

State of Tennessee
v Mark Clayton
Case No. 2018-D-2207

Affidavit of Mark E Clayton

August 25, 2021

City of Nashville, Davidson County, Tennessee

INITIAL CLARIFICATIONS

To avoid any confusion, and to clarify something that was spoken in the hearing in the Criminal Court of Davidson County, Honorable Judge Monte Watkins, on August 25th 2021 – I want to make it clear that I do not represent pro se in any litigation other than my own, and sometimes I hire an attorney. I have a standing policy (and legally correct policy), where I do not work on any litigation for any litigant other than my own (at times) without them having an attorney for me to work with. While I can rightly take credit for legal work and legal theories and rulings enforcing stare decisis advanced within the state of Tennessee from 2013 to the present, I have always done my work with attorneys of record when required by law. While it is not a career for me, legal research, legal theory, and legal management is a job skill for me. I have a degree in Prelaw from Pensacola Christian College which provided some of the foundational training. Much of my training has come from spending time reading statute law, law reviews, and appellate law.

I **OBJECT** to the state making fun of me for stating that I demoted Mr. Byron Pugh and placed a supervisor over him. **FIRST**, Mr. Pugh either filed his motion to withdraw or told me he was withdrawing before I had a chance to get another attorney – I hired Mr. Tennyson out of the desperate position which Mr. Byron Pugh intentionally put me in. I am the one signing the checks, and that is my choice alone. If someone gets paid, they need to do the work. If they do not do the work correctly and want to quit, it is my right to pay someone else to see to it that that work gets done. Mr. Byron Pugh signed a contract. If he was not getting the job done, I had the right to bring in another attorney to supervise Mr. Byron Pugh. I demand **specific performance** and Rule 12 and rule 47 demand specific performance – the appellate courts demand specific performance and deliver icy mandates against those who allow an attorney to run afoul of pretrial requirements. If Mr Byron Pugh and an attorney named Ceasar whom I had never authorized to represent me (and who I did not even know before he started calling me out of the blue) want to be Defense attorneys, then they should not function as prosecutors against their own clients (or in Mr. Ceasars' case non-clients). I have cited specific case law, which is the correct and prevailing legal theory in Tennessee and this is a matter of **stare decisis**, see, Defendants Memorandum In Opposition to Attorney Motion to Withdraw.

In his motion to withdraw, Mr. Byron Pugh failed to follow Rule 47 in his motion regarding particularity and the subsequent order failed to address this Rule 47 violation and also failed to address any of my Memorandum in Opposition to Attorney Motion to Withdraw.

GLENN FUNK JIM CROW AND CONFEDERATED FLAG ISSUE –and MY LONG-STANDING PUBLIC ACCUSATIONS AGAINST GLENN FUNK

I am a well-known public figure. I have run in two state-wide political primaries and state-wide general election for Tennessee. I have qualified to run for office state-wide in 2014 and 2018 but Glenn Funk and Mark Goins, as well as many others involved in this association in fact criminal enterprise, removed my name from appearing from the ballot. My support comes largely from minority communities who are unable to vote for me because of this association in fact criminal enterprise in which Glenn Funk, among many others, is involved in his individual capacity as both a political party "public" state actor,

Without paying any money to these organizations, candidate ballots with which Mr. Marlon Latroy Alexandria-Williams is either associated or owns the state trademarks to (candidate ballots which contain mostly minority candidates) have included me on most circulations from 2008 to the present. I have only become personally acquainted with those in charge of these ballots since 2018 and am extremely grateful for their support, and I am committed to advancing the issues which promote the interests of minorities, not just as a public figure, but also as a private citizen.

This affidavit will provide factual allegations against Glenn Funk and those who are associated with Glenn Funk in what I allege to be a criminal conspiracy. The first case which this affidavit will discuss relates to political parties being state actors "public function test". I am calling for a criminal RICO investigation of Glenn Funk as a state political party actor (which in taking candidates off the ballot is considered a public and not private organization) – the "public function test" evaluates whether or not a political party is a state actor and not a private organization based on the function of a political party at the time of action. Glenn Funk is intimately involved in Jim Crow policies to remove minority candidates from the ballot illegally, as well as candidates such as myself who derive a majority of support from minority candidates, and as a party official is not immune from prosecution under the Civil Rights Act of 1871 (Klu Klux Klan Act), the Voting Rights Act, as well as the criminal prohibitions in Tennessee Code Annotated Title 2.

Furthermore, I am willing to work with a special prosecutor to assist in the legal work to show the many predicate acts of RICO which Glenn Funk is violating.

The synopsis of previous legal activity, stare decisis, and res judicata are below, however, it is important to note and keep in mind the following: the political party is criminally liable under not only the above acts, but RICO as well: *see, e.g., Jund v. Town of Hempstead*, 941 F.2d 1271, 1282 (2d Cir. 1991)

(unincorporated political associations fell within the definition of "person" for purposes of RICO, since they were capable of holding property under New York law); *United States v. Marzook*, 426 F. Supp. 2d 820, 824-27 (N.D. Ill. 2006) (Hamas, an alleged foreign terrorist organization); *Hudson v. LaRouche*, 579 F. Supp. 623, 628 (S.D.N.Y. 1983) (unincorporated national political association affiliated with a political candidate).

SYNOPSIS OF LEGAL ACTIVITY TO STOP GLENN FUNK JIM CROW POLICY

WHEN THE POLITICAL PARTY IS NOT A PRIVATE ORGANIZATION AND IS A STATE ACTOR: "PUBLIC FUNCTION TEST" MANDATE FROM UNITED STATES SIXTH CIRCUIT COURT OF APPEALS AGAINST DEMOCRATIC PARTY WHICH INCLUDES GLEN FUNK: The Democratic Party, including Glenn Funk who calls himself an elected stakeholder, is a public organization for the purposes of these allegations – this is already litigated and mandated by the United States Sixth Circuit Court of Appeals. In August 2013, I filed a *Mark Clayton v Chip Forrester, et. al.* in the United States District Court for the Middle District of Tennessee and (although initially had an attorney) took the case on myself, pro se, in United States District Court for the Middle District of Tennessee.

See, *Chapman v. Higbee Co.*, 319 F.3d 825, 834 (6th Cir. 2003).

powers traditionally reserved exclusively to the state (public function test), a close nexus between the government and the defendants' conduct (symbiotic relationship or nexus test), or action coerced or encouraged by the state (state compulsion test). See *Chapman*, 319 F.3d at 833-34; *Lansing v. City of Memphis*, 202 F.3d 821, 828-29 (6th Cir. 2000); see also *Max v. Republican Comm. of Lancaster Cty.*, 587 F.3d 198, 202 (3d Cir. 2009).

Instead of following the mandate issued by the United States 6th Circuit Court of Appeals, and overzealous attorney, Gerard Stranch of Branstetter, Stranch, and Jennings, has gone around promoting fictions and flouting the law as it is applied against him, willfully and contemptfully, advising political party and government officials that they can remove candidates from the ballot under what has become an ever-evolving conspiratorial process, despite the fact the the 6th Circuit and now a state Judge Walter Evans in Memphis has clearly iterated and mandated. Glenn Funk is right in the middle of all of this, involved I allege criminally in blatant violation of stare decisis, res judicata, and state and federal criminal law.

MARK CLAYTON DIRECT COMMUNICATION WITH GLENN FUNK

I spoke to Mr Glenn Funk personally on the telephone two (2) times when he was running for office. I spoke to Mr Glenn Funk personally twice on the telephone during that time and explained that 1) we had a situation in Nashville where the Election Commissioner, Mark Goins, was evolving a conspiratorial policy to remove candidates from the ballot through secret processes in violation of state and federal law and that 2) we do not want prisons which operate as for-profit companies and 3) that we wanted to "change the water" in the district attorney office of Nashville and to fire Karen Fentress and to not rehire Rob McGuire. Karen Fentress is someone I met with personally giving her the first Jim Crow evidence in 2013 – when Torrey Johnson declined to prosecute (and sent me a letter declining to prosecute), I continued my own litigation. In *Clayton v. Forrester* United States Middle District of Tennessee, I defeated the first of many motions to dismiss on December 30, 2013; that week Torrey Johnsons announced that he would not run for office again. I believe it is because of my legal and political action that Torrey Johnson announced retirement that week.

Glenn Funk honored our wishes as I had expressed to him after election and fired Karen Fentress (we wanted her out because of the Jim Crow) and did not rehire Rob McGuire. We consider Rob McGuire a dishonest prosecutor who will do anything it takes to get a conviction even when he knows that there is exculpatory evidence. We were also happy that Glenn Funk fired Sarah Beth Myers, because she worked in the prosecutor office of Nashville and could have stood up to the Jim Crow during that time and did not, and now that Sarah Beth Myers has weaseled (as has Rob McGuire) her way back into a prosecutor position in the United States District Attorney office for Middle Tennessee, it is outrageous that Sarah Beth Myers is in the Civil Rights division of the office as she has maintained a position in violation of Section 1986 toward the Jim Crow which is going on. All offices East, West, and Middle Tennessee District Attorneys know about the Jim Crow issue because I have sent letters or at least called all of them. I also allege in this affidavit that All offices-East, West, and Middle Tennessee District Attorneys are in personal violation of the Civil Rights Act of 1871 and that this is not a matter of prosecutorial discretion. The Civil Rights Act of 1871 derives its authority from the Reconstruction Amendments which give the United States Congress power to enforce through appropriate legislation – this Civil Rights Act of 1871 has never been struck down, nor has it ever been successfully challenged on its face (facial challenge). "Prosecutorial discretion" is not a defense for bystanders and these actors, being prosecutors, including Glenn Funk, do not have immunity as individuals for neglecting to do what is in their power as individuals to protect the civil rights of minorities – as I have in contrast done myself in fulfillment of the law.

Furthermore, Investigator Steve Turner of the City of Nashville Davidson County District Attorney's office has an entire dossier and many emails which I have sent him on this issue, and Glenn Funk wants to hide this dossier from this Honorable Court and from a criminal investigation against Glenn Funk and his office.

It should be noted somewhere that Glenn Funk took office 1) allegedly committing a misdemeanor and was almost prosecuted and faced a movement to throw him out of office for this alone 2) circumvented nepotism laws by getting his wife a job which she would likely not have received had Glenn Funk not been elected (this may be a foul of "patronage" as described in the United States Prosecutor Manual for the Voting Rights Act as Glenn Funk is violating Jim Crow intentionally) 3) engaged in personal vendetta and bully litigation against news anchor Phil Williams and David Chase, showing Glenn Funk to be thin-skinned and unable to take criticism and 4) had the audacity to prosecute the Delke case when Glenn Funk was the one who should have been blamed as being one of two leaders, both the top district and the police chief, for a failure to train police officers.

It is not believable either Glenn Funk or Amy Hunter, or anyone else for that matter, in the City of Nashville, Davidson County, Tennessee District Attorney's office do not know who I am. Not only does this Davidson County District Attorney office know exactly who I am, this same said office is institutionally at odds with my own person and mission (a mission which is also ubiquitously subscribed to by all of my institutional associations) of preserving and advancing Civil Rights in Tennessee for all people; particularly minorities and candidates running for office and to defend civil society from the Jim Crow policies of Glenn Funk (and his entire Davidson County office as an institution) and Election

Commissioner Mark Goins, as these racist, apartheid policies are embraced and perpetrated against the innocent citizens of Tennessee in massive violation of state and federal laws appertaining.

If, as prosecutor Lauren Hogan stated, that she brought all of these allegations to the attention of Glenn Funk only recently, then the obvious question is if all of this is new to Glenn Funk, 1) why is Glenn Funk not here himself in this court correcting the record.

Glenn Funk helps racist white people oppress black people and works with racists to control the black community through fake elections. Glenn Funk only revealed his Confederate Flag yearbook picture because I was on Rise Up Radio and exposed Glenn Funk's role in the Jim Crow and had thousands of people call Glenn Funk's office. If Glenn Funk says under oath that he does not know anything about this, his front office secretary certainly knows not only about Mark Clayton and the Jim Crow that Mark Clayton and his supporters are fighting because she has gotten thousands of calls about this.

DATED this 15th day of July, 2021



SWORN to subscribed before me this 15th day of July 2021



NOTARY PUBLIC

My commission Expires

05/05/2025

