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Full speed ahead: Lee clears hurdle on removal of Forrest bust

On the day a bust of Confederate cavalry general Nathan Bedford Forrest was installed at the state Capitol in November 1978, opponents held a protest against the monument to the former slave trader and early Ku Klux Klan leader as an “obvious insult to blacks.”

Opponents implored Lamar Alexander, the state’s young new governor who strived to make the state Republican Party more inclusive of African Americans, to get Forrest’s likeness moved out of the statehouse. But Alexander lamented there was nothing he could do about the bust placed there by the legislature, which was then dominated by rural Democrats.

Resentment about the bust has simmered over the ensuing four decades, occasionally coming to a boil amid national crises. But a series of parliamentary barriers established by the General Assembly thwarted efforts to move the Forrest bust — until this week.

Faced with the very real possibility Gov. Bill Lee might succeed in his efforts to have the Forrest bust relocated to the Tennessee State Museum, lawmakers made a last-minute attempt to move the goal posts. A Senate floor amendment to a sunset bill was passed in the final days of the legislative session. It added one more member each for the House and Senate to the State Capitol Commission, which could have had the effect of stacking the first panel tasked with considering any monument changes against the move.

But Lee, who hadn’t been consulted about changing the makeup of the commission, decided to call its next meeting before signing the bill into effect (which he said he will do at a later date). While members had voted 7-5 against then-Gov. Bill Haslam’s call to move the bust in 2017, Lee’s subsequent appointments to the 11-member panel had it poised to approve the change.

By the time the vote came up, most opposition had crumbled. The state’s constitutional officers, who as appointees of the General Assembly have an interest in doing the bidding of their electors, opposed the move in 2017. But they voted yes this time. Only the panel’s two lawmakers, Rep. Matthew Hill (R-Jonesborough) and Sen. Jack Johnson (R-Franklin), ended up voting no.

Next steps. While supporters of moving the bust cheered an important victory, the deal is far from sealed. Amid the rising national debate about Confederate monuments, the General Assembly in 2016 updated the state’s Heritage Protect Act to require two-thirds approval by the Tennessee Historical Commission in order to alter any “statue, monument, memorial, bust, nameplate, historical marker, plaque, artwork, flag, historic display, school, street, bridge, or building.”

The Historical Commission is made up of 24 members appointed by the governor, plus the governor, state historian, archaeologist, librarian and archivist, and commissioner of environment and conservation. The panel must wait at least 180 days to consider any petition, meaning the soonest it could take up the Forrest bust would be in early January.

Fourteen members’ terms have either already expired or will lapse before the end of the year, giving Lee wide influence over the panel before it meets to consider the Forrest bust. But the two-thirds requirement is still exceedingly high: It will take 20 of 29 votes to approve the petition. And the window to act may be short, as lawmakers angry about the governor’s moves could try to reconstitute the Historical Commission — or set an even more difficult threshold — after the next General Assembly convenes on Jan. 12.

Collateral damage. When the late Sen. Douglas Henry (D-Nashville) championed the installation of the Forrest bust, he argued it would provide historical balance to a bust of David Farragut, a Union admiral from Knox County. Farragut issued the famous the command “Damn the torpedoes, full speed ahead” during the Battle of Mobile Bay in 1864.

Comptroller Justin Wilson won approval from the panel for an amendment to also move the Farragut bust to the State Museum, along with that of Albert Gleaves, an admiral who had nothing to do with the Civil War. Gleaves, a Nashville native, is credited with developing more accurate torpedoes before the First World War. Under the final version of the proposal, all three busts would be sent to be displayed at the State Museum, while future monuments on the second floor of the Cap-

itol would be dedicated to figures linked to events that occurred there. Wilson said he'd like to see a bust of Henry (whose descendants sent a letter supporting the Forrest move) placed there, while Secretary of State Tre Hargett called it overdue for a woman to be honored.

From the courts

TSBA loses open records lawsuit filed by school voucher supporters

The Tennessee School Boards Association is the “functional equivalent” of a governmental agency and therefore subject to public records laws, Nashville Chancellor Patricia Head Moskal ruled this week in a lawsuit filed by the Beacon Center. The conservative think tank and the TSBA have been on opposite sides of the years-long fight to create a school voucher program.

Williamson County parent Karrie Marren, the plaintiff in the lawsuit, last year asked the TSBA for a series of records including communications with lawmakers about the group's 2018 and 2019 legislative agendas and documents pertaining to its position that taxpayer funds should not be spent to support private schools. The TSBA declined to provide most of the records, saying it was not subject to open government laws because it is a private, nonprofit organization.

Moskal found the TSBA is the equivalent of a government agency because more than 90% of its funding comes from “public support,” the state officially recognizes it as the “organization and representative of members of school boards of this state,” and it has held the state contract to provide school board member training since 1991. She also noted the TSBA's “close relationship” with the state Education Department and Board of Education and its participation in the state retirement and health insurance programs.

The chancellor rejected arguments that TSBA communications with lawmakers should be covered by the General Assembly's exemption from public records laws because the plaintiff had requested the materials from the group and not from the legislature. Moskal did not award attorneys' fees to the plaintiffs because she found the TSBA had “asserted a good-faith argument” for why it didn't believe it was required to supply the records.

Precedent. The state Supreme Court ruled unanimously in 2002 that Cherokee Children & Family Services, a Shelby County day care contractor with ties to the family of then-Sen. John Ford (D-Memphis), was subject to public scrutiny because it was a functional equivalent of a government agency.

Cherokee had won a \$2.5 million brokerage contract from the state after Ford raised questions about the financial adequacy of a lower bidder. The scope of a subsequent state audit was narrowed after Ford disputed the state's right to look into the company's books. The decision stemmed from consolidated lawsuits filed by the *Commercial Appeal* and the comptroller's office.

Following that precedent, courts have found several other cases of outside groups acting as the functional equivalent of government agencies, including the Ten-

nessee Secondary School Athletic Association, a contractor for the Nashville Sports Authority, private prison operator Corrections Corporation of America (now CoreCivic), and the Newport and Cocke County Economic Development Commission.

The TSBA records lawsuit has been closely watched by organizations serving similar roles, such as the Tennessee Municipal League and the Tennessee County Services Association. More lawsuits could follow.

Bad blood? When Bill Lee was little more than a long-shot gubernatorial candidate in 2017, he told the Beacon Center he agreed with the group's position that taxpayer-funded entities shouldn't be allowed to lobby against school choice proposals like vouchers. When Lee decided to pursue the state's first general school voucher program last year, supporters were once again angered when groups like the TSBA opposed them.

While the 2019 debate over vouchers was raging in the legislature, a separate bill was introduced by Rep. Andy Holt (R-Dresden) and Sen. Todd Gardenhire (R-Chattanooga) aiming to do away with a law requiring school districts to use the TSBA for state-mandated training and other services like mediations and evaluations. Opponents saw the measure as vindictive, and it failed in the Education Committee. The school voucher bill itself went on to narrowly pass the House among much arm-twisting and back room dealing, only to be thrown out by a different Nashville chancellor in May.

From the campaign trail

Rival internal polls play up prospects of Hagerty, Sethi in U.S. Senate race

Most campaigns would be loath to release internal polling numbers unless they paint their candidate in the best possible light. So it's of little surprise rival surveys released by the leading aspirants for the Republican nomination in the open U.S. Senate race did just that. Bill Hagerty's numbers have him with a 45% to 29% advantage over Manny Sethi, while the latter's poll shows him closing to within 2 percentage points, 33% to 31%, after trailing by 16 points a month earlier.

Late this week, an unexpected entry into the polling game appeared in the form of a survey conducted by the Trafalger Group, which the polling site FiveThirtyEight rates at a C-minus. The automated poll of 1,062 likely Republican voters found 42% supported Hagerty, compared with 39% for Sethi. It's not known who paid for the poll. The Sethi camp touted its results, while skeptics saw echoes of the 2018 governor's race in which little-known pollsters released supposedly unsolicited surveys suggesting a Bill Lee surge. Several Sethi advisers also worked on the Lee campaign.

Jimmy Duncan of Knoxville joined fellow former Republican congressmen Ed Bryant of Jackson and Zach Wamp of Chattanooga in endorsing Sethi. Current Rep. Tim Burchett (R-Knoxville) and Knox County Mayor Glenn Jacobs spoke at a Sethi event last week, though both claimed to be neutral in the race. Wamp successor Chuck Fleischmann has endorsed Hagerty.

Tennessee News Digest

- Gov. Bill Lee's office is accepting applications to serve the remaining two years of retiring prosecutor Garry Brown's term in the 28th Judicial District comprising Crockett, Gibson, and Haywood counties.
- LeMoyné-Owen College received a \$40 million endowment from the Community Foundation of Greater Memphis. The historically black school, which will receive 5% of the average balance of

the fund each year, said much of the money will go toward scholarships.

- Jabil Inc., a Florida-based manufacturing services company, plans to designate three U.S. plants, including its factory in Memphis, to produce 1.6 million face masks per day for customers ranging from airlines to supermarkets.
- People traveling to Chicago from Tennessee and 14 other states with rising COVID-19 cases will be required to quar-

antine for 14 days before venturing out in public. Similar restrictions are in place for visitors to the New York area.

- The Austin Peay State University board named Dannelle Whiteside interim president following Alisa White's nomination to head Sam Houston State University in Texas.
 - Nashville was sent home from a Major League Soccer tournament after nine players tested positive for COVID-19.
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1st District. The Club for Growth endorsed Timothy Hill in the 16-way Republican primary for the 1st District seat being vacated by the retirement of Rep. Phil Roe (R-Johnson City). The group has begun buying up copious amounts of TV advertising time and *Politico* reports the independent expenditure campaign will total about \$550,000.

The outfit is no stranger to Tennessee, having long supported Marsha Blackburn in her successful bids for the U.S. House and Senate, though it fell short in its support for Robin Smith in the 3rd District race against Chuck Fleischmann in 2010. The group's first ad for Hill touts his support for Trump's positions on congressional term limits and to "defend law enforcement against leftist efforts to defund the police."

Kingsport pharmacist Diana Harshbarger, a self-funder who has been the heaviest spender of the race so far, is a likely target by rivals as the early voting period draws near. She released a new ad on Thursday saying that if elected she won't be "another snake that will put special interest ahead of East Tennessee."

Harshbarger campaigned in Cocke County last week in an effort to bolster support in the southern part of the district as most of the major candidates hail from the more populous northeastern portion. Harshbarger in a release touted a lunch with state House Republican Caucus Chairman Jeremy Faison, though the Cosby lawmaker said he's not endorsing in the primary.

Knoxville doctor Josh Gapp, who on the eve of the filing deadline switched from the U.S. Senate race to run for the GOP nomination to succeed Roe, defended himself for living outside the district, telling the *Times News* he has a medical office in Johnson City and has treated more than 45,000 patients in the district.

Former Kingsport Mayor John Clark launched a new TV ad touting his experience raising two daughters in East Tennessee, including teaching them how to use firearms. "Liberal socialist Democrats in Washington hate to see a TV ad like this one," Clark says in the spot.

Nichole Williams pleaded guilty to a misdemeanor perjury charge for filling out the wrong address on her petition to run for the seat. The former Roe intern told WJHL-TV she mistakenly used the address from her driver's license even though she had just moved.

State Senate. Retiring Sen. Dolores Gresham (R-Somerville) endorsed former Agriculture Commissioner

Jai Templeton in the race to succeed her. Templeton recently held a Nashville fundraiser hosted by former Gov. Bill Haslam. The other hopeful for the Republican nomination is former state Rep. Page Walley of Bolivar. Senate District 26 in West Tennessee comprises Chester, Decatur, Fayette, Hardeman, Hardin, Haywood, McNairy, and Henderson counties.

State House. Rep. Micah Van Huss (R-Jonesborough) told the *Johnson City Press* the top issue facing Tennessee is "the degeneration of our society" pushed by "radical leftists, corrupt members of the media, and communist hate groups." District 6 primary challenger Tim Hicks told the paper he considers the opioid epidemic the state's No.1 issue. Hicks, who recovered from his own struggle with drugs and alcohol 18 years ago, is a mentor for a faith-based addiction recovery program.

In neighboring District 7, Rep. Matthew Hill (R-Jonesborough), who was at the center of a legislative firestorm over a \$1 million local grant pool critics labeled a "slush fund," touted his prowess bringing in funding to local projects. Primary challenger Rebecca Keefauver Alexander said she would focus on funding projects that "have an impact on the whole region."

In the GOP race to succeed retiring Rep. Martin Daniel (R-Knoxville), former mayoral candidate Eddie Mannis landed the endorsement of the Tennessee Federation for Children, a deep-pocketed organization supporting school vouchers. Attorney Virginia Couch, the only Democrat running for the open seat, was endorsed by the Knox County PAC for Education.

NRA endorsements. Mannis' GOP opponent, real estate agent Gina Oster, received the National Rifle Association's endorsement in the District 18 race. The group gave Mannis an F rating. It is the only open House race in which the gun rights group has endorsed.

The NRA gave the nod to incumbents in several contested GOP primaries, including Reps. Rush Bricken of Tullahoma, David Byrd of Waynesboro, Rusty Grills of Newbern, Curtis Halford of Dyer, Matthew Hill, Tom Leatherwood of Arlington, Mary Littleton of Dickson, Paul Sherrell of Sparta, Rick Tillis of Lewisburg, and Ryan Williams of Cookeville.

The NRA didn't endorse in the primaries featuring incumbents who failed to receive its top rating: Kent Calfee of Kingston, Kirk Haston of Lobelville, John Holsclaw of Elizabethton, and Bob Ramsey of Maryville.

Tennessee Notes & Quotes

■ “A drunkard wants another drink of wine / And a politician wants a vote / I don't want much of nothin' at all / But I will take another toke.” — **Charlie Daniels** in his 1975 classic “*Long Haired Country Boy*.” Daniels, who resided in Mt. Juliet, died Monday at age 83.

■ Gov. **Bill Lee's** administration has signed a \$250,000 contract with the Horne Group accounting firm to ensure the state spends all federal COVID-19 relief money before Dec. 30. A spending plan is being finalized by the end of the month in the interest of “ensuring \$0 is returned to the U.S. Treasury” at the end of the year, according to a slide presented to the governor's Financial Stimulus Accountability Group by Horne partner **Bryan McDonald**.

■ “I've been too busy to think about that. One thing for sure, though, is that I won't be spending time in Washington, D.C.” — U.S. Sen. **Lamar Alexander** about his post-retirement plans. The senator said he and his wife, **Honey**, will live in his hometown of Maryville though they also plan to keep their house in Nashville “because that's where the kids and grandkids are.”

■ Alexander, 80, doesn't plan to attend the Republican National Convention in Jacksonville, Fla., next month despite serving as honorary co-chair of the Tennessee **Trump** campaign. His office said the senator will stay home because “the delegate spots should be reserved for those who have not had that privilege before.”

■ **Lesly Hafner**, a former legislative director for then-Gov. **Bill Haslam**, has joined the board of the Sycamore Institute, a nonpartisan think tank on Tennessee public policy. Hafner now works for Omnia Partners.

■ “I am a rule follower. I am a hand-washer. I am a hand-sanitizer. I am a social distancer. Alone, these actions were not enough. We also need to add wearing masks in public areas.” — **Cleveland Mayor Kevin Brooks** in a statement to the Daily Banner after testing positive for COVID-19 when he was hospitalized for pneumonia in both lungs. Brooks, a former GOP lawmaker, was the House chaplain of the day on June 18.

■ **Jerry Estes** has retired as executive director of the Tennessee District Attorneys General Conference, a position he had held since 2015. Estes, an Athens lawyer, was a district attorney from 1982 to 2006. His successor at the conference is **Guy Jones**, who has been a deputy director and lobbyist for the group for 23 years.

■ The U.S. Senate on a voice vote confirmed **Tyreece Miller's** nomination as U.S. Marshal for the Western District of Tennessee. President **Donald Trump** nominated the deputy chief of the Jackson Police Department for the position after former state Rep. **Barrett Rich** (R-Somerville) withdrew from consideration after his confirmation got tied up in the Senate.

■ Gov. **Bill Lee** issued an executive order declaring mayors of the 89 of 95 counties that don't have independent health departments now have the authority to require face coverings to be worn in public. Some larger

counties like Williamson, Montgomery, and Sumner mandated masks, while many smaller ones did not.

■ “Over the last few months we've become a nation of cowards who have given ourselves over to fear, to overreaching executive orders, to political correctness, and to a mob mentality. The insanity has to stop.” — **Maury County Mayor Andy Ogles** in announcing he wouldn't mandate masks. But he said free face coverings will be made available to anyone who wants one.

■ The Knox County Charter Commission voted 23-1 against a proposal to ban mayors from engaging in outside work while serving in office, meaning the incumbent, **Glenn Jacobs**, will be able to continue to moonlight under his professional wrestling persona, **Kane**. Commission member **Bill Johns** said while he supports the mayor's political views, he proposed the change due to concerns about conflicts of interest.

■ **Jacobs**, who is most famous for his career as a masked WWE villain, gained some national media attention for being the lone vote against the Knox County Board of Health's decision to mandate face coverings in public to stem the spread of COVID-19. The *New York Post* ran side-by-side photos of the mayor in civilian clothing and in character as **Kane**, while *Yahoo Sports* called Jacobs “one of the most prominent mask-wearers in the United States.”

■ The *Compass* of Knoxville noted the WWE itself is offering **Kane**-style face coverings for sale on its website for \$12.99. Before the Charter Commission gets too worked up, there's no conflict for **Jacobs** there — at least not a financial one. All proceeds from WWE mask sales are being donated to a healthcare charity.

■ But the **Kane** mask is perfect for folks who want to proclaim anti-mask sentiment while complying with face covering rules — it has a fake mouth slit and a fake nose hole, replete with fake nose sticking through it.

■ The Tennessee Registry of Election Finance voted 4-2 to reconsider and confirm its earlier decision to approve cutting the civil penalty owned by Rep. **Joe Towns** (D-Memphis) from \$65,000 to \$22,000. The panel has been sued by media groups because the original vote was taken via email, which appears to conflict with open meetings rules. Executive Director **Bill Young** said he was confident he didn't violate the law when he polled each member to approve the settlement on the eve of the candidate filing deadline, by which point all fines must be paid in order to qualify.

■ The Registry also voted to issue a \$10,500 penalty to former House Speaker **Glen Casada** (R-Franklin) for failing to keep receipts for 299 unitemized expenditures spread over seven PAC reports totaling \$99,000. Casada said he had mistakenly believed bank and credit card statements would suffice. The penalty was proposed by new member **Paige Burcham Dennis**.

■ “You've got 99 problems, I'm not one — no, 99,000 problems.” — **Dennis to Casada**.