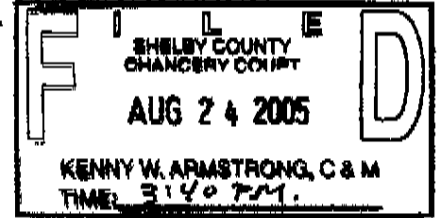


IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE  
THIRTIETH JUDICIAL DISTRICT



DAVID G. MILLS

VS.

NO. 0405-1565-3

SHELBY COUNTY  
ELECTION COMMISSION

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**COMPLAINT**

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The Plaintiff, David G. Mills, an attorney licensed to practice law in the state of Tennessee and a resident of Shelby County, Tennessee, brings this cause of action against the Defendant, the Shelby County Election Commission, and would show the court the following:

**PARTIES, STANDING, AND JURISDICTION**

1. The Plaintiff, David G. Mills, is an attorney licensed to practice in the state of Tennessee, who lives and has an office in Shelby County and who is a registered voter of Shelby County, Tennessee.
2. The Defendant, the Shelby County Election Commission, may be served with process by serving Gregory M. Duckett, Chairman, at 157 Poplar Avenue, Memphis, Tennessee; moreover, since state constitutional issues are involved, pursuant to TRCP 24.04, the Tennessee Attorney General, Paul G. Summers, will also be notified of this

action, by Plaintiff mailing a copy of this Complaint to P.O. Box 20207, Nashville, TN 37202-0207.

3. The Plaintiff has standing to bring this Declaratory Judgment action pursuant to TCA 29-14-103.

4. This court has jurisdiction to hear this Declaratory Judgment action pursuant to TCA 29-14-102.

### **BACKGROUND**

5. Shelby County Tennessee now requires its citizens to vote on electronic voting machines that produce no paper ballot or no paper verification of the vote cast.

6. The Plaintiff has been required, as have most, if not all of Shelby County residents, to vote on these paperless machines for the last several elections, and Plaintiff presently intends to be a Shelby County resident voter for many years to come.

7. The Plaintiff, and the other citizens of Shelby County have no means of verifying that their votes are actually being properly recorded when their votes are cast on paperless mechanical or electronic voting machines.

8. The Plaintiff, as well as other citizens of Shelby County, knows that when the ballot is paperless, poll workers have no means to review a questionable vote to determine the intent of the voter.

9. The Plaintiff, as well as the other citizens of this county, knows that with paperless mechanical or electronic voting, the poll workers or other interested citizens have no means to statistically estimate whether the votes are being properly recorded and tabulated.

10. The Plaintiff, as well as other citizens of this county, knows that with paperless mechanical or electronic voting there is only one system of tabulation and that no secondary system of tabulation exists to verify or check the one and only system of tabulation.

11. The Plaintiff, as well as other citizens of this county, knows that with paperless mechanical or electronic voting, since no secondary system of cross-tabulation exists, there is no verifiable means of performing a legitimate recount of any election that might be questionable, close, or suspicious; with paperless voting, a recount is a merely a copycat procedure, not a legitimate cross-check.

12. Upon information and belief, the Plaintiff avers that these electronic voting systems may also disenfranchise voters in the event that voter turnout is far greater than expected; since each voter must wait his turn to use the machine, the possibility of too few machines, causing discouraging delays, is quite real.

13. Upon information and belief, the Plaintiff avers that electronic voting systems may disenfranchise voters when there are power outages or other malfunctions of the paperless machines during the election process.

14. Upon information and belief, the Plaintiff would aver that even in a state election contest, a paperless voting machine's cumulative tabulations are not an equivalent evidentiary replacement for paper ballots; paperless voting makes judicial review of state election contests far less legitimate than election contests involving paper ballots.

15. Upon information and belief, the Plaintiff also avers that due to the time constraints imposed by federal law, in the most important election of all, the election for President of the United States, the Presidential electors from Shelby County and



may be unduly partisan; and perhaps without realizing it, the Shelby County Election Commission may even be relying upon persons or corporations who may not, or could not, have passed criminal background checks, or it may be relying upon persons or who have had to pass religious, racial, sexual or political tests, or who could even be citizens of a foreign country, or, in the worst possible case, it could be relying on enemies of the state.

20. Upon information and belief, the Plaintiff also avers that the central tabulators, which compile the votes from each precinct, are also privately owned and also have proprietary software that the manufacturers claim to be a trade secret, and are also subject to most of the same problems as the electronic voting machines themselves.

21. The Plaintiff brings this cause of action to have this court declare that the voting methodology and process currently in use in Shelby County by the Shelby County Election Commission, along with the statutes that permit this voting methodology and process, are in violation of the Tennessee Constitution and are therefore respectively illegal and unconstitutional.

22. The pertinent parts of the Tennessee Constitution and the Tennessee Election Code are attached to this Complaint as *Exhibit "A"* and incorporated herein by reference.

### **THE TENNESSEE CONSTITUTIONAL REQUIREMENTS**

23. Article I, Section 5 of the Tennessee Constitution states in relevant part: "The elections shall be free and *equal*..."

24. However, the General Assembly, when it enacted the Tennessee Election Code, made two systems of voting possible: one with a paper ballot, and one without.

25. Plaintiff avers that the two systems are vastly unequal in the rights the systems grant to the voters and candidates of this state; moreover, Plaintiff avers that the voters in Shelby County, who must vote on paperless systems have vastly inferior voting rights when compared with those other citizens of other counties whose election officials have opted to use paper ballots.

26. Article IV, Section 1 of the Tennessee Constitution states in relevant part: “The General Assembly shall have the power to enact laws ... to *secure ... the purity of the ballot box.*”

27. However, the General Assembly, when it enacted the Tennessee Election Code made a curious change in tracking the language of the Constitution when it made the following legislative enactment in TCA 2-1-102:

“The purpose of this title is to regulate the conduct of all elections by the people so that: (1) The freedom and *purity of the ballot* are secured;” ...

When referring to the purity of the ballot box, the General Assembly omitted the word “*box.*”

28. Plaintiff avers it was perhaps the omission of the word “*box*” that has led the General Assembly in the direction of paperless voting; without a box to put the ballot in, paper is no longer required.

29. Plaintiff avers that the image invoked by a ballot box requires that a tangible ballot must be placed into it; without a box, the ballot need not be tangible.

30. Plaintiff further avers that it is this tangible quality that makes a ballot verifiable to the voter; the voter can observe the name of the candidate he has selected and/or observe his vote for or against any particular referendum.

31. It is also the tangible quality of the paper ballot that allows humans to statistically estimate the accuracy of any tabulation, whether the tabulation is human, mechanical or electronic.

32. It is also the tangible quality of the paper ballot that allows humans to ascertain the will of the voter, should a recount or review be deemed necessary.

33. Take away the tangible paper ballot, and both the recount process and an election contest become unverifiable copycat procedures with no ability to crosscheck for errors.

34. The road to paperless voting (and with it, the loss of the individual ballot) began innocently enough with mechanical voting machines which recorded votes by pulling a lever after selections were made and which tallied the votes as they occurred; these machines and how they worked were beyond the comprehension of the average voter and poll worker.

35. The mechanical voting machines that were beyond the comprehension of the average voter and poll worker caused enough voter angst, distrust and suspicion; however, the new electronic voting machines are so far beyond the comprehension of the average voter and poll worker that voter angst, distrust, and suspicion has reached epidemic levels.

36. With the loss of the individual paper ballot becoming widespread, and with electronic voting machines becoming customary, the equality of elections, and the purity of the ballot box have been lost, and the result is a crisis of confidence in the election process.

### **CLAIMS OF UNCONSTITUTIONALITY**

#### **FIRST CLAIM: A PAPERLESS BALLOT PRODUCED IN THE INTERNAL BELLY OF A VOTING MACHINE IS NOT EQUAL TO A PAPER BALLOT AND ITS BALLOT BOX**

37. Paragraphs 29-34 make it abundantly clear that the two different systems the General Assembly created are not equal systems and that the rights of the voters who vote on paperless systems are vastly inferior to the rights of the voters who are permitted to vote on paper systems.

38. Ensuing paragraphs will make the inequality of these systems even more apparent.

#### **SECOND CLAIM: A PAPERLESS BALLOT FAILS TO SECURE THE PURITY OF A TANGIBLE PAPER BALLOT AND ITS BOX BY FAILING TO PERMIT VOTER VERIFICATION OF HIS BALLOT**

39. A voter can examine a tangible paper ballot before it is put in the ballot box to be certain his intentions have been properly recorded, but with a paperless system, a voter can unknowingly make a mistake he may not be able to catch and retract.

40. Moreover, with a paperless system, there is no way for a voter to know whether the internal belly of the equipment has properly recorded his vote.



**THIRD CLAIM: A PAPERLESS BALLOT FAILS TO SECURE THE PURITY OF A TANGIBLE PAPER BALLOT AND ITS BOX BY FAILING TO PERMIT A POLL WORKER THE ABILITY TO DISCERN THE INTENT OF THE VOTER IN THE EVENT OF A QUESTIONABLE BALLOT**

41. With a paper ballot, a poll worker can examine a questionable ballot to see if the intent of the voter can be discerned; this cannot be done with a paperless system.

**FOURTH CLAIM: A PAPERLESS BALLOT FAILS TO SECURE THE PURITY OF A TANGIBLE PAPER BALLOT AND ITS BOX BY FAILING TO ENABLE POLL WORKERS OR CONCERNED CITIZENS A MEANS TO ESTIMATE WHETHER A TABULATION IS CORRECT**

42. Statistical analysis of a sufficient number (perhaps as little as five percent) of randomly chosen ballots is a highly accurate means of quickly verifying the validity of final tabulations within certain parameters.

43. Paperless systems do not provide a means of such statistical analysis; paper systems do.

**FIFTH CLAIM: A PAPERLESS BALLOT FAILS TO SECURE THE PURITY OF A TANGIBLE PAPER BALLOT AND ITS BOX BY FAILING TO PERMIT A POLL WORKER WITH A SECONDARY RECOUNT CAPABILITY**

44. The paperless ballot cannot produce a meaningful recount.

45. The paperless ballots produced by the mechanical parts of a mechanical voting system or by the software running an electronic voting system cannot recount the paperless ballot by any secondary means so there is no ability to crosscheck for the accuracy of the initial tabulation; recounts are just a virtual copy of the original tabulation.

46. In stark contrast, a tangible paper ballot can always be counted by a different scanning system, or by hand, and by different individuals.

**SIXTH CLAIM: A PAPERLESS BALLOT FAILS TO SECURE THE PURITY OF A TANGIBLE PAPER BALLOT AND ITS BOX BY FAILING TO PROVIDE A CANDIDATE OR REFERENDUM ADVOCATE OR OPPONENT WITH A MEANS OF MEANINGFUL JUDICIAL REVIEW**

47. The usage of these modern voting systems has been enacted by the General Assembly and are set forth primarily in TCA 2-5-206, 2-8-104, 2-8-110, 2-8-113, 2-9-101, 2-9-110, and 2-17-110.

48. Perhaps the statute most illustrative of the loss of the purity of the ballot box caused by paperless voting is TCA 2-17-110, which allows for a voting machine to be used as evidence in the event of an election contest.

49. No longer is the evidence of the will of the voter on a paper ballot; out of necessity it is stored in the internal gearing of a machine or on the hard drive, floppy drive or memory chip of electronic devices which become the "virtual" evidence of the voter's intent.

50. Since a paperless voting machine cannot produce a singular ballot to evidence the intent of a single voter, singular examination of the intent of each voter is impossible.

51. Paper ballots allow for the physical examination, in court, of any singular ballot that may be questionable; in fact, courts can instruct citizens to examine each and every ballot and to audit them.

52. But TCA 2-17-110 states the machines themselves can be brought to court and examined by the parties as evidence and that the total votes shown on the machines shall be conclusive unless the court determines otherwise.

53. If there are 1,000 machines that need examination, must the parties have 1,000 machines brought to court to adequately examine them under direct Court supervision or must they be forced to travel to wherever the machines are located to examine them without the direct supervision of the Court and under far less than ideal conditions?

54. Moreover, checking out a mechanical machine to ensure proper mechanical operation is one thing; checking an electronic system for verifiability becomes a quantum leap in hardship when access is denied to the source code running the software of the system.

55. Denial of access to software is egregiously problematical if all electronic voting machines are operated by proprietary software and the manufacturer of the software insists on refusing to subject the software to analysis or insists on a protracted legal battle to determine its rights to keep its software a trade secret.

56. What if multiple software systems are required, and all must be checked?

57. Moreover, there is no adequate remedy for a situation where the Shelby County Election Commission fails to anticipate high voter turnout and there are not enough machines, or where there are electrical outages during the voting process, or where there are machines that malfunction during the voting process or where there is no real way to know whether failures such as these would have made a difference in the outcome of the election.

58. Most disturbing of all about electronic systems is the possibility of wholesale fraud perpetrated by a handful of people; a few keystrokes on a computer by a

knowledgeable computer hacker with access to the central tabulators, using a program that erases any trace of itself after use, easily produces the perfect undetectable crime of election fraud that changes the outcome without evidence of fraud whatsoever.

59. Compared to the paperless electronic voting and its electronic system of tabulation, the paperless machine mechanical voting machines and their mechanical tabulators never made wholesale fraud possible to the extent that electronic systems do.

60. Plaintiff avers that it is easy to see how, almost any election contest, which has to resolve the highly complicated and disturbing legal issues and evidence brought about by mechanical and electronic paperless voting, could not produce an election contest that is anything more than a legal fiction.

**SEVENTH CLAIM: A PAPERLESS BALLOT FAILS TO SECURE THE PURITY OF A TANGIBLE PAPER BALLOT AND ITS BOX IN PRESIDENTIAL ELECTIONS BECAUSE THERE IS LIKELY NO JUDICIAL REVIEW POSSIBLE THERE AT ALL**

61. In an election for President of the United States, the most important election of all, the ability to verify election results in a timely manner is of extraordinary importance.

62. Within mere weeks of the national election, Shelby County, and Tennessee, and all other counties and states in the United States, must by federal law have their Presidential Electors chosen to send to Washington, D.C. to elect the President.

63. While electronic paperless voting systems may be exceedingly fast at calculating initial results, any attempts to have timely judicial review of voting systems this complex, is “virtually” impossible.

64. The statutes provide for no expedited means of judicial review for verifying Presidential elections; without it, no judicial review is even possible before Presidential Electors must be chosen.

65. The winning party can simply run out the "federal clock" before any real review takes place; in fact, answers to complaints need not be expedited, nor does pre-trial discovery need to be expedited, and the case under the present law could hardly be begun before electors had to report to Washington, D.C.

66. Add to this process, the legal challenges that paperless voting brings, and there is no security at all in the purity of the ballot box in Presidential elections.

**EIGHTH CLAIM: A PAPERLESS BALLOT OF ELECTRONIC VOTING SYSTEMS FAILS TO SECURE THE PURITY OF A TANGIBLE PAPER BALLOT AND ITS BOX BECAUSE THE VIRTUAL BALLOT BOX PRIVATIZES ELECTIONS THAT WERE EXCLUSIVELY MEANT TO BE GOVERNMENTAL FUNCTIONS**

67. In paragraphs 17-20 the Plaintiff has averred that electronic voting systems are so technically complex as to require an inordinate amount of technical support to run them.

68. In the same paragraphs he has averred that this technical help must come from outside the Shelby County Election Commission itself and that it must contract with the manufacturers of these voting systems to run them.

69. This means that, perhaps without realizing it, the Shelby County Election Commission, which is now so very dependent on the private sector, has abdicated the responsibility of the election process to the private sector and to persons or corporations who are not elected, not appointed, not deputized, and perhaps not even sworn to uphold the Constitutions of the United States or the State of Tennessee.

70. This abdication of governmental responsibility is even more apparent, (assuming the Plaintiff's information and belief is true) if the contracts between these private entities and the Shelby County Election Commission have provisions that ensure that the software, which runs both the voting machines and the central tabulators, remains proprietary and a trade secret of the manufacturer.

71. The purity of the ballot box cannot be secure when the process is privatized.

**NINTH CLAIM: PRIVATIZATION OF THE ELECTION PROCESS ALLOWS IMPERMISSIBLE AMOUNTS OF PARTISANSHIP TO INFECT THE SYSTEM, DESTROYING THE PURITY OF THE BALLOT BOX**

72. For the public to have confidence in its elections, and for the ballot box to retain its purity, elections must be conducted in atmosphere of political fairness.

73. But when corporations usurp the election process, the principals, or highly influential corporate personnel may have their own political agendas, and when they become actively involved in elections, the appearance of political fairness is compromised and the purity of the ballot box is also lost.

**TENTH CLAIM: PRIVATIZATION OF THE ELECTION PROCESS ALLOWS FOR PERSONS OF UNKNOWN CHARACTER, CITIZENSHIP OR LOYALTY TO RUN THE ELECTION SYSTEM; IT ALSO ALLOWS THE PRIVATE SECTOR TO IMPOSE RELIGIOUS, RACIAL, SEXUAL OR POLITICAL REQUIREMENTS ON THE PERSONS RUNNING THE PROCESS; BOTH OF WHICH FURTHER DESTROY THE PURITY OF THE BALLOT BOX**

74. For the public to have confidence in its elections, and for the ballot box to retain its purity, voters must have confidence that the people who are conducting the elections are people who are of decent character, and who are citizens of, or who have at least sworn loyalty to, the United States.

75. But when private corporations usurp the election process, the voters have no means of knowing whether the corporate employees had to pass certain race, sex, creed or political persuasion tests to become employed, or whether the corporate employees have passed criminal background checks, or even whether the corporate employees have any loyalty to this state or the United States of America; consequently, voters have good reason to lack confidence in the private corporations running the process, all which further blights the purity of the ballot box.

### PRAYER

Wherefore, premises considered, the Plaintiff prays that the Defendant, the Shelby County Election Commission, be cited to appear; and, Plaintiff would further pray this Court thoroughly review the process of elections in Shelby County Tennessee.

The Plaintiff would request that this Court, after thorough review, to make both a determination and a declaration that those provisions of the Tennessee Election Code, which allow for the usage of a paperless ballot, are unconstitutional under the Tennessee Constitution.

The Plaintiff would request that this Court, after thorough review, to make both a determination and a declaration that the Shelby County Election Commission has chosen to use an unconstitutional paperless ballot election system; and Plaintiff would request this Court to declare that such system is illegal, is prohibited under the Tennessee Constitution, and must be changed henceforth.

The Plaintiff would further ask this Court, after thorough review, to make both a determination and a declaration that in order to be in compliance with the requirements of the Tennessee Constitution, henceforth the Shelby County Election Commission must use

a system of voter verified, tangible, paper ballots that are capable of being placed by the voters into an appropriate ballot box for later tabulation.

The Plaintiff would ask this Court, after thorough review, to make both a determination and a declaration that the Tennessee Constitution requires that the election process must be and must remain a public governmental function; and further, that all essential processes of the election process must remain in public governmental control and must not be abdicated to private control or subject to private usurpation.

The Plaintiff would ask this Court, after thorough review, to make both a determination and a declaration that the Tennessee Constitution requires that all election functions must be open and transparent to the public, and that no election functions shall be performed in secret, save and except the actual casting of the vote by the voter himself.

The Plaintiff would further ask this Court, after thorough review, to make both a determination and a declaration that any contract between the Shelby County Election Commission and the private sector, and which is for the purchase or use of voting equipment or voting tabulation, and which includes provisions in the contract for the protection of private trade secrets, constitutes either an abdication, or usurpation, or both, of a highly essential public governmental function and is prohibited by the Tennessee Constitution.

The Plaintiff would further ask this Court, after thorough review, to make both a determination and a declaration that in order to be in compliance with the requirements of the Tennessee Constitution, henceforth the Shelby County Election Commission must refrain from engaging in any activity that would jeopardize the public, open and

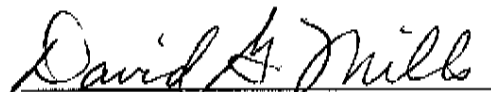


transparent nature of the election process or that would privatize any of the processes' essential elements that must be open remain open and transparent.

The Plaintiff would further ask this Court, after thorough review, to make both a specific determination and a declaration that in order to be in compliance with the requirements of the Tennessee Constitution, henceforth the Shelby County Election Commission shall refrain from becoming a party to any contract which possesses a provision that protects trade secrets of a private party.

Finally, the Plaintiff prays for any other relief, general and special, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,



David G. Mills, TBN 17640

Pro Se

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**EXHIBIT "A"**

**PERTINENT PARTS OF THE TENNESSEE  
CONSTITUTION AND ELECTION CODE**

**TENNESSEE CONSTITUTION**

**ARTICLE I**

**Sec. 5. Elections to be free and equal – Right of suffrage**

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

**ARTICLE IV**

**Sec. 1. Right to vote – Election precincts**

Every person, being eighteen years of age, being a citizen of the United States, being a resident of the State for a period of time as prescribed by the General Assembly, and being duly registered in the county of residence for a period of time prior to the day of any election as prescribed by the General Assembly, shall be entitled to vote in all federal, state, and local elections held in the county or district in which such person resides. All such requirements shall be equal and uniform across the state, and there shall be no other qualification attached to the right of suffrage.

*The General Assembly shall have power to enact laws* requiring voters to vote in the election precincts in which they may reside, and laws *to secure* the freedom of elections and *the purity of the ballot box*.

# TENNESSEE ELECTION CODE

## 2-1-102. Purpose

The purpose of this title is to regulate the conduct of all elections by the people so that:

- (1) The freedom and purity of the ballot are secured;
- (2) Voters are required to vote in the election precincts in which they reside except as otherwise expressly permitted;
- (3) Internal improvement is promoted by providing a comprehensive and uniform procedure for elections; and
- (4) Maximum participation by all citizens in the electoral process is encouraged.

## 2-5-206. Forms of ballots on voting machines

- (a) Voting machine ballot labels and names of candidates shall be printed in black ink with office titles printed in black or red ink on clear material of such size as will fit the ballot frame and in as plain, clear type as the space will reasonably permit.
- (b) All voting machine ballots shall be arranged as follows:
  - 1) In primary elections, the title of the offices shall be placed vertically on the left or right side of the ballot, and there shall be a vertical column for each political party, and the names of the candidates shall be placed opposite the title of the office for which they are to be selected, in alphabetical order according to the initials of their surname, beginning with the first initial. Each column shall be designated by the name of the political party for that column;
  - 2) In general elections, the title of the offices shall be placed vertically on the left or the right side of the ballot, and there shall be a vertical column for each political party. Any candidate whose name is to be placed on the ballot by virtue of party nomination shall be listed in the political column of such candidate's party, opposite the title of the office the candidate seeks. One (1) vertical column for independent candidates shall be placed on the ballot and shall appear immediately after the political party columns. The independent candidates shall be listed in alphabetical order according to the initials of their surnames, beginning with the first initial. The independent candidate's name

shall be listed opposite the title of the office the candidate seeks. This ballot format shall apply to all voting machine ballots, except in counties using Automatic Voting Machine, Inc. type machines, C.E.S., Votomatic or comparable punch card voting systems, or Shouptronic or other comparable direct recording electronic voting systems. Any county using Automatic Voting Machine, Inc. type machines shall arrange its machine ballots in the following manner, to wit: the title of offices shall be placed in vertical columns and the names of the candidates shall be placed in horizontal columns with each political party having its own columns and the independents being placed in a single column or columns after the political party columns; with such candidates' names being listed alphabetically according to the initials of their surname, beginning with the first initial. The ballot format for C.E.S., Inc., Votomatic, or other comparable punch card systems shall be governed by the rules set out by the coordinator of elections and the state election commission under § 2-9-110. The ballot format for Shouptronic or other comparable direct recording electronic voting systems shall be governed by the rules set out by the coordinator of elections and the state election commission under §2-9-110. Such rules shall be approved by not less than four (4) members of the state election commission;

3) If the arrangement as set out in subdivisions (b)(1) and (2) will not fit on the voting machine ballot, the county election commission may arrange the ballot so that the voting machine will accommodate the entire ballot including, without limitation, the arrangement of material in vertical columns with the office appearing first and the candidates for such office listed vertically beneath the office, with political party nominees indicated by (D) or (R) and independent candidates by (I); and )

4) Any county using a punch card format system which places an identifying number on the punch card ballot shall place the corresponding number by each position or name displayed on the ballot pages

(c) The county election commission of each county shall prepare a sample ballot of all candidates and mail this sample ballot to the coordinator of elections for approval. No ballot shall be printed or funds expended therefor by any county until such approval has been granted. The coordinator of elections must give approval or disapproval within ten (10) days of the receipt of the sample ballot.

(d) If the coordinator of elections or the state election commission fails to correct promptly any alleged defect in any ballot, whether for voting machine, paper ballot, or otherwise, a candidate, the candidate's representative, or other party deemed to have standing may apply to the chancery court in the county wherein the allegedly defective ballot may be used, for any appropriate relief under this code or the rules of civil procedure.

(e) (1) Should there be so many candidates or questions, or both, to be voted upon in any election, as to exceed the capacity of a voting machine, paper ballots

shall be provided for each polling place, to hold the entire ballot. Where paper ballots are required to list the entire ballot, the names of all candidates for any one (1) particular office shall be printed on the same paper ballot.

(2) Notwithstanding the provisions of subdivision (e)(1), in any county where a voting machine will not accommodate the entire ballot, the coordinator of elections may, with the approval of the county election commission, permit the placement of part of the ballot on paper ballots. In considering the priority in which parts of the ballot should be placed on paper ballots, the coordinator shall first permit the placement of the candidates for the court of appeals and the court of criminal appeals on paper ballots. Next, the coordinator shall permit the placement of the unopposed candidates for countywide positions on paper ballots; provided, that no candidate who is unopposed in a primary election shall be placed on paper ballots. In any county having a population of not less than one hundred forty-three thousand nine hundred (143,900) nor more than one hundred forty-four thousand (144,000) according to the 1980 federal census or any subsequent federal census, the coordinator shall permit the placement of candidates in nonpartisan elections for county commission on paper ballots.

(f) The machine shall be so adjusted that when one (1) or more voting pointers equaling the total number of persons to be elected to an office shall have been operated, all other voting pointers connected with that office shall be locked. The machines shall be so adjusted that no voter may vote in more than one (1) party's primary election.

#### **2-8-104. Opening of voting machines.**

(a) The commission, or such persons as it may designate, shall, as soon as possible after the election, open each voting machine and compare the votes shown with the tally sheets prepared at the polling place.

(b) All candidates, their representatives, representatives of the political parties, and representatives of the press may be present at the opening of the voting machines and throughout their examination and shall be given ample opportunity to examine the tabulations.

(c) The commission shall revise any figures in the tally sheets prepared at the polling place to conform to the figures on the machines without writing on or otherwise making the original figures on the tally sheets illegible. The commission figures shall be circled in red.

**2-8-110. Public calculation and comparison of votes - Declaration of election -  
Certificates of election**

(a.) The governor, secretary of state and attorney general and reporter shall, as soon as the returns are received, publicly calculate and compare the votes received by each person for the office of member of the general assembly, presidential and vice presidential elector, member of congress, judge, chancellor, or district attorney general, and declare the person receiving the highest number of votes elected.

(b.) The secretary of state shall assure the preservation of the original certification of results executed under this section.

(c.) The governor shall furnish each person elected with a certificate of election, which shall also be a commission of office, signed by the governor and the secretary of state. The certificate shall be prima facie evidence of election. A duplicate original of the certificate of election as United States senator shall be sent to the president of the United States senate.

**2-8-113. Primary elections - Determination of results**

(a.) On the third Thursday after a primary election, the state coordinator of elections shall publicly calculate and compare the votes received by each person and declare who has been nominated for office in the primary or elected to the state executive committee. The candidates who receive the highest number of votes shall be declared elected or nominated; provided, that in order for any person to receive a party nomination by write-in ballots, such person must receive a number of write-in votes equal to or greater than five percent (5%) of the total number of votes cast in the primary on the day of the election. However, this section shall not apply where there are candidates for the office involved listed on the official ballot.

(b.) The coordinator of elections may delegate the duty under subsection (a) to county primary boards with respect to offices to be elected by voters within a single county and, if requested by the state executive committee of a political party, shall delegate such duty to the county primary boards. The county primary boards shall send the results of the primary election to the state party executive committee unless the state party executive committee wishes to exercise its functions under this section as a party primary board. The state party executive committee may revoke or rescind its request that the coordinator of elections delegate such duty to the county primary boards.

(c.) Any person trying to receive a party nomination by write-in ballots shall complete a notice requesting such person's ballots be counted in each county of the district no later than twenty (20) days before the primary election. Such person shall only have votes counted in counties where such notice was completed and timely filed. Write-in candidates for the offices of governor, United States senator and representative in the

United States congress shall file their notice with the state coordinator of elections. The notice shall be on a form prescribed by the coordinator of elections and shall not require signatures of any person other than the write-in candidate requesting ballots be counted. The coordinator of elections shall distribute such form to the county election commissions.

## **2-9-101. Specifications - Contract for modification**

(a) A voting machine to be used in Tennessee must provide facilities for voting for candidates at both primary and general elections, at nonpartisan elections or at a combination of a nonpartisan and partisan primary or general election. It must permit a voter to vote for any person for any office, whether or not nominated as a candidate by a political party. It must ensure voting in absolute secrecy. It must permit a voter to vote for any candidate or on any special measure for whom or on which the voter is lawfully entitled to vote but none other. It must permit a voter to vote for the proper number of candidates for an office but no more. It must be provided with a lock or locks by which immediately after the polls are closed any movement of the voting or registering mechanism can be absolutely prevented. It may be either manually or electrically operated. An electric machine must convert to manual operation, and the alternate type of operation must be a standard function of the machine and not be designed as an emergency or temporary device only. Each voting machine shall have not less than eight (8) columns and shall be equipped with interlocks in the following manner: for the basic lever type machine, interlocks on columns 1, 4, and 7; for the 2.5 lever type machine, interlocks on columns 1, 4, and 7 and an additional main interlock adjacent to column 10; on the 3.2 eight column machine, interlocks on columns 1, 4, and 7 and an additional main interlock adjacent to column 8; on the 3.2-10.25 lever type machine, interlocks on columns 1, 4, and 7 and an additional main interlock adjacent to column 10.

(b) Any voting machine not presently equipped as described in (a) shall be modified pursuant to a contract to be let by the coordinator of elections through normal purchasing procedures. The contract shall contain such provisions as the coordinator of elections, secretary of state and commissioner of finance and administration shall deem necessary and Any voting machine not presently equipped as described in (a) shall be modified pursuant to a contract to be let by the coordinator of elections through normal purchasing procedures. The contract shall contain such provisions as the coordinator of elections, secretary of state and commissioner of finance and administration shall deem necessary and proper, and shall provide for the use of new parts only. Furthermore, the contract shall provide for the inspection of parts, labor, and equipment by a team of local machine technicians, and the costs of such inspection at the local level shall be borne by the company or firm awarded the contract.

(c) A party lever device enabling a voter to vote for all the nominees of a particular political party by operating a single lever is prohibited except that a party lever shall

be provided for each political party's candidates for presidential and vice presidential electors

**2-9-110. Use of non-standard machines**

(a) The county election commission, with the approval of the coordinator of elections and the state election commission, may provide for the use of voting machines which do not meet the requirements of this title except under this section

(b) Machines and procedure for such use shall provide as much protection for the purity of the ballot and against election fraud as do voting machines which otherwise meet the requirements of this title.

(c) The use of voting machines in compliance with this section and the rules of the coordinator of elections shall be as valid for all purposes in an election as if the machines had otherwise met the requirements of this title for voting machines.

**2-17-110. Voting machine as evidence**

(a) If voting machines were used in the election, any party to the contest who challenges either the accuracy of the voting machines or the accuracy of the election officials' recording of the vote on the machines may have the machine or machines brought into court to be examined by the parties or as evidence.

(b) The total votes shown on the machine shall be conclusive unless the court finds reason to believe that the vote shown on the machine is not accurate.