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1. Comes now Thomas F. Kovach, hereinafter Plaintiff, and files this Brief and Memorandum, as directed by the Court via an Order entered on the 17th of March, 2008, in preparation for a hearing on this topic at 9am on Wednesday, the 2nd of April, 2008.

FACTUAL SCENARIO

2. This case arises from a Complaint filed by the Plaintiff, *pro se*, in an attempt to prevent the Defendants from building a project that is widely perceived by state citizens as a wasteful example of government arrogance and abuse of power. The project is a two-story, underground, party hall. (Officially named "Conservation Hall", the project has been nicknamed "Bredesen's Bunker".) The plan is to build it beneath the front yard of the Governor's Mansion. The historic home is located in the City of Oak Hill, an upscale municipal community that is entirely surrounded by the City of Nashville. Neighbors surrounding the Governor's Mansion, regardless of political leanings, are almost uniformly against the building of the bunker. The City of Oak Hill has stated that the plans contain numerous local code violations.¹ Oak Hill has some of the strictest zoning regulations in the state. (They are so strict that the Oak Hill City Hall is actually located *outside* of Oak Hill, which only allows construction of homes, schools, and churches.) Of particular concern to Oak Hill officials are the amount of traffic that would be generated on the narrow streets (which are lined with steep ditches), the inability of fire trucks to access the facility while it is in use (because of visitor parking, which will block the driveway), the unauthorized use of nearby church parking lots to handle overflow parking and shuttle bus traffic, the substantial strain on water supplies and

¹ A copy of the Oak Hill Findings of Fact, from that city's official Web site, is attached herewith. It describes the code violations in concise detail.

sewage facilities if the facility is used at or near capacity, and the noise levels generated by having an additional 500 people traveling the streets of one of the quietest neighborhoods in Davidson County. In addition to the above concerns, residents near the Governor's Mansion are concerned about the blasting needed to construct the facility. Blasting could not only crack foundations of nearby houses, but could also create an underground pressure wave that could force sewage up into the surrounding homes. (Some of the blasting will be done only *inches* from the foundation of the newly-renovated Governor's Mansion. Thus, there is an inherent chance that taxpayer money could be spent to do the same repairs twice.) There are also concerns about the traffic of large dump trucks hauling away dirt, rock, and debris after the blasting. The streets are so narrow and winding, with steep ditches on both sides, that dump trucks could be expected to overturn on a near-daily basis. The construction would also create an unsightly disturbance of the lush vegetation surrounding the Governor's Mansion, thus denigrating the ambience of the neighborhood. Given that much of the surrounding neighborhood consists of million-dollar homes on five-acre lots, residents are understandably upset about any potential disturbance of their serene surroundings.

3. Add to all those concerns the larger, statewide implications of a \$19-million expenditure at a time when Governor Bredesen has asked state agencies to tighten their figurative belts. This is the same governor that recently booted tens of thousands of Tennesseans from the rolls of the state's TennCare healthcare program — because of budget constraints. School districts, including Nashville, are cutting back on staff members because state aid to those districts has been cut. Taxpayers are understandably angry about such wasteful spending for a fancy party hall to be used only by an elite few.

4. Add to that the fact that citizens have a duty to restrain out-of-control government. This duty is thoroughly ingrained in the American psyche. It is best summed up in the clause "redress of grievances" in the United States Constitution (USC).

5. Enter the Plaintiff: a long-time citizen-activist, who ran for Congress in 2006, is the state PR coordinator for the nationally-recognized Constitution Party, writes online investigative columns, and hosts a network talk-radio program on 51 stations nationwide.

6. The Plaintiff filed his Complaint in late December of last year. The case was heard in early January, based upon the Plaintiff's request for an emergency hearing on a Motion for a temporary injunction to stop the construction project before any blasting could begin. (Local reports suggested that the blasting was set to begin on the 27th of December last year; but, it did not actually begin until late January of this year.)

7. The state assigned a senior counsel from the Office of the Attorney General to oppose this *pro se* Plaintiff. Said counsel filed a Motion to dismiss the case entirely, and cited Tennessee Code Annotated (TCA), Section 4-4-104. Said section requires that any action brought against the State of Tennessee must be brought only in the Chancery Court within Davidson County (the location of Nashville, the state capital). Plaintiff resides in neighboring Wilson County, and brought the action to the Chancery Court of his local venue. Attorney for the Defendants claimed that the Wilson County Chancery Court "lacks subject matter jurisdiction". The Court disagreed at oral arguments on the 8th of January, but ceded the Defendants' position regarding "improper venue", based solely upon TCA 4-4-104. Plaintiff objected, claiming that said statute is unconstitutional, because it limits access to the courts by citizens of counties other than Davidson. The

Court upheld the Defendants' argument, but verbally opined that the statute is "unfair" and that the General Assembly should rescind the law because it also unfairly limits the jurisdiction of the Chancery Courts. Said courts have otherwise statewide jurisdiction in matters of law and equity, and are the proper venue for seeking redress against the State.

8. At this point, it should be noted that Defendants also tried to invoke "sovereign immunity" as a defense. But, the court refused to hear that argument, claiming that it had been made moot by the fact that the case would be dismissed under cited TCA 4-4-104.

9. Notably, the Court also refused to hear a claim by Defendants' counsel that the first lady is an official of the State, by virtue of her position as a member of the board of the Tennessee Residence Foundation (TRF). Said TRF is an entity created by the General Assembly for the expressed purpose of handling money appropriated by them for the repairs and renovations at the Governor's Mansion. As the annual accounting reports from the State Comptroller's Office indicate, the amount of money handled by TRF grew rapidly, and went far beyond what was originally budgeted for needed upkeep. In fact, from one year's report to the next, the figures take several "blind leaps". It is almost impossible to discern how much money was actually in the TRF account at any given time. It is also nearly impossible to track a monetary timeline with regard to how much money was contributed by private citizens, versus how much money was provided by General Assembly appropriations. This point becomes a hinge issue with regard to the credibility of Defendants' claims, because the amount of taxpayer money required to build the party hall is somewhere in between zero and \$19-million. Public statements by the governor, the first lady, and the state architect have obfuscated the amount of private

contributions to the project. One point is almost a guaranteed fact: public claims by the first lady that "no state money" will go to build the party hall are quite unsupportable.

10. Plaintiff countered at oral arguments that the first lady is not an official of the state, because she was neither elected nor appointed. Plaintiff gave the example that his wife works for the state, but that does not make him an official of the state by virtue of his marriage to her.

11. Plaintiff further countered at oral arguments that the first lady is not an official of the state, because said Tennessee Residence Foundation was created "out of thin legal air", because the state already has a Historical Commission that could have overseen the renovation project. Thus, if the TRF was created illegally, then the first lady cannot be made an "official of the state" by virtue of her seat on the board of an illegal entity.

12. Plaintiff also argued in his written objection that, because a first lady is not an official of the state, a first lady is not entitled to legal representation by the Office of the Attorney General. Thus, while a defense of "improper venue" might have been presented on behalf of the governor, the Plaintiff asserts that the courtroom standing of the first lady is merely "failed to appear", because no separate attorney appeared on her behalf, nor did she appear in person at the oral arguments. Thus, Plaintiff asserts that First Lady Andrea Conte, as a private citizen, is in default in the instant action.

13. Defendants' counsel injected — improperly, and perhaps unethically — the claim about the first lady's status into the draft Order, even though the Court specifically excluded said point from the oral arguments from which the draft Order arose. When the Court issued said Order as drafted by the counsel for the Defendants, including a

statement that the first lady is an official of the state, Plaintiff then had grounds to file an objection to the Order that had dismissed the instant action.

14. In his objection, Plaintiff claimed that TCA 4-4-104, under which the case had been dismissed, was unconstitutional. In support, Plaintiff argued that said statute places an undue burden upon a citizen's access to the court to seek "redress of grievances", as is authorized by the United States Constitution, Amendment I. Plaintiff also cited the Tennessee State Constitution, Article I, Section 2, which encourages citizens to resist arbitrary abuses of power.

15. Plaintiff further argued, citing the Court's own stated opinion at the previous oral argument in January, that TCA 4-4-104 is also an arbitrary limitation upon the statewide jurisdiction of the Chancery Courts. At oral arguments in both January and March, the Court opined that Chancellors "all qualified the same way"; thus, there is no difference between the Chancellor in Davidson County and the Chancellor in any other TN county.

16. Plaintiff asserted in his written objection that, if the intent of TCA 4-4-104 is to save the state money by reducing attorney travel around the state to answer lawsuits, then the State could better save money by simply operating within the proper parameters of the law. An ounce of prevention is still better than a pound of cure.

17. Based upon the Plaintiff's arguments, both written and oral, the Court decided to set aside the previous Order that had dismissed the Complaint. The Court further decided to hear arguments, both written and oral, on the question of whether TCA 4-4-104 is constitutional. If it is not constitutional, then the Complaint could be revived, and could

be heard in the instant Court. If the statute is constitutional, then the action would be dismissed without prejudice, and could be re-filed in Davidson County Chancery Court.

ISSUES AND ANSWERS

18. Was the Complaint, from which the constitutional question arises, properly filed?

Yes. Plaintiff resides within Wilson County. Chancery Court is the proper court for questions of law and equity that affect the operations of the State of Tennessee. Thus, plaintiff was proper to approach the instant Court under both venue and subject matter jurisdiction. Even the statute in question implies support that the Chancery Court has subject matter jurisdiction over issues in which the State is a defendant. This is despite the claims of the counsel for the Defendants with regard to "subject matter jurisdiction".

19. Does the Chancery Court have "subject matter jurisdiction" over this action?

Yes. The fact that the very statute used to dismiss the action in January requires only a change of county, and not a change in the selection of the type of court, proves that the oral opinion of the Court in January is correct. The court *does* have "subject matter jurisdiction". The only question is whether the Court lacks "venue" under TCA 4-4-104.

20. Should TCA 4-4-104 be overturned, because it violates constitutional principles?

Yes. As the legal analysis will demonstrate, said statute is unsupportable, because it unfairly limits *both* the rights of the citizens and the jurisdiction of the Chancery Courts of the State of Tennessee.

LEGAL ANALYSIS

21. Any examination of the constitutionality of a statute must begin with an examination of the Constitution. As was the custom of learned people at that time, the Tennessee State Constitution was written so that each portion creates a foundation for subsequent portions. In other words, the most foundational aspects are written first. Or, in the modern parlance, the writers of the Constitution "made their 'bottom line' their top line". The TSC, Article I, Section 1, specifies that "all power is inherent in the people", and that "they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper".

22. If the people of Tennessee have an unalienable right "to alter, reform, or abolish the government", then surely the people would also have a right to restrain a runaway government. The Plaintiff filed his Complaint in an attempt to restrain what is widely perceived as a wasteful expense of state tax money. The Plaintiff asserts that restraining a runaway government (or, government official) is not merely a "right", but also an affirmative "duty". This concept becomes even clearer to observers when considering that the person that is a driving force behind the project in question is not even an official of the State at all. The first lady was neither elected nor appointed to that position. Her status does not rise past that of any other private citizen, except for an honorary title.

23. It should be noted that another first lady, at the national level, also tried to exercise non-existent government authority. That attempt was on a much grander scale, so that Hillary Clinton was touted (sometimes by her, with glee) as the "co-president". Her multiple efforts to seize the reins of government power (healthcare, White House staff hiring and firing decisions, even inputs on presidential Cabinet appointments) met with resistance — even from many of her own supporters. The American people can

suffer an incompetent elected official (such as President Bill Clinton, who not only condoned but encouraged her "co-president" status), but they do not suffer an unelected and unconstitutional power grab.

24. Whether it is a reflection of party loyalty (by a TN General Assembly wherein both houses were controlled by the Democratic Party, the same party as Gov. Bredesen, for more than a century), or whether it is a reflection of genteel Southern ways to bend over backwards to grant a woman her wishes, the point remains that "why" is secondary to "how" in this case. And, the "how" remains that the first lady has a seat on the board of the Tennessee Residence Foundation only because of her marriage to the governor, thus enabling her to become a temporary occupant of the Governor's Mansion. While her inputs into plans for repairs and renovations are rightly to be considered and respected, that is a far cry from making her a state official with executive powers over budgetary decisions regarding monetary appropriations from the General Assembly. Thus, any argument presented regarding the germaneness of TCA 4-4-104 (especially its inherent constitutionality, or the lack thereof) cannot apply to *any* first lady of Tennessee. Even if the Court were to decide that this action was properly dismissed against all other named Defendants, the Court would thus be precluded from deciding that such dismissal applies to First Lady Andrea Conte. The fact remains that she is in default for failure to appear, and that she is *not* entitled to representation at taxpayer expense. The honorific title of "first lady" is not the inherited title of "queen", and holds no "sovereign" immunity.

25. The above is only one point wherein this Plaintiff relies upon TSC Article I, Section 2, which states, "... the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind."

This Plaintiff asserts that the planned construction of "Bredesen's Bunker" is someday destined to become a textbook example of an attempt at the exercise of arbitrary power. The main surprise is that only one such lawsuit has been filed in the entire State of Tennessee. (But, it also remains true that David only needed to sling one stone....)

26. It appears to this Plaintiff that the Defendants' counsel has invoked TCA 4-4-104 in error. The statute simply establishes the "official residence" of state departments. The location of "official residence" could be used to establish venue, if the State were the plaintiff. However, in this action, the State is a Defendant. Because the wasteful spending of taxpayer dollars can (and does!) affect taxpayers statewide, the Plaintiff had (and still has) standing to bring the instant action in his home venue. The Plaintiff's standing would be equal, whether the case had been brought in Wilson County, Davidson County, or any other outlying county of the State. It is only happenstance that the Plaintiff resides in a county that is within commuting distance of Davidson County. Had the Plaintiff resided in Bristol or Memphis, the effect to his standing as a taxpayer would be identical. Thus, the Defendants' reliance upon TCA 4-4-104 is unsupportable, because the Plaintiff had standing (under both "venue" *and* "subject matter jurisdiction") to bring the action in Wilson County. The question of venue was apparently a delaying strategy, which was successful. During the pendency of these proceedings, blasting has begun on the project in question. Mao Tse-Tung famously stated, "Power flows from the barrel of a gun." How much more power seems to flow from the ground with dynamite.

27. Plaintiff's assertion that TCA 4-4-104 has been cited in error is supported by the very existence of TCA 4-5-322, "Judicial review". If it had been the legislative intent of the General Assembly to compel citizens to only sue the State in a court in Davidson

County, regardless of the residence of the citizen(s), then TCA 4-5-322 would not specifically give an aggrieved person the option of venue for a petition against the department of human services or the department of children's services.

28. Notably, the existence of TCA 4-5-322 also belies any blanket application of the specious doctrine of "sovereign immunity".² If lawsuits against the State are prohibited, then why would the General Assembly have specified the venue for bringing an action against specific State agencies? And, if an aggrieved person can sue one State agency, then why not another? And, in the instant action, this Plaintiff is also trying to bring action against a person that is not a state official, and an entity that cannot be proven to be a state entity. (More about that later.) Thus, TCA 4-4-104 does not apply to Defendants First Lady Andrea Conte and Tennessee Residence Foundation, even if the Court were to decide that it does apply to Defendant Governor Phil Bredesen and to Defendant the State of Tennessee.

29. Furthermore, a reading of the larger context of TCA 4-4-104 within the scope of its title (TCA Title 4, "State Government") and its chapter (TCA Chapter 4, "Administration of State Departments") seems to indicate that the actual intent of TCA 4-4-104 is to establish a statutory basis for a) preventing department heads and

² Although the Court limited the scope of this argument to the constitutionality of the invocation of TCA 4-4-104 as a grounds for dismissal, it is necessary to touch tangentially on the doctrine of "sovereign immunity", because that seems to be the doctrine that underlies the defense in question. It should be noted, then, that the United States Congress placed limits on that doctrine at the Federal level more than sixty years ago. Specifically, the Federal Tort Claims Act(s), 28 U.S.C. 1346, 2671-2678, 2680 allows certain claims against the Federal Government when its employees commit a "negligent or wrongful act or omission". The essence of the instant Complaint is that the Defendants' actions are wrongful. In the kindest interpretation, those acts are negligent. In 1953, upholding certain claims against the Federal Government, the United States Supreme Court described the navigation through and around the doctrine of sovereign immunity as "notoriously clumsy". *Dalehite v. United States*, 346 US 15, at 25 (1953) The Supreme Court further relaxed the doctrine of sovereign immunity via *United States v. Orleans*, 425 US 807 (1976) Therefore, any claim by Defendants to a blanket claim of sovereign immunity must fail, unless it passes certain tests. It does not.

commissioners from moving the location of their agencies to other parts of the state (nearer to their own home, for example), and/or b) establishing a fixed point of reference for the reimbursement of travel and lodging expenses. This analysis is supported by comparing the cited statute with TCA 8-26-112, "Expenses of salaried county officers, clerks and masters". According to a computerized search, within the entire Tennessee Code Annotated, there are only eleven uses of the phrase "official residence", including a reference in the Index. The above analysis seems to be consistent through the other ten. Thus, it appears that prior case law citing TCA 4-4-104 as a basis for dismissing citizen lawsuits against the State might be based upon erroneous interpretations of the statute.

30. While there are only eleven uses of the term "official residence" within the Tennessee Code Annotated, there are one hundred uses of the term "venue". The first reference is to committee investigations by the General Assembly. The statute, TCA 3-3-114 "Venue for violations of § 3-3-112" allows for prosecution of a violator "in any county of this state". Thus, although the General Assembly officially "resides" only in Nashville, in Davidson County, the statute gives the General Assembly the power to bring an indictment and prosecution anywhere within the State. Apparently, the State is not bound by any purported or perceived "venue" inherent within TCA 4-4-104. If the State is not restricted to Davidson County as a plaintiff, then how can it be restricted to Davidson County as a defendant? To do so would be to "stack the deck" against the very citizens that give the State its existence under TSC, Article I, Section 1.

31. Venue may be determined by various means. Venue may lie with the residence of the plaintiff, as in the instant action. Venue may lie with the location of a tortious event, as described in TCA 7-52-609, "Civil actions". Certain claims for partition of land have

venue "in any county in the state", regardless of the location of the land itself, under TCA 29-27-107, "Venue of actions". Thus, the Defendants' attempt to link the legal doctrine of "venue" with a fixed location only in Davidson County, and under TCA 4-4-104, must fail. It appears that TCA 4-4-104 was never intended to establish "venue" in the first place. The fact that has been historically cited in that manner in the past does not make such citations correct. There is a parallel example from military jurisprudence. Many a young troop has been prosecuted for rendering himself unfit for duty by falling asleep on a beach and getting a severe sunburn. Of those troops, many have been wrongly prosecuted for "damage to government property", while the correct charge would have been "malingering, by means of neglect". The fact that young (and, sadly, ill-advised by their young defense lawyers) troops sign the papers put in front of them by their commanders does not make the result "just" or "fair" or even "right". It only makes it a matter of history. This honorable Court has a golden opportunity to place a wrongfully cited statute upon the ash-heap of history, where it should remain.

32. Having examined the doctrine of venue, and some of its various applications, this Plaintiff now turns briefly to the definition of venue — at the risk of "preaching to the choir". The most concise explanation actually comes from Tennessee's criminal statutes. Specifically, TCA 39-14-905, "Jurisdiction and venue", specifies, "Venue in a criminal prosecution under this part shall be either in the county where one (1) or more elements of the underlying specified unlawful activity occurred, or in the county where one (1) or more elements of a violation of § 39-14-903 occurred or was attempted." That is consistent with the US Supreme Court decision in *United States v. Rodriguez-Moreno*, 526 US 275 (1999), which upheld *Hyde v. United States*, 225 US 347 (1912). Although

these citations stem from criminal statutes, the Plaintiff asserts that the concept of venue applies to both. In fact, the civil application of venue is even more permissive, supporting "principles of deference to the court of first filing", per the US Supreme Court in *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 US 193 (2000).

33. Further, should the point need to be stressed, the Plaintiff points the reader to TCA 39-16-402, "Official misconduct". It could be easily argued that the conduct of the Defendants — especially First Lady Andrea Conte, should the State persist in defining her as an official of the state — rises to the felonious level of Official Misconduct. (What better example than conning the General Assembly to create a quasi-public entity into which to appropriate taxpayer money for a \$19-million boondoggle party hall, which will only be used by one family at a time, on a four-year rotational basis?)³ Plaintiff asserts that the political machinations (such as creating the Tennessee Residence Foundation out of thin legal air, and claiming a private citizen to be a State official) already accomplished to bring about "Conservation Hall" could be construed as rising to the level of a criminal conspiracy to commit Official Misconduct. Therefore, the application of the criminal statutes to the question of venue in this case is not as far-fetched as it might seem at first glance. See: *Whitfield v. United States*, 543 US 209 (2005), for an examination of the elements of a criminal conspiracy. No one could deny that blasting a 40-foot-deep hole in the front yard of the Governor's Mansion constitutes an "overt act" — as does a \$19-million shady appropriation of taxpayer money, or the use of a taxpayer-

³ In a television news interview, Governor Bredesen claimed that "Conservation Hall" was needed to facilitate "business recruitment" for Tennessee. However, the largest business recruitment deal in the history of the state was the Nissan car factory in Smyrna. To negotiate that deal, the Nissan Corporation sent only three people. Thus, building a hall that holds 500 for a reception would strongly appear to be a misappropriation of funds that rises to the level of Official Misconduct.

funded attorney to represent a private citizen! Thus, the Plaintiff reiterates that point that — whether by the civil or criminal standard — the filing of the original Complaint in the Wilson County Chancery Court was, indeed, the proper selection of venue.

34. State law also shows deference to the court of original filing. Under TCA 20-4-206, even if a change of venue were to be ordered, it would generally only move by one county. Using the example of a taxpayer in Bristol, the cited statute would require such a plaintiff to move only to Washington County, and not to Davidson County. Further, under TCA 20-4-210, the expense of moving the case to another venue would be born by the moving party. In the instant action, that would require the State, and not the Plaintiff, to pay for transferring the case to Davidson County. Thus, both statute and common sense suggest that a change of venue is not warranted.

35. So far, opposing counsel has insisted that all Defendants are either state agencies and/or state officials. Much ink and effort has been expended in examining the spurious claim that the first lady is a state official. But, what about the Tennessee Residence Foundation? The Plaintiff asserts that the TRF is not a state agency. (And, if it is not, then the first lady's position on the board does not qualify her as a state official.) If the TRF is not a state agency, then the TRF also does not qualify for representation by the Office of the Attorney General. And, if that is so, then the TRF is also in default, because the TRF was not properly represented in the original response to the Complaint.

36. To address these issues, one must examine the Tennessee Residence Foundation *quo warranto*. It was created by the General Assembly, at the request of the previous first lady (Mrs. Sundquist), for the purpose of appropriating money to renovate the

Governor's Mansion. (Under the pre-"9-11" customs of this State, this Plaintiff had toured the Governor's Mansion during a Christmas season open house. No reasonable citizen would have denied that the historic home needed serious repairs and renovations.) But, under current First Lady Andrea Conte, the TRF agenda has moved from needed renovations to controversial expansions. That was not the original intent of the creation of the TRF; and, for that reason, this Plaintiff asserts that the current expenditures move the TRF outside of its original charter. Having moved outside of its chartered purpose, the TRF is now in the same position organizationally as the first lady and the governor are individually. By operating outside of their authorized capacity, both the agents and the agency have rendered themselves susceptible to legal action. Thus, there can be no "sovereign immunity", because the TRF (along with the other Defendants) operates outside of its "sovereign" capacity. If there is no support for that capacity, then there is no support for the requested change of venue, because the TRF has stepped outside of the parameters used to create it as a "state agency" (if it ever was one to begin with).

37. Was the TRF ever a state agency? As noted in the Objection that gave rise to this constitutional argument, even the General Assembly's own Committee on Finance, Ways, and Means was unable to accurately decide that question. But, there are key indications that the TRF never was a state agency. The concept for such an agency goes back as far as 1974; but, came to fruition in 1999 under Governor Don Sundquist. In an apparent move to increase "political correctness", the term "Governor's Mansion" was replaced with "Executive Residence", at the request of First Lady Andrea Conte, by a later act of the General Assembly. (The legislated name change applied only to the foundation, and

not to the historic name of the property itself. Hence, this Plaintiff persists in referring to the Governor's Mansion as ... the Governor's Mansion.)

38. Notably, after that "facelift" name change, another change took place. In a piece of 2004 legislation, the word "preservation" was taken out of the name. The name of the agency had been the Tennessee Executive Residence Preservation Foundation. The change to the new name exposes the ulterior motive of First Lady Andrea Conte. While the agency's name changed to reflect her "expansionist" motives, the agency's charter did not change. So, even if the original Tennessee Governor's Mansion Preservation Foundation had been a state agency, the new Tennessee Residence Foundation is not, because it has stepped outside the boundaries for which the General Assembly created it.

39. The proof that the TRF is outside of its chartered boundaries is the introduction of a new bill (HB3021 / SB3725, introduced on 12 February 2008 by Rep. Campfield) that seeks to limit TRF expenditures to the appraised value of the Governor's Mansion. In reality, that limit has already been surpassed. But, it would provide the legislative equivalent of the ultimate goal of this Plaintiff's instant action: to prevent the building of Bredesen's Bunker and the bilking of Tennessee's taxpayers.

40. Further guidance can be gleaned from a parallel example: the creation of the Tennessee Educational Lottery Commission. That entity was created by TCA 4-51-101, "Creation of corporation". That statute defines the Commission as "... a quasi-public instrumentality, and not a state agency or department ...". It was created by the General Assembly, it has a specific purpose, it utilizes state money and facilities, and it (purportedly) provides a general benefit to the citizens of the state. In all of those

aspects, it is precisely parallel to the Tennessee Residence Foundation. Therefore, this Plaintiff asserts that both this Court and the Joint Committee on Finance, Ways, and Means should infer from that example with regard to TRF's status. Plaintiff asserts that TRF is not a "state agency", and never was. Thus, TRF cannot enjoy the defenses of either "improper venue" or "sovereign immunity". Thus, Defendant TRF is in default.

41. Add to these examinations of the defendants, and the intent of the legislature, an examination of the court structure of Tennessee. If the defense motion stands, then it would unduly limit the access of citizens to the courts to seek redress of grievances against the State. Further, granting the defense motion of "improper venue" would unduly alter and limit the statewide jurisdiction of the Chancery Courts. Granting the defense motion would mean that the Chancery Court in Wilson County is somehow inferior to the Chancery Court in Davidson County; and, the same would be true for any other outlying county in Tennessee.

42. There is an example in case law that contains most of the elements of the instant case. In examining *Rice v. Cayetano*, 528 US 495 (2000), the United States Supreme Court upheld the complaint of a private citizen against a state agency. Said agency was created by the 1978 Constitutional Convention of Hawaii, "for the betterment" of those citizens of Hawaii that descended — by at least half — from the peoples native to the Hawaiian Islands prior to the discovery of those islands by Captain Cook's expedition in 1778. A single citizen of Hawaii took his case through the system, all the way to the United States Supreme Court, because he had been denied the right to vote in the election of the election of nine commissioners for the Office of Hawaiian Affairs. The agency had been created by legislation, it was challenged by a single voter, that voter was not

impeded by "sovereign immunity" nor by "improper venue", and the state agency was restrained as a result of that one voter's legal action. In the instant case, one Tennessee citizen (and taxpayer, and voter) seeks also to restrain those actions that go outside the agency's original charter — and thus to prevent wasteful spending and an arrogant abuse of governmental power.

SUMMARY

43. The attempt at dismissing the Complaint by claiming "improper venue" under TCA 4-4-104 must fail. The assertion by defense counsel is erroneous, because TCA 4-4-104 was never intended to be used in the manner that current case law has come to use it. Thus, a defense of "improper venue" under said statute is generally improper and unconstitutional.

44. Further, even if this Court disagrees with the above assertion, the statutory defense of "improper venue" must fail specifically for Defendants First Lady Andrea Conte and Tennessee Residence Foundation, because neither is operating in an official state capacity. And, for that reason, both of said Defendants are in default for failure to appear in response to the original Complaint.

45. Further, the defense argument must fail because it would unduly limit the jurisdiction of the Chancery Courts in every statewide county except Davidson.

46. Finally, the United States Supreme Court has upheld the right of a private citizen to sue his state for redress of grievances. Not only was the citizen's right to sue his state (Hawaii) upheld, but also the citizen prevailed in his action against that state.

RELIEF SOUGHT

47. A decision by this honorable Court that the defense motion to dismiss this case on the grounds of "improper venue" and/or "sovereign immunity" is denied.

48. The resumption, toward trial, of the original Complaint.

49. A temporary restraining order, blocking any and all construction and/or pre-construction activities regarding "Conservation Hall", until the matter is settled at trial.

50. The award of costs and attorney fees to this Plaintiff. Legal time is billed at \$125 per hour, and this Plaintiff, *pro se*, expended billable 35 hours in research and drafting.

Dated: Monday, 24 March 2008

Respectfully submitted,

Thomas F. Kovach
Plaintiff, *pro se*