

IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

THE ASSOCIATED PRESS, KIMBERLEE KRUESI, CHATTANOOGA PUBLISHING COMPANY, GANNETT GP MEDIA, INC., MICHAEL ANASTASI, GOULD ENTERPRISES, INC., MEMPHIS FOURTH ESTATE, INC., MEREDITH CORPORATION, JEREMY FINLEY, SCRIPPS MEDIA, INC., BEN HALL, TEGNA, INC., JEREMY CAMPBELL, LISA LOVELL, TENNESSEE ASSOCIATION OF BROADCASTERS, TENNESSEE COALITION FOR OPEN GOVERNMENT, INC., and TENNESSEE PRESS ASSOCIATION,

Plaintiffs,

v.

THE TENNESSEE REGISTRY OF
ELECTION FINANCE,

and

PAIGE BURCHAM-DENNIS, HANK FINCHER, DAVID GOLDIN, PAZ HAYNES, TOM LAWLESS, and TOM MORTON, in their Official Capacities as Members of the Tennessee Registry of Election Finance,

and

BILL YOUNG, in his Official Capacity as Executive Director of the Bureau of Ethics and Campaign Finance,

Defendants.

No. _____

COMPLAINT TO ENFORCE THE TENNESSEE OPEN MEETINGS ACT

Plaintiffs The Associated Press and its reporter Kimberlee Kruesi, Chattanooga Publishing Company, Gannett GP Media, Inc. and its editor Michael Anastasi, Gould Enterprises, Inc., Meredith Corporation and its reporter, Jeremy Finley, Memphis Fourth Estate, Inc., Scripps Media, Inc. and its reporter Ben Hall, TEGNA, Inc. and its news directors Jeremy Campbell and Lisa Lovell, the Tennessee Association of Broadcasters, the Tennessee Coalition for Open Government, Inc., and the Tennessee Press Association (collectively, “Plaintiffs”), for their complaint to enforce the Tennessee Open Meetings Act against the Tennessee Registry of Election Finance, its members, in their official capacities, Paige Burcham-Dennis, Hank Fincher, David Goldin, Paz Haynes, Tom Lawless, and Tom Morton, and Executive Director of the Bureau of Ethics and Campaign Finance Bill Young, in his official capacity, state as follows:

PARTIES, JURISDICTION, AND VENUE

1. This matter arises under the Tennessee Open Meetings Act (“OMA”), Tenn. Code §§ 8-44-101 to 8-44-201.

2. Plaintiff The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York. AP has employees in Tennessee, has offices in both Memphis and Nashville, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Kimberlee Kruesi is a reporter with the AP in Nashville, Tennessee. Ms. Kruesi resides in Nashville, Tennessee.

3. Plaintiff Chattanooga Publishing Company (“Chattanooga Publishing”), owns and operates the *Chattanooga Times Free Press*, a daily newspaper in Hamilton County, Tennessee; three weekly newspapers in Tennessee; and three magazines in Tennessee. Chattanooga Publishing is a Tennessee corporation with its principal place of business in Chattanooga, Tennessee.

4. Plaintiff Gannett GP Media, Inc. (“Gannett”) is the publisher of the Nashville-based daily newspaper *The Tennessean*. Other Gannett-affiliated publications in Tennessee include *The Commercial Appeal* (Memphis), *Columbia Daily Herald*, *The Daily News Journal* (Murfreesboro), *The Jackson Sun*, *The Knoxville News-Sentinel*, *The Leaf-Chronicle* (Clarksville), and *The Oak Ridger* (Oak Ridge). Gannett is a Delaware corporation with its principal place of business in McLean, Virginia. Gannett, either directly or through subsidiaries or affiliates, has employees in Tennessee, has multiple offices in Tennessee, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Michael Anastasi is the Vice President and Editor of *The Tennessean*. Mr. Anastasi resides in Franklin, Tennessee.

5. Plaintiff Gould Enterprises, Inc., d/b/a Main Street Media TN (“Main Street Media”), is the publisher of eleven weekly newspapers in middle Tennessee. Main Street Media is a Tennessee corporation with its principal place of business in Gallatin, Tennessee.

6. Plaintiff Memphis Fourth Estate, Inc. d/b/a Daily Memphian (“Daily Memphian”) is a nonprofit daily online publication covering news in the Memphis area. The Daily Memphian is a Tennessee nonprofit corporation with its principal place of business in Memphis, Tennessee.

7. Plaintiff Meredith Corporation (“Meredith”) owns and operates WSMV-TV, a television station based in Nashville, Tennessee. Meredith is an Iowa corporation with its principal place of business in Des Moines, Iowa. Meredith, either directly or through subsidiaries, is licensed by the FCC to broadcast from Nashville, Tennessee, has employees in Tennessee, has an office in Nashville, Tennessee, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Jeremy Finley is the Chief Investigative Reporter for Meredith’s WSMV television news station in Nashville, Tennessee. Mr. Finley resides in Nashville, Tennessee.

8. Plaintiff Scripps Media, Inc. (“Scripps Media”) owns and operates WTVF-TV, a television station based in Nashville, Tennessee. Scripps Media is a Delaware corporation with its principal place of business in Cincinnati, Ohio. Scripps Media, either directly or through subsidiaries, is licensed by the FCC to broadcast from Nashville, Tennessee, has employees in Tennessee, has an office in Nashville, Tennessee, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Ben Hall is an investigative reporter at WTVF-TV. Mr. Hall resides in Nashville, Tennessee.

9. Plaintiff TEGNA Inc. (“TEGNA”) owns and operates WBIR-TV, a television station based in Knoxville, Tennessee, and WATN-TV and WLMT-TV, television stations based in Memphis, Tennessee. TEGNA is a Delaware corporation with its principal place of business in Tysons, Virginia. TEGNA, either directly or through subsidiaries, is licensed by the FCC to broadcast from Knoxville and Memphis, has employees in Tennessee, has offices in Knoxville and Memphis, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Jeremy Campbell is the News Director for WBIR. Mr. Campbell resides in Knoxville, Tennessee. Plaintiff Lisa Lovell is the News Director at WATN-TV and WLMT-TV. Ms. Lovell resides in Cordova, Tennessee.

10. Plaintiff the Tennessee Association of Broadcasters (“TAB”) is the trade association for radio and television broadcasters in Tennessee. The TAB is a Tennessee nonprofit corporation with its principal place of business in Nashville, Tennessee.

11. Plaintiff the Tennessee Coalition for Open Government, Inc. (“TCOG”) is an organization dedicated to promoting citizen access to public records and meetings in Tennessee. TCOG is a Tennessee nonprofit corporation with its principal place of business in Nashville, Tennessee.

12. Plaintiff the Tennessee Press Association (“TPA”) is the trade association for 126 Tennessee newspapers. The TPA is a Tennessee nonprofit corporation with its principal place of business in Knoxville, Tennessee.

13. Defendant the Tennessee Registry of Election Finance (the “Registry”) is an independent entity of the Tennessee state government, created by Tenn. Code §§ 2-10-202 to 2-10-203. Pursuant to Tenn. Code § 2-10-101(d) and § 2-10-301(b), the Registry is responsible for the enforcement of laws governing campaign finance disclosure requirements and campaign contribution limits.

14. Defendants Paige Burcham-Dennis, Hank Fincher, David Goldin, Paz Haynes, Tom Lawless, and Tom Morton (collectively, the “Registry Members”) currently serve as the six members of the Registry, having been duly appointed to five-year terms as required by law. They are only being sued in their official capacities.

15. Defendant Bill Young (“Director Young”) currently serves as Executive Director of the Bureau of Ethics and Campaign Finance, of which the Registry is a division. He is only being sued in his official capacity.

16. This Court has jurisdiction in this action pursuant to Tenn. Code §§ 8-44-106(a), 16-1-101, and 16-11-101.

17. Venue for this action is proper in this Court.

THE TENNESSEE CONSTITUTION AND OPEN MEETINGS ACT

18. Article 1, Section 19 of the Tennessee Constitution provides:

That the printing presses shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak,

write, and print on any subject, being responsible for the abuse of that liberty.

19. The Tennessee Supreme Court has explained that “in the first two sentences of th[is] section, the Constitution provides freedom of the press, open government and freedom of speech.” *Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976). “Clearly, the Open Meetings Act implements the constitutional requirement of open government.” *Id.*

20. The General Assembly has declared “it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.” Tenn. Code § 8-44-101(a).

21. The OMA requires that “[a]ll meetings of any governing body . . . be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” Tenn. Code § 8-44-102(a).

22. The Tennessee Supreme Court has explained that a “governing body” under the OMA includes “any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.” *Dorrier*, 537 S.W.2d at 892.

23. A “meeting” is defined under the OMA to be “the convening of a governing body of a public body for which a quorum is required in order to make a decision or deliberate toward a decision on any matter.” Tenn. Code § 8-44-102(b)(2).

24. Email communications may be a meeting under the OMA if the email communications constitute “either an intentional or inadvertent ‘convening . . . for which a quorum is required’ for the purpose of making a decision.” *Johnston v. Metro. Gov’t of*

Nashville & Davidson Cty., 320 S.W.3d 299, 310 (Tenn. Ct. App. 2009) (citing Tenn. Code § 8-44-102(b)(2)).

25. Meetings are required to be properly noticed under the OMA. Tenn. Code § 8-44-103.

26. “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.” Tenn. Code § 8-44-104(b).

27. Moreover, “[n]o . . . informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of” the OMA. Tenn. Code § 8-44-102(c).

28. Tennessee Governor Bill Lee has suspended specific, limited portions of the OMA during the ongoing COVID-19 pandemic in Executive Order No. 16. But Executive Order No. 16 “does not in any way limit existing quorum, meeting notice, or voting requirements under law” Ex. 1 at 3 (Exec. Order No. 16 at ¶ 1(b) (Mar. 20, 2020)).

29. Suit may be brought by “any citizen of this state” to enforce the OMA. Tenn. Code § 8-44-106(a).

30. The remedies available to a citizen who brings a complaint to enforce the OMA include, among other things, a permanent injunction and court supervision of the violating parties for a period of one year. Tenn. Code § 8-44-106(c)–(d).

THE REGISTRY’S EMAIL VOTE

31. On or about April 1, 2020, Director Young contacted the six members of the Registry by email and/or telephone, asking each Registry Member for his or her vote on whether to approve a settlement offer made by State House Representative Joe Towns to resolve outstanding civil penalties levied by the Registry.

32. On or about April 1, 2020, the Registry voted to approve a settlement offer from Representative Towns in the amount of \$22,000 by sending emails to Director Young. The \$22,000 was offered to settle fines of \$65,000 owed to the Registry and \$1,100 owed to the Tennessee Ethics Commission. Pursuant to the agreement, the Ethics Commission is to be paid the entire amount owed it, whereas the Registry will receive \$44,100 less than it was owed for the civil penalties it levied against Representative Towns.

33. Registry Members Paz Haynes, Paige Burcham-Dennis, Hank Fincher, and David Goldin voted, via email, in favor of approving the proposed settlement with Representative Towns.

34. Registry Members Tom Lawless and Tom Morton voted, via email, against approving the proposed settlement with Representative Towns.

35. In an email sent to Registry Members and Tennessee Ethics Commission Board Chair Charles Traugher on the morning of April 2, 2020, Director Young explained the events that led to the settlement, including that he “polled each member of the Registry Board regarding whether to accept the settlement offer” from Representative Towns and that “[t]he Registry Board has now voted via email 4-2 to accept Representative Towns’ counsel’s settlement proposal.” Ex. 2 at 1.

36. In an email dated April 2, 2020, Registry Member Tom Morton said the following regarding the email vote: “[t]his was a roll call vote the results of which with details should be made public.” Ex. 3 at 1.

37. The only details that have been made public are the fact of the email vote and the “official tally” of the email votes. Ex. 2 at 1; Ex. 3 at 1. The Registry Members’ emails constituting the vote have not been made public and other details about the email vote—

including who moved to accept the settlement and who seconded the motion—are also not available to the public.

38. In an on-the-record interview, Defendant Tom Lawless, Chairman of the Registry, said regarding the Registry’s April 1, 2020 email vote: “I do not feel that it was an appropriate meeting and was not an appropriate action under open meetings (law).” Ex. 4 at 1 (Sam Stockard, *Email Vote for Towns’ Settlement Draws Dissent*, DAILY MEMPHIAN (Apr. 7, 2020)).

39. Because the Registry’s vote occurred via email, rather than in a properly noticed public meeting, its actions violated the OMA.

COUNT I

VIOLATION OF TENNESSEE OPEN MEETINGS ACT

40. Plaintiff incorporates by reference the allegations set forth in paragraphs 1–39 above.

41. The Registry is a “governing body” within the meaning of Tenn. Code Ann. § 8-44-102(b)(1)(A).

42. The Registry voted via email to approve the settlement offer made by Representative Towns on or about April 1, 2020.

43. The email vote was conducted in secret, a violation of Tenn. Code § 8-44-101(a).

44. The email vote was a “meeting” pursuant to Tenn. Code § 8-44-102(b)(2) because it constituted the convening of the Registry for which a quorum was required for the purpose of making a decision regarding the settlement offer from Representative Towns.

45. The meeting was not public, a violation of Tenn. Code § 8-44-102(a).

46. The email vote was not made by public vote, public ballot, or public roll call, a violation of Tenn. Code § 8-44-104(b).

47. The email vote was not made in a properly noticed public meeting, a violation of Tenn. Code §§ 8-44-102(a)-(b).

48. The email vote was made in violation of Tenn. Code § 8-44-102(c), which provides that “[n]o . . . informal assemblages, or electronic communications shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.” Tenn. Code § 8-44-102(c).

49. The Registry’s email vote therefore violated the OMA.

50. No adequate remedy exists at law to protect the rights of Plaintiffs and other members of the public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Pursuant to Tenn. Code § 8-44-106(b), file written findings of fact and conclusions of law holding that the Defendants’ email vote constitutes a violation of the Tennessee Open Meetings Act;

B. Pursuant to Tenn. Code § 8-44-106(c), enter a permanent injunction enjoining Defendants from any future violations of the Tennessee Open Meetings Act, including but not limited to the use of email to circumvent the OMA by voting on, deciding, and/or deliberating on public business;

C. Pursuant to Tenn. Code § 8-44-106(d), retain jurisdiction over the parties and subject matter for a period of one year from the date of entry of its final judgment, and order Defendants to report in writing semi-annually to the Court on compliance with the Tennessee Open Meetings Act;

D. Grant Plaintiffs an award of their reasonable expenses and costs incurred in this action to the fullest extent allowed under law or statute; and

E. Grant such other relief as the Court deems just and proper.

Dated: April 29, 2020

Respectfully submitted,

By: /s/ Paul R. McAdoo _____
Paul R. McAdoo
Tennessee BPR No. 034066
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
6688 Nolensville Rd., Suite 108-20
Brentwood, TN 37027
Phone: 615.823.3633
Facsimile: 202.795.9310
pmcadoo@rcfp.org

Counsel for Plaintiffs