

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
CIVIL DIVISION**

**CHRIS GAMBLE**

**PLAINTIFF**

vs.

No. CV-\_\_\_\_\_

**T. WES WAGNER;  
THE MISSISSIPPI COUNTY ELECTION COMMISSION;  
THE MISSISSIPPI COUNTY CLERK, LIB SHIPPEN, in  
her official capacity only; and MARK MARTIN,  
THE ARKANSAS SECRETARY OF STATE, in his  
official capacity only**

**DEFENDANTS**

**COMPLAINT FOR WRIT OF MANDAMUS AND DECLARATORY JUDGMENT  
AND MOTION FOR EXPEDITED HEARING**

Comes now the Plaintiff, Chris Gamble, by and through his attorneys, Christopher D. Brockett and John Helbling of Hatfield, Sayre & Brockett, and for his Complaint for Writ of Mandamus and Declaratory Judgment and Motion for Expedited Hearing, states:

**SUMMARY**

1. This action is a pre-election challenge to the qualifications of Wes Wagner, who is currently running unopposed for, but is not qualified to run for, the position of State Representative, District 54. Due to the fact that the general election is only three (3) months away, an expedited hearing is necessary to hear and decide this matter, as the election officials for Mississippi County will need to prepare the November ballots accordingly, and possibly hold a special primary election for a replacement candidate. An expedited hearing of this matter is also required under Arkansas Rule of Civil Procedure 78(d), which provides that such a hearing must be

“held no sooner than 2 and no longer than 7 days thereafter to hear and determine the cause.”

## **PARTIES**

2. The Plaintiff, Christopher Gamble, is a registered voter and resident of District 54 located in Mississippi County, Arkansas, and he is eligible to vote in the upcoming general election for District 54. The Plaintiff, like all residents and registered voters of District 54, has standing to bring this qualification challenge pursuant to *Jacobs v. Yates*, 342 Ark. 243, 252, 27 S.W. 3d 734, 739 (2000) (wherein the Court found that it is “established law that gives a voter the right to challenge the qualifications and eligibility of a candidate”).

3. Separate Defendant, Wes Wagner, has declared himself to be a candidate for the upcoming general election for the Arkansas General Assembly, District 54 Representative. Wes Wagner is being made a party to this action pursuant to Arkansas Rule of Civil Procedure 19, in that his interests will be affected by the outcome of this case. (See also *State v. Craighead County Board of Elected Commissioners*, 400 Ark. 405, 412, 779 S.W. 2d 169, 173 (1989) in that a candidate whose eligibility is being challenged must be made a party to the action).

4. Separate Defendants Mississippi County Election Commission and Mississippi County Clerk are made parties to this action in their official capacities in that the adjudication of this action may lead to a Writ of Mandamus affecting and commanding these officials to take necessary action regarding ballot information for the general election on November 6, 2012 with regard to District 54, specifically, preventing Wes Wagner’s name from appearing on the ballot.

5. Separate Defendant, Arkansas Secretary of State Mark Martin, is named as a party in his official capacity in that the adjudication of this action may lead to a Writ of Mandamus affecting and commanding the Secretary of State's Office to take necessary action regarding certification of votes and ballot information for the November 6, 2012 general election with regards to District 54.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 7-5-207(b), which provides that:

**(b)** No person's name shall be placed upon the ballot as a candidate for any public office in this state at any election unless the person is qualified and eligible at the time of filing, or as otherwise may be provided by law, as a candidate for the office to hold the public office for which he or she is a candidate, except if a person is not qualified to hold the office at the time of filing because of age alone, the name of the person shall be placed on the ballot as a candidate for the office if the person will qualify to hold the office at the time prescribed by law for taking office.

7. Additionally, the Arkansas Supreme Court has held that "an action for mandamus and declaratory relief is the proper method of enforcing the right set out in Ar. Code Ann. § 7-5-207(b) which prohibits the inclusion of an ineligible candidate on an election ballot." *State v. Craighead County Board of Elected Commissioners*, 400 Ark. 405, 412, 779 S.W. 2d 169, 173 (1989).

8. Venue is proper in Pulaski County pursuant to Ark. Code Ann. § 16-60-103, in that one of the Defendants is a state officer and the State of Arkansas has a general interest in enforcing its eligibility requirements of legislative candidates.

## CAUSE OF ACTION

9. Plaintiff hereby incorporates and realleges paragraphs 1-8 as if set forth word for word.

10. Article 5, Section 4 of the Arkansas Constitution, explicitly provides that:

No person shall be a Senator or Representative who, at the time of his election, is not a citizen of the United States, nor any one who has not been for two years next preceding his election, a resident of this State, and for one year next preceding his election, a ***resident of the county or district whence he may be chosen***. Senators shall be at least twenty-five years of age, and Representatives at least twenty-one years of age. [Emphasis Added]

11. It is a clear requirement set forth in Article 5, Section 4 of the Arkansas Constitution that mandates in order for a candidate for the Arkansas General Assembly to be qualified for that office under the law, the candidate must be a resident of the District for which the candidate is running. Upon information and belief, Separate Defendant Wes Wagner, fails to meet this constitutional requirement, as he is a resident of Craighead County, Arkansas.

12. Upon information and belief, Separate Defendant Wes Wagner has filed the required and necessary paperwork with the State of Arkansas, and is currently, an active candidate for Arkansas State Representative District 54 for the November 6, 2012 general election. Also upon information and belief, Wes Wagner ran as an unopposed Democratic candidate in the primary election held earlier this year, and is currently running unopposed for the upcoming general election as there is currently not a Republican candidate running for the District 54 position.

13. Upon information and belief, Separate Defendant Wes Wagner currently is, and at the time of his filing for candidacy, was a resident of Jonesboro, Craighead

County, Arkansas. However, District 54, the Arkansas Legislative District for which Wagner is currently running, is entirely located within the confines of Mississippi County, Arkansas.

14. Wagner made an unsuccessful attempt to run for the Arkansas General Assembly, District 76 (containing Craighead County) in 2010. At this time of his filing for the 2010 election, Wagner stated that his home address was 4409 Lochmoor Cir., Jonesboro, AR 72401. See copy of 2010 Candidate Information/Receipt attached hereto as Exhibit "A" and incorporated herein by reference.

15. However, on Wagner's 2012 Candidate Information/Receipt, signed under penalties of perjury by Wagner, and filed with the Arkansas Secretary of State, Wagner listed a post office box in Manila, Arkansas as his "permanent address," and listed Mississippi County as his county of residence. See copy of 2012 Candidate Information Form & Receipt for 2012 Election Year attached hereto as Exhibit "B" and incorporated herein by reference.

16. In addition, Wagner's 2012 Political Practices Pledge, also signed by him and filed with the Arkansas Secretary of State; Wagner again listed his address as "P.O. Box 909, Manila."

17. On his 2012 District, State or Federal Candidate Filing Form, Wagner listed his "residence Address" as being "838 Hwy 77 N., Manila, AR 72442." See copy of 2012 District, State or Federal Candidate Filing Form attached hereto as Exhibit "C" and incorporated herein by reference.

18. However, upon information and belief, this "838 Hwy 77 N., Manila, AR 72442" address is not a residential residence; rather the area is undeveloped farm land.

Also upon information and belief, Entergy Arkansas, Inc., the electric utility provider for the subject area, has no record of providing electrical service to the "838 Hwy 77 N., Manila, AR 72442" address.

19. Upon information and belief, Wes Wagner maintains a private law practice in Manila, Arkansas and utilizes the P.O. Box 909 as the mailing address for his law office. However, Wes Wagner continues to reside, and resided at the time of his filing for candidacy with the Arkansas Secretary of State's Office, in Sage Meadows, Jonesboro, Craighead County, Arkansas.

20. Separate Defendant Wes Wagner, a licensed practicing attorney in the State of Arkansas, is attempting to defraud the State of Arkansas and the voters of District 54 by falsely claiming to be a resident of Manila, Arkansas by using his law office P.O. Box and undeveloped farm land as his residence. Wes Wagner is actually a resident of Sage Meadows, Jonesboro, Craighead County, and as such is not qualified to be a candidate for District 54 in the November 6, 2012 general election.

#### **MOTION FOR EXPEDITED HEARING**

21. Plaintiff hereby incorporates and realleges paragraphs 1-20 as if set forth word for word.

22. Ark. Code Ann. § 16-115-103 provides that "Petitions for writs of mandamus or prohibition shall have precedence over all other actions and proceedings and shall be heard and determined summarily." Additionally, as stated herein above, Arkansas Rule of Civil Procedure 78(d) provides that such a hearing must be "held no sooner than 2 and no longer than 7 days thereafter to hear and determine the cause."

As such, Plaintiff requests that the Court set this matter for a hearing at its earliest convenience.

**WHEREFORE**, Plaintiff requests that this Court enter a Declaratory Judgment declaring:

(1) Separate Defendant Wes Wagner to be ineligible for candidacy as State Representative for District 54;

(2) Issuing a Writ of Mandamus to the appropriate state officials to exclude Separate Defendant Wes Wagner from the election ballots of the November 6, 2012 general election and to nullify any votes gained by Wes Wagner in the unopposed primary election this year;

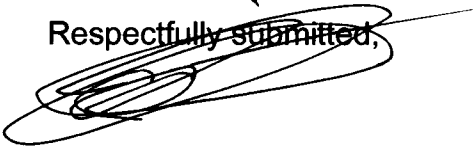
(3) Granting Plaintiff's Motion for Expedited Hearing;

(4) Mandating that state officials either allow votes for write-in candidates to be certified in determining the outcome of the election for District 54, or to hold a special election prior to the November 6, 2012 general election in order to obtain a replacement candidate for the general election;

(5) And for all other relief to which Plaintiff may be entitled.

Respectfully submitted,

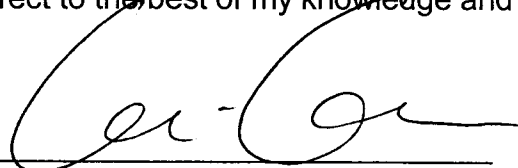
By:

  
\_\_\_\_\_  
Christopher D. Brockett ABA# 2005192  
John Helbling ABA# 2009144  
HATFIELD, SAYRE & BROCKETT  
401 West Capitol Avenue, Suite 502  
Little Rock, Arkansas 72201  
Telephone: (501) 374-9010  
Facsimile: (501) 374-8510  
cbrockett@handsark.com

**ATTORNEYS FOR PLAINTIFF**

**VERIFICATION**

I, Christopher Gamble, have read the foregoing pleading and state that the factual averments contained therein are true and correct to the best of my knowledge and belief.

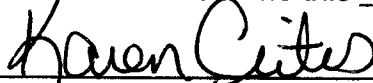


Chris Gamble

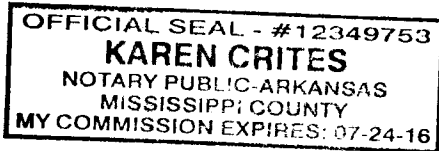
STATE OF ARKANSAS

COUNTY OF Mississippi

SUBSCRIBED AND SWORN to before me this 9<sup>th</sup> day of August, 2012.



NOTARY PUBLIC





Candidate Information/Receipt

STREP 07602  
290  
EST

For  
2010  
Election Year

Name of Candidate: Wes Wagner  
Please print name as it is to appear on ballot

Office Sought: State Rep District No. 76 Sub District No. \_\_\_\_\_  
(if any) (if any)

Division No. \_\_\_\_\_, Position No. \_\_\_\_\_, County in which Candidate resides: Craighead  
(if any) (if any)

Party Affiliation: Democrat K, Republican \_\_\_\_\_, Independent \_\_\_\_\_, Write In \_\_\_\_\_,  
Non-Partisan Judicial \_\_\_\_\_, Other \_\_\_\_\_

Phone: ( 870 ) 561-4600 Please put the number you want released to the public.

Permanent Address:  
4409 Lochmar Cir  
Jonesboro AR 72401

Campaign Address: **FILED**  
MAR 08 2010  
CHARLIE DANIELS  
SECRETARY OF STATE  
BY \_\_\_\_\_

The Secretary of State has received party certificate showing candidate's payment of filing fees, etc.....   
Completed and signed Political Practices Pledge.....   
Candidate has been offered opportunity to fill out optional background information.....   
Candidate has received information packet which includes:.....

- 1. Arkansas Election Calendar
- 2. Campaign Finance Forms
- 3. Campaign Finance Rules & Regulations
- 4. Statement of Financial Interest

**This receipt** shall serve as verification that all filing procedures with the Secretary of State's office have been completed, and the above candidate is officially filed for the 20 10 election ballot.

Wes Wagner Candidate's Signature  
Jon Danks Elections Division Staff

**\*\* The following information is optional \*\***  
Marital status: Married  Single  Sex: Male  Female  Date of Birth: 5/7/79  
Place of Birth: Blytheville Race: W  
Number of children: 0 Religion: Methodist Occupation: Attorney  
Schools attended: Manita Public School, Arkansas State University, University of Tulsa Law School  
Current office held (if any): \_\_\_\_\_  
Previous public office(s) held (if any): \_\_\_\_\_  
E-mail Address: weswagner@yahoo.com

EXHIBIT  
tabbies  
A

Elections Division, Room 026  
State Capitol  
Little Rock, Arkansas 72201

**Candidate Information Form  
& Receipt For**  
2012 Election Year

**FILED**

FEB 24 2012

Elections Division  
Phone 501-682-5070  
Fax 501-682-3408

**Arkansas  
Secretary of State**

Name of Candidate: Wes Wagner

Office Sought: State Rep District No. 54 Division No. \_\_\_\_\_  
(if any) (if any)

Position No. \_\_\_\_\_ County in which Candidate resides: Mississippi  
(if any)

Party Affiliation: Democrat  Republican \_\_\_\_\_ Libertarian \_\_\_\_\_ Green \_\_\_\_\_  
Non-Partisan Judicial \_\_\_\_\_ Other \_\_\_\_\_

Phone: (870) 561-4600 Please put the number you want released to the public.

Permanent Address: P.O. Box 909  
Manila AR 72442  
Campaign Address: (if different from permanent address) \_\_\_\_\_

- The Secretary of State has received a party certificate or other document showing Candidate's payment of filing fees, etc .....
- Candidates for Non-Partisan Judicial position have either paid a filing fee or filed sufficient petition signatures .....
- Candidate completed and signed a Political Practices Pledge .....
- Candidate has been offered the opportunity to complete optional background information .....
- Candidate has received an information packet which includes: .....

- 1. Arkansas Election Calendar
- 2. Campaign Finance Forms
- 3. Campaign Finance Rules & Regulations
- 4. Statement of Financial Interest

**This receipt shall serve as verification that all filing procedures with the Secretary of State's office have been completed, and the above candidate is officially filed for the 20 12 election ballot.**

Wes Wagner  
Candidate's Signature

[Signature]  
Elections Division Staff

**\*\* The following information is optional \*\***

Marital status: Married  Single  Sex: Male  Female

Place of birth: Bytheville AR Date of birth: 5/7/79

Number of children: 1 Religion: Methodist Occupation: Attorney

Schools attended: Manila High School, Arkansas State, Univ. of Tulsa law school

Current public office held (if any): \_\_\_\_\_

Previous public office(s) held (if any): \_\_\_\_\_

E-mail address: WesWagner@yahoo.com

**EXHIBIT**  
B



Democratic Party of Arkansas



2012 DISTRICT, STATE, OR FEDERAL CANDIDATE FILING FORM

Office Sought: State Rep. District or Position #: 54

Candidate Name: Tyler Wes Wagner Date of Birth: 5/7/79 Sex: M

Residence Address (street, city, zip): 838 Hwy 77 N. Manila AR 72442

Phone: 870-561-4600 (Residence) 870-561-4600 (Business) 870-219-4601 (Cell)

Voter Reg. #: \_\_\_\_\_ Marital Status: married Spouse's Name: Katy Massey Wagner

Children (names & ages): Scarlett Wagner 1 yr

Occupation: Attorney Employer: self

Email Address/Website: weswagner@yahoo.com Campaign Contact: \_\_\_\_\_

Current Office Held (if any): \_\_\_\_\_ Previous Office Held (if any): \_\_\_\_\_

CANDIDATE ELIGIBILITY APPLICATION

I request that the Democratic Party of Arkansas place my name on the ballot in the Democratic Primary elections to be held on May 22, 2012 and the run-off (if required) June 12, 2012 as a candidate for the Democratic nomination for the office specified above.

As a candidate in the Democratic Primary elections to be held May 22, 2012, I agree to abide by the results of said Primary Elections and support the Principles of the Democratic Party. I am eligible and legally qualified to file for the office under Arkansas law.

I understand that my filing will not be complete unless and until I file the legally required "Political Practices Pledge" with the Democratic Party of Arkansas and the Secretary of State for district, state, and federal offices. I understand that my name will be printed on the ballot in the same form as I sign my name on said Political Practices Pledge.

Signature: Tyler Wes Wagner Date: 2/24/12

FOR STATE PARTY USE ONLY

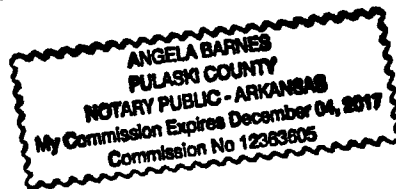
State of Arkansas

County of Pulaski

Subscribed and sworn to me a Notary Public this 24th day of Feb, 2012.

My commission expires: 12/4/17

Notary Public: Angela Barnes



White Copy: Secretary of State Yellow Copy: Candidate Pink Copy: Democratic Party of Arkansas

