

applicants who filed a timely, but deficient, voter registration application will suffer irreparable harm absent extraordinary relief from this Court; 3) the balance of the harm to the aforementioned voter registration applicants in the loss of the right a) to receive statutory notice, b) to cure deficiencies and c) to ultimately exercise the right to vote, far outweighs the harm to the Shelby County Election Commission (“SCEC”) in responding to the relief ordered by this Court; and 4) the public interest is best served by protecting the constitutionally guaranteed and fundamental right to vote over allowing the use of a regulatory process to deny that right. The public deserves a regulatory process which permits this right to remain inviolate and which allows as many eligible voters as possible to freely and timely participate in the election process. The Court further finds that the petition seeks to enforce a significant constitutional right and concerns a matter of a public interest.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that the attached transcript of the Court’s findings of fact and conclusions of law (Exhibit A) are incorporated into, and made a part of, this order as if recited verbatim herein. Pursuant to Tennessee Rule of Civil Procedure 65.04 and Tennessee Code Annotated § 10-7-505, the Court hereby:

1. **DECLARES** that Tennessee Code Annotated § 2-2-109(a) requires that Defendants adopt and implement procedures to ensure that eligible voters who submitted timely but incomplete or deficient voter registration forms can cure any deficiency and, that, immediately upon the cure, the Administrator shall register the applicant to vote allowing for a vote on the electronic voting machines both during early voting and on Election Day;


2. **ORDERS** Defendants to adopt and implement procedures to ensure that eligible voters who submitted timely but incomplete or deficient voter registration forms can cure any deficiency and that, immediately upon the cure, the Administrator shall register the applicant to vote allowing for a vote on the electronic voting machines during early voting or on Election Day, as required by Tennessee Code Annotated § 2-2-109(a), in substantially the following form:

- a. A voter who is not on the list of registered voters at the voting check-in table shall be connected via telephone with the Shelby County Election Commission's central help desk.
- b. The help desk shall consult both the voter registration database and the alphabetized file of incomplete paper registration forms and attempt to locate the voter's voter registration form. If the voter is at the incorrect polling place, the voter shall be directed to the correct polling place.
- c. If the voter is eligible to vote and previously submitted a timely, but deficient, voter registration form, the help desk worker shall correct any deficiencies in the voter registration record and the voter shall complete a new voter registration form at the polling place, at which time the voter shall be registered to vote and the voter shall be entitled to vote on the voting machines.
- d. If the help desk worker is unable to locate any timely-submitted voter registration form for the voter, the voter will be given the opportunity to vote a provisional ballot. In such case, the SCEC will conduct a further review of available voter registration records during the provisional ballot counting process.

- e. If technological issues prevent the voter from communicating with the help desk, or if the voter has already been issued a mail ballot or already cast an in-person ballot during the election, the voter will be given the opportunity to vote a provisional ballot. In such case, the SCEC will conduct a further review of available voter registration records during the provisional ballot counting process.
 - f. As an alternative option to the help desk procedure, a voter who is not on the list of registered voters at the voting check-in table may voluntarily opt to complete a new voter registration form at the polling place and thereafter vote a provisional ballot. In such case, the voter shall be considered to have corrected his or her voter registration form, and the SCEC will conduct a further review of available registration records during the provisional ballot counting process to determine if the voter had previously submitted a timely voter registration application and is otherwise eligible to vote.
 - g. The SCEC shall staff the help desk with sufficient resources to minimize waiting time at the polling place.
3. **DECLARES** that the Defendants' failure to send notifications to all individuals who submitted a voter registration application, informing them of their voter registration status—including informing those individuals whose forms were deemed incomplete of their right to correct any incomplete voter registration forms before or on Election Day—violates Tennessee Code Annotated § 2-2-115(b)(3) and the right to procedural due process under Article I, Section 8 of the Tennessee Constitution;

4. **ORDERS** Defendants to send notice letters to all individuals who submitted a timely voter registration form and who have not yet been sent a notice letter, notifying them of their registration status and that those whose registration forms are incomplete may correct their incomplete forms at any early voting location or their assigned polling place on Election Day, as required by Tennessee Code Annotated § 2-2-115(b)(3);
5. **ORDERS** Defendants to provide Petitioners with a list or compilation of the names of all individuals whose timely-submitted voter registration forms were determined to be deficient and the reasons therefor no later than October 26, 2018, and, to the extent that Defendants continue to process voter registration forms and determine that such newly-processed forms are deficient, to supplement such list on a daily basis in a manner most convenient to the Administrator, for example, by simply emailing a supplemental list to Petitioners' counsel or by providing redacted copies of deficiency notice letters generated each day to Petitioners' counsel;
6. **ORDERS** the parties to work together in good faith to accomplish the statutory duties of the SCEC and the Administrator to register voters and administer the November 6, 2018 election pursuant to this Order with as little interference as possible in the daily responsibilities of the SCEC and the Administrator; and
7. **ORDERS** that because this Order is in the public interest, the requirement of the filing of a bond is set at \$250.00.

IT IS HEREBY ORDERED.


Chancellor Joe Dae Jenkins
Date: 10/27/2018
Nunc Pro Tunc: 10/25/2018 @ 3:46 p.m.

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
30TH JUDICIAL DISTRICT, MEMPHIS

THE TENNESSEE BLACK VOTER
PROJECT, THE NATIONAL
ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE MEMPHIS BRANCH, HOPE
OSEDO, BENJAMIN A. GASTEL,

Petitioners,

v.

SHELBY COUNTY ELECTION
COMMISSION, LINDA PHILLIPS, IN
HER OFFICIAL CAPACITY AS THE
ADMINISTRATOR OF ELECTIONS OF
SHELBY COUNTY; ROBERT MEYERS,
IN HIS OFFICIAL CAPACITY AS THE
CHAIR OF THE SHELBY COUNTY
ELECTION COMMISSION,

Defendants.

Case No: CH-18-1476

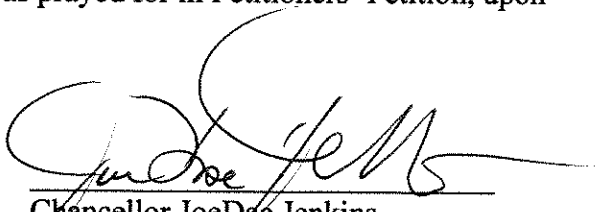
Chancellor JoeDae Jenkins

FIAT

TO THE CLERK OF THIS COURT:

Issue the Injunction in the attached Order, as prayed for in Petitioners' Petition, upon
bond being given in the amount of \$250.00.

DATE: October 27, 2018


Chancellor JoeDae Jenkins

Nunc Pro Tunc: 10/25/2018 @ 3:46 p.m.

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2018, the foregoing was delivered via email and U.S. Mail to the following:

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Deputy Clerk/Court Clerk

1 IN THE CIRCUIT COURT OF TENNESSEE
2 FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

3 THE TENNESSEE BLACK VOTER PROJECT,))
4 THE NATIONAL ASSOCIATION FOR THE)
5 ADVANCEMENT OF COLORED PEOPLE)
6 MEMPHIS BRANCH, HOPE OSEDO,)
7 BENJAMIN A. GASTEL,)
8)
9 Plaintiffs,)

10 VS.) NO. CH-18-1476

11 SHELBY COUNTY ELECTION COMMISSION,))
12 LINDA PHILLIPS, IN HER OFFICIAL)
13 CAPACITY AS THE ADMINISTRATOR OF)
14 ELECTIONS OF SHELBY COUNTY; ROBERT))
15 MEYERS, IN HIS OFFICIAL CAPACITY)
16 AS THE CHAIR OF THE SHELBY COUNTY)
17 ELECTION COMMISSION,)
18)
19 Defendants.)

20 RULING OF THE COURT
21 OCTOBER 25, 2018
22 HONORABLE JOEDAE JENKINS

23 BE IT REMEMBERED, that the above-captioned
24 cause came on to be heard, on this, the 25th of
25 October, 2018, beginning at approximately 11:00
26 a.m., before the HONORABLE JOEDAE JENKNS, Chancellor
27 presiding, when and where the following proceedings
28 were had, to-wit:

29 ALPHA REPORTING CORPORATION
30 236 Adams Avenue
31 Memphis, TN 38103
32 901-523-8974

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1 A P P E A R A N C E S

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1 RULING OF THE COURT

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3 THE COURT: All right. The Court has
4 considered the arguments of counsel, the testimony
5 of Ms. Phillips, memorandums submitted by the
6 parties, the amended complaint, which is a complaint
7 for declaratory and injunctive relief to obtain
8 public records.

9 The Court is mindful of the time is of the
10 essence in this particular case, and that the
11 election is right upon us. That being November the
12 6th, 2018.

13 It appears to the Court that the Tennessee
14 Black Voters Project and others, including Hope
15 Osedo, O-S-E-D-O, have charged the defendants that
16 they provided them with voter registration
17 applications for processing. The sheer volume of
18 the applicants was nearly 40,000 applicants and
19 overwhelmed the executive staff of the Shelby County
20 Election Commission.

21 The administrator, in response, hired
22 temporary trained staff to address that problem.
23 Still, the task remains uncompleted. The
24 administrator testified that the task of processing

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1 the application will be complete on or about
2 November the 1st, 2018. In the meanwhile, 4 to
3 6,000 applicants are not processed, and they have
4 not been notified as of the status of their
5 application and any reason, if any, for the
6 nonissuance of a voter registration card.

7 The plaintiffs assert that the registrants
8 are in jeopardy of being disenfranchised as they
9 have no opportunity to cure any deficiency which may
10 exist prior to November the 1st, 2018, at which time
11 the defendant would allow them to vote only by way
12 of provisional ballot as opposed to the use of a
13 traditional ballot.

14 Plaintiff further argues that this
15 procedure violates the due process rights of the
16 qualified registrants who timely filed a
17 registration application, but that had deficiencies
18 and that they have no opportunity to cure the
19 deficiency and to vote a traditional ballot.

20 The defendant argues that it does not
21 matter, because the votes for the traditionally and
22 provisionally are the same and will be counted the
23 same. However, the defendant overlooks the rights
24 guaranteed to the registrants by Tennessee Code

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1 Annotated 2-2-109 that the right -- that the
2 registrants have the right to be notified of a
3 deficiency and the opportunity to cure the
4 deficiency and the affirmative duty of the
5 administrator to register the person to vote if they
6 are otherwise qualified.

7 In that same statute, 2-2-109, the
8 provision limiting the administrator to updating of
9 the registration until no later than five days
10 before the election appears to relate to existing
11 registrations who have submitted a change of
12 address. This provision may apply to those
13 registrants who were previously on the voter
14 registration listing and have now filed an
15 application using a new address. It is not a
16 limiting provision otherwise.

17 Defendant also argues further, that the

18 procedure to be utilized in this instance is
19 Tennessee Code 2-7-112. And further submits to the
20 Court that this is the procedure suggested by the
21 coordinator of elections. This statute applies,
22 though, if a person claims to be properly registered
23 and eligible to vote at a precinct, but whose
24 eligibility cannot be determined on the computer

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1 list or by registration cards at the County Election
2 Commission, or an official asserts the person is
3 ineligible to vote. Tennessee Code 2-7-112.

4 The Court is of the opinion that this is
5 not the procedure envisioned by the legislature for
6 otherwise qualified registration applicants who
7 filed timely but whose application was deficient.
8 Tennessee Code 2-2-109 allows the applicant to file
9 a corrective application or action on or before the
10 regularly scheduled November general election. In
11 this case, November 6th, 2018. The statute
12 requires, then, the administrator to register the
13 applicant.

14 Failure to provide the applicant with
15 notice that there is a deficiency denies them of due
16 process rights under the law. Moreover, if the

17 applicant is never notified and the registration is
18 not corrected by the November general election, by
19 statute the application is then considered void. So
20 that on 11/6/18, if the correction is not made
21 according to the statute, the application is void.

22 Now considering the relief requested. The
23 plaintiff has established that certain applicants
24 are in jeopardy of being disenfranchised as provided

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1 by the law. The provisional process is an
2 alternative process which voters may elect not to
3 pursue due to its very nature causing what may be a
4 chilling effect on the voting process. The
5 plaintiff has established irreparable harm. The
6 plaintiff has established that there's a likelihood
7 of success on the merit if the applicants have minor
8 deficiencies that can be easily corrected. The harm
9 to the applicants in this case far outweighs the
10 harm to the Shelby County Election Commission in
11 requiring it to afford the plaintiffs the relief
12 that this Court will order.

13 Finally, the public interest is best
14 served and supported by a process which allows for

15 as many voters as possible to freely and timely
16 participate in the election process. Both parties
17 suggested that Tennessee is on the bottom rung of
18 voter participation. The Court's ruling will
19 facilitate, hopefully, an increase in voter
20 participation. Voter registration is a key
21 component to a viable election process.

22 The plaintiff has requested the defendant
23 employ the help desk process with respect to the 4
24 to 6,000 unidentified applicants. The Court will

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1 grant this request and require the attorneys to
2 provide the process in sufficient detail to become a
3 part of this order. Additionally, beginning October
4 26th, 2018, the defendant shall on a daily basis
5 provide the plaintiffs with a list of 4 to 6,000
6 applicants processed.

7 The defendants shall further -- further,
8 the defendants shall notify each processed applicant
9 immediately of the status and the reason for the
10 nonissuance of a voter registration card.

11 The Court's ruling does not require it to
12 invalidate Tennessee Code 2-7-112. The Court does
13 not see that that provision applies to the instant

14 facts, nor does the Taylor case apply to this
15 particular set of facts.

16 I hope that is as clear as I can possibly
17 make it. Do you have any questions?

18 MR. RYDER: No. That's right. Thank you,
19 Your Honor.

20 THE COURT: I'm going to need you all to
21 work together to come up with some language that
22 does not tie the hands of the administrator. She
23 has her hands full with this election, so you all
24 need to help her as much as possible with a process,

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1 or with the process that she has and not encumber
2 what she's attempted to do. Her primary job is to
3 make sure that this election goes off with as few
4 hitches as possible, and I believe that she's going
5 to do just that if we assist her in every way that
6 we can possibly assist her.

7 MR. RYDER: Your Honor, in terms of
8 presenting the order to the Court, I know you've had
9 some scheduling issues. How can we do that so that
10 we can get the order to the Court as soon as
11 possible?

12 THE COURT: When will you have it?

13 MR. RYDER: Tomorrow morning.

14 THE COURT: Then I will make arrangements
15 for a signature.

16 MR. RYDER: I mean, we can submit -- we're
17 happy to submit it any way --

18 THE COURT: You'll probably need to submit
19 it to me electronically, and then I will go over it.

20 MR. RYDER: Okay.

21 THE COURT: I'm particularly interested in
22 how you're going to word the language on the
23 administrator providing with the daily updates. And
24 the reason I'm requiring that is so that plaintiffs

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1 can go ahead and notify these people so that they
2 can come in, and then make whatever corrections
3 there are to be made. But I don't want it to be
4 language that's going to interrupt the
5 administrator's office. So we have to be careful
6 about how we draft that, that particular process.
7 Am I becoming muddier now?

8 MR. RYDER: No, I think we can -- we can
9 craft appropriate language.

10 THE COURT: Thank you so much.

11 MR. WHARTON: Thank you, Your Honor.

12 (THE PROCEEDINGS CONCLUDED AT 3:46 p.m.)

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1 C E R T I F I C A T E

2 STATE OF TENNESSEE)

)

3 COUNTY OF SHELBY)

4

I, SHERI ALLEN, LCR #492, Licensed Court Reporter, in and for the State of Tennessee, do hereby certify that the above proceeding was reported by me, and the transcript is a TRUE and accurate record to the best of my knowledge, skills, and ability.

8 I further certify that I am not related to nor an employee of counsel or any of the parties to

9 the action, nor am I in any way financially
interested in the outcome of this case.

10

11 I further certify that I am duly licensed by
12 the Tennessee Board of Court Reporting as a Licensed
Court Reporter as evidenced by the LCR number and
expiration date following my name below.

13 I further certify that this transcript is
14 the work product of this court reporting agency and
any unauthorized reproduction and/or transfer of it
15 will be in violation of Tennessee Code Annotated
39-14-104, Theft of Services.

16

17

Sheri Allen, LCR #492
Expiration Date 6-30-2020
ALPHA REPORTING CORPORATION
236 Adams Avenue
Memphis, Tennessee 38103

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