

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE

JOHN JAY HOOKER,)	
Petitioner,)	
)	
vs.)	NO. 04C-2737
)	
BETTYE NIXON, Chairman, Davidson)	(March 17, 2005)
County Election Commission, and)	
JAY STARLING, LYNN GREER, EDDIE)	
BRYAN and JAMES FARRELL,)	
Members of the Davidson County Election)	
Commission, in their official capacities, and)	
MAYOR BILL PURCELL in his capacity)	
as a potential candidate for re-election, and)	
KARL DEAN, Director of Law for the)	
Metropolitan Government, and)	
the METROPOLITAN GOVERNMENT)	
OF NASHVILLE AND DAVIDSON)	
COUNTY, TENNESSEE,)	
Defendants.)	

AMENDED COMPLAINT

1. The Petitioner is a citizen voter/candidate who plans to be a voter/candidate in the 2007 election for Mayor of the Metropolitan Government of Nashville and Davidson County, Tennessee, and, accordingly, has “standing” to sue to support both the Federal and State Constitutions in accordance with the precedents set in *Hooker v Sundquist*, 107 SW.3d 532, *Hooker v Bredesen*, No. M2002-01025-COA-R3-VC, 2002 WL 31425791, and *Hooker v Thompson*, ___S.W.2d ___ (Tenn. 1996) (No 01S01-9605-CH-00106), which cases involve the enforcement of the Constitution by a voter/candidate. The Courts in these cases would not otherwise have had jurisdiction to hear those matters if a voter/candidate had not had the standing to sue and, for the same reasons, if this

Petitioner had standing in those cases, this Petitioner has standing in this case. Likewise, a voter was held to have standing in the celebrated term limits case that went to the Supreme Court of the United States, *US Term Limits, Inc., v Thornton*, 514 US 779 (1995). Moreover, if a voter/candidate does not have standing to challenge the election process, who would?

2. This lawsuit seeks a declaratory judgment under T.C.A. 29-14-101 and T.R.C.P. Rule 57 regarding the constitutionality of Metropolitan Charter Provision 1.07(a) and Provision 5.06, which provisions relate to “**term limits.**”

Provision 1.07(a) provides:

“Effective January 1, 1995, no person shall be eligible to serve in any elected office authorized or created by the Charter of the Metropolitan Government of Nashville and Davidson County if during the previous two (2) terms of that office, the person in question has served more than a single term. Service prior to the passage of this measure shall not count in determining length of service. Judges are exempt from this Provision.”

Provision 5.06 provides:

“No person elected and qualified for three (3) consecutive four-year terms shall be eligible for a succeeding term.”

3. Mayor Bill Purcell is the incumbent Mayor, having twice been elected. Mr. Karl Dean, Director of Law, has issued a legal opinion (copy attached) providing:

Question:

“How many consecutive terms may an individual serve in the office of the Mayor of the Metropolitan Government of Nashville, Davidson County, under the terms of the Metropolitan Charter?”

Conclusion:

“. . .and, therefore, an individual may serve three (3) consecutive terms in the office of the Mayor of the Metropolitan Government.”

4. Therefore, this lawsuit seeks a declaratory judgment as to whether Provision 1.07(a) amends and voids Provision 5.06 and, consequently, this lawsuit seeks a declaratory judgment as to whether Mayor Purcell is eligible to run for re-election in 2007, he having been twice elected.

5. It is the position of the Petitioner that Provision 1.07(a) amends and makes void Provision 5.06. Consequently, Mayor Purcell is not eligible to run for re-election in 2007.

6. It is further the position of the Petitioner that the plain language of Provision 1.07(a) obviously includes the mayoral election as the Mayor's Office is "**an elected office**." Had the Provision intended to exempt the mayoral election, the Provision would have so said, as it exempted judges from the Provision.

Obviously, Provision 1.07(a) is all encompassing and the language, "No person shall be eligible to serve in any elected office," must include all persons and all offices. To say otherwise is to violate the plain language of the Provision.

7. Notwithstanding the attached opinion of the Director of Law regarding term limits for Mayor, there are no cases that hold otherwise. The cases cited by the Metropolitan Law Director do not address the general rule. For example, the Seventeenth Amendment of the Federal Constitution relating to the

election of United States Senators amends Article I, Section 3, without mentioning the Provision. Those Provisions, like those involved here, are “**irreconcilable**”.

8. In other words, they are not simply in conflict subject to being harmonized as Provision 1.07(a) as an amendment voids Provision 5.06. See *Massachusetts Mutual Life Insurance Co. v Bogue*, 393 Tenn. S.W.2d 164. Likewise see *Metropolitan Government of Nashville v Hillsboro Land Company*, 436 S.W.2d 850. There is no way to construe these two constitutional provisions to give effect to each because if no person is eligible to serve more than two terms under Provision 1.07(a), then the language of Provision 5.06 is meaningless because it is only operative by its terms if the Mayor is elected for three consecutive terms.

9. Therefore, because the Provisions are “**irreconcilable**”, it is obvious that Provision 1.07(a) amends and voids Provision 5.06. In common parlance, 1.07(a) “**trumps**” 5.06.

10. Moreover, how could any voter, when voting upon Provision 1.07(a) in 1994, have concluded that the plain language of the Provision allowed the Mayor to be exempt without saying so as it does with respect to judges? In other words, the intent of the voter obviously is expressed in Provision 1.07(a) itself.

11. Therefore, this Petitioner as a voter/candidate, seeks declaratory judgment that Mayor Purcell is not eligible to run for re-election in 2007.

12. However, on the other hand, in the alternative, this Petitioner seeks an adjudication as to whether “**The People**,” i.e., the voters, have the power to create

term limits under the Metropolitan Charter in view of the Provisions of the Tennessee Constitution. The Tennessee Constitution provides:

“Article I, Section 4. No Religious or Political Test – That no political or religious test, other than an oath to support the Constitution of the United States and the Constitution of this State, shall ever be required as a qualification to any office or public trust under this State.”

13. This Provision, therefore, raises a question regarding whether the Metropolitan Charter can have as a qualification a requirement that a person cannot run for a third term. Likewise, Article I, Section 5, requiring a **“free and equal election”** raises the question of whether an election can be **“free and equal”** under the Tennessee Constitution if the Metropolitan Charter prohibits any person from seeking a third term, whether it be for members of the City Council or the Mayor.

Article I, Section 5, provides:

“Article I, Section 5, Elections To Be Free And Equal – Right of Suffrage – The elections shall be free and equal, and the right of suffrage as hereinafter declared shall never be denied to any person entitled thereto.”

14. Importantly, the Tennessee Constitution, to protect the integrity of the aforesaid Provisions under the Declaration of Rights, deprived all branches of government of the power to violate the aforesaid Provisions by Article XI, Section 16, which provides:

“Article XI, Section 16 – Bill Of Rights To Remain Inviolable – The Declaration of Rights hereto prefixed is declared to be a part of the Constitution of this State and shall never be violated on any pretense whatever. And to guard against the transgression of the high powers we have delegated, we declare that everything in the Bill of Rights contained is excepted out of the general powers of government and shall forever remain inviolate.”

15. Therefore, this lawsuit seeks a declaratory judgment to determine whether or not “**The People**” of Nashville, Davidson County, have the power in the adoption of the Metropolitan Charter to deprive themselves of a “**choice**” in the election process by disqualifying a candidate to run for re-election.

In the celebrated case of *US Term Limits, Inc., v Thornton*, 514 US 779 (1995), a similar question arose as the citizens of Arkansas passed a constitutional amendment to provide for term limits for members of Congress and, thereby, deprived themselves of the right to “**choose**” various public officials who were made ineligible by the term limit provisions. The Supreme Court of the United States held that the citizens of Arkansas had no such power to deprive themselves of a “**choice**” on the basis that “**choice**” is the essence of democracy, and that neither the State of Arkansas nor Congress could deprive the people of that “**choice**” by adding another additional qualification.

16. The “**People of Tennessee**” and “**We, The People of the United States**”, by constitutional amendment, can create term limits as they so desire, as evidenced by the fact that there are term limits for the Governor of Tennessee under Article II, Section 3, of the Tennessee Constitution, and for the President of the United States under Amendment 24 of the Constitution of the United States. However, it would appear that the Tennessee Constitution would have to be amended in order to give the “**People**” of Nashville, Davidson County, the right to limit “**their choice**” for Mayor.

17. Therefore, this lawsuit, in the alternative, seeks a declaratory judgment that both Metropolitan Charter Provision 1.07(a) and Provision 5.06 violate the Tennessee Constitution and, therefore, term limits are not permissible under the Metropolitan Charter for any and all elected public officials and likewise

deprives the voters of their “liberty rights” under the Fourteenth Amendment to a “choice” in the election process.

RELIEF

1. That this voter/candidate has standing to sue to bring this declaratory judgment.
2. That Metropolitan Charter Provision 1.07(a) be declared to be constitutional and further that said Provision renders Provision 5.06 void.
3. That Mayor Purcell is not eligible for re-election.
4. That in the alternative, both Provision 1.07(a) and Provision 5.06 are unconstitutional under both the State and Federal Constitutions and, therefore, Mayor Purcell is eligible to run for re-election in the 2007 Mayoral election.
4. For such further and general relief as is just.

Respectfully submitted,

JOHN JAY HOOKER (BPR #5118)
222 Polk Avenue
Nashville, Tennessee 37203
615-244-6723

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded by fax (615-862-6353) and by U.S. Mail, postage prepaid, to Karl F. Dean and Brooks Fox, Metropolitan Department of Law, 204 Metropolitan Courthouse, Nashville, Tennessee, 37201, on this 17th day of March, 2005.

JOHN JAY HOOKER