CERTIFIED MAIL
7-22-22

In the Tennessee Supreme Court

State of Tennessee, ex rel. David Jonathan Tulis	)	
Appellant	)	
	)	Case No.
V.	)	E2021-00436-COA-R3-CV
	)	
Bill Lee	)	
Governor, State of Tennessee	)	
Respondent, in personal and official capacity	)	
	)	
Rebekah Barnes	)	
Administrator, Hamilton County Health Department	)	
Respondent, in personal and official capacity	)	

Petition to the Supreme Court

By State of Tennessee, on relation

From the court of appeals in Knoxville
And the chancery court in Hamilton County

Briefing, oral arguments requested

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SUMMARY The courts below have used artifice in their obstruction of justice of the state, on relation, and ultimately destroying equity jurisdiction itself, whether it be in wrongly calling as precedent cases not applicable to petition of relator, holding two or more contrary fabricated views at the same time and not applicable to evidence, or not applying those fabrications to their logical end, denying all lawful due process the law required to be disposed forthwith, failing to honor clearly established equity principles, contorting settled principles of law, etc.; or as relator will show when given the opportunity in brief, the courts deny justice, contrary to their trust duties and obligations, or relationship to the Tennessee constitution, and invoking any one of the four reasons the court is required under the rule to accept review of this travesty of justice, upending its maladministration to date, and to do justice to the state on relation, relator, and those similarly situated.

Case overview

On March 12, 2020, Gov. Bill Lee declared a state of emergency without having met the lawful requirements to exercise police power, the evidence of this dereliction of duty facially upon the order, as well the failure to demonstrate a nonfraudulent exigency, nor evidence of support of any faithfully executed duty of respondent Barnes in matters of communicable disease, T.C.A. § 68-5-104, to lawfully demonstrate a cause, in directly causing irreparable harm to the state, on relation, which would not have occurred but for the admitted respondents-in-fraud acts or omissions to act, having no adequate remedy at law, and redressable through equity relief.

This case is in chancery because *equity will not suffer a wrong without a remedy*. The courts these past 658 days have allowed a wrong to be suffered by state of Tennessee, on relation, and evidence suggests are as much opposed to a restoration of law and order as are respondents-in-fraud in official breach of criminal statutes.

This case is brought by a man among the people of Tennessee in a dual role. He is not representing himself privately solely for private harms, but, as a matter of law, proceeds in the name of the state. The action is of uncontested public interest requiring restoration to the *status quo ante*. Relator seeks remedy for wrongs done him personally, uniquely, separately and

concretely apart from any other person or group. Contrary to the mistreatment of the courts to date, doing justice in this matter is of great public interest as well as to those similarly situated, and consequently to redress harm to the law itself, restoring good order.

State of Tennessee, on relation, brings this action against the respondents for a two-pronged failure of duty. The first is a violation of T.C.A. § 68-5-104, with 102 words in its first section giving six duties to every party subject to that law, starting with Lee, who in Const. art. 3, sect. 10, "shall take care that the laws be faithfully executed," almost always by commissioners and agents. Also bound is respondent Barnes, a health department administrator. These imperatives regarding infectious diseases are a duty to identify each infectious principle by demonstration of a non-fraudulent infectious agent and before any discretion devolves upon the respondent.

> (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.

T.C.A. § 68-5-104 (emphasis added)

The state, on relation, highlights this law in its Oct. 2, 2020, lawsuit upon and notice to Lee and Barnes that the law controls how they deal with a reportable communicable disease. The contagion in question in 2020 was being intensely sold to the public as a novel disease with flulike symptoms, a quickly spreading coronavirus. Nonfraudulently, truth be told, by the respondents, influenza is not spread by coronavirus, the common cold.

The respondents are to consult the infectious disease law with its six requirements, as detailed in relator's Petition for Equity and Writ of Mandamus.

> Respondent(s) did not receive "a report of a [Hamilton County] 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," pursuant to and required by T.C.A. § 68-5-104.
>
> Respondent(s) did not "confirm or establish the diagnosis", pursuant to and required by T.C.A. § 68-5-104.
>
> Respondent(s) did not "determine the source or cause of the disease" pursuant to T.C.A. § 68-5-104.
>
> Respondent(s) did not use any testing method[s] which could identify the cause of the disease.
>
> Respondent(s) did not have a required communication or report of the initial case, in anticipation of compliance with TCA § 68-1-202, the cause, or "contagious principle" or transmission mode to the commissioner, or governor, or any other government official.
>
> Respondent(s) or department did not "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," and of the "contagious principle" or transmission mode and did not send its findings to the Commissioner or governor or any other government official, pursuant to either T.C.A. § 68-5-104 or T.C.A. § 68-1-202.

Petition for Equity and Writ of Mandamus (paragraph numbers omitted)

Gillum Ferguson, the respondent governor's press secretary, and health department spokesman Bill Christian indicate they can supply no documents showing compliance under relator's open records request following Lee's facially fraudulent executive order No. 14 of March 12, 2020. Local health officer Dr. Paul Hendricks, responding to demands for evidence of compliance, indicates in a Sept. 2, 2020, letter he has none. In other words, respondent Barnes does not demonstrate a nonfraudulent exigency for her communicable disease emergency, not even for an outbreak, let alone an epidemic, "pandemic" being a private term, also outside the state bounds of the legislature to enact.

The second prong failure of duty, an abdication or usurpation of the office, is the failure of the governor to independently demonstrate a non-fraudulent exigency required for any police power emergency he declares, independent of respondent Barnes, as well the omission of Barnes to

inform the governor she hasn't any evidence of a nonfraudulent exigency for even an outbreak in Hamilton County for that emergency.

There is not so much as a sticky note indicating officials have considered the law's claims upon their persons or offices.

They are oppressing relator, and those similarly situated, under emergency orders like those imposed by the Chinese communist party without due process protections — and they are doing so in violation of official misconduct, oppression, and terrorism criminal felony statutes and breach of oath.

The relator testifies of his personal harms from respondents in an affidavit detailing infringement of five constitutionally guaranteed rights that would not have occurred to him but for respondents' actions, all of which are reasonably traceable to them. The affidavit of support is pursuant T.C.A. § 29-25-101 to establish interest and standing. Respondents offer no facts of their own, and accept the facts in the affidavit in support are true.

The trial court holds four hearings over 201 days and 12 orders, evading the equity-based requirement to dispose of the matter forthwith, immediately if not sooner, T.C.A. § 29-25-104, mandamus. The state, on relation, hotly prosecutes its case, including filing a motion pro confesso and motions for default that are denied. Relator objects to delay, objects to hearings that add delay in an accelerating harm, objects to numerous due process abuses such as grant of a motion for continuance before an objection is timely filed, demands a just reading of the petition, a regard for the verified record and just treatment in equity and is denied in substance under color of authority. The record preserves his objections to violations of equity principles and lawful due process.

The court redundantly issues twin orders of denial of the petition on Jan. 21, 2021, requiring him to write Feb. 16, and Feb. 22, 2021, two detailed demands for reconsideration, primarily because chancery never heard the cause of relator, but the one fabricated by the respondents-in-fraud and the court. On April 21, 2021, it issues twin orders of denial — four dismissals for one cause of

action. The court of appeals, CoA, May 23, 2022, denies state of Tennessee's demands, on relation, for relief.

In its reluctance to see any injury or cause, the court nevertheless, begrudgingly, agrees there are two "arguable" particularized injuries, a valid cause of action. Despite this, despite the legislative mandate to act forthwith, the record shows no further hearing, due process, or disposal protecting this acknowledgment of irreparable harm by fraud, breach or felony. But the standard for evidence of fraud is inarguably circumstantial (Gibson § 456. Fraud Proved by Circumstances). The court denies relator relief denying justice in its extrajudicial foray, the CoA without competency. The fraud being facial, beyond a doubt, a chancellor is required to do more, much more, if intending justice. Despite the lack of competent record, so says the CoA, it then characterizes the injury without competent evidence after lawful hearing, as tenuous, further acknowledging the existence of injury and the lack of due process. The CoA is likewise to eschew fraud, is required to aid and abet justice, not respondents-in-fraud, state actors all, under color.

Overview of legal issues

Summary of overview. CoA takes the untenable position of two diametrically opposed propositions and misapplies cases to falsely claim this action is at once both one where an injured party has particularized injury and a remedy at law and one without an injury and therefore not entitled to relief at all. It falsely claims relator is seeking to compel the governor to perform an act. It misrepresent his standing by allegorizing him into the wrong set of precedents claiming he is harmed and has remedy at law (without explicitly saying so), and simultaneously that he has no facts of personal concrete harm to a constitutionally protected right, despite an unrebutted affidavit evidencing unique particularized injuries and harms, and thus has no cause for which relief may be granted. Speaking with self-contradiction, the judges in the middle court say he has grievances too generalized to be heard amid mass harm, but also has no grievance, no standing, indicating no remedy **at law** for relief and thusly no right to relief whatsoever, despite an affidavit of fact explaining fundamental harms to press and religion (among other rights) the

harms of which were specific to relator, the elements for standing being met and equity relief being available.

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The CoA's opinion is a complex mashup with five elements relator would like the court to unwind that arise from a bad faith reading of the petition. The judges impose a line of cases, as precedent, not actually applicable, against relator to suggest he is a certain class of citizen, having a concrete and articulable harm — but one with a remedy at law (which suggestion the petition denies, relator having remedy only in equity). Simultaneously and contradictorily, CoA says relator, being man, has no harms, and has no need of a remedy, contrary to the Tennessee constitutional guarantee for relief. The cases used as precedent to imply his action has a legal remedy at law are *Mayhew v. Wilder*, 46 S.W.3d 760, 766–68 (Tenn. Ct. App. 2001), and its progeny. This case is cited in *Am. C.L. Union of Tennessee v. Darnell,* 195 S.W.3d 612, 619–20 (Tenn. 2006) with its discussion about the elements of standing. Unlike petitioners in *Mayhew* antecedents who fail at equity because they have a remedy at law, relator has no remedy, and the CoA agrees denying remedy to him despite an adequate and sufficient petition expressing to the contrary in its demand. Evidence in the record shows relator has standing sufficient to sue respondents, especially on the point of concrete, particularized wrongs and harms, without evidence of any due process providing for amendment if it weren't.

Secondarily, the judges below take a parallel tack, separating out relator from the *Mayhew* and *Darnell* category of plaintiffs by saying he doesn't have particularized and personal harms, because they do not perceive his particularized harms as he is in a group of "all citizens." However, grudgingly, in the third and forth dismissal orders, the trial court admits two "arguable" harms. These constitutional rights infringements the CoA admits, albeit they are "tenuous." Still, these court-admitted harms are whisked offstage, deemed nonexistent. The courts place relator in this category of a person without a harm, indistinguishable from other citizens, whom the courts describe as having been harmed. The judge in equity could have — should have — notified relator that his claim is "arguable" and that he can enter more facts under his right to amend, his affidavit unchallenged by respondents. Admissions by defendants when

moving to dismiss the case procedurally admit the fraud, and that cannot be something "arguable," but proven by admission. The issue of an "arguable" claim amid admission of an unavoided fraud, procedurally admitted, is not an arguable claim but a fraud in the court.

Thirdly, the appellate court refuses to consider a petition that appeals to equity's plenary power against admitted fraud, saying the "gravamen" of the petition is for mandamus. This mounting blinders on its nose lets the court commit two injustices. It stretches subject matter jurisdiction as a defense to mandamus-and-governors, effectively immunizing the governor from claims of law by deleting relator's petition the moment it's filed. The other is that the "gravamen" of the case being mandamus, and so violations of equity principles and due process in chancery are "pretermitted," the mandamus demand "dispositive" for dismissal. The question of whether the Davidson County filing rule for commissioners could possibly control a case of admitted felony breach and fraud by Lee is argued in the negative by relator. This debate is carted out of view. Had lawful due process rights in equity been respected, relator forthwith, per T.C.A. § 29-25-102, could have argued this claim, or transferred Lee to Davidson, or withdrawn and refiled, under the supposedly well-known law on commissioners applicable to governors in breach and fraud, or could have amended the complaint if it had been improperly filed. A CoA shell game settles the record in favor of respondents. Complaints of lawful due process and valuable rights forthwith violations by relator to this court starting Nov. 2, 2020, in the first of three administrative filings, brought no correctives to the Hamilton County judiciary.

Fourthly, courts prejudicially apply mandamus cases as precedent to this case that say that no court can compel a governor to perform any act. Cases such as *State ex. rel. Latture v. Frazier,* 86 S. W. 319, 320 (Tenn. 1905) say mandamus won't lie to compel a governor to "perform an act." Citing to *Latture* and other cases, the courts wrongly imply, if not assert, that this is what relator is trying to do. Contrary to the expression of the petition, they say relator asks solely for mandamus, which demand can be nothing other than the single plea by relator: That Lee be compelled to perform an act. This "finding" is misreading and rewriting the petition. The petition is not so narrow. Consistent with its express demand, it invokes equity and *chancery's plenary power*, in title and substance, as chancery court can afford relief and equity by many means apart from compelling Lee to perform an act. Proposed points of equitable remedy are cited in detail

by CoA (p. 5). The CoA ruling commits the state to extinguishing equity as a right in Tennessee. It curtails our powerful common law mandamus remedy. Such extraordinary remedies care less about harm to any one person, but harm to the law, [1] which wrong the CoA ignores by legislating against state of Tennessee, on relation, by revising the mandamus and equity procedures, a breach of the separation doctrine.

Fifthly, the petition is an emergency complaint alleging unavoided criminal fraud and irreparable harm in equity, for equity and mandamus, consistent with the word forthwith in the statute, reflecting settled equity principles. Beyond the injustice of delay, prolongation of the case into its 658th day the case piles up *judicially caused* wrongs. Relator's intended two-week court case in an emergency petition at equity costs him a stinging $10,000 legal tab from Hamilton County, aggrandized by judicial dawdling violating equity rights. It burdens him with days, weeks of time consumed prosecuting this case, a real harm to one in the catchpenny radio business, which would not have already been irreparably harmed but for the action of admitted respondents-in-fraud. The CoA's rejection of forthwith, disposal of the action in a cause of fraud, properly deployed is conjoined with the courts' rejecting the rules of statutory construction to shelter Barnes' exercise of discretion in disobeying the entirety of T.C.A. § 68-5-104 and to claim she has done nothing wrong for which relief may be granted. Words giving discretion, before completion of a legislatively mandated multi-step law *voids the law by making the whole discretionary*, the CoA claims. All this and an incompetent record, as the CoA accepts analysis and opinion from the trial court as to Lee, over whom it claimed subject matter jurisdiction in practice despite signal of a well-known law as to commissioners' right to be sued in Davidson County, denying it subject matter jurisdiction, with its pages of type mere juristic eructation.

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Before the details, relator asks review of courts that use legally required content provided by relator and pit it against him, making his defenses of the petition cannibalize themselves, as it were.

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[1] "It was introduced to prevent disorder from a failure of justice and a defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one." Mobile & O. R. Co. v. Wisdom, 52 Tenn. 125, 142–43 (1871)

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

P. 23 (emphasis added)

Relator's insistence that he is "one of the people of Tennessee" is misconstrued and his statement that he is not "a person or an individual" misread. He filed as a man, and here and earlier in the record has been defamed as a corporate person pursuing a case at law. Rather, he is a man, *not a person or an individual,* i.e., not a bankrupt corporation or in any way a beneficiary of any legal fiction privilege status. The CoA quote above suggests the thrice-made "upon careful review" claim is sophistry. Petitioner's public duties as relator in service to state of Tennessee cannot justly be pitted against record of his private harms unique to him as a member of the press and the Christian religion, and other points establishing personal interest and standing.

2 'arguable' harms give standing

The courts below say relator has two "arguable" harms of constitutional infringements and violations in evidence. One afflicts the rights of the press. The other that of religion. CoA notes this important material admission of the trial court judge, p. 24, without disagreeing. It says the connection between one harm and Barnes exists, albeit "tenuous[ly]."

Relator testifies without rebuttal to these two wrongs done him in respondents-caused "pandemic lockdown" of Tennessee, or done him by their agents obeying and respecting their directives, offices and authority. He testifies of three additional constitutional rights infringements in violation of the state constitution and the federal constitution's equal protection guarantees in the 14th amendment.

"The law of standing should not be construed narrowly or restrictively. Standing is not a rigid dogmatic rule but is one that must be applied with some view to realities as well as practicalities." *Am. Jur.*, § 35, Parties (2004). Ignoring this precept lets Tennessee courts ignore constitutional duties in the interest of a judge-made rule used as if it applied in such a case.

The two court-recognized breaches violate what the U.S. supreme court on June 23, 2022, calls "presumptively protect[ed]" conduct, *New York State Rifle & Pistol Association Inc. et al. v. Bruen, Superintendent of New York State Police, et al*, the rights of the press and religion. [2]

The lower courts admit harms against press and religion, but deny constitutionally guaranteed relief — enough for this court to intervene. In dismissal of relator's Affidavit and Motion to Alter Barnes Dismissal Order in Interest of Equity, Justice, the chancellor says, "As to Relator's claim that his affidavit establishes particularized harm to him, only paragraph 1 and paragraphs 23-24 of the affidavit arguably could state any particularized harm allegedly suffered by Relator." This reference is to his affidavit in support touching on his being booted from the county courthouse on a news assignment while insisting on his right to have bare chin, nose and cheeks, and, secondly, to his being threatened with arrest for getting out of his car during a parking lot worship service surveiled and enforced by Chattanooga police, without warrant of and contrary to law.

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[2] "In keeping with Heller, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." New York State Rifle & Pistol Association Inc. et al. v. Bruen, Superintendent of New York State Police, et al, decided June 23, 2022 (emphasis added) https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

CoA assents to the evidence of a fundamental rights infringement. "We agree with the trial court that any direct connection between these alleged arrest threats and Administrator Barnes's action in authorizing the county health department directive with which Relator takes issue in his petition is tenuous at best."

"Arguable" and "tenuous."

That's enough judicial cognizance of a concrete, palpable, distinct and personal injury for relief to issue, absent evidence of the lawful due process provided showing to the contrary. The courts have no record enjoying lawful due process from any competent court to the contrary to rely upon.

The facts in the affidavit involve an arrest threat and ejection from the county courthouse and arrest threats against relator's presumptively protected press rights, and the infringing of the free exercise of religion and of its establishment the unwarranted personal bodily movement by a cop's taking agency from respondent's orders to rule over a private church worship service in exercise of relator's "indefeasible right to worship Almighty God," Tenn. const. Art. 1, sect. 3. Alone, these two harms constitute what the courts admit are infringements of federally protected constitutionally guaranteed rights, the harm arising from widespread obedience by public servants to directives from respondents-in-fraud, whose words are believed to be credible, true, lawful, respectful of rights, etc. — believed by the people, and by law officers.

According to the petition, "Given the societal destruction and undue influence allowed, this could be deemed criminal fraud supporting international terrorism, each of severe penalty, which the respondents aid and abet, if not commit, when not performing the duty imposed pursuant to 68-5-104."

The courts below declare that such harms have no remedy. They pretermit these wrongs by not intending justice and adhering to the flumdiddlery, frivolous arguments and mischaracterizations against the intention of relator while providing succor to parties in fraud, insisting that he has no

harms and cannot be seen has having harms because "all citizens" have similarly been harmed. This the CoA claims without any evidence of record in support.

State of Tennessee, on relation, objects to the artifice of its relator being described as invisible, and thus not harmed, because "all citizens" have been harmed or injured, making him invisible and indistinct. Tennessee courts' denying that infringement of constitutionally guaranteed rights, federal and state, is unjust or actionable, doing so with an unreasonable rigidity in the use of standing jurisprudence.

Am. C.L. Union of Tennessee v. Darnell, 195 S.W.3d 612, 619–20 (Tenn. 2006) figures prominently in this case as to the legal standard for standing. It is quoted at length by CoA to establish the three familiar elements, which are said to condemn petitioner for the alleged absence of particularized and concrete harms unique to him and apart from "all citizens."

The primary focus of a standing inquiry is on the party, not on the merits of the claims. *Mayhew v. Wilder,* 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001), cited by *Darnell*.

The courts ignore the *Am. Jur*. counsel, backed by claimed precedent from *Mayhew,* and count relator as a member of a class that lacks interest and standing because the harm to any one member is indistinguishable from the harm to any other. He is not properly one of "all citizens" (pp. 10, 21, 23, 25). Nor is he in the "general public," the record shows, the *Mayhew* line of precedent by certain classes of litigants of particular causes said to be relevant, applicable and, as the court expands and extends it, among "all citizens."

Intersecting with the courts' holding of relator's standing is separate analysis that draws the court to allege he has a harm, and impliedly has a remedy *at law*. Use of cases within *Mayhew* implies relator has a harm (contradictorily) and also has a remedy at law. Petition declares he has no remedy at law, and no party has said otherwise and no judge has instructed the relator otherwise.

State of Tennessee, on relation, objects to the artifice of its relator's being described as invisible, and thus not harmed, because "all citizens" have been harmed or injured, making him invisible

and indistinct. Tennessee courts deny that infringement of constitutionally guaranteed rights, federal and state, is unjust or actionable, and do so with an unreasonable rigidity in the use of standing jurisprudence.

In its chosen mistreatment of this action, CoA pretermits equity jurisdiction itself.

(1) Distinct, palpable harms

Darnell, used in support of Barnes' demurrer, says a plaintiff gets standing with distinct and palpable injury, traceability of the harm to the accused and redressability of the wrong in a favorable ruling. The CoA focuses on the first two elements to conclude the petition "not justiciable" (p. 26).

"And whatever the shapes and disguises fraud has invented in the refinements and diversities of commerce and the progress of civilization," Gibson says, *Id.* § 57, Equity Will Undo What Fraud Has Done, "the Courts of Equity have, always, been able to detect and expose it, to redress the wrong done by it, and to keep it odious, regardless of the rank or wealth of the perpetrator." Such clear promises richly developed by Chancellor Gibson are lost upon the judiciary, none of whose members make a single reference to equity principle. "'[N]othing can call a Court of Chancery into activity but conscience, good faith and reasonable diligence,'" *Id.* § 58 Equity Aids the Vigilant, Not Those Who Sleep upon Their Rights.

Given the courts' admissions of material facts of relator constitutional rights infringement harms, the court needs look how the wrong standard applies to relator in mass fraud imposed by agents of the principals under this suit and notice. CoA says relator is "nonetheless under the same requirements as others entering the courthouse or participating in the religious service" and "was not singled out" for enforcement. Relator's ejectment from the Hamilton County court for being a "member of the media" with visible chin, nose and cheeks is "a requirement shared by all members of the public at the time," and, thus, not a harm (p. 25). The problem conveniently evading the courts requiring correction by this court: Relator is singled out and immediately

irreparably harmed when without lawful warrant he is not free to exercise or enjoy any guaranteed or fundamental freedom, or those property or rights appurtenant and he has no adequate remedy at law for those deprivations of rights and to property or the pursuit thereof.

Such irrationales as the courts construct to deny relator justice are in the crosshairs of Tenn. const. Art. 1, sect. 2, banning oppression. Judges defend a wicked "law" — forbidden under precedent requirements for police power exercise — because the intent of such law is to apply to "all people" equally, without discrimination, and that because no discrimination is allowed by a totality of intent, relator is ***justly abused*** in exercise of religious, press and other material fundamental rights interests.

The affidavit of irreparable particularized unique injury or harms is full of distinctions and undisputed facts. This case fact base sets him apart from every other person, company, interest or category of group or person in state of Tennessee, of which judicial notice is required. Indeed, there is no other action like it in the state.

- ➤ Relator is unique among members of the press in Tennessee in that he is a practicing Christian seeking the welfare of the general public in his occupation, which he views as a prophetic ministry under authority of the command to look out for the orphans, widows, poor, aliens and strangers and to see that those in authority are just (Isaiah 10:1-3; Romans 13:1-8), a ministering Christian speaking to the oppressed and propagandized, a journalist among print, TV, radio and Internet media hucksters of panic and dread. Beyond this, no other press in Tennessee studied nor reported on the facial and admitted frauds of the respondents. As a consequence, where the rest of the press profits handsomely promoting the lucrative fraud, the relator does not.

- ➤ There is no evidence to the contrary to show interruption of worship services by respondents' fraudulent practices does not injure relator uniquely but does equally affect others in his congregation in Presbyterian Church in America (North Shore Fellowship, Chattanooga). Services are held online, not a relief to relator. Services are under mask, acceptable to some, but not to relator. Says the affidavit, "The threats and falsehoods of

the governor closed North Shore Fellowship, where affiant is a member *** [and is a] denial of affiant's rights of access or ingress and egress." The affidavit describes Christian tenets on public worship with open face and song, to which denial relator objects as respondents seek to "control or interfere with the rights of conscience" even though "no preference shall ever be given, by law, to any religious establishment or mode of worship," Tenn. const. Art. 1, sect. 3, and the federal first amendment. The courts have no evidence relator is not unique even among others attending North Shore Fellowship, denied to him.

➤ The record indicates relator, in his personal situation and occupation, and his Christian commitments as a long-time former deacon in Presbyterian Church in America, is absolutely unique in state of Tennessee, being a Christian among atheists, agnostics, and a man, in contrast to women in Tennessee, or children.

➤ Relator is a lifetime journalist, in newspaper and radio, unlike "all citizens." Covering a court case, per affidavit, he cites *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980) as legal authority in demanding free entry into the Hamilton County court building, closed by authorities acting without a nonfraudulent reason or basis, according to the affidavit. It states that on April 15, 2020, relator had put county government under administrative notice as an officer's duty under T.C.A. § 40-7-103 to get a warrant to make an arrest for a misdemeanor that is not a "public offense" nor a threat of the breach of the peace. Despite this notice to their employer as to their duty to get a warrant in a threat relator had anticipated under respondents' lawlessness starting March 12, 2020, officers threatened to lay hands upon the reporter instantly, commit a crime against him, in light of lack of a warrant, and "[h]umiliated, and for his safety, affiant retreated without enjoying or fulfilling his fundamental liberty interest at the courthouse. *** Deputies cited as their authority Mayor Jim Coppinger and county mask directive No. 1 under the state's ostensible state of emergency called by Gov. Lee." The affidavit gives this video link to the encounter, the whole reasonably traceable to Barnes, not attenuated, though she is not named in the affidavit, that not

being any harm to his cause.
https://www.facebook.com/noogaradio/videos/2374419749519298

➤ Relator is distinguished from other members of the press in being a truthteller among TV, radio and print media hucksters and marketers of panic and dread of Covid-19. Exposing respondents' wrongs as a protected member of the press has negatively affected him, unlike other press outlets, with the affidavit establishing that people refuse to do business with him. A proper handling of the case will redress these evils, and end his status as pariah and re-establish his radio station as one with whom local businesses may advertise.

➤ Lawful due process and valuable rights forthwith denied, evidenced by the non-existent notice of inadequacy of the unrebutted affidavit of fundamental rights injuries, relator is deprived of opportunity to make a more detailed record or explain further unique harms that would not have occurred but for respondents' warrantless transgressions of clearly established law, good order, and peace.

➤ A unique harm implicated in the affidavit, and a consequence of the wrongs complained of, contrary to CoA unsupportable contention, not suffered by "all citizens": A New York factor, following respondents' lawless acts starting March 12, 2020, interfering with private contract, is suing relator personally for $26,326.71 in Hamilton County circuit court, April 28, 2022, the date on which trial is set, case no. 22C429, *Flexibility Capital Inc. vs. Sabatino Cupelli and David Tulis*, for nonrepayment of cash advances for sales receivables, which nonpayment under obligation began mid-March 2020 when respondents-in-fraud, led by Lee, collapsed commerce and travel and put the people under effective mass house arrest. Other creditors are circling overhead, threatening legal action as relator struggles to get his business back on its feet.

➤ The judge-created rules for standing cited in *Darnell* are intended to avert a "profusion of lawsuits" by parties who don't have an interest in a law's obedience or personal concrete injury or harm upon which to enter the courts for redress (p. 21). Relator, a

private prosecutor serving the public interest in the name of the state, by right of T.C.A. § 29-25-102, is distinct from district attorneys general offices whose chiefs see no breach of any law in Title 39 and have filed no criminal cases or civil cases against Lee or agents in the state's 31 judicial districts or 95 counties, the record indicates.

➤ So distinct is relator in harms done him that he alone has sued. Few others have seen the harms done him and so sued, or seen harms to themselves. No one saw a harm being done to relator to prosecute his defense. Record indicates that relator alone witnesses fundamental constitutional rights breach by officials, to him alone, the harms perhaps not designed with him alone in mind, but because fraud operates and violence, the effect against him personally registered in the affidavit of support, is unrebutted as to his unique situation.

There is no record evidence of explanation that the courts below can rely on as to how those "missed" irreparable harms — continuing until today — comport with the requirement for "[u]pon careful review of the record and applicable authorities," (CoA pp. 19, 23, 28) for a cause which ***but for*** respondents' fraud the harms would not have occurred to eliminate those from consideration, notwithstanding the biding, willful ignorance of the courts.

(2) Traceability of harm to respondents

Fraud is elusive, and harms traceable to it may be harder to pin down than if the harms complained of came from a contract or will. "Fraud is proved by circumstances" because "Its path is crooked and circuitous, its footprints are carefully covered up, the signs of its operations are diligently removed, or attempted to be removed, and the mask of honesty and good faith is put over the face of the real transaction," Gibson says. "A wide latitude of evidence is allowed; and if a fact or circumstance relates directly, or indirectly, to the transaction, it is admissible, however weak or slight it may be, its relevance depending, not upon its weight or force, but upon its bearing or tendency. *** When, however, certain states of facts are once shown to exist, a presumption of fraud will arise sufficiently strong to throw on the defendant the burden of

proving that there was nothing fraudulent, or inequitable, in the transaction sought to be impeached." Gibson *Id.* § 456 Fraud Proved by Circumstances, § 457 When Fraud Will Be Presumed

All the harms by respondents in this case are imposed by governmental bullhorn, without lawful warrant, upon the mass of people indiscriminately, contrary to clearly established law, as an undifferentiated and nonparticularized police threat and imposition apart from a nonfraudulent exigency or lawful cause. None of the harms claimed existed prior to and would not have occurred but for the Lee and Barnes frauds.

A "thorough review" of the petition "and the record as a whole" lets CoA "determine[s] that Relator failed to establish the second element of a causal connection between his claimed injuries and his challenge to what he alleged to be the lack of implementation of Tennessee Code Annotated § 68-5-104" (p. 26).

The court contradicts this statement (p. 25) by saying "We agree with the trial court that any *direct connection* between these alleged arrest threats and Administrator Barnes's action in authorizing the county health department directive with which Relator takes issue in his petition is tenuous at best." Barnes' directive has a "tenuous *** direct connection" with constitutional rights breaches supporting the petition.

The judges hide the foundation for their determination for no traceability, if such basis exists at all. Relator has right to know the foundation for purposes of appeal, these denied. He avers, by way of general statement, on the point of "the element of causal connection" that the harms would not have happened ***but for*** respondents' fraud and felonies.

CoA agrees with the trial court that the traceability between the parking lot church service arrest threat and police officers barely makes the cut for a rights violation. The fact is the affidavit or petition could have been amended to bring the officers into direct contact because of the fraudulent emergency orders, and also assert that the cops weren't there ***but for*** and reliance upon orders directly made by, and to reach, respondents, through the commission of facially

fraudulent orders by the omission to adhere to clearly established law. The omission attaches by the respondents' consent to and undertaking of unavoidable duties and obligations pursuant to the oath of office, the promise attaching the duty to adhere to law, the dereliction to or breach of which caused unwarrantable irreparable harms without an adequate remedy at law. But, the court, instead, intentionally obstructs timely lawful due process in a number of ways. And this is beyond the problem that the courts have observed, if it is ultimately properly applied to the present case, that the Hamilton court does not have jurisdiction by the Davidson rule, nor by order bifurcating the case as between the respondent to maintain jurisdiction as to Barnes. [3] There is no due process, or notice and opportunity to respond provided in any of this that justice could be done, it appearing a fraud upon the court.

The court denies these due process requirements, or the right of relator to amend the petition to include officers after notice, or does not act on its own motion because, it appears, justice was never intended. The delay of 201 days to receive a response from chancery the legislature intended to be forthwith, immediately if not sooner, running afoul of other due process considerations, or denying a transfer to a competent court, or a right to amend the petition, is further evidence of the fact of fraud upon the court by the trial court itself.

The state, on relation, complained of this injustice to the supreme court which rejected relator's maladministration of justice complaint fraudulently construing, without reason, that it was instead a request for an appeal without an order. The CoA caught this maladministration of justice but blamed the state, on relation. The fate of this corrupt and absurd treatment and continuing maladministration of justice is sealed in mandate of this court. The petition anticipating, the evidence, and subsequent deeds of the judiciary proving out, the reason for the maladministration of justice is because of at least the appearance of impropriety, if not worse, the supreme court committed its own frauds upon the same police power subject matter failures, promoting the underlying subversion of the state, additionally redefining the weighing of a facial fraud as *"collective wisdom."* This is in a March 13, 2020, Tennessee secretary of state's administrative procedures division public record, the secretary of state accepting without

[3] Such bifurcation violates the long rule in equity that "the rule in Chancery is that where the Court has jurisdiction for one purpose it will take jurisdiction for all purposes, and determine the entire controversy." Gibson, Id., § 1131 Suits for Mandamus Generally Considered.

qualification a facially fraudulent presumption of an emergency interfering with the proper function of government under the pretense or color of authority do to so.

(3) Redressability with standing for relief

Redressability is the third requisite in *Darnell* for standing. Exercise of chancery's plenary powers brings redressability for relator, and for state of Tennessee.

Starting with him, redressability in delivering relief to the state restores him rightly to his place in Christian fellowship, having been ejected from Sunday worship, and making clear to the body as awhole that his warnings about Lee/Barnes frauds are true and he is not a scoundrel or pariah. As for his press rights, court-imposed correctives (voiding all illegal orders, reformation as demanded in the petition, assignment of all fraud not avoided by respondents, etc.) will end his being shunned as reporter, restore business, win ad sales contracts, let him collect commission and other fruits by exercising Tenn. const. Art. 1, sect. 19 press rights. Rather than being a crank against whom all other media outlets declaim, he is no longer underfoot, whether in business or lucrative assignment.

As to redressability of remedy to the state, a party in this case, in whose name relator sues, government function will be restored. Government again is servant to the people, not their overlord, with lawless commands, impositions, frauds, medical bullying, death-mill public hospitals with their federally directed mistreatments, etc. Upon restoration after a two-year respondent-caused nightmare, the people will be able to have confidence again in the high court, whose judges make mistakes and admit to them, and work to relieve the harm in which they participated, just as the supreme court for the United States repents of *Roe vs. Wade* with its ruling *Dobbs v. Jackson*, decided June 24, 2022, taking the hand of federal protection for abortion away from the abortionist.

Redressability demanded, had it been provided, would have provided the relief petition sought, forthwith, as the legislature and equity principles require. It would have kept

respondents-in-fraud from continuing or doing it again, no claim having been made to the contrary.

Relator avers that a restoration of equity would void all emergency orders as unlawful, declare that officials are bound to obey T.C.A. § 68-5-104, would require respondents to show cause as to their past actions, bring reformation to a policy rule cited in petition as being insecure as to whether foreign opinion and advice is controlling in state of Tennessee, bar future repeats of the revolutionary misadventure of the past two years, and other benefits to restore the *status quo ante*.

The misuse of standing holdings denies a remedy to material property interests of state of Tennessee, on relation, violating the *raison d'etre* of chancery and the courts of appeal. "The term 'property,' as used in this section, includes everything that is the subject of exclusive individual ownership; or, to be more specific, includes not only lands, houses, goods and chattels, rights and credits, but, also, a man's person, and his wife and minor children, *and his right to work, and to sell and acquire property, and engage in any lawful business,* and his and their reputation, *health* and capacity to labor, and his and their right to enjoy the senses of sight, smell, hearing and taste, and his and their right of speech and locomotion, and his and their right to enjoy their sense of moral propriety when normal." Gibson, *Id.* § 65 To Protect and Enforce Rights to Property the Object of Suits in Chancery.

The CoA wrecks this promise of equity — breathing with one's nose in the open air, the right to travel, the right to pursue an occupation. Petitioner demands review of the case to settle questions of public interest and the need for the exercise of the court's supervisory authority.

Converting equity action into case at law, denying justice

The court won't find any particularized injury to relator, but applies, as precedent, cases of particularized injury to say the particularized injury they refuse to see in the affidavit is common, saying so without evidence in the record of relator's case, whether or not before a court competent to hear the cause, denied to exist.

The court's acknowledging relator is a man, it does not follow, as the court wrongfully impugns, that relator "seeks relief that no more benefits Relator than it does the public at large" (p. 23). This misinterprets the court's own assent to and abuse of the compliance in the petition with an element required for equity actions, that of public interest, the state, on relation, of a constitutionally protected man.

Rather, the court's acknowledging this status is a fact requires, by organic law, the judicial trustees provide the highest relief expressly guaranteed to a man through the Tennessee constitution, and pursuant to which the respondents undertook in their oath of office, a contract, to be liable to, the required causal connections, not a legal entity (person, individual, corporation) entitled to mere statutory protection. This relief is expressly not to "all citizens" as the courts conflates, and contrary to the expressed intention in the petition.

As such, the petition, the state, and the man on relation demand relief for respondents' frauds in the office, for breached duties and obligations causing irreparable harms to the constitutionally protected fundamental rights of relator, or those similarly situated, not "all citizens," for purposes of relief, as improperly fabricated by the judiciary, the enjoining of which official corruption, restoring the properly functioning government, is of great public interest, the relief from which tyranny cannot be said to not uniquely benefit either the relator or those similarly situated, but for the unwarranted, wrongful, pretzel logic used by judicial trustees breaching constitutional duties and obligations in denying justice to the state, on relation, a man of constitutional right.

The CoA joins chancery and respondents in converting this equity action to one at law, trespassing on this case and defaming relator, without evidence, so it can attempt to settle by its judicial legislation in favor of sovereign individuals in office under color of state law. To support public servants who use police powers personally under coloration of authority and hurt people, CoA applies a legal standard summarized by this sentence (p. 21). "Standing also may not be predicated upon an injury to an interest that the plaintiff shares in common with all other citizens." This quote from *Darnell* draws from *Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn. Ct.

App. 2001), and is applied to relator in instant case. By doing so the court implies, contrary to its concurrent diametrically opposed opinion to the contrary, that the relator has a particularized injury and is one in a unique classes of litigants whose members *have* an adequate remedy "at law" or are cases of political question beyond the power of the court to provide relief. The relator's cause is none of these, contrary to the treacherous declension of the court. The judiciary should not be allowed to have it both ways, violating the principle of non-contradiction, when the case before the court is not within either of those constructions.

Relator's equity standing is created where, without an adequate remedy at law, respondents adversely, wrongfully, irreparably harm the unique constitutionally protected interests of the relator without warrant in law, without the protection of law, the intrinsically tied respondents-in-fraud disclaiming "*any* duty" to law (italics in original, from a Lee brief).

Moreover, the court, after creating its artificial reality of this case, does not go back to apply its fantastic world to see that due process with timely application would be destroyed causing fraud on the court and other injustices, not limited to due process deprivations in denying relief.

Mandamus and governors

Relator is not demanding and neither would the court be compelling the performance of any act of the governor as the courts continue to misconstrue his intention; rather, as a matter of law and due process, mandamus or equity procedures, provide the governor an opportunity to confirm that his acts — performed prior — were done lawfully with respect to constitutional police power considerations through the showing of evidence of the required demonstration of a nonfraudulent exigency not evidenced in the public record, for a prior performed act alleged as basis for declaring an emergency. Fraud is not an act which law devolves upon the governor that the courts can rely upon to withhold doing justice.

If the return does not satisfy the law, the court is not mandating the governor to perform any devolved discretionary act to stop the fraud however chancery decides would best provide justice, or relief, whether or not demanded by the relator.

This cause is upon respondents who are involved in felonies. State of Tennessee, in civil process on relation, views these crimes in terms of civil fraud. Fraud generally is abhorred by chancery and equity jurisdiction. Says Gibson, "Fraud, in the sight of a Court of Equity, vitiates every contract or transaction into which it enters, at the election of the injured party and the court will not only undo what fraud has done, but will treat acts as done which fraud prevented from being done," Gibson, *Id.* § 57 Equity WillUndo What Fraud Has Done..

> The Court of Chancery [and by implication, the court] is the **arch enemy of fraud**; and to that court those who are the victims of bad faith generally apply for redress, not only because the Chancery Court can grant more perfect relief, but, also, because it will often **grant that relief upon weaker presumptive evidence** than will a Court of Law.

Gibson, *Id.* § 456. Fraud Proved by Circumstances (emphasis added)

> Whatever fraud touched was declared to be vitiated, wherever fraud trod was declared unholy ground, and **whatever fraud did was pronounced null and void**. All the haunts of fraud were laid bare, all of its paths, however crooked, were sign-boarded, all of its subterfuges pointed out, all of its false coins branded, and all of its allies detected and marked with badges. Fraud has been so crippled and hedged about by the Chancery Court that its power to deceive and do evil has been much weakened, and the remedies for its rascalities much increased, but it has not yet gone out of business.

Gibson, *Id.* § 57, Equity Will Undo What Fraud Has Done (emphasis added)

Indeed, fraud in this case keeps on in business as respondents refuse to comply with Tenn. Code Ann. § 68-5-104, requiring respondent Barnes and Lee to make an honest determination as to the viral agent of contagion in the erstwhile flu season of Covid-19 or SARS-CoV2. The legislature through T.C.A. § 68-5-104, acting upon respondents, mandates how the respondents would demonstrate a nonfraudulent exigency.

The governor is involved in fraud, and in crime, he admits. He violates T.C.A. § 39-16-402, official misconduct; T.C.A. § 39-16-403, official oppression; T.C.A. § 39-13-80, terrorism; and

violation of oath of office. Beyond the procedural power to compel show cause, he is outside or beyond his office and reachable by the Petition for Equity and Writ of Mandamus. "Tennessee courts do not have the authority to issue a writ of mandamus requiring the governor to perform any act," (p. 16), CoA says, citing *State ex rel. Latture*. Using these cases as precedent, CoA implies that every mandamus case naming a governor necessarily is making a demand that the court compel the officeholder to perform an act. It says that any petition for a writ of mandamus can be instantly dismissed for lack of subject matter jurisdiction, effectively immunizing lawbreaking governors by judicial legislation.

This rule under *Latture* and like cases (pp. 16-18) cannot be applied here, however, without injustice. For starters, the mandamus statute allows for a judge to command show cause hearing without limit as to the respondent's position, which is not a command to perform an act, but is an obligation to respond which devolves upon the office outside of any discretion.

> 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.

Tenn. Code Ann. § 29-25-102 (emphasis added)

At a show cause hearing, any number of things can be made to happen benefitting the petitioner and respecting the authority of the governor. *Latture* says the governor "is not subject to the mandate of any court. No court can coerce him. No court can imprison him for failing to perform any act, or to obey any mandate of any court." Commanding a governor involved in admitted felony offenses and fraud to show cause is not coercion, has no prospect of prison "for failing to perform any act" and is not an issue raised by the petition.

Many things short of issuance of the peremptory writ to compel an act be done are possible. The petition invokes the plenary power of the court of equity to provide any number of remedies short of compelling Lee to perform an act.

This case is about fraud. The courts refuse to recognize it, and to be alarmed by it. Gibson is turning in his grave. One would think a great crime in the record would prompt the judicial department to welcome details; rather, the courts have drawn up rigid defenses of respondents. For all the chasm of separation the judiciary claims deprives it of power, the courts evidence a particular affinity and partnership with the fraudulent cause of respondents and to continue to deny the state, on relation, justice in depriving relator of his fundamental due process rights and the intention of his cause. Fraud poisons respondents' actions, as the petition gives notice.

> [I]f a contract is affected with fraud, or has a fraudulent purpose, **none of the parties to such fraud can have the assistance of the Court** either to compel the execution of such contract, or to have it cancelled, or to have the property or interests, transferred thereunder, restored. Equity will leave such parties where they have placed themselves, and **will refuse all affirmative aid to either of the fraudulent participants**. It is on this principle that the door of a Court of Equity is always shut against a debtor when he seeks to recover back property he has conveyed to hinder, delay or defraud his creditors. *Ex dolo malo non oritur actio.* **(No right of action arises out of a fraud)**.

Gibson, *Id.* § 51 He Who Comes into Equity Must Come with Clean Hands (emphasis added)

A governor who admits and fails to avoid fraud can be confronted by a court of equity under the show cause provision in the mandamus law. Relator urges the court to intervene to restore mandamus to its proper place and function "or show cause" preparatory to the equity relief demanded.

"We determine that the gravamen of Relator's petition was for mandamus," CoA says. "Insofar as Relator requested any additional relief against Governor Lee in his official capacity, it was based on his request for mandamus, and the trial court therefore did not have subject matter jurisdiction to consider it. Likewise, any additional issues related to Relator's mandamus action against Governor Lee in his official capacity are pretermitted as moot due to lack of subject matter jurisdiction." But the petition begins, "Petition in equity," the demand for relief in any number of suggestions cognizable in equity, not limited to mandamus.

Relator is being told that because the word "mandamus" is in his paperwork, he worked for 201 days in a court without subject matter jurisdiction on a theory invented by the court of appeals. That allows the CoA to deliberately ignore what should have happened in chancery, how equity was to have controlled, with forthwith action, and respect for law. Pretermitting "any additional issues" in the trial court covers up the numerous instances of due process rights harms preserved in the record and not enjoying review. Pretermitting the commission of fraud or by omission from remedy is not justice. By its own term, it is a disregard for justice, pretermitting equity itself. And this cannot by this court be left to stand pursuant to its duty to administer justice.

Petition invokes 'plenary power,' court's several options

Mandamus cases cited, as precedent controlling this action, unduly allow courts to rebuff all mandamus cases if they seek to compel a governor to perform the act of showing cause. The court of appeals says that if the word mandamus is on a lawsuit naming the governor, no court can have subject matter jurisdiction. But this position misreads the demands in the petition, misreads the mandamus statute and overlooks equity courts' plenary power and the equity principles established for doing justice, in doing injustice.

The CoA has a duty to see how else the petitioner's demands might be satisfied as per his intention. "In Tennessee, a liberal interpretation is given to all writings, the purpose of the Court being to ascertain, and give effect to, the intention of the makers of the instrument. The intention is the substance, the words are but the shadow; and so the intention is the only infallible touchstone for the interpretation" of a contract. Gibson, *Id.* § 72, Maxims Applicable to Pleadings.

The courts improperly use *Latture* to sweepingly suggest in this action mandamus singularly is to compel performance of an act of the governor and as a consequence all other equity relief demanded is lost.

An additional purpose evaded and not mentioned by the officers of the court, mandamus is to compel a respondent to show cause. The return in a mandamus action is that opportunity within the power of the judiciary, to command of any officer, in this action an obligation devolved upon the office of the governor, to show cause, contrary to the assertions of the courts to the contrary that it commands the governor to act relative to the powers of that office.

The equity and mandamus law envisions a party is to be compelled to perform to show cause to answer to a petition claiming fraud or breach, etc, taken true. A court has powerful authority in a properly administered equity jurisdiction to nullify, void and overrule an order issued by a public servant, even the governor. Doing so does not compel the governor to act, but merely offers a due process opportunity to avoid or encourage a sanction upon the force and effect of the product of the performance of a prior illicit act.

The four duties of show cause are:

> (Where the law requires any one to show cause the cause must be just and legal.) In Court a party is frequently required to show cause: (1) Why he did so and so; or, (2) why he did not do so and so; or, (3) why he should be allowed to do so and so ; or (4) why the other party should not be allowed to do so and so. It may be stated generally that what is meant by "showing cause" is showing good cause, that is, showing a good, legal, substantial and meritorious reason or reasons, justifications, or excuses, for the action in question. The law despises trifles and quibbles, and when the law or the Court requires a party to 'show cause,' such party must, in good faith, make such a showing as to demonstrate that justice is clearly on his side. If he is **showing cause to be relieved**, or to shield himself, he must make it clearly appear that he has been guilty of no inexcusable laches or negligence, and of **no acts of bad faith** or disregard of duty, and that he has a meritorious claim or defence. In a word he must show *good cause.*

Gibson, *Id.* § 71 Maxims Applicable to the Practice of the Court (emphasis added)

A mandamus action calls for a hearing via an alternate writ that is returned at the hearing in which the respondent shows cause, if the petition does not command a peremptory writ sooner. The alternate 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," § 29-25-102 (emphasis added). A governor is constitutionally bound and by oath of office is part of this process without being commanded to perform any act, in keeping with the purpose of equity jurisdiction to do justice.

In its second dismissal order as to Lee, the trial court lays down a defense of respondent Lee that is inapplicable to the case.

> In its January 21, 2021 Order, the Court ruled that no court can issue a writ of mandamus requiring the Governor to perform any act, period. Therefore the Court granted the Governor's motion to dismiss.

The lower courts say they are helpless to demand an explanation of respondents in public process, and CoA agrees, contrary to clearly established law.

An order to show cause, in any style of case *whatever,* is within the powers of a court in Tennessee's three-part form of government. A mandamus case lets the court, as it were, bring cognizance of the duty of the law to a governor before leveling any order to perform an act or comply with the law — which power Tennessee court precedent forbids to operate.

Respondent Lee, admitted breaching the duty to demonstrate a nonfraudulent exigency, or in violating T.C.A. § 68-5-104, which is the legislative mandate for establishing that nonfraudulent exigency, has a duty to explain his actions or show cause, contrary to the public record evidencing his fraudulent breaches of law.

Fraud is not "a law" devolving any duty upon the governor. And police power does not without qualification devolve upon the governor. Clearly established law requires he shall demonstrate a nonfraudulent exigency before it can be said police power or the right of judgment and discretion devolves upon the office. Therefore, it is not within "the exercise of his judgment and discretion," where he fails to demonstrate a nonfraudulent exigency for any emergency. The

court is prejudicially imposing, contrary to law that no relator has right to demand show cause and a case is restricted by some forbidden command for performance that "commands the defendant to do the act," and that the court doesn't have power to even inquire upon any fraud because that somehow infringes upon a duty, discretion, or judgment of the governor. But this is not what the Tennessee constitution, equity principle, law, or justice require.

Even if after issuance of the alternative writ, which is not any infringement of any executive power, the commanded return fails to show cause and the non-existence of fraud, the court is saying it has not enough plenary power, which does not command the governor to perform any act, to bring relief through various nullification measures.

No danger exists for the chief executive in this case. The acts in view are past. No future act that he be commanded to perform is *necessarily* in view. Relator is demanding the court command the governor's office and the man entrusted with it to review acts and produce the lawful authority, such as at T.C.A. § 68-5-104, which evidences the authority for the police power assumed, starting Day No. 1 in office, even though on March 12, 2020, he entered facial official misconduct against said law, to the harm of the good and lawful order of state of Tennessee. Relator is being told there exists no public interest in a *defense of the law*, good order, justice or at least a showing in the state of Tennessee that its government holds public servants accountable for their acts, whether done personally under coloration of law or in office and under coloration of authority.

Even in abusing relator, the lower courts exercise plenary power in this case. Apart from any pleading by two parties, chancery *sua sponte* comes up with its theory of gubernatorial sovereignty to be unaccountable to felony criminal statutes and civil claim of harm, to protect the governor's rejection of clearly established law in its own interest as co-conspirator, evidenced in its own fraudulent orders issued without lawful power. No judge can sit on a case in which he has an interest. *Sua sponte*, chancery closes its eyes to pretermit the unrebutted affidavit of relator's concrete, unique particular harms and says he has no harms and no standing under *Darnell*, in pursuit of a legitimate interest.

Not to be outdone, the court of appeals *sua sponte* backstops respondents and the lower court by *reviving a theory* about standing in mandamus debunked by relator. Relator's brief replying to respondents' answers before CoA rebuts the *Darnell* standing framework as irrelevant to action in this case. Convinced and chastened, respondents make not a peep about *Darnell* in Feb. 15, 2022, oral arguments. *They drop* Darnell *standing arguments as a defense* and do not honestly apply the elements cited in *Darnell* to the action and intention of relator. https://www.youtube.com/watch?v=Guh-l9Uojew&t=731s

But CoA, their ally in the cause of *judicial policy over law*, stirs itself to revive the theory in its ruling, and curries favor, not intending justice.

There is no evidence of due process or hearing of a competent court, or upon the objection preserving this theoretical mistreatment and injustice properly disposing relator's contention of injustice for the court to rely upon.

Relator objects to these *sua sponte* actions against him for the due process deprivations denying justice as these are fraud upon the court. It is in his favor, however, to see *sua sponte* authority operate. It shows courts have plenary power, as Gibson says they do, *free reign across the scope of action, to do what they see is just and true.* This is the power that the sufficient and adequate petition invokes, the entirety of which is shut down as to Lee because the word "mandamus" is on Page 1. The court conveniently denying relief of the broader intention beyond the term "mandamus" predicated by and consistent with the demand being a "Petition in Equity and" for any failure of the respondents to show cause how their emergency orders are not the product of past acts of fraud and breach of law.

Beyond mandamus, judicial tools available to equity jurisdiction plenary power might be to:

- ➤ Stop the fraud
- ➤ Declare the admitted fraud as fraud by order

➤ Nullify unsupported and unsupportable emergency orders

➤ Reform the unlawful rule aiding and abetting the fraudulent orders, as demanded in petition's reformation section

➤ Specific performance. "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, *Id.* § 43 Equity Acts Specifically, and Not by Way o Compensation (emphasis added)

➤ Action in interpleader. On review, because the CoA identifies the elements exist for relief because of its reconstruction of the action, relator discerns this remedy or an immediate notice and right to amend to this remedy of interpleader, if the court would not extend equity to do so on its own motion in doing justice, it could hereby offer the immediate relief demanded of its *sua sponte* creation, if due process were of any concern to chancery or upon review in doing justice, with no harm, loss, injury to respondents liable under statute.

➤ Transfer, etc., lawful due process or direction and opportunity to amend, forthwith, and to remove the unwarranted infringement upon relator's fundamental rights, evidenced in secured affidavit of particular, i.e., special, injury, of special interest, not common.

The chancery court has plenary power. That power is not impeded by faults in form, even in the petition, as Gibson notes,

> It would seem that, in view of the enlarged jurisdiction of the Chancery Court, the bill, in case of usurpation of office, might well be entertained not only to oust the usurper and put the complainant in possession of the office, but would also he sustained if it went further and sought to recover the fees of the office and the damages the complainant has sustained by reason of the acts of the defendant.

> Under the jurisdiction of the Chancery Court to award a mandatory injunction, **a peremptory mandamus**, and all necessary writs to oust usurpers, or officers who have forfeited their offices, and in view of the fact that in Chancery **names and forms are immaterial,** the Court has **plenary power**, on **one and the same bill**, regardless of its technical name, 1st, to compel an officer or usurper to put things in statu quo, or do any other act the rights of the complainant or of the public require; 2d, to put the complainant, or the rightful person, in his place ; and 3d, to make against the defendant a decree for such damages as complainant may be entitled to.

Gibson, *Id.,* § 1129 Frame of a Bill against Corporations, Trustees and Usurpers (emphasis added)

The late U.S. justice Marshall, cited in *Clements v. Roberts,* 144 Tenn. 129, 230 S.W. 30, 35 (1921), discusses how a court can step into a matter of breach by another branch without breaching limits imposed on itself by the constitution. A court "[acts] within [its] proper sphere[]" by investigation of deeds in the other two branches. "Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance."

A court's putting governor actions under "its cognizance" to show cause and practicing equity makes justice emerge in a case, even if petitioner makes technical errors or asks amiss, even if he hasn't drafted an order (which failing the chancellor chides him for), even if he hasn't comprehended the entirety of the fraud he is tackling. That is the nature of equity, to bring justice and the duty of this court, or in seeing to the administration of justice denied to the state, on relator, thus far.

Forthwith violation wrongs relator

Mandamus is required to be handled "forthwith" at Tenn. Code Ann. § 29-25-102 as a peremptory, emergency, ministerial act.

Civil procedure rules tell a court to act immediately in an emergency. The rule on restraining orders says a court may issue a TRO on the spot **prior to notice** to the defendant.

> A restraining order may be granted **at the commencement of the action** or during the pendency thereof **without notice**, if it is clearly shown by verified complaint or affidavit that the applicant's rights are being or will be violated by the adverse party and the applicant will suffer **immediate and irreparable injury, loss or damage** before notice can be served and a hearing had thereon.

Tenn. R. Civ. P. Rule 65.03 (emphasis added)

This court itself, in an order in this case, rather the court-obstructed administrative complaint pursuant to this court's ministerial power preserving the objection to these very procedural denials, describes the action as ***"an emergency petition for writ of mandamus."*** In disregard of this postulate, the courts have opted for delay and prejudice as justice in Tennessee. State tribunals under current administration *understand delay as justice* when violation of law is admitted in the petition and irreparable harm is alleged and *future imminent harm is warned against* — namely, harm to the law and to the relator by respondents-in-fraud.

CoA says forthwith "refers to the speed with which a defendant must respond once an alternative writ is issued by a court" and, denying the equity of irreparable harm present and imminent, adds, "It does not refer to the speed with which a trial court should consider whether issuance of a writ is warranted." The court speaking as to what does not exist fails to add that it does not because Equity exists to do justice in a particular matter which dictates that time to be immediately if not sooner. See acknowledgment at Tenn. R. Civ. P. Rule 65.03.

Acting immediately "without notice" protects petitioner rights at equity from "immediate and irreparable injury, loss or damage." Relator demanded no less in a motion *pro confesso* to obtain a writ based on the record prior to appearance.

The present action was filed on a Friday. It should've had an in-chamber meeting Monday or Tuesday in the new week, with the clerk calling respondents and ordering them to Chattanooga, with a filing deadline for motions and briefs three or four hours prior. The mandamus law requires "forthwith" treatment by the will of the people, through their legislature, in the interest of maintaining confidence in the law and the courts. **Every day, every hour, the government disobeys the law is a harm,** a perversion of justice, and the future disobedience the next hour or

day or week is a future irreparable harm to be averted — **prevented** — judicially under the principles of equity.

Denial of forthwith disposal prolongs and delays the action and adds costs and property losses to relator, and those appurtenant the continuing irreparable harms in unrebutted evidence. His own work to arrest an insidious obstruction of justice by the judiciary itself, anticipated in the petition, as the constitution requires for harm done to a man for the fundamental rights harms of record in unrebutted affidavit, is required to be taken true. It is not taken at all by the courts, contrary to equity, good principles, and law.

> To sell justice would be a crime, to deny justice would be an outrage akin to crime, and to delay justice is an intolerable wrong, for delay is equivalent to a denial while the delay continues : **the virtue of justice often evaporates during the delay.** Denial and delay are man and wife, and injustice and injury are their children.

Gibson's, *Id.* § 535 Applications to Amend, or to Continue, How Considered (emphasis added)

There is also the irreparable harm to being denied the opportunity of any alternative remedy, forthwith, were the judiciary properly to handle the due process required to do justice, or not wrongfully captured by a court, it is claimed, is not competent to hear the subject matter, the opinion allowing which also maintains the contrary position that the court of appeals deemed incompetent maintained a record of hearings the court of appeals relies upon to deny justice to the state, on relation.

A just court cannot lawfully maintain both of these positions, straddling the fence, as it were. Reason and logic require it maintain one path disposed upon a valid record of facts, the law faithfully applied. A just court also, as it does here, cannot use the record of a court it declares incompetent, if lawful due process is honored. In light of the presumptively protected conduct of relator, no timely prior notice was afforded to relator explaining the established specific remedy, how no other equity relief would suffice to enable an opportunity for justice to be done, if not mandamus; or what adequate remedy is available relative to the court's reliance of *Mayhew et al*, causes at law, if it could lawfully impose those. Justice does not allow the court to brush the

demanded equity relief aside, as the courts have, in judicial breach of the legislative mandate to have equity and justice done forthwith, stopping the force and effect of the prior acts of respondents-in-fraud.

'Discretion' claim violates statutory construction rules

What reason do Lee and Barnes have to obey the law when the courts violate the rules of statutory construction in their restatements of the law and their characterizations of it, voiding the compulsory nondiscretionary elements of the law by smearing discretion across the whole? T.C.A. § 68-5-104 says:

> (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. (emphasis added)

Notice where the phrase *"as may be necessary"* falls. According to CoA (p.10),

> The court also found that language in the statute that would be applicable to Administrator Barnes as a "'local health authorit[y]'" is "inherently discretionary" in that it provides for local health authorities to "'take such steps as may be necessary' to quarantine, to confirm, or to determine the source."

Chancery may be accurately quoted. But chancery's summary misstates the law, in violation of the rules of statutory construction. The law allows discretion in only *one part* of the local official's duties, the steps "to isolate or quarantine the case or premises upon which the case *** may be found." Four imperative commands are operative **PRIOR TO** the qualifier, "as may be necessary," despite chancery's erroneous summary. They are:

(1) Receive "a report of a case or suspected case"
(2) Receive report of case that has "been declared by the commissioner to be subject to isolation or quarantine,"
(3) "confirm or establish the diagnosis,"
(4) "determine the source or cause of the disease."

Does the discretionary qualifier "as may be necessary" *apply backwards to these duties?* The courts say yes. They make the statute, all of it, *optional, the entirety subject to discretion.* And subject to discretion by ones who don't have the nonfraudulent exigency or probable cause or legal reason by *which to have any* ***discretion or vesting*** *whatever.* The courts decohere, nullify and void the law. Pure knavery violating the rule for statutory construction.

The claims about respondent-in-fraud Barnes' discretion are frivolous. The courts take them seriously and violate the longstanding rule about statutory construction laid out in *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011) and other cases.

Conclusion

This petition does not need to secure a settlement on important questions of law. There are no questions of law in the petition. This case does not challenge a law, nor the validity or constitutionality of a law. The question is whether the judicial branch of government will step up to do its duty, or absquatulate, as four judges have done so far in matters of facial and admitted fraud, breach, and felony causing irreparable injury and harms without adequate remedy at law, and where, contrary to CoA wrongful recreation of the facts and law, respondents had no discretion for their prior acts which were violative of law duty and trust obligations, as a matter of law requiring relief only equity can provide.

The wrongs below are so poisonous that Chancellor Gibson is not merely turning in his grave. He has climbed out, packed his bag and left state of Tennessee in disgust. Three areas of disease

in the body politic require the court's intervention so relator can be restored and the republic and its people put out of dis-ease once more:

Uniformity of decision. The court says it will accept a petition to ensure uniformity of decision. CoA's ruling disturbs jurisprudence by using its response to an unprecedented and unlawful state action to bend the straight-iron remedy of mandamus, legislating an obstacle to its use and giving Lee more of what he lawlessly took from the relator and those similarly situated, by misuse of power, i.e., liberty of action outside of law. The court must keep the mandamus we have, and now allow a panic, like that in the courts below, showing interest, wreck it and hurt relator *et al.*

Secure settlement of questions of public interest. It is in the public interest to see to it a man or woman in Tennessee has a right to be served by government officials who comply with the law, and do not act beyond their authority, depriving relator, and those similarly interested, of their rights to property and movement. The courts in this matter, however, disagree, say emphatically, "No. State of Tennessee, on relation, cannot be heard, despite a sufficient and adequate petition demanding compliance with the law respecting police power subject matter. No, you cannot be secure in your rights of religion and the press," they say, unsettling our law and causing more grief for the relator, those similarly situated, and the people in Tennessee, than did the War Between the States.

Exercise of supreme court supervisory authority. While abuses in the lower courts of the concept of equity, of due process, of the rules of statutory construction, of definitions such as of "discretion" and "forthwith" beckon the court to exercise supervisory authority, justice demands it. Relator made three administrative filings about abuses in Hamilton County, now replicated and amplified by CoA. The court has identified this action as "an emergency petition for writ of mandamus." Equity requires it is an emergency disposed forthwith due to fraud, breach, and felony causing irreparable injury without adequate remedy, one of utmost important to the people of Tennessee and her public and private institutions and families, worthy of review to the ends justice requires.

Respectfully submitted,

David Jonathan Tulis

State of Tennessee, ex rel. David Jonathan Tulis

CERTIFICATE OF SERVICE

David Jonathan Tulis certifies that a true and exact copy of this petition is being sent by first-class mail to the parties below with sufficient postage on them as to carry it to its destination on this 22nd day of July, 2022.

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