

**IN THE CHANCERY COURT OF TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

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**THE STATE OF TENNESSEE, ex rel  
CITIZENS FOR BETTER EDUCATION,  
EDDIE JONES AND KATHRYN LEOPARD**

**Petitioners,**

v.

Case No.: CH-  
Part \_\_\_\_\_

**SHELBY COUNTY ELECTION COMMISSION,  
WILLIAM GIANNINI, MYRA STILES,  
J.H. JOHNSON, ROBERT D. MEYERS,  
and STEVE STAMSON, in their official capacities as  
members of the Shelby County Election  
Commission,**

**Respondents.**

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**VERIFIED PETITION FOR WRIT OF MANDAMUS, OR  
IN THE ALTERNATIVE FOR INJUNCTIVE RELIEF, OR IN THE  
ALTERNATIVE FOR DECLARATORY JUDGMENT**

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COME now, the Citizens for Better Education, Eddie Jones and Kathryn Leopard and files this, their Petition for Writ of Mandamus or in the alternative, for injunctive relief, or in the alternative, for declaratory judgment, and in support thereof, would show unto the Court as follows:

**JURISDICTION**

1. This matter is for a writ of mandamus, or in the alternative, for injunctive relief, or in the alternative, for declaratory judgment. Jurisdiction is proper in this Court pursuant to Tennessee Code Annotated Section 29-25-101. Further, venue is proper pursuant to Tennessee Code Annotated Section Section 20-4-101.

## PARTIES

2. Petitioner, Citizens for Better Education, is a single-issue interest group which has been duly filed with the Shelby County Election Commission to advocate and support the instant issue regarding the merger of Memphis City Schools with Shelby County Schools. Said group has standing as it is composed of citizens and voters who live within the jurisdiction of the Memphis City Schools Special School District. The members of said group, qualified voters within the Memphis Special School District, have the statutory and constitutional right to vote on the question of whether the administration of the Memphis City Schools should be transferred to the Shelby County Board of Education, once the call for a vote was made by MCS.

3. Petitioners Eddie Jones and Kathryn Leopard are interested citizens, voters, parents and taxpayers, who live within the jurisdiction of the Memphis City Schools Special School District, and therefore, have standing to enforce their statutory and constitutional right to vote on the question of whether the administration of the Memphis City Schools should be transferred to the Shelby County Board of Education, once the call for a vote was made by MCS.

4. Respondent, Shelby County Election Commission, is a duly appointed committee authorized by Shelby County Government and is therefore a political subdivision of Shelby County Government responsible for conducting elections. It may be served with process on its Administrator, Richard Holden or its Chairman, Bill Giannini.

## **FACTUAL ALLEGATIONS**

5. Pursuant to Tennessee Code Annotated section 49-2-502, the Board of Education of the Memphis City Schools (hereinafter “MCS”) is “authorized and empowered to transfer the administration of the schools in the special school district to the county board of education of the county in which the special school district is located.”

6. Further, pursuant to Tennessee Code Annotated section 49-2-502, the Shelby County Election Commission has a mandatory duty to hold the a referendum election on the subject, when requested by “the school board of the special school district.”

7. Finally, pursuant to Tennessee Code Annotated section 49-2-502, the citizens residing within the jurisdiction of the Memphis City Schools Special School District have the statutory right to decide, by majority vote in a referendum election, the question of whether to transfer the administration of the schools in the special school district to the county board of education of the county in which the special school district is located vote.

8. On December 20, 2010, the Memphis City Schools (“MCS”) passed a Resolution to Surrender Charter of Memphis City Schools providing for two separate and distinct actions:

- (1) The surrender and dissolution of its charter pursuant to Chapter 375 of the 1961 Private Act (hereinafter the “1961 Private Act”), and

(2) The transfer of the administration of the Memphis City Schools to the Shelby County Board of Education pursuant to Tennessee Code Annotated Section 49-2-502.

A copy of the Resolution to Surrender Charter of Memphis City Schools (hereinafter the “MCS Resolution”) is attached hereto as Exhibit A.

9. On December 22, 2010, the MCS approved the minutes of its December 20, 2010 meeting.

10. On December 22, 2010, in connection with the second action only (the transfer of the administration), MCS submitted the MCS Resolution to the Shelby County Election Commission (“SCEC”) and officially requested the SCEC “to conduct a referendum that transfers the administration of MCS to the Shelby County School Board of Education (the “SCS”) as required by Tennessee Code Annotated Section 49-2-502 to take place at the same time as any future election is conducted by the SCEC or as provided by state law, whichever occurs sooner.” *See* Affidavit of Shea Flinn, filed herewith.

11. MCS did not request that the SCEC conduct a referendum on the question of surrender and dissolution of its charter under the 1961 Private Act. MCS only requested that the SCEC conduct a referendum on the question of whether the administration of the MCS should be transferred to the SCS pursuant to Section 49-2-502. See id.

12. As such, Respondents, members of the SCEC, have a mandatory ministerial duty to hold the referendum election as requested by the school board of the special school district. *See* Tenn. Code Ann. § 49-2-502 (“The referendum **shall** be held

by the county election commission when requested by the school board of the special school district, and the expenses of the election shall be paid from the funds of the special school district.”)

13. Petitioner’s right to vote on the question called by MCS is within the zone of interests guaranteed by Tennessee Code Annotated Section 49-2-502.

14. Pursuant to Section 2-3-204, the SCEC is required to set the date for said referendum not less than forty-five (45) days and nor more than sixty (60) days from receipt of the resolution by MCS. Accordingly, pursuant to the strict mandates of Section 2-3-204, the referendum must be set between February 5, 2011 and no later than February 20, 2011.

15. The MCS is a special school district, not a city school system. See Op. Atty. Gen. No. 03-037, April 2, 2003. Because MCS is a special school district, as opposed to a city school system, the Memphis City Council has no authority to schedule a referendum to vote on any abolition of the board. See id.

16. Section 49-2-502 provides as follows:

Abolition of special district on initiative of school officials:

The school board, school commissioners, school trustees or other duly constituted administrative officials of any special school district are authorized and empowered to transfer the administration of the schools in the special school district to the county board of education of the county in which such special school district is located. Before a transfer is effectuated, however, a referendum shall first be conducted on the subject, and the school system of such special school district shall not be transferred to the county unless a majority of the voters who cast votes in the referendum shall vote in favor of such transfer. The referendum shall be held by the county commissioners of elections when requested by the school board of the special school district, and the expenses of the election shall be paid from the funds of the special school district.

Tenn. Code Ann. § 49-2-502.

17. The 1961 Private Act provides in pertinent part as follows:

Section 1. Be it enacted by the General Assembly of the State of Tennessee, that an Act entitled “AN ACT TO CHARTER THE MEMPHIS CITY SCHOOLS,” passed January 27, 1869, and all amendments thereto, constituting the charter of the Board of Education of the Memphis City Schools, be and they are hereby amended so as to authorize the Board of Education of the Memphis City Schools to dissolve the charter of the Memphis City Schools and to surrender the same to the Secretary of State, at such time as the said Board of Education shall determine by resolution that such action is desirable, all of which shall be subject to the approval, by resolution, of the Board of Commissioners of the City of Memphis  
...

1961 Private Act, Chapter No. 375.

18. The 1961 Private Act therefore expressly provides that surrender is effective upon approval by the Memphis City Council by resolution, with absolutely no requirement for a referendum by voters. The election commission would, therefore, have absolutely no role in the process of surrender pursuant to the 1961 Private Act.

19. Importantly, because it does not require a referendum to be operative, the 1961 Private Act is not an election law.

20. As such, Section 49-2-502 and the 1961 Private Act provide for two distinctly different methods for the abolition of the Memphis Special School District. Section 49-2-502 requires a referendum, while the 1961 Private Act does not. Section 49-2-502 allows MCS to request the referendum, while the 1961 Private Act allows the Memphis City Council, by resolution alone, to surrender the charter with no referendum.

21. Moreover, the Tennessee Attorney General has previously rendered an opinion providing that Section 49-2-502 and the 1961 Private Act provide “different”

methods of abolishing the Memphis Special School District. See Tenn. Op. Atty. Gen. 03-037 attached as an Exhibit hereto. In its 2003 opinion, the Tennessee Attorney General opined:

It should also be noted that, under 1961 Tenn. Private Acts Ch. 375, the School Board is authorized to surrender its charter. The statute does not require a referendum. This act, however, may be subject to challenge on the grounds that it conflicts with Tenn. Code Ann. § 49-2-502 because it accomplishes the same end without a referendum. The [1961 Private] act could only be upheld if there is a rational basis for the different method.

Tenn. Op. Atty. Gen. 03-037 (citation omitted).

Thus, the then Attorney General, Paul Summers, observed that no referendum is required under the 1961 Private Act, but a referendum is required under Tenn. Code Ann. § 49-2-502.

22. It is therefore clear that the 1961 Private Act and Section 49-2-502 each provide distinctly different and independent methods for abolition of MCS' charter, and therefore, cannot be read together to create a unified method for abolition of the Memphis City Schools.

23. Therefore, under the clear statutory language of Section 49-2-502, when MCS lawfully requested the SCEC to conduct a referendum on the question of whether the administration of the Memphis City Schools should be transferred to SCS, the duty of the SCEC to conduct the referendum became mandatory and the right of qualified voters in the Memphis City School District became vested and protected by the Tennessee and Federal Constitutions from elimination, dilution or interference by state action.

24. Nonetheless, even if there is a disputed question of law concerning the application and interplay between the 1961 Private Act and Section 49-2-502, neither

Respondents, nor the state coordinator of elections, Mark Goins, have any authority or duty to decide such disputed questions of substantive law.

25. The SCEC's duties are purely ministerial. See City of Memphis v. Shelby County Election Commission, 146 S.W.3d 351 (Tenn. 2004).

26. The SCEC is constitutionally forbidden from making judicial determinations. See id.

27. Despite its constitutional limitations and its purely ministerial duties, and in clear dereliction of its duties, the SCEC has exceeded its authority by seeking an opinion from the state coordinator of elections, Mark Goins, as to whether it is required to honor the request made by MCS.

28. Mr. Goins has attempted to render an opinion as to the interplay of Section 49-2-502 and the 1961 Private Act, which is a judicial function – not the function of the state coordinator of elections. Moreover, Mr. Goins has attempted to interpret the 1961 Private Act, which the Tennessee Attorney General has opined is not an election law because it does not require a referendum to be operative. Thus, Mr. Goins has absolutely no authority whatsoever to issue opinions or rulings on these matters.

29. Pursuant to the Tennessee Constitution and state statutes, it is the duty of the Tennessee Attorney General, not the state election coordinator, to defend the constitutionality and validity of all private acts and general laws. Upon information and belief, the SCEC did not seek such an opinion from the Tennessee Attorney General before acting.



30. Petitioners further rely on the facts set forth in the Affidavit of Shea Flinn, filed contemporaneously herewith and incorporate same by reference as if fully set forth herein.

## **CAUSES OF ACTION**

### **I.**

#### **WRIT OF MANDAMUS**

31. All of the allegations contained in Paragraphs 1-28 of the Petition are incorporated herein as if set forth in full.

32. The SCEC has improperly and unconstitutionally refused to schedule the referendum as mandated by Tennessee Code Annotated section 49-2-502.

33. The MCS Resolution requested that the SCEC conduct a referendum on the question of whether the administration of the MCS should be transferred to the SCS pursuant to Section 49-2-502.

34. Pursuant to Section 2-3-204, the SCEC is required to set the date for said referendum not less than forty-five (45) days nor more than sixty (60) days from receipt of such a resolution. Accordingly, pursuant to the strict mandates of Section 2-3-204, the referendum must be set between February 5, 2011 and no later than February 20, 2011.

35. Because Respondents have a mandatory, ministerial, and official duty to hold the referendum election on the question of whether to transfer the administration of the schools in the special school district to the county board of education of the county in which the special school district is located, as requested by MCS and because they have refused to do so, the Writ of Mandamus is the proper remedy to require the Respondents to perform their ministerial duties and schedule the election within the time mandated by Section 2-3-204.

36. Based upon the allegations contained herein, and affidavits filed in support hereof, Petitioners are entitled to a Writ of Mandamus, as provided in Tennessee Code Annotated Section 29-25-101, requiring Respondents to perform their official non-discretionary function of holding a referendum election on the question of whether to transfer the administration of the schools in the MCS school district to the board of education of Shelby County, in the time frame required by Section 2-3-204.

## **II.**

### **INJUNCTIVE RELIEF**

37. All of the allegations contained in Paragraphs 1-35 of the Petition are incorporated herein as if set forth in full.

38. Because Respondents have no authority to refuse to schedule and hold the referendum election on the question of whether to transfer the administration of the schools in the special school district to the county board of education of the county in which the special school district is located, as requested by MCS pursuant to Section 49-2-502, Petitioners are entitled to a temporary and permanent injunction, enjoining all Respondents and their successors from refusing to take any and all necessary actions to hold the referendum election.

39. Injunctive relief pursuant to Tennessee Rule of Civil Procedure 65 is granted “if it is clearly shown . . . that the movant’s rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.” See Tenn. R. Civ. P. 65.04.

40. Further delay of the SCEC setting an election date will cause irreparable injury, loss and damage to the Petitioners and the voters within the Memphis City Schools Special School District jurisdiction, as indicated by two bills which are to be introduced today in the Tennessee General Assembly which purport to diminish and dilute the opportunity for the voters living within the boundaries of the MCS Special School District to vote on this issue.

41. Accordingly, Petitioners seek injunctive relief from this Court requesting that the SCEC set an election date for the aforementioned referendum as soon as possible.

### **III.**

#### **DECLARATORY JUDGMENT**

42. All of the allegations contained in Paragraphs 1-40 of the Petition are incorporated herein as if set forth in full.

43. The Tennessee Attorney General has previously rendered an opinion providing that Section 49-2-502 and the 1961 Private Act provide “different” and independent methods of abolishing the Memphis Special School District.

44. Pursuant to Section 49-2-502, when MCS requested the SCEC to conduct a referendum on the question of whether the administration of the Memphis City Schools should be transferred to SCS, the duty of the SCEC to conduct the referendum became mandatory.

45. Therefore, Petitioners seek a declaratory judgment from this Court declaring that MCS has lawfully submitted a referendum based on Section 49-2-502 to the SCEC which does not require another vote by Memphis City Council.

**WHEREFORE**, premises considered, the Petitioners pray as follows:

1. That good and adequate service be had on the Shelby County Election Commission;
2. That this Court issue a Writ of Mandamus as requested in this Petition, supported by affidavits, or in the alternative,
3. That an expedited hearing for Writ of Mandamus, for Injunctive Relief, or in the alternative, for declaratory judgment be had on this matter;
4. That this Court issue orders granting the relief sought herein;
5. Such other relief to which the Petitioners may show itself to be entitled.

Respectfully Submitted,

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Attorneys for Petitioner

**VERIFICATION**

**STATE OF TENNESSEE**            )

**COUNTY OF SHELBY**            )

We have read the foregoing factual allegations contained in this Petition and do hereby certify that it is true and correct to the best of our knowledge.

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Cardell Orrin, Chair  
Citizens for Better Education

**SWORN TO AND SUBSCRIBED** before me this 11th day of January, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
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