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

4 GOOD GOVERNMENT, *FMR.* METRO COUNCILMAN DUANE DOMINY AND THE 27,263 REGISTERED VOTERS WHO SIGNED THE NASHVILLE TAXPAYER PROTECTION ACT,	)	
Plaintiffs,	)	
vs.	)	**No. 20-1010-III**
THE DAVIDSON COUNTY ELECTION COMMISSION and 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,	)	
Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS FROM 10/26-27/2020 BENCH TRIAL

RULINGS AND ORDERS

Tapping into the discord over the Metropolitan Government's finances and a 34% property tax increase passed this year by the Metro Council, an attorney has drafted a proposed act which includes repealing, mid-fiscal year, the property tax increase (the "Proposed Act"). The attorney participated in circulating Petitions with the Proposed Act to over 27,000 persons and has obtained enough signatures to build public expectations that the Proposed Act will be placed on a ballot by the Davidson County Election Commission (the "Election Commission") and a special election (referred to in the Metro Charter as a "referendum") will be held on December 15, 2020. Such a referendum will cost the City over $800,000.

The issue with fueling these expectations of holding a referendum is that the Proposed Act is invalid under Tennessee law. Unbeknownst to the signers who were presented with the referendum Petition, it contains a Proposed Act that is defective in form, facially unconstitutional and under no set of circumstances could be valid. The Proposed Act presents an impermissible form of government in Tennessee where the laws of a local government conflict with or intrude upon the sovereignty of State law. While there may be lawful ways to change the 34% Metro property tax hike prospectively, this Proposed Act is not one of them.

Circulating Petitions with clearly invalid content raises the expectations of the signers and then frustrates them, and that is what has occurred in this case. The Court's

role in these circumstances is to determine solely, by applying Tennessee law, whether or not the Proposed Act can be legally placed on the ballot. Tennessee law is clear, it cannot.

Part of the defect of the Proposed Act is that Tennessee is not like California,[1] Arizona, Colorado or Michigan where citizens can enact laws by a direct ballot initiative. Tennessee does not have this form of government. With a few limited exceptions concerning referendums, in Tennessee it is the legislature/Metro Council who enacts laws, "legislation/ordinances" and the voters' recourse is to vote for or against the office holder when up for reelection. Neither the Tennessee Constitution, Tennessee statutes, nor the Metro Charter allows citizens, by a referendum, to, as in this case, repeal a tax increase for a Metro budget already five months underway. The evidence and law presented at the October 26-27, 2020 trial of this case were clear and left no doubt that if the December 15, 2020 election were held on the Proposed Act and it passed, the Proposed Act has no chance of being upheld in court in a post-election challenge.

The drafter of the repeal measure at trial provided few, if any, defenses under Tennessee law to the invalidity of the referendum repeal method he proposes. Instead, taking a "wait and see approach," his position was to insist on going forward with the referendum election, even if it is invalid on its face, asserting that a court determination of the validity of the measure must wait until after the Proposed Act has been voted on. That position is simply not the law.

[1] California's "Proposition 13" and "Proposition 31," ballot initiatives by citizens to lower taxes, are widely known.

For good reason Tennessee law does not give much leeway to election commissions to refuse to hold a referendum, where the required number of voters have signed a petition. But there are exceptions under Tennessee law, and this case, without a doubt, is one of those exceptions.

Under obvious circumstances such as were shown at trial to exist in this case of clear, basic defects in form, facial unconstitutionality and that there is no chance of the Proposed Act being upheld in court in a post-election challenge, Tennessee law provides a remedy to the Election Commission to seek, pre-election, a court ruling on the validity of the Proposed Act before undergoing: the expense and effort of an election, and before Metro loses at least $332,000,000 in budgeted property tax revenue for the current fiscal year which will cause Metro's budget to be unbalanced in violation of state and local law, and which will have the immediate effect of putting Metro in breach of financial covenants, leases, and other agreements. Under these circumstances Tennessee law authorizes a court to enjoin the measure from being placed on the ballot. The law does not require the expenditure of public resources on an obvious futile process.

It is therefore ORDERED that pursuant to Tennessee Civil Procedure Rule 57 and Tennessee Code Annotated section 29-14-101, *et. seq.*, the Court grants the Counterclaim and Cross-Complaint of the Davidson County Election Commission, filed October 19, 2020, and the Counter-Complaint and Cross-Complaint of the Metropolitan Government, filed October 19, 2020, and issues a declaratory judgment that:

— these matters are ripe for adjudication before a referendum election is held,

— the Election Commission had the right under Tennessee law to seek a court ruling on the validity of the Proposed Act and to set only a conditional December 15, 2020 election depending on the outcome of the trial in this case, and

— the Proposed Act is defective in form and facially unconstitutional.

It is further ORDERED that the Counter-Complaint and Cross-Complaint of the Metropolitan Government, filed October 19, 2020 is granted, and the Davidson County Election Commission is permanently enjoined from placing the Proposed Act on the ballot and is enjoined from holding a referendum election on the Proposed Act.

It is ORDERED that the Plaintiffs' October 8, 2020 *Complaint* for a writ of mandamus, declaratory judgment and injunctive relief for the Davidson County Election Commission to place the Proposed Act on the ballot and hold a referendum election are dismissed with prejudice. The Plaintiffs' "all or nothing" claim/defense that the Election Commission has only ministerial duties and no discretion is incorrect as a matter of law, *McFarland v. Pemberton*, 530 S.W.3d 76, 93–94 (Tenn. 2017) ("The Election Code clearly gives county election commissions the authority to perform functions that are discretionary in addition to their ministerial duties."), and as applied to this case.

It is ORDERED that the Plaintiffs' *Motion To Dismiss* the Counter-Complaints of the Davidson County Election Commission and the Metropolitan Government, filed October 20, 2020, for lack of ripeness and standing, is denied.

The Plaintiffs' claims in Count Two: Violation of Constitutional Rights of their October 8, 2020 *Complaint* remain pending pursuant to the orders of this Court under

Tennessee Civil Procedure Rule 42.02 separating the Count II claims for subsequent litigation.

The findings of fact and conclusions of law on which this decision is based are as follows.

FINDING OF FACTS AND CONCLUSIONS OF LAW

The Proposed Act and the Parties' Positions

The Court finds that the content of the Proposed Act (Trial Exhibit 2) is as follows and that this is the actual wording the Plaintiffs propose to add to the Metro Charter. The following is not campaign literature in support of the Proposed Act. The following text, including the bolding, check marks, and underlines, are the exact text the Plaintiffs seek to have added to the Metro Charter ---- the formal, legal document that governs Davidson County. To be clear, different versions of the Proposed Act were circulated for signatures. Contained below are two of those versions.

Nashville Taxpayer Protection Act [one version]

> Nashville was flat broke **before** the Covid-19 crisis, and the State was threatening to take over our city. Decades of reckless over-borrowing and over-spending has nearly bankrupted us, and Metro's "solution" is to impose a **32% property tax increase** on homeowners. Nashville is **$3.6 BILLION DOLLARS ($3,6000,000,000.00)** in debt, and $1 in $7 tax dollars received goes to paying bond interest. **It is time for this nonsense to stop!** Fixing Metro's budgetary mismanagement and financial incompetence should not come on the backs of innocent taxpayers. It is time for Metro to rein in its spending, cut waste, and stop giving away our city, parks and public lands for free.

This Charter amendment will **stop** the fiscal insanity and force the Metro Government to be more financially responsible. The Voters by petition want this Amendment submitted to the citizens:

☑ **Property Tax Rates.** Property Tax Rates shall not increase more than 2% per year after January 1, 2020, without a voter referendum.

☑ **No Give-away of Our Parks, Greenways, of Public Lands.** 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.

☑ **Issuance of Bonds.** 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.

☑ **Failed Promises.** 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.

☑ **Metro's Records Shall Be Open to the Public.** 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.

The Nashville Taxpayer Protection Act [another version]

REPEAL **the 34% Property Tax Increase NOW.**

PROTECT YOUR Parks, Greenways, and Public Lands from being given away for free.

RESTRICT out-of-control spending and the use of bonds to finance private development schemes.

DEFEND Taxpayers and make the City's books and records open for inspection to all citizens.

Our Metro Government is out-of-control, and the **34% Property Tax Increase** is a symptom of the problem. This Charter Amendment will **stop** the fiscal insanity and force the Metro Government to be more financially responsible.

Nashville Taxpayer Protection Act

REPEAL the 34% Property Tax Increase and make Metro Government more fiscally responsible. Davidson County Voters by Petition want this Charter Amendment submitted to the citizens:

☑ **Property Tax Rates.** Property Tax Rates shall not increase more than 2% per year after January 1, 2020, without a voter referendum.

☑ **No Give-away of Our Parks, Greenways, of Public Lands.** 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.

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to the people, and all related contracts shall be terminated, including land leased from the Nashville Fairgrounds.

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The Proposed Act titled by the drafter, "The Nashville Taxpayer Protection Act," and sometimes referred to as the property tax referendum, as shown by the quotation above, is actually a package of five sweeping provisions running the gamut of the operations of the Metropolitan Government of Nashville and Davidson County ("Metro" or the "Metropolitan Government"). In addition to a provision on property taxes, the Proposed Act seeks to place limitations on:

— Metro's bond issuance;
— contracts for sports facilities for all of Nashville's Professional Sports Teams – the Titans, Nashville Sounds, Predators and Nashville SC;
— real property transfers; and
— pertains to opening records to the public of public instrumentalities such as the Hospital Authority and Metro Nashville Sports Authority.

The Proposed Act contains no "severability clause" allowing one or more of the five provisions or other context, if defective, to be removed by the Election Commission and the remainder be placed on the ballot. The Proposed Act was presented to the persons who signed Petitions to put it on the ballot as one package, one comprehensive measure for

the Metro Charter. The Proposed Act states that it is an amendment to the Metro Charter but cites to no section(s) in the Charter to amend.

Metro has taken the position that the Election Commission cannot place the Proposed Act on the ballot because in numerous, obvious, fundamental ways the five provisions of the Proposed Act, singly and as a package, violate Tennessee law both as to defective form and facial unconstitutionality.

The genesis of the Proposed Act is the Plaintiffs' attorney. He drafted it and was responsible in large part for its circulation on Petitions and the filing of the Petitions on August 26, 2020 with the Metropolitan Clerk. Seven versions of the Petition with a total of 20,032 signatures affixed to them were filed. *See* Trial Exhibit 2. The first two versions have different introductory language than the latter five versions. Additionally, the seventh version altered the fifth section of the Petition. The seventh form of the Petition replaces "[p]ublic instrumentalities" with "[a] person or entity." In paragraph 17 of Plaintiffs' Answer to the Election Commission's Counterclaim, Plaintiffs concede that the seventh version was filed with the Commission by mistake.

On September 17, 2020, the Election Commission verified that 12,461 valid signatures for formats 1 to 6 of the Petition which contained the same charter amendment language had been submitted. On September 17, 2020, the Election Commission also verified that the submitted signatures exceeded 10% of the number of registered voters of Nashville-Davidson County voting in the preceding general election, as required in Section

19.01 of the Metropolitan Charter to place the measure on the ballot. That same day, the Metropolitan Clerk also certified the Petition to the Election Commission.

On or about September 22, 2020, the Election Commission announced a public meeting for September 25, 2020. At the meeting, the Election Commission, to avoid the cost of holding an election on an invalid amendment, voted to hire legal counsel and seek declaratory action on an expedited basis from chancery court to determine if the Election Commission had a duty to place the Proposed Act on the ballot for a referendum election. That was followed by the Plaintiffs filing this lawsuit, and the Election Commission and Metro, as well, filing claims.

The parties are before this Court with the Plaintiffs/proponents of the Proposed Act seeking an order for the Election Commission to place the Proposed Act on the December 15, 2020 ballot for a vote; Metro seeking an injunction for the Proposed Act not to be placed on the December 15, 2020 ballot; and the Election Commission seeking a declaratory ruling on whether the Proposed Act is defective and the scope of the Election Commission's duty under these circumstances. The Election Commission has set the Proposed Act for a referendum vote on December 15, 2020 conditioned on the outcome of this case.

From October 26 and 27, 2020, an expedited bench trial[2] was conducted, where motions for a temporary injunction were consolidated and advanced with a trial on the

[2] There is no impending referendum timetable applicable to the Plaintiffs' Count II constitutional challenges, and those have been separated out from the issues ruled upon herein and will be litigated separately at a later date under the authority of Tennessee Civil Procedure Rule 42.02.

merits pursuant to Tennessee Rule of Civil Procedure 65.04(7). The trial was conducted by Zoom video conferencing due to the COVID-19 pandemic pursuant to Tennessee Rule of Civil Procedure 43.01 and orders of the Tennessee Supreme Court and the Twentieth Judicial District. Two witnesses testified by video conferencing: (1) Plaintiff and Former Metro Council person Duane Dominy and (2) Davidson County Administrator of Elections Jeff Roberts. Nineteen (19) exhibits were admitted into evidence. At the conclusion of the trial, the Court took the matter under advisement to study the law and the evidence.

Conclusions of Law on Defects of Form and Unconstitutionality of Proposed Act

From the October 26-27, 2020, trial of this case, the Court concludes that on its face the Proposed Act presents an impermissible form of government in Tennessee where the laws of a local government conflict with or intrude upon the sovereignty of State law. The Proposed Act seeks to enact measures in Davidson County that fundamentally violate Tennessee law and/or under no set of circumstances could be valid, as follows.

— The Proposed Act is defective in form through its use of marketing ploys of inflammatory, editorial catch phrases, slogans and symbols that work a bias in favor of the proposal without contributing to voter understanding, words such as: "no giveaways," "failed promises," and "keep a close eye."

— It further is defective in form because under Tennessee referendum law the Proposed Act must contain an amendment to the Metro Charter; it cannot seek to enact or repeal legislation. The Proposed Act does not fit this requirement. It cites to no specific section of the Metro Charter it seeks to amend and states in its introduction that it seeks to impermissibly legislate or repeal. Also, the absence of the Metro Charter section(s) the Proposed Act seeks to amend makes it impossible for a voter to intelligently cast a vote for or against a proposal with full knowledge of the consequences of his vote.

— As to the property tax, the Proposed Act is defective in form in two respects: (1) it seeks to alter the tax rate mid-fiscal year in violation of Tennessee law and (2) it seeks to repeal an existing ordinance by referendum—a political process not recognized under Tennessee law.

— With respect to issuance of bonds, the Proposed Act is defective in form because it contradicts state law and seeks to enact provisions where the Legislature has said a state uniform scheme controls, and it is facially unconstitutional under Article I, section 20 of the Tennessee Constitution which forbids impairing contracts.

— The Proposed Act is facially unconstitutional as to real property Metro owns and has ongoing leases with sports teams. The Proposed Act seeks to add new conditions to those that the parties to the leases did not know or agree to when they signed the leases. The Tennessee Constitution forbids this in Article I, section 20 where it forbids retrospective law or law impairing contracts and in Article I, section 21 of the Tennessee Constitution forbidding taking property without just compensation.

— As to public records, the Proposed Act is facially unconstitutional by violating the State's sovereign immunity set forth in Article II, section 17 of the Tennessee Constitution that only the General Assembly and not voters via a referendum can determine to what extent public instrumentalities of the State can be sued.

Tennessee Referendum and Ballot Law

The law on which the foregoing conclusions about the defects in form and facial unconstitutionality of the Proposed Act are based is as follows.

The Plaintiffs take the position that they have followed all requirements of the Metro Charter for placement of the Proposed Act on the ballot, and therefore there are no defects in form to prohibit proceeding with the referendum. The Metro Charter provision section 19.01 provides,

> 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.

The Plaintiffs' argument that section 19.01 of the Metro Charter is the sole source of the law on ballot form is not the law in Tennessee.

In the Tennessee Code on "Elections," section 2-1-102 recognizes the "freedom and purity of the ballot." It further provides in section 2-7-111(b) that balloting is to be separated from campaign materials or solicitations containing a "position on the question." In *Johnston v. Davidson Cty. Election Comm'n*, No. M2011-02740-COA-R3CV, 2014 WL 1266343, at *4 (Tenn. Ct. App. Mar. 26, 2014), the appellate court explained that, "our Supreme Court reiterated that the state's interest in the integrity of the election process is 'compelling' [citation omitted]." The appellate court further explained, "Consistent with that interest, the Election Code at Title 2 was adopted to 'protect the freedom and purity of elections' [citations omitted] . . . . The code governs all elections for public office, candidacy for public office and <u>referendum questions submitted to the people</u> [emphasis added]."

In addition to the freedom, purity and unbiased ballot content principles of Tennessee, law, the Tennessee Supreme Court has held that a ballot question must "convey a reasonable certainty of meaning so that a voter can intelligently cast a vote for or against a proposal with full knowledge of the consequences of his vote." *Rodgers v. White*, 528 S.W.2d 810, 813 (Tenn. 1975). *See also Pidgeon-Thomas Iron Co. v. Shelby Cty.*, 397

S.W.2d 375, 378 (Tenn. 1965). "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. This means the petition must be free from misleading tendency, amplification, or omission to permit voters to exercise intelligent and enlightened judgment as to whether to sign the referendum petition." 42 AM. JUR. 2D *Initiative and Referendum* § 18 (West 2020) (footnotes omitted).[3]

Further, the Tennessee Supreme Court has recognized that there are principles of form and facial constitutionality which apply to referendum measures. The Tennessee Supreme Court has adopted the following examples from other states as illustrative of defective ballot measures and examples of facially unconstitutional measures.

— *Alaska Conservative Political Action Comm. v. Municipality of Anchorage*, 745 P.2d 936, 938 (Alaska 1987) (refusing to require election officials to place on the ballot an initiative that on its face sought to make an appropriation because the Alaska constitution specifically prohibited making appropriations by initiative);

— *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo. 1990) (en banc) (considering, in a pre-election challenge, whether a ballot measure violated a state law requiring that an initiative petition contain no more than one subject and stating that

[3] In other cases, the Tennessee Supreme Court has quoted with authority the *Initiative and Referendum* section of American Jurisprudence. *See, e.g.*, *Jordan v. Knox Cty.*, 213 S.W.3d 751, 781 (Tenn. 2007) ("Our primary purpose in interpreting a charter amendment must be "*to effectuate the intent of the electorate* that adopted it." 42 Am.Jur.2d *Initiative and Referendum* § 49 (Supp.2006) (emphasis added). "Absent ambiguity, a court may presume that voters intend the meaning apparent upon the face of an initiative measure, and a court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language." *Id.*); *Chattanooga-Hamilton Cty. Hosp. Auth. v. City of Chattanooga*, 580 S.W.2d 322, 327–28 (Tenn. 1979) ("It appears that other jurisdictions are divided on this issue, but the better view is that the legislature and the electorate are co-ordinate legislative bodies, and in the absence of special constitutional or charter restraint, either may amend or repeal an enactment by the other. See Annot., 33 A.L.R.2d 1118 s 2 (1954); 42 Am.Jur.2d Initiative and Referendum § 58 (1969); 82 C.J.S. Statutes s 150 (1953).").

> "[o]ur single function is to ask whether the constitutional requirements and limits of power, as expressed in the provisions relating to the procedure and form of initiative petitions, have been regarded");
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> — *State ex rel. Childress v. Anderson*, 865 S.W.2d 384, 390–91 (Mo. Ct. App. 1993) (holding a ballot zoning measure invalid because it had not been submitted to the city planning and zoning commission for examination and recommendation prior to consideration by the city council, as required by the city charter);
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> — *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801, 806 (1992) (refusing, in a pre-election declaratory judgment action brought by the town and various taxpayers, to require the town to place a facially unconstitutional measure on the referendum ballot);
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> — *Dixon v. Provo City Council*, 12 Utah 2d 134, 363 P.2d 1115, 1116 (1961) (refusing to compel election authorities to place the ordinance on the ballot because the proposal which called for the election of "three commissioners and an auditor" was facially invalid in light of a generally applicable state statute vesting the authority of municipal government "'in a board of commissioners, consisting of a mayor and two commissioners, to be elected at large'").

City of Memphis v. Shelby Cty. Election Comm'n, 146 S.W.3d 531, 538–40 (Tenn. 2004).

Another aspect of a defective ballot identified by the Tennessee Supreme Court in *City of Memphis*, citing with approval to James D. Gordon III & David B. Magleby, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L. Rev. 298, 314 (1989) (hereinafter "*Pre-Election Judicial Review*"), and *Burnell v. City of Morgantown*, 558 S.E.2d 306, 314 (2001), is where the referendum intrudes into an area or subject that the local government does not have authority over. So, in this case, where this Court found above that the Proposed Act seeks to enact measures for Davidson County that contradict state law or intrude into areas the Legislature has reserved for state law, this is

an example of defective form because the subject matter of the referendum exceeds the power of the Metro Charter.

> The second type of challenge to ballot proposals alleges a failure to meet the procedural requirements to qualify the measure for an election. These requirements, imposed by state constitutional provisions or statutes, include the minimum number of qualified signatures, the form of the petition and its title and summary, and the timeliness of filing the petition with the government.
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> The third type of challenge asserts that the ballot measure does not fall within a proper subject matter for direct legislation. Restrictions on the scope of initiatives and referendums are common. Most states require that the measure must propose a constitutional amendment, statute, or ordinance, although some also permit advisory measures. Many states require that a measure may not encompass more than a single subject, which requirement helps avoid confusion and logrolling. Many states also provide that a measure may not apply to certain topics, such as appropriations, administrative matters, the court system, zoning, and other subjects.
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> ****
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> For both procedural and subject matter requirements, the factual controversy—whether these requirements are met—exists before the election. In general, post-election events will not sharpen the issues, and no additional facts are needed for the decision. No contingencies make the issue speculative, hypothetical, or abstract, and no advisory opinion on the substantive validity of the measure is involved. Furthermore, the doctrine of avoiding constitutional questions unless necessary is not violated: the only constitutional issues involved are those specifically governing the proponents' right to invoke the direct legislation process. Determination of these questions before the election is necessary because the basis of the challenge is that the proponents are not entitled to invoke the process and thereby cause the expenditure of public funds. If the election is permitted, the very injury complained of will occur.

James D. Gordon III, *Pre-Election Judicial Review of Initiatives & Referendums*, 64 Notre Dame L. Rev. 298, 302–03; 314 (1989) (footnote omitted).

The *Burnell* opinion, cited with approval by the Tennessee Supreme Court in *City of Memphis*, also enlightens that this defect in form of an excessive subject matter need not be contained in the provision creating the right to a referendum as "that requirement would elevate form over substance." *Id.* at 313. *See also Pre-Election Judicial Review*, 64 Notre Dame L. Rev. at 316 (same).

Since the Tennessee Supreme Court cited *Burnell* and the Notre Dame Law Review with approval in ruling on defects of form and facial unconstitutionality in pre-election ballot challenges, this Court has applied those legal authorities to this case.

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. Finally, as developed below, severability, *i.e.*, removing defective provisions and leaving the remainder for placement on the ballot, is not an option in this case.

Application of Tennessee Law to the Facts of this Case

Taking the above law on the requirements for ballots in Tennessee, the Court applies it to the Proposed Act in this case. The Court begins with the Proposed Act in general and then examines separately each of the five provisions. This analysis ends with the conclusion that none of the provisions of the Proposed Act can be severed or removed in any attempt to cure its defects.

The Proposed Act's Wording and Format

Relevant to this analysis are the above principles of Tennessee ballot law concerning the freedom and purity of the ballot, separation of campaign materials or solicitations from the ballot, and that the content of the ballot must convey a reasonable certainty of meaning and be free from misleading and amplification so that a voter can intelligently cast a vote for or against the proposal with full knowledge of the consequence of the vote.

The Proposed Act violates these principles in the following ways.

— The Proposed Act contains marketing, promotional content rather than amendatory language. Each provision of the Proposed Act contains a "check box" signifying approval of the provision. Headings used in the Proposed Act—the "No Give-away of Our Parks, Greenways, or Public Lands"; "Failed Promises"; "fiscal insanity"; "nonsense" etc. are marketing sound bites and/or improper catch phrases.

— While the Proposed Act appears to affect multiple parts of the Metropolitan Charter, it fails to identify what portion or portions of the Charter are intended to be amended or repealed. The Proposed Act's provisions could fall within any number of Metropolitan Charter sections: property taxes in Article 6 of the Charter; bond issues in Article 7; and Parks in Article 11, chapter 10, and sections within those. The Proposed Act will create undisclosed conflicts with other Charter provisions.

— The Proposed Act fails to define the scope and meaning of key terms essential to voters' understanding and the intelligent casting of votes. For example, the language of the "Issuance of Bonds" provision does not define the scope of debt instruments

used by the Metropolitan Government that would fall within the term "bonds." It does not define "Charter protected facilities," a term that otherwise does not appear in the Metropolitan Charter or Code. And it excludes from its requirements bonds related to "construction of educational classrooms" without clarifying whether construction of educational facilities other than classrooms—such as gymnasiums and other sports facilities, auditoriums, administrative offices, parking and landscaping—is also excluded.

The language in the "Metro's Records" provision is similarly confusing. It applies to "[p]ublic instrumentalities under Title 7" but does not identify where "Title 7" is found (the Metropolitan Charter utilizes an "Article/Chapter" nomenclature). The provision states that such entities would be barred from receiving public funds but does not specify whether the loss of funding is perpetual or limited in time.

Other provisions in the Proposed Act also fail to define essential terms such as "transfers of interest," "facilities," "related commercial development," and "revert to the people."

In addition to these overall defects in form of the Proposed Act, the Court finds below that each one of the five provisions contained in the Proposed Act, individually, are defective in form and/or are facially unconstitutional.

1. *Property Tax Provision*

The "Property Tax Rates" provision of the Proposed Act states,

☑ **Property Tax Rates.** Property Tax Rates shall not increase more than 2% per year after January 1, 2020, without a voter referendum.

There are two defects of this provision. The first is an obvious, common sensical one—the tax rate set for a fiscal year on which the City's budget is fixed cannot be changed mid-year because of the annual balanced budget required by the State for local governments.

Tennessee Code Annotated section 9-21-403 requires local governments to submit an annual budget "in order that the current receipts of the local government shall be

sufficient to meet current expectations," This section further requires the governing body, in this case the Metro Council, using the budget as an estimate, to pass an appropriation resolution and "immediately," upon the passage of the appropriation resolution, "pass a resolution levying upon all property subject to taxation, a tax rate sufficient to produce the sum necessary to balance the budget upon a cash basis." Tennessee Code Annotated section 67-5-510 provides that it is the duty of local governments "to fix" the annual tax rates. In addition, section 6.06 of the Metro Charter requires adoption of an operating budget by the Metro Council for the ensuing year that "shall be effective for the fiscal year beginning on the following July 1st."

All of these provisions establish that at the outset of the fiscal year the local tax rate is fixed – set for that year – to fund and meet the needs for a balanced local budget required by state law, Tennessee Code Annotated section 9-21-403(b)-(c), and the Metro charter sections 6.03, 6.06 and 6.07.

The proof at trial established from Trial Exhibit 33 that in June 2020, the Metropolitan Council passed substitute ordinance BL2020-287, which established the property tax levy for the 2020-21 fiscal year that began July 1, 2020. The total levy for the general services district was set at $3.788 per $100 and $4.221[4] per $100 for the urban services district, an increase of more than 2% from the previous year. On June 17, 2020, the Mayor signed the ordinance into law, establishing the 2020-21 fiscal year tax levy. The tax rates resulting from that levy became effective July 1, 2020. The property taxes

[4] This amount reflects the combined rate for the general services district and the additional levy for property in the urban services district.

become due and payable in October 2020 when tax bills with those duly-enacted tax rates were sent to taxpayers.

In contradiction of the 2020-21 budget and tax ordinance, the Proposed Act provides that property tax rates can not increase more than 2% per year "**after January 1, 2020**" without a voter referendum. As found above, the evidence at trial was the tax levy by the Council approved by the Mayor in July of 2020 – after the Proposed Act, if passed, would take effect – is more than a 2% increase. Moreover, the Proposed Act, if passed, goes into effect immediately. The immediate effect if adopted of the Proposed Act is that it would cause the Metropolitan Government to lose at least $332,000,000 in budgeted property tax revenue for the current fiscal year. *See* Trial Exhibit 32. This lost revenue will cause the Metropolitan Government's budget to be unbalanced on its face in violation of state and local law. *See* TENN. CODE ANN. §9-21-403(b), (c) (requiring a balanced budget);Metropolitan Charter §§ 6.03, 6.06, 6.07 (same).

Thus, the property tax provision of the Proposed Act, which would alter the tax rate mid-fiscal year, exceeds the power of the Metro Charter. The Metro Council has no authority to revise tax rates for the current fiscal year after the taxes for that fiscal year become due. Legislative bodies have a duty "to fix the tax rates on all properties within their respective jurisdictions for all county purposes" "on the first Monday in July, or as soon thereafter as practicable." TENN. CODE ANN. § 67-5-510. As a general rule, county, school, and all property taxes are "due and payable on the first Monday in October of each year." *Id.* § 67-1-702(a), -701(a). Unpaid property taxes become delinquent on March 1.

Id. § 67-5-2010(a)(1).

Construing these statutes collectively, the Tennessee Attorney General has opined that a "county legislative body lacked the authority to alter the county's property tax rates in mid-fiscal year." Tenn. Op. Atty. Gen. No. 04-149, 2004 WL 2326706 (Oct. 1, 2004); *see also* Tenn. Op. Atty. Gen. No. 92-3, 1992 WL 544978 (Jan. 14, 1992). A county may only alter its tax rate before the first Monday in October; allowing it to do otherwise could lead to the "untenable result" of taxes becoming delinquent as soon as they are levied. Tenn. Op. Atty. Gen. No. 92-3, 1992 WL 544978, at *3.

That the Metro Council does not have the authority under law to change/repeal the tax rate mid-year, a referendum vote is similarly unlawful. "An electorate has no greater power to legislate than the municipality itself." *Town of Hilton Head Island v. Coal. of Expressway Opponents*, 415 S.E.2d 801, 805 (1992) (citing *City & Cty. of San Francisco v. Patterson*, 202 Cal. App. 3d 95 (Cal. Ct. App. 1988)); *City of Hitchcock v. Longmire*, 572 S.W.2d 122, 127 (Tex. Civ. App. 1978) ("There can be no right or power existing in the people of a city to adopt an ordinance through the initiative process if the power to adopt it is not lodged in the city council in the first instance."). The Proposed Act seeks to use the referendum process as a legislative tool to retroactively repeal the tax increase mid-fiscal year to accomplish what the Metropolitan Government could not do. Thus, the Proposed Act involves a subject matter beyond the scope of referendum power, and, therefore, it is defective in form.

The second defect of the property tax provision of the Proposed Act is another subject matter beyond the scope of the referendum power of local governments under state law and the Metro Charter. The only referendum power under the Metro Charter is to amend the Charter. But the Proposed Act identifies no section(s) of the Metro Charter it seeks to amend and in fact states that it seeks to repeal the property tax increase passed by the Metro Council. That increase was adopted by an ordinance of the Metro Council. It did not involve an amendment to the Metro Charter. Thus, the limited power under the Metro Charter to amend it by referendum is not triggered in this case because the tax increase was an ordinance by the Metro Council not a provision of the Metro Charter. The invalidity, then, is that a local government cannot legislate by referendum petition absent express authority. *See McPherson v. Everett*, 594 S.W.2d 677, 680 (Tenn. 1980) ("The right to hold an election does not exist absent an express grant of power by the legislature."). The Tennessee Supreme Court has defined "legislative authority" as "the authority to make, order, and repeal law." *McClay v. Airport Mgm't Servs., LLC*, 596 S.W.3d 686, 694 (Tenn. 2020). The power of direct legislation by initiative and referendum is only permissible when consistent with the Tennessee Constitution and statutory authority. *See* Eugene McQuillin, The Law of Municipal Corporations § 16:48 (3d ed.) (citing *Bean v. City of Knoxville*, 175 S.W.2d 954 (Tenn. 1943)).

There is no delegation of legislative authority in the Metro Charter or in state law that would allow the referendum process in Section 19.01 of the Metro Charter to repeal

an existing ordinance. Significantly, the Proposed Act seeks to legislate a repeal of a previously enacted ordinance, not empower future repeals.

While the Tennessee Constitution makes clear that all governmental power is derived from the people, it "contains no reservation to the people of the powers of initiative or referendum." *Vincent v. State*, No. 01A-01-9510-CH-00482, 1996 WL 187573, at *3 (Tenn. Ct. App. Apr. 19, 1996).

> While some states, *e.g.* Colorado and Arizona, have provided for referendum in their state constitutions, Tennessee has not done so. As we noted in *Vincent v. State,* No. 01A–01–9510–CH–00482, 1996 WL 187573 at *3 (Tenn. Ct. App. M.S., filed April 19, 1996), "[t]he Constitution of Tennessee conveys to the three designated departments all governmental power of the state. It contains no reservation to the people of the powers of initiative or referendum." And we do not agree that either the cited Petition Clause of the Tennessee Constitution or its federal counterpart pertain to a petition to initiate a referendum. Tennessee courts have recognized that Article I, § 23 of the state constitution serves to protect the citizen's rights "to '*instruct* 'representatives [and] to '*apply* ' to officials." *Vincent,* at *2 (emphasis added), and the U.S. Supreme Court has construed the Petition Clause of the federal constitution as a guaranty "that people 'may communicate their will' through direct petitions to the legislature and government officials." *McDonald v. Smith,* 472 U .S. 479, 482 (1976). That the rights of a citizen to appeal to the government for redress are not the rights at issue in the procedure to initiate a referendum was recognized by the Eleventh Circuit in *Biddulph v. Mortham,* 89 F.3d 1491 (11th Cir.1997):
>
> > After all, in the initiative process people do not seek to make wishes known to government representatives but instead to enact change by bypassing their representatives altogether. We are aware of no case that has held that state initiative regulations implicate the "right to petition the government for redress of grievances." Moreover, scholarship on the issue explains that state initiative processes do not involve the sort of petitioning that is guaranteed by the Petition Clause.
> > *Id.* at 1497.

State ex rel. Potter v. Harris, No. E200700806COAR3CV, 2008 WL 3067187, at *9–10

(Tenn. Ct. App. Aug. 4, 2008). Similarly, the General Assembly has not authorized broad powers of initiative or referendum at the state or local level but instead authorized the use of a referendum in only a handful of discrete subject areas with particularized requirements. *See, e.g.*, TENN. CODE ANN. § 57-3-101 (liquor retail sales); *id.* § 6-51-104 (annexation); *id.* § 67-6-706 (local sales tax); *id.* § 9-21-208 (general obligation bonds); *id.* § 7-86-104 (E911 districts).

The Plaintiffs' referendum right to have a vote on the Proposed Act derives from a combination of a state statute, Tennessee Code Annotated section 7-2-108(a)(20), and section 19.01 of the Metro Charter. The state law, section 7-2-108(a), leaves it to local governments to decide how their charters should be amended, and then section 19.01 of the Metro Charter provides, as one option to amend the Charter, the referendum process, where a set number of voters can petition to amend the Charter. Thus, state law, Tennessee Code Annotated section 7-2-108(a)(20), and section 19.01 of the Metro Charter limit referendums, such as the one in this case, to amendments to the Metro Charter. State law does not allow new laws to be enacted, that repeal existing law, by a voters' referendum. New laws that repeal existing law, can only be enacted in Tennessee by a legislative body such as the Tennessee Legislature or Metro Council. The Proposed Act quoted above cites to no specific section(s) of the Metro Charter the Proposed Act seeks to amend, even though the Proposed Act states it is an amendment to the Charter. As noted, the drafter's preamble circulated to voters on the Petitions stated that the Proposed Act sought to "repeal" certain laws.

The Proposed Act states that the "Property Tax Rates" provision would "**REPEAL the 34% Property Tax Increase**" and "**REPEAL THE 34% Property Tax Increase NOW**." Based on the language in the Proposed Act and the retroactive effective date, the intent and effect of the Proposed Act is to repeal BL2020-287.

Thus, the "Property Tax Rate" provision in the Proposed Act improperly uses the referendum process to legislate by repealing a duly-enacted ordinance. In so doing, the Proposed Act involves subject matter beyond the scope of referendum power under the Metropolitan Charter and state law.

The property tax provision in the Proposed Act is therefore defective in form in seeking to alter the tax rate in the middle of the fiscal year in violation of state law and in seeking to repeal by referendum an ordinance of the Metro Council, a process not permitted by state law.

2. *No Give-away Provision*

The Tennessee Constitution states that "no retrospective law, or law impairing the obligations of contracts, shall be made." TENN. CONST., art. 1, § 20. 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). "A 'vested right,' although difficult to

define with precision, is one 'which it is proper for the state to recognize and protect and of which [an] individual could not be deprived arbitrarily without injustice.'" *Doe*, 2 S.W.3d at 923.

The "No Give-away of Our Parks, Greenways, or Public Lands" provision of the Proposed Act states,

> ☑ **No Give-away of Our Parks, Greenways, or Public Lands.** 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. Transfer 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 transfer of interest in real properties valued over $5,000,000.00 and for leases exceeding twenty (20) years, commencing after January 1, 2020.

This provision, which requires a voter referendum for all transfers of interest in real properties valued over $5,000,000 and for leases exceeding 20 years, commencing after January 1, 2020, violates Article 1, section 20 of the Tennessee Constitution. For example, Trial Exhibit 39 established that in September 2020, the Metropolitan Council approved Ordinance No. BL2019-11, authorizing a lease agreement between the Metropolitan Government (through the Metropolitan Board of Public Education) and Belmont University. The lease agreement has a 30 year-term and involves construction of athletic facilities. The "No Give-away" provision of the Proposed Act would impair this existing lease agreement by attaching to it the new burden of a voter referendum approval requirement.

Thus, this provision of the Proposed Act on its face impairs the obligations of existing contracts by attaching a new requirement of voter approval to transactions

consummated before the Metro Charter referendum date. This proposed charter provision is a retrospective law that facially violates the Tennessee Constitution.

3. *Issuance of Bonds*

The "Issuance of Bonds" provision of the Proposed Act states,

> ☑ **Issuance of Bonds.** 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.

This provision is both defective in form by violating state law that preempts this area and is a facially unconstitutional violation of Article I, section 21, the impairment of contract section of the Tennessee Constitution.

As to the first ground of defective form, the Metropolitan Government issues general obligation and revenue bonds under the authority of the Local Government Public Obligations Act of 1986 (the "LGPOA"), Tenn. Code Ann. § 9-21-101, *et seq.*[5] By its plain terms, the LGPOA's provisions "prevail" over any conflicting law with respect to all bonds issued under the LGPOA. *Id.* § 9-21-124(a). Thus, bonds may be issued under the LGPOA "without regard to the requirements, restrictions or procedural provisions contained in any other law or any home rule charter." *Id.* Because the "Issuance of Bonds" in the Proposed Act conflicts with the LGPOA as described below, it would be preempted if adopted.

[5] The Metropolitan Government's Sports Authority, which is incorporated pursuant to Tenn. Code Ann. § 7-67-101, *et. seq.*, also issues bonds in accordance with the LGPOA. *Id.* § 7-67-109(15).

The LGPOA specifies the circumstances under which a public referendum can be held to approve general obligation and revenue bonds. *Id*. § 9-21-201(a)(1). Under the LGPOA, the public can demand a referendum on a particular general obligation bond issuance only after the local governing body's adoption of an initial resolution to issue the bonds, publication of notice of the resolution, and timely filing of a petition signed by at least 10% of registered voters to be taxed for the bonds. *Id*. §§ 9-21-205, -206. The LGPOA does not allow referendums if the bonds are revenue bonds, such as bonds issued to fund water works or sewerage projects, or if the local governing body determines that an emergency requires the bond issuance. *Id*. §§ 9-21-207, -301, *et seq.*

The "Issuance of Bonds" provision in the Proposed Act violates the LGPOA's requirements for bond referendums in all of these respects. First, contrary to the LGPOA, the proposed "Issuance of Bonds" provision would automatically trigger a referendum for nearly all of the Metropolitan Government's bond issues for projects exceeding $15,000,000. In other words, the Proposed Act seeks to preempt LGPOA petition requirements for all future bond issuances and is thus defective in form. Second, the Petition was signed by only 10% of the registered voters in the previous general election—not 10% of the total number of registered voters to be taxed for the bonds as the LGPOA requires. There were 429,936 registered voters in Davidson County on August 26, 2020, when the 4GG Petition was filed, leaving the Petition with less than half of the signatures required by the LGPOA.[6] The evidence at trial established that the Petitions for the

[6] Plaintiffs' Counsel conceded during the trial that their Petition did not have enough signatures required under the LGPOA to validly have this provision placed on the ballot for a referendum election. For this

Proposed Act had 20,032 signatures when filed. Additionally, the "Issuance of Bonds" provision would apply to revenue and emergency bonds, even though they are explicitly exempt from referendums under the LGPOA.

For example, as proven by Trial Exhibit 35, on March 17, 2020, the Metropolitan Council adopted Resolution No. RS2020-215 (the "Resolution") authorizing the issuance of up to $330,000,000 in Water and Sewer Revenue Bonds. Pursuant to the Resolution, on April 8, 2020, the Metropolitan Government issued $215,015,000 in principal amount of Water and Sewer Revenue Bonds (the "2020 Bonds") pursuant to the terms and conditions of a Bond Purchase Agreement dated as of April 2, 2020, between the Metropolitan Government and the underwriters of the 2020 Bonds. Even though the 2020 Bonds are exempt from referendum under the LGPOA, the Proposed Act would automatically subject the 2020 Bonds to a referendum because the bonds exceed $15,000,000 for a specific project and were issued after January 1, 2020.

Accordingly, the Court finds that the "Issuance of Bonds" provision in the Proposed Act involves a subject matter beyond the scope of referendum power and thus constitutes a defect in form.

This provision is also invalid because it impairs contract rights in violation of the Tennessee Constitution. The "Issuance of Bonds" provision of the Proposed Act requires that "[a]ll bonds issued or guaranteed after January 1, 2020, exceeding $15,000,000.00 for a specific project (excluding construction of educational classrooms, public libraries,

reason alone, the provision of the Proposed Act on the Issuance of Bonds is defective in form for lack of the required number of signatures under Tennessee law to be placed on the ballot.

public healthcare buildings, and police and fire stations, and Charter protected facilities) must be approved by voter referendum." This provision of the Proposed Act on its face would unconstitutionally impair contractual rights relating to several of Metropolitan Government's existing bond and other debt obligations.

The Metropolitan Government has outstanding general obligation and water and sewer bond anticipation notes. *See* Trial Exhibit 36. These are short-term notes that the noteholders expect to be retired by a date certain with the issuance of long-term general obligation or water and sewer revenue bonds. These short-term notes are issued after the Metropolitan Government adopts an initial resolution, publishes any statutorily required notice, and waits for the 20-day protest-by-referendum period to expire.

Like bond resolutions, the bond anticipation note resolutions constitute contractual relationships with the noteholders who have relied on the resolutions as a representation that the Metropolitan Government satisfied all voter protest requirements before issuing the notes. But the Proposed Act purports to mandate a vote on the bonds needed to retire the outstanding bond anticipation notes. The contractual right, which vested with the note resolution approval, to receive payment at maturity from the proceeds of the bond issue is at risk of voter disapproval. Thus, the Proposed Act attaches "a new disability in respect of transactions . . . already passed," which violates the constitutional prohibition against impairment of contracts. *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999).

Finally, as described above, the Metropolitan Government has issued its Series 2020A and 2020B Water and Sewer Revenue Bonds for more than $15,000,000 for a single

project. *See* Trial Exhibit 35. When issued, these bonds were valid, did not require a voter referendum, and created a vested right of repayment for the bondholders. The Proposed Act would call into question the validity of these bonds as well as impair the vested rights of the bondholders.[7]

Thus, in addition to being defective in form, the "Issuance of Bonds" provision of the Proposed Act facially violates Article I, section 20 of the Tennessee Constitution prohibiting impairment of contracts.

4. Failed Promises

The "Failed Promises" provision of the Proposed Act states,

> ☑ **Failed Promises.** 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.

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. Under Tennessee law, eminent domain is to be used sparingly, and the laws of

[7] The limitation on the Metropolitan Council's taxing authority under the "Property Tax Rates" provision also would impair the vested rights of holders of the Metropolitan Government's outstanding general obligation bonds. The Metropolitan Government issued these bonds pursuant to bond resolutions adopted by the Metropolitan Council. These resolutions constitute contractual relationships with the bondholders. The Metropolitan Government pledged to bondholders that it will adopt annual tax levies sufficient to pay the interest and principal on the bonds, as Tenn. Code Ann.§ 9-21-215 requires. 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.

eminent domain are to be "narrowly construed so as not to enlarge, by inference or inadvertently, the power of eminent domain." TENN. CODE ANN. § 29-17-101 (West 2020).

Nashville's four professional sports teams—the NHL Hockey Club, the NFL Football Team, the Minor League Baseball Team, and the MLS Soccer Club—have lease interests in the sports facilities in which their teams play, as well as property interests in related commercial endeavors in the area. *See* Trial Exhibit 37. If the "Failed Promises" provision is triggered by a team's departure or the games-played provision, then two actions will happen: 1) "all facilities and related commercial development will revert to the people," and 2) "all related contracts shall be terminated, including land leased from the Nashville Fairgrounds." Although the Proposed Act's meaning is vague and confusing because it fails to define key terms such as "facilities," "related commercial development," and "revert to the people," even under a narrow reading of these undefined terms, the provision will result in taking property without just compensation.

Specifically, if a team fails to meet its 24-month requirement, the team will lose its lease interests in the facilities and related private commercial developments without compensation. And even if the word "revert" in the provision means that only property that initially belonged to the Metropolitan Government would be taken if one of the triggers is met, private entities will still lose property interests and related benefits under the provision. Because the "Failed Promises" provision does not require a just-compensation process, it violates the Tennessee Constitution's takings clause, and is a defective referendum on the grounds that it is facially unconstitutional.

5. Metro's Records Shall be Open to the Public

The "Metro's Records Shall Be Open to the Public" provision in the Proposed Act states,

> ☑ **Metro's Records Shall Be Open to the Public.** 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.

Assuming that the provision refers to Title 7 of Tennessee Code Annotated, entitled "Consolidated Governments and Local Governmental Functions and Entities," two Title 7 public entities have been created within the Metropolitan Government that receive more than $250,000 per year in funding: the Metropolitan Hospital Authority (Chapter 57) and the Metropolitan Sports Authority (Chapter 67).

The Tennessee Public Records Act (the "TPRA") applies to "governmental entities," defined as "the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee." TENN. CODE ANN. §§ 10-7-503, -504(a)(16)(A)(i). The consequences of disregarding or denying in bad faith a request for public records are set forth in the TPRA:

> If the court finds that the governmental entity, or agent thereof, refusing to disclose a record, knew that such record was public and willfully refused to disclose it, such court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the nondisclosing governmental entity. In determining whether the action was willful, the court may consider any guidance provided to the

> records custodian by the office of open records counsel as created in title 8, chapter 4.

TENN. CODE ANN. § 10-7-505(g).

The Proposed Act seeks to impose penalties above and beyond those authorized by the TPRA which only allows the assessment of reasonable costs in obtaining a public record when a court determines the governmental entity's refusal was willful. In contrast, the Proposed Act assesses new and significant penalties—treble damages and a bar on public funding—for any refusal to provide public records subject to the TPRA, whether in good faith or not.

As instrumentalities of the Metropolitan Government, both the Hospital Authority and the Sports Authority are already subject to the TPRA. *Allen v. Day*, 213 S.W.3d 244, 257-58 (noting that the Sports Authority is an agency or instrumentality of the Metropolitan Government in holding Authority's private contractor subject to TPRA); TENN. CODE ANN. § 7-57-102(b) (Hospital Authorities are "public and governmental bodies acting as agencies and instrumentalities of the creating and participating municipalities"); *see also* Tenn. Op. Atty. Gen. No. 96-011, 1996 WL 56175 (Feb. 6, 1996) (noting that a Sports Authority is a governmental agency within the meaning of the TPRA).

By seeking to expand the TPRA's scope and penalties as applied to certain Metropolitan Government entities, the Proposed Act impermissibly usurps the General Assembly's authority to determine when and to what extent sovereign immunity is waived. The Tennessee Constitution unequivocally states that "[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct." TENN.

CONST., art. I, § 17. There is no provision in the State Constitution for a local municipality by ordinance or referendum to authorize additional recovery against instrumentalities of a local government.

Article I, section 17 of the Tennessee Constitution has been interpreted as a grant of sovereign immunity to the State, and, accordingly, no suit against the State may be sustained absent express authorization from the Legislature. *E.g.*, *Coffman v. City of Pulaski*, 422 S.W.2d 429 (Tenn. 1967). Even where authorization exists, suits may be brought only in those courts and under those conditions specified by the Legislature. *See Long v. City of Knoxville*, 467 S.W.2d 309 (Tenn. Ct. App. 1971). Such unalterable conditions would include time limits for filing suit and damage limitation. *Crowe v. John W. Harton Mem. Hosp.*, 579 S.W.2d 888, 890 (Tenn. Ct. App. 1979).

Accordingly, only the General Assembly, and not the voters via referendum, authorizes suit against instrumentalities of the state. On its face, the Public Records provision of the Proposed Act violates the State's constitutional sovereignty and is thus facially unconstitutional.

If Any Provision of the Proposed Act is Invalid, Then the Entire Proposed Act Fails

At some point in the trial, Plaintiffs' Counsel suggested that defective portions of the Proposed Act could be deleted/severed/excised and the remainder could be submitted to the voters at a December 15, 2020 referendum election. As held above, all of the

provisions contain defects in form and/or are facially unconstitutional, but even so, if deletion of defects were possible, it is not an option in this case for several reasons of law.

In many respects the evidence at trial established that the Proposed Act was intended to be and was represented to those who signed the referendum Petitions as one unitary, comprehensive Act not intended to be changed by removing some of its parts. First, the Proposed Act's wording indicates that the intent is for the entire Proposed Act to be placed on the ballot. All seven versions of the Petition contain the following endorsement of the entire amendment, with minor variations: "Davidson County Voters by Petition *want this Charter Amendment submitted* to the citizens." (emphasis added). The Proposed Act's purpose as described in the Petition covers all of the amendment's provisions: the "Charter Amendment" should be adopted to fix the Metropolitan Government's "budgetary mismanagement and financial incompetence," to force the Metropolitan Government to "be more financially responsible," and to "rein in its spending, cut waste, and stop giving away our city, parks, and public lands for free."

In addition, the evidence at trial established that the attorney drafter of the Proposed Act stated to the Election Commission at its meeting on September 25, 2020, that the Proposed Act could not be severed.

> I've heard rumor that there's been some suggestion that this ballot initiative should be broken up into multiple parts.
>
> ****
>
> I want to be very clear to the Commission, that the language used on this ballot initiative was crafted over about a ten-year period and every word was chosen intentionally. It says "amendment" not "amendments" for a reason,

> and it was absolutely intentional. And it is our expectation, and I'm speaking on behalf of those 27,000 voters who signed these petitions, that it be placed on the ballot as written. It was done that way intentionally; it was not by accident.

Trial Exhibit 8, Election Comm'n Hrg. Tr. at 14:4-6; 18-25 – 15:1-2). The Plaintiffs' pleadings further concede this point. (Answer to Election Commission's Counter-Compl. ¶ 32 (admitting that "[t]he Petition does not contain a severability clause, and there is no other explicit or implicit indication that [the Petition's] sections are severable").

There also was the testimony of the Plaintiff' witness, former Metro Council person Duane Dominy, who testified he signed the Petition because of the provision limiting Metro's bond issuance. Yet, Plaintiffs' Counsel conceded the bond issuance provision is invalid. If it were to be removed from the Proposed Act, it follows that the intentions of persons, such as Duane Dominy, in signing the Petition is not being adhered to.

Thus, this evidence establishes that it would be pure speculation by the Election Commission or the Court in severing provisions to discern whether the signers of this Petition would have signed a different proposal that eliminated one or more defective parts of the Proposed Act.

This same legal principle of not permitting severability on election matters was recognized by the Tennessee Supreme Court in an analogous case. In *State ex rel. Brown v. Howell*, a petition was signed by 2,500 registered voters for the Davidson County Election Commission to put on a ballot the recall and removal of multiple election commissioners and other officials, including the Nashville mayor. 134 Tenn. 93, 183 S.W. 517 (1916). The circuit judge, concluding that certain officials on the petition were not

subject to recall and removal, ordered the commissioners of election to attach their certificate and to order a recall election only as to three of the individuals on the petition. *Id.* The Court of Civil Appeals reversed the circuit judge and dismissed the petition. *Id.*

On appeal, the Tennessee Supreme Court affirmed the Court of Civil Appeals, concluding that the recall petition could not be severed because the voters who signed the petition did so for the removal of all the officials jointly, not just a few of the officials who the circuit judge determined were eligible for a recall election.

> The petition signed by the voters was for the removal of all the officials jointly. By what means can we determine that the people would sign a recall as to one or a few, less than all of the officials? The petition was joint and proceeded against all.
>
> After a judicial inquiry by the courts under the Ouster Bill, Mayor Howse has been ousted from office, and Commissioner Elliott has been restored to office. Wilkerson has resigned. So, if we were to order the writ of mandamus, and the election should be held, it could only apply now to Elliott, the only remaining officer subject to removal. How may we know that these 2,500 voters who signed the joint petition for removal would now desire the removal of Elliott alone?
>
> This illustrates how improper it is to include a number of officials in one petition or proceeding for removal.
>
> The petition signed by the voters constitutes, so to speak, the pleading or indictment initiatory to remove an official. It should be directed against a single individual for the reason, first, as we think, that it is so contemplated by the act of the Legislature granting this remedy in the city charter. The act starts out with the provision that the mayor or any commissioner elected by the people under the terms and provisions of this act may be removed from such office by the qualified voters of the city. All the way through it grants authority to proceed against an officer sought to be removed, and nowhere indicates that the method may be proceeded with against a number of officials jointly. See Priv. Acts 1913, c. 22, § 32.
>
> The impropriety and injustice of proceeding against a number of persons in

> one petition is manifest. It is subject to objection on the ground that a voter, when presented with the petition, must judge as to the question of whether he shall ask for a removal of a number of men or else submit to the retention in office of all. He is not given the clear-cut right to pass on each individual and exercise his own individual judgment as to that particular person. The fact that the petition stated the same cause of removal against all does not cure it of this objection. The voter ought to have the right to judge singly against each officer if he so desires. The Legislature evidently so intended.

Id. at 518 (1916).

There also is analogous Tennessee case law on the legal doctrine of elision which 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").

Further, the Tennessee Supreme Court decision in *City of Memphis* cited two Missouri cases that discuss the doctrine of elision in a judicial referendum challenge. 146

S.W.3d at 540. Both cases emphasize the difficulty of determining the intent of petition signers for purposes of elision.

In *Missourians to Protect the Initiative Process v. Blunt*, the Missouri Supreme Court declined to sever provisions of a referendum initiative that had been removed from the ballot for violating the state constitution. 799 S.W.2d at 832. The court identified several factors that would make a provision severable: "whether the provision is essential to the efficacy of the amendment, whether it is a provision without which the amendment would be incomplete and unworkable, and whether the provision is one without which the voters would not have adopted the amendment." *Id*. Because the proposed amendment had more than one subject, the court concluded that it could neither determine which provisions the petition signers intended to support nor identify the provisions essential to the amendment's efficacy.

In *State ex rel. Hazelwood Yellow Ribbon Committee v. Klos*, the Missouri Court of Appeals declined to sever provisions of a proposed city charter amendment, despite the city charter providing that if any charter provision was held void, the validity of other provisions would not be affected. 35 S.W.3d at 470-71. The court explained that it would be "impossible" to determine what the amendment framers or petition signers intended "with respect to whether they considered the unconstitutional language to be essential to the efficacy of the amendment." *Id*. at 471.

Other courts have also declined to apply elision where a referendum measure was removed from the ballot because part of it was unconstitutional. *See In re Jackson Twp.*

Admin. Code, 97 A.3d 719, 725-28 (N.J. App. Div. 2014) (court declined to sever voter initiative, holding that it "cannot discern with any certainty which provisions of an initiative ordinance induced each voter to sign it. It is not the role of the courts to interfere with the legislative powers granted to [these] citizens . . . ."); *Bennett v. Drullard*, 149 P. 368, 370 (Cal. Ct. App. 1915) (redacting petition to remove invalid provisions "would be directing something to be placed on the ballot which the hundreds of voters did not petition for at all"), *cited with approval in Alexander v. Mitchell*, 260 P.2d 261, 268-69 (Cal. App. 1953).

In sum, the facts established at trial are that it was not the intent of the Proposed Act to be presented as less than all the provisions, and under Tennessee's doctrine of elision, as well as the analogous Tennessee law and multi-state case law discussed above, it would be impossible and not appropriate to sever out parts of the Proposed Act and present the remainder for a December 15, 2020 vote.

Ripeness and Standing

Ripeness

The foregoing defects in form and facial unconstitutionality of the Proposed Act make it ripe under Tennessee law for the Election Commission to seek a declaratory order from this Court prior to holding an election.

Tennessee courts have consistently held that it is appropriate for courts to resolve legal issues regarding the form and legality of a petition *before* holding the election. *City*

of Memphis v. Shelby Cnty. Election Comm'n, 146 S.W.3d 531, 538 (Tenn. 2004), (recognizing that "pre-election challenges to the form or facial constitutional validity of referendum measures are ripe for judicial scrutiny.") Some Tennessee cases state this in terms of a preference. *See, e.g.*, *Fraternal Order of Police v. Metro. Gov't of Nashville*, 582 S.W.3d 212, 217 (Tenn. Ct. App. 2019) (noting that challenges to what should be on the ballot should be brought before the election, "preferably in time for the issue to be resolved before the ballots have to be printed and before the start of absentee and early voting"); *Shelby Cnty. Election Comm'n v. Turner*, 755 S.W.2d 774, 777 (Tenn. 1988) (holding that election commission had standing to seek pre-election determination via declaratory judgment regarding whether to place candidate on ballot); *Brown v. State ex rel. Jubilee Shops, Inc.*, 426 S.W.2d 192, 193 (Tenn. 1968) (considering the form of a petition in a pre-election challenge); *see also* James D. Gordon III & David B. Magleby, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L. Rev. 298, 313 (1989) ("Courts generally permit pre-election review of challenges based on procedural or subject matter limitations.") (collecting cases).

As found above, there are numerous form and facial constitutional defects in the package of the five provisions which comprise the Proposed Act. Because, as found above, the defective parts cannot be dissected or excised from the Proposed Act, the entire Proposed Act is defective in form and facially unconstitutional. Under these circumstances Tennessee law provides that the case is ripe for the Election Commission to not place the Proposed Act on the ballot but may seek a ruling pre-election from a court on

the validity of the Proposed Act. For these reasons, the Plaintiffs' October 20, 2020 *Motion To Dismiss* the claims of the Election Commission and Metro as not ripe is denied.

In addition, as another, independent basis of ripeness for judicial review is that the Proposed Act in this case is self-executing. The Court in *City of Memphis* noted that pre-election challenges to substantive constitutionality "[g]enerally" are not ripe. 146 S.W.3d at 538. But it did so because there was a long chain of contingencies that had to occur before the privilege tax at issue would ever go into effect. *Id.* Not only would the referendum in the *City of Memphis* case have to pass, but by the requirements of the ordinance (1) the city would have to decide to adopt a privilege tax, (2) the city would have to seek approval from the General Assembly for the tax, and (3) the General Assembly would have to approve the tax. *Id.* In stating that substantive constitutional challenges to a referendum are held back until after the election, the Tennessee Supreme Court conditioned that as "generally" the case and for the reason noted that a substantive constitutional challenge was unlikely to be ripe as the chain of eventualities cited in the *City of Memphis* case demonstrate.

This case is very different. The parties do not dispute that the Proposed Act at issue here is entirely self-executing—there would be no required action on behalf of the City or the General Assembly if the Proposed Act passes.[8] Thus, the concern in *City of Memphis* that the referendum would never actually result in an unconstitutional law is absent here.

[8] Plaintiffs, the Election Commission, and the Metropolitan Government all agree to stipulated fact #18 which reads "[t]he proposed amendment is self-executing in that it would not require any additional action from the Metropolitan Government before it went into effect."

In fact, the Proposed Act contains a number of retroactive provisions. Consequently, not only would the provisions of the Proposed Act immediately go into effect, some aspects would have effects dating back to long before this case was filed.

This case, then, is much more akin to *Cummings v. Beeler*, 223 S.W.2d 913 (Tenn. 1949). In *Cummings*, the Tennessee Legislature passed an act that would require the Secretary of State to hold a special election. *Id.* at 915. Prior to the passage of the act, the State Attorney General published an opinion declaring similar legislation unconstitutional. *Id.* Instead of waiting for a post-election challenge, the Secretary of State filed a declaratory judgment to determine whether he was required to hold the election. *Id.* at 914. The Court found that the controversy was "real and not theoretical" because the act required the Secretary of State to "spend large sums of money in holding a special election." *Id.* at 915.

Importantly, the *Beeler* Court also ruled on the substantive constitutional merits of the underlying act. *Id.* at 916–24. In discussing whether the constitutional questions were premature, the Court noted that even though things may "come within [the Court's] view that are premature and contingent," the Court still could decide the constitutionality of the act. *Id.* at 918.

In the analysis above, the Court has determined that all of the provisions of the Proposed Act are defective in form and/or are facially unconstitutional. But even if some of the invalid provisions of the Proposed Act constituted substantive, as opposed to facial, invalidity, nevertheless, substantive invalidity of the Proposed Act allows for pre-election disposition of the matter under *Beeler* and *City of Memphis*. Because of the self-executing

nature of the Proposed Act, it does not fit into the "general" rule referred to in the *City of Memphis*. The self-executing aspect of the Proposed Act takes it outside the general rule making it akin to *Beeler*, and, this Court concludes, allows for a substantive law challenge to the validity of the Proposed Act to be made pre-election.

Further, persuasive to the Court is that reviewing the constitutional issues now is consistent with the approach adopted by courts in other states. *See, e.g., Carmony v. McKechnie*, 217 P.3d 818, 819–20 (Alaska 2009) (noting the general rule of not reviewing an initiative pre-election has an exception "where the initiative is challenged as clearly unconstitutional"); *Terry v. Bishop*, 158 P.3d 1067, 1070 n.7 (Okla. 2007) ("We will declare a ballot initiative invalid in advance of a vote of the people where there is clear or manifest showing of unconstitutionality."); 5 McQuillin Mun. Corp. § 16:68 (3d ed.) ("On the other hand, it has been ruled that, in a proceeding to compel submission to the electors, in accordance with initiative procedure, a court will look into the question whether, if approved by the voters, the measure would be valid and constitutional.") (collecting cases).

This also may be a situation akin to what one commentator calls the "circuit breaker" exception. Gordon, *Pre-Election Judicial Review*, 64 Notre Dame L. Rev. at 318. While the article's author believes pre-election review of a measure's substantive validity should generally be denied, the article acknowledges "there are extreme cases in which pre-election review of substantive validity should also be allowed." *Id.*; *see e.g., Legislature of California v. Deukmejian*, 669 P.2d 17, 20–21 (Cal. 1983) (reviewing the substantive constitutionality of a proposal pre-election because of the exorbitant cost and disruption

the measure would cause to the orderly conduct of an upcoming election). The general rule favoring post-election review because "no serious consequences will result" can and should give way based on the "dire consequences of delay." *Deukmejian*, 669 P.2d at 20–21. This is a case of dire consequences of delaying until post-election a decision on the legality of the provisions of the Proposed Act. Thus, when the self-executing aspect of the Proposed Act is applied to the foregoing law, the result is that this matter is ripe for pre-election court ruling on the validity of the Proposed Act.

Standing

There is also evidence from which the Court finds that both Metro and the Election Commission will sustain injury and immediate and irreparable harm if the Proposed Act is not reviewed by this Court pre-election. These findings furnish the essential elements for the issuance above of injunctive relief and another basis for denying Plaintiffs' October 20, 2020 *Motion To Dismiss* for lack of standing.

The first and most obvious hardship is the cost to conduct this election—estimated at $800,000—on an invalid measure. Relatedly, there are numerous administrative difficulties in putting on a large election, particularly one occurring barely a month after a historically large general election during the COVID-19 pandemic.

The Election Commission's hardships also include the inevitable legal problems that will occur should the referendum pass without pre-election judicial review. First, the language of the Proposed Act is not in the form of an amendment, so the Proposed Act will simply be added to the Metropolitan Charter, thereby creating internal conflicts in the

Charter itself. This could take years to sort out and, in the meantime, leave the Metropolitan Government (and its citizens) with an impossible-to-follow and contradictory charter. Second, the retroactive applications would immediately call into question the sales tax ordinance (Substitute Ordinance No. BL2020-287) and any bonds issued earlier this year. Citizens would thereby be confused regarding their tax obligations while the inevitable post-election litigation similarly prolongs the Metropolitan Government's uncertainty about its finances. Based on its role in putting on the election, the Election Commission will undoubtedly be pulled into all of these legal battles. But these are hardships that can be avoided by pre-election review.

Without question, the Metropolitan Government will sustain significant injury if the Proposed Act is placed on the ballot. The approximately $800,000 cost alone establishes standing. *See Cummings v. Beeler*, 223 S.W.2d 913, 915 (Tenn. 1949) (referendum presents "real controversy" where Secretary of State "required to spend large sums of money in holding a special election"); *see also Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 828 (Mo. 1990) (en banc) (citing "cost and energy expended relating to elections" in allowing pre-election review of referendum); *Dixon v. Provo City Council*, 363 P.2d 1115, 1116 (Utah 1961) (enjoining illegal referendum that would be "a waste of taxpayer time and money").

Allowing an election to proceed on a Proposed Act that will be void *ab initio* will also injure the Metropolitan Government by undermining public confidence in its electoral processes. *See Schmitt v. Husted*, 341 F. Supp. 3d 784, 791 (S.D. Ohio 2018) ("Repeated

votes on matters unlawful or unenforceable on their face could erode public confidence in the entire initiative or referendum process."); *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 415 S.E.2d 801, 805 (S.C. 1992) ("[I]f an initiated ordinance is facially defective in its entirety, it is 'wholly unjustified to allow voters to give their time, thought, and deliberation to the question of the desirability of the legislation as to which they are to cast their ballots, and thereafter, if their vote be in the affirmative, confront them with a judicial decree that their action was in vain . . . .") (quoting *Schultz v. City of Philadelphia*, 122 A.2d 279, 283 (Pa. 1956)); *Missourians to Protect the Initiative Process*, 799 S.W.2d at 828 (avoiding "public confusion" militates in favor of limited pre-election review of referendum).

Finally, the evidence at trial established that the Proposed Act will have an immediate negative and severe effect if adopted, causing the Metropolitan Government to lose at least $332,000,000 in budgeted property tax revenue for the current fiscal year. *See* Trial Exhibit 32. As found above, this lost revenue will cause the Metropolitan Government's budget to be unbalanced in violation of state and local law. *See* TENN. CODE ANN. §9-21-403(b), (c) (requiring a balanced budget);Metropolitan Charter §§ 6.03, 6.06, 6.07 (same). The Proposed Act would also have the immediate effect of putting the Metropolitan Government in breach of financial covenants, leases, and other agreements. The Proposed Act potential placement on the ballot threatens the Metropolitan Government's financial position, which is a real and palpable injury, and establishes Metro's standing in this case.

Conclusion

The clear and obvious ways that the Proposed Act violates Tennessee law authorize this Court to issue a pre-election declaratory judgment that the Davidson County Election Commission is not required to place the Proposed Act on the ballot nor conduct a referendum election, and that the Election Commission is enjoined from doing so.

Appeal

The foregoing ruling does not constitute a final order from which an appeal lies as a matter of right because there are additional claims in the Plaintiffs' *Complaint* that have not yet been litigated and have been reserved for further proceedings. In post-trial briefing, Counsel for Metro and the Election Commission requested and advised the Court that this ruling should not be made a final ruling pursuant to Tennessee Civil Procedure Rule 54.02, and the Court agrees. Accordingly, if any party seeks to appeal this matter, they must file a motion for an interlocutory appeal, as this is not a final order.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR

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