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App. 1

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

**BETTY JANE AYERS ET AL v.
TRE HARGETT ET AL**

**Circuit Court for Anderson County
No. C2LA0108**

No. E2022-01551-SC-WRM-CV

ORDER

(Filed Nov. 14, 2022
Clerk of the Appellate Courts)

On November 4, 2022, Betty Jane Ayers, David Russell Ayers, and Sarah Walker Bruun (“petitioners”), acting *pro se*, filed a petition asking this Court to issue a Writ of Mandamus. The petitioners allege the Anderson County Circuit Court has repeatedly failed to hold a hearing on their “Complaint of Writ of Quo Warranto,” Case No. C2LA0108, filed on September 20, 2022. However, the jurisdiction of the Tennessee Supreme Court is appellate only. Tenn. Code Ann. §16-3-201. Thus, the issuance of a writ of mandamus is only proper when it serves an appellate function. *State v. Irick*, 906 S.W.2d 440, 442 (Tenn. 1995). Accordingly, it is ORDERED that the petition seeking a writ of mandamus is DENIED. The costs of this petition are taxed against Betty Jane Ayers, David Russell Ayers, and Sarah Walker Bruun, for which execution may issue, if necessary.

PER CURIAM

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

SARAH WALKER BRUUN;)	
DAVID RUSSELL AYERS;)	
and BETTY JANE AYERS,)	
in their personal capacities)	
as residents of and registered)	
voters in Anderson County)	
and Bradley County,)	
Tennessee, pro se,)	
Plaintiffs,)	
v.)	No.:
TRE HARGETT, in his)	3:22-CV-292-TAV-JEM
official capacity as Secretary)	
of State of Tennessee, and)	
MARK STEPHENS, in)	
his official capacity as)	
Administrator, Anderson)	
County Election Commission,)	
Defendants.)	

ORDER

(Filed Nov. 4, 2022)

This civil action is before the Court on plaintiffs' notice of voluntary dismissal [Docs. 19, 20]. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A), plaintiffs have notified the Court that they wish to voluntarily dismiss this action without prejudice. Defendants have filed no response to plaintiffs' notice, and enough time has passed to consider their failure to do so a waiver of

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any opposition to the relief sought. *See* E.D. Tenn. L.R. 7.1(a), 7.2.

Rule 41(a)(1)(A) states, “[T]he plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A). The Sixth Circuit has held that motions to dismiss do not bar a plaintiff from filing a notice of voluntary dismissal under Rule 41(a)(1). *Aamot v. Kassel*, 1 F.3d 441, 444-45 (6th Cir. 1993); *see also McCord v. Bd. of Educ. of Fleming Cnty., Ky.*, No. 17-5548, 2018 WL 1724560, at *5 (6th Cir. Jan. 30, 2018) (stating that “a motion to dismiss does not constitute an answer or a motion for summary judgment” under Rule 41(a)(1)). Instead, a plaintiff will be barred from filing a notice of voluntary dismissal under Rule 41(a)(1) only after the defendant has filed an answer or a motion for summary judgment. *See Aamot*, 1 F.3d at 445.

Here, plaintiffs filed their notice of voluntary dismissal on September 16 and 19, 2022 [Docs. 19, 20]. Prior to their filings, defendant Tre Hargett filed a motion to dismiss with prejudice for lack of subject matter jurisdiction and failure to state a claim pursuant to Rules 12(b)(1) and (6) [Doc. 16]. However, neither defendant has filed an answer to the complaint or a motion for summary judgment. Thus, pursuant to Rule 41(a)(1) and plaintiffs’ notice of voluntary dismissal [Docs. 19, 20], this case shall be **DISMISSED without**

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prejudice. The Clerk is **DIRECTED** to **CLOSE** this civil case. All pending motions are **DENIED as moot.**

IT IS SO ORDERED.

s/ Thomas A. Varlan

UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

BETTY JANE AYERS,)
DAVID RUSSELL AYERS, and)
SARAH WALKER BRUUN,)
Plaintiffs,)
)
v.) No.:
) 3:22-CV-370-TAV-JEM
TRE HARGETT,)
MARK STEPHENS,)
GEN. JONATHAN SKRMETTI,)
JANET M. KLEINFELTER,)
DAVID KUSTOFF,)
JIM COOPER,)
STEVE COHEN,)
MARSHA BLACKBURN, and)
BILL HAGERTY,)
Defendants.)

MEMORANDUM OPINION AND ORDER

(Filed Dec. 6, 2022)

This civil matter is before the Court on plaintiffs' motion to remand [Doc. 3]. Defendants filed a response [Doc. 10], and plaintiffs filed a reply [Doc. 16]. This matter is now ripe for the Court's review. For the reasons discussed below, plaintiffs' motion to remand [Doc. 3] is **DENIED**. Likewise, plaintiffs' motion to extend the time to respond [Doc. 15] to the pending motions to dismiss [Docs. 4, 12, 13] is **DENIED as moot**, and plaintiffs are **ORDERED** to respond to the

pending motions to dismiss within 14 days from the date of this Order.

On or about September 20, 2022, plaintiffs, proceeding *pro se*, filed this action in the Anderson County Circuit Court, alleging a violation of the right to fair elections under both the United States Constitution and the Tennessee Constitution, through the use of voting machines that have “[a] cryptographic security risk inherent in all voting machines by design” [Doc. 1-1, pp. 7–35]. On October 19, 2022, defendants Congressmen David Kustoff, Jim Cooper, Steve Cohen, and Senators Marsha Blackburn and Bill Hagerty (“Federal Defendants”) filed a notice of removal of this action to federal court, pursuant to 28 U.S.C. §§ 1442(a)(4) and 1446, as the complaint challenges acts of the federal officers taken in the discharge of their official duties [Doc. 1].

Five days later, plaintiffs filed a “Notice to the United States District Court for the Eastern District of Tennessee of Remand of the Instant Action to the Circuit Court of Anderson County, Tennessee” [Doc. 3]. Plaintiffs assert that “in a case with multiple Defendants, the matter is to be filed in the Court with Jurisdiction over the lowest Defendant, which is the Circuit Court for Anderson County, Tennessee, for Mark Stephens in this matter” [*Id.* at 2]. Plaintiffs appear to assert that the Federal Defendants are not “federal officers” because they are sued only in their individual capacities [*Id.* at 5]. Finally, plaintiffs argue that the Federal Defendants are not entitled to sovereign immunity [*Id.* at 2–3].

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The Federal Defendants respond that jurisdiction is not determined by the rank of any one individual defendant, and, in the present case, this Court's jurisdiction to hear this matter is based on 28 U.S.C. §§ 1442(a)(1) and (a)(4) [Doc. 10, pp. 2–3]. Federal Defendants argue that because they are Members of the United States Congress, they are officers of the United States under this statute [*Id.* at 3]. Moreover, the allegations against them relate to their duties as members of Congress, specifically as to duties involving certifying the electoral college vote and voting on proposed legislation [*Id.*]. The Federal Defendants also argue that the issue of sovereign immunity is distinct from that of whether removal is appropriate [*Id.* at 4].

In reply, plaintiffs largely re-argue the allegations of their complaint [Doc. 16]. They also point to two cases in which state supreme courts have held that injured voters have standing to raise voter fraud claims and argue that they have standing to raise their claims [*Id.* at 4–8, 11]. Plaintiffs further argue that all defendants “were appointed or elected to a seat in our Tennessee Government, no matter if We the People send them to Washington, DC to vote to represent us” [*Id.* at 14].

A defendant may remove to a federal district court a civil action over “which the district court[] . . . ha[s] original jurisdiction.” 28 U.S.C. § 1441(a). Federal courts have limited original jurisdiction and may only exercise the “power authorized by Constitution and statute.” *Freeland v. Liberty Mut. Fire Ins. Co.*, 632 F.3d 250, 255 (6th Cir. 2011) (quoting *Kokkonen v. Guardian*

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Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)). If a defendant improperly removes an action, on a motion of the plaintiff, the Court may order remand. *See* 28 U.S.C. § 1447.

Title 28, United States Code, Section 1442(a) specifically states that:

(a) A civil action . . . that is commenced in a State court and that is directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office . . .

(4) Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

28 U.S.C. § 1442(a). In this case, there is no doubt that the Federal Defendants are officers of the United States for purposes of this statute. To the extent that plaintiffs argue that § 1442(a) is inapplicable because they are suing the Federal Defendants in their individual capacities, § 1442(a)(1) specifically covers claims raised against an official in his or her official *or* individual capacity. Accordingly, the fact that plaintiffs have sued the Federal Defendants in their individual

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capacities does not render removal improper under this state. Moreover, to the extent that plaintiffs argue that the Federal Defendants are members of the Tennessee state government, they are mistaken, as these defendants are members of the United States Congress, a branch of the federal government, rather than holding any state governmental position. *See* Branches of the U.S. Government, USA.gov, [usa.gov/branches-of-government](https://www.usa.gov/branches-of-government), last updated Aug. 5, 2022. Finally, to the extent that plaintiffs contend that they have standing to bring this action and that the defendants are not entitled to sovereign immunity, neither of these questions are before the Court at this time, as neither of these matters relate to whether this action is properly removed under § 1442(a). Accordingly, plaintiffs' request to remand this action to the Anderson County Circuit Court [Doc. 3] is **DENIED**.

While plaintiffs' request to remand was pending, defendants filed several motions to dismiss [Docs. 4, 12, 13]. Plaintiffs subsequently filed a motion for an extension of time to respond to these motions to dismiss until the Court resolved their request to remand [Doc. 15]. In light of the Court's denial of plaintiffs' request to remand, plaintiffs' request for an extension of time [Doc. 15] is **DENIED as moot**. Plaintiffs shall file any response to the pending motions to dismiss **no later than 14 days from the date of this Order**.

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IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES
DISTRICT JUDGE

**Constitutional Provisions,
Statutory Provisions, and Case Law Involved**

State of Tennessee Constitution Article I, the following Sections:

Section 1: *“That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.”*

Section 5. *“The elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.”*

Section 8. *“That no man shall be . . . disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.”*

Section 17. *“That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the state in such manner and in such courts as the Legislature may by law direct.”*

Section 23. *“That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address of remonstrance.”*

Article VI. Judicial Department, Section 1. *The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery and other Inferior Courts as the Legislature shall from time to time, ordain and establish; in the judges thereof, and in justices of the peace. The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by justices of the peace may also be established.*

Tennessee Code, Title 29 – Remedies and Special Proceedings Chapter 35 – Usurpation or Forfeiture of Office or Franchise – Corporate Misdeeds § 29-35-111. *Bill in Equity – Venue: The suit is brought by bill in equity, filed in either the circuit or chancery court of the county in which the office is usurped or held, or the corporation or supposed corporation holds its meetings or has its principal place of business.*

18 U.S. Code § 2381 *“Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$10,000; and shall be incapable of holding any office*

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under the United States.” (June 25, 1948, ch. 645, 62 Stat. 807; Pub. L. 103-322, title XXXIII, § 330016(2)(J), Sept. 13, 1994, 108 Stat. 2148.)

18 U.S. Code §2382. Misprision of treason: *“Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.”*

18 U.S. Code § 2383 – Rebellion or insurrection *“Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States”.*

18 U.S. Code § 2384 – Seditious conspiracy *“If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.”*

United States Constitution Preamble; *“We the People of the United States . . . establish Justice”*

United States Constitution Article III, Section 3, Clause 1: *Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.*

United States Constitution, Article IV, Section 1. *“Full faith and credit shall be given in each state to the . . . judicial proceedings of every other state.”*

United States Constitution, Article VI *“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;”*

U.S. Constitution, Amendment I: *“Congress shall make no law . . . prohibiting . . . the right of the people . . . to petition the Government for a redress of grievances.*

U.S. Constitution, Amendment V: “No person shall . . . be deprived of life, liberty, or property, without due process of law”

U.S. Constitution, Amendment IX: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

U.S. Constitution, Amendment XII: *“The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; – The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; – the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one*

vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.”

U.S. Constitution, Amendment XIV: *“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” . . . “No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State*

legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.”

Help America Vote Act of 2002, (HAVA), Pub. L. No. 107-252, 116 Stat. 1666 (2002) codified at 52 U.S.C. 20901 to 21145

***Gamble v. United States*, No. 17-646, 587 U.S. ____ (2019)** “(a) *The dual-sovereignty doctrine is not an exception to the double jeopardy right but follows from the Fifth Amendment’s text. The Double Jeopardy Clause protects individuals from being “twice put in jeopardy” “for the same offence.” As originally understood, an “offence” is defined by a law, and each law is defined by a sovereign. Thus, where there are two sovereigns, there are two laws and two “offences.”*”

***Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974)** “*when a state officer acts under a state law in a manner violative of the Federal Constitution, he “comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.” [Emphasis supplied in original]. By law, a judge is a state officer.*

Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958)
"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."

PIERSON v. RAY, et al, 386 U.S. 547 (1967) *"When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices. [386 U.S. 547, 568]; A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function. See, e. g., Ex parte Virginia, 100 U.S. 339; 2 Harper & James, The Law of Torts 1642-1643 (1956). The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function."*

Ex parte Young, 209 U.S. 123 (1908) *If government officials attempt to enforce an unconstitutional law, sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for injunctive relief. This is because they are not acting on behalf of the state in this situation. "The attempt of a State officer to enforce an unconstitutional statute is a proceeding without authority of, and does not affect, the State in its sovereign or governmental capacity, and is an illegal act, and the officer is stripped of his official character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to its officer immunity from responsibility to the supreme authority of the United States."*

Two recent State Supreme Court Decisions affirming injured voters have standing:

- 1) ***S22g0039. Sons Of Confederate Veterans Et Al. V. Henry County Board Of Commissioners. S22g0045. Sons Of Confederate Veterans Et Al. V. Newton County Board Of Commissioners:*** Decided October 25, 2022, in the Supreme Court of Georgia:

“For the lesser requirement—that the plaintiff has suffered some kind of injury, albeit one that may be shared by all other members of the community—Georgia has long recognized that members of a community, whether as citizens, residents, taxpayers, or voters, may be injured when their local government fails to follow the law. Government at all levels has a legal duty to follow the law; a local government owes that legal duty to its citizens, residents, taxpayers, or voters (i.e., community stakeholders), and the violation of that legal duty constitutes an injury that our case law has recognized as conferring standing to those community stakeholders, even if the plaintiff suffered no individualized injury.” And it is unsurprising that we have extended this logic to “voters,” because they, like citizens and taxpayers, are community stakeholders. Voters may be injured when elections are not administered according to the law or when elected officials fail to follow the voters’ referendum for increased taxes to fund

a particular project, so voters may have standing to vindicate public rights. See, e.g., Barrow v. Raffensperger, 308 Ga. 660, 667 (2) (b) (842 SE2d 884)

- 2) **Albence v Higgins Case No. 342, 2022**, Decided in the Supreme Court of the State of Delaware, October 7, 2022. As of yet, only the abbreviated Per Curiam Order of this ruling has been published for this case which also affirmed injured voters have standing, formal opinion not yet issued. Quote from a judge at the en banc panel as related by winning attorney Julianne Murray, *“the Court cannot accept that a Citizen does not have a remedy in a voting act.”*¹

United States v. Throckmorton, 98 U.S. 61 (1878)
“There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.”

Cramer v. United States, 325 US 1 – Supreme Court 1945 *“We believe in short that no more need be laid for an overt act of treason than for an overt act of conspiracy . . . Hence we hold the overt acts relied on were sufficient to be submitted to the jury, even though they perhaps may have appeared as innocent on their*

¹ Statement from attorney Julianne Murray heard starting at the 4:25 mark in this interview hyperlink: [Julianne Murray: Delaware's No-Excuse Vote By Mail Has Been Eliminated In Time For The 2022 Midterms \(rumble.com\)](https://rumble.com/v1nnmtg-julianne-murraydelawares-no-excuse-vote-by-mail-has-been-eliminated-in-time-for-the-2022-midterms) weblink: <https://rumble.com/v1nnmtg-julianne-murraydelawares-no-excuse-vote-by-mail-has-been-eliminated-in-time.html>

face.” A similar conclusion was reached in United States v. Fricke,^[6] it is: “An overt act in itself may be a perfectly innocent act standing by itself; it must be in some manner in furtherance of the crime.”

Ex parte Bollman, 8 U.S. (4 Cranch) 75 (1807)

“Chief Justice Marshall was careful, however, to state that the Court did not mean that no person could be guilty of this crime who had not appeared in arms against the country. On the contrary, if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors. But there must be an actual assembling of men, for the treasonable purpose, to constitute a levying of war.”

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)

“A Law repugnant to the Constitution is void.”

Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); **Conley v. Gibson**, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); **Haines v. Kerner**, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); **McDowell v. Delaware State Police**, 88 F.3d 188, 189 (3rd Cir. 1996); **United States v. Day**, 969 F.2d 39, 42 (3rd Cir. 1992) “Pro se litigants’ court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal

authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements."

S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, **United States v. Miller**, 197 F.3d 644, 648 (3rd Cir. 1999) (*Court has special obligation to construe pro se litigants' pleadings liberally*)

Poling v. K.Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000). "*The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires.*"

Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting **Bramlet v. Wilson**, 495 F.2d 714, 716 (8th Cir. 1974) "*the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory.*"

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971) "*Brennan found that the absence of any federal remedy for the violation of a constitutional right could not be contemplated because every wrong must have a remedy. Therefore, he found it possible to infer a private right of action for damages even when it was not expressly provided. Brennan did leave open an exception when Congress has specifically provided that there may be no such cause of action, or when there are certain circumstances that would make a court reluctant to infer it, although he did not define what those circumstances might be. Broadly speaking,*

however, the majority opinion issued a clear rule that federal courts may award damages for any violations of constitutionally protected interests by using traditional remedies such as money damages.” and “In furtherance of the majority’s conclusions, Harlan pointed out that federal courts could issue injunctions for violations of constitutional rights. Money damages typically have been considered a less drastic remedy than injunctions, so it was logical to think that the courts could award them if they could award a more significant remedy. This concurrence also stated that constitutional rights are some of the most important that an individual can have, so it is particularly critical to give citizens the power to enforce them.”

Butz V. Economou 438 U.S. 478 (1978) “2. Without congressional directions to the contrary, it would be untenable to draw a distinction for purposes of immunity law between suits brought against state officials under 42 U.S.C. § 1983, *Scheuer v. Rhodes*, 416 U. S. 232, and suits brought directly under the Constitution against federal officials, *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388. Federal officials should enjoy no greater zone of protection when they violate federal constitutional rules than do state officers. Pp. 438 U. S. 496-504” “While federal officials will not be liable for mere mistakes in judgment, whether the mistake is one of fact or one of law, there is no substantial basis for holding that executive officers generally may with impunity discharge their duties in a way that is known to them to violate the Constitution, or in a

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manner that they should know transgresses a clearly
established constitutional rule. Pp. 438 U. S. 504-508.”

<u>Case#</u>	<u>CaseStyle</u>	<u>Judge</u>	<u>Status</u>	<u>Filing</u>	<u>Disp. Date</u>	<u>Disp. Stage</u>	<u>Disp. Code</u>	<u>Case Type(s)</u>
C2LA0108	BETTY JANE AYERS, et al Vs. TRE HARGETT, et al	RYAN M SPITZER	OP	9/20/2022		NT		MISC GENERAL CIVIL

Parties

<u>Name</u>	<u>Party Type</u>	<u>Service Date</u>	<u>Service Type</u>	<u>Answer Date</u>
AYERS , BETTY JANE	PLAINTIFF			
AYERS , DAVID RUSSELL	PLAINTIFF			
BRUUN , SARAH WALKER	PLAINTIFF			
HARGETT , TRE	DEFENDANT			
STEPHENS , MARK	DEFENDANT			
SLATERY III, HERBERT H	DEFENDANT			
KLEINFELTER , JANET M	DEFENDANT			
KUSTOFF , DAVID	DEFENDANT			
COOPER , JIM	DEFENDANT			
COHEN , STEVE	DEFENDANT			
BLACKBURN , MARSHA	DEFENDANT			
HAGERTY , BILL	DEFENDANT			

Attorneys

<u>Name</u>	<u>Represents</u>
PRO SE ,	X
YEAGER , N JAY	D
JONES , MIRANDA	D
JONES , MIRANDA	D
CUNNINGHAM , BEN D	D
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HAMILTON III, FRANCIS	D
HAMILTON III, FRANCIS	D
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HAMILTON III, FRANCIS	D
HAMILTON III, FRANCIS	D

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ANTOLIC , NICOLE L		D
Proceedings/Events		
Date	Court Date	Type
9/20/2022		COMPLAINT WITH EXHIBITS A - P
9/21/2022		LETTER TO PARTIES FOR STATUS HEARING DATE
9/21/2022		SUMMONS ISSUED ADMINISTRATOR MARK STEPHENS - (PLAINTIFFS HANDLING SOP)
9/21/2022		SUMMONS ISSUED BILL HAGERTY - (PLAINTIFFS HANDLING SOP)
9/21/2022		SUMMONS ISSUED DAVID KUSTOFF - (PLAINTIFFS HANDLING SOP)
9/21/2022		SUMMONS ISSUED HERBERT SLATERY, III - (PLAINTIFFS HANDLING SOP)
9/21/2022		SUMMONS ISSUED JANET KLEINFELTER - (PLAINTIFFS HANDLING SOP)
9/21/2022		SUMMONS ISSUED JIM COOPER - (PLAINTIFFS HANDLING SOP)
9/21/2022		SUMMONS ISSUED MARSHA BLACKBURN- (PLAINTIFFS HANDLING SOP)
9/21/2022		SUMMONS ISSUED SECRETARY TRE HARGETT - (PLAINTIFFS HANDLING SOP)
9/21/2022		SUMMONS ISSUED STEVE COHEN - (PLAINTIFFS HANDLING SOP)
9/22/2022		LETTER AND ATTACHMENTS RECEIVED VIA CERTIFIED MAIL FROM SARAH BRUUN
9/26/2022		MOTION FOR CHANGE OF ORDER FROM STATUS HEARING TO A HEARING FOR JUDGMENT BEFORE THIS COURT UPON THE EVIDENCE PRESENTED
9/26/2022		SWORN AFFIDAVIT FOR BETTY JANE AYERS AND DAVID RUSSELL AYERS
9/27/2022		FILING PROOF OF SERVICE
9/27/2022		NOTICE OF APPEARANCE / JAY YEAGER
9/27/2022		SUMMONS RETURNED / ALL DEFENDANTS SERVED VIA CERTIFIED MAIL
9/30/2022		MOTION FOR CHANGE OF ORDER FROM STATUS HEARING TO A HEARING FOR JUDGMENT BEFORE THIS COURT UPON THE EVIDENCE PRESENTED
9/30/2022		PROOF OF SERVICE FILED BY PLTF SARAH WALKER BRUUN
10/17/2022		MEMO IN SUPPORT OF STATE DEFENDANTS' MOTION TO DISMISS
10/17/2022		STATE DEFENDANTS' MOTION TO DISMISS
10/19/2022		MOTION TO DECLARE STATE DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT OF STATE DEFENDANTS' MOTION TO DISMISS UNCONSTITUTIONAL AND VOID PER MARBURY V. MADISON
10/19/2022		NOTICE OF REMOVAL/U.S. DIST CT
10/19/2022		SUBMISSION OF PROOF OF SERVICE OF MOTION AND FILINGS ON 9/26/22 AND 9/27/22 AND MOTION FOR IMMEDIATE ISSUE OF ORDER ON MOTION MADE IN THIS MATTER ON 9/26/22

10/21/2022	10/21/2022 09:00AM	STU STATUS
10/24/2022		NOTICE TO THE CIRCUIT COURT OF ANDERSON CO, TN OF REMAND OF THIS CASE, REMOVED TO US DISTRICT COURT FOR THE EASTERN DISTRICT OF TN ON 10/19/22
10/24/2022		PROOF OF RECEIPT OF SERVICE OF PLAINTIFFS MOT'S OF 10/19/22 & MOT FOR ISSUE OF ORDERS IN THIS CASE TODAY FRO THIS TIME-SENSITIVE ISSUE
11/1/2022		DEMAND FOR DEFAULT JUDGMENT FILED
11/4/2022		NOTICE OF PROOF OF SERVICE
11/7/2022		NOTICE FILED - INITITATING DOCUMENT - PETITION FOR WRIT OF MANDAMUS
11/16/2022		COPY OF PETITION RECEIVED FOR ISSUE OF EMERGENCY ORDER TO THE SUPREME COURT OF THE UNITED STATES
11/16/2022		NOTICE: CASE DISPOSITIONAL DECISION - PETITION FOR WRIT DENIED/DISMISSED RECEIVED FROM THE APPELLATE COURT CLERK'S OFFICE.

Narrative

I SPOKE WITH BROOKE AT FEDERAL COURT 800 MARKET STREET, SUITE 130 KNOXVILLE, TN 37902 PHONE: (865) 545-4228 THIS CASE IS STILL PENDING AND MOTIONS HAVE BEEN FILED BUT NOT YET SCHEDULED WE WILL BE ABLE TO SEE ALL UPDATE ON PACE.GOV

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**Live Database
U.S. District Court – Eastern District
of Tennessee (Knoxville)
CIVIL DOCKET FOR
CASE #: 3:22-cv-00370-TAV-JEM**

Ayers et al v. Hargett et al Date Filed: 10/19/2022
(TV1)

Assigned to: District Judge Jury Demand: None
Thomas A Varlan

Referred to: Magistrate Nature of Suit:
Judge Jill E McCook 441 Civil Rights:
Voting

related Case:
3:22-cv-00292-TAV-JEM

Case in other court: Jurisdiction: U.S.
Anderson County Circuit Government
Court, C2LA0108 Defendant

Cause: 28:1442 Petition for
Removal

Plaintiff

Betty Jane Ayers represented by
 Betty Jane Ayers
 162 Wade Lane
 Oak Ridge, TN 37830
 PRO SE

Plaintiff

David Russell Ayers represented by
 David Russell Ayers
 162 Wade Lane
 Oak Ridge, TN 37830
 PRO SE

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Plaintiff

Sarah Walker Bruun represented by

Sarah Walker Bruun
405 Horton Road SE
Cleveland, TN 37323
PRO SE

V.

Defendant

Tre Hargett

represented by

Miranda Jones
Tennessee Attorney
General's Office
P.O. Box 20207
Nashville, TN 37202
615-521-0417
Email:
miranda.jones@ag.tn.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Mark Stephens

represented by

Nicholas J Yeager
Anderson County Law
Director
101 South Main Street
Suite 310
Clinton, TN 37716
865-457-6290
Fax: 865-457-3775
Email:
jyeager@aclawdirector.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Gen. Jonathan Skrmetti represented by
Miranda Jones
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Defendant

Janet M. Kleinfelter represented by
Miranda Jones
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

David Kustoff represented by
Ben Cunningham
U S Department of Justice
(Knox USAO)
Office of U S Attorney
800 Market Street
Suite 211
Knoxville, TN 37902
865-225-1662
Email:
ben.cunningham@usdoj.gov
TERMINATED: 03/07/2023
LEAD ATTORNEY

Leah Walker McClanahan
U S Department of Justice
(Knox USAO)
Office of U S Attorney
800 Market Street
Suite 211

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Knoxville, TN 37902
865.545.4167
Fax: 865.545.4176
Email:
leah.mcclanahan@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicole Antolic Gross
U S Department of Justice
(Knox USAO)
Office of U S Attorney
800 Market Street
Suite 211
Knoxville, TN 37902
865-545-4167
Email:
nikki.gross@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Jim Cooper

represented by

Ben Cunningham
(See above for address)
TERMINATED: 03/07/2023
LEAD ATTORNEY

Leah Walker McClanahan
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nicole Antolic Gross
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Steve Cohen

represented by

Ben Cunningham

(See above for address)

TERMINATED: 03/07/2023

LEAD ATTORNEY

Leah Walker McClanahan

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Nicole Antolic Gross

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

Marsha Blackburn represented by

Ben Cunningham

(See above for address)

TERMINATED: 03/07/2023

LEAD ATTORNEY

Leah Walker McClanahan

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE

NOTICED

Nicole Antolic Gross

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

Bill Hagerty

represented by

Ben Cunningham

(See above for address)

TERMINATED: 03/07/2023

LEAD ATTORNEY

Leah Walker McClanahan

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Nicole Antolic Gross

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Date Filed # Docket Text

- 10/19/2022 1 NOTICE OF REMOVAL from Anderson County Circuit Court, case number C2LA0108. (), filed by Marsha Blackburn, Jim Cooper, Bill Hagerty, David Kustoff, Steve Cohen. (Attachments: # 1 Exhibit 1 – State Court Pleadings, # 2 Other Civil Cover Sheet)(Cunningham, Ben) (Entered: 10/19/2022)
- 10/19/2022 2 NOTICE by Marsha Blackburn, Steve Cohen, Jim Cooper, Bill Hagerty, David Kustoff (*Notice of Filing in State Court*) (Attachments: # 1 Exhibit 1 – Notice of Filing in State Court)(Cunningham, Ben) (Entered: 10/19/2022)

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- 10/24/2022 3 NOTICE OF REMAND to the Circuit Court of Anderson County, TN by Betty Jane Ayers, David Russell Ayers, Sarah Walker Bruun (ABF) (Entered: 10/24/2022)
- 10/24/2022 4 MOTION to Dismiss by Tre Hargett, Janet M. Kleinfelter, Jonathan Skrmetti. (Jones, Miranda) (Entered: 10/24/2022)
- 10/24/2022 5 MEMORANDUM in Support of Motion re 4 MOTION to Dismiss filed by Tre Hargett, Janet M. Kleinfelter, Jonathan Skrmetti. (Jones, Miranda) (Entered: 10/24/2022)
- 10/24/2022 6 CERTIFICATE of Counsel by Miranda Jones on behalf of Tre Hargett, Janet M. Kleinfelter, Jonathan Skrmetti (Jones, Miranda) (Entered: 10/24/2022)
- 10/25/2022 7 Proof of Service filed by Betty Jane Ayers, David Russell Ayers, Sarah Walker Bruun. (JBR) (Entered: 10/25/2022)
- 10/28/2022 8 NOTICE of Appearance by Nicholas J Yeager on behalf of Mark Stephens (Yeager, Nicholas) (Entered: 10/28/2022)
- 11/03/2022 District Judge Thomas A Varlan and Magistrate Judge Jill E McCook added. (ABF) (Entered: 11/03/2022)
- 11/03/2022 9 ORDER: Pursuant to Local Rule 3.2(d)(3), the undersigned finds that

the above-captioned case is related to Sarah Walker Bruun v Tre Hargett, et al., No. 3:22-CV-292. The Court finds that these cases arise out of the same transaction or occurrence and involve one or more of the same parties. Therefore, the two cases are related. Because the first of these cases was assigned to District Judge Thomas A. Varlan and Magistrate Judge Jill E. McCook, this case will also be assigned to District Judge Thomas A. Varlan and Magistrate Judge Jill E. McCook. However, consolidation is not ordered. Signed by Magistrate Judge Jill E. McCook on 11/3/22. (c/m to Betty Jane Ayers, David Russell Ayers and Sarah Walker Bruun)(ABF) (Entered: 11/03/2022)

- 11/04/2022 10 RESPONSE re 3 Notice (Other) filed by Betty Jane Ayers, David Russell Ayers, Sarah Walker Bruun (*Response in Opposition to Plaintiffs' Notice of Remand*). (Gross, Nicole) (Entered: 11/04/2022)
- 11/04/2022 11 CERTIFICATION OF COUNSEL *regarding Motion to Dismiss* by Mark Stephens. (Yeager, Nicholas) Modified text on 11/7/2022 (ABF). (Entered: 11/04/2022)
- 11/04/2022 12 MOTION TO DISMISS FOR FAILURE TO STATE A CLAM *Join-in Co-Defendants' Motion to Dismiss* by

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Mark Stephens. (Yeager, Nicholas)
(Entered: 11/04/2022)

- 11/08/2022 13 MOTION to Dismiss by Marsha Blackburn, Steve Cohen, Jim Cooper, Bill Hagerty, David Kustoff. (Gross, Nicole) (Entered: 11/08/2022)
- 11/08/2022 14 MEMORANDUM in Support of Motion re 13 MOTION to Dismiss filed by Marsha Blackburn, Steve Cohen, Jim Cooper, Bill Hagerty, David Kustoff. (Gross, Nicole) (Entered: 11/08/2022)
- 11/14/2022 15 MOTION for Extension of Time to File Response as to 12 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *Join-in Co-Defendants' Motion to Dismiss*, 13 MOTION to Dismiss , 4 MOTION to Dismiss by Betty Jane Ayers, David Russell Ayers, Sarah Walker Bruun. (ABF) (Entered: 11/14/2022)
- 11/14/2022 16 REPLY by Betty Jane Ayers, David Russell Ayers, Sarah Walker Bruun re 10 Response to 3 Notice of Remand (ABF) (Entered: 11/14/2022)
- 11/14/2022 17 NOTICE OF PROOF OF SERVICE by Betty Jane Ayers, David Russell Ayers, Sarah Walker Bruun re 16 REPLY to RESPONSE TO NOTICE OF REMAND and 15 MOTION for Extension of Time to File Response/Reply as to 12 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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Join-in Co-Defendants' Motion to Dismiss, 13 MOTION to Dismiss , 4 MOTION to Dismiss (ABF) (Entered: 11/14/2022)

- 12/06/2022 18 ORDER: Plaintiffs motion to remand 3 is DENIED. Likewise, plaintiffs motion to extend the time to respond 15 to the pending motions to dismiss [Docs. 4, 12, 13] is DENIED as moot, and plaintiffs are ORDERED to respond to the pending motions to dismiss within 14 days from the date of this Order. Signed by District Judge Thomas A Varlan on 12/6/22. (c/m to Betty Jane Ayers, David Russell Ayers and Sarah Walker Bruun) (ABF) (Entered: 12/06/2022)
- 12/20/2022 19 RESPONSE to Motion re 12 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *Join-in Co-Defendants' Motion to Dismiss*, 13 MOTION to Dismiss , 4 MOTION to Dismiss filed by Betty Jane Ayers, David Russell Ayers, Sarah Walker Bruun. (ABF) (Entered: 12/20/2022)
- 12/21/2022 20 PROOF OR SERVICE by Betty Jane Ayers, David Russell Ayers, Sarah Walker Bruun re 19 Response to Motions to Dismiss (ABF) (Entered: 12/21/2022)
- 03/07/2023 21 NOTICE of Appearance by Leah Walker McClanahan on behalf of Marsha Blackburn, Steve Cohen,

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Jim Cooper, Bill Hagerty, David
Kustoff (McClanahan, Leah) (En-
tered: 03/07/2023)

03/07/2023 22 Notice of Attorney Withdrawal Attor-
ney Ben Cunningham terminated.
(Cunningham, Ben) (Entered:
03/07/2023)
