

IN THE ARKANSAS SUPREME COURT

TOMMY L. FITE

PETITIONER

VS.

NO. _____

HON. COLLINS KILGORE, CIRCUIT JUDGE,
CHARLIE DANIELS, ARKANSAS SECRETARY
OF STATE; TERESA ARMER, CRAWFORD
COUNTY CLERK; KENNETH A. CHITWOOD,
BRUCE COLEMAN, and KENNETH L. REDDING,
CRAWFORD COUNTY COUNTY ELECTION
COMMISSIONERS; SHARON NEEDHAM,
FRANKLIN COUNTY CLERK; JOHN PAUL
PENDERGRASS, JOHN VERKAMP, and RANDY
HILLARD, FRANKLIN COUNTY ELECTION
COMMISSIONERS; and MICHAEL GRULKEY

RESPONDENTS

PETITION FOR WRIT OF PROHIBITION

Comes the Petitioner, Tommy L. Fite, by and through his attorneys, ALMAND, ORSI & CAMPBELL, PLLC, and for his Petition for Writ of Prohibition states:

1. This is a Petition for Writ of Prohibition against implementation of an Order of the Circuit Court of Pulaski County, against the Arkansas Secretary of State, the Franklin County Board of Election Commission, the Crawford County Election Commission, and the County Clerks of both Crawford and Franklin counties. As such, original jurisdiction lies with the Arkansas Supreme Court.
2. This is an election case, and if the time is not accelerated on an emergency basis the matter will evade review and voters in Arkansas's House District 83 will be disenfranchised. Further, an injunction prohibiting the Election Commissions from placing the name of the candidate on the ballot, after the the ballot is printed and voting has commenced will deprive the voters in House of Representatives District 83 from voting for any candidate on a ballot upon

which the name of the Petitioner appears.

3. Since there is no time for a ten day response period given the proximity of the general election on November 2, 2010, the Clerk of the Court is asked to accelerate the time for an emergency hearing.

4. The Secretary of State certified Mr. Fite's name to Crawford and Franklin Counties on July 28, 2010. A copy of the Certificate of Nomination is attached hereto as Exhibit "A" and is incorporated herein by reference.

5. On October 20, 2010, Respondent Michael Grulkey filed a "Complaint for a Writ of Mandamus and Declaratory Judgment and Motion for an Expedited Hearing" in the Circuit Court of Pulaski County, Arkansas, 13th Division, alleging himself to be a resident and registered voter of Arkansas's State House District 83.

6. In his "Complaint for Mandamus" etc., Respondent Grulkey claimed his purpose was to challenge the qualifications and eligibility of Petitioner Tommy L. Fite as a candidate for office.

7. Any suit to have a candidate declared ineligible for the office he seeks must join that candidate as a party, and must notify him of the suit by proper service of process if justice is to be served and complete relief is to be dispensed.

8. Petitioner Tommy L. Fite was not properly joined as a respondent in the Writ of Mandamus heard by Judge Kilgore in the Pulaski County Circuit Court in CV 2010-6013. He was not served with summons and complaint, and no exception to the rules for service of process was found to exist in the Circuit Court's Writ of Mandamus and Declaratory Judgment.

9. The Circuit Court found that Mr. Fite and his father shared a residence despite

Defendant Fite's verified allegations to the contrary in his Motion to Quash, the testimony of Mr. Fite's daughter to the contrary, the listing of Mr. Fite's official address on the Secretary of State's website indexed under his listing as a candidate, the Answer of the Secretary of State, filed on October 22, 2010 at 11:08 A.M. and Respondent Grulkey's return of service filed after the date first scheduled for hearing shows service of process upon Petitioner's father at a different address than do the remainder of the parties Defendant in the Circuit Court. The return of service on Fite shows a date of service 10/22/2010), but not a time of service.

10. Arkansas Code Ann. 7-5-202 (Supp. ____) requires the County Board of Election Commissioners to give public notice of the candidates and the offices they seek at least twenty (20) days prior to a general election. Since the challenge to Mr. Fites's candidacy was made 13 days prior to the election, it was untimely made.

11. The general election is to be held Tuesday, November 2, 2010. Ballots must be prepared within

12. Thirteen days prior to the election is insufficient time to change ballots.

13. Because electronic ballots are used in Crawford and Franklin counties, all ballots must be counted.

14. Since all electronic ballots must be counted, the Circuit Court's Writ of Mandamus and Declaratory Judgment cannot be complied with.

15. Pursuant to Ark. Code Ann. 7-5-404, absentee ballots can be mailed twenty-five days before an election to voters who are not within the United States. The only way to accomplish excluding him from absentee ballots would be to throw out the ballots on which his name appears, eliminating those ballots on which soldiers, sailors, expats, and others out of the

country at the time of the election have voted.

16. The delay in challenging Mr. Fite's candidacy is inexcusable as ballots have already been made available to absentee voters, lists of candidates have already been published to voters in House District 83, and ballots have already been made ready for the November 2, 2010 election day event. It will be impossible at this late date to scrub Mr. Fite's appearance from the ballot entirely, and a number of people have no doubt already voted for him.

17. By waiting until beyond the eleventh hour to challenge his candidacy, Mr. Fite's opponent seeks to give himself the defacto status of running for the state House of Representatives unopposed, without allowing for any realistic challenge by any party opponent. This is patently unfair and inherently foul, and these tactics cannot be condoned by our court system.

18. Pursuant to A.C.A. § 7-5-801, a complaint contesting the certification of a candidate, or contesting the certification of the vote count, must be filed within twenty days of the certification complained of.

19. Petitioner Fite was certified as the Republican Party's nominee on July 28, 2010. A copy of the Certificate of Nomination is attached hereto as Exhibit "A" and is incorporated herein by reference.

20. Mr. Grulkey filed his Complaint for Mandamus and Declaratory Judgment on October 20, 2010. This action is untimely by 64 days, and as such, this Court had no subject matter jurisdiction over Grulkey's action and the Writ of Mandamus and Declaratory Judgment is void *ab initio*. The officials charged with carrying it out should be prohibited from doing so.

21. In its Writ of Mandamus and Declaratory Judgment, the Circuit Court stated that

Mr. Gulkey "orally amended his request to also seek to enjoin the County Election Commissioners from counting any votes for Mr. Fite and to enjoin the Secretary of State from certifying an election which allowed Mr. Fite to be the prevailing candidate."

22. A review of the record of pleadings will demonstrate that there was, in fact, no oral amendment. Mr. Grulkey had actually filed a *written* motion asking for *ex parte* relief along these lines and then, during the actual hearing, withdrew his motion. For some reason, the Circuit Court granted the withdrawn motion anyway.

23. The relief granted in the Writ of Mandamus and Declaratory Judgment is impossible for officials to comply with: Mr. Fite's name cannot be removed from any ballots and all ballots must be counted as they already exist.

24. Absentee ballots are sent to voters forty-five days prior to an election, at which time the ballot is set and cannot be changed.

25. Early voting began October 18, 2010, two days prior to Mr. Gulkey filing his Complaint, and anyone voting early in District 83 will necessarily see a ballot with Mr. Fite's name on it.

26. The Circuit Court's Writ of Mandamus and Declaratory Judgment orders officials to do that which is impossible to do; therefore the order is void.

WHEREFORE, the Petitioner, Thomas Lyle Fite, respectfully prays that his Petition for Writ of Prohibition be granted, that his name remain as a candidate for the office of Representative to the State House of Representatives for District 83, that votes cast for him be counted, that all other provisions of the Writ of Mandamus and Declaratory Judgment issued by the Pulaski County Circuit Court in CV 2010-6013 be prohibited from being carried out, for his

attorneys fees and costs, and for all other just and proper relief.

Respectfully submitted,

THOMAS LYLE FITE

By and through his Attorneys,
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By: William G. Almand by
William G. Almand
ARSC Bar #86001 *Ann Orsi*

CERTIFICATE OF SERVICE

I, William G. Almand, do hereby certify that a true and correct copy of foregoing Petition for Writ of Prohibition was served via email transmission to brianmeadors@gmail.com and facsimile transmission to David L. Gibbson @ (479) 967-1086 and first class mail this 26th day of October 2010 to the following attorneys of record:

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William G. Almand by
William G. Almand
Anna Orsi

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COMMISSIONERS; and MICHAEL GRULKEY**

RESPONDENTS

BRIEF IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION

Comes the Petitioner, Tommy L. Fite, by and through his attorneys, ALMAND, ORSI & CAMPBELL, PLLC, and for his Brief in Support of Petition for Writ of Prohibition states:

The Arkansas Supreme Court is the Court of original jurisdiction for filing petitions for prohibition directed to the state or county officials or to circuit courts. AR Sup. Ct. R. 1-2(3). Rule 6-1 of the Arkansas Supreme Court Rules provides that proceedings for extraordinary writs like Writs of Prohibition are started by filing an original petition for the Writ in the Arkansas Supreme Court.

The pleadings from the circuit court, including the certified exhibits from circuit court, make up the record for the Writ. AR Sup. Ct. Rule 6-1(a)(1). *The Wise Company, Inc. v. Clay Circuit*, 315 Ark. 333, 869 S.W.2d 6 (1993). *Pike v. Benton Circuit Court*, 340 Ark. 311, 314, 10 S.W.3d 447, 448 (2000) (quoting *State v. Circuit Court of Lincoln County*, 336 Ark. 122, 125,

984 S.W.2d 412, 414 (1999)).

A writ of prohibition is extraordinary relief which is appropriate only when the trial court is completely without jurisdiction and there is no other remedy such as an appeal available.

Henderson Specialties, Inc. v. Boone County Circuit Court, 334 Ark. 111, 971 S.W.2d 234 (1998); *Nucor Holding Co. v. Rinkines*, 326 Ark. 217, 931 S.W.2d 426 (1996); *West Memphis Sch. Dist. No. 4 v. Circuit Court*, 316 Ark. 290, 871 S.W.2d 368 (1994) (quoting *National Sec. Fire & Cas. Co. v. Poskey*, 309 Ark. 206, 828 S.W.2d 836 (1992)).

In *Willis v. Circuit Court of Philips County*, 342 Ark. 128, 27 S.W.3d 372, 2000 Ark. LEXIS 421., the Phillips County Circuit Court was without jurisdiction to hear the original claims because not all of the indispensable parties had been joined in the action and because the proper venue was in Pulaski County, not Phillips County where the action was actually brought.

Under the particular circumstances of this case, a writ of prohibition is the appropriate remedy because Mr. Fite, the Petitioner, was not properly before the Court in the mandamus action due to a failure of service. He cannot be heard in a timely manner on appeal given the delay with which the mandamus was brought in Pulaski County against him. There is simply no time for even an expedited appeal to be heard prior to the election with only three business days between the release of the unsigned, unfiled decision on the writ of mandamus and election day.

Absentee ballots were sent to voters requesting them more than a month before Mr. Grulkey filed his Complaint for Mandamus and Declaratory Judgment and early voting has been ongoing since two days prior to the filing of the Petition for Writ of Mandamus in Pulaski Circuit No. CV 2010-6013.

Arkansas Code Ann. §7-5-203 (Supp. 2009) requires that at least seventy (70) days prior

to a general election, the Secretary of State is to certify the county election commissions the names of all of the candidates who are to be voted on in that county. The only candidates not to be included on these lists are those who have voluntarily withdrawn their names from consideration as candidates. The Secretary of State certified Mr. Fite's name to Crawford and Franklin Counties on July 28, 2010. Both of those counties make up House District 83.

Thirteen days before the general election, on October 20, 2010, Respondent Michael Grulkey filed a "Complaint for a Writ of Mandamus and Declaratory Judgment and Motion for an Expedited Hearing" in the Circuit Court of Pulaski County, Arkansas, 13th Division, alleging himself to be a resident and registered voter of Arkansas's State House District 83. (R. 1) In his "Complaint for Mandamus" etc., Respondent Grulkey claimed his purpose was to challenge the qualifications and eligibility of Petitioner Tommy L. Fite as a candidate for office.

Any suit to have a candidate declared ineligible for the office he seeks must join that candidate as a party, and must notify him of the suit by proper service of process. Without the participation of the person whose candidacy is being challenged, no court can provide complete relief. Obviously the candidate has an interest in how the matter is decided. He cannot protect that interest unless he can participate in the lawsuit. Under Ark. R. Civ. Proc. 19 (2010), he must be joined properly as a party to the action for the matter to go forward.

Tommy L. Fite was not joined properly. He was never served with the Petition. Instead, the Petitioner Grulkey in the Mandamus suit claimed that Mr. Fite lived with his very elderly father and that leaving a copy of the Petition for Mandamus with Mr. Fite's elderly father was good service. It was not.

On its website, the Secretary of State maintains the addresses of the candidates for office

as they have listed them at the time of filing. At the time of filing, Mr. Fite, the candidate, listed his address as 531 Pine Cliff Drive, Van Buren, Arkansas. The petitioner in the Mandamus matter served Mr. Fite's elderly father at 442 Beverly Hills Drive, Van Buren, Arkansas - a different address entirely. At no time was the Beverly Hills Drive address listed with the Secretary of State as the proper address for Candidate Fite. Had the petitioner in the Mandamus action bothered to look at the Secretary of State's website, he would have found the candidate's correct address. Instead, he served the wrong individual then persisted in his wrongheaded claim despite easily located evidence to the contrary.

Candidate Fite filed a Motion to Quash (R. 14) due to insufficiency of service of process pursuant to Rule 12(b)(5) of the Arkansas Rules of Civil Procedure (2010). He had become aware of the Petition for Writ of Mandamus only because it was reported in the news. His Motion to Quash was filed half an hour before the hearing was to start, because he did not have time to pull it together any sooner. He did not know all of the allegations against him and was ill-prepared to appear in court to defend himself.

Only because his attorney was able to speak with the complainant's attorney prior to the hearing was Mr. Fite able to determine that his father, whose name is similar but not the same, apparently received the lawsuit instead of himself.

Tommy L. Fite was not properly joined as a respondent in the Writ of Mandamus heard by Judge Kilgore in the Pulaski County Circuit Court in CV 2010-6013. He was not served with the summons. Judge Kilgore's opinion (R. 47) made no finding that the failure of service was excused for any reason. The Circuit Court should not have heard the Writ of Mandamus unless and until Mr. Fite had been served properly and had an opportunity to study the pleadings with

his attorney.

In the face of overwhelming evidence to the contrary, the Circuit Court made the finding that Mr. Fite and his father shared a residence, presumably at the home of the elder Mr. Fite. Despite the consistency of the candidate Fite having listed his address with the Secretary of State at the same address as he testified was his home, the same address his daughter testified was his home, the same address that appeared as his address on the certificates of service on every pleading filed by any party except Mr. Gulkey throughout the entire record (R. 10, 13) who attempted to serve him personally, the judge chose to believe the one person with an agenda to have his mistake as to the actual address covered up.

While a trial court normally has the benefit of being in a position to better discern the credibility of witnesses, the overwhelming nature of the consistent understanding among all the parties to this suit save one that Mr. Fite lives not with his father on Beverly Hills Drive but in his own home on Pine Cliff Drive in Van Buren tends to cause one to pause and question the motives of the sole dissenter. One has to wonder if that dissenter's goal might be to deprive Mr. Fite and the Republican voters of the 83rd District of their due process.

Due process requires that when one is the defendant or respondent in a lawsuit, one has the opportunity to respond and to be heard in a meaningful time and in a meaningful manner. *Jewell v. Fletcher*, 2010 Ark. 195 (Ark. 4/29/2010); *Sims v. Moser*, 373 Ark. 491, 284 S.W.3d 505 (2008) (citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)). That simply did not happen in the mandamus action in Pulaski Circuit. Mr. Fite had no time to marshal his defense, no time to study the pleadings or the law germane to the issues on which his candidacy hinged, and no opportunity to pull together a cogent argument, or find witnesses in his

favor, or prepare for a hearing.

In his Motion to Quash (R. 14) Candidate Fite asked that the hearing be removed from the docket in order for him to be accorded due process. The court extended the hearing only to the following day, so Mr. Fites's request was mostly denied. By extension, then, the electorate of Arkansas House District 83 is being denied the opportunity to vote for a candidate that has already been certified by his political party to the Secretary of State, qualified in a primary election, been certified the primary winner by the Secretary of State at least seventy (70) days prior to the general election, and whose candidacy was allowed to stand until beyond the eleventh hour. Even a candidate who has died in the last week will not have his name stricken from the ballot despite the literal impossibility of his being able to assume office should he win his election. Tommy Fite should not have his name stricken, either.

This close to the general election a pre-election challenge is not reasonable. Arkansas Code Ann. 7-5-202 (Repl. 2000) requires the County Board of Election Commissioners to give public notice of the candidates and the offices they seek at least twenty days prior to a general election. Since the challenge to Mr. Fites's candidacy was made within this time frame, and made too late to change the ballots, the challenge was untimely made. The general election is to be held Tuesday, November 2, 2010. The challenge was not made to Mr. Fite's candidacy until 13 days prior to the election, which was within the window of time after which the ballots had been made ready and public notice given in House District 83.

If Mr. Fite's opponent for House District 83 seeks to win election other than by a majority of votes, the time for doing so has long passed. Mr. Fite is a party nominee certified by virtue of his having received a majority of the votes cast for the office, or as an unopposed candidate, at

the May 18, 2010, primary election held by the political party in the manner provided by law. Furthermore, he was certified to the Crawford and Franklin County election commissions by the Secretary of State on July 28. His name appears on the appropriate absentee ballots for his district, and voters have already voted either for or against him in the election since early voting began October 18, two days before the Complaint for Mandamus and Declaratory Judgment was filed. Early voting and absentee voting has continued unabated since.

Now the Circuit Court of Pulaski County would disenfranchise the remaining voters of House District 83 who might want to vote for Mr. Fite, or for a Republican candidate. There is no time to replace Mr. Fite on the ballot with another qualified candidate at this point. Mr. Fite's opponent will effectively be allowed to run unopposed, gaining office by nefarious means unbecoming to any truly democratic process.

Members of the military, including those serving in Iraq and Afghanistan, civilians living abroad, college students living out of state and voting perhaps for the first time, and others who simply cannot be in Crawford County or Franklin County on November 2, 2010, will forfeit their constitutional right to vote because Mr. Fite's opponent chose to be undemocratic about how he would win an election. All of these people stand to be deprived of their due process unless the Arkansas Supreme Court grants Mr. Fite's Writ of Prohibition and reinstates him to the ballot, countermanding the holding of the Pulaski County Circuit Court that service on someone else at that person's home constitutes good service on Mr. Fite.

Unless the Supreme Court recognizes that the rest of the Circuit Court's Writ of Mandamus and Declaratory Judgment is poisoned by that erroneous holding, the voters of House District 83 will not be able to vote for the candidate of their choice. Instead, they will be left with

the sour taste of a blatantly stolen election. One cannot imagine how Mr. Fite's opponent could find any satisfaction in such an egregious theft.

This case is not unlike *Ball v. Phillips County Election Commission*, 364 Ark. 574, 579, 222 S.W.3d 205, 208 (2006), in which the Arkansas Supreme Court held:

The candidates' names were certified on or before August 6, 2004. Ball offers no compelling reason for waiting [until eight days prior to the election] to file her petition for writ of mandamus and declaratory judgment to remove Jones' name from the ballot. If Ball had filed her suit within this ... period ..., there would have been ample time in which to resolve all relevant issues raised by Ball prior to the September 21, 2004 election. ... Ball's inability to have Jones' name removed from the ballot in the 2004 School District Election was due to her decision to wait until eight days before the election to file her petition.

Thirteen days prior to the election is no better than eight days prior to it, especially where the changing of ballots and the counting of electronic ballots is concerned. In other words, it is much too late to redo the ballots and all electronic ballots must be counted. That is simply the way the system works. Judge Kilgore's Writ ignores this ticklish detail.

In its answer to the Petition for Writ of Mandamus (R. 21), the Franklin County Election Commissioners explain these facts to the Pulaski Circuit Court. The explanations are ignored in favor of facts, like Mr. Fite's actual residence, that the Court preferred to believe in spite of the evidence, however.

Arkansas Code Ann. 7-5-202 (Repl. 2000) requires the County Board of Election Commissioners to give public notice of the candidates and the offices they seek at least twenty days prior to a general election. Since the challenge to Mr. Fites's candidacy was made 13 days prior to the election, it was untimely made.

The general election is to be held Tuesday, November 2, 2010. There is no way to change

the ballots thirteen days prior to the election, and all the ballots that are cast must be counted. Again, this is true even in the districts of our State in which a candidate may have died in the week before the election. The bottom line is that the Circuit Court's Writ of Mandamus and Declaratory Judgment simply cannot be complied with.

Furthermore, pursuant to Ark. Code Ann. 7-5-404 (Supp. 2009), absentee ballots must be mailed at least seven (7) days before an election. Members of the military as well as expatriated citizens received these ballots with Mr. Fite's candidacy listed on them already. The Circuit Court's Writ of Mandamus and Declaratory Judgment cannot possibly recall these ballots. Absentee voters will essentially be disenfranchised by the portion of Judge Kilgore's Writ of Mandamus and Declaratory Judgment that Mr. Fite be excluded from election ballots. The only way to accomplish excluding him from the ballots would be to throw out the ballots on which his name appears, eliminating those ballots on which soldiers, sailors, expats, and others out of the country at the time of the election voted. One cannot imagine that the law means to disenfranchise any member of the armed services who is engaged in protecting the very rights and privileges voting protects.

Other absentee ballots can be mailed thirty-five days in advance of the election according to Ark. Code Ann. 7-5-407 (Repl. 2000). Again, the only way to accomplish Judge Kilgore's mandamus of excluding Mr. Fite from these absentee ballots would be to throw them out, thereby disenfranchising anyone availing themselves of the absentee voting method.

Pursuant to A.C.A. § 7-5-801 (Repl. 2000), a complaint contesting the certification of a candidate, or contesting the certification of the vote count, must be filed within twenty days of the certification complained of.

Petitioner Fite was certified as the Republican Party's nominee on July 28, 2010. Mr. Grulkey filed his Complaint for Writ of Mandamus and Declaratory Judgment on October 20, 2010. (R. 1) His action was untimely by 64 days, and as such, the Pulaski County Circuit Court had no subject matter jurisdiction over Grulkey's action. The Writ of Mandamus and Declaratory Judgment (R. 47) issued by Judge Kilgore after the October 27, 2010 hearing is void *ab initio*. The officials charged with carrying it out should be prohibited from doing so. *Tittle v. Woodruff*, 322 Ark. 153, 907 S.W.2d 734, 735-6 (1995).

A court does not have subject matter jurisdiction to hear any pre-election contest following the 20th day after a certification of a party's nominee. The remedy lies elsewhere after the twentieth day. Subject matter jurisdiction cannot be waived, and can be raised at any time. *Cincinnati Ins. Co. v. Johnson*, 367 Ark. 468, 241 S.W.3d 264 (2006) *Zolliecoffer v. Post*, 371 Ark. 263, 265 S.W.3d 114, 2007 Ark. LEXIS 531 (2007); *Pederson v. Stracener*, 354 Ark. 716, 719, 128 S.W.3d 818, 820 (2003).

In its Writ of Mandamus and Declaratory Judgment (R. 47), the Circuit Court stated that Mr. Gulkey "orally amended his request to also seek to enjoin the County Election Commissioners from counting any votes for Mr. Fite and to enjoin the Secretary of State from certifying an election which allowed Mr. Fite to be the prevailing candidate."

A review of the record of pleadings will demonstrate that there was, in fact, no oral amendment. Mr. Grulkey had actually filed a *written* motion asking for *ex parte* relief along these lines (R. 35) and then, during the actual hearing, withdrew his motion. For some reason, the Circuit Court granted the withdrawn motion anyway.

Unfortunately, the Circuit Court ordered an impossibility. In its answer to the Petition for

Writ of Mandamus, the Franklin County Election Commissioners explain these facts to the
Pulaski Circuit Court (R. 21-22):

- i) The election in Franklin County is being conducted through the use of electronic voting machines and, therefore, it is impossible at this late date to remove a name from the ballot; and
- ii) To the best of the Defendants' knowledge and belief, it is not possible not to count votes cast for a name on the ballot; and
- iii) Under A.C.A. §7-5-701, certification of the results of the election to the Secretary of State may occur up to fifteen (15) calendar days after the election.

Ignoring the facts as pleaded by the Franklin County Election Commissioners, ignoring the withdrawal of the motion for ex parte relief, and disregarding the impossibility of complying with the Writ of Mandamus, the Circuit Judge nevertheless issued the Writ.

The Officials charged with complying with this impossible Writ of Mandamus and Declaratory Judgment should be prohibited from doing so.

Respectfully submitted,

THOMAS LYLE FITE

By and through his Attorneys,
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By: William G. Almand by
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CERTIFICATE OF SERVICE

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