

TENNESSEANS FOR SENSIBLE ELEC. LAWS

VS.

TN BUR. OF ETHICS & CAMPAIGN FI., et al.

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**TRANSCRIPT OF PROCEEDINGS**

**September 26, 2018**

**ORIGINAL**



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IN THE CHANCERY COURT OF DAVIDSON COUNTY  
STATE OF TENNESSEE

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TENNESSEANS FOR SENSIBLE  
ELECTION LAWS,

Plaintiff,

vs.

Case No.  
18-821-II

TENNESSEE BUREAU OF  
ETHICS AND CAMPAIGN  
FINANCE and DAVIDSON  
COUNTY DISTRICT ATTORNEY  
GENERALS,

Defendants.

---

BE IT REMEMBERED that the  
above-captioned cause came on for hearing, on  
this, the 26th day of September, 2018 before  
Chancellor Ellen Hobbs Lyle, when and where the  
following proceedings were had, to wit:

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Max Curry, B.C.R, LCR, RPR, CCR, CRI  
Bachelor's Degree of Court Reporting  
P.O. Box 292382  
Nashville, Tennessee 37229  
(615) 595-0073



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A P P E A R A N C E S

For the Plaintiff:

MR. DANIEL HORWITZ and  
MR. JAMES HOLLIN  
Attorneys at Law  
Law Office of Daniel A. Horwitz  
1803 Broadway, Suite 531  
Nashville, TN 37203  
(615)739-2888  
daniel.a.horwitz@gmail.com  
j.hollin@me.com

09:08:04

For the Defendants:

MS. JANET KLEINFELTER and  
MS. KELLEY L. GROOVER  
Deputy Attorneys General  
P.O. Box 20207  
Nashville, TN 37202  
(615)741-7403  
janet.kleinfelter@ag.tn.gov  
kelley.groover@ag.tn.gov

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(WHEREUPON, the following proceedings  
came before the Court to be heard, as follows:)

09:07:11  
09:07:17  
09:07:18  
09:07:20  
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09:07:32  
09:07:34  
09:07:37  
09:07:40  
09:07:43  
09:07:46  
09:07:49  
09:07:58  
09:08:01  
09:08:01  
09:08:02  
09:08:03  
09:08:07  
09:08:10  
09:08:12  
09:08:12

THE COURT: Good morning.

MS. KLEINFELTER: Good morning, Your  
Honor.

THE COURT: We are here this morning  
on a limited bench trial that had been  
convened, scheduled by the Court. The Court  
has received four motions in limine that were  
filed by the plaintiff, and so we're going to  
start with arguments on those.

And let me ask the plaintiff if you  
will, please, present all your motions in  
limine and then let me have the State respond  
to all of those and then we'll have a reply.  
Thank you.

MR. HORWITZ: Morning, Your Honor.

THE COURT: Good morning.

MR. HORWITZ: Daniel Horwitz on  
behalf of the plaintiff, with my co-counsel  
Jamie Hollin.

Plaintiff's first motion in limine  
has to do with non-compliance with the Court's

1 order that the defendants disclose witnesses 09:08:13  
2 with a brief description as to what the 09:08:16  
3 defendants expect the witnesses will testify 09:08:18  
4 about at trial. 09:08:20

5 The defendants disclosed one witness, 09:08:22  
6 Mr. Rawlins. They did not comply with the 09:08:25  
7 requirement that they provide a brief 09:08:27  
8 description as to what Mr. Rawlins would 09:08:29  
9 testify about at trial. As a result of 09:08:32  
10 non-compliance with this Court's order, I 09:08:35  
11 respectfully ask that this Court exclude his 09:08:38  
12 testimony. 09:08:43

13 Plaintiff's second motion in limine 09:08:43  
14 is based on hearsay. Witnesses cannot testify 09:08:46  
15 by affidavit; must be subject to 09:08:50  
16 cross-examination. Hearsay is an out-of-court 09:08:54  
17 statement used for the truth of the matter 09:08:57  
18 asserted. It does not matter whether it is 09:08:59  
19 sworn or not. The important thing is that it 09:09:01  
20 is out of court and not subject to 09:09:03  
21 cross-examination. 09:09:11

22 The defendants have asked for several 09:09:11  
23 witnesses not disclosed as witnesses to be 09:09:12  
24 permitted to testify by affidavit. We 09:09:12  
25 respectfully submit that they should be 09:09:15

1 excluded from being able to testify by 09:09:18  
2 affidavit under rule of evidence 801c. 09:09:21

3 Plaintiff's third motion in limine is 09:09:24  
4 a conditional relevance objection. Your Honor, 09:09:29  
5 the crux of this case is going to come down to 09:09:32  
6 whether or not the statutes that have been 09:09:35  
7 challenged are narrowly tailored to achieve 09:09:38  
8 their purpose. There are approximately two 09:09:42  
9 dozen exhibits, many of which concern matters 09:09:46  
10 that occurred recently well after the statute 09:09:48  
11 went into effect. 09:09:51

12 And regardless of the interest they 09:09:52  
13 support, I respectfully submit, Your Honor, 09:09:54  
14 they are not relevant unless and until the 09:09:57  
15 defendants are able to demonstrate that the 09:10:00  
16 statutes are narrowly tailored to their 09:10:01  
17 purpose. 09:10:06

18 The fourth motion in limine was filed 09:10:07  
19 yesterday, Your Honor. We had asked for 09:10:11  
20 disclosure of the exhibits that defendants were 09:10:13  
21 planning to introduce in this trial. Local 09:10:16  
22 rules require that disclosure be 72 hours in 09:10:18  
23 advance. By Monday evening we requested those 09:10:21  
24 exhibits. They were not forthcoming until 09:10:24  
25 yesterday afternoon, I believe at about 09:10:27

1 2 o'clock, 2:30 p.m. 09:10:29

2 I'm not trying to be unreasonable, 09:10:31

3 Your Honor. I'm happy to withdraw that motion 09:10:33

4 if there is some reason why those exhibits had 09:10:35

5 to be provided for the first time on the eve of 09:10:38

6 trial, not in compliance with local rules. If 09:10:43

7 there was some basis for that, we'll withdraw 09:10:45

8 the objection, but I'm certainly not aware of 09:10:48

9 any. 09:10:51

10 Thank you, Your Honor. 09:10:51

11 THE COURT: Let me ask you this 09:10:52

12 question. And if you want to wait until you've 09:10:54

13 heard from the State and answer the question 09:10:56

14 and the reply, you may do so. 09:11:01

15 If the Court were to grant the 09:11:04

16 motions in limine, then that would eliminate 09:11:08

17 any proof in the record, and under that -- 09:11:12

18 under that outcome, then the Court would be 09:11:19

19 required to rule in the plaintiff's favor 09:11:24

20 because there is no evidence. 09:11:26

21 On appeal when this is reviewed, it's 09:11:30

22 a matter of discretion on these motions in 09:11:33

23 limine. And so, you're taking quite a risk if 09:11:39

24 the Court grants the motions in limine that an 09:11:42

25 appellate court would take a different view of 09:11:46

1 that and say, No, that was not a proper 09:11:48  
2 exercise of discretion. 09:11:50  
3 So the alternative would be for you 09:11:55  
4 to seek a continuance. If the Court granted 09:11:58  
5 that, then the matter would not go up before 09:12:00  
6 the November election. And I know it was 09:12:05  
7 important to your client to have this matter 09:12:07  
8 determined in this court prior to the November 09:12:09  
9 election, and that was part of the rationale 09:12:12  
10 for proceeding with an expedited hearing, which 09:12:17  
11 the State had agreed to. 09:12:21  
12 So I put this choice to you, because 09:12:24  
13 it's really a decision for you to make on 09:12:29  
14 behalf of your client whether you want to 09:12:32  
15 proceed with the motions in limine. If the 09:12:33  
16 Court grants them, then you run the risk of a 09:12:36  
17 remand on appeal. Or do you want a continuance 09:12:39  
18 in the case? 09:12:42  
19 MR. HORWITZ: Your Honor, if you're 09:12:43  
20 amenable to it, I have a -- a different 09:12:44  
21 potential solution here. 09:12:47  
22 THE COURT: And I'm not necessarily 09:12:49  
23 looking for solutions. 09:12:51  
24 MR. HORWITZ: Sure. 09:12:52  
25 THE COURT: I just want to be very 09:12:52



1 clear of what the risk is. 09:12:54

2 Proceed, Mr. Horwitz. 09:12:57

3 MR. HORWITZ: I understand. 09:12:57

4 THE COURT: I know that you had 09:12:58

5 filed a summary judgment, and the reason that 09:13:00

6 the Court did not proceed with the summary 09:13:03

7 judgment is I think that's even more of a risk 09:13:05

8 on appeal, because there were no statements of 09:13:08

9 undisputed material fact. A rushed-up summary 09:13:10

10 judgment is probably more -- or less 09:13:15

11 informative to a court of appeal than what 09:13:18

12 we're doing here, which is convening a limited 09:13:21

13 bench trial and motions in limine, et cetera. 09:13:25

14 So that's why the Court did not go that route. 09:13:28

15 So, yeah, go ahead. 09:13:32

16 MR. HORWITZ: Your Honor, we would 09:13:34

17 like to proceed with the motions in limine, but 09:13:35

18 I would ask that this Court permit the State 09:13:38

19 to make an offer of proof as to what they 09:13:41

20 intended to introduce. It's our position that 09:13:43

21 if this trial moved forward, they won't have 09:13:47

22 sufficient evidence to overcome the standard 09:13:50

23 anyway. But we do ask those motions in limine 09:13:52

24 be granted. 09:13:55

25 I respectfully submit, Your Honor, 09:13:56

1 that this will not prejudice the defendants. 09:13:59  
2 It, in fact, just restores them to the position 09:14:01  
3 that they previously took, which is that they 09:14:03  
4 don't need evidence and they don't have to 09:14:05  
5 introduce evidence and they wouldn't be 09:14:07  
6 introducing evidence. 09:14:09  
7 So I do not want to continue this. 09:14:10  
8 We still do want to proceed on an expedited 09:14:11  
9 basis, but we ask that those motions in limine 09:14:14  
10 be granted and, again, that the State be 09:14:18  
11 allowed to make an offer of proof and allow us 09:14:21  
12 to proceed today. 09:14:23  
13 THE COURT: And the Court had thought 09:14:24  
14 about that, that if the motions in limine were 09:14:25  
15 granted, that the State should be permitted to 09:14:26  
16 make an offer of proof and how that would 09:14:29  
17 proceed. 09:14:31  
18 I do not listen to offers of proof. 09:14:33  
19 You-all would stay in the courtroom. They 09:14:37  
20 would present their matters and put it on the 09:14:39  
21 record for the court reporter. So that's how 09:14:42  
22 we would handle that. 09:14:44  
23 But they -- I think, looks like we 09:14:45  
24 have a notebook up here, so they do have -- 09:14:46  
25 this could be filed in the record. And then 09:14:50

1 any questions they wanted to ask of their 09:14:52  
2 witness and any cross-examination could 09:14:53  
3 proceed. 09:14:56  
4 All right. Anything further in 09:14:57  
5 response to that question? 09:14:59  
6 MR. HORWITZ: Just very briefly, Your 09:15:00  
7 Honor, I wanted to clarify. The plaintiff did 09:15:02  
8 file a statement of undisputed material facts 09:15:04  
9 submitted with motion for summary judgment. I 09:15:08  
10 understand that probably doesn't affect 09:15:08  
11 anything, but if this Court hadn't seen it I 09:15:09  
12 wanted to mention it. 09:15:13  
13 THE COURT: I did see that, but the 09:15:14  
14 time to respond is the problem. 09:15:16  
15 MR. HORWITZ: Yes, ma'am. 09:15:19  
16 THE COURT: It would have been on an 09:15:19  
17 expedited basis. And then if they -- they have 09:15:20  
18 the opportunity to submit statements of 09:15:20  
19 undisputed material fact in response, and there 09:15:23  
20 just would not be enough time to do that. We'd 09:15:26  
21 have to compress it so much. 09:15:28  
22 MR. HORWITZ: I understand and I 09:15:31  
23 agree. 09:15:32  
24 THE COURT: Thank you. All right, at 09:15:33  
25 this time the Court will hear the State's 09:15:37

1 response to the motions in limine. 09:15:41

2 MS. KLEINFELTER: Thank you, Your 09:15:43

3 Honor. Janet Kleinfelter with the Attorney 09:15:44

4 General's Office here on behalf of the 09:15:49

5 defendant, Your Honor. 09:15:50

6 And, Your Honor, in your question to 09:15:52

7 counsel, plaintiff's counsel has identified and 09:15:53

8 specifically comes from, that the Court of 09:15:55

9 Appeals identified in the case of Duran and 09:15:58

10 Honda Motor American, Inc. The cite for that 09:16:01

11 case is 271 Southwest 3rd, 178. That's a 2008 09:16:03

12 decision. 09:16:06

13 And in that case the Court said that 09:16:06

14 a motion in limine is not the proper vehicle to 09:16:09

15 use to attempt to preclude a claim or a 09:16:12

16 defense. A motion in limine should not be used 09:16:15

17 to, quote, Choke off a party's entire claim or 09:16:18

18 defense. Rather, the purpose of a motion in 09:16:22

19 limine is to enable a Court prior to trial to 09:16:25

20 exclude anticipated evidence that would be 09:16:29

21 clearly inadmissible for any purpose at trial. 09:16:31

22 And, Your Honor, when you apply that 09:16:35

23 standard to the four motions in limine which 09:16:37

24 plaintiff has filed, they don't meet that 09:16:39

25 standard in any form or fashion. 09:16:41

1           With respect to the first motion in           09:16:45  
2     limine, the entire basis for excluding the           09:16:47  
3     testimony of Mr. Rawlins is the assertion that           09:16:49  
4     our identification of Mr. Rawlins did not           09:16:53  
5     provide a brief description as to what he was           09:16:55  
6     expected to testify. Mr. Rawlins was           09:16:57  
7     specifically identified as the Executive           09:16:59  
8     Director of the Registry of Election Finance.           09:17:01  
9     I think it's -- it's safe to say that's pretty           09:17:07  
10    obvious as to what he was going to testify is           09:17:08  
11    the actions of the Registry of Election           09:17:09  
12    Finance.           09:17:11  
13           Regardless, plaintiff had that           09:17:12  
14    information since September 14th, Your Honor,           09:17:14  
15    and waited until the 21st to even raise it as           09:17:17  
16    an issue as to why that testimony should be           09:17:23  
17    excluded.           09:17:25  
18           With respect to the second motion in           09:17:26  
19    limine to exclude the testimony of witnesses by           09:17:29  
20    affidavit, Your Honor, there the problem with           09:17:31  
21    that is, once again, counsel had that           09:17:35  
22    information as of September 14th. As this           09:17:39  
23    Court noted in its order, if counsel felt the           09:17:42  
24    need to inquire about testimony of witnesses,           09:17:45  
25    they could have asked for a continuance in           09:17:49

1 order to depose those witnesses. No such 09:17:52  
2 request has been made. No request is being 09:17:57  
3 made today. 09:18:00  
4 And, Your Honor, with respect to at 09:18:00  
5 least two of the witnesses, because of the 09:18:03  
6 expedited basis of this trial, there was no way 09:18:04  
7 that we could have these witnesses available 09:18:07  
8 today. Two of the witnesses are more than a 09:18:09  
9 hundred miles outside -- one of the witnesses 09:18:12  
10 is in California at the moment. Another 09:18:13  
11 witness is located in Hardeman County, which is 09:18:15  
12 170 miles from Davidson County. Two more of 09:18:18  
13 the witnesses are administrators of election 09:18:21  
14 for -- one for Davidson County, the other one 09:18:24  
15 for Montgomery County. Your Honor, they are 09:18:27  
16 extremely busy at this moment preparing for the 09:18:31  
17 November elections. One of the other witnesses 09:18:35  
18 was just elected vice-mayor. In addition, he 09:18:38  
19 has a full-time job. 09:18:42  
20 We were not able to insure that those 09:18:43  
21 witnesses were going to be able to be available 09:18:46  
22 for this trial given the expedited basis. Your 09:18:48  
23 Honor, we would have made them available, 09:18:52  
24 however, had counsel requested the opportunity 09:18:54  
25 to depose them and asked for a continuance. We 09:18:56

1 would have made them available for depositions. 09:18:59  
2 That request never came. 09:19:01  
3 With respect to the third motion, 09:19:04  
4 Your Honor, the third motion says that the 09:19:06  
5 basis for excluding, conditionally excluding 09:19:08  
6 irrelevant exhibits, Your Honor, first of all, 09:19:12  
7 I think it's the Court that decides whether or 09:19:15  
8 not a particular exhibit is relevant, not 09:19:18  
9 opposing counsel. 09:19:20  
10 But regardless, the basis that they 09:19:23  
11 provide for excluding it is because it's 09:19:25  
12 inadequately described. And the example they 09:19:28  
13 give is the legislative history from the 99th 09:19:31  
14 Session of the Tennessee General Assembly for 09:19:35  
15 House Bill 89 and Senate Bill 79. 09:19:38  
16 Your Honor, I don't know how else to 09:19:40  
17 describe legislative history. The legislative 09:19:42  
18 history is the history -- it's the recorded 09:19:45  
19 history of what the legislature did. I'm not 09:19:47  
20 sure how else to describe that. And if counsel 09:19:50  
21 is not aware of what the legislative history 09:19:59  
22 is, I'm not sure if there's a definition out 09:20:02  
23 there to provide them. 09:20:05  
24 But regardless, Your Honor, I don't 09:20:06  
25 think there's any basis for excluding all of 09:20:08



1 the exhibits simply because counsel believes 09:20:10  
2 that they're not relevant to the issue. 09:20:12

3 The final motion, Your Honor, with 09:20:14  
4 respect to excluding an exchange of exhibits, 09:20:16  
5 so if we're going to play the game of the local 09:20:20  
6 rules, Your Honor, and argue that our exhibits 09:20:23  
7 should be excluded because we didn't comply 09:20:25  
8 with the local rule, well, counsel's motion 09:20:28  
9 doesn't comply with the local rule, because 09:20:30  
10 Local Rule 30 says that that motion in limine 09:20:33  
11 is supposed to be filed five days before the 09:20:37  
12 trial. 09:20:38

13 But we're not going to play that 09:20:39  
14 game, Your Honor. The simple matter of the 09:20:40  
15 fact is that all of the exhibits, the 09:20:41  
16 documentary exhibits that we listed on 09:20:44  
17 September 14th and provided to counsel on 09:20:46  
18 September 14th are public records that could 09:20:49  
19 have been obtained at any time by plaintiff's 09:20:51  
20 counsel without obtaining them from us. We 09:20:54  
21 provided specific sites to where newspaper 09:20:57  
22 articles could be found. To the extent that 09:21:02  
23 they could not be downloaded off the internet, 09:21:04  
24 they were available at the State library and 09:21:07  
25 archives. They were all public records. 09:21:11

1                   With respect to the affidavits, Your                   09:21:14  
2 Honor, we were still in the process of getting                   09:21:17  
3 executed affidavits, and two of the affidavits                   09:21:19  
4 were not actually executed until yesterday. We                   09:21:21  
5 went ahead and actually provided those                   09:21:24  
6 affidavits to plaintiff's counsel, even though                   09:21:25  
7 we were not required to do so under the local                   09:21:29  
8 rules.                   09:21:32

9                   The simple matter of fact is, Your                   09:21:32  
10 Honor, counsel wants to exclude all of our                   09:21:36  
11 evidence because they happen to believe that we                   09:21:38  
12 have to demonstrate that it's narrowly                   09:21:41  
13 tailored. That's the issue still for the Court                   09:21:45  
14 to determine based upon the pre-trial briefs,                   09:21:45  
15 what's the appropriate standard of review.                   09:21:45

16                   But their position is that unless we                   09:21:47  
17 demonstrate that it's narrowly tailored, the                   09:21:50  
18 Court should exclude all of our evidence. Your                   09:21:54  
19 Honor, that kind of begs the question, how do                   09:21:56  
20 you demonstrate that something is narrowly                   09:21:59  
21 tailored without the evidence? That's exactly                   09:22:03  
22 what the Court said in its previous order.                   09:22:03  
23 That's why this Court ordered an evidentiary                   09:22:04  
24 hearing.                   09:22:06  
25                   We would respectfully request that                   09:22:06

1 the Court deny all of the motions in limine. 09:22:09  
2 We fully expect if the motions were granted 09:22:11  
3 that we would find ourselves back here in a 09:22:14  
4 couple of months after the Court of Appeals 09:22:17  
5 reverses and remands. Thank you. 09:22:18  
6 THE COURT: Thank you. Anything 09:22:21  
7 else? 09:22:23  
8 MR. HORWITZ: Very briefly, Your 09:22:24  
9 Honor. 09:22:25  
10 As to the first motion in limine, 09:22:26  
11 this is not about inquiring into his testimony. 09:22:29  
12 It's simply about fair notice, Your Honor. I 09:22:35  
13 would respectfully submit this Court has 09:22:37  
14 significant discretion to control the evidence 09:22:40  
15 that gets admitted, and non-compliance with 09:22:41  
16 this Court's orders is a legitimate basis for 09:22:44  
17 excluding evidence. 09:22:49  
18 As to the hearsay affidavits, Your 09:22:51  
19 Honor, I also submit that not deposing a 09:22:53  
20 witness does not entitle the defendants to 09:22:56  
21 introduce hearsay. The rules of evidence apply 09:22:59  
22 whether or not the plaintiff wanted to depose 09:23:03  
23 witnesses or not. 09:23:06  
24 As for waiting to raise this 09:23:08  
25 objection, it was raised within seven days of 09:23:10

1 the disclosures being made, and I believe the 09:23:12  
2 fact that I was out of town during this 09:23:16  
3 process was previously introduced into the 09:23:18  
4 record. 09:23:22

5 Legislative history, Your Honor, can 09:23:23  
6 include many, many, many things: committee 09:23:26  
7 reports, floor statements, committee 09:23:29  
8 statements, newspaper articles from the time. 09:23:31  
9 There is a vast quantity of information that 09:23:33  
10 can be shoehorned into the category of 09:23:36  
11 legislative history. Simply saying we're going 09:23:41  
12 to introduce legislative history does not 09:23:43  
13 provide fair notice. 09:23:47

14 More importantly, that's not the 09:23:47  
15 basis for the objection anyway. The objection 09:23:48  
16 is a conditional relevance objection. Assuming 09:23:51  
17 for the sake of argument that the interests 09:23:56  
18 that they have alleged are compelling, the 09:23:58  
19 problem is they are still not narrowly 09:23:59  
20 tailored. And failing to be able to 09:24:03  
21 demonstrate that fact makes the balance of the 09:24:06  
22 evidence irrelevant. 09:24:09

23 As to whether yesterday's motion in 09:24:10  
24 limine should have been filed five days ago, I 09:24:14  
25 respectfully submit they were not in violation 09:24:15

1 five days ago. The local rule provides that 09:24:17  
2 the exhibits need to be disclosed within 09:24:19  
3 72 hours; that period came and went. Monday we 09:24:22  
4 asked for them; came and went. They weren't 09:24:25  
5 provided until late yesterday afternoon. 09:24:27  
6 As for the fact that these are public 09:24:30  
7 records, Your Honor, they are not. The 09:24:32  
8 affidavits are not public records. There was 09:24:34  
9 no way for me to be able to get access to those 09:24:36  
10 absent the defendants providing them. And if 09:24:39  
11 they had a -- had difficulty getting their 09:24:42  
12 witnesses to this trial, that was their 09:24:45  
13 obligation, not mine. This is their burden of 09:24:47  
14 proof, not the plaintiff's. 09:24:50  
15 If their witnesses were unavailable, 09:24:53  
16 they could have asked to move this trial date. 09:24:56  
17 They did not. They simply are attempting to 09:24:58  
18 get their witnesses to testify by affidavit. 09:24:59  
19 That is not permitted under the rules of 09:25:02  
20 evidence. 09:25:03  
21 I submit that these motions in limine 09:25:04  
22 should be granted. I would not be opposed to 09:25:06  
23 this Court holding a determination as to those 09:25:08  
24 motions in abeyance pending the trial that 09:25:11  
25 proceeds today for purpose of expediting this. 09:25:14

1 Thank you. 09:25:17

2 THE COURT: Is there any proof that 09:25:17

3 the -- if the Court granted the motions in 09:25:19

4 limine, then is there any proof that the 09:25:21

5 plaintiff has to offer in this case? 09:25:24

6 MR. HORWITZ: It was my 09:25:27

7 understanding, Your Honor, that this limited 09:25:28

8 bench trial was noticed on the defendants' 09:25:30

9 defenses. 09:25:33

10 THE COURT: Yes. 09:25:33

11 MR. HORWITZ: So that's why we're 09:25:35

12 here today. No, Your Honor. 09:25:37

13 THE COURT: All right. Thank you. 09:25:38

14 Anything else, General Kleinfelter? 09:25:40

15 MS. KLEINFELTER: No, Your Honor. 09:25:43

16 THE COURT: The Court grants the 09:25:49

17 motions in limine for the reasons stated in the 09:25:51

18 plaintiff's oral arguments and in their 09:25:55

19 briefing, including but not limited to, that 09:25:59

20 the State failed to comply with measures that 09:26:02

21 this Court had put in its order to regulate and 09:26:07

22 provide structure and fair notice when we were 09:26:10

23 having a bench trial on an expedited basis. 09:26:15

24 The Court was careful and thoughtful 09:26:20

25 in crafting regulations so that the trial of 09:26:24

1 this case would be fair, even though it was 09:26:26  
2 expedited, and the State has not complied with 09:26:29  
3 the Court's order. The State did not provide a 09:26:33  
4 description of the testimony that would be 09:26:37  
5 given by its witness. 09:26:40  
6 The Court had also put in footnote 1 09:26:41  
7 of its order that if there were difficulties or 09:26:45  
8 problems complying with the deadlines, that 09:26:49  
9 relief should be sought from the Court, and the 09:26:55  
10 Court anticipated or acknowledged that that was 09:26:59  
11 a possibility. The State never came forward 09:27:03  
12 and asked for any additional time or measures 09:27:06  
13 in which to put their evidence on before the 09:27:11  
14 Court, other than the limited bench trial that 09:27:16  
15 the Court had set up. These are in addition 09:27:18  
16 to the reasons that are stated by the 09:27:23  
17 plaintiff in their oral argument and their 09:27:26  
18 briefing. 09:27:29  
19 The Court concludes that the way 09:27:30  
20 that the State has proceeded, it has the 09:27:33  
21 effect of a trial by ambush, and it doesn't 09:27:36  
22 provide an opportunity for the other side to 09:27:41  
23 defend against the proof that the plaintiff 09:27:46  
24 seeks -- that the defendant, the State, seeks 09:27:49  
25 to offer. 09:27:52



1           So for all of these reasons, the           09:27:53  
2           Court grants the motions in limine. The Court           09:27:55  
3           directs plaintiff's counsel to prepare the           09:28:00  
4           order granting the motions in limine and submit           09:28:03  
5           that stating the Court's reasoning. And to the           09:28:06  
6           extent that it's not all in there, I will add           09:28:10  
7           to it, but use what you stated in oral           09:28:13  
8           arguments and in your briefing and then what           09:28:16  
9           you've heard the Court state on the record here           09:28:20  
10          today. If it's not exactly like I want it,           09:28:22  
11          then I will change it up.           09:28:25

12           The reason I'm having you prepare the           09:28:27  
13          order is that the Court has a number of matters           09:28:29  
14          this week, and for us to get the order done in           09:28:32  
15          time it would be next week or week after before           09:28:36  
16          I could do it.           09:28:39

17           Where that leaves us with respect to           09:28:40  
18          the case is that having granted the motions in           09:28:42  
19          limine, the State has insufficient facts of           09:28:45  
20          record to withstand the plaintiff's claim, and           09:28:50  
21          so judgment is granted in favor of the           09:28:52  
22          plaintiff, and the plaintiff shall prepare the           09:28:55  
23          order of judgment on that as well and submit it           09:28:57  
24          to the Court.           09:29:01

25           In terms of the State, of course,           09:29:03

1 there is the three-day holding period that we 09:29:05  
2 have in the clerk and master's office. And to 09:29:07  
3 the extent that the State disagrees with the 09:29:12  
4 orders that have been submitted, they may 09:29:14  
5 submit an opposing or competing order. 09:29:16  
6 As to preparing a record on appeal, 09:29:18  
7 I'm going to have Mr. Seamon mark the notebook 09:29:22  
8 that General Kleinfelter had provided before 09:29:27  
9 today's proceedings for identification only. 09:29:31  
10 So that will be in the record. And then if 09:29:35  
11 there is any offer of proof that the State 09:29:38  
12 seeks to make with their witness, they may do 09:29:43  
13 so in the courtroom here with the court 09:29:46  
14 reporter and opposing counsel, and you-all may 09:29:49  
15 put that questioning on the record. 09:29:52  
16 Let me ask if there are any questions 09:29:57  
17 about the Court's ruling? 09:29:59  
18 MS. KLEINFELTER: Yes, Your Honor. 09:30:02  
19 The State intends to file a notice of appeal, 09:30:03  
20 and we are we requesting a stay of the Court's 09:30:06  
21 order. 09:30:08  
22 Do I need to go ahead and file that 09:30:09  
23 motion, or will the Court entertain an oral 09:30:11  
24 motion? 09:30:13  
25 THE COURT: You would need to file a 09:30:14

1 motion. 09:30:16

2 MS. KLEINFELTER: We'll get that 09:30:16

3 motion and notice filed today, Your Honor. 09:30:18

4 THE COURT: Okay. Any other 09:30:20

5 questions, General Kleinfelter, about the 09:30:22

6 Court's ruling? Any other questions? 09:30:26

7 MS. KLEINFELTER: Your Honor, do we 09:30:28

8 have the opportunity in making our offer of 09:30:29

9 proof of explaining the exhibits, because there 09:30:32

10 was going to be explanation provided when we 09:30:34

11 presented them in the record? 09:30:37

12 THE COURT: Absolutely. Put anything 09:30:39

13 on the record that you think you need to put on 09:30:41

14 there. 09:30:43

15 MS. KLEINFELTER: Thank you. 09:30:43

16 THE COURT: Any questions of 09:30:45

17 plaintiff? 09:30:47

18 MR. HORWITZ: Very briefly, Your 09:30:47

19 Honor. 09:30:49

20 Would it be permissible to integrate 09:30:49

21 the transcript of this proceeding into the 09:30:51

22 proposed order that is filed. 09:30:53

23 THE COURT: Yes. There are a couple 09:30:54

24 ways you can do it. Either you can prepare 09:30:57

25 the order and paraphrase what I've said, or you 09:30:59

1 can attach the transcript to the order and just 09:31:03  
2 provide that it's incorporated by reference. 09:31:08  
3 And if you need to put other 09:31:10  
4 provisions in the order, you may do so, but 09:31:12  
5 just attach the transcript. So any form is 09:31:15  
6 fine as long as we get the substance of the 09:31:18  
7 Court's ruling so it can be adequately reviewed 09:31:20  
8 on appeal. 09:31:23  
9 MR. HORWITZ: Thank you, Your Honor. 09:31:24  
10 THE COURT: Any other questions? Any 09:31:25  
11 other questions? 09:31:29  
12 (No response.) 09:31:29  
13 THE COURT: All right. At this time, 09:31:31  
14 Mr. Seamon, I'm going to ask you to mark that. 09:31:33  
15 (WHEREUPON, the above-mentioned 09:31:37  
16 documents were marked for Identification only  
17 as Exhibit No. 1, Exhibit No. 2, Exhibit No. 3,  
18 Exhibit No. 4, Exhibit No. 5, Exhibit No. 6,  
19 Exhibit No. 7, Exhibit No. 8, Exhibit No. 9,  
20 Exhibit No. 10, Exhibit No. 11, Exhibit No. 12,  
21 Exhibit No. 13, Exhibit No. 14, Exhibit No. 15,  
22 Exhibit No. 16, Exhibit No. 17, Exhibit No. 18,  
23 Exhibit No. 19, Exhibit No. 20, Exhibit No. 21,  
24 Exhibit No. 22, Exhibit No. 23, and Exhibit No.  
25 24.)

1 THE COURT: And we will adjourn 09:31:37  
2 court. 09:31:39  
3 (WHEREUPON, court was adjourned at  
4 9:31 a.m.)  
5 \* \* \*  
6 (WHEREUPON, the following is an offer  
7 of proof after the Court left the bench, as  
8 follows:)  
9 08:56:28  
10 MS. GROOVER: The Court asked that 09:32:40  
11 the State put on evidence of there being the 09:32:42  
12 existence of corruption or its appearance, that 09:32:46  
13 we could not rely purely on the assertion that 09:32:49  
14 such corruption existed. 09:32:53  
15 So we have submitted a number of 09:32:55  
16 exhibits that demonstrate that this statute 09:32:57  
17 came about not as a hypothetical situation, not 09:33:02  
18 to address a hypothetical situation, but to 09:33:06  
19 address something that was actually occurring 09:33:09  
20 in the state of Tennessee that caused 09:33:10  
21 corruption in its appearance. So these 09:33:14  
22 exhibits will demonstrate that. 09:33:16  
23 The very first exhibit is an article 09:33:17  
24 written by Phil Williams for the Tennessean on 09:33:23  
25 May 3rd, 1992, entitled "PACs Big Spenders When 09:33:31

1 It Comes to Congressional Races". 09:33:33

2 And what this article covers is the 09:33:36

3 extent to which Congressional races in 09:33:39

4 Tennessee were being funded by PAC money, and 09:33:42

5 it demonstrates that for some representatives 09:33:45

6 they received as much as 35 percent or more of 09:33:49

7 their funding from PACs. This demonstrates 09:33:51

8 that prior to the passage of this legislation, 09:33:55

9 there was concern about PAC money in elections 09:33:57

10 amongst the public. 09:34:00

11 The next section of articles regards 09:34:02

12 specific examples of PACs placing money -- of 09:34:06

13 donating money into campaigns within the last 09:34:11

14 10 days prior to an election where it would not 09:34:15

15 be reported until after an election. So these 09:34:17

16 articles talk about a primary race for the 09:34:21

17 Republican primary for the State Senate seat in 09:34:25

18 District 32. It was a primary between Tom 09:34:31

19 Leatherwood and Leonard Dunavant. 09:34:35

20 The first article was written by 09:34:35

21 Gail McKnight for the Tennessean, and it is 09:34:39

22 entitled "Voters Turn Out 2 West Tennessee 09:34:41

23 Lawmakers", and it was published on August 7th, 09:34:45

24 1992. And as the article itself states, this 09:34:48

25 was published the day after this primary 09:34:51

1 election. 09:34:54

2 I will read just a small portion of 09:34:55

3 it. "Senator Leonard Dunavant, 09:34:58

4 Republican-Memphis, defeated in Senate District 09:35:03

5 32 by Tom Leatherwood of Bartlett and Rep. 09:35:05

6 Alvin King, R-Memphis, defeated by Henri E. 09:35:09

7 Brooks. Dunavant, who served three terms in 09:35:13

8 the House and ten terms in the Senate, 09:35:17

9 sponsored a state income tax for Governor Ned 09:35:20

10 McWherter's education reform plan. He dropped 09:35:24

11 his support of the tax last year, but the 09:35:27

12 effort apparently beat him politically. With 09:35:27

13 no Democrat in the offering, Leatherwood is 09:35:32

14 assured the Senate seat." 09:35:35

15 The next article comes two days later 09:35:37

16 from Larry Daughtry titled "Not Much to Cry Or 09:35:40

17 Crow About", also in the Tennessean. And it is 09:35:46

18 here two days after the election that the 09:35:49

19 public has now become aware of the significant 09:35:51

20 contributions made to Tom Leatherwood's 09:35:54

21 campaign by a PAC, and you'll see that Mr. 09:35:59

22 Daughtry references, "Tennessee's fat medical 09:36:06

23 establishment poured perhaps as much as to 09:36:11

24 \$20,000 into the campaign of Dunavant's 09:36:14

25 opponent, Tom Leatherwood." And Mr. Daughtry 09:36:19



1 is saying "perhaps as much", because the 09:36:21  
2 disclosures have still not come out. 09:36:23

3 Then an article from October 25th, 09:36:26  
4 1992, after the disclosures have been made 09:36:31  
5 public, an article by Duren Cheek titled 09:36:35  
6 "Naifeh Wants State Income Tax, Opponent Says", 09:36:42  
7 finally has the figure of \$24,000 that was 09:36:43  
8 contributed to Tom Leatherwood's campaign. So 09:36:46  
9 two months after the election we finally have a 09:36:51  
10 report in the newspaper of how much money was 09:36:54  
11 actually spent. 09:36:56

12 We also have the campaign financial 09:36:58  
13 disclosure report filed by Tom Leatherwood in 09:37:00  
14 the 1992 Republican primary election. We have 09:37:04  
15 the preprimary reports, as well as the post 09:37:07  
16 primary reports, and the post primary reports 09:37:11  
17 are what showed the contributions that were 09:37:13  
18 made in those last 10 days. 09:37:16

19 And what they reveal is that this 09:37:19  
20 PAC, the Independent Medicine PAC, which as the 09:37:21  
21 previous article explained is the PAC for the 09:37:25  
22 Tennessee Medical Association, expended over 09:37:28  
23 \$14,000 in the last 10 days of the election for 09:37:33  
24 Tom Underwood, and those were not disclosed 09:37:35  
25 until after the election. 09:37:38

1	The next article that we have is	09:37:39
2	written by Duren Cheek titled "Lawmakers	09:37:45
3	Relying on PAC Money". It's from the	09:37:49
4	Tennessean, and it was published on August	09:37:51
5	13th, 1994.	09:37:55
6	And on the second page of this	09:37:56
7	article, there is a box at the lower left-hand	09:37:57
8	corner titled "Mostly PAC Incumbents", and it	09:38:03
9	lists 48 State lawmakers who received more than	09:38:06
10	half of their campaign contributions from PACs.	09:38:10
11	So, again, we see a concern about the amount of	09:38:15
12	PAC money being contributed to State	09:38:16
13	legislators.	09:38:20
14	The next article is from January	09:38:21
15	10th, 1995, also from the Tennessean, written	09:38:24
16	by Duren Cheek and Larry Daughtry titled	09:38:28
17	"General Assembly to Focus on Ethics".	09:38:31
18	In the second column, "Representative	09:38:34
19	Matt Kisber, Democrat-Jackson, expected to be	09:38:38
20	reappointed today to chair the House Ethics	09:38:42
21	Committee, said he's angry that some lobbying	09:38:46
22	groups are boasting of their power at the	09:38:50
23	ballot box. 'There have been some special	09:38:54
24	interests which have bragged about the role	09:38:57
25	their large contributions have played in	09:38:58

1 determining outcomes of some races,' said 09:38:59  
2 Kisber. 'I'm not going to name names.' 09:39:02  
3 Kisber apparently referred to claims 09:39:05  
4 in an internal newsletter of the Tennessee 09:39:07  
5 Medical Association, the doctor's lobby, that 09:39:12  
6 its contributions tilted several legislative 09:39:13  
7 races last year. The TMA gave \$128,000 to 09:39:18  
8 political candidates in the first three 09:39:23  
9 quarters of 1994. Final figures are not 09:39:26  
10 available." 09:39:26  
11 So we have the exact same PAC who 09:39:31  
12 contributed to the Leatherwood campaign 09:39:33  
13 boasting in an internal newsletter how their 09:39:36  
14 contributions tilted elections. 09:39:39  
15 The next article is also from the 09:39:45  
16 Tennessean. It was published June 19th, 1995, 09:39:49  
17 and it is written by Duren Cheek, titled 09:39:53  
18 "Ethics Bills Bring Confusion". This article 09:39:57  
19 was published the month after this bill was 09:39:59  
20 passed. 09:40:03  
21 And on the second page of this 09:40:05  
22 article in the center of the article there is a 09:40:06  
23 portion titled, "What the New Ethics 09:40:10  
24 Legislation Says." And on the last question in 09:40:13  
25 the first column, the question is, 09:40:16

1 "Historically PACs have contributed large sums 09:40:20  
2 just before an election that aren't reported 09:40:24  
3 until after the election. Voters therefore do 09:40:27  
4 not know who is contributing. Are those 09:40:31  
5 stealth contributions prohibited?" 09:40:33  
6 The next exhibit that we have are 09:40:38  
7 portions of the legislative history from the 09:40:44  
8 99th Session of the Tennessee General Assembly 09:40:48  
9 for House bill 89 and Senate bill 79. I will 09:40:52  
10 read the third portion that is provided in this 09:40:56  
11 exhibit, and this is a quote from 09:41:00  
12 Representative Kisber who was the sponsor of 09:41:03  
13 this bill. 09:41:06  
14 Representative Kisber said, I think 09:41:07  
15 that that the concern that's been raised on 09:41:12  
16 this issue is one of what I as a candidate, and 09:41:13  
17 I'm sure many of you as a candidates, have had 09:41:17  
18 to address at the home front. When you're 09:41:20  
19 running and you file a disclosure seven days 09:41:22  
20 before the election covering the period up 09:41:25  
21 through 10 days before the election, it's 09:41:27  
22 baring yourself. You disclose everything 09:41:30  
23 you've received and everything you've spent, 09:41:32  
24 and the public before they go vote has an 09:41:35  
25 opportunity to see who has contributed and what 09:41:38

1 those political action committees have given, 09:41:40  
2 and if there's been in the last few days of an 09:41:43  
3 election talk about campaign finance it's 09:41:45  
4 usually about what PACs have given, and how 09:41:48  
5 much they've given, and why have they given to 09:41:50  
6 a candidate. 09:41:53

7 Well, in a matter of public policy to 09:41:54  
8 prevent large amounts of money being put into a 09:41:56  
9 campaign in the last few days and evade the 09:41:59  
10 disclosure prior to an election in order that 09:42:02  
11 the public has the opportunity to see what PACs 09:42:03  
12 have given and how much they've given before 09:42:05  
13 they go to vote, this provision was discussed 09:42:07  
14 and unanimously adopted by the members of the 09:42:10  
15 Conference Committee. The members of the 09:42:14  
16 Conference Committee believed it was good 09:42:16  
17 public policy. In light of the interest in 09:42:17  
18 reform, in light of the interest in campaign 09:42:19  
19 finance, and in light of the interest and 09:42:23  
20 concern of where campaign money comes from, 09:42:25  
21 that before someone goes to vote they have a 09:42:27  
22 right to know, they have an opportunity to know 09:42:30  
23 who is funding that campaign, and this 09:42:31  
24 provision helps to strengthen that." 09:42:33

25 We also have an affidavit from Matt 09:42:37

1 Kisber who was the representative at the time 09:42:41  
2 who sponsored the house bill. 09:42:43

3 MR. HORWITZ: Object to hearsay on 09:42:46  
4 the record. 09:42:48

5 MS. KLEINFELTER: This is an offer of 09:42:51  
6 proof. You already made your objection. 09:42:53

7 MR. HORWITZ: I'm noting that if this 09:42:54  
8 were introduced, I would object to hearsay. 09:42:56  
9 And that's a standing objection to each 09:42:59  
10 affidavit. 09:43:01

11 MS. GROOVER: This affidavit, again, 09:43:03  
12 supports the notion that the statute was 09:43:04  
13 passed to address specific incidences of PACs 09:43:06  
14 making donations in the last 10 days before an 09:43:12  
15 election that would not be disclosed to the 09:43:15  
16 public until after the election. 09:43:18

17 There are several articles after 09:43:20  
18 this that are current articles or recent 09:43:24  
19 articles that demonstrate that PAC money in 09:43:28  
20 elections and where a candidate receives their 09:43:31  
21 money from is still an issue of public concern. 09:43:33  
22 These are numerous articles from the 09:43:37  
23 Nashville Scene, the Tennessean, and 09:43:41  
24 Knoxblogs.com, and each of them discusses, you 09:43:46  
25 know, that reporters have pulled campaign 09:43:53

1 disclosures and are reporting on those 09:43:56  
2 disclosures because it is still an issue of 09:43:58  
3 concern to the public. 09:44:01  
4 The final article in this set is an 09:44:02  
5 article from The Atlantic by Elaine Godfrey 09:44:06  
6 titled "Why So Many Democratic Candidates are 09:44:11  
7 Dissing Corporate PACs". 09:44:15  
8 This article discusses, because there 09:44:17  
9 is such a concern among voters of corruption or 09:44:19  
10 its appearance and there even being PAC 09:44:24  
11 contributions, that many candidates are 09:44:28  
12 refusing such contributions to avoid that 09:44:29  
13 appearance. 09:44:32  
14 The next exhibit is an affidavit from 09:44:33  
15 Richard H. Williams. He is the Chairman of the 09:44:36  
16 Board for Common Cause Tennessee. Common Cause 09:44:39  
17 Tennessee is a non-profit organization 09:44:42  
18 dedicated to strengthening public participation 09:44:46  
19 in government and assuring transparency in 09:44:47  
20 government in elections. 09:44:50  
21 And Mr. Williams speaks to his 09:44:51  
22 experience in that role for the last over 09:44:53  
23 40 years and his -- his belief and observation 09:44:56  
24 of the concern that voters have about PAC money 09:45:01  
25 being contributed to politicians. 09:45:05

1           The next exhibit is an affidavit from           09:45:08  
2           Jim Schulman, the Vice-Mayor of Nashville and           09:45:10  
3           Davidson County. In his affidavit he explains           09:45:15  
4           how a candidate plans and budgets for their           09:45:18  
5           campaign and how any mailings or literature or           09:45:21  
6           ads are planned before the 10-day period           09:45:26  
7           leading up to the election.           09:45:29  
8           The next exhibits are a series of           09:45:33  
9           articles and a public report that deal with the           09:45:36  
10          lack of broadband availability statewide.           09:45:39  
11          First is an article written by           09:45:44  
12          Michael Edward Miller for Nashville Public           09:45:46  
13          Radio titled "Some Tennessee Residents Lack           09:45:51  
14          Broadband. Could TVA Become Their New ISP?"           09:45:53  
15          The next is an article written by           09:45:55  
16          Alexander Willis for Brentwood Home Page titled           09:45:58  
17          "Fire Station Used Hot Spots, 'Welcome Back to           09:46:02  
18          1997', DSL Before the World Broadband           09:46:04  
19          Initiative."           09:46:08  
20          The next is an article written by           09:46:10  
21          Kelly Fisher for the Tennessean titled "Forum           09:46:11  
22          Aims to Pinpoint Broadband Options, Internet           09:46:16  
23          Expansion for Rural Cheatham Residents."           09:46:16  
24          And then the last is a public report           09:46:19  
25          from the Tennessee Advisory Commission on           09:46:21



1 Intergovernmental Relations titled "Broadband 09:46:25  
2 Internet Deployment, Availability, and Adoption 09:46:28  
3 in Tennessee." And this report details the 09:46:31  
4 statistics about where broadband is and isn't 09:46:34  
5 available throughout the state of Tennessee. 09:46:37  
6 The last three that we have are 09:46:39  
7 affidavits from Administrators of Elections. 09:46:43  
8 The first is from Amber Moore, who is the 09:46:47  
9 Administrator of Elections -- of Elections in 09:46:52  
10 Hardeman County. And this affidavit simply 09:46:54  
11 explains what a voter would have to do to be 09:46:57  
12 able to obtain these financial disclosures from 09:47:00  
13 the Hardeman County Election Commission. It 09:47:03  
14 states these are not available electronically, 09:47:07  
15 and that if an individual wishes to receive 09:47:10  
16 these disclosures, they have to show up at the 09:47:13  
17 Election Commission. 09:47:19  
18 The next is an affidavit from Jeff 09:47:21  
19 Roberts, who is the Administrator of Elections 09:47:23  
20 for the Davidson County Election Commission. 09:47:27  
21 Davidson -- he states that Davidson County does 09:47:30  
22 have an electronic filing system. However, 09:47:31  
23 once a candidate submits their filing to this 09:47:34  
24 system, there's a 48-hour lag time before it is 09:47:38  
25 available for viewing by the public. 09:47:42

1                   And the final affidavit is from                   09:47:45  
2                   Aletta West, who is the Administrator of                   09:47:48  
3                   Elections in Montgomery County. And she states                   09:47:52  
4                   they do not have electronic filing available in                   09:47:55  
5                   Montgomery County, and that members of the                   09:47:59  
6                   public who wish to access the disclosures must                   09:48:01  
7                   appear in person and fill out a public request                   09:48:05  
8                   form to access the document.                   09:48:07  
9                   That is the end of our exhibits.                   09:48:12  
10                   (Conference between co-counsel.)                   09:48:20  
11                   MS. GROOVER: Yes, and we have a                   09:48:20  
12                   witness to call. I'd like to call Drew                   09:48:21  
13                   Rawlins.                   09:48:26  
14                   MR. HORWITZ: Is that your only                   09:48:28  
15                   witness?                   09:48:29  
16                   MS. GROOVER: Yes.                   09:48:31  
17                   ///  
18                   ///  
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DREW RAWLINS,  
was called as a witness, being duly sworn after  
the testimony that all testimony given was true  
and accurate, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MS. GROOVER:

Q. Good morning, Mr. Rawlins.

A. Morning.

Q. Would you state your name for the  
record?

A. Drew Rawlins.

Q. Are you currently employed?

A. Yes. I'm the Executive Director of the  
Bureau of Ethics and Campaign Finance.

Q. And how long have you held that  
position?

A. Since 2000.

Q. And can you tell me a little bit about  
what the Bureau of Ethics and Campaign Finance  
is?

A. Yes. It's really -- it's kind of made up  
of two divisions, the Registry of Election  
Finance and the Tennessee Ethics Commission.

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1           The Registry of Election Finance side           09:49:17  
2 deals with the campaign finance statutes,           09:49:18  
3 including the disclosure laws, the amendments           09:49:19  
4 laws, several rules and statutes.           09:49:22  
5           And then on the Ethics Commission side,           09:49:24  
6 they enforce the lobbying statutes and the State           09:49:26  
7 election limitation statutes.           09:49:32  
8 Q.       How long have you been with the Bureau?           09:49:33  
9 A.       Since July of 1990.           09:49:34  
10 Q.       And what position did you hold before           09:49:36  
11 becoming the executive director?           09:49:39  
12 A.       When I began work in 1990, I was the           09:49:40  
13 audit manager. In 1997, I became the assistant           09:49:43  
14 director. And then, as I said earlier, I           09:49:47  
15 became the director in 2000.           09:49:51  
16 Q.       And how long had the Bureau existed prior           09:49:52  
17 to you starting there?           09:49:55  
18 A.       The -- what was then known as the           09:49:56  
19 Registry of Elections Finance was created by           09:49:59  
20 the '89 legislature. They actually went into           09:50:03  
21 operation, I believe, about February of 1990.           09:50:06  
22           Again, just to kind of take us through           09:50:08  
23 the point, the Tennessee Ethics Commission was           09:50:09  
24 created in 2006, it was combined with the           09:50:12  
25 Registry of Election Finance in 2009, and the           09:50:14

1 Bureau of Ethics and Campaign Finance was 09:50:17  
2 created in 2009 I believe was the combining of 09:50:18  
3 those two agencies. 09:50:22

4 Q. Will you describe what your job 09:50:24  
5 responsibilities are as executive director? 09:50:26

6 A. Basically running the day-to-day 09:50:29  
7 operations; supervising staff; answering 09:50:30  
8 questions of policy; enforcing the statutes 09:50:32  
9 that we mentioned that are enforced by our 09:50:34  
10 office. Providing information to our boards 09:50:36  
11 so that they have civil penalty authority and 09:50:37  
12 the ultimate say and enforcement upon the 09:50:41  
13 statutes. So I advise them and give them any 09:50:44  
14 information from the daily activity of the 09:50:46  
15 office. 09:50:47

16 Q. And as you know, we're here today because 09:50:47  
17 the plaintiff is challenging Tennessee Code 09:50:51  
18 Annotated 2-10-117. 09:50:54

19 Are you familiar with this statute? 09:50:57

20 A. Yes. 09:50:59

21 Q. And what does it say? 09:51:00

22 A. Basically it says that a PAC cannot make 09:51:01  
23 a contribution, that there's a blackout period 09:51:04  
24 on PAC contributions from the end of the 09:51:07  
25 pre-election report until election day. 09:51:10

1 Q. And is this a statute that the Registry 09:51:11  
2 enforces? 09:51:14  
3 A. Yes. 09:51:14  
4 Q. To your knowledge, when was this statute 09:51:16  
5 passed? 09:51:18  
6 A. It was passed in 1995, and became 09:51:19  
7 effective in 1996. 09:51:23  
8 Q. And to your knowledge, was it part of a 09:51:24  
9 larger bill? 09:51:26  
10 A. Yes. 09:51:26  
11 Q. And was this bill called the Campaign 09:51:26  
12 Contribution Limits Act? 09:51:29  
13 A. Yes. 09:51:32  
14 Q. Do you recall anything about what 09:51:33  
15 prompted the legislature to pass the law? 09:51:35  
16 A. There was a discussion at the time about 09:51:37  
17 disclosure, about limits. There was a concern 09:51:41  
18 about the amount of money in politics in 09:51:43  
19 elections, per se, and about the disclosure of 09:51:47  
20 those to the public. 09:51:50  
21 And I -- I think -- I think based on my 09:51:51  
22 knowledge and based on what I had heard at the 09:51:54  
23 time there was a concern about those things, 09:51:57  
24 and they were trying to put together a package 09:51:58  
25 that would give more disclosure, limit the 09:52:00

1 amount of money, and provide information before 09:52:04  
2 the election. 09:52:06

3 Q. Do you remember anything about a primary 09:52:07  
4 that took place in 1992 between Leonard 09:52:09  
5 Dunivant and Tom Underwood? 09:52:13

6 A. I vaguely have -- I know you mentioned 09:52:15  
7 that as an exhibit, and basically what you 09:52:16  
8 stated is what I -- I remember. I remember 09:52:18  
9 there was some contributions made right before 09:52:21  
10 the election, and there was -- that were not 09:52:24  
11 disclosed obviously before the election, 09:52:27  
12 because they weren't required to be disclosed 09:52:29  
13 at that time. 09:52:32

14 Q. Do you remember there being controversy 09:52:32  
15 about that? 09:52:35

16 A. I -- I remember there being discussions 09:52:35  
17 about that and what effect that had on the 09:52:37  
18 election. Was there -- what could they do to 09:52:39  
19 prevent that if they felt that there was an 09:52:41  
20 issue; what they could do to rectify that 09:52:42  
21 situation. 09:52:46

22 Q. Could you talk a little bit about the 09:52:46  
23 Campaign Contribution Limits Act and what it 09:52:48  
24 does? 09:52:50

25 A. Yes, it -- well, first off, it 09:52:50

1 established limits on contributions from 09:52:52  
2 individuals and PACs to candidates, depending 09:52:55  
3 on what office you were running for. It 09:52:58  
4 created the blackout period. It set up a 09:53:00  
5 structure also of disclosure reports that tied 09:53:04  
6 to election dates. It added to the number of 09:53:04  
7 disclosure reports that candidates and PACs 09:53:07  
8 were required to file. It changed the 09:53:10  
9 reporting periods so that they matched up with 09:53:12  
10 the blackout period that was also created 09:53:14  
11 during that time period. 09:53:17  
12 Q. Can you explain your understanding of the 09:53:18  
13 definition of a PAC? 09:53:21  
14 A. Yes. A PAC generically -- well, let me 09:53:23  
15 say this, in the statute it's referred to as a 09:53:26  
16 multi-candidate committee. Everybody else in 09:53:35  
17 the free world calls it a PAC, but we chose to 09:53:30  
18 use the words multi-candidate committee. 09:53:34  
19 It's defined as a political campaign 09:53:36  
20 committee that makes expenditures to support 09:53:36  
21 two or more candidates or two or more 09:53:38  
22 referendums. 09:53:40  
23 If you dial it down another step, the 09:53:40  
24 political campaign committee is defined 09:53:43  
25 basically as an organization of people, a 09:53:45



1 corporation, any group that makes expenditures 09:53:48  
2 to support candidates or referendum of over a 09:53:52  
3 thousand dollars in a calendar year. 09:53:56

4 Q. Can you explain to me your understanding 09:53:58  
5 of what a contribution is? 09:54:00

6 A. Yes. Contribution is basically money or 09:54:02  
7 anything of value that someone uses to 09:54:05  
8 influence an election or referendum. 09:54:08

9 Q. And is there anything expressly exempted 09:54:10  
10 from that definition? 09:54:14

11 A. Yeah, there's a -- there's a few things 09:54:15  
12 that the statute exempts, such as volunteering 09:54:18  
13 on your own time so you're not being paid to do 09:54:20  
14 it. If you want to go knock on doors and 09:54:21  
15 things like that as a volunteer, that's not a 09:54:24  
16 contribution. 09:54:26

17 News articles, TV reports, editorials are 09:54:27  
18 not campaign contributions. If you have a 09:54:30  
19 fundraiser at your house for a campaign and 09:54:35  
20 spend less than a hundred dollars, that's not a 09:54:36  
21 campaign contribution. There's a couple other 09:54:36  
22 small things. If you have a membership 09:54:37  
23 organization and send a donation to that group, 09:54:40  
24 it's not considered a contribution. 09:54:43  
25 Q. And what is your understanding of the 09:54:45

1 definition of an independent expenditure? 09:54:47

2 A. An independent expenditure is an 09:54:50

3 expenditure made by a person or a group that is 09:54:53

4 totally independent of the candidate or their 09:54:57

5 campaign committee. And so, there's no 09:54:58

6 coordination between the candidate and their 09:54:59

7 campaign committee and the group or the 09:55:02

8 individual making that expenditure to support 09:55:02

9 or oppose a candidate. 09:55:05

10 Q. What are disclosure statements? 09:55:06

11 A. Disclosure statements are reports filed 09:55:08

12 by candidates and PACs disclosing their 09:55:10

13 contributions, expenditures, loans, obligations 09:55:15

14 of the campaign. 09:55:16

15 Q. And for those who have to file them, 09:55:18

16 where do they file them? 09:55:20

17 A. If you're a state candidate, you file 09:55:21

18 those disclosure reports with our office, the 09:55:23

19 Bureau of Ethics and Campaign Finance. 09:55:27

20 If you're a local candidate, you file 09:55:28

21 those with your County Election Commission. 09:55:29

22 Q. And for candidates filing with the 09:55:32

23 Bureau, how do they file them? 09:55:35

24 A. If they have over -- for candidates if 09:55:36

25 they have over a thousand dollars in activity 09:55:38

1 during a reporting period, they're required by 09:55:41  
2 statute to file electronically; it's an online 09:55:43  
3 filing system. 09:55:45

4 If they have less than a thousand dollars 09:55:46  
5 of activity, they can file on paper, which is a 09:55:48  
6 one-page report. 09:55:50

7 Q. How many statements must be filed in an 09:55:50  
8 election cycle? 09:55:53

9 A. If you are in the Primary and General 09:55:54  
10 Election, you file six reports during an 09:55:57  
11 election year. You also may be required to 09:55:58  
12 file additional reports prior to the election 09:56:01  
13 year and after the election year if you have an 09:56:04  
14 open campaign account. 09:56:06

15 Q. And when are each of those filed? 09:56:08

16 A. So, there's -- there's four quarterly 09:56:11  
17 reports that basically run through and end in 09:56:12  
18 regular order. The March 31st is due 09:56:15  
19 April 10th; June runs -- the second quarter 09:56:17  
20 report runs through June 30th and is due 09:56:20  
21 July 10th; the third quarter report is 09:56:23  
22 September 30th, due October 10th; the fourth 09:56:24  
23 quarter runs through January 15th of the 09:56:27  
24 following year, and is due at the end of 09:56:29  
25 January. 09:56:32

1           The -- then inter-disbursed with           09:56:33  
2       those are two, what we call, pre-election       09:56:38  
3       reports: the pre-primary and the pre-general     09:56:41  
4       report. Both of those are one through ten days   09:56:41  
5       before the election. They start with the last     09:56:44  
6       quarterly report before they're due. One is 10    09:56:47  
7       days before the election, and are due in the     09:56:49  
8       office 7 days before the election. So there's     09:56:50  
9       a pre-primary and pre-general report for both     09:56:52  
10       elections.                                           09:56:55  
11       Q.       And is there a time of day that those are   09:56:55  
12       dues?                                                09:56:57  
13       A.       Basically for the state candidates they    09:56:57  
14       would be -- I mean, they're due by midnight     09:57:00  
15       basically, because if you file them               09:57:04  
16       electronically they're time stamped with the     09:57:06  
17       date, basically. So if you file before            09:57:09  
18       midnight on the due date, you would have that    09:57:10  
19       date. If you filed after midnight, it would     09:57:10  
20       have the next day.                                   09:57:13  
21               Locally they file on paper, so those are    09:57:14  
22       due in -- they're due on the due date. It is     09:57:17  
23       considered filed -- if they send -- if a         09:57:22  
24       candidate sends those reports by paper            09:57:23  
25       certified mail, they're considered filed the     09:57:26

1 day they're mailed, even if they're not 09:57:28  
2 received by the County Election Commission 09:57:31  
3 until a later date. 09:57:34  
4 Q. Okay. If a candidate or PAC files a 09:57:35  
5 disclosure on the Bureau's website, how soon 09:57:37  
6 can those be viewed by the public? 09:57:41  
7 A. They're -- they're immediately available, 09:57:43  
8 even before we review them. 09:57:44  
9 Q. If a candidate submits a report by paper 09:57:46  
10 through the mail -- 09:57:50  
11 A. Uh-huh. 09:57:51  
12 Q. -- are those later uploaded to the 09:57:52  
13 website? 09:57:54  
14 A. We type those in ourselves, yes. Once 09:57:54  
15 upon receipt, we can type those into the system 09:57:58  
16 so they can be viewed by the public. 09:58:00  
17 Q. And about how long does it take to get 09:58:02  
18 those typed in? 09:58:04  
19 A. For the candidates it doesn't take long, 09:58:05  
20 'cause if they file on paper it's very short, 09:58:05  
21 only one page long. So we usually do it the 09:58:08  
22 next business day. Again, sometimes it takes 09:58:10  
23 several days to get to us, but once we get it 09:58:12  
24 we can type it in that day. 09:58:15  
25 Q. To your knowledge, do County Election 09:58:16

1 Commissions have electronic filing? 09:58:25

2 A. There are a few. I think there's six, 09:58:26

3 five or six that have a electronic filing. So 09:58:30

4 a few do have electronic filing. The rest are 09:58:33

5 all paper. 09:58:35

6 Q. And how many counties are there total in 09:58:36

7 the state of Tennessee? 09:58:38

8 A. 95. 09:58:38

9 Q. What are the current contribution limits 09:58:40

10 for non-party PACs donating to a campaign? 09:58:42

11 A. 7800 -- these are per election, so you 09:58:46

12 can give this amount for primary and general. 09:58:49

13 \$7,800 for local candidates, and for state rep 09:58:52

14 candidates it's 11,800 for state Senate 09:58:56

15 candidates and all statewide candidates, such 09:59:00

16 as governor. 09:59:01

17 Q. And will you explain to me your 09:59:03

18 understanding of the Safe Harbor Provision? 09:59:04

19 A. Yes. There is a provision in the statute 09:59:08

20 that states that if you receive a contribution 09:59:10

21 that's over the limits, that you have 60 days 09:59:13

22 from receipt of that contribution to refund 09:59:16

23 that contribution and you are not in violation 09:59:19

24 of the statute. 09:59:22

25 Q. If this nine-day blackout period that's 09:59:23

1 being contested here today was declared 09:59:26  
2 unconstitutional, could a PAC evade the 09:59:28  
3 contribution limits? 09:59:31  
4 A. I think just as an example, if -- if a 09:59:33  
5 PAC made a contribution to that -- to a 09:59:36  
6 candidate during that nine-day, what is now a 09:59:39  
7 blackout period, and then refunded that 09:59:41  
8 contribution at some time before the next 09:59:44  
9 reporting period, then the candidate would not 09:59:47  
10 be required to disclose that contribution and 09:59:50  
11 we would never know that it really occurred. 09:59:54  
12 Q. Are you aware of the Registry ever 09:59:56  
13 assessing a penalty against a PAC for violation 09:59:59  
14 of the nine-day blackout? 10:00:03  
15 A. I'm not aware of one. 10:00:05  
16 Q. Are you aware of any complaints ever 10:00:06  
17 being filed against a PAC in violation of the 10:00:08  
18 nine-day blackout period? 10:00:11  
19 A. We had one that I'm aware of that was -- 10:00:12  
20 that was filed against a PAC for a couple 10:00:15  
21 reasons, but it included violation of the -- 10:00:18  
22 potential violation of the blackout period. 10:00:21  
23 Q. Do you remember what PAC that was? 10:00:23  
24 A. Standing for Children. That was the 10:00:24  
25 organization; the PAC was actually a PAC 10:00:28

1 called Stand PAC, and it was another PAC called 10:00:32  
2 Stand PAC Individual Expenditure Committee, but 10:00:34  
3 they were affiliated PACs. They were basically 10:00:38  
4 the same PAC, but they were organized 10:00:38  
5 separately. 10:00:41  
6 Q. I'm handing you Exhibit 10 to plaintiff's 10:00:41  
7 complaint. Do you recognize this document? 10:00:44  
8 A. Yes. 10:00:56  
9 Q. And can you tell me what this document 10:00:56  
10 is? 10:00:58  
11 A. This is what we would call a show-cause 10:00:58  
12 notice issued to Stand PAC for Tennessee and 10:01:03  
13 Stand For Children, Inc., and to four Davidson 10:01:05  
14 County candidates for the potential violation 10:01:08  
15 of campaign finance laws. 10:01:11  
16 Q. And if you go to the very last page, is 10:01:13  
17 that your signature? 10:01:16  
18 A. Yes. 10:01:17  
19 Q. And is this an accurate copy of that 10:01:17  
20 letter? 10:01:22  
21 A. Yes. 10:01:22  
22 Q. What happened with this complaint? 10:01:22  
23 A. The complaint, after show-cause notice 10:01:26  
24 was issued, the Registry of Election Finance 10:01:30  
25 held a hearing and dismissed the complaint. No 10:01:32



1 action was taken against any of the parties. 10:01:34

2 Q. Thank you. 10:01:36

3 MS. GROOVER: I don't have anything 10:01:38

4 further. 10:01:40

5 10:01:40

6 CROSS EXAMINATION 10:01:40

7 QUESTIONS BY MR. HORWITZ: 10:01:47

8 Q. Good morning, Mr. Rawlins. My name is 10:01:47

9 Daniel Horwitz, and I represent the plaintiff 10:01:57

10 in this matter. 10:01:59

11 Sir, I think we can all appreciate the 10:02:00

12 value of campaign finance disclosure laws 10:02:03

13 currently, but Tennessee code 2-10-117 isn't 10:02:07

14 actually a disclosure law, is it? 10:02:11

15 MS. KLEINFELTER: Objection to this 10:02:15

16 witness of you're asking a legal question. 10:02:16

17 This witness is only here to testify to facts. 10:02:19

18 THE WITNESS: It's -- it's part of 10:02:24

19 the disclosure statutes. As far as being a 10:02:27

20 required disclosure, it does not require 10:02:32

21 discloser. 10:02:35

22 BY MR. HORWITZ: 10:02:36

23 Q. It does not require anyone to disclose 10:02:36

24 anything, does it? 10:02:38

25 A. Correct. 10:02:39

1 Q. Instead, it's a restriction of certain 10:02:39  
2 speaker's ability to make contributions before 10:02:43  
3 an election; isn't that right? 10:02:46  
4 A. Yes. It limits -- it prohibits 10:02:47  
5 contributions for that nine-day period. 10:02:52  
6 Q. So rather than promoting disclosure as a 10:02:53  
7 remedy, in other words, more speech, instead it 10:02:56  
8 insures that 10 days before an election there 10:02:59  
9 are no direct contributions from certain 10:03:02  
10 speakers to disclose at all; is that right? 10:03:05  
11 MS. KLEINFELTER: Objection. That is 10:03:08  
12 not what the statute says. 10:03:09  
13 THE WITNESS: Again, it -- it 10:03:11  
14 prohibits PACs from making contributions during 10:03:12  
15 that nine-day period. 10:03:14  
16 BY MR. HORWITZ: 10:03:16  
17 Q. In other words, the remedy is not 10:03:16  
18 disclosure? It is just less speech in the 10:03:18  
19 political marketplace, correct? 10:03:20  
20 MS. KLEINFELTER: Objection again. 10:03:22  
21 You're asking for this witness to provide a 10:03:23  
22 legal conclusion. This witness is not an 10:03:26  
23 attorney. He is not here providing legal 10:03:28  
24 testimony. He is only testifying to the 10:03:29  
25 facts. 10:03:32

1 THE WITNESS: I mean, I don't know 10:03:33  
2 how to answer that question. 10:03:34  
3 BY MR. HORWITZ: 10:03:34  
4 Q. Is the effect of this statute fewer 10:03:39  
5 contributions? 10:03:42  
6 A. To be honest with you, I don't know, 10:03:44  
7 because they can make a contribution before 10:03:47  
8 the blackout period or after the blackout 10:03:48  
9 period. So, again, I don't know if that -- it 10:03:50  
10 prohibits during that nine-day period, but 10:03:53  
11 over the course of an election I do not know 10:03:55  
12 if it lessens the number of overall 10:03:57  
13 contributions. 10:03:59  
14 Q. Is the effect of the statute a shortened 10:04:00  
15 time period in which contributions can be 10:04:02  
16 made? 10:04:04  
17 A. Yes. 10:04:05  
18 Q. The first area I'd like to explore with 10:04:05  
19 you is whether 2-10-117 actually promotes 10:04:09  
20 pre-election disclosure. 10:04:16  
21 So first, let's just make something very 10:04:19  
22 clear. 2-10-117 does not apply to all 10:04:21  
23 political speakers, does it? 10:04:24  
24 A. It applies -- well, what you call a PAC. 10:04:26  
25 Q. For example, it does not apply to 10:04:29

1	individuals; am I right?	10:04:30
2	A. Correct.	10:04:31
3	Q. It doesn't apply to committees controlled	10:04:32
4	by a political party on the national level	10:04:36
5	either; is that right?	10:04:39
6	A. Correct.	10:04:40
7	Q. It doesn't apply to committees controlled	10:04:41
8	by a political party on the state level either;	10:04:43
9	is that correct?	10:04:45
10	A. Correct.	10:04:45
11	Q. It doesn't apply to committees controlled	10:04:46
12	by a political party on the local level either;	10:04:49
13	is that correct?	10:04:52
14	A. Correct.	10:04:53
15	Q. It also doesn't apply to the Tennessee	10:04:54
16	Senate Republican Caucus; isn't that right?	10:04:55
17	A. Correct.	10:04:59
18	Q. It also doesn't apply to the Tennessee	10:04:59
19	Senate Democrat Caucus; isn't that right?	10:05:03
20	A. Yes.	10:05:05
21	Q. It also doesn't apply to the Tennessee	10:05:06
22	House Republican Caucus; isn't that right?	10:05:07
23	A. Yes.	10:05:10
24	Q. It also doesn't apply to the Tennessee	10:05:10
25	House Democratic Caucus; isn't that right?	10:05:13

1 A. Yes. 10:05:17

2 Q. So all of those speakers are exempt, but 10:05:17

3 2-10- is still -- 2-10-117 is really about 10:05:22

4 pre-election disclosure, right? 10:05:27

5 MS. KLEINFELTER: Objection. Again, 10:05:29

6 you're asking this client -- this witness to 10:05:30

7 provide a legal analysis of this statute. If 10:05:32

8 you're going to continue to ask him to provide 10:05:35

9 a legal analysis, this is a standing objection. 10:05:38

10 If you're asking him factual 10:05:41

11 questions, he is competent to testify. Again, 10:05:43

12 though, if you're going to ask for legal 10:05:46

13 analysis, this witness is not competent to 10:05:48

14 provide that testimony. 10:05:51

15 MR. HORWITZ: Standing objection is 10:05:52

16 noted for the record. 10:05:54

17 You can answer. 10:05:55

18 MS. KLEINFELTER: If you are able to 10:05:55

19 provide a legal answer. 10:05:56

20 THE WITNESS: Again, it prohibits 10:05:59

21 contributions being made during that nine-day 10:06:01

22 period. 10:06:04

23 BY MR. HORWITZ: 10:06:04

24 Q. Sir, I'm putting a finding from the 10:06:05

25 defendants in this matter up on the screen that 10:06:09

1 deals with the purported basis for the 10:06:11  
2 statute's speaker preference. 10:06:15

3 MS. KLEINFELTER: Can you provide a 10:06:19  
4 copy to the witness? 10:06:21

5 MR. HORWITZ: I'll be happy to do 10:06:22  
6 that. 10:06:24

7 THE WITNESS: Yeah. 10:06:24

8 MR. HORWITZ: I'm going to hand the 10:06:27  
9 witness up a document. 10:06:28

10 BY MR. HORWITZ: 10:06:30

11 Q. Will you please read the first 10:06:30  
12 highlighted statement, sir? 10:06:43

13 A. Yes. 10:06:45

14 "It is entirely unclear which candidates 10:06:45  
15 will receive support from any given 10:06:48  
16 non-political party PAC." 10:06:51

17 Q. Do you agree with that statement? 10:06:53

18 A. (Witness reviews document.) 10:06:56

19 I -- I mean, I guess before they give a 10:06:58  
20 contribution, yes, it would be unclear what PAC 10:07:03  
21 the candidate would receive a contribution 10:07:06  
22 from. 10:07:09

23 Q. Would you please read the second 10:07:09  
24 highlighted statement? 10:07:11

25 A. "If non-political party PACs were allowed 10:07:12

1 to make direct contributions during the nine 10:07:14  
2 days before an election, then the voters would 10:07:16  
3 be denied an accurate portrait of a candidate's 10:07:18  
4 support before they're required to cast their 10:07:22  
5 votes." 10:07:26  
6 Q. Do you also agree with that statement? 10:07:26  
7 A. (Witness reviews document.) 10:07:29  
8 Yeah. Yes, they would not know. If -- 10:07:34  
9 if they were -- if PACs were allowed to make 10:07:37  
10 contributions during that nine-day blackout 10:07:40  
11 period, those contributions would not be public 10:07:43  
12 before the election day. 10:07:45  
13 Q. So that's your position, and later in 10:07:46  
14 this proceeding it's not going to change; is 10:07:47  
15 that right? 10:07:49  
16 A. Yeah. Well, I mean, I think -- again 10:07:50  
17 that's what this -- yes. 10:07:52  
18 Q. I'm going to take the document back. 10:07:53  
19 For the moment let's restrict our 10:08:11  
20 conversations to the universe of non-political 10:08:13  
21 party PACs, okay, the ones that we just 10:08:18  
22 discussed. 10:08:20  
23 A. Yes. 10:08:21  
24 Q. Okay. Mr. Rawlins, what is the rate of 10:08:21  
25 corruption among non-political party PACs? 10:08:25

1 A. I have no idea. 10:08:29

2 Q. And when a new non-political party PAC is 10:08:29

3 formed, are you able to predict in advance 10:08:34

4 whether it will pose a risk of corruption? 10:08:36

5 A. No. 10:08:39

6 Q. From one non-political party PAC to 10:08:39

7 another, you aren't able to predict whose 10:08:47

8 contributions need to be restricted due to a 10:08:51

9 risk of corruption, so the safe thing to do is 10:08:54

10 just to restrict all of their contributions 10 10:08:57

11 days before an election; is that right? 10:09:00

12 A. That was the legislature's decision. 10:09:01

13 Q. Mr. Rawlins, does 2-10-117 actually 10:09:04

14 prohibit all non-political party PACs from 10:09:07

15 making direct contributions 10 days before an 10:09:11

16 election? 10:09:14

17 MS. KLEINFELTER: Objection. That's 10:09:15

18 not what the statute says. 10:09:16

19 MR. HORWITZ: It's the question. 10:09:18

20 MS. KLEINFELTER: I think it has been 10:09:18

21 established by this witness that the statute 10:09:20

22 prohibits contributions nine days before an 10:09:22

23 election by non-political party PACs. 10:09:26

24 BY MR. HORWITZ: 10:09:32

25 Q. Sir, does 2-10-117 prohibit political 10:09:33



1 campaign committees from making direct 10:09:38  
2 contributions nine or ten days before an 10:09:39  
3 election? 10:09:41  
4 A. Non-party and non -- yes. 10:09:42  
5 Q. All of them? 10:09:46  
6 A. It does not prohibit independent 10:09:48  
7 expenditures, if you consider that. 10:09:52  
8 Q. That's not what I'm asking, sir. 10:09:54  
9 I'm asking if all non-party PACs are 10:09:56  
10 prohibited from making contributions during 10:09:59  
11 this period? 10:10:02  
12 A. Yes. 10:10:03  
13 Q. Sir, does 2-10-117 prohibit political 10:10:04  
14 campaign committees, not multi-candidate 10:10:11  
15 political campaign committees, just the 10:10:14  
16 political campaign committees from making 10:10:16  
17 direct contributions during this restricted 10:10:16  
18 period before an election? 10:10:19  
19 A. No. 10:10:23  
20 Q. It does not, does it? 10:10:24  
21 A. No. 10:10:28  
22 Q. It only applies to multi-candidate 10:10:28  
23 political campaign committees? 10:10:31  
24 A. Correct. 10:10:33  
25 Q. Do you remember the statements I had you 10:10:34

1 read earlier? 10:10:39

2 A. Uh-huh. 10:10:40

3 Q. Do you remember telling me that you can't 10:10:41

4 predict whether non-political party PACs pose a 10:10:44

5 risk of corruption? 10:10:49

6 A. Uh-huh. 10:10:49

7 Q. Do you remember telling me that you 10:10:50

8 can't distinguish between non-political party 10:10:52

9 PACs? 10:10:55

10 A. Yes. 10:10:56

11 Q. But this statute doesn't apply 10:10:56

12 universally to non-political party PACs, does 10:11:00

13 it? 10:11:03

14 MS. KLEINFELTER: Objection. First 10:11:03

15 of all, your whole line of questioning is 10:11:04

16 premised upon a definition that is incorrect. 10:11:07

17 This witness testified that a PAC is a 10:11:10

18 multi-candidate political campaign committee. 10:11:13

19 If you are trying to assume or if you 10:11:16

20 are trying to equate multi-candidate political 10:11:18

21 campaign committees with political campaign 10:11:21

22 committees, you need to make that clear to this 10:11:23

23 witness, because this witness has specifically 10:11:24

24 testified that the definition of a PAC is a 10:11:26

25 multi-candidate political campaign committee. 10:11:29

1 MR. HORWITZ: Objection is noted. 10:11:32

2 BY MR. HORWITZ: 10:11:32

3 Q. I'm establishing that this statute does 10:11:33

4 not apply to political campaign committees; is 10:11:36

5 that correct? 10:11:39

6 A. It applies to a specific category of 10:11:40

7 political campaign committees, because 10:11:43

8 multi-candidate committees are political 10:11:44

9 campaign committees. So it applies to a 10:11:46

10 specific category of political campaign 10:11:48

11 committees. 10:11:48

12 Q. Is it fair to say that some non-partisan 10:11:50

13 PACs can make contributions before an election 10:11:53

14 and other non-partisan PACs cannot? 10:11:55

15 A. No. 10:11:58

16 MS. KLEINFELTER: Can you please 10:11:58

17 clarify as to whether or not you're referring 10:12:00

18 to a multi-candidate or a single or just a 10:12:01

19 political campaign committee, because those are 10:12:04

20 two different things. 10:12:04

21 BY MR. HORWITZ: 10:12:06

22 Q. Okay. The point is, multi-candidate 10:12:06

23 committees are restricted by the statute; 10:12:11

24 political campaign committees are not? Is that 10:12:14

25 right? 10:12:16

1 A. Again, multi-campaign committees are 10:12:16  
2 political campaign committees, so some 10:12:21  
3 political campaign committees are prohibit -- 10:12:23  
4 are prohibited from making campaign 10:12:24  
5 contributions during the nine-day period -- 10:12:26  
6 Q. But not all the -- 10:12:28  
7 A. -- but not all political campaign 10:12:29  
8 committees. 10:12:30  
9 Q. Just to be clear, not all political 10:12:30  
10 campaign committees? 10:12:33  
11 A. Correct. 10:12:34  
12 Q. So there's another pretty vast and 10:12:35  
13 important group that's completely exempt from 10:12:37  
14 2-10-117, isn't there? 10:12:41  
15 A. There are groups that are excluded, but I 10:12:44  
16 don't know that's -- 10:12:47  
17 Q. I'm talking about political campaign 10:12:48  
18 committees. We call them political campaign 10:12:50  
19 committees. 10:12:56  
20 A. There -- well, again, there's not 10:12:56  
21 political campaign -- if you have -- basically 10:12:56  
22 in Tennessee you have two types of political 10:12:57  
23 campaign committees that make up 99.9 percent 10:13:00  
24 of political campaign committees. You have 10:13:02  
25 multi-candidate committees and single candidate 10:13:03

1 committees. 10:13:07

2 Single candidate -- candidate committees 10:13:05

3 are the candidates' political campaign 10:13:07

4 committees. Multi-candidate campaign 10:13:10

5 committees are what everybody refers to as 10:13:11

6 PACs. So I don't know that there's a vast 10:13:14

7 amount of political campaign committees that 10:13:17

8 can make contributions to that. 10:13:20

9 As you have stated, there are the 10:13:22

10 party -- what I originally refer to as the 10:13:23

11 party PACs that can make contribution during 10:13:27

12 that nine-day period. 10:13:30

13 Q. Sir, was your testimony a moment ago that 10:13:31

14 political campaigns are just the candidates' 10:13:32

15 committees? 10:13:33

16 A. No. I said political campaign committees 10:13:33

17 are made up of two specific types, 99.9 10:13:37

18 percent. The multi-candidate committees, 10:13:41

19 'cause they are political campaign committees; 10:13:43

20 and single candidate committees, which are also 10:13:45

21 political campaign committees. 10:13:47

22 Q. I'm just going to hand you the statute so 10:13:48

23 we can read the definition of political 10:13:50

24 campaign committee into the record. 10:13:53

25 A. I've got it in front of me if you want me 10:13:54

1 to. 10:13:56

2 Q. What is the definition of a political 10:13:57

3 campaign committee? 10:14:01

4 A. There's at 2-10-112 has two pieces to it: 10:14:01

5 "A) any corporation or any other organization 10:14:06

6 making expenditures, except as provided in 10:14:09

7 subdivision 4 to support or oppose the measure; 10:14:11

8 or B) any committee, club, corporation, 10:14:13

9 association, or other groups of persons which 10:14:17

10 receives contributions or make expenditures to 10:14:20

11 support or oppose any candidate for public 10:14:22

12 office or measure during the calendar year in 10:14:24

13 an aggregate amount exceeding \$1,000." 10:14:27

14 Q. Anyone who satisfies that definition is 10:14:31

15 not subject to the statute, are they? 10:14:34

16 A. Is not subject to? 10:14:36

17 Q. 2-10-117? 10:14:40

18 A. No, that's not correct. Because a multi- 10:14:43

19 campaign committee is a political campaign 10:14:47

20 committee. It is by definition. 10:14:50

21 Q. I am talking specifically about PACs that 10:14:51

22 do not qualify as multi-candidate political 10:14:54

23 campaign committees and that only qualify as 10:14:58

24 political campaign committees under the 10:15:00

25 definition you just provided. 10:15:03

1 A. Well, listen, I'm -- I'm trying to answer 10:15:04  
2 your question, but to be honest with you, 10:15:05  
3 you're mixing the word PAC with multi-candidate 10:15:07  
4 committee. They're one in the same in 10:15:11  
5 Tennessee. A PAC that the election law refers 10:15:12  
6 to is a multi-candidate committee in Tennessee. 10:15:15  
7 Q. My question is not about multi-candidate 10:15:16  
8 political campaign committees. My question is 10:15:20  
9 about political campaign committees under the 10:15:23  
10 definition you just provided. 10:15:23  
11 A. Right. 10:15:24  
12 Q. Anyone who satisfies merely the 10:15:25  
13 definition of political campaign committee is 10:15:30  
14 not restricted by 2-10-117, are they? 10:15:30  
15 A. Some that are -- I think that's 10:15:33  
16 incorrect. I think some -- a multi-candidate 10:15:37  
17 committee by definition is a political campaign 10:15:40  
18 committee, so they would be restricted. 10:15:43  
19 Q. I'm going to clarify this again. 10:15:44  
20 Can -- I'm sorry. Organizations that 10:15:46  
21 qualify as political campaign committees but do 10:15:49  
22 not qualify as multi-campaign committees -- 10:15:53  
23 A. You added in "qualify". Yes, that is 10:15:56  
24 correct. 10:15:58  
25 Q. Anyone who merely satisfies the 10:15:58

1 definition of political campaign committee, not 10:16:00  
2 multi-candidate campaign committee, merely 10:16:06  
3 political campaign committee is not subject to 10:16:06  
4 the statute, are they? 10:16:08  
5 A. I've answered that. That was the same 10:16:08  
6 question again. 10:16:12  
7 Q. And what was your answer to that 10:16:13  
8 question? 10:16:14  
9 A. If a -- a group that does not qualify as 10:16:14  
10 a multi-candidate committee but qualifies as a 10:16:19  
11 political campaign committee as an other type 10:16:22  
12 of political campaign committee is not subject 10:16:25  
13 to 2-10-117. 10:16:27  
14 Q. Whether they are non-partisan or not; 10:16:29  
15 isn't that right? 10:16:32  
16 A. Correct. 10:16:33  
17 Q. In other words, 2-10-117 doesn't just 10:16:33  
18 treat partisan versus non-partisan speakers 10:16:51  
19 differently? It also treats speakers 10:16:54  
20 differently within the universe of non-partisan 10:16:57  
21 PACs; is that correct? 10:17:01  
22 MS. KLEINFELTER: Objection. Same 10:17:02  
23 objection. Calling for a legal analysis. 10:17:03  
24 THE WITNESS: I don't know how to 10:17:07  
25 answer that, 'cause you're using the word "PAC" 10:17:09



1 again, and that is not in our statute. It 10:17:12  
2 becomes difficult to answer these questions. 10:17:14  
3 BY MR. HORWITZ: 10:17:16  
4 Q. Respectfully, sir, I don't recall you 10:17:17  
5 having this confusion when I asked you if you 10:17:25  
6 would read the statement, it is entirely 10:17:28  
7 unclear which candidates will receive support 10:17:31  
8 from any given non-political party PAC? 10:17:33  
9 A. Correct. But again, it's a different 10:17:37  
10 context. We generically refer to PACs as 10:17:40  
11 multi-campaign committees in the office, 10:17:43  
12 because everyone else -- every other state, 10:17:45  
13 including pretty much the Federal Government, 10:17:47  
14 refers to them as PACs. 10:17:49  
15 If you refer to them as multi-candidate 10:17:50  
16 committees on a day-to-day basis, most people 10:17:53  
17 have no idea what you're speaking of. And so, 10:17:55  
18 when you mix in a question of PAC and 10:17:57  
19 multi-campaign committee, political campaign 10:18:00  
20 committee, it's difficult for me to answer the 10:18:02  
21 question correct, or what I feel is correct. 10:18:04  
22 I'm not trying to be difficult, but I 10:18:07  
23 want to make sure I answer the questions 10:18:08  
24 correctly. 10:18:11  
25 Q. Let's move to a different topic. 10:18:11

1 Mr. Rawlins, will you tell the Court, or 10:18:13  
2 the record in this case, all the methods by 10:18:17  
3 which County Election Commissions can receive 10:18:20  
4 documents in Tennessee? 10:18:23  
5 A. Are we -- not for every document they 10:18:24  
6 receive. But, I mean, are we speaking 10:18:31  
7 specifically about campaign financial 10:18:33  
8 disclosure documents? 10:18:35  
9 Q. Any document, any formal documents 10:18:36  
10 submitted to the Commission. 10:18:38  
11 A. State -- ask your question again? I'm 10:18:39  
12 sorry. 10:18:41  
13 Q. Will you tell the Court or the record all 10:18:41  
14 of the methods by which County Election 10:18:44  
15 Commissions can receive documents? 10:18:47  
16 A. Again, I don't know. All we deal with is 10:18:49  
17 campaign finance documents. Many County 10:18:53  
18 Election Commissions lets you give -- I mean, 10:18:56  
19 they receive petitions and things like that 10:18:58  
20 that we have no -- we don't work with that and 10:19:00  
21 don't enforce those statutes. 10:19:02  
22 As far as campaign finance goes, the 10:19:05  
23 majority of the counties receive campaign 10:19:07  
24 financial disclosure reports from the treasurer 10:19:09  
25 forms filed by paper. There are a few counties 10:19:11

1 as have been mentioned previously, I believe 10:19:14  
2 it's six, that do have an electronic filing 10:19:16  
3 system for campaign financial disclosure 10:19:19  
4 reports. 10:19:20  
5 Q. It includes mail? 10:19:20  
6 A. Yes. 10:19:21  
7 Q. Hand delivery? 10:19:22  
8 A. Yes. 10:19:23  
9 Q. Telegram? 10:19:23  
10 A. Yes. 10:19:25  
11 Q. But not e-mail, right? 10:19:26  
12 A. They can receive it by e-mail, but they 10:19:29  
13 do have to receive an original copy. 10:19:33  
14 Q. Would it be infeasible for every County 10:19:35  
15 Election Commission be required to accept 10:19:39  
16 filings by e-mail? 10:19:42  
17 A. That's a legislative decision. 10:19:43  
18 Q. You don't know the answer? 10:19:45  
19 A. I don't really have an answer. I mean, 10:19:46  
20 we require original signature on documents, and 10:19:48  
21 I believe the counties do too. So that would 10:19:52  
22 be -- that would be one reason not to accept an 10:19:53  
23 e-mail as a final document. 10:19:56  
24 Q. I'm asking whether you know if it's 10:19:57  
25 infeasible for every County Election Commission 10:19:59

1 to -- 10:20:03

2 A. I don't know. I assume every County 10:20:03

3 Election Commission has an e-mail account. But 10:20:05

4 again, I don't think it's infeasible, but I -- 10:20:07

5 I can't speak for every County Election 10:20:11

6 Commission. 10:20:12

7 Q. Sir, I'm going to hand you a document. 10:20:12

8 This is Tennessee Code Annotated section 10:20:13

9 2-6-202. I'll put it on the screen and give 10:20:15

10 you a separate copy. 2-6-202. 10:20:19

11 Mr. Rawlins, will you please read to the 10:20:34

12 Court or the record the highlighted portion? 10:20:38

13 MS. KLEINFELTER: Objection. I don't 10:20:41

14 believe you've established that this witness 10:20:42

15 has any knowledge with respect to the absentee 10:20:44

16 voting statutes. And so, before you ask him 10:20:49

17 any questions, I think you need to establish 10:20:51

18 that he has knowledge and is competent to 10:20:52

19 testify with respect to absentee ballots and 10:20:54

20 voting by absentee ballot. 10:20:58

21 MR. HORWITZ: Objection noted. 10:21:01

22 BY MR. HORWITZ: 10:21:01

23 Q. The question was, will you please read to 10:21:02

24 the Court the highlighted portion of the 10:21:03

25 statute? 10:21:04

1 A. "A voter may also request from the County 10:21:04  
2 Election Commission Office an application to 10:21:08  
3 vote absentee. A voter may not have to be 10:21:11  
4 present and submit an application to vote by 10:21:11  
5 mail, facsimile transmission, or e-mail with an 10:21:12  
6 attached document that includes a scanned 10:21:16  
7 signature. For a voter to use a facsimile 10:21:18  
8 transmission, an Election Commission shall have 10:21:21  
9 a facsimile machine physically located in the 10:21:23  
10 Election Commission Office." 10:21:29  
11 Q. Do you agree that the statute requires 10:21:29  
12 County Election Commissions to accept e-mail'd 10:21:31  
13 applications for absentee ballots? 10:21:32  
14 A. Yes. 10:21:35  
15 Q. Would you agree that the statute requires 10:21:35  
16 County Election Commissions to have a fax 10:21:38  
17 machine physically located in the Election 10:21:41  
18 Commission Office? 10:21:43  
19 A. Yes. 10:21:43  
20 Q. Mr. Rawlins, would you agree that 10:21:44  
21 candidates are capable of reporting campaign 10:21:50  
22 contributions within one business day? 10:21:54  
23 A. They're capable, yes. 10:21:59  
24 Q. Would mandating next business day fax 10:22:01  
25 filing of campaign disclosures be infeasible in 10:22:06

1 Tennessee? 10:22:10

2 A. I can't -- if we're including the State 10:22:13

3 and the County Election Commissions, I can't 10:22:16

4 really speak to that. I know some County 10:22:18

5 Election Commissions only have one employee, 10:22:20

6 so I can't speak to their office functionality. 10:22:23

7 As far as it being feasible, could they 10:22:26

8 receive through telegrams, e-mails, yes. But 10:22:26

9 again, processing those, I can't really speak 10:22:28

10 for the County Election Commissions. 10:22:31

11 Q. Would mandating next business day 10:22:32

12 disclosure of campaign contributions by hand 10:22:36

13 delivery be infeasible in Tennessee? 10:22:37

14 A. If we're talking all offices, yes, I 10:22:41

15 believe it would be, could be because of the 10:22:44

16 size of the state and the size of some 10:22:45

17 counties. 10:22:47

18 Q. Would mandating next business day 10:22:47

19 disclosure of campaign contributions by 10:22:50

20 overnight mail delivery be infeasible in 10:22:51

21 Tennessee? 10:22:54

22 A. No. 10:22:54

23 Q. Would or wouldn't? 10:22:55

24 A. No, it would not be infeasible. 10:22:58

25 Q. So it would be feasible? 10:22:58

1 A. It would be feasible. I -- I may have 10:23:01  
2 misunderstood your question. 10:23:04  
3 Q. Indeed, there are already circumstances 10:23:04  
4 when Tennessee law requires next business day 10:23:07  
5 disclosure of campaign contributions, aren't 10:23:12  
6 there? 10:23:15  
7 A. Yes. 10:23:15  
8 Q. Mr. Rawlins, I'm handing you a copy of 10:23:16  
9 Tennessee Code section 2-10-105(h). Please 10:23:19  
10 take whatever time you need to review it. 10:23:24  
11 A. (Witness reviews document.) 10:23:48  
12 Q. If you would, please tell the Court and 10:23:49  
13 the record what this provision requires? 10:23:50  
14 A. This is the provision that requires a 10:23:52  
15 person to file contributions, large 10:23:56  
16 contributions -- well, let me rephrase that. 10:24:01  
17 It requires a candidate to file reports 10:24:05  
18 disclosing large contributions received during 10:24:08  
19 a specific time period. 10:24:11  
20 Q. What's the time period? 10:24:12  
21 A. Basically, the blackout period. The 10 10:24:13  
22 days before the election, nine days before the 10:24:16  
23 election. 10:24:18  
24 Q. And how quickly do these contributions 10:24:18  
25 have to be disclosed? 10:24:22

1 A. I believe it's within 24 hours. Again, 10:24:23  
2 I'll be honest with you, we haven't had one 10:24:27  
3 filed in so many years that I think it's -- I 10:24:29  
4 would not know, to be honest with you. 10:24:36  
5 Q. Tell me what (h) (2) says? 10:24:36  
6 A. The next business day, yes. 10:24:39  
7 Q. And the Registry provides guidance on 10:24:41  
8 compliance with the statute, does it not? 10:24:45  
9 A. Yes. 10:24:47  
10 Q. The Registry, do you agree, even created 10:24:47  
11 a special form for compliance with this 10:24:50  
12 statute, does it not? 10:24:53  
13 A. Yes. 10:24:54  
14 Q. Tell me if the form looks like this, and 10:24:55  
15 I'll hand you a copy. 10:25:00  
16 A. (Witness reviews document.) 10:25:13  
17 Yes. Yes, this looks like the form. 10:25:14  
18 Q. Would you please read the highlighted 10:25:17  
19 portion? 10:25:20  
20 A. "This form may be used by candidate, 10:25:20  
21 single candidate political campaign committees 10:25:23  
22 and single measure political campaign 10:25:26  
23 committees to report major contributions or 10:25:27  
24 loans during the final days of a campaign as 10:25:30  
25 required by TCA 2-10-105(h). Such 10:25:32



1 contributions and loans must be reported if 10:25:35  
2 they're received --

3 THE REPORTER: I need you to slow  
4 down and raise you voice up a little bit, too.

5 THE WITNESS: I'm sorry. I'm  
6 speaking too fast. Do you want me to start  
7 over again?

8 THE REPORTER: Please. Thank you.

9 THE WITNESS: "This form must be used 10:25:47  
10 by candidates, single candidate political 10:25:48  
11 campaign committees, and single measure 10:25:52  
12 political campaign committees to report major 10:25:55  
13 contributions or loans during the final days of 10:25:57  
14 a campaign as required by TCA 2-10-105(h) . 10:26:00  
15 Such contributions or loans must be reported if 10:26:06  
16 they are received during the period beginning 10:26:10  
17 at midnight of the 10 days prior to an election 10:26:11  
18 in which the candidate or committee are 10:26:14  
19 involved and extending through midnight of such 10:26:17  
20 election day." 10:26:20

21 Q. And this is the Registry's form; is it 10:26:20  
22 not? 10:26:25

23 A. Yes, sir. 10:26:25

24 MR. HORWITZ: I'd like to introduce 10:26:32  
25 this as a rebuttal exhibit, statement against 10:26:33

1 interest and a statement of a party component. 10:26:36

2 MS. KLEINFELTER: Excuse me, I'm 10:26:45

3 going to object to that, because it was not 10:26:45

4 listed in their exhibit list, and it was not 10:26:48

5 listed as an exhibit on the defendant's witness 10:26:50

6 list. 10:26:54

7 According to the Court's order, any 10:26:54

8 exhibits that either party intended to 10:26:56

9 introduce were supposed to have been disclosed 10:27:00

10 by the defendants on September 14th and by the 10:27:03

11 plaintiff on September 21st. And, of course, 10:27:05

12 as plaintiff have pointed out pursuant to the 10:27:08

13 local rules, those exhibits were supposed to 10:27:11

14 have been exchanged at least 72 hours before 10:27:13

15 the trial. 10:27:16

16 This witness was never -- this 10:27:17

17 exhibit was never disclosed. The fact that 10:27:19

18 counsel has identified it as a rebuttal exhibit 10:27:22

19 is not distinguished anywhere in any of the 10:27:25

20 Court's order or reflected in the Court's 10:27:30

21 order. 10:27:33

22 So we object to the admission of this 10:27:33

23 evidence, this exhibit into the record. 10:27:35

24 MR. HORWITZ: Just going to state for 10:27:42

25 the record, the exhibits that would have been 10:27:44

1 introduced as rebuttal exhibits were unknown 10:27:47  
2 until the substance of Mr. Rawlins' testimony 10:27:54  
3 was known. That testimony was not disclosed. 10:27:57  
4 And I state that regardless of the 10:27:59  
5 admission of this document as an exhibit, the 10:28:01  
6 witness has testified that it is a statement of 10:28:04  
7 the Registry, which is a defendant in this 10:28:08  
8 matter, and the content of that statement which 10:28:10  
9 has already been introduced into the record is 10:28:14  
10 admissible. 10:28:17  
11 MS. KLEINFELTER: Again, we state the 10:28:17  
12 objection. It was not disclosed. The Court's 10:28:20  
13 order requiring the parties to list their 10:28:23  
14 exhibits did not distinguish between exhibits 10:28:25  
15 in your case in chief -- case in chief or in 10:28:27  
16 rebuttal exhibits. 10:28:30  
17 And so, to the extent that defendants 10:28:32  
18 -- plaintiffs did not disclose this or any 10:28:35  
19 other exhibit that they planned to introduce, 10:28:38  
20 it should be -- it should be excluded for the 10:28:41  
21 same reasons that defendants' exhibits were 10:28:44  
22 excluded. 10:28:47  
23 BY MR. HORWITZ: 10:28:51  
24 Q. Mr. Rawlins, you provide guidance on 10:28:51  
25 compliance with the statutes, do you not? 10:28:54

1 A. Yes, sir. 10:28:55

2 Q. I'm going to hand you a copy, and this is 10:28:56

3 small print, for which I apologize. 10:29:08

4 Would you please read what Question 11 10:29:26

5 says, and then the answer that the Bureau of 10:29:30

6 Ethics and Campaign Finance provides? 10:29:34

7 MS. KLEINFELTER: Could you ask the 10:29:35

8 witness to identify what this document is. 10:29:37

9 MR. HORWITZ: I'm sorry, you're 10:29:39

10 right. 10:29:39

11 MS. KLEINFELTER: It's not visible on 10:29:39

12 the screen. 10:29:41

13 BY MR. HORWITZ: 10:29:42

14 Q. What does this document look like to 10:29:42

15 you? 10:29:44

16 A. It appears to be a printout from our -- 10:29:44

17 from the Registry of Election Finance web page, 10:29:46

18 "Candidate Frequently Asked Questions". 10:29:50

19 Q. And can you please read Question 11 and 10:29:52

20 the answer? 10:29:55

21 A. "Are candidates required to file a report 10:29:56

22 in the final days of an election?" 10:29:59

23 I'll be very honest with you, I'm not 10:30:01

24 sure I can read this or not. (Witness reviews 10:30:04

25 document.) 10:30:08

1           "Interim report: An interim report is           10:30:08  
2           required by" -- for, I'm sorry -- "is required   10:30:13  
3           for major contributions during the final days    10:30:15  
4           before an election. Such a report must be       10:30:18  
5           filed by a candidate, or a single candidate     10:30:21  
6           political campaign committee, by state public   10:30:24  
7           office, or single measure committee in a -- in   10:30:27  
8           a referendum. Receives a contribution or loan    10:30:34  
9           for more than \$5,000 from a single source in    10:30:41  
10          the period beginning at midnight the 10th day   10:30:44  
11          prior to any election and ending through the    10:30:47  
12          day of the election.                               10:30:54  
13                       Such a report also is due if a candidate   10:30:55  
14          or single candidate committee for local public   10:30:58  
15          office or single measure committee noted in a    10:31:02  
16          -- involved --" I'm sorry -- "involved in a    10:31:06  
17          local referendum receives a contribution or     10:31:08  
18          loan for more than \$2,500 during the campaign   10:31:12  
19          period."                                             10:31:16  
20                       And it references TCA 2-10-105       10:31:17  
21          (inaudible) --                                     10:31:17  
22                       THE REPORTER: I'm sorry?           10:31:17  
23                       THE WITNESS: It references TCA       10:31:17  
24          2-10-105, I think (1)(a). And then there's a    10:31:26  
25          separate --                                         10:31:31

1 Do you want that last paragraph. 10:31:32

2 BY MR. HORWITZ: 10:31:35

3 Q. Could that last -- could that last 10:31:35

4 statute be TCA 2-10-105(h)(1)(a) ? 10:31:38

5 A. Yes. 10:31:45

6 Q. Does the last sentence say, "Such reports 10:31:46

7 must be filed by the end of the next business 10:31:48

8 day following the day on which the contribution 10:31:50

9 was received. The interim report must be filed 10:31:53

10 by telegram, fax machine, hand delivery, or 10:31:56

11 overnight delivery," and cites TCA section 10:32:00

12 2-10-105(h)(2)? 10:32:04

13 A. Yes. 10:32:06

14 Q. For purposes of cleaning up the record, 10:32:07

15 plaintiff will strike Exhibit 1 previously 10:32:12

16 introduced and will rely instead only on the 10:32:17

17 witness's summary of the contents of that form 10:32:21

18 which he testified was a form of the defendant 10:32:28

19 Registry. 10:32:33

20 One more question about this previous 10:32:42

21 documented. 10:32:44

22 A. Uh-huh. 10:32:44

23 Q. Is this a public record? 10:32:45

24 A. Yes. 10:32:47

25 Q. Did the Registry have access to this 10:32:47

1 document before this trial? 10:32:55

2 A. Yes. 10:32:57

3 Q. Because it's your document, right? 10:32:59

4 A. Yes. It's on our website. 10:33:01

5 MR. HORWITZ: Did that resolve your 10:33:14

6 objection? 10:33:16

7 MS. KLEINFELTER: No, because it was 10:33:17

8 not disclosed. 10:33:18

9 MR. HORWITZ: It's been stricken. 10:33:19

10 MS. KLEINFELTER: I don't care. 10:33:21

11 BY MR. HORWITZ: 10:33:21

12 Q. If candidates were required to disclose 10:33:41

13 all contributions received by multi-candidate 10:33:43

14 PACs within the 10 days before an election 10:33:47

15 within a business day of receiving them, would 10:33:51

16 the Registry have difficulty providing similar 10:33:54

17 guidance? 10:33:57

18 A. When you say "provide similar guidance" 10:34:03

19 on that -- 10:34:06

20 Q. Guide -- 10:34:06

21 A. I mean, yes, that form could be used or a 10:34:07

22 form similar to that can be used. 10:34:09

23 Q. A similar form can be created? 10:34:10

24 A. Yes. 10:34:12

25 Q. A similar FAQ can be created? 10:34:12

1 A. Yes. 10:34:16

2 Q. Let's just try this again. 10:34:19

3 Mr. Rawlins, do candidates for political 10:34:22

4 office in Tennessee generally have to file 10:34:25

5 campaign finance reports during election 10:34:27

6 years? 10:34:30

7 A. Yes. 10:34:30

8 Q. For the convenience of the Court and the 10:34:30

9 record, we're talking about TCA section 10:34:35

10 2-10-105(c); is that right? 10:34:38

11 A. Yes. 10:34:40

12 Q. And how long before election day is the 10:34:41

13 final candidate report filed? 10:34:45

14 A. The pre-election reports ten days before 10:34:47

15 the election are due seven days before the 10:34:51

16 election. 10:34:53

17 Q. Is there any reason that that period has 10:34:54

18 to be 10 days and why the reporting date has to 10:34:57

19 be seven days? 10:35:02

20 A. That was the -- that was determined by 10:35:03

21 the legislature. 10:35:07

22 Q. Let me ask a different question. Could 10:35:08

23 the legislature make it nine days? 10:35:11

24 MS. KLEINFELTER: Objection. Calls 10:35:13

25 for speculation. 10:35:14



1	THE WITNESS: Not to be flippant, but	10:35:17
2	the legislature can pass any statute they feel	10:35:19
3	necessary, I guess, or that -- you know, within	10:35:23
4	the law.	10:35:26
5	BY MR. HORWITZ:	10:35:26
6	Q. Make it eight days?	10:35:27
7	A. Yes.	10:35:28
8	Q. Seven?	10:35:29
9	A. Yes.	10:35:30
10	Q. Six?	10:35:31
11	A. Yes.	10:35:32
12	Q. Five?	10:35:32
13	A. Yes.	10:35:33
14	Q. Four?	10:35:34
15	A. Yes.	10:35:34
16	Q. Three?	10:35:35
17	A. Yes.	10:35:36
18	Q. Two?	10:35:36
19	A. Yes.	10:35:37
20	Q. One?	10:35:38
21	A. Yes.	10:35:39
22	Q. Sir, if candidates had to file campaign	10:35:39
23	finance reports the day before election day,	10:35:44
24	would you agree that there would no longer be	10:35:46
25	any concern about Tennessee's voters being	10:35:49

1 uninformed about PAC contributions before 10:35:52  
2 election day? 10:35:56  
3 A. I think there could be an issue, 10:35:57  
4 especially at the local level, if contributions 10:35:58  
5 ran through the day before an election, and 10:36:03  
6 even at the state level, because we get -- 10:36:07  
7 currently we get three days to file those 10:36:09  
8 report. So the report wouldn't normally be due 10:36:12  
9 until after the election. 10:36:14  
10 So I think there would be difficulty in 10:36:15  
11 saying that if a candidate received a 10:36:16  
12 contribution the day before the election and 10:36:18  
13 the report was due that day, it would probably 10:36:21  
14 be a difficult scenario getting it filed. 10:36:24  
15 Q. What about the next business day? 10:36:27  
16 A. Can you rephrase that? I mean, if you 10:36:29  
17 said -- if you said this report is due on 10:36:34  
18 election day? I'm sorry? 10:36:36  
19 Q. We just discussed the statute where next 10:36:38  
20 business day disclosure is already required, 10:36:40  
21 did we not? 10:36:43  
22 A. Yes. 10:36:44  
23 Q. Is there any reason why that same statute 10:36:44  
24 could not apply to multi-candidate PAC 10:36:47  
25 contributions? 10:36:51

1 A. No. 10:36:52

2 Q. Couple more topics to cover. 10:36:52

3 Mr. Rawlins, if a multi-candidate PAC 10:37:00

4 makes a \$50 contribution to a candidate, is the 10:37:07

5 candidate obligated to report the source of 10:37:11

6 that contribution on a campaign finance 10:37:14

7 report? 10:37:16

8 A. If that's the only contribution they 10:37:16

9 receive during that reporting period from that 10:37:19

10 PAC, they do not have to, what we call, itemize 10:37:22

11 that contribution. In other words, they have 10:37:24

12 to report it as a lump sum. Do not have to 10:37:26

13 report the actual source on the report. 10:37:26

14 Q. And the reason for that is because 10:37:28

15 Tennessee Code Annotated section 10:37:33

16 2-10-107(a)(2)(a)(1), and I'll hand you a copy 10:37:37

17 in a moment, only mandates disclosure of 10:37:41

18 contributions of more than \$100; is that 10:37:44

19 right? 10:37:47

20 A. It only mandates itemization of 10:37:47

21 contributions over \$100. 10:37:50

22 Q. I'm going to hand you the actual 10:37:51

23 statute. 10:37:55

24 A. Okay. 10:37:55

25 Q. When you say itemized contributions, 10:38:03

1 you're talking about the source, right? 10:38:06

2 A. Right. And just to clarify, an itemized 10:38:07

3 contribution requires the source; the address; 10:38:09

4 if it's an individual, the occupation; the 10:38:13

5 amount; and the date. 10:38:16

6 Q. So just the question again -- 10:38:17

7 A. Yes, sir. 10:38:18

8 Q. -- if a multi-candidate political 10:38:19

9 campaign committee makes a \$50 contribution, 10:38:22

10 the candidate receiving that contribution is 10:38:27

11 not obligated to disclose them as a source; am 10:38:30

12 I right? 10:38:33

13 A. They are not -- correct. Yes, they are 10:38:33

14 not required to disclose the name of the 10:38:34

15 contributor. 10:38:38

16 Q. Fair to say that there's no circumstance 10:38:39

17 in which contributions of less than a hundred 10:38:40

18 dollars in the aggregate are obligated to be 10:38:44

19 disclosed; is that right? 10:38:46

20 A. Correct. 10:38:48

21 Q. But 2-10-117 doesn't permit low-dollar 10:38:49

22 contributions 10 days before an election, does 10:39:03

23 it? 10:39:06

24 A. No. Not -- not multi-candidate 10:39:06

25 committees. 10:39:09

1 Q. So the disclosure of low-dollar 10:39:10  
2 contributions from multi-candidate campaign 10:39:12  
3 committees is never even required at all? 10:39:17  
4 Prohibiting low-dollar contributions 10 days 10:39:24  
5 before an election doesn't actually provide any 10:39:27  
6 disclosure with respect to contributions under 10:39:31  
7 \$100, does it? 10:39:35

8 MS. KLEINFELTER: Objection. It 10:39:36  
9 calls for legal analysis or legal conclusion 10:39:36  
10 that this witness is not competent to testify 10:39:37  
11 to. 10:39:38

12 THE WITNESS: Again, I can't really 10:39:41  
13 state that. That's what the legislature chose 10:39:42  
14 to disclose. 10:39:46

15 BY MR. HORWITZ: 10:39:48

16 Q. Mr. Rawlins, do candidates ever fail to 10:39:49  
17 file their required campaign disclosure reports 10:39:53  
18 on time? 10:39:56

19 A. Yes. 10:39:57

20 Q. To the best of your knowledge, does the 10:39:57  
21 Registry always initiate enforcement actions 10:40:01  
22 against candidates who fail to file timely 10:40:08  
23 disclosure reports? 10:40:11

24 A. Yes. To the best of my knowledge, yes. 10:40:12

25 Q. Every single time somebody misses? 10:40:14

1 A. It -- every single time a candidate or a 10:40:17  
2 PAC files late, it goes before the Registry of 10:40:20  
3 Election Finance. They make a determination 10:40:25  
4 whether to issue a show cause notice for that 10:40:27  
5 late filing. And then again, some they don't 10:40:29  
6 issue a show cause; some they do. And once 10:40:33  
7 they do go to the -- 10:40:34  
8 Q. I'm talking about the actual enforcement 10:40:36  
9 action. So not just the show cause. 10:40:38  
10 A. Not every PAC is -- not every 10:40:40  
11 multi-candidate committee or candidate is 10:40:43  
12 assessed a civil penalty if they file late. 10:40:45  
13 Q. They don't even pursue civil penalties 10:40:48  
14 against every candidate that misses a 10:40:52  
15 disclosure deadline; is that correct? 10:40:55  
16 A. Correct. 10:40:56  
17 Q. And when candidates are fined for 10:40:57  
18 campaign finance disclosure violations, does 10:41:05  
19 the Registry always collect those fines? 10:41:08  
20 MS. KLEINFELTER: Objection. We are 10:41:10  
21 going way beyond the scope of this witness's 10:41:12  
22 testimony in direct examination. I don't 10:41:15  
23 believe there was ever any discussion about the 10:41:17  
24 imposition of civil penalties for the failure 10:41:20  
25 to disclose campaign financial disclosure 10:41:23

1 reports or to file. 10:41:26

2 MR. HORWITZ: For the record, this 10:41:26

3 witness was disclosed as a rebuttal witness. 10:41:27

4 The basis or the scope of the examination of 10:41:29

5 this witness was disclosed in advance. 10:41:34

6 MS. KLEINFELTER: Actually, this 10:41:36

7 witness in your disclosure on your witness 10:41:40

8 exhibit list has the same deficiencies that 10:41:43

9 supposedly the defendants' disclosure had in 10:41:48

10 that you did not disclose the scope of what you 10:41:51

11 sought to -- that you'd have this witness 10:41:54

12 testify to as a rebuttal witness. 10:41:58

13 You simply identified that you would 10:42:00

14 chose -- you would call -- chose to call any 10:42:02

15 witness that was identified on the defendants' 10:42:05

16 witness list, but you did not specify or 10:42:08

17 provide that brief description of what this 10:42:11

18 witness would testify to as a rebuttal 10:42:13

19 witness. 10:42:16

20 MR. HORWITZ: For the record, 10:42:17

21 counsel's characterization is inaccurate. The 10:42:19

22 substance of the scope of rebuttal was 10:42:22

23 described in compliance with the order, and I 10:42:24

24 note for the record this objection has never 10:42:27

25 been raised. 10:42:31

1 MS. KLEINFELTER: You have not called 10:42:33  
2 him as a rebuttal witness. He is still on 10:42:35  
3 cross-examination. 10:42:38  
4 MR. HORWITZ: Would you like me to 10:42:42  
5 relieve him and then recall him as a rebuttal 10:42:44  
6 witness? 10:42:46  
7 MS. KLEINFELTER: No, because we need 10:42:46  
8 to do a redirect. 10:42:52  
9 BY MR. HORWITZ: 10:42:53  
10 Q. You can answer the question. 10:42:54  
11 When candidates are fined for campaign 10:42:56  
12 finance disclosure violations, does the 10:42:58  
13 Registry always collect those fines? 10:43:00  
14 A. If the Registry assesses a civil penalty, 10:43:02  
15 the -- if the civil penalty is not paid in a 10:43:05  
16 certain amount of time, they are turned over to 10:43:08  
17 the State Attorney General's Office, collection 10:43:10  
18 office for collection. In addition, candidates 10:43:13  
19 are ineligible to qualify if they have an 10:43:15  
20 outstanding civil penalty. 10:43:18  
21 Q. Do they always collect those fines? 10:43:19  
22 A. No, not always. 10:43:21  
23 Q. If I represented to you that the Registry 10:43:22  
24 only collected 21 percent of the fines levied 10:43:24  
25 since 2010, would that be accurate? 10:43:29



1 A. I have no idea. I would say it's 10:43:31  
2 probably accurate, but I don't have no idea of 10:43:33  
3 the top of my head. 10:43:36  
4 Q. If I represented to you that in 2016 just 10:43:36  
5 7 percent of the nearly \$217,000 in penalties 10:43:38  
6 assessed by the Registry and Ethics Commission 10:43:43  
7 have been paid, would that be inaccurate? 10:43:45  
8 A. Again, I -- 10:43:47  
9 MS. KLEINFELTER: Objection. This is 10:43:48  
10 totally irrelevant to the issue of whether 10:43:49  
11 2-10-117 is unconstitutional in violation of 10:43:51  
12 the plaintiff's First Amendment right. The 10:43:55  
13 amount of civil penalties that the Registry has 10:43:58  
14 collected, civil penalties assessed against 10:44:01  
15 candidates, is totally irrelevant to the issue. 10:44:05  
16 BY MR. HORWITZ: 10:44:05  
17 Q. You can answer the question. 10:44:09  
18 A. Again, I don't know off the top of my 10:44:11  
19 head. And that -- I will say that that number 10:44:12  
20 changes daily. 10:44:16  
21 Q. I've put an article up on the screen from 10:44:25  
22 the Tennessean. 10:44:27  
23 MS. KLEINFELTER: Objection. 10:44:28  
24 MR. HORWITZ: It's not an exhibit. 10:44:29  
25 MS. KLEINFELTER: If it's not an 10:44:30

1 exhibit, then how come it has not been 10:44:32  
2 authenticated? 10:44:35  
3 MR. HORWITZ: The witness is quoted 10:44:36  
4 in the article. 10:44:38  
5 BY MR. HORWITZ: 10:44:39  
6 Q. Sound familiar to you? 10:44:41  
7 A. I'm sure I've seen it. I don't read all 10:44:44  
8 the articles that I'm in, that they quote me 10:44:48  
9 in. 10:44:50  
10 Q. I'm going to hand you a copy. 10:44:51  
11 Was your testimony you don't remember 10:45:20  
12 being quoted in this article? 10:45:22  
13 A. No, that was not my testimony. My 10:45:23  
14 testimony was that I do not read every article 10:45:26  
15 that I'm quoted in. 10:45:28  
16 Q. Take a moment to read it just to refresh 10:45:29  
17 your recollection. 10:45:31  
18 A. (Witness reviews document.) 10:45:32  
19 MS. KLEINFELTER: Standing objection 10:45:40  
20 to this line of questioning in that it is 10:45:41  
21 totally irrelevant to what we are here before 10:45:43  
22 the Court for. 10:45:46  
23 THE WITNESS: (Witness reviews 10:45:50  
24 document.) 10:45:58  
25 MS. KLEINFELTER: And I would say if 10:45:58

1 the Court was present, Mr. Horwitz, you would 10:46:00  
2 have to demonstrate to the Court how this line 10:46:03  
3 of questioning is relevant to the fundamental 10:46:06  
4 issue before the Court, which is the 10:46:08  
5 constitutionality of 2-10-117. 10:46:10

6 MR. HORWITZ: I'll represent for the 10:46:13  
7 record this is relevant because the Registry 10:46:14  
8 does not uniformly pursue fines that are levied 10:46:16  
9 for disclosure violations. It -- 10:46:21

10 MS. KLEINFELTER: Based upon a 10:46:24  
11 newspaper article. 10:46:26

12 BY MR. HORWITZ: 10:46:27

13 Q. Sir, will you turn to the third page of 10:46:28  
14 that article? 10:46:29

15 A. Uh-huh. 10:46:30

16 Q. Will you read the part that says 10:46:31  
17 "Source", please, at the very bottom? 10:46:33

18 A. The Bureau of Ethics and Campaign Finance 10:46:37  
19 as of May. 10:46:39

20 Q. Sir, if I told you that the Registry 10:46:44  
21 issued \$172,000 -- sorry, \$172,275 had -- 10:46:49  
22 withdraw the question. 10:46:57

23 You see the chart at the bottom of this 10:47:00  
24 article? 10:47:04

25 A. Yes. 10:47:04

1 Q. Can you read it, please. 10:47:04

2 A. Unpaid penalties held by political and 10:47:08

3 PAC committees. Year 2016, \$172,275 by the 10:47:13

4 Registry of Election Finance; 29,325 by the 10:47:21

5 Ethics Commission. 10:47:23

6 2015, \$3,300 by the Registry of Election 10:47:24

7 Finance; \$14,550 by the Ethics Commission. 10:47:28

8 2014, \$16,550 by the Registry of Election 10:47:32

9 Finance; 14,600 by the Ethics Commission. 10:47:39

10 2013, 70,275 by the Registry of Election 10:47:41

11 Finance; 32,125 by the Ethics Commission. 10:47:47

12 2012, \$33,225 by the Registry of Election 10:47:50

13 Finance; \$12,955 by the Ethics Commission. 10:47:56

14 2011, \$350 by the Registry of Election 10:48:02

15 Finance; \$10,725 by the Ethics Commission. 10:48:05

16 2010, 60,150 by the Registry of Election 10:48:09

17 Finance; 104,100 by the Ethics Commission. 10:48:14

18 Total 356,125 by the Registry of Election 10:48:18

19 Finance; 218,380 by the Ethics Commission. 10:48:23

20 Q. These are unpaid penalties, are they not? 10:48:27

21 A. They were at the time, yes. 10:48:30

22 Q. Mr. Rawlins, I'm handing you a copy of 10:48:32

23 Tennessee Code Annotated 2-10-121. Can you 10:48:46

24 tell the Court and the record what this 10:49:10

25 provision provides? 10:49:12

1 A. This is the registration fee paid for by 10:49:14  
2 the PACs, \$100 registration fee paid by PACs 10:49:20  
3 each year. 10:49:24  
4 Q. Would you agree that this provision 10:49:25  
5 applies only to multi-candidate political 10:49:27  
6 campaign committees? 10:49:29  
7 A. Yes. 10:49:31  
8 Q. Would you please read the last sentence 10:49:31  
9 of this provision? 10:49:33  
10 A. "This section shall not apply to any 10:49:33  
11 statewide political party that's defined in 10:49:36  
12 2-1-104 of section 4 for subsidiaries of a 10:49:40  
13 political party." 10:49:43  
14 Q. Based on that, then -- 10:49:44  
15 MS. KLEINFELTER: Objection. You 10:49:44  
16 know, I just bothered to look at the witness 10:49:46  
17 list and your disclosure, and you specifically 10:49:49  
18 state that it is only for the purposes of 10:49:52  
19 establishing the next day disclosures feasible 10:49:55  
20 under Tennessee law. It doesn't go beyond 10:49:58  
21 that. 10:50:02  
22 I don't see where any of the previous 10:50:02  
23 testimony is relevant to that issue of the 10:50:03  
24 feasibility of next day disclosure. 10:50:08  
25 MR. HORWITZ: Disclosure is in the 10:50:11

1 record. We can fight about it later. 10:50:12

2 MS. KLEINFELTER: Just a standing 10:50:14

3 objection, then, to anything as -- as rebuttal 10:50:16

4 testimony from this witness that is beyond the 10:50:20

5 issue of demonstrating the feasibility of next 10:50:24

6 day disclosure. 10:50:28

7 BY MR. HORWITZ: 10:50:31

8 Q. Would you agree that this provision does 10:50:32

9 not apply to political parties or its 10:50:34

10 subsidiaries? 10:50:37

11 A. Yes. 10:50:38

12 Q. Would you agree this provision does not 10:50:39

13 apply to standard political campaign 10:50:41

14 committees, just multi-candidate political 10:50:44

15 campaign committees? 10:50:46

16 A. It just applies to multi-candidate 10:50:47

17 campaign committees. 10:50:48

18 Q. Approximately how much revenue is 10:50:48

19 generated by this provision? 10:50:51

20 A. Again, I'm going to approximate, because 10:50:53

21 I don't know off the top of my head. Probably 10:50:56

22 -- it's a hundred dollar fee. Probably 10:50:58

23 somewhere between 45,000 and 50,000 annually. 10:51:02

24 Q. Is there any reason why the General 10:51:05

25 Assembly did not appropriate that revenue from 10:51:08

1 another source? 10:51:10

2 A. I couldn't answer that. 10:51:11

3 Q. Is there any reason why the General 10:51:12

4 Assembly wouldn't subject political parties and 10:51:12

5 their subsidiaries to this hundred dollar 10:51:16

6 annual assessment? 10:51:18

7 A. Again, I can't answer that. 10:51:18

8 Q. Thank you, sir. 10:51:20

9 MR. HORWITZ: I have no additional 10:51:30

10 questions. 10:51:32

11 10:51:32

12 REDIRECT EXAMINATION 10:51:32

13 QUESTIONS BY MS. KLEINFELTER: 10:51:32

14 Q. Mr. Rawlins, since counsel has 10:51:33

15 completely confused the issue with respect to 10:51:37

16 multi-candidate political campaign committees, 10:51:41

17 political campaign committees, and PACs, let's 10:51:44

18 do a little clarification here. 10:51:47

19 So, a political campaign committee is 10:51:49

20 defined as what under the statute? 10:51:52

21 A. Political campaign committee is a group 10:51:54

22 of people, corporation, an organization, an 10:51:58

23 association of people that spends over a 10:52:02

24 thousand dollars in a calendar year to support 10:52:04

25 or oppose candidates or referendum. And also, 10:52:07

1 there's -- there's another section that also 10:52:11  
2 states that it includes any corporation that 10:52:12  
3 spends money to support or oppose a referendum. 10:52:14  
4 Q. And what is the definition of a multi- 10:52:19  
5 candidate -- multi-candidate political campaign 10:52:22  
6 committee? 10:52:24  
7 A. A multi-candidate political campaign 10:52:24  
8 committee is a political campaign committee 10:52:27  
9 that supports two or more candidates or two or 10:52:29  
10 more referendums. 10:52:32  
11 Q. And you testified that you have been 10:52:33  
12 employed by the Registry of Election Finance 10:52:36  
13 since July -- since July of 1990; is that 10:52:39  
14 correct? 10:52:41  
15 A. Yes, ma'am. 10:52:41  
16 Q. Okay. So you have been involved with 10:52:42  
17 these statutes and with the disclosure reports 10:52:48  
18 filed by political campaign committees and 10:52:52  
19 multi-candidate political campaign committees 10:52:56  
20 for approximately 28 years; is that correct? 10:52:59  
21 A. That's correct. 10:53:01  
22 Q. Okay. So in your 28 years of 10:53:01  
23 experience, how many political campaign 10:53:09  
24 committees are there or have there been that 10:53:18  
25 were not a candidate political campaign 10:53:20



1 committee or a multi-candidate political 10:53:24  
2 campaign committee? 10:53:27  
3 A. Very, very few. We've had a few 10:53:29  
4 referendum committees, and maybe -- and I'm 10:53:34  
5 stretching here, maybe one or two probably 10:53:41  
6 defined as single candidate committees, but 10:53:44  
7 they were not actually the candidate's single 10:53:47  
8 candidate committee, if that makes sense. 10:53:51  
9 In other words, someone else had formed a 10:53:51  
10 committee to support that single candidate, but 10:53:53  
11 they were still, by definition, single 10:53:55  
12 candidate committees, but they weren't the 10:53:57  
13 candidate's political campaign committee, if 10:53:58  
14 that makes sense. 10:54:01  
15 But very, very few. I mean, almost none. 10:54:02  
16 If you take the referendum committees, what we 10:54:06  
17 -- what we call a single measure committee, we 10:54:08  
18 have what we call single measure committees 10:54:10  
19 that report -- support or oppose one 10:54:11  
20 referendum. They're political campaign 10:54:15  
21 committees, but they're not multi-candidate 10:54:17  
22 committees and they're not a single candidate 10:54:18  
23 committees. 10:54:20  
24 Q. So in your 28 years of experience, when 10:54:20  
25 we refer to a political campaign committee, 10:54:25

1 it's either going to be the candidate campaign 10:54:30  
2 committee? For example, the candidate 10:54:34  
3 campaign committee that plaintiff's co-counsel 10:54:36  
4 probably created when he ran for Metro Council 10:54:39  
5 back a number of years, several years ago, 10:54:43  
6 correct? 10:54:46  
7 A. Correct. Correct. We would call that a 10:54:46  
8 single candidate committee. And I think to 10:54:52  
9 answer your question -- but to answer your 10:54:54  
10 question, and I think to clarify, 99 -- I think 10:54:55  
11 as I stated, 99.99 probably percent of 10:54:58  
12 political campaign committees that file just in 10:55:02  
13 our office, and I think it's probably 100 10:55:05  
14 percent for local office, are either single 10:55:07  
15 candidate committees, being the candidate's 10:55:10  
16 campaign committee; a multi-candidate 10:55:11  
17 committee; or in limited source, a very limited 10:55:14  
18 amount, a referendum committee. 10:55:16  
19 Q. And I believe you testified that when 10:55:18  
20 candidates and PACs file their disclosure 10:55:23  
21 reports -- well, candidates and candidate 10:55:27  
22 political campaign committees and 10:55:30  
23 multi-candidate political campaign committees 10:55:31  
24 that file their disclosure reports either with 10:55:35  
25 the Registry or with their local Election 10:55:38

1 Commission, you require an original signature 10:55:40  
2 on that document; is that correct? 10:55:41  
3 A. That's correct. 10:55:43  
4 Q. So if I e-mail my disclosure report to 10:55:43  
5 the Davidson County Election Commission, that 10:55:48  
6 is not going to be accepted because it does not 10:55:51  
7 contain an original signature? 10:55:53  
8 A. Correct. Well, and to clarify, we would 10:55:55  
9 allow them to e-mail it as long as they follow 10:56:00  
10 it up with the original signature report, 10:56:02  
11 because we have to have the signature report, 10:56:05  
12 the original signature report. 10:56:07  
13 Q. And if I were to fax it to the Davidson 10:56:09  
14 County Election Commission, that would not 10:56:11  
15 contain an original signature? 10:56:15  
16 A. Correct. 10:56:17  
17 Q. And I believe counsel asked you about the 10:56:17  
18 provision of 2-10-105(h)(2), and that is the 10:56:23  
19 section that dealt with contributions that are 10:56:28  
20 received, large contributions received during 10:56:30  
21 the time period after the last disclosure 10:56:33  
22 report was due, correct? 10:56:37  
23 A. Correct. 10:56:38  
24 Q. And the testimony was, is that if it was 10:56:38  
25 for a candidate for state office and the amount 10:56:42

1 of the contribution was more than \$5,000, it 10:56:46  
2 had to be disclosed; is that correct? 10:56:49  
3 A. Correct. 10:56:50  
4 Q. And if it was a candidate for local 10:56:50  
5 office and it was more than \$2,500 -- 10:56:52  
6 A. Yes. 10:56:54  
7 Q. -- that needed to be disclosed? 10:56:55  
8 A. Yes. 10:56:57  
9 Q. And these are contributions from 10:56:58  
10 committees, correct? 10:57:00  
11 A. Contributions from persons. 10:57:01  
12 Q. Are you sure? 10:57:04  
13 A. Uh-huh. 10:57:05  
14 Q. Do you need to look at the statute 10:57:05  
15 again? 10:57:08  
16 A. (No response.) 10:57:11  
17 Q. Would you like to look at the statute? 10:57:12  
18 A. (Shrugged shoulders.) 10:57:16  
19 Q. In (h)(1)(a)? 10:57:23  
20 A. (Witness reviews document.) 10:57:28  
21 The candidates are filing reports. 10:57:31  
22 Q. Right. The candidate files the report 10:57:32  
23 and accepted -- and it says, "Has received and 10:57:35  
24 accepted a contribution from or transfer of 10:57:37  
25 funds during such period, and the date of 10:57:40

1 receipt of each contribution in excess of the 10:57:44  
2 following amounts." 10:57:45  
3 So if it's a committee -- if it's a 10:57:49  
4 committee participating in the election of the 10:57:53  
5 candidate for any state public office. So it's 10:57:55  
6 the committee that's actually filing the 10:57:58  
7 report; is that correct? 10:58:04  
8 A. Right. Yes. 10:58:04  
9 Q. It's not the candidate that's filing the 10:58:05  
10 report? 10:58:07  
11 A. No. 10:58:07  
12 Q. It's the committee that's filing the 10:58:07  
13 report. Is that going to be a single candidate 10:58:09  
14 committee that we're referring to there? 10:58:18  
15 A. (Witness reviews document.) 10:58:20  
16 The candidate, yes. The candidate is 10:58:25  
17 filing the report of the contribution received, 10:58:27  
18 the single candidate committee. 10:58:32  
19 Q. The single candidate committee for the 10:58:33  
20 candidate -- 10:58:36  
21 A. Yes. 10:58:36  
22 Q. -- is filing the report -- 10:58:37  
23 A. Yes. 10:58:38  
24 Q. -- if they receive a contribution in 10:58:38  
25 excess of \$5,000 -- 10:58:41

1 A. Yes. 10:58:42  
2 Q. -- for state office, and in excess of 10:58:42  
3 \$2,500 for local office? 10:58:46  
4 A. Yes. 10:58:47  
5 Q. Let me ask you this, do you know what the 10:58:48  
6 limit, the contribution limit is for 10:58:50  
7 individuals for local public office? 10:58:51  
8 A. \$1,500 per election. 10:58:53  
9 Q. So this wouldn't even apply, then, to 10:58:55  
10 contributions from -- unless it was in excess 10:58:58  
11 of the limits; is that correct? 10:59:01  
12 A. Right, yes. Correct. 10:59:02  
13 Q. It wouldn't apply to contributions from 10:59:04  
14 individuals to local public office? 10:59:07  
15 A. Correct. 10:59:08  
16 Q. And what is the limit for individuals to 10:59:09  
17 contribute to a candidate for state public 10:59:12  
18 office? 10:59:15  
19 A. Well, for legislature it's \$15,000; for 10:59:15  
20 governor it's \$4,000. 10:59:22  
21 Q. In your 28 -- well, let's see, this has 10:59:26  
22 not been in existence -- actually, it probably 10:59:31  
23 has. 10:59:35  
24 A. I think it has. 10:59:35  
25 Q. In your experience, in your 28 years of 10:59:36

1 experience, how often have you received the 10:59:37  
2 disclosure reports that are contemplated by 10:59:42  
3 2-10-105(h)(1)(a)? 10:59:46  
4 A. I'll be honest, I can't remember the last 10:59:49  
5 time we received one. 10:59:51  
6 Q. And in your 28 years of experience, how 10:59:53  
7 often have you received complaints that someone 10:59:56  
8 failed to file one of these forms or to 10:59:58  
9 disclose a contribution that was received 11:00:01  
10 during this time period and that was in excess 11:00:05  
11 of the amounts listed in the statute? 11:00:08  
12 A. To the best of my knowledge, we've never 11:00:10  
13 received a complaint concerning this section. 11:00:12  
14 Q. I think counsel asked you about if -- if 11:00:16  
15 a candidate received a \$50 contribution from a 11:00:21  
16 multi-candidate political campaign committee, 11:00:26  
17 were they required to disclose that on their 11:00:29  
18 disclosure report. 11:00:31  
19 And your testimony was that if it was \$50 11:00:32  
20 and it was the only contribution received from 11:00:34  
21 that political -- multi-candidate political 11:00:36  
22 campaign committee, they were not required to 11:00:40  
23 itemize it -- 11:00:43  
24 A. Correct. 11:00:43  
25 Q. -- right? 11:00:44

1 But is that candidate required -- does 11:00:45  
2 that \$50 contribution, can the candidates just 11:00:46  
3 ignore that they got that \$50 contribution, or 11:00:51  
4 do they have to keep that information for other 11:00:55  
5 purposes? 11:00:58  
6 A. They -- they have to disclose the one as 11:00:58  
7 an amount, as a contribution. They also have 11:01:01  
8 to in their records know the source of that 11:01:04  
9 contribution in case that individual or PAC or 11:01:07  
10 multi-candidate committee gives additional 11:01:10  
11 contributions to make sure they don't go over 11:01:13  
12 the limit on that report. 11:01:15  
13 Q. All right. And that's the limit -- 11:01:16  
14 there's a PAC limit, an individual PAC limit, 11:01:16  
15 correct? 11:01:20  
16 A. Correct. 11:01:20  
17 Q. Is there also an aggregate limit for 11:01:20  
18 candidates? 11:01:23  
19 A. Yes. 11:01:23  
20 Q. And what is that aggregate limit? 11:01:24  
21 A. Let me see. For the aggregate PAC limit 11:01:26  
22 for everything except statewide elections, it's 11:01:30  
23 \$118,100 per election. 11:01:35  
24 Q. And for statewide election, what's the 11:01:37  
25 limit? 11:01:40



1 A. And for statewide elections it is -- 11:01:40  
2 there's actually not a statewide election. It 11:01:43  
3 is based on a -- a PAC candidate 50 percent. 11:01:46  
4 You can't receive more than 50 percent of your 11:01:50  
5 contributions from PACs. 11:01:52  
6 MS. KLEINFELTER: No further 11:02:17  
7 questions. 11:02:18  
8 MR. HORWITZ: I have no further 11:02:22  
9 questions, either. 11:02:23  
10 I do want to make one note for the 11:02:24  
11 record. Counsel previously had an exchange 11:02:26  
12 regarding disclosure of this witness's 11:02:30  
13 testimony. I respectfully submit that the 11:02:33  
14 disclosure that was claimed was incomplete. 11:02:36  
15 I state for the record that 11:02:40  
16 plaintiff's disclosure states that plaintiff 11:02:43  
17 may call as necessary any witnesses called by 11:02:45  
18 defendants if necessary for rebuttal and for 11:02:48  
19 the purpose of establishing that next day 11:02:51  
20 disclosure is feasible under Tennessee law -- 11:02:55  
21 and this is where the emphasis goes -- that the 11:02:58  
22 challenged statutes are not narrowly tailored 11:03:01  
23 to achieve the purposes that the defendants 11:03:05  
24 have advanced. 11:03:07  
25 I move the admission of the party's 11:03:10

1 pleadings without objection. 11:03:12

2 MS. KLEINFELTER: They're already 11:03:14

3 part of the record, so there's no need to move 11:03:16

4 to make the pleadings part of the record. 11:03:18

5 MR. HORWITZ: Without objection, 11:03:21

6 then. 11:03:23

7 I'm handing the pleadings to the 11:03:55

8 court reporter to have them marked. 11:03:57

9 MS. KLEINFELTER: Actually, we do 11:03:59

10 object. There is no purpose, no reason for 11:04:00

11 putting them in the record. They're already 11:04:02

12 part of the Court record that would go up on 11:04:04

13 appeal. So we object to having them being made 11:04:06

14 part of this transcript. 11:04:09

15 (Off-the-record discussion.) 11:04:59

16 (WHEREUPON, documents were marked as 11:04:59

17 Exhibit No. 25 and Exhibit No. 26.) 11:04:59

18 MR. HORWITZ: And just note for the 11:05:00

19 record that pleadings are evidence. They're 11:05:01

20 conclusive judicial admissions, and the answer 11:05:05

21 is a statement by party opponent. 11:05:08

22 I do have a couple clarifying 11:05:11

23 questions for the Judge. I realize that we 11:05:14

24 didn't -- 11:05:16

25 MS. KLEINFELTER: Nope, she's already 11:05:16

1 gone. 11:05:17

2 MR. HORWITZ: Well, I'm going to go 11:05:17

3 get her anyway. You're welcome to stay. 11:05:19

4 MS. KLEINFELTER: Nope. If you want 11:05:21

5 those clarifying answers, you need to ask the 11:05:22

6 Judge at a later time. 11:05:25

7 MR. HORWITZ: I respectfully submit 11:05:27

8 that this proceeding is not over until all the 11:05:29

9 issues have been adjudicated. You're going to 11:05:32

10 get kickback on the basis this isn't ripe yet. 11:05:34

11 But I'm going to get the Judge to 11:05:39

12 stay, and I'll ask the court reporter to stay. 11:05:41

13 MS. KLEINFELTER: I believe the Judge 11:05:45

14 asked if you had any further questions before 11:05:47

15 she left the bench and adjourned the Court. 11:05:48

16 (Short break.) 11:08:30

17 (WHEREUPON, the Court resumed the 11:08:30

18 Bench, with proceedings continuing as follows:) 11:10:34

19 THE COURT: Have you-all completed 11:10:34

20 your offer of proof? 11:10:36

21 MS. KLEINFELTER: With one exception 11:10:37

22 that because your clerk was not here, the 11:10:39

23 witness was not sworn in. So we need to I 11:10:42

24 guess swear him in after the fact. 11:10:45

25 THE COURT: Okay. The court reporter 11:10:48

1 could have done that, though.

2 THE REPORTER: Your Honor, I  
3 apologize. I didn't think about it until after  
4 they had begun, because normally the clerk  
5 would swear the witness in in court.

6 THE COURT: Okay. If you would come 11:10:57  
7 forward, sir. Let me say that we're going to 11:10:58  
8 have the court officer administer the oath. 11:11:01  
9 And do you -- after you've taken the oath, I'm 11:11:06  
10 going to ask you some questions -- 11:11:08

11 THE WITNESS: Yes, ma'am. 11:11:10

12 THE COURT: -- about whether that 11:11:11  
13 applies to the testimony you provided. Thank 11:11:12  
14 you so much. 11:11:14

15 (Witness sworn in retroactively.) 11:11:20

16 THE COURT: Okay. You have provided 11:11:22  
17 testimony in an offer of proof where the 11:11:23  
18 attorneys asked you questions here in the 11:11:26  
19 courtroom. 11:11:28

20 THE WITNESS: Yes, ma'am. 11:11:28

21 THE COURT: We have just administered 11:11:29  
22 the oath to you. Do you understand that that 11:11:31  
23 oath applied to the statements that you 11:11:34  
24 provided here today in your testimony? 11:11:36

25 THE WITNESS: Yes, ma'am. 11:11:39

1 THE COURT: And did you tell the 11:11:40  
2 truth, the whole truth, and nothing but the 11:11:42  
3 truth in compliance with the oath that you've 11:11:44  
4 just taken? 11:11:46  
5 THE WITNESS: Yes, ma'am. 11:11:47  
6 THE COURT: Okay. All right. Thank 11:11:48  
7 you, sir. 11:11:49  
8 What else? 11:11:51  
9 MR. HORWITZ: Thank you. Your Honor, 11:11:53  
10 just a couple of clarifying questions. 11:11:54  
11 The Court had asked the plaintiff to 11:11:56  
12 prepare an order of judgment in this matter. 11:11:57  
13 It occurred to me after you left that we did 11:12:01  
14 not apportion costs. I just want this to be a 11:12:04  
15 final order to enable the State to be able to 11:12:06  
16 appeal. 11:12:08  
17 THE COURT: Yes, let me speak to 11:12:09  
18 that. Costs will be tasked to the plaintiff -- 11:12:10  
19 to the defendants. 11:12:14  
20 Now, you had a request to recover 11:12:15  
21 attorney's fees. Normally how that's handled 11:12:17  
22 is under local rule 5 point, I believe it's 05. 11:12:19  
23 You file an application to recover your 11:12:25  
24 attorney's fees and state the amount with the 11:12:29  
25 backup documentation. And then once we receive 11:12:31

1 that, the Court will notify the State of the 11:12:36  
2 time in which to file their opposition. And 11:12:38  
3 then you would have the opportunity to reply, 11:12:41  
4 and the Court would determine on the papers. 11:12:43  
5 I have had some cases where counsel 11:12:47  
6 have agreed to hold that in abeyance until an 11:12:50  
7 appeal is taken. I don't recommend that. I've 11:12:55  
8 also had problems with that on appeal. It's 11:13:00  
9 better to send everything up. 11:13:02  
10 So I would recommend the -- just 11:13:04  
11 proceeding and us going on and assessing 11:13:09  
12 attorney's fees, but if the parties can reach 11:13:12  
13 an agreement on that and the Court would accede 11:13:14  
14 to it. 11:13:17  
15 MR. HORWITZ: I guess the only 11:13:18  
16 difficulty is, and I understand the State wants 11:13:19  
17 to appeal promptly, petitions for attorney's 11:13:21  
18 fees have to be verified by affidavit with 11:13:23  
19 exhibits related to similar -- fees assessed in 11:13:26  
20 other cases, and it's a fairly extensive 11:13:27  
21 process. 11:13:30  
22 We certainly can try to reach an 11:13:31  
23 agreement, but I don't want -- I don't want the 11:13:34  
24 State to feel like we're delaying their ability 11:13:36  
25 to appeal. So I guess -- 11:13:39

1 MS. KLEINFELTER: Well, Your Honor, 11:13:42  
2 we have 30 days to file a notice of appeal. 11:13:43  
3 The Court's order is not final until that 30 11:13:46  
4 days has run. So I don't believe the plaintiff 11:13:49  
5 can act upon the Court's order until it does 11:13:51  
6 become final. 11:13:54  
7 And of course if we file that notice 11:13:55  
8 of appeal and the request for a stay, because 11:13:57  
9 the essence of your Court's order is enjoining 11:13:59  
10 the State from enforcing the provisions of the 11:14:01  
11 statute and finding the statute 11:14:04  
12 unconstitutional. 11:14:08  
13 You know, if counsel is not able to 11:14:08  
14 get their motion filed and resolved within that 11:14:11  
15 30 day time period, we're willing to discuss 11:14:13  
16 it, but certainly counsel could get that done 11:14:16  
17 within the 30 days that we have. 11:14:18  
18 THE COURT: If the Court were to 11:14:20  
19 require the application with the attorney's 11:14:23  
20 fees to be filed by October 12th, would you be 11:14:25  
21 able to do that? 11:14:28  
22 MR. HORWITZ: Yes, Your Honor. 11:14:29  
23 THE COURT: All right. And then the 11:14:30  
24 State can file any response to that by 11:14:32  
25 October 19th. 11:14:38

1 MS. KLEINFELTER: We only get a week, 11:14:40  
2 Your Honor? Because unfortunately my 11:14:42  
3 co-counsel is going to be out during a good 11:14:44  
4 portion of that time period. 11:14:48  
5 THE COURT: How much time do you 11:14:49  
6 need? 11:14:50  
7 MS. KLEINFELTER: If we can have 'til 11:14:51  
8 the middle of the following week, Your Honor. 11:14:53  
9 THE COURT: Sure. Until 11:14:55  
10 October 24th? 11:14:58  
11 MS. KLEINFELTER: Yes. 11:14:58  
12 THE COURT: And then the Court will 11:14:58  
13 rule following that on the papers. 11:15:00  
14 What other? 11:15:02  
15 MR. HORWITZ: Your Honor, that was 11:15:03  
16 the first one. 11:15:04  
17 The second was, I realize this was a 11:15:05  
18 fact-based trial here. I didn't want to 11:15:08  
19 presume -- I didn't know the parties had a 11:15:10  
20 dispute over the standard of review. I didn't 11:15:13  
21 want to presume that this Court agreed with my 11:15:13  
22 position rather than the State's, so I was 11:15:15  
23 wondering if this Court would permit me to file 11:15:17  
24 the judgment as to the facts of this matter, 11:15:20  
25 and then this Court would issue an opinion 11:15:22



1 based on those facts? 11:15:24

2 THE COURT: Yes. Yes. Because there 11:15:25

3 are other matters that we put together, and Mr. 11:15:27

4 Seamon and I will look into the record that 11:15:30

5 we're going to add to the order concerning the 11:15:31

6 motions in limine. So just submit to the Court 11:15:32

7 that portion of it, and we'll fill it in. 11:15:35

8 MS. KLEINFELTER: And, Your Honor, is 11:15:38

9 the Court's order granting the judgment also -- 11:15:39

10 and enjoining the State, does that also apply 11:15:44

11 to the District Attorney General? 11:15:48

12 THE COURT: How we're going to handle 11:15:53

13 the District Attorney General is the plaintiff 11:15:54

14 had suggested in its papers that that be 11:15:58

15 dismissed without prejudice. And then 11:16:01

16 depending on what occurs on appeal, then it 11:16:04

17 could be re-filed if necessary. I think that's 11:16:07

18 the best way to proceed, instead of a rule 11:16:11

19 54.02. 11:16:16

20 So if you will put in the order that 11:16:16

21 it's -- that it's dismissed, the claim as to 11:16:18

22 the Attorney General is dismissed without 11:16:21

23 prejudice. 11:16:24

24 MR. HORWITZ: I will do that. 11:16:24

25 THE COURT: District Attorney 11:16:26

1 General, excuse me. 11:16:28

2 MR. HORWITZ: Understand. 11:16:28

3 THE COURT: Yeah. 11:16:30

4 MR. HORWITZ: Just a couple remaining 11:16:30

5 things. 11:16:33

6 I wanted this Court's permission to 11:16:33

7 file the transcript of the first hearing into 11:16:35

8 the record. There's the ability to get the 11:16:38

9 audio/video of it, and I can have that 11:16:44

10 transcribed and filed. 11:16:47

11 THE COURT: Are you talking about, 11:16:48

12 you think there was a recording in this Court? 11:16:49

13 MR. HORWITZ: Yes. 11:16:52

14 THE COURT: We do not record 11:16:52

15 proceedings. We don't have the recording. 11:16:54

16 Did you have a court reporter? 11:16:57

17 MR. HORWITZ: We did not. 11:16:58

18 THE COURT: Okay. All right. Then 11:16:58

19 we don't have that. 11:17:00

20 Was there a particular matter that 11:17:01

21 you needed on that that's not in the Court 11:17:02

22 order? 11:17:05

23 MR. HORWITZ: Yes, the basis for that 11:17:05

24 request was going to be that initially this 11:17:07

25 matter was submitted without evidence anyway. 11:17:09

1 That was the defendants' initial position. And 11:17:12  
2 any claim of prejudice after they've already 11:17:15  
3 been relieved of that, what I consider a 11:17:18  
4 waiver, would be important for purposes of 11:17:23  
5 appeal. 11:17:25  
6 THE COURT: Isn't that apparent on 11:17:26  
7 the record without the transcript? 11:17:27  
8 MR. HORWITZ: I thought so, Your 11:17:31  
9 Honor, but there's never been a formal finding 11:17:32  
10 as to that fact. It was implied in previous 11:17:35  
11 orders, but I would be more comfortable with 11:17:38  
12 that acknowledgment being ordered someplace. 11:17:41  
13 THE COURT: In the order that you 11:17:45  
14 prepare, propose that and let me see exactly 11:17:46  
15 what it is that you're seeking. I don't know 11:17:49  
16 if I can enter that or not. I'll have to see 11:17:52  
17 what the text reads like, but put it in the 11:17:55  
18 proposed order. 11:17:58  
19 What else? 11:18:00  
20 MR. HORWITZ: Last question was 11:18:02  
21 whether costs include the cost of this 11:18:05  
22 transcript, whether discretionary costs are 11:18:08  
23 included? 11:18:14  
24 THE COURT: You will need to file a 11:18:14  
25 motion to recover discretionary costs. 11:18:16

1 MR. HORWITZ: So even though the 11:18:19  
2 transcript of the Court's initial order is 11:18:21  
3 going to be integrated -- 11:18:24  
4 THE COURT: The way it would work is 11:18:26  
5 court costs that are the billable costs are 11:18:28  
6 passed to the State. Any costs that you seek 11:18:31  
7 to recover for transcripts, you will need to 11:18:33  
8 file a motion to recover discretionary costs 11:18:37  
9 under the rule. I've forgotten the exact rule 11:18:40  
10 number now. And then the State will have an 11:18:43  
11 opportunity to reply to that, to respond to 11:18:45  
12 that. So we'll put it on the motion docket, so 11:18:48  
13 go on and get that filed. 11:18:51  
14 MR. HORWITZ: For everyone's 11:18:52  
15 convenience, would you have any objection if I 11:18:53  
16 include that in the attorney's fee 11:18:55  
17 attestation? 11:18:58  
18 THE COURT: You may do so. The Court 11:18:59  
19 grants that, yes. And when I say I grant that, 11:19:01  
20 the Court gives you leave to file the motion 11:19:07  
21 for discretionary costs along with application 11:19:09  
22 to recover the attorney's fees, and the same 11:19:12  
23 time limits will apply for the State to 11:19:15  
24 respond, and the Court will rule on the 11:19:18  
25 papers. 11:19:21

1 MR. HORWITZ: Thank you, Your Honor, 11:19:22  
2 that's all I have. 11:19:23  
3 THE COURT: Are there any matters 11:19:24  
4 that the State needs clarified? Anything, 11:19:26  
5 General Kleinfelter? 11:19:31  
6 MS. KLEINFELTER: No, as long as we 11:19:33  
7 get the opportunity to respond to this -- this 11:19:34  
8 request for the Court to make a finding on some 11:19:37  
9 sort of waiver of something given that was not 11:19:42  
10 an issue that was ever actually presented to 11:19:44  
11 the Court at the prior hearing, and I don't 11:19:47  
12 know if the Court ever made a definitive 11:19:49  
13 ruling. As long as we get the opportunity to 11:19:52  
14 respond to whatever language is put in the 11:19:54  
15 order. 11:19:56  
16 THE COURT: The way that the State 11:19:56  
17 will be provided an opportunity to respond is 11:19:57  
18 under our local rule -- 11:20:00  
19 MS. KLEINFELTER: Right. 11:20:02  
20 THE COURT: -- when they file their 11:20:03  
21 order, we hold the order for three days and a 11:20:04  
22 competing or opposing order may be filed. And 11:20:07  
23 if there is opposition or objection, the State 11:20:11  
24 may state it during that time that you file 11:20:13  
25 that report. 11:20:17

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All right. Thank you very much.  
Mr. Seamon, if you would adjourn the court,  
please.

11:20:19  
11:20:21  
11:20:24

(WHEREUPON, the hearing was concluded  
at 11:20 a.m.)

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE

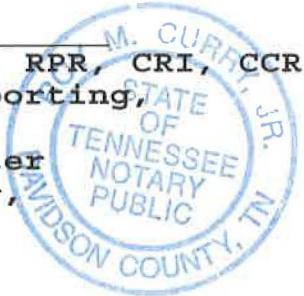
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