In chancery court, Hamilton County, Tenn.

State of Tennessee, ex rel. David Jonathan Tulis	)	
	)	
V.	)	
	)	Case No. 20-0685
Bill Lee	)	
Governor, State of Tennessee	)	
In his personal capacity	)	
In his official capacity	)	
	)	***EXPEDITED***
Rebekah Barnes	)	
Administrator, Hamilton County Health Department	)	
In her personal capacity	)	
In her official capacity	)	

Affidavit & motion to alter Barnes dismissal order in interest of equity, justice

Comes now, David Jonathan Tulis, of 10520 Brickhill Lane, Soddy-Daisy, Hamilton County, Tenn., being of sound mind and body, of capacity, declaring the following facts true and correct to the best of his firsthand knowledge, as follows:

State of Tennessee on relation objects to the order to dismiss and moves the court to alter the order to reflect the petition relator filed and intended pursuant to principles to equity, not the case suggested at law by the respondent-in-fraud, and reflexively adopted by the court, on grounds that it

- ➢ Errs on relator standing, particularity and concreteness of relator's injury and of subject matter jurisdiction
- ➢ Allows for discretion in whether to obey a law, rather than discretion within acts of obedience to the law
- ➢ Confuses the process of vesting; an official is "vested" in compliance with law, and is not vested with any authority in in violation of it

➤ Deconstructs Tenn. Code Ann. § 68-5-104 as to make it essentially meaningless

➤ Ignores the rules of statutory construction as to whom is subject to performance of a law (it's not the relator)

➤ Denies equity to relator and state of Tennessee as an alternative to issuing a writ of mandamus to order compliance with Tenn. Code Ann. § 68-5-104

➤ Admits unrebutted fraud, the avoidance of which is for respondent(s) to show that they are working to understand the statute and come into compliance with it and to halt their mass continuing irreparable harms

➤ Tolerates violation of the division of powers in which state executive authority misused bids state and county employees to issue directives and other pretended legislation upon people not subject to such commands

➤ Abrogates due process rights of relator to not be subject to police power without warrant or valid exigency and without means of appeal

➤ Imposes a breach of trust and violation of oath / terms of employment on relator and general public, in overthrow of Tennessee constitutional and statutory jurisprudence

Relator points out that a writ of mandamus — as brief a matter as two lines of type on a sheet of white paper — would settle his grievance and those of the people in state of Tennessee. Chancery is a powerful court with power to do justice and to right wrong; therefore, it may use any method of its choosing. If mandamus is not a proper remedy for irreparable harm, the court has authority to use other measures to halt the harm being done and to provide relief and the court admits the petition demands such relief but denied all relief.

Notwithstanding respondents' failure to answer to the frauds committed, and admitted, and allowed by the court 140 days, as of Friday, Feb. 19, 2021, the petition does not seek to enforce duties of respondent which are discretionary. Instead, it seeks to stop irreparable harm caused respondent without adequate remedy at law, the demanded relief of which is to mandate the respondent to obey the law to *obtain* the discretion she assumes without warrant, and then to *challenge any lawfully delegated discretion for abuse* — as delineated in the petition.

State of Tennessee on relation registers is objection to the court's refusal of due process in its issuing a dismissal while denying relator opportunity to answer the motions for dismissal following the Jan. 11 hearing on the telephone. Relator orally (hearing transcript, P. 27, lines 24, 25, P. 28, lines 1, 2) and in writing reserved the right to respond

Respondent duty under statute

The court says state of Tennessee on relation is due no relief for harms admitted done because relator has no right by which he can claim a duty on the part of respondent Barnes to deliver honest government services.

The essential question is: Does respondent Barnes have discretion to obey the law, or does she have to obey state law? Relator rejects the court's order that says discretion operates before compliance, not just after.

Its dismissal order's casuistry begins by describing mandamus very much in relator's favor. "[W]here 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*," citing Tusant v. City of Memphis, 56 S. W.3d 10, 18 Tenn. Ct. App. 2001. It goes on to say, "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" (emphases added).

Tusant doesn't provide grounds for dismissal of relator's petition, but for issuance of a writ of mandamus, other conditions having been met, to compel respondent Barnes to obey the law. The court supposes that if discretion is operative anywhere in obedience to a law, that mandamus will not lie. However:

> Where the exercise of judgment or discretion is required, he may be compelled by the issuance of a mandamus to perform the duty, however his judgment regarding the details in the performance of the duty are to be left unfettered.

Tusant v. City of Memphis, 56 S.W.3d 10 (Tenn. Ct. App. 2001)

This above single sentence summarizes mandamus (duty) and its limit (no power upon details in the performance). The court's summary of mandamus is starkly different: *If discretion operates anywhere within the confines of obedience to a law, mandamus will not lie.*

The authorities permit no such concept, because the court's standard makes mandamus unworkable as a remedy, impossible to attain by any relator. Consequently, the action commenced by the state on relation does not regard lawful discretion, lawfully conducted, but targets *unvested* power to maintain any discretion, or the abuse of any discretion shown warranted. The respondent(s) failed to avoid the frauds,

enumerated and evidenced in the petition, now admitted by respondent irreparably harming relator, reference the affidavit of irreparable harms, exhibit No. 1, without adequate remedy at law.

The court's order for Barnes (one of *two* orders of dismissal in a single "cause") reproduces the statute in full at Tenn. Code Ann. § 68-5-104; the case focuses on the duties in the 102 words in section (a)(1).

The concept of ***vesting*** is key for state of Tennessee on relation in making its demand for a proper understanding of the petition, the affidavits in support of the law, and of its intent — and so an alteration of the order.

A public official such as respondent Barnes is "vested" when she operates within the law and pursuant to the law, in obedience to provisions devolving upon her. The court's order supports respondent Barnes' actions to mitigate the erstwhile COVID-19 "pandemic" *even though she is not vested to do any of them, which acts are promiscuously applied to the people at large, and not solely upon the sick and contagious in the law.* Contrary to the court's own acknowledgment as to its limits, the court's order does substitute its will for that of the general assembly, and the people's representatives' theory about the law, despite that law's clarity that saves it from needing to be subjected to a statutory construction analysis.

The court takes the law's command to make a determination of a viral agent of contagion and construes it as an option, choice and preference of respondent, subject to the free will and opinion of the respondent.

As Tusant and other cases explain, mandamus lies not to compel Choice A when an official has an option between Choice A and Choice B. However, mandamus in Tennessee law will lie when the official has a duty to make a decision of either A or B, and compel him to decide according to his professional discretion within a vested duty.

> 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. [emphasis added]

Also,

> A court will not, by mandamus, disturb the decision and action of boards and officers **vested in discretionary powers**, *except* where they act in an arbitrary and oppressive manner, or act beyond their jurisdiction, or where they refuse to assume a jurisdiction which the law devolves upon them [emphasis added]

Tusant v. City of Memphis, 56 S.W.3d 10 (Tenn. Ct. App. 2001)

The Tusant case, as do others, clarifies the role of discretion in an equity petition that the dismissal order misconstrues, inconsistent with the intention of relator's petition.

> 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.
>
> ***
>
> A court will not, by mandamus, disturb the decision and action of boards and officers vested in discretionary powers, except where they act in an arbitrary and oppressive manner citation omitted, or act beyond their jurisdiction, or where they refuse to assume a jurisdiction which the law devolves upon them

Tusant v. City of Memphis, 56 S.W.3d 10 (Tenn. Ct. App. 2001)

> The crux of the defendants' contention is that mandamus can be used to compel a public official to perform only ministerial and not discretionary acts. *** In the legal sense an act is discretionary when an official has the lawful authority to determine of his own will whether or not he will perform the act. *When the performance of an act is discretionary in the sense referred to above the only legal duty of the official is to exercise his discretion which he can do by either performing or declining to perform the act. When the performance of an act is truly discretionary, a writ of mandamus can only compel the official to* ***exercise his discretion one way or another, it cannot dictate how the discretion is to be exercised****.* [emphasis added]

Bradley v. State ex rel. Haggard, 222 Tenn. 535, 539–40, 438 S.W.2d 738, 740 (1969)

State of Tennessee is compelled to act in chancery on relation because respondent Barnes and her executive branch superiors ignore the law; they harm the public health, safety and welfare with arbitrary and capricious health measures imposed on men, women and children not in any way subject to their authority apart from the lawful use of authority. Relator is concretely and specifically harmed by her actions, as exhibit No. 1 makes clear. He is harmed irreparably daily by her pretended control over the lives of tens of thousands of people in Hamilton County, whom she is defrauding by pernicious and bad faith acts done in her personal capacity under color of authority of the office as administrator of Hamilton County health department, which office is subject to state law.

The court denies relief because state of Tennessee's r*elator failed to do the job assigned by the general assembly to respondent Barnes.* The order describes the failure of a journalist and family man with no medical background to do sufficient detective work about cases to "allege what *** case" came before her in which she failed to diagnose or determine a case of the disease, as follows:

> 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. [Emphasis added]

Barnes order, P. 5

Relator wasn't declared to be someone subject. But that hasn't stopped respondent from irreparably harming relator under color of compliance with that statute the respondent denies being subject to.

Contrary to clearly established law, notwithstanding the tortured construction by the court, relator was not declared to be someone subject, yet respondent uses the color of authority of a communicable disease statute, that court has determined is not relevant to relator, to irreparably harm relator without adequate or complete remedy or prior notice, in dereliction of the duty the court admits is upon respondent, not the relator. The court also determines Tenn. Code Ann. § Title 68-5-104 is not relevant to relator. This is the actionable harm, relative to the affidavit, exhibit No. 1 in the petition, and justiciable.

The petition properly interpreted evidences there is no communicable disease report respondent could have received, or which relator could allege, given the failure to produce *any* report required by the general assembly demanded prior to the commencement of the suit, and because any report would have been based in fraud if claiming to be pursuant to "COVID-19 pandemic," or having relator's name on it.

Contrary to the court's assertion, the respondent, upon which this court finds the duties lie, is required to demonstrate the non-fraudulent exigency giving warrant to the power being used to irreparably harm relator, that this is lawfully vested; and which nevertheless is limited to quarantine, not to extend beyond as evidences in exhibit No. 1, the affidavit of irreparable harm. There is no stated authority the court relies upon to *require relator to make a false statement to allege a report to a non-existent communicable disease*, one merely purported to exist under color of authority through fraud.

The petition alleges respondent(s) ignored the entire statute, from A to Z, which would have protected relator. A giant fraud and misdeed are admitted in the record, including by the court, the evidence showing irreparable harm to relator without adequate remedy at law, the court faulting relator for not specifying a lesser wrong, through a duty not relevant to him; how this works is not explained at all or through any equity principle. It should not be expected to be explained, because equity, doing justice, will not allow it.

> [N]owhere 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.

Barnes order, P. 7

The court says relator has no "injury in fact" because he cannot show that the law *was operational* under respondent Barnes, and that he was harmed by that operation and denied his rights. (The court should take judicial notice: The law was not, is not, being observed and obeyed.)

Without any evidence of any report required by the general assembly, the court ought not anticipate the relator could be someone declared to be subject or affected by the statute. This is one of the actionable principal trespasses of respondent(s). If jurisdiction were *vested* in the respondent(s), the required report generated with the name of the relator, the adequate remedy provided by the general assembly would be an application for writ of habeas corpus, not available to this relator not evidenced to be subject to the law.

Relator's affidavits, or exhibits, not disclosed in its order, answer the court's objection.

Before filing his action, relator had demanded information about the first communicable disease case of which respondent Barnes received a report, petition ¶¶ 27 - 30, about which she made report to respondent Lee's commissioner of health as provided for in 68-5-104. His quest came up empty. Exhibits Nos. 3 and 4 show that respondent had no evidence that it had a first case. The exhibits show she did not determine the "source or cause of the disease," its agent of contagion. That relator doesn't identify the "communicable disease case that Barnes received a report of where she failed to establish the diagnosis" is not any lack that can be ascribed to relator, as if he were under a duty.

Exhibit No. 3 is a letter to the health department in which relator asks about compliance with five duties under the statute, section (a)(1), and demands evidence of their obedience to determine if respondent Barnes is vested with authority for her purported epidemic and mitigation project that now includes a program giving DNA-altering vaccine the respondent's department rushed into public use. Exhibit No. 4 is the one-page letter from Dr. Paul Hendricks ("I can answer your questions in general terms," he says. ["*Fraus latet in generalibus*. Fraud lurks in general expression," warns Gibson at § 58, maxims and sayings relating to fraud]). See petition ¶¶ 36-41.

This exhibit, which the court prejudicially fails to disclose or in context of the relator's intention, shows that the department admits being in violation of the law, as respondent Barnes provides ***not one iota of evidence*** of compliance with the statute at any point of (a)(1). Respondent Barnes' subordinate confirms there is not a first case that meets the definitions under 68-5-104, and that Hamilton County does not have any public health condition that merits being called an epidemic to vest any body with any authority.

The court's analysis, speculating into a fourth dimension, an alternative reality imagining the intention and purpose of the petition, is ***unreasonable and prejudicial.*** The court, charged with doing equity, appears in its order on a search-and-destroy mission to remove every trace of it, none left even for the gleaners, in a cause irreparably harming 6.8 million souls nearly 350 days through fraud, relator particularly, as established in Exhibit No. 1.

The court examines the four main parts of Tenn. Code Ann. § 68-5-104 minutely. Yet it seems to not comprehend it. Where the court *decoheres* the law, it actually *coheres* into a whole. The law reads,

> (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 communicable, contagious, or one which has been declared by the commissioner 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.

§ 68-5-104. Isolation or quarantine

The phrase "as may be necessary" indicates the acts are subject to review for **abuse.** Once the respondent can show the non-fraudulent exigency that as a matter of law **is not to the discretion of the respondent to show** to enforce discretionary acts. And where the relator cannot be shown to have caused an initiating

report, then every act against the relator is arbitrary and capricious, for want of lawful warrant for the police power claimed.

At (2), as follows: "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." This provision at (2) cannot happen until (1), above it, relevant to "the duty of the local health authorities, on receipt of a report of a case," occurs. To allow respondent Barnes to evade her duty in (1) in the legislatively required process does not "apply the plain meaning without complicating the task," Eastman Chemical Co. v. Johnson, 151 S. W.3d 503, 507 (Tenn. 2004).

The Barnes defense is "intrinsically linked" to that of the governor, the respondent says in a motion for enlargement, as are the duties of these public servants under law.

The order to dismiss is an argument by the court that officials are free to ignore state law when it suits them, or the court.

Respondent discretion under statute

The court deletes obedience and duty to law, and substitutes discretion as the means by which respondent(s) do their jobs.

> 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. [emphasis added]

Barnes order, P. 3

The court works to remove three sections of the law from the dispute at hand over duties in Tenn. Code Ann. § 68-5-104(a)(1). Yes, (a)(2) applies to the commissioner.[1] Section (b), regarding one who has escaped quarantine, classifies that as a misdemeanor. Section (c), deals with placarding the house of a

[1] That respondent Barnes has included relator in her policy decisions, without a medical report with relator's name on it, or a finding the relator subject to the authority of the local health official, where the court "determines" the part does not apply to relator, ***is*** the very reason a writ of mandamus is required. The part does not apply to respondent Barnes, but to "intrinsically linked" conspirator Gov. Lee. They have applied this authority to relator to irreparably harm him without adequate remedy, the purpose of equity relief.

person under quarantine and the duty of city or county officials to give such a person subject to lawful police power "a copy of this law."

The fact that relator cannot state a claim under section (c) indicates **relator has no adequate remedy at law**, required to be found for relief in equity for the irreparable harm respondent is causing under color of the communicable disease statute without warrant. She is imposing police power, but apart from law; hence, relator has no means of appeal an unjust finding; neither does anyone else.

The court takes the reference of "such steps as may be necessary" in at (a)(1) and magnifies it so greatly that it obliterates the clear non-optional, non-discretionary and ministerial duties in the preceding lines, nevertheless to the sole purpose of quarantine to stop the contagious principle. One need not read too closely to see how limited this expression of discretion is intended to be.

The law begins by these words: "It is the duty of the local health authorities" (respondent, though her office is not named) to do several things:

- ➢ Receive a report of a local case ("on receipt of a report of a case")
- ➢ Recognize the dangerous special nature of the case, if it is not a familiar illness (cholera, yellow fever, smallpox and other epidemic diseases such as TB), the condition which is to be "declared to be communicable, contagious")
- ➢ Coordinate with the commissioner of health, who has identified and isolated the illness ("one which has been declared by the commissioner of health to be subject to isolation or quarantine")
- ➢ "Determine the source or cause of the disease" (discern the *isolate* of, say, a novel coronavirus)
- ➢ Use police power, notice, postings, legal action and other means to "take **such steps as may be necessary" on a case-by-case basis "**to isolate or quarantine the case or premise upon which the case, cause or source may be found."
- ➢ This process occurs "**as may be required by the rules** and regulations of the state department of health," properly applied.

The "steps as may be necessary" to "isolate and quarantine the case or premise" are premised on preceding provisions regarding receipt of report, a case or suspected case, declaration of communicability, confirmation or establishment of a diagnosis, determination of source or cause.

The “one which has been declared by the commissioner of health to be subject to isolation or quarantine,” including any by respondent Gov. Lee, is not free from demonstrating a non-fraudulent exigency, the determination of which the general assembly provides no alternative to other than Tenn. Code Ann. § 68-5-104.

The court magnifies the phrase “as may be necessary” of a subsequent act to apply to ministerial, non-optional and non-discretionary acts, and upholds violation of law, upholds effectively the fraud admitted in the petition.

In the 102 words of (a)(1), there is both duty and discretion. The court would have relator, or the public, believe that if discretion operates anywhere in the law, upon a detail or a process, the entire law is thus optional, discretionary, not a duty, up to the personal opinion and preference of respondent Barnes, and that mandamus will not lie.

For respondent Barnes to be “vested with discretion,” she must be within the statute and obeying it, not disregarding and disobeying it, according to the cases. The petition shows respondent(s) are not vested, and given the frauds cannot be vested, and there is no record evidence avoiding the fraudulent evasion of duty and law.

Statutory construction rule contradicts order

The court hauls in the rules of statutory construction, which undermine its thesis of duty and discretion. The court refuses mandamus and equity because it contends *discretion* “vests” with an official on its own. It doesn’t. Authority vests when the official does his duty pursuant to the plain meaning of the black-letter law, with any one law working in coordination with all other statutes. Then, discretion operates.

Vest is defined as “to give an immediate, fixed right of present or future enjoyment” and “to accrue to; to be fixed; to take effect. To clothe with possession; to deliver full possession of land or of an estate,” Black’s. The court disputes the truism that an official is vested with authority, the lawful exercise of which allows discretion. Discretion is a byproduct from obedience; it comes after obedience, and in administration of law (in ***ministry*** in law, if you will).

There's no "fixed right of present or future enjoyment" of an office in contradiction to obedience to law. Without duty being fulfilled, it is impossible to exercise discretion. Without duty and obedience, all acts of discretion are arbitrary and capricious, by definition.

Standing based on exhibit of personal, concrete harm

The court says relator lacks standing to ask for a mandamus or other equitable relief because he fails to show "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." Relator will treat under separate headings other angles of attack on his standing that give the court subject matter jurisdiction.

The court says relator must "demonstrate a causal connection between the plaintiff's injury and the challenged conduct" and that the court has authority to redress the injuries he has alleged, order, P. 7.

The court ignores relator's material affidavit of injuries in Exhibit No. 1. That is because, evidencing undue influence, respondents ignore it, too. They seek to block relator's march toward relief by mandamus or equity with barricades of persiflage, case citations and misrepresentations about Tennessee jurisprudence, and the intent or purpose of relator's petition and evidence, which argument the court prejudicially adopts.

Rejecting affidavit evidence without express foundation or warrant, the court looks for harms of its own design, superimposes them upon relator and finds — voila — that he wasn't harmed. The court says "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 presumes in this line of thinking that the statute is operative. It presumes without evidence or a medical report in denial of any duty pursuant to Tenn. Code Ann. § 68-5-104 that authorities have declared *relator* is a carrier of a coronavirus, that authorities by notice or court case have ordered ***him*** by police power or court order to be isolated and quarantined.

The relator is constitutionally secured to be presumed innocent of all wrong-doing until a lawful showing by respondent(s) to the contrary. Relator is unaware that anyone has been quarantined under the law, and

with the effect of law. The law at Tenn. Code Ann. § 68-5-104 is effectively nullified by respondent's refusing to obey it. The relator has no adequate remedy for these breaches of law and of trust for the irreparable harm caused by respondent's breach of court-determined, law-imposed duty.

The court amplifies its fictive artmaking. It says he fails to "seek a writ ordering Respondent Barnes to confirm" a diagnosis directing relator "to be quarantined." The court says it "determines that Relator failed to allege that he sustained a concrete, injury in fact. Relator failed to allege that he was quarantined or escaped from quarantine, so as to demonstrate a right to relief under the statute. 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" P. 7.

From this discussion the court says respondent Barnes has no duty to perform the statute she admits not obeying, and that because relator cannot show she misused her powers while administering the statute in the court's theoretical narrative, that he has nothing to complain about. State of Tennessee on relation admits to being baffled.

The court's in a bleak house in this narrative, with its prose seemingly borrowed from the leaves of Jarndyce and Jarndyce in Charles Dickens' novel. The court's story pretends that the law is in operation: "Relator failed to allege that he was quarantined or escaped from quarantine, so as to demonstrate a right to relief under the Statute." The court pretends relator is seeking "a right of relief under the statute," P. 7, as if the statute were in operation and its operation had caused a harm or violated his due process rights, or that the statute is the sole source of right for relief.

It is not. See petition ¶¶ 12, 13, 21, 51, 53, 86, 87, 98, 99, 131 —

> 132. Without fulfilling the statutory and constitutional obligations, given the unquestioned prerogative extended to the Executive, it can't be known this isn't a health crisis fraud perpetrated under color of science or medicine; the lack of bona fide evidence would indicate it is fraud and much worse.
>
> 133. An inexcusable deleterious fruit of refusal to obey T.C.A. § 68-5-104 is this: If there is an actual health crisis, respondents' fraudulent reliance on misleading foreign presumption prevents the people from acquiring knowledge of the real contagion and how they might protect themselves.

Petition

— and also ¶¶ 201, 203, 207, 208.

If the statute were obeyed, he would have due process rights therein — the right to notice, hearing, trial and right of appeal out of sessions court, if found guilty of being a carrier of a contagious condition. See the tuberculosis statute at Tenn. Code Ann. § 68-9-201 ff for details on the legal process required for the state to seize a citizen for an alleged wrong. The court protocols intended to protect relator and all other citizens in a tuberculosis outbreak is the same that need to be operating today, under the novel flu that broke out in March 2020.

But the statute is not operative. Respondents have not harmed relator by invoking and using the statute, but by *having refused to do so,* denying *any duty.* If the statute were invoked, relator would have right of due process, a right to be heard in a timely manner, a right to rebuff claims rightly presented to him with notice, the right to face an accuser, the right to have a charge in writing, the right to have witnesses and the power to compel witnesses, and opportunity to respond as the general assembly provided.

As he does not have exercise of these rights, under *vested* police power exercised under constraint of law in Hamilton County, he is irreparably harmed and with no recourse except mandamus, to compel obedience, or other relief equity provides and demanded in the petition. In ignoring the law, public servant respondents *put the entire population in quarantine apart from due process*, which the lawful due process intended by the general assembly operates upon individual men and women, one at a time, for breaches of law, each person having a right to notice, a charge, trial and right of appeal under a quarantine or closure order, and contrary to the court's order.

The court breaks down the law to suggest its provisions are misused by relator. On P. 5, "[S]ubsection (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." The court provides no foundation to explain its premise that the general assembly intend that this statute applies in parts, not a unified whole.

The court goes on: "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."

The court's analysis presupposes that the law is operational. It supposes that if it were operational, it would have injured relator, and since relator reports no harm from the operation of the law, he has no grounds for complaint. The respondent's brief, P. 7, weaves a yarn about "petitioner" who "has alleged no injury relative to the application Tenn. Code Ann. ¶ 68-5-104." He hasn't been diagnosed, quarantined, can't identify any other person quarantined, and "complains primarily about wearing [a] mask," which latter she says is "neither contemplated nor controlled by the law..

This suggestive sequence of suppositions bends the court's memo into an alternate dimension of reality into which relator's imagination has scarce enough wits to enter. Truly, a reflexive quantum leap.

The relator cannot be expected to allege misdeeds of a law *not in operation*. Theoretically, were the statute honestly being administered, relator could have had an encounter with a local health authority about its provisions; he would then have had right to notice, etc., and the protection of his due process rights. But since the law isn't operational, its provisions haven't harmed him. He is not subject to the law, has no duty under it — not charged in its administration.

Relator is failing to state a claim, as the court sees it, arising from operation of a law that respondent Barnes refuses to put into operation.

Demonstrating a non-fraudulent communicable disease exigency is not the duty of the relator. Despite determining the statute does not apply to relator, and agrees he fulfills an element for standing, the court misinterprets what mandamus relief is to do and misappropriates the law, misapplying the duties relative to relief and the intention of the petition. The petition doesn't seek to *correct* a specific *discretionary* nonministerial act but to stop an official not vested with lawful authority from irreparably harming relator without adequate remedy.

In its analysis about the parts of the law, the court keeps looking for something that doesn't exist, but is supposed to, ***before*** relator was to be affected, and then only reasonably within the communicable disease statute delegation, and then with opportunity of adequate remedy, not as the petition adequately alleges through fraud under color of a communicable disease, to irreparably harm relator (see exhibit No. 1, affidavit of individual harm) without remedy.

The court asks more of the statute than is intended by the legislature. There is no right to relief under the statute for someone wrongfully infringed, under its color. The standard to avoid harm is the statutory

direction directed to the respondent to avoid liability. The right to remedy, is an equity principle and the Tennessee constitution — not **the statute which the court agrees the respondent has the duty to fulfill** and also determining it is not relevant to the relator.

The court cannot have it both ways, that the relator is magically responsible to the statute at the same time determining it is not relevant to him, at the same time saying the respondent has no duty whatsoever, in its zeal to cover for the unavoided fraud of the respondent in irreparably harming relator without lawful warrant, or demonstrating a non-fraudulent exigency, or in the alternative, petition ¶¶ 45, 50-52, exercise of non-abusive discretion were the respondent to have avoided her fraud under color of state law.

Respondent Barnes, her public health department and her "intrinsically linked" collaborator in fraud, respondent Lee openly admit to defying the statute. Respondent Barnes, in having *no isolate* for the conditions identified as COVID-19 or SARS-CoV2, in having made *no determination* as to the "contagious principle" (phrase from Tenn. Code Ann. § 68-1-202) of the purported condition, evidenced by no initiating medical report, is defrauding the relator and the public and injuring public health with purported mitigation methods outside her authority, even if it were *vested*, disgorged against the public in her personal capacity, that may or may not slow the spread of the set of symptoms dubbed COVID-19.

Relator's petition is filed under authority of the Tennessee constitution for equity relief and pursuant to the mandamus statute at Tenn. Code Ann. § Title 29, chapter 25, serviceable to the people of Tennessee to quash acts causing irreparable harm caused by respondent without adequate remedy at law. In its quantum leap, the court violates its rule, cited in order P. 2, to "construe the complaint liberally, giving the plaintiff the benefit of all reasonable inferences."

Ignoring a main body of material evidence for standing, such as the petition and Exhibit 1, is wrongful, violating at least the rules of evidence, equity principles and state of Tennessee's due process rights on relation, and relator objects and so demands an amended order.

Specific harms, wrongs & subject matter jurisdiction

Relator turns now to subject matter jurisdiction and the court's dismissal based on its findings of a lack thereof. The court on P. 2 says subject matter jurisdiction is "a threshold inquiry," meaning it comes before anything else.

The court says respondent, in her facial challenge to relator's cause, admits "the facts serving as the basis for jurisdiction," order, P. 2. We can look at the court's actions first to determine whether it has claimed subject matter jurisdiction up until Jan. 21, 2021, when the court said it didn't.

The court has had three hearings in State ex rel Tulis and as of Friday, Feb. 19, 2021, will have had the case 4½ months (140 days). Surely — *surely,* it cannot justly now say it has no subject matter jurisdiction, or if it fulfilled its duty to do justice.

A petition for writ of mandamus is an ***emergency, peremptory*** petition. "Mandamus is a personal obligation of the individual to whom it is addressed and is based on the fact that the respondent has neglected or refused to perform a *personal* duty to which the plaintiff is clearly entitled. *** It ***affects the defendant personally***. *** [emphases added] Mandamus is an unusual and extraordinary remedy, which the courts issue only as a last resort. It is not a common means of obtaining redress and is available only in rare cases when the parties stand to lose their substantial rights. *** Mandamus is a remedy at law whose purpose is to execute, not adjudicate established legal rights in an expeditious manner." Mandamus, American Jurisprudence §§ 1-5.

Mandamus is a petition for remedy not to be docketed "as quickly as I could" (the court's words, hearing transcript, Jan. 11, 2021, P. 12, lines 10-13) behind custody cases and contract feuds. The court refused to instantly and summarily dismiss the case for lack of subject matter jurisdiction, or transfer to a competent court. Its actions profess the court has subject matter jurisdiction, empowered by the petition evidencing fraud to act to uphold the law and benefit the public in Hamilton County and statewide.

An order which prejudicially fails to disclose relator's unrebutted affidavit of private irreparable harm, Exhibit No.1, relator's affidavit with five particulars of irreparable harm (here are three, for example, not abandoning those remaining), cannot be an order relevant to the relief relator intends for his irreparable harm without adequate remedy at law; the affidavit says in part:

> ➤ Hamilton County deputies' threatening to commit the crime of violating Tenn. Code Ann. § Title 40-7-103, arrest by officer without warrant, by arresting affiant without a warrant for walking into the courts building as a member of the press to cover a court hearing, and doing so with his jaw, cheeks, mouth and nose visible to other people;
>
> ➤ Respondents' actions and falsehoods about a state emergency have deprived affiant of Christian fellowship and gathering, or freedom of religious worship; the threats and falsehoods of the governor closed North Shore Fellowship, where affiant is a member;
>
> ➤ "Affiant is suffering injury buying goods and services in commerce and selling goods and services. These activities have been curtailed — with opportunities for growth and expansion lost — whether from barking store clerks, officers threatening affiant in

> public buildings or by billboards telling affiant, or by unwarranted ridicule, that if he doesn't wear a mask he doesn't care for other people. After Gov. Lee's placing the people of Tennessee under house arrest, affiant finds people unwilling to meet with him at every part of life in local economy and free markets, to the growth and prosperity of which affiant is committed."

These are harms in fact, economic and otherwise, that distinguish relator from the otherwise undifferentiated mass of the public. Neither respondent nor the court have offered counter-affidavits, nor attacked or disputed the petition's facts. Only with the convenient though prejudicial failure to disclose the evidence of irreparable harm can the court find no concrete injuries, particular to him, that, when included, would meet the elements delineated in law, contrary to what is offered in the order.

In his motion to amend the Lee dismissal order, Pp. 12 to 20, relator supports the affidavit in detail as to his harms reaching the lofty standard proposed that they be "extraordinary," which standard chancery brings upon the cause from a footnote in a federal case. Relator hereby incorporates that analysis in this motion.

In its order, the court gives a long discussion of Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016), as revised (May 24, 2016), and says,

> 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.

The court reaches the conclusion from a concurring opinion indicating a relator's harms be not just injury in fact, concrete, personal, particularized and de facto, but also "extraordinary, beyond the rest of the community."

The court cites Justice Thomas' concurring opinion. He quotes Blackstone's commentaries and cites an 1828 ruling from the general court of Virginia.

> Even in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them "some **extraordinary damage, beyond the rest of the [community].**" 3 Blackstone *220 (discussing nuisance); see also *Commonwealth v. Webb,* 27 Va. 726, 729 (Gen.Ct.1828). [Emphasis added]

Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1551, 194 L. Ed. 2d 635 (2016), as revised (May 24, 2016).

The two standards in play cut in alternate angles. One insists on deep personal harm. The other insists on a public interest. "([C]ommoner must establish not only *injuria* [legal injury] but also *damnum* [damage] to challenge another's overgrazing on the commons)." Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1552, citing Commonwealth v. Webb, 27 Va. 726, 729 (Gen.Ct.1828). Relator is vindicating his private rights under damnum ("damage"), but also the public's rights under injuria ("legal injury," a wrong enabled amid abuse of rights embedded in statute and constitution — aka, due process) in exhibit No. 1.

The affidavit recounts threats against him of false arrest for entering a courts building with jaw, chin, nose and cheeks visible to the public, or in violation of a so-called mask mandate. The public is injured when respondents bar access to public buildings and subject a citizen to false arrest. The affiant is irreparably harmed by a breach of several laws, which are forbidden their proper operation across the board, with other people harmed.

Relator's press activity is under protection of Tennessee constitution bill of rights Section 19. His is a protected category of citizen activity. An officer enforcing respondent's directive threatened to violate the exceptions list for arrest by officer without warrant at Tenn. Code Ann. § 40-7-103, as attested, making the experience extraordinary in the record, and sufficient to reject respondent's motion to dismiss. No other radio reporter in the state has had like experience of which relator is aware.

> **EXTRAORDINARY.** Out of the ordinary; exceeding the usual, average, or normal measure or degree; beyond or out of the common order or rule; not usual, regular, or of a customary kind; remarkable; uncommon; rare. (Black's Law Dictionary, 4th edition) [Citations omitted]

Under the headings of concrete, particular, actual and uncontested, relator avers his private harms are extraordinary, presuming the test is valid and his unrebutted affidavit disclosed by the court.

Relator is held to the high standard for standing, as he is a private man, aggrieved, seeking *equity* to vindicate not just a private irreparable harms, but one the relief sought requires also be of public interest or benefit as well. The court imposes on relator the standard test of concreteness and particularity, but also that of "extraordinary." And then the court prejudicially disregards evidence in the record which would meet the test.

No other radio reporter in the state has had like experience of which relator is aware. But that commonality would not defeat the same infringement of the next reporter, despite the court's assertion to

the contrary. It is extraordinary ***whenever*** people are harmed by officials without warrant of law under color of authority. Doing so is by law felony conduct and not, at least until the court's order, ordinary.

Under the headings of concrete, particular, actual and uncontested, relator avers his private harms are extraordinary, insofar as the extraordinary test imposed upon him is valid and his unrebutted affidavit acknowledged and read by the court.

Petition phrases such as "commerce, travel and constitutionally guaranteed rights" (order P. 13) might allow the court to see a mere generalized grievance had relator gone no farther; but his grievance is particularized to relator in the appurtenant affidavit of irreparable harms specifically identifying unwarranted infringement of his private commerce and travel, themselves constitutionally guaranteed rights, prejudicially not disclosed in the order of the judge.

The supreme court says mass wrongs can also, with any one victim, give that victim standing.

> For example, a mass tort inflicts "widely shared" injury, and each victim "suffers a particularized and differentiated harm. One tort victim suffers a burnt leg, another a burnt arm—or even if both suffer burnt arms they are different arms.... With the generalized grievance, on the other hand, the injury or deprivation is not only widely shared but it is undifferentiated." Akins, 524 U.S. at 35, 118 S.Ct. 1777 (Scalia, J., dissenting); see also Lujan, 504 U.S. at 572, 112 S.Ct. 2130 (Scalia, J., opinion for the Court) (no generalized grievance when "concrete injury has been suffered by many persons, as in mass fraud or mass tort situations")
> .

Pub. Citizen, Inc. v. Nat'l Highway Traffic Safety Admin., 489 F.3d 1279, 1293 (D.C. Cir. 2007)

Respondent Barnes alleges that there are insufficient *factual* allegations to articulate a claim of relief. Respondents have not attacked specifically and particularly relator's affidavit of irreparable harms. Rather, the affidavit is never disclosed — allowing them, and of which non-disclosure technique the court adopts, to wrongly get a contrived outcome. Then, and again, the court wrongfully, prejudicially, allows a respondent without equity for the unavoided frauds to have a defense, anticipating the appearance of predetermination, in concert.

Alternative writ required? Form over substance?

The court says the failure of relator to "to submit either a peremptory or an alternative writ" left the court uncertain about what the petition demands, and "the Court had no writ to issue to Respondent," P. 8. "It is not the duty of the court to prosecute the case" for relator, nor its duty to guess which ministerial duty

Relator seeks for Respondent to perform," because a court "cannot create claims or defenses for litigants where none exist."

The court says state of Tennessee's case on relation is "procedurally deficient" in that relator did not ask for an alternative writ under Tenn. Code Ann. § 29-25-102.

The court itself fulfilled the hearing requirement under the alternative mandamus provision, giving respondent two hearings to which respondent was invited and appeared, well beyond the acceptable equity requirement to respond *"forthwith,"* such as within 5 days or less. The court's unwarranted indulgence of 140 days being more than enough time to be heard by a respondent to avoid the alleged frauds given notice *prior* to suit. (Notice was in relator's demand letter, exhibit No. 3, Aug. 27, 2020, or 36 days before filing suit Oct. 2, 2020.) Relator's demands in petition ¶ 8 for a peremptory writ of mandamus, together with the case's public interest and benefit requirement for the equity relief, empowers chancery to use its plenary authority to halt wrongs and bring justice and relief.

The court does not explain how the relator is to divine its will for acts and purposes wholly within the court's discretion. He will gladly meet with the court or the clerk and master and draft an order pursuant to the court's direction.

The court cites State v. Grindstaff, 144 Tenn. 554, 234 S.W. 510, 513 (1921) that states,

> In a mandamus case under our practice the peremptory writ has not, so far as we know, ever been issued before the return of the alternative writ. This always insures [sic] notice to the adverse party and a hearing before there is any removal from office.

The reference regards precedent inapplicable to this case, and in light of the statute and private process exposing fraud, is not dispositive, particularly in light of chancery's sweeping powers. This rebuke on relator's plea under mandamus also abuses and insults the evidence of the notice to respondents in relator's private process of notice of record. His exhibit No. 3, "evidence demand pursuant to the duty imposed in TCA 68-5-104" of Aug. 27, 2020; exhibit No. 4, the Sept. 2, 2020, letter of Dr. Paul Hendricks, prove failure of respondents to "show cause" as per Tenn. Code Ann. § 29-25-102, with their lawful warrant for the irreparable harm they caused, *before* the action was instituted.

All the court had to do was read the evidence in support to see the facts taken true, the justice intended. The court itself has fulfilled the requirement for respondent Barnes to show cause as to her dereliction under Tenn. Code Ann. § 68-5-104, or produce the demonstrable exigency, forthwith.

> **FORTHWITH.** Immediately; without delay, directly, hence within a reasonable time under the circumstances of the case; Black's Law Dictionary, 4th ed.

"Forthwith" means not 140 days, but three days or four, equity relief time. On the other hand, a court claiming lack of subject matter jurisdiction has bent over backwards to give "a hearing" — two of them to which respondent Barnes made appearance after begging for two months time to answer.

Despite the court's insistence to the contrary, an alternative writ, the purpose of which is ensuring notice to respondent-in-fraud given notice *before* and again at the suit, serves no legitimate purpose but to further delay**.** If the court intended to do justice to stop the irreparable harm, as it now suggests was available, it would have invited the type of writ and extent *of its discretion* to issue which the relator has been ever-vigilant to receive in aid of the court's doing justice. But that justice is apparently not to come and the suggestion that the relator is somehow procedurally derelict was never to the relator's discretion.

The court, if it intends to hold to this tack, should explain obedience to the chancery principle, "Equity regards substance rather than form." In other words, rules are not allowed to subvert a right by imposition of a mere technical form. Another equitable principle is denied control in this case of admitted fraud: "A court of equity in the exercise of a broad discretion should see to it that wrong and oppression are not inflicted under the guise of legal procedure, but that justice be done as the very right of each case may demand" Griffith, § 39, p. 42.

Equity jurisprudence requires chancery to heed intent and not focus on the form or style of pleadings. "Equity heeds not forms but strives to reach the substance of things; and to ascertain, uphold and enforce rights and duties which spring from real relations and the actual transactions of the parties." Or, "Where there is substance for the Court to act on, the want of form will be disregarded, for *Equity regards substance, and not ceremonies*. *** Thus if the bill makes out a case for relief, any want of formality, or any misnomer of the bill, or any eccentricity of phraseology, will not defeat the complaint's right to relief on the facts alleged and proved." Or, "a meaning should be drawn out of the words and not forced into the words. The *intention of the party* is the life of the instrument. That interpretation, which is born of the bowels of the case, is, in law, the fittest and most powerful. It is a guess, not an interpretation, which disregards the words of an instrument." (Gibson's Suits in Chancery, §§ 43, 64, 1907 ed.) (emphasis added)

The court has not worked to secure the just, speedy, and inexpensive determination of this action. Where was this suggestion of procedural deficiency 140-plus days ago, given also this writ *but for* the purported procedural failure of relator can only be offered by a court of competent jurisdiction, also denied to relator? Relator is aggrieved.

The order is untenable and evasive, hardly instilling confidence and trust, or giving fair treatment, but destroying these. Costs for the hearings should be borne by the court that ordered hearings without subject matter jurisdiction, or to allow maintenance of fraud within chancery under color of jurisdiction.

State of TN on relation demands equity, not damages

The court follows respondent(s)' custom of mischaracterizing the petition and relator's intent, converting it from an action for mandamus and (or) equity into a case at law seeking "damages as compensation for an injury," or damages under Tenn. Code Ann. § Title 29, chapter 20, the governmental tort liability act. The court says "Relator fails to state a claim for damages in this mandamus action," order P. 9.

That's true, because he states no claim, makes no demand, for damages.

Unless this court has secretly and wrongly transferred this action to the circuit court, it applies the wrong expectations to the action filed by the relator intending equity relief.

State of Tennessee on relation is in chancery because relator seeks equity against respondent Lee the officeholder and the man personally. Relator invokes, against either capacity, the court's discretion to do *equity*:

> 202. The relator via this petition and verified complaint demands the court —
>
> *****
>
> 209. ➢ Order *equitable compensation*, to the extent available to chancery, to persuade and *impress the conscience* of each respondent from repeating wrongs cited in this complaint, sending a message to others so inclined;
>
> 210. ➢ Make *other redress within the power of this court* to the ends justice requires, not limited to, further compensation, reimbursement, indemnification or reparation for benefits derived from, or for loss or injury caused to the relator, fellow Tennesseans or the state of Tennessee. [emphases added]

This demand for equitable compensation "to the extent available to chancery" seeks to "*impress the conscience* of each respondent from repeating wrongs cited in this complaint," sending a deterrent message to other office holders and men and women acting outside authority of office. The demand is within the court's inherent jurisdiction, and relator objects to this demand being cited as cause of dismissal.

If there is a lawful and equitable contract, the court can equitably

> Enforce the contract, or (2) award compensation for its breach, or (3) to require the party in default to do such act relative thereto as he, in good reason and good conscience ought to have done without suit. (Gibson's Suits in Chancery, 1956 ed. § 28)

If there is no contract and a dispute arises,

> [A]ll the court can do is *** (2) where injury has been done, to make the defendant ***atone*** therefor. [emphasis added]

Chancery is the jurisdiction for "the determination of the equitable rights, estates, and interests of the parties to such causes, or the granting of equitable remedies," Gibson's § 30. "Equity Acts Specifically, and Not by Way of Compensation" is a maxim of chancery § 43.

> Equity aims at putting the parties exactly in the position they ought to occupy, giving them *in specie* what they are entitled to enjoy and putting a stop to injuries which are being inflicted. Thus, Equity decrees the *specific performance* of a contract, instead of giving damages for its breach. So, Equity restrains the commission of a trespass, instead of compensating the aggrieved party by damages. Gibson's § 43 [emphasis added]

Relator in petition ¶ 209 invokes chancery's inherent equitable powers (reference is "to the extent available to chancery"), and is content whether the specie from respondent Barnes the woman and the officeholder is silver coin or, better yet, "performance according to exact terms," which phrase defines specie in Black's Law Dictionary, 4th ed., and pursuant to the court's discretion. ***Specie of equity*** — the health administrator's obedience to law — is relator's demand, not cash damages assessed upon relator's report of his checkbook shortfalls, plunging sales commissions and overdue bills in respondent-caused material economic and other harm.

Relator treads not upon the state's sovereign immunity to not be sued for damages reaching the treasury. The court's interpretation to the contrary is prejudicially erroneous.

Relator in equity insists the court avoid a misreading of his intentions to give cause to dismissal of his petition, *and he reserves the right to amend it*, and requires the order of dismissal be altered to reflect the facts of the petition as relator intended, as equity principles require, and if not to summary disposal as demanded in the court's discretion, then as due process requires the right of the relator to respond or amend, as equity would appear to require it where the court can bring a foundation for ignoring fraud in chancery, or disclosure that the evidence the court promised existed outside of the knowledge of relator, that the matter is not in default.

Public interest nature of cause

The court denies relator has standing, saying he has no distinctive, concretely presented and redressable particularized injuries that the court can see, preventing the court from having subject matter jurisdiction. By second means, in a flank attack, the court devotes Pp 10-14 to help it draw the same conclusion based on findings about relator's efforts to establish a public interest in his cause.

The court knows, or should know, one of the required elements to invoke the extraordinary remedy relator seeks is that it has public benefit and a clear public interest. The court forces one part of relator's paperwork to cannibalize the other part, leaving him no wherewithal for standing.

The court marshals the relator's references to the people at large, to his hurt, as follows.

> 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.

Order, P. 13

> Further Relator asks this Court to "deal with him as o*ne 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.

Order, P. 14

First of all, the standard of *relative benefit* among the citizenry from a writ of mandamus' bringing relief is made impossible to meet.

The relator "seeks relief that no more benefits the Relator than it does the public at large," the court says. This statement holds that relator can control whether other people get *more* benefit from a writ of mandamus as a relief than he might, can control *relative blessings* of the people's liberties and rights being restored to them by the court's power of equity and of mandamus to halt the state of disaster by respondent(s) since March 12, 2020. Relator cannot be made to claim he will benefit more (financially, spiritually, psychologically or severally), then faulted for showing no evidence that he can obtain more benefit than other people. Such test would be impossible to score.

Secondarily, the references to the people and the public give the petition the essential element of being in the public interest, serving more than just a private interest.

Relator's references to the people serve two purposes.

➤ Inform the court of the broad public interest in his petition. Yet the court converts relator's references to the people ***as speech acts by which he is made to deny his own standing.*** The petition seeks to enforce the duty of the health law at Tenn. Code Ann. § Title 68, or of lawful police power, and also the protections of the people under the emergency law as noted in the petition:

> 184. Even were the respondents to identify the exigent circumstance supporting their claim to power, emergency law requires executive action to protect against collateral damage, injury, or harm within state operations in time of crisis and to enhance the service of government to protect the people and their property. In the emergency law, respondent(s) are required to reduce dangers, "all of which —
>
> ➤ "threaten the life, health, and safety of [the state's] people
> ➤ "damage and destroy property;
> ➤ "disrupt services and everyday business and recreational activities; and
> ➤ "impede economic growth and development." Tenn. Code Ann. § 58-2-102
>
> 185. This "vulnerability is exacerbated by the growth in the state's population, in the elderly population, in the number of seasonal vacationers, and in the number of persons with special needs" Tenn. Code Ann. § 58-2-102.

The case is styled State of Tennessee ex rel David Jonathan Tulis for a reason. The relator represents the state itself and the people who comprise the compact creating it. Using the very purpose of the remedy *against itself*, cannot do justice. Nor can it comport to the constitutional trust responsibility to provide remedy for harm done.

> "Inasmuch as the people themselves are the plaintiffs in a proceeding by mandamus, it is not of vital importance who the relator should be, so long as he does not officiously intermeddle in a matter with which he has no concern. The office which a relator performs is merely the instituting a proceeding in the name of the people, ***and for the general benefit."*** Certainly, it cannot be affirmed that these relators are "officious intermeddlers," or have in view any other than the public good. [emphasis added]

Harris v. State, 96 Tenn. 496, 34 S.W. 1017, 1019 (1896)

➢ Relator's references to the people at large intend to establish his constitutional status, that of a man, among the "free people" of Tennessee (state constitution, Article 1, section 24). Repetition of the point anticipated abuse of it in these proceedings. Respondents and the court have acted to diminish and reduce relator's legal status, to defame him and to reduce him to a subject, a legal person or entity, to a bankrupt corporation (see Motion to object to the proposed Dec. 2, 2020, hearing orders, filed Dec. 4, 2020). Relator objected to this treatment in the Jan. 11 hearing, Transcript, P 46 ¶ 15 to P 50 ¶ 2; None of which has been rebutted in the record, and cannot be.

Thirdly, the petition shows scofflaws' wrongs falling upon the larger public. Respondents-in-fraud have brought state of Tennessee and its people a disaster second only, perhaps, to the Civil War split in Tennessee in 1861. But the court intends to controvert that fact, and magnify the references to affinity to so shrink down to a pin dot, if it only could, the petition's Exhibit 1, the unrebutted affidavit of personal injury and its five harms traceable to respondent Barnes.

> 46. Respondent(s)' silence on these facts is admission that they have no way to investigate, or identify the virus, diagnose it or deal confidently with those who are its presumed victims, called cases by rule definition. The pretense of respondent(s) jeopardizes everyone in state of Tennessee.

Petition

The court takes the references to the comprehensive nature of the respondent-in-fraud man-made disaster that "jeopardizes everyone," petition ¶ 46, to *contort this required element* into something not intended nor stated by relator.

As anticipated several times in the petition, the court engages in tactics unworthy of chancery's high calling for equity and justice.

> 48. The state of Tennessee, on relation, is in this honorable court seeking remedy because respondents are acting without benefit of the duty imposed upon them by the legislature to protect the public.
>
> 49. Instead of obeying the law, evading constitutionally required due process and to confine their actions within a lawful delegation to protect relator and state of Tennessee, the ***respondents rely upon such tactics as subterfuge, confusion, and deceit.*** [emphasis added]

Respondents have not attacked the affidavit's sufficiency as to substance or facts; relator asks on what foundation does the court make its unparticularized nonspecific parallel attack upon it in the ignoring and not disclosing of it in the record. The court merely, conveniently, fails to disclose the affidavit of irreparable harm, or properly interpreted, under color that it did.

Ignoring a main body of material evidencing standing is improper, violating the rules of evidence, equity principles and state of Tennessee's due process rights on relation, and relator objects.

Conflation of 3 branches of state

The court denies relief on grounds that relator wants to "to test the abstract legality of government action" and have the court to become "entangled in a political dispute" that would violate the separation of powers. Demanding equity or a mandamus from chancery court is hardly a bid to conflate the duties of any of the three branches of government, order P. 14, 15.

That is already being done by respondent Lee by his invoking emergency authority under Title 58 and legislating the economic, religious, political, social and educational life of the people as a whole, apart from authority and in breach of his oath to uphold the Tennessee constitution.

Rather than seeking lawlessness and centralization of state government functions, relator demands the court restore the *status quo ante* and halt irreparable harm caused through fraud under color of authority, which has put the judiciary under the executive branch, humiliated the judicial branch and its independence, and trashed the constitution and innumerable rights of the people.

Reserving arguments in favor of judicial economy

This cause is single. But the court has filed two dismissal orders. That imposes a hardship on relator as well as the court. This motion for a Barnes altered order, to avoid making the cause tedious, hereby incorporates by reference points made in the Lee motion to alter that relate reasonably to this respondent and the cause as a whole.

Concern for judge ethical violations

For 140 days the court has mistreated this case in a pattern of transgressions against equity and against the rights of state of Tennessee on relation. Evidence of continuing improper activity — such as the court's issuing a dismissal order without giving relator a chance to answer respondents' motions to dismiss — is prejudicial and disturbing.

Members of the judiciary should hold themselves to the highest ethical standards, are ordained to be committed to personal and professional discretion in which the interest of justice and the law are paramount.

So says Rule 10 of the code of judicial ethics. The pattern of improper activity ranges from foundationless orders to gagging the relator at hearings, from misrepresenting the remedy of mandamus to misreading cases. The effect of such improper activity on the judicial system or others is to damage the respect and honor the judicial office must keep. The office of judge is a public trust, and that office must be impartial. Impartially means absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before the court.[2]

---

[2] The court's improper acts include boilerplate citations that misapply cases.

➢ "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)." P. 11. This statement and cite are prejudicial, because petitioner is not "seeking to have the actions of a sovereign state" declared unlawful or unconstitutional." He is defending the state and its sovereignty from interlopers and malefactors, to uphold its authority and respect for law.

➢ "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." P. 10. This cause is styled "Petition in equity and for writ of mandamus" and refers frequently to broad authority, existence of which should not be news to the court. Relator has multiple cites to Robert Gibson's treatise Suits in Chancery, indicating supple, plenary authority to pursue justice conducive to a given conflict, with great discretion. See P. 32 for more.

In Canon 2, "A judge shall perform the duties of judicial office impartially, competently, and diligently." "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. *** Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety." Rule 1.2, plus comment

Rule 2.2 on impartiality and fairness requires "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."

Relator wonders if the court is aware of this canon: "Rule 2.4 External Influences on Judicial Conduct (B) A judge shall not permit family, social, **political,** financial, or other interests or **relationships** to influence the judge's judicial conduct or judgment."

The court's exhaustive treatment of the state's case on relation is like a carpet bombing. No tree is standing. No plate of glass is unshivered. The court *sua sponte* buries relator's every motion on the unrebutted record, with respondents needing to lift not a pinky.

Rejection, denial, overriding, abrogating of Tennessee law or the constitution are forbidden to a chancery court judge. "Actual improprieties include ***violations of law,*** court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge," the court system states in a comment.

Legislature has spoken; will court obey?

In this cause, the court is siding with two people who have overthrown the legislative enactment as to how police power is to flow from the state into society and the public. That is to say, the law at Tenn. Code Ann.§ 68-5-104.

The general assembly has spoken as to the process for what constitutes an epidemic, and has devolved authority upon the governor and his agents. That protocol begins in every county with the finding of a

first case and a determination as to the source and cause of the contagion, with local departments dealing with the state commissioner of health and her staff, all under the authority of the governor.

This cause evokes the plenary power of chancery court to issue a mandamus and to do whatever equity requires of it in the overthrow by respondent(s) of limited representative government under the constitution by their refusal to obey the protocols that protect the public health and also protect the people's property right in due process — their constitutionally guaranteed, God-given, inherent and unalienable rights.

Mandamus is the means to compel obedience to a nondiscretionary act — compliance with that law.

> We know of no exception to the rule that the court will not, by *mandamus*, disturb the decisions, and actions of the boards and officers having discretionary powers, except where they act in an arbitrary and oppressive manner (Williams v. Dental Examiners, 93 Tenn. 619, 27 S. W. 1019), or act beyond their jurisdiction (Insurance Co. v. Craig, supra), or where they refuse to assume a jurisdiction *734 which the law devolves upon them (State ex rel. v. Taylor, 119 Tenn. 229, 104 S. W. 242).

Peerless Const. Co. v. Bass, 158 Tenn. 518, 14 S.W.2d 732, 733–34 (1929)

The court has authority to draft an order, based on the petition, containing a single-sentence directive to respondents to obey Tenn. Code Ann. § 68-5-104. A draft is attached with this motion. But it can do more. Petition ¶ 207 demands "By ***rectification, reformation, or whatever this equity court may find just***, ensure the Rules reflect the legislative intent, purpose, function, etc., of T.C.A. § 68-5-104, consistent with the Tennessee constitution which the respondent(s) fraudulently, or through other wrong, breach without such correction." Relator provides a list of four sorts of remedies that could attach to the order, at the chancellor's discretion.

Mandamus ***itself*** as a remedy doesn't envision any supervision of malefactors as the Peerless court indicates. The Peerless court quotes Ferris on Extraordinary Legal Remedies § 194.

> The office of mandamus is to execute, not adjudicate. *It does not ascertain or adjust mutual claims or rights between the parties.* If the right be doubtful, it must be first established in some other form of action; mandamus will not lie to establish as well as enforce a claim of uncertain merit. It follows therefore that mandamus will not be granted where the right is doubtful.

Mandamus operates on a clear right, upon an official with a duty that pre-exists the action, ministerial and nondiscretionary. A mandamus action concludes when the official is compelled to his duty. State of Tennessee's cause on relation is mandamus, with relator indicating what other ascertainments or adjustments beyond mandamus could justly help bring an end to the state of disaster and restore the state economy and the people to their liberties.

The court says "Relator failed to state a prima facie case for mandamus against Barnes," order, P. 9. But indeed he has. The petition is prima facie evidence. The court says issuance of mandamus is "within the sound discretion of the court."

Exactly. As are other remedies that would suit the court's understanding of respondents' state of disaster.

Discretion means that when a matter comes before the chancellor, the judge has under law and under equity plenary power. "PLENARY. Full, entire, complete, absolute, perfect, unqualified. Mashunkashey v. Mashunkashey, 191 Okl. 501, 134 P.2d 976, 979," Black's Law Dictionary, 4th ed.

The court has authority over "all suits resulting from frauds, actual and constructive" and exercises, in distinction from circuit court's "rigid realm of law," as Gibson puts it, an "elastic domain." This suppleness of power, this pliable intellectual and moral power of chancery, is invoked in this case.

> The chancery court in Tennessee is now equipped with full power to do complete and speedy justice in all suits within its jurisdiction, however numerous the parties, or complicated their rights and duties. It is vested with authority to **so shape and mould its decrees as to meet every exigency** required either by law or equity, and to adjust all matters in controversy, legal as well as equitable, so as to *give each party his exact rights and to require of each party his exact duties*, whether such party be complainant or defendant and whether the obligations between complainants and defendants, or between co-complainants or between co-defendants. *And it has been clothed with* ***unlimited power*** to use ***any kind of process***, legal or equitable, to enforce its orders and decrees; and if an emergency should arise necessitating a process not hitherto used, the court *would, when absolutely necessary to prevent the failure of substantial justice, so modify one of the customary legal or equitable processes as to* ***adapt it to the exigencies of the emergency.*** [emphasis added]

Gibson's § 25. Effect of the Act Transferring Jurisdiction over Certain Law Matters

Relator is confident that his proper petition avers an actionable grievance and harm. He would not have taken the trouble to file suit were it not so. No matter how complex the matter, no matter how mighty his

enemy, he is confident in the operation of law in his protection, and that of the people of Tennessee, and in the power of equity to halt continuing harm.

Equity will not suffer a wrong without a remedy. This maxim contains many powers, and those that "lie dormant in this potent maxim will awaken, as the necessities of their action arise; and they will be found commensurate with every necessity." Some matters equity cannot handle, Gibson says — violations of honor, or of truth, or of morals that don't involve a question of property or pecuniary liability. But "any wrong done to a legal or equitable right will be redressed in Equity, unless some other Court has exclusive jurisdiction," Gibson notes, § 42.

If it is true mandamus does not lie to stop an official's public fraud under color of an emergency causing irreparable harm, and an order stopping the fraud and irreparable harm mandating the official to simply obey the law is unavailable, then the court's inquiry serving the complete justice relator intends is not over. It continues pursuant to the plenary power of chancery to make all such orders, either in court or at chambers, to remedy wrongs threatened or done.

Equity principles require alteration of the order of the court to reflect the facts and law appurtenant the petition filed by relator for relief in chancery, not limited to mandamus, not as mistreated or guessed at by the respondent-in-fraud or adopted by the court.

If mandamus is unreachable by state of Tennessee on relation, and equity cannot help — if no remedy in law exists under any basis — the court should not have maintained the action longer than immediately.

I do hereby declare to the above statement to be true and correct to the best of my firsthand knowledge.

_____

Respectfully submitted, state of Tennessee, ex rel. David Jonathan Tulis

STATE OF TENNESSEE, COUNTY OF _____ — I, the undersigned notary public, do hereby affirm that David Jonathan Tulis was present before me on the _____ day of _____, and signed this affidavit as his free and voluntary act and deed.

_____

(notary public)

Errata

— Relator, in page numbering sequences in the Lee order, means to say “Tulis motion for altered order.”

— Page 7, Lee motion, should say, “course of 140 days (as of Feb. 19, 2021)
— Relator regrets duplicative quote from Harris v. State, P. 14 in Lee motion

CERTIFICATE OF SERVICE

David Jonathan Tulis certifies that a true and exact copy of this pleading is being hand delivered or being sent by first-class mail to the parties below with sufficient postage on them as to carry the documents to their destination on this _____ day of _____ 2021.

Janet Kleinfelter
Office of Tennessee attorney general
P.O. Box 20207
Nashville, TN 37202

Mrs. Sharon McMullan Milling
Attorney for respondent
Ham. Co. Atty’s Ofc.
625 Georgia Ave. Ste. 204
Chattanooga, TN 37402

_____
David Jonathan Tulis