

**IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

TENNESSEE DEMOCRATIC PARTY and)
MARQUITA BRADSHAW FOR SENATE,)
Plaintiffs,)
v.)
MARK GOINS, Coordinator of Elections) No. _____
and TRE HARGETT, Secretary of State for)
the State of Tennessee, each in their official)
capacity for the State of Tennessee,)
Defendants.)

**MOTION FOR EXPEDITED HEARING, PRELIMINARY INJUNCTION, AND
PETITION FOR EXTRAORDINARY RELIEF**

Pursuant to Tenn. R. Civ. P. 65.04, *et. seq.*, the Tennessee Democratic Party (the “TNDP”) and the Marquita Bradshaw for Senate campaign respectfully moves this Court to enter an Order:

1. Directing Defendant Mark Goins and Tre Hargett to obtain and release or direct County Election Commission’s across the State of Tennessee to release information on absentee ballot requests and returns for the general election scheduled for November 3, 2020 (the “Election”) within an hour of entry of Order of this Court; and
2. Directing Defendants and any other persons in active concert or participation with them who receive actual notice of the Court’s order, from prohibiting, or directing others to prohibit, Plaintiffs and those similarly situated from receiving information concerning absentee ballots pursuant to Tenn. Code Ann. § 2-6-202(c)(6)

ARGUMENT

Due to the COVID-19 Pandemic, a large number of citizens of the State of Tennessee requested absentee ballots for the November 3, 2020 election. Under Tennessee law, Tenn. Code. Ann. § 2-6-202(c)(6), “information regarding absentee requests and applications shall be confidential and not subject to the open records law...until the end of the early voting period.” (emphasis added). Pursuant to Tenn. Code Ann. § 2-6-102, the early voting period for the State of Tennessee ended Thursday, October 29, 2020.

In accordance with State law and in an effort to increase voter participation, on Friday, October 30, 2020, Plaintiffs requested that Elections administrators for Tennessee’s 95 counties provide them with information of voters who were mailed absentee ballots and had not yet returned them to the respective election commission offices. Plaintiffs also made the same request to the Tennessee Secretary of State and the Division of Elections Coordinator Mark Goins on Friday, October 30, 2020 after the early voting period for the State of Tennessee ended. The Secretary of State’s office and its Division of Elections officials informed Plaintiffs that they would not provide information regarding absentee ballots that have not been received. More disturbingly, Defendants also instructed local county election administrators across the State of Tennessee to ignore the law and not provide Plaintiffs with the requested information.

Because the action of the Defendants and their blatant disregard for the law in the State of Tennessee, and in an effort to increase voter turnout and participation in our Nation’s most fundamental right, Plaintiffs now file this lawsuit. Under Tennessee law a plaintiff is entitled to a temporary injunction when:

[D]uring the pendency of an action...it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

Tenn. R. Civ. P. 65.04(2).

“The most common description of the standard for preliminary injunction in federal and state courts is a four-factor test: (1) the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest. *Denver Area Meat Cutters & Employers Pension Plan ex rel. Clayton Homes, Inc. v. Clayton*, 120 S.W.3d 841, 857 (Tenn. Ct. App. 2003).

Consistent with Tenn. Code Ann. § 2-6-202(c)(6), the Defendants are required to permit the inspection of absentee requests and applications. Under Tenn. Code Ann. § 10-7-503(a)(2)(B) Tenn. Code Ann. (B), these records now must be promptly made available for inspection as the Open Records Act commands that “[t]he custodian of a public record or the custodian's designee shall **promptly** make available for inspection any public record not specifically exempt from disclosure.” At the end of the early voting period, these absentee records became subject to a prompt inspection.

Plaintiff, United States Senate Candidate Marquita Bradshaw, will be irreparably harmed if the injunction is not granted because the Senate campaign will be unable to learn which absentee voters need not be bothered about returning their ballots, and which voters may need contact from the campaign and further information.

Plaintiff will prevail on the merits of this litigation because the verified complaint shows Plaintiffs are being barred from information they are lawfully required to obtain and they are being harmed as a result of Defendant’s failures to follow the law.

The balance of harms weighs in Plaintiff's favor given the timing and need for a quick resolution of the pending issues before the Court. The public interest also weighs heavily in favor of Plaintiff.

Counsel for Plaintiffs have emailed Mark Goins, counsel for Defendants, at 9:03 a.m. November 1, 2020; called by telephone; and have served all pleadings on Mark Goins, shortly thereafter.

Plaintiffs thus seek from the Court an order enjoining the Defendants to direct immediately all county election officials throughout the state to comply with the terms of Tenn. Code Ann. § 2-6-202(c)(6), and permit the immediate inspection of absentee records.

Dated: November 1, 2020

Respectfully submitted,

By: /s/ Benjamin A. Gastel
J. Gerard Stranch, IV (BPR #023045)
Benjamin A. Gastel (BPR #028699)
BRANSTETTER, STRANCH &
JENNINGS, PLLC
223 Rosa Parks Ave. Suite 200
Nashville, TN 37203
Telephone: 615/254-8801
Facsimile: 615/255-5419
gerards@bsjfirm.com
beng@bsjfirm.com

and

By: /s/ Alexander C. Wharton
Alexander C. Wharton (BPR #26937)
THE WHARTON LAW FIRM
Attorneys for Plaintiff
1575 Madison Ave.
Memphis, Tennessee 38104
Tel: (901) 726-6884
Fax: (901) 726-6844
alexanderwharton@thewhartonlawfirm.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 1, 2020, the foregoing document was served via electronic mail upon:

Janet M. Kleinfelter
Deputy Attorney General
Public Interest Division
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 741-7403
Janet.kleinfelter@ag.tn.gov

Attorney for Defendant Mark Goins and Tre Hargett

/s/ Benjamin A. Gastel
Benjamin A. Gastel