

# Tennessee Mid-Summer Update: New Laws in Place; Congressional Race Heating Up

With all of the state House seats and half of the Senate seats up for re-election, not to mention a hotly contested Congressional race that will likely take the GOP's numerical advantage in Tennessee's Congressional delegation from 7-2 to 8-1, this summer has been far from quiet. Plus, with the overwhelming number of predominately blue or red districts across the state, the August primary is the only competitive race in many instances. That means that campaign ads are increasingly filling the airwaves, fundraisers are filling calendars, and more and more voters are starting to take interest in the races. And as is custom, a raft of new state laws took effect on July 1, including one law that adds new reporting requirements for Political Action Committees (PACs).

## New Campaign Finance/Ethics Law Contains Changes for PAC Reporting

Tennessee's latest finance and ethics reform law took effect on July 1, and among other things will require greater openness and transparency from political candidates and political action committees (PACs) in an attempt to curtail bad actors and to shine light on so-called "dark money" groups. Going forward, PACs will experience the following changes:

- The new law deletes the so-called blackout provision whereby a PAC is prohibited from making a contribution to any candidate after the 10th day before an election until the day of the election. Going forward however, PACs must disclose most donations, loans, or expenditures made or received within the window of the last ten days before an election by the end of the next business day. The threshold amounts requiring next-day disclosure are as follows:
  - \$5,000 for statewide offices;
  - \$3,000 for senate elections; and
  - \$1,000 for any other state or local public office.
- The foregoing reports must include the amount, date, and a brief description of the contribution, expenditure, or loan reported. For independent expenditures, the report must include the name of the candidate or measure supported or proposed. For loans, the report must contain the name and address of the lender, the recipient of the proceeds of the loan, and any person who makes any type of security agreement binding such person or such person's property for the repayment of all or any part of the loan.
- Established PACs (those already in existence as of July 1, 2022) have until January 31, 2023 to submit certification of the name and address of all officers of the committee and of all persons who directly control expenditures by submitting valid government photo IDs to the Tennessee Registry of Election Finance. If a PAC designates a new person under this law, the committee shall submit evidence of identification within thirty days of the designation. New PACs (those registered on or after July 1, 2022) are required to provide the above disclosures prior to making any expenditures or taking contributions.
- The law also makes the officer in charge of the committee's expenditures personally liable for any fines assessed by the Registry. However, it prohibits the PAC from paying

a fine issued against a candidate by the Registry. These penalties must not be paid using PAC funds.

- PACs must now ensure that all funds in a campaign account remain separate and segregated at all times from other funds, including personal funds. A candidate or PAC found to be in violation of this provision commits a Class 2 offense and is subject to a civil penalty of up to \$25 per day and a maximum penalty not to exceed \$10,000.
- In order to comply with an audit, PACs must retain copies of all checks, money orders, wire or account transfer statements, withdrawal statements, credit or debit statements, bank statements, vendor receipts, and other documentation directly resulting from a financial transaction involving the receipt or disbursement of any funds subject to disclosure for two years after the date of the election to which the records refer.

The law, which was sponsored by Lt. Governor Randy McNally (R-Oak Ridge) and House Speaker Cameron Sexton (R-Crossville), came as a result of an FBI investigation of campaign funding and activity in Tennessee. The investigation, which is ongoing, has resulted in a number of highly-publicized raids of legislator and staff offices and homes, as well as Rep. Robin Smith's (R-Hixon) guilty plea for wire fraud and subsequent resignation from the General Assembly.

In a release, McNally stated that the law is "aimed at bad actors," as well as "the various shell companies and shadowy PACs used by certain legislators to line their own pockets." McNally added, "if you are working to influence the outcome of an election, the voters deserve to know who you are and what you are doing. What could possibly be wrong with that? The fact this is even in question demonstrates the need for the legislation."

As it relates to candidates, the new law requires disclosure of all expenditures and sets a cap on non-itemized expenses at \$2,000 per statement period. A candidate's contributions will be audited automatically for reporting periods beginning on or after January 16, 2023, if more than 30% of the report contains un-itemized contributions.

The law also prohibits candidates and political action committees from utilizing pre-checked or pre-marked boxes in a solicitation authorizing or requiring future contributions to that candidate or committee. Such a request must now be accepted and acknowledged in writing by the potential contributor in clear and precise language.

Further, the law mandates that nonprofit organizations classified as 501(c)(4), 501(c)(5), or 501(c)(6) disclose any expenditures of more than \$5,000 made on communications that feature a candidate's name or image which take place within 60 days of an election. However, there are exceptions for communications to the nonprofit's members, lobbying during a special session, and communications to groups that have opted in to receive such communications.

## **Other New Laws of Note Include Sales Tax Compensation, Energy Infrastructure, and Suspension of License Plate Fees**

The McNally-Sexton ethics reform law was far from the only law that took effect on July 1. Other laws of note include the following:

Compensating vendors for sales tax collections: Vendors in Tennessee are charged with hiring the personnel, investing in software, and devoting the time necessary to collect

more than \$11 billion in sales tax annually. Until 2000, vendors were compensated for their work, but have yet to receive any financial incentive since that year due to the state's fiscal cutbacks. This newly enacted law restores compensation for vendors in the form of a 2% remuneration on the first \$2,500 in sales tax collected and 1.15% on all sums over \$2,500 on each report.

Energy Infrastructure: Under this new law, local governments are now prohibited from blocking the development of infrastructure while preserving municipal zoning power. The law applies to storage tanks, pipelines, gas transmission lines and other infrastructure essential to fuel the economy and meet transportation and industry demands. In addition to zoning, localities may still use their police powers to regulate certain aspects of construction and maintenance to reduce or prevent the risk of an imminent and substantial threat to human safety. This includes the localities' right to charge reasonable, cost-based compensation for the use of the locality's highways and streets. Supporters of the new law argued that given the highly regulated nature of the energy industry and the fact that energy infrastructure regularly crosses state lines, one municipality should not be able to block its development unilaterally.

License Plate Registration Fees Suspended: From July 1, 2022 until June 30, 2023, Tennesseans will not have to pay the state's annual license plate registration fee of \$23.75.

Certificates of Need: As of July 1, the Board of Licensing Healthcare Facilities merged with the Health Services and Development Agency to form the Health Facilities Commission. This change was a result of a recommendation from the HSDA to improve the state's Certificate of Need process.

Truth in Sentencing: A rift developed between Governor Lee and Republican legislative leadership over this bill, which became law without the Governor's signature. The law provides that individuals convicted of certain offenses must now serve the entirety of their sentence before being eligible for release. These offenses include: (1) aggravated assault; (2) vehicular homicide; (3) possessing a firearm during the attempt or commission of a dangerous felony; (4) aggravated kidnapping; (5) aggravated robbery; (6) carjacking; (7) aggravated burglary; (8) aggravated arson; and (9) the manufacture, delivery, or sale of controlled substances which carry an instant offense as a Class A, B, or C felony if the person has two or more prior convictions for this offense. The measure received strong bipartisan support in the General Assembly, which promoted the bill as showing that Tennessee is tough on crime; however, it ran into strong opposition from Governor Lee and criminal justice reform advocates, who argued that the legislation would result in significant operational and financial strain such as higher recidivism and prison overcrowding, with no reduction in crime.

Overdose prevention: Effective July 1, healthcare providers that offer a prescription for an opioid to a patient must also offer a prescription for naloxone. Naloxone can reverse an overdose if administered in time.

Tire dumping penalties: This law makes it a Class E felony charge for a first-time conviction when disposing of eight or more tires for commercial purposes. It also creates a Class A misdemeanor charge of aggravated littering for the unauthorized and willful disposal of two or more tires on public or private property.

Residential blasting: To address neighborhood concerns about residential blasting, this law updates blasting requirements, including the addition of safety processes and protocols. The law aims to reduce vibrations, improve communication with the public, and clean up and repeal standards that have been in effect since 1975.

Human trafficking prevention: This new law expands the mandatory training in school to detect and prevent human trafficking to all school employees, including personnel such as janitors, bus drivers, and cafeteria workers. Prior to the implementation of the new law, only teachers were required to undergo the training.

Public camping prohibited: This law makes it a felony for a person to camp on state property in areas that have not been designated as camping areas, and a misdemeanor to camp along areas such as an interstate highway, a ramp, or under an overpass. Critics argued that the law further criminalizes poverty and homelessness, and the bill became law without Governor Lee's signature.

## **Election Update: TN-5 Has Become a Three Horse Race; Several Intriguing Races to Replace Departing Legislators**

Early voting for Tennessee's August 4th primary election began last Friday, and all eyes are on the newly-drawn 5th Congressional District. That seat, which has historically been considered "safely Democrat" and for the last 20 years has been occupied by Jim Cooper (D-Nashville), underwent a dramatic change in the most recent redistricting process. The district was redrawn by the GOP-dominated General Assembly in a fashion that should now make it "lean Republican," a change that led Cooper to decide that he would not seek an additional term. Cooper did not spare his criticism of the legislature in the process. "Despite my strength at the polls, I could not stop the general assembly from dismembering Nashville. No one tried harder to keep our city whole," Cooper said in a statement.

The approval of the newly-constituted district, paired with Cooper's announcement, set off immediate, widespread interest in the seat as well as a feeding frenzy of prospective candidates. Even President Trump entered the fray to endorse a candidate. The field was narrowed somewhat in April when the Tennessee Republican Party eliminated three formidable candidates for a lack of bona fides, leaving voters with a race that essentially comes down to three candidates:

- Beth Harwell, the former Speaker of the state House;
- Andy Ogles, the mayor of Maury County; and
- Kurt Winstead, a retired Brigadier General in the TN National Guard.

While Harwell leads in name recognition, Ogles' strong conservative record makes him a dark horse candidate, and Winstead's fundraising numbers suggest he could be a strong contender as well. Friday's fundraising disclosures show that Winstead received \$381,980 in donations and loaned his campaign \$660,000 in the second quarter. However, he also paid back \$460,000 of an earlier loan, totaling a net \$581,980 in collections for this quarter. Adding that amount to the \$519,625 from first quarter contributions and the \$20,000 remaining from his initial \$480,000 loan, Winstead's total is roughly \$1.1 million since joining the race. Harwell raised \$421,360 in the second quarter, an improvement over her first-quarter collections of \$353,927. Harwell's total receipts to date are \$775,287. Surprisingly, Ogles reported no fundraising numbers by the July 15 Federal Election Commission deadline. The missed deadline will likely subject Ogles to a fine from the FEC.

On the Democrat side, State Senator Heidi Campbell (D-Nashville) is replacing Cooper as the party nominee and is running unopposed in the primary. However, Campbell will face a stiff test in November's general election, as the GOP has long coveted a "Nashville" seat in Congress, not to mention the ability to shift the balance of power in Washington as well.

The election intrigue is not limited to Congress. The General Assembly will also see a number of interesting races, with a handful of hotly contested primaries taking place to determine who will replace retiring incumbents such as Sen. Mike Bell (R-Riceville), Sen. Brenda Gilmore (D-Nashville), Rep. Kent Calfee (R-Harriman), Rep. Mike Stewart (D-Nashville), Rep. Brandon Ogles (R-Franklin), Rep. Glen Casada (R-Franklin), and Rep. Michael Curcio (R-Dickson). As noted previously, the plethora of safely Democratic or Republican districts frequently means that all of the action is in the primary, with the general election often standing as a mere formality.

We will update you following the outcome of the August primary elections. In the meantime, we hope you are having a safe and enjoyable summer, and please don't hesitate to reach out if you have any questions.