

The Tennessee Journal

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GOP wins latest skirmish in multi-front legal battle over new laws

A three-judge panel on the 6th Circuit U.S. Court of Appeals has come to the rescue — at least for now — of a law banning gender-affirming care for minors in Tennessee. The measure had been a top priority of state Republicans, who were outraged when the non-surgical elements of the statute were blocked by a Nashville judge appointed to the federal bench by former President Donald Trump.

State Attorney General Jonathan Skrmetti, who has been on the losing end of other recent court decisions on the state and federal levels, called the 6th Circuit decision “a big win.” But he cautioned that “the case is far from over.” In the 2-1 opinion, the judges acknowledged that the week they had to consider the motion for an emergency stay of District Judge Eli Richardson’s ruling may not have been sufficient to weigh all the factors involved or “to see our own mistakes.” As such, they plan to expedite the full appeal with a goal of coming to a decision by Sept. 30.

The opinion was written by Chief Judge Jeffrey Sutton of Ohio, an appointee of Republican President George W. Bush, whose 2014 opinion to uphold same-sex marriage bans in Tennessee and elsewhere was overturned in the U.S. Supreme Court’s landmark *Obergefell* ruling the following year. Sutton was joined in the transgender decision by Amul Thapar of Kentucky, who was elevated to the 6th Circuit bench by Trump and once presided over the Eastern District of Tennessee case that led to the conviction of an octogenarian nun for breaking into the Y-12 National Security Complex and defacing a uranium processing plant. Senior Judge Helene White, an appointee of Democratic President Bill Clinton, dissented.

Kelsey chronicles. When former state Sen. Brian Kelsey (R-Germantown) was making a long-shot bid to withdraw his decision to plead guilty to two felonies in a federal campaign finance case in May, he testified from the witness stand that the about-face wasn’t due to poor advice from his lawyers when he had first decided to take the deal. “They did and said all the right things,” Kelsey said. Conditions appear to have changed, as Kelsey in a court filing this week announced he was replacing his legal team and considering legal action against his previous attorneys. He also asked for a month-long delay to his July 27 sentencing date.

Kelsey was previously represented by David Warrington of the Dhillon Law Group in Washington for his effort to take back his guilty plea, while prominent criminal defense attorney Paul Bruno and former U.S. Attorneys Jerry Martin and Paul David Rivera handled proceedings up to the deal with prosecutors. Kelsey’s new lawyers are J. Alex Little and Zachary Lawson of Burr & Forman’s Nashville office.

From the campaign trail

Early voting underway for Nashville mayor, special state House races

Voters headed to the polls Friday to start casting early ballots in Nashville’s open mayoral race. A field of eight serious candidates is seeking to succeed incumbent John Cooper, who declined to seek a second term. They include Democratic state Sens. Jeff Yarbrow and Heidi Campbell, former city official Matt Wiltshire, Metro Council members Freddie O’Connell and Sharon Hurt, former AllianceBernstein executive Jim Gingrich, Republican operative Alice Rolli, and property assessor Vivian Wilhoit.

Wiltshire was the top fundraiser in the most recent quarter with \$504,400, while Yarbrow’s \$509,800 was the highest total remaining on hand. Self-funder Gingrich led the way by spending \$1.96 million, followed by Wiltshire’s \$1.4 million. Nobody else topped \$200,000.

Special House elections. The general election contests to fill three open state House seats may have an air of inevitability around them, but the candidates still have to get to the finish line. Democratic Reps. Justin Jones of Nashville and Justin Pearson of Memphis face nominal opposition in their bids to be restored to their respective seats after being expelled by Republicans for leading a gun protest from the well of the chamber. Meanwhile, former Rep. Timothy Hill of Blountville is seeking to succeed resigned Rep. Scotty Campbell (R-Mountain City).

Pearson raised \$45,900 and spent \$67,900 during the quarter in heavily Democratic House District 86. He faces independent Jeff Johnston, who reported no contributions or expenditures in the period (and just \$361 during the pre-primary phase). Pearson, who earlier gave his bid \$100,000, had \$18,900 remaining. Jones landed \$57,400

in mostly small-dollar donations in the quarter and spent just \$4,000 — about half of which went to Democratic on-line fundraising service ActBlue. He had \$108,300 remaining. Donors in California made up 38% of Jones' total so far, while Tennesseans have given 28% of the \$121,800 he has raised for the bid. The District 52 race is being contested by Republican Laura Nelson, whose quarterly haul of \$9,600 included \$2,500 from the Davidson County GOP, \$1,800 from Rep. Jake McCalmon (R-Franklin), and \$250 from Republican National Committee member Oscar Brock.

The balances in Pearson's and Jones' special election accounts don't tell the whole story about the bonanza that followed their ousters. Exempted from a ban on lawmakers accepting donations during the session, Pearson's campaign told the Associated Press he had raised about \$814,000 in the week between his expulsion and the Shelby County Commission's decision to send him back to fill the vacancy on an interim basis. Disclosures are due next week.

Hill, who held the District 3 seat comprising all of Johnson and parts of Carter, Hawkins, and Sullivan counties before making an unsuccessful congressional bid in 2020, raised \$4,000 and loaned his bid \$5,000. He spent \$10,600 and had \$1,800 remaining for his contest against Democrat Lori Love. She had \$3,000 in receipts, \$4,900 in expenditures, and \$1,300 left on hand. Hill's notable contributions included \$1,000 from the Tennessee Truck PAC, \$500 each from Reps. Ed Butler (R-Rickman) and Pat Marsh (R-Shelbyville), and \$250 from Rep. Dennis Powers (R-Jacksboro).

Beck seat. The primary in the race to serve out the term of the late Rep. Bill Beck (D-Nashville) in District 51 is on the same day as the general elections for the other open House seats. The Democratic primary features activist Aftyn Behn and former Nashville Metro Council member Anthony Davis, who has been appointed to the seat on an interim basis.

Davis, the founder of the East Nashville Beer Works, raised \$52,700, including \$3,000 and \$1,000 from the respective PACs of the state liquor and beer wholesalers. He also received \$1,000 each from Reps. Caleb Hemmer and Darren Jernigan (both D-Nashville) and \$250 from former Nashville Mayor Bill Purcell.

Behn, who has said she would align herself with the so-called Tennessee Three of Jones, Pearson, and Rep. Gloria Johnson (D-Knoxville), brought in \$34,000. More than 80% of her donors gave less than \$100 each. Johnson announced this week she is endorsing Behn in the race. Republican David Hooven faces no primary opposition. He had not filed a fundraising disclosure by this week's deadline.

Foreman lawsuit. Nashville Circuit Judge Lynne Ingram dismissed a \$300,000 libel lawsuit filed by Republican state House candidate Michelle Foreman against Metro Nashville Council member Dave Rosenberg for calling her "a truly unhinged politician" and a "pathological liar." Foreman lost last year's open House District 59 race to Democrat Caleb Hemmer, whom she also sued during the campaign (but she dropped the case in March after it was transferred to Nashville from Williamson County). Rosenberg, who defeated Foreman by 23 percentage points in a 2019 council race, made the comments in a newsletter urging constituents to vote for Hemmer.

Obituary

Roy Herron had front-row seat for Democrats' decline in Tennessee

Roy Herron, whose political career was ramping up just as fellow Democrats' prospects began to fade in their one-time power base in rural West Tennessee and around the state as a whole, died Sunday from injuries sustained in a personal watercraft collision on Kentucky Lake. The attorney, minister, lobbyist, triathlete, and author was 69.

Herron followed in the huge footsteps left by legendary House Speaker Ned McWherter when the Dresden Democrat gave up his legislative seat to make a successful bid for governor in 1986. Herron, who came from the same town as McWherter, won a five-way primary for the Democratic nomination despite grumbling on the local level that he might be too liberal to represent the district. A quarter-century later, many fellow Democrats charged he was too conservative to run what was left of the state party after Republicans had gained control of the General Assembly for the first time since Reconstruction.

Herron spent a combined 26 years as a member of the state House and Senate. Early in his tenure, he made a name for himself by proactively faxing press releases about his bills to media outlets at the Capitol and around West Tennessee. Reporters seeking interviews would be plied with printouts from Herron's computer — a novelty at the time — or pages pulled from racks of three-ring binders on a variety of pet subjects. Some colleagues grumbled about what they saw as his attention-seeking ways, though Herron's supporters said he was fighting for good-government principles.

For example, Herron sponsored a 1989 overhaul of state ethics laws amid the series of public corruption scandals involving bingo gambling in what federal investigators dubbed Operation Rocky Top. The bill aimed to ban lawmakers from using lobbyists' credit cards or accepting money to cover hotel expenses when they were receiving per-diem allowances. The measure also sought to bar lobbyists from giving legislators more than \$500 per year in gifts or from making political donations during the legislative session.

In a raucous House floor session, Herron unsuccessfully tried to fend off several poison-pill amendments (such as requiring all lobbyists and lawmakers to get drug tested twice a year) brought by resentful colleagues trying to kill the bill. A conference committee ultimately stripped most of the provisions, leaving it with the credit card ban and a new reporting requirement when lobbyists spent more than \$50 on a lawmaker in one week or \$500 over the year.

Herron was a prolific fundraiser for his legislative campaigns. After 10 years in the House, he ran for an open state Senate seat. Then-Gov. Don Sundquist told a GOP gathering in Union City that Herron had made a career out of "coddling" criminals. Herron responded by faxing a seven-page response to the governor that included a letter he received from Sundquist the previous summer thanking him for helping pass the administration's 20-bill crime package. Herron ended up winning by a 2-to-1 margin.

Herron ran Democrat Jim Cooper's U.S. Senate campaign in West Tennessee in 1994 and was state director for

Tennessee News Digest

- Standard & Poor's upgraded Metro Nashville's general obligation debt to AA+, the highest rating the city has received from the agency since at least 1981. Nashville also has a AA+ rating from Kroll, while Moody's places the city one step lower at Aa2.
- Nashville Chancellor Pat Moskal is set to rule after hearing arguments this week in a lawsuit aimed at blocking Williamson County from removing the Confederate battle flag

- from its seal. The Sons of Confederate Veterans sued to block a Tennessee Historical Commission finding that the county was free to change the seal under the state Heritage Protection Act because it isn't a monument.
- Employees for Memphis-based FedEx will return to working in the office three days per week in September.
- Officials in Collegedale celebrated the opening of Little Debbie Park. The McKee

- family, which controls snack maker McKee Foods Corp., donated the 10 acres featuring oversized versions of its treats such as the Cosmic Brownie and Christmas Tree Cake.
 - Knoxville Area Transit is receiving a \$3.6 million federal grant to install overhead bus charging equipment at its downtown facility.
 - Off the Wagon Tours has received 72 of the 105 transportation citations issued by Metro Nashville under a 2021 state law.
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Al Gore's presidential bid in 2000. Neither carried the state in what foreshadowed the massive partisan shift to come.

Herron was an exercise enthusiast, running in numerous marathons and participating in several triathlons. In 2011, Herron credited his helmet with saving his life in a bicycle crash that left him with a fractured collarbone and broken ribs. He rushed back to the Senate, where he claimed to have missed only the day his youngest son was born.

Guns. Herron was the sponsor of a 1994 bill to take concealed handgun carry permits statewide. Under the previous law, the permits were only in effect in the counties where sheriffs had issued them. The new law championed by the National Rifle Association also created an avenue for a judicial challenge for people who thought they were denied a permit for political or other improper reasons. Despite Herron's role in the expansion of permits, the NRA declined to endorse him when he ran for the state Senate in 1996.

Two years later, lawmakers passed legislation to shift the permitting authority to the Safety Department (the General Assembly in 2021 eliminated the requirement to get a permit to be armed in public). Herron in 2009 voted in favor of an override of Democratic Gov. Phil Bredesen's veto of the "guns in bars bill" allowing permit holders to be armed in restaurants serving alcohol.

Faith in politics. Herron and former state Agriculture Commissioner Cotton Ivy wrote a book in 2000 about humor in state politics. It included anecdotes and one-liners about such characters as Davy Crockett, Jim Cummings, and Shelby Rhinehart. Herron also authored two books about the role of faith in politics and co-chaired the launch of a website for Christian Democrats in 2006 as part of an effort to combat the notion that "God is spelled G-O-P." He added: "Scripture teaches us that the church is to be the bride of Christ, not the prostitute of any political party."

After Republican Ron Ramsey of Blountville won the Senate speakership in 2007, Herron mounted a campaign to topple Joe Haynes of Goodlettsville as Democratic Caucus chair. Going into the meeting, Herron told colleagues he had 10 votes from within the 16-member caucus to replace Haynes. But a motion to reorganize failed on an 8-8 vote. Ramsey never had much love lost for Herron. When it came time to name new committees, Ramsey named every eligible Democrat to a committee officer position — except Herron. The following year, Herron was elected caucus chair after Haynes (who died in 2018) decided against running for the job again.

Congressional dreams. Herron was still a freshman state lawmaker when U.S. Rep. Ed Jones (D-Yorkville) announced he would give up the seat after two decades. Herron expressed interest, but ultimately deferred to state Rep. John Tanner (D-Union City), who went on to win the 1988 election. When Tanner's name was bandied about as a U.S. Senate replacement following Gore's election as vice president in 1992, Herron was once again waiting in the wings.

But Tanner stayed in Congress until 2010, when he made the surprise announcement he wouldn't seek another term. Herron, who was in the midst of a campaign for governor, pulled the plug on his statewide bid to instead run for Tanner's seat. He easily captured the Democratic nomination but failed to gain traction in the general election despite presenting himself as a "shotgun-shooting, Bible-reading, crime-fighting, family-loving country boy," and vowing to vote against Nancy Pelosi for speaker.

Opponent Steve Fincher, a gospel-singing farmer from the Frog Jump community, parried sustained attacks from Herron that the Republican had broken the law by claiming a \$250,000 contribution had come from personal funds when it was really a loan from a local bank. Fincher responded by refusing to debate someone who had called him a criminal. Herron ended up losing by 20 points.

Next steps. Following his unsuccessful congressional bid, Herron served out the remaining two years of his Senate term before announcing he wouldn't run again in 2012. Republican attorney John Stevens of Huntingdon won the open seat. Herron then jumped into an open race for chair of the state Democratic Party, which had suffered major losses over the previous election cycles. Herron prevailed in the 2013 vote over rival Dave Garrison.

Following his election, Herron was challenged by an executive committee member to state his support for President Barack Obama. "I support the president," Herron intoned, though critics inferred that by not using Obama's name, his backing was somehow less than total. Herron's time as party chair was plagued by infighting among Democrats and staff turnover at party headquarters. Herron decided against seeking a second term.

Since leaving the party chairmanship, Herron focused on his private legal practice and representing a group of small school districts in court and at the legislature. Looking back on his decades in politics, Herron was mulling a new project before he had the fatal accident: A novel about the Tennessee General Assembly.

Tennessee Notes & Quotes

■ **Yancy Freeman** was confirmed Friday as the next chancellor of the University of Tennessee's Martin campus. Freeman, a first-generation college student from Memphis, becomes the first black chancellor in the West Tennessee school's nearly 100-year history. He comes to Martin after 25 years working at the UT's Chattanooga campus, where he was most recently vice chancellor for enrollment management and student affairs. The other finalists were interim UT-Martin chancellor and former provost **Philip Cavalier** and **Phillip Bridgmon**, the provost of the University of Central Missouri. The position was open following **Keith Carver's** departure to head the UT Institute of Agriculture in Knoxville.

■ U.S. District Judge **Waverly Crenshaw** this week approved a settlement in a lawsuit filed by former top legislative aide **Cade Cothren** and his partner, **Ava Korby**, against the operator of two Hwy 55 burger restaurants. Cothren, Korby, and their attorneys will receive \$75,000 as part of the deal. The couple had claimed they weren't paid for work they did at stores in Crossville and Fayetteville in 2021 and 2022. Defendants Moon Unit Inc. and Little Mint Inc. initially argued the plaintiffs weren't entitled to compensation because they were employees of Hwy 55 of Tennessee, which is owned by Cothren's mother. The deal says all further claims will be dropped. Cothren and his onetime boss, former House Speaker **Glen Casada** (R-Franklin), are awaiting trial in October on unrelated federal charges they orchestrated a bribery and kickback scheme through a political vendor called Phoenix Solutions.

■ Presidential candidate **Ron DeSantis** is planning another Tennessee stop this month after appearing in Nashville on Saturday for the state Republican Party's annual Statesmen's Dinner. The Florida governor plans to hold a fundraising luncheon on July 25 at the Knoxville home of **Sherri Lee**, the widow of the late businessman **Baxter Lee**. The couple's son, also named **Baxter Lee**, wanted to run for the open 5th Congressional District seat in Middle Tennessee last year but was excluded from the race by the GOP's state executive committee.

■ **Kara Owen**, a former chief spokeswoman for then-House Speaker **Beth Harwell** (R-Nashville) and the House Republican Caucus, is joining Parthenon Strategies as vice president of strategic communications. The firm was founded by political consultant **Josh Thomas** in 2017.

■ **Jennifer Sink**, who spent more than seven years as a lawyer for the city of Memphis, including the last three as chief legal officer, is leaving to become vice president in the general counsel's office of Memphis Light, Gas, and Water. She rejoins the city's former chief operating officer **Doug McGowen**, who is now the CEO of the municipal utility.

■ "She will strongly state her position. But, if I make the decision to go elsewhere, she is a team player." — *Mayor Jim Strickland, who leaves office later this year, to the Daily Memphian about Sink.*

■ *The Jackson Sun* will begin mailing its newspapers to subscribers next month rather than delivering them to their

doorsteps. The 150-year-old newspaper is owned by the Gannett chain. Editor **Kerri Bartlett** acknowledged that receiving the publication from a mail carrier will "mean a change in routine for customers who like to read the paper with their morning coffee," but added the electronic version of each edition will be available at all times.

■ State Sen. **Brent Taylor** (R-Memphis) pushed back against critics of his support for "pretextual traffic stops," under which law enforcement officers pull drivers over for lesser violations to search for evidence of more serious crimes. The city banned the practice after the death of **Tyre Nichols**, but state law supersedes local ordinances. Taylor cited Tennessee Highway Patrol statistics from last quarter's Operation Grizzly in which troopers stopped 9,624 vehicles in Shelby County, resulting in 2,919 citations, eight felony arrests, and the recovery of three stolen vehicles.

■ "Everybody who's being pulled over for a license plate being expired — all of them are going to be treated as possible criminals. That's not a good law enforcement strategy." — *Joshua Adams of the group DeCarcerate Memphis, which advocates for more community-led solutions to reducing crime, to WATN-TV.*

■ "When your car gets broken into, call a thug. Don't call the Memphis Police Department or don't call THP." — *Taylor in response.*

■ The Tennessee Chamber of Commerce promoted **Sarah Burnett**, a former finance director for the Republican National Committee, to chief of staff. Burnett had previously served as the Chamber's director of membership and foundation development.

■ Williamson County Circuit Judge **Michael Binkley** announced he will retire at the end of September. He was elected to another eight-year term last year despite some high-profile missteps. The state Court of Appeals in 2021 removed Binkley from a case involving attorney **Brian Manookian**, who the judge suspected of leaking his 2010 arrest in a prostitution sting to reporters. Binkley in a 2015 Facebook post cited the "moral courage" of then-state Rep. **Jeremy Durham** (R-Franklin) for writing a character reference on behalf of a youth minister who had pleaded guilty to child porn possession. Binkley also called then-Senate Speaker **Ron Ramsey** (R-Blountville) "dumb as a rock" for saying Durham's letter had shown poor judgment. Durham was expelled from the House the following year amid allegations of serial sexual misconduct.

■ **Herbert Slatery** may have left his position as state attorney general last year, but that doesn't mean he's stopped collecting a paycheck. *The Tennessean* reports Slatery has been hired at \$400 per hour to assist successor **Jonathan Skrmetti** with "active and continuing oversight" of cooperation agreements under the state Hospital Cooperation Act.

■ Maybe when they were repairing the damage from recent acts of vandalism and a portapotty fire at the AG's office, designers should have considered adding a new feature.

■ A revolving door.