

**IN THE CHANCERY COURT FOR THE ELEVENTH JUDICIAL DISTRICT
OF TENNESSEE**

STATE OF TENNESSEE, EX REL.)	
DAVID JONATHAN TULIS,)	
)	
VS.)	NO. 20-0685
)	
)	PART 1
BILL LEE, GOVERNOR, STATE OF)	
TENNESSEE, IN HIS PERSONAL CAPACITY)	
IN HIS OFFICIAL CAPACITY)	
)	
REBEKAH BARNES, ADMINISTRATOR)	
HAMILTON COUNTY HEALTH DEPARTMENT)	
IN HER PERSONAL CAPACITY)	
IN HER OFFICIAL CAPACITY)	

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ORDER

This cause came on for hearing telephonically on January 11, 2021 pursuant to the Order entered December 8, 2020 upon the “Motion to Dismiss of Rebekah Barnes”; the “Memorandum in Support of Motion to Dismiss of Rebekah Barnes”; and the “Motion to strike Barnes motion to dismiss” filed by David Jonathan Tulis (Relator). The Court took the matter under advisement.

**LEGAL STANDARD FOR MOTION TO DISMISS FOR FAILURE TO
STATE A CLAIM**

Respondent Barnes filed this motion to dismiss for failure to state a claim upon which relief can be granted pursuant to T.R.C.P. 12.02(6). A motion to dismiss a complaint for failure to state a claim for which relief may be granted tests the legal sufficiency of the plaintiff’s complaint. *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 894 (Tenn. 2011). Dismissal under Tenn. R. Civ. P. 12.02(6) is warranted only when the alleged facts will not entitle the plaintiff to relief, *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011), or when the complaint is totally lacking in clarity and specificity,

Dobbs v. Guenther, 846 S.W.2d 270, 273 (Tenn. Ct. App. 1992). A Tenn. R. Civ. P. 12.02(6) motion admits the truth of all the relevant and material factual allegations in the complaint but asserts that no cause of action arises from those facts. *Webb*, 346 S.W.3d at 426. In considering a motion to dismiss, court must construe the complaint liberally, giving the plaintiff the benefit of all reasonable inferences. *Id.* However, the Court need not accept as true mere conclusory allegations, *Kincaid v. South Trust Bank*, 221 S.W.3d 32 (Tenn. Ct. App. 2007), nor legal arguments or conclusions couched as facts. *Riggs v. Burson*, 941 S.W.2d 44, 47-48 (Tenn. 1997). A court should only grant a motion to dismiss when it appears that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *Webb*, 346 S.W.3d at 426. The undisputed material facts at issue when considering a Rule 12 motion are those stated in the complaint. *Findley v. Hubbard*, M2017-01859-COA-R3-CV, 2018 WL 3217717 at *6 (July 2, 2018).

LEGAL STANDARD FOR MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Respondent also filed a motion to dismiss for lack of subject matter jurisdiction pursuant to T.R.C.P. 12.02(1). A Rule 12.02(1) motion to dismiss for lack of subject matter jurisdiction addresses the power of the court to adjudicate an issue and should be reviewed as a threshold inquiry. *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012). When the court's subject matter jurisdiction is challenged, the burden is on the plaintiff to demonstrate that the court has the requisite jurisdiction to hear and adjudicate plaintiff's claims. *Id.* A challenge to the court's subject matter jurisdiction may be either a facial challenge or a factual challenge. When a facial challenge is asserted, the factual allegations in the plaintiff's complaint are presumed to be true. *Staats v. McKinnon*, 206 S.W.3d 532 at 543-544 (Tenn. Ct. App. 2006). A factual challenge, however, attacks the facts serving as the basis for jurisdiction. *Schutte v. Johnson*, 337

S.W.3d 767 at 770 (Tenn. Ct. App. 2010).

LEGAL ANALYSIS

I. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM FOR MANDAMUS

Relator filed a petition in equity and seeks a peremptory writ of mandamus under T.C.A. 68-5-104. (P. 4, 8, 35, 107). Ms. Barnes filed this motion to dismiss on grounds that the Relator lacks standing and only seeks to enforce duties of Ms. Barnes which are discretionary.

In general a court may issue a writ of mandamus only where (1) the plaintiff's right to the relief sought is clearly established; (2) the defendant has a clear duty to perform the act at issue; and (3) no other plain, adequate, and complete method of obtaining the relief exists. *Cherokee Country Club v. City of Knoxville*, 152 S.W.3d 466, 479 (Tenn. 2004).

Further, where a public official has any discretion concerning doing of an act, the issuance of a mandamus is not available. *Tusant v. City of Memphis*, 56 S.W.3d 10, 18 (Tenn. Ct. App. 2001). Additionally, where an official has the duty to do an act only after making determinations, evaluations or judgments, a writ of mandamus will not lie to do the act in any particular way. *Id.* A court will not substitute its judgment for that of an official vested with discretion unless the official has clearly acted arbitrarily and without regard to his duty in the exercise of that discretion. *Id.* In determining whether an act is ministerial, Tennessee courts look to whether the law defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of judgment. *Id.*

Relator alleges that Barnes has the burden of proof to demonstrate the compelling interest for her official acts. (P. 54) However, as now-Justice Kirby explained in *Manhattan, Inc. v. Shelby County*, because a relator seeks the writ, the relator has the burden of

establishing that he is entitled to the writ. *Manhattan*, W2006-02017-COA-R3-CV, 2008 WL 639791 at *7 (March 11, 2008).

The Relator alleges that his Petition is to stop the abuse of unwarranted police power committed by the Respondent in dereliction of the duties imposed upon her pursuant to T.C.A. 68-5-104. (P.4) Relator further alleges that Respondent is in violation of the duties imposed on her through T.C.A. 68-5-104 (P. 35) and Respondent failed to independently identify the infectious agent as required by T.C.A. 68-5-105. (P. 107).

The Court notes that T.C.A. 68-5-104 is entitled, “Quarantine—Penalty for Escape” and provides:

(a)(1) It is the duty of the local health authorities, on receipt of a report of a case, or suspected case, of disease declared to be a communicable, contagious, or one which has been declared by the commission of health to be subject to isolation or quarantine, to confirm or establish the diagnosis, to determine the source or cause of the disease and to take such steps as may be necessary to isolate or quarantine the case or premise upon which the case, cause or source may be found, as may be required by the rules and regulations of the state department of health.

(2) The commissioner is authorized and directed to promulgate and publish such rules and regulations as may be necessary to prevent the spread of contagious or communicable diseases in order to protect the public health and welfare.

(b) Any person isolated or quarantined in accordance with any statute or rule or regulation promulgated and published in accordance with statutes relating to isolation and quarantine, who willfully escapes from such isolation or quarantine commits a Class B misdemeanor.

(c) Whenever any one of the local health authorities, either municipal or county as the case may be, isolates, quarantines or placards any person or house for communicable diseases, it is the duty of the health official to deliver or cause to be delivered to the head of the household a copy of this law or such portion of this law as may pertain to the particular case under construction.

It is a well-established rule of statutory construction that we must assume that every word in the statute has meaning and purpose. *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889,

895. Moreover, the purpose of statutory interpretation is to carry out the legislative intent without broadening or restricting a statute beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.* 90 S.W.3d 676, 678 (Tenn. 2002). Finally when a statute is clear, courts apply the plain meaning without complicating the task. *Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004)

Applying the plain meaning of the statute reveals that subsection (a)(2) by its specific language applies only to the “commissioner” not the Respondent. The commissioner is the head of the Tennessee department of health. T.C.A. 68-1-102(a). Thus subsection (a)(2) by its plain meaning does not give rise to any ministerial duty of Respondent.

Additionally subsection (b) states that a person who willfully escapes from a quarantine commits a Class B misdemeanor. Thus the Court determines as a matter of law that subsection (b) does not apply to Respondent.

Further subsection (c) states that when a local health authority quarantines someone, it is the duty of the health official to deliver to the head of the household a copy of this law. Relator did not allege that Respondent Barnes failed to deliver to the head of any household of a quarantined person, a copy of this statute. Thus Relator likewise did not state a claim under this subsection.

Subsection (a)(1) does apply to local health authorities such as Respondent Barnes. Subsection(a)(1) says it is the duty of the local health authorities, on receipt of a case or suspected case of a communicable disease to confirm the diagnosis, to determine the cause of the disease, and to take such steps as may be necessary to isolate or quarantine the case.

Relator claims that Respondent failed “to independently identify the infectious agent.” (P. 107) But Relator fails to allege what communicable disease case that Barnes

received a report of where she failed to establish the diagnosis, or failed to determine the cause of the disease, or failed to take such steps to quarantine that person. Accordingly, Relator failed to state a claim for mandamus to compel Barnes to perform a specific ministerial act under T.C.A. 68-5-104.

Further the Court discerns that the language in T.C.A. 68-5-104(a)(1) that “the local health authorities” are “to take such steps *as may be necessary*” to quarantine, to confirm, or to determine the source, is by its terms inherently discretionary. Where a public official has any discretion concerning doing of an act, the issuance of a mandamus is not available. *Tusant v. City of Memphis*, 56 S.W.3d 10, 18 (Tenn. Ct. App. 2001). Further where an official has a duty to do an act only after making determinations, evaluations or judgments, a writ of mandamus will not lie to do the act in any particular way. *Id.* Thus Relator has failed to allege any non-discretionary, ministerial act in T.C.A. 68-5-104 that Respondent failed to do. As such, Relator has failed to state a claim for a writ of mandamus to compel Barnes to perform any ministerial act under T.C.A. 68-5-104. Thus the Court concludes as a matter of law that Barnes’ motion to dismiss for failure to state a claim is well-taken.

II. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Additionally Barnes moves the Court to dismiss the mandamus action, because Relator lacks standing to sue Barnes under T.C.A. 68-5-104.

The Relator alleges that his Petition is to stop the abuse of unwarranted police power committed by the Respondent in dereliction of the duties imposed upon her pursuant to T.C.A. 68-5-104. (P.4, 35), and Respondent failed to independently identify the infectious agent as required by T.C.A. 68-5-105. (P. 10 7).

Tennessee law provides that in determining whether a plaintiff has a personal stake to confer standing, the focus is whether the complaining party has alleged an injury in fact,

economic or otherwise, which distinguishes that party in relation to the alleged violations from the undifferentiated mass of the public. *Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001). Additionally a plaintiff must demonstrate a causal connection between the plaintiff's injury and the challenged conduct. *City of Memphis v. Hargett*, 414 S.W.3d 88 (Tenn. 2013). Lastly, the plaintiff must show that the alleged injury can be redressed by a favorable decision of the court. *Id.*

Petitioner seeks a writ of mandamus under T.C.A. 68-5-104. As set forth, supra, the only subsection of the statute for which a writ could issue to Respondent Barnes is T.C.A. 68-5-104(a) which states it is the duty of the local health authorities, on receipt of a report of a case of a communicable disease, to confirm the diagnosis, to determine the source of the disease and to take such steps as may be necessary to isolate or quarantine the affected person. However, nowhere in his petition does Relator claim to be someone who was declared to be subject to isolation or quarantined. Nor does Relator seek a writ ordering Respondent Barnes to confirm his diagnosis that required Relator to be quarantined. The Court determines that Relator failed to allege that he sustained a concrete, injury in fact.

Thus as additional grounds, the Court determines that Relator lacks standing to have a writ issued pursuant to T.C.A. 68-5-104, because Relator failed to allege that he was quarantined or escaped from quarantine, so as to demonstrate a right to relief under the statute. *Tusant, supra*. Further as he has alleged no right to relief under the statute then it follows there is no clear ministerial duty that Barnes must perform as a remedy.

Therefor the Court concludes as a matter of law that the motion to dismiss for lack of subject matter jurisdiction is also well-taken, because Relator lacks standing.

Relator also complains of acts of the judiciary, the W.H.O the C.D.C. (P. 85, 86). The Court discerns these allegations further fail to state a claim against Ms. Barnes.

In addition to the aforementioned substantive grounds for dismissal, the Court further finds that Relator's mandamus action is procedurally deficient.

At Paragraph 8 of his Petition Relator demanded "a peremptory writ to benefit the public at large."

T.C.A. 29-25-102 entitled, "Alternative and peremptory writs" provides:

- (a) The writ is either alternative or peremptory.
- (b) The alternative writ commands the defendant to do the act required to be performed or show cause before the court forthwith, or at a specified time and place, why the defendant has not done so, and that the defendant then and there return the writ.
- (c) The peremptory writ commands the defendant to do the act and return the writ accordingly.

In the instant case Relator demanded a peremptory writ. However, a peremptory writ is not issued before the return of the alternative writ. *State ex rel. Brumit v. Grindstaff*, 234 S.W. 510, 513 (Tenn. 1921). This is so the opposing party has notice and an opportunity for a hearing. *Id.*

Moreover, Relator failed to submit either a peremptory or an alternative writ. Nor did the Relator plead with specificity what the alternative writ should contain. While courts must give some leeway to a pro se litigant, courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Young v. Barrow*, 130 S.W.3d. 59, 63 (Tenn. Ct. App. 2003).

Thus because Relator failed to submit an alternative writ stating a ministerial duty that Respondent had a clear duty to perform, the Court had no writ to issue to Respondent. It is not the duty of the court to prosecute the case for the Relator. *Young*, 130 S.W.3d at 63. Nor is it the duty of the Court to guess which ministerial duty Relator seeks for Respondent to perform, as courts cannot create claims or defenses for litigants where none exist. *Id.*

Relator also continues to argue that Respondent was in default. However, unless a

prima facie case of mandamus be stated, the defendant need not answer. *Jellicorse v. Russell*, 1 S.W.2d 1011 (Tenn. 1928). *Gentry v. Casada*, M2019-02230-COA-R3-CV, 202 WL 5587720 at *5 (September 17, 2020). Moreover, the issuance of a writ of mandamus is within the sound discretion of the court. *Harris v. State*, 34 S.W. 1017 (Tenn. 1986).

As Relator failed to state a prima facie case for mandamus against Barnes under T.C.A. 68-5-104, and no writ was issued, then Barnes was never in default.

Accordingly, the Court concludes the Relator's mandamus action is also procedurally deficient and for this ground as well, the motion to dismiss for failure to state a claim for relief is well-taken.

III. MOTION TO DISMISS RELATOR'S CLAIMS FOR COMPENSATION

The Relator also seeks compensation, reimbursement, indemnification or reparation. (P. 209, 210). However, a writ of mandamus does not award damages as compensation for an injury. *Mobile & O.R. Co., v. Wisdom* 52 Tenn. 125 (1871). Rather it seeks to give the thing itself that the Relator claims is withheld. *Id.* Moreover damages for delay in doing the thing that the mandamus petition seeks to command, cannot be sought in the mandamus action. *Id.* Thus Relator fails to state a claim for damages in this mandamus action.

Moreover, any claims for compensation against Ms. Barnes in her official capacity are claims against Hamilton County. The doctrine of sovereign immunity bars claims against the sovereign unless allowed by the Legislature. The Legislature has allowed claims for compensation against the county under T.C.A. 29-20-102, the Tennessee Governmental Tort Liability Act (TGTLA). However, T.C.A. 29-20-307 provides that the circuit courts have exclusive jurisdiction over any action brought under TGTLA. Therefore this chancellor does not have subject matter jurisdiction to hear a TGTLA case.

For this cause also, the Court concludes as a matter of law that the motion to dismiss

for lack of subject matter jurisdiction the Relator's claims for damages against Ms. Barnes is well-taken.

IV. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

While demanding a peremptory writ for alleged violations of T.C.A. 68-5-014, the Relator intermingles additional claims in his petition for mandamus. Relator has cited no authority for the proposition that in a mandamus action, a relator can obtain additional relief other than the writ ordering the official to perform some clear ministerial duty. Rather case law provides that the purpose of mandamus is to execute, not to adjudicate. *State ex rel. Metro Government of Nashville and Davidson County v. State of Tennessee*, 534 S.W.3d 928, 930 (Tenn. 2017). Further mandamus does not ascertain or adjust claims between parties, nor is it used to establish a claim of uncertain merit. *Peerless Construction Co. v. Bass*, 14 S.W.2d 732 (Tenn. 1929). Moreover, if Relator has an adequate remedy otherwise, then Relator is not entitled to a mandamus. *Mobile & O.R. Co. v. Wisdom*, 52 Tenn. 125 (1871). The writ of mandamus is not a writ of right, and is not granted as a matter of course. *Id.* It only lies where the law has established no specific remedy. *Id.*

Relator alleges that “the Constitution and laws of the state of Tennessee . . . have been and are being contravened, and rights granted or secured thereby are being infringed, unwarranted power exercised in an arbitrary and oppressive manner by the respondents such as to justify the interference of this honorable court to prevent wrong and oppression.” (P. 201). Relator requests that this Court quash all orders relative to Covid (P. 204), and requests that this Court “maintain oversight over this government-caused, pseudo-crisis” (P. 208), because Relator “knows of no one experiencing the symptoms.” (P. 171). Relator demands that this Court declare that Respondent Barnes is acting outside the scope of her

lawful authority, (P. 203) and Relator demands this court to do anything it deems serves the ends of justice to relieve Relator and fellow Tennesseans of ongoing wrongs and oppression.

(P. 5)

Barnes argues that Relator lacks standing to seek this declaratory and injunctive relief, because standing cannot be based on an alleged injury that a plaintiff has in common with all other citizens.

Tennessee law provides that in determining whether the plaintiff has a personal stake sufficient to confer standing, the focus should be on whether the complaining party has alleged an injury in fact, economic or otherwise, which distinguishes that party, in relation to the alleged violations, from the undifferentiated mass of the public. *Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001). The inquiry as to whether a plaintiff has standing should be especially rigorous where a petitioner seeks to have the actions of a sovereign state declared unlawful or unconstitutional. *Crawford v. U.S. Department of Treasury*, 868 F.3d 438, 457 (6th Cir 2017).

Further in *American Civil Liberties Union of Tennessee v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006) the Tennessee Supreme Court held that standing may not be predicated upon an injury to an interest that the plaintiff shares in common with all other citizens. “Were such injuries sufficient to confer standing, the State would be required to defend against a “profusion of lawsuits” from taxpayers, and a purpose of the standing doctrine would be frustrated.” *Id.*

During the hearing Relator argued that *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) supports his standing to file this action. Accordingly this Court will review the *Spokeo* opinion.

In *Spokeo* Mr. Robins filed a federal class action against Spokeo, a consumer

reporting agency, alleging that the company willfully failed to comply with the Federal Credit Reporting Act. The Ninth Circuit had determined that Mr. Robins had standing to sue. However, the USSCt vacated the Ninth Circuit's standing decision and remanded. Thus *Spokeo* does not support Relator's claim of standing. However, the *Spokeo* opinion does provide much insight into the doctrine of standing generally.

In *Spokeo*, Judge Alito noted that standing to sue is a doctrine rooted in the traditional understanding that courts should only hear actual cases or controversies. *Id.* at 1547. The standing doctrine developed to ensure that courts do not exceed their authority, and the requirement of standing prevents the judicial process from being used to usurp the powers of political branches. *Id.*

Further the irreducible constitutional minimum of standing consists of three elements: (1) the plaintiff must have suffered an injury in fact (2) the injury is fairly traceable to the challenged conduct of the defendant and (3) the injury is likely to be redressed by a favorable judicial decision. *Id.* To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical. *Id.* at 1548. For an injury to be particularized it must affect the plaintiff in a personal and individual way. *Id.* An injury in fact must also be concrete-not abstract. *Id.*

In his concurrence in *Spokeo*, Justice Thomas noted that common law courts more readily entertain suits from private plaintiffs who allege a violation of their own rights in contrast to actions, such as the instant case, where private plaintiffs assert claims vindicating public rights. *Id.* at 1550. Further, standing imposes limits on the judiciary to preserve separation of powers by preventing the judiciary's entanglement in disputes that are primarily political in nature. *Id.* Justice Thomas noted that for public rights that involve

duties owed to the whole community, a plaintiff has to allege that the violation caused him some **extraordinary** damage beyond the rest of the community. *Spokeo*, 136 S. Ct. at 1551. The standing doctrine keeps courts out of political disputes by denying private litigants the right to test the abstract legality of government action. *Id.*

In footnote 7 of *Spokeo*, upon which Relator relies, the court noted that the fact that an injury may be suffered by a large number of people does not, of itself, make that injury a nonjusticiable generalized grievance. However footnote 7 refers specifically to victims' injuries from a mass tort, and notes that, in such a case, each individual suffers a particularized harm.

Footnote 7 also refers to the case of *Public Citizen, Inc. v. National Highway Traffic Safety Administration*, 489 F.3d 1279 (C.C.D.C. 2007), an opinion written by then-Judge Kavanaugh. In *Public Citizen*, Judge Kavanaugh opined that while it does not matter how many persons have been injured by the challenged action, the party bringing suit **must** still show that the action injures him in a concrete and personal way, because a generalized grievance is not justiciable. *Id.* at 1292-1293.

Turning to the Relator's petition, Relator sues so that dignity be "restored **to the people**" (P. 21), not to Relator. Relator alleges harms to "commerce, travel and constitutionally guaranteed rights" (P. 21). This Court determines that Relator only alleges generalized grievances. As Justice Kavanaugh explained, generalized grievances are not justiciable.

Relator also alleges wrongful acts done under color of authority and asserts that this Court should order the Respondent to faithfully follow the law and to keep accurate records. (P. 205). However, standing doctrines reflect the rule that citizens cannot appear in court simply to insist that the government and its officials adhere to the requirements of

law. 13B Wright & Miller, “Federal Practice and Procedure” Section 3531.10 (3d ed. 2016).

Further Relator asks this Court to “deal with him *as one of the people of Tennessee, not as a person or an individual*” (P. 14); demands “remedy for the extraordinary irreparable harm done to him *and the state of Tennessee*” (P. 14); and alleges “that he *and the state of Tennessee* are being irreparably injured by respondents” (P. 21). In fact the “*entire injury is to the state of Tennessee*” (P. 23), and “*jeopardizes everyone in the state of Tennessee*” (P. 52), so Relator sues so that dignity be restored *to the people* (P. 21), and demanded a peremptory writ *to benefit the public at large*. (P. 8).

The above allegations demonstrate that Relator seeks relief that no more benefits the Relator than it does the public at large. Relator failed to allege how the Administrator’s actions injured Relator in a concrete and personal way. Nor has Relator alleged some extraordinary damage to him personally, beyond that of the rest of the community. As set forth in *Darnell*, supra, standing may not be predicated upon an injury to an interest that the Relator shares in common with all other citizens.

Thus the Relator has failed to meet the first element of the irreducible constitutional minimum of standing as Relator failed to allege that he has suffered a particularized concrete injury in fact. Thus without a personal concrete injury, there is no conduct of Ms. Barnes to challenge nor is there any injury for this Court to remedy. Therefore this Court concludes that Barnes’ motion to dismiss for lack of subject matter jurisdiction is well-taken, because Relator lacks standing to bring this action.

Relator also alleges that Respondent’s acts breached the established separation of powers principle. (P. 53). However, it is Relator who requests that this Court quash all Covid orders, (P. 204) and requests that this Court maintain oversight over the crisis. (P.

208). This Court discerns that, Relator seeks to test the abstract legality of government action, and seeks to have this Court become entangled in a political dispute. As Justice Thomas noted in *Spokeo*, Relator's requests would have this Court violate the constitutional separation of powers.

Accordingly, from all of the above, the Court concludes as a matter of law that Relator lacks standing to sue as he only alleged nonjusticiable generalized grievances. Thus for this ground also, Barnes' motion to dismiss for lack of subject matter jurisdiction is well-taken.

V. MOTION TO DISMISS CLAIMS AGAINST BARNES IN HER INDIVIDUAL CAPACITY

Relator also sued Respondent Barnes in her "personal" capacity. (caption) Relator alleges that Respondent Barnes "is sued in her official and **private** capacity, is responsible for having her health officer, Dr. Paul Hendricks, issue Directive No. 1 of the Hamilton County health department, effective July 10, 2020, pursuant to the governor's statewide emergency order of March 12, 2020." (P. 11) Relator allege that Respondent's "unwarranted official acts" violated the separation of powers." (P. 53) This Court discerns that these allegations are only against Respondent Barnes in her official capacity as Administrator of the Hamilton County Health Department. Moreover, the Court determines that nowhere within the 212 paragraphs in his Petition does Relator allege any claim against Respondent Barnes in her personal capacity. Therefore the Court further concludes as a matter of law that the motion to dismiss the action against Rebekah Barnes in her individual capacity is well-taken.

ATTORNEYS FEES

Tenn. Code Ann. § 29-20-113 provides in pertinent part:

“(a)...if a claim is filed with a Tennessee...court...against an employee of the state or of a governmental entity of the state in the person’s individual capacity, and the claim arises from actions or omissions of the employee acting in an official capacity or under color of law, and that employee prevails in the proceeding as provided in this section, then the court or other judicial body on motion shall award reasonable attorneys’ fees and costs incurred by the employee in defending the claim against the employee.

(b) For purposes of this section, the employee shall be the prevailing party if:

(1) The employee successfully defends the claim alleging individual liability.

(c) The inclusion of an additional claim against the employee in official capacity in the same proceedings shall not preclude the employee from obtaining the remedies provided in this section that are related to the claim against the employee in the individual capacity.

(a) Attorneys’ fees and costs shall be paid to the...governmental entity of the state, if...the governmental entity represents...the employee sued in an individual capacity. Attorney’s fees shall be calculated at a reasonable rate paid to attorneys of similar experience in private practice in the county where the proceeding is held.

As shown above, Relator filed suit against Rebekah Barnes in her official and in her individual capacity, and the Relator’s allegations against her arose from Barnes’ actions in her official capacity. Respondent Barnes has successfully defended the Relator’s claims against her in her personal capacity. Accordingly, pursuant to T.C.A. 29-20-113, she is entitled to attorney’s fees to be calculated at a reasonable rate paid to attorneys of similar experience in private practice in Hamilton County.

WHEREFORE it is hereby

ORDERED that the motion to dismiss for failure to state a claim against Barnes in her official capacity is GRANTED; it is further

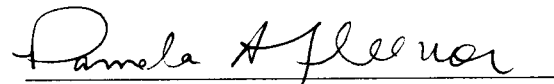
ORDERED that the motion to dismiss for failure to state a claim against Barnes in her individual capacity is GRANTED; it is further

ORDERED that Barnes’ motion to dismiss for lack of subject matter jurisdiction is GRANTED; it is further

ORDERED that Rebekah Barnes is entitled to reasonable attorney's fees. Respondent's attorney shall file a motion for fees accompanied by a fee affidavit and this Court will set the matter for hearing on the fee application so submitted.

Costs taxed to Relator, David Jonathan Tulis.

ENTER:



PAMELA A. FLEENOR
Chancellor - Part 1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this Order has been placed in the United States Mail addressed to the following person (s):

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This the 21ST day of January 2021.

Robin L. Miller, Clerk and Master

By: KAH 4N
Deputy Clerk and Master