

**IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY, TENNESSEE**

**THE METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON COUNTY,)
TENNESSEE, JOHN COOPER, in his)
official capacity as Mayor of the)
Metropolitan Government of Nashville and)
Davidson County, Tennessee, KEVIN)
CRUMBO, in his official capacity as)
Finance Director of the Metropolitan)
Government of Nashville and Davidson)
County, Tennessee,)**

Petitioners/Plaintiffs,)

v.)

**THE DAVIDSON COUNTY ELECTION)
COMMISSION,)**

Respondent/Defendant.)

FILED
2021 MAY 11 PM 1:32
CLERK & MASTER
CHANCERY CT.
DAVIDSON CO. TENNESSEE
D.C. & M.

Case No. 21-0433 I

**PETITION FOR A WRIT OF MANDAMUS, OR PETITION FOR A WRIT OF
CERTIORARI, OR COMPLAINT FOR DECLARATORY JUDGMENT**

Respondent/Defendant Davidson County Election Commission (“Election Commission”) voted to place proposed amendments to the Metropolitan Government of Nashville and Davidson County Charter (the “Proposed Amendments”) on a ballot for a special election on July 27, 2021. The Proposed Amendments were submitted by petition (the “Petition”) filed by a group known as 4 Good Government (“4GG”).¹ The Petition and Proposed Amendments fail to meet the requirements of Metropolitan Charter § 19.01 for a charter-amendment referendum. They are also defective in form and facially unconstitutional. The special election will cost the Petitioner/Plaintiff Metropolitan Government of Nashville and

¹ This lawsuit challenges the Election Commission’s decision to hold a referendum election on the Petition. While the Metropolitan Government recognizes that 4GG has an interest in any legal proceedings related to its Petition, 4GG is not a necessary party to the suit. A courtesy copy of the Petition/Complaint has been sent to 4GG’s counsel, Jim Roberts.

Davidson County (“Metropolitan Government”) at least \$800,000, and preparations for the special election must begin well in advance of the election date. Furthermore, the Proposed Amendments, if adopted, would require the Metropolitan Government to reduce the proposed property tax rate for Fiscal Year 2021-2022. This reduction would cause a revenue loss of over \$40 million from the Fiscal Year 2021-2022 budget that the Metropolitan Government must adopt before July 1, 2021. Thus, judicial relief is necessary to prevent these and other unwarranted harms resulting from a ballot initiative on Proposed Amendments that if adopted will be void *ab initio*.

Accordingly, Petitioners/Plaintiffs seek a writ of mandamus requiring the Election Commission to cancel the special election; or a writ of certiorari voiding the action of the Election Commission; or a declaratory judgment that the Proposed Amendments are ineligible to be placed on a referendum election ballot and an injunction preventing the special election from proceeding. In support, Petitioners/Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to Tenn. Code Ann. § 16-11-102.

2. This Court has jurisdiction to issue a writ of mandamus pursuant to Tenn. Code Ann. §§ 16-10-101, *et seq.*, and Tenn. Code Ann. § 5-1-107.

3. This Court has jurisdiction to issue a writ of certiorari pursuant to Tenn. Code Ann. § 27-9-101 to void the illegal, arbitrary, and capricious decision of the Election Commission to set a special election on a defective and invalid petition for proposed Charter amendments.² *McCallen v. City of Memphis*, 786 S.W.2d 633, 641-42 (Tenn. 1990). This is the first application for the writ of certiorari.

² In *Wallace v. Metro. Gov’t of Nashville & Davidson Cty.*, 546 S.W.3d 47 (Tenn. 2018), the Tennessee Supreme Court concluded that the Davidson County Election Commission “acted in a

4. This Court has the power to enter a declaratory judgment and issue injunctive relief pursuant to Tenn. Code Ann. § 1-3-121, § 29-1-101, §§ 29-14-102 and -103, and Tenn. R. Civ. P. 65.

5. Venue is proper in this judicial district pursuant to Tenn. Code Ann. §§ 4-4-104 and 20-4-101(a), as this cause of action arose in Davidson County, Tennessee.

PARTIES

6. Petitioner/Plaintiff Metropolitan Government is a consolidated city and county government formed by the City of Nashville and Davidson County and incorporated pursuant to the Metropolitan Charter Act, Tenn. Code Ann. §§ 7-1-101, *et seq.* The Metropolitan Government has the power to levy and collect taxes on all property, except property exempt from taxation by general law, to purchase, lease, construct, maintain, or otherwise acquire, hold, and operate any building or other property, real or personal, for a public purpose, and to sell, lease, or otherwise dispose of any property, real or personal, belonging to the Metropolitan Government. Metropolitan Charter § 2.01.

7. Petitioner/Plaintiff Mayor John Cooper is a Metropolitan Government elected official. He has served as Mayor since 2011. He exercises the executive and administrative power of the Metropolitan Government. *Id.* § 5.01. The Mayor must submit an annual operating budget to the Metropolitan Council no later than May 1 of each year. *Id.* § 6.04.

ministerial capacity in setting the date for the election to fill the mayoral vacancy under the Charter, even though the Commission was required to make an initial determination of what the Charter authorized.” *Id.* at 51. While that “would suggest that mandamus is the proper vehicle for review,” the Court further noted that “the inquiry in this case is the same” as if the case were proceeding on a petition for a writ of certiorari—namely, whether the Charter authorized the Commission’s actions or required some other action. *Id.* (citing *McCallen v. City of Memphis*, 786 S.W.2d 633, 641-42 (Tenn. 1990) (noting that “[t]he scope of judicial review under common law writ of certiorari, on substantive as opposed to procedural issues” is “whether the action of the city council in the exercise of its administrative, judicial or quasi-judicial function was illegal or in excess of jurisdiction”)).

8. Petitioner/Plaintiff Metropolitan Director of Finance Kevin Crumbo is responsible for administration of the Metropolitan Government's financial affairs. *Id.* § 8.103. The Director of Finance must submit an annual operating budget to the Mayor for review and revision before the Mayor submits the budget to the Metropolitan Council. *Id.* § 6.02.

9. Respondent/Defendant Election Commission is a creature of state law and is appointed by the State of Tennessee's Election Commission. Tenn. Code Ann. § 2-12-101. The Election Commission is located at 1417 Murfreesboro Pike, Nashville, Tennessee 37217. The Election Commission has the duty to hold referendum elections on charter-amendment petitions pursuant to Metropolitan Charter § 19.01.

LEGAL STANDARDS

10. Tennessee law recognizes the "freedom and purity of the ballot." 4 *Good Government, et al. v. Davidson Cty. Election Comm'n*, No. 20-1010-III, Findings of Fact, Conclusions of Law, and Orders from 10/26-27/2020 Bench Trial at 13 (Davidson Cty. Chancery Ct. Nov. 3, 2020) (hereinafter "Findings & Conclusions") (citing Tenn. Code Ann. § 2-1-102). Tennessee law further requires balloting "to be separated from campaign materials or solicitations containing a 'position on the question.'" *Id.* at 13 (quoting Tenn. Code Ann. § 2-7-111(b)).

11. The State of Tennessee has a compelling interest in the integrity of the election process, and Title 2 of the Tennessee Code "was adopted 'to protect the freedom and purity of elections.'" *Johnston v. Davidson Cty. Election Comm'n*, No. M2011-02740-COA-R3CV, 2014 WL 1266343, at *4 (Tenn. Ct. App. Mar. 26, 2014), *cited in* Findings & Conclusions at 13.

12. Tennessee courts require referendum language to be sufficiently clear and understandable so as to avoid voter confusion and allow the intelligent casting of votes. In *Rodgers v. White*, 528 S.W.2d 810 (Tenn. 1975), the Tennessee Supreme Court held that the test of sufficiency for a ballot question was "whether or not the notice on the ballot conveyed

a reasonable certainty of meaning so that a voter could intelligently cast a vote for or against the proposal with full knowledge of the consequence of his vote.” *Id.* at 813.

13. The text of a referendum petition “must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent, and informed decision by the average citizen affected.” Findings & Conclusions at 14 (quoting 42 Am. Jur. 2d Initiative and Referendum § 18 (West 2020)). And proposed referendum provisions must “define the scope and meaning of key terms essential to voters’ understanding and intelligent casting of votes.” *Id.* at 18.

14. In *City of Memphis v. Shelby Cty. Election Comm’n*, 146 S.W.3d 531 (Tenn. 2004), the Tennessee Supreme Court held that “pre-election challenges to the form or facial constitutional validity of referendum measures are ripe for judicial scrutiny.” *Id.* at 539.

15. Cases to which *City of Memphis* cited illustrate the types of permitted pre-election challenges based on “form or facial constitutional validity.”

16. The first type of permitted pre-election challenge is one in which a petition “violate[s] procedural or technical requirements incident to placing the measure on the ballot.” *Burnell v. City of Morgantown*, 558 S.E.2d 306, 314 (W.V. 2001), cited in *City of Memphis*, 146 S.W.3d at 536; Findings & Conclusions at 15-17.

17. A second type of permitted pre-election challenge is one in which a petition attempts to accomplish by referendum that which may not be accomplished in that manner under existing law. Findings & Conclusions at 15-17 (citing *Burnell*, 558 S.E.2d at 314; James D. Gordon III & David B. Magleby, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L. Rev. 298, 314 (1989)); see also Findings & Conclusions at 22 (“Thus, the Proposed Act involves a subject matter beyond the scope of the referendum power, and, therefore it is defective in form.”).

18. A third type of permitted pre-election challenge is one in which a referendum petition is facially unconstitutional. Findings & Conclusions at 17 (citing *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 415 S.E.2d 801, 806 (S.C. 1992)).

FACTS

I. THE PETITION

19. On March 25, 2021, 4GG filed with the Metropolitan Clerk a petition to amend the Metropolitan Charter labeled the “Nashville Taxpayer Protection Act” (the “Petition”).

20. 4GG is, on information and belief, an unincorporated association with its principal place of operation in Davidson County. James D.R. Roberts signed and filed a “Charter Amendment Petition Filing Form” for the Petition with the Metropolitan Clerk on behalf of 4GG.

21. The Metropolitan Clerk transmitted the Petition to the Election Commission on the date of receipt for verification of the Petition’s signatures.

22. The Petition proposes the following six amendments to the Metropolitan Charter “as written in *italics*”:

1. **Limit Property Tax Rates – Add to Article 6, § 6.07, Paragraph 5:** *“Property Tax Rates shall not increase more than 3% per fiscal year upon enactment without a voter referendum, pursuant to Tenn. Code Ann. § 2-3-204. For Fiscal Years 2021-2022 and 2022-2023 the property tax rate(s) shall revert to Fiscal Year 2019-2020’s tax rate(s), or lower if required by law. This amendment’s provisions are severable.”*
2. **Recall Elected Officials – (A) Add to Article 15, § 15.07:** *“Petitions to recall elected officials filed after January 1, 2021, under this section shall contain the signatures and addresses of registered qualified voters in Davidson County equal to ten (10) percent of the citizens voting in the preceding Metro general election in the district or area from which the recalled official was elected. Such Petitions shall be filed with the metro clerk within seventy-five (75) days of the date the notice is filed. This amendment’s provisions are severable”* **(B) Replace existing Article 15, § 15.08, Paragraph 2 with:** *“A recalled official’s name shall not appear on the recall ballot, but such official may qualify as a write-in candidate. This amendment’s provisions are severable.”*
3. **Abolish Lifetime or Other Benefits for Elected Officials – Add to Article 18, § 18.05, Paragraph 1:** *“No elected official shall receive any benefits at taxpayer expense as a result of holding such elected office without a voter referendum.”*
4. **Preserve Voters’ Charter Amendments – Create Article 19, § 19.04:** *“Voter-sponsored Charter Amendments approved after January 1, 2021, shall be amended only by voter-sponsored Petition, notwithstanding any law to the contrary.”*
5. **Protect Publicly-Owned Parks, Greenways & Lands – Create Article 18, § 18.18:** *“No portion of a publicly-owned park, greenway, or other real property shall be transferred or conveyed without 31 votes of Metro Council. All transfers of interest in real property shall be at fair market value based on an independent appraisal. Public referendum shall be required for transfers of interest in such publicly-owned properties valued over \$5,000,000, and for leases exceeding twenty (20) years, unless prohibited by state law.”*
6. **Protect Promises to Nashville – Create Article 18, § 18.19:** *“If a professional sports team leaves Nashville, or ceases playing professional games for more than twenty-four (24) consecutive months during the term of a team’s ground lease, all sports facilities and related ancillary development related to the defaulting team shall revert to public property, and all related contracts shall terminate, including land leased from the Nashville Fairgrounds, and just payment shall be paid, if required by law.”*

23. There are two versions of the Petition, which both propose the same six amendments.

24. Both versions of the Petition prescribe two dates for the referendum election: "May 28, 2021 or June 14, 2021, whichever is earlier as permitted by Metro Charter § 19.01." Section 19.01 requires that a petition "prescribe a date" for holding the referendum election not less than eighty days after the date the petition is filed.

25. The first version of the Petition, which was mailed to voters, contains the following introductory language:

Metro sued to STOP YOU from voting on the Nashville Taxpayer Protection Act.

Support *4GoodGovernment.com*'s fight to:

ROLL BACK the massive 34-37% Property Tax Increase and return the tax rate to the 2019-2020 budget level.

PROTECT OUR Parks, Greenways, and Public Lands, and save them for the public's benefit.

HELP TO RECALL elected officials who ignore citizens' demands.

END lifetime benefits for career politicians at Taxpayers' expense.

DONATE today at www.4GoodGovernment.com!

Metro Government's spending has exceeded its revenues for years – and the 34-37% **Property Tax Increase** is just a *symptom* of the problem. These Charter Amendments will help stop Metro's fiscal irresponsibility and rein in spending.

Please Sign, Fold & Mail ASAP (No later than Friday, March 5, 2021)

** We hope to file the Petitions with the Metro Clerk on Monday, March 8, 2021 **

The undersigned Davidson County voters propose the following six (6) Amendments to the Metropolitan Charter, as written in *italics*, to be voted on by the citizens on May 28, 2021 or June 14, 2021, whichever is earlier as permitted by Metro Charter § 19.01:

26. The first version of the Petition contains the following sentence below the proposed six amendments and above signature lines 1 – 2:

On Election Day the citizens shall vote on the foregoing six (6) separate amendments.

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Taxpayer

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27. The first version of the Petition contains the following editorial language at the top of the second page, above signature lines 3 – 10:

**Our Government sued the citizens to block YOUR right to vote.
Help STOP Metro's fiscal irresponsibility!**

28. The first version also contains the following editorial language below the signature lines:

Decades of reckless fiscal irresponsibility has bankrupted our city, and Metro's "solution" gave us a 34-37% property tax increase on homeowners. Metro then squandered \$100K+ to sue its citizens to prevent repeal of the 34-37% tax increase. While the Court said we cannot repeal a prior tax increase, we can **reduce** the tax in the *next budget* to return to the 2019-2020 level. We must also remove "public servants" who will not listen! One of the ballot initiatives lowers the barrier to recall officials who ignore the citizens. **It is time to force Metro to rein in its uncontrolled spending, cut waste, and stop giving away our city, parks, and public lands to billionaires for virtually nothing.**

29. The first version of the Petition states that signed petitions should be returned by Friday, March 5, 2021, for filing with the Metropolitan Clerk by Monday, March 8, 2021. That filing date is eighty-one days before the first election date—May 28, 2021—prescribed in the Petition. Accordingly, the first version of the Petition is based on the first election date.

30. There are no more than 11,848 verified signatures on the first version of the Petition.

31. The second version of the Petition, which was posted at www.4GoodGovernment.com, contains the following introductory language:

ROLL BACK Mayor Cooper's massive 34%-37% Property Tax Increase and Bring Fiscal Sanity to Metro Government!

NOW is the time to act to STOP decades of reckless fiscal irresponsibility has bankrupted our city. Spending increased \$100,000,000.00 in 2020 and the property tax rate is going up again in 2021. We must also remove "public servants" who will not listen! **It is time to force Metro to rein in its uncontrolled spending, cut waste, and stop giving away our city, parks, and public lands to billionaires for virtually nothing.**

Please Gather TEN (10) Signatures & Mail ASAP (No later than Tuesday, March 23rd)

** The very last day to file the Petitions with the Metro Clerk is Thursday, March 25, 2021. **

The undersigned Davidson County voters propose the following six (6) separate Amendments to the Metropolitan Charter, as written in *italics*, to be voted on by the citizens on May 28, 2021 or June 14, 2021, whichever is earlier as permitted by Metro Charter § 19.01:

32. The second version of the Petition states that signed petitions should be returned by Tuesday, March 23, 2021, for filing with the Metropolitan Clerk by Thursday, March 25, 2021. That filing date is eighty-one days before the second election date—June 15,

2021—prescribed in the Petition. Accordingly, the second version of the Petition is based on the second election date.

33. There are no more than 550 verified signatures on the second version of the Petition.³

34. Metropolitan Charter § 19.01 requires that a proposed charter amendment petition filed with the Metropolitan Clerk be “signed by ten (10) percent of the number of the registered voters of Nashville-Davidson County voting in the preceding general election.”

35. The August 6, 2020 ballot in Davidson County included federal primary elections, state primary elections, Oak Hill municipal elections, and elections for Davidson County Assessor of Property, Davidson County Trustee, and five Metropolitan school board seats.

36. In the August 6, 2020 election, 121,420 voters cast ballots.

37. If the August 6, 2020 election were determined to be the “preceding general election,” 12,142 verified signatures would be required for the Proposed Amendments to be submitted for a referendum election.

38. The ballot in Davidson County for the general election held on November 3, 2020, included federal general elections, state general elections, Belle Meade, Forest Hills, and Goodlettsville municipal elections, and an election for a Metropolitan school board seat.

39. In the November 3, 2020 election, 312,113 voters cast ballots.

³ Due to the use of quotation marks as “ditto marks” in lieu of addresses on some petitions, the Election Commission directed the Administrator of Elections at its meeting on April 17, 2021, to re-verify the number of signatures. At the Election Commission’s subsequent meeting on April 22, 2021, the Administrator reported that the total number of verified signatures had been reduced by 29, from 12,398 to 12,369. Because it is unknown how the reduction affected the number of verified signatures on each version of the Petition, the Metropolitan Government anticipates amending its claims to reflect such impact once those facts become available. Any revision, however, will be de minimis and therefore immaterial to the merits of the claims.

40. If the November 3, 2020 election were determined to be the “preceding general election,” 31,212 verified signatures would be required for the Proposed Amendments to be submitted for a referendum election.

41. On April 17, 2021, the Election Commission voted that the election held on August 6, 2020, is the “preceding general election” to be used to determine the requisite number of signatures to satisfy this requirement.⁴

42. On April 22, 2021, the Election Commission voted to certify to the Metropolitan Clerk that the Petition had 12,369 verified signatures, which were more than 10% of the number of voters in the “preceding general election” on August 6, 2020. The Election Commission did not consider the number of verified signatures on each of the two versions of the Petition in its deliberations or vote.

43. The Election Commission’s verification of the Petition’s signatures was certified to the Metropolitan Clerk by letter dated May 4, 2021 (attached as Ex. A).

44. The Metropolitan Clerk certified a copy of the two versions of the Petition to the Election Commission by letter dated May 6, 2021 (attached as Ex. B).

45. On May 10, 2021, the Election Commission voted to set July 27, 2021, as the date for the referendum election on the Proposed Amendments.

46. The Election Commission voted to place the Petition on the ballot without publicly discussing the Petition’s defects. The Commission and its counsel referred only to a confidential memorandum that the Commission’s legal counsel drafted and provided to the Election Commission, as well as the Executive Summary for the confidential memorandum. The Executive Summary was made part of the record before the Commission (attached as Ex. C).

⁴ The Election Commission also met to discuss the Petition on April 6 and 8, 2021.

47. According to the Executive Summary, the Petition is suitable for placing on the ballot in its entirety.

48. The Executive Summary notes that that Chancery Court's Findings & Conclusions concerning the first 4GG petition "identified significant problems – both in form and substance – that made it inappropriate to put the proposed 2020 amendment on the ballot." (Ex. C at 1.)

49. The Executive Summary identifies three defects from the 2020 petition that precluded it from the ballot but that are purportedly corrected in the current Petition:

- The 2021 petitions expressly state the sections of the Metro Charter to be amended and clearly delineate the proposed new Charter provisions.
- The 2021 petitions omit campaign-like language from the text of the proposed amendments.
- The 2021 petitions omit language that suggests a retroactive intent.

50. The Election Commission's vote to place the Petition on the ballot is consistent with the Executive Summary's directive to consider only the form issues described in Paragraph 49 and the number of valid signatures in determining whether to place the Petition on the ballot.

51. The Executive Summary stated that any other issues related to the Petition's validity were beyond the scope of the Election Commission's authority. The Election Commission did not deliberate over any other issues in determining whether to place the Petition on the ballot.

52. The Executive Summary does not address the legal effect under Metropolitan Charter § 19.01 of the Petition's inclusion of two election dates or the distribution of two versions of the Petition.

53. "Form" defects are not limited to those categories identified in Paragraph 49. For example, where a petition seeks to accomplish by referendum a matter that may not be

accomplished through that means, the petition contains a defect in form that is subject to a pre-election challenge. Findings & Conclusions at 22 (“Thus, the Proposed Act involves a subject matter beyond the scope of the referendum power, and, therefore it is defective in form.”), 42-49 (“[I]t is appropriate for courts to resolve legal issues regarding the form and legality of a petition *before* holding the election.”).

54. The Election Commission has discretion to seek a declaratory judgment action before placing a petition on the ballot or decline to place it on the ballot altogether where form defects exist in the petition beyond those identified in the Executive Summary and in Paragraph 49 above. Findings & Conclusions at 42-49.

55. The Election Commission has discretion to seek a declaratory judgment action before placing a petition on the ballot or decline to place it on the ballot altogether where the petition is facially unconstitutional. *Id.*

56. The Election Commission did not deliberate over or consider either of these options because its counsel advised the Commission to adopt an overly narrow scope of review inconsistent with applicable law and in conflict with the Findings & Conclusions issued concerning 4GG’s 2020 petition. The Election Commission’s action was therefore arbitrary, capricious, and illegal for the above-stated reasons.

II. PETITION DEFECTS: METROPOLITAN CHARTER § 19.01 REQUIREMENTS

A. The Petition Fails to Comply With Metropolitan Charter Section 19.01’s Requirement to “Prescribe a Date” for Holding the Referendum Election.

57. The Petition states that the Proposed Amendments are “to be voted on by citizens on May 28, 2021 or June 14, 2022, whichever is earlier as permitted by Metro Charter § 19.01.”

58. Metropolitan Charter § 19.01 states that a charter-amendment “resolution or petition shall also prescribe *a date* not less than eighty (80) [days] subsequent to the date of its filing for the holding of a referendum election.” (emphasis added).

59. By its plain language, Section 19.01 does not permit inclusion of multiple election dates on a petition.

60. By requiring a single date, Section 19.01 provides transparency and certainty to the important process of amending the Metropolitan Charter. The single-date requirement also serves the critical purpose of setting the date by which the petition must be filed, which is not less than eighty days before the prescribed election date.

61. 4GG sought to “game the system” by listing multiple election dates on its Petition.

62. Including multiple election dates on a petition creates confusion among the persons signing the petition and the officials charged with processing it, as well as ambiguity about the petition’s intent.

63. The language of the Charter is mandatory and unambiguous. With regard to similar requirements under state law, the Election Commission does not have authority “to certify partial compliance or to pick and choose which of the applicable requirement were sufficient for compliance.” *Littlefield v. Hamilton Cty. Election Comm’n*, 2012 WL 3987003, at *13 (Tenn. Ct. App. 2012).

B. The Petition Does Not Satisfy the Signature Requirement in Metropolitan Charter Section 19.01.

64. Metropolitan Charter § 19.01 requires that a proposed charter amendment petition filed with the Metropolitan Clerk be “signed by ten (10) percent of the number of the registered voters of Nashville-Davidson County voting in the preceding general election.”

65. Tennessee courts have interpreted the term “preceding general election” in Section 19.01 to be an election that was not specially set and that contains at least one municipal office on the ballot. See *Fraternal Order of Police v. Metro. Gov’t of Nashville & Davidson Cty.*, 582 S.W.3d 212, 219 (Tenn. 2019); *Wallace v. Metro. Gov’t of Nashville & Davidson Cty.*, 546 S.W.3d 47, 55 (Tenn. 2018) (“general election” means any municipal general election, not the more limited “general metropolitan election”); *State ex rel. Wise v. Judd*, 655 S.W.2d 952, 953 (Tenn. 1983) (election with “no metro offices” on the ballot is not a “general election” under Metropolitan Charter § 19.01).

November 2020 Election

66. The November 2020 ballot in Davidson County contained a Metropolitan Government contest to fill a vacant school board office. The school board election was held pursuant to Metropolitan Charter § 9.02, which provides that elections to fill school board vacancies “shall be at the first *county-wide general election.*” *Id.* (emphasis added); see also Tenn. Code Ann. § 49-2-201(a)(1) (successor to a school board vacancy “shall be elected at the *next general election* for which candidates have a sufficient time to qualify under the law”) (emphasis added); *id.* § 2-14-101 (“Special elections shall be held when a vacancy in any office is required to be filled by election *at other times than those fixed for general elections.*”) (emphasis added).

67. Because the November 2020 ballot contained a Metropolitan Government contest and was not a specially-set election, it qualifies as the “preceding general election” for purposes of determining whether the Petition has sufficient signatures.

68. There were 312,113 votes cast in Davidson County in the November 2020 election, so a petition based on that election would need 31,212 verified signatures to qualify for the ballot.

69. There are only 12,369 verified signatures on both versions of the Petition. Therefore, both versions taken together fail to meet Section 19.01's signature requirement based on the November 2020 election.

August 2020 Election

70. The Election Commission decided to use the number of votes cast in the August 2020 election to determine whether ten percent of the number of registered voters voting in the preceding general election signed the petition.

71. There were 121,420 votes cast in Davidson County in the August 2020 election, so a petition based on that election would need 12,142 verified signatures to qualify for the ballot.⁵

72. The first version of the Petition, which is based on the Petition's first prescribed election date of May 28, 2021, contains no more than 11,848 verified signatures and therefore fails to meet Section 19.01's signature requirement based on the August 2020 election.

73. The second version of the Petition, which is based on the Petition's second prescribed election date of June 14, 2021, contains no more than 550 verified signatures and therefore fails to meet Section 19.01's signature requirement based on the August 2020 election.

74. Because the Petition was circulated in multiple versions with different prescribed submission and election dates, the number of signatures on the two versions

⁵ 4GG has asserted that a petition based on the August 2020 election requires only 9,319 signatures, which is ten percent of the registered voters who cast votes in only one race on the August 2020 ballot, the assessor of property race. The August 2020 ballot, however, included elections to multiple local offices.

cannot be aggregated in an attempt to satisfy the signature requirement based on the August 2020 election.

75. Furthermore, circulating a petition in multiple versions with different submission dates is a disqualifying defect in form. *Nevadans for Nevada v. Beers*, 142 P.3d 339, 350-51 (Nev. 2006).

III. THE PETITION IS DEFECTIVE IN FORM AND IS FACIALLY UNCONSTITUTIONAL.

A. The Petition Fails to Satisfy “Purity of the Ballot” Requirements by Including Campaign Materials and Solicitations.

76. As described in Paragraphs 22, 25, 27-28, and 31 above, the Petition fails to separate balloting from campaign materials or solicitations containing a position on the question, and provision headings in the Proposed Amendments are based on marketing sound bites and/or improper catch phrases.

B. The “Limit Property Tax Rates” Provision Is Defective in Form and Facially Unconstitutional.

77. The “Limit Property Tax Rates” provision of the Proposed Amendments states:

Limit Property Tax Rates – Add to Article 6, § 6.07, Paragraph 5:
Property Tax Rates shall not increase more than 3% per fiscal year upon enactment without a voter referendum, pursuant to Tenn. Code Ann. § 2-3-204. For Fiscal Years 2021-2022 and 2022-2023 the property tax rate(s) shall revert to Fiscal Year 2019-2020’s tax rate(s), or lower if required by law. This amendment’s provisions are severable.

Defective in Form—Vague and Confusing

78. The “Limit Property Tax Rates” provision is defective in form because it is unclear and does not convey a reasonable certainty of meaning.

79. The provision fails to define “or lower if required by law.” Thus, the provision does not convey reasonable certainty of meaning of the provision’s effect on tax rates for Fiscal Years 2021-2022 and 2022-2023, rendering it defective in form.

Defective in Form—Beyond Scope of Metro Charter Referendum Authority

80. The Metropolitan Charter grants the Metropolitan Council authority to legislate with respect to all powers of the Metropolitan Government granted by Article 2, which includes the power to levy and collect property taxes. *See* Metropolitan Charter §§ 2.01(1), 3.06, 6.07.

81. The provision does not repeal or revise the Metropolitan Charter language directing that property tax rates be set by the Metropolitan Council.

82. The provision seeks to set property tax rates in Fiscal Year 2021-2022 and Fiscal Year 2022-2023 without Charter authority to use a referendum for that purpose. The provision therefore involves a subject matter beyond the scope of the referendum power and is defective in form.

Defective in Form—Beyond the Scope of State Law Referendum Authority

83. Article II, Section 28 of the Tennessee Constitution conveys authority to the State to tax real property. Article II, Section 29 provides that counties and incorporated towns can tax real property only as authorized by the General Assembly.

84. The General Assembly has extended property tax authority only to county legislative bodies, not to the public. Tenn. Code Ann. §§ 49-2-101(6), 67-5-102(a)(2).

85. The General Assembly has authorized home rule municipalities to amend their charters by referendum to establish a property tax rate or to increase or reduce the rate, but the Metropolitan Government is explicitly exempted from that statute. Tenn. Code Ann. § 6-53-105(b).

86. The General Assembly has authorized municipal school boards, not the public, to submit a school property tax to voters, but only when the county fails or refuses to levy a county school property tax. Tenn. Code Ann. § 49-2-401.

87. The provision involves a subject matter beyond the scope of the referendum power because it attempts to set property tax rates in a manner that violates the Tennessee Constitution and state law and therefore is defective in form.

88. Plaintiff Mayor Cooper has submitted a budget to the Metropolitan Council that would set the property tax rate for Fiscal Year 2021-2022 at 3.288. The property tax rate for Fiscal Year 2019-2020 was 3.155.

89. The provision, if adopted, would repeal the property tax ordinance that the Council is required by state law to adopt prior to the start of Fiscal Year 2021-2022. Tenn. Code Ann. § 67-5-510 (county legislative body has duty to fix property tax rates by first Monday in July). Such a repeal by referendum is “a political process not recognized under Tennessee law,” Findings & Conclusions at 12, and therefore involves a subject matter beyond the scope of the referendum power and is defective in form.

Facially Unconstitutional

90. The provision is facially unconstitutional because it would impair the vested rights of Metropolitan Government’s outstanding general obligation bondholders.

91. A similar limitation on the Metropolitan Council’s taxing authority in 4GG’s 2020 petition was held facially unconstitutional. Findings & Conclusions at 32 n.7.

92. The Tennessee Constitution states that “no retrospective law, or law impairing the obligations of contracts, shall be made.” Tenn. Const., art. 1, § 20.

93. The constitutional guarantee against retrospective laws prohibits retrospective substantive legal changes “which take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already passed.” *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999) (quoting *Morris v. Gross*, 572 S.W.2d 902, 907 (Tenn. 1978)); *Estate of Bell v. Shelby Cty. Health Care Corp.*, 318 S.W.3d 823, 829 (Tenn. 2010).

94. The Metropolitan Government issued bonds pursuant to resolutions adopted by the Metropolitan Council in which the Metropolitan Government pledged to bondholders that it would adopt annual tax levies sufficient to pay the bonds' principal and interest as required by state law.

95. A charter provision limiting the Metropolitan Council's duty to adopt a sufficient tax levy would directly impair the vested contractual rights of the bondholders on the Metropolitan Government's outstanding general obligation bond issues.

96. The "Limit Property Tax Rates" provision will impair the bondholders' vested rights in violation of Article I, Section 20 of the Tennessee Constitution. Thus, it is facially unconstitutional.

C. THE "RECALL ELECTED OFFICIALS" PROVISION IS FACIALLY UNCONSTITUTIONAL.

97. The "Recall Elected Officials" provision in the Proposed Amendments states:

Recall Elected Officials – (A) Add to Article 15, § 15.07: Petitions to recall elected officials filed after January 1, 2021, under this section shall contain the signatures and addresses of registered qualified voters in Davidson County equal to ten (10) percent of the citizens voting in the preceding Metro general election in the district or area from which the recalled official was elected. Such Petitions shall be filed with the metro clerk within seventy-five (75) days of the date the notice is filed. This amendment's provisions are severable[.]” **(B) Replace existing Article 15, § 15.08, Paragraph 2 with:** “A recalled official's name shall not appear on the recall ballot, but such official may qualify as a write-in candidate. This amendment's provisions are severable.”

Facially Unconstitutional

98. Application of the "Recall Elected Officials" provision would impair property rights retrospectively in violation of Tennessee Constitution Article I, Section 20. It also violates the right to vote in Article I, Section 5 and Article IV, Section 1 of the Tennessee Constitution. Thus, the provision is facially unconstitutional.

99. The constitutional guarantee against retrospective laws prohibits retrospective substantive legal changes "which take away or impair vested rights acquired

under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already passed.” *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999) (quoting *Morris v. Gross*, 572 S.W.2d 902, 907 (Tenn. 1978)); *Estate of Bell v. Shelby Cty. Health Care Corp.*, 318 S.W.3d 823, 829 (Tenn. 2010).

100. The “Recall Elected Officials” provision if adopted would retrospectively lower the requirements for recalling an elected official and remove the elected official’s name from the recall ballot and thus impose a new burden on current Metropolitan Government office holders’ property interests in their elected offices, in violation of the Tennessee Constitution.

101. The “Recall Elected Officials” provision if adopted also would infringe on the right to vote in the Tennessee Constitution. The provision does not operate like a recall. Rather, it precludes elected officials from being listed on a recall ballot and otherwise serving out their terms under the rules that existed when the voters elected them.

102. The provision permits these retroactive changes and effectively nullifies voters’ votes, midterm, for any or no reason and without any showing of cause. The provision is thus not narrowly tailored to achieve a compelling state interest.

D. THE “ABOLISH LIFETIME OR OTHER BENEFITS FOR ELECTED OFFICIALS” PROVISION IS DEFECTIVE IN FORM AND FACIALLY UNCONSTITUTIONAL.

103. The “Abolish Lifetime or Other Benefits for Elected Officials” provision in the Proposed Amendments states:

Abolish Lifetime or Other Benefits for Elected Officials – Add to Article 18, § 18.05, Paragraph 1: No elected official shall receive any benefits at taxpayer expense as a result of holding such elected office without a voter referendum.

Defective in Form—Vague and Confusing

104. The “Abolish Lifetime or Other Benefits for Elected Officials” provision is defective in form because it is unclear and does not convey a reasonable certainty of meaning.

105. The provision fails to define “benefits.” It is unclear whether the provision refers to benefits typically provided in the employment context (*i.e.*, health insurance or a pension) or to anything of value that an elected official receives and that is publicly funded in whole or part.

106. The provision does not define “elected officials.” There are numerous elected officials throughout the Metropolitan Government. Some of those are metropolitan officials (Mayor, Vice Mayor, Council Members, and School Board Members) and some are county officials (County Clerk, Register of Deeds, Trustee, Assessor, Sheriff, General Sessions Judges, Juvenile Court Judge, Circuit Court Clerk, Criminal Court Clerk, and Juvenile Court Clerk).

107. The provision does not delete or amend Metropolitan Charter § 5.07, which addresses the pension payable to the Mayor, so it is unclear whether that “benefit” continues if the provision is adopted.

108. The provision does not delete or amend Metropolitan Charter § 14.08, which allows General Sessions judges to participate in the Metropolitan Government pension system, so it is unclear whether that “benefit” continues if the provision is adopted.

109. Because the provision fails to define critical terms or to explain their effect on related Charter provisions, it is not subject to reasonable certainty of meaning and thus is defective in form.

Facially Unconstitutional

110. Application of the “Abolish Lifetime or Other Benefits for Elected Officials” provision to current and former office holders whose rights to medical and pension benefits have vested would impair the obligation of contracts in violation of Tennessee Constitution Article I, Section 20. Thus, the provision is facially unconstitutional.

111. A Metropolitan mayor is eligible to receive a pension after serving two full terms in office. Metropolitan Charter § 5.07.

112. Elected officials other than the Mayor and Council members, including constitutional officers and judges, are eligible for pension benefits administered by the Benefit Board. Metropolitan Charter §§ 13.07, 14.08; Metropolitan Code § 3.08.010.

113. Council members who have held office for eight years or more are eligible to continue participating in the Metropolitan Government's health care plan after they leave office, provided they pay contribution rates equivalent to those rates paid by Metropolitan Government employees. Metropolitan Code § 3.24.010(C).

114. Elected officials other than Council members who have held office for eight years or more and those receiving a pension from the state county paid judges pension plan are eligible to continue participating in the Metropolitan Government's health care plan. Metropolitan Code § 3.24.010(B).

115. The "Abolish Lifetime or Other Benefits for Elected Officials" provision if adopted would impair these vested rights of numerous current and former Metropolitan Government office holders in violation of the Tennessee Constitution.

E. THE "PROTECT PROMISES TO NASHVILLE" PROVISION IS DEFECTIVE IN FORM AND FACIALLY INVALID.

116. The "Protect Promises to Nashville" provision of the Proposed Amendments states:

Protect Promises to Nashville – Create Article 18, § 18.09: If a professional sports team leaves Nashville, or ceases playing professional games for more than twenty-four (24) consecutive months during the term of a team's ground lease, all sports facilities and related ancillary development related to the defaulting team shall revert to public property, and all related contracts shall terminate, including land leased from the Nashville Fairgrounds, and just payments shall be paid, if required by law.

Defective in Form—Vague and Confusing

117. The “Protect Promises to Nashville” provision is defective in form because it is unclear and does not convey a reasonable certainty of meaning.

118. The provision is vague and confusing because it fails to define key terms such as “ground lease,” “facilities,” “related ancillary development,” “revert to public property,” and “related contracts.”

119. Thus, the provision does not convey reasonable certainty of meaning as to its scope and effect, rendering it defective in form. Similar terms were found vague and confusing in 4GG’s previous petition. Findings & Conclusions at 33.

Defective in Form—Beyond the Scope of Referendum Authority

120. Metropolitan Charter Sections 2.01(12) and 3.06 vest the power to take private property in the Metropolitan Council.

121. The “Protect Promises to Nashville” provision does not amend these Charter provisions and therefore would take private property without following or amending the Charter’s prescribed process for eminent domain. For this reason, the provision involves a subject matter beyond the scope of the referendum power and therefore is defective in form.

122. The Sports Authority of the Metropolitan Government of Nashville and Davidson County is a public corporation separate from the Metropolitan Government and was created under the authority of Tenn. Code Ann. §§ 7-67-1010, *et seq.* (Sports Authorities Act of 1993).

123. Being separate from the Metropolitan Government under state law, the Sports Authority is not subject to the Metropolitan Charter. Thus, any attempt to amend the Charter to affect the Authority is a subject matter beyond the scope of the referendum power and therefore defective in form.

124. Pursuant to Tenn. Code Ann. § 7-67-112(a), sports authority bonds must

comport with the provisions of the Local Government Public Obligations Act of 1986.

125. Pursuant to Tenn. Code Ann. § 7-67-112(a) and Tenn. Code Ann. § 9-21-107(9), revenue and receipts generated by a sports facility financed with revenue bonds are the primary source of funds for repayment of those bonds and may be formally pledged to such repayment.

126. The Sports Authority owns all but one of the properties to which the “Protect Promises to Nashville” provision would apply.

127. The Sports Authority has executed leases with professional sports teams for them to manage and utilize sporting facilities (the “SA Facilities”) constructed and owned by the Sports Authority.

128. Specifically, the Sports Authority has current leases with: The Nashville Predators (Powers Management, LLC), The Tennessee Titans (Cumberland Stadium, Inc.), The Nashville Sounds (MFP, LLC), and The Nashville Soccer Club (Walsh Management, LLC) (collectively, SA Leases).

129. The SA Facilities covered by the SA Leases were constructed with revenue bonds issued by the Sports Authority and backed by the Metropolitan Government’s pledge of non-tax revenues, evidenced by the execution and delivery of intergovernmental project agreements.

130. The Sports Authority has pledged facility rent payments and other revenues dependent on the SA Leases being in effect to the repayment of the bonds issued to build the SA Facilities.

131. The “Protect Promises to Nashville” provision, if allowed to go into effect and enforced against an SA Lease tenant while bonds for the associated SA Facility remain outstanding, would cause the Sports Authority to violate Tenn. Code Ann. § 7-67-113(a), which requires that a pledge of revenues “shall continue in effect until the principal of and

interest on the bonds for which the pledge [was] made shall have been fully paid.”

132. The provision, if allowed to go into effect and enforced against an SA Lease tenant while bonds for the associated SA Facility remain outstanding, would cause the Sports Authority to violate Tenn. Code Ann. § 9-21-125(a)(1), which requires that:

Any pledge of, or lien on revenues, fees, rents, tolls or other charges received or receivable by any local government to secure the payment of any bonds or notes issued by a local government pursuant to this chapter, and the interest thereon, shall be valid and binding from the time that the pledge or lien is created or granted and shall inure to the benefit of the holder or holders of any such bonds or notes until the payment in full of the principal thereof and premium and interest thereon.

133. Termination of any of the SA Leases would require the Sports Authority, and the Metropolitan Government as a result of its non-tax revenue pledge, to fund payments due on the revenue bonds without the expected rental, sales tax, and other income currently devoted to that purpose.

134. Termination of SA Leases would terminate the revenue stream pledged under these statutes to repayment of the underlying bonds.

135. Thus, by affecting the Sports Authority in these ways, the provision involves a subject matter beyond the scope of the referendum power and therefore is defective in form.

Facially Unconstitutional

136. The “Protect Promises to Nashville” provision, if allowed to go into effect, would impose an onerous new restriction on each of the SA Leases that could constitute a breach by the Metropolitan Government or entitle the other party to terminate.

137. The provision would impair the SA Leases by effectively forcing the inclusion therein of terms the parties to the SA Leases did not bargain for.

138. The provision is facially unconstitutional as a retrospective law impairing the obligation of contracts in violation of Tennessee Constitution Article I, Section 20.

139. In addition, if a professional sports team that is a party to an SA Lease fails to

meet its 24-month requirement, it will lose “all sports facilities and related ancillary development,” and “all related contracts shall terminate.”

140. The Tennessee Constitution provides that “no man’s particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor.” Tenn. Const., art. I, § 21.

141. The professional sports team’s loss of property interests and related benefits would be a taking of private property by the Metropolitan Government.

142. In such an event, the provision requires that “just payment shall be paid, if required by law.”

143. The provision, however, does not establish a legitimate public use for this governmental taking of private property.

144. This provision is facially unconstitutional because it violates the prohibition on taking private property without establishing a legitimate public use as required by the federal and state constitutions. *See Johnson City v. Cloninger*, 372 S.W.2d 271, 284 (Tenn. 1963).

IV. SEVERABILITY.

145. The Petition is void as a whole because it fails to meet the requirements of Metropolitan Charter Section 19.01 to “prescribe a date” and to have sufficient signatures.

146. The Petition is void as a whole because it does not satisfy “purity of the ballot” requirements and does not convey a reasonable certainty of meaning.

147. The Petition also contains Proposed Amendments that are defective in form and facially unconstitutional. There is no basis in the Petition to sever defective amendments from the other amendments.

148. The Petition states that the provisions *within* Proposed Amendment 1 are severable *from one another*. It does not state that Proposed Amendment 1 is severable from the other Proposed Amendments.

149. The Petition states that the provisions *within* Proposed Amendment 2 are severable from *one another*. It does not state that Proposed Amendment 2 is severable from the other Proposed Amendments.

150. There is no other reference in the Petition to severability.

151. The Petition does not state that any of the six Proposed Amendments are severable from any other Proposed Amendment.

152. Because the Petition signers' intent to approve any particular part of the Proposed Amendments over the whole cannot be ascertained from the Petition, a defect in form or facial invalidity of any one provision of the Proposed Amendments invalidates the entire Petition.

V. INJURY TO THE METROPOLITAN GOVERNMENT IF THE PETITION IS PLACED ON THE BALLOT.

153. The Metropolitan Government will incur as much as \$800,000 in expenses to hold a special county-wide referendum election.

154. Allowing an election to proceed on a proposed charter amendment that will be void *ab initio* will undermine public confidence in its electoral processes. Findings & Conclusions at 48-49.

155. The Metropolitan Government must adopt a budget for Fiscal Year 2021-2022 by June 30, 2021, to become effective on July 1, 2021. Metropolitan Charter § 6.06. Allowing an election to proceed on the Petition will introduce unnecessary and harmful confusion and uncertainty within Metropolitan Government and the general public with respect to the process of adopting and implementing the budget.

156. The Proposed Amendments, if adopted, would repeal the Mayor's proposed property tax rate of 3.288 for Fiscal Year 2021-2022 and replace it with 3.155, which was the property tax rate in Fiscal Year 2019-2020, resulting in over \$40 million in lost revenue from the proposed Fiscal Year 2021-2022 budget.

157. The Proposed Amendments, if adopted, will put the Metropolitan Government in default of its bond covenants.

158. Allowing a special election to be held on a Petition that is defective in form and facially invalid imposes concrete injury on Plaintiffs, as well as to Metropolitan Government taxpayers.

CAUSES OF ACTION

I. PETITIONERS/PLAINTIFFS ARE ENTITLED TO A WRIT OF MANDAMUS, WRIT OF CERTIORARI, OR A DECLARATORY JUDGMENT THAT THE PETITION FAILS TO MEET THE REQUIREMENTS OF METROPOLITAN CHARTER § 19.01.

159. Petitioners/Plaintiffs adopt and incorporate all allegations in the preceding paragraphs as if fully set forth herein.

160. The Petition does not "prescribe a date" for a referendum election, in violation of Metropolitan Charter § 19.01. Because it fails to meet the Charter's requirements for petitioning to amend the charter by referendum vote, it should not be placed on a ballot.

161. The Petition fails to meet the signature requirement in Metropolitan Charter § 19.01. Because it fails to meet the Charter's requirements for petitioning to amend the charter by referendum vote, it should not be placed on a ballot.

II. PETITIONERS/PLAINTIFFS ARE ENTITLED TO A WRIT OF MANDAMUS, WRIT OF CERTIORARI, OR A DECLARATORY JUDGMENT THAT THE PROPOSED AMENDMENTS ARE DEFECTIVE IN FORM.

162. Petitioners/Plaintiffs adopt and incorporate all allegations in the preceding paragraphs as if fully set forth herein.

163. The Proposed Amendments violate general election principles concerning the purity of the ballot by including marketing language rather than amendatory language. Thus, it is defective in form and should not be placed on the ballot.

164. The “Property Tax Increase” provision is defective in form because its language is confusing, and it fails to define key terms. It therefore does not convey a reasonable certainty of meaning so that a voter could intelligently cast a vote for or against the proposal with full knowledge of the consequence of his or her vote.

165. The “Property Tax Increase” provision is defective in form because it seeks to take actions—setting tax rates—that are beyond the scope of the referendum power under the Charter and state law.

166. The “Abolish Lifetime or Other Benefits for Elected Officials” provision is defective in form because its language is confusing, and it fails to define key terms. It therefore does not convey a reasonable certainty of meaning so that a voter could intelligently cast a vote for or against the proposal with full knowledge of the consequence of his or her vote.

167. The “Protect Promises to Nashville” provision is defective in form because its language is confusing, and it fails to define key terms. It therefore does not convey a reasonable certainty of meaning so that a voter could intelligently cast a vote for or against the proposal with full knowledge of the consequence of his or her vote.

168. The “Protect Promises to Nashville” provision is defective in form because it would (1) take property without following processes prescribed in the Metropolitan Charter for taking property for public use and (2) attempt to regulate the activity of the Metropolitan Sports Authority, which is a public corporation separate from the Metropolitan Government. These actions are beyond the scope of the referendum power under state and local law.

169. Because the various provisions in the Proposed Amendment are not severable from one another, a defect in any one provision renders all of the Proposed Amendments void.

170. The Election Commission's decision to place the Petition on the ballot without addressing its form defects or facial unconstitutionality and based upon advice of counsel that is inconsistent with applicable law on what constitutes a "form" defect is arbitrary, capricious, and illegal.

III. PETITIONERS/PLAINTIFFS ARE ENTITLED TO A WRIT OF MANDAMUS, WRIT OF CERTIORARI, OR A DECLARATORY JUDGMENT THAT THE PROPOSED AMENDMENTS ARE FACIALLY UNCONSTITUTIONAL.

171. Petitioners/Plaintiffs adopt and incorporate all allegations in the preceding paragraphs as if fully set forth herein.

172. The "Limit Property Tax Rates" provision is facially unconstitutional because it would impair the vested rights of Metropolitan Government's outstanding general obligation bondholders in violation of Tenn. Const., art. I, § 20. Thus, it should not be placed on a ballot.

173. The "Recall Elected Officials" provision is facially unconstitutional because it imposes a new burden on current elected officials' property interests in their elected positions retrospectively in violation of Tenn. Const., art. I, § 20. It also violates the right to vote in violation of Tenn. Const., art. I, § 5 and art. IV, § 1. Thus, it should not be placed on a ballot.

174. The "Abolish Lifetime or Other Benefits for Elected Officials" provision is facially unconstitutional because it would impair current and former office holders' vested rights to medical and pension benefits in violation of Tenn. Const., art. I, § 20. Thus, it should not be placed on a ballot.

175. The "Protect Promises to Nashville" provision is facially unconstitutional because it would impair the obligation of contracts in violation of Tenn. Const., art. I, § 20,

and because it would take property without establishing a public use in violation of Tenn. Const., art. I, § 21. Thus, it should not be placed on a ballot.

176. Because the various provisions in the Proposed Amendment are not severable from one another, a defect in any one provision renders all of the Proposed Amendments void.

IV. PETITIONERS/PLAINTIFFS ARE ENTITLED TO A WRIT OF MANDAMUS, WRIT OF CERTIORARI, OR A DECLARATORY JUDGMENT VOIDING THE ELECTION COMMISSION'S ACTION AND AN INJUNCTION PROHIBITING THE PROPOSAL FROM BEING PLACED ON THE BALLOT.

177. Petitioners/Plaintiffs adopt and incorporate all allegations in the preceding paragraphs as if fully set forth herein.

178. Petitioners/Plaintiffs are entitled to (1) a writ of mandamus requiring Respondent/Defendant Election Commission to cancel the special election being held for the Proposed Amendments; (2) an order voiding the Election Commission's action; (3) a declaratory judgment that the Petition fails to meet the requirements of Metropolitan Charter § 19.01, that the Proposed Amendments are defective in form and facially unconstitutional, and that the Proposed Amendments are not severable; or (4) an injunction prohibiting Defendant Election Commission from placing the Proposed Amendment on the ballot and from holding a special election on the Proposed Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioners/Plaintiffs demand judgment against Respondent/Defendant Election Commission and pray that the Court award the following relief:

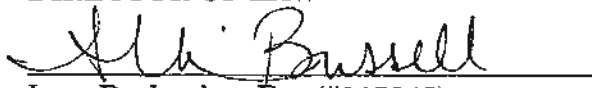
1. An order directing the Election Commission to prepare the administrative record for review, containing the transcripts of the meetings held on April 6, April 8, April 17, April 22, and May 10, 2021, and all the proof submitted before the Commission for those meetings; and

2. A writ of mandamus requiring the Election Commission to cancel the special election on the Proposed Amendments; or
3. A writ of certiorari voiding the action of the Election Commission setting the special election on the Proposed Amendments; or
4. A judgment and order declaring the Petition and Proposed Amendments defective in form, facially unconstitutional, illegal, void, and unenforceable;
5. A temporary and permanent injunction preventing the Election Commission from placing the Proposed Amendments on the ballot and holding a special election; and/or
6. Such further and general relief as the Court deems appropriate.

Respectfully submitted,

DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

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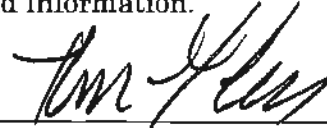
melissa.roberge@nashville.gov

*Counsel for Petitioners/Plaintiffs Metropolitan
Government, Mayor John Cooper, and Director of
Finance Kevin Crumbo*

VERIFICATION

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

I, Thomas G. Cross, after first being duly sworn, state that I am the Deputy Director of the Metropolitan Department of Law and that I am authorized to verify and affirm the facts set forth in the foregoing petition. I have read this petition, and the matters set forth herein are true and correct to the best of my knowledge and information.



Thomas G. Cross
Deputy Director of Law

Sworn to and subscribed before me this 11th day of May, 2021.

My commission expires: 11/08/22

Sally E. Palmer
Notary Signature

5/11/21
Date

