

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE

DAVID G. RIDINGS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 22-0332-III
	)	
DAVIDSON COUNTY ELECTION	)	
COMMISSION, and	)	
TENNESSEE DEMOCRATIC PARTY	)	
	)	
	)	
Defendants.	)	

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PLAINTIFF'S SUPPLEMENTAL BRIEF

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The Court has requested supplemental briefing on the issue of whether the Court has authority to direct the Davidson County Election Commission to place Plaintiff on the general election ballot when Plaintiff relied on the Davidson County Democratic Executive Committee's representations that he would be allowed to speak at one of their events as a candidate for the judicial election in April of 2022, after the qualifying deadline to run as an independent had passed.

In addition, Plaintiff has briefed the issue of whether the Democratic Party is a state actor due to their dominion over the judicial election at issue, and whether the Defendants' violations of Plaintiff's Procedural and Substantive Rights to Due Process further warrants injunctive relief under the facts of this case.

For the reasons herein, both questions should be answered in the affirmative.

**FACTS**

Mr. Ridings was a candidate in the Democratic primary for Division VII General Sessions Judge in Davidson County. His only opponent was Marcus Floyd. Mr. Floyd was a client of

Triumph Strategies (“Triumph”) a fundraising and political consulting firm in Nashville, Tennessee. Mr. Floyd paid Triumph approximately \$8,000.00 as of his campaign finance report dated January 31, 2022. His first disclosed payment to Triumph was made on October 7, 2021.

Tara Houston (“Houston”) is the managing director of Triumph. However, she is also the chair of the Davidson County Democratic Executive Committee (“DCDEC”). David Kleinrock is the founder and principal of Triumph, and is also a member of the DCDEC.

Mr. Ridings paid \$500.00 to the DCDEC in October 20, 2021 to host a democratic party event and to speak about his campaign at an October event. The party accepted the donation. However, Ms. Houston, who by then was working for Mr. Floyd (the only opponent of Mr. Ridings), told him that the agenda for the next event had already been filled, but he could speak at a later Democrat party event in April of 2022. Mr. Ridings attended the October event, over which Ms. Houston presided, and learned that there was no agenda, and nothing prevented him from speaking except for Ms. Houston.

Based on the party’s acceptance of his donation and its invitation for him to speak at an event in April, Mr. Ridings continued his campaign, spending money on signs, advertising, and other traditional campaign items. Mr. Ridings filed his campaign financial disclosures as required for the period ending January 31, 2022. He filed his qualifying petition eight days prior to the filing deadline, and his petition was accepted by the DCDEC. He was the only candidate who qualified to run against Mr. Floyd by the qualifying deadline, and there were no Republicans who qualified. As a result, the primary election for the Democratic nominee became the *de facto* election.

After the qualifying deadline, the DCDEC, with Ms. Houston – who continued to work for Mr. Floyd as his political strategist and consultant – voted to disqualify Mr. Ridings from the

ballot. The DCDEC did not provide any basis at all for the disqualification, and Mr. Ridings was not given the opportunity to respond and defend his bona fides before the committee.

Neither Ms. Houston nor Mr. Kleinrock, both of whom worked directly for Mr. Floyd, recused themselves from the disqualification process or vote. Nor did they disclose their clear conflicts of interest to the committee members who voted.

After the vote to disqualify Mr. Ridings, the DCDEC forwarded the results to the Democratic State Executive Committee, and the State chair, Hendrell Remus, notified Mr. Ridings that he had been disqualified. Mr. Remus advised Mr. Ridings of his right to appeal, but because no basis for disqualification had been stated, Mr. Ridings was left without any information as to the subject matter for such an appeal. Mr. Ridings nonetheless provided notice of his appeal, which was summarily – and predictably – denied.

Of course, by that point, the qualifying deadline had already passed, prohibiting Mr. Ridings from qualifying as an independent.

### **LAW ON JUSTIFIABLE RELIANCE**

In *State ex rel. Hooker v. Thompson*, 249 S.W.3d 331 (1996), the Tennessee Supreme Court made clear that if a candidate misses a qualifying deadline due to her reasonable and justifiable reliance upon an official opinion, “relief from the mandatory deadline is appropriate, provided filing takes place with all reasonable dispatch after it is discovered that the opinion is incorrect.” *Id.* at 342.

In *Crowe v. Ferguson*, 814 S.W.2d 721 (1991), two Democrat candidates for Bedford County Clerk and Bedford County Executive lost their primary races and thereafter decided to run for a seat on the County Commission. *Id.* at 722. The qualifying deadline for the August general election was June 7, 1990. *Id.* The County Registrar-At-Large received an opinion from the State

Election Coordinator that state statutes prohibited persons who had been candidates for county clerk or executive in the May 1990 Democratic primary (and defeated) could not qualify as candidates for the August 1990 County Commission election. *Id.* For that reason, the county election commission rejected one of the candidates' qualifying petitions, and the other candidate did not file one, based on the information from the registrar. *Id.*

The registrar was later informed (after the qualifying deadline but before the August general election) that the previous opinion was incorrect, and that the statutes did not prohibit an unsuccessful candidate in the May primary election from running as a candidate in a different, nonpartisan, race in the August general election. *Id.* The candidate who did not file a qualifying petition based on the registrar's previous statements immediately filed. *Id.* Both of the candidates were elected to the commission. *Id.* at 723. Several unsuccessful candidates challenged the election. *Id.*

The Supreme Court ultimately held that if a candidate misses a qualifying deadline due to her "reasonable and justifiable reliance" upon an official opinion, relief from the mandatory deadline is appropriate, "provided filing takes place with all reasonable dispatch after it is discovered the opinion is incorrect."

### **APPLICATION**

Here, Mr. Ridings reasonably and justifiably relied on the DCDEC's acceptance of his donation and its invitation to him to speak at an April event. He filed his qualifying petition in a timely manner, and was the only other qualified candidate besides Mr. Floyd. Ms. Houston did not disclose to him that she was working directly for his only opponent and that she intended to seek his removal from the primary election.

The DCDEC voted to remove Mr. Ridings, while it simultaneously declined to take a vote on another challenged candidate for a different race who had essentially the same voting history as Mr. Ridings. The DCDEC accepted Mr. Ridings' contribution, invited him to speak at an event *after* the qualifying deadline, was aware of his candidacy, and took no adverse action against him until the deadlines to qualify had already passed. At that point, they voted to remove him from the ballot, with the direct participation of at least two members who worked directly for his only opponent, Mr. Floyd. They refused to provide him an opportunity to defend his candidacy or to even inform him of the basis of the challenge. At the same time, they declined to even vote on another challenged candidate.

Had Mr. Ridings been properly informed that Ms. Houston would work against his placement on the Democratic primary ballot, he would have timely filed as an independent. Instead, by accepting his contribution and inviting him to speak, Ms. Houston in her capacity as chair of the DCDEC induced him to remain in the Democrat primary until such time as she could have him disqualified, clearing the way for her client, Mr. Floyd, to run unopposed.

Based on *Crowe* and *Hooker*, the court has the authority to order Mr. Ridings' placement on the ballot as an independent due to reasonable and justifiable reliance.

### **STATE ACTION AND DEPRIVATION OF PLAINTIFF'S DUE PROCESS RIGHTS**

#### **A. The DCDEC is a State Actor.**

The Tennessee Democratic Party is a state actor because the Party has influenced the outcome of an election via its elimination of Mr. Ridings. Stated differently, the Party has played an integral role in the electoral process itself, as opposed to handling the "internal affairs" of the party. *Blanchy v. Republic Party of Hamilton County*, 898 F.2d 1192, 1196 (6<sup>th</sup> Cir. 1990). Public elections are one of the few functions traditionally performed by governments that the United States

Supreme Court has expressly identified. “Under the public function test, a private party is a state actor if he exercises powers traditionally reserved exclusively to the state.” *Reguli v. Guffee*, 371 F. App’x 590, 600 (6th Cir. 2010)(citing *Chapman v. Higbee Co.*, 319 F.3d 825, 833 (6<sup>th</sup> Cir. 2003)). “The public function test has been interpreted narrowly. **Only functions like holding elections**, exercising eminent domain, and operating a company-owned town, **fall under this category of state action.**” *Chapman* at 833. (emphasis added)(additional citations omitted).

In *Flagg Bros, Inc. v. Brooks*, 436 U.S. 149 (1978), the United States Supreme Court illustrated those functions that are traditionally performed by governments. Noting that “very few have been ‘exclusively reserved to the State[.]’” the Court expressly held that “[o]ne such area has been elections.” *Id.* at 158. “While the Constitution protects private rights of association and advocacy with regard to the election of public officials, our cases make it clear that the conduct of the elections themselves is an exclusively public function.” *Id.*

The doctrine does not reach to all forms of private political activity, but encompasses only state-regulated elections or elections conducted by organizations which in practice produce “the uncontested choice of public officials.” *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 158, 98 S. Ct. 1729, 1734 (1978)(citing *Terry v. Adams*, 345 U.S. 461, 484 (1953)(Clark, J., concurring)).

Thus, the DCDEC is a state actor for purposes of analyzing Mr. Ridings’ rights to due process of law.

## **B. DCDEC’s Deprivation of David Ridings’ Rights to Procedural Due Process.**

Candidly, the law is murky with regard to candidate’s right to run for a political office and the scrutiny a court will employ to determine whether a state actor has overstepped its bounds. This is because of the nature of the rights involved. On one hand, restricting a candidate from running for office affects the fundamental rights of voters by restricting their access to the ballot.

On the other hand, the candidate's own fundamental right to association is implicated by the same restriction from the ballot. Yet, government entities have an interest in the orderly administration of elections. It is clear that, at a minimum, a form of the rational basis test would apply to Mr. Ridings' rights to Procedural Due Process, and that arbitrary, capricious, and pretextual

The closest case on point comes from the Supreme Court of Alabama. In *Ala. Republican Party v. McGinley*, 893 So. 2d 337 (Ala. 2004), Alabama's high court analyzed whether a political candidate's exclusion from the Republican ballot violated her constitutional rights to due process. Kelly McGinley timely filed a qualifying form with the Alabama Republican Party to qualify as a candidate for the State Board of Education, certifying that she was required to certify her bona fides as a Republican. Just before midnight on April 4, 2005, the Mobile County Republican executive committee raised objections to McGinley's qualifications as a Republican and loyalty to the party after questions were raised about anti-President Bush and anti-Republican statements made by McGinley. *Id.* at 340. On the morning of April 5, 2004, the chairman of the Alabama Republican Party called McGinley's attorney, and stated that her qualifications would be challenged at the candidate committee meeting on April 7. *Id.* McGinley was informed, through counsel, that she would have an opportunity to testify at the meeting.

On the morning of April 7, McGinley, through counsel, submitted an email response about, *inter alia*, her support for the Constitution Party. *Id.* at 341. The email indicated that McGinley had "twice been promised a copy of the allegations against her, but sadly they had not been furnished." *Id.* The response contained a motion to dismiss the challenge to McGinley's candidacy based on inadequate notice and failure to provide a copy of the allegations in the April 4 email. *Id.* On the afternoon of April 7, the executive committee telephone McGinley four times and her attorney twice to "make sure we give her every opportunity to participate in the [hearing]." *Id.*

McGinley was also informed that if it was not possible to attend the hearing in person, they could participate by telephone. *Id.*

At 6:00pm on April 7, the candidate committee met and considered the challenges to McGinley's candidacy and voted unanimously to disqualify her so her name would not appear on the primary ballot. *Id.* at 341. Later that evening, McGinley was notified of her disqualification, and the party filed an amendment to its earlier certification with the secretary of state, removing McGinley's name from the ballot. *Id.*

On April 19, three days before the deadline for delivering absentee ballots and other materials to the absentee-election managers, McGinley filed her lawsuit challenging her disqualification. *Id.* The trial court found that McGinley's rights had been violated and that her disqualification had been effectuated in an arbitrary manner. *Id.* The trial court found that the Republican Party's lack of a clearly articulated rule about whether a candidate's criticisms constituted disloyal conduct eliminated the party's ability to determine a violation of its qualifying oath in a fair and evenhanded fashion. *Id.* at 341-342.

The circuit court ordered McGinley's name restored to the June 1, 2004 Party primary ballot. *Id.* at 342. The party appealed.

McGinley argued that the Party's actions violated both her procedural and substantive due-process rights under the Fourteenth Amendment to the United States Constitution because (1) she was not presented with a copy of the "complaint" against her before the hearing, and (2) the Party had no clearly articulated rule delineated in advance that would warn her of disqualifying activity. *Id.* at 342.

For purposes of the appeal, the Alabama Republican Party assumed, without admitting, that McGinley had a "liberty interest" in running as a Republican candidate in the Republican



primary election sufficient to invoke the procedural or substantive protections of the Due Process Clause, citing *Board of Regents v. Roth*, 408 U.S. 564 (1972). *Id.* at 343. The Alabama Supreme Court assumed, without deciding, that McGinley had such a liberty interest, but found that the Party's failure to provide McGinley with a copy of the "complaint" was harmless because (1) McGinley's email response specifically addressed each and every point of contention raised by the committee and (2) McGinley did not attend the hearing at all and "she cannot now contend that she was harmed by not being prepared to address the specific charges made against her in the complaint." *Id.* at 343.

Thus, the Alabama Supreme Court found that McGinley was provided with both sufficient notice and an opportunity to be heard, and her procedural due process rights were therefore not violated. *Id.* at 343-344. It follows that a complete lack of notice and any opportunity to be heard is a violation of a candidates procedural due process rights.

### **C. DCDEC's Deprivation of David Ridings' Rights to Substantive Due Process.**

With regard to McGinley's substantive due process rights, the Alabama high court held that the Republican Party's rules for certifying candidates invoked substantive due process rights because the interpretation of "loyalty" by the Party was asserted by McGinley to be arbitrary and substantively unfair. *Id.* "This is a substantive due-process claim." *Id.* at 344.

The Alabama Supreme Court identified the nature of the claim as follows:

"'Substantive due process' analysis forces courts to step beyond merely assuring, regardless of the outcome, that a state actor fairly followed a particular procedure (procedural due process) and to examine whether the particular outcome was itself 'fair' or whether it was impermissibly 'arbitrary or conscience shocking.' *Waddell v. Hemerson*, 329 F.3d 1300, 1305 (11th Cir. 2003)('conduct by a government actor will rise to the level of a substantive due process violation only if the act can be characterized as arbitrary or conscience shocking in a constitutional sense'); see *C.B. v. Bobo*, 659 So. 2d 98, 103 (Ala. 1995) (stating that the "substantive component of the Due Process Clause 'protects individual liberty against "certain government actions regardless of the fairness of the procedures used to implement them"') (quoting *Doe v. Taylor Indep. School*

*Dist.*, 15 F.3d 443, 450-52 (5th Cir. 1994), quoting in turn *Collins v. City of Harker Heights*, 503 U.S. 115, 125, 117 L. Ed. 2d 261, 112 S. Ct. 1061 (1992)).”

*Ala. Republican Party v. McGinley*, 893 So. 2d 337, 344 (Ala. 2004)

“To be successful, McGinley must produce evidence indicating that the system and its resultant deprivation was ‘for an improper motive and by means that were pretextual, arbitrary and capricious, and ... without any rational basis.’” *Id.* at 345 (quoting *Hearn v. City of Gainesville*, 688 F.2d 1328, 1332 (11<sup>th</sup> Cir. 1982))(other citations and quotations omitted).

Because McGinley could not make this showing, her claim for violation of her substantive due process rights failed. *Id.*

Thus, the primordial issue was “whether this system, and the decision it produced, is arbitrary, capricious, pretextual, ‘conscience-shocking’ or wholly unrelated to the legitimate political interests of the Party.” *Id.* at 346.

Unlike Kelly McGinley, David Ridings was (1) not provided any notice at all before he was disqualified, (2) not provided any opportunity to be heard before his disqualification, and (3) not given sufficient time to challenge or appeal the decision due to the DCDEC’s intentional delay in informing Ridings that he would be disqualified until after the deadline for Ridings to run as an independent candidate.

Thus, the procedural gamesmanship present in the case at bar was not present with McGinley. Under the analysis set forth by the Alabama Supreme Court, *supra*, Mr. Ridings has substantive and procedural due process claims for the same reasons that McGinley did not.

First, McGinley was given both sufficient notice and ample opportunities to be heard before being disqualified. Ridings was never provided notice or an opportunity to be heard, and the Defendant sullied his ability to appeal the decision by sandbagging until the deadline had

passed. It is also clear that the Davidson County Democratic Election Committee concealed facts from Ridings that would have changed the course of his election campaign had he known he was surrounded by the proverbial “vipers in the nest.” He was lead to believe that the persons with whom he was coordinating were neutral members of the Democratic Party at large, when in fact they concealed their affiliation with, material support of, and employment by Mr. Ridings’ opponent.

Thus, Mr. Ridings’ Substantive Due Process Rights are implicated here because the DCDEC’s decision to exclude Ridings, and the manner in which his exclusion was obtained, were arbitrary, capricious, pretextual, and unlawful. Injunctive relief in the form of placing Mr. Ridings on the ballot for the general election is the equitable solution to the Defendants’ unlawful actions.

### **CONCLUSION**

For the reasons herein, this Court has the authority to direct the Election Commission to place Mr. Ridings on the general election ballot because of his reliance on the Tennessee Democratic Party’s representations that he would be placed on the primary ballot, after their acceptance of his donations and their invitation to speak at the Democratic Party event. The Party’s intentional concealment of its intentions and conflicts of interest with Mr. Ridings’ opponent have eliminated Plaintiff from the judicial race entirely, which stifles the First Amendment Rights of both voters and Mr. Ridings. In addition, injunctive relief is necessary to correct the DCDEC’s violation of Mr. Ridings Procedural and Substantive Rights guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and Art I, sec. 8 of the Tennessee Constitution.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing Amended Complaint was served upon the following attorneys for the defendants this 31<sup>st</sup> day of March, 2022:

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