

## Judge: Voucher bill ‘horse trading’ caused unconstitutional law

A 1953 amendment to the Tennessee Constitution aimed at preventing state lawmakers from foisting their political agendas on local governments has undone Gov. Bill Lee’s school voucher law — at least for now.

Nashville Chancellor Anne Martin on Monday ruled the education savings account law had run afoul of the home rule amendment by applying only to Nashville and Shelby County without giving local governments or voters a say. State Attorney General Herbert Slatery’s office filed an appeal Wednesday, arguing education policy falls solely within the purview of state government and that home rule protections don’t apply.

Martin’s order focused on the home rule case made by Metro Nashville Legal Director Bob Cooper, himself a former state attorney general. The ruling followed an all-day video conference hearing last week that also included representatives of a slew of organizations from the left and right of the political spectrum. The judge put most of those groups’ legal motions on hold while the state pursued its appeal of her home rule decision.

In the 30-page order, Martin delved into the legislative history of the bill that narrowly passed last year. A close inspection of the record shows lawmakers whittled away at the scope of the measure to ease individual members’ worries it might apply to counties outside of Nashville and Shelby. She wrote that other counties were removed to “satisfy legislators” rather than to “enhance the merits” of the bill.

Rep. Matthew Hill (R-Jonesborough), a convert to the bill after long espousing opposition to the concept of school vouchers, is quoted in the ruling making a political argument on the House floor for approving the bill because it would only apply to “children in those deep-blue metropolitan areas.”

The deep division among the 73 Republican House members over the bill was put on full display when it came up for its first full floor vote. Following a spirited debate, the bill received 49 votes in favor — one short of the minimum needed to pass. Under normal circumstances, that would have meant the bill had failed. But then-House Speaker Glen Casada (R-Franklin) kept the

board open for 40 minutes while making desperate entreaties to lawmakers to have a change of heart. He found one in Rep. Jason Zachary (R-Knoxville), who said he reversed his vote after being assured Knox County would be removed from the bill.

The ruling cited other Republican lawmakers making similar statements about supporting school vouchers only because their home districts would be excluded. The “horse trading” over the bill “resulted in an act that, in form and effect, is local,” Martin said. While the legislature designated the bill to be a public act, that classification is “irrelevant” if it is local in application and therefore subject to home rule protections, she found.

Martin noted it was undisputed that the education savings account law “can only *ever* apply” to schools in Nashville and Shelby County because the criteria had been frozen based on school performance in 2015, 2017, and 2018. Since those results can’t change, no school districts can either be added or subtracted later.

**Crisis averted.** In ruling the law unconstitutional, Martin enjoined the state from further implementation of the program. So it came as a shock when Lee told reporters Tuesday he would continue to encourage parents to apply for vouchers while a legal challenge was underway. Talk of a miniature constitutional crisis was averted when Slatery’s office filed a late-night request for Martin to issue a stay on her ruling while the state pursued its appeal. Lee’s office went a step further on Wednesday by issuing a statement that it would put voucher matters on hold while the issue was hashed out.

The state had received 1,825 applications on behalf of 2,648 students as of Wednesday. The deadline to apply was Friday, and the program is capped at 5,000 students in year one. About two-thirds of applications have been deemed incomplete, and defendants argued the injunction would prevent the state from working with those parents to submit follow-up paperwork to qualify.

**No offense.** Following a hearing on Thursday, Martin declined the state’s motion to lift the injunction. She took state officials to task for failing to notify parents of the pending legal challenge and that the program had

been ruled unconstitutional. Martin said the state's position was confusing to parents and showed "a disregard of the court and the rule of law." The judge was less stern about Lee's comments, saying she took no offense because she assumed he "was not prepared for the question" posed at a coronavirus press conference.

**Constitutional convention.** The state's post-Civil War constitution was adopted in 1870. The first effort to amend the document occurred 17 years later, when a proposal to ban the sale of liquor in the state was placed on the ballot. In a sign of things to come, voters defeated the measure 55% to 45%. They also turned back the next 12 proposed amendments, in the process making it the country's oldest unchanged constitution by the early 1950s. That's when voters finally approved a constitutional convention to propose a series of changes.

The amendments ultimately approved by voters in 1953 included lengthening the governor's term from two years to four, establishing line-item veto power (but banning pocket vetoes), allowing mergers of city and county governments, banning poll taxes, and eliminating obsolete language limiting the right to vote to men.

The subject of extending greater home rule powers caused the most debate at the constitutional convention, but opposition failed to materialize at the ballot box as the change was approved with over 70% of the vote. The overwhelming approval reflected a sentiment summed up in an editorial in the *Knoxville News Sentinel* at the time that the update was needed to "make it tough on city charter meddlers in Nashville."

State Supreme Court Justice A.B. Neil told the delegates to the constitutional convention the home rule question would be key to their deliberations. The General Assembly had handed down "too much unwise local legislation" over the years, the justice said, adding that many of those acts had "no merit other than to serve the basest ends in partisan politics."

In a historical twist, the president of the 1953 constitutional convention was Prentice Cooper, a former governor who opposed the home rule amendment. Cooper, who died in 1969, was the father of Nashville Mayor John Cooper, who has led the charge to dismantle the voucher law on the basis of home rule violations.

### **From the campaign trail**

## **Groups sue to expand access to absentee ballots amid COVID-19**

A federal lawsuit filed in Nashville seeks to lift Tennessee's limitations on voting by mail during the coronavirus pandemic. Under current law, allowable reasons for obtaining absentee ballots include being over 59 years old, traveling outside the home county during the election, and receiving a doctor's certification of a medical reason for being unable to vote in person.

The Lawyers' Committee for Civil Rights Under Law and Campaign Legal Center allege the state has some of the nation's most restrictive rules for voting by mail and argue Tennesseans should be able to cast ballots "without subjecting themselves to unnecessary exposure to a

pandemic disease." President Donald Trump opposes the expansion of voting by mail. Friday was the first day to request absentee ballots for the Aug. 6 primary.

**Retro support.** When Bill Hagerty was seeking U.S. Senate confirmation to become ambassador to Japan in 2017, he had to go out of his way to assure skeptical Democrats that as a top transition official for President-elect Donald Trump, he had absolutely no role in vetting Michael Flynn for his short-lived position as national security adviser. Flynn resigned after just 24 days on the job and later pleaded guilty to lying to FBI agents about his conversations with a Russian diplomat.

Federal prosecutors this week dropped criminal charges against Flynn. Hagerty, who is now running for the U.S. Senate on a platform largely consisting of his unlimited support for the president, rushed to laud the decision as an exoneration of Flynn "after years of political harassment and abuse."

**Roe seat.** Kingsport pharmacist Diana Harshbarger received the endorsement of the national Value in Electing Women PAC in her bid for the Republican nomination to succeed retiring U.S. Rep. Phil Roe (R-Johnson City). The super PAC supported Tennessee candidates Diane Black, Marsha Blackburn, and Ashley Nickloes in 2018. Sixteen GOP candidates are running in the 1st District. Harshbarger and former Roe intern Nichole Williams are the only women in the contest.

**Gresham seat.** In the only open race for the state Senate, Page Walley and Jai Templeton are vying for the Republican nomination to succeed retiring Sen. Dolores Gresham (R-Somerville) in rural western Tennessee. Templeton, a former agriculture commissioner from McNairy County, named a leadership team that includes former state Rep. Barrett Rich as co-chair and Layne Provine and Tommy Hopper as consultants. Walley, a former state representative from Hardeman County, released a 54-member "grassroots leadership team" from each of the district's eight counties. Bob Davis and Stoneridge Group of Georgia are consulting.

**Left hook?** The Middle Tennessee chapter of Our Revolution, which grew out of Bernie Sanders' 2016 presidential campaign, has made a series of endorsement in federal and state races. Progressives were excited about Sanders' prospects in Tennessee's presidential primary in March, only to see him slip to a distant second-place finish to former Vice President Joe Biden, who is now the presumptive nominee.

At the top of the ticket, Our Revolution gave the nod to little-known Robin Kimbrough. The chaplain at Meharry Medical College was a late entrant into the Democratic primary for the U.S. Senate seat being vacated by Lamar Alexander (R-Maryville).

Nashville attorney James Mackler has been the top fundraiser among Democratic candidates, bringing in \$1.6 million since joining the race. He's spent \$1.1 million and had \$531,300 remaining at the end of the first quarter. Mackler has gained the endorsements of the Democratic Senatorial Campaign Committee and the VoteVets political action committee.

# Tennessee News Digest

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- A 67-year-old inmate at the Trousdale Turner Correction Center became the first Tennessee prisoner to die of COVID-19. About 2,000 state prisoners have tested positive, though officials said nearly all of them were asymptomatic.
- University of Tennessee President Randy Boyd announced plans to have students return for on-campus instruction this fall. UT closed its campuses on March 11 and moved to online instruc-

tion for the remainder of the spring and summer semesters.

- While air travel has cratered amid the COVID-19 pandemic, Memphis International Airport has been insulated from some of the worst effects because of the relative strength of cargo revenues. Scott Brockman, the president and CEO of the airport authority, tells the *Memphis Business Journal* that cargo has been down between 5% and 10%. Memphis-

based FedEx has been accounting for 98% of landing activity at the airport.

- Vanderbilt University has received a \$20 million gift from the Oklahoma-based William K. Warren Foundation to study brain disorders. The newly named Warren Center for Neuroscience Drug Discovery employs about 100 scientists.
  - The Great Smoky Mountains National Park is reopening on Saturday after being closed since March 24.
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Our Revolution also made endorsements in Nashville primaries, choosing former public defender Keeda Haynes over incumbent U.S. Rep. Jim Cooper and supporting James Turner's challenge of state House Democratic Caucus Chairman Mike Stewart.

## Retroactive honor

### **New Pulitzer Prize winner Ida Wells was viciously targeted by Carmack**

Ida B. Wells, who gained international renown for her fearless reporting about lynching in Memphis and the South in the 1890s, has been awarded a posthumous Pulitzer Prize. Wells was the editor and a part-owner of the *Memphis Free Speech and Headlight*, where she wrote detailed reports and fiery editorials about extrajudicial violence against African-Americans.

One of Wells' chief critics was Edward Ward Carmack, the editor of the *Memphis Commercial* who went on to serve in the U.S. Senate and was later gunned down in Nashville by the son of a political rival. Carmack, a statue of whom stands outside the southern entrance of the state Capitol, ran vicious editorials about the *Free Speech* while it was operating and about Wells after she fled the city amid threats of personal harm.

Wells was born a slave in Mississippi during the Civil War and was a teacher in Memphis before she had a run-in with the Chesapeake & Ohio Railroad in 1884, when she was removed from a train for refusing to leave a first-class car (for which she held a ticket) that was reserved for white passengers.

State law required "accommodations equal in all respects and comfort" for first-class ticket holders, and a circuit judge found the other car was of lesser grade because it allowed "smoking and drunkenness." Wells was awarded \$500 (more than \$13,500 today).

The Tennessee Supreme Court overturned the decision three years later, finding the two rail cars were equipped alike and that Wells' had acted in bad faith by seeking to "harass" the railroad by creating conditions for which she could file a lawsuit. Wells gained acclaim in the black press for her firsthand accounts of the legal challenge, and began making writing about race issues her full-time job.

In the pages of the *Free Speech*, Wells took aim at a frequent pretext for lynchings. "Nobody in this section of the country believes the old thread-bare lie that

Negro men rape white women," she wrote in 1892. If white men weren't careful, Wells wrote, the public would reach conclusions that would be "very damaging to the moral reputation of their women."

Carmack's *Commercial* denounced the article as "dangerous sentiment," adding it was a testament to the patience of Southern whites that "a black scoundrel is allowed to live and utter such loathsome and repulsive calumnies." The editorial warned the writer's allegations had pushed public patience to the "very outermost limit." The paper ominously concluded with: "We hope we have said enough."

Wells fled town for the Northeast, where audiences were horrified by her speeches and pamphlets about lynching in the South. Her examination of statistics found rape wasn't even an accusation in two-thirds of the lynchings. Carmack's *Commercial* followed Wells' growing reputation with dread, publishing vitriolic stories denouncing her as a fraud and a liar.

Wells had never been the editor of the *Free Speech*, the paper claimed in late 1892, but rather the mistress (a "black harlot") of the man who was. In 1894, the *Commercial* took aim at "gullible audiences easily duped" by what it called Wells' slander while on a lecture tour of Great Britain. Mob justice was an "unfortunate state of affairs," the paper claimed, but it had grown out of the "noblest sentiments" of protecting white women's virtue against "an inferior race."

While the *Commercial's* editorials were carried in some British newspapers, they did little to change public opinion galvanizing against lynching in Memphis and the South. The damage to the city's reputation was a worrying development for cotton merchants in Memphis who feared it could hurt demand among their biggest clients in the English textile industry.

The *Commercial* absorbed the *Appeal-Avalanche* in 1894, and Carmack left to make a successful bid for Congress in 1896. In the ensuing years, the paper's editorial stance shifted to the point where the *Commercial Appeal* won a Pulitzer Prize in 1923 for its coverage of the bigotry and violence of the Ku Klux Klan, making it the first newspaper in the South to win the award.

Wells eventually settled in Chicago, where she helped lay the groundwork for the NAACP, though she later broke with the group because she disagreed with what she saw as a too cautious approach.

## Tennessee Notes & Quotes

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■ “The Tennessee Valley Authority plays in the big leagues. It is our country’s largest public utility, a \$10 billion company serving 10 million residents in seven states. Big utilities pay big salaries to attract the best executives.” — *U.S. Sen. Lamar Alexander in an op-ed in the Knoxville News Sentinel defending the \$8.1 million in annual compensation received by CEO Jeffrey Lyash, which President Donald Trump recently described as “ridiculous.”*

■ A whistleblower complaint first obtained by *The Washington Post* alleges “bureaucratic cycles of chaos” hampered efforts led by **Jared Kushner**, the son-in-law of President **Donald Trump**, to obtain medical supplies and protective equipment. Kushner’s team — derided by some federal employees as the “Slim Suit Crowd” — is made up of volunteers from consulting firms and government including **Brad Smith**, the director of the Centers for Medicare and Medicaid Innovation and a former aide to **Bob Corker** and **Bill Hagerty**. The complaint submitted to the U.S. House Oversight Committee on April 8 alleges Kushner’s team lacked experience or expertise to make significant headway. Volunteers were also instructed to prioritize “VIP” leads from the president’s allies, according to the complaint.

■ “President @realDonaldTrump and @jaredkushner have done a phenomenal job.” — *Hagerty on Twitter.*

■ “When they go back to work, what’s going to protect them from having their employees come back and sue them? It would be very difficult to prove where they got it.” — *U.S. Rep. Tim Burchett (R-Knoxville) to WBIR-TV about his bill to shield employers from “frivolous” lawsuits if they follow coronavirus guidelines.*

■ Former *Knoxville News Sentinel* and WBIR-TV government reporter **Mike Donila** has been named communications director for Knox County Mayor **Glenn Jacobs**. He succeeds **Rob Link**, a former campaign spokesman who will serve as communication and records coordinators for the county information technology department. Donila left journalism three years ago to become deputy director of the county Parks and Recreation Department, a position to be left unfilled.

■ “The COVID-19 global pandemic is unlike anything we’ve seen in our lifetimes and in our company’s 100-year history. And we’ve been through a lot — the Great Depression, a world war, regional conflicts, 9/11, the 2009 financial crisis, trade wars, and much more in between.” — *Eastman Chemical chairman and CEO Mark Costa in an earnings call with analysts.*

■ In a *Tennessee Journal* note last week, we botched our recap of attorney **John Ryder’s** office arrangement in Nashville. His law firm rents space from lobbying firm MNA Government Relations, not the other way around. We also overstated requirements to vote in person before being able to cast absentee ballots. It’s not required for all new voters, just those who haven’t submitted their first registration in person.

■ *The Tennessean’s* **Natalie Allison** started a recent article about the legislative response to the COVID-19 outbreak with a telling anecdote about just how far the pandemic was from the minds of state officials two months ago. The scene was a Feb. 27 press conference to announce Gov. **Bill Lee’s** proposal to do away with requirements to obtain a state-issued permit to carry handguns in public. Flanked by an overflow crowd of Republican lawmakers, Lee took a series of queries from reporters about the proposal. But when longtime WKRN-TV reporter **Chris Bundgaard** got his chance to ask a question, it was regarding a different subject. “About the virus,” he began, setting off laughter among those on stage about the unexpected topic.

■ Within the next few weeks, lawmakers were cutting more than \$1 billion from the state spending plan in anticipation of the crushing economic and health impact of the pandemic before calling a 75-day halt to the session while waiting for the storm to blow over. With a June 1 resumption rapidly approaching, some House Republican leaders are angling to get back to pre-coronavirus initiatives, including getting rid of the handgun permit requirement.

■ Former state Sen. **Bill Owen** (D-Knoxville) survived an effort to call for him to step down as a member of the Democratic National Committee over recent federal donations to Republican candidates and committees. Owen said the donations were made in the course of his lobbying activities. After a three-hour debate, the state executive committee voted 40-15 against the motion. Owen said he is closing his Washington lobbying practice to avoid future conflicts.

■ The Tennessee Bankers Association says financial institutions have provided \$8.95 billion in federal coronavirus relief loans to small business in the state.

■ Photos of Knoxville Mayor **Indya Kincannon** waving from the hatch of an armored personnel carrier during a parade for county health department workers drew unfavorable comparisons to **Michael Dukakis’** ride in a tank during the 1988 presidential campaign. The military vehicle, which was acquired by the Knoxville Police Department in 2003 through a federal grant, was criticized by progressive members at a City Council meeting for being used to intimidate protesters in the past. The mayor acknowledged the ride was a bad idea.

■ “I realize in hindsight that the optics weren’t optimal. It’s not the image we want to send.” — *Kincannon.*

■ Republican Party leaders from Coffee, Giles, Lawrence, Lincoln, Marshall, Maury, Perry, and Wayne counties signed on to a letter urging Gov. **Bill Lee** to drop all pandemic-related restrictions.

■ “The limitation on public gatherings to 10 persons not only hurts us economically, but as human beings. We are social creatures and always have been.” — *The local GOP leaders in the letter to the governor.*

■ Also hurting us as human beings: Coronavirus.