No. 16-____

IN THE
Supreme Court of the United States

MARK CLAYTON,
Petitioner,
v.

CHIP FORRESTER, ET. AL. ,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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**Counsel of Record, pro se*
March __, 2016

QUESTIONS PRESENTED FOR REVIEW

1. Whether political parties as defined and regulated in the Tennessee code are "a state or political subdivision thereof" and therefore are subject to the enumerated state election statutes and rules appertaining thereto, if any, related to federal elections; and therefore that such political parties are subject to and therefore restricted by enumerated state election statutes as well as state statutory restrictions on *quo warranto* actions by political in federal elections, if any.

2. Whether ubiquitous civil federal protections for elections, a federal election for United States Senator in this case, exist and may be applied to buttress enforcement of state law or not, particularly with regard to the Voting Rights Act.

3. Although apparently uncontested, in and of itself , by any party or the lower Courts, whether or not Allen v. State Board of Elections, 393 U.S. 544,554-57 (1969), a *de novo* determination of this case presents the Supreme Court the opportunity to affirm, for the first time, the propriety of civil petitioning and remedy for Voting Rights Act violations against voters and candidates, which to the Petitioner's knowledge is an issue not yet affirmed by the United States Supreme Court.

4. Whether the U.S. District Court wrongfully non-joindered Plaintiff's FRCP (19)(a)(2), *see* DKT 115, Motion for Joinder of facts and actors relating to the common all-pervasive legal question as to

whether or not, under any laws pled, that Plaintiff Clayton was or is indeed a *bona fide* Democrat.

5. Notwithstanding any relief which may or may not have been granted, whether or not the U. S. District Court committed abuse of procedure by unilaterally forcing Plaintiff Clayton, under duress, to involuntarily withdraw both his memorandum of support for (which is to be incorporated into all pleadings in part to avoid redundancy and repetition) as well as his motion for preliminary injunctive enforcement of Tennessee's Open Meetings Act; that not only Plaintiff's First Amendment Right of petition but also Plaintiff's sole privilege as master of his complaint remain inviolate, regardless of a potentially adverse ruling upon remand to state venue, *see* DKT. 20, 21, 22.

6. Whether or not the Sixth Circuit erred in stating that the the U. S. District Court did not err in restricting Plaintiff Clayton from being master of his complaint and right of petition merely because preliminary injunction would "not have succeeded on such a motion", especially since all claims the motion and accompanying memorandum are still active and merely remanded; that the First Amendment right to petition for redress of grievance and the consistent maintenance of Plaintiff Clayton as the sole master of his complaint inviolate.

7. Whether or not the Voting Rights Act, 28 U. S. Code § 1973l(c)(1) allows the U. S. District Court to consider anything other than Plaintiff's sixth-grade

education as a prerequisite for protections under the Voting Rights Act; that the protections of the Voting Rights Act remain ubiquitous to all citizens.

8. Whether or not the Voting Rights Act, 28 U. S. Code § 1973l(c)(1), notwithstanding any otherwise specifically enumerated protected classes in other clauses, is the primogenitor of Voting Rights Act election protections, the proposition of which is supported by both its isolated and independent placement in the code as well as a study of original intent; so that the Voting Rights Act, 28 U. S. Code § 1973l(c)(1) when pled alone restricts the U. S. District Court from imposing other disparate code as prerequisite – that any citizen should require no other prerequisite for Voting Rights Act protections should that citizen have graduated the sixth-grade.

9. Whether or not Gerard Stranch IV committed perjury related to electoral facts of which he had previously demonstrated cognizance (remand and the mandatory Tennessee doctrine of judicial estoppel demand that this issue be revisited in state court as well) during the scheduling hearing on December 30, 2013 in Clayton v. Forrester, *et. al.* and what such a proposition, if upheld, portends regarding Nix v. Whiteside, 475 U.S. 157 (1986).

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LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follow.

PETITIONER,
Mark Clayton

DEFENDANTS/RESPONDENTS,
Chip Forrester, Brandon Puttbrese, Sean Braisted, The Tennessee Democratic State Primary Board, Elisa Parker, David Garrison, Marjorie Ramsey, Mike Hampton, Linda Dotson, Bruce Dotson, Pamela Harris, Michael W. Lane, Dr. Joyce Hopson, Bill Howerton, Dixie Damm, Richard Dawson, Sylvia Woods, Harold Woods, Gyle Alley, William Owen, Barbara Wagner, Dan Lawson, Sally Love, Jim Bilbo, Chantelle Roberson, Chris Anderson, Sandra Lusk, Terry Lee, Martha Beaty Wiley, Bradley Parish, Brenda Ables, Guy Derryberry, Betty Fraley, Paul Davis, Dr. Geeta McMillan, Dennis Gregg, Kristen Cullen, Mark Farrar, Mary Patterson, David Harper, Jeanette Jackson, Bill Basset, Inez Crutchfield, Jerry Maynard, Angelia Cannon, David Biley, Dorris Medlin, Will Cheek, Kim Smith-Taylor, Keith Jackson, Elisa Parker, Jonathan Faill, Paige Burcham, Toney Campbell, Martha Shepard, Richard Dunavant, Diane Davis, Mike Kiddy, Patsy R.. Johnson, Don Farmer, Gale Jones Carson, J.M. Bailey, Joyce Adams, Henry Hooper, Maura Black Sullivan, Kevin Gallagher, Adriene Pakis-Gillon, Dwayne Thompson, Gladys Crain, Bobby Sproles, Hazel Moore, Sidney Chism

TABLE OF AUTHORITIES

CASES

PETITION FOR WRIT OF CERTIORARI

Petitioner Mark Clayton ("Clayton") respectfully petitions for a writ of certiorari to review the decision and order of the United States 6th Circuit Court of Appeals, who upon Clayton's appeal errantly held that a political party is not "a state or political subdivision thereof", when as a matter of law, political parties derive their power from enumerated statutes. Clayton pleads that "statewide political part[ies]" are "a state or political subdivision thereof".

The 6th Circuit Court of Appeals raised a new issue and is trying to bypass and overturn *Mobile v. Bolden*, 446 U.S. 55 (1980) by saying that Clayton has no federal protections for elective franchise as either a federal candidate, a state candidate, or a voter. It does not matter what color Clayton is. The protections are equal. Tenn. Code Ann. § 40-12-104 *et. seq.* allows for any person, including non-citizens, to seek an indictment directly from the grand jury of any of Tennessee's ninety-five (95) counties. The Plaintiff/Appellant believes that his position as a state-wide candidate seeking criminal indictments against Title 2 Defendants/Appellees, as opposed to seeking mere civil injunctive and declaratory relief, sets a bad precedent for electoral chaos, corruption, and violence in Tennessee. Plaintiff is well within his rights to seek criminal indictments rather than civil injunctive and declaratory relief. It is in the hope that the Supreme Court of the United States will overturn the political machinations of the U.S. District Court of Middle Tennessee as well as the incompetence of the 6th Circuit and uphold the universal, statutory pathway for civil relief, including federal protections of elections, herein pled. If we are to be a civilized nation of laws, our election

controversies must be granted civil declaratory and injunctive relief. I am partly of the mind to draw up affidavits to press charges against the Defendants/Appellees if the United States Supreme Court upholds the failures of the lower courts to enforce civil remedy in the matters herein.

Despite the hope of some in the lower courts, this case will not merely go away, the issue will fester if left unattended and will have long-standing and wide-spread negative implications. Failure by the United States Supreme Court to grant this petition and the relief herein requested by Plaintiff/Appellant will result in exponential electoral corruption, secrecy, and coercion and will discourage former civil rights activists in Tennessee who risked their lives for ubiquitous federal civil remedy in all matters whatsoever related to elective franchise.

Clayton alleges that both the U.S. District Court and the 6th Circuit have wantonly overlooked perjury by Gerard Stranch IV, counsel for Defendants/Appellees.

Furthermore, a Tennessee political party is "a state or political subdivision thereof" because Defendant Cheek says that it is: "That was pretty much the end. Because we have nothing left. In the other low points, we had the Election Commission, we had the Building Commission.... If you wanted to get state deposits into your bank, those were all ours. And that's where you'd raise your [the party's] money." *see* DKT 123, PageID # 854. Notwithstanding possible criminal and racketeering implications from such a statement, which hearkens back to the infamous "Tennessee Waltz" FBI sting, the aforementioned described "financing of the party" (*Id.*) by

Defendant Cheek Tennessee Democratic Party as "a state or political subdivision thereof".

In addition to the matter of law that the entire construction of authority and prohibited behavior of Tennessee political parties is statute law, the 6th Circuit also ignores relevant statutory authority and case law which prohibits elected officers, including officers of a political party from engaging in *quo warranto* actions; that is that officers elected under statute, such as the Defendants/Appellees, may not exercise non-enumerated powers.

The 6th Circuit also erroneously conflates the "statewide political party" with the Executive Committee of a statewide political party, the executive committing existing **for** the benefit of the "statewide political party" and does not exist as the Tennessee Democratic Party.

At the U. S. District Court for Middle Tennessee, Defendants/Appellees abandoned all claims against Clayton, *pro se* that state statutes restricting their behavior are invalid under First Amendment. All parties, the U. S. District Court, and the U. S. Sixth Circuit Court of Appeals now agree with Clayton that all claims, excepting count IX (*see* Complaint DKT. 34), must be remanded.

PROCEEDINGS BELOW

Clayton is the only Democrat to win in a statewide general election in Shelby County, Memphis where he won for the United State Senate in 2012 after winning the party primary in a landslide and doing so during a presidential

election which involved the first black president of the United States. The last statewide elected Democratic nominee in Tennessee in 2008 failed to win Shelby County, Memphis. Statewide, Clayton received over 700,000 votes, a significant number which places statewide offices within reach and establishes Clayton as a preeminent Democrat in Tennessee.

Judge Kevin Sharp, Mark Clayton, Chip Forrester, and Gerard Stranch IV all live in or adjacent to Nashville/Davidson county and, including Judge Sharp, have recently been deeply involved in local politics and have, competing against Clayton, significant political and economic interests within Nashville/Davidson County. The mother of Gerard Stranch IV, Judge Jane Branstetter Stranch, refused to recuse herself and presided over the secret committee assigned to this case at the Sixth Circuit Court of Appeals to help her son, Gerard Stranch IV. Clayton has been under perpetual duress under threat of retaliation, including physical threat throughout the entire process. Judge Kevin Sharp publicly brags to newspaper reporters, as reported in the newspaper and as described with citation in Clayton's appeal to the Sixth Circuit, that he carried around a baseball bat in Memphis to intimidate people and that if attacking a person's ideas do not work at first, you then attack the person directly. In his final order for Clayton v. Forrester, et. al., Judge Sharp ominously and threateningly described Clayton's pleadings describing the details of related corruption and threats as "spurious" and "ill-advised" without elaboration and which Clayton takes as a death-threat against a federal candidate from a federal judge, especially since the context was that Clayton pled in detailed fear for his life. These and other threatening iterations of Judge Kevin

Sharp are matters of public record. Judge Kevin Sharp intimidated and forced Clayton to withdraw a key motion and memorandum, violating Clayton's right of petition. Clayton proceeds under duress and threat of violence to his person by all parties. On November 11, 2013, Forrester, et. al. removed this case, *Clayton v. Forrester* No. 3:13-cv-01211 from the Circuit Court for Davidson County, Tennessee. In doing so, Forrester, et. al. waived any immunity from state rules and laws and subjected themselves to state rules and laws despite federal venue, per the Erie Doctrine. Despite Clayton's success in compromised and hostile venues (Middle District and Sixth Circuit) against numerous motions to dismiss and frivolous, dilatory, and malicious motions for sanctions as a method of intimidation, the United States District Court and Sixth Circuit Court both decided that while the First Amendment did not strike down the several state claims made by Clayton and that therefore the case should be remanded, that at the same time Clayton, as both a voter and a statewide elected nominee, enjoyed no federal or Voting Rights Act protections whatsoever. Federal protections within the Voting Rights Act are what can keep our nation free from electoral chaos, coercion, and violence. It is in the hope that this Honorable Supreme Court will uphold and enforce an equal application of protections enumerated in the Voting Rights Act as a right to civil relief for all citizens, that Clayton respectfully presents these questions to the Honorable Supreme Court of the United States for review:

OPINIONS BELOW

On November 20, 2014, the United States District Court for Middle Tennessee issued an opinion in *Clayton v. Forrester*, et. al. No. 3:13-01211 (DKT. 160). The District Court granted the Plaintiff's prayer that the case be remanded to state court, in Nashville/Davidson County, where the case began. However, the District Court denied Plaintiff's prayer that federal elections under the Voting Rights in Tennessee qualified for federal protection on the basis that a political party in Tennessee is not a "a state or political subdivision thereof".

On October 13, 2015, the United States Court of Appeals for the Sixth Circuit issued an opinion in *Clayton v. Forrester*, et. al. No 3:13-cv-01211 (DKT 170). The Sixth Circuit upheld that the Defendants/Appellees had abandoned any claim that the First Amendment strikes down Tennessee Title 2 statutes made for the protection of elections but upheld that political parties as defined, empowered, and regulated by Tennessee Title 2 and other statutes are not "a state or political subdivision thereof" and that Clayton enjoys, as either a statewide candidate for office or voter, no federal election protection whatsoever and particularly no federal protection under the Voting Rights Act.

JURISDICTION

The Defendants/Appellees, having removed this case in its entirety from state court to the U. S. District Court for Middle Tennessee have waived any immunity to state rules and laws, if any. The Erie Doctrine is controlling and authorizes, when necessary, for federal courts to apply the state standard. The Supreme Court of the United States has jurisdiction to consider this case *de novo*.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifteenth Amendment and Article IV. The First Amendment is excluded because all parties have now agreed with Clayton that state statutes must be presumed constitutional if there is any doubt and should be heard on their own merits in state court.

TREATY PROVISIONS INVOLVED

None

STATUTES AND REGULATIONS INVOLVED

28 U.S. Code § 1973l(c)(1) and § 2284 1973b(e)(2) which pertain to the protection of elections and electors in state law. Tennessee Title 2 defines and authorizes statewide political subdivisions, such as political parties as well as the election of an function of executive committees for political parties within the state of Tennessee. Tenn. Code Ann. § 29-35-101 (3) and (4) (B) prohibits *quo warranto* actions by elected officials, such as the elected Tennessee Title 2 executive committee for statewide political parties.

Fifteenth Amendment to the United States Constitution; United States Constitution Article IV § 4; Tenn. Code Ann. § 2-13-101; Tenn Code Ann. § 2-17-104; Tenn. Code Ann. § 2-17-115 (b)(1)(2); Tenn. Code Ann. § 29-35-101; Tenn. Code Ann. § 8-44-102; Tenn. Code Ann. § 8-44-105; Tenn. Code Ann. § 8-44-104; Tenn. Code Ann. § 39-16-702(4); Tenn. Code Ann. § 39-16-703; Tenn. Code Ann. § 39-16-703; Tenn. Code Ann. § 39-16-702(4); Tenn. Code Ann. § 40-12-104.

STATEMENT OF THE CASE

Pursuant to Tenn. Code Ann. § 2-17-115 (b)(1)(2), Mark Clayton is, as a matter of fact and law, a *bona fide* Democrat.

By all rights as "Any person", Mark Clayton has unilateral authority in Tennessee to seek a criminal indictment against the Defendants/Appellees, pursuant to Tenn. Code Ann. § 40-12-104 *et. seq*. If any sympathy of the federal courts lies with the Defendants/Appellees, then it behooves the federal courts to enforce the civil remedy of injunctive and declaratory relief via federal protections of elections.

Voting for Am., Inc v. Andrade, 488 Fed. Appx. 890 (5th Cir. 2012), *Voting for Am. v. Steen*, 732 F3d 382(5th Cir. 2013), and *Kurita v. State Primary Board No. 3:08-0098* (U.S. District Court Middle Tenn.) very clearly establish that state election laws create a burden of enumerated state statutory compliance for political parties and therefore obligates political parties as agencies of the state as political subdivisions.

Political parties in Tennessee qualify as "a state or political subdivision thereof'. Tenn. Code Ann. § 2-13-101 defines the "political party" as "statewide political party". The executive committee for the "statewide political party" is elected pursuant too Tenn. Code Ann. § 2-13-102 and is sometimes referred to as the "state primary board". These are not distinct bodies, and no authorization exists whatsoever to meet as one in public, adjourn, and then reconvene in secret as the other. Tenn. Code Ann. § 2–13-108 enumerates mandatory incorporation of sunshine law Tenn. Code Ann. § 8-44, Tennessee's "Open Meetings Act". Under Tenn. Code Ann. § 8-44, neither chance meeting nor informal assemblage is allowed, meaning that for elected Tennessee Title 2 state primary board members, they may not convene in secret as another entity. Public record for decades also proves and upholds the doctrine that there is only one body: the state primary board is the executive committee. This is a matter for the state court to enforce upon remand. Tenn. Code Ann. § 2-13-202 requires state political parties, as a statutory political subdivision of the state, in Tennessee to hold primary elections for United State Senator, Governor, State Senator, and State Representative. For other races, with some exception, Tenn. Code Ann. § 2-13-103 authorizes the executive committee to choose "any method" of nominating candidates or to have a primary. For a federal court to hold that a Tennessee political party is not a "a state or political subdivision thereof" is to strike down all of these rules. Federal Courts should hold that "statewide political parties" and their statutory accouterments to be "a state or political subdivision thereof".

The Defendants/Appellees, through counsel, misuse *Democratic Party of the United States v. Wisc.*, 450 U.S.

107 (1981), which is a case regarding a state with open primaries and conflate the issue of allowing non-party voters to vote in a party primary, as is the issue in *Democratic Party of the United States v. Wisc*. Tennessee is entirely different; A voter must belong to the party in which he or she votes – there is merely no party registration, see

Tenn. Code Ann. § 29-35-101 (3) and (4) (B) prohibit *quo warranto* actions by state election officials. *Morrison v. Crews*, 192 Tenn. 20, 29, the controlling Tennessee State Supreme Court decision on the question at a time when the notations were different for Tennessee statutes, settled the matter that quo warranto prohibitions do indeed apply against Title 2 election officials, and board or commission members – that the statutory restriction against application to the validity of the election does not restrict the courts from applying *quo warranto* prohibitions against election board members themselves, rather than the actual election. The quo warranto restriction is yet more evidence that political party board members under Title 2 are part of "a state or political subdivision thereof". To say otherwise is to void aforementioned statute and case law, see and DKT. 127 ¶ 17. Many courts from varying state and federal venues look to *Morrison* for direction, and the intentional ignorance of *Morrison*, after being fully briefed by Plaintiff/Appellant, on the part of the lower courts is damaging to precedent. *Morrison*, when followed, solves many major problems of Tennessee election controversies.

Allen v. State Board of Elections, 393 U.S. 544,554-57 (1969) should be upheld and affirmed by the United States Supreme Court in this case. Clayton graduated the sixth-

grade and should enjoy the same federal protections as both a voter and a candidate as any other citizen could enjoy under 28 U. S. Code § 1973l(c)(1) and § 2284 1973(b)(e)(2). Therefore, not only must a vote or votes cast by Clayton, both as a candidate and a voter, be allowed to be cast and counted. All efforts required by Tennessee Title 2 executive committee membes to to make said cast and counted, said all efforts must also be made to make cast and counted votes *effective*. The United States Supreme Court should enforce by decree that votes must be allowed to be cast and counted but also effective for all citizens equally under 28 U. S. Code § 1973l(c)(1) and § 2284 1973(b)(e)(2). The United States Supreme Court should apply *Smith v. Allwright*, 321 U.S. 649, 663 (1944) regardless of race, color, or creed: that state statutes and party rules for selecting nominees are not private law and are an extension of state statutes.

The U.S. District court violated Clayton's right to petition by forcing him to withdraw his motion in DKT. 20 and the accompanying memorandum in DKT. 22. All proceedings before the Magistrate Judge are transcribed. The Sixth Circuit erred in stating that the matter did not succeed, because all state claims are being remanded. The matter is not the merit of the motion. The matter i that Judge Sharp, using the Magistrate Judge as a proxy, intimidated Clayton and placed him under duress by withdrawing the motion without any consent whatsoever by Clayton while allowing the Defense to proceed by filing several malicious motions for sanctions, which Clayton took as the "baseball bat" as Judge Sharp publicly bragged about carrying around as well as bragging about attacking the person directly if attacking the ideas did not work out.

This is a direct violation of Clayton's First Amendment right to petition.

The U. S. District Court erred in failing to grant Clayton's FRCP 19 (a)(2) in DKT. 115 "Motion for Joinder" as a matter of course. The gravamen of both cases involved the same fundamental legal question upon which all questions are predicated: whether Clayton is or is not a *bona fide* Democrat. All parties share this fundamental question of law and fact. In Clayton v. Forrester, the Defense argues as a defense that Clayton is, in fact, a *bona fide* Democrat. Neither the U.S. District Court for Middle Tennessee nor the Sixth Circuit Court of Appeals provides an authority by which Clayton's FRCP 19 (a)(2) "Motion for Joinder", which is titled under the FRCP as "Required" can be denied. This flouting of procedure by the U.S. District Court, in addition to setting a terrible precedent for misusing a federal court to harass and intimidate candidates as well as setting a precedent for a federal judge to interfere in the electoral process, proved extremely costly for all parties, *see Appellant Brief* (6th Circuit) ¶ 7. Now that remand is won by Plaintiff/Appellant in all lower venues, it is also clear that the "Required Joinder" would have, and should have, time having been of the essence, necessarily become and shall become a matter for the state court upon remand. Why would the U.S. District Court for Middle Tennessee remand ALL state claims, yet ignore the procedural fact that a state court would have joindered all related controversies – unless the U.S. District Court were politically motivated to throw the 2014 election and remove the front-runner for the gubernatorial primary, Mark Clayton. The U.S. District Court defrauded the Democratic Party voters in Tennessee by refusing to

joinder related state claims which it had yet to remand. The Plaintiff/Appellant properly filed all motions, etc. and diligently pursued his rights throughout the process and is owed a "Required Joinder" of parties and claims. It is the height of absurdity that with facts and parties intertwining to such a vast extent, that the both parties have had great expense in running to and from state and federal venues regarding the same facts and actors. Judge Sharp and his political machinations make him the author of this litigation chaos, *see* DKT. 115.

Clayton believes that Gerard Stranch IV committed aggravated perjury under Tenn. Code Ann. 39-16-702 (3) in December 30, 2013 with malice aforethought by making up a false story about how the executive committee unanimously "disavowed" Clayton after "unanimously" confirming Clayton as the officially nominated candidate. The matter is transcribed on the Docket of *Clayton v. Forrester* 3-13-cv-01211; *see also* transcript Crim v. Tenessee Democratic Party v. Mark Clayton, 3:12-CV-0838.

Nix v. Whiteside, 475 U.S. 157 (1986) very clearly does not allow a counsel, such as Mr. Stranch IV to participate in planned perjury, See DKT. 23-1 PageID #255, DKT. 39 PageID # 402,403 ¶15, and DKT. 40 PageID 407-08, and Tenn. Code Ann. § 39-16-702(4) and Tenn. Code Ann. § 39-16-703, Appendix A-32 and A-33. Clayton alleges that Gerard Stranch IV committed aggravated perjury under Tenn. Code Ann. 39-16-702 (3) in December 30, 2013 with malice aforethought by making up a false story about how the executive committee unanimously "disavowed" Clayton after "unanimously" confirming Clayton as the officially nominated candidate. The matter is transcribed on the Docket of *Clayton v. Forrester*. At the very least,

Gerard Stranch IV, counsel for the Appellees, is a discredited witness and may not be relied upon to support the facts. *See also* Appelant Brief (6th Cir.) ¶ 11-20.

Despite this case setting a precedent for all elections and all candidates in Tennessee, the Sixth Circuit Court of Appeals captioned its memorandum as not being recommended for publication. We believe that this is because of the negative and embarrassing contrarian treatment of *Smith v. Allwright*, 321 U.S. 649, 663 (1944) that the "party which is required to follow these legislative directions an agency of the State" and the Voting Rights Act. By recommending that the decision not be published, the 6th Circuit is trying to obscure negative treatment of *Smith* to propagate a legal myth of electoral equality while denying the same. My many Democratic constituents in Memphis will be infuriated if the United States Supreme Court does not correct this blaring contradiction of ethos.

Judge Sharp did not comply with FRCP 65 (e)(3) because he wanted to inject his politics into the election cycles and did not want any other judges to interfere. Judge Sharp has a penchant for removing things from filings and for not granting subpoenas relevant to the case. We have at this point appealed only the most debilitating and egregious in the hope that the United States Supreme Court will hold what is commonly held that political parties and their rules are an extension of the state statutes and therefore a political subdivision of the state.

REASONS FOR GRANTING THE PETITION

I. GRANTING THIS PETITION IS A PUBLIC SERVICE AND BENEFITS THE PEOPLE OF TENNESSEE, AND CREATES A PRECEDENT BY WHICH ELECTIONS IN TENNESSEE CAN FUNCTION IN "SUNSHINE" WITH FEDERAL PROTECTION, IF NECESSARY, DUE TO CORRUPT TRIFECTA

While the Sixth Circuit Court of Appeals wishes for its decision to remain unpublished, every institution remotely related to elections in Tennessee eagerly awaits the outcome of this case. The main question is whether or not a political party is a political subdivision of the state and therefore subject to federal protections on behalf of voters and candidates, which federal protections buttress state election law, so long as that state election law is found by the courts to be constitutional.

At the time that this lawsuit was filed, Clayton, who lives in Nashville/Davidson County, was facing both a horizontal trifecta as well as a verticle trifecta. They mayor's office, Judge Brothers in state court, as well as the office of the District Attorney were all political allies with Mr. Forrester. We all know that prosecutorial discretion, jury rigging, coupled with judicial discretion meant no justice for Clayton. On top of this Mr. Forrester's ties to local developers conflate with the interests of developers whom Judge Sharp worked for. Even worse, Mr. Stranch IV's mother took charge of this

case at the Sixth Circuit Court of Appeals by secret committee.

The failure, on the part of Judge Sharp, to joinder *Clayton v. Forrester* with *Clayton v. Herron* coupled with his dilatory mishandling of DKT.. 20 and 22 constitutes an egregious violation of both the Erie Doctrine as well as a direct, political interference with the natural electoral course of the Democratic Party. Judge Sharp did not maintain neutrality from party "squabbles", whatever that means, Judge Sharp was part of the political machination and directly interfered with Tennessee's gubernatorial 2014 race by not joindering claims per DKT. 115. Judge Sharp knew exactly what he was doing and will go down in history for rigging Tennessee's gubernatorial race in 2014 through his dilatory handling of DKT. 20 and 22 as well as his flouting of FRCP 19 (a)(2) in DKT. 115. It was by this method that Judge Sharp removed from consideration of hundreds of thousands of Clayton supporters, the 2014 frontrunner for the Democratic nomination for governor, Mark Clayton.

Recently, the government beheaded a popular political leader in Saudi Arabia. A newly elected mayor in a Mexican city who pledged to clean up corruption was assassinated. In the United States of America, Judge Kevin Sharp, who brags to newspaper reporters (see appeal brief to Sixth Circuit) that he carried around a baseball bat to make people pay for gas and that if attacking a person's ideas do not work that he just attacks the person, threatened federal candidate Mark Clayton that his detailed description of Nashville corruption is

"spurious" and "ill-advised". If this is common legal jargon instead of a death-threat by Judge Sharp, I would like for the United States Supreme Court to declare the difference, *see* DKT. 149.

The aftermath at this point is that Clayton Democrats heavily influenced the 2015 mayoral race for Nashville/ Davidson County, defeating Forrester's faction.

In 2014, Clayton Democrat joined a coalition to remove Forrester's faction from the Nashville/Davidson County District Attorney office and won outright.

These developments are germane to this case and proper before the United States Supreme Court, because it shows that not only has Clayton diligently pursued his rights in the system of courts, but Clayton has also engaged in an unprecedented pursuit of his rights against those who should be investigated as racketeers in a criminal investigation rather than leaving Clayton to defend himself against what non-parties have called "the institutional harassment of Mark Clayton."

Finally, the 6th Circuit Court erred in stating that Plaintiff/Appellant counsel filed anything. Plaintiff/Appellant filed himself, *pro se*, and did not have a federal attorney. The reversible error is that the U.S. District Court erred in violating the petitioner's right to plead by striking *pro se* pleadings, notwithstanding any outcome. This sets a dangerous precedent to destroy the right of petition and encourages the District Court to be

reckless and careless with the right of petition, *see Appendix* p. A-7. The U.S. District Court also forcibly, through encouraging a stream of frivolous and malicious motions for sanctions and motions to dismiss, thus placing Plaintiff/Appellant under duress, did fraudulently in an abuse of proceedure force Plaintiff/Appellant to withdraw *see Appendix A-7* and A-22.

United States Constitution Article IV § 4 guarantees state citizens federal protections in elections. Subsequent laws merely buttress and affirm the principles of Article IV.

The particulars of the state laws themselves, in this case, are to be remanded to the state court.

Finally, the judges think it proper to put "spin" on the election and with neither basis in fact or law, nor anything related in Plaintiff/Appellant's pleadings; the federal judges want to say that somehow that the Plaintiff/Appellant is "complain[ing]" that he "lost votes" when nothing of the sort is in the pleadings, law, or facts. Federal judges should leave "spin" to op-ed writers and politicians. Clayton is going around helping candidates defeat the allies of Mr. Forrester and winning on a regular basis. If anyone is losing votes or being marginalized politically due to another it is Mr. Forrester who is losing to the superior politics of Mark Clayton and not the other way around as the political "spin" in the 6th Circuit and District Court would have one believe. Furthermore, nobody in the political sphere is listening to the political spin of federal judges.

Furthermore, the 6th Circuit invented a new actor, the "Tennessee Democratic Party" or the "TDP" and invented a new lawsuit. There is no conflict of law between Mark

Clayton, Plaintiff/Appellant, and the "Tennessee Democratic Party". The "TDP" is not an actor in this case, and only the most incompetent jurist would invent such a conflict out of thin air. The Defendants/Appellees are not the "TDP".

In addition to flouting rules for "Required Joinder" Judge Sharp FRCP (b)(1)(A) and (B) FRCP (b)(3) to rig the 2014 Tennessee gubernatorial election. Plaintiff/Appellant's "Memorandum on Federal Question and the Voting Rights Act" (DKT 127) is incorporated by reference.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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United States Court of Appeals
for the Sixth Circuit

Docket No. 14-6525
MARK CLAYTON,
Appellees,
v.
CHIP FORRESTER, et. al.,
Appellants,

October 13, 2015

Decision Under Review: Appeal from the Appellate Court for the Sixth Circuit; heard in that court on appeal from the United States District Court for Middle Tennessee, the Honorable Kevin H. Sharp presiding.

Judgement: Judgement affirmed.
Clayton's Rule 26(b) motion denied.

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Judges: JUDGE BOGGS, SUHRHEINRICH, and SUTTON delivered the judgement of the court, with opinion, signed by the clerk.

JUDGE STRANCH contributed to the

opinion and may fraternizes with the other judges and influence their opinions either through clerks or directly as no overt reply to Clayton's demand for recusal of the same honored Clayton's pleading. There exists no assurance that JUDGE STRANCH is not involved with this case. We presume that JUDGE STRANCH concurs and is *ex parte* off record.

OPINION

Mark Clayton, a Tennessee citizen proceeding pro se, appeals to the district court's judgment dismissing his claims brought under the Voting Rights Act of 1965 (Voting Rights Act), 52 U.S.C. § 10301, and remanding his remaining state-law claims to the state court in which they originated. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In 2014, through counsel, Clayton filed a complaint against the Tennessee Democratic State Primary Board, numerous members of the Tennessee Democratic State Primary Board, and several officers of the Tennessee Democratic Party (TDP), alleging that they violated his rights under the Voting Rights Act and multiple provisions of state law during the 2012 United States Senate election. In his fourth amended complaint, which he filed pro se after the withdrawal of his trial counsel, Clayton alleged that although Tennessee voters chose him in the primary election as the Democratic candidate for the United States Senate, the TDP campaigned against him, urged voters to

write in another candidate of their choice, stated that voters chose him only because his name was first on the ballot, and made various disparaging remarks to the press about him, including remarks about his alleged membership in a hate group. Additionally, he asserted that when he went to TDP headquarters in October 2012 to complain, he was forcibly removed by premises by the police. The defendants removed the case to federal court.

The defendants subsequently filed a motion to dismiss the action pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted. The district court dismissed Clayton's Voting Rights Act claim for failure to state a claim because Clayton did not allege any facts demonstrating that a voter or group of voters had been prevented from voting and because none of the named defendants was a state or a political subdivision thereof, as required by the Voting Rights Act. The district court declined to exercise pendent jurisdiction over the remaining state-law claims and remanded the case to state court for further proceedings.

On appeal, Clayton challenges the district court's dismissal of his Voting Rights Act claim, its failure to comply with "Tennessee's Declaratory Relief Act," and its handling of several of his filings. He does not challenge the district court's decision to remand his remaining state-law claims to the state court. Accordingly, he has abandoned the issue. *See Hills v. Kentucky*, 457 F.3d 583, 588 (6th Cir. 2006) (holding that issues not raised in an opening brief are waived).

As an initial matter, Clayton's appellate brief attempts to incorporate by reference pleadings and transcripts that were previously filed in this case and other "related" cases. This method, however, is insufficient in appellate arguments. *See Northland Ins. Co. V. Stewart Title Guar. Co.*, 327 F.3d 448, 452-53 (6th Cir. 2003). Clayton has also filed a Federal Rule of Civil Procedure 26(b) motion seeking to add into the record his 2015 membership card in the Southern Poverty Law Center. However, under the circumstances in this case, this new evidence cannot be added to the record on appeal. *See Adams v. Holland*, 330 F.3d 398, 406 (6th Cir. 2003) ("[T]he purpose of amendment under [Federal Rule of Appellate Procedure 10(e)] is to ensure that the appellate record accurately reflects the record before the District Court, *not* to provide this court with new evidence not before the District Court, even if the new evidence is substantial.")

Liberally construed, Clayton's appellate brief challenges the district court's dismissal of his Voting Rights Act claim for failure to state a claim. This court reviews de novo a district court's dismissal of a complaint under Rule 12(b)(6). *Benzon v. Morgan Stanley Dstribs., Inc.*, 420 F.3d 598, 605 (6th Cir. 2005). A complaint will survive dismissal if it "contain[s] sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

The Voting Rights Act states, "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" or their membership in a language minority group. 52 U.S.C. §§ 10301(a), 10303(f)(2). Clayton's Fourth Amended Complaint alleged that the defendants violated the Voting Rights Act by stating that voters had merely chosen the first name on the ballot when they voted for him in the primary election, which thus implied that voters, including Clayton, were "unable to read, write, understand, or interpret Democratic matters in the English language." R. 34 at 18. However, these alleged facts do not demonstrate that a person or group's right to vote was denied or abridged.

Citing *Smith v. Allwright*, 321 U.S. 649, 663 (1944, Clayton also challenges the district court's determination that there was no state action. The district court determined that there was not state action because neither the Tennessee Democratic State Primary Board nor the TDP had acted as a "State or political subdivision" thereof, as required under § 10301(a).

The issue of whether a party is a state actor is fact-specific and is resolved on a case-by-case basis. *See Chapman v. Higbee* Co., 319 F.3d 825, 834 (6th Cir. 2003). Here, Clayton did not allege that the defendants removed him from the Tennessee general election ballot as the Democratic Party nominee or that the defendants hindered voters' ability to vote. Instead, he challenged the

defendants' write-in-campaign against him, his removal from their headquarters, and their alleged statements disavowing support for him, challenging his legitimacy as a Democrat, and asserting that he was a member of a hate group. These actions do not involve powers traditionally reserved to the state (public function test), a close nexus between the government and the defendants' conduct (symbiotic relationship or nexus test), or action coerced and encouraged by the state (state compulsion test). See Chapman, 319 F.3d at 833-34; Lansing v. city of Memphis, 202 F.3d 821, 8228-29 (6th Cir. 2000); see also max v. Republican Comm. of Lancaster City., 587 F.3d 198, 202 (3d. Cir. 2009). Nor do the defendants' actions involve racially discriminatory voter qualifications at issue in Allwright. See 321 U.S. at 664-65; Cal. Democratic Party v. Jones, 530 U.S. 567, 573 (2000) (limiting *Allwright* and similar cases to instances of racial discrimination by a political party and noting that these cases do not stand for the broader proposition that political parties' affairs are public affairs that lack First Amendment protections). In light of the foregoing, the district court did not err in dismissing Clayton's Voting Rights Act claim.

Clayton also argues that the district court violated "Tennessee's Declaratory Relief Act" in failing to consider whether declaratory relief was warranted before remanding the case to a state court. *See* Tenn. Code Ann. § 29-14-109. However, this statute does not govern federal courts, and thus this claim lacks merit.

Clayton contends that the district court failed to consider one of his filings: "Plaintiff Memorandum on

Federal Question and Voting Rights Act." However, he provides no facts or evidence, other than his own conclusory assertion, that the district court in fact failed to consider the memorandum. Although Clayton also argues that the district court abused its discretion by denying his motion to consolidate his case with *Clayton v. Herron*, No. 3:14-cv-09955 (M.D. Tenn.), the record establishes that *Clayton v. Herron* was dismissed in April 2014 for lack of jurisdiction. *See Clayton v. Herron*, No. 3:14-00995 (M.D. Tenn. Apr. 23, 2014). As a result, there was no abuse of discretion. *See* Fed. R. Civ. P. 42(a); *see also Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir. 1993).

Clayton argues that the district court erred in not awarding him fees for the service of process and in failing to advise him that he might not recover those fees. However, the record establishes that although the magistrate judge informed Clayton that it was highly unlikely that he would recover the cost of service on the defendants beyond the cost of service by mail, Clayton chose to personally serve the defendants anyway. Additionally, because Clayton was not the prevailing party, he was not entitled to court costs under Federal Rule of Civil Procedure 54(d)(1). Clayton also argues that the district court erred in striking pleadings that were filed on his behalf by an attorney who was not a member of the federal bar because the attorney did not wish to pay the membership fee. However, the district court did not abuse its discretion in upholding its practice requirements. *See M.D. Tenn. L.R.* 83.01.

Clayton argues that the magistrate judge erroneously determined that Clayton had agreed to withdraw his motion for a preliminary injunction. However, even if Clayton did not withdraw the motion, the district court's order dismissing his Voting Rights Act claim for failure to state a claim and remanding his state-law claims demonstrates that he would not have succeeded on such a motion, and thus the district court did not commit reversible error in failing to grant the preliminary injunction. *See Bays v. City of Fairborn*, 668 F.3d 814, 818019 (6th Cir. 2012).

In light of the foregoing, the district court's judgement is AFFIRMED, and Clayton's Rule 26(b) motion is DENIED.

ENTERED BY ORDER OF THE COURT Deborah S. Hunt, Clerk

United States District Court Middle District of Tennessee
Nashville Division

Docket No. 3:13-01211

MARK CLAYTON,

Appellees,

v.

CHIP FORRESTER, et. al.,

Appellants,

November 20, 2014

Decision Under Review: Appeal from the Appellate Court for the Sixth Circuit; heard in that court on appeal from the United States District Court for Middle Tennessee, the Honorable Kevin H. Sharp presiding.

Judgement: (1) The Report and Recommendation (Docket No. 130) is ACCEPTED and APPROVED, and Plaintiff's Objections thereto (Docket No. 134) are OVERRULED;

(2) Defendants' Motion to Dismiss (Docket No. 107 is GRANTED IN PART. The Motion is GRANTED with respect to Plaintiff's claim under the Voting Rights Act of 1965 and that claim is DISMISSED WITH PREJUDICE. Plaintiff's state law claims are REMANDED to the Circuit Court for Davidson County, Tennessee;

(3) Plaintiff's Motion to Strike Response (Docket No. 148) is DENIED;

(4) Defendants' Motion to Strike Plaintiff's Notice of Tolling and Equitable Tolling (Docket No. 150) is DENIED;

(5) Plaintiff's Motion for Service order Rule 83.03 Sanctions (Docket No. 153) is DENIED;

(6) Plaintiff's Motion for Rule 72.03(b)(3) and 72.06 Ne Novo Determinations and Hearing by District Judge(s) (Docket No. 156) is DENIED; and

(7) Any remaining Motions shall be terminated as MOOT.

***

Judges: JUDGE KEVIN SHARP delivered the opinion by himself.

OPINION

Magistrate Judge Brown has entered a Report and Recommendation ("R & R") (Docket No. 130), recommending that Plaintiff's claims under the Voting Rights Act of 1965 be dismissed for failure to state a claim,

and that his state law claims be remanded to the Circuit Court for Davidson, County, Tennessee. Plaintiff has filed Objections (Docket No. 134) to the R & R, to which Defendants have responded in opposition (Docket No. 141). Additionally, a number of other Motions have been filed since the issuance of the R & R, all of which the Court now considers.

R & R (Docket No. 130), Objections (Docket No. 134), and Response (Docket No. 140)

In the R & R, Magistrate Judge Brown recommends dismissal of the Voting Rights Act claim for two reasons. First, Plaintiff "failed to specifically allege, or state facts sufficient to infer, that any voter, or group of voters was prevented from voting," and that, even liberally construed, his complaint "is that defendants" efforts to disavow him caused some voters that cast their ballots for him in the primary election to cast their votes for other candidates in the general election." (Docket No. 130 at 5). Second, and more fundamentally, Plaintiff does not allege 'facts that would infer action by 'any State or political subdivision thereof'" as required by 42 U.S.C. § 1973(a). (Id.).

With regard to Plaintiff's state law claims, Magistrate Judge Brown concluded that "comity and fairness weight [sic] heavily in favor of remand," writing"

> Governance of a state's political process and control over its political parties is an area of grave importance to the State. This is

> particularly so where, as here, the legislature has dictated both the form and forum of squabbles over internal party decisions. Of only slightly less import is fairness. As the master of his complaint, Plaintiff initially chose "to have the cause heard in state court" and that cause is only here based upon defendants' removal on the basis of his claims under the Act which should be dismissed.
>
> (Id. at 6)

Plaintiff lists 19 objections to the R & R, some with subparts, and many that overlap. The Court has thoroughly considered all of Plaintiff's objections and notes the following.

Plaintiff begins by arguing that "the US [sic] District Court may not dismiss and refuse to render judgement [sic] on the Voting Rights Act Claim unless there [sic] terminates no uncertainty or controversy," (Docket No. 134 at 1), citing Tenn. Code Ann. § 29-14-109 for that proposition. The statutory provision provides:

> The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings.

Id. But the statute uses the term "may" and, as such, "whether to entertain a declaratory judgement action ... is largely discretionary with the trial judge." State of *ex rel.*

Earhart v. City of Bristol, 790 S.W.2d 948, 954 (Tenn. 1998). Besides, "the court" in the statute is a reference to the state, not federal courts. Likewise, Tenn. Code Ann. § 29-14-102, which Plaintiff quotes in his sixth objection, and which states that "[c]ourts of record within their respective jurisdictions have the power to declare rights," is a reference to state circuit and chancery courts.

Citation to state declaratory relief statutes aside, Plaintiff argues

> The US [sic] District Court is also required, if it passes judgment on the Voting Rights Act, to explain what constitutes action neecessary to make votes effective ... and iterate whether or not ... Defendants and/or agents took all action to make the votes of the 2012 Democratic US [sic] Primary effective and to describe what that entails.
>
> If Title 2 is not protected by the Voting Rights Act, the US [sic] District Court should explain why. If Title 2 board members and/or their agents are not required to take all action necessary to make votes effective in primaries, then the US [sic] District Court should explain why. The US [sic] District Court should also explain whether or not all efforts to make votes effective took place.

(Docket No. 134 at 2, Obj. 1 & at 2-3, Obj. 3). Plaintiff also raises a myriad of rhetorical questions in other objections, such as whether he is "in fact a bonafide Democrat"; whether he committed "some type of fraud by running for office"; whether there are "any squabbles in this case" and if so, "what is the legal definition of 'squabbles'"?; and "what [does] disavow mean as a matter of law and how [does] 'disavow' applies to the facts of this

case'"? (Id., at 4-5, Obj. 6; and at 9, Obj. 13). However, answering such questions goes far beyond the scope of the issue of whether Plaintiff has stated a claim upon which relief can be granted, and Article III of the Constitution prohibits advisory opinions. Wheeler v. City of Lansing, 660 F.3d 931, 940 (6th Cir. 2011); Arnett v. Myers, 281 F.3d 552, 562 (6th Cir. 2002). With the decision that the Voting Rights Act claim fails and the state law claims should be dismissed, there is no justiciable case or controversy before the Court, and no basis upon which to answer Plaintiff's questions.

Plaintiff, "a [C]aucasian voter," reads the R & R as saying that the Voting Rights Act only applies to minorities. (Docket No. 134 at 3, Obj. 5). This is an improper reading of the R & R, as it says no such thing. See Shelby Cnty. v. Holder, __ U.S. __, 133 S.Ct. 2612, 1659 (2013) (Section 2 of the Voting rights Act "forbids any 'standard, practice, or procedure' that 'results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color").

Plaintiff also argues that the R & R shold have recommended dismissal of "Defendants' affirmative First Amendment Defense." (Id. At 4, Obj. 5). However, no answer has been filed which would have contained affirmative defenses and, in any event, the question before the Magistrate Judge and now before the Court is whether Plaintiff has stated a federal claim upon which relief can be granted, not whether Defendants have a viable defense.

Plaintiff further contends Magistrate Judge Brown erred by failing to apply the "mandatory doctrine of judicial estoppel, to defendant's multiple inconsistent positions, particularly that plaintiff is not a *bona fide* democrat and was not a *bona fide* democrat during 2012 [.]" (Id. At 5, Obj. 7). Butwhether Defendants have taken inconsistent positions and, for that matter, whether Plaintiff is or is not a bona fide Democrat, has nothing to do with whether an action was taken by a State or political subdivision that prevented voters from voting. Likewise, whether or not Plaintiff is upset about losing votes, and whether he visited the Democratic Party Headquarters to demand documentation, rather than to complain (id. At 7-8, Obj. 8 & 9) has no bearing on whether dismissal for the reasons recommended is appropriate.

Plaintiff claims that he "pusues [sic] rights and remedy against all Defendants res ipsa loquiter" [sic] and, therefore, Magistrate Judge Brown's statement about "the powers that be" was improper because if the Court "cannot yet determine who an actor is ... it should pursue the Defendants [sic] identity under res ipsa loquiter [sic] before ascribing a name 'powers that be' which make it impossible to determine the actor." (Id. at 9, Obj. 12). The Court does not understand what a tort doctrine relating to breach of duty and care has to do with Plaintiff's claims, but it was not improper for Magistrate Judge Brown to write that "the powers that be within the Tennessee Democratic Party ... began a write-in campaign to disavow and discredit Plaintiff," (Docket No. 130 at 1), when Plaintiff specifically alleged that "Defendants and/or their agents sent out a communique via their official blog

'disavowing' the candidacy of Plaintiff" (Docket No. 34 at 6, Am. Cmp. ¶ 24).

Plaintiff further complains that magistrate Judge Brown ignored the authorities Plaintiff citied and, in particular, "Smith v. Allwright." (Id. At 11, Obj. 15). Presumably this is a reference to Smith v. Allwright, 321 U.S. 649 (1944), an inapposite case which found unconstitutional the Texas Democratic Party's rule limiting participation in its primary to whites. It, together with Terry v. Adams, 345 U.S. 461 (1953), "held only that, when a State prescribes an election process that gives a special role to political parties, it 'endorses, adopts and enforces the discrimination against Negros' that the parties ... bring into the process–so that the parties' discriminatory actoin becomes state action under the Fifteenth Amendment." Cal. Democratic Party v. Jones, 530 U.S. 567, 573 (2000) (quoting Allwright, 345 U.S. at 664). Those cases "do not stand for the proposition that party affairs are public affairs, free of First Amendment protections[.]" Id. To the contrary, "[r]epresentative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting the electorate candidates who espouse their political views," and "[i]n no area is the political association's right to exclude more important than in the process of selecting its nominee." Id.

Plaintiff also argues that "Tenn. Code Ann. § 2-14-104(c) is irrelevant to this case as it pertains to a removal statue [sic] which defendants did not initiate[.]" (Id. At 11, Obj. 16). The court finds no such statutory provision in the Tennessee Code, nor any such citation in the R & R.

Magistrate Judge Brown once cited 2-17-104(c), but that was because Judge Echols cited that statutory provision in Kurita v. State Primary Bd., 2008 WL 4601574, at *7 (M.D. Tenn. Oct. 14, 2008) to support the proposition that "[t]he power to select a nominee for a political party has never been reserved traditionally and exclusively to the State of Tennessee"; rather, "the Tennessee General Assembly expressly disclaimed any role of state government in resolving party nomination contests and instead reserved power exclusively to the political party to choose the nominee whose name will appear on the general election ballot."

Finally, Plaintiff argues it would be improper "to remand this case without direct supervision over which judge hears this case," because, in the absence of any direction, it will be assigned to Judge Brothers who is allegedly the "go to judge" fr Defendants' cases. (Docket No 132 at 10, Obj. 14). Plaintiff then goes on to make comments about Judge Brothers and his alleged relationship with Defendants and their counsel, and further claims that his life could be in danger were the case assigned to Judge Brothers. (Id. at 10-11, Obj. 14). This objection needs only the curtest of responses: (1) this Court has no power to direct which state judge will hear this case on remand; (2) Plaintiff's fear that his safety will somehow be jeopardized by the state court judge and defense counsel is baseless; and (3) his accusations are spurious and ill-advised.

Although the Court usually finds it unnecessary to address responses to objections, the Court does so here

because Defendants have requested affirmative relief in their response.

Defendants contend that the R & R should be modified by dismissing Plaintiff's state law claims, instead of remanding them to state court. They argue that Plaintiff has made clear his distrust of the state courts through his objections, and dismissiong the action at this juncture will "put this matter fully to rest" and save Defendants further expense. This latter rationale (about closure and reduction of costs) existed at the time the R & R was issued ad, as such, Defendants should have objected and sought modification within the fourteen-day limit set forth in the R & R and Rule 72(b)(2) of the Federal Rules of Civil Procedure.

Regardless, how Plaintiff feels about litigating in state court is not germane to the question of whether the state law claims should now be remanded. District courts have "broad discretion" under 28 U.S.C. § 1367 in determining whether to exercise supplemental jurisdiction, a discretion which is guided by "several factors, including the 'values of judicial economy, convenience, fairness and comity.'" Gamel v. City of Cincinnati, 65 F.3d 949, 951-52 (6th Cir. 2010) (quoting Carnegie-Mellon Univ. V. Cohill, 484, U.S. 343, 350 (1988)).

The Court agrees with Magistrate Judge Brown that it is best to remand the state law claims. The case before the Court has proceeded only to the motion to dismiss stage, and all but one of the remaining claims will require

application of Title 2 of the Tennessee Code, which is best addressed by a state court.

In their response, Defendants also requests sanctions pursuant to this Court's inherent power or pursuant to 28 U.S.C. § 1927. The requested sanctions will be denied.

Section 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct.

16 28 U.S.C. § 1927. Given that the statute refers to "[a]n attorney or other person admitted to conduct cases," some doubts have been expressed as to whether a party appearing *pro se*, like Plaintiff here, can be sanctioned under the statute. See Feingold v. Graff, 516 F. App'x 229, n.9 (9th Cir. 2013) (we express doubt as to whether 28 U.S.C. § 1927 may be applied to non-lawyer, pro se litigants ... and we need not decide this difficult issue now"); Modelist v. Miller, 445 F. App'x 737, 742 (5th Cir. 2011) ("we leave open the question of whether § 1927 sanctions can be imposed against a *pro se* litigant"); Hall v. Liberty Life Assur. Co., 595 F.3d 270, 275 (6th Cir. 2010) (district court erred in looking at client's financial ability to pay "because the statute authorizes the imposition of sanctions only on 'any attorney or other person admitted to conduct case'"). Regardless, whether to award

sanctions under Section 1927 rests within the discretion of the Court, and while Defendants request sanctions because of Plaintiff's diatribe in his objections, the Court does not believe that his objections so multiplied the proceedings as to make an award of sanctions under Section 1927 appropriate.

Defendants' request for sanction based on this Court's inherent power presents a much closer question. Given Magistrate Judge Brown's March 13, 2014 Order (Docket No. 105) threatening sanctions and warning all sides "to knock off the inappropriate language," Plaintiff certainly knew better than to cast vitriolic aspersions in his objections, such as describing a "corrupt state judicial environment, void of justice and full of political intrigue[.]" (Docket No. 134 at 13-14). "Nevertheless, the district court should exercise its inherent authority to impose sanctions with restraint and discretion." Murray v. City of Columbus, 534 F. App'x 479, 485 (6th Cir. 2013)(citing, Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991)). The Court does so here by declining to award sanctions but reiterating Magistrate Judge Brown's observation that Plaintiff's assertions are "quite frankly ... juvenile and totally inappropriate." (Docket No. 105 at 1).

II. Motions to Strike (Docket Nos. 148 & 150)

Plaintiff has moved to strike Defendants' response to his objection because the response was not filed until 28 days after the R & R issued, and "[i]f the Defendant wanted to object to the Report and Recommendation that this case be remained" they should have done so within 14 days. (Docket No. 148 at 1). Striking Defendants' response is

not the appropriate remedy and this Court has already determined that it will remand the case, Defendants' objection thereto, notwithstanding.

Defendants move to strike Plaintiff's Notice of Tolling and Equitable Tolling. However, as Defendants themselves note, the notice "does not actually request that this Court take any action." (Docket No. 150 at 1).

Accordingly, both Motions to Strike will be denied.

III. Motion for Service Order and Rule 83.03 Sanctions (Docket No. 153)

Plaintiff moves for sanctions based upon statements defense counsel allegedly made in related state court proceedings, including that Plaintiff "is affiliated with a group the Southern Poverty Law Center identifies as a 'hate group," and as is clear from reading Plaintiff's pleadings in this and other cases, he seems to have only a loose connection with reality." (Docket 154 at 1). This motion will be denied.

Even assuming counsel's comments made in argument are sanctionable, the "Service Order" in which Magistrate Judge Brown admonished the parties to remain civil applies to filings and actions in this case; conduct in state court is for the state judge to police. Local Rule 83.03, upon which Plaintiff also relies, is inapplicable because it

addresses "extrajudicial" statements that might interfere with a fair trial.

In this Motion, Plaintiff claims that he "disagrees with and always disagreed with the Magistrate Judge's finding or assertion that the Plaintiff agreed, orally, to withdraw his motion in Dkt. 20 and 22 during a scheduling hearing on December 30, 2013." (Docket No. 156). The referenced "motion" is Plaintiff's Motion for a Preliminary Injunction and accompanying memorandum.

In an Order issued the same day as the scheduling hearing, Magistrate Judge Brown wrote:

> After discussion with the parties the Plaintiff agreed to **withdraw** this motion without prejudice to being refiled once he has had an opportunity to consider the matters discussed in court. The Magistrate Judge did opine that, to the extent that he had to provide a report and recommendation on the motion for preliminary injunction, he would have great difficulty in finding that an injunction was needed to prevent irreparable harm, given that the election was completed in 2012 and it does not appear that the Plaintiff is involved in an active election at this point.

(Docket No. 31 at 4)(emphasis in original). If Plaintiff disagreed with the assertion that he had withdrawn his request for preliminary relief, his objection was required to be lodged "within 14 days" and "[a] party may not

assign as error a defect in the order not timely objected to." Fed. R. Civ. P. 72(a).

Plaintiff also argues that this Court "should have been the one to exercise authority to decide whether or not to issue the subpoenas" requested by Plaintiff. (Docket No. 156 at 1). However, 28 U.S.C. § 636 (b)(1)(A) specifically provides that a "judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court," and this Court's Local Rule 16.01 provides for oversight by the "case management judge."

Finally, Plaintiff requests that a three judge panel (ostensibly pursuant to requirements of the Voting Rights Act) "rule that Dkt. 20 and 22 are and have always been throughout the process active and never withdrawn, and that the subpeones [sic] as requested in Dkt. 132 and143 be issued to Plaintiff for service of process [.]" (Docket No. 156 at 2). But determining whether a motion has been withdrawn or subpoenas should be issued is not something for a three-judge panel, particularly since Plaintiff has not stated a cognizable claim under the Voting Rights Act. See 28 U.S.C. § 2284 (requiring three judge panel where challenge is to constitutionality of congressional district or statewide legislative body but, even then, "a single judge may conduct all proceedings except the trial and enter all orders permitted by the rule of civil procedure"); Kreiger v. Loudon Cnty., 2014 WL 4923904, at *5 (W.D. Va. Sept. 30, 2014) ("the plain language of 52 U.S.C. § 10101" of the Voting Rights Act which requires three judge panels "expressly limits its application to discrimination based on

'race, color, or previous condition of servitude' and discrimination against 'language minorities.'").

V. Conclusion

The Court will enter an Order confirming the foregoing rulings. KEVIN H. SHARP CHIEF UNITED STATES DISTRICT JUDGE

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifteenth Amendment to the United States Constitution

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

United States Constitution Article IV § 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

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42 U.S.C § 1973 13(c)(1)

The terms "vote" and "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in

the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

Voting Rights Act of 1965
28 U. S. Code § 1973l(c)(1)

No person who demonstrates that he has successfully completed the sixth primary grade in public school in, or a private school accredited by, any State or territory, the District of Columbia, or the commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that, in States which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

Tenn. Code Ann. § 2-13-101

In this chapter, "political party" and "party" mean "statewide political party" unless another intent is clearly shown.

2-13-102. Creation of state primary boards.

(a) Each political party shall have a state executive committee which shall be the state primary board for the party.

(b) The state primary board shall perform the duties and exercise the powers required by this title for its party.

(c) The state primary board of each statewide political party created by this section is the immediate successor to the state board of primary election commissioners of each party. Wherever in the Tennessee Code the state board of primary election commissioners of a political party is referred to, "state primary board" shall be substituted.

Tenn Code Ann. § 2-17-104

Contest of primary election.

(a) Any candidate may contest the primary election of the candidate's party for the office for which that person was a candidate.

(b) To institute a contest, the candidate shall, within five (5) days after the certification of results by the county election commission, file a written notice of contest with the state primary board of the candidate's party and with all other candidates who might be adversely affected by the contest. In the notice the candidate shall state fully the grounds of the contest.

(c) The state primary board shall hear and determine the contest and make the disposition of the contest which justice and fairness require, including setting aside the election if necessary.

Tenn. Code Ann. § 2-17-115 (b)(1)(2)

(b) A registered voter is entitled to vote in a primary election for offices for which the voter is qualified to vote at the polling place where the voter is registered if:

(1) The voter is a bona fide member of and affiliated with the political party in whose primary the voter seeks to vote; or

(2) At the time the voter seeks to vote, the voter declares allegiance to the political party in whose primary the voter seeks to vote and states that the voter intends to affiliate with that party.

Tenn. Code Ann. § 29-35-101

Grounds for action

An action lies in the name of the state against the person or corporation offending, in the following cases:(1) Whenever any person unlawfully holds or exercises any

public office or franchise within this state, or any office in any corporation created by the laws of this state;

(2) Whenever any public officer has done, or suffered to be done, any act which works a forfeiture of that officer's office;

(3) When any person acts as a corporation within this state, without being authorized by law; or

(4) If, being incorporated, they:

(A) Do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation;

(B) Exercise powers not conferred by law; or

(C) Fail to exercise powers conferred by law and essential to the corporate existence.

Tenn. Code Ann. § 2-13-108

Meetings of state primary boards -- Appointment of county primary boards.

(a) (1) Each state primary board shall meet at a public building in Nashville at least once in every even-numbered year at the call of its chair, or on such other occasions as may be necessary in order that it may fulfill its duties under this title.

(2) Meetings of each state primary board shall be open and subject to title 8, chapter 44.

(b) Each state primary board shall appoint five (5) persons in each county, for terms of two (2) years from the date of their appointment and until their successors are appointed and qualified by taking the oath, to compose its county primary boards.

(c) The county primary board of each statewide political party created by this section for each county is the immediate successor to the county boards of primary election commissioners of each political party. Wherever in the Tennessee Code the county boards of primary election commissioners of political parties are referred to, "county primary board" shall be substituted.

Tenn. Code Ann. § 8-44-102

Open meetings -- "Governing body" defined -- "Meeting" defined.

(a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.

(b) (1) "Governing body" means:

(A) The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration and also means a community action agency which administers community action

programs under the provisions of 42 U.S.C. § 2790 [repealed]. Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times;

(B) The board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public; provided, that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings of the board of directors of such nonprofit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state law or by federal or state regulation shall not be covered under the provisions of this chapter, and no other matter shall be discussed at such meetings;

(C) The board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to the provisions of title 7, chapter 54 or 58. The provisions of this subdivision (b)(1)(C) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more, according to the 1980 federal census or any subsequent federal census;

(D) The board of directors of any nonprofit corporation which through contract or otherwise provides a metropolitan form of government having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, with heat, steam or incineration of refuse;

(E) (i) The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

(a) Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;

(b) Receives dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and

(c) Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

(ii) The provisions of this subdivision (b)(1)(E) shall not be construed to require the disclosure of a trade secret or proprietary information held or used by an association or nonprofit corporation to which this chapter applies. In the event a trade secret or proprietary information is required to be discussed in an open meeting, the association or nonprofit corporation may conduct an executive session to

discuss such trade secret or proprietary information; provided, that a notice of the executive session is included in the agenda for such meeting.

(iii) As used in this subdivision (b)(1)(E):

(a) "Proprietary information" means rating information, plans, or proposals; actuarial information; specifications for specific services provided; and any other similar commercial or financial information used in making or deliberating toward a decision by employees, agents or the board of directors of such association or corporation; and which if known to a person or entity outside the association or corporation would give such person or entity an advantage or an opportunity to gain an advantage over the association or corporation when providing or bidding to provide the same or similar services to local governments; and

(b) "Trade secret" means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. The trier of fact may infer a trade secret to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(2) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program.

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.

Tenn. Code Ann. § 8-44-105

Action nullified -- Exception.

Any action taken at a meeting in violation of this part shall be void and of no effect; provided, that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned.

Tenn. Code Ann. § 8-44-104

Minutes recorded and open to public -- Secret votes prohibited.

(a) The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

(b) All votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed. As used in this chapter, "public vote" means a vote in which the "aye" faction vocally expresses its will in unison and in which the "nay" faction, subsequently, vocally expresses its will in unison.

Tenn. Code Ann. § 39-16-702(4)

Makes a false statement, not under oath, but in a declaration stating on its face that it is mad under penalty of perjury.

Tenn. Code Ann. § 39-16-703

Aggravated perjury.

(a) A person commits an offense who, with intent to deceive:

(1) Commits perjury as defined in § 39-16-702;

(2) The false statement is made during or in connection with an official proceeding; and

(3) The false statement is material.

(b) It is no defense that the person mistakenly believed the statement to be immaterial.

(c) Aggravated perjury is a Class D felony.

Tenn. Code Ann. § 40-12-104

Application to testify by person having knowledge of commission of offense.

(a) Any person having knowledge or proof of the commission of a public offense triable or indictable in the county may testify before the grand jury.

(b) The person having knowledge or proof shall appear before the foreman. The person may also submit the sworn affidavits of others whose testimony the person wishes to have considered.

(c) The person shall designate two (2) grand jurors who shall, with the foreman, comprise a panel to determine whether the knowledge warrants investigation by the grand jury. The panel may consult the district attorney general or the court for guidance in making its determination. The majority decision of the panel shall be final and shall be promptly communicated to the person along with reasons for the action taken.

(d) Submission of an affidavit which the person knows to be false in any material regard shall be punishable as perjury. An affiant who permits submission of a false affidavit, knowing it to be false in any material regard, is guilty of perjury. Any person subsequently testifying before the grand jury as to any material fact known by the person to be false is guilty of perjury.