

**IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

VAN TURNER, JR.)
)
Plaintiff,)
)
v.)
)
SHELBY COUNTY ELECTION COMMISSION,)
LINDA PHILLIPS in her official capacity as)
Administrator of the Shelby County Election)
Commission, **BENNIE SMITH, MARK**)
LUTTRELL, STEVEN STAMSON, VANECIA)
KIMBROW, AND FRANK UHLHORN in)
their Official Capacities as Members of the Board)
of Commissioners of the Shelby County Election)
Commission,)
)
Defendants.)

No. _____

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF
AND DECLARATORY JUDGMENT**

**TO THE CHANCELLORS OF THE CHANCERY COURT OF TENNESSEE FOR THE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS:**

Plaintiff, Van Turner, Jr. by and through the undersigned counsel, files his Complaint for Injunctive Relief and Declaratory Judgment against Defendants Shelby County Election Commission (“Election Commission”), Linda Phillips in her official capacity as Administrator for the Shelby County Election Commission and Bennie Smith, Mark Luttrell, Steven Stamson, Vanecia Kimbrow and Frank Uhlhorn in their Official Capacities as Members of the Board of Commissioners of the Shelby County Election Commission, and would state as follows:

I.INTRODUCTORY STATEMENT

On or about November 2, 2022, Linda Phillips, Administrator of Elections, Shelby County Election Commission sought clarity as to the “Residency Requirements for Memphis Mayor and City Council Members”. (See Exhibit 1). Allen Wade, counsel for City Council Members of the City of Memphis opined the following:

“Presently there are no durational residency requirements for the office of Legislative Council and Mayor. The previous requirements have been expressly repealed and replaced. Tennessee Election Laws defer to the charter of a local government for the qualification to serve in an elected office for such local government. Referendum Ordinance No. 4346 provides that “[e]ach member shall be a resident, as defined by state election laws, of the City and of the district from which he or she is elected.” Tennessee’s Election Laws define residency in the context of eligibility to vote and the place at which a person may vote. The reference in Referendum Ordinance No. 4346 to Tennessee’s Election Law was not intended to require that a person qualifying to serve as Mayor or Council member be a qualified voter, but only that the provisions of the Election Code that define a person’s residence be used to determine whether a person qualifying to serve as Mayor or Council member is a resident “of the City and of the district from which he or she is elected.”

...

Finally, a person’s qualifications to serve as Mayor or City Council member are determined at the time he or she is elected. All prior Charter provisions speak of qualifications “for a seat” or qualification “next preceding” or “preceding” his or her election. Moreover, Referendum Ordinance No. 4346 provides that the Mayor or Council members “shall be a resident of the City and of the district from which he or she **is elected**.” Thus, the qualification provisions are requirements to serve not to run for office.

Thus, for the purpose of administering City elections, your office should not refuse a candidate’s petition based on questions about residency; of course, your office may refuse to place the name of any candidate on the ballot if you have evidence that such person is ineligible under Tennessee Law to hold any elected office, irrespective of residency.

Exhibit 1.

Unsatisfied with two opinions from Council representing the Memphis City Council, the Election Commission and members of the City of Memphis sought a different opinion and retained the service of Robert Meyers, Esq. to provide that opinion. Interestingly, even though

Allan Wade, attorney for the Memphis City Council gave the same exact opinion in March of 2019, The Election Commission has decided to rely on Robert Meyers¹' letter to deny Mr. Turner an opportunity to run for Memphis Mayor. Exhibit 2. Plaintiff now files this lawsuit seeking clarity and an injunction from the Court.

II. PARTIES AND JURISDICTION

1. Plaintiff, Van Turner, Jr. is a resident of Memphis, Shelby County, Tennessee.
2. Defendant Shelby County Election Commission is a governmental entity licensed and authorized to do business in the State of Tennessee, with its election's operations office located at 980 Nixon Drive in Memphis, Tennessee.
3. Defendants Bennie Smith, Mark Luttrell, Steven Stamson, Vanecia Kimbrow and Frank Uhlhorn (collectively referred to as "the Shelby County Election Commissioners") are presently serving as the duly appointed members of the Shelby County Election Commission. The Shelby County Election Commissioners are being sued solely in their official capacities as members of the Board of Election Commissioners.
4. Defendant Linda Phillips is the Administrator for the Shelby County Election Commission. Linda Phillips is sued solely in her official capacity as Administrator of the Shelby County Elections Commission.
5. All defendants are residents of Shelby County, Tennessee.
6. This Court has jurisdiction in this action pursuant to T.C.A. § 29-14-102 *et seq.*
7. Venue of this action is proper in this Court.

III. STATEMENT OF THE FACTS

¹ It is uncertain what authority Robert Meyers' letter has because he does not work for the City Council and is not a sitting Judge.

8. On or about January 1, 2021, Plaintiff, Van Turner, Jr. (hereinafter “Mr. Turner” or “Plaintiff”) initiated an exploratory committee to determine if he was eligible for the Office of Mayor in the City of Memphis.
9. After the launch of his exploratory committee, Mr. Turner determined that he was eligible to run for the position of Mayor for the City of Memphis.
10. On September 1, 2022, Mr. Turner officially announced his candidacy for the office of Mayor for the City of Memphis. Mr. Turner also filed his Appointment for Political Treasurer with the Shelby County Election Commission.
11. On January 31, 2023, Mr. Turner filed his Campaign financial disclosure statement with the Shelby County Election Commission.
12. Mr Turner is a current resident of Memphis, Shelby County, Tennessee.
13. Mr. Turner is a licensed attorney with his primary business is also located in Memphis, Shelby County, Tennessee.
14. Mr. Turner served two terms as a Shelby County Commissioner.
15. Mr. Turner is currently a resident of the City of Memphis.
16. Mr. Turner is a registered voter in the City of Memphis.

a. Referendum Ordinance No. 4346

17. On November 5, 1996 pursuant to Article XI, § 9 of the Tennessee Constitution, the City of Memphis Home Rule Charter was amended by Referendum Ordinance 4346.
18. Memphis voters approved and adopted Referendum Ordinance No. 4346.
19. Referendum Ordinance 4346, inter alia, amended Section 1 of Referendum Ordinance No. 1852 by **deleting the second unnumbered paragraph of Section 1**.

20. Referendum Ordinance 4346, inter alia, amended Section 1 of Referendum Ordinance No. 1852 by **deleting the fourth unnumbered paragraph of Section 1**.
21. Referendum Ordinance 4346, inter alia, substituted the following language in Section 1 of 1852 for the deleted second and fourth unnumbered paragraphs of Section 1:
- "Each member shall be a resident, as defined by state election laws, of the City and of the district from which he or she is elected."**
22. The second unnumbered paragraph of Section 4 of Referendum Ordinance 1852 was not deleted or substituted by Referendum Ordinance 4346.
23. The second unnumbered paragraph of Section 4 of Referendum Ordinance 1852 remained as follows after the passage of Referendum Ordinance 4346:
- "... The qualifications of the Mayor shall be the same as those required herein for the members of the Council..."**
24. As a result of the passage of Referendum Ordinance 4346, the Home Rule Charter for the City of Memphis no longer contained a durational residency requirement for members of the Memphis City Council.
25. Moreover, as a result of Referendum Ordinance 4346, the Home Rule Charter for the City of Memphis no longer contained a durational residency requirement for the Office of Mayor.
26. Article 5, Section 17 of the Memphis City Charter states as follows:
- The qualifications of said Mayor and of the members of said Board of Commissioners shall be those now required by law for the members of the present legislative council, and the Mayor shall have the additional qualifications now provided by law for said office; provided, however, that no person shall be ineligible to said office because of having heretofore held said office.

(Acts 1909, ch. 298, § 2)

27. In 2019, at the request of Defendant, Linda Phillips, Allen Wade, Counsel for the Memphis City Council issued an opinion stating the following:

“As to who is eligible to run for offices of City Council and Mayor, the City’s charter has provided since 1966 that no person shall be elected or appointed to the Council unless such person is a “resident voter and taxpayer of the City of Memphis.”

...

In sum, we have consistently opined that “resident voter” is the same as a voter qualified to vote in an election under state election laws. Moreover, a qualified candidate for Council or Mayor need only be a resident of the City and a district for 30 days before the election. While the charter provision relating to City Court Clerk and City Judges have not been amended, it is our opinion that absent a court decision that justifies a five (5) year duration residency requirement for those positions, such a restriction mut yield to the holding in *Dunn v. Blumstein*. Thus, the rules applicable to Mayor and Council members apply to the City Court Clerk and City Judges.

I trust I have adequately responded to your inquiry.

Exhibit 3.

28. Mr. Turner meets all the qualifications as outlined by the charter and Mr. Wade’s opinion. *Id.*, see also Exhibit 1.

29. In 2022, at the request of Defendant, Linda Phillips, Allen Wade, Counsel for the Memphis City Council issued an opinion stating the following:

I am responding to recent request from counsel for the Election Commission and from you about the residency requirements for Mayor and Council Members for the City of Memphis. I provided you with guidance by letter dated March 15, 2019² and verbally this year.

...

Finally, a person’s qualification to serve as Mayor or City Council member are determined at the time he or she is elected. All prior Charter provisions speak of qualifications “for a seat” or qualifications “next preceding” or “preceding” his or her election. Moreover, Referendum Ordinance No. 4346 provides that the Mayor or Council members “shall be a resident of the City and of the district from which he or she **is elected**.” Thus, the qualification provision are requirements to serve not to run for office.

² See Exhibit 3.

Thus, for the purposes of administering City elections, your office should not refuse a candidate's petition based on questions about residency; of course, your office may refuse to place the name of any candidate on the ballot if you have evidence that such a person is ineligible under Tennessee Law to hold any elected office, irrespective of residency.

Exhibit 1.

30. On February 28, 2023, Defendant, Linda Phillips solicited the opinion of Robert Meyers to refute the two opinions from Allan Wade, Counsel for the Memphis City Council.
31. Robert Meyers wrote a letter to Defendant, Linda Phillips stating that a candidate must have five (5) years preceding the election. Exhibit 3.
32. Defendants linked the letter of Robert Meyers to its website and stated that they will comply with Mr. Meyers' letter officially disqualifying Mr. Turner as a candidate for the City of Memphis Mayor in contradiction to the Memphis City Ordinance as stated in Exhibits 1 and 2.
33. Defendants have failed to state on what authority Robert Meyers, Esq. has to issue an opinion that binds the Shelby County Election Commission, Shelby County, or the City of Memphis to his opinion.

COUNT I –

REQUEST FOR DECLARATORY RELIEF

34. The Plaintiff incorporates by reference all previous and subsequent allegations as if fully set forth within this count.
35. T.C.A. § 29-14-101, *et seq.*, provides as follows:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined

any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

36. Pursuant to T.C.A § 29-14-101, *et seq.*, Plaintiff seeks a judgment declaring that the Memphis Home Rule Charter, as amended by Referendum Ordinance 4346 and approved by the voters on November 5, 1996, complied with Article XI § 9 of the Tennessee Constitution. Pursuant to T.C.A. § 29-14-101, *et seq.*, Plaintiff seeks a judgment declaring that the City of Memphis Home Rule Charter, as amended by Referendum Ordinance 4346, approved by Memphis voters on November 5, 1996, removed from the Charter the five (5) year durational residency requirement.
37. Pursuant to T.C.A. § 29-14-101, *et seq.*, Plaintiff seeks a judgment declaring that the City of Memphis Home Rule Charter, as amended by Referendum Ordinance 4346 and approved by Memphis voters on November 5, 1996, does not contain a durational residency requirement to be eligible to run for the office of Mayor.
38. Pursuant to T.C.A § 29-14-101, *et seq.*, Plaintiff seeks a judgment declaring that the Shelby County Election Commission's requirement that candidates for the office of Mayor in the Memphis Municipal election scheduled for October 5, 2023, be a resident of the City of Memphis for five (5) years is unlawful and contrary to law.
39. Pursuant to T.C.A § 29-14-101, *et seq.*, Plaintiff seeks a judgment declaring that he is an eligible candidate for the office of Mayor, in the Memphis Municipal Election on October 5, 2023.
40. Defendants' refusal to allow the Mr. Turner to pull a permit and run for the office of Mayor will cause him imminent irreparable harm.

41. The Court should, therefore, impose a restraining order prohibiting Defendants from denying Mr. Turner the right to run for election.

Injunctive Relief/Temporary and/or Permanent Injunction

42. Plaintiff incorporates by reference all previous and subsequent allegations as if fully set forth within this count.

43. Plaintiff seeks a temporary injunction prohibiting Defendants from enforcing the requirement in the Memphis Municipal Election on October 5, 2023, for candidates seeking the office of Mayor to be a resident of the City of Memphis for five (5) years.

44. If the Defendants are allowed to enforce a durational residency requirement, Plaintiff would suffer probable, imminent, and irreparable harm.

45. Plaintiff has adequately pled a cause of action for declaratory judgment and is likely to prevail on the merits.

46. The possible harm to Plaintiff and to the public outweighs any harm to Defendants, thus injunctive relief is appropriate.

47. Plaintiff requests that a permanent injunction issue after a trial on the merits, enjoining and restraining Defendants from violating the Memphis Home Rule Charter, as amended by Referendum Ordinance 4346, by illegally enforcing a durational residency requirement for the office of Mayor in the Memphis Municipal Election on October 5, 2023.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff hereby respectfully requests as follows:

1. That process be issued and Defendants be made to appear and answer;

2. A declaration that the City of Memphis Home Rule Charter, as amended by Referendum Ordinance 4346 and approved by the voters on November 5, 1996, complied with Article XI§ 9 of the Tennessee Constitution;
3. A declaration that the City of Memphis Home Rule Charter, as amended by Referendum Ordinance 4346, approved by Memphis voters on November 5, 1996, removed from the Charter the five (5) year durational residency requirement;
4. A declaration that the City of Memphis Home Rule Charter, as amended by Referendum Ordinance 4346 and approved by Memphis voters on November 5, 1996, does not contain a durational residency requirement to be eligible to run for the office of Mayor;
5. A declaration that the Shelby County Election Commission 's requirement that candidates for the office of Mayor in the Memphis Municipal election scheduled for October 5, 2023, be a resident of the City of Memphis for five (5) years is unlawful and contrary to the City of Memphis Home Rule Charter;
6. A declaration that Plaintiff is a qualified candidate for the office of Mayor, in the Memphis Municipal Election on October 5, 2023;
7. A temporary injunction prohibiting Defendants from enforcing a five (5) year durational residency requirement for the office of Mayor in the Memphis Municipal Election on October 5, 2023;
8. A permanent injunction prohibiting Defendants from enforcing a five (5) year durational residency requirement for the office of Mayor; and
9. Any further relief in law and equity to which Plaintiff is deemed entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

Respectfully Submitted,

s/Darrell J. O'Neal

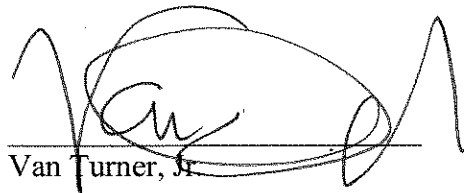
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DECLARATION

I, Van Turner, Jr. pursuant to Tenn. R. Civ. P. 72 do hereby declare that I have read the foregoing Complaint and verify under penalty of perjury that the facts contained therein are true and correct to the best of my knowledge, information and belief.

Pursuant to Tenn. R. Civ. P. 72, I declare, certify and state under penalty of perjury that the foregoing is true and correct.

FURTHER DECLARANT SAITH NOT.


Van Turner, Jr.

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Plaintiff,)
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)
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FIAT

TO THE CLERK AND MASTER:

Defendants shall appear on the _____ day of _____, 2023, at _____, _____.m. in Part _____ of the Chancery Court of Shelby County for a hearing on a Temporary Injunction as requested in the Complaint and show cause why a Temporary Injunction should not be issued.

This the _____ day of _____ 2023, at _____, _____.m.

CHANCELLOR

DATE: _____

TIME: _____