

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**JEREMY R. DURHAM,**

**Plaintiff,**

**v.**

**BUTCH ELEY, as Commissioner of  
Finance and Administration, in his  
official capacity,<sup>1</sup> et al.,**

**Defendants.**

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) **Case No. 3:17-cv-01172**  
) **Judge Aleta A. Trauger**  
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**MEMORANDUM**

Before the court is plaintiff Jeremy Durham’s Motion for Summary Judgment (Doc. No. 64), seeking judgment in his favor on the sole remaining claim in this case: whether he was denied due process in connection with the termination of certain health insurance benefits, which resulted from his expulsion from the Tennessee legislature. For the reasons set forth herein, the plaintiff’s motion will be denied.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

The basic facts of this case are undisputed.<sup>2</sup> Plaintiff Jeremy Durham was elected to the 108th General Assembly of the Tennessee House of Representatives in November 2012 and served

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<sup>1</sup> Durham originally sued Larry Martin in his official capacity as the Tennessee Commissioner of Finance and Administration. Martin was succeeded by Stuart McWhorter and then Butch Eley, who was appointed to that position in April 2020. Commissioner Eley is automatically substituted for former-Commissioner Martin as a defendant in this case. Fed. R. Civ. P. 25(d).

<sup>2</sup> Unless otherwise indicated, the facts set forth herein are drawn from the defendants’ Response to [Plaintiff’s] Statement of Undisputed Material Facts (Doc. No. 69) and the plaintiff’s Response to Defendants’ Supplemental Statement of Undisputed Material Facts (Doc. No. 72).

a full term, which expired in 2014. He was reelected in 2014 to serve a full term as a member of the 109th General Assembly. Under ordinary circumstances, his term would have expired on the date of the general election in November 2016. *See* Tenn. Const. art. II, § 3 (“Representatives shall hold office for two years . . . from the day of the general election . . .”).

On September 2, 2016, then-Governor Bill Haslam announced that he would call a special session of the General Assembly after learning that sixty million dollars in federal highway funds was in jeopardy. The governor’s proclamation, calling for the special session, identified four specific items for the General Assembly to consider and act upon. All four items dealt with certain DUI laws and federal highway funds. (*See* Proclamation, Doc. No. 33-1.) The Proclamation did not mention or reference Durham.

Prior to the announcement of the special session, Durham had been the subject of an investigation and report issued by the Tennessee Attorney General’s office (“Report”) in July 2016.<sup>3</sup> (Doc. No. 72-1, Durham Decl. ¶ 4.) Durham did not receive a copy of the Report until it was released to the public. (Durham Decl. ¶ 5.) The Report cited anonymous sources and identified the individuals alleging improper conduct by Durham only as “Jane Doe.” (Durham Decl. ¶ 6.) The Report concluded that Durham had engaged in “disorderly conduct” while in office.<sup>4</sup> Prior to issuing the Report, the Attorney General’s office told Durham that he could answer questions from the office’s investigators, but the Attorney General’s office did not notify Durham of the nature of

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<sup>3</sup> The Report is not in the court’s record but is available online at <https://www.documentcloud.org/documents/2993307-Final-Report-Into-Inappropriate-Conduct-Rep.html>.

<sup>4</sup> More specifically, the Report concluded that Durham had engaged in sexually inappropriate conduct involving at least 22 women between 2012 and 2016. Report at 2.

the allegations against him or the identity of his accusers in advance of the meeting. (Durham Decl. ¶ 7.) Durham declined to meet with the investigators. (*Id.*)

Shortly after the Report became public, Representative Mike Stewart called for a special session of the Tennessee House of Representatives to vote to expel Durham, but the call failed. (Doc. No. 33 ¶¶ 35, 39; Doc. No. 63 ¶¶ 35, 39.) House Republican Caucus Chair Glen Casada and Representative Joe Armstrong circulated a second petition to call a special legislative session to oust Durham. That petition failed as well. (Doc. No. 33 ¶ 40; Doc. No. 63 ¶ 40.)

On July 14, 2016, Durham publicly announced that he would not seek reelection. (Doc. No. 33 ¶ 42; Doc. No. 63 ¶ 42.)

On July 26, 2016, *The Tennessean* newspaper quoted defendant Connie Ridley, Director of Legislative Administration, as stating: “All members of the general assembly who are elected to serve a full term of office as a member of the general assembly are eligible to continue their health insurance by paying the appropriate premium amount.” (Doc. No. 33 ¶ 37; Doc. No. 63 ¶ 37.)

On September 12, 2016, during the special session called by the governor, Representative Susan Lynn made a motion to expel Jeremy Durham from the House of Representatives. Durham learned about the motion late in the afternoon of September 12, 2016, through a text alert from an online newspaper article. (Durham Decl. ¶ 10.) A few hours later, Doug Himes, then-Director of the Office of Legal Services for the Tennessee General Assembly, emailed Durham to notify him that the House would be considering a motion to expel him the next day. (Doc. No. 70-1, Himes Decl. ¶¶ 1, 2 & Ex. A; Durham Decl. ¶ 14.) Durham contacted his personal attorney as soon as he heard about the motion and discovered that his attorney would not be available to accompany him to the General Assembly the following morning. (Durham Decl. ¶ 11.) That evening, Durham

wrote a letter to his House colleagues detailing the ways in which he believed the Attorney General's investigation and the motion to expel him had denied him the right to due process. He also expressed his belief that he would not receive a fair hearing on the House floor. (Durham Decl. ¶ 18 & Ex. B, Doc. No. 72-1, at 12–19.)

On September 13, 2016, prior to his expulsion, Durham was given an opportunity to address the House. He spoke for approximately thirteen minutes before voluntarily concluding his statements. Debate on the motion remained open for an additional hour, during which time members of the House could pose questions to Durham. Durham, however, was not permitted to ask questions or to confront the accusers whose allegations formed the basis of the Attorney General's Report. At some point during this debate, Durham voluntarily left the House. The House eventually voted 70-2 to expel Durham. Durham was not present for the vote. He alleges that, due to Ridley's comments in *The Tennessean*, he believed that he would retain his health insurance benefit, even if he was expelled from the House. (Durham Decl. ¶¶ 22–23.)

On September 26, 2016, after the expulsion, Durham received correspondence from defendant Connie Ridley's office stating that his health insurance coverage would end effective September 30, 2016 and that the decision to terminate his insurance was made by then-Commissioner of Finance and Administration, Larry Martin, in consultation with the Attorney General. Durham's (and his family's) state health insurance coverage ended on September 30, 2016. The communication from Ridley's office did not provide any process for a hearing or for appealing the decision to terminate Durham's health insurance, either before or after the termination went into effect. (Doc. No. 33-2; *see also* Durham Decl. ¶ 27 & Ex. C, Doc. No. 72-1, at 21–24.)

Tennessee law provides that, “[u]pon retirement from the general assembly, any . . . representative . . . may elect to retain retiree health benefits by participating in the plan authorized by the state insurance committee.” Tenn. Code Ann. § 8-27-208(a)(1) (2015). The provision only applies to officials first elected prior to July 1, 2015, and the statute expressly excludes any former member of the General Assembly who, after November 2, 2010, is convicted of a felony “arising out of that person’s official capacity as a member of the general assembly.” *Id.* § 8-27-208(a)(2), (b).

Durham has never been convicted of a felony. (Durham Decl. ¶ 2.) Accordingly, if he had retired after his first term expired in 2014, he would have been eligible to elect to retain retiree health benefits under Tenn. Code Ann. § 8-27-208. However, following his expulsion, the Commissioner of Commerce and Insurance, acting in his official capacity and in consultation with the Tennessee Attorney General, determined that Durham was not entitled to continued health insurance benefits, because he had not “retired” from the General Assembly.<sup>5</sup>

The plaintiff filed suit in August 2017, challenging his expulsion from the legislature and the termination of state benefits—a state pension as well as the lifetime health insurance benefit—on the grounds that the expulsion and denial of benefits violated his right to due process. (Doc. No. 1.) The defendants promptly filed their first Motion to Dismiss, arguing that Durham lacked standing to bring the case. This court granted the motion, but the Sixth Circuit reversed. *Durham v. Martin*, 287 F. Supp. 3d 683 (M.D. Tenn. 2017), *rev’d & remanded*, 905 F.3d 432 (6th Cir. 2018). Following remand, Durham filed his Amended Complaint, adding a new cause of action and new defendants. The court granted in part and denied in part the defendants’ second Motion

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<sup>5</sup> This court previously held as a matter of law that “expulsion” is not equivalent to retirement. *See Durham v. Martin* (“*Durham III*”), 388 F. Supp. 3d 919, 941 (M.D. Tenn. 2019), *aff’d sub nom. Durham v. McWhorter* (“*Durham IV*”), 789 F. App’x 533 (6th Cir. 2020).

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