

SENATE RESOLUTION 21

By Niceley

A RESOLUTION to authorize the Speaker of the Senate to appoint a committee to meet with a like committee from the House of Representatives to consider the removal of Ellen Hobbs Lyle from the office of Chancellor of the Twentieth Judicial District by the Tennessee General Assembly acting pursuant to Article VI, Section 6 of the Constitution of Tennessee.

WHEREAS, Article II, Section 1 of the Constitution of Tennessee states that "[t]he powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial"; and

WHEREAS, Article II, Section 3 of the Constitution of Tennessee provides that "[t]he Legislative authority of this State shall be vested in a General Assembly"; and

WHEREAS, Article IV, Section 1 of the Constitution of Tennessee provides that "[t]he General Assembly shall have power to enact laws...to secure the freedom of elections and the purity of the ballot box"; and

WHEREAS, during the 111<sup>th</sup> General Session, members of this legislative body considered and rejected legislation expanding the statutory criteria for allowing a person in this State to vote absentee by mail; and

WHEREAS, Article VI, Section 1 of the Constitution of Tennessee states "[t]he judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the Peace"; and

WHEREAS, Article VI, Section 6 of the Constitution of Tennessee sets out a process by which the General Assembly may remove a judge of this State from office for cause by a

concurrent two-thirds vote of both Houses of the General Assembly, each House voting separately; and

WHEREAS, Ellen Hobbs Lyle is a duly elected Chancellor for the Twentieth Judicial District; and

WHEREAS, Because Chancellor Lyle has committed serious ethical violations and abused her authority by pursuing a personal and partisan agenda in violation of State law and her oath of office, the General Assembly finds it necessary to commence proceedings for the removal of Ellen Hobbs Lyle from office as Chancellor of the Twentieth Judicial District for the following causes:

(1) In or around June of 2020, Chancellor Lyle attempted to expand the voting absentee by mail criteria without overturning Tennessee Code Annotated, Section 2-6-201, and without legislative authority; and

(2) In or around June of 2020, Chancellor Lyle changed State election forms to include access to absentee voting by mail that had not been approved by this legislative body and that was contrary to the statutory provisions duly enacted by this legislative body; and

(3) In or around June of 2020, Chancellor Lyle usurped the authority of State election authorities and this legislative body by replacing statutory language on State election forms with her own language; and

(4) Despite an August 5, 2020, ruling by the Tennessee Supreme Court, Chancellor Lyle forced State election officials to abide by her June 4, 2020, order to change State election forms and voting absentee by mail instructions in a blatant overreach of her judicial authority and in disregard of the Tennessee Supreme Court's August 5, 2020, decision and the authority of this legislative body; and

(5) On August 25, 2020, Chancellor Lyle ordered the absentee ballot request form to be changed despite being unable to identify any language in the Tennessee Supreme Court's August 5, 2020, order to support her authority to change State election forms; and

(6) Chancellor Lyle threatened State election officials with criminal contempt and incarceration if they did not change State election forms to conform with her orders even though such actions by State election officials violated State law and the August 5, 2020, order of the Tennessee Supreme Court, and usurped the authority of this legislative body; and

(7) Chancellor Lyle spoke critically about another branch of government when she stated that a law passed by the General Assembly allowing a citizen of this State to receive a monetary award for reporting information of voter fraud leading to a conviction was a form of voter suppression as well as confusing and intimidating to the public; and

(8) In or around June and August of 2020, Chancellor Lyle treated plaintiffs and defendants inconsistently and unfairly by publicly chastising defendant State officials and threatening them with criminal contempt if they did not implement her orders even though such action violated laws passed by the General Assembly, and by relying on information provided by the plaintiffs to make her decisions without verifying the accuracy of the information, and by dismissing information supplied to her by the defendant State officials and State law; and

(9) In or around June and August of 2020, Chancellor Lyle did not use judicial authority to overturn State laws passed by this legislative body, but rather changed the law without authority to do so and replaced the law with her own opinions thereby undermining the State election process and the authority given to this legislative body by

the United States Constitution and the Constitution of Tennessee to control election law;  
and

WHEREAS, the Tennessee Supreme Court has held in *McCully v. State*, 102 Tenn. 509 (1899) that Article VI, Section 6 of the Constitution of Tennessee guarantees Chancellor Lyle a right to be heard on the causes alleged for removal from office as Chancellor of the Twentieth Judicial District; and

WHEREAS, the Tennessee Supreme Court noted in *In Re Murphy*, 726 S.W.2d 509 (Tenn. 1987) that a removal under Article VI, Section 6 of the Constitution of Tennessee could be affected after notice and hearing; and

WHEREAS, the Tennessee Attorney General and Reporter has opined that "an individual accepts a public office subject to any conditions placed on that office, including conditions for removal" (Tenn. Op. Att'y Gen. 90-27 (1990)), and an office is a species of property in which the officer has property rights as noted by the Tennessee Supreme Court in *State v. Blazer*, 619 S.W.2d 370 (Tenn.1981); and

WHEREAS, although a property right is defined by State law and State law permits removal from office for cause, the removal must be done in compliance with the constitutional mandates of due process (Tenn. Op. Att'y Gen. 93-21 (1993)), and the concept of due process is a flexible one which "calls for such procedural protections as the particular situation demands". *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976), quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); and

WHEREAS, in order to commence removal proceedings and provide Chancellor Lyle with procedural due process, the Speaker of the Senate shall appoint five (5) members of the Senate to meet jointly with a like number of House of Representatives members to be appointed by the Speaker of the House of Representatives; and

WHEREAS, the joint committee shall have all powers conferred upon standing or select committees of the Senate by Tennessee Code Annotated, Title 3, including, but not limited to, the power to issue subpoenas, including subpoenas duces tecum, to enforce the attendance of witnesses and the production of any records, documents, papers, or other items of evidence; and

WHEREAS, the joint committee shall be convened by the member with the most continuous service at which time it shall elect such officers as are deemed appropriate; and

WHEREAS, the joint committee shall meet and consider the causes specified in this resolution, or consider additional causes not contained herein, and determine if the causes warrant a due process hearing on the removal of Chancellor Lyle; and

WHEREAS, if the joint committee determines a due process hearing is in order, it shall establish the rules and procedures to be utilized at the hearing, the parameters of the hearing, the date, time, and place of the hearing, and the extent, if any, to which witnesses will be heard and evidence received; and

WHEREAS, the joint committee shall provide Chancellor Lyle with written notice of the date, time, and place of any hearing at least ten (10) days prior to the hearing; and

WHEREAS, at the conclusion of the hearing, if one is conducted, the joint committee shall vote "for recommending removal" or "against recommending removal" as to each cause presented against Chancellor Lyle at the hearing and the committee may vote "for recommending removal" based on the cumulative effect of all the causes presented even though they vote "against recommending removal" as to one (1) or more of the individual causes; and

WHEREAS, within ten (10) days from the date the committee has voted and concluded its hearing, the committee shall make and file its report with the respective speakers, who shall forthwith convene a joint convention of the General Assembly for the purpose of acting upon the

report of the joint committee. Consideration before the joint convention shall be limited to the record; but oral argument will be permitted; and

WHEREAS, upon the conclusion of the argument, the joint convention shall adjourn and each house shall repair to its respective chamber, and vote separately, in the manner prescribed in Article VI, Section 6 of the Constitution of Tennessee. Each house shall vote "for" or "against" removal of Ellen Hobbs Lyle as to each cause for which the joint committee recommended removal. Any member, by a motion properly seconded, may call for a vote of the member's respective House on any cause considered by the joint committee but for which such committee recommended "against" removal. In the event two thirds (2/3) of the members to which one (1) House may be entitled vote to remove Ellen Hobbs Lyle for a cause which the joint committee recommended "against removal," the vote and the cause receiving such two thirds (2/3) vote shall be transmitted forthwith to the other House which shall then vote on it as if the cause was one recommended "for removal" by the joint committee; and

WHEREAS, if two-thirds of the members to which each House is entitled vote for removal on one (1) or more of the causes alleged then the judge is removed from office and the votes shall be entered in the journals as required by Article VI, Section 6 of the Constitution of Tennessee; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED TWELFTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, that the Speaker of the Senate shall appoint a committee of five (5) members of the Senate to meet with a like number of Representatives to be appointed by the Speaker of the House of Representatives pursuant to a similar House of Representatives Resolution to meet and determine if cause exists to conduct a hearing on the removal of Ellen Hobbs Lyle from the position of Chancellor of the Twentieth Judicial District.

BE IT FURTHER RESOLVED, that the joint committee shall be convened by the member with the most continuous service at which time the committee shall elect such officers as are deemed appropriate.

BE IT FURTHER RESOLVED, that the joint committee shall have all powers conferred upon standing or select committees of the Senate by Tennessee Code Annotated, Title 3, including, but not limited to, the power to issue subpoenas, including subpoenas duces tecum, to enforce the attendance of witnesses and the production of any records, documents, papers, or other items of evidence.

BE IT FURTHER RESOLVED, that the joint committee shall meet and consider the causes specified in this resolution, or consider additional causes not contained herein, and determine if the causes warrant a due process hearing on the removal of Ellen Hobbs Lyle as Chancellor of the Twentieth Judicial District.

BE IT FURTHER RESOLVED, that if the joint committee determines that a due process hearing is in order, the joint committee shall establish the rules and procedures to be utilized at the hearing; the parameters of the hearing; the date, time, and place of the hearing; and the extent, if any, to which witnesses will be heard and evidence received.

BE IT FURTHER RESOLVED, that the joint committee shall provide Chancellor Lyle with written notice of the date, time, and place of any hearing at least ten (10) days prior to the hearing.

BE IT FURTHER RESOLVED, that at the conclusion of the hearing, if one is held, the joint committee shall vote "for recommending removal" or "against recommending removal" as to each cause presented against Chancellor Lyle at the hearing and the committee may vote "for recommending removal" based on the cumulative effect of all the causes presented even though they vote "against recommending removal" as to one (1) or more of the individual causes.

BE IT FURTHER RESOLVED, that within ten (10) days from the date the committee has voted and concluded its hearing, the committee shall make and file its report with the respective speakers.

BE IT FURTHER RESOLVED, that a signed and certified copy of this resolution be transmitted to Ellen Hobbs Lyle ten (10) days before the committee appointed pursuant to this resolution, and the similar House of Representatives resolution, conducts a hearing to consider her removal from office as Chancellor of the Twentieth Judicial District pursuant to Article VI, Section 6 of the Constitution of Tennessee.

BE IT FURTHER RESOLVED, that this resolution and the similar House of Representatives resolution serve as notice to Chancellor Lyle of the General Assembly's intention to remove her from the office of Chancellor of the Twentieth Judicial District for cause; provided, that if the joint committee appointed pursuant to this resolution, and the similar House of Representatives resolution, determines it is necessary to consider any cause not contained herein, the joint committee shall provide Chancellor Lyle with notice of any additional cause not contained herein at least ten (10) days before the committee conducts a hearing to consider her removal from office as Chancellor of the Twentieth Judicial District pursuant to Article VI, Section 6 of the Constitution of Tennessee.