

# The Tennessee Journal

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## Will Bloomberg gambit pay off in Tennessee on Super Tuesday?

Tennessee is hardly uncharted territory when it comes to receiving attention from presidential hopefuls, but over the last several cycles it has been Republicans who have made the bigger effort to court primary voters in the state than Democrats.

This time around, Tennessee has become a top priority for one candidate in particular: Democrat Mike Bloomberg, who is making his latest visit to the state on Friday, his fourth since entering the race. The former New York mayor has spent \$7.8 million through the middle of this week on broadcast TV, cable, digital, and radio ads in Tennessee, according to Advertising Analytics. Bloomberg has also hired more than 40 staffers and opened seven campaign offices around the state.

Bloomberg has been rolling out a series of blast-from-the-past endorsements, including from former U.S. Reps. Harold Ford Sr. (D-Memphis) and John Tanner (D-Union City), along with former mayors Randy Tyree of Knoxville and Jon Kinsey of Chattanooga. Those endorsements are likely aimed at undercutting the narrative of former Vice President Joe Biden having a lock on the state's Democratic establishment.

The Bloomberg campaign has focused on under-the-radar states that could net a strong haul of delegates on Super Tuesday. The primaries in Alabama, Arkansas, Oklahoma, and Tennessee, where Bloomberg has focused much of his efforts, have a combined 294 delegates on offer. That's 66 more than Texas and 122 fewer than California, which also vote Tuesday.

While Bloomberg's heavy campaign spending activity in Tennessee is unusual, it still pales in comparison with the barrage voters were subjected to in the 2018 U.S. Senate race in which Republican Marsha Blackburn and her allies dropped a dizzying \$29 million and Democrat Phil Bredesen and his supporters spent an eye-popping \$23 million. Given that experience, Tennessee voters may be numb to the occasional Bloomberg ad.

Ad spending has been far more modest among the other Democrats: about \$770,000 by Amy Klobuchar, \$568,000 by Bernie Sanders, \$563,000 by Tom Steyer, \$446,000 by the pro-Elizabeth Warren Persist PAC,

\$114,000 by Biden, and \$37,000 by Pete Buttigieg. Klobuchar had rallies scheduled for Nashville on Friday and Knoxville on Saturday, while surrogates made appearances for other candidates. They included Atlanta Mayor Keisha Lance Bottoms campaigning in Nashville for Biden on Friday. Earlier in the week, Sanders' wife, Jane, visited Nashville and actress Ashley Judd campaigned for Warren in Nashville and Memphis.

**Early indicators.** This year's early voting turnout was 13% below 2016 levels, a decrease attributable to the 90,000 fewer Republicans who cast ballots in a primary in which President Donald Trump faces no serious opposition. Democrats trying to influence the wide-open presidential nomination contest saw an increase of 41,000 voters, a 30% jump over 2016.

While Republicans outvoted Democrats by a 33 percentage point margin four years ago, the GOP advantage was eliminated this time around. Democrats made up 50.3% of the early vote and represented a majority of the turnout in 14 counties, compared with just four counties in 2016.

Without reliable polling, it's not immediately clear which Democratic candidates might benefit most from the early voting higher turnout. But perhaps historical performance will serve as a guide.

Democrat Hillary Clinton won the state with 66% of the vote in 2016, enough to garner 49 delegates. Sanders, who is the leading Democrat so far this year, received 32% of the vote and 22 delegates four years ago. President Donald Trump gained 39% in the GOP primary, winning 94 of 95 counties. Ted Cruz was second with 25%, and Marco Rubio (who carried Williamson County) was third with 21%.

Some of Tennessee's early voting patterns appear promising for Sanders. Democratic turnout has been substantially higher in counties where he did relatively well in 2016, such as in Washington — one of three counties where Sanders beat Clinton that year — and in Knox, where he fell just 3 percentage points short last time around. Both are home to universities, where Sanders has strong followings around the country.

Clinton in 2016 trounced Sanders in Shelby and Davidson counties, the state's most heavily Democratic areas, winning a respective 80% and 65% of the vote. Both counties had originally been expected to solidly support Biden this time around, but his lackluster showings in early primaries have contributed to flagging enthusiasm for the former vice president.

The Biden campaign is banking on a strong performance in Saturday's primary in South Carolina — the first contest featuring a major African-American population — to turn the tide for Super Tuesday states casting ballots next week. But that will be too late for those who have voted early — which was about one out of every three Democrats in the 2016 primary.

**Democratic surge?** It was an unexpected development for Democrats, a party grown accustomed to lackluster turnout at the polls, to outnumber Republicans in early voting. But before Democrats get too excited about their 2,429-ballot margin through the 12-day period, it's worth remembering that incumbent presidents have inspired far more meager turnouts in the past.

About 167,000 Republicans cast ballots in early voting this year, presumably the vast majority of them for Trump. That compares with just 99,000 Republican ballots, or 21% of all the votes cast, in the 2004 primary when President George W. Bush was seeking his second term. Bush nevertheless went on to carry the state over Democrat John Kerry 57% to 43%.

Here's a closer look at the top counties where Democratic turnout rose the most compared with 2016:

County	Dem change	GOP change	Total change	GOP %	Dem %
Shelby	7,864	-7,710	154	22%	78%
Knox	7,081	-8,744	-1,663	51%	49%
Davidson	6,682	-9,698	-2,816	21%	79%
Williamson	3,921	-4,259	-338	48%	52%
Hamilton	3,380	-3,686	-306	43%	57%
Rutherford	2,227	-6,399	-4,172	46%	54%
Wilson	1,1612	797	2,487	66%	33%
Washington	1,366	160	1,496	65%	35%

**From the courts**

**Supreme Court in 3-2 ruling upholds state cap on noneconomic damages**

A narrowly divided state Supreme Court has ruled that a Tennessee law placing caps on noneconomic damages in civil lawsuits does not violate the right to a jury trial guaranteed by the state constitution. The decision upholds a key component of the tort reform package championed by former Gov. Bill Haslam and his then-legal counsel Herbert Slatery, who is now the Supreme Court-appointed state attorney general.

Justices Jeff Bivins, Holly Kirby, and Roger Page, each Haslam appointees, formed the majority. The dissenters were Justices Cornelia Clark and Sharon Lee, appointees of former Democratic Gov. Phil Bredesen.

The law enacted in 2011 set a \$750,000 limit for non-economic damages — for such things as pain, suffering,

disfigurement, or injury to reputation. The statute also limited punitive damages to double the compensatory damages or \$500,000, whichever is greater. The latter has been found to violate the state constitution by the 6th Circuit U.S. Court of Appeals.

Critics of the federal decision argued the panel erred by declining to ask the state Supreme Court to weigh in on Tennessee constitutional questions. But the nation's highest court in December declined to consider a challenge of the ruling in *Lindenberg v. Jackson National*.

This week's state ruling is in response to certified questions submitted by U.S. District Judge Eli Richardson after a jury had awarded a California woman named Jodi McClay \$930,000 in noneconomic damages — or \$180,000 more than the state cap — after a beverage cooler fell and crushed her foot at the Nashville airport.

Bivins wrote in the ruling that juries are not informed about the cap on noneconomic damages as they deliberate over awards. That extra step means plaintiffs have not lost their right to having juries decide the underlying facts of cases, he found. Bivins cited state Supreme Court rulings in Alaska, Idaho, Ohio, and Maryland that came to similar conclusions upholding the constitutionality of caps on noneconomic damages.

Clark wrote in her dissent that every version of the Tennessee Constitution since 1796 has declared "the right of trial by jury shall remain inviolate." The caps on damages amount to a "legislative usurpation of the jury's constitutionally protected fact-finding function," she wrote, citing similar rulings by high court counterparts in Alabama, Georgia, Kansas, Missouri, and Washington declaring that caps on damages violate their respective constitutions.

Lee questioned the need for the caps when Tennessee doesn't have a history of "runaway juries." In the five years before the tort reform law, the annual average award of economic and noneconomic damages was about \$299,000. In the five years after the new law went into effect, the average was nearly \$373,000. Lee said the judicial power to reduce jury awards is only permissible under the state constitution because plaintiffs who disagree with the modifications can seek new trials.

As for the disparity between the state ruling upholding noneconomic damages and the 6th Circuit decision throwing out the limits on punitive damages, Bivins stressed that federal decisions are not binding in state courts. He also declared the reasoning behind the *Lindenberg* decision to be "unpersuasive." But because the cap on punitive damages was not including in the pending case, "we express no opinion on this issue." It appears to be only a matter of time before someone makes sure to put that question to the high court.

**Appeals court.** The Governor's Council for Judicial Appointments has narrowed the field of 16 applicants to succeed retiring Appeals Judge Charles Susano Jr. to a panel of three for Gov. Bill Lee to choose from. The finalists are Chancellor Jerri Bryant of Athens, Circuit Judge Kristi Davis of Knoxville, and Circuit Judge Thomas Wright of Greeneville.

# Tennessee News Digest

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- Explosives maker Accurate Energetic Systems LLC announced a nearly \$10 million expansion and modernization of its 1,300-acre facility in Hickman and Humphreys counties, creating 80 jobs.
- Nashville has the country's second-hottest job market after Austin, Texas, according to the latest ratings by *The Wall Street Journal*. Memphis ranked 29th among the largest 381 metro areas. Among cities with fewer than 1 million

residents, the paper rated Jackson at No. 62, Clarksville No. 86, Chattanooga No. 99, and Knoxville No. 114. Johnson City got the state's worst ranking at No. 226.

- The Justin P. Wilson Cumberland Trail State Park is getting a 6,229-acre, or nearly 10-square-mile, addition. The acquisition will connect the Ozone Falls State Natural Area to the park. Plans call for the trail to run 300 miles from the Cumberland Gap to Chattanooga.

- The former home of *The Tennessean* and *Nashville Banner* will not, as widely speculated, be turned into a parking lot. The *Nashville Post* reports it will instead serve as a staging ground for nearby construction projects.
  - The Joint Center for Political and Economic Studies found Tennessee's congressional delegation is the only one in Washington without a person of color serving in a senior staff position.
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## Legislative roundup

### Lee goes great guns over permitless carry amid uneasy GOP relations

Second-year Gov. Bill Lee has been keeping fellow Republicans in the General Assembly off balance with his major policy initiatives. While many criticized his decision to keep Tennessee in the federal refugee resettlement program, the stage was overflowing with GOP supporters when he announced plans to file sweeping legislation aimed at curbing access to abortions.

Muttering has been on the rise among Republican lawmakers about Lee's efforts to extend 12 weeks of paid leave to state employees caring for a new child or ill family member. But the pendulum again swung toward the political red meat Thursday, when Lee announced he will lead efforts to do away with requirements to obtain a state-issued permit to carry handguns in public.

Lee was joined onstage by an overflow crowd of Republican lawmakers thrilled with his decision to take the lead on eliminating the permit requirements. The governor said the measure will also increase penalties and set mandatory sentences for stealing guns. The cost of the proposal wasn't immediately available.

The National Rifle Association is working closely with the Lee administration on the proposal. But the effort was panned Shelby County District Attorney General Amy Weirich, a Republican, who said removing permit requirements for open carry would create "incredible challenges for law enforcement."

Tennessee's longstanding handgun permit system requires background checks and eight hours of hands-on weapons training. About 653,000 Tennesseans, or 12% of the state's adults, were permit holders as of the end of last year. The state suspended or revoked 2,793 permits and denied 2,326 applications in 2019.

A law that went into effect on Jan. 1 created a two-tiered system. The old permits are now classified as "enhanced," while the new "concealed-only" permits can be obtained through an online-only course.

**Family leave.** Republican unease about Lee's family leave policy resulted in the governor withdrawing an executive order that would have put the program into effect for state workers starting on Sunday. He's now pursuing legislation to write the policy into law for executive, legislative, and judicial branch employees.

Beyond the lack of partisan enthusiasm for the plan (family leave proposals have traditionally been championed by Democrats), Republican lawmakers also chafed at the governor's claim that the change wouldn't come at any new cost to the state. The legislature's fiscal note on the policy change now pegs the cost at \$15 million per year, mostly to pay for overtime and temporary workers to cover for employees going on leave.

**Certificates of need.** New House Speaker Cameron Sexton's major priorities include an overhaul of what he sees as Tennessee's overly cumbersome certificate-of-need system for permitting new hospitals and medical facilities around the state.

The Crossville Republican's efforts are meeting resistance from the Tennessee Hospital Association, which prefers the current system. The THA this week launched what it calls a campaign to "engage and mobilize" hospital employees on healthcare issues in the state. The effort dubbed "We Care We Vote" is a not-so-subtle reminder to lawmakers that hospitals are top employers in many parts of the state.

**Literacy initiative.** Lee's plan to spend \$68 million on a new literacy initiative was lauded by both sides of the aisle when he first proposed it in his State of the State address earlier this month. But when the detailed legislation was finally unveiled this week, the plan suddenly received some pushback from education groups worried he was moving too quickly.

But Lee picked up an important ally in Sexton, with whom he hasn't necessarily seen eye-to-eye on other education issues so far. The governor and the speaker toured a Nashville elementary school on Thursday, and Sexton told *The Tennessee Journal* afterward that he was in "total agreement" with Lee on the literacy proposal. Sexton cited its focus on phonics at the earliest grade levels to promote reading proficiency.

Superintendents have also raised concerns about the legislation for proposing diagnostic testing for children in kindergarten through second grade. Testing currently begins in third grade. Lee said assessments are necessary to ensure the program is working. Sexton said he expects the administration to make a "great case" to lawmakers about why the tests are needed.

**Search warrant.** The FBI executed search warrants on the home and nursing school owned by state Sen. Katrina Robinson (D-Memphis) last week.

## Tennessee Notes & Quotes

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■ “Since I became governor, I’ve been to Korea, I’ve been to Japan, and I’ve been to, as I like to say, foreign countries on the West Coast, recruiting companies to locate their businesses here.” — *Gov. Bill Lee at an economic development announcement near Bucksport.*

■ The University of Tennessee’s board of trustees has planned a series of town halls to gather feedback on the recommended appointment of **Randy Boyd** to a five-year term in charge of the system after two years as interim president. The meetings are March 4 in Chattanooga, March 5 in Memphis, March 9 in Knoxville, March 10 in Martin, and March 11 in Nashville.

■ “The two most despised names in Tennessee right now are **Nancy Pelosi** and **Mitt Romney**. The president and I both talked about how we both supported **Mitt Romney** back in 2012 to defeat **Barack Obama**. And now it seems he’s become indistinguishable from Barack Obama. It’s like it’s one.” — *Republican U.S. Senate candidate Bill Hagerty, the finance chairman for Romney in 2008 and a national strategist for the Utah senator’s 2012 campaign.*

■ “She was totally biased.” — *President Donald Trump in a tweet about former Memphis school board member Tomeka Hart, who served as jury foreman in the trial and conviction of Roger Stone.*

■ “Both the prosecution and defense knew she was a former Democratic congressional candidate.... It is a disgrace for President Trump and his allies to question her honest service as a juror.” — *U.S. Rep. Steve Cohen (D-Memphis), who defeated Hart in 2012.*

■ Attorney **Jim Gilliland**, a co-chair of **Willie Herenton’s** transition team after he won election as the first black mayor of Memphis in 1991, has died at age 86. Gilliland later worked as general counsel to the U.S. Department of Agriculture and was an adviser to **Al Gore** for his 1988 and 2000 presidential bids. He also hired Memphis Mayor **Jim Strickland** to his first job.

■ “He was a great example of a lawyer who took leave from his private practice to serve this city and our country.” — *Strickland remembering Gilliland.*

■ “I am applying for the position of former director.” — *Ed Carter, the executive director of the Tennessee Wildlife Resources Commission since 2009, in announcing his plans to retire in May.*

■ This was **Chris Walker’s** last week as Gov. **Bill Lee’s** communications director. Walker had initially intended to depart the administration at the end of last year but agreed to stay on to bridge the gap until the return of successor **Laine Arnold** from maternity leave toward the middle of March.

■ The Reporters Committee for Freedom of the Press has hired Adams and Reese attorney **Paul McAdoo** to direct legal support for enterprise and investigative journalism in Tennessee as part of the group’s efforts to improve public records access and to challenge “overly broad” applications of law enforcement exemptions.

■ “If we want to talk about safety, somebody should amend this bill to say we need to ban drive-thrus. Because you cannot eat a taco well in a car.” — *State Sen. Jon Lundberg (R-Bristol) about his failed bill to dial back a ban on using mobile phones while driving.*

■ “Not many people in my district trust the government and they don’t trust the insurance companies. And when you put the two together, you’ve got a double negative.” — *Sen. Frank Niceley (R-Strawberry Plains) about the sale of driver’s license information.*

■ The revival of the *Nashville Banner* as a nonprofit online news organization is nearing its launch. Editor **Steve Cavendish** announced reporters will initially focus on state and local government, education, business, and criminal justice. Ex-WSMV anchor **Demetria Kalodimos** will serve as executive producer.

■ Social media attention wasn’t the only thing state Rep. **Kent Calfee** got from a *Tennessean* photo showing the Kingston Republican swigging from a Hershey’s chocolate syrup container he uses as a water bottle.

■ The Hershey Co. apparently took note of the publicity generated by **Calfee’s** unlikely turn as a viral sensation, sending a case of its chocolate syrup to his office in Nashville. Seeking to avoid a potentially sticky situation, Calfee said he got clearance to accept the gift from the Tennessee Ethics Commission after it was confirmed the company doesn’t employ a lobbyist in the state.

■ That doesn’t mean Hershey doesn’t have a presence in Tennessee. The company makes its Ice Breakers brand of gum and mints at a plant in Memphis. Which seems appropriate, as drinking from a chocolate syrup bottle could also work as a sort of icebreaker.

■ State Rep. **Joe Towns’** boycott of the Tennessee Registry of Campaign Finance appears to be over. The Memphis Democrat on Feb. 3 submitted seven overdue fundraising disclosures in which he detailed a total of \$11,750 in itemized contributions. Amid his refusal to file those and other reports, Towns has accrued \$65,000 in pending civil penalties. Candidates with unpaid campaign finance fines can’t run for re-election.

■ **Towns**, who paid off \$35,000 in previous fines to qualify for the ballot in 2012, told the *Daily Memphian* his lawyer has been in talks with Attorney General **Herbert Slatery’s** office to try to reach a settlement in time for the Registry’s last meeting before the filing deadline.

■ “I believe in miracles.” — *Towns on his prospects of striking a deal and qualifying for re-election.*

■ A bill to allow a for-profit social club called The Register to apply for a liquor license is headed for its last committee hearing before a House floor vote. The establishment’s website touts “experience specialists” who can advise members on how to “buy a Lamborghini — with cash, credit card, or even the blockchain.”

■ Last week, we posited that the booze bill might better be applied to the Registry. **Joe Towns** might agree, so long as he can pay off his fines with funny money, too.