

COPY

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

ROBERT DIONNE O'NEAL,

Plaintiff,

v.

MARK GOINS, individually and in his
official capacity, and TENNESSEE STATE
ELECTION COMMISSION,

Defendants.

No.

15-373-TII

COMPLAINT

Comes the Plaintiff, ROBERT DIONNE O'NEAL, individually and as a representative of a class of similarly situated persons, and for a cause of action would show and state as follows:

1. Plaintiff is a citizen and resident of Marshall County, Tennessee, whose citizenship rights were fully restored by judicial order pursuant to Tenn. Code Ann. § 40-29-101 et seq., in an order in the matter of In re O'Neal, which order was entered on October 6, 2014 and became final on Wednesday, November 5, 2014. No appeal of this order was timely filed.

2. Defendant Mark Goins is a citizen and resident of the State of Tennessee and is the coordinator of elections appointed by Tre Hargett in his official capacity as Tennessee Secretary of State to serve at Mr. Hargett's pleasure as the chief administrative election officer of this state, as defined in and provided by Tenn. Code Ann. § 2-11-201. Defendant Goins is sued in his individual and official capacities and may be personally served at the offices of the Tennessee State Election Commission at 312 Rosa L. Parks Avenue, Snodgrass Tower, 7th Floor, Nashville, TN 37243.

3. Defendant Tennessee State Election Commission (hereinafter "state election commission") is an agency of the State of Tennessee created by title 2, chapter 11 of the

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Tennessee Code. Its official place of business is defined by statute as Davidson County, Tennessee and it may be served as provided by Tenn. R. Civ. P. 4.04 (6) upon the Attorney General of the State of Tennessee, Herbert H. Slatery, III, or any assistant attorney general found at 425 Fifth Avenue North, Nashville, TN, 37243.

4. Defendant Goins, in his capacity as coordinator of elections, has the statutory duty pursuant to Tenn. Code Ann. § 2-11-202 (d) to “authoritatively interpret the election laws for all persons administering them,” including but not limited to the county election commissions of the state of Tennessee.

5. Upon information and belief, Defendant Goins in his official capacity is the official responsible for the state election commission office maintained in Nashville, Tennessee and responsible for the conduct of the employees and agents of that office as to their actions under the color of law via the auspices of the state election commission and the oversight of Goins as coordinator of elections and individually.

6. This Court has jurisdiction over this action and all parties thereto as individual citizens of the state of Tennessee or state officials thereof, and venue is proper in Davidson County pursuant to Tenn. Code. Ann. § 4-4-104 and because the actions of Defendants as to which Plaintiff complains and seeks declaratory relief occurred in Davidson County pursuant to that statute.

7. Upon information and belief, the procedures and policies propounded by Defendant Goins and/or Defendant State Election Commission to the county election commissions and other subsidiary election commissions (hereinafter generally “the local election commissions”) throughout the State of Tennessee require such local election commissions to submit judicial orders restoring rights of citizenship including the right to vote issued pursuant to

Tenn Code Ann. § 40-29-101 et seq to the Defendants as part of the procedure to remove such individuals from the lists of ineligible voters and restore them to the voting rolls, and do not permit the local election commissions to restore individuals whose citizenship rights have been restored as described in this paragraph to the voting rolls or remove them from the lists of ineligible voters without the approval of Defendants, pursuant to Defendant Goins' interpretation of title 40, chapter 29 and its effect and his authority in his official capacity as Coordinator of Elections to authoritatively interpret that law for those local election commissions.

8. Plaintiff asserts upon information and belief that the local election commissions are attempting to comply with their statutory duties and are not willfully failing to obey judicial restoration of citizenship orders requiring them to restore individuals to the voting rolls and remove them from lists of ineligible voters, but are instead unable to do so due to the actions of the Defendants under color of state law forbidding them to obey such orders. Plaintiff reserves the right to join any such local election commission in this action whose joinder as a party is deemed necessary by this Court.

9. Plaintiff seeks declaratory relief as to the class of all persons whose citizenship rights have been restored by judicial order pursuant to Tenn. Code Ann. § 40-29-101 et seq. but who have not been restored to the voting rolls due to the refusal of Defendants to recognize or obey said judicial orders by so restoring them or permitting them to be restored to the voting rolls by the local election commissions.

10. Plaintiff has individual standing to maintain this action due to the Defendants' refusal to obey the judicial order requiring the state election commission to restore him to the voting rolls.

11. Plaintiff has standing as the representative party to a class action pursuant to Tenn. R. Civ. P. 23.01 because the class is, upon information and belief, too large to make joinder of all members practical; the issues of law are identical as to Plaintiff and all similarly situated persons inasmuch as they require judicial interpretation of an ambiguous statute applying equally to all such similarly situated persons; the claim of Plaintiff is representative of the claims of the entire class as Plaintiff seeks restoration to the voting rolls denied to him and similarly situated persons which is, upon information and belief, the official or unofficial policy of the state election commission of disregarding judicial orders because it feels it has the authority to determine whether such order is enforceable without seeking relief from the issuing court or appeal; and Plaintiff's representation will fairly and adequately represent the interests of the class inasmuch as resolution of the statutory ambiguity will affect all members of the class the same way.

12. Attempts to obtain public records allowing Plaintiff to ascertain the actual size of the class have been refused by the Defendants through Mark Goins in his official and individual capacities, despite being made in accordance with the relevant laws governing the release of public records. The class consists of no less than two (2) identifiable persons. The actual size of the class may be determined in discovery or upon compliance by Defendants with legal requests for public records allowing Plaintiff to so determine which have not as of the date of filing been answered in the manner required by law.

13. Plaintiff may further represent the class identified *supra* pursuant to Tenn. R. Civ. P. 23.02 (1) because the prosecution of separate actions by members of the class creates a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the state election commission and/or the coordinator of elections; because the state election

commission and the coordinator of elections opposing the class have refused to act on grounds common to the whole class, making final injunctive and declaratory relief appropriate as to the whole class, and/or in the alternative, because the common question of law regarding the authority of the Defendants to override final judicial orders by fiat predominate over any question affecting an individual member and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

14. Plaintiff, individually and as representative of the class identified *supra*, seeks declaratory relief as to the interpretation of title 40, section 29 of the Tennessee Code as set forth herein, *infra*; injunctive relief requiring Defendants to enforce judicial restoration of citizenship orders which restore a person's right to vote by restoring them to the rolls without undue delay; and contempt against those person(s) who have willfully refused to enforce the order restoring his citizenship rights so as to deter repetition of the conduct, as well as contempt and sanctions for all other persons similarly situated.

15. Plaintiff asserts, individually and as part of a class, that there is or is alleged to be a statutory ambiguity requiring resolution by this Court as to the Defendants' power to refuse to obey or permit local election commissions to comply with a final judicial order restoring the rights of citizenship to an individual issued pursuant to Tenn. Code Ann. § 40-29-101 *et seq.*, and whether Tenn. Code Ann. § 40-29-201 limits in any way the ability of the circuit court to restore "full rights of citizenship" pursuant to Tenn. Code Ann. § 40-29-101 (a) or permits a secondary approval process by the Defendants before they obey such judicial orders.

16. Tenn. Code Ann. title 40, chapter 29 provides two (2) procedures related to restoration of citizenship: a petition to the circuit court for restoration of citizenship rights including but not limited to the right to vote prescribed by Tenn Code Ann. § 40-29-101 *et seq.*,

or an administrative procedure for restoration of voting rights only subject to approval of an administrative application by the state election commission, as prescribed by Tenn. Code Ann. § 40-29-201 *et seq.*

17. The standards for restoration of citizenship rights by the circuit courts, including exclusion of certain felons from eligibility *ab initio* for a defined class of offenses, the petitioner's burden of proof to establish eligibility for restoration by providing certain character evidence, and giving the state of Tennessee, through the district attorney's office, the opportunity to object to and defend against the restoration of any individual's citizenship, are set forth in Tenn Code Ann. § 40-29-101 *et seq.*

18. The standards for restoration of voting rights only through an administrative application process, including the class of felons eligible for administrative voting rights restoration and the necessary documents to be submitted with the application, are set forth in Tenn. Code. Ann. § 40-29-201 *et seq.*

19. The standards, including the class of felons, eligible for restoration of voting rights only under section 201 *et seq.*, are discrete and significantly different than the standards prescribed for consideration by the circuit courts in adjudication of petitions for restoration of full citizenship rights under section 101 *et seq.*

20. Tenn Code Ann. § 40-29-101 (a), governing the jurisdiction of the circuit courts over judicial restoration of citizenship rights, provides that “[p]ersons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court **may have their full rights of citizenship restored by the circuit court.**” (emphasis added).

21. Tenn. Code Ann. § 40-29-201 (a) provides, regarding administrative restoration of voting rights only, that “[t]he provisions and procedures of this part shall apply to and govern

restoration of the right of suffrage in this state to any person who has been disqualified from exercising that right by reason of a conviction in any state or federal court of an infamous crime.” Tenn. Code Ann. § 40-29-201 (c) adds “[t]his part shall apply only to restoration of the right of suffrage. For restoration of all other rights of citizenship forfeited as the result of a conviction for an infamous crime, part 1 of this chapter shall apply.”

22. Upon information and belief, when the local election commissions carry out their duty to submit the names of persons whose rights of citizenship have been restored by judicial order pursuant to Tenn. Code Ann. § 40-29-101 *et seq* to the Defendants so that those persons may be restored to the voting rolls, Defendants routinely refuse to obey all such judicial orders upon receipt by restoring such persons to the voting rolls in compliance with those orders or permitting the local election commissions to do so.

23. Instead, upon information and belief, when notified by local election commissions of judicial orders issued pursuant to Tenn. Code Ann. § 40-29-101 *et seq.* requiring restoration of an individual to the voting rolls due to judicial restoration of citizenship, Defendants conduct a second “investigation” to determine whether a person entitled by court order to restoration owes any fines, restitution, or child support. Defendants refuse to obey such judicial orders and restore persons to the voting rolls when their inquiries show that such fines, restitution or child support are owed, despite the person’s vested right to restoration to the voting rolls in a valid and final judicial order restoring their citizenship rights. This “investigation” does not permit the participation of the individual so investigated. There is no hearing or appeal for an affected individual from Defendants’ decisions as to whether or not to obey judicial orders restoring citizenship rights and requiring individuals to be restored to the voting rolls.

24. Upon information and belief, Defendants base their refusal to obey judicial orders restoring full rights of citizenship and imposing upon Defendants the duty to restore Plaintiff and similarly situated persons to the voting rolls on Defendant Goins' interpretation of Tenn. Code Ann. § 40-29-201 as either limiting the power of a circuit judge to restore full rights of citizenship pursuant to Tenn. Code Ann. § 40-29-101 *et seq.*, or as giving Defendants the right to go outside the four corners of an order issued pursuant to Tenn. Code Ann. § 40-29-101 *et seq.* and refuse to enforce it.

25. Upon information and belief, the refusal of Defendants to comply with judicial orders as described herein is based on Defendant Goins' interpretation of Tenn. Code Ann. § 40-29-201 as removing or limiting the power of a circuit court to make a final determination as to the restoration of voting rights and/or vesting in Defendants the right to conduct a secondary investigation after such a court has issued a final order to determine whether in their sole discretion such a judicial order is valid.

26. Defendant Goins makes this interpretation authoritatively as to all local election commissions pursuant to Tenn. Code Ann. § 2-11-202 (4). All local election commissions are bound by his interpretation. Upon information and belief, Defendants have never sought declaratory relief to determine whether Defendant Goins' interpretation permitted them to disregard final judicial orders.

27. Tenn. Code Ann. §§ 40-29-101 and 40-29-201 (a) and (c) create, or are alleged to create, a statutory ambiguity wherein section 101 gives the circuit court the right to restore full rights of citizenship, which include the right to vote according to well-settled precedent, but section 201, subsections (a) and (c), which limit the availability of the administrative procedure to restoration of voting rights only, suggest that the "full" rights of citizenship which may be

restored by the circuit courts upon petition now exclude the right to vote unless the person whose full citizenship rights are judicially restored also qualifies under the administrative procedure section that allows administrative restoration of voting rights only.

28. Plaintiff asserts that the rights of the circuit court to restore full rights of citizenship as provided in Tenn. Code Ann. § 40-29-101 using the procedure outlined in Tenn. Code Ann. § 40-29-101 et seq. are not limited by Tenn. Code Ann. § 40-29-201 et seq., but that Tenn. Code Ann. § 40-29-201's provisions regarding the right of suffrage simply limit the use of the administrative procedure described therein to restoration of voting rights, requiring other rights of citizenship, such as the right to run for and hold public office, to be restored by petition to the circuit court in all cases.

29. Plaintiff asserts that Tenn. Code Ann. § 40-29-201's provisions regarding the right of suffrage do not deprive the circuit courts of the jurisdiction or authority to restore "full" rights of citizenship, including voting rights, and to order that such a person be restored to the voting rolls upon successful petition for restoration, and that the remedy of the State if it feels such restoration was in error is timely appeal of the order of the circuit court through the district attorney, not a secondary investigation and determination conducted by Defendants as to the person's eligibility to vote, with no transparency, due process or right of appeal as to Defendants' determination.

30. Defendant State Election Commission is an arm of the state of Tennessee (hereinafter "the State") and Defendant Goins in his official capacity as state election coordinator is an agent of the State.

31. The State is represented in petitions for restoration of citizenship by the office of the district attorney, as provided in Tenn. Code Ann. § 40-29-103. The district attorney may raise

on the State's behalf any valid objection the State wishes to pose to judicial restoration of citizenship rights, including the facts which Defendants take upon themselves to investigate with the cooperation of the State Attorney General before choosing which final judicial orders requiring Defendant State Election Commission to restore persons to the voting rolls the Defendants feel apply to the Commission, a policy upon information and belief propounded by Defendant Goins as described herein.

32. In the specific case of Plaintiff, the State waived all objections to the restoration through the district attorney empowered to make such decisions and did not appeal the subsequent decision of the circuit court to restore Plaintiff's full citizenship rights prior to its becoming final.

33. Instead, Defendants' conduct provides the State with two bites at the apple: the opportunity to defend against and object to judicial restoration of total or partial citizenship rights by the district attorney, who is solely vested with the right to object on behalf of the State by operation of Tenn. Code Ann. § 40-29-103, and then, once the matter has been adjudicated in favor of the petitioner requesting restoration, a second opportunity for Defendants, acting as agents of the State who was represented in the underlying action, to simply refuse to follow a court order requiring it to restore a successful petitioner to the voting rolls, based on facts the State could have raised through the district attorney as relevant to the judicial determination of fitness for restoration of citizenship rights if the State so chose.

34. Plaintiff asserts, individually and as part of a class, that he is entitled to a declaratory judgment that Tenn. Code Ann. § 40-29-201 (a) and (c) do not limit the power of the circuit court under Tenn. Code Ann. § 40-29-101 (a) to restore full rights of citizenship, including the right to vote, to petitioners seeking such restoration under Tenn. Code Ann. § 40-

29-101 *et seq.* and that Tenn. Code Ann. § 40-29-201 *et seq.* provide no basis for Defendants to require or conduct a secondary investigation into the background of a person whose rights of citizenship have been restored by judicial order pursuant to Tenn. Code Ann. § 40-29-101 *et seq.* prior to obeying the requirement of such judicial orders that persons be restored to the voting rolls due to judicial restoration of citizenship pursuant to Tenn. Code Ann. § 40-29-101 *et seq.*

35. Plaintiff asserts, individually and as part of a class, that Defendant's refusal to restore him and all similarly situated persons to the voting rolls following the issuance and receipt of final judicial orders requiring such restoration as part of an adjudicated restoration of citizenship rights under Tenn. Code Ann. § 40-29-101 *et seq.* violates the United States Constitution and the Tennessee State Constitution inasmuch as the Defendant, part of the executive branch of government, is refusing to recognize valid and final orders of the judiciary requiring it to place on the voting rolls persons whose citizenship rights have been judicially restored and whose restoration of citizenship orders are final and not appealable unless they pass Defendants' private and independent investigation as to whether it believes the orders should be obeyed, violating the separation of powers doctrine.

36. Plaintiff asserts, individually and as part of a class, that Defendants are in civil contempt due to their willful failure to enforce final judicial orders requiring them to restore affected members of the class to the voting rolls and should be strongly sanctioned in whatever manner the Court determines will deter repetition for each and every such act of contempt, up to and including imprisonment of Defendant Goins until all persons eligible to vote due to judicial restoration of citizenship who have not been restored to the voting rolls. The Defendants' interpretation of Tenn. Code Ann. § 40-29-201 *et seq.* as giving them powers superior to both Constitutional separation of powers and the final orders of the Circuit Courts of the state of

Tennessee to refuse the right to vote to individuals who have a vested right to be reinstated to the voting rolls by the state election commission office, is entirely without merit.

37. The actions of Defendants in disregarding such judicial orders to conduct their own investigation prior to compliance with the orders of circuit courts are willful on the part of Defendants, and particularly Defendant Goins individually and in his official capacity as the person empowered to issue authoritative interpretations of state election laws to local election commissions. Said contempt has resulted in the unlawful deprivation of the Plaintiff and similarly situated persons' rights, and serious sanctions for the civil contempt of Defendants resulting in this deprivation of rights are required in order to deter such future conduct by Defendants, including Defendant Goins and his successors in office.

WHEREFORE, PETITIONER PRAYS:

1. That the Defendants be required to answer within the time provided by the Tennessee Rules of Civil Procedure; and
2. That this Court permit Plaintiff to represent a class of similarly situated persons as described herein; and
3. That this Court determine whether Tenn. Code Ann. §§ 40-29-101 and 40-29-201 create a statutory ambiguity regarding the ability of the circuit courts to restore full rights of citizenship and resolve any such ambiguity according to the principles of statutory construction and governing law; and
4. That this Court determine that Tenn. Code Ann. § 40-29-201 et seq., irrespective of any statutory ambiguity, do not give the Defendants the right to refuse to enforce final judicial orders requiring them to restore individuals to the voting rolls or to conduct a secondary investigation prior to enforcing such orders, pursuant to the separation of powers doctrine; and


5. That this Court hold the Defendants in civil contempt for their violation of the judicial order in In re O'Neal specifically requiring them to restore Plaintiff O'Neal to the voting rolls, as well as in civil contempt for all other final orders which they have disregarded as alleged herein; and

6. That this Court impose appropriate sanctions for the civil contempt of Defendants, including an award of monetary sanctions and/or imprisonment of Defendant Goins until such time as Plaintiff and all similarly situated persons are restored to the voting rolls; and

7. Any and all such other and further relief which the Court shall find reasonable and necessary.

Respectfully submitted this the 25 day of March, 2015,

McCLELLAN, POWERS, EHMLING
& ROGERS, P.C.



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COST BOND

We are surety for the costs of this cause.



ELIZABETH R. McCLELLAN