

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**DAPHNE TURNER-GOLDEN AND  
SULLISTINE BELL, Citizens And  
Residents Of Memphis, Tennessee, And  
CITY OF MEMPHIS,**

*Plaintiffs,*

v.

**TRE HARGETT, Secretary of State;  
MARK GOINS, Tennessee Coordinator of  
Elections; all in their official capacity only,**

*Defendants.*

**CLASS ACTION**

**CASE NO. 3:12-CV-765  
JUDGE TRAUGER**

**SECOND AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

This Second Amended Verified Complaint for Declaratory and Injunctive Relief adds claims pursuant to 42 U.S.C. § 1983 for deprivation of rights protected under Article I, Section 5 and Article IV of the Tennessee Constitution.

**I. STATEMENT OF THE CASE**

1. This is an action brought pursuant to 42 U.S.C. § 1983 because Defendants, acting under color of law, seek to deprive and are depriving certain citizens of Tennessee of their constitutionally and statutorily protected right to vote. The action seeks to enjoin enforcement of Tenn. Code Ann. § 2-7-112 to the extent that such statute purports to require a qualification, i.e., photographic identification for the exercise of the right to vote which is in addition to those exclusive qualifications delineated in Article IV of the Tennessee Constitution, or, in the alternative to enjoin enforcement of Tenn. Code Ann. § 2-7-112 unless or until the Defendants

ensure that all persons who are qualified to vote pursuant to the provisions of Article IV have been issued such photographic identification free of charge .

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (a)(4) for causes of action arising under the Fourteenth Amendment to the United States Constitution and federal law.

3. A live case and controversy exists between Plaintiffs Daphne Turner-Golden, Sullistine Bell, and the City of Memphis and Defendants. The City and Memphis Library system have issued library cards containing a photograph of the holder to citizens over the age of 18, as a means of assisting its citizens in complying with Tennessee's Voter ID law Tenn. Code Ann. 2-7-112(c)(2). Plaintiff Daphne Turner-Golden has been issued such a card, and said card is the only form of photo identification in her possession at this time. While Plaintiff Turner-Golden once had a Tennessee driver's license, it was stolen from her prior to this election, and she has been unable to obtain a replacement. Plaintiff Sullistine Bell has also been issued a Memphis library card containing her photograph, and said card is her only form of photo identification. Plaintiff Bell has a Tennessee driver's license, but not one with a photo identification. The Defendants have responded by ordering the Shelby Election Commission to disallow the Memphis library cards if they are presented at Shelby County polling locations as evidence of identification, and are otherwise enforcing the provisions of Tenn. Code Ann. § 2-7-112.

4. Venue in this district is proper under 28 U.S.C. § 1391(b)(1), as all Defendants officially reside in the Middle District of Tennessee, and is also proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to the claims asserted have occurred, and continue to occur, in the Middle District of Tennessee.

### III. PARTIES

5. Plaintiff Daphne Turner-Golden is a citizen and resident of Memphis, Shelby County, Tennessee, who has attempted to vote using her library card for photo identification, which is the only photo identification Plaintiff Turner-Golden possesses. Plaintiff Turner-Golden was refused a ballot, and was discouraged from casting a provisional ballot. Plaintiff, a registered voter, has been voting for many years. Plaintiff was unable to obtain other photographic identification and was unable to present any such photographic identification to the Shelby County Election Commission by August 6, 2012.

6. Plaintiff Sullistine Bell is over 70-years-old and a citizen and resident of Memphis, Shelby County, Tennessee, who has attempted to vote using her library card for photo identification, which is the only photo identification Plaintiff Bell possesses. On Saturday, July 28, 2012, Plaintiff Bell attempted to vote at the Mt. Zion Church, an early voting location in Memphis, Shelby County, Tennessee. Upon attempting to vote, Plaintiff Bell was informed that her library photo identification was not a valid state photo identification card. Instead, she was provided a provisional paper ballot and told that she would have to obtain a valid photo identification card prior to August 6, 2012 and provide it to the Shelby County Election Commission in order to make the provisional ballot count. Accordingly, Plaintiff Bell voted using the provisional paper ballot. Plaintiff Bell no longer drives and was unable to get a ride to a driver's license station and then to the Shelby County Election Commission in order to present acceptable photo identification prior to August 6, 2012. Due to her age and limited income it is very difficult for Plaintiff Bell to get transportation and very difficult for her to make more than one trip.

7. Plaintiff the City of Memphis is an incorporated municipality and a political subdivision of the State of Tennessee and as such is a governmental entity.

8. The Defendants in this action are:

- a. Tre Hargett, Tennessee Secretary of State, who holds office pursuant to Article III, Section 17 of the Tennessee Constitution. Mr. Hargett, as Secretary of State, appointed Mr. Goins as Tennessee Coordinator of Elections, and has unfettered authority to terminate Mr. Goins from that position pursuant to Tenn. Code Ann. § 2-11-201 et seq.
- b. Mark Goins, Tennessee Coordinator of Elections, who is appointed by the Secretary of State pursuant to Tenn. Code Ann. § 2-11-201. Mr. Goins is charged with obtaining and maintaining “uniformity in the application, operation and interpretation of the election code,” and acts under the authority of the Tennessee Secretary of State. *Id.*

9. Defendants are sued in their official capacity only, and not individually.

#### IV. FACTUAL ALLEGATIONS

10. The Tennessee Constitution, Article 4, Section 1 contains the sole and exclusive qualifications for citizens and residents of the state of Tennessee in their exercise of the right to vote. It states as follows:

**Section 1.** Every person, being eighteen years of age, being a resident 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.

All male citizens of this state shall be subject to the performance of military duty, as may be prescribed by law.

11. During the 2011 legislative session, the Tennessee General Assembly enacted certain amendments to Tenn. Code Ann. § 2-7-112 regarding procedures for voting.

12. Effective January 1, 2012 most voters in Tennessee are required to present at their designated polling places, an identification card which includes a photograph of the voter and which otherwise meets the requirements of Tenn. Code Ann. § 2-7-112(c).

13. Tenn. Code Ann. § 2-7-112(c) states in its entirety:

(c) For purposes of verifying the person's identification on the application for ballot, "evidence of identification" shall be:

(1) A Tennessee driver license;

(2) (A) Except as provided in subdivision (c)(2)(B) a valid identification card issued by a branch, department, agency or entity of this state, any other state, or the United States authorized by law to issue personal identification; provided, that such identification card contains a photograph of the voter;

(B) An identification card issued to a student by an institution of higher education containing a photograph of a student shall not be evidence of identification purposes of verifying the person's identification on the application for ballot;

(3) A valid identification card issued pursuant to § 55-50-3336;

(4) A valid United States passport;

(5) A valid employee identification card issued by a branch, department, agency or entity of this state, any other state, of the United States authorized by law to issue employee identification; provided, that such identification card contains a photograph of the voter; or

(6) A valid United States military identification card; provided, that such identification card contains a photograph of the voter.

14. Any voter who fails to present such an identification card at the polling place may only cast a provisional ballot. Then, within two business days of the end of the election, the voter must present, at their local Election Commission office, a valid photo identification card as specified in the statute in order to have the provisional ballot counted. Any such voter who fails to do so will not have his or her vote counted.

15. No definition for the term “entity of this state” is provided in the Tennessee Election Code, Tenn. Code Ann. § 2-1-101 et seq.

16. As a municipality, both the City of Memphis and its library system are state entities pursuant to the provisions of Tenn. Code Ann. § 12-4-601 and/or other code sections. Its library system is authorized by law to issue personal identification cards.

17. Following enactment of the amendments to Tenn. Code Ann. § 2-7-112, officials of the City of Memphis became concerned that the amendments might tend to disenfranchise a sizeable number of the City’s residents who are otherwise eligible to vote.

18. The State of Tennessee has acknowledged that at least 126,000 Tennesseans age 60 or older and who are registered voters do not have a driver’s license with a picture.

19. It has been estimated that as many as ten percent of registered voters of Tennessee numbering 390,000 voters out of almost 3,900,000 registrants, do not have a picture identification card. That would mean that perhaps as many as 390,000 Tennesseans who are registered to vote may not have the newly required identification.

20. As of July 9, 2012, the Tennessee Department of Safety, which is charged with the responsibility of issuing photo identification cards to registered voters, had issued less than 21,000 such cards. This would be only 17% of seniors age 60 or older who would be eligible and just 5.5% of the greater number of those without Photo ID.

21. Thus, enforcement of the amendments of Tenn. Code Ann. § 2-7-112 requiring voters to present photographic identification before being allowed to exercise the right to vote will and does disenfranchise tens of thousands of Tennessee voters who are qualified to vote pursuant to Article IV of the Tennessee Constitution.

22. Accordingly, officials of the City of Memphis began to search for ways to facilitate Memphis citizens' access to valid photo identification, so as to maximize those citizens' right to vote as protected by the United States and Tennessee Constitutions.

23. The City of Memphis has begun implementing a plan to have its library system issue photo identification cards to its citizens who are 18 years older or over. The cards being so issued contain a photograph of the owner, along with the name and address of that owner. The back of the card contains a space for the signature of the owner and contains a bar code which identifies the card holder.

24. Plaintiff Daphne Turner-Golden is a holder of a library card from the Memphis Public Library with her photograph on the library card. On the 23<sup>rd</sup> day of July, 2012, Plaintiff Turner-Golden went to the early voting precinct at Mississippi Blvd. Church. When she arrived at the voting precinct she completed and signed an application for a ballot and presented the application along with her library card to the precinct register in order to receive her ballot to vote. The precinct register refused to give the Plaintiff a ballot on the basis that the Plaintiff did not have an appropriate Photo ID card therefore, she was unqualified to vote in the election, thus denying her the right to vote in violation of her Federal and State Constitutional rights to vote. After going to Greater Lewis Church precinct and being refused a ballot, the election official did finally give her a provisional ballot, after first discouraging her from casting a provisional ballot.

Plaintiff Turner-Golden was unable to present other photographic identification to the Shelby County Election Commission by August 6, 2012.

25. Plaintiff Sullistine Bell is also a holder of a library card from the Memphis Public Library, with her photograph on the library card. Plaintiff Bell has a Tennessee driver's license, but it does not have a photo identification on it. On July 28, 2012, Plaintiff Bell was able to secure a ride to the South Memphis branch of the Memphis Library System in order to obtain a photo identification. Plaintiff Bell applied for and received a library card with a photo identification on it. Plaintiff Bell obtained this photo identification from the library by showing her Tennessee non-photo driver's license, two bills identifying her residence, and providing her Social Security number. Plaintiff Bell then secured transportation to the Mt. Zion Church, an early voting location in Memphis, in order to cast her vote. Upon attempting to vote, Plaintiff Bell was informed by Shelby County Election Commission officials that her library photo identification card was not sufficient to allow her to vote. She was informed by these officials that she would only be able to vote a provisional paper ballot. She was also informed that she needed to obtain a valid identification before August 6, 2012 and provide such identification to the Shelby County Election Commission in order to have her provisionally cast votes counted. Plaintiff Bell was unable to obtain such identification prior to August 6, 2012.

26. The City of Memphis knows that over 1285 of its citizens have been issued such cards. On information and belief, the City asserts that such cards may be the only form of photographic identification held by those citizens, and, therefore, that such cards may be the only practical means of compliance with the law those citizens have. Without such a card, those citizens are being denied the fundamental, Constitutional right to vote even though such voters are fully qualified to vote pursuant to Article IV, Section 1 of the Tennessee Constitution.

27. On or about July 10, 2012, Defendant Mark Goins declared that the library cards are not valid for voter identification. Defendant Goins issued instructions to the Shelby County Election Commission to disallow the use of the library cards as a valid form of photo identification pursuant to Tenn. Code Ann. § 2-7-112(c). In turn, an official of the Shelby County Election Commission has acknowledged that the Commission “can only act as advised by the State Coordinator,” i.e., Defendant Goins.

28. Defendant Goins’ comments and instructions, made in the course and scope of his official employment and under the color of law, threaten to disenfranchise otherwise qualified voters unless this Court declares otherwise and/or enjoins the Defendants from continuing their unlawful actions.

#### **V. CAUSES OF ACTION**

##### **COUNT ONE: VIOLATION OF ARTICLE I, SECTION 5 AND ARTICLE IV OF THE TENNESSEE CONSTITUTION**

29. Title 42 of the U.S. Code, Section 1983 prohibits any person acting under color of law to subject or cause to be subjected any other person to the deprivation of any rights, privileges or immunities secured by either or both of the Federal or State Constitutions and laws.

30. Both the United States and the Tennessee Constitutions guarantee the right of citizens to vote.

31. The Tennessee voter photographic identification statutes purport to create a qualification on the right of Tennessee citizens to vote that is in addition to the four express qualifications delineated in Article IV, Section 1 of the Tennessee Constitution. The Defendants’ enforcement of this statute, acting under color of law, deprives a class of constitutionally qualified voters of the right to vote and directly contravenes Article IV’s mandate that “there shall be no other qualification attached to the right of suffrage.” In addition,

such enforcement deprives Plaintiffs' right of suffrage as guaranteed under Article I, Section 5 of the Tennessee Constitution.

**COUNT TWO: VIOLATION ARTICLE IV, SECTION 1 OF THE TENNESSEE  
CONSTITUTION AND DENIAL OF EQUAL PROTECTION**

32. Title 42 of the U.S. Code, Section 1983 prohibits any person acting under color of law to subject or cause to be subjected any other person to the deprivation of any rights, privileges or immunities secured by either or both of the Federal or State Constitutions and laws.

33. Both the United States and the Tennessee Constitutions guarantee the right of citizens to vote.

34. The Tennessee voter photographic identification statutes purports to create a qualification in the right of Tennessee citizens to vote that is in addition to the four express qualifications delineated in Article IV, Section 1 of the Tennessee Constitution. The Defendants' enforcement of this statute, acting under color of law, deprives a class of constitutionally qualified voters to the right to vote and directly contravenes Article IV's mandate that "there shall be no other qualification attached to the right of suffrage." The enforcement of this statute thus deprives the Plaintiffs of the equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

**COUNT THREE: VIOLATION OF 42 U.S.C. § 1983, ARTICLE I OF AMENDMENT  
14 TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 5 OF  
THE TENNESSEE CONSTITUTION**

35. Title 42 of the U.S. Code, Section 1983 prohibits any person acting under color of law to subject or cause to be subjected any other person to the deprivation of any rights, privileges or immunities secured by either or both of the Federal or State Constitutions and laws.

36. Both the United States and the Tennessee Constitutions guarantee the right of citizens to vote.

37. Defendants, acting under color of state law, have ordered the Shelby County Election Commission not to accept photo identification issued by the Memphis library system as proper identification pursuant to Tenn. Code Ann. § 2-7-212(c).

38. Accordingly, Defendants acting in their official capacity, and under color of law, have deprived, and will continue to deprive citizens of the City of Memphis rights secured by the Fourteenth Amendment to the United States Constitution; and the Tennessee Constitution Article I, Section 5 and Article IV.

**COUNT FOUR: VIOLATION OF THE EQUAL PROTECTION CLAUSE OF  
AMENDMENT 14 TO THE UNITED STATES CONSTITUTION AND ARTICLE I,  
SECTION 5 AND ARTICLE IV OF THE TENNESSEE CONSTITUTION**

39. Pursuant to the Equal Protection Clause of the Fourteenth Amendment, of the United States Constitution, and Article I, Section 5 and Article IV of the Tennessee Constitution, States are obligated to conduct elections uniformly and to avoid arbitrary and disparate treatment of voters.

40. By ordering the Shelby County Election Commission not to accept photo identification issued by the City of Memphis' library system, the Defendants are depriving those citizens who hold such cards and who are otherwise qualified to vote, the right to participate in elections on an equal basis with all other citizens, in violation of the Federal and Tennessee Constitutions.

**PRAYER FOR RELIEF**

WHEREFORE, premises considered, Plaintiffs pray for relief as follows:

1. For injunctive relief in the form of a Preliminary Injunction and Permanent Injunction against the Defendants requiring them to allow all registered voters, who are qualified

to vote in accord with Article IV of the Tennessee Constitution to cast their votes without the necessity of showing photographic identification;

2. In the alternative, for injunctive relief preventing the Defendants from enforcing the requirement of photographic identification prior to voting unless and until Defendants have ensured that all Tennessee registered voters who are otherwise qualified to vote in accord with Article IV of the Tennessee Constitution have received a photo ID at no cost to themselves;

3. For a declaratory judgment that any requirement that voters present photographic identification prior to being allowed to vote constitutes an additional qualification on the right to vote in violation of Article I, Section 5 and Article IV of the Tennessee Constitution;

4. In the alternative, for a declaratory judgment that to the extent any requirement that voters present photographic identification prior to being allowed to vote is found to be within the purview of the Tennessee General Assembly's authority to ensure the "purity of the ballot" that the Defendants may not enforce such requirements until and unless they ensure that all Tennessee registered voters who are otherwise qualified to vote in accord with Article IV of the Tennessee Constitution have received a photo ID at no cost to themselves;

5. An award to Plaintiffs of all costs and fees incurred in this action, including but not limited to reasonable attorneys' fees in accord with 42 U.S.C. § 1988; and

6. Such other and further relief to which they may be entitled.

Dated: August 7, 2012

Respectfully Submitted

/s/ Douglas S. Johnston, Jr.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of August, 2012, the foregoing *Second Amended Verified Complaint for Declaratory and Injunctive Relief* was served upon the following via the Court's Electronic Filing System:

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s/ Douglas S. Johnston, Jr.  
DOUGLAS S. JOHNSTON, JR.

**VERIFICATION OF COMPLAINT**

I, Regina M. Newman under penalty of perjury states as follows:

I am familiar with the facts as stated herein and have read the Complaint and state under oath the facts contained herein are true to the best of my knowledge, information and belief. I make this Verification pursuant to 28 U.S.C. § 1746 and declare under the penalty of perjury under the law of the United States of America, that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of August, 2012.

  
NAME