

IN THE TENNESSEE COURT OF APPEALS  
MIDDLE SECTION AT NASHVILLE

JOHN JAY HOOKER,	)	
	)	
Plaintiff/Appellant,	)	
	)	
vs.	)	NO. M2003-03107-COA-R3-CV
	)	
BILL PURCELL,	)	On Appeal from the Davidson
	)	County Chancery Court
Defendant/Appellee.	)	Case No. 03-2387-I

---

**BRIEF OF PLAINTIFF/APPELLANT**

---

JOHN JAY HOOKER, pro se (BPR 5118)  
222 Polk Avenue  
Nashville, Tennessee 37201  
(615) 244-6723

**ORAL ARGUMENT REQUESTED**

**(April 19, 2004)**

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
ISSUES PRESENTED FOR REVIEW.....	1
INTRODUCTION.....	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS.....	4
ARGUMENT.....	5
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	7
ADDENDUM.....	8

## **ISSUES PRESENTED FOR REVIEW**

1. Does the Court have jurisdiction under Article XI, Section 16, to interpret Article X, Section 3, under the plain language of both provisions?
  
2. Does the Defendant have the right under Article XI, Section 16, to file a Rule 12 Motion for Dismissal involving a case under Article X, Section 3, under the plain language of the aforesaid provisions?
  
3. Does a trial judge have the right to sit on a case and not recuse himself/herself when the conduct of the Defendant under attack is similar conduct to that of the judge in a similar situation without violating Rule 60?

## **INTRODUCTION**

This Appeal involves a Rule 60 Motion to challenge the conduct of the Defendant and the Judge in dismissing the Plaintiff=s lawsuit under T.R.C.P. Rule 12.

The Plaintiff claims that he has an unalienable and indefeasible right to defend the integrity of the Constitution and, therefore, this lawsuit should not have been dismissed in violation of the Plaintiff=s rights under Article I, Sections 1, 2, 17 & 19, and Article X, Section 3, and Article XI, Section 16, of the Tennessee Constitution.

## STATEMENT OF THE CASE

Appellant John Jay Hooker filed a Rule 60 Motion on October 24, 2003, (T.R \_\_\_) requesting the Court to set aside the Order of September \_\_, 2003, dismissing Plaintiff=s lawsuit under Rule 12. The Rule 60 Motion was decided on February 19, 2004, and the Notice Of Appeal was timely filed on March 18, 2004.

This is a highly important constitutional lawsuit regarding the People=s right to a free and equal election under Article I, Section 5, amplified by Article X, Section 3, outlawing the use of meat & drink in the election process as the right to a free and equal election is inviolate under Article XI, Section 16. The Court=s granting of the Rule 12 Motion depriving the Plaintiff of his aforesaid constitutional rights, it is alleged, violates Rule 60 and is the subject matter of this appeal.

## **STATEMENT OF FACTS**

The facts in this case are not in dispute. The Trial Court dismissed the Plaintiff/Appellant=s Rule 60 Motion challenging the Court=s jurisdiction to dismiss the Plaintiff/Appellant=s Complaint alleging the Defendant=s violation of Article X, Section 3, and T.C.A. 2-19-126. As a consequence, this Appeal was filed.

## ARGUMENT

The Founders set out the Bill of Rights to protect the people from the government, and the Founders passed Article XI, Section 16, to strip the Government of the power to deprive the People of their rights enunciated in the Declaration of Rights. Article XI, Section 16 provides:

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 pretence whatever. And to guard against 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.

This lawyer has found no case authorizing the courts to violate the plain language of Article XI, Section 16, which provisions are a direct imitation upon the General Powers of Government and, therefore, forbid the Government from depriving the People of their rights. [See *Keith v Funding Board*, 127 TN 441, 155 S.W. 142 (1912).]

Consequently, the Trial Court erred in acting contrary to the Constitution, as did the Defendant, and the Plaintiff is entitled to be protected from this conduct under Rule 60.

## **CONCLUSION**

The Courts are mandated by Article XI, Section 16, not to use the General Powers of Government to deprive the People of their rights under the Declaration of Rights and, consequently, this Honorable Court in this Appeal should so hold. Respectfully, how can Article XI, Section 16, be read otherwise as a matter of principle?

Respectfully submitted,

---

JOHN JAY HOOKER (BPR #5118)  
222 Polk Avenue  
Nashville, Tennessee 37201  
(615) 244-6723

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded by U. S. Mail to Ms. Lora Fox, Metropolitan Department of Law, 225 Polk Avenue, Nashville, Tennessee 37201, on this 19<sup>th</sup> day of April, 2004.

---

## **ADDENDUM**

### **TENNESSEE CONSTITUTION**

Article I, Section 1

Article I, Section 2

Article I, Section 5

Article I, Section 17

Article I, Section 19

Article X, Section 3

Article XI, Section 16

### **TENNESSEE CODE ANNOTATED**

T.C.A. 2-19-126