

IN THE CHANCERY COURT FOR DAVIDSON COUNTY
TWENTIETH JUDICIAL DISTRICT
THE STATE OF TENNESSEE

LEAGUE OF WOMEN VOTERS;)
ANNA CARELLA;)
NELLA P. FRIERSON;)
Plaintiffs,)

Case No.

vs.)

**FIRST APPLICATION FOR
EXTRAORDINARY RELIEF**

DAVIDSON COUNTY ELECTION)
COMMISSION; JEFF ROBERTS,)
in his official capacity)
as the Davidson County)
Elections Administrator;)
BILL LEE, in his official capacity as)
Governor of the State of Tennessee;)
TRE HARGETT, in his official capacity)
as Secretary of State)
of the State of Tennessee;)
MARK GOINS, in his official capacity)
as Coordinator of Elections)
for the State of Tennessee)
)
)
)
Defendants.)
_____)

COMPLAINT

I. Nature of the Action

1. This Complaint contends that hundreds, if not thousands, of Davidson County voters will be unable to vote in the State and Federal General Election on November 8, 2022, in which Davidson County voters will select their state and federal congressional representatives, due to Defendants' failure to issue correct ballots.
2. As confirmed by the Defendants Davidson County Election Commission and Jeff Roberts, 200 or more voters were already prevented from casting their ballot in the congressional district in which they reside due to being issued an incorrect ballot during early voting.¹ These voters' ballots will be counted in the race for the state and federal congressional districts in which they do not reside.²
3. Plaintiff and Plaintiff organization seek to assert their and their members' rights, as duly registered voters, to participate in all federal, state, and local elections held in the county or district in which they reside. Tenn. Const. Art. IV, §1. Issuance of incorrect ballots—that is, ballots to elect state and federal congressional representatives in districts in which the voter does not reside—constitutes a denial of the fundamental right of suffrage and is therefore unconstitutional. Tenn. Const. Art. I, §5.

¹ <https://www.tennessean.com/story/news/politics/2022/11/02/tennessee-election-2022-nashville-voters-wrong-ballots-7th-congressional-district/69611817007/>

² <https://www.newschannel5.com/news/some-voters-cast-wrong-ballots-in-split-nashville-district-officials-say>

4. Plaintiffs seek an emergency temporary injunction preventing the issuance of incorrect ballots and other such relief as the Court deems just and proper.

II. Jurisdiction and Venue

5. This Court has subject matter jurisdiction over this action pursuant to T.C.A. §16-11-101, et seq., as well as T.C.A. §§1-3-121, 29-1-101 and 29-14-101, et seq., and Tenn. R. Civ. P. 65.
6. This Court has personal jurisdiction over Defendants pursuant to T.C.A. §§20-2-222 and 20-2-223 on the grounds that their principal place of business is in Tennessee and that the wrongful conduct and resulting injuries alleged herein substantially occurred in Tennessee.
7. Venue is proper in this judicial district pursuant to T.C.A. §20-4-101(a) because the cause of action arose in Davidson County.

III. Parties

8. One Plaintiff is the League of Women Voters. The League of Women Voters of Tennessee (the “League” or “LWVTN”) is a non-partisan, non-profit corporation organized under laws of Tennessee, and a tax-exempt entity pursuant to sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. The League seeks to promote civic engagement through informed and active participation in government. It accomplishes this mission in part by empowering Tennesseans to vote. The LWVTN is a non-partisan organization and never supports or endorses political parties or candidates. The LWVTN is part of the League of Women Voters of the United States.

9. The LWVTN currently has 775 dues paying members, around 200 of which reside in Davidson County. The LWVTN has two arms—a 501(c)(3) organization called the League of Women Voters of Tennessee Education Fund and a 501(c)(4) arm, the former of which conducts most of its voter registration activities. The LWVTN is a volunteer organization, relying both on dues-paying members and other volunteers to conduct almost all its activities, other than two temporary consultants hired on a limited basis to help with advocacy during the legislative session and limited administrative support.
10. Anna Carella is a Plaintiff. She resides in Davidson County and is a registered voter. She voted early in the State and Federal General Election and was given the incorrect ballot—that is, a ballot for the U.S. Congressional District in which she does not reside.
11. Defendant Davidson County Election Commission is empowered by state law to conduct and oversee elections held in Davidson County. Tenn. Code Ann. §2-12-116.
12. Defendant Jeff Roberts is the Administrator of Elections for the Davidson County Election Commission. Under state law, he is responsible for “the daily operations of the office and the execution of all elections.” Tenn. Code Ann. § 2-12-201. His duties include, but are not limited to, “conducting of instruction class for poll workers,” Tenn. Code Ann. §2-12-201(6) and, upon request, assisting in redistricting, Tenn. Code. Ann. §2-12-201(17)(D).

13. Defendant Bill Lee is the Governor of the State of Tennessee and has a legal obligation to enforce the Constitution and laws of this State. Governor Lee is vested under Article III, §§1 and 10, of the Tennessee Constitution with “Supreme Executive power” and the duty to ensure that “the laws be faithfully executed.” As the chief executive officer for the State of Tennessee, Governor Lee has responsibility for ensuring that elections held in the state meet the requirements of the Tennessee Constitution and state laws and regulations. Governor Lee has an office located at State Capitol, First Floor, 600 Charlotte Avenue, Nashville, Tennessee 37243. Service on Governor Lee may be perfected by delivering a copy of the summons and complaint to the Attorney General or at his State office.

14. Defendant Tre Hargett is the Secretary of State of Tennessee. He is sued in his official capacity. He appoints the Coordinator of Elections, who is “the chief administrative election officer of the state” charged with “obtain[ing] and maintain[ing] uniformity in the application, operation and interpretation of the election code.” Tenn. Code Ann. § 2- 11-201(b). The Coordinator of Elections serves “at the pleasure of the secretary of state” and may only make regulations necessary to carry out the election code with “the concurrence of the secretary of state.” Tenn. Code Ann. §2-11-201(a).

15. Defendant Mark Goins is the Coordinator of Elections and the “chief administrative election officer of the state.” He is sued in his official capacity. The Coordinator is “the chief administrative election officer of the state” charged with “obtain[ing] and maintain[ing] uniformity in the application, operation and

interpretation of the election code.” Tenn. Code Ann. § 2-11-201(b); see also id. §§ 2-11-202, 2- 2-115. As Coordinator, Goins is also authorized to investigate or direct local authorities to investigate “the administration of the election laws.” Id. § 2-11-202(a)(5).

IV. Relevant Law

A. Tennessee Constitution’s Provisions Ensuring the Right to Vote

Article I, § 5 of the Tennessee Constitution provides:

The elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.

Article IV, § 1 provides in pertinent part:

Every person, being eighteen years of age, being a citizen of the United States, being a resident of the State for a period of time as prescribed by the General Assembly, and being duly registered in the county of residence for a period of time prior to the day of any election as prescribed by the General Assembly, shall be entitled to vote in all federal, state, and local elections held in the county or district in which such person resides. All such requirements shall be equal and uniform across the state, and there shall be no other qualification attached to the right of suffrage. The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box.”

V. Factual Allegations

16. Earlier this year, state lawmakers redistricted the geographical area containing

Metro Nashville, splitting up Tennessee’s former 5th U.S. Congressional District into three districts: the 5th, 6th, and 7th. Decl. of Stella Yarbrough, Ex. 1 and 2³

³ <https://www.tennessean.com/story/news/politics/2022/02/07/lee-signs-redistricting-bills-dividing-davidson-county/9245380002/>

17. Early voting for the State and Federal General Election in Davidson County began on Wednesday, October 19, 2022 at one location (the Howard Office Building) and then later expanded to include several locations starting October 25, 2022. Early voting concluded at all locations on November 3, 2022.⁴ Decl. of Yarbrough.
18. During this early voting period, hundreds of voters were given the wrong ballot. That is, voters were given a ballot to vote in the state and/or federal district in which they did not reside.⁵ *Id.*
19. Defendant Jeff Roberts stated to NewsChannel Five that, as of November 2, 2022, 190 voters were given incorrect ballots for the U.S. Congressional District races; six were given incorrect ballots in state House races; and 16 were given incorrect ballots in state Senate races.⁶ *Id.*
20. These early voters only represent a small fraction of voters who were misidentified and misclassified by Defendants. Many more voters from the affected precincts will vote on Election Day.
21. As a result, hundreds and possibly thousands of voters who vote on Election Day could receive the wrong ballot.

⁴ https://www.nashville.gov/sites/default/files/2022-08/Early_Voting_Schedule_NOVEMBER_8_2022.pdf?ct=1660944409.

⁵ <https://apnews.com/article/2022-midterm-elections-legislature-tennessee-nashville-9553e4e8966cf8196287aa914f0d7b4a>

⁶ <https://www.newschannel5.com/news/some-voters-cast-wrong-ballots-in-split-nashville-district-officials-say>

22. One such early voter, Anna Carella, was given the wrong ballot for the U.S. Congressional District when she voted at the Howard School Building on October 27, 2022. Decl. of Carella.
23. Ms. Carella lives at 1600 Haynes Meade Circle, Nashville, TN, 37202. *Id.*
24. The Tennessee State Comptroller’s website reports that Ms. Carella resides in U.S. Congressional District 7.⁷
25. However, a voter card issued by Defendant Davidson County Election Commission on April 1, 2022 lists Ms. Carella as being eligible to vote U.S. Congressional District 6.⁸ Decl. of Carella.
26. On October 27, 2022, when Ms. Carella appeared at the early voting location, she was given a ballot to vote in U.S. Congressional District 6, despite residing in District 7. ⁹ *Id.*
27. Ms. Carella was confused as to which ballot was correct and relied on the poll workers to select the correct ballot.¹⁰
28. On October 29, 2022, Ms. Carella checked a third source to determine which U.S. Congressional district she resided in. According to the Secretary of State’s website at that time, she resided in District 6. ¹¹ *Id.*

⁷Ibid

⁸ <https://www.newschannel5.com/news/some-voters-cast-wrong-ballots-in-split-nashville-district-officials-say>

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

29. As of November 3, 2022, however, Ms. Carella is listed by the Secretary of State's website as residing in District 7.¹² *Id.*
30. It is unclear how and when changes to the Secretary of State's website were made and whether other Davidson County residents' districts were updated or changed.
31. It is also unclear whether the Davidson County Election Commission or State Defendants have separately identified affected voters and whether their voter registration information has been updated to reflect the changes in U.S. Congressional districts.
32. On November 1, 2022, the Associated Press first reported that Davidson County election officials confirmed that some early voters, like Ms. Carella, were given ballots to the wrong congressional district—possibly due to a discrepancy between state and county maps.¹³ Decl. of Yarbrough.
33. As explained by Defendant Jeff Roberts, ballots cast in Davidson County are not traceable to the voters who cast them, meaning once a vote is cast, it cannot be withdrawn based on the identity of the voter.¹⁴ *Id.*
34. As a result, voters who were issued the wrong ballot have no recourse or ability to participate in the election for the district in which they reside. Their original ballot cannot be identified; therefore it cannot be withdrawn. Absent judicial intervention, voters are not able to cast a second, correct vote.

¹² *Ibid.*

¹³ <https://apnews.com/article/2022-midterm-elections-legislature-tennessee-nashville-95eb0aa188874f9cb223074917bf7943>

¹⁴ <https://www.wsmv.com/2022/11/03/voters-casting-ballots-wrong-district-wont-get-re-vote/>

VI. Cause of Action

CLAIM

(Violation of Tennessee Constitution, Article I, §5 and Article IV, §1)

35. Plaintiff incorporates all allegations of all preceding paragraphs as if fully set forth herein.
36. The right to vote is a fundamental right guaranteed by the Tennessee Constitution.
37. Defendants stand to deny the right to vote to voters in Davidson County, including Plaintiffs and members of Plaintiff's organization, by issuing incorrect ballots on election day which cannot be withdrawn or recast by voters.

VII. Requested Relief

38. Plaintiffs incorporate all allegations in all preceding paragraphs as if fully set forth herein. Plaintiffs request the following relief:
- a. That the Court enter an emergency temporary injunction, as asserted in the contemporaneously filed Motion with the specific remedies requested therein and incorporated here by reference;
 - b. That the Court enter a declaratory judgment that issuance of incorrect ballots to registered voters in Davidson County denies their right to vote;
 - c. That the Court appoint an independent auditor to investigate how this error occurred and that such findings of the auditor would be made publicly available;
 - d. That the Court grant such further relief as it may deem just and proper.

/s/ Stella Yarbrough
STELLA YARBROUGH

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been forwarded via electronic mail to the following this 4th day of November 2022. Plaintiff requests no further notice be required by this Court for good cause shown and supported by the Declaration of Stella Yarbrough [attached here], which details efforts to notify opposing counsel of the pending Motion and the emergent nature of the requested relief.

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