

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS**

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**SHELBY ADVOCATES FOR VALID  
ELECTIONS; ET. AL,**

**Plaintiffs and for all Others  
Similarly Situated,**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMAND**

**vs.**

**No. 2:18-cv-02706**

**TRE HARGETT in his Official  
capacity as TENNESSEE SECRETARY  
OF STATE; ET. AL,**

**Defendants.**

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**MEMORANDUM OF LAW IN SUPPORT THEREOF DEFENDANTS LINDA  
PHILLIPS, SHELBY COUNTY ELECTOIN COMMISSION, ROBERT MEYERS,  
NORMA LESTER, DEE NOLLNER, STEVE STAMSON, AND ANTHONY TATE'S  
MOTION TO DISMISS**

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COMES NOW, Defendants, Linda Phillips, in her official capacity as Administrator of the Shelby County Election Commission, the Shelby County Election Commission, Robert Meyers, Norma Lester, Dee Nollner, Steve Stamson, and Anthony Tate, in each of their official capacities as the Board of Commissioners of the Shelby County Election Commission (“County Defendants”), file this Memorandum of Law in support of County Defendants’ Motion to Dismiss, and for their cause County Defendants would show the Court as follows:

**PRELIMINARY STATEMENT**

County Defendants hereby incorporate by reference the *Motion to Dismiss* filed by Tre Hargett, Mark Goins, the Tennessee State Election Commission, Kent D. Younce, Judy Blackburn, Donna Barrett, Greg Duckett, James H. Wallace, Jr., Tom Wheeler and Mike McDonald as if herein restated.

ADDITIONAL RELEVANT FACTS

1. Plaintiff, Suhkara A. Yahweh previously filed at least two (2) federal district court cases raising the same claims made in the Complaint filed in the present case. Case No. 06-cv-02492 was filed in 2006 and dismissed in 2007 and Case No. 2:10-cv-02608 filed in 2010 and dismissed in 2012.
2. The allegations raised in both previously filed federal cases raised the same claims as those raised in the present Complaint. (*see* 2:06-cv-02492 ECF No. 11 and 2:10-cv-02608 ECF No. 4).

LAW AND ARGUMENT

**Plaintiffs' suit is barred by the doctrine of *res judicata*.**

Plaintiffs are barred from bringing their claims by the doctrine of *res judicata* as a result of the judgments issued by the District Court for the Western District of Tennessee in in Case No. 2:06-cv-02492 and Case no. 2:10-cv-02608. *See Miller v. Shell Oil Co.*, 345 F.2d 891, 893 (10th Cir.1965) (noting that an affirmative defense may be raised in a motion to dismiss for the failure to state a claim “[i]f the defense appears plainly on the face of the complaint itself.”). “the doctrine of *res judicata* provides that when a final judgment has been entered on the merits of a case, “[it] is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.” *Nevada v. United States*, 463 U.S. 110, 130, 103 S. Ct. 2906, 2918, 77 L.Ed.2d 509, 524 (1983) (quoting *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1877)).

In Tennessee, *res judicata* bars “all claims that were actually litigated or could have been litigated in the first suit between the same parties.” *Am. Nat’l Bank & Trust Co. of Chattanooga v. Clark*, 586 S.W.2d 825, 826 (Tenn. 1979). *Res Judicata* applies when the following elements are

satisfied: (1) the underlying judgment must have been rendered by a court of competent jurisdiction; (2) the same parties were involved in both suits; (3) the same cause of action was involved in both suits; and (4) the underlying judgment was on the merits. *Collins v. Greene County Bank*, 916 S.W.2d 941, 945 (Tenn. Ct. App. 1990) (citing *Lee v. Hall*, 790 S.W.2d 293, 294 (Tenn. Ct. App. 1990)). All four elements are satisfied in this case such that *res judicata* requires the dismissal of the present law suit.

In 2006, Plaintiff Yahweh and others complaints “on behalf of themselves and all other persons similarly situated, namely the citizens and residents of Shelby County, Tennessee, who have the right to register to vote and to vote in Shelby County, Tennessee,” filed a law suit against Shelby County and the SCEC raising the same due process, equal protection and voting rights violation claims raised by Plaintiffs in the present case. (*see Exhibit 1*, Case No. 2:06-cv-02492 ECF No. 11, ¶¶ 55-64 and; DOC #1, ¶¶ 22, 194, 207-245). In 2010, Plaintiff Yahweh et al. filed Case No. 2:10-cv-02608 in the District Court for the Western District of Tennessee raising identical claims to those raised in the 2006 complaint. (*see Exhibit 2*, Case No. 2:10-cv-02608 ECF No. 4, ¶¶ 76-85 and; DOC #1, ¶¶ 22, 194, 207-245). As in the present case, the plaintiffs in both prior federal cases filed their complaints “on behalf of themselves and all other persons similarly situated, namely the citizens and residents of Shelby County, Tennessee, who have the right to register to vote and to vote in Shelby County, Tennessee.” (**Exhibit 1** and **Exhibit 2**); (DOC #1, ¶3). Thus, the same parties are involved in the present law suit.

The complaints in 2006 and 2010 raised the same due process and equal protection claims raised in the present complaint. Both the 2006 and 2010 complaints alleged violations of equal protection under 42 U.S.C. § 1893 and the civil rights violations resulting from Shelby County’s use of the DRE machines. (**Exhibit 1**, ¶¶ 55-64; **Exhibit 2**, ¶¶ 76-85; DOC #1, ¶¶ 22, 194, 207-245).

The dismissals of the 2006 and 2010 suits were rendered by a court of competent jurisdiction and the judgments were on the merits. The District Court dismissed the claims raised in the 2006 complaint with pursuant to Fed. R. Civ. P 12(b)(6). *Yahweh v. Shelby Cnty.*, No. 06-2492-JPM-dkv (W.D. Tenn. Sept. 4, 2007) (D.E. 55, Order Granting Motion to Dismiss). In 2010, the District Court also dismissed Case No. 2:10-cv-02608 with prejudice for the same reasons it dismissed the 2006 case. *Yahweh v. Shelby Cnty.*, No. 10-cv-02608-JDT-dkv, at 8-14 (W.D. Tenn. July 2, 2012) (“For the reasons stated by Chief Judge McCalla in Plaintiff Yahweh’s previous suit, Plaintiffs’ § 1983 count fails to state a claim.”) (D.E. 9, Order of Dismissal). In addition, the District Court’s dismissal of Case No. 2:10-cv-02608 was bolstered by the fact that the same issues were litigated a number of times in Tennessee courts as well. *See. Mills v. Shelby County*

A complaint dismissed pursuant to Fed. R. Civ. P. 41(b), other than for lack of jurisdiction, improper venue or failure to join a party under Fed. R. Civ. P. Rule 19 operates as an adjudication on the merits. *Proctor v. Millar Elevator Service Co.*, 303 U.S. App. D.C. 420, 8 F.3d 824 (1993). The District Court for the Western District of Tennessee dismissed each of Plaintiffs’ claims in Cases No. 2:06-cv-02492 and 2:10-cv-02608 pursuant to Fed. R. Civ. P. 12(b)(6). Thus, the order dismissing Cases No. 2:06-cv-02492 and 2:10-cv-02608 operated as an adjudication on the merits in both cases.

The same parties have thus previously raised the same allegations in two previous federal lawsuits. Both lawsuits were dismissed by a court of competent jurisdiction for failure to state a claim for which relief may be granted by the Court. Finally, the dismissals operated as an adjudication on the merits in both cases. As a result, *res judicata* should apply in this case requiring that Plaintiffs’ Complaint in this case be dismissed.

#### **CONCLUSION**

Wherefore, based on the foregoing, in addition to the reasons stated in the State Defendants' Motion to Dismiss and corresponding memorandum of law in support, Plaintiff's Complaint must be dismissed with prejudice.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served upon:

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via U.S. Mail and email on this the 7<sup>th</sup> day of December 2018.

*/s/ Pablo A. Varela*

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Pablo A. Varela