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Oops, I did it again? State hit for foot-dragging on judges' orders

The state was taken to task this week for failing to adhere to a judge's order requiring election officials to provide absentee ballots to any voter seeking one due to fear of contagion during the coronavirus pandemic.

Davidson County Chancellor Ellen Hobbs Lyle lowered the boom on Thursday, telling Secretary of State Tre Hargett's office "shame on you" for taking matters into its own hands by modifying her order without first seeking approval from the court.

State Election Coordinator Mark Goins late last week told county election commissions to "hold off" on following Lyle's order while his office revised application forms and sought a stay. The state's creation of a new category for voters unwilling to risk their health was criticized as sowing uncertainty about whether ballots would be counted if the decision is later overturned.

While Lyle declined plaintiffs' motion to impose sanctions for the unauthorized changes, she ordered the state to revise its forms to include concerns over COVID-19 among the existing qualifications for people too ill to vote in person. If her ruling isn't followed, she warned, criminal contempt proceedings could follow.

State Attorney General Herbert Slatery had taken the unusual step of issuing a press release blasting Lyle — with whom he had attended the University of Tennessee College of Law — for "replacing legislation passed by the people's elected officials" with her own judgment. Lyle, who was twice appointed to the court by Republican Gov. Don Sundquist in the 1990s, bristled at what she called the "cliché" of judicial activism, calling her order a "common-sense, conservative remedy."

It's not the first time the state has gotten into hot water by trying to skirt a judge's ruling. When Chancellor Anne Martin last month enjoined the state from implementing the new school voucher program, Gov. Bill Lee told reporters he would continue to urge parents to apply while Slatery mounted an appeal.

Martin took the high road in her response, saying from the bench she assumed the governor had not been prepared for the question. But she criticized other state officials for making public statements inconsistent with

her ruling, which she said indicated a "disregard of the court and the rule of law." Slatery's office sought to directly appeal the voucher ruling to the Supreme Court. The high court's refusal to take that unusual step had the effect of undoing Lee's plans for an accelerated start to the program this coming school year.

The attorney general asked for a similar intervention from the Supreme Court for his efforts to undo a local prosecutor's deal to exchange a convict's death sentence for life in prison. The justices declined, leaving the case to be heard in the Court of Criminal Appeals this week.

Death row inmate Abu-Ali Abdur'Rahman sought to reopen his case after the U.S. Supreme Court in 2016 overturned a Georgia man's death sentence after finding prosecutors there had illegally excluded African Americans from the jury. Prosecutors' notes from Abdur'Rahman's 1987 murder trial showed prosecutors treated potential jurors differently depending on whether they were black or white.

District Attorney General Glenn Funk last year struck a new deal in which the 69-year-old prisoner agreed to serve the rest of his life in prison and give up all other legal challenges in exchange for the death penalty being dropped. Deputy Attorney General Zachary Hinkle argued the trial court had short-circuited the process for revisiting a sentence. The only state official with the power to commute the death sentence is the governor, Hinkle argued. Abdur'Rahman's attorney, David Esquivel, said the state attorney general doesn't have the right to seek to overrule an elected local prosecutor.

Legislative update

Senate passes budget revisions, in holding pattern amid House standoff

The Senate on Thursday accomplished its goal of completing most of its business within two weeks of returning into session following a 75-day hiatus. The chamber passed revisions to the state's budget to account for the heavy economic damage inflicted by the coronavirus pandemic, making a handful of adjustments to the plan put forward by Gov. Bill Lee.

One major change includes allowing counties and cities to spend their share of a \$200 million pool to make up for revenues lost because of the pandemic. Lee had initially sought to earmark the money for local infrastructure, safety, and capital projects. The Senate also voted to cancel state lawmakers' pay raises scheduled to start in the next legislative session.

House Republican leaders declined Senate counterparts' proposal to recess to allow the lower chamber to catch up. That means the Senate is technically required to convene Monday but members have been told to stay home to deprive the chamber of a quorum.

The Senate has sought to focus on legislation related to the coronavirus and other time-sensitive matters (though the definition of the latter could sometimes be in the eye of the beholder). The House, by contrast, chose to pick up where it left off in March, reopening debate on a whole host of initiatives ranging from banning abortions to loosening gun laws.

It remains to be seen whether the House will be able to force the Senate to consider some of the bills it has deemed not to be critical during the pandemic.

Campaign finance

Durham a no-show as Registry turns back reduction of record penalty

The Tennessee Registry of Election Finance voted unanimously this week to reject a judge's recommendation it reduce by three-quarters the record \$465,000 civil penalty imposed on former Rep. Jeremy Durham (R-Franklin). The panel held the hearing without a legal motion or representation for Durham, who had emailed Registry executive director Bill Young over the weekend to request a continuance due to a work conflict.

Young, who has been acting as the Registry's attorney, told members he decided not to take up direct communication with a party in the case and that he was unsuccessful in attempts to reach Durham's attorney, Peter Strianse. After confirming Strianse hadn't filed a motion to withdraw as Durham's attorney, the panel voted to decline a continuance and proceed without the former lawmaker's side present.

Administrative Law Judge Steve Darnell in November found the Registry hadn't proven Durham intended to spend campaign money on personal expenses unrelated to his official responsibilities. Registry members said the burden of proof wasn't on them, but rather on Durham to show his spending was legitimate.

Durham was ousted from the state House in 2016 over allegations of serial sexual misconduct toward interns, lobbyists, and staffers. The next venue to appeal his campaign finance fines is in chancery court.

Casada. An audit of former House Speaker Glen Casada's political action committee revealed the Franklin Republican had failed to keep receipts for nearly \$100,000 in expenditures. Casada told the panel he had been unaware he was required to keep records for expenditures of less than \$100.

The audit was also unable to verify several expenditures, including for money paid to campaign staffers. Casada said he was unaware he was supposed to issue 1099 forms for workers paid more than \$600 per year. Chairman Tom Lawless told Casada he wouldn't want to be in his shoes if the IRS comes knocking.

The panel took up the case after discussing the Durham issue, and several members remarked that Casada's transgressions were minor by comparison. Registry member Tom Morton said he didn't see any intent by Casada to violate campaign finance laws. Added Lawless: "You did wrong, but you're not Jeremy." Morton and Lawless are Republican appointees.

The panel appeared to be settling on a \$10,500 penalty for Casada, but stopped short when members were informed they first had to hold another hearing on the issue next month before they could vote on fines.

Staples. Rep. Rick Staples (D-Knoxville) appeared before the Registry to ask members to approve his plan to pay back \$500 a month toward the nearly \$12,000 of his expenditures he has deemed "unallowable." It's an unusual case because the questionable spending was first identified in news reports, and the Registry hasn't conducted its own full investigation.

Staples told the panel he was taking action on his own behalf to combat what he considers a false narrative of his being "unethical, untrustworthy, almost criminal." Staples insisted he had never spent campaign money on himself, though records appear to show he charged hotel stays and meals on days when he was also receiving reimbursements from the state.

Staples' campaign spending began to come under scrutiny after he was evicted from his Knoxville home for failing to pay \$8,875 in rent. The lawmaker said he moved out of the property owned by Lawrence Thompson because of a dispute over fungus. Staples in 2018 reported what he called donations of \$1,300 to a Larry Thompson. In records submitted to the Registry, Staples said the money was in fact for "landscaping."

Registry members appeared pleased Staples had taken proactive steps to address the questionable spending but were uncertain about how to proceed. Since there was no pending case, they weren't in a position to vote on Staples' payback proposal. Taking the formal step of a show-cause hearing might reflect poorly on Staples during election season, said Registry member Hank Fincher, a Democrat. They agreed to put off a decision on next steps until next month's meeting.

Staples told the *Knoxville News Sentinel* after the meeting he found the panel to be supportive of his view of himself as an "ethical lawmaker."

Ketron. The Registry's deep dive into Casada's campaign finances consigned an audit of former state Sen. Bill Ketron (R-Murfreesboro) to the back burner. Lawless said the probe should now take precedence over any others still pending with the Registry. Ketron's audit had been complicated by fraud charges filed against his daughter, Kelsey, who had also served as the treasurer of his campaign committee.

Tennessee News Digest

- More than 1,000 members of the Tennessee National Guard's 278th Armored Cavalry Regiment and the 134th Air Refueling Wing returned Tuesday from a weekend deployment to support law enforcement in Washington, D.C.
- The 2020 Tennessee State Fair has been canceled over COVID-19 concerns. Officials cited construction of a professional soccer stadium on the Nashville Fairgrounds site as a reason for why the

event couldn't be carried out while adhering to social-distancing protocols.

- The U.S. Environmental Protection Agency has cleared the face masks Tennessee has purchased from North Carolina sock maker Renfro Corp. The coverings are treated with Silvadur 930 Flex, an antimicrobial the EPA considers a safe preservative for textiles.
- Richard Smith, the son of FedEx founder Fred Smith, has been named

regional president of the Americas for the Memphis-based shipping company.

- The guitar-shaped scoreboard at the Nashville Sounds' baseball stadium has been repaired after being damaged by a tornado in March.
 - Six Tennessee stores are among the 154 retailer JCPenney is closing as part of its Chapter 11 bankruptcy.
 - John Zomchick is the new provost of the University of Tennessee-Knoxville.
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From the campaign trail

Crowe turns to Saltsman in shake-up of stalled congressional campaign

State Sen. Rusty Crowe (R-Johnson City) has parted ways with his campaign consulting firm and is hiring prominent GOP operative Chip Saltsman in hopes of jump-starting his 1st Congressional District bid.

The good news, from Crowe's perspective, is that he's one of 16 Republican candidates running to succeed retiring U.S. Rep. Phil Roe (R-Johnson City), so a win could require a plurality of less than 20%. But the challenge will be for Crowe to leapfrog other serious contenders with just five weeks remaining until the start of early voting for the Aug. 6 primary.

Crowe had initially hired the ShellMillerSebastian firm, which had run Roe's successful campaign to upset sitting U.S. Rep. David Davis in 2008. But while GOP rivals like pharmacist Diana Harshbarger, former Kingsport Mayor John Clark, and state Rep. Timothy Hill of Blountville have been running TV ads, little has been seen of Crowe since he announced his bid. Matters haven't been helped by the pandemic, which has curtailed traditional door-to-door campaigning.

Saltsman is a veteran of hard-fought Republican primaries. While he was unsuccessful in securing the gubernatorial nomination for Randy Boyd in 2018, he guided David Kustoff's victory in a 13-way GOP primary in the 8th Congressional District in 2016 and secured his re-election against self-funder George Flinn in 2018. Saltsman also ran Chuck Fleischmann's successful primary campaign against Robin Smith in the open 3rd District race in 2010 and fended off spirited GOP challenges from Weston Wamp in 2012 and 2014.

Crowe won his first two state Senate elections in 1990 and 1994 as a Democrat, but his conservative leanings and Republican Don Sundquist's election as governor led him to reconsider. Saltsman, who was an aide to Sundquist before going on to become state Republican Party chairman, was part of the effort to persuade Crowe to switch parties and was on hand when the senator announced his change in allegiance in 1995 to give the GOP its first majority since Reconstruction.

Crowe's main advantages are his affable personality and long history of serving a large portion of the congressional district. But with longevity in public service comes an extensive voting record that his opponents

will seek to exploit. Saltsman will have to strike a fine balance among positive messaging, response to attacks from rivals, and his own efforts to point out the weaknesses in other candidates.

Senate endorsements. Former U.S. Ambassador Bill Hagerty landed the endorsement of the Susan B. Anthony List, one of two of the most influential anti-abortion organizations in the country. The other, Right to Life, has not backed a candidate in the primary to succeed retiring U.S. Sen. Lamar Alexander (R-Maryville). The latter group has long snubbed the state's junior senator, Marsha Blackburn, because she favors exceptions in cases of rape, incest, or danger to the life of the mother — a position shared by Hagerty.

Hagerty last week sent out an email noting "my opponent" had been endorsed by Planned Parenthood. The candidate in question is Democrat James Mackler, not any of the 14 other Republican hopefuls. Manny Sethi has been the most active rival for the GOP nomination, and the Vanderbilt surgeon has taken a harder line on abortion, calling for it to be banned in all instances unless the mother's life is danger.

Sethi received the endorsement of U.S. Sen. Rand Paul (R-Ky.), a fellow physician who cited Sethi's outsider status in seeking the nomination. Kentucky's senior senator, Majority Leader Mitch McConnell, is backing Hagerty's bid. Also announcing his support for Hagerty this week was U.S. Sen. Tom Cotton (R-Ark.), who has been in the news for penning an op-ed in *The New York Times* in favor of calling up active-duty troops to put down civil unrest. Hagerty has made similar entreaties to President Donald Trump, while Sethi argued the National Guard is better suited for the job.

Former U.S. Sen. Ed Bryant (R-Jackson) this week endorsed Sethi. Bryant gave up his House seat to run against Alexander in an open Senate race in 2002. He ran again when Sen. Bill Frist (R-Nashville) decided against seeking another term in 2006. Bryant retired as a U.S. magistrate in Jackson last year.

Walley fundraiser. Former state House Speaker Beth Harwell is hosting a fundraiser for Page Walley's campaign to succeed retiring state Sen. Dolores Gresham (R-Somerville). The event is scheduled for Tuesday afternoon at the Hermitage Hotel in Nashville. Walley, a former state representative from Bolivar, faces former Agriculture Commissioner Jai Templeton in the GOP primary for the rural West Tennessee seat.

Tennessee Notes & Quotes

■ “We have to make government boring again.” — *Republican U.S. Senate candidate* **George Flinn**.

■ Former New Jersey Gov. **Chris Christie**, a Republican, has filed to lobby the federal government on behalf of CleanSlate Centers, an opioid and alcohol addiction treatment company that moved its headquarters from western Massachusetts to Nashville in 2017.

■ The Tennessee Bar Association is bestowing its **Frank Drowota** Award for contributions to access to justice upon Tennessee Supreme Court Chief Justice **Jeff Bivins**. Drowota, who died in 2018, spent a quarter century on the state’s highest court

■ **Kent Caldwell** has stepped down as president of the Nashville branch of the NAACP, citing “philosophical differences” with the organization’s state president, **Gloria Jean Sweet-Love**.

■ **Ovi Kabir**, a former *Big Brother* contestant and one-time student body president at UT-Knoxville, appears on the verge of being excluded from the Democratic primary for state House District 15 after his residency was challenged. Kabir said while he has lived in the Knoxville district for most of the last five years, he had briefly registered in Anderson County, his family home, earlier this year. Candidates are required to live in the district they are seeking to represent for a year before the election. Kabir’s exit is expected to be formalized when the Knox County Election Commission meets next week. That would leave incumbent Rep. **Rick Staples** with two primary challengers: former County Commissioner **Sam McKenzie** and technology consultant **Matthew Park**.

■ “Someone just butt-dialed me by mistake. It was a number from Knox County, and I thought it was the mayor.” — *Sen. Richard Briggs (R-Knoxville) during a Senate State and Local Government Committee meeting. The call turned out to be from his cousin.*

■ The Tennessee Immigrant and Refugee Rights Coalition has named **Lisa Sherman-Nikolaus** as its new executive director. She succeeds **Lindsey Harris** and **Stephanie Teatro**, who have jointly run the organization for the last six years.

■ **Meghan Mangrum**, an education reporter for the *Chattanooga Times Free Press*, has been hired to cover the same beat in Nashville for *The Tennessean* and other Gannett newspapers around the state.

■ “I do want to apologize to all the citizens in Lauderdale County especially the Afro Americans.” — *Lauderdale County Sheriff Steve Sanders after a year-old recording emerged in which he used the n-word.*

■ “I made a comment in my remarks last week regarding **George Soros** and Progressive Insurance, and that was not necessary and for that I’m going to apologize to both parties.” — *Rep. Kelly Keisling (R-Byrdstown) in remarks on the House floor. A week earlier, Keisling had urged colleagues to drop their insurance with Progressive because of its purported links to Soros. The*

company’s former chairman, Peter Lewis, was once a major donor to liberal causes also supported by Soros, but he died in 2013.

■ **Keisling’s** resolution sought to call for an Article V constitutional convention on campaign finance. The chamber voted 77-14 against the measure.

■ Rep. **Mike Carter** (R-Ooltewah) made a tearful apology from the well of the House chamber on Monday to Rep. **Joe Towns** (D-Memphis) for comments made in a committee meeting earlier in the day. Carter, who is white, had suggested he couldn’t get the attention of Towns, who is black, because he was preoccupied with “getting the secret formula to Kentucky Fried Chicken.”

■ “I said something stupid. Foot-in-mouth disease, I suppose. I made an inappropriate and deeply regretful comment that hurt my friend Joe’s feelings. I am never as hurt as when I hurt someone else. I hurt him, and I hurt every member of this House.” — **Carter**.

■ “You don’t make chicken, watermelon, blackface — all that bullshit.” — *Towns speaking to WPLN-FM reporter Sergio Martínez-Beltrán.*

■ “I wear two press badges around my neck every day. I wear a suit too. Why? So that security and lawmakers know right away I’m press. Not an intern, not a random person, not a criminal. Press. This week showed that hasn’t been enough.” — *Martínez-Beltrán after he was singled out for extra screening upon entering the Cordell Hull Building and trying to attend a Senate committee meeting. No other Capitol Hill Press Corps member has been subjected to similar treatment.*

■ House Republicans blocked the latest efforts by Democratic lawmakers to remove the bust of **Nathan Bedford Forrest** from the state Capitol. The Senate GOP then enacted a change to the makeup of the State Capitol Commission, the body with authority over proposed changes to memorials in the building, to give the General Assembly two more voting members. Lawmakers approved a bill to allow Gov. **Bill Lee** to decline to sign a proclamation declaring July 13 to be Nathan Bedford Forrest Day in Tennessee. But the law doesn’t get rid of the day honoring the former slave trader, Confederate general, and early Ku Klux Klan leader.

■ “Is this even a conversation, @GovBillLee? A statue that honors a KKK founder? We need to get rid of this disgusting symbol of racism. And every other marker of white supremacy in the state.” — *Actress Reese Witherspoon, a Nashville native, on Twitter.*

■ Jacksonville has been chosen over Nashville to host the finale of the Republican National Convention after the event was moved from Charlotte, N.C.

■ “Three months ago, I think we treated our governor the wrong way, we shoved him out on the beach with no trunks. We shouldn’t do that to a good man.” — *Rep. Bud Hulseby (R-Kingsport) about his bill seeking to give lawmakers more say over states of emergency.*

■ Might be a good reason to keep the beaches closed.