

IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE

DANA ZEHNER,)
)
 Plaintiff/Petitioner,)
)
 v.)
)
 LOUDON COUNTY ELECTION)
 COMMISSION,)
)
 Defendant/Respondent.)

Docket No. 11485

COMPLAINT AND COMMON LAW PETITION FOR WRIT OF CERTIORARI

Petitioner/Plaintiff Dana Zehner, for her causes of action against Defendant/Respondent Loudon County Election Commission states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Petitioner/Plaintiff Dana Zehner ("Ms. Zehner") is a citizen and resident of Loudon County, Tennessee.

2. Defendant/Respondent Loudon County Election Commission (the "Commission") is authorized by and subject to the provisions and requirements of Tenn. Code Ann. § 2-12-101, et. seq. By statute, the Commission is composed of residents of Loudon County, Tennessee.

3. Ms. Zehner's Petition and Complaint arise from the actions of the Commission which occurred primarily within Loudon County, Tennessee. Therefore, jurisdiction and venue are proper.

STATEMENT OF FACTS

4. Ms. Zehner served as administrator of elections for Loudon County, Tennessee until her employment was terminated by Defendants/Respondents on April 21, 2009.

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5. The position of administrator of elections and the appointment and duties of the position are set forth in Tenn. Code Ann. § 2-12-201.

6. The administrator of elections is expected to perform all duties of the office with political impartiality.

7. At all times during her tenure as administrator of elections, Ms. Zehner ably performed her job and carried out the duties of the office with political impartiality and in accordance with the law and the trust placed in her to be responsible for the daily operations of their office and the execution of all elections.

8. The Commission is authorized by and subject to the provisions and requirements of Tenn. Code Ann. § 2-12-101 et. seq.

9. The Commission is a governing body as defined in Tenn. Code Ann. § 8-44-102(b)(1).

10. Members of the Commission are appointed in compliance with Tenn. Code Ann. § 2-12-103(a). Three appointees on the Commission are required to be members of the majority party in the state legislature and two appointees are members of the minority party.

11. Upon information and belief, prior to their appointment or reappointment as County Election Commissioners, the majority party appointees to the Commission committed and pledged to members and officials of the state and county Republican party, as a requisite condition of their appointment to the Commission, to replace Ms. Zehner and appoint a member of the Republican party to replace her.

12. Prior to the April 21, 2009 public meeting of the Commission, the three majority party appointees to the Commission held a meeting and communicated and deliberated in private; secretly decided and agreed to terminate Ms. Zehner's employment; and, secretly decided and agreed to appoint a Republican to the position of Administrator of Elections.

13. At the April 21, 2009 meeting of the Commission, the three majority party members of the Commission appointed a new administrator of elections, effectively terminating Ms. Zehner's employment on the sole basis of her perceived political party affiliation which differed from the majority party members of the Commission.

14. At the April 21, 2009 meeting of the Commission, which was chaired and controlled by a majority party member, the Commission failed to consider "the knowledge and experience of such prospective appointee in the following areas: administrative, managerial, instructional, communication, budgetarial, purchasing, promotional, legal and general office skills and other related skills necessary to fulfill the statutory requirements of administrator" when evaluating its prospective appointee as mandated by Tenn. Code Ann. § 2-12-116(a)(1).

15. It is unlawful to impose a political test for the office of administrator of elections. Article 1, Section 4 of the Constitution of the State of Tennessee states as follows:

That no political or religious test, other than an oath to support the Constitution of the United States and of this State, shall ever be required as a qualification to any office or public trust under this State.

CAUSES OF ACTION

COUNT I.

Common Law Petition for Writ of Certiorari

16. The termination of Ms. Zehner was arbitrary and illegal, without cause, and contrary to the legal obligations of the Commission; it was in direct violation of the Open Meetings Act, Tenn. Code Ann. § 8-44-101, et. seq., and Article 1, Section 4 of the Constitution of the State of Tennessee.

17. The Commission failed to proceed according to the essential requirements set forth in Tenn. Code Ann. § 2-12-116(a)(1).

18. Pursuant to Tenn. Code Ann. § 27-8-101, Ms. Zehner seeks the Court's review of the decision by the Commission on April 21, 2009 to terminate her employment as the Administrator of Elections for Loudon County, Tennessee.

COUNT II.

Violation of the Open Meetings Act, Tenn. Code Ann. § 8-44-101, et. seq.

19. The Commission violated the Open Meetings Act, Tenn. Code Ann. § 8-44-101, et. seq., which applies to the Loudon County Election Commission, by a majority of its members' meeting, communicating and deliberating in private, secretly deciding and agreeing to terminate Ms. Zehner's employment, and secretly deciding and agreeing to appoint a Republican to the position of administrator of elections prior to the April 21, 2009 public meeting of the Commission.

20. The Commission's act of terminating Ms. Zehner and appointing a new Republican administrator of elections should be deemed null and void ab initio.

PRAYER FOR RELIEF

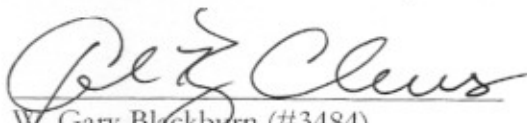
Wherefore, premises considered, Ms. Zehner prays:

1. That a common law writ of certiorari issue to bring suit in the Chancery Court for Loudon County, Tennessee, for review and to be tried de novo;
2. That the Commission be required to provide the Court a record of all relevant proceedings;
3. That upon the filing of this Petition, pursuant to Tenn. Code Ann. § 27-9-107, the Clerk of the Court shall immediately send by registered return-receipt mail, to the Loudon County Election Commission notice of filing of this Petition and a certified copy thereof;
4. That the Court declare the action of the Loudon County Election Commission terminating Ms. Zehner arbitrary, illegal, and void ab initio;
5. That the Court order, pursuant to Tenn. Code Ann. § 8-44-106 and upon final hearing of this cause, the Loudon County Election Commission to immediately reinstate Ms. Zehner to her position as Administrator of Elections and award her back pay, compensatory damages in the amount of \$500,000, and the penalty allowed by law; and
6. That the Court grant all other relief it deems equitable and appropriate.

THIS IS THE FIRST APPLICATION FOR WRIT OF CERTIORARI IN THIS CAUSE.

Respectfully submitted,

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Attorneys for Plaintiff/Petitioner

COST BOND

I, the undersigned, pursuant to Tenn. Code Ann. 20-12-125, acknowledge myself as surety for amounts required by law or included in the Clerk's bill of costs in this cause of action.



John Ray Clemmons

VERIFICATION

Pursuant to Article VI, section 10 of the Constitution of the State of Tennessee and Tenn. Code Ann. § 27-8-106, I, first being duly sworn, depose and state that the allegations of the foregoing Petition and Complaint are true and accurate to the best of my knowledge, information and belief.

FURTHER AFFIANT SAITH NOT.

STATE OF TENNESSEE)
)
COUNTY OF LOUDON)

Dana Lee Zehner

DANA ZEHNER

Sworn to and subscribed before me this 19. day of June, 2009.

My commission expires: May 19 2011.

Angela R. Kizer

NOTARY PUBLIC (signature)

