



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

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LEGAL OPINION NO. 2021-01

To: Honorable John Cooper
Metropolitan Mayor
Metropolitan Courthouse, Suite 100
Nashville, Tennessee 37201

Mr. Kevin Crumbo
Metropolitan Director of Finance
Metropolitan Courthouse, Suite 106
Nashville, TN 37201

Date: April 16, 2021

QUESTION

You have requested a legal opinion from the Department of Law on the following question:

1. Are the provisions of the Petition that 4 Good Government filed with the Metropolitan Clerk on March 25, 2021 (the "Petition") legal and enforceable?
2. Are the provisions of the Petition severable, or does the illegality of one provision invalidate all of the proposed amendments?

SHORT ANSWER

1. No, the Petition does not satisfy Charter requirements to be placed on the ballot, is defective in form, and is facially unconstitutional for the following reasons:
 - A petition must "prescribe *a date* not less than eighty (80) [days] subsequent to the date of its filing for the holding of a referendum election." Metropolitan Charter § 19.01 (emphasis added). The Petition prescribes two dates and therefore is defective.
 - A petition must be signed by ten percent of the number of registered voters voting in the "preceding general election" pursuant to Metropolitan Charter § 19.01. The Petition does not have sufficient signatures to satisfy that requirement based on either the November 2020 election ballot or the August 2020 election ballot.

- The proposed amendment to “Limit Property Tax Rates” is defective in form because setting property tax rates by referendum involves a subject matter beyond the scope of the referendum power. It is facially unconstitutional in that it impairs vested contractual rights of bondholders on the Metropolitan Government’s outstanding general obligation bond issues.
 - The proposed amendment to “Abolish Lifetime or Other Benefits for Elected Officials” is defective in form because it is too vague to convey a reasonable certainty of meaning. It is facially unconstitutional because it violates the vested rights of elected officials.
 - The proposed amendment to “Protect Promises to Nashville” is defective in form because it is too vague to convey a reasonable certainty of meaning. It is also defective in form because it involves subject matters beyond the scope of the referendum power. It is facially unconstitutional because it takes property without establishing a public purpose for the taking and impairs the obligations of contracts.
2. The Petition does not establish that any of the six proposed amendments are severable from each other. Therefore, if one amendment is held invalid, a court would likely disqualify the entire Petition.

BACKGROUND

On March 25, 2021, an entity known as 4 Good Government (“4GG”) filed the Petition, labeled the “Nashville Taxpayer Protection Act,” with the Metropolitan Clerk. 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.”*

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

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 (Exh. A). That filing date is eighty-one days before the first election date—May 28, 2021—prescribed in the Petition. There are 11,848 verified signatures on the first version of the Petition.

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 (Exh. B). That filing date is eighty-one days before the second election date—June 15, 2021—prescribed in the Petition. There are 550 verified signatures on the second version of the Petition. The two versions of the Petition together contain 12,398 verified signatures.

ANALYSIS

A petition to amend the Metropolitan Charter must comply with the provisions of Metropolitan Charter § 19.01, which require that the petition (1) be “signed by ten (10) per cent of the number of the registered voters of Nashville-Davidson County voting in the preceding general election” and (2) “prescribe a date not less than eighty (80) [days] subsequent to the date of its filing for the holding of a referendum election.”

In addition to these Charter requirements, the Davidson County Chancery Court identified other legal requirements a petition must satisfy to be placed on the ballot in connection with a previous petition filed by 4GG:

Thus, in sum, this Court concludes as a matter of law that a measure that seeks to be placed on a referendum ballot must adhere to the principles of Tennessee law of the freedom, purity, and unbiased content of the ballot; that it must convey a reasonable certainty of meaning so that a voter can intelligently cast a vote with full knowledge of the consequences and be free from misleading tendency and amplification; that it must not exceed the subject matter limitations of the referendum power; and that the measure cannot be facially unconstitutional. Further, as discussed later, if these

conditions exist, it is proper for the Election Commission to seek a pre-election court review of the ballot measure and for a court to keep the measure off 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 17 (Davidson Cty. Chancery Ct. Nov. 3, 2020) (hereinafter “Findings & Conclusions”).

The Department of Law has identified numerous deficiencies in the Petition and its proposed amendments in the limited time since the Petition was filed. While this memorandum is not intended to be an exhaustive list of those deficiencies, those identified to date are outlined in further detail below.

In addition to the specific defects identified herein, the Petition does not adhere to the principles of Tennessee law of the freedom, purity, and unbiased content of the ballot identified by the Chancery Court. The Petition fails to separate balloting from campaign materials or solicitations containing a position on the questions presented by the Petition, and amendment headings in the Petition are based on marketing sound bites and/or improper catch phrases. *See* Findings & Conclusions at 18.

I. THE PETITION FAILS TO COMPLY WITH THE REQUIREMENTS OF METROPOLITAN CHARTER § 19.01.

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

The 4GG Petition states that the proposed amendments are “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.”

Metropolitan Charter § 19.01 does not permit the inclusion of multiple election dates on a petition. Rather, Section 19.01 states that a petition must set a specific election date:

This Charter may be amended subsequent to its adoption in the following manner: An amendment or amendments may be proposed ... upon petition filed with the metropolitan clerk, signed by ten (10) per cent of the number of the registered voters of Nashville-Davidson County voting in the preceding general election, the verification of the signatures to be made by the Davidson County Election Commission and certified to the metropolitan clerk. *Such 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 at which the electorate of the metropolitan government will vote to ratify or to reject the amendments proposed.*

Id. (emphasis added).

Failure to provide a specific date on a referendum election petition is not a mere technicality. Section 19.01 prescribes a process by which the petitioner selects an election date, discloses that date on the petition to potential signers, and then has until eighty days before the election date to file the petition. The process is simple, clear, and understandable.

4GG improperly seeks to “game the system” by listing multiple election dates on the petition, violating the Charter and creating confusion and ambiguity.

The Charter’s language is mandatory and unambiguous. In *Littlefield v. Hamilton Cty. Election Comm’n*, 2012 WL 3987003, (Tenn. Ct. App. 2012), the Tennessee Court of Appeals enforced strict compliance with mandatory referendum petition requirements under state election law:

The Election Commission asserts that the Supreme Court has held that “only a substantial compliance, rather than a strictly literal compliance, with the election laws is required.” *Lanier v. Revell*, 605 S.W.2d 821, 822 (Tenn.1980). Accordingly, the Election Commission argues that the court should not find the recall invalid for noncompliance with the “requirement of the date for signatures obtained.”

Despite outdated case law to the contrary, the legislature has not allowed for “substantial compliance” regarding the matter before us. Subsection (h) of Tennessee Code Annotated section 2–5–151 provides that “[t]he county election commission *shall* certify whether or not the completed petition meets *all applicable requirements* within thirty days of filing of the completed petition.” (Emphasis added). The legislature did not give authority to the Election Commission to certify partial compliance or to pick and choose which of the applicable requirements were sufficient for compliance. This issue is meritless.

Id. at *13. This same rule of strict compliance would apply to petition requirements under the Metropolitan Charter’s election laws, which similarly use the mandatory “shall,” and failure to comply would be a disqualifying defect in form.

Requiring strict compliance is appropriate when a petition seeks to amend a government’s “organic and fundamental law,” as it promotes stability and avoids involving courts in “impossible line drawing.” *Nevadans for Nevada v. Beers*, 142 P.3d 339, 350-51 (Nev. 2006). The Metropolitan Charter is the “constitution” for the Metropolitan Government and its mandatory requirements should be enforced for the same reasons. *See also Wallace v. Metro. Gov’t of Nashville & Davidson Cty.*, 546 S.W.3d 47, 57 n.11 (Tenn. 2018) (“The shortened election period, however, is not the result of our construction of the Charter. Rather, it is the result of the statutory time-frame for special elections. . . . It is not our place to judge the wisdom of this statute or of the Charter provision at issue.”). 4GG’s inclusion of two dates for the election, contrary to the Charter’s clear instructions, is a defect in form that disqualifies the Petition.

B. The Petition Fails to Satisfy the Number of Verified Signatures Required in § 19.01.

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.” 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.

In *State ex rel. Wise v. Judd*, 655 S.W.2d 952 (Tenn. 1983), the Tennessee Supreme Court held that a “preceding general election” under Section 19.01 must be a municipal election as opposed to a state or national election.¹ Because the November 1982 election had no metropolitan offices on the ballot, the Court held that the previous metropolitan elections in August 1982 or August 1979 would be the relevant “general election” to determine the number of required signatures on a charter amendment petition. *Id.* at 953.

In *Wallace v. Metro. Gov't of Nashville & Davidson Cty.*, the Court summarized *Wise* and reaffirmed that “general election” refers to any municipal general election, as opposed to the more limited category of “general metropolitan elections” at which the Mayor and Council are elected:

That the intent of the drafters of the Charter was to draw a distinction between “general metropolitan elections” and all other “general elections” is evidenced by the use of these distinct phrases within section 15.03 to address different events. *We do not read the use of the distinct phrases “general metropolitan election” and “general election” to be merely accidental.* Rather, we view the two phrases to have been intentionally and thoughtfully employed to refer to different elections. The former phrase refers to the particular general election at which the Mayor, Vice Mayor, Councilmen-at-Large, and District Councilmen are elected in August of each fourth odd-numbered year, beginning in 1971, as called for in section 15.01 of the Charter. In contrast, *the latter phrase refers more broadly to any municipal general election, including but not limited to general metropolitan elections.*

546 S.W.3d at 55 (emphasis added).

In *Fraternal Ord. of Police v. Metro. Gov't of Nashville & Davidson Cty.*, 582 S.W.3d 212 (Tenn. Ct. App. 2019), the Court of Appeals held that the November 2016 election could not be used to determine the number of signatures needed for a Metropolitan Charter amendment petition because “no metro offices were on the ballot.” *Id.* at 219. The Court held that the proper election to use was the August 4, 2016 election, which was a primary election for federal and state offices and a general election for the Metropolitan Assessor of Property, five Metropolitan school board offices, and a vacant Metropolitan district council position.

¹ The conclusion in *Wise* is not clearly mandated by the Metropolitan Charter language. Generally, when the Charter intended to narrow the scope of a general election, it used qualifying terms. *See, e.g.*, Metropolitan Charter §§ 9.02 (“next county-wide general election”), 14.05 (“general election required for judges”), 14.10 (“general August election”), 14.13 (“next August general election”), 15.01 (“general metropolitan election”), 15.02 (same), 15.03 (same), 18.06 (same), 20.20 (“metropolitan general election”). Because the Charter drafters did not qualify “general election” in Section 19.01, it is reasonable to conclude that the term was used to distinguish between special and general elections, not between different types of general elections. Such a conclusion would be consistent with involving a meaningful number of involved citizens in the important act of amending the Metropolitan Government’s founding document.

The 4GG Petition was filed after the November 2020 election. The November 2020 ballot was a general election for federal and state offices and a Metropolitan 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*” (emphasis added); *see also* Tenn. Code Ann. § 2-14-101 (by appearing on the November 2020 ballot, the school board election was not a special election). Although the school board election did not involve a county-wide office, there is no such requirement in the cases cited above for an election to qualify as a municipal general election. While Tennessee courts have not squarely addressed the question, using the November 2020 ballot to determine the number of signatures required for the 4GG petition to qualify is consistent with current case law and thus legally defensible. 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 signatures to qualify for the ballot. The 4GG Petition did not receive the requisite number of signatures to satisfy the signature requirement based on the November 2020 election.

The August 2020 ballot was a primary election for federal and state offices and a general election for the Metropolitan Assessor of Property, the Metropolitan Trustee, and five Metropolitan school board offices. If the Commission were to decide that the November 2020 election is not the “preceding general election,” the August 2020 ballot would qualify as a municipal general election under the *Fraternal Ord. of Police* opinion. 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 signatures to qualify for the ballot.²

4GG circulated two versions of the Petition, each stating a different deadline to file the Petition with the Metropolitan Clerk. The first version set the filing date on March 8, which was one day before the eighty-day filing deadline based on the May 28 election date prescribed in the Petition. The second version set the filing date on March 25, which was one day before the eighty-day filing deadline based on the June 14 election date prescribed in the Petition. In effect, 4GG circulated two separate petitions, each based on a different prescribed election date, which is a disqualifying defect in form. *See Nevadans for Nevada*, 142 P.3d at 350-51 (rejecting petition to amend state constitution because two versions were circulated). Neither version of the Petition received the requisite number of signatures to satisfy the signature requirement of 12,142 based on the August 2020 election. The first version of the Petition, based on the first election date of May 28, 2021, contains only 11,848 verified

² 4GG asserts that the number of signatures required by Metropolitan Charter § 19.01 should be based on the number of votes cast in a single municipal race on the August 2020 ballot rather than all of the votes cast in that election. The plain language of Section 19.01, however, expressly requires ten percent of the “number of the registered voters of Nashville-Davidson County voting in the preceding general election.” Limiting the signature requirement to the number of votes for a particular candidate improperly disregards those voters who voted in the general election but chose not to cast ballots for a particular candidate. None of the court decisions addressing the meaning of Section 19.01 supports a conclusion that the votes cast in a single race in a preceding general election, rather than all of the votes cast in that election, determine the number of signatures required for a petition to be eligible for a referendum.

signatures. The second version of the Petition, based on the second election date of June 14, 2021, contains only 550 verified signatures.

II. THE “LIMIT PROPERTY TAX RATES” AMENDMENT IS DEFECTIVE IN FORM AND FACIALLY UNCONSTITUTIONAL.

The “Limit Property Tax Rates” amendment in the Petition states:

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.

Because the proposed amendment seeks to set property tax rates by referendum, it involves a subject matter beyond the scope of the referendum power under state and local law and therefore is defective in form.

Article II, Section 28 of the Tennessee Constitution permits the State to tax property. Article II, Section 29 provides that counties and incorporated towns can tax property only as authorized by the General Assembly. The Metropolitan Government is vested with powers of both counties and cities. Tenn. Code Ann. § 7-2-108(a)(1); *see also* Metropolitan Charter § 1.05. The proposed amendment does not comply with taxing authority granted either to counties or cities.

The General Assembly extended property tax authority only to county legislative bodies, not to the public. Tenn. Code Ann. § 67-5-102(a)(2) (counties are authorized to levy an ad valorem tax on all property, and the “amount of such tax shall be fixed by the county legislative body of each county”); *id.* § 49-2-101(6) (the “county legislative body” shall “[l]evy such taxes for county . . . schools as may be necessary to meet the budgets submitted by the county board of education and adopted by the county legislative body”).

The Tennessee Attorney General has explained that the county legislative body, not the public, determines property tax rates. According to a 1994 opinion, “[a]ll counties . . . must follow the general law concerning the setting of the county property tax rate, which does not allow for submitting a rate increase to the voters.” Tenn. Op. Atty. Gen. No. 94-008, 1994 WL 88766 (Jan. 14, 1994); *see also* Tenn. Op. Atty. Gen. No. 05-027, 2005 WL 740148, at *1 (Mar. 21, 2005) (“[I]n the absence of a general law authorizing such a procedure, a county legislative body may not hold a public referendum to establish the county property tax rate.”).

With respect to cities, the General Assembly has empowered 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). And the legislature 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; *see also* Metropolitan Charter § 9.04(3). Neither statute grants authority to the Metropolitan

Government to set property tax rates by referendum, and there is no other general law authorizing a public referendum to establish a municipal tax rate.³

Accordingly, the “Limit Property Tax Rates” amendment involves a subject matter beyond the scope of the referendum power. For this reason, the amendment is defective in form and should not be placed on the ballot.

Furthermore, the “Limit Property Tax Rates” amendment purports to set the property tax rate for the next two fiscal years at the same rate adopted by the Metropolitan Council for Fiscal Year 2019-2020. In so doing, the amendment usurps legislative authority granted by the Charter to the Metropolitan Council. The Charter grants the 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. The proposed amendment does not amend the Charter to transfer that legislative authority to voter referendums. Rather, it seeks to set the property tax rate without any Charter authority to use a referendum for that purpose.

In fact, the amendment 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 is “a political process not recognized under Tennessee law.” Findings & Conclusions at 12. For this additional reason, the amendment involves a subject matter beyond the scope of the referendum power and therefore is defective in form and should not be placed on the ballot.

Finally, the Davidson County Chancery Court found that a similar limitation on the Metropolitan Council’s taxing authority in 4GG’s petition filed last fall would impair the vested rights of Metropolitan Government’s outstanding general obligation bondholders. Findings & Conclusions at 32 n.7. The bonds were issued pursuant to resolutions adopted by the 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. The Chancellor concluded that a charter provision limiting the Council’s duty to adopt a sufficient tax levy “would directly impair the vested contractual rights of the bondholders” in violation of Article I, Section 20 of the Tennessee Constitution and thus is facially unconstitutional and should not be placed on the ballot.

³ In a 2003 opinion, the Tennessee Attorney General suggested that home rule municipalities have implied authority to set property tax rates by referendum. See Tenn. Op. Atty. Gen. No. 03-019, 2003 WL 912609, at *2. That opinion conflicts with the general proposition that the state’s taxing power “is never presumed to be relinquished” unless the intention to relinquish “is declared in clear and unambiguous terms.” *Knoxville & O.R. Co. v. Harris*, 43 S.W., 115, 117 (Tenn. 1897).

III. THE “ABOLISH LIFETIME OR OTHER BENEFITS FOR ELECTED OFFICIALS” AMENDMENT IS VAGUE AND FACIALLY UNCONSTITUTIONAL.

The “Abolish Lifetime or Other Benefits for Elected Officials” amendment in the Petition states:

No elected official shall receive any benefits at taxpayer expense as a result of holding such elected office without a voter referendum.

This proposed amendment is too vague to convey a reasonable certainty of meaning and is facially unconstitutional.

Tennessee courts require referendum language be sufficiently clear and understandable 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. In her *4 Good Government* opinion, the Chancellor explained that 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)).

The proposed amendment fails to convey “a reasonable certainty of meaning” for multiple reasons. The amendment fails to define “benefits.” It is unclear whether the amendment refers to benefits typically provided in the employment context (*i.e.*, health insurance, pension, or both) or to anything of value that an elected official receives and that is publicly funded in whole or part.

The amendment does not define “elected officials.” There are numerous elected officials throughout the Metropolitan Government. Some of them are metropolitan officials (Mayor, Vice Mayor, and Council 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).

The amendment does not delete Metropolitan Charter § 5.07, which addresses the pension payable to the Mayor, so it is unclear whether that benefit continues if the amendment is adopted. The amendment does not delete Metropolitan Charter § 14.08, which allows General Sessions judges to participate in the Metropolitan Government pension system, or Metropolitan Charter § 13.07, governing eligibility of Metropolitan Government officers and employees, so it is unclear whether those benefits continue if the amendment is adopted.

Because the proposed amendment 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.

Furthermore, the amendment is facially unconstitutional because its application 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. Current and former elected officials receive vested benefits under the Metropolitan Charter and Code, including but not limited to:

- A Metropolitan mayor is eligible to receive a pension after serving two full terms in office. Metropolitan Charter § 5.07.
- 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.
- 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 the contribution rates equivalent to those rates paid by Metropolitan Government employees. Metropolitan Code § 3.24.010(C).
- 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).

Because the amendment is too vague for a voter to be reasonably certain of its meaning, it is defective in form. Because the amendment violates the vested rights of former and current elected officials, it is facially unconstitutional. Either defect disqualifies the amendment from being placed on the ballot.

IV. THE “PROTECT PROMISES TO NASHVILLE” AMENDMENT IS VAGUE, INVOLVES SUBJECT MATTERS BEYOND THE SCOPE OF THE REFERENDUM POWER, AND IS FACIALLY UNCONSTITUTIONAL.

The “Protect Promises to Nashville” amendment in the Petition states:

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.

The “Protect Promises to Nashville” amendment 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.” 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. The new proposed amendment does not clarify the language sufficiently to remedy that defect in form.

The Chancellor also found last fall’s “Failed Promises” provision facially unconstitutional because it took property without just compensation. *Id.* The final phrase in the proposed amendment does not solve this constitutional defect and creates additional form defects.

The Metropolitan Charter vests the power to take property in the Metropolitan Council. Metropolitan Charter §§ 2.01(12), 3.06. The proposed amendment does not amend these Charter provisions and therefore would take property without following or amending the Charter's prescribed process for eminent domain. For this reason, the amendment involves a subject matter beyond the scope of the referendum power and therefore is defective in form.

Additionally, the proposed amendment would take 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) (taking for anything other than public use “violates the provisions of our State and Federal Constitutions”); *Phillips v. Montgomery Cty.*, 442 S.W.3d 233, 243 (Tenn. 2014) (eminent domain “should be used sparingly” and is prohibited unless property “taken for public purposes”) (footnotes omitted); Tenn. Code Ann. § 29-17-102 (defining “eminent domain” as taking property “for a legitimate public use”). For this reason, the amendment is facially unconstitutional.

Moreover, all but one of the properties to which the proposed amendment would apply are owned by the Sports Authority of the Metropolitan Government of Nashville and Davidson County, a public corporation separate from the Metropolitan Government. *See* Tenn. Code Ann. §§ 7-67-101, *et seq.* (Sports Authorities Act of 1993). Being separate from the Metropolitan Government, the Sports Authority is not subject to the Metropolitan Charter, and any attempt to amend the Charter to affect the Sports Authority is a subject matter beyond the scope of the referendum power and therefore defective in form.

Furthermore, termination of long-term Sports Authority leases of properties purchased and improved with bond funds, as contemplated by the Petition, would violate the statutes that give sports authorities their powers and authorized issuance of those bonds. *See id.* § 7-67-109(4), (15) (sports authorities authorized to acquire and improve property for the purpose of developing sports complexes, stadiums and the like; bonds issued to fund those projects must comply with the Local Government Public Obligations Act of 1986, Tenn. Code Ann. §§ 9-21-101, *et. seq.*); *id.* § 7-67-113 (sports authorities issuing bonds shall collect rents from projects for which revenues are pledged to payment of bonds); *id.* § 9-21-125(a)(1) (“Any pledge of, or lien on, revenues, fees, rents, tolls or other charges received by any local government to secured 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.”). Termination of Sports Authority leases would terminate the revenue stream pledged under these statutes to repayment of the underlying bonds. For these additional reasons, the amendment involves a subject matter beyond the scope of the referendum power and therefore is defective in form.

Because the amendment is too vague for a voter to be reasonably certain of its meaning, it is defective in form. Because the amendment seeks to use a referendum to take property contrary to the eminent domain process defined in the Charter, it involves a subject matter beyond the scope of the referendum power and is defective in form. Because the amendment takes property without establishing a public purpose, it is facially

unconstitutional. And because the amendment seeks to use a referendum to affect a public corporation separate from the Metropolitan Government, it involves a subject matter beyond the scope of the referendum power and is defective in form, as well as facially invalid under state law. Any of these defects disqualifies the amendment from being placed on the ballot.

V. IF ANY AMENDMENT IN THE PETITION IS HELD INVALID, A COURT WOULD LIKELY STRIKE DOWN THE ENTIRE PETITION.

The Petition is invalid as a whole because it failed to comply with Metropolitan Charter § 19.01. Even if it had complied with the Charter, it contains multiple amendments that are defective in form and facially unconstitutional. It provides limited guidance, however, on whether these defective provisions could be redacted from the remainder of the Petition.

The Petition states that the provisions *within* Amendment 1 are severable from each other and the provisions *within* Amendment 2 are severable from each other. Notwithstanding this statement of severability within two amendments, the Petition has no explicit statement that Amendments 1 through 6 are severable *from each other*. The Petition (not the proposed amendments) states that the amendments are “separate,” without explaining what that means. While that description might imply that the amendments are to be voted on separately on the ballot, it does not imply, much less expressly provide, that the amendments are severable for purposes of the Petition’s validity.

Under the rules of elision as applied in Tennessee, if one or more of the Petition’s amendments were found invalid, a court likely would not sever the invalid amendments from the Petition but rather would disqualify the entire Petition. The doctrine of elision is generally not favored under Tennessee law. *Gibson Cty. Special Sch. Dist. v. Palmer*, 691 S.W.2d 544, 551 (Tenn. 1985); *Smith v. City of Pigeon Forge*, 600 S.W.2d 231, 233 (Tenn. 1980). The Tennessee Supreme Court has applied the rule of elision to legislation sparingly and only when:

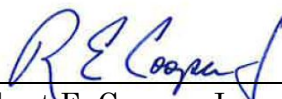
it is made to appear from the face of the statute that the legislature would have enacted it with the objectionable features omitted, and those portions of the statute which are not objectionable will be held valid and enforceable, . . . provided, of course, there is left enough of the act for a complete law capable of enforcement and fairly answering the object of its passage.

Gibson Cty., 691 S.W.2d at 551. The Court cautioned that the legislative intent required for elision must be “fairly clear of doubt from the face of the statute” because eliding the act without such intent would be an act of “judicial legislation.” *Id.*; see also *Willeford v. Klepper*, 597 S.W.3d 454, 470 (Tenn. 2020) (courts may elide unconstitutional portion of statute “in keeping with the expressed intent of a legislative body”); Findings & Conclusions at 40 (eliding without clear legislative intent would be act of “judicial legislation”) (quoting *Gibson Cty.*, 691 S.W.2d at 551).

As the Chancery Court noted in *4 Good Government*, a key factor in applying severability is the uncertainty in determining which provisions of an initiative “induced each voter to sign it. It is not the role of the courts to interfere with the legislative powers granted to [these] citizens.” *Id.* at 42 (quoting *In re Jackson Twp. Admin. Code*, 97 A.3d 719, 725-28 (N.J. App. Div. 2014)). For this Petition, nothing in its language would allow a court to

determine which amendments induced the requisite number of voters to sign the Petition and which, if any, could be severed. Accordingly, under the rule of elision as applied in Tennessee, it is likely that a court would not sever invalid amendments from the Petition but rather would disqualify the entire Petition.

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



Robert E. Cooper, Jr.
Director of Law

cc: Vice Mayor
Members of the Metropolitan Council

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Taxpayer

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

Support 4GoodGovernment.com's fight to:

GO 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. **

059806 P-2 S76 P1 *****ECR



P2-76

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:

- 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.”*
- 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.”*
- 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.”*
- 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.”*
- 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.”*
- 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.”*

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

Davidson County, TN

VOTER SIGNATURE

PRINT NAME

ADDRESS & ZIP

AS STATED ON VOTER REGISTRATION CARD

1. [Redacted Signature] [Redacted Name] [Redacted Address]

2. [Redacted Signature] [Redacted Name] [Redacted Address]

MORE SIGNATURE LINES ON BACK PLEASE USE!

RP RP

Sign here

Print Name Here

Address

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

Davidson County, TN
VOTER SIGNATURE

PRINT NAME

ADDRESS & ZIP

AS STATED ON VOTER REGISTRATION CARD

3.	Sign here	Print Name Here	Address
4.	Sign here	Print Name Here	Address
5.	Sign here	Print Name Here	Address
6.	Sign here	Print Name Here	Address
7.	Sign here	Print Name Here	Address
8.	Sign here	Print Name Here	Address
9.	Sign here	Print Name Here	Address
10.	Sign here	Print Name Here	Address

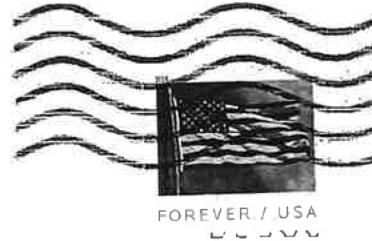
Decades of reckless fiscal irresponsibility has bankrupted our city, and Metro's "solution" gave us a **34-37% property tax increase** on homeowners. Metro then squandered \$100K+ to sue its citizens to prevent repeal of the 34-37% tax increase. While the Court said we cannot repeal a prior tax increase, 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.**

The vote shall be on May 28, 2021 or June 14, 2021, whichever is earlier as permitted by Metro Charter § 19.01:



Save It
While You Can...

NASHVILLE TN 370
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Nashville Taxpayer Protection Act
P. O. Box 331606
Nashville, Tennessee 37203-1606

Download More Petitions at www.4GoodGovernment.com & Donate Today!

Hurry - Before our city is bankrupted and more of Nashville is given away for free!

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:

- 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."
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Davidson County, TN

Voter signature form with columns for Sign here, Print Name Here, Address, and AS STATED ON VOTER REGISTRATION CARD. Includes a checkmark in the registration card column for the first signature.

Please visit www.4GoodGovernment.com and DONATE TODAY!