

**IN THE SUPREME COURT OF TENNESSEE,
AT NASHVILLE**

Ludye N. Wallace,	§	
	§	
<i>Petitioner,</i>	§	
	§	
v.	§	Appellate Case No: _____
	§	
Metropolitan Government of	§	
Nashville and Davidson County, and	§	Chancery Court No. 18-0254-I
	§	
Davidson County Election Commission,	§	Chancellor Claudia Bonnyman
	§	
<i>Respondents, and</i>	§	
	§	
David Hiland,	§	
	§	
<i>Proposed Intervenor-Petitioner.</i>	§	

**PETITIONER WALLACE’S EMERGENCY MOTION TO ASSUME
JURISDICTION PURSUANT TO TENNESSEE SUPREME COURT RULE 48
AND TENN. CODE ANN. § 16-3-201(d)**

Comes now Petitioner Ludye Wallace, by and through undersigned counsel, and respectfully moves this Court to assume jurisdiction over the instant action pursuant to Tennessee Supreme Court Rule 48 and Tenn. Code Ann. § 16-3-201(d). As grounds for this Motion, Mr. Wallace respectfully states as follows:

A. Tennessee Supreme Court Rule 48(a)(1) Statement

(i) Questions Presented for Review

This case involves a pure question of law regarding a matter of unusual public importance: When the Metropolitan Government of Nashville and Davidson County—Tennessee’s capital city and most populous municipality—must hold an election to fill a vacancy in the office of Mayor. Even more significantly, this case seeks to determine

whether the citizens of Nashville are entitled to have their government faithfully adhere to the text of a Charter provision that they collectively enacted with overwhelming support by popular referendum.

(ii) Statement of the Relevant Facts

It is undisputed that in August of 2007, the Respondents placed a proposed amendment to the Metro Charter on the ballot for approval by popular referendum.¹ In pertinent part, the Respondents summarized that proposed Charter amendment as follows: **“This amendment would require that a special election be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term.”**² The amendment was overwhelmingly approved by the voters, and it is now codified at Metro Charter § 15.03.³

It is similarly undisputed that on March 6, 2018, former Mayor Megan Barry resigned from her position as Mayor.⁴ Given that her term was not set to expire for approximately eighteen (18) months at the time of her resignation, there is no doubt that there were more than twelve months remaining in her unexpired term. Accordingly, in keeping with both the above-described Charter amendment and the straightforward text of Metro Charter § 15.01,⁵ the Petitioner contends that a special election is required. Of note, if a special election is indeed required, all Parties also agree that the election must

¹ See Attachment A-1 (alterations added for emphasis).

² *Id.*

³ See Attachment A-2.

⁴ Joey Garrison, Nate Rau and Anita Wadhvani, *Nashville Mayor Megan Barry resigns from office as part of guilty plea to felony theft charge*, THE TENNESSEAN (Mar. 6, 2018), <https://www.tennessean.com/story/news/2018/03/06/nashville-mayor-megan-barry-expected-resign-press-conference-tuesday-morning/398440002/>.

⁵ See Attachment A-3.

be held on either May 1, 2018 or between May 20, 2018 and May 25, 2018, and that holding an election on these dates still remains feasible as of the filing of this motion.

Taking an opposing view, the Respondents have declined to hold a special election to fill the vacancy created by former Mayor Barry's resignation. In defense of that position, the Respondents contend, *inter alia*, that the ballot summary of the Charter amendment that was approved by the voters was *inaccurate*. As such, they argue, it can properly be rejected, and they are not bound to follow it. *But see* Attachment A-4 ("Section 19.01 . . . requires to be set forth in the adoption resolution a brief description of each amendment so **worded so as to convey the meaning of said amendment**") (emphasis added). Thus, based on their acknowledged disregard of the ballot summary of the above-described Charter amendment—and based further on what the Petitioner contends is an erroneous reading of this Court's opinion in *State ex rel. Wise v. Judd*, 655 S.W.2d 952 (Tenn. 1983)—the Respondents have set Nashville's upcoming Mayoral election for August 2, 2018.

In an order issued by the Davidson County Chancery Court on March 14, 2018, the Chancellor issued an Order affirming the Respondents' position and dismissed the Petitioner's petition. That Order is the subject of this appeal.⁶

(iii) Petitioner's Need for an Expedited Decision

In case after case, this Court has determined that the proper interpretation of the Metro Charter is sufficiently important to merit this Court's review. *See, e.g., The Metro. Gov't of Nashville v. The Bd. of Zoning Appeals of Nashville*, 477 S.W.3d 750 (Tenn. 2015); *Renteria-Villegas v. Metro. Gov't of Nashville & Davidson Cty.*, 382 S.W.3d 318

⁶ Pursuant to Tennessee Supreme Court Rule 48(a)(2), the Trial Court's bench ruling is attached hereto as **Exhibit A**.

(Tenn. 2012); *Gray's Disposal Co. v. Metro. Gov't of Nashville*, 318 S.W.3d 342 (Tenn. 2010); *Amos v. Metro. Gov't Of Nashville And Davidson Cty.*, 259 S.W.3d 705 (Tenn. 2008); *State ex rel. Metro. Gov't of Nashville & Davidson Cty. v. Spicewood Creek Watershed Dist.*, 848 S.W.2d 60 (Tenn. 1993); *State ex rel. Wise v. Judd*, 655 S.W.2d 952 (Tenn. 1983); *Metro. Gov't of Nashville & Davidson Cty. v. Allen*, 529 S.W.2d 699 (Tenn. 1975); *Winter v. Allen*, 212 Tenn. 84, 367 S.W.2d 785 (1963).

This case seeks to determine both when the election for Nashville's most important office must be held and whether the text of a popularly-enacted Charter amendment must be respected. Accordingly, the Charter provision at issue here is arguably more important than any of the provisions that this Court has previously reviewed in the above-cited cases. Critically, however, unless this Court assumes jurisdiction over this case immediately, review in this Court will be impossible. Specifically, given that a May 2018 election will be required if the Petitioner's position prevails, this Court's emergency review of the instant case is essential; without it, the relief that the Petitioner seeks will become infeasible, and this action will become moot long before this Court can adjudicate it under Tennessee Supreme Court Rule 11.

B. Statement of the Reasons for Assuming Jurisdiction

i. This Court's "reach-down" jurisdiction under Tenn. Code Ann. § 16-3-201(d)(2)(B).

Under limited circumstances, the General Assembly has vested this Court with authority to "reach down" and assume jurisdiction over an undecided case in which a notice of appeal has been filed.⁷ See Tenn. Code Ann. § 16-3-201(d)(1) ("The supreme court may, upon the motion of any party, assume jurisdiction over an undecided case in

⁷ A copy of the Petitioner's Notice of Appeal, filed in the Court of Appeals, is attached hereto as **Exhibit B**.

which a notice of appeal or an application for interlocutory or extraordinary appeal is filed before any intermediate state appellate court.”). The exercise of such jurisdiction is limited to “cases of unusual public importance in which there is a special need for expedited decision and that involve:

(A) State taxes;

(B) The right to hold or retain public office; or

(C) Issues of constitutional law.”

Tenn. Code Ann. § 16-3-201(d)(2) (emphasis added).

Given its subject matter, this case qualifies for the exercise of this Court’s reach-down jurisdiction under Tenn. Code Ann. § 16-3-201(d)(2)(B). The subject matter of this case is unusually important and involves the right to hold or retain public office. *See id.* Here, the Petitioner submits that he has a right to stand for election and to hold public office beginning in May 2018, while the Respondents contend that he must wait until August of 2018. Similarly, this case seeks to determine whether—based on a Charter amendment enacted with overwhelming support by popular referendum—Nashville’s acting Mayor may lawfully retain office after May 2018, or whether a special election to fill the vacancy must instead be held immediately. *Id.*

ii. This Court’s “Reach Down” Jurisdiction under Tenn. Code Ann. § 16-3-201(d)(3).

In addition to the specified subject matter set forth in Tenn. Code Ann. § 16-3-201(d)(2), Tenn. Code Ann. § 16-3-201(d)(3) provides further that:

The supreme court may, upon its own motion, when there is a compelling public interest, assume jurisdiction over an undecided case in which a notice of appeal or an application for interlocutory or extraordinary appeal is filed with an intermediate state appellate court.

Id.

For the reasons previously advanced, this case seeks to vindicate a compelling public interest. Further, the Respondents' position in this case does violence to a longstanding Metro public policy that ensures that local elections are not contaminated by state or federal partisan influences.⁸ By design, the Metro Charter prevents Mayoral elections from being held on the same dates as partisan state or federal elections. *See id.* By unlawfully setting Nashville's Mayoral election for August 2, 2018, however, the Respondents have placed Nashville's Mayoral election on the same ballot as partisan primaries for U.S. Senator, U.S. Congressman, Governor, State Senator, and State Representative.

Never in Metro's history has its election for Mayor been scheduled alongside partisan federal and state primary contests. The Petitioner also submits that Nashville's longstanding and consistently reaffirmed public policy against state or federal partisan influence *prohibits* this outcome, and that the Metro Charter was deliberately designed to prevent it. *Id.* Accordingly, the exercise of this Court's reach-down jurisdiction is appropriate under Tenn. Code Ann. § 16-3-201(d)(3) as well.

C. Statement of the Relief Sought

Pursuant to Tennessee Supreme Court Rule 48(a)(1)(iv), the Petitioner seeks to have this Court **REVERSE** the Trial Court's Order dismissing his petition, and to have this Court **REMAND** this action to the Trial Court with instructions to mandate that the Respondents hold a special election to fill the vacancy in the office of Mayor on either May 1, 2018 or between May 20, 2018 and May 24, 2018.

⁸ See Attachment A-5.


Given that this case is subject to *de novo* review and has already been fully briefed and argued by the Parties in the proceedings below, and given further that attorneys for both Parties have previously briefed the merits of this action in *Hamilton v. Metro. Gov't of Nashville*, No. M2016-00446-COA-R3-CV, 2016 WL 6248026 (Tenn. Ct. App. Oct. 25, 2016),⁹ the Petitioner also moves this Court to exercise its discretion to expedite briefing and decision of this matter pursuant to Tennessee Supreme Court Rule 48(d).

D. Conclusion

For the foregoing reasons, this Court should assume immediate jurisdiction over this case pursuant to Tennessee Supreme Court Rule 48 and Tenn. Code Ann. § 16-3-201(d). Pursuant to Tennessee Supreme Court Rule 48(a)(4), the original and six (6) paper copies of this motion and supporting papers have been filed with the clerk of the appellate court, and the clerk has been furnished with a .pdf copy of this filing by email.

Respectfully submitted,

By:


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Counsel for Petitioner Ludye Wallace

⁹ *Hamilton* was resolved on standing grounds only and did not reach the merits of the action. See *Hamilton*, 2016 WL 6248026, at *4 (“Having determined that Mr. Hamilton has failed to plead facts sufficient to establish standing, we pretermitt the remaining issues. In the absence of standing, the trial court properly dismissed Mr. Hamilton's petition.”).

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2018, a copy of the foregoing was mailed, postage prepaid, and/or transmitted by e-mail to the following:

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Attachments A1-A5

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
GENERAL ELECTION
AUGUST 2, 2007

AMENDMENT NO. 1

SUMMARY

This amendment would require that a special election be held to fill a vacancy in the office of mayor and a vacancy in the office of district councilmember whenever more than twelve (12) months remain in the unexpired term.

Amendment No. 1

Section 15.03 of Article 15 of the Charter of The Metropolitan Government of Nashville and Davidson County shall be amended by deleting the provisions of such section in their entirety and substituting in lieu thereof the following new provisions:
"Section 15.03 Special elections. There shall be held a special metropolitan election to fill a vacancy for the unexpired term in the office of mayor and in the office of district councilmember whenever such vacancy shall exist more than twelve (12) months prior to the date of the next general metropolitan election. The special election shall be ordered by the county commissioners of elections and they shall give notice thereof as provided by Tennessee Code Annotated, section 2-14-105. When a vacancy exists in the office of vice mayor or in the office of councilmember-at-large, said office shall remain vacant until the next general election at which time such vacancy shall be filled; however, in no event shall a special election be held to fill such vacancy. If in such special election to fill a vacancy for the unexpired term of the office of mayor or district councilmember, or in the general election at which time a vacancy in the office of vice mayor or councilmember-at-large, no candidate shall receive a majority of all the votes cast for such office, a runoff election shall be held five (5) weeks subsequent to the first special election to fill a vacancy in accordance with the provisions hereinbefore set forth in the case of a general metropolitan election. The provisions of section 15.01 hereof with respect to voting in general metropolitan elections and with respect to qualifying as a candidate shall apply to special elections and to general elections at which time a vacancy is filled."


MAYOR
VOTE FOR ONE

- DAVID BRILEY
- BOB CLEMENT
- KARL DEAN
- BUCK DOZIER
- KENNETH EATON
- HOWARD GENTRY
- CHERYL LYNN TISDALE
- Write-In

VICE MAYOR
VOTE FOR ONE

- DIANE NEIGHBORS
- LINDA W. PERRY
- CAROLYN BALDWIN TUCKER
- Write-In

- Yes, For Ratification
- No, Against Ratification

 ALL REGISTERED VOTERS OF DAVIDSON COUNTY WHO HAVE MOVED WITHIN THE COUNTY OR HAD A NAME CHANGE ARE ENCOURAGED TO MAKE THESE CHANGES BY NOTIFYING THE DAVIDSON COUNTY ELECTION COMMISSION AS SOON AS POSSIBLE. VOTERS WHO FAIL TO DO SO PRIOR TO ELECTION DAY WILL EXPERIENCE A DELAY IN VOTING.



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
GENERAL ELECTION
AUGUST 2, 2007

COUNCIL AT LARGE
VOTE FOR FIVE(5)

- BRADY BANKS
- MEGAN BARRY
- LUTHER BECKETT
- KEN BERRYHILL
- JIM BOYD
- LUVENIA HARRISON BUTLER
- JON DAVIDSON
- RICHARD EXTON
- TIM GARRETT
- RONNIE GREER SR.
- SALETTA A. HOLLOWAY
- PHILIP HOSTETTLER
- MICHAEL V. KERSTETTER
- J.B. LORING
- JAMES (JIM) A. MAXWELL

Contest Continued Next Column

- JERRY MAYNARD
- J. GOWER MILLS
- DAVE PELTON
- STEVE REITER
- TONY ROBERTS
- RONNIE STEINE
- JOHN SUMMERS
- JAMES C. TURNER, II
- CHARLIE TYGARD
- MAURICE "MOE" WALKER
- PETER WESTERHOLM
- Write-In
- Write-In
- Write-In
- Write-In
- Write-In



Sec. 15.03. - Special elections.

There shall be held a special metropolitan election to fill a vacancy for the unexpired term in the office of mayor and in the office of district council member whenever such vacancy shall exist more than twelve (12) months prior to the date of the next general metropolitan election. The special election shall be ordered by the county commissioners of elections and they shall give notice thereof as provided by Tennessee Code Annotated section 2-14-105. When a vacancy exists in the office of vice mayor or in the office of councilmember-at-large, said office shall remain vacant until the next general election at which time such vacancy shall be filled; however, in no event shall a special election be held to fill such vacancy. If in such special election to fill a vacancy for the unexpired term of the office of mayor or district council member, or in the general election at which time a vacancy in the office of vice mayor or councilmember-at-large, no candidate shall receive a majority of all the votes cast for such office, a runoff election shall be held five (5) weeks subsequent to the first special election to fill a vacancy in accordance with the provisions hereinbefore set forth in the case of a general metropolitan election. The provisions of section 15.01 hereof with respect to voting in general metropolitan elections and with respect to qualifying as a candidate shall apply to special elections and to general elections at which time a vacancy is filled.

(Amended by Res. No. 65-670, § 1, 7-6-65; Res. No. 88-526, § 28, 10-4-88; amended by referendum petition approved August 2, 2007)

Editor's note— In addition to the legislation given in the history note, § 15.03 was amended in its entirety by virtue of a referendum petition approved November 8, 1994, and amended again at a referendum election held November 5, 1996.

Sec. 15.01. - When general metropolitan elections held; who may vote; qualifications of candidates.

For the purpose of electing a mayor, vice-mayor, five (5) councilmen-at-large and thirty-five (35) district councilmen, there shall be held on the first Thursday in April, 1966, and on the first Thursday in August of 1971, and each four (4) years thereafter, a general metropolitan election. At such general election each voter shall be entitled to vote for one (1) candidate for mayor, one (1) candidate for vice-mayor, five (5) candidates for councilmen-at-large, and one (1) candidate for district councilman from the district wherein the voter resides; and the names of all qualified candidates shall be so placed on the ballot or voting machine as to accord the voter such right. All persons who are lawfully registered and who are qualified to vote for members of the general assembly of the State of Tennessee shall be qualified to vote in the metropolitan elections. The name of any candidate shall be included on the ballot or the voting machines when a written petition signed by at least twenty-five (25) qualified voters shall so request and when said petition shall be filed with the county commissioners of election at least within the number of days prior to the election provided by general law for the filing of qualifying petitions of candidates for election to county offices.

(Amended by Res. No. 65-670, § 1, 7-6-65; Res. No. 66-1053, § 1, 8-16-66)

Note— See Tenn. Const. ART. VII, SECT. 5:

Sec. 5. Civil officers—Election—Vacancies.—

Elections for Judicial and other civil officers shall be held on the first Thursday in August, one thousand eight hundred and seventy, and forever thereafter on the first Thursday in August next preceding the expiration of their respective terms of service. The term of each officer so elected shall be computed from the first day of September next succeeding his election. The term of office of the Governor and of other executive officers shall be computed from the fifteenth of January next after the election of the Governor. No appointment or election to fill a vacancy shall be made for a period extending beyond the unexpired term. Every officer shall hold his office until his successor is elected or appointed, and qualified. No special election shall be held to fill a vacancy in the office of Judge or District Attorney, but at the time herein fixed for the biennial election of civil officers; and such vacancy shall be filled at the next Biennial election recurring more than thirty days after the vacancy occurs.

RESOLUTION NO. RS2007-1846

A resolution providing amendments to the Charter of The Metropolitan Government of Nashville and Davidson County, Tennessee, in accordance with Article 19, Section 19.01, and setting forth a brief description of each amendment to be placed on the ballot.

WHEREAS, Article 19.01 of the Charter of The Metropolitan Government of Nashville and Davidson County, Tennessee, provides that the Metropolitan Government shall not adopt a resolution proposing amendments to the Charter more often than twice during the term of office of members of the Metropolitan Council; and

WHEREAS, Article 19, Section 19.01, also requires to be set forth in the adoption resolution a brief description of each amendment so worded so as to convey the meaning of said amendment; and

WHEREAS, it is the desire of the Metropolitan Council by adopting this resolution to fulfill these two Charter requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. Pursuant to the provisions of Section 19.01 of the Charter of The Metropolitan Government of Nashville and Davidson County, the proposed amendments to the Charter of The Metropolitan Government of Nashville and Davidson County, attached hereto, are submitted to the people for approval in the manner provided by Section 19.01 of the Charter.

Section 2. The date prescribed for holding of the referendum election at which the electorate of the Metropolitan Government will vote to ratify or reject the amendments proposed in Section 1 of this Resolution shall be August 2, 2007.

Section 3. This Resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Randy Foster

Amendment No. _____

Section 15.03 of Article 15 of the Charter of The Metropolitan Government of Nashville and Davidson County shall be amended by deleting the provisions of such section in their entirety and substituting in lieu thereof the following new provisions:

"Sec. 15.03. Special elections.

There shall be held a special metropolitan election to fill a vacancy for the unexpired term in the office of mayor and in the office of district councilmember whenever such vacancy shall exist more than twelve (12) months prior to the date of the next general metropolitan election. The special election shall be ordered by the county commissioners of elections and they shall give notice thereof as provided by Tennessee Code Annotated, section 2-14-105. When a vacancy exists in the office of vice mayor or in the office of councilmember-at-large, said office shall remain vacant until the next general election at which time such vacancy shall be filled; however, in no event shall a special election be held to fill such vacancy. If in such special election to fill a vacancy for the unexpired term of the office of mayor or district councilmember, or in the general election at which time a vacancy in the office of vice mayor or councilmember-at-large, no candidate shall receive a majority of all the votes cast for such office, a runoff election shall be held five (5) weeks subsequent to the first special election to fill a vacancy in accordance with the provisions hereinbefore set forth in the case of a general metropolitan election. The provisions of section 15.01 hereof with respect to voting in general metropolitan elections and with respect to qualifying as a

candidate shall apply to special elections and to general elections at which time a vacancy is filled."

FOR THE BALLOT

Amendment No. _____

This amendment would require that a special election be held to fill a vacancy in the office of mayor and a vacancy in the office of district councilmember whenever more than twelve (12) months remain in the unexpired term.

Sponsored by: Randy Foster

LEGISLATIVE HISTORY	
Referred:	Charter Revision Commission Charter Revision Committee
Introduced:	April 3, 2007
Deferred to June 5, 2007:	April 3, 2007
Approved:	June 5, 2007
Mayor's approval not required - Metro Charter Sec. 19.01:	

RESOLUTION NO. RS2011-1607**A resolution opposing any state legislation that would change the Metropolitan Mayor, Vice Mayor, and/or Council terms of office to coincide with November partisan elections.**

WHEREAS, the founders of the Metropolitan Government of Nashville and Davidson County chose to make local elected offices non-partisan; and

WHEREAS, the offices of Metropolitan Mayor, Vice Mayor, and Council have been non-partisan since the Charter became effective in 1963; and

WHEREAS, Section 15.01 of the Metropolitan Charter provides that the election for these offices is to be held on the first Thursday of the month every four years from and after 1971; and

WHEREAS, legislation is currently pending in the Tennessee General Assembly that would attempt to override the Metropolitan Charter and require the elections for the Mayor, Vice Mayor, and Members of Council to be held at the November Presidential elections; and

WHEREAS, having Metropolitan elections coincide with partisan Presidential elections would negatively impact the democratic process and destroy the purpose of having a non-partisan elected body; and

WHEREAS, local governments in Tennessee should have the freedom and authority to make decisions that are solely applicable to the Metropolitan Government without state interference; and

WHEREAS, the stated purpose of the pending state legislation is to address the problems associated with having the redistricting process in the same year as Council elections; and

WHEREAS, if the citizens of the Metropolitan Government desire to have the Metropolitan elections coincide with November partisan elections, the Metropolitan Charter includes a mechanism for amending the Charter to provide for such on a local level

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Metropolitan County Council hereby goes on record as opposing any state legislation that would change the Metropolitan Mayor, Vice Mayor, and/or Council terms of office to coincide with November partisan elections.

Section 2. The Metropolitan Vice Mayor is requested to charge the Council Charter Revision Committee with examining the need to amend the Metropolitan Charter to address the concerns associated with the consideration of new Council districts in an election year.

Section 3. The Metropolitan Clerk is directed to send a copy of this Resolution to each member of the Davidson County Delegation to the Tennessee General Assembly.

Section 4. This Resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Jerry Maynard, Ronnie Steine, Megan Barry, Bo Mitchell, Lonnell Matthews, Mike Jameson, Erica Gilmore, Sam Coleman, Greg Adkins, Walter Hunt, Frank Harrison, Sandra Moore, Buddy Baker, Edith Taylor Langster, Parker Toler, Darren Jernigan, Jamie Hollin, Rip Ryman, Anna Page, Erik Cole, Sean McGuire, Tim Garrett, Jim Forkum, Emily Evans, Carter Todd, Randy Foster, Bruce Stanley, Kristine LaLonde, Vivian Wilhoite, Jason Holleman

LEGISLATIVE HISTORY

Referred:	Rules & Confirmations Committee
Introduced:	April 12, 2011
Deferred:	April 12, 2011
Adopted:	April 19, 2011 - Roll Call Vote
Approved:	April 21, 2011
By:	

Exhibit A

WALLACE

vs.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, et al.

JUDGE'S RULING

March 14, 2018



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1 IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

2 LUDYE N. WALLACE,

3 Petitioner,

4 vs.

 Case No. 18-254-I

5 METROPOLITAN GOVERNMENT OF
6 NASHVILLE AND DAVIDSON COUNTY
7 and DAVIDSON COUNTY ELECTION
 COMMISSION,

8 Respondents,

9 and

10 DAVID HILAND,

11 Proposed Intervenor-Petitioner.

12
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14
15 JUDGE'S RULING

16 BE IT REMEMBERED that the above-captioned cause
17 came on for hearing, on this, the 14th day of March,
18 2018 before Chancellor Claudia Bonnyman, when and where the
 following proceedings were had, to wit:

19
20
21
22 Elite Reporting Services
23 www.elitereportingservices.com
24 Sarah N. Linder, LCR, Senior Managing Associate
 Post Office Box 292382
25 Nashville, Tennessee 37229
 (615)595-0073

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A P P E A R A N C E S

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P R O C E E D I N G S

(WHEREUPON, additional matters were heard by the Court; after which, the Court's ruling was excerpted as follows:)

15:36:16
16:01:58
16:02:01
16:02:05
16:02:08
16:02:12
16:02:16
16:02:18
16:02:24
16:02:29
16:02:33
16:02:34
16:02:36
16:02:40
16:02:44
16:02:46
16:02:50
16:02:53
16:02:58
16:03:01

THE COURT: Please be seated.

All right. Lawyers, and parties, and citizens, the Court is going to dictate a bench ruling. A bench ruling is more informal than a memorandum of law that you have seen and read, or an opinion written by the Court of Appeals or our Supreme Court. It is, however, necessary in this case because we have expedited hearings and an expedited issue; an issue that needs to be solved very -- resolved and solved very quickly.

And I notice that the lawyers -- all the lawyers have done a really good job in the case, and they've probably done their best under the time pressure. This Court's also gonna try to do its best under the time pressure knowing that we are all oriented toward reaching an accurate decision and a just decision in compliance with State law, and Metro law, and our rule of law.

This is a bench ruling in Wallace versus

1 Metropolitan Government and Davidson County Election 16:03:06
2 Commission, and it is a ruling in a companion case, a 16:03:08
3 separate case, Mr. Hiland versus Metropolitan 16:03:12
4 Government and the Davidson County Election 16:03:14
5 Commission. 16:03:15

6 The petitioners seek certiorari review to 16:03:16
7 reverse the decision of the Davidson County Election 16:03:19
8 Commission that the vacancy in the office of mayor 16:03:22
9 will be voted upon and filled at the August 2018 16:03:25
10 election. 16:03:29

11 Further, the petitioners seek a writ of 16:03:31
12 mandamus compelling the Commission to set a special 16:03:33
13 election to fill the mayoral vacancy on a specific 16:03:37
14 day in May of 2018. 16:03:40

15 Because the question under both causes of 16:03:43
16 actions and both lawsuits is a question of law and 16:03:46
17 the same question of law, the Court does not address 16:03:49
18 whether these two causes of action may be combined in 16:03:52
19 one complaint given that mandamus is a matter of 16:03:57
20 original jurisdiction, and certiorari is judicial 16:04:00
21 review of the Commission action relying on the record 16:04:04
22 below. In this decision, the Court refers to the 16:04:08
23 respondents collectively as the Commission. 16:04:11

24 Both Mr. Wallace and Mr. Hiland, the 16:04:13
25 petitioners, requested an expedited hearing on the 16:04:14

1 merits. Mr. Hiland also seeks injunctive relief at 16:04:19
2 this hearing. The Commission's motion to dismiss 16:04:22
3 will serve as its response to injunctive relief, 16:04:25
4 along with the two affidavits from the Commission 16:04:30
5 setting forth the 2018 Davidson County election 16:04:32
6 calendar. 16:04:32

7 And as for the issues in the case, the 16:04:37
8 petitioners state that the Davidson County Election 16:04:39
9 Commission erroneously voted to hold the election to 16:04:42
10 fill the vacancy for the office of mayor in August 16:04:45
11 2018. The petitioners contend that the Metropolitan 16:04:48
12 Charter, Article 15, Section 15.01 and 15.03 require 16:04:52
13 a special election to fill that vacancy in May 2018. 16:04:58
14 The petitioners assert that the term general 16:05:03
15 metropolitan election is defined in the Charter at 16:05:08
16 Section 15.01 as the election when the offices of 16:05:10
17 mayor, vice mayor, five council-members-at-large, and 16:05:15
18 thirty five district council members are on the 16:05:18
19 ballot. 16:05:20

20 The petitioners claim that the general 16:05:21
21 metropolitan election is held every four years and 16:05:26
22 the next general metropolitan election cannot occur 16:05:28
23 until August of 2019. The petitioners assert that 16:05:33
24 the term general metropolitan election includes only 16:05:35
25 the first Thursday in August for the years 1971, 16:05:39

1 1975, 1979, 1983, 1987, 1999 -- 1991, 1995, 1999, 16:05:44
2 2003, 2007, 2011, 2015, and 2019. That is every four 16:05:56
3 years. At that August 2019 election, say the 16:06:05
4 petitioners, all of the aforementioned offices 16:06:09
5 including the mayor will be on the ballot, should be 16:06:13
6 on the ballot. 16:06:15

7 According to the petitioners, because the 16:06:16
8 August 2019 general metropolitan election is more 16:06:17
9 than 12 months from the date of the mayoral vacancy, 16:06:21
10 Section 15.03 mandates a special election. The 16:06:25
11 petitioners' reason that the Commission's choice of 16:06:29
12 the August 2018 election to fill the vacancy of mayor 16:06:32
13 will place that vacancy on the ballot with a state 16:06:36
14 partisan primary and a federal partisan primary 16:06:39
15 contrary to the longstanding policy that Metro 16:06:43
16 elections for mayor, the council, and vice mayor are 16:06:47
17 nonpartisan. The petitioners assert this nonpartisan 16:06:50
18 policy was affirmed by the Metro Council in its 16:06:53
19 RS2011-1607 resolution setting out the nonpartisan 16:06:56
20 nature of its offices of mayor, vice mayor, and the 16:07:02
21 council. 16:07:05

22 The petitioners explained that the term 16:07:05
23 of office for the mayor expires in August 2019, the 16:07:07
24 same month and year of the next general metropolitan 16:07:11
25 election. The petitioners argue that there is no 16:07:15

1 general metropolitan election scheduled within the 16:07:18
2 next 12 months and, therefore, a special election 16:07:21
3 must be held in May given TCA Section 2-14-102. The 16:07:24
4 petitioners point to the summary language on the 16:07:30
5 referendum ballot for what is now Section 15.03 of 16:07:33
6 the Metropolitan Charter in support of the 16:07:37
7 allegations in their petition. 16:07:39

8 Now, as for the contentions of the 16:07:41
9 Commission, the Commission moves to dismiss both 16:07:43
10 petitions. According to the Commission, the August 16:07:45
11 2nd, 2018 election is a general metropolitan election 16:07:48
12 and the vacancy in the office of mayor must appear on 16:07:53
13 that August 2018 ballot. 16:07:56

14 In response to the petition for mandamus, 16:07:58
15 the Commission shows that the May 1, 2018 ballot 16:08:00
16 includes the transit referendum and primary elections 16:08:04
17 for a number of Metro offices. The Commission also 16:08:09
18 responds that the August 2nd, 2018 ballot includes 16:08:11
19 the general election of the Metro offices on the May 16:08:15
20 ballot after the primaries. The Commission explains 16:08:18
21 that the August 2018 ballot will also include the 16:08:22
22 primary elections for State representatives and for 16:08:26
23 Congress. 16:08:30

24 The Commission states that the trial 16:08:30
25 court in Hamilton versus Metropolitan Government 16:08:32

1 addressed in this -- addressed this issue when the 16:08:37
2 State judge made an alternative ruling in case the 16:08:39
3 dismissal based on standing was reversed that a 16:08:43
4 general metropolitan election is one in which Metro 16:08:46
5 has an office on the ballot for general election and 16:08:48
6 is not limited to those elections where the mayor, 16:08:51
7 vice mayor, thirty five council representatives, and 16:08:55
8 five at-large representatives are elected. And 16:08:57
9 that's the end of the quote from the trial judge in 16:09:00
10 that case. 16:09:03

11 The Commission reasons that in the 16:09:04
12 Hamilton case, it decided to fill the vacant council 16:09:06
13 seat at the August 4, 2016 election and not at a 16:09:10
14 special election. According to the Commission in the 16:09:14
15 Hamilton case, the August 4, 2016 general election 16:09:16
16 was not the every four year general metropolitan 16:09:20
17 election. Instead says the Commission, a general 16:09:24
18 election as defined in TCA Section 2-1-401(7) is one 16:09:26
19 in which membership in a political party is not 16:09:32
20 required in order to participate as a voter, and says 16:09:35
21 the Commission the general metropolitan election is 16:09:38
22 any election in which a Metropolitan office is filled 16:09:42
23 and membership in a party is not required. 16:09:45

24 The Commission explains that based upon 16:09:47
25 Section 15.03 of the Charter, a special election is 16:09:50

1 held to fill a vacancy for the office of mayor and 16:09:54
2 district council members only when there's no general 16:09:57
3 metropolitan election scheduled within the next 12 16:10:02
4 months. 16:10:04

5 The Commission also relies on a 1983 16:10:04
6 Supreme Court decision which affirmed a chancery 16:10:07
7 ruling that general metropolitan elections held on 16:10:09
8 off years such as the August 1982 election in which 16:10:12
9 several Metropolitan offices were on the ballot is a 16:10:17
10 general metropolitan election as that term is used in 16:10:22
11 the Metro Charter. 16:10:23

12 The Commission relies on Attorney General 16:10:24
13 decision number 82-223 which states that the term 16:10:27
14 general election means for purposes of state law all 16:10:33
15 elections where all can vote but does not include 16:10:35
16 primaries and referenda. In summary, the Commission 16:10:39
17 insists that a general metropolitan election is a 16:10:43
18 broad term not at all limited to the four-year 16:10:45
19 schedule upon which the petitioners rely. 16:10:49

20 And the issues for this Court to decide 16:10:52
21 are questions of law. Number one -- issue number 16:10:54
22 one: Taking all of the facts in the complaints as 16:10:57
23 true and considering the facts to which the parties 16:11:01
24 stipulate, what is a general metropolitan election as 16:11:03
25 used in the Metro Charter? And issue number two: 16:11:06

1 Given how that term general metropolitan election is 16:11:10
2 used in the Metro Charter, is there a general 16:11:14
3 metropolitan election scheduled within four months 16:11:18
4 after the March 6th, 2018 vacancy in the office of 16:11:19
5 mayor or must there be a special election. Applying 16:11:24
6 the law found to resolve these issues one and two, is 16:11:27
7 Mr. Hiland entitled to injunctive relief, and are the 16:11:31
8 petitioners entitled to an order vacating the 16:11:36
9 Commission decision and setting the election on a 16:11:38
10 date in May 2018 to be effectuated by the Commission? 16:11:41
11 As for a summary of this Court's 16:11:44
12 decision, the Court grants the Commission's motion to 16:11:47
13 dismiss both lawsuits because the vacancy in the 16:11:49
14 office of mayor must be filled at the next general 16:11:52
15 metropolitan election which occurs on August 2nd, 16:11:56
16 2018. 16:11:58
17 And now the Court is moving to the facts 16:12:00
18 stated in the verified petitions for certiorari 16:12:03
19 review, mandamus, and Mr. Hiland's claim for 16:12:07
20 declaratory relief. The Court finds that the facts 16:12:09
21 stated below and in the petitions are true for 16:12:12
22 purposes of the Commission's motion to dismiss. The 16:12:15
23 Court recounts the facts deemed most pertinent for 16:12:19
24 the issues to be determined today. 16:12:23
25 The petitioners are residents of 16:12:24

1 Nashville. Mr. Wallace has qualified as a mayoral 16:12:26
2 candidate with the election to take place in August 16:12:30
3 2018. Mr. Hiland is in the process of becoming 16:12:33
4 qualified for the same office. The petitioners are 16:12:36
5 being denied the right to appear on a ballot in a 16:12:38
6 special election in May 2018. Both petitioners want 16:12:42
7 to limit the months during which they will seek the 16:12:46
8 office in order to reduce their expense and to reduce 16:12:49
9 the demands of a campaign. 16:12:51

10 The former mayor, Megan Barry, resigned 16:12:53
11 from the office of mayor on March 6th, 2018. On 16:12:56
12 March 9, 2018, the Commission voted to hold the 16:13:00
13 election to fill the vacancy in the office of mayor 16:13:03
14 on August 2nd, 2018. 16:13:06

15 The parties stipulate that the 2018 16:13:08
16 Davidson County election calendar shows the May 1, 16:13:14
17 2018 ballot includes the transit referendum and 16:13:17
18 primary elections for a number of Metro offices such 16:13:21
19 as the sheriff, the trustee, and the register of 16:13:24
20 deeds. The August 2018 ballot consists of the 16:13:27
21 general election of the same Metro offices on the May 16:13:30
22 ballot; that is after the primaries. The August 2018 16:13:33
23 ballot also includes primary election s for some 16:13:37
24 State offices and primary elections for Congress. 16:13:40

25 And now as for the principles of law to 16:13:44

1 be applied in this case that the Court applies in 16:13:49
2 this case, the Court will read the pertinent portions 16:13:51
3 of law and omit sections of the law which are not 16:13:55
4 applicable here. 16:13:58

5 First, Rule 12, motion to dismiss, in the 16:14:02
6 Rules of Civil Procedure: In considering a motion to 16:14:05
7 dismiss, courts must construe the complaint liberally 16:14:08
8 presuming all factual allegations to be true and 16:14:12
9 giving the plaintiff the benefit of all reasonable 16:14:15
10 inferences. A trial court should grant a motion to 16:14:19
11 dismiss only when it appears that the plaintiff can 16:14:21
12 prove no set of facts in support of the claim that 16:14:24
13 would entitle the plaintiff to relief. The Supreme 16:14:28
14 Court reviews the trial court's legal conclusions 16:14:31
15 regarding the adequacy of the complaint as a new 16:14:34
16 question; that is de novo. 16:14:37

17 And then as for the application of Rule 16:14:39
18 12.02(6), failure to state a claim: A Rule 12.02(6) 16:14:42
19 motion to dismiss only seeks to determine whether the 16:14:48
20 pleadings state a claim upon which relief can be 16:14:51
21 granted. When a defendant files a Rule 12.02(6) 16:14:55
22 motion, he or she is challenging the legal 16:14:58
23 sufficiency of the plaintiff's claims, not the 16:15:00
24 evidence presented. This is from Holt versus City of 16:15:03
25 Fayetteville, a non-reported case, at 2016 Westlaw 16:15:06

1 104-5537, a Tennessee Court of Appeals case decided 16:15:12
2 in 2016. 16:15:15

3 A defendant who files a motion to dismiss 16:15:16
4 admits the truth of all the applicable and material 16:15:19
5 allegations contained in the plaintiff's complaint, 16:15:22
6 and the defendant asserts the allegations fail to 16:15:25
7 establish a cause of action. And that is from Brown 16:15:29
8 versus Tennessee Title Loans, a Tennessee Supreme 16:15:36
9 Court case decided in 2010 and reported at 328 S.W.3d 16:15:40
10 850. 16:15:47

11 And then from Hargrove versus 16:15:51
12 Metropolitan Government of Nashville and Davidson 16:15:55
13 County reported at 154 S.W.3d 565 -- and these are 16:15:57
14 rules for interpreting the Metropolitan Charter 16:16:02
15 written by former Supreme Court Judge Koch. This 16:16:07
16 case, that is the Hargrove case, requires the Court 16:16:16
17 to interpret provisions of the Metropolitan 16:16:19
18 Government's Charter and ordinances. The tools for 16:16:22
19 this job consists of the same rules of construction 16:16:25
20 used to interpret state statutes. Our goal is 16:16:28
21 ascertain and to give effect to the ordinance's 16:16:31
22 purpose without unduly restricting it or expanding it 16:16:34
23 beyond its intended scope. The search for an 16:16:38
24 ordinance's purposes begins with the words of the 16:16:41
25 ordinance itself. If the ordinance is unambiguous, 16:16:44

1 the courts need only enforce it as written. The 16:16:46
2 courts must consider an ordinance as a whole, and in 16:16:50
3 doing so, must give the words in the ordinance their 16:16:52
4 natural and ordinary meaning. 16:16:55

5 Courts should be mindful of existing law 16:16:57
6 when they construe an ordinance. The court should 16:17:00
7 avoid displacing existing rules and principles any 16:17:03
8 further than the plain meaning of the ordinance 16:17:06
9 expressly declares or necessarily implies. Likewise, 16:17:09
10 courts should avoid questioning the wisdom of the 16:17:12
11 ordinance or substituting their own policy judgments 16:17:15
12 for those of the local legislative bodies -- or body. 16:17:17
13 And this is from Exxon Corporation versus 16:17:21
14 Metropolitan Government of Nashville and Davidson 16:17:24
15 County reported at 72 S.W.3d 638, a Tennessee Supreme 16:17:27
16 Court case decided in 2002. A trial court's decision 16:17:33
17 regarding the interpretation of a statute or 16:17:36
18 ordinance is a question of law. 16:17:37

19 And as for applying and construing 16:18:01
20 captions for statutes: It is permissible under 16:18:05
21 widely -- widely-held rules of statutory construction 16:18:13
22 to consider headings to statutes for legislative 16:18:15
23 intent and purposes. Where the language in a body of 16:18:20
24 an act is not clear but is unambiguous when read with 16:18:24
25 the caption, the caption will be considered in the 16:18:28

1 construction of the statute. Otherwise, state law 16:18:30
2 indicates that a caption is not a part of the law. 16:18:34

3 The Metropolitan Charter states that in 16:18:41
4 the event the office of mayor becomes vacant, the 16:18:44
5 vice mayor shall serve as mayor and be compensated as 16:18:47
6 such until the vacancy is filled at a special 16:18:50
7 election or at a general election as provided in 16:18:53
8 Section 15.03 of this Charter. And this particular 16:18:55
9 charter provision is Section 5.05. 16:19:00

10 Section 15.04 of the Charter states: The 16:19:05
11 general election laws of the state shall be 16:19:09
12 applicable to all metropolitan elections, except as 16:19:11
13 otherwise provided in this article. 16:19:15

14 And then at TCA 2-1-104 which is part of 16:19:18
15 the election provisions of the State of Tennessee, 16:19:22
16 definitions, Subsection (a)(7): Election means a 16:19:25
17 general election for which membership in a political 16:19:30
18 party in order to participate therein is not 16:19:33
19 required. 16:19:36

20 And Article -- the same statute, Section 16:19:37
21 19: Primary election means an election held for a 16:19:40
22 political party for the purpose of allowing members 16:19:44
23 of that party to select a nominee or nominees to 16:19:46
24 appear on the general election ballot. 16:19:50

25 And then also moving on with provisions 16:19:54

1 of the Charter that are pertinent and applicable in 16:19:56
2 this case, Section 15.01: For the purpose of 16:19:59
3 electing a mayor, vice mayor, five 16:20:03
4 councilmen-at-large, and thirty five district 16:20:07
5 councilmen, there shall be held on the first Thursday 16:20:10
6 in April 1966 and on the first Thursday in August of 16:20:13
7 1971, and each four years thereafter a general 16:20:17
8 metropolitan election. At such general election, 16:20:23
9 each voter shall be entitled to vote for one 16:20:24
10 candidate for mayor, one candidate for a vice mayor, 16:20:29
11 five candidates for councilmen-at-large, and one 16:20:31
12 candidate for district councilman from the district 16:20:31
13 where the voter resides; and the names of all 16:20:33
14 qualified candidates shall be so placed on the ballot 16:20:35
15 or voting machine as to accord the voter such right. 16:20:42
16 All persons who are lawfully registered and who are 16:20:46
17 qualified to vote for members of the general assembly 16:20:48
18 of the State of Tennessee shall be qualified to vote 16:20:50
19 in the metropolitan elections. And the caption of 16:20:53
20 that section is when general metropolitan elections 16:20:56
21 held, semicolon, who may vote, semicolon, 16:21:02
22 qualifications of candidates. 16:21:08
23 And then in Section 15.03, special 16:21:08
24 elections: There shall be held a special 16:21:10
25 metropolitan election to fill a vacancy for the 16:21:14

1 unexpired term in the office of mayor and in the 16:21:16
2 office of district council member whenever such 16:21:19
3 vacancy shall exist more than 12 months prior to the 16:21:23
4 date of the next general metropolitan election. The 16:21:25
5 special election shall be ordered by the county 16:21:29
6 commissioners of elections and they shall give notice 16:21:33
7 thereof as provided by Tennessee Code Annotated 16:21:35
8 Section 2-14-105. When a vacancy exists in the 16:21:39
9 office of vice mayor or in the office of 16:21:41
10 councilmember-at-large, said office shall remain 16:21:43
11 vacant until the next general election at which time 16:21:48
12 such vacancy shall be filled; however, in no event 16:21:51
13 shall a special election be held to fill such 16:21:56
14 vacancy. If in such special election to fill a 16:21:58
15 vacancy for the unexpired term of the office of mayor 16:22:00
16 or district council member, or in the general 16:22:03
17 election at which the vacancy in the office of vice 16:22:05
18 mayor or council-member-at-large no candidate shall 16:22:08
19 receive a majority of all the votes cast for such 16:22:12
20 office, a run-off election shall be held five weeks 16:22:15
21 after the first special election to fill a vacancy in 16:22:19
22 accordance with the provisions herein before set 16:22:22
23 forth in the case of a general metropolitan election. 16:22:25
24 And then Section 19.01, amending charter 16:22:27
25 by resolution of council or petition and popular 16:22:31

1 vote: This Charter may be amended subsequent to its 16:22:34
2 adoption in the following manner: An amendment or 16:22:37
3 amendments may be proposed, (1), by the adoption of a 16:22:40
4 resolution by the council favoring the same and 16:22:43
5 submitting it or them to the people for approval. 16:22:46
6 The affirmative vote for adoption of such resolution 16:22:47
7 in the council shall be not less than two-thirds of 16:22:51
8 the membership to which the council is entitled, and 16:22:53
9 such resolution when adopted need not be submitted to 16:22:57
10 the mayor for his approval; or (2) upon petition with 16:22:59
11 the metropolitan clerk signed by 10 percent of the 16:23:05
12 number of registered voters of Nashville-Davidson 16:23:06
13 County voting in the preceding general election. 16:23:10
14 And then from Tennessee opinion of the 16:23:17
15 Attorney General, Number 82-223: The phrase next 16:23:21
16 general election refers to any election in which all 16:23:27
17 registered voters in the city would be eligible to 16:23:30
18 participate except for referenda and primary 16:23:34
19 elections. Election is defined at TCA 2-1-104(6), 16:23:38
20 and that's now (7), as a general election for which 16:23:44
21 membership in a political party in order to 16:23:45
22 participate therein is not required. Of course, the 16:23:47
23 definitions in the election code do not control a 16:23:51
24 question arising from a city charter. In the latter 16:23:54
25 context, the term general election would certainly 16:23:58

1 include a municipal election. To argue otherwise 16:24:01
2 would be contrary to common sense. It is the opinion 16:24:04
3 of this office, however, that the phrase general 16:24:07
4 election in the Harriman City Charter should be 16:24:09
5 construed also to include other general elections as 16:24:12
6 defined in TCA 2-1-104(6). 16:24:15

7 And then from State versus -- State in 16:24:19
8 Wise versus Judd reported at 655 S.W.2nd, page 952, a 16:24:25
9 Tennessee Supreme Court case decided in 1983. In 16:24:29
10 this case, the Supreme Court affirmed a decision of 16:24:40
11 the Chancellor as regards to the definition of 16:24:42
12 general election in the Charter. And the decision of 16:24:46
13 the Supreme Court said -- states: The Metropolitan 16:24:49
14 Charter, Section 1901 -- 19.01 requires that a 16:24:53
15 petition for a referendum on a proposed amendment be 16:24:57
16 signed by 10 percent of the number of registered 16:25:00
17 voters of Nashville-Davidson County voting in the 16:25:03
18 preceding general election. The issue is whether 16:25:05
19 this reference is to a preceding metropolitan general 16:25:09
20 election regularly held in August or the previous 16:25:14
21 state general election which occurred in November 16:25:16
22 1982. If the August 1982 or August 1979 Metro 16:25:19
23 elections are meant, facially the petitions contain 16:25:25
24 the sufficient number of signatures. If the 16:25:28
25 reference is to a state general election held in 16:25:31

1 November 1982 to which no Metropolitan offices were 16:25:33
2 subject, the number is insufficient. 16:25:38

3 The Chancellor held that since the 16:25:39
4 subject involved is the amendment of the Metropolitan 16:25:42
5 Charter, the intent of the Charter Commissioners was 16:25:45
6 to refer to the number of votes cast in a 16:25:47
7 Metropolitan election rather than to the number in a 16:25:50
8 state or national election. We agree. The Charter 16:25:54
9 Section 15.01 provides for metropolitan general 16:25:56
10 election and refers to them as such. We think the 16:26:00
11 reference in Section 19.01 under consideration here 16:26:03
12 clearly is to municipal elections. 16:26:06

13 And going behind that Supreme Court 16:26:12
14 decision is the memorandum issued by -- or entered by 16:26:17
15 Chancellor Kilcrease in this Chancery Court. And he 16:26:24
16 found, reading from his memorandum, which was filed 16:26:27
17 in June of 1983 -- entered in June of 1983: When 16:26:35
18 read in the context of the entire Metropolitan 16:26:46
19 Charter, logic and reason compel the conclusion that 16:26:48
20 the drafters of the Metropolitan Charter in setting a 16:26:51
21 minimum number of voters needed to file a petition to 16:26:54
22 amend a provision of the Metropolitan Charter had in 16:26:58
23 mind the preceding general metropolitan election. 16:27:01
24 Section 15.01 of the Metropolitan Charter provides 16:27:04
25 for general metropolitan elections and refers to such 16:27:07

1 elections as general elections. The Court is 16:27:11
2 persuaded to conclude that the preceding general 16:27:13
3 election for purposes of Section 19.01 of the Metro 16:27:16
4 Charter is the preceding general municipal election, 16:27:20
5 and further holds the most recent general municipal 16:27:24
6 election are the August 1982 election and the August 16:27:27
7 1979 election respectively. 16:27:30

8 And in this decision, Chancellor 16:27:33
9 Kilcrease found that the August metro general 16:27:36
10 election held in off years are also a general 16:27:38
11 metropolitan election as that term is used in the 16:27:43
12 Metro Charter. 16:27:45

13 And from an alternative ruling issued in 16:27:50
14 State -- State ex rel. John Hamilton versus Metro 16:27:59
15 Government and the Davidson County Election 16:28:00
16 Commission, the trial court decided that if the Court 16:28:05
17 were to reach the merits -- and in this case, the 16:28:08
18 Hamilton case, the trial court had dismissed the case 16:28:10
19 on the ground of standing; that is the plaintiffs had 16:28:13
20 no standing to bring the case. But she also stated 16:28:16
21 that if the Court were to reach the merits, the Court 16:28:20
22 would rule in favor of the Election Commission's 16:28:23
23 decision to fill the vacant council seat on August 4, 16:28:26
24 2016, not at a special election in April 2016. Metro 16:28:30
25 Charter 15.03 requires a special election where 16:28:34

1 there's no general metropolitan election scheduled 16:28:36
2 within the next 12 months. A general metropolitan 16:28:39
3 election is one in which Metro has an office on the 16:28:43
4 ballot for general election and is not limited to 16:28:45
5 those elections where the mayor, vice mayor, thirty 16:28:48
6 five council representatives, and five at-large 16:28:52
7 representatives are elected. 16:28:54
8 And, of course, this Court is not bound 16:28:56
9 by a decision written by a fellow trial court, but 16:28:59
10 the Court can certainly be persuaded by the reasoning 16:29:03
11 in which that trial court engaged. 16:29:07
12 And now having -- having discussed and 16:29:11
13 read the principles of law, I'm going back to the 16:29:16
14 issues in the case because that's what we have to 16:29:19
15 decide and justify. Issue number one: Taking all 16:29:24
16 the facts in the complaints as true and considering 16:29:30
17 the facts to which the parties stipulate, what is a 16:29:32
18 general metropolitan election as used in the Metro 16:29:37
19 Charter? And the Court finds here that state law 16:29:39
20 defines general election as an election in which all 16:29:46
21 voters may participate. And most importantly, the 16:29:49
22 Metro Charter definition of metro -- of general 16:29:59
23 metropolitan election means an election where Metro 16:30:03
24 offices are on the ballot and everyone can vote for 16:30:05
25 the Metro office . 16:30:08

1 And it is unfortunate that there are only 16:30:11
2 two cases in which our courts have construed the 16:30:17
3 Metropolitan Charter as regards how to understand the 16:30:23
4 term general metropolitan election. However, we do 16:30:29
5 have two and they are consistent. They're applied to 16:30:33
6 different issues, but the broader terminology or the 16:30:37
7 broader definition of metropolitan general election 16:30:41
8 was adopted and applied by -- all the courts have 16:30:46
9 specifically looked at the subject. 16:30:49

10 The Tennessee Supreme Court has 16:30:52
11 interpreted the phrase metropolitan general election 16:30:54
12 in Metro Charter 15.01 to mean any election where 16:30:58
13 Metropolitan offices are being elected. The 16:31:01
14 Metropolitan Charter Section 19.01 requires that a 16:31:06
15 petition for a referendum on a proposed amendment be 16:31:10
16 signed by 10 percent of the number of register voters 16:31:13
17 of Nashville-Davidson County voting in the preceding 16:31:16
18 general election. And the issue in that case that 16:31:19
19 the Supreme Court decided was whether the reference 16:31:22
20 was to a preceding metropolitan general election, and 16:31:24
21 was there such a thing, what was it; or the previous 16:31:28
22 the state general election which occurred in November 16:31:31
23 1982. If the August 1982 or August 1979 metropolitan 16:31:33
24 election meant, facially the petitions contained a 16:31:39
25 sufficient number of signatures. 16:31:41

1 The Chancellor held that since the 16:31:43
2 subject involved is the amendment of the Metropolitan 16:31:46
3 Charter, the intent of the Charter Commissioners was 16:31:48
4 to refer to the number of votes cast in the 16:31:51
5 metropolitan election rather than to the number in a 16:31:54
6 state or national election. The Charter provides for 16:31:55
7 metropolitan general election and refers to them as 16:31:59
8 such. We think the reference in 19.01 under 16:32:00
9 consideration is to municipal elections; that is a 16:32:04
10 broad meaning of the term general metropolitan 16:32:06
11 elections rather than the narrow term which is touted 16:32:13
12 by and argued by the plaintiffs. 16:32:17

13 This Court also finds in regard to the 16:32:22
14 memorandum underlying Wise versus Judd that the 16:32:26
15 August 1982 election was not the every four year 16:32:29
16 general election but was the more generic, broad 16:32:33
17 general metropolitan election. Therefore, the 16:32:39
18 Supreme Court has interpreted Chapter 15.01 to mean 16:32:41
19 any election where votes are cast in the metropolitan 16:32:45
20 election. 16:32:45

21 The Court is also persuaded by the trial 16:32:49
22 court's ruling in Hamilton versus Metro in which the 16:32:52
23 Court held a general metropolitan election is broad, 16:32:54
24 a broad definition; one in which Metro has an office 16:32:58
25 on the ballot office. But most importantly, the 16:33:00

1 Court also looks, of course, at the language of the 16:33:07
2 Charter provisions Section 15.01 and 15.03. 16:33:10

3 As to 15.01 -- first as to 15.01 -- let 16:33:14
4 me find that provision so I can specifically refer to 16:33:18
5 it. In reading the provisions of 15.01, the Court 16:33:21
6 does not see a restrictive definition. The term is 16:33:35
7 used -- the terms used are a general metropolitan 16:33:39
8 election, such general election, the Metropolitan 16:33:44
9 elections. There is no narrow definition for a 16:33:48
10 general metropolitan election and the Court cannot 16:33:55
11 find one. Instead, there are two cases that say 16:33:56
12 otherwise on -- otherwise in terms of applying a 16:34:01
13 broader definition to general metropolitan elections. 16:34:04

14 And the Court also looks, of course, at 16:34:08
15 Section 15.03 which also states -- which refers more 16:34:10
16 to a special metropolitan election but does refer to 16:34:16
17 the next general metropolitan election. This Court 16:34:20
18 does not see language or terminology in 15.03 which 16:34:23
19 would narrow the definition of next metropolitan 16:34:28
20 election to a specific year. And the council could 16:34:31
21 have done that and -- or the referendum could have 16:34:35
22 done that, and that was not -- that did not occur. 16:34:40
23 And the Court does not find language narrowing or 16:34:42
24 referring to a narrow definition of general 16:34:45
25 metropolitan election. Instead, it appears to be a 16:34:50

1 broad term, and -- and, therefore, I'm going back 16:34:52
2 then, having found that it's broad terminology and 16:34:59
3 defining the general metropolitan election broadly, 16:35:06
4 or more broadly certainly than the plaintiffs -- than 16:35:09
5 the petitioners use. 16:35:12

6 The second issue is given how that term, 16:35:14
7 general metropolitan election, is used in the Metro 16:35:17
8 Charter, is there a general metropolitan election 16:35:19
9 scheduled within 12 months after the March 6, 2018 16:35:22
10 vacancy in the office of mayor or must there be a 16:35:26
11 special election? And the Court finds here that the 16:35:29
12 August 2nd, 2018 election falls within the definition 16:35:31
13 of a general metropolitan election. It is an 16:35:35
14 election in which all persons can vote regardless of 16:35:39
15 party, and in which -- so it is a general election 16:35:44
16 and it is an election in which Metropolitan offices 16:35:48
17 will be filled. 16:35:48

18 Applying the law found to resolve these 16:35:50
19 issues one or two, Mr. Hiland is not entitled to 16:35:53
20 injunctive relief, and the plaintiffs are not 16:35:59
21 entitled -- or the petitioners are not entitled to an 16:36:01
22 order vacating the Commission decision. The 16:36:04
23 petitioners' petitions having been dismissed, the 16:36:07
24 Commission's decision stands. And it appears that 16:36:10
25 the vacancy in the office of the mayor must be filled 16:36:16

1 at the next general Metropolitan election which 16:36:19
2 occurs on August 2nd, 2018, and that's the Court's 16:36:21
3 resolution of the declaratory judgment request. 16:36:25

4 And I -- I do thank all of the parties 16:36:31
5 for pressing forward and doing the great job that 16:36:34
6 everybody did in such a hurry. I think, as I said 16:36:39
7 before, we're all moving toward the best decision 16:36:42
8 that can be made given what we have to work with. So 16:36:46
9 if there any matters -- 16:36:47

10 MR. HOLLIN: Yes, Your Honor, I'd like 16:36:49
11 for permission to take interlocutory appeal pursuant 16:36:51
12 to Rule 9(a) of the Rules of Appellate Procedure. 16:36:54

13 THE COURT: Okay. Well, this is, I 16:36:56
14 believe, the final order. Don't you think, lawyers? 16:36:58

15 MS. FOX: Yes, Your Honor. And -- 16:37:01

16 THE COURT: So -- 16:37:02

17 MS. FOX: -- I assume they're in a hurry 16:37:03
18 to appeal -- 16:37:05

19 MR. HOLLIN: We are. 16:37:05

20 MS. FOX: -- so I'm not sure what you 16:37:05
21 want to do about the order as far as -- usually, I 16:37:09
22 order the transcript and then we would draft 16:37:10
23 something so I don't know what to do about that. 16:37:12

24 THE COURT: Well, I would -- it seems to 16:37:15
25 me like that's what's called for. Maybe that could 16:37:16

1 be done tomorrow. 16:37:19

2 MS. FOX: Yes. 16:37:19

3 THE COURT: We're all looking at a really 16:37:20

4 important person here, our court reporter. 16:37:23

5 So I -- of course, I have to stay out of 16:37:24

6 that. But -- but I don't -- respectfully, I'm not 16:37:26

7 sure you need an interlocutory appeal if I mark 16:37:30

8 this -- or make this a final order. And I think it 16:37:33

9 should be. Do you have any problem with that? 16:37:36

10 MR. HOLLIN: No. 16:37:38

11 THE COURT: Okay. 16:37:38

12 MR. HOLLIN: I'm just trying to somehow 16:37:38

13 speed up the -- you know, so that way -- 16:37:39

14 THE COURT: Sure. 16:37:39

15 MR. HOLLIN: -- we can file in the 16:37:42

16 morning due to the -- I think that says about 4:45. 16:37:43

17 THE COURT: Okay. 16:37:43

18 MR. HOLLIN: Yeah, the first thing in the 16:37:48

19 morning. 16:37:49

20 THE COURT: Okay. Well, you'll have to 16:37:49

21 have something. 16:37:55

22 MS. FOX: I think you can go ahead and 16:37:56

23 file a notice of appeal and then it'd just be 16:37:58

24 premature until the order's filed. I've had people 16:38:01

25 do -- file a little bit early. And I think it -- 16:38:06

1 just once the order's filed, then it kicks in. 16:38:08

2 THE COURT: And, of course, that is -- 16:38:10

3 there is that -- I know you know this, but there's 16:38:11

4 that expedited process in the appellate rules so 16:38:14

5 that's gonna help you too. 16:38:17

6 And so I wish everybody the best. Thank 16:38:18

7 you. We're now adjourned. 16:38:21

8 COURT CLERK: All rise.

9 (WHEREUPON, the foregoing proceedings
10 were concluded at 4:38 p.m.)

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REPORTER'S CERTIFICATE

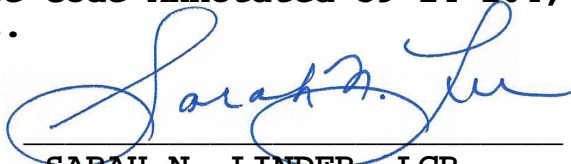
STATE OF TENNESSEE

COUNTY OF DAVIDSON

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I further certify that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome of the proceedings.

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Exhibit B

M2018-00481-00A R3 CV

NOTICE OF APPEAL

FILED
MAR 15 2018
Clerk of the Appellate Courts
Rec'd By KJM 11:36AM

Style Ludye N. Wallace

v. Metropolitan Government of Nashville and Davidson County and Davidson County Election Commission

Notice

Notice is given that Ludye N. Wallace
[List name(s) of all appealing party(ies) on separate sheet if necessary]

appeals the final judgment(s) of the Chancery Court of Davidson
[List the circuit, criminal, chancery or juvenile court] [List the County]

County filed on 3/14/2018 to the Court of Appeals
[List the date(s) the final judgment(s) was filed in the trial court clerk's office] [Name the Court of Appeals (civil), Court of Criminal Appeals (criminal), or Supreme Court (Workers' Compensation)]

Additional Information

Type of Case [Check the most appropriate item]

- | | |
|---|---|
| <input checked="" type="checkbox"/> Civil | <input type="checkbox"/> Habeas Corpus |
| <input type="checkbox"/> Criminal | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> Post Conviction | <input type="checkbox"/> Dependent and Neglect |
| <input type="checkbox"/> Workers's Compensation | <input type="checkbox"/> Other (Specify: _____) |
| <input type="checkbox"/> Death Penalty | |
| <input type="checkbox"/> Parental Termination | |

Trial Court Number 18-0254-1

Trial Court Judge Chancellor Bonnyman

Civil Appeal Cost Bond [Check the most appropriate item]

- Filed in trial court with copy attached
- Indigent with copy of indigency order or affidavit attached
- Cash bond filed in trial court with copy attached

Criminal Appeal Appearance Bond [Check the most appropriate item]

- Order appointing counsel with copy attached
- Appearance bond with copy attached
- Incarcerated pending appeal

TDOC Number [Appellant is an inmate] _____

List of Parties

Appellant: Ludye N. Wallace At trial: Plaintiff Defendant
Party's Address: 2718 Scovel Street, Nashville, TN, 37208
Party's Telephone: 615-870-4650
Attorney's Name: Jamie R. Hollin; Daniel A. Horwitz BPR#: 025460
Attorney's Address: 511 Rosebank Ave., Nashville, TN 37206 Phone: 615-870-4650

** Attach an additional sheet for each additional Appellant **

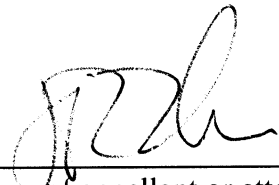
Appellee(s)

Appellee: Metro Govt. of Nashville & Davidson County Election Co. At trial: Plaintiff Defendant
Appellee's Address: 108 Metro Courthouse, Nashville, TN 37219
Attorney's Name: Lora Fox BPR#: 17243
Attorney's Address: 108 Metro Courthouse, Nashville, TN 37219 Phone: 615-862-6341

** Attach an additional sheet for each additional Appellee **

CERTIFICATE OF SERVICE

I, Jamie R. Hollin, certify that I have forwarded a true and exact copy of this Notice of Appeal by First Class, United States Mail, postage prepaid, to all parties and/or their attorneys in this case in accordance with Rule 20 of the Tennessee Rules of Appellate Procedure on this the 15th day of March, 2018.



[Signature of appellant or attorney for appellant]