IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

Jenna Amacher,	)	Case No:
PETITIONER,	)	
v.	)	
State of Tennessee; Tre Hargett, Secretary of State; and the Tennessee Election Commission	)	
RESPONDENT,	)	

Memorandum of Law

Comes now the Plaintiff Jenna Amacher by and through Counsel in support of its motion for summary judgment asserts the following.

I. Case History

The Plaintiff, Jenna Amacher, is a duly elected Alderman in the city of Tullahoma since August of 2020. The Defendant, Tre Hargett, is the Secretaryof State of Tennessee and by virtue of his office and statutes, the Chief administrator of elections and election laws in Tennessee.

Specifically, Tennessee Code Annotated 2-13-208 prohibits partisan elections in municipalities, hereinafter called cities. The prohibition covers the offices of Mayor and alderman in cities. The statute allows cities to block partisan elections in their charter or to remain silent or to allow them. The Tullahoma charter is silent as to partisan elections.

A city cannot be allowed to prohibit a constitutionally protected activity anymore than a state can be allowed to do so.

The Plaintiff asserts that she is denied her freedom of speech under the first amendment of the United States Constitution, freedom of association under the first amendment of the United States Constitution, and equal protection clause of the United States. The equal protection clause of the United States Constitution. The equal protection clause of the United States is invoked because all other offices in the county are partisan.There can simply be no legal justification that meets a "compelling state interest" as described in Fong Eu v. San Francisco County. 109 s. Ct. 1013 (1989).

This memorandum has an extensive examination of standing, justiciability, ripeness and other procedural issues. The attached affidavits indicate that this statute is obeyed despite the interest of the Republican Party in fielding candidates for alderman and mayor in city elections.

The complaint is based on 42 USC 1983 violation of civil rights by a state actor that precludes exercise of the Plaintiff's First and Fourteenth amendment rights.

II. Material Undisputed Facts

For purposes of this motion these material facts are undisputed:

Material Fact 1: Jenna Amacher is an elected member of the Tullahoma Board of Mayor and Alderman having been elected in August 2020.

Material Fact 2: Based on Affidavit 1 of Jenna Amacher the Plaintiff was and is precluded from running in a primary election as a member of the Republican Party.

Material Fact 3: Jenna Amacher, Plaintiff, was a candidate in the April 2018 Republican Primary for Coffee County Clerk.

Material Fact 4: The Coffee County Republican Party (see attached Affidavit 2) would conduct a primary for city offices (Mayor and Alderman) if not for T.C.A. 2-13-208.

III. Applicable Legal Standard

Summary judgment is proper only when the pleadings and evidence viewed in a light most favorable to the nonmoving party, illustrate that no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a),(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A fact is deemed "material" if resolving that fact in law." Anderson v. Liberty Lobby, Inc., 477 U.S. at 322; Moore v. Philip Morris Cos., Inc., 8 F. 3d 335, 339 (6th Cir. 1993).

Once the motion is properly supported with competent evidence, the nonmovant must show that summary judgment is inappropriate by setting forth specific facts showing there is a genuine issue for trial. Celotex, 477 U.S. at 323; Anderson, 477 U.S. at 249. If the "evidence is such that a reasonable jury could return a verdict for the nonmoving party,"then there is a genuine dispute as to a material fact. Anderson. 477

U.S. at 248. If no proof is presented, however, the Court does not presume that the nonmovant "could or would prove the necessary facts." Little v. Liquid Air Comp., 37 F.3d 1069, 1075 (5th Cir.1994)(citing Lujuan v. Nat'l Wildlife Fed'n., 497 U.S. 871, 889 (1990).

The very purpose of summary judgment is to "pierce the pleadings and assess the proof in order to see whether there is a genuine issue for trial." Advisory Committee Note to the 1963 Amendments to Rule 56. Indeed, "the amendment is not intended to derogate from the solemnity of the pleadings (;) rather, it recognizes that despite the best efforts of counsel to make his pleadings accurate, they may be overwhelmingly contradicted by the proof available to his adversary." Id. The non-moving party (the plaintiff in this case), must come forward with proof to support each element of his claim. The plaintiff cannot meet this burden with some metaphysical doubt as to the material facts," Matt Suschita, EOS Industry v. Zenith Radio Corporation 475 U.S. 574, 586 (1986), "conclusory allegations" Lu Juan, 497 U.S. at 888, or by mere scintilla of evidence, Anderson 477 U.S. at 252. It would undermine the purposes of summary judgment if the parties could defeat such a motion simply by replacing conclusory allegations of the complaint or answer with conclusory allegations of an affidavit." Lu Juan, 497 U.S. at 888. Therefore, in considering a motion for summary judgment the court must determine whether the nonmoving parties allegations are plausible. Mat Suchieda 475 U.S. at 586. "Determining whether a complaint states a plausible claim for relief is context specific requiring the review in court to draw on its judicial experience and common sense." Ashcroft v. Iqbal 556 U.S. 662 to 679 (2009) (discussing plausibility of a claim to survive a motion to dismiss under F.R.C.P Rule 12.

In considering a motion for summary judgment, once the court has determined the relevant set of facts and drawn all inferences in favor of the nonmoving party to the extent supportable by the record, the ultimate decision becomes a pure question of law." Scott v. Harris 550 U.S. 372-381 (2007). When opposing parties tell two different stories, one of which is blatantly contradicted by the record so that no reasonable jury could believe it, a Court should not adopt that version of the facts for purposes of ruling on the motion for summary judgment. Id at 380. Morelock v. Richardson, 1:18-CV-76-DCLC-CHS, 2020 WL 4060774, at *1-2 (E.D. Tenn. July 20, 2020).

IV. The Circuit and Supreme Court precedent regarding political speech and candidates.

The case that is centered on the plaintiff's claim and motion for summary judgment in Fong En v. San Francisco County Democratic Central Committee 1096 S. Ct. 1013 (1989). This Supreme Court case opinion written by Justice Marshall struck down a California statute that precluded political parties from endorsing candidates in their own primary if also regulated composition of committees, chairmen of terms and other organizational restrictions were included. The most invasive and restrictive portion of the code provided that the parties governing bodies shall not endorse, support, or oppose any candidate for nomination by that party for partisan office in the direct primary office."

The opinion of the 9th Circuit Court of Appeals dealt with and disposed of the procedural issues likely to be raised in this case by the state.

1. The Plaintiff's case is non-justiciable and thus a federal court under Article III of the U.S. Constitution would lack the power to adjudicate the case.
2. Plaintiff's lack standing to bring the case.
3. The action is barred by the Eleventh Amendment.
4. The Court should abstain from hearing the case under the Pullman Doctrine.

Issue One

Article III limits the exercise of federal judicial power to actual cases or controversies. NAACP v. City of Richmond 743 Fed. 2nd 1346 (9th Circ. 1984). "A plaintiff must demonstrate a realistic danger of substantial or direct injury as a result of the statutes operation or enforcement." Babbitt v. United Farm Workers National Union 99 S. Ct. 2301 (1979). But one does not have to await the consummation of the threatened injury to seek relief if the injury is certainly impending. Id. "When a Plaintiff seeks to engage in conduct prescribed by statute and a credible threat of prosecution exists he need not expose himself to actual arrest and prosecution to be entitled to challenge the statute." Steffel v. Thompson 94 S. CT. 1209 (1974). This is especially true in a First Amendment case because of the sensitive nature of constitutionally protected expression. " Dombroski v. Pfister 85 S. Ct. 1116 (1965).

Issue Two

The affidavit of Jenna Amacher, (see attached) clearly indicates that TCA 2-13-208 prevents partisan primaries in Tullahoma City elections. If the states argument is that the issue is non-justiciable because it has never been enforced then Justice Marshall answered this by citing

Babbitt at 2310-2311, "...that proof of non-enforcement did not equate with non-justiciability because there is no proof that the statute had been commonly and notoriously violated.

Issue Three

The state can argue that the statute is banned by the 11th Amendment. The case of Ex Parte Young 28 S.Ct. 441 (1908) makes clear the 11th Amendment does not bar action seeking prospective relief from an unconstitutional statute. This case at hand is identical in that it seeks only injunctive and declaratory relief rather than money damages.

Issue Four

The abstention doctrine as described in Railroad Commission of Texas v. Pullman Company 61 S. Ct. 648 (1941). In that case the Supreme Court held that federal court abstention may be appropriate when difficult or unsettled questions of state law must be resolved before substantial federal constitutional questions can be decided." Pullman abstention is inappropriate when a state statute is not fairly subject to interpretation which will render unnecessary adjudication of the federal question jurisdiction.

Reversing that logic there is no question of state law interpretation involved in this statute. The question presented is completely a U.S. Constitutional question. This memorandum now turns to the merits of the states argument after having discussed the procedural issues likely to be raised by the state. In the Fong Eu case, the 9th Circuit and the Supreme Court addressed the "lack of a compelling state interest" that is a requisite component to pass the strict scrutiny standard for statutes infringing on the First and Fourteenth Amendments.

The State in the Fong Eu case argued that the statute prevented party endorsements in a primary to promote stable government and party stability. The state cited Storer v. Brown 94

S.Ct. 1282 "splintered parties and unrestrained factionalism may do significant damage to the fabric of government." The Fong opinion points out that Storer does not stand for the proposition that the state may enact legislation to mitigate intra-party factionalism during a primary campaign. Furthermore, in the case at hand, how can the state have a compelling interest in keeping the city elections nonpartisan but allowing partisan elections for county offices. The county mayor and commissioners in Tennessee are partisan elected officials. Yet the Mayor and Alderman of Tullahoma must be nonpartisan. To quote Judge Norris in Fong Eu (9th Circuit), "Moreover any state regulation of political parties beyond that necessary to further orderly elections must be viewed with great skepticism." A state " in short, a state's interest is in orderly elections, not orderly parties, and it may regulate parties only as an incident to regulating elections."

The Ninth Circuit opinion in Fong Eu was precise in its language on the ban of partisan endorsements. "Because Section 11702 prohibits political speech inviability rests at the core of the First Amendment, we must subject the section to strict scrutiny. Where a prohibition is directed at speech itself and the speech is intimately related to the process of governing the state may prevail only when showing a subordinating interest which is compelling. Moreover, the burden is on the government to show the existence of such an interest." Bellati 98 S. Ct. 1421 (quoting Elrod 96 S.Ct. 2684).

The second element of banning political speech is banning the ability of the public to hear political speech. "Prohibiting the governing body of a political party from supporting some candidates and opposing others patently infringes both the right of the party to express itself freely and the right of party members to an unrestricted flow of political information." (Fong, 9th)

The case Tashjian v. Connecticut Republican Party 107 S.Ct. 544 (1987) reiterated the argument that regulating parties to avoid voter confusion was a compelling state interest. "The state certainly does not have a compelling interest in shielding from confusion those voters who engage in unthinking and Pavlovian reliance on party leaders." Id.

As to the equal protection argument under the Fourteenth Amendment, what could be the possible argument advanced by the state that allows partisan elections for four judicial positions (two general sessions, and two circuit judges) in Coffee County but deny the same for 6 aldermen and one mayor in Tullahoma? This statute cannot survive the strict scrutiny of the court that is required when free speech and equal protection rights are at stake. A candidate for political office has as much right to be heard and assert membership in a political party as the party has its right to speech and free association. The party has made clear that it would conduct a primary and field candidates for Mayor and Alderman if not for the prohibition in T.C.A. 2-13-208.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this day I electronically filed the foregoing motion and attached affidavits with the Clerk of Court of the Middle District of Tennessee.

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This the ____ day of _____, 20___.

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James Threet, Attorney for Petitioner