

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

2010 AUG 24 AM 11:21

RICHARD JONES,)

Plaintiff,)

vs.)

Civil Action No. _____

PHIL BREDESEN, GOVERNOR)

OF TENNESSEE; ROBERT COOPER, JR.,)

TENNESSEE ATTORNEY GENERAL;)

DAVID H. LILLARD, JR.,)

TENNESSEE STATE TREASURER;)

JUSTIN WILSON, TENNESSEE)

STATE COMPTROLLER;)

TRE HARGETT, TENNESSEE)

SECRETARY OF STATE;)

JOSEPH BARNES,)

DIRECTOR OF LEGAL SERVICES)

FOR THE TENNESSEE)

GENERAL ASSEMBLY;)

GWENDOLYN SIMS DAVIS,)

TENNESSEE COMMISSIONER)

OF GENERAL SERVICES,)

CITY OF MEMPHIS;)

A C WHARTON, JR., MAYOR)

OF MEMPHIS; BRIDGETT)

HANDY-CLAY, PUBLIC RECORDS)

COORDINATOR FOR THE CITY OF)

MEMPHIS,)

)

Defendants.)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff Richard Jones alleges as follows:

I. SUMMARY OF ACTION

1. The City of Memphis refused a public records request by an American citizen relating to the identity of the winning bidder for a government contract because under T.C.A. § 10-7-503(a), public records may only be inspected by "citizens of

Tennessee.” The plaintiff in this suit challenges those portions of the Tennessee Public Records Act restricting public records access to only “citizens of Tennessee” as unconstitutional.

II. JURISDICTION

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4) for causes of action arising under Article IV, Section 2, Clause 1 (the Privileges and Immunities Clause), Article I, Section Eight, Clause Three (the Commerce Clause) of the United States Constitution.

III. PARTIES

3. The Plaintiff is Richards Jones, an individual of the full age of majority and who is domiciled in Solon, Ohio.

4. Made Defendants are:

- a. Phil Bredesen in his official capacity as the Governor of the State of Tennessee;
- b. Robert Cooper, Jr. in his official capacity as Tennessee Attorney General, P.O. Box 20207, Nashville 37202;
Tennessee, Tennessee State Capital, Nashville, TN 37243.
- c. Bridgett Handy-Clay, in her official capacity as the Public Records Coordinator for the City of Memphis, 125 N. Main Street, Memphis, TN 38103.
- d. A C Wharton, Jr. in his official capacity as Mayor of the City of Memphis, 125 N. Main Street, Room 700, Memphis, TN 38103;

City of Memphis, Memphis, TN 38103.

- e. Permanent voting members of the Public Records Commission under T.C.A. 10-7-302 including:
- f. David H. Lillard, Jr. in his official capacity as the Tennessee State Treasurer, First Floor, State Capital Building, Nashville, TN 37243;
- g. Justin P. Wilson in his official capacity as the Tennessee State Comptroller of the Tennessee Treasury, First Floor, State Capital Building, Nashville, TN 37243;
- h. Tre Hargett in his official capacity as the Tennessee Secretary of State, State Capital Building, Nashville, TN 37243-1102;
- i. Joseph Barnes in his official capacity as the Director of Legal Services for the Tennessee General Assembly, G-10, War Memorial Building, Nashville, TN 37243; and
- j. Gwendolyn Sims Davis in her official capacity as the Tennessee Commissioner of General Services, 3112 Rosa Park Avenue, Nashville, TN 37243-1102.

IV. STANDING

5. Plaintiff Jones, an American citizen living in Solon, OH, has standing to pursue this matter.

6. Mr. Jones, a civil rights advocate, was prevented from obtaining access to Tennessee Public Records because he is not a "citizen of Tennessee" as required by T.C.A. § 10-17-502(a).

7. Denying access to Tennessee public records prevents Mr. Jones from pursuing his common calling as civil rights advocate that is protected by the United States Constitution and he has suffered an injury.

8. That portion of the Tennessee Public Records Act, T.C.A. § 10-7-503(a) that limits access to public records to only “citizens of Tennessee” is unconstitutional under both the Privileges and Immunities Clause and the Commerce Clause of the United States Constitution.

9. Mr. Jones’ injury will be rectified by a favorable decision declaring and/or enjoining the enforcement as unconstitutional these sections of the Tennessee Public Records Act that are being challenged.

10. As such, Mr. Jones has standing to complain of the unconstitutional section of the Tennessee Public Records Act being challenged.

V. FACTUAL ALLEGATIONS

11. Richard Jones currently resides in Solon, OH where he works as the Midwest Director for the National Action Network and the Reverend Al Sharpton.

12. National Action Network (NAN) is one of the leading civil rights organizations in the nation, with numerous local chapters around the country. Founded in 1991 by Reverend Al Sharpton, NAN works within the spirit and tradition of Dr. Martin Luther King, Jr. to promote a modern civil rights agenda that includes the fight for social justice and one standard of justice and decency for all people regardless of race, religion, national origin, and gender.

13. In the course of his work with this organization, Mr. Jones often engages in investigations of various activities throughout the country.

14. Mr. Jones sought to investigate the granting of a certain government contract in Memphis, Tennessee.

15. On May 10, 2010, after a telephone conversation with Bridett Handy-Clay, Public Record Coordinator for the City of Memphis, Mr. Jones followed up with an e-mail message and made the following request:

"I am the Midwest Director for the National Action Network and the Rev. Al Sharpton. The Rev. has ask (sic) me to submit a public records request for the following records **An email copy (pdf) of the winning bid for the following RFQ#2957 for State Advocacy/State Lobbying Services December 2008**"

A copy of the May 10, 2010 email is attached as **Exhibit 1**.

16. In an email dated on or about May 10, 2010, Ms. Handy-Clay declined acting under color of law and in her capacity as Public Records Mr. Jones's request. A copy of this correspondence is attached as **Exhibit 2**. Ms. Handy-Clay explained that his request was being denied because Mr. Jones was not a citizen of Tennessee as required under T.C.A. § 10-7-503(a)(1).

This email acknowledges receipt of your request for a **copy of the winning bid for the following RFQ #2957**. Since it does not appear that you are a Tennessee resident, I must deny your request pursuant to Tennessee Code Annotated, Section 10-7-503, states '*...open for personal inspection by any citizen of Tennessee. . .*'"

17. Mr. Jones was then directed to call Senior Assistant City Attorney Jill Madajczyk to discuss this request for information. After a brief telephone call with Ms. Madajczyk on or about May 12, 2010, she sent an email confirming their telephone

conversation and the City's denial of Mr. Jones' open records request (and copied Herman Morris, Memphis city Attorney), Tonya Meeks (City of Memphis Spokesperson), Bobby White (Staffer with the Mayor's Office), George Little (Chief Administrative Officer for the City of Memphis) and Bridgett Handy-Clay (Public Records Coordinator) stating in pertinent part:

"As discussed on the telephone, your open records request is being denied pursuant to the provisions of Tenn. Code Anno. §10-7-503, which provides any "citizen of Tennessee" has the rights to inspect and/or copy public records.

This office denies all public records requests from any individual or entity outside of the State of Tennessee."

A copy of the letter is attached as **Exhibit 3**.

18. In order to obtain the requested records, Mr. Jones is forced to file the present lawsuit. In addition, Mr. Jones reasonably anticipates making additional future public records requests to obtain Tennessee Government records.

The "Tennessee Citizen Only" Requirement is Imposed Throughout Tennessee to Deny Citizens of Other States Access to Tennessee's Open Records

19. Various government agencies throughout the State of Tennessee use the "Tennessee Citizen Only" requirement as a method to deny access to open records to those requestors who do not live in Tennessee.

20. The TPRA included the citizenship requirement when it was first enacted in 1957. As recently as 2007, the American Civil Liberties Union of Tennessee (ACLU-TN), the Tennessee Coalition on Open Government (TCOG) and other public interest groups testified in front of the Open Records Sub-Committee of the Special Joint Committee on Open Records, explaining that the provision was a violation of the

Privileges and Immunities Clause of the United States Constitution and urging that it be repealed.

21. In 2008, when the Tennessee General Assembly amended the TPRA, they failed to repeal the citizenship provision.

22. As early as January 2007, ACLU-TN has been monitoring denial of access to Tennessee Open Records on the basis of the Tennessee citizenship requirement.

23. Since that time, ACLU-TN has been made aware of numerous situations where both in-state and out-of-state residents have been denied Tennessee Open Records because they could not (or would not) prove that the requesting party was a citizen of the State of Tennessee.

24. If relief is not granted in the present litigation, records will continue to be withheld from journalists, authors, business people and concerned citizens who have an interest in Tennessee events in violation of their constitutional rights.

VI. FIRST COUNT: PRIVILEGES & IMMUNITIES CLAUSE

25. Plaintiff re-alleges and re-avers all of the allegations contained in the previous paragraphs.

26. 42 U.S.C. § 1983 prohibits Defendants from depriving Mr. Jones of “rights, privileges and immunities secured by the constitutional laws” of the United States.

27. Article IV Section 2, Clause 1 of the United States Constitution provides that “[t]he citizens of each state shall be entitled to all Privileges and Immunities of Citizens in several states.”

28. Mr. Jones is an American citizen, currently residing in Solon, Ohio.

29. The Privileges and Immunities Clause, “prevents a state from discriminating against citizens of other states in favor of its own.” See *Hague v. CIO*, 307 U.S. 496, 511 S.Ct. 954, 83 L. Ed. 1423 (1939).

30. Under the Privileges and Immunities Clause, a state may not discriminate against people who are not citizens of that state from the ability to “engage in a central activity or exercise of a basic right.” See *Baldwin v. Fishing Game Commission of Montana*, 436 U.S. 371, 387, 98 S. Ct. 1852, 1862, 56 L. Ed. 354 (1978).

31. The ability and/or opportunity to “engage in the political process with regard to matters of national political and economic importance” is also recognized and protected by the Privileges and Immunities Clause. Furthermore, “[e]ffective advocacy and participation in the political process, however, requires access to information,” and is a “right protected by the Privileges and Immunities Clause.” See *Lee v. Mminner*, 458 F.3d 194, 200 (3rd Cir., 2006).

32. *Lee v. Minner*, 458 F.3d 194 (3rd Cir., 2006) held that a Delaware statute that limited Freedom of Information Act access to public records to only citizens of the State of Delaware to be unconstitutional in violation of the Privileges and Immunities Clause of the United States Constitution.

33. The Tennessee Public Records Act that limits access to public records to only “citizens of Tennessee” deprives Richard Jones from his ability to engage in the common calling as a civil rights advocate.

34. The denial of Richards Jones’s request for a Memphis contract bid process records deprives him of the ability to engage in “effective advocacy and participation in

the political process” because he is not entitled to access to the information that he seeks. The State of Tennessee and the city of Memphis do not have a substantial reason for their discriminatory policy nor do they have a substantial relationship to any protected interest by only its citizens having access to public records under the Tennessee Records Act.

35. As such, the Tennessee Public Records Act limiting access to public records to only “citizens of Tennessee” prevents Richard Jones from access to the records he seeks and violates his protected and guaranteed rights under the Privileges and Immunities Clause of the United States Constitution.

VII. SECOND COUNT: COMMERCE CLAUSE

36. Plaintiff re-alleges and re-avers all of the allegations contained in the previous paragraphs.

37. 42 U.S.C. § 1983 prohibits Defendants from depriving Plaintiff of “rights, privileges and immunities secured by the constitutional laws” of the United States.

38. The Commerce Clause of the United States Constitutional provides that “[t]he Congress shall have power . . . [t]o regulate commerce . . . among the several states . . .” United States Constitutional, Article I, Section 8, Clause 3.

39. The Commerce Clause limits a state’s power to regulate commerce by unjustifiably discriminating against or burdening interstate flow of commerce. See *Wyoming v. Oklahoma*, 502 U.S. 437, 454, 112 S. Ct. 789, 800 117 L. Ed. 2d 1 (1992).

40. State laws and regulations that discriminate against interstate commerce are constitutionally invalid. See *Fulton Corp. v. Faulkner*, 516 U.S. 325, 31 116 S Ct. 848, 854, 133 L. Ed. 2d 796 (1996).

41. State laws and regulations that discriminate against interstate commerce are subject to strict judicial scrutiny. See *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 392, 114 S. Ct. 1677, 1683, 128 L. Ed. 2d 399 (1994).

42. The Tennessee Public Records Act discriminates against interstate commerce because it restricts access to public records to only those Tennessee citizens, and serves no legitimate state interest.

43. Tennessee Public Records Act discriminates against Richard Jones who is a civil rights advocate. Mr. Jones cannot have access to the public records he seeks because he does not reside in Tennessee.

44. The Defendants' administration and enforcement of the Tennessee Public Records Act that limits access to public records to only "citizens of Tennessee" violates the Commerce Clause of the United States Constitution and is therefore, unconstitutional.

VIII. DECLARATORY RELIEF

45. Plaintiff re-alleges and re-avers all of the allegations contained in the previous paragraphs.

46. Plaintiff is entitled to declaratory judgment pursuant to 28 U.S.C. § 2201 and in accordance with the Federal Rules of Civil Procedure 57 that the Tennessee Public Records Act T.C.A. 10-7-503(a) restricting access to public records to only

“citizens of Tennessee” violates the Privileges and Immunities Clause and the Commerce Clause of the United States Constitution.

IX. INJUNCTIVE RELIEF

47. Plaintiff has suffered and will continue to suffer immediate and irreparable harm in the event that the Defendants are allowed to continue administering the Tennessee Public Records Act in a manner that restricts access of public records to only those “citizens of Tennessee.”

48. Plaintiff seeks a preliminary and in due course a permanent injunction pursuant to Rule 65 of the Fed. R. Civ. Proc. which enjoins all Defendants, their successors, employees and agents from permitting, authorizing, encouraging and enforcing T.C.A. § 10-7-503(a) that restricts access to public records to only “citizens of Tennessee.”

X. SEVERANCE

49. Mr. Jones seeks relief from only those portions of the Tennessee Public Records Act T.C.A. § 10-7-503(a) that restricts public records access to only “citizens of Tennessee.”

50. Mr. Jones asks that only the clause “citizens of Tennessee” be declared void as unconstitutional and that injunctive relief be exercised only as to the objectionable limitation, “citizens of Tennessee.” Mr. Jones does not seek nullification of the entire Tennessee Public Records Act.

XI. ATTORNEY'S FEES

51. Plaintiff requests and is entitled to an award of attorneys' fees in litigation-related costs pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 1920.

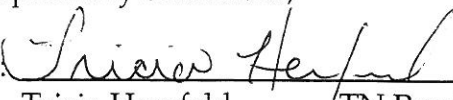
XII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff Richard Jones requests after all the proceedings are completed that there be judgment rendered in his favor and against the Defendants, Phil Bredesen, in his official capacity as the Governor of the State of Tennessee, Tennessee State Capitol, Nashville, Tennessee 37243; Robert Cooper, Jr., in his official capacity as Tennessee Attorney General permanent voting members of the Public Records Commission including David H. Lillard, Jr., in his official capacity as the Tennessee State Treasurer, First Floor, State Capitol Building, Nashville Tennessee 37243; Justin P. Wilson, in his official capacity as the State Comptroller of the Tennessee Treasury, First Floor, State Capitol Building, Nashville, Tennessee 37243-1102; Joseph Barnes, in his official capacity as the Director of Legal Services for the Tennessee General Assembly, G-10, War Memorial Building, 37243; Gwendolyn Sims Davis, in her official capacity as the Commissioner of General Services, 312 Rosa Park Avenue, Nashville, Tennessee 37243-1102; A C Wharton, Jr., in his official capacity as Mayor of the City of Memphis, 125 N. Main Street, Room 700, Memphis, Tennessee 38103; and Bridgett Handy-Clay in her capacity as Public Records Coordinator, City of Memphis, 125 N. Main Street, Memphis, TN 38103, as follows:

- a. Declaring unconstitutional that part of the Tennessee Public Records Act that restricts access to Tennessee Public Records to only "citizens of Tennessee;"

- b. Enjoining Defendants and their successors, employees and agents from permitting, authorizing, encouraging and administering that portion of the Tennessee Public Records Act, T.C.A. § 10-7-503(a), that restricts access to public records to only citizens of Tennessee.
- c. Awarding Plaintiff nominal damages;
- d. Awarding Plaintiff attorneys' fees and litigation costs pursuant to 42 U.S.C. § 1998 and 28 U.S.C. § 1920;
- e. Awarding any other relief as this Court deems just and appropriate.

Respectfully Submitted,

By: 
Tricia Herzfeld, TN Bar #026014
Staff Attorney
ACLU-TN
P.O. Box 120160
Nashville, TN 37212
Phone: (615) 320-7143, ext. 303
Fax: (615) 691-7219

Edmund J. Schmidt III, TN Bar #021313
1913 21st Avenue South
Nashville, Tennessee 37212
Phone: (615) 742-1775
Fax: (615) 742-1223

ACLU-TN Cooperating Attorney

EXHIBIT 1

Richard Jones <richardddonaldjones@gmail.com>
sender-time Sent at 3:29 PM (GMT-04:00). Current time
there: 11:33 AM. ©
to Bridgett.Handy-Clay@memphistn.gov hide details May 10 (8
date Mon, May 10, 2010 at 3:29 PM days ago)
subject Records Request
mailed-by gmail.com

Dear Madam

I am the Midwest Director for the National Action Network and the Rev Al Sharpton.
The Rev. has ask me to submit a public records request for the following records

**An email copy (pdf) of the winning bid for the following RFQ #2957 for State
Advocacy/State Lobbying Services December 2008**

You can reach me at

Richard Jones
National Action Network Midwest
6630 Forest Glen
Solon Ohio 44139
216-548-6340

EXHIBIT 2

Mr. Jones,

This email acknowledges receipt of your request for a **copy of the winning bid for the following RFQ #2957**. Since it does not appear that you are a Tennessee resident, I must deny your request pursuant to Tennessee Code Annotated, Section 10-7-503, states: "*... open for personal inspection by any citizen of Tennessee...*"

If you have any questions, please let me know.

Very truly yours,

Bridgett Handy-Clay

Public Records Coordinator

City of Memphis

125 N. Main ST.

Memphis, TN 38103

Phone: 901-576-6511

Fax: 901-576-6524

EXHIBIT 3

Jill.Madajczyk@memphistn.gov ①

to **Herman.Morris**, **tonya.meeks**, **Bobby.White**, **George.Little**, me, show details May 12 (5 days ago)
Bridgett.Handy.

Mr. Jones:

As discussed on the telephone, your open records request is being denied pursuant to the provisions of Tenn. Code Anno. §10-7-503, which provides any "citizen of Tennessee" has the right to inspect and/or copy public records.

This office denies all public record requests from any individual or entity outside of the State of Tennessee.

If you have any further questions, please do not hesitate to contact me.