

**IN THE COURT OF APPEALS OF THE MIDDLE SECTION OF  
TENNESSEE**

STATE OF TENNESSEE	)	
	)	
Ex Parte Appellant	)	
	)	
JOHN ANTHONY GENTRY	)	
	)	
Appellant	)	
	)	
v.	)	<b>M2022-00654-COA-R3-CV</b>
	)	
SPEAKER OF THE HOUSE CAMERON	)	
SEXTON	)	
	)	
Appellee	)	
	)	

*Rule 3 Appeal As Of Right from the Final Judgment of the Chancery Court For  
The State of Tennessee, Twentieth Judicial District, Davidson County, 21-2165-IV*

---

**BRIEF OF APPELLANT**

---

JOHN ANTHONY GENTRY  
*sui juris*  
208 Navajo Court  
Goodlettsville, TN 37072  
(615) 351-2649  
john.a.gentry@comcast.net

**[Oral Argument Requested]**

## TABLE OF CONTENTS

<b>TABLE OF AUTHORITIES .....</b>	<b>2</b>
<b>CERTIFICATE OF COMPLIANCE .....</b>	<b>3</b>
<b>JURISDICTIONAL STATEMENT.....</b>	<b>4</b>
<b>STATEMENT IN SUPPORT OF ORAL ARGUMENT .....</b>	<b>4</b>
<b>STATEMENT OF THE ISSUES.....</b>	<b>4</b>
<b>STATEMENT OF THE CASE.....</b>	<b>5</b>
<b>STATEMENT OF THE FACTS .....</b>	<b>5</b>
<b>DENIAL OF ARTICLE I, § 23 RIGHT: Stmt. of Issue No. 1 .....</b>	<b>5</b>
<b>Plaintiff is a citizen.....</b>	<b>5</b>
<b>Application to Tennessee House of Representatives.....</b>	<b>6</b>
<b>During Proceedings.....</b>	<b>7</b>
<b>SUMMARY OF ARGUMENTS.....</b>	<b>9</b>
<b>ARGUMENTS: LAW AND DISCUSSION.....</b>	<b>9</b>
<b>INVOCATION .....</b>	<b>9</b>
<b>THE RIGHT OF REMONSTRANCE MUST BE RESTORED .....</b>	<b>10</b>
<b>RES JUDICATA APPLIED IN ERROR: Stmt. of Issue No. 1.....</b>	<b>10</b>
<b>A. Prior judgment was NOT rendered by a court of competent jurisdiction.....</b>	<b>12</b>
<b>B. Prior judgment was NOT final and on the merits. ....</b>	<b>14</b>
<b>C. Both proceedings do not involve the same Defendant added to an Amended Petition that was dismissed sua sponte. ....</b>	<b>15</b>
<b>D. Both proceedings DO NOT involve the same cause of action.....</b>	<b>16</b>
<b>RES JUDICATA IS A PROHIBITED PRETENSE Stmt. of Issue No. 1 (Cont.).....</b>	<b>19</b>
<b>A. Plaintiff Has Right &amp; Made Proper Application .....</b>	<b>21</b>
<b>B. Citizens have a right to present § 23 applications orally to legislative bodies.....</b>	<b>22</b>
<b>CONCLUSIONS .....</b>	<b>24</b>
<b>DECLARATION UNDER PENALTY OF PERJURY .....</b>	<b>25</b>
<b>AFFADAVIT OF JOHN ANTHONY GENTRY.....</b>	<b>27</b>

## TABLE OF AUTHORITIES

### Cases

<i>Caton v. Pic-Walsh Freight Co.</i> , 211 Tenn. 334, 364 S.W.2d 931, 933 (1963).....	13
<i>Estate of Brown</i> , 402 S.W.3d at 198.....	13
<i>Gaither Corp. v. Skinner</i> , 241 N.C. 532, 85 S.E.2d 909, 911 (1955).....	18
<i>Gerber v. Holcomb</i> , 219 SW 3d 914 - Tenn: Court of Appeals 2006 .....	18
<i>Harris v. Baptist Memorial Hospital</i> , 574 SW 2d 730 - Tenn: Supreme Court 1978 .....	15
<i>Henry v. Goins</i> , 104 SW 3d 475 - Tenn: Supreme Court 2003 .....	15

<i>Hutcheson v. Tenn. Valley Auth.</i> , 604 F.Supp. 543, 550 (M.D.Tenn.1985) .....	18
<i>In Re Estate of Trigg</i> , 368 S.W.3d 483, 489 (Tenn.2012) .....	13
<i>Ins. Corp. of Ireland</i> , 456 U.S. at 702, 102 S.Ct. 2099; Word, 377 S.W.3d at 674 .....	13
<i>Johnson v. Hopkins</i> , 432 S.W.3d 840, 844 (Tenn.2013) .....	13
<i>Kane v. Kane</i> , 547 SW 2d 559 (Tenn. 1977) .....	14
<i>Northland Ins. Co. v. State</i> , 33 S.W.3d 727, 729 (Tenn.2000) .....	13
<i>Turner v. Turner</i> , 473 SW 3d 257 - Tenn: Sup. Ct., (2015) .....	13

#### Other Authorities

A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION (1883) .....	23
Black's Law Dictionary 5 <sup>th</sup> Edition 'Competent' .....	13
INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES (1934) .....	24

#### Rules

House Rule of Order 15 .....	23
Sup. Ct. R. 10 .....	20
Tenn. R. App. P., Rule 3 .....	4
Tenn. R. Civ. P., Rule 12.08 .....	13

#### Constitutional Provisions

Tennessee Constitution, Article I, Section 23 .....	4, 10, 19, 20, 21, 22
Tennessee Constitution, Article VI, Section 11 .....	12, 15
Tennessee Constitution, Article X, Section 1 .....	9
Tennessee Constitution, Article XI, Section 16 .....	4, 10, 19, 20, 24

## CERTIFICATE OF COMPLIANCE

As required by Tenn. R. of App. P. Rule 30(e), I hereby certify that Appellant's **BRIEF OF APPELLANT**, contains 6,158 words excluding the parts of the brief that are exempted by Tenn. R. of App. P. Rule 30(e). Notarized affidavit and declaration is also included herein.

## **JURISDICTIONAL STATEMENT**

Pursuant to Tennessee Rules of Appellate Procedure Rule 3, in civil actions, every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right. The trial court entered into the Record, its final judgement pertaining to Plaintiff's Rule 59 motion on May 4, 2022 (TR Vol. V, p. 746-748). Plaintiff properly and timely filed a Notice of Appeal on May 18, 2022, seeking appeal of a final judgement as of right pursuant to Tenn. R. App. P. Rule 3.

## **STATEMENT IN SUPPORT OF ORAL ARGUMENT**

Due to the profound and unique nature of this case, the Court would benefit from hearing oral argument. This case is a matter of First Impression since not at any time, in the history of the state of Tennessee, has a citizen, or group of citizens as in this case, asserted the right to apply to the Tennessee House of Representatives for redress or proper purpose by oral address, with that right denied.

## **STATEMENT OF THE ISSUES**

1. Whether the trial court was in error dismissing the case based upon the application of *res judicata* doctrine when the factors necessary for application of *res judicata* defense have not been demonstrated.
2. Whether the application of *res judicata* dismissing this case, erroneous or not, or any rule, statute, or policy used to deny exercise of Tennessee Constitution, Article I, section 23 rights, is a prohibited pretense in violation of Article XI, § 16 of the Constitution of The State of Tennessee as well as a violation of Article I, Section 23 rights.

## **STATEMENT OF THE CASE**

This case seeks to restore constitutionally protected rights in Article I, Section 23 of the Constitution of the State of Tennessee.

This case seeks Writ Mandamus upon Defendant Speaker of the Tennessee House of Representatives CAMERON SEXTON to perform his duty to: (1) mandate Defendant CAMERON SEXTON to schedule Plaintiff's address on behalf of similarly aggrieved citizens and co-applicant's to a quorum of the House, and Plaintiff's oral presentation of their: APPLICATION BY ADDRESS: RESTORATION OF RIGHT TO APPLY FOR REDRESS OF GRIEVANCE OR OTHER PROPER PURPOSE BY ADDRESS OR REMONSTRANCE, and to make such schedule at a mutually agreed upon date and time with Plaintiff, (2) mandate Defendant, CAMERON SEXTON call Plaintiff to the table before a quorum of the House, at the mutually agreed upon date and time, to address the body, (3) mandate Defendant, CAMERON SEXTON to provide reasonable time to Plaintiff to make oral address. Plaintiff has asked for fifteen (15) minutes.

## **STATEMENT OF THE FACTS**

### **DENIAL OF ARTICLE I, § 23 RIGHT: Stmt. of Issue No. 1**

#### **Plaintiff is a citizen**

Plaintiff is a citizen of the United States and a citizen of the state of Tennessee. In ORDER entered on February 22, 2022, the Court stated; "Therefore, the Court GRANTS Plaintiff's motion and hereby affirms the Court recognizes Plaintiff is a citizen of the United States, and a citizen of the state of Tennessee." (*TR Vol III, p. 411*). Defendant did not dispute Plaintiff is a citizen.

## **Application to Tennessee House of Representatives**

On May 3, 2021, Plaintiff presented APPLICATION BY ADDRESS: RESTORATION OF RIGHT TO APPLY FOR REDRESS OF GRIEVANCE OR OTHER PROPER PURPOSE BY ADDRESS OR REMONSTRANCE (*TR Vol I, p. 15*) to Representative Johnny Garrett.

The application was co-signed by a large number of citizens from across the state of Tennessee (*TR Vol I, p. 16 - 95*). The application to the Tennessee House of Representatives specifically asserted right to make application to the body by oral address, as well as rights to due course of law, justice administered without delay, and the right to instruct representatives (*TR Vol I, p. 15 ¶ 1 and ¶ 2*). The application seeks Resolution of the Members of the House, to welcome proper petitions and remonstrances, and to hear and decide them, as well as Resolution to reinstate the Propositions and Grievances Committee (*TR Vol I, p. 15 ¶ 3*).

Representative Johnny Garrett properly received the application, and filed the application with the Chief Clerk of the Tennessee House of Representatives (*TR Vol I, p. 14*) on the same day. On May 3, 2021, the same day, the application was announced on the floor of the House. Video of the announcement can be viewed in the House Video Journal, as well as on YouTube at this url; <https://youtu.be/SmcPOmWpFiw> .

Also on the same day, May 3, 2021, Representative Garrett emailed Plaintiff that he had “*requested additional information from the Speaker’s office regarding further action on the floor as it relates to your petition. I highly suggest you reach to (sic) Speaker Sexton’s office and inquire as to the next steps, his office number is (615) 741-2343.*” (*TR Vol I, p. 97*).

Plaintiff then called Defendant CAMERON SEXTON's office and was instructed to contact Rosie Gregory, a member of Defendant SEXTON's legislative staff, via email, which Plaintiff did receiving no response. Plaintiff sent several follow up emails, copying Defendant SEXTON each time. See *TR Vol I, p. 98 (Exhibit E), p.100 (EXHIBIT F), p. 102 (EXHIBIT G), and p. 103 (EXHIBIT H)*, all without response. On May 14, 2021, Plaintiff again followed up with Representative Garrett inquiring if Defendant SEXTON had replied to his request regarding; *"further action on the floor."* Representative Garrett stated; *"I'm currently still waiting on instructions from the Speaker's office as well."* (*TR Vol I, p. 105*).

On November 18, 2021, in anticipation of the beginning of the next legislative session, Plaintiff again resumed emailing Defendant SEXTON, Representative Garrett, and various other legislative staff, Senators, and Representatives. See *TR Vol I, p. 109 – 122 (EXHIBITS J – M)*.

In an email dated December 2, 2021, Representative Garrett, relying on OPINION of this Appellate Court, in which prior case; 1) written application (not application by address as in this case) was made pursuant to a fraudulent constitution on the General Assembly website (See *TR VOL II, p. 223,224*), and 2) the Court admitted interest in the case, and that there was not a judge in the state qualified to hear the case (*SUPP, VOL I, p. 10*), stated; *"According to the Court of Appeals, after their lengthy opinion (for which I'm certain you've read) said, that "the general Assembly had no duty too (sic) read at the table or to hear and decide Mr. Gentry's petition of remonstrance."*, thus making this case ripe for petition of Writ of Mandamus.

## **During Proceedings**

On December 15, 2021, Plaintiff filed his Verified Petition for Writ of Mandamus (*TR VOL I, p. 6*) seeking Writ of Mandamus as follows;

3. To mandate Defendant Speaker of the House, CAMERON SEXTON schedule Plaintiff's address on behalf of similarly aggrieved citizens and co-applicant's to a quorum of the House, and Plaintiff's oral presentation of their: APPLICATION BY ADDRESS: RESTORATION OF RIGHT TO APPLY FOR REDRESS OF GRIEVANCE OR OTHER PROPER PURPOSE BY ADDRESS OR REMONSTRANCE and to make such schedule at a mutually agreed upon date and time with Plaintiff.
4. To mandate Defendant Speaker of the House, CAMERON SEXTON call Plaintiff to the table before a quorum of the House, at the mutually agreed upon date and time, to address the body.
5. To mandate Defendant Speaker of the House, CAMERON SEXTON to provide reasonable time to Plaintiff to make oral address. Plaintiff has asked for fifteen (15) minutes.

In Defendant's Answer to Verified Petition For Writ of Mandamus (TR VOL II, p. 160), Defendant Sexton "Admitted" the language of Article I, Section 23 of the Tennessee Constitution and that "*Defendant admits that he has not responded to Plaintiff's emails.*" (*id.* p. 161).

On February 16, 2022, Defendant SEXTON filed a Motion for Summary Judgment and supporting Memorandum of Law (TR VOL III, p. 388 and 390), purporting "*Plaintiff's claims are barred by the doctrine of res judicata as a matter of law*". On February 26, 2022, Plaintiff also filed a Motion for Summary Judgment and supporting Memorandum of Law (TR VOL III, p. 416 and 418), seeking judgment in his favor "*pursuant to protected rights in the Constitution of the State of Tennessee.*"

On April 8, 2022 the trial court entered ORDER denying Plaintiff's Motion for Summary Judgment and granting Defendant SEXTON's Motion for Summary Judgment on the sole basis of the doctrine of *res judicata* (TR VOL V, p. 679).

On April 14, 2022 Plaintiff filed Plaintiff's Motion To Alter Order Granting Defendant's Motion for Summary Judgment & Incorporated Memorandum of Law to draw the Court's attention to facts overlooked, and to provide the trial court opportunity rectify errors of law (TR VOL V, p.



691). Plaintiff's Motion To Alter was DENIED in ORDER entered on May 4, 2022 (*TR VOL V*, p. 746).

## SUMMARY OF ARGUMENTS

Constitutionally protected rights cannot be lawfully oppressed by any rule, statute, policy since any oppression of Article I rights are prohibited pretense in violation of Article XI, § 16. The doctrine of *res judicata* cannot be applied to a subsequent case such as this where the prior case was 1) not decided by a court of competent jurisdiction, 2) where the prior case included different causes of action, 3) the parties to the case are not the same, or 4) where the prior case was not decided on the merits. Accordingly, the trial court was in error dismissing the case based on doctrine of *res judicata*.

## ARGUMENTS: LAW AND DISCUSSION

### INVOCATION

The constitution of this state binds all judges to uphold constitutional provisions, and evidences certain rights retained by the people.

Pursuant to Tennessee Constitution, Article X, Section 1;

**Every person who shall be chosen or appointed to any office of trust or profit under this Constitution, or any law made in pursuance thereof, shall, before entering on the duties thereof, take an oath to support the Constitution of this state, and of the United States, and an oath of office.**

The trial court affirmed Plaintiff is a citizen of the state of Tennessee and United States and Defendant did not dispute Plaintiff's citizenship (*TR Vol III*, p. 411). As a citizen, Plaintiff invokes the oaths of this Appellate Court, and that his rights as a citizen be upheld and enforced.

## THE RIGHT OF REMONSTRANCE MUST BE RESTORED

*"Common and frequent petition, without the threat of force, took the place of prolonged discontent and abrupt presentation of a complex cahier of grievances at the point of the sword."*

J.E.A. Jolliffe, THE CONSTITUTIONAL HISTORY OF MEDIEVAL ENGLAND 404 (4th ed. 1961). If this Appellate Court upholds the trial court's decision dismissing Plaintiff's Petition for Writ of Mandamus, and oppression of Art. I, § 23 rights by Defendant SEXTON, this Court provides no means for redress, or protest of a wrongful government to future generations, – **except the presentation of grievances "at the point of the sword."**

### RES JUDICATA APPLIED IN ERROR: Stmt. of Issue No. 1

#### Standard of Review

**Tennessee Constitution, Article XI, Miscellaneous Provisions, Section 16;** The **declaration of rights** hereto prefixed is declared to be a part of the Constitution of the state, and **shall never be violated on any pretense whatever.** And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the general powers of the government, and shall forever remain inviolate.

**Tennessee Constitution, Article I, Declaration of Rights, Section 23;** That the citizens **have a right**, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and **to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance.**

The party asserting a defense predicated on res judicata or claim preclusion must demonstrate (1) that the underlying judgment was rendered by a court of competent jurisdiction, (2) that the

same parties or their privies were involved in both suits, (3) that the same claim or cause of action was asserted in both suits, and (4) that the underlying judgment was final and on the merits.

*Jackson v. Smith*, 387 SW 3d 486 - Tenn: Supreme Court 2012

### **Argument**

Defendant SEXTON failed to demonstrate that the judgment rendered in the prior case was made by a court of competent jurisdiction. Appellant in fact proved that both the trial court and the appellate court in the prior case were incompetent and lacked jurisdiction.

Defendant SEXTON failed to demonstrate the same parties were involved in both suits. Appellant in fact proved Defendant SEXTON in the prior case was Speaker Elect while in this case Speaker of the House.

Defendant SEXTON failed to demonstrate the same claim or cause of action was asserted in both suits. Appellant in fact proved two distinctly different causes of action, the first case application made in written remonstrance seeking various reforms, and the second application asserting right to present by oral address moving the House of Representatives to Resolve to welcome, hear, and decide petitions and remonstrances, and to reinstate the Propositions and Grievances Committee.

Defendant SEXTON failed to demonstrate the underlying judgment was tried on the merits. Appellant in fact proved the prior case was dismissed without hearing and without an operative Motion To Dismiss before the court.

Therefore, the trial court was in error dismissing this case on the sole basis of the doctrine of res judicata asserted as a defense. If any one of four (4) factors necessary for the application of

res judicata to apply fail, then dismissal was in error. In this matter none of four (4) the factors were demonstrated to apply by Defendant SEXTON.

**A. Prior judgment was NOT rendered by a court of competent jurisdiction.**

The Constitution of the State of Tennessee, Article VI, Section 11 requires; “*No judge of the Supreme or Inferior Courts shall preside on the trial of any cause in the event of which he may be interested, ..., except by consent of all the parties.*” The Tennessee constitution clearly prohibits judges from presiding over a case in which they have interest, without consent of all the parties.

The Tennessee Court of Appeals stated in ORDER, Case No. M2019-02230-COA-R3-CV, denying MOTION FOR ALL APPELLATE COURT JUDGES TO RECUSE OR DISQUALIFY; “*Given the allegations in Petitioner’s remonstrance, we conclude that we the undersigned judges have an interest in the underlying case to the extent that it seeks to impeach the judges of this Court.*” (SUPP, VOL I, p. 6), and further that; “*Given the allegations in Petitioner’s remonstrance, there is no qualified pool from which either the Chief Justice or our Governor could appoint special judges to hear this appeal.*” (SUPP, VOL I, p. 10)

In Case No. 19-644-I, neither the presiding Chancellor, nor the appellate court judges obtained consent of all the parties before presiding over the case 19-644-I (trial court) and M2019-02230-COA-R3-CV (Ct of App).

Since the Constitution of the State of Tennessee expressly prohibits judges presiding over a case in which that “may be” interested, without consent of the parties, and since the Court of

Appeals stated that there was not a judge in the entire state qualified to hear the case, and because neither the trial court nor the appellate Court bothered to seek consent of the parties, neither the trial court nor the appellate court had jurisdiction, and most certainly neither the trial court nor the appellate court obtained consent of the parties.

Not only did the trial court and appellate court fail to obtain consent in a case which the Court of Appeals affirmed every judge and the attorney had interest not to be reformed (SUPP, VOL I, p. 10), but both courts refused to recuse or disqualify under proper motion, further evidencing Plaintiff did not consent to their jurisdiction.

**Subject matter jurisdiction confines judicial power to the boundaries drawn in constitutional and statutory provisions.** *Ins. Corp. of Ireland*, 456 U.S. at 702, 102 S.Ct. 2099; Word, 377 S.W.3d at 674; *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000). As a result, "[a] party's consent, silence, waiver, entered plea, or appearance before the court, is not sufficient to confer subject matter jurisdiction." *Estate of Brown*, 402 S.W.3d at 198 (citing *In Re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn.2012); *Caton v. Pic-Walsh Freight Co.*, 211 Tenn. 334, 364 S.W.2d 931, 933 (1963)). See also Tenn. R. Civ. P. 12.08 (stating that subject matter jurisdiction may not be waived). **As a result, subject matter jurisdiction may be challenged at any time and may be raised by a court on its own motion, even if the parties have not raised the issue.** *Johnson v. Hopkins*, 432 S.W.3d 840, 844 (Tenn.2013). See *Turner v. Turner*, 473 SW 3d 257 - Tenn: Sup. Ct., (2015) (at 270).

Black's Law Dictionary 5<sup>th</sup> Edition Defines "competent" as follows; "**Duly qualified**; answering all requirements; having sufficient ability or authority; possessing the requisite natural or legal qualifications (at 257). The Tenth Edition defines "competence" as follows; "**1. A basic**

or minimal ability to do something; **adequate qualification.** 2. The capacity of an official body to do something.

Yet in the matter asserting preclusion under res judicata, the Court of Appeals held that “Given the allegations in Petitioner’s remonstrance, *there is no qualified pool* (SUPP, VOL I, p. 10). Since “**competent**” or “**competence**” are defined as “**duly qualified**” or “**adequate qualification**” and the Court of Appeals ruled there was not a qualified judge or attorney in the entire state, then clearly neither the presiding Chancellor in the trial court, nor the appellate court judges were competent in the prior case. And since, neither the trial court nor the appellate court judges obtained consent of the parties of a case in which they had interest not to be reformed, neither court had proper jurisdiction. Therefore, both the trial court and the appellate court were incompetent and lacked jurisdiction, and neither were not courts of competent jurisdiction.

Defendant cites *Kane v. Kane*, 547 SW 2d 559 (Tenn. 1977) that “A trial court’s jurisdiction relates to its inherent power or authority to hear and decide a particular type of case.”

In that same case, Justice Brock stated in OPINION;

**Jurisdiction is lawful authority of a court to adjudicate a controversy** brought before it; **jurisdiction of the subject matter is conferred by the constitution and statutes**, jurisdiction of the parties is acquired by service of process.

The constitution expressly prohibits judges from presiding over a case in which they may be interested without consent of the parties. Accordingly subject matter was not conferred by the constitution, subject matter in the previous case was expressly prohibited by the state’s constitution.

## **B. Prior judgment was NOT final and on the merits.**

The word “merit” as a legal term is to be regarded as referring to the strict legal rights of the parties. Black’s Law Dictionary, Fifth Edition (892). Plaintiff was denied his strict legal right to a fair and impartial court by being subjected to proceedings where the trial court Chancellor and appellate court judges presiding over the matter admitted interest and did not obtain consent of the parties, in violation of the Constitution of the State of Tennessee, Article VI, Section 11.

**The prior case**, upon which this Court finds Defendant has a *res judicata* defense, **was not decided upon the merits** since the case was dismissed *sua sponte* without hearing and without an operating motion to dismiss. **In the case, *Harris v. Baptist Memorial Hospital*, 574 SW 2d 730 - Tenn: Supreme Court 1978**

Although Rule 41.02 does not expressly so provide, we are of the opinion that a trial court may under certain circumstances and upon adequate grounds therefor, *sua sponte* order the involuntary dismissal of an action. **However, this power must be exercised most sparingly and with great care that the right of the respective parties to a hearing shall not be denied or impaired.**

**In the case, *Henry v. Goins*, 104 SW 3d 475 - Tenn: Supreme Court 2003**

In addition, this Court has observed that the power to order *sua sponte* the involuntary dismissal of an action "must be exercised most sparingly and with great care **that the right of the respective parties to a hearing shall not be denied or impaired.** Citing *Harris v. Baptist Memorial Hospital. Henry v. Goins*, 104 SW 3d 475 - Tenn: Supreme Court 2003

**C. Both proceedings do not involve the same Defendant added to an Amended Petition that was dismissed *sua sponte*.**

On August 19, 2019, Plaintiff filed an Amended Petition for Writ of Mandamus in the previous matter. See Defendant’s Statement of Undisputed Material Facts, (TR VOL II, p. 243).

As indicated in the style of the case, in that amended petition, Plaintiff added defendant “SPEAKER OF THE HOUSE ELECT CAMERON SEXTON” in his official capacity. The Tennessee House of Representatives convened in special session called by the governor on August 23<sup>rd</sup>, 2019 and elected Defendant CAMERON SEXTON as Speaker of the House. Speaker of the House Cameron Sexton, as Speaker has new powers not vested in him as Speaker Elect. Therefore, Defendant “SPEAKER OF THE HOUSE ELECT CAMERON SEXTON” is a different party to the case than “SPEAKER OF THE HOUSE CAMERON SEXTON”

#### **D. Both proceedings DO NOT involve the same cause of action.**

Defendant through counsel seeks to deceive this Court, that the causes of action are the same in both cases which they are not. **“Cause of Action” is defined in Black’s Law Dictionary, Tenth Edition as follows;** *“A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person”* (266). And in the Fifth Edition; *“A situation or state of facts which would entitle party to sustain action and give him a right to seek a judicial remedy in his behalf”* (201).

The cause of action giving rise to this case could not be more different. In the previous action, Plaintiff presented to the Tennessee House of Representatives, through a member of the House, a **written** PETITION OF REMONSTRANCE. In that remonstrance, Plaintiff presented facts and evidentiary materials supporting those facts in approximately 700 pages of appendix. In that remonstrance, Plaintiff also demanded specific reforms and redress sought, including proposed articles of impeachment for several trial and appellate court judges.

In that case, the Chancellor’s MEMORANDUM AND ORDER DISMISSING AMENDED PETITION FOR WRIT OF MANDAMUS, stated;



**Petitioner has fully exercised this right** [emphasis added] and has remonstrated to both the Tennessee Senate and the House. He filed with the Senate and had filed on his behalf with the House his Petition of Remonstrance, exercising his right to apply for redress of the grievances set forth in his Petition of Remonstrance. No other rights are conferred under Art. I, § 23. **See Defendant's Statement of Undisputed Facts, EXHIBIT 4, Page 16**

In this matter, the fact giving rise to this case, Plaintiff filed with the Tennessee House of Representatives, through a member of the House, **APPLICATION BY ADDRESS: RESOTRATION OF RIGHT TO APPLY FOR REDRESS OF GRIEVANCE OR OTHER PROPER PURPOSE BY ADDRESS OR REMONSTRANCE** (*TR VOL I, p. 15*). In that application, Plaintiff and co-applicants stated;

A large number of citizens from across the sate of Tennessee assert right to apply to the powers of the government for redress of grievance and proper purpose by address, pursuant to the Tennessee Constitution, Article I, Section 23. **See Verified Petition For Writ of Mandamus, filed Dec. 15, 2021 (TR VOL I, p. 15).**

The factual situation pursuant to which Plaintiff sought to obtain remedy in court in the previous matter was a written Petition of Remonstrance, received by both Houses. The Court in the previous matter determined that Plaintiff “has fully exercised” his right. And again, in that case, the Court of Appeals stated there was not a judge in the entire state qualified to hear that matter.

The factual situation pursuant to which Plaintiff seeks to obtain remedy in this case is an “APPLICATION BY ADDRESS” filed with the Tennessee House of Representatives, by a member of the House. Clearly Plaintiff has not fully exercised his right to address the body of the House, since Defendant SEXTON oppresses that right by denying Plaintiff and co-applicants their right to address the full body of the House. Clearly factual situation is different. **The fact that a**

member accepted the Application By Address, and the fact that the Clerk of the House announced the application on the House Floor, further establishes the cause of action, that Plaintiff has a right to address the body, and that this cause of action is different from the previous matter.

In the case, *Gerber v. Holcomb*, 219 SW 3d 914 - Tenn: Court of Appeals 2006

"Generally, a consent judgment operates as *res adjudicata* to the same extent as a judgment on the merits." *Horne v. Woolever*, 170 Ohio St. 178, 163 N.E.2d 378, 382 (1959). Much like a judgment on the merits, an agreed judgment of dismissal in settlement of a controversy **"is conclusive, not only on the matters actually raised and litigated, but it is also conclusive on every other matter that could have been litigated and decided as an incident to or essentially connected with the subject matter of the prior litigation."** *Freeman v. Cherokee Water Co.*, 11 S.W.3d 480, 483 (Tex.App.2000). "It is to be noted that the phase of the doctrine of res judicata which precludes relitigation of the same cause of action is broader in its application than a mere determination of the questions involved in the prior action. **The bar of the judgment in such cases extends not only to matters actually determined, but also to other matters which in the exercise of due diligence could have been presented for determination in the prior action.**" *Gaither Corp. v. Skinner*, 241 N.C. 532, 85 S.E.2d 909, 911 (1955). (at 918)

Since in the previous matter, Plaintiff remonstrated in written form, and the Court found Plaintiff fully exercised his right, it was impossible in the other matter, to litigate that Plaintiff and co-applicants had made application by address. In the previous matter, Plaintiff could not present the fact that he made application by address.

We first note that both proceedings in this matter involve the same cause of action. **"The principal test for determining whether the causes of action are the same is whether the primary right and duty or wrong are the same in each case."** *Hutcheson v. Tenn. Valley Auth.*, 604 F.Supp. 543, 550 (M.D.Tenn.1985). (*id* at 918)

Under the principal test for determining whether the causes of action are the same is whether the primary right and duty are the same in each case which they are not in these matters. In the previous matter, Plaintiff remonstrated in written form, again which the court determined Plaintiff had fully exercised his right. In this matter, Plaintiff's primary right protected in Art. I, § 23 to make application by oral address is different since it is a fact the state constitution provides two methods to apply to those invested with the powers of government, by address or by remonstrance.

Since none of the factors necessary for application of res judicata have been demonstrated by Defendant SEXTON, the trial court was in error dismissing Plaintiff's Petition for Writ of Mandamus.

## **RES JUDICATA IS A PROHIBITED PRETENSE**

### **Stmt. of Issue No. 1 (Cont.)**

#### **Standard of Review**

**Tennessee Constitution, Article I, Declaration of Rights, Section 23;** That the **citizens have a right**, in a peaceable manner, to assemble together for their common good, **to instruct their representatives**, and to **apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance.**

**Tennessee Constitution, Article XI, Miscellaneous Provisions, Section 16;** The **declaration of rights** hereto prefixed is declared to be a part of the Constitution of the state, and **shall never be violated on any pretense whatever.** And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the general powers of the government, and shall forever remain inviolate.

Regarding this Standard of Review, there appear to be no higher court opinions for Appellant to cite, at least not that he can find. Appellant remains hopeful the court will not uphold dismissal of this case based upon the common judicial finding; “*Appellant cites no supporting authorities to support his argument.*” As this Court knows, pursuant to Sup. Ct. R. 10, judges are supposed to be knowledgeable in the law, and it is the court’s responsibility is to determine the facts of the case and rule according to law, within the confines of the constitution.

### **Argument**

No citizen before Appellant has exercised, **or rather “attempted to exercise”**, rights in Art I, 23 by oral address. Since it is true the right has never been exercised, and no evidence of oppression or upholding of the right exists, the courts have not been faced with such a matter before. **Accordingly, Appellant seeks *First Impression Opinion*.**

The **declaration of rights ... shall never be violated on any pretense whatever**. In Article I, Declaration of Rights, the framers enumerated certain rights retained by the people to protect them against a wrongful government. Article XI, § 16, further protects those rights from being violated under any pretense whatever, and placing those rights forever beyond the reach of government. Any statute, rule of order, legislative or procedural rule, or doctrine of law, including *res judicata* is a prohibited pretense. This is true especially when any statute, rule or doctrine is erroneously applied such as the erroneous application of *res judicata* defense made in this case.

Plaintiff first raised this issue in his first Motion for Summary Judgment filed on December 29, 2021 (TR VOL I, p, 150 ¶ 1b). Plaintiff again raised this issue in a Motion To Sanction (TR VOL III, p, 441 ¶ 13 – 17) filed on March 21, 2021 prior to final decision entered on April 8, 2022

(TR VOL V, p. 679) that *res judicata* as a defense is a prohibited pretense. Therefore, this matter and issue is properly before this court.

Since it is true that Article I rights cannot be violated under any pretense whatever, then the only questions are whether citizens have a right to orally address a legislative house and whether Plaintiff properly exercised his Art I, § 23 rights. On that point there is no doubt that citizens of Tennessee do in fact have a right to orally address the Tennessee House of Representatives in application for redress of grievance or other proper purposes, and Plaintiff did in fact properly exercise, or rather, attempt to exercise that right.

### **A. Plaintiff Has Right & Made Proper Application**

**Our Beloved Tennessee Constitution could not be more clear on this point. Article I, Declaration of Rights, Section 23; That the citizens have a right, to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance.**

Plaintiff is in fact a citizen, undisputed by Defendant SEXTON, and affirmed by the trial court. In ORDER entered on February 22, 2022, the Court stated; “*Therefore, the Court GRANTS Plaintiff’s motion and hereby affirms the Court recognizes **Plaintiff is a citizen of the United States, and a citizen of the state of Tennessee.***” (TR Vol III, p. 411). In that ORDER, the trial court further stated; “*If the Defendant wishes to further challenge whether or not Plaintiff is a Citizen, Defendant must file an appropriate motion no later than 7 days subsequent to entry of the ORDER into the record.*” Defendant SEXTON did not file a subsequent appropriate motion challenging Plaintiff’s citizenship of the state of Tennessee or the United States (TR Vol III, p. 411).

**The Tennessee House of Representatives is in fact invested with the powers of government.** Defendant SEXTON did not raise the issue or dispute that the Tennessee House of Representatives is invested with the powers of government.

**Plaintiff and co-signers made proper application to the Tennessee General Assembly which includes the Tennessee House of Representatives** (*TR Vol I, p. 15*). Defendant SEXTON did not raise the issue or dispute that Plaintiff made application or proper application.

**Plaintiff and co-signers were in fact seeking redress of grievances as well as a proper purpose in making application.** In Representative Garrett's letter addressed to the Chief Clerk of the Tennessee House of Representatives, he stated; "*1. Restoration of the right to apply for redress of grievance or other proper purpose by address or remonstrance.*" Restoration of a right is a grievance of an oppressed right. Representative Garrett's letter further stated; "*2. Reinstatement of the Propositions and Grievances Committee.*" which is most certainly a proper purpose. Defendant SEXTON did not raise the issue or dispute that Plaintiff's application was not an application for redress of grievance or proper purpose. See (*TR Vol I, p. 14*).

Since Plaintiff is in fact a citizen of the state of Tennessee and United States, and did in fact apply to those invested with powers of government, and in application was in fact seeking redress of grievance as well as had a proper purpose, Plaintiff has a right to orally address the full body of the Tennessee House of Representatives.

**B. Citizens have a right to present § 23 applications orally to legislative bodies.**

Again, our Beloved **Tennessee Constitution could not be more clear.** **Article I, Declaration of Rights, Section 23;** That the citizens have a right, to apply to those invested

**with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance.**

Since our legislative houses are invested with the powers of government, citizens have a right to make their applications to legislative bodies by oral address.

Pursuant to House Rule of Order 15, Petitions shall be received and read at the table. Specifically, House Rule of Order, Rule 15 states;

Before any petition or memorial addressed to the House ***shall be received and read at the table***, a brief statement of the contents of the petition or memorial shall be filed with the Chief Clerk. (TR VOL II, p. 287 ¶ 15)

The House of Representative own rules create a duty have petitions and remonstrances presented to the body by oral address. The word “shall” establishes that duty.

In his often-cited book on constitutional law, Michigan Sup. Ct Justice Cooley states that petitions “***may give to the representatives or other bodies the most valuable information.***”, evidencing petitions were historically presented primarily to legislative bodies.

*“The right of the people... to petition the government for a redress of grievances is one which “would seem unnecessary to be expressly provided for in a republican government, since it results from the very nature and structure of its institutions. It is impossible that it could be practically denied until the spirit of liberty had wholly disappeared, and the people had become so servile and debased as to be unfit to exercise any of the privileges of freemen.” “a sacred right which in difficult times shows itself in its full magnitude, frequently serves as a safety-valve if judicially treated by the recipients, and may give to the representatives or other bodies the most valuable information. It may right many a wrong, and the deprivation of it would at once be felt by every freeman as a degradation.... – a simple, primitive, and natural right. As a privilege it is not even denied the creature in addressing the Deity.” Thomas M. Cooley (MI Sup. Ct. Justice), A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 427/28 (5<sup>th</sup> ED. 1883).*

In 1669, the House of Commons resolved that every commoner in England possessed “the inherent right **to prepare and present petitions**” to it “in case of grievance,” INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES VOL 12 at 98 (1934). The right to present petitions to legislative bodies, even by commoners, dates back at least to the 17<sup>th</sup> Century.

## **CONCLUSIONS**

**Based upon the facts of this case, arguments of law, supporting authorities, constitutional provisions, Sup Ct Rules you are bound to, oaths of office, for the good of the people, assertion of all rights by Plaintiff, and to commence the restoration of the republican character of the state of Tennessee;**

The trial court was in error dismissing the case based upon the application of *res judicata*. Whether or not the trial court was in error dismissing the case based upon the application of *res judicata*, the trial court dismissed the case in error based upon a pretense prohibited in Tennessee Constitution, Article XI, Section 16.

This Court should remand the case back to trial court with instructions to the trial court to issue Writ of Mandamus upon Defendant as requested in Plaintiff’s Petition for Writ of Mandamus. This Court should assign all costs to the Appellee in his personal capacity. This Court should further remand to the trial court to determine costs paid by Appellant, and reimbursement of those costs by Appellee in his personal capacity. And for any other relief deemed proper and just.



## **DECLARATION UNDER PENALTY OF PERJURY**

By my signature below and properly notarized affidavit under oath, I, John Anthony Gentry do hereby make oath and affirm that all statements included in this BRIEF OF APPELLANT, are true and correct to the best of my knowledge, information and belief.

Respectfully submitted,

---

John A Gentry, *sui juris*  
208 Navajo Court  
Goodlettsville, TN 37072  
(615) 351-2649  
john.a.gentry@comcast.net

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via email and via Priority US Mail, postage prepaid to;

Janet M. Kleinfelter (BPR 13889)  
Deputy Attorney General  
Office of the Tennessee Attorney General  
P.O. Box 20207  
Nashville, TN 37202  
(615) 741-7403  
janet.kleinfelter@ag.tn.gov

On this the 13<sup>th</sup> day of September, 2022

---

John Anthony Gentry, *Sui Juris*

## AFFADAVIT OF JOHN ANTHONY GENTRY

State of Tennessee )

County of \_\_\_\_\_ )

I, John Anthony Gentry, after being first duly sworn according to law, and pursuant to the penalties of perjury under the laws of the State of Tennessee, do hereby make oath and affirm that all statements, in this **BRIEF OF APPELLANT**, are true and correct to the best of my knowledge, information and belief. I further affirm that I have personal knowledge of the facts, assertions and allegations herein stated, and that all the facts, assertions, and allegations are supported by evidentiary materials.

---

John A. Gentry

Sworn to and subscribed before me, this

the 13<sup>th</sup> day of September, 2022

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_