

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

DAVIDSON COUNTY ELECTION
COMMISSION,

Plaintiff,

v.

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,
and 4GOODGOVERNMENT,

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff, the Davidson County Election Commission (the “Election Commission”), states the following for its Complaint for Declaratory Judgment against Defendants, The Metropolitan Government of Nashville and Davidson County, Tennessee (the “Metropolitan Government”), John Cooper, in his official capacity as Metropolitan County Mayor of the Metropolitan Government (“Mayor Cooper”), Kevin Crumbo, in his official capacity as Finance Director of the Metropolitan Government Finance Department (“Director Crumbo”), and 4GoodGovernment.

INTRODUCTION

This case presents questions of law as to whether the Election Commission has the legal authority to place a proposed amendment to the Charter of the Metropolitan Government of Nashville and Davidson County, Tennessee (the “Metropolitan Charter”) on the ballot for a

referendum election when the proposed amendment is potentially invalid on its face; whether the Election Commission has the discretion to decline to put the proposed amendment on the ballot for approval by referendum; and whether the proposed amendment is substantively unconstitutional.

PARTIES

1. Plaintiff, the Election Commission, is the county election commission for Davidson County established pursuant to Tenn. Code Ann. § 2-12-101, *et seq.* The Election Commission is charged with the responsibilities of a county election commission found in the Metropolitan Charter and in Title 2 of the Tennessee Code Annotated (the “Election Code”) and performs both ministerial and discretionary functions in discharging its duties.

2. Defendant, the Metropolitan Government, is the metropolitan government created by the consolidation of the City of Nashville and Davidson County pursuant to Article XI, Section 9 of the Tennessee Constitution and Tenn. Code Ann. § 7-1-101, *et seq.* Defendant the Metropolitan Government’s address is c/o Director of Law, 1 Public Square, Suite 108, Nashville, TN 37201.

3. Defendant, John Cooper, is the Metropolitan County Mayor of the Metropolitan Government. As Metropolitan County Mayor, Mr. Cooper is responsible for the conduct of the executive and administrative work of the Metropolitan Government, including amendments to the Metropolitan Charter. Defendant Cooper’s address is Office of the Mayor, 1 Public Square, Suite 100, Nashville, TN 37201.

4. Defendant, Kevin Crumbo, is the Finance Director of the Metropolitan Government Finance Department. As Finance Director, Mr. Crumbo is responsible for administering the

financial affairs of the Metropolitan Government. Defendant Crumbo's address is Office of the Director of Finance, 1 Public Square, Suite 106, Nashville, TN 37201.

5. Defendant, 4GoodGovernment, is an unincorporated association based in Nashville, Tennessee. Representatives of 4GoodGovernment drafted, gathered signatures, and submitted a petition purporting to amend the Metropolitan Charter (the "Petition") labeled "The Nashville Taxpayer Protection Act." James D. R. Roberts, Jr., whose address is 1700 Hayes Street, Suite 303, Nashville, Tennessee 37203-3098, is the organizer and spokesperson for 4GoodGovernment.

JURISDICTION, VENUE, AND JUSTICIABILITY

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

7. This Court has personal jurisdiction over the parties because all of the parties are domiciled in Tennessee.

8. Venue is proper in this Court pursuant to Tenn. Code Ann. § 16-11-102 *et seq.*

9. A real, as opposed to theoretical, controversy exists between the parties in this case.

10. The Election Commission cannot properly discharge its ministerial and discretionary functions without definitive judicial guidance regarding not only the extent of its authority to address the facial or procedural legality of a petition to amend the Metropolitan Charter but also regarding the substantive legality and constitutionality of the separate provisions of the Petition.

11. This case is ripe for pre-election judicial review because (a) the material facts are not disputed and the issues can be decided as a matter of law; (b) the record will not be improved

by waiting until the election is held; (c) post-election events will not sharpen the issues; and (d) the issues are neither speculative nor hypothetical.

12. If the election is held and later invalidated, various harms will occur including but not limited to (a) the public confusion regarding property taxes and the status of the Metropolitan Government's finances while the inevitable post-election litigation is resolved; (b) the taxpayers' disillusionment about the process; (c) the squandered cost of the election; and (d) the waste of the taxpayers' time.

FACTUAL BACKGROUND

A. The Right to Petition to Amend the Metropolitan Charter

13. The Tennessee Constitution does not provide citizens a right to petition by referendum.

14. The Tennessee Code does not provide citizens a right to adopt, repeal, or amend state statutes or local ordinances by referendum.

15. The Metropolitan Charter does not provide citizens a right to adopt, repeal, or amend an ordinance by referendum.

16. Tenn. Code Ann. § 7-2-108(a)(20) provides that the charter of a metropolitan government must include "the method and procedure by which the charter may subsequently be amended; provided, that no such amendment shall be effective until submitted to the qualified voters residing within the general services district and approved by a majority of those voters voting on the amendment."

17. The Metropolitan Charter grants the registered voters in the Metropolitan Government the right to submit a petition to amend the Metropolitan Charter to be approved by referendum.

18. Section 19.01 of the Metropolitan Charter provides, “[the] Charter may be amended subsequent to its adoption in the following manner: An amendment or amendments may be proposed [. . .] (2) 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.”

19. Because the right to petition in Section 19.01 is limited to petitions to amend the Metropolitan Charter, a referendum cannot be used to enact, repeal, or amend a city ordinance or to amend the Metropolitan Charter in a manner that conflicts with the Tennessee Constitution or state law.

B. “The Nashville Taxpayer Protection Act”

20. 4GoodGovernment filed the Petition labeled “The Nashville Taxpayer Protection Act” with the Metropolitan Clerk on August 26, 2020. A true and correct copy of the Charter Amendment Petition Filing Form is attached hereto as **Exhibit A**. There were seven versions of the Petition, and a true and correct copy of each variation is attached hereto collectively as **Exhibit B**.

21. The Petition contains an introduction discussing the proposed amendment and five distinct sections for approval at a referendum election.

22. 4GoodGovernment submitted seven versions of the Petition with signatures affixed thereto.

23. The language of the first six Petition forms contained identical proposed charter amendment language.

24. The seventh form altered the fifth section of the Petition.

25. The introduction of the Petition emphasizes select phrases with bolded text, underlined text, or a combination thereof.

26. Upon information and belief, the introduction is intended as a substantive amendment to the Metropolitan Charter.

27. The five sections themselves also contain bolded text in various places.

28. If passed, the proposed amendment would not require the Metropolitan Government to perform any additional actions and is thereby self-executing.

29. The first section of the Petition, titled “**Property Tax Rates,**” states that “Property Tax Rates shall not increase more than 2% per year after January 1, 2020, without a voter referendum.”

30. The second section of the Petition, titled “**No Give-aways of Our Parks, Greenways, of Public Lands,**” states that:

No part of a Park, Greenway, Public Land, or other real property shall be given away or conveyed without 31 votes of the Metro Council in favor. Transfers of interest in real property shall only be at fair market value or greater based on an independent appraisal. A voter referendum shall be required for transfers of interest in real properties valued over \$5,000,000.00, and for leases exceeding twenty (20) years, commencing after January 1, 2020.

31. The third section of the Petition, titled “**Issuance of Bonds,**” states that “All bonds issued or guaranteed after January 1, 2020, exceeding \$15,000,000.00 for a specific project (excluding construction of educational classrooms, public libraries, public healthcare buildings, and police and fire stations, and Charter protected facilities) must be approved by voter referendum.”

32. The fourth section of the Petition, titled “**Failed Promises,**” states that “If a professional sports team leaves Nashville, or ceases playing professional games for more than twenty-four (24) months, all facilities and related commercial development shall revert to the people, and all related contracts shall be terminated, including land leased from the Nashville Fairgrounds.”

33. The fifth section of the Petition, titled “**Metro’s Records Shall Be Open to the Public,**” states that:

Citizens are entitled to keep a close eye on Metro’s actions and entitled to inspect its books and records for free and consistent with the Tennessee Open Records Act’s protections (§10-7-501, et seq). Public instrumentalities under Title 7 receiving more than \$250,000 yearly in Metro taxpayer funds or benefits agree to be bound by this Amendment, and such entities refusing to provide public records shall be barred from receiving public funds and liable for treble the Citizen’s damages, including attorney fees.

34. One variation of the Petition, the seventh form, alters the fifth section of the Petition to change “[p]ublic instrumentalities under Title 7 receiving more than \$250,000 yearly . . .” to “[a] person or entity receiving more than \$250,000 yearly. . . .” *Compare* Exhibit B, pp. 2–7 with Exhibit B, p. 8.

35. The Petition does not contain a severability clause, and there is no other explicit or implicit indication that these sections are separate or severable.

36. The Petition does not state which sections of the Metropolitan Charter it is attempting to amend.

37. On September 17, 2020, the Election Commission certified to the Metropolitan Clerk that ten percent (10%) of the registered voters of Nashville-Davidson County who voted in the preceding general election signed the Petition, as required in Section 19.01 of the Metropolitan Charter.

38. Even though the seventh form altered the Petition, the Election Commission determined that there were sufficient signatures on the first six Petition forms containing identical proposed charter amendment language to satisfy Section 19.01 of the Metropolitan Charter.

39. Also on September 17, 2020, the Metropolitan Clerk certified the Petition to the Election Commission.

40. On September 25, 2020, the Election Commission voted to set a conditional referendum election date of December 15, 2020 in accordance with Tenn. Code Ann. § 2-3-204(a).

C. Metro Department of Law Legal Opinion No. 2020-01

41. On September 28, 2020, the Law Director for the Metropolitan Government, Robert E. Cooper, Jr. (the “Law Director”), responded to a request from Mayor Cooper and Director Crumbo regarding the validity and legality of the Petition by way of a published opinion, Legal Opinion No. 2020-01. A true and correct copy of Legal Opinion No. 2020-01 is attached hereto as **Exhibit C**.

42. In Legal Opinion No. 2020-01, the Law Director opined that the Petition was defective, identifying numerous problems regarding the facial legality of the Petition with respect to the Tennessee Constitution, state law, and local law. *See Exhibit C, p. 1.*

43. The Law Director opined that the first section of the Petition regarding property tax violates the Tennessee Constitution and state law, improperly uses a referendum to legislate in violation of the Metropolitan Charter and state law, and adjusts tax rates mid-year without legal authority to do so. *See Exhibit C, pp. 3–7.*

44. The Law Director further opined that the second section of the Petition regarding “give-aways” of public land violates the Tennessee Constitution’s prohibition on retrospective laws and impairment of contracts. *See Exhibit C, p. 8*

45. The Law Director also opined that the third section of the Petition regarding issuance of bonds violates the bond referendum requirements of the Local Government Public Obligations Act of 1986, as well as the Tennessee Constitution's prohibition on retrospective laws and impairment of contracts. *See Exhibit C*, pp. 8–11.

46. In addition, the Law Director opined that the fourth section of the Petition regarding failed promises violates the Tennessee Constitution's prohibition on taking private property without just compensation. *See Exhibit C*, pp. 11–12.

47. The Law Director further opined that the fifth section of the Petition regarding open records improperly expanded penalties under the Public Records Act. *See Exhibit C*, pp. 12–13.

48. The Law Director also opined that the Petition was not severable, and therefore if any provision of the Petition is invalid, then the entire amendment must fail. *See Exhibit C*, pp. 14–15.

D. The Dispute

49. The Election Commission recognizes that under Section 19.01 of the Metropolitan Charter, registered voters in the Metropolitan Government have the right to submit a petition to amend the Metropolitan Charter for approval at a referendum.

50. Pursuant to Section 19.01 of the Metropolitan Charter, the Election Commission is the body that is responsible for holding referendums on proposed charter amendments.

51. The Election Commission estimates that conducting the referendum election for the proposed amendment could cost as much as \$800,000.00.

52. The preparations to hold the referendum on December 15, 2020 must begin in earnest as the election must be called and the absentee ballots approved on or around November 4, 2020, and November 14, 2020 would be the deadline to mail military ballots.

53. The Law Director has opined that certain sections of the Petition conflict with the Tennessee Constitution, state law, and local law. *See Exhibit C*, p. 1.

54. Upon information and belief, the defendants to this action may seek legal redress against the Election Commission if those parties disagree with the decisions made by the Election Commission regarding the unsettled areas of law that are the subject of this action.

COUNT I

Declaratory Judgment Action—The Identified Deficiencies Being Considered Issues of “Form”

55. The Election Commission hereby adopts and realleges by reference paragraphs 1 through 54.

56. An actual controversy exists between the parties regarding whether the Petition suffers from defects in “form” that the Election Commission has the authority to address.

57. The Election Commission has the discretion to consider deficiencies in the “form” of a proposed amendment to the Metropolitan Charter.

58. Section 19.01 of the Metropolitan Charter allows registered voters to submit a petition to amend the Metropolitan Charter to be approved at a referendum.

59. There is no authority in the Tennessee Constitution, state law, or local law that allows registered voters to submit a petition to amend, repeal, or revoke legislation, such as ordinances passed by the Metropolitan Council and executed by the Metropolitan Mayor.

60. Legal Opinion No. 2020-01 concluded that the first section of the Petition attempts to use the referendum process to repeal existing legislation, namely a passed ordinance regarding the property-tax rate for Nashville and Davidson County residents. *See Exhibit C*.

61. Tennessee courts have not had an opportunity to address whether a proposed amendment that attempts to amend, repeal, or revoke legislation is defective in form.

62. There is no authority in the Tennessee Constitution, state law, or local law that requires the Election Commission to conduct a referendum on a proposed amendment to the Metropolitan Charter that would cause the Metropolitan Charter to conflict with the Tennessee Constitution or state law.

63. Legal Opinion No. 2020-01 concluded that each section of the Petition is in conflict with the Tennessee Constitution or Tennessee Statutes. *See Exhibit C.*

64. Tennessee courts have not had an opportunity to address whether a proposed amendment that attempts to amend the Metropolitan Charter such that it facially conflicts with the Tennessee Constitution or state law is defective in form.

65. The Petition contains bolded text, underline text, and in some cases both to emphasize certain language, thereby removing the neutrality of the Petition.

66. Tennessee courts have not had an opportunity to address whether a proposed amendment that places emphasis on certain phrases, employs biased, one-sided, preferential, or argumentative language, or is otherwise non-neutral is defective in form.

67. The Election Commission seeks a determination from this Court as to whether a proposed amendment that attempts to amend, repeal, or revoke legislation, such as an ordinance passed by the Metropolitan Council and executed by the Metropolitan Mayor, is defective in form such that the Election Commission can exercise its discretion in putting the proposed amendment forth to be approved at a referendum.

68. The Election Commission seeks a determination from this Court as to whether a proposed amendment that attempts to amend the Metropolitan Charter such that it facially conflicts with the Tennessee Constitution or state law is defective in form such that the Election

Commission can exercise its discretion in not putting the proposed amendment forth to be approved at a referendum.

69. The Election Commission seeks a determination from this Court as to whether a proposed amendment that emphasizes certain phrases and is otherwise biased, one-sided, preferential, or not neutral is defective in form such that the Election Commission can exercise its discretion in not putting the proposed amendment forth to be approved at a referendum.

COUNT II

Declaratory Judgment Action—The Election Commission’s Discretion In Putting the Proposed Amendment on the Ballot

70. The Election Commission hereby adopts and realleges by reference paragraphs 1 through 69.

71. An actual controversy exists between the parties regarding the Election Commission’s rights, duties, and/or authority to exercise discretion in putting the proposed amendment on the ballot.

72. Under Section 19.01 of the Metropolitan Charter, registered voters have the right to submit a petition to amend the Metropolitan Charter to be approved at a referendum.

73. Legal Opinion No. 2020-01 has identified numerous possible defects in the facial legality of the proposed amendment. *See Exhibit C.*

74. It is unclear whether the Election Commission has the legal authority to put forth the proposed amendment for a vote despite the potential defects.

75. Should this Court decide in Count I that the deficiencies identified in Legal Opinion No. 2020-01 are defects as to the form of the Petition, an open question remains regarding whether the Election Commission can consider the facial or procedural legality of the proposed amendment.

76. The Election Commission seeks a determination from this Court as to whether or not the Election Commission is required to put forth the proposed amendment or whether the Election Commission has the authority to consider the facial or procedural legality of the Petition in deciding whether or not to put forth the proposed amendment.

COUNT III

Declaratory Judgment Action—The Form or Facial Legality of the Petition

77. The Election Commission hereby adopts and realleges by reference paragraphs 1 through 76.

78. An actual controversy exists between the parties regarding the facial legality of the Petition.

79. Legal Opinion No. 2020-01 has identified numerous possible defects in the proposed amendment's form and/or the facial legality of the proposed amendment. *See Exhibit C.*

80. If this Court finds via Count I and/or Count II that the Election Commission has the legal authority to withhold the proposed amendment from a referendum, the validity of the Petition is highly relevant.

81. The Election Commission seeks a determination from this Court regarding whether there are defects in the form and/or the facial or procedural legality of the Petition with respect to the Tennessee Constitution, state law, and/or local law, or any other reason this Court so finds.

COUNT IV

Declaratory Judgment Action—The Election Commission's Discretion In Removing Invalid Sections From the Proposed Amendment

82. The Election Commission hereby adopts and realleges by reference paragraphs 1 through 81.

83. An actual controversy exists between the parties regarding the Election Commission's rights, duties, and/or powers to omit sections of the proposed amendment before putting it on the ballot.

84. The proposed amendment does not contain a severability clause.

85. The Metro Law Director identified potential defects with every section of the proposed amendment. *See Exhibit C.*

86. Should this Court find that any section of the proposed amendment is defective in form and/or facially or procedurally invalid, the Election Commission seeks a determination from this Court as to whether or not the Election Commission is required to consider and act on the proposed amendment in its entirety or whether the Election Commission's discretion is broad enough to allow the Election Commission to omit invalid provisions or otherwise modify the proposed amendment before putting it on the ballot.

COUNT V

Declaratory Judgment Action—The Constitutionality of the Proposed Amendment

87. The Election Commission hereby adopts and realleges by reference paragraphs 1 through 86.

88. An actual controversy exists between the parties regarding the substantive constitutionality of the proposed amendment.

89. Under Tennessee law, the Election Commission does not have the authority to address the substantive constitutionality of the proposed amendment.

90. The proposed amendment is self-executing in that it would not require any additional action from the Metropolitan Government before it went into effect.

91. Legal Opinion No. 2020-01 has identified numerous possible defects related to the constitutionality of the proposed amendment. *See Exhibit C.*

92. Should this Court decide that the Election Commission does not have the authority to address the substantive constitutionality of all or any portion of the proposed amendment, the Election Commission seeks a determination from this Court as to whether the proposed amendment is substantively constitutional.

PRAYER FOR RELIEF

1. That the Court issue a declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101 *et seq.* and Tennessee Rules of Civil Procedure 57 regarding whether certain possible defects are considered defects in the form of the proposed amendment such that the Election Commission can exercise discretion in placing the referendum on the ballot.

2. That the Court issue a declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101 *et seq.* and Tennessee Rules of Civil Procedure 57 regarding the Election Commission's rights, duties, and/or powers to exercise discretion in placing the referendum on the ballot.

3. That the Court issue a declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101 *et seq.* and Tennessee Rules of Civil Procedure 57 regarding whether the proposed amendment is invalid based on the proposed amendment being defective in form, problems regarding the facial legality of the Petition with respect to the Tennessee Constitution, Tennessee statutory law, and/or local law, or any other reason this Court so finds.

4. That the Court issue a declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101 *et seq.* and Tennessee Rules of Civil Procedure 57 regarding the Election Commission's rights, duties, and/or powers to omit or otherwise modify invalid provisions in a proposed charter amendment before putting it on the ballot.

5. That the Court issue a declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101 *et seq.* and Tennessee Rules of Civil Procedure 57 regarding the substantive constitutionality of the proposed charter amendment.

6. That the Court hear this declaratory judgment action on an expedited schedule since this action presents questions of law and based on the advance preparation necessary to prepare for the election, including the Election Commission having to call the election by November 4, 2020, open the absentee-request period by November 4, 2020, and mail military ballots by November 14, 2020.

7. That process issue for all parties and that they be made defendants hereto and be required to answer this Complaint.

8. That the Court award the Election Commission such other and further relief as this Court deems just and equitable, including resetting the date of the referendum election if that becomes necessary to enable judicial proceedings to be completed.

DATED: October 9, 2020.

Respectfully submitted,

/s/William C. Koch, Jr.

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