

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

<b>ROBERT STARBUCK</b>	)	
<b>NEWSOM,</b>	)	<b>Court of Appeals No.</b>
<b>a/k/a ROBBY STARBUCK,</b>	)	<b>No. M2022-00735-COA-R10-</b>
	)	<b>CV</b>
	)	
<b>Plaintiff,</b>	)	<b>Chancery Case No. 22-</b>
	)	<b>0735-IV</b>
<b>v.</b>	)	
	)	<b>Chancellor Perkins</b>
<b>TENNESSEE</b>	)	
<b>REPUBLICAN PARTY;</b>	)	
<b>and the TENNESSEE</b>	)	
<b>REPUBLICAN PARTY</b>	)	
<b>STATE EXECUTIVE</b>	)	
<b>COMMITTEE,</b>	)	
	)	
<b>Defendants.</b>	)	

**ON APPLICATION FOR EXTRAORDINARY APPEAL FROM  
THE ORDER OF THE DAVIDSON COUNTY CHANCERY COURT**

**EXPEDITED REVIEW REQUESTED**

---

**DEFENDANTS' RULE 48 MOTION FOR SUPREME COURT TO  
ASSUME JURISDICTION**

---

Joshua A. Mullen (TN Bar No. 28388)  
WOMBLE BOND DICKINSON (US) LLP  
1222 Demonbreun Street, Suite 1201  
Nashville, Tennessee 37203  
Email: josh.mullen@wbd-us.com  
Direct Dial: (202) 857-4522

Pursuant to Tenn. R. Sup. Ct. 48, Defendants, the Tennessee Republican Party (“TRP”) and the Tennessee Republican Party State Executive Committee (“TRP Executive Committee”) (collectively the “TRP Defendants”),

1. Move the Supreme Court of Tennessee to assume jurisdiction over and to render an expedited decision in the extraordinary appeal, *Robert Starbuck Newsom, Plaintiff v. Tennessee Republican Party, et. al., Defendants*, Dkt. No. M2022-00735-COA-R10-CV (the “Appeal”). The Appeal seeks to vacate or stay the mandatory injunction issued by the Davidson County Chancery Court on June 3, 2022, which ordered unidentified public officials “to immediately restore [Starbuck], to the ballot as a Republican candidate for the United States House of Representatives in the 5<sup>th</sup> Congressional District of Tennessee”
2. As part of the relief requested by this Motion, the TRP Defendants also request that the Supreme Court assume jurisdiction over and render an expedited decision on the Petition for Common Law Writ of Certiorari and Supersedeas that was filed by the State of Tennessee in the Appeal on behalf of Petitioners Tre Hargett, in his official capacity as Tennessee Secretary of State, and Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee. The Petition for Common Law Writ of Certiorari and Supersedeas also seeks

vacatur of the June 3, 2022 mandatory injunction—*i.e.*, the same relief that the TRP Defendants seek in the Appeal.<sup>1</sup>

The Appeal meets the requirements of Tenn. Code Ann. § 16-3-201(d)(1)-(2) because this case involves unusual public importance, including the need for an expedited decision so that the State of Tennessee can complete and then issue the ballots for the August 4, 2022 Republican primary election by June 10, 2022. The case also involves:

- A direct violation of the TRP Defendants’ Freedom of Association rights guaranteed by the First Amendment to the United States Constitution, which cannot be remedied if the trial court’s June 3, 2022 mandatory injunction (the “Injunction”) is not vacated before ballots are completed; and
- A question of whether Plaintiff Robert Starbuck Newsom (“Starbuck”) has the right run as a Republican candidate on the Republican ballot even though the Tennessee Republican Party strongly objects to Starbuck being on the ballot, has concluded he is not a bona fide Republican, and has been forced to litigate the matter to confirm its convictions in response to lawsuits filed by Starbuck in federal and state court.

See Tenn. Code Ann. § 16-3-201(d)(2) (the Supreme Court may assume jurisdiction over an undecided case in which an application for

---

<sup>1</sup>The Petition for Common Law Writ of Certiorari and Supersedeas served on the TRP Defendants is attached as **Exhibit 1**. The same Appendix that was filed with the Court of Appeals also is filed with this Motion.

extraordinary appeal is filed in an intermediate state appellate court in cases of “unusual public importance” that involve “[i]ssues of constitutional law” or the “right to hold or retain public office”).

### **QUESTION PRESENTED**

On June 3, 2022, which is 45 days after Starbuck first learned that he would not be restored to the TRP ballot for the Fifth Congressional District, the Chancery Court entered an Injunction that (i) forces unidentified non-party state officials to include Starbuck on the TRP ballot despite the TRP’s conclusion that Starbuck is not a bona fide Republican; (ii) imposes significant burdens on unidentified public official nonparties, including the redevelopment and recertification of ballots, without identifying who those officials are or considering the potential harm that would be caused to those public officials or the integrity of the electoral process; and (iii) voids the purely private intraparty decision about Starbuck’s party bona fides because that private decision was not made in a public meeting pursuant to TOMA when the TRP Defendants have a fundamental right to act privately and are not subject to TOMA. The TRP Defendants thus present this question for the Court’s review:

1. Whether the Chancery Court erred by entering the June 3, 2022 Injunction requiring unidentified state officials who are not parties to this lawsuit to restore Starbuck to the ballot as a Republican candidate for the United States House of Representatives for the Fifth Congressional District of Tennessee on the ground that the TRP Defendants’ April 11, 2022 decision that Starbuck is not a bona fide

Republican is null and void because that purely private intraparty decision was not made in accordance with the requirements for public meetings in TOMA.

### STATEMENT OF THE RELEVANT FACTS

On March 22, 2022, Starbuck filed his nominating petition with the State Election Commission seeking to be a candidate for U.S. House of Representatives in Tennessee’s Fifth Congressional District. App. at 020 ¶ 21. The nominating petition was due not later than noon on April 7, 2022. Tenn. Code Ann. § 2-5-101(a)(2); *see also* Qualifying Procedures for U.S. House of Representatives (“All candidates for U.S. House of Representatives must file their nominating petitions no later than 12:00 NOON on April 7, 2022.”)<sup>2</sup>; App. at 021-22 ¶ 26 (confirming “April 7, 2022 filing deadline”).

Once a candidate files his or her nominating petition that meets the requirements, “[e]ach qualified candidate’s name shall be placed on the ballot . . . **unless** the executive committee with which a primary candidate filed the original petition determines that the candidate is not qualified under § 2-13-104.” Tenn. Code Ann. § 2-5-204(a) (emphasis added). Tenn. Code Ann. § 2-13-104 expressly delegates to political parties the sole power and authority to “require by rule that candidates for its nominations be bona fide members of the party.” § 2-13-104.

Tenn. Code Ann. § 2-5-204(b)(2)(A) provides that “an **executive committee** that determines that a candidate is not qualified under § 2-

---

<sup>2</sup> Available at <https://sos.tn.gov/elections/guides/qualifying-procedures-for-united-states-house-of-representatives>. *See also* Tenn. R. Evid. 201.

13-104 [i.e., not a bona fide party member] shall file **the committee’s determination** with the coordinator of elections no later than twelve o’clock (12:00) noon prevailing time on the seventh day after the qualifying deadline for the election.” § 2-5-204(b)(2)(A) (emphasis added). Therefore, when the executive committee of any political party decides that a candidate is not a bona fide member of that party, the executive committee must communicate that decision to the coordinator of elections within 7 days after the initial qualifying deadline. *Id.* Since the qualifying deadline was April 7, 2022, the TRP Executive Committee was required to communicate any removal decisions to the Coordinator of Elections by April 14, 2022, which it did. *Id.*

On April 11, 2022, Starbuck was notified in writing that “**the State Executive Committee of the [TRP]**” decided that he did not meet the bona fide standard of the TRP. App. at 154-55 (emphasis original); *see also* App. at 023-24 ¶ 34. In accordance with Tenn. Code Ann. § 2-5-204(b)(2)(A), the TRP also instructed the Coordinator of Elections to remove Starbuck from the Republican primary ballot within seven days after the qualifying deadline, i.e., by April 14, 2022. App. at 013 ¶¶ 3-4; App. at 190-191.

After a candidate is removed from the ballot by the TRP’s Executive Committee pursuant to § 2-13-104, the candidate may then file an appeal of that determination “with **the executive committee . . .** within two (2) days of receipt of the **notice from the executive committee.**” Tenn. Code Ann. § 2-5-204(b)(2)(B) (emphasis added). The notice provided to Starbuck expressly informed him of the appeal option under Tenn. Code

Ann. § 2-5-204(b). *See* App. at 154-55.

If a political party's executive committee is not persuaded by a timely appeal and maintains the position that the candidate is not a bona fide member of that party in accordance with § 2-13-104, the candidate's name will not appear on the ballot. Tenn. Code Ann. § 2-5-204(b)(2)(B). "Unless the coordinator of elections receives a letter . . . withdrawing **the committee's** determination of the candidate's disqualification no later than the close of business seven (7) days after the original withdrawal deadline [i.e., April 21, 2022], the candidate's name must be excluded from the ballot." *Id.* Therefore, in order for the TRP to restore Starbuck to the ballot, it would have had to have sent a second notice to the coordinator of elections after April 14, 2022 and by April 21, 2022, instructing him that the executive committee's earlier determination removing Starbuck was being withdrawn. Tenn. Code Ann. § 2-5-204(b)(2)(B).

In this case, the TRP properly determined that Starbuck is not a bona fide Republican for candidacy to public office under § 2-13-104 and its bylaws, and it communicated that decision to Starbuck and to the coordinator of elections before April 14, 2022. App. at 154-55.

Starbuck undisputedly did not vote in at least three (3) of the four (4) most recent Statewide Republican primary elections and does not allege that he did. App. at 012-40 ¶¶ 1-90; App. at 119. Starbuck therefore could not meet the bona fide Republican qualifications set forth in Article IX, § 1, Para. B of the TRP's bylaws, which are based on voting record. App. at 57-59. Starbuck purports to be "a lifelong Republican," but he

did not vote in either the March 2020 presidential primary or the August 2020 U.S. Senate primary. App. at 119; App. at 003 ¶ 3. Starbuck claims to have lived in Tennessee since December 2018, but he did not vote in any statewide Republican primaries before filing his nominating petition on April 7, 2022. App. at 003 ¶ 3; App. at 119. Starbuck has not sought to be considered a bona fide Republican based on his voting record because he undisputedly does not meet those requirements. *Id.*

Because he could not meet Article IX, § 1, Para. B of the bylaws based on his voting record, he attempted to meet Para. C, which states:

Any individual who is vouched for in writing (to the satisfaction of the decision makers defined herein) as a bona fide Republican by an officer of the TRP or a member of the CEC, excluding SEC members, of the County and/or District where said individual resides. The decision makers defined herein may require additional verification that said individual is indeed a bona fide Republican.

App. at 058 (emphasis added). Starbuck submitted “vouching letters” from certain TRP officials as an attempt to satisfy the decision-makers that he was a bona fide Republican in accordance with the TRP bylaws. App. at 023-24 ¶¶ 31, 34. However, after considering the information submitted by Starbuck, on April 19, 2022, the TRP voted to uphold (i.e., not withdraw) Starbuck’s earlier removal from the ballot. App. at 026 ¶¶ 39-40, 48; App. 191 ¶¶ 6-7. TRP Executive Committee voted 13-3 to not restore him to the ballot. App. at 025 ¶ 38.

Because Starbuck failed to vote in three out of the last four Republican primary elections, it was Starbuck’s burden to prove his party



bona fides “to the satisfaction of the decision makers” and the TRP Executive Committee had authority to require “additional verification that [Starbuck] is indeed a bona fide Republican.” App. at 058. The TRP Executive Committee reviewed the information submitted by Starbuck, but were not satisfied by his bona fides. App. 191 ¶¶ 6-7.

*None of the foregoing actions removing Starbuck were conducted by the state primary board of the TRP.* App. at 154; App at 109 ¶ 6; *see also* Tenn. Code Ann. § 2-13-104 (confirming it is the “executive committee” who conducts bona fide removals). The notice Starbuck received removing him from the ballot expressly stated, in bold and underline, that “**the State Executive Committee of the [TRP]**” was responsible for his removal. App. at 154 (emphasis original). Starbuck admits in his Complaint that it was the TRP Executive Committee, not the state primary board, who voted to keep him off the ballot on April 19, 2022. App. at 013 ¶ 4. Starbuck has not sued the state primary board of the TRP. *Id.*

After Starbuck learned of his removal from the ballot on April 19th, “Starbuck ‘waited until the eleventh hour to pursue his claims’” in the U.S. District Court for the Middle District of Tennessee and sought an injunction in that Court that would restore him to the ballot. *Newsom v. Golden*, No. 3:22-CV-00318, 2022 WL 1500860, at \*2 (M.D. Tenn. May 12, 2022). The Middle District of Tennessee, however, denied Starbuck’s motion for preliminary injunction, in part, because he was unlikely to succeed on the merits of his claims brought under 42 U.S.C. § 1983 because “there is a serious question as to whether” the TRP can be a state

actor when conducting removals based on bona fide party status. *Id.* at \*6. Starbuck then waited another 8 days, until late on Friday afternoon, May 20, 2022, to file a lawsuit in Davidson County Chancery Court (“Chancery Court”), which alleges essentially the same facts that he raised in Federal Court.

At 8:06 p.m., on Friday June 3, 2022, the Chancery Court entered the Injunction, which does not consider the TRP Defendants’ Freedom of Association rights guaranteed by the U.S. Constitution, and ruled that the TRP Defendants’ private decisions about who are bona fide party members must be made before *all of the public* in accordance with TOMA:

The decision to have a candidate for U.S. House of Representatives removed from the ballot because he is not a bona fide Republican is a public decision made under the authority of Title 2 of the Tennessee Code, and is, accordingly, public business within the meaning of TOMA.

App. at 010. Based on this conclusion, the Chancery Court then ordered that Starbuck—who the TRP Defendants have decided is not a bona fide Republican—must be restored to the ballot for the Republican nomination for the Fifth Congressional District. *Id.* Because Starbuck failed to sue the State of Tennessee, and the TRP Defendants are not state actors and do not control the election process or the ballots, the Chancery Court also ordered non-party unidentified public officials to comply with the Injunction even though they had no notice or opportunity to be heard in relation to the Injunction:

All other appropriate public officials are expected to immediately take steps to treat the [TRP] Defendants’ April 11, 2022 decision as a nullity

and to restore Plaintiff, Robert Starbuck Newsom, also known as Robby Starbuck, to the ballot as a Republican candidate for the United States House of Representatives in the 5<sup>th</sup> Congressional District of Tennessee, to the same extent and in the same particulars as Plaintiff was on the ballot before Defendants' April 11, 2022 decision was made and communicated.

App. at 011.

After receiving the Injunction entered on Friday night, the TRP Defendants filed a Rule 10 Application for Extraordinary Appeal on Monday morning, June 6, 2022. TRP Defendants also filed an Emergency Motion to Stay Injunction Pending the Extraordinary Appeal under Rule 7.

**STATEMENT OF THE REASONS FOR THE SUPREME COURT  
TO ASSUME JURISDICTION**

It is appropriate for the Supreme Court to assume jurisdiction of the Appeal under Tenn. R. Sup. Ct. 48 and Tenn. Code Ann. § 16-3-201(d)(1)-(2). First, section 16-3-201(d)(1) provides that “[t]he supreme court may, upon motion of any party, assume jurisdiction over an undecided case in which . . . an application for interlocutory or extraordinary appeal is filed before any intermediate state appellate court.” Tenn. Code Ann. § 16-3-201(d)(1). The Appeal, which is an application for extraordinary appeal from an order of the Chancery Court, meets this requirement. *Id.*

Section 16-3-201(d)(1) applies “only to cases of unusual public importance in which there is a special need for expedited decision and

that involve: (A) State taxes; (B) The right to hold or retain public office; or (C) Issues of Constitutional Law.”

This election law Appeal is of unusual public importance and very much in special need for expedited decision so that the State of Tennessee can complete and then issue the ballots for the August 4, 2022 Republican primary election by June 10, 2022. In addition, the Injunction that is the subject of the Appeal directly violates the protected constitutional rights of the TRP Defendants, which cannot be remedied without an order vacating the trial court’s Injunction before June 10, 2022. Therefore, the Appeal involves important issues of constitutional law. Tenn. Code Ann. § 16-3-201(d)(2)(C).

The Appeal also involves a question of whether Starbuck has the right run as a Republican candidate on the Republican ballot even though the Tennessee Republican Party strongly objects to Starbuck being on the ballot, has concluded he is not a bona fide Republican, and has been forced to litigate the matter to confirm its convictions in response to lawsuits filed by Starbuck in federal and state court. Therefore, while Starbuck has no right to run as a Republican candidate for office, the Appeal presents a question of the right to hold or retain public office, which is another basis for the Supreme Court to assume jurisdiction. Tenn. Code Ann. § 16-3-201(d)(2)(B). For these reasons, and the reasons stated below, assumption of jurisdiction by the Tennessee Supreme Court is appropriate in this case.

**A. This Appeal Involves Issues of Unusual Public Importance Related to the Completion of Ballots for the Fifth Congressional District, Which Requires an Expedited Decision.**

The Injunction, which is the subject of the Appeal, was entered at 8:06 p.m. on Friday night, June 3, 2022. App. at 001. According to the Secretary of State, the ballots for the Fifth Congressional District need to be completed by June 10, 2022, but even this date imposes “a very tight and tenuous schedule.” App. at 258. Therefore, a final review and expedited decision from the Supreme Court is necessary and appropriate to provide certainty to all parties to the Appeal and to the State of Tennessee as it attempts to complete the ballots just days from now in order to comply with Federal law.

The TRP Defendants and the State of Tennessee have acted diligently in this matter in seeking immediate review of the Injunction entered on Friday night, June 3, 2022. The TRP Defendants quickly filed their Rule 10 Application for Extraordinary Appeal and Rule 7 Emergency Motion to Stay Injunction Pending the Extraordinary Appeal on Monday morning, June 6, 2022. The Tennessee Secretary of State and Coordinator of Elections filed their Petition for Common Law Writ of Certiorari and Supersedeas today, June 7, 2022. The TRP Defendants now seek this expedited review and decision from the Supreme Court to provide necessary certainty to all interested parties in order to complete the ballots for the Fifth Congressional District.

**B. This Appeal Involves Issues of Unusual Public Importance and the Direct Violations of Constitutional Rights of Both the TRP Defendants and Coordinator of Elections and the Secretary of State.**

The Chancery Court, without any precedent, ruled that *all actions* by the TRP Defendants that occur “under powers granted to them under Title 2 of the Tennessee Code” – *which is the entire Election Code* – must be conducted in accordance with the Tennessee Open Meetings Act (“TOMA”), Tenn. Code Ann. § 8-44-101, *et. seq.* App. at 010. The Chancery Court then concluded that, because the TRP Defendants’ private political decisions are subject to TOMA, its decision concluding that Starbuck is not a bona fide member of the Republican Party is void because the *private* political party should have held a *public* meeting:

The decision to have a candidate for U.S. House of Representatives removed from the ballot because he is not a bona fide Republican is a public decision made under the authority of Title 2 of the Tennessee Code, and is, accordingly, public business within the meaning of TOMA.

App. at 010. Even though they were not parties to the case, the Chancery Court then ordered non-party unidentified public officials “to restore . . . [Starbuck] . . . to the ballot as a Republican candidate for the United States House of Representatives in the 5<sup>th</sup> Congressional District of Tennessee . . . .” App. at 011.

As set forth in the TRP Defendants’ separately filed Rule 10 Application for Extraordinary Appeal, the Chancery Court’s application of TOMA to private meetings of the TRP Executive Committee is a fundamental violation of the law, a palpable abuse of discretion, and a

failure to proceed according to the essential requirements of law. If this error is not remedied on an expedited basis, Starbuck will appear on the ballot for the Fifth Congressional District as a candidate for the *Republican Party's nomination* to the United State Congress when *the Republican Party* absolutely objects to him being its standard-bearer. If this issue is not remedied, it will result in a direct violation of the TRP Defendants' Freedom of Association Rights under the U.S. Constitution.

The First Amendment to the United States' Constitution states that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. CONST., amend. I. The Supreme Court's "cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords to, the process by which a political party 'select[s] a standard bearer who best represents the party's ideologies and preferences.'" *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) (citing *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989)). When determining whether a party member is actually a bona fide member of that party, "the associational rights . . . are at their zenith." *LaRouche*, 152 F.3d at 996 ("The Party's ability to define who is a 'bona fide Democrat' is nothing less than the Party's ability to define itself.").

"Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, . . . but also that a political party has a right 'to identify the people who constitute the association.'" *Eu*, 489 U.S. at 224 (citing *Tashjian v. Republican Party of*

*Conn.*, 479 U.S. 208, 214 (1986)) (internal citations omitted). “The Party’s determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.” *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 224, 107 S. Ct. 544, 554, 93 L. Ed. 2d 514 (1986) “**In no area is the political association’s right to exclude more important than in the process of selecting its nominee.**” *Jones*, 530 U.S. at 575 (emphasis added). The First Amendment reserves a special place and grants a special protection for that process. *Id.* at 575. “[A] State, or a court, may not constitutionally substitute its own judgment for that of the Party.” *Democratic Party of U. S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 123–24 (1981) (emphasis added).

The Chancery Court’s Injunction directly substitutes the court’s judgment for the judgment of the TRP Executive Committee about who should be the party’s standard-bearer. The TRP Executive Committee undisputedly confirmed that Starbuck, who did not vote in the March 2020 presidential primary or the August 2020 U.S. Senate primary, App. at 119; App. at 003 ¶ 3, and did not vote in any statewide Republican primaries since he moved to Tennessee in December 2018, App. at 003 ¶ 3; App. at 119, was not—and is not—a bona fide Republican and *twice* instructed the Tennessee Coordinator of Elections to exclude him from the ballot. App. at 190-91 ¶¶ 5-6. Nonetheless, the Chancery Court has, in an unprecedented ruling, disregarded the TRP’s objections to Starbuck being on the ballot and ordered unidentified state officials to include Starbuck “as a Republican candidate for the United States House of



Representatives in the 5<sup>th</sup> Congressional District of Tennessee.” App. at 011. The Chancery Court’s order fully usurps the will of the TRP Defendants and violates their Freedom of Association rights by requiring a candidate to be on the ballot for the *TRP’s nomination* to United States’ Congress when the TRP Defendants have affirmatively concluded that he is *not* a bona fide Republican and that they do not want him to be their standard-bearer. Tenn. Code Ann. § 2-13-104; *Jones*, 530 U.S. at 575.

The Chancery Court’s Injunction is especially problematic and unprecedented because longstanding Tennessee case law holds that it could not be “more clear, lucid, definitive or final” that Tennessee courts lack subject matter jurisdiction over disputes about whether an individual is qualified to be a political party’s nominee for political office. *See State ex rel. Inman v. Brock*, 622 S.W.2d 36, 43 (Tenn. 1981). “Tennessee state law is abundantly clear that the State's chancery courts lack jurisdiction to hear state primary election challenges . . . because such disputes involve purely political rights and such disputes are to be referred to the political parties for resolution.” *Kurita v. State Primary Bd. of Tennessee Democratic Party*, No. 3:08-0948, 2008 WL 4601574, at \*12 (M.D. Tenn. Oct. 14, 2008), *aff'd*, 472 F. App'x 398 (6th Cir. 2012) (citing *Heiskell v. Ledgerwood*, 234 S.W. 1001, 1001-1002 (Tenn. 1921); *Taylor v. Tenn. State Democratic Executive Comm.*, 574 S.W.2d 716, 717-718 (Tenn.1978); *Brock*, 622 S.W.2d at 42-43. Such disputes are purely intraparty matters that rest entirely with the political party itself, and should not be intruded upon by the judiciary. *Taylor*, 574 S.W.2d at 717-718.

Beyond the constitutional violations to the TRP Defendants, the Injunction also violates the constitutional rights of the Coordinator of Elections and the Secretary of State, particular in relation to due process. *Phillips v. State Bd. of Regents of State Univ. & Cmty. Coll. Sys. of State of Tenn.*, 863 S.W.2d 45, 50 (Tenn. 1993) (“A fundamental requirement of due process is notice and an opportunity to be heard.”). The Coordinator of Elections and Secretary of State were not made parties to the Chancery Court action and therefore had no notice or opportunity to be heard in relation to Starbuck’s demands to be placed back on the ballot. Nonetheless, without considering the potential impact to the State or the election process, the Chancery Court ordered “[a]ll other appropriate public officials” to immediately restore Starbuck to the ballot. App. at 011. As fully argued in the separate Petition for Common Law Writ of Certiorari and Supersedeas filed by the State of Tennessee, the Chancery Court’s Injunction was a clear action in excess of its jurisdiction that violated the due process rights of the Secretary of State and Coordinator of Elections. For this reason also, the Supreme Court should assume jurisdiction over this Appeal.

### **CONCLUSION AND STATEMENT OF THE RELIEF SOUGHT**

For all of the foregoing reasons, the TRP Defendants’ Motion for the Supreme Court to assume jurisdiction should be granted and this Court should reverse the Injunction. Given the need for immediate review, the TRP Defendants also respectfully request expedited consideration of both this Rule 48 Motion and the merits of the Appeal.

Respectfully Submitted,

/s/ Joshua A. Mullen

Joshua A. Mullen, Esq. (TN Bar No. 28388)  
WOMBLE BOND DICKINSON (US) LLP  
1222 Demonbreun Street  
Suite 1201  
Nashville, TN 37203  
Josh.Mullen@wbd-us.com

&

2001 K Street, NW  
Suite 400 South  
Washington D.C. 20006  
Direct Dial: (202) 857-4522  
Facsimile: (202) 261-0034<sup>3</sup>  
*Counsel for TRP Defendants*

---

<sup>3</sup> Washington, DC is the official mailing address, while the Nashville, TN address is undersigned counsel's local office.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 7, 2022, I caused a copy of the foregoing **DEFENDANTS' RULE 48 MOTION FOR SUPREME COURT TO ASSUME JURISDICTION** to be filed electronically with the Supreme Court. I also have also served this Rule 48 Motion via email to the parties listed below and via regular mail, U.S. Postage Prepaid, on this same day.

Eric G. Osborne (#29719)  
Mark Alexander Carver (#36754)  
Lauren Curry  
Jayme Hartness-Gwaltney  
Chris Sabis  
SHERRARD ROE VOIGT & HARBISON, PLC  
150 Third Avenue South, Suite 1100  
Nashville, Tennessee 37201  
Tel. (615) 742-4200 | Fax. (615) 742-4539  
eosborne@srvhlaw.com  
acarver@srvhlaw.com  
LCurry@srvhlaw.com  
JHartness@srvhlaw.com  
CSabis@srvhlaw.com

JANET M. KLEINFELTER (BPR 13889)  
Deputy Attorney General  
Public Interest Division  
Office of Tennessee Attorney General  
P.O. Box 20207  
Nashville, TN 37202  
(615) 741-7403  
Janet.kleinfelter@ag.tn.gov

/s/ Joshua A. Mullen  
Joshua Mullen