

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE  
AT FRANKLIN

FILED  
WILLIAMSON COUNTY  
CLERK OF COURSE

2015 SEP -1 PM 2:46

TRE HARGETT, Secretary of State of the )  
State of Tennessee, MARK GOINS, )  
Coordinator of Elections of the State of )  
Tennessee, )

Plaintiffs, )

v. )

TRACY E. GEORGE, ELLEN WRIGHT )  
CLAYTON, DEBORAH WEBSTER- )  
CLAIR, KENNETH T. WHALUM JR., )  
MERYL RICE, JAN LIFF, TERESA M. )  
HALLORAN, MARY HOWARD )  
HAYES, )

Defendants. )

ENTERED \_\_\_\_\_

No. 44460

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COMPLAINT FOR DECLARATORY JUDGMENT

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INTRODUCTION

This is an action brought by the Secretary of State of the State of Tennessee and the Coordinator of Elections of the State of Tennessee, by and through their counsel of record, the Attorney General and Reporter of the State of Tennessee, to determine the proper construction of the requirement under Article XI, Section 3 of the Tennessee Constitution that amendments proposed pursuant to the legislative process shall be "approve[d] and ratif[ied] . . . by a majority of all the citizens of the State voting for Governor, voting in their favor." In particular, the Secretary of State and Coordinator of Elections seek a declaration that, in order to pass and be made part of the Tennessee Constitution, such an amendment must be both (i) approved, by receiving votes equal to or exceeding a majority of the total votes cast on the amendment and (ii) ratified, by receiving votes equal to or exceeding a majority of the total votes cast in the

gubernatorial election, and that all votes cast in favor of an amendment count toward ratification, regardless of whether the vote was cast by a voter who also voted for Governor.

## I. PARTIES

1. Plaintiff Tre Hargett is the Secretary of State of the State of Tennessee. Secretary Hargett's duties include "[k]eep[ing] a fair register of all the official acts and proceedings of the government." Tenn. Code Ann. § 8-3-104. Secretary Hargett is also responsible for appointing and overseeing Tennessee's Coordinator of Elections. *Id.* at § 2-11-201(a). Secretary Hargett was one of the parties who certified the results of the November 4, 2014 general election.

2. Plaintiff Mark Goins is the Coordinator of Elections of the State of Tennessee. Coordinator Goins "is the chief administrative election officer of the state" and is required to "obtain and maintain uniformity in the application, operation and interpretation of the election code." Tenn. Code Ann. § 2-11-201(b). His duties include "[g]enerally supervis[ing] all elections," *id.* § 2-11-202(a)(1), and "[a]uthoritatively interpret[ing] the election laws for all persons administering them," *id.* at § 2-11-202(a)(4).

3. Defendant Tracey E. George is a Professor of Law and Professor of Political Science at Vanderbilt University and a resident of Nashville, Tennessee. Ms. George voted in the November 4, 2014 general election. In an action filed in the United States District Court for the Middle District of Tennessee against Secretary Hargett, Coordinator Goins, and other state officials in their official capacities, Ms. George has alleged that the method by which Secretary Hargett and Coordinator Goins tabulated votes on Amendment 1 in the November 4, 2014 general election violated Article XI, Section 3 of the Tennessee Constitution. She seeks to have the November 4, 2014 election results for Amendment 1 declared void, among other relief. See First Amended Complaint for Declaratory and Injunctive Relief, *George v. Haslam*, No. 3:13-cv-02182

(M.D. Tenn. Mar. 6, 2015), ECF No. 51 (hereinafter "First Amended Complaint") (attached as Exhibit A).

4. Defendant Ellen Wright Clayton is a Professor of Pediatrics and Professor of Law at Vanderbilt University and a resident of Nashville, Tennessee. Dr. Clayton voted in the November 4, 2014 general election. In an action filed in the United States District Court for the Middle District of Tennessee against Secretary Hargett, Coordinator Goins, and other state officials in their official capacities, Dr. Clayton has alleged that the method by which Secretary Hargett and Coordinator Goins tabulated votes on Amendment 1 in the November 4, 2014 general election violated Article XI, Section 3 of the Tennessee Constitution. She seeks to have the November 4, 2014 election results for Amendment 1 declared void, among other relief. *See* First Amended Complaint.

5. Defendant Deborah Webster-Clair is an obstetrician and gynecologist and a resident of Brentwood, Tennessee. Dr. Webster-Clair voted in the November 4, 2014 general election. In an action filed in the United States District Court for the Middle District of Tennessee against Secretary Hargett, Coordinator Goins, and other state officials in their official capacities, Dr. Webster-Clair has alleged that the method by which Secretary Hargett and Coordinator Goins tabulated votes on Amendment 1 in the November 4, 2014 general election violated Article XI, Section 3 of the Tennessee Constitution. She seeks to have the November 4, 2014 election results for Amendment 1 declared void, among other relief. *See* First Amended Complaint.

6. Defendant Kenneth T. Whalum Jr. is the pastor of the New Olivet Baptist Church in Memphis, Tennessee and a resident of Memphis, Tennessee. Rev. Whalum voted in the November 4, 2014 general election. In an action filed in the United States District Court for the Middle District of Tennessee against Secretary Hargett, Coordinator Goins, and other state

officials in their official capacities, Rev. Whalum has alleged that the method by which Secretary Hargett and Coordinator Goins tabulated votes on Amendment 1 in the November 4, 2014 general election violated Article XI, Section 3 of the Tennessee Constitution. He seeks to have the November 4, 2014 election results for Amendment 1 declared void, among other relief. *See First Amended Complaint.*

7. Defendant Meryl Rice is a social worker and small business owner and a resident of Whiteville, Tennessee. Ms. Rice voted in the November 4, 2014 general election. In an action filed in the United States District Court for the Middle District of Tennessee against Secretary Hargett, Coordinator Goins, and other state officials in their official capacities, Ms. Rice has alleged that the method by which Secretary Hargett and Coordinator Goins tabulated votes on Amendment 1 in the November 4, 2014 general election violated Article XI, Section 3 of the Tennessee Constitution. She seeks to have the November 4, 2014 election results for Amendment 1 declared void, among other relief. *See First Amended Complaint.*

8. Defendant Jan Liff is a registered nurse and a resident of Nashville, Tennessee. Ms. Liff voted in the November 4, 2014 general election. In an action filed in the United States District Court for the Middle District of Tennessee against Secretary Hargett, Coordinator Goins, and other state officials in their official capacities, Ms. Liff has alleged that the method by which Secretary Hargett and Coordinator Goins tabulated votes on Amendment 1 in the November 4, 2014 general election violated Article XI, Section 3 of the Tennessee Constitution. She seeks to have the November 4, 2014 election results for Amendment 1 declared void, among other relief. *See First Amended Complaint.*

9. Defendant Teresa M. Halloran is the volunteer coordinator for Meals on Wheels and a resident of Franklin, Tennessee. Ms. Halloran voted in the November 4, 2014 general

election. In an action filed in the United States District Court for the Middle District of Tennessee against Secretary Hargett, Coordinator Goins, and other state officials in their official capacities, Ms. Halloran has alleged that the method by which Secretary Hargett and Coordinator Goins tabulated votes on Amendment 1 in the November 4, 2014 general election violated Article XI, Section 3 of the Tennessee Constitution. She seeks to have the November 4, 2014 election results for Amendment 1 declared void, among other relief. *See* First Amended Complaint.

10. Defendant Mary Howard Hayes is the former Director of the Public Health Department of Sumner County and a resident of Gallatin, Tennessee. Ms. Hayes voted in the November 4, 2014 general election. In an action filed in the United States District Court for the Middle District of Tennessee against Secretary Hargett, Coordinator Goins, and other state officials in their official capacities, Ms. Hayes has alleged that the method by which Secretary Hargett and Coordinator Goins tabulated votes on Amendment 1 in the November 4, 2014 general election violated Article XI, Section 3 of the Tennessee Constitution. She seeks to have the November 4, 2014 election results for Amendment 1 declared void, among other relief. *See* First Amended Complaint.

## II. JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action pursuant to Tenn. Code Ann. §§ 16-11-101 and 16-11-102 and the Declaratory Judgment Act, Tenn. Code Ann. §§ 29-14-101, *et seq.*

12. Venue in this Court is proper in Williamson County pursuant to Tenn. Code Ann. § 20-4-101 because two of the defendants are residents of Williamson County and the cause of action arose in part in Williamson County.

### III. APPLICABLE LAW

13. Article XI, Section 3 of the Tennessee Constitution establishes two methods for amending the Tennessee Constitution—the legislative process and the convention process. The method for amending the Tennessee Constitution pursuant to the legislative process is as follows:

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays thereon, and referred to the general assembly then next to be chosen; and shall be published six months previous to the time of making such choice; and if in the general assembly then next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people at the next general election in which a Governor is to be chosen. And if the people shall approve and ratify such amendment or amendments by a majority of all the citizens of the State voting for Governor, voting in their favor, such amendment or amendments shall become part of this Constitution. When any amendment or amendments to the Constitution shall be proposed in pursuance of the foregoing provisions the same shall at each of said sessions be read three times on three several days in each house.

Tenn. Const. art. XI, § 3.

14. As the final step of the legislative process for amending the Tennessee Constitution, the people must “approve and ratify such amendment or amendments by a majority of all the citizens of the State voting for Governor, voting in their favor.” Tenn. Const. art. XI, § 3.

15. That requirement, in its current form, has been part of Article XI, Section 3 since 1953.

16. The prior version of Article XI, Section 3 was identical to the current version except that it required approval and ratification by “a majority of all the citizens of the State, voting for *Representatives*, voting in their favor.” Tenn. Const. art. XI, § 3 (1834) (emphasis added).

17. State officials have long interpreted Article XI, Section 3 to require that, in order to pass and be made part of the Tennessee Constitution, an amendment must be both (i) approved,

by receiving votes equal to or exceeding a majority of the total votes cast on the amendment, and (ii) ratified, by receiving votes equal to or exceeding a majority of the total votes cast in the gubernatorial election, and that all votes cast in favor of an amendment count toward ratification,

( regardless of whether the vote was cast by a voter also voted for Governor. )

18. State officials have consistently applied this interpretation to determine whether a proposed amendment is approved and ratified.

#### IV. FACTUAL ALLEGATIONS

19. Pursuant to the legislative process for amending the Tennessee Constitution established by Article XI, Section 3 of the Tennessee Constitution, four proposed amendments to the Tennessee Constitution were submitted to the people for approval and ratification on the November 4, 2014 general election ballot.

20. Proposed Amendment 1 appeared on the ballot as follows:

Shall Article I of the Constitution of Tennessee be amended by adding the following language as a new, appropriately designated section:

Nothing in this Constitution secures or protects a right or requires the funding of an abortion. The people retain the right through their elected state representatives and senators to enact, amend, or repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.

21. The official results of the November 4, 2014 general election reflect that a total of 1,386,355 votes were cast on Amendment 1 and that a total of 1,353,728 votes were cast for Governor.

22. The official results further reflect that 729,163 votes were cast in favor of adoption of Amendment 1, while 657,192 votes were cast in favor of rejection of Amendment 1.

23. To determine whether the people had approved and ratified Amendment 1 as required by Article XI, Section 3 of the Tennessee Constitution, Secretary Hargett and Coordinator

Goins first compared the number of votes in favor of Amendment 1 to the total number of votes cast on Amendment 1. Because the number of votes in favor of Amendment 1 constituted a majority of the total votes cast on Amendment 1, Secretary Hargett and Coordinator Goins determined that Amendment 1 had been approved. ✓

24. Secretary Hargett and Coordinator Goins further compared the number of votes in favor of Amendment 1 to the total number of votes cast for Governor. Because the number of votes in favor of Amendment 1 constituted a majority of the total votes cast for Governor, Secretary Hargett and Coordinator Goins determined that Amendment 1 had also been ratified. ✓

25. In determining the number of votes in favor of Amendment 1, Secretary Hargett and Coordinator Goins counted all votes cast in favor of Amendment 1, regardless of whether the vote was cast by a voter who also voted for Governor. ✓

26. On December 8, 2014, Secretary Hargett, along with Governor William Edward “Bill” Haslam and Attorney General Herbert H. Slatery III, certified the results of the general election held on November 4, 2014, including the results for Amendment 1. ✓

27. On November 7, 2014, Defendants George, Clayton, Webster-Clair, Whalum, Rice, Liff, Halloran, and Hayes brought suit against Secretary Hargett, Coordinator Goins, and several other state officials in their official capacities in the United States District Court for the Middle District of Tennessee. *See* Complaint for Declaratory and Injunctive Relief, *George v. Haslam*, No. 3:14-cv-02182 (M.D. Tenn. Nov. 7, 2014), ECF No. 1.

28. As amended, their complaint alleges that the method used by Secretary Hargett and Coordinator Goins to tabulate votes on Amendment 1 failed to comply with Article XI, Section 3 of the Tennessee Constitution. *See* First Amended Complaint ¶¶ 6-7, 9, 42.



29. Specifically, their complaint alleges that, under Article XI, Section 3, the only votes in favor of Amendment 1 that should count toward ratification are those cast by voters who also voted for Governor. *See id.* at ¶ 6.

30. Among other relief, their complaint seeks a declaration that the election results for Amendment 1 certified by Secretary Hargett are void; a declaration that “Article XI, Section 3 of the Constitution of the State of Tennessee requires that Defendants tabulate the votes on Amendment 1 based only on the number of . . . voters who both voted for governor and voted on Amendment 1”; and an injunction “mandating that Defendants recount the vote on Amendment 1 to correlate votes in the governor’s race with votes on Amendment 1.” *Id.*, Prayer for Relief.

31. The action brought by Defendants George, Clayton, Webster-Clair, Whalum, Rice, Liff, Halloran, and Hayes demonstrates that a controversy exists regarding the proper interpretation of the requirement under Article XI, Section 3 of the Tennessee Constitution that the people “approve and ratify” amendments “by a majority of all the citizens of the State voting for Governor, voting in their favor.”

32. Secretary Hargett and Coordinator Goins have an interest in obtaining a declaration from this Court regarding the proper interpretation of that requirement under state law because the correct performance of their official duties depends on such interpretation.

33. The action brought by Defendants George, Clayton, Webster-Clair, Whalum, Rice, Liff, Halloran, and Hayes has created uncertainty regarding the rights and duties of Secretary Hargett and Coordinator Goins under Article XI, Section 3 of the Tennessee Constitution and regarding the status of Amendment 1.

34. A determination by this Court as to the proper interpretation of the requirement under Article XI, Section 3 that the people “approve and ratify” amendments “by a majority of all

the citizens of the State voting for Governor, voting in their favor” would afford relief from that uncertainty.

35. Such relief cannot be obtained in the action currently pending in the United States District Court for the Middle District of Tennessee because that court lacks the power to authoritatively construe the Tennessee Constitution. That court also has declined to abstain under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), or to certify that important question of Tennessee law to the Tennessee Supreme Court.

#### V. CAUSE OF ACTION

36. Plaintiffs repeat and incorporate by reference all of the above allegations of the Complaint as though fully set forth herein.

37. A controversy exists regarding the proper interpretation of the requirement under Article XI, Section 3 of the Tennessee Constitution that the people “approve and ratify” amendments to the Tennessee Constitution “by a majority of all the citizens of the State voting for Governor, voting in their favor.” Tenn. Const. art. XI, § 3.

38. Secretary Hargett and Coordinator Goins interpret Article XI, Section 3 to require that an amendment first be approved by receiving votes equal to or exceeding a majority of the total votes cast on the amendment, and then be ratified by receiving votes equal to or exceeding a majority of the total votes cast in the gubernatorial election.

39. Secretary Hargett and Coordinator Goins further interpret Article XI, Section 3 to require the counting of all votes in favor of Amendment 1, regardless of whether that vote was cast by a voter who also voted for Governor.

40. Secretary Hargett and Coordinator Goins relied on this interpretation in determining that Amendment 1 passed in the November 4, 2014 election.

41. Defendants George, Clayton, Webster-Clair, Whalum, Rice, Liff, Halloran, and Hayes have challenged the November 4, 2014 election results for Amendment 1 based on their contrary interpretation of Article XI, Section 3. Under that interpretation, the only votes in favor of an amendment that would count toward ratification are those cast by voters who also voted in the gubernatorial election.

42. Accordingly, Secretary Hargett and Coordinator Goins seek an order from this Court declaring that, in order to pass pursuant to the legislative method for amending the Constitution established by Article XI, Section 3, a proposed amendment must be both (i) approved, by receiving votes equal to or exceeding a majority of the total votes cast on the amendment and (ii) ratified, by receiving votes equal to or exceeding a majority of the total votes cast in the gubernatorial election, and that all votes cast in favor of an amendment count toward ratification, regardless of whether the vote was cast by a voter who also voted for Governor.

## VI. PRAYER FOR RELIEF

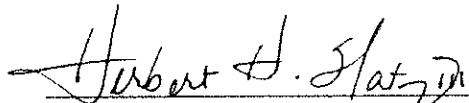
Wherefore, Plaintiffs respectfully request that this Court enter judgment as follows:

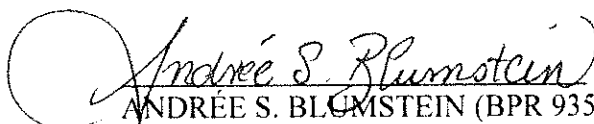
1. Allowing this complaint to be filed without cost bond as provided in Tenn. Code Ann. § 20-13-101 and issuing and serving process upon Defendants requiring them to appear and to answer this complaint;
2. Ordering a speedy hearing of this action for declaratory judgment and advancing it on the Court's calendar pursuant to Tennessee Rule of Civil Procedure 57;
3. Declaring that Article XI, Section 3 of the Tennessee Constitution requires that, in order to pass pursuant to the legislative method for amending the Tennessee Constitution, a proposed amendment must be both (i) approved, by receiving votes equal to or exceeding a majority of the total votes cast on the amendment and (ii) ratified, by receiving votes equal to or

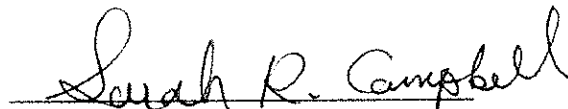
exceeding a majority of the total votes cast in the gubernatorial election, and that all votes cast in favor of an amendment count toward ratification, regardless of whether the vote was cast by a voter who also voted for Governor; and


4. Awarding Plaintiffs such other further relief to which they may be entitled.

Respectfully Submitted,

  
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Attorney General and Reporter

  
ANDRÉE S. BLUMSTEIN (BPR 9357)  
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