

# METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



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## MEMORANDUM

**TO:** Vice Mayor Jim Shulman  
Metropolitan Council

**FROM:** James L. Charles, Associate Director of Law

**DATE:** August 1, 2019

**SUBJECT:** M.C.L. § 2.40.115. 2019 2<sup>nd</sup> Quarter Reports

**ATTACHMENTS:** (1) 2019 2<sup>nd</sup> Quarter Report of Significant Litigation, Damage Amount Specified;  
(2) 2019 2<sup>nd</sup> Quarter Report of Significant Litigation, Damage Amount Not Specified;  
(3) 2019 2<sup>nd</sup> Quarter Report of Significant Litigation Classifications; and  
(4) Report of Judgment Entered Against the Metropolitan Government in July 2019.

1. The 2019 2<sup>nd</sup> Quarter Report of Significant Litigation (Damage Amount Specified) list new cases filed this quarter in which the *ad damnum* clause in the complaint request damages greater than \$300,000. (Attachment 1)
2. An additional 2019 2<sup>nd</sup> Quarter Report of Significant Litigation (Damage Amount Not Specified) list new cases filed this quarter in which liability is not limited to \$300,000 by the TGTLA. (Attachment 2)
3. An additional 2019 2<sup>nd</sup> Quarter Report of Significant Litigation Classifications classifies the new significant cases by the legal issues presented in the complaints, sorted first by department and then sorted by the classifications themselves. (Attachment 3)
4. The Report of Judgment list a judgment that became final against the Metropolitan Government in July 2019. (Attachment 4)

5. Acronyms:

ADA:	Americans Disability Act, 42 USC §§ 12101 et seq.
CCS:	Correct Care Solutions.
FCC:	Federal Communications Commission
FMLA:	Family Medical Leave Act, 29 USC §§ 2601 et seq.
IDEA:	Individuals with Disabilities Education Act, 20 USC § 1400.
IIED:	Intentional Infliction of Emotional Distress.
NIED:	Negligent Infliction of Emotional Distress.
RLUIPA:	Religious Land Use and Institutionalized Persons Act, 2 USC §§ 2000cc et seq.
Sec. 504:	Section 504 of the Rehabilitation Act, 29 USC §§ et seq.
STRA:	Short Term Rental Act TCA § 13-7-601 et seq.
TCPA:	Tennessee Consumer Protection Act TCA § 47-18-101
TDA:	Tennessee Disability Act, TCA §§ 4-21-102(3); 8-50-103.
TDOE:	Tennessee Department of Education.
TGTLA:	Tennessee Governmental Tort Liability Act, TCA §§ 29-20-101 et seq.
THRA:	Tennessee Human Rights Act, TCA §§ 4-21-101 et seq.
TITDA:	Tennessee Identity Theft Deterrence Act TCA § 47-18-2101
Title VI:	Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000(d) et seq.
Title VII:	Title VII of the Civil Rights Act of 1964, 42 USC §§ 2000(e) et seq.
Title IX:	Title IX, Education Amendments of 1972 to the Civil Rights Act of 1964, 20 USC §§ 1681 et Seq.
TPPA:	Tennessee Public Protection Act, TCA § 50-1-304.
TRFRA:	Tennessee Religious Freedom Restoration Act, TCA § 4-1-407.

**2019 2nd Quarter Report of Significant Litigation: Damage Amount Specified**

File Name	Court	Docket #	Initial Demand
Morrow, Nicholas v. Metropolitan Government, et al.	U.S. Dist. Ct. M.D. Tenn.	3:19-cv-00351	\$2,000,000.00
<p>Damages Plaintiff alleges that he was illegally arrested at his home, tased and his arm broken because he posted comments critical of the Metropolitan Government on Facebook. 42 USC 1983: 4th Amend; 1st Amend; excessive force, false force, false arrest, retaliation.</p>			
Plaintiff	Morrow, Nicholas		
Defendant	Metropolitan Government of Nashville and Davidson County		
Defendant	Kulp, Nicholas		
Defendant	Kooshian, Andrew		
Defendant	Doe, John		
Counsel: Opposing	Justice, Drew		

Webster, James, et al v. Metro Government, et al	Circuit Court - Sixth	19C1059	\$350,000.00
<p>Damages TGTLA: Negligent supervision of employee with known propensity for unjustified violence. Assault &amp; Battery. Compensatory &amp; punitive damages.</p>			
Plaintiff	Webster, Veronica		
Plaintiff	Holt, Virginia		
Plaintiff	Holt, Kahvarious		
Plaintiff	Webster, James		
Defendant	Metropolitan Government of Nashville and Davidson County		
Defendant	Davis, Michael E.		
Defendant	Metro Nashville - Public Schools		
Counsel: Opposing	Smith, Michael K.		

(ATTACHMENT 1)

## 2019 2nd Quarter Report of Significant Litigation: Damage Amount Specified

File Name	Court	Docket #	Initial Demand
Rogers, Helen, et al v. Metro Government, et al	Chancery Court - Part I	19-548-I	\$0.00
<p>Damages Reverse Bd of Zoning Appeals decision granting variance on parking requirements and height restrictions. Writ of Certiorari. Attorney fees under Equal Access to Justice Act, TCA 29-37-101 et seq.</p>			
Plaintiff	Rogers, Helen S.		
Plaintiff	Kamm, Lawrence		
Defendant	22 Developments LLC		
Defendant	Metropolitan Government of Nashville and Davidson County		
Counsel: Opposing	Dean, George A.		

Huffman, Rachel, et al v. Metro Government, et al	Chancery Court - Part IV	19-616-IV	\$0.00
<p>Damages Plaintiff alleges that the Metropolitan Government's Environmental Court was created in violation of the Tenn. Constitution because neither of the Public Acts authorizing the Environmental Court include the specific language mandated by article 11, section 9 of the Constitution for approval by the local government. Declaratory judgment, temporary and permanent injunction; 42 USC 1983: 5th Amend, substantive due process, attorney fees and cost.</p>			
Plaintiff	Huffman, Rachel		
Plaintiff	Ibarra, Silvia		
Plaintiff	Lewis, Colin		
Defendant	Metropolitan Government of Nashville and Davidson County		
Defendant	Slatery, III, Herbert H.		
Counsel: Opposing	Hollin, Jamie R		

## 2019 2<sup>nd</sup> Quarter Significant Litigation Classifications – By Department

Department	1 <sup>st</sup> Issue	Docket No	2 <sup>nd</sup> Issue	Sub-Issue
1 Bd of Education	1 Neg. Act/Omission	19C1059	Assault & Battery	Failure to Supervise
1 Bd of Zoning Appeals	1 Zoning	19-548-I		Variance
1 General Sessions Courts	1 Statutory Interpretation	19-616-IV	Tennessee Constitution	Due Proc-procedural
1 Police Department	1 4th Amendment	3:19-cv-00351	1st Amendment	Excessive Force

## 2019 2<sup>nd</sup> Quarter Significant Litigation Classifications – By Issue

1 <sup>st</sup> Issue	Department	Docket No.	2 <sup>nd</sup> Issue	Sub-Issue
1 4th Amendment	1 Police Department	3:19-cv-00351	1st Amendment	Excessive Force
1 Neg. Act/Omission	1 Bd of Education	19C1059	Assault & Battery	Failure to Supervise
1 Statutory Interpretation	1 General Sessions Courts	19-616-IV	Tennessee Constitution	Due Proc-procedural
1 Zoning	1 Bd of Zoning Appeals	19-548-I		Variance

(Attachment 3)

# METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



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**TO:** Vice Mayor Jim Shulman  
Metropolitan Council

**FROM:** James L. Charles, Associate Director of Law

**DATE:** July 31, 2019

**SUBJECT:** M.C.L. § 2.40.115; Report of Judgment Entered Against the Metropolitan Government

The Department of Law reports that the following judgment became final against the Metropolitan Government during the month of July 2019.

**Style of Case:** *John McGlone et al., v. Metropolitan Government of Nashville and Davidson County*

**Docket No.:** United States District Court for Middle District of Tennessee Case No. 3:16-739;  
United States Court of Appeals for the Sixth Circuit Case No. 17-6291

**Amount of Judgment:** Civil Rights Damages and Attorneys' Fees: \$300,000.00

## Case Summary:

The Plaintiffs, John McGlone and Jeremy Peters, are "street preachers" who were required to move off of a public sidewalk during the 2015 Pride Festival<sup>1</sup> on the basis that the sidewalk was a permitted part of the Festival. Plaintiffs were moved across the street from the Festival and allowed to continue preaching their anti-LBGTQ message using amplification equipment. Other individuals who were not making anti-LBGTQ speech but who had surrounded the street preachers on the public sidewalk before they were moved were allowed to remain within the permitted areas. Plaintiffs were threatened with arrest if they went back over to the permitted area.

Plaintiffs sued Metro alleging violations of their First Amendment rights of free speech and free exercise of religion. Plaintiffs' claims centered on how Metro's special events ordinance

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<sup>1</sup> Plaintiffs' claims related to the 2014 Pride Festival were dismissed as time-barred.

(ATTACHMENT 4)

was applied to exclude Plaintiffs from the otherwise public sidewalk that was part of the permitted area of the Pride Festival. Following discovery, the parties filed cross motions for summary judgment. The District Court granted summary judgment to Metro, finding that moving the street preachers across the street was a reasonable time, place, and manner restriction on their speech. The United States Court of Appeals for the Sixth Circuit reversed, holding that the street preachers were actually moved because of the content of their speech and that the sidewalk remained a public forum despite being part of a permitted event. As a result, the Court of Appeals found that Plaintiffs' First Amendment rights had been violated and remanded the case to the District Court for proceedings consistent with its Opinion.

The District Court subsequently entered summary judgment for Plaintiffs consistent with the Court of Appeals Opinion. The District Court ordered payment of \$300,000.00, which represented nominal damages to the Plaintiffs themselves and reasonable attorneys' fees to the legal team that had represented Plaintiffs throughout the litigation.

(ATTACHMENT 4)