

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

THE BOARD OF EDUCATION OF SHELBY)
COUNTY, TENNESSEE,)

Plaintiff/Counter-Defendant,)

v.)

No. 2:11-cv-02101-SHM-cgc

THE MEMPHIS CITY BOARD OF EDUCATION;)
THE MEMPHIS CITY COUNCIL; THE CITY OF)
MEMPHIS; THE DEPARTMENT OF)
EDUCATION OF THE UNITED STATES OF)
AMERICA; ARNE DUNCAN, in his official)
capacity as Secretary of the Department of Education)
of the United States of America; THE)
DEPARTMENT OF JUSTICE OF THE UNITED)
STATES OF AMERICA; ERIC HOLDER, in his)
official capacity as the Attorney General of the)
United States of America; THE STATE OF)
TENNESSEE DEPARTMENT OF EDUCATION;)
and KEVIN HUFFMAN, in his official capacity as)
Commissioner of the State of Tennessee Department)
of Education; THE BOARD OF COUNTY)
COMMISSIONERS OF SHELBY COUNTY,)
TENNESSEE)

Defendants.)

**MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT AND
INCORPORATED MEMORANDUM IN SUPPORT THEREOF**

COMES NOW The Board of County Commissioners of Shelby County, Tennessee, (hereinafter the "Shelby County Commission") by and through undersigned counsel, pursuant to Rule 14 of the Federal Rules of Civil Procedure, and respectfully moves this Honorable Court for leave to file its Third-Party Complaint for Declaratory Judgment, Temporary Restraining Order, Preliminary, and Permanent Injunctive Relief, and Request for Expedited Hearing, a true,

correct, and genuine copy of which is attached hereto as Exhibit “A”. In support of this Motion, the Shelby County Commission states and alleges as follows:

ARGUMENT

1. A motion to file a third-party complaint is a matter addressed to the discretion of the trial court. *See General Elec. Co. v. Irvin*, 274 F. 2d 175, 178 (6th Cir. 1960). *See also Nipponkoa Ins. Co., Ltd. v. Ozark Motor Lines*, No. 3:06CV0447, 2006 WL 2947467, at *3 (M.D. Tenn. Oct. 12, 2006) (“Whether a third-party claim should be allowed to proceed is committed to the discretion of the trial court.”).
2. As a general rule, “timely motions for leave to implead third parties should be freely granted . . . unless to do so would prejudice the plaintiff, unduly complicate the trial, or would foster an obviously unmeritorious claim.” *Trane U.S., Inc. v. Meehan*, 250 F.R.D. 319, 322 (N.D. Ohio 2008). *See also Nipponkoa*, 2006 WL 2947467, at *3 (same).
3. In this case, the Shelby County Commission’s motion for leave to file a third-party complaint is timely filed, as the municipalities within Shelby County have only recently given approval for ordinances authorizing referenda to authorize the formation of municipal school districts, and have asked the Election Commission to schedule these referenda to be held on August 2, 2012. Moreover, these same municipalities also passed ordinances setting a November 6, 2012 election of school board members if their respective referenda pass.
4. Moreover, this Court’s August 8, 2011 Order (Docket Entry 243) interpreting Chapter 1 of the Public Acts of 2011 (“Chapter 1”), and ruling generally on the status of the Memphis City Schools’ consolidation with the Shelby County Schools, concluded that consideration of the legality and constitutionality of Section 3 of Chapter 1 was not ripe, because no municipality in

Shelby County had taken any steps to form a municipal school district and because the parties had not shown any injury from Section 3.

5. As discussed in detail in the attached Complaint, the municipalities, with the authority provided by Chapter 1, as well as the subsequently-enacted Public Chapter 905, and Public Chapter 970, have now taken any steps to form municipal school districts and The Shelby County Commission has and will suffer resulting injury.

WHEREFORE, The Shelby County Commission prays that this Honorable Court grant it leave to file the Third-Party Complaint for Declaratory Judgment, Temporary Restraining Order, Preliminary, and Permanent Injunctive Relief, and Request for Expedited Hearing, a true, correct, and genuine copy of which is attached hereto as Exhibit "A", and for any such other relief as may be just and equitable.

Respectfully submitted this 26th day of June, 2012.

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

/s/ Leo Bearman Jr.

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CERTIFICATE OF CONSULTATION PURSUANT TO LR 7.2

Pursuant to Local Rule 7.2(a)(1)(B), the undersigned hereby certifies that on June 26, 2012, counsel for The Board of Commissioners of Shelby County Tennessee attempted to confer with counsel for all parties in this action regarding the foregoing motion. Counsel for the City of Memphis, the Memphis City Council and the Memphis City Board of Education have indicated they consent to the relief sought herein. Counsel for the Board of Education of Shelby County has indicated that he takes no position on the relief sought herein. The undersigned was unable to reach counsel for the Intervening Plaintiffs or for the Intervening Defendants by telephone.

/s/ Lori H. Patterson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of June, 2012, a true and exact copy of the foregoing was filed using the CM/ECF system and has been served via electronic filing, to the following ECF participants:

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