

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20th JUDICIAL DISTRICT, DAVIDSON COUNTY

COPY

TENNESSEE DEMOCRATIC PARTY)

Petitioner)

v.)

HAMILTON COUNTY ELECTION)
COMMISSION,)

Respondent.)

Case No: 18-730-I

TENNESSEE DEMOCRATIC PARTY)

Plaintiff,)

v.)

HAMILTON COUNTY ELECTION)
COMMISSION,)

Defendant.)

FILED
2018 JUL -2 PM 4:30
CLERK AND MASTER
DAVIDSON CO. CHANCERY CT.
DC&M

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
PETITION FOR WRIT OF CERTIORARI**

The Tennessee Democratic Party (the "TNDP") hereby files this Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Certiorari challenging the decision by the Hamilton County Election Commission (the "HCEC") to reopen the ballot for the August 2, 2018 Republic Primary Election for Tennessee House District No. 26 (hereinafter the "Republican Ballot") following the abrupt withdrawal of Gerald McCormick, the incumbent,

which occurred on June 18, 2018. Tenn. Code Ann. § 2-5-101(g)(1) provides the exclusive instances wherein, following a previously qualified primary candidate's withdrawal, a political party may reopen the ballot and qualify additional candidates. Since none of the exclusive instances provided for in Tenn. Code Ann. § 2-5-101(g)(1) apply to Mr. McCormick, the HCEC was without statutory authority to allow additional candidates to qualify for the Republican Ballot.

PARTIES

1. The TNDP is the statewide political party entitled under Title 2 of the Tennessee Code to carry out all of the functions of the democratic political party in the State of Tennessee. The TNDP maintains its headquarters in Davidson County at 1900 Church St., Nashville, TN. Its current chairperson is Mary Mancini.

2. The Hamilton County Election Commission is a board or commission functioning under the laws of the State of Tennessee and charged with overseeing and administering all elections for all public offices in Hamilton County, including, but not limited to, House District 26. HCEC is the board or commission that qualifies candidates for House District 26 and determines, consistent with state law, who may or may not appear on the ballot for House District 26 primary and general elections.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action because it is a matter requesting a Writ of Certiorari under Tenn. Code Ann. § 27-9-101 and under Tenn. Code Ann. § 27-9-102, this cause may be brought in a county where the Petitioner resides. Also, as detailed below, a substantial portion of the actions giving rise to this action occurred in Davidson County in that Mark Goins maintains his office in this jurisdiction and conducted his investigation into the residency of Gerald McCormick in this jurisdiction.

4. Venue is proper in this Court under Tenn. Code Ann. § 27-9-102.

FACTUAL BACKGROUND

5. The qualifying deadline to appear on the Republican Ballot for the August 2, 2018 primary election for House District 26 was April 5, 2018 (the “Qualifying Deadline”). The only Republican Candidate who had submitted a valid petition by the Qualifying Deadline was Gerald McCormick, the incumbent for House District 26.

6. In or around early June 2018, rumors began circulating that Gerald McCormick was no longer a Hamilton County resident and therefore no longer eligible to run for House District 26.

7. As a result of these rumors State Election Coordinator, Mark Goins, undertook an investigation concerning Gerald McCormick’s primary residence. On June 12, 2018, following Mr. Goins investigation, which included Mr. McCormick’s participation, Mr. Goins published a memo (the “Goins Memo”) and delivered it to the HCEC. A true and correct copy of the Goins Memo is attached as Exhibit 1. In that letter, Mr. Goins concludes that:

Based on the evidence provided and the information independently gathered by my office, Representative McCormick has evidence that he meets a sufficient number of factors under Tennessee law to support the determination that he meets the residency requirements to appear on the ballot as a candidate for state representative [for House District 26].

8. In short, the Goins Memo concluded that Gerald McCormick was a resident of Hamilton County as of June 12, 2018.

9. On June 13, 2018, the Times Free Press publishes a report on the Goins Memo and that article stated that “McCormick said during several Times Free Press interviews that he continues to spend the majority of his time outside of the General Assembly's annual four-month legislative session at his Chattanooga home and thus meets the Tennessee Constitution's

[residency] requirements.” A true and correct copy of this news article is attached as Exhibit 2.

10. Just five days following the June 13, 2018 Times Free Press report, which reported numerous statements made by McCormick that he was a Hamilton County resident, Gerald McCormick submitted a letter to the HCEC stating that “As a result of a job opportunity I will be forced to move to Nashville to carry out my work responsibilities later this year.” He promptly withdrew his candidacy for House District 26. A copy of this letter is attached as Exhibit 3.

11. Tenn. Code Ann. § 2-5-101(g)(1) states as follows:

If a candidate in a primary election or nonpartisan general election, after the qualifying deadline:

(A) Dies;

(B) Withdraws because of military call up;

(C) Withdraws because of physical or mental disability, such physical or mental disability being properly documented by competent medical authority;

(D) Withdraws because such candidate is forced to change residence by the candidate's employer for a job-related reason;

(E) Is declared ineligible or disqualified by a court or disqualified by the political party executive committee under § 2-5-204;

(F) Is declared disqualified by the peace officer standards and training (POST) commission pursuant to § 8-8-102(e); or

(G) Is declared disqualified by the Tennessee highway officials certification board pursuant to § 54-7-104;

leaving no candidates for nomination or office, additional candidates may qualify for the election or that nomination by filing their petitions as provided by law no later than twelve o'clock (12:00) noon, prevailing time on the fortieth day before the election. If any of these events occur within ten (10) days of the fortieth day, the qualifying deadline shall be twelve o'clock (12:00) noon, prevailing time on the tenth day following the death or withdrawal.

12. The Tennessee code makes it clear that “[c]andidates may withdraw for reasons other than those listed in subdivision (g)(1); however, no additional candidates may qualify.” Tenn. Code Ann. § 2-5-101(g)(2).

13. Since Gerald McCormick was the only qualified nominee for the Republican Party for House District 26, the Republican Party could only obtain a new nominee for House District 26 if Mr. McCormick satisfied one of the exclusive enumerated reasons set forth in Tenn. Code Ann. § 2-5-101(g)(1). He does not. As a result, the HCEC is without statutory authority to accept new nominating petitions after the Qualifying Deadline.

14. Nevertheless, on July 2, 2018, the HCEC met (the “July 2 Meeting”) and announced that it would be accepting the qualifying petitions of new candidates to appear on the Republican Ballot. At that meeting, no evidence other than Mr. McCormick’s letter of June 18, 2018 was provided to the HCEC. Mr. McCormick did not appear. His employer did not appear. The HCEC did not appear to even question the veracity of the statements claimed in the June 18, 2018 letter despite being in possession of the Goins Memo. The HCEC simply accepted new nomination petitions from Republican Candidates and approved a ballot for the newly qualified candidate, Robin Smith.

15. Prior to the July 2 Meeting, counsel for the TNDP informed members of the HCEC it intended to object to the reopening of the Republican Ballot and this was conveyed to other members of the HCEC. On July 2, the TNDP hand delivered a letter to several members of the Election Administrator objecting to the decision. A copy of this letter is attached as Exhibit 4.

16. At that July 2 Meeting, the HCEC was ware of 1) the finding in the Goins Memo 2) Mr. McCormick’s repeated statements to the press that he was a Hamilton County resident, 3) Mr. McCormick stated intention to run for House District 26 leading up to his June 18, 2018

shocking announcement to withdraw 4) Mr. McCormick's continued efforts throughout June 2018 to fight the rumors that he was a Davidson County resident not qualified to run for House District 26 in the first place.

17. Notwithstanding this knowledge the HCEC accepted, with little to no evidence, Mr. McCormick's radical change of position that his employment situation so radically changed between June 12, 2018 - the date of the Goins Memo - and June 18, 2018 - the day he announced his intent to withdraw - to trigger Tenn. Code Ann. § 2-5-101(g)(1)(D). To the best of the TNDP's knowledge, the HCEC did not interview Mr. McCormick or his employer, he did not attend the July 2, 2018 Meeting, his employer did not attend the July 2, 2018 Meeting, and there was simply no evidence presented that Mr. McCormick's withdrawal from the race triggered any of the reasons that would allow the reopening of the Republican Ballot.

18. The TNDP is responsible for coordinating and aiding all democrats running for partisan political office in the State of Tennessee. As part of those duties the TNDP raises money, provides staff, facilitates communications, and administers a robust public relations campaign to help elect democrats to partisan political office. House District 26 is one such partisan political office and the TNDP shall have a candidate on the November General Election Ballot for that office as it has two qualified candidates running for the party's nomination for House District 26. The TNDP will suffer immediate and irreparable harm in the event that its candidate for House District 26 has to compete against an unlawfully qualified candidate from the republican party. The TNDP has a particular interest in ensuring that all candidates appearing on the November General Election Ballot for House District 26 are statutorily qualified to appear and the make-up of the November General Election Ballot will help determine the TNDP's staffing, fundraising, and outreach efforts in House District 26. Accordingly, the TNDP has standing to challenge the

HCEC's decision to reopen the Republican Ballot.

COUNT I
PETITION FOR WRIT OF CERTIORARI

19. All preceding paragraphs are restated, realleged and incorporated as if fully set forth herein.

20. Tenn. Code Ann. § 27-9-101 allows “anyone who may be aggrieved” by an administrative decision to file a suit to have that decision reviewed. The HCEC is a board or commission covered by Tenn. Code Ann. § 27-9-101. The TNDP is a person aggrieved by a decision by the HCEC.

21. The TNDP will suffer immediate and irreparable harm in the event that the HCEC is permitted to unlawfully reopen the Republican Ballot and allow a Republican candidate to appear on the November General Election Ballot following the August 2, 2018 Republic Primary for House District 26.

22. None of the enumerated reasons set forth in Tenn. Code Ann. § 2-5-101(g)(1) apply to Gerald McCormick's withdrawal from running for House District 26.

23. At all times leading up to his shocking June 18, 2018 announcement that he would withdraw, Mr. McCormick steadfastly maintained that he resided in Hamilton County and it was his intent to run for reelection for House District 26.

24. Just six days prior to that shocking announcement, Mr. McCormick provided sufficient evidence to Mark Goins, the State Election Coordinator, to conclude that he was a Hamilton County resident and qualified to run for House District 26.

25. The HCEC utterly failed to obtain any evidence that would support Mr. McCormick's newly professed position that his employment situation so radically changed that

he would be forced to relocate to Davidson County and therefore could not run for reelection, just six days after the Goins Memo and five days after the Free Times reported that he repeatedly insisted that he was a resident of Hamilton County while performing work for the same employer in Davidson County.

26. The Court should therefore declare that the HCEC was in error in finding that Tenn. Code Ann. § 2-5-101(g)(1) applied to Mr. McCormick's withdrawal and overturn its decision to reopen the Republican Ballot to candidates who submitted qualifying petitions well past the Qualifying Deadline.

WHEREFORE, the TNDP respectfully requests that this Court issue a Writ of Certiorari setting aside the HCEC's decision to allow new Republican candidates onto the August 2, 2018 Republican Party Primary Ballot for House District 26 and order that no candidates for the Republican Party appear on the August 2, 2018 primary ballot for House District 26.

COUNT II
DECLARATORY JUDGMENT UNDER TENN. CODE ANN. § 29-14-101 ET. SEQ.

27. All preceding paragraphs are restated, realleged and incorporated as if fully set forth herein.

28. Tenn. Code Ann. § 29-14-103 provides that any person "whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance... may have determined any question of construction or validity arising under the...statute [or] ordinance..."

29. The TNDP is an interested person as that term is used in T.C.A. § 29-14-103 and has standing as described above.

30. The TNDP will suffer immediate and irreparable harm in the event that the HCEC is permitted to reopen the Republican Ballot.

31. None of the enumerated reasons set forth in Tenn. Code Ann. § 2-5-101(g)(1) apply to Gerald McCormick's withdrawal from running for House District 26.

32. Under the clear terms of Tenn. Code Ann. § 2-5-101(g)(1) as applied to the present situation, the Republican Party is not permitted to have any candidates appear on the Republican Ballot following Gerald McCormick's withdrawal from the race.

33. Gerald McCormick's claims that he withdrew from the race because his employer forced his move to Davidson County after the Qualifying Deadline is merely pretextual and not consistent with the facts.

34. The Court should, therefore, declare that Gerald McCormick's withdrawal from the race did not trigger any of the enumerated reasons set forth in Tenn. Code Ann. § 2-5-101(g)(1) and as a result it was unlawful and void that HCEC accepted the qualifying petitions of Ms. Smith.

35. If Defendants are not enjoined from allowing Ms. Smith from appearing on the Republican Ballot, the TNDP will suffer immediate and irreparable harm in its efforts to elect democrats to partisan elected office in the State of Tennessee.

WHEREFORE, The TNDP respectfully requests that this Court declare the HCEC's actions of July 2, 2018 accepting the qualifying petitions for Ms. Smith to run as Republican Candidates for House District 26 null and void and enjoin the HCEC from printing any ballot with Ms. Smith appearing as candidates for House District 26.

PRAYER FOR RELIEF

Based upon the above allegations, The TNDP prays for the following:

1. That proper process issue, service thereof be perfected, and

Defendants/Respondents HCEC be required to answer for the conduct described herein;

2. That the Court declare that Gerald McCormick's withdrawal from running for House District 26 did not trigger any of the enumerated reasons in Tenn. Code Ann. § 2-5-101(g)(1);

3. That the Court declare that HCEC's decision to reopen the Republican Ballot and permit Robin Smith to appear as potential Republican candidates for House District 26 is null and void;

4. That, to the extent necessary, issue of Writ of Certiorari setting aside the HCEC's decision finding that Gerald McCormick's withdrawal from running for House District 26 satisfied Tenn. Code Ann. § 2-5-101(g)(1)(D) and permitting Robin Smith to appear on the August 2, 2018 Republican primary ballot for House District 26;

5. That the Court issue an injunction temporarily and permanently enjoining the HCEC from printing or displaying any ballot containing the name of any person as the Republican Party candidate for House District 26;

6. That the Court award the TNDP attorneys' fees, court costs, fees, and taxes;

7. That any other extraordinary relief be granted to Petitioner as warranted by the arbitrary, capricious, and illegal actions of the HCEC; and

8. That the Court award any other and further relief as this Court deems appropriate or which is allowed for in law or equity.

This is the first request for extraordinary relief in this case. The TNDP demands a trial by jury on all claims as triable as a matter of right.

Dated: July 2, 2018

Respectfully submitted,

By:  _____

J. Gerard Stranch, IV (BPR#023045)

Benjamin A. Gastel (BPR#028699)

Seamus T. Kelly (BPR#032202)

BRANSTETTER, STRANCH & JENNINGS,
PLLC

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Nashville, TN 37203

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VERIFICATION AND AFFIDAVIT

STATE OF TENNESSEE)

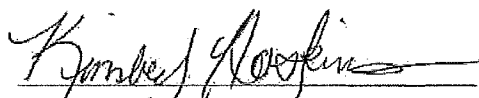
COUNTY OF DAVIDSON)

The undersigned, upon being duly sworn upon her oath deposes and testifies as follows:

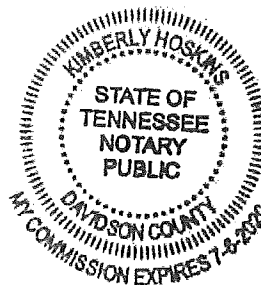
1. That she is the current chairperson of the TNDP;
2. That she has read the complaint and the foregoing factual allegations thereto are true and correct according to the best of her knowledge, information, and belief.


Mary Mancini

Sworn to and subscribed before me this 2nd day of July, 2018.


Notary Public

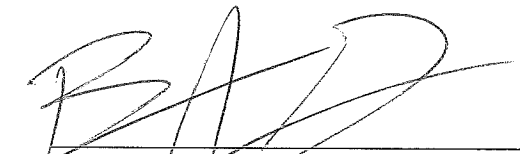
My Commission Expires: 7/6/2020



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 2, 2018, the foregoing document was served via electronic mail upon:

Kerry Steelman
Administrator of Elections, Hamilton County
700 River Terminal Rd.,
Chattanooga, TN 37406
vote@hamiltonTN.gov
brendah@hamiltontn.gov



Benjamin A. Gastel

EXHIBIT 1

Tennessee Secretary of State

Tre Hargett



Elections Division
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

June 12, 2018

Kerry Steelman
Administrator of Elections
Hamilton County Election Commission
700 River Terminal Road
Chattanooga, TN 37406

Dear Mr. Steelman,

Late last week, a person called the office questioning the residency of Representative Gerald McCormick, who has qualified to seek re-election in District 26. Representative McCormick filed his petition with a sufficient number of valid signatures on February 21, 2018. The qualifying deadline passed on April 4, 2018. The Hamilton County Election Commission met in a meeting open to the public on May 29, 2018, to approve qualified candidates, including Representative McCormick, and set the ballot for the August 2, 2018 election.

The question that was raised three months after Representative McCormick filed his petition to run as to his residency was not timely since the election commission has approved the candidates and military ballots must be sent out by June 18. However, since only qualified candidates are to be placed on the ballot, I did perform due diligence to ensure the determination on May 29 that Representative McCormick was in fact qualified to run for office was correct. For the reasons outlined below, Representative McCormick would have met the residency requirements had the challenge been made timely.

I reached out to Representative McCormick to inquire about his qualifications to run for office. Specifically, I inquired about whether he had purchased a house in Davidson County. He confirmed he did own a home with his wife in Davidson County, as well as a home in Hamilton County. He also provided several records showing that his residence for voting and candidacy purposes was in Hamilton County. These records include his driver license, receipts, utility and bank statements, and an IRS tax filing showing his address as 5311 Fairview Road, Hixson, TN 37343, which is in District 26. Independently, my office verified that he remains licensed as a

Real Estate Agent using a Chattanooga address, and that he and his wife continue to own and pay property taxes on the Fairview Road residential property.

A person may have multiple homes, but only one residence for voting and candidate qualifying purposes. T.C.A. § 2-2-122 provides that a person's residence is determined by a person's intent plus actions consistent with that intent and sets out factors that assist in determining a person's residency. These factors include possession of property, the location of a person's occupation, place of licensing or registration of personal property, payment of taxes, and the place a person is licensed for activities such as driving.

Based on the evidence provided and the information independently gathered by my office, Representative McCormick has evidence that he meets a sufficient number of factors under Tennessee law to support the determination that he meets the residency requirements to appear on the ballot as a candidate for state representative.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Mark Goins".

Mark Goins
Coordinator of Elections

EXHIBIT 2

Tennessee elections chief says review shows McCormick meets residency requirements

June 13th, 2018 | by Andy Sher | in Politics State | Read Time: 4 mins. |



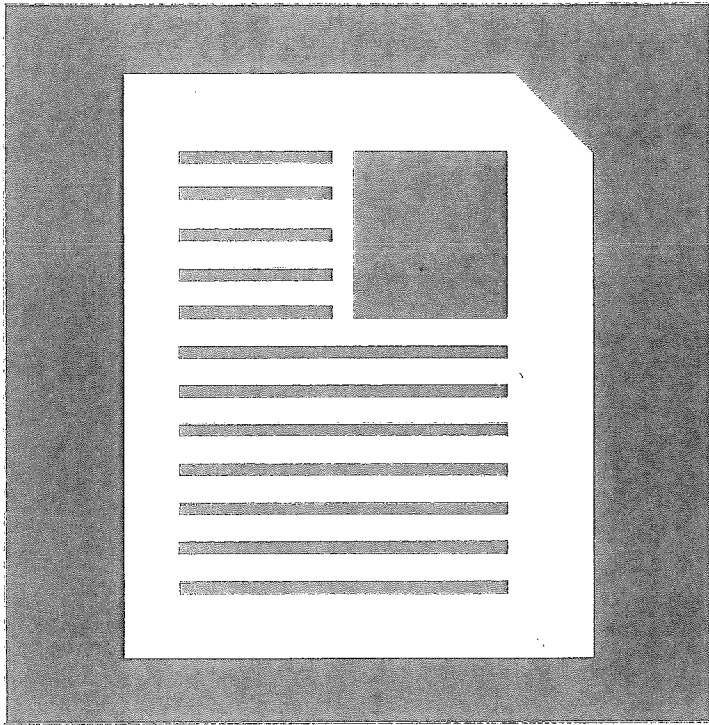
House Majority Leader Gerald McCormick, R-Chattanooga, presents Gov. Bill Haslam's anti-meth bill in the House Criminal Justice Committee on Wednesday, March 26, 2014. The panel advanced its bill that would carry lighter restrictions on cold and allergy medicines than the Senate version, setting up the prospect of a conference committee between the two chambers. (AP Photo/Erik Schelzig)

Photo by Erik Schelzig

Document: Letter to Steelman

NASHVILLE — Tennessee Election Coordinator Mark Goins says he's determined that state Rep. Gerald McCormick, R-Chattanooga, whose legal residency in Hamilton County has been questioned, "meets a sufficient number of factors" to remain on the ballot as a candidate in the House District 26 contest.

In recent weeks, an issue about the former state House majority leader's legal residency has been raised in light of the Aug. 4, 2017, purchase of a \$487,032 home in Nashville by McCormick and his wife, Kim McCormick, a



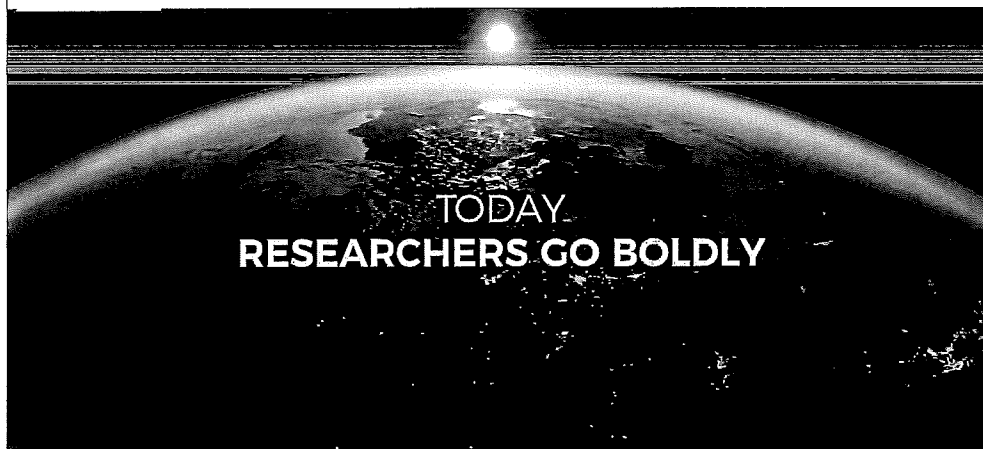
top aide to Tennessee Board of Regents Chancellor Flora Tydings.

The deed of trust for the Nashville home lists the house as McCormick's "principal residence." The representative still owns a 3,500-square-foot Chattanooga residence on Big Ridge.

Read a copy of State Election Coordinator Mark Goins' letter to Hamilton County Election Administrator Kerry Steelman saying evidence shows "sufficient factors" supporting Rep. Gerald McCormick's Chattanooga residency to run for re-election.

ADVERTISING

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McCormick, a seven-term representative and former House majority leader, accused Democrats of being the culprits behind raising issues about his legal residency.

"The guy that came and crept around in my backyard through a gate and looked at the windows is a Democratic campaign guy. He works for one of the guys who's running against me," McCormick charged.

McCormick said during several Times Free Press interviews that he continues to spend the majority of his time outside of the General Assembly's annual four-month legislative session at his

Chattanooga home and thus meets the Tennessee Constitution's requirements.

The state constitution's Article 2, Section 9 states that no one can be a state representative unless he has "resided three years in this state, and one year in the county or district, immediately preceding the election."

McCormick works as a real estate broker. He said he and his wife, who formerly worked at Chattanooga State and in 2017 went to work for Tydings, currently as her vice chancellor of external affairs, made the decision to buy the home because Kim McCormick spends most of her time in Nashville.

Goins and current House Majority Leader Glen Casada, R-Franklin, said in recent interviews a younger man identifying himself as a University of Tennessee at Chattanooga student had contacted them with questions about McCormick's ability to run for the seat.

"Someone called Friday and it was the first we became aware of even a hint of an issue in regards to his residency," Goins said Monday, saying he had already reached out to McCormick.

"A person can have, as you know, more than one residence," Goins said. "There's a statute that we look at for guiding factors and after talking to Rep. McCormick, he's going to be supplying some information that would meet those factors."

That process was soon completed, Goins said.

Goins said the charges were similar to those made in another case in which someone first challenged a Roane County judicial candidate's ability to run before the local election commission, saying the candidate actually lived in Knox County. That came at a public meeting of the Roane County Election Commission as candidates were being approved to run.

In McCormick's case, no one publicly identified has spoken out, although some Chattanooga-based reporters had been contacted by a man identifying himself as a UTC student. Goins and Majority Leader Casada said they had been contacted by a man identifying himself as a UTC student, as well.

Casada, who is currently vying with McCormick to become the House's next speaker, said he wanted no part of it when the man called his office.

"We told him real quick that has nothing to do with us. We're not interested in it. And I know Gerald — I've been out to his place and he lives in Chattanooga. There's no doubt in my mind."

Efforts by the Times Free Press to reach the UTC student leveling the charges were unsuccessful Tuesday.

In Roane County, the accusation was that the candidate, who had formerly lived in Roane and eventually won the race, had purchased a vacation home in Roane simply to run. The local election commission determined he could run. The losing judicial candidate later filed suit in a case that was ultimately decided by the Tennessee Supreme Court. The winner of the election also prevailed in the state's highest court.

"It's fairly close on this, honestly. It's one I was involved in," Goins said of the Roane County decision.

He noted the Hamilton County case was unusual because questions to his office about McCormick meeting residency requirements came after the April 4 candidate qualifying deadline as well as the Hamilton County Election Commission's May 29 meeting in which candidates were approved to run.

The ballot is now set, and because Hamilton County has paper ballots, one of only two counties to have paper balloting in Tennessee, it would be difficult to make changes, Goins said.

But the election coordinator said he felt "compelled" to conduct a "due diligence" inquiry," and sought a number of documents from McCormick. The list included a federal income tax return, Hamilton County property tax payments, information on his business and other data.

Goins said he also conducted a search of databases that, among other things, showed McCormick's real estate license has a Chattanooga, not a Nashville addresses.

McCormick said he didn't realize the deed of trust he and his wife signed and had notarized had the 12-month "principal residence" requirement in the Nashville home's purchase.

He said he reached out to the mortgage company officials to tell them that the Nashville home is not his principal residence. McCormick said an official assured him that was OK provided that his spouse counted the Nashville as her "principal residence," which McCormick stated she does.

State Election Coordinator Goins, meanwhile, on Tuesday, notified his local counterpart, Hamilton County Election Administrator Kerry Steelman, by letter Tuesday that he had conducted an inquiry.

"For the reasons outlined below, Representative McCormick would have met the residency [requirements] had the challenge been made timely," Goins wrote.

He noted that candidates may have multiple homes, "but only one residence for voting."

Goins said Tennessee Code Annotated 2-2-1222 provides that a person's residency is "determined by a person's intent plus actions consistent with that intent" and sets forth the various factors such as property ownership, and various licenses that determine a person's residency.

Contact staff writer Andy Sher at asher@timesfreepress.com or 615-255-0550. Follow him on Twitter @AndySher1.

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BY ENERGI3

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EXHIBIT 3

STATE OF TENNESSEE



GERALD McCORMICK
HOUSE OF REPRESENTATIVES
TENNESSEE GENERAL ASSEMBLY

June 18, 2018

Kerry Steelman
Hamilton County Election Commission
Chattanooga, Tennessee

Dear Mr. Steelman,

As a result of a job opportunity I will be forced to move to Nashville to carry out my work responsibilities later this year. Please consider this letter official notice that I will not be running for the office of State Representative for the 26th District in 2018.

Please contact me if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald McCormick", with a long, sweeping flourish extending to the right.

Gerald McCormick
State Representative, District 26

EXHIBIT 4

BSJ BRANSTETTER
STRANCH & JENNINGS
PLLC

TENNESSEE:

CECIL D. BRANSTETTER, SR., 1920-2014
KARLA M. CAMPBELL*
BEN CASTEL*
TRICIA HERZFELD*
R. JAN JENNINGS*
JOE P. LENISKI, JR.
MIKE STEWART
JAMES G. STRANCH, III
J. GERARD STRANCH, IV
MICHAEL J. WALL

KENTUCKY:

DAVID SUETHOLZ*

THE FREEDOM CENTER
223 ROSA L. PARKS AVENUE, SUITE 200
NASHVILLE, TENNESSEE 37203
TELEPHONE (615) 254-8801
FACSIMILE (615) 255-5419
BSJFIRM.COM

515 PARK AVENUE
LOUISVILLE, KY 40208
TELEPHONE (502) 636.4333
FACSIMILE (502) 636.4342

3142 LOSANTIVILLE AVENUE, SUITE A
CINCINNATI, OH 45213
TELEPHONE (513) 381.2224
FACSIMILE (513) 381.2225

ASSOCIATES:

TENNESSEE:

CALLIE K. JENNINGS
SEAMUS T. KELLY
ISAAC MILLER*
ANTHONY A. ORLANDI*
K. GRACE STRANCH

KENTUCKY:

DEVON N. R. OSER*

OHIO:

ALYSON STEELE BERIDON*
ERIC "RICK" GILL
PAMELA M. NEWPORT

OF COUNSEL:

ROBERT E. RICHARDSON, JR.*

July 2, 2018

VIA HAND DELIVERY

Ms. Kerry B. Steelman
Administrator of Elections

Michael S. Walden
Chairperson, Hamilton County Election Commission

Jerry Summers
Secretary, Hamilton County Election Commission

Ruth Braley
Commissioner, Hamilton County Election Commission

Chris Clem
Commissioner, Hamilton County Election Commission

Secondra Meadows
Commissioner, Hamilton County Election Commission

Hamilton County Election Commission
700 River Terminal Road
Chattanooga, TN 37406

RE: Tennessee House District 26, July 2 2018 Meeting

Dear Ms. Steelman and Commissioners:

I write on behalf of the Tennessee Democratic Party to apprise the Hamilton County Election Commission ("the Commission") of its lack of statutory authority to re-open access to the ballot for the August 2, 2018 Republican Primary Election.

*ATTORNEYS MAY BE ADMITTED IN OTHER JURISDICTIONS.



Tenn. Code Ann. § 2-5-101(g)(1) states as follows:

If a candidate in a primary election or nonpartisan general election, after the qualifying deadline:

(A) Dies;

(B) Withdraws because of military call up;

(C) Withdraws because of physical or mental disability, such physical or mental disability being properly documented by competent medical authority;

(D) Withdraws because such candidate is forced to change residence by the candidate's employer for a job-related reason;

(E) Is declared ineligible or disqualified by a court or disqualified by the political party executive committee under § 2-5-204;

(F) Is declared disqualified by the peace officer standards and training (POST) commission pursuant to § 8-8-102(e); or

(G) Is declared disqualified by the Tennessee highway officials certification board pursuant to § 54-7-104;

The Tennessee Code makes clear that “Candidates may withdraw for reasons other than those listed in subdivision (g)(1); however, no additional candidates may qualify.”

Subsections (A), (B), (C), (E), (F), and (G) of subdivision (g)(1) clearly do not apply. The only question remains whether or not Subsection (D) applies. It clearly does not.

As this Commission is all too well aware, as late as June 12, 2018, McCormick obtained an opinion from Mark Goins, State Election Coordinator, to determine that he remained a resident of Hamilton County and could run for the 26th District House Seat. That opinion is attached hereto as Exhibit A.

Just three business days later he announced he would be moving to Nashville on the pretextual basis that his employer required his relocation. It is beyond comprehension that Mr. McCormick would take the extraordinary step of obtaining an opinion from Mr. Goins, providing him information to prove his residence, and convincing Mr. Goins that he was a resident only to have his employer “force” him to move to Nashville “for a job related reason” three business days later. Nothing in Mr. Goins’ assessment remotely suggests that Mr. McCormick’s relocation was imminent and it is beyond comprehension that Mr. McCormick would work to convince Mr. Goins of his residence if his relocation for job purposes was so imminent.

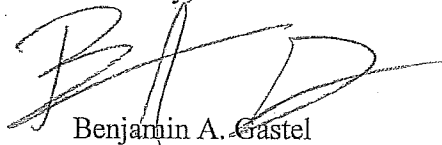
In fact, Mr. McCormick's statements to the press throughout the relevant period reaffirmed his desire to run for office and maintain his Hamilton County residency status while not mentioning whatsoever that he intended to relocate to Nashville in the immediate future.

On June 6, 2018 Mr. McCormick provided a statement to Chattanooga.com where he stated that he "spend[s] most of my time in Chattanooga where I am a small business owner and work in the commercial real estate field" and represented that he continues to live much of the time at his home near Greenway Farm and has the family dogs there. This article made no mention of his relocation to Nashville and in fact his statements were purposefully aimed at giving the impression that he was not a resident of Davidson County and did not intend to be a resident of Davidson County. A copy of this news article is attached as Exhibit B.

Further, on June 13, 2018, Mr. McCormick stated to the Times Free Press following reports that he had executed a document with his mortgage company showing his residence was in Davidson County that he reached out to that company to tell them that the Nashville home was not his principal residence and this report reiterated that Mr. McCormick maintained his residence in Hamilton County. This article made no mention of his relocation to Nashville and in fact his statements were purposefully aimed at giving the impression that he was not a resident of Davidson County and did not intend to be a resident of Davidson County. A copy of this news article is attached as Exhibit C.

Any decision to re-open the ballot on the evidence before the Commission would be arbitrary, capricious, and in clear violation of Tennessee law. To the extent the Commission does so, it would be in clear violation of Tenn. Code Ann. § 2-5-101 and the Tennessee Democratic Party stands ready and willing to enforce the Tennessee Election Code in a court of competent jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to read "BAG", written over a horizontal line.

Benjamin A. Gastel

Enclosure

EXHIBIT A

Tennessee Secretary of State
Tre Hargett



Elections Division
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

June 12, 2018

Kerry Steelman
Administrator of Elections
Hamilton County Election Commission
700 River Terminal Road
Chattanooga, TN 37406

Dear Mr. Steelman,

Late last week, a person called the office questioning the residency of Representative Gerald McCormick, who has qualified to seek re-election in District 26. Representative McCormick filed his petition with a sufficient number of valid signatures on February 21, 2018. The qualifying deadline passed on April 4, 2018. The Hamilton County Election Commission met in a meeting open to the public on May 29, 2018, to approve qualified candidates, including Representative McCormick, and set the ballot for the August 2, 2018 election.

The question that was raised three months after Representative McCormick filed his petition to run as to his residency was not timely since the election commission has approved the candidates and military ballots must be sent out by June 18. However, since only qualified candidates are to be placed on the ballot, I did perform due diligence to ensure the determination on May 29 that Representative McCormick was in fact qualified to run for office was correct. For the reasons outlined below, Representative McCormick would have met the residency requirements had the challenge been made timely.

I reached out to Representative McCormick to inquire about his qualifications to run for office. Specifically, I inquired about whether he had purchased a house in Davidson County. He confirmed he did own a home with his wife in Davidson County, as well as a home in Hamilton County. He also provided several records showing that his residence for voting and candidacy purposes was in Hamilton County. These records include his driver license, receipts, utility and bank statements, and an IRS tax filing showing his address as 5311 Fairview Road, Hixson, TN 37343, which is in District 26. Independently, my office verified that he remains licensed as a

Real Estate Agent using a Chattanooga address, and that he and his wife continue to own and pay property taxes on the Fairview Road residential property.

A person may have multiple homes, but only one residence for voting and candidate qualifying purposes. T.C.A. § 2-2-122 provides that a person's residence is determined by a person's intent plus actions consistent with that intent and sets out factors that assist in determining a person's residency. These factors include possession of property, the location of a person's occupation, place of licensing or registration of personal property, payment of taxes, and the place a person is licensed for activities such as driving.

Based on the evidence provided and the information independently gathered by my office, Representative McCormick has evidence that he meets a sufficient number of factors under Tennessee law to support the determination that he meets the residency requirements to appear on the ballot as a candidate for state representative.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Mark Goins". The signature is written in a cursive style with a large initial "M" and a stylized "G".

Mark Goins
Coordinator of Elections

EXHIBIT B



Friday, June 29, 2018

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Rep. McCormick Buys Nashville House, Puts Big Ridge Home For Sale, But Says He Is Still Hixson Resident

Wednesday, June 6, 2018



Rep. Gerald McCormick

Rep. Gerald McCormick has bought a house in Nashville after his wife got a job transfer there, and he put his Big Ridge home up for sale. However, he said he remains a resident of House District 26.

The former House Majority Leader said he continues to live much of the time at his home near Greenway Farm and has the family dogs there.

A UTC student who said he was studying campaigns and elections last year with a case study of Gerald McCormick said he went out to his house. He said, "There was a huge for sale sign when I went there to interview him. Then I looked him up on the register of deeds and found that he moved to Nashville. So I paid \$40 to pull the mortgage and found that was his permanent residency - meaning, it seemed to me, he was not a voting citizen during his time in office."

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The student, who asked not to be identified, said under the terms of the Nashville mortgage that Rep. McCormick averred that the Nashville home near Belle Meade Plantation was his permanent residence for at least six months.

Also, the student said he questioned per diem payments from the Legislature that Rep. McCormick has been receiving. Legislators from Chattanooga receive a higher per diem than those who live in Nashville.

The student said the McCormick house in Hixson went off the market shortly after he got opposition in the upcoming election. But he still has a version of the earlier listing from Zillow.

Rep. McCormick said he and his wife, Kim, had been renting the Nashville house and decided to buy it last August after she took a position with the state Board of Regents. He said when former Chattanooga State president Dr. Flora Tydings got elevated to head of the Board of Regents, she asked Ms. McCormick to join her there.

He said since his wife may be on the Nashville job for the next several years they decided to buy the house they had been renting.

Rep. McCormick, who has stated he plans to run for the House Speaker post now held by Beth Harwell, said if the Hixson house had sold he would have bought a condominium in the district.

Concerning the student, he said he did not know why he was at his house. He said no one had called him about an interview.

The student said, "I went over there because I had not seen him around the city in a while. I wanted to get his opinion of why he voted on the 30 credit hour a year regulation of the Hope Scholarship and that is when I noticed all the chairs in the backyard were all stacked up and the house was abandoned inside. There was like pictures on the wall, but there was not anything in the general floor area.

"So that's when I ran the retail search on the property and uncovered all the information about his residency. I thought this was weird so I called the Election Commission and asked if it was legal for a representative to just move out of the district like that and they stated that they must be a voting member of the district.

"That's when I looked up the voting law which states you must register with your permanent address, and I know in real estate to take a mortgage you must claim the new residence as your primary within 60 days.

"Nothing was adding up. I contacted Rep. Glen Casada's office as well as I was trying to get the per diem records pulled from the state.

"If he really is living in Hixson, it seems to me that would mean he lied to his lender. All of this to me as a citizen is super concerning especially with the call to action as citizens to hold our lawmakers accountable."

Rep. McCormick said, "Here are the facts:

- We have owned our home in Hixson for 18 years and continue to own it although as empty-nesters since our children moved out we look forward to down-sizing at some point.
- I spend most of my time in Chattanooga where I am a small business owner and work in the commercial real estate field. I have also spent a significant amount of time in Nashville in the last 14 years and continue to do so with my duties in the state legislature.
- My wife, Dr. Kim McCormick, continues to have a very successful career and is now based in Nashville. We purchased the home there that we had been renting since we felt it wiser to own the house rather than pay rent. She lives in the home and I stay there when I spend nights in Nashville.
- Legislators are paid a per diem to help cover living expenses in Nashville and I receive it just like other members of the Legislature.
- The anonymous person raising these issues could have called me to learn the facts, rather than creeping around our home, if they were truly interested in talking with me."

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EXHIBIT C

Tennessee elections chief says review shows McCormick meets residency requirements

June 13th, 2018 | by Andy Sher | in Politics State | Read Time: 4 mins. |



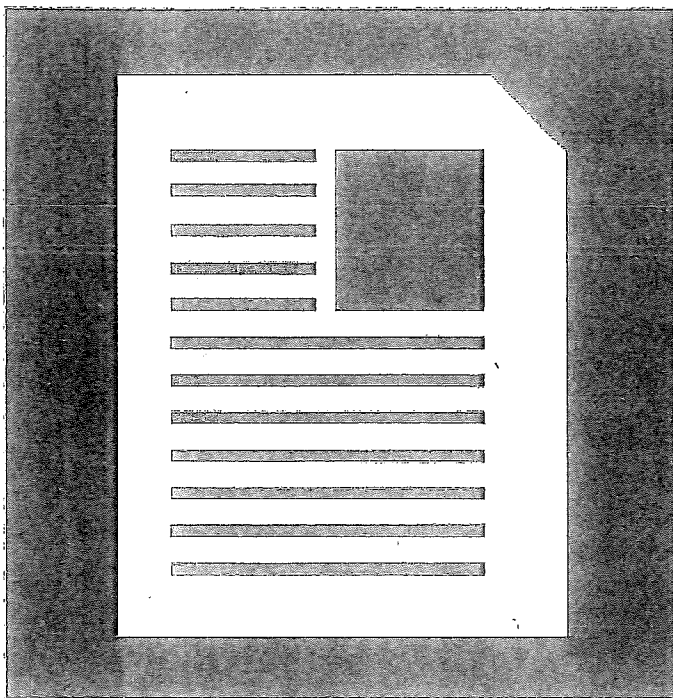
House Majority Leader Gerald McCormick, R-Chattanooga, presents Gov. Bill Haslam's anti-meth bill in the House Criminal Justice Committee on Wednesday, March 26, 2014. The panel advanced its bill that would carry lighter restrictions on cold and allergy medicines than the Senate version, setting up the prospect of a conference committee between the two chambers. (AP Photo/Erik Schelzig)

Photo by Erik Schelzig

Document: Letter to Steelman

NASHVILLE — Tennessee Election Coordinator Mark Goins says he's determined that state Rep. Gerald McCormick, R-Chattanooga, whose legal residency in Hamilton County has been questioned, "meets a sufficient number of factors" to remain on the ballot as a candidate in the House District 26 contest.

In recent weeks, an issue about the former state House majority leader's legal residency has been raised in light of the Aug. 4, 2017, purchase of a \$487,032 home in Nashville by McCormick and his wife, Kim McCormick, a



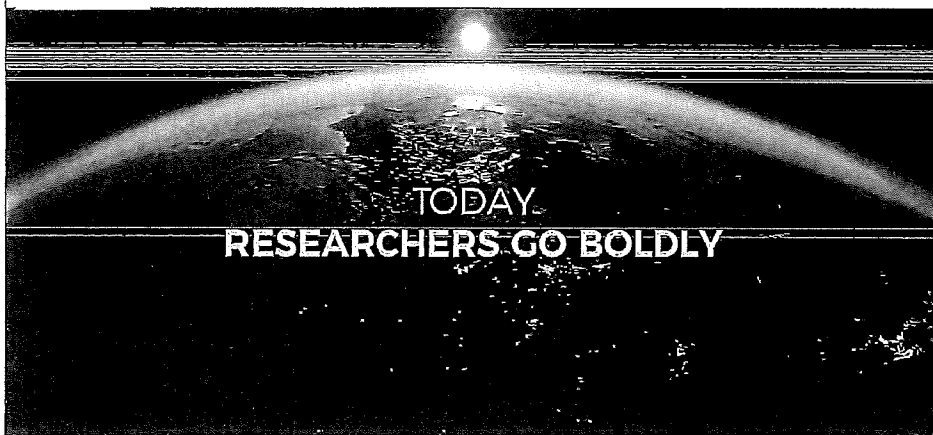
top aide to Tennessee Board of Regents Chancellor Flora Tydings.

The deed of trust for the Nashville home lists the house as McCormick's "principal residence." The representative still owns a 3,500-square-foot Chattanooga residence on Big Ridge.

Read a copy of State Election Coordinator Mark Goins' letter to Hamilton County Election Administrator Kerry Steelman saying evidence shows "sufficient factors" supporting Rep. Gerald McCormick's Chattanooga residency to run for re-election.

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McCormick, a seven-term representative and former House majority leader, accused Democrats of being the culprits behind raising issues about his legal residency.

"The guy that came and crept around in my backyard through a gate and looked at the windows is a Democratic campaign guy. He works for one of the guys who's running against me," McCormick charged.

McCormick said during several Times Free Press interviews that he continues to spend the majority of his time outside of the General Assembly's annual four-month legislative session at his

Chattanooga home and thus meets the Tennessee Constitution's requirements.

The state constitution's Article 2, Section 9 states that no one can be a state representative unless he has "resided three years in this state, and one year in the county or district, immediately preceding the election."

McCormick works as a real estate broker. He said he and his wife, who formerly worked at Chattanooga State and in 2017 went to work for Tydings, currently as her vice chancellor of external affairs, made the decision to buy the home because Kim McCormick spends most of her time in Nashville.

Goins and current House Majority Leader Glen Casada, R-Franklin, said in recent interviews a younger man identifying himself as a University of Tennessee at Chattanooga student had contacted them with questions about McCormick's ability to run for the seat.

"Someone called Friday and it was the first we became aware of even a hint of an issue in regards to his residency," Goins said Monday, saying he had already reached out to McCormick.

"A person can have, as you know, more than one residence," Goins said. "There's a statute that we look at for guiding factors and after talking to Rep. McCormick, he's going to be supplying some information that would meet those factors."

That process was soon completed, Goins said.

Goins said the charges were similar to those made in another case in which someone first challenged a Roane County judicial candidate's ability to run before the local election commission, saying the candidate actually lived in Knox County. That came at a public meeting of the Roane County Election Commission as candidates were being approved to run.

In McCormick's case, no one publicly identified has spoken out, although some Chattanooga-based reporters had been contacted by a man identifying himself as a UTC student. Goins and Majority Leader Casada said they had been contacted by a man identifying himself as a UTC student, as well.

Casada, who is currently vying with McCormick to become the House's next speaker, said he wanted no part of it when the man called his office.

"We told him real quick that has nothing to do with us. We're not interested in it. And I know Gerald — I've been out to his place and he lives in Chattanooga. There's no doubt in my mind."

Efforts by the Times Free Press to reach the UTC student leveling the charges were unsuccessful Tuesday.

In Roane County, the accusation was that the candidate, who had formerly lived in Roane and eventually won the race, had purchased a vacation home in Roane simply to run. The local election commission determined he could run. The losing judicial candidate later filed suit in a case that was ultimately decided by the Tennessee Supreme Court. The winner of the election also prevailed in the state's highest court.

"It's fairly close on this, honestly. It's one I was involved in," Goins said of the Roane County decision.

He noted the Hamilton County case was unusual because questions to his office about McCormick meeting residency requirements came after the April 4 candidate qualifying deadline as well as the Hamilton County Election Commission's May 29 meeting in which candidates were approved to run.

The ballot is now set, and because Hamilton County has paper ballots, one of only two counties to have paper balloting in Tennessee, it would be difficult to make changes, Goins said.

But the election coordinator said he felt "compelled" to conduct a "due diligence" inquiry," and sought a number of documents from McCormick. The list included a federal income tax return, Hamilton County property tax payments, information on his business and other data.

Goins said he also conducted a search of databases that, among other things, showed McCormick's real estate license has a Chattanooga, not a Nashville addresses.

McCormick said he didn't realize the deed of trust he and his wife signed and had notarized had the 12-month "principal residence" requirement in the Nashville home's purchase.

He said he reached out to the mortgage company officials to tell them that the Nashville home is not his principal residence. McCormick said an official assured him that was OK provided that his spouse counted the Nashville as her "principal residence," which McCormick stated she does.

State Election Coordinator Goins, meanwhile, on Tuesday, notified his local counterpart, Hamilton County Election Administrator Kerry Steelman, by letter Tuesday that he had conducted an inquiry.

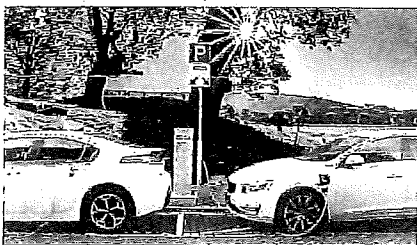
"For the reasons outlined below, Representative McCormick would have met the residency [requirements] had the challenge been made timely," Goins wrote.

He noted that candidates may have multiple homes, "but only one residence for voting."

Goins said Tennessee Code Annotated 2-2-1222 provides that a person's residency is "determined by a person's intent plus actions consistent with that intent" and sets forth the various factors such as property ownership, and various licenses that determine a person's residency.

Contact staff writer Andy Sher at asher@timesfreepress.com or 615-255-0550. Follow him on Twitter @AndySher1.

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BY ENER3

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