

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,

)

Docket No. 304647

v.

)

TIMOTHY BOYD,

)

Judge Andrew Freiberg

)

MOTION TO DISMISS AND MEMORANDUM OF LAW

COMES NOW, the Defendant, Timothy Boyd, by and through counsel, Lee Davis, Davis & Hoss, P.C., pursuant to Rule 12 of the *Tennessee Rules of Criminal Procedure*, the First Amendment to the *United States Constitution* and Article 1, Section 19 of the *Tennessee Constitution* and moves this Honorable Court for an order dismissing the pending indictment against Timothy Boyd.

For cause, the Defendant would show as follows:

I. BACKGROUND

1. The State indicted Timothy Boyd pursuant to T.C.A. § 39-14-112, charging him with a single count of extortion. Boyd has no criminal history and has never been arrested or convicted of a crime.
2. The State alleges that before February 22, 2018, Boyd did unlawfully use coercion upon another, Brent Lambert, with the intent to obtain property, services, any advantage or immunity; or restrict unlawfully another's freedom of action in violation of Tennessee Code Annotated § 39-14-112.
3. "Coercion" is defined by statute as a threat to: (A) Commit any offense; (B) Wrongfully accuse any person of any offense; (C) Expose any person to hatred, contempt or ridicule; (D) Harm the credit or business repute of any person; or (E) Take or withhold action as a

public servant or cause a public servant to take or withhold action. T.C.A. § 39-11-106.

II. LAW & ARGUMENT

History

On or about February 15 and 21, 2018, Lambert called Boyd and spoke to him on the telephone. As indicated above, these men had been political rivals. During the February conversations, Lambert called Boyd, seeking to discuss the upcoming contested County Commission election. Lambert was an experienced politician, serving as the Mayor of East Ridge running against the incumbent Boyd for County Commissioner. The entire purpose of Lambert's telephone calls to Boyd was clearly political. They are not friends; they are not coworkers; they do not have interests in common; they have no family in common; they do not socialize; they do not attend the same church. They have no reason to communicate except for their shared interest in the same political office, an office that Boyd then and now holds, and that Lambert sought. There was no other reason for Lambert to call Boyd except for his own political motivations. The content of the telephone conversations between Lambert and Boyd is political speech. It is from within these political conversations that the alleged crime occurred. "Because speech is an essential mechanism of democracy—it is the means to hold officials accountable to the people—political speech must prevail against laws that would suppress it by design or inadvertence." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

Lambert Secretly Recorded Calls

To put the conversations in further context, Lambert sought to defeat incumbent Boyd in the May 1, 2018, Republican Primary for County Commission, District 8. Toward that end, Lambert initiated two telephone calls. He surreptitiously tape-recorded Boyd. These recordings were not at the direction of law enforcement. They were not made in the presence of law enforcement. Indeed, it appears that Lambert never contacted the District Attorney's Office or the Tennessee Bureau of Investigation

("TBI") until well after the secretly recorded telephone calls were made.

In the calls, Lambert asked Boyd about Boyd's campaign research. During the campaign, Boyd and his supporters had researched Lambert's record. They had reviewed and collected information from Lambert's campaign disclosure forms and local media accounts reporting Lambert's highly suspicious use of campaign contributions. Lambert had learned that Boyd and his supporters were aware of Lambert's suspicious activities as a result of a conversation Lambert had with his employer's attorney. Of course, Lambert already was aware of the damaging and negative research material since it originated from his own disclosure forms, and it had been published by Dick Cook at East Ridge Online News on February 3, 2018. The Cook article in particular had raised concerns over the unusual and suspicious circumstances by which Lambert paid himself \$5,000 from developers who did business with the City of East Ridge while Lambert was Mayor.¹

During Lambert's two telephone calls, Boyd calmly answered Lambert's questions. He was not angry. He did not raise his voice. Boyd did not threaten Lambert. He did not curse. He used no hateful or violent speech. Boyd honestly and openly answered Lambert's questions, stating that his campaign was in possession of the potentially negative research material. Lambert and Boyd discussed only what was already in the public record. Boyd simply stated that the campaign had research material about Lambert and was prepared to disclose it.

¹ In 2017 Lambert was not running for any office, he was Mayor of East Ridge. Yet, in a financial disclosure dated July 17, 2017, Lambert lists contributions of \$1,000 each from Matt Wood, Ethan Wood, John Healy, Emerson Russell and Terry Watts. The Wood brothers and Healy are individuals who developed the Bass Pro Shop and are continuing to build out Jordan Crossing at Exit 1 in East Ridge, Tennessee.

These contributions are dated June 14, 2017. That is 31 months after Lambert was elected to his second term as mayor of East Ridge. It is also 12 days after Lambert and the East Ridge City Council had a special called meeting to vote on and approve construction costs for the reconfiguration of Exit 1. Mayor Lambert and the council voted to approve a \$2.5 million bond issue to, in part, finance the \$7 million project.

According to the financial disclosure statement, Lambert paid himself \$5,000. This money was used by Lambert to offset a \$9,100 campaign loan to his campaign from himself in 2014. Of course this payment could be politically damaging if voters became critical of how Lambert, mayor of East Ridge, used money received in 2017 from East Ridge developers to pay himself for a loan he made to himself in 2014.

This information was published on February 3, 2018, by Dick Cook at East Ridge News Online. Available at <http://www.eastridgenewsonline.com/timing-is-everything/>

The information that Boyd described is protected political speech. Lambert asked Boyd: What should I do? Boyd urged Lambert to drop out of the race, and spare his campaign from having to release the research material. This kind of communication between political rivals, without more, is not criminal extortion. Without a threat—that is itself a criminal act or offense—there is no crime of extortion. In a political campaign, telling your opponent that you will release negative research information, if the candidate stays in the race is not a crime. *See State v. Eddins*, 2007 WL 4116490 (Tenn. Crim. App.), (Tenn. Crim. App. 2007). It is political speech.

Boyd told Lambert that he could drop out, if he wanted to avoid the unwelcome media attention from what the Boyd campaign, and the press, found in the public record. Lambert knew what was there. Candidates often publish harsh facts about their opponents. It is the nature of politics. Candidates have the discretion to publish their opponent's record; or they can choose not to publish the information. The decision whether to publish or not is afforded protection under the First Amendment to the *U.S. Constitution* and Article 1, Section 19 of the *Tennessee Constitution*.²

The New Strategy Unfolds

Political candidate Lambert engaged in a calculated campaign strategy. He chose to call Boyd. He chose to secretly tape-record Boyd. He engaged him in conversation. Lambert did so with a plan in mind.

TBI and Indictment

In possession of the recorded calls, Lambert first went to the TBI in April days before early voting in the election began. As leaks of the investigation surfaced, Boyd attempted to obtain a record of the allegations being made against him. He was never provided a report of investigation;

² Significantly, the Tennessee Supreme Court has held that its protections of the freedoms of speech are “substantially stronger” than the First Amendment because “it is clear and certain, leaving nothing to conjecture and requiring no interpretation, construction, or clarification.” *Press, Inc. v. Verran*, 569 S.W.2d at 442. *See Lewis v. News Channel 5 Network, L.P.*, 238 S.W.3d 270, 288 (Tenn. Ct. App. 2007).

he was never interviewed; he was never shown any recordings or transcripts of recordings. Within days of Lambert making his complaint, and on the day before early voting started, an indictment was obtained and splashed all over the media.

Lambert then in dramatic fashion, and unbeknownst to the District Attorney, threatened to release the tape-recordings through an orchestrated press conference. He did so to seek an advantage over Boyd. In fact, Lambert held a press conference for invited guests at East Ridge Town Hall where he serves as Mayor. During this press conference, Lambert played the taped conversations to invited media. Security for the event was provided by an East Ridge Police Officer in uniform who was “off duty” and paid by the Lambert campaign. (A copy of the press conference coverage is attached as Exhibit “A.”)

On April 28, 2018, the Saturday before the election, Lambert delivered a mass mailing, through the U.S. Postal Service, sending highly negative and prejudicial campaign literature to voter’s homes, all in attempt to seek an advantage over Boyd. (A copy of the mailer is attached as Exhibit “B.”) Lambert delivered another toxic mass mailing to voter’s homes on Monday, April 30. (A copy of that mailer is attached and labeled Exhibit “C.”) All of Lambert’s negative campaign literature, as obnoxious and repugnant as it may be, is protected campaign speech.³

Constitutional Free Speech

Boyd as a political candidate and citizen, has the right guaranteed him under the *Tennessee* and *United States* Constitutions to express himself politically. He like Lambert has the right to speak directly, forcefully, and unsparingly about a political opponent, either in a mailing like Lambert chose to do or directly to the man as Boyd chose to do. Boyd’s free speech protections are characterized in First Amendment jurisprudence as a “fundamental” liberty. “Of that freedom one

³ District 8 County Commissioner Tim Boyd defeated challenger East Ridge Mayor Brent Lambert on Tuesday, May 1, 2018. In the election Boyd received 62% of the vote; Lambert received 37% of the vote.

may say that it is the matrix, the indispensable condition, of nearly every other form of freedom.” *Palko v. Connecticut*, 302 U.S. 319, 327 (1937). The First Amendment contemplates that “the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market....” *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). The choices that government may make in an effort to regulate or prohibit speech are limited.

An essential part of Boyd’s constitutionally protected freedoms of speech is his right to bring focus to issues and to examine and criticize conduct of Lambert as a public official, the mayor of East Ridge or candidate for County Commission. Boyd has every right to publish or withhold the information he discovered on his political opponent Lambert. So too does he have the right to discuss the consequences of the release of this information directly with Lambert. A discussion with Lambert concerning the facts that may surface in the election is fully protected political speech. There is no place for the State to burden Boyd with its view on the matter. This right of Boyd’s, like that of any citizen, has been characterized as a “political duty” that “should be a fundamental principle of the American government.” *Whitney v. California*, 274 U.S. 357, 375 (1927).

Boyd has the right to address what he views as matters of public concern. Matters of public concern have “been characterized as those matters as to which ‘free and open debate is vital to informed decision-making electorate.’” *Phillips v. State Bd. of Regents*, 863 S.W.2d at 51 (quoting *Pickering v. Bd. of Educ.*, 391 U.S. 563, 572 (1968)); *Lewis v. News Channel 5 Network, L.P.*, 238 S.W.3d 270, 297 (Tenn. Ct. App. 2007).

III. CONCLUSION

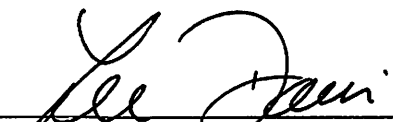
For this prosecution to continue is to allow the State to intrude on protected ground. Political candidates have a right to engage in free political speech. While the State may not agree on the

methods or choices of political speech at play here, barring an explicit criminal act, the State must step aside and let the political process control. The vote is of such importance that it may not be damaged by limitations on speech that mistakenly attempted to fit the conduct here within Tennessee's extortion statute.

WHEREFORE, the premises considered, Mr. Timothy Boyd, through counsel, respectfully submits that as a matter of law this indictment should be dismissed.

Respectfully submitted,

DAVIS & HOSS, P.C.



Lee Davis, BPR #15958
850 Fort Wood Street
Chattanooga, TN 37403
(423) 266-0605
(423) 266-0687 – Fax


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CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served on the following counsel of record by placing postage prepaid envelope in the United States Mail, by facsimile, and/or by email to the following:

District Attorney Neal Pinkston
Hamilton County District Attorney's Office
600 Market Street, Suite 310
Chattanooga, TN 37402.

This the 3rd day of May, 2018.



Lee Davis

East Ridge mayor plays recordings of phone conversations with Hamilton County commissioner [video, photos]

April 16th, 2018 by Zack Peterson in Breaking News Read Time: 3 mins.



Brent Lambert speaks on Hamilton County Commissioner Tim Boyd's indictment at a press conference in East Ridge's community center.

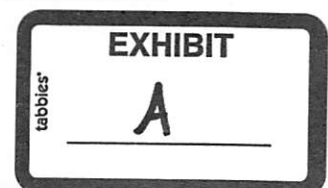
Photo by [C.B. Schmelter](#) /Times Free Press.

This story was updated April 16, 2018, at 11:30 p.m. with more information.

Gallery: Brent Lambert plays recorded calls

Two politicians running to represent East Ridge and parts of Brainerd on the Hamilton County Commission continued to trade shots Monday over the meaning of three recorded phone calls.

East Ridge Mayor Brent Lambert played nearly 30 minutes of audio Monday that he recorded between himself and incumbent District 8 Commissioner Tim Boyd for members of the media.



Other community members interested in hearing more about the calls that got Boyd indicted for criminal extortion were turned away from the East Ridge Community Center.

"I may not have all the experience in the world, but I do know this," Lambert said in between one of the calls. "In my 10 years in the political world, I don't know anyone who has ever been threatened by a candidate in this way."

Last week, Boyd characterized his conversations with Lambert as a father giving advice to a son. In the phone calls, which Lambert made on Feb. 16, Feb. 20 and Feb. 21, Boyd said his political team had found damaging information on campaign contributions Lambert accepted in 2017 from local developers. Boyd said he wanted to let Lambert know that his team would use those contributions to paint Lambert as an "unethical businessman" on the campaign trail.

If Lambert dropped out, Boyd said in the calls, his team wouldn't mention anything publicly. That could save Lambert and the Tennessee Valley Railroad Museum, where he is chief operating officer and president, some embarrassment.

Plus, Boyd said, the District 8 seat would be open in four years, as he planned on making this his last political run.

"It serves me no good to [mess] with somebody's life unless we're in a political race," Boyd said in one of the calls. "But if it's a political race, it's like a football game: I'm going to do everything I can to win."

Boyd's attorney, Lee Davis, said his client was being a responsible candidate and collecting opposition research via public records. He said Lambert was the one who released evidence in a pending criminal case and then blocked citizens from entering the news conference.

There is no law that prevents Lambert from releasing the calls, since he recorded them. And because Lambert paid for Monday's event with campaign funds, he could control the audience, too.

"But now he wants to change the narrative and turn that into a threat when any responsible candidate would bring [contributions] up in a race," Davis said after Lambert's conference. "Follow the money: It's as old as any political campaign, and it's what we will be doing. He's invited it, and we will investigate it."

Is it a threat to say you're going to release public information?

"He didn't call it public information [on the phone]," Lambert said Monday during his news conference. "It is a threat to say if you don't do this, then I'm going to hurt you."

Tennessee law says extortion is when a citizen coerces somebody else for the purposes of obtaining property, services or some kind of advantage or immunity. Last week, Chattanooga defense attorney Bill Speek said the perceived advantage here is Boyd telling his opponent to stop to gain an upper hand in the election. But Speek said a lot of behavior could be shoehorned into that statute because it's broadly written.

A Hamilton County grand jury indicted Boyd last week on one count of extortion, a Class D felony that carries two to four years in prison. He is scheduled to appear April 27 in Hamilton County Criminal Court to plead guilty or not guilty and already has posted a \$2,500 bond.

After Boyd said this was a political setup, Lambert called a news conference on Friday to give his side.

Lambert said he received a call on the evening of Feb. 15 from his employer's attorney, Allen McCallie, that Boyd planned to release some damaging information unless he dropped out of the District 8 race.

When he called Boyd the next morning, Lambert said he recorded their conversation so he would have a witness. Lambert said it was his idea to record but said he was in contact with his personal lawyer, John Anderson, who used to be East Ridge's city attorney until he was fired in 2012 for overbilling.

Later that afternoon, Lambert said he went to Hamilton County District Attorney General Neal Pinkston, who arranged a meeting with the Tennessee Bureau of Investigation on Feb. 19. It is not uncommon for a prosecutor who feels too close to a case to ask the TBI to step in. But Boyd cried foul because of the timing: he was indicted a day before early voting began in the May 1 Republican primary.

After his meeting with the TBI, Lambert recorded two more calls. He declined to comment Monday on whether the TBI was involved in them.

Contact staff writer Zack Peterson at zpeterson@timesfreepress.com or 423-757-6347. Follow him on Twitter @zackpeterson918.

TIM BOYD INDICTED FOR EXTORTION



“That Timothy Boyd did unlawfully use coercion upon another with the intent to obtain property, services, any advantage or immunity; or restrict unlawfully another’s freedom of action in violation of Tennessee Code Annotated 39-14-112, against the peace and dignity of the State.”

EXHIBIT

B

tabbles

COUNTY COMMISSIONER TIM BOYD

⊗ State of Tennessee vs. Timothy Boyd

PROVIDING SOLUTIONS TO ISSUES THAT MATTER



As Mayor of East Ridge, Brent Lambert worked with other community leaders to build partnerships that are bringing more jobs to the area and expanding economic development while keeping taxes low. As County Commissioner, he will continue his focus on these important issues while leading the effort to improve our roads and infrastructure across the district and make sure public schools have the funding and resources they need so students can be successful.

**Republican Primary
Election May 1**

**LAMBERT
COUNTY COMMISSION**

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TIM BOYD'S

Corrupt & Sleazy Politics

On February 19, the Tennessee Bureau of Investigations began an investigation of Tim Boyd leading to **his indictment for criminal extortion** on April 10 by the Hamilton County Grand Jury.

Tim Boyd says one thing and does another. In 2016, he told the East Ridge Alumni and Supporters if they would raise \$50,000 for East Ridge High School to build a field house and other facilities at Raymond James Stadium he would donate \$50,000 from the Hamilton County Commission's discretionary fund. The Alumni Association worked hard and raised \$70,000, but

Tim Boyd did not keep his word and never gave the school the \$50,000 he promised.

Paid for by Citizens for Lambert, Thomas W. Lambert, Treasurer.

BRENT LAMBERT IS BUILDING PARTNERSHIPS THAT BRING RESULTS TO HAMILTON COUNTY

Brent Lambert listens to all sides and makes smart, reasonable decisions to get things done for our communities. He led the effort on the Exit 1 Reconfiguration along with a new Camp Jordan Parkway which will improve safety and access for everyone traveling around I-75. As Mayor of East Ridge, he worked with other city

officials to be the first municipality in the state with a "Border Region" designation, which is bringing new businesses and better jobs.

LAMBERT
COUNTY COMMISSION

RESULTS
NOT RHETORIC

EARLY VOTING NOW THROUGH APRIL 26
REPUBLICAN PRIMARY MAY 1



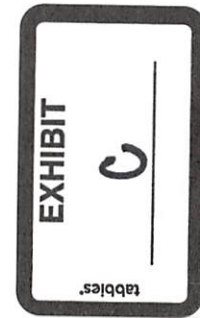
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Grand Jury Indicts Tim Boyd

on one count of extortion,
a Class D felony that carries
two to four years in prison

COUNTY COMMISSIONER TIM BOYD
turned himself in at the county jail
on April 11, 2018

