

LUDYE N. WALLACE,

Petitioner,

v.

METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
and DAVIDSON COUNTY ELECTION
COMMISSION,

Respondents.

No. _____

Comes now the Petitioner, Ludye N. Wallace, by and through undersigned counsel,
and petitions this Court for:

1. A writ of certiorari reversing the Respondents March 9, 2018 Order setting the election to fill the vacancy in the office of Mayor on August 2, 2018.
2. A writ of mandamus compelling the Respondents to set the above-described election on either May 1, 2018 pursuant to Tenn. Code Ann. § 2-14-102(b)(1) or sometime between May 21 and May 26, 2018 pursuant to Tenn. Code Ann. § 2-14-102(a) as commanded by the Charter of the Metropolitan Government of Nashville and Davidson County (“Charter”).

The Petitioner would show unto court, after a presentation of the facts at issue here, the administrative record, the applicable provisions of the Charter and the Metropolitan Code of Laws of Nashville and Davidson County (the “Metro Code”), the applicable state statutes, and arguments of counsel that the Metropolitan Government of Nashville and

Davidson County (“Metro”) and the Davidson County Election Commission (“DCEC”) erred by setting the election on August 2, 2018 and that their Order is invalid because it was entered in violation of applicable law.

The Petitioner would further show unto the Court, as follows:

PARTIES

1. Ludye N. Wallace is a resident and citizen of Nashville and Davidson County, Tennessee residing at 2718 Scovel Street, Tennessee. Mr. Wallace is a constituent of the Metropolitan Council’s 21st District.

2. As a consequence of the Respondents’ illegal action, the Petitioner—a qualified candidate for the office of Mayor¹ who appeared at the DCEC’s hearing setting the election date that is the subject of this action—has experienced a concrete and particularized injury that is specific to him.

3. Petitioner has suffered a distinct and particularized injury as he is being denied the right to seek elective office in the reduced time period commanded by the Charter and will have to expend significant additional resources as a consequence of the Respondents’ illegal action. Petitioner now has to wait until August 2, 2018 to stand for election rather than until May 1, 2018 or between May 21 and May 26, 2018 as mandated by Charter §§ 15.01 & 15.03 and Tenn. Code Ann. § 2-14-102(a)-(b)(1).

4. Campaigns for any office cost time and money. Campaigns for the office of Mayor are particularly costly. The 2015 election for the office of Mayor was the most

¹ Contemporaneously with the filing of this action, Mr. Wallace is submitting his nominating petition with the requisite number of signatures to meet the applicable qualifications for the office of Mayor to the Office of the DCEC. Subsequent to receiving the applicable approval from DCEC evidencing the fact that Mr. Wallace is indeed qualified as determined by DCEC, counsel will immediately supplement this filing with confirmation thereof.

expensive election in the history of Metro, with candidates collectively spending almost \$17 million.²

5. Petitioner lacks the money to run a campaign for the multiple additional months that he will be required to campaign as a consequence of the Respondents' illegal action. Setting the election to fill the vacancy on August 2, 2018 requires Petitioner to spend more money than he possesses and requires him to campaign for an unlawfully extended period of time—up to an additional three months beyond the time commanded by the Charter. This extension of time is a specific injury to the Petitioner and is not common to the general public. The additional expense and illegal extension of time are a special injury to the Petitioner's campaign for the office of Mayor.

6. Moreover, Petitioner has a cognizable legal interest in being a qualified candidate for the office of Mayor, and upon his election, serving as Mayor. Thus, the DCEC's failure of DCEC to set a special election during the time period mandated by the Charter injures Petitioner because he will be denied the opportunity to become a qualified candidate and to become Mayor in the time period required by law.

7. Petitioner's injuries can be remedied by the relief sought herein. As an aggrieved party, the Petitioner has standing because he made an appearance via counsel at the meeting or hearing of DCEC, which was held on Friday, March 9, 2018. *See generally* McFarland v. Pemberton, 530 S.W.2d 76, (Tenn. 2017). Petitioner has a sufficient special interest or personal stake in the outcome of the DCEC's decision so as to qualify as "anyone who may be aggrieved" by the decision of the DCEC. Id. at 105 ("A party with standing to file

² <https://www.tennessean.com/story/news/politics/2015/10/21/nashville-mayoral-races-final-price-tag-168-million/74329134/>

a petition for writ of certiorari under section 27-9-101 is ‘anyone who may be aggrieved’ by the administrative decision at issue.”).

8. Respondent Metro is a political subdivision of the State of Tennessee. Metro is responsible for the oversight, rulemaking, compliance with applicable law, and control of Respondent Davidson County Election Commission.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. §§ 27-9-101 *et seq.*, Tenn. Code Ann § 29-25-102, and Tenn. Code Ann. § 29-14-102.

10. The acts, errors, or omissions described herein were committed in Nashville, Davidson County, Tennessee, where all parties reside. Accordingly, venue is proper pursuant to Tenn. Code Ann. § 20-4-101(a)-(c).

ISSUE

11. On March 9, 2018, the DCEC voted affirmatively on a split, part-line, 3-2 vote,³ to hold an election to fill the vacancy in the office of Mayor (the “Vacancy”) on August 2, 2018. Charter §§ 15.03 requires a special election to fill the vacancy at issue. *See* Charter § 15.01. Yet, based upon the advice of DCEC’s legal counsel who announced it was the position of the Metro Department of Law that the election to fill the Vacancy was not a special election, the DCEC instead set the election for August 2, 2018. Accordingly, the Petitioner has filed this action to remedy that clear legal error.

APPLICABLE LAW

12. Metro Charter § 15.03 states, in its entirety, the following:

Sec. 15.03.—Special Elections.

³ The three (3) Republican members of DCEC voted yes, and the two (2) Democratic members voted no.

There shall be held a special metropolitan election to fill a vacancy for the unexpired term in the office of mayor and in the office of district council member whenever such vacancy shall exist more than twelve (12) months prior to the date of the next general metropolitan election. The special election shall be ordered by the county commissioners of elections and they shall give notice thereof as provided by Tennessee Code Annotated section 2-14-105. When a vacancy exists in the office of vice mayor or in the office of councilmember-at-large, said office shall remain vacant until the next general election at which time such vacancy shall be filled; however, in no event shall a special election be held to fill such vacancy. If in such special election to fill a vacancy for the unexpired term of the office of mayor or district council member, or in the general election at which time a vacancy in the office of vice mayor or councilmember-at-large, no candidate shall receive a majority of all the votes cast for such office, a runoff election shall be held five (5) weeks subsequent to the first special election to fill a vacancy in accordance with the provisions hereinbefore set forth in the case of a general metropolitan election. The provisions of section 15.01 hereof with respect to voting in general metropolitan elections and with respect to qualifying as a candidate shall apply to special elections and to general elections at which time a vacancy is filled.

The first sentence therein is clear and as pertinent here, reads as follows:

There shall be held a special metropolitan election to fill a vacancy for the unexpired term in the office of mayor... **whenever such vacancy shall exist more than twelve (12) months prior to the date of the next general metropolitan election.** (Emphasis added).

13. Metro Charter § 15.01 states, in its entirety, the following:

Sec. 15.01. - When general metropolitan elections held; who may vote; qualifications of candidates.

For the purpose of electing a mayor, vice-mayor, five (5) councilmen-at-large and thirty-five (35) district councilmen, there shall be **held on the first Thursday in April, 1966, and on the first Thursday in August of 1971, and each four (4) years thereafter, a general metropolitan election. At such general election** each voter shall be entitled to vote for one (1) candidate for mayor, one (1) candidate for vice-mayor, five (5) candidates for councilmen-at-large, and one (1) candidate for district councilman from the district wherein the voter resides; and the names of all qualified candidates shall be so placed on the ballot or voting machine as to accord the voter such right. All persons who are lawfully registered and who are qualified to vote for members of the general assembly of the State of Tennessee shall be qualified to vote in the metropolitan elections. The name of any candidate shall be included on the ballot or the voting machines when a written petition signed

by at least twenty-five (25) qualified voters shall so request and when said petition shall be filed with the county commissioners of election at least within the number of days prior to the election provided by general law for the filing of qualifying petitions of candidates for election to county offices (emphasis added).

14. Metro Charter § 15.04, states in its entirety, the following:

Sec. 15.04. - Applicability of general election laws.

The general election laws of the state shall be applicable to all metropolitan elections, except as otherwise provided in this article.

15. Tenn. Code Ann. § 2-14-101 provides:

2-14-101. Special elections -- When required.

Special elections shall be held when a vacancy in any office is required to be filled by election at other times than those fixed for general elections.

16. Tenn. Code Ann. § 2-14-102(a) provides:

2-14-102. Time of holding special election.

(a) Special elections shall be held not less than seventy-five (75) days nor more than eighty (80) days after the officer or body charged with calling the election receives notice of the facts requiring the call. An election for an office shall be held on the same day in every county in which it is held.

(b)(1) If it is necessary to hold a special election to fill a vacant seat in the United States house of representatives, a vacancy in a county office, or a vacancy in any municipal office, and the date for such election, as established under subsection (a), falls within thirty (30) days of an upcoming regular primary or general election being held in that district, the governor, or the county election commission, as specified in § 2-14-103, may issue the writ of election for the special election for the date which will coincide with the regular primary or general election.

SPECIFIC ALLEGATIONS OF ARBITRARY, CAPRICIOUS, OR ILLEGAL ACTIONS

17. The meeting of the DCEC on Friday, March 9, 2018 was not a substantive discussion on the positions of the Commissioners. Instead, as reflected in collective **Exhibit**

No. 1, the outcome of the meeting was established prior to the commencement of the meeting.

18. Specifically, the agenda for the March 9 meeting of DCEC stated that the purpose of the meeting was to the “[a]dd office of Mayor to August 2, 2018 Election Ballot.” Petitioner’s qualifying petition, which was picked up on the morning of Friday, March 9, 2018, already set the date of the election to be August 2, 2018. However, the DCEC did not have its meeting to set the election date until the afternoon of Friday, March 9, 2018.

19. Following its predetermined agenda, the DCEC set an election on a date that is forbidden by law.

20. Respondents’ above-described actions were arbitrary, capricious, and illegal.

WRIT OF MANDAMUS

21. This court has jurisdiction to issue a writ of mandamus pursuant to Tenn. Code Ann. §§ 16-10-101 *et seq.*, Tenn. Code Ann. §§ 29-25-101 *et seq.*, and Tenn. Code Ann. § 5-1-107.

22. Petitioner seeks a peremptory writ of mandamus because his right to the relief sought has been clearly established.

23. The DCEC has a clear duty to perform the act as set forth herein, and there is no other adequate and complete method of obtaining relief he is entitled under the law to receive.

24. Petitioner’s only adequate and complete method of obtaining relief is by the Court issuing a writ of mandamus compelling the DCEC to:

(1) set a special election for the Vacancy in the office of Mayor on a date pursuant to Tenn. Code Ann. § 2-14-102(a)-(b)(1);

(2) set the qualifying deadline no sooner than March 22, 2018 or April 12, 2018; and
(3) to publish legal notice of the special election pursuant to Tenn. Code Ann. § 2-14-105.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Petitioner prays for the following:

1. That proper process issue, service thereof be perfected, and Respondent required to answer.
2. That the Court issue a writ of certiorari voiding the DCEC's ruling as arbitrary, capricious, and illegal.
3. That the Court declare, pursuant to Tenn. Code Ann. § 29-14-102, that the DCEC acted illegally when it set the election to fill the vacancy in the office of Mayor for August 2, 2018.
4. That Petitioner's attorneys' fees, court costs, fees, and taxes be paid by the Respondents due to Respondents' its arbitrary, capricious, and illegal actions.
5. That any extraordinary relief be granted to Petitioner as warranted by the plainly arbitrary, capricious, or illegal actions of the DCEC, as dictated by the Court.
6. That the Court command the DCEC to: (1) to set a special election for the Vacancy in the office of Mayor on a date pursuant to Tenn. Code Ann. § 2-14-102(a)-(b)(1); (2) set the qualifying deadline no sooner than March 22, 2018 or April 12, 2018; and (3) to publish legal notice of the special election pursuant to Tenn. Code Ann. § 2-14-105; and
7. That the Court award the Petitioner any and all other additional relief to which he is entitled.

Respectfully submitted,

By: _____
Jamie R. Hollin, BPR No. 025460
511 Rosebank Avenue
Nashville, TN 37206
Tel. 615-870-4650
j.hollin@me.com
Attorney for Petitioner

Surety

I am surety for costs in this cause in an amount not to exceed \$1,000.

Jamie R. Hollin

THIS IS THE FIRST REQUEST FOR EXTRAORDINARY RELIEF IN THIS MATTER.

Verification

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, Ludye N. Wallace, have read the foregoing and know the contents thereof. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Ludye N. Wallace

Sworn to and subscribed before me this _____ day of March, 2018.

Notary Public

My Commission Expires: _____

Exhibit No. 1

**NOTICE
OF
DAVIDSON COUNTY ELECTION
COMMISSION MEETING**

The Davidson County Election Commission will hold

a “Special Called” meeting

on

Friday, March 9, 2018 at 3:30 p.m.

Metro Southeast Building (MSE)
1417 Murfreesboro Pike

Davidson County Election Commission Conference
Room

Attest: Jeff Roberts, Administrator of Elections

Agenda

1. Add office of Mayor to August 2, 2018 Election Ballot
2. Review Cards

ORIGINAL DOCUMENT
PHOTOCOPY CANNOT BE
ACCEPTED TCA2-5-102

STATE OF TENNESSEE CANDIDATE NOMINATING PETITION

Select Type of Petition →

<input type="checkbox"/>	Primary Candidate
<input type="checkbox"/>	Independent Candidate
<input checked="" type="checkbox"/>	Municipal Candidate

We the undersigned registered voters in the city of Nashville, in the county of _____
(for municipal elections)

Davidson

, State of Tennessee, hereby nominate

Ludye Wallace

(name)

2718 Scovel St

(address)

as a candidate for the office of Mayor to be voted on in
(office) (division, part or district number)

the election, N/A Primary, which will be held on the 2nd day of August, 2018.

We request that such candidate's name be printed on the official ballot.

This petition was issued by

H. Harrison
(signature of election official)

3.9.2018

(date)

** TO BE COMPLETED BY THE CANDIDATE **

I hereby direct that my name appear on the official ballot as follows, and I declare, under penalty of perjury, that I have reviewed the qualifications for the office sought herein and hereby certify that I meet said qualifications and that the information provided over my signature is true and correct:

PRINT NAME

(residential address of candidate)

(Zip code)

(residential phone)

(business address of candidate)

(Zip code)

(business phone)



CANDIDATE'S SIGNATURE

(Required Under T.C.A. § 2-5-102)

T.C.A. § 2-19-109 provides that a person who knowingly makes any false entry on an election document commits a class D felony.

FOR CANDIDATES REQUIRED TO BE AN ATTORNEY:

By my signature, I hereby certify that I am licensed to practice law in this state.

(signature of candidate)

SUPREME COURT REGISTRATION NO. _____

THE QUALIFYING DEADLINE
IS 12 NOON

APR 05 2018

NOMINATING SIGNATURES

(must be registered voters who are eligible to vote to fill this office)

(Cannot sign for another – no ditto " " marks)

(Address as listed on registration – No P.O. Boxes)

1. Sign here _____

Street address _____

Print here _____

City/State/Zip _____ County _____

2. Sign here _____

Street address _____

Print here _____

City/State/Zip _____ County _____

THE QUALIFYING DEADLINE
IS 12 NOON
APR 05 2018