

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

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Fraternal Order of Police <i>et al.</i> ,	§	
	§	
<i>Petitioners-Appellants,</i>	§	M2018-01717-SC-RDM-CV
	§	
v.	§	
	§	Circuit Court No. 18-0254-I
Metropolitan Government of Nashville and Davidson County, <i>et al.</i> ,	§	
	§	
<i>Respondents-Appellees,</i>	§	
	§	
&	§	
	§	
Community Oversight Now,	§	
	§	
<i>Intervening Respondent-Appellee.</i>	§	

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**INTERVENING RESPONDENT’S RESPONSE IN OPPOSITION TO  
PETITIONERS’ MOTION TO ASSUME JURISDICTION**

**I. Introduction**

The Fraternal Order of Police (FOP) vigorously opposes civilian oversight of Metro Nashville’s police officers. Indeed, the FOP is so aggrieved by the prospect of civilian oversight that it opposes even allowing citizens to vote on the matter. And although the FOP has not suffered an injury that permits it to bring this action, this lawsuit is the result of that purely political opposition.

This lawsuit does not, however, present any “issues of constitutional law.” See Tenn. Code Ann. § 16-3-201(d)(2)(C). The FOP’s attempt to prevent voters from voting on a civilian oversight board also does not promote any “compelling public interest.” See Tenn. Code Ann. § 16-3-201(d)(3). To the contrary, further review of this case would substantially undermine the public interest by introducing significant confusion into an electoral process that is already underway. For each of these reasons, the FOP’s *Motion to Assume Jurisdiction* should be **DENIED**.

## **II. The FOP Lacks Standing Even to Present Its Claims, Because Its “Injury” Is Hypothetical and Political**

The FOP’s lawsuit purports to be about the Metro Charter’s referendum requirements. But the FOP and its members are no more injured by Metro’s referendum process than any other member of the public who has political opposition to the concept of civilian oversight of police officers. Critically, the FOP’s own Complaint also reflects as much.

Here, rather than claiming an injury that is attributable to the process for placing a referendum on the ballot—the formal subject of this challenge—the FOP has alleged that “[m]embers of the FOP, along with the sworn police officers who are members of the FOP, will be distinctly and significantly affected by the referendum **if it is adopted and the proposed Charter amendment becomes law.**” See Exhibit #1 (FOP’s *Verified Petition*), p.

2, ¶ 8 (emphasis added). Indeed, making the purely hypothetical nature of the FOP's claimed "injury" unmistakable, the FOP's Complaint alleged repeatedly that its supposed injury is conditioned upon the civilian oversight referendum passing. See, e.g., *id.* at p. 6, ¶ 27 (claiming that civilian oversight referendum would injure the Petitioners "***if it becomes law***") (emphasis the FOP's); p. 7, ¶ 28 (alleging that "[t]he amendment, **if it becomes law**, will injure the individual Petitioners . . . .") (emphasis added); *id.* at ¶ 29 (alleging that "[t]he amendment, **if it becomes law**, will injure the individual Petitioners who are retired MNPB officers as well as retired officers who are members of the FOP . . . .") (emphasis added).

Significantly, though, an injury "must be 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical'" to create a justiciable case or controversy. *Hayes v. City of Memphis*, No. W2014-01962-COA-R3-CV, 2015 WL 5000729, at \*9 (Tenn. Ct. App. Aug. 21, 2015) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Here, however, no serious claim can be made that the referendum process itself has injured the FOP or its members in any way, or that any non-"conjectural or hypothetical" injury exists. *Id.* As a result, given the absence of a constitutionally cognizable injury, the FOP's Complaint should have been dismissed *ab initio* for lack of standing.

Of special note, the constitutional “case or controversy” requirement was also designed specifically with cases like this one in mind. At best, the FOP’s claimed injury presents “a non-justiciable political question” that should be adjudicated at the ballot box. *Bredesen v. Tennessee Judicial Selection Comm'n*, 214 S.W.3d 419, 434 (Tenn. 2007). Toward that end, to avoid the precise injury alleged, the FOP has a straightforward alternative remedy available: It can attempt to convince a majority of the voting public that police officers should not be subject to civilian oversight.

### **III. None of the Tenn. Code Ann. § 16-3-201(d) Factors is Met**

Regardless of the Appellants’ lack of standing, however, it is unnecessary for this Court to assume jurisdiction over this case because none of the Tenn. Code Ann. § 16-3-201(d) factors is met. This case does not present a question regarding “state taxes.” See Tenn. Code Ann. § 16-3-201(d)(2)(A). Nor does it present a question regarding “[t]he right to hold or retain public office.” See Tenn. Code Ann. § 16-3-201(d)(2)(B). Nor does it present a question regarding “[i]ssues of constitutional law.” See Tenn. Code Ann. § 16-3-201(d)(2)(C). Even taking the lone, significantly attenuated constitutional issue referenced in the FOP’s *Motion to Assume Jurisdiction* at face value, see *id.* at 9, the FOP has never advanced any claim regarding Tenn. Const. Art. VII, § 1 at any point throughout this litigation—

a fact that necessarily prohibits it from doing so before this Court. See *Correll v. E.I. DuPont de Nemours & Co.*, 207 S.W.3d 751, 757 (Tenn.2006) (“[I]ssues not raised in the trial court cannot be raised for the first time on appeal.”). As a result, the only “issue[] of constitutional law” presented in this case is the FOP’s lack of standing. Consequently, if this Court assumes jurisdiction of this lawsuit, it should only be for the purpose of dismissing it.

Scrutiny of the FOP’s Complaint also reveals that its only real goal is to deprive the public of the opportunity to vote on a referendum to which it has political opposition. The FOP’s *Motion to Assume Jurisdiction* notwithstanding, the FOP has never advanced a consistent definition of “general election” at any point during this lawsuit. Instead, the FOP has argued—for practical purposes—that under the Metro Charter, the term “preceding general election” is defined as “whichever preceding election prevents Nashville’s voters from being able to vote on a civilian oversight board.” See Exhibit #1, pp. 8-10 (arguing that “‘the preceding general election’ before August 1, 2018 . . . was the May 24, 2018 [special] election,” or else “the November 8, 2016 [federal] election,” or else “the August 6, 2015 general metropolitan election,” but certainly was not the most recent municipal general election).

With this context in mind, this Court should not indulge the FOP’s

efforts to inject further uncertainty into the democratic process. The notion that the public has a compelling interest in not being able to vote is farcical. Rather than promoting “a compelling public interest,” Tenn. Code Ann. § 16-3-201(d)(3), the FOP’s challenge in this case is merely the product of a single interest group’s political opposition to a specific democratic reform.

Further—and perhaps most importantly—accepting review at this juncture would significantly undermine the public interest. Tenn. Code Ann. § 16-3-201(d)(3). For the reasons presented in the Intervenor’s *September 25, 2018 Motion to Dismiss* filed in the Court of Appeals, further review would be both purposeless and impermissible, because the election process has already begun, because this case is moot as a result, and because introducing uncertainty into an electoral process that is already underway would create significant voter confusion and violate the *Purcell* principle. *See generally Exhibit #2* (Community Oversight Board’s September 25, 2018 Motion to Dismiss Appeal). The FOP’s demand for emergency review also becomes significantly less compelling in light of the fact that it presents an emergency of the FOP’s own making. *Id.* at pp. 1-2.

#### **IV. Conclusion**

For each of these reasons, the FOP’s Motion to Assume Jurisdiction should be **DENIED**.

Respectfully submitted,

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*Counsel for Intervening  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of September, 2018, a copy of the foregoing was mailed, postage prepaid, transmitted by e-mail, and/or served via the Court's e-filing system to the following:

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FILED  
2018 AUG 21 PM 1:57  
RICHARD R. RODGER, CLERK  
D.C.

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

FRATERNAL ORDER OF POLICE )  
(ANDREW JACKSON LODGE NO. 5), )  
MATTHEW DEAN BOGUSKIE, )  
NOBLE TAYLOR, HAROLD MILTON )  
BURKE, III, ROBERT ALAN YOUNG )  
and JAMES ANTHONY GAFFORD, )

Petitioners, )

v. )

No. \_\_\_\_\_

METROPOLITAN GOVERNMENT )  
OF NASHVILLE AND DAVIDSON )  
COUNTY and DAVIDSON COUNTY )  
ELECTION COMMISSION, )

Defendants. )

VERIFIED PETITION FOR WRIT OF CERTIORARI AND SUPERSEDEAS  
AND WRIT OF MANDAMUS

Come now the Petitioners, Fraternal Order of Police (Andrew Jackson Lodge No. 5), Matthew Dean Boguskie, Noble Taylor, Harold Milton Burke, III, Robert Alan Young and James Anthony Gafford, and for their cause of action against the Defendants, Metropolitan Government of Nashville and Davidson County and Davidson County Election Commission, would respectfully state as follows:

PARTIES

1. Petitioner Fraternal Order of Police (Andrew Jackson Lodge No. 5) (“FOP”), is a Tennessee public benefit corporation with its principal office located at 440 Welshwood Drive, Nashville, Tennessee 37211. The FOP has existed since at least 1954 and counts as members 1,212 sworn police officers of the Metropolitan Government of Nashville and Davidson County (“Metro Nashville”). Of those members, 698 live in Davidson County. Metro Nashville, via a



memorandum of understanding, has recognized the FOP as the authorized representative of the sworn members of the Metro Nashville Police Department (“MNPD”).

2. Petitioner Matthew Dean Boguskie is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Boguskie is an active, sworn officer of the MNPD.

3. Petitioner Noble Taylor is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Taylor is an active, sworn officer of the MNPD.

4. Petitioner Harold Milton Burke, III, is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Burke is an active, sworn officer of the MNPD.

5. Petitioner Robert Alan Young, is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Young is a retired officer of the MNPD.

6. Petitioner James Anthony Gafford is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Gafford is a retired officer of the MNPD.

7. Defendant Metro Nashville is a political subdivision of the State of Tennessee. Metro Nashville is responsible for the oversight, rulemaking, compliance with applicable law and control of Defendant Davidson County Election Commission (“Election Commission”).

8. In the event a referendum occurs based on the Petition, as defined herein, FOP will be involved in the campaign against adoption of the referendum. Members of the FOP, along with the sworn police officers who are members of the FOP, will be distinctly and significantly affected by the referendum if it is adopted and the proposed Charter amendment becomes law.

#### **JURISDICTION AND VENUE**

9. The Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 16-10-101 *et seq.*, § 16-11-102, § 27-8-101 *et seq.*, § 27-9-101 *et seq.*, and § 29-25-101.

10. Venue is proper in this Court pursuant to Tenn. Code Ann. § 20-4-101 *et seq.*

## FACTUAL BACKGROUND

### Relevant Provision of the Metro Charter

11. Metro Nashville Charter Section 19.01, which governs amendments to the Charter, includes the following relevant requirements:

This Charter may be amended subsequent to its adoption in the following manner:

An amendment or amendments may be proposed . . . upon petition filed with the metropolitan clerk, signed by ten (10) per cent of the number of the registered voters of Nashville-Davidson County voting in the preceding general election, the verification of the signatures to be made by the Davidson County Election Commission and certified to the metropolitan clerk. Such . . . 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 Petition

12. On August 1, 2018, a Petition ("Petition") was filed with the Metro Nashville Metropolitan Clerk ("Metro Clerk") requesting that a referendum be held on an amendment to the Metro Nashville Charter. A copy of the Petition, without signatures, is attached hereto as

### Exhibit A.

13. The amendment proposed by the Petition establishes The Metropolitan Government of Nashville and Davidson County Community Oversight Board ("Board").

14. The amendment requires the Board to submit to the Metro Nashville Mayor, through the Director of Finance, an annual budget request of no less than \$1,500,000.00 beginning and after fiscal year 2019-2020. The amendment imposes on the Metro Nashville Metropolitan Council ("Metro Council") the duty to determine if this amount is sufficient for the operation of the Board and staff.

15. The amendment requires that, no later than March 29, 2019, through a special appropriation lasting through the end of the fiscal year, the Board must be fully operational and staffed. The amendment requires that the salaries and benefits of the following staff and personnel of the Board be fixed: Executive Director, Assistant Executive Director, a minimum of three investigators, a minimum of two research analysts, a minimum of one community engagement liaison and a legal resource advisor.

16. The amendment provides that the Board must be operational by January 31, 2019. The amendment states that the Board shall consist of 11 members who are residents of Davidson County and shall serve terms of three years each. The Board members must have a demonstrated knowledge of issues pertaining to civil rights and equity and must have experience with criminal justice and policing practices. The amendment prohibits the following persons from serving on or working for the Board: employees of any law enforcement agency; anyone who has served in a law enforcement capacity in the past five years; any elected official; the spouse of any of the foregoing persons.

17. The amendment provides that seven Board members shall be persons who are nominated by community organizations or private petition signed by 50 Davidson County residents and approved by a majority vote of the Metro Council. Four of these seven must reside in economically distressed communities. Two members of the Board shall be persons nominated and approved by a majority vote of the Metro Council. The remaining two members shall be persons nominated by the Metro Mayor and approved by a majority vote of the Metro Council.

18. The amendment assigns the Board the power to investigate allegations that MNPD officers have committed misconduct against members of the public. The amendment gives the Board the power to compel attendance of witnesses and production of documents. The amendment empowers the Board to issue policy advisory and resolution reports assessing

allegations of misconduct by the MNPDP, to recommend to agencies involved in public safety and the administration of justice and to establish a monitoring program for ongoing review or audit of the complaint process administered by the MNPDP Office of Professional Accountability or equivalent internal affairs program in MNPDP. The amendment also empowers the Board, where it finds a basis to believe that an officer has committed misconduct in violation of MNPDP policy, to refer the matter to the MNPDP Office of Professional Accountability with a recommendation for discipline within the parameters of civil service rules and regulations. In this situation, the amendment would require the MNPDP to respond in writing to the Board's disciplinary recommendations. The amendment provides that the Board may forward to the District Attorney, the Grand Jury or the United States Attorney reports that produce factual findings of criminal misconduct and civil rights violations.

19. The Petition requests that the amendment be submitted to the Metro Nashville voters for ratification by referendum election as part of the November 6, 2018, election.

**Submission and Review of the Petition**

20. The Petition filed with the Metro Clerk on August 1, 2018, with a statement that it contained an estimated 8,269 signatures.

21. On August 2, 2018, the Metro Clerk transmitted the Petition to the Election Commission, and a staff committee of the Election Commission began to analyze the signatures for verification purposes.

22. At the Election Commission meeting on August 15, 2018, the Election Commission staff committee that had been analyzing signatures announced that it had reviewed 6,491 signatures, it had verified 4,801 signatures and it had rejected 1,690 signatures. The committee also announced that approximately 1,200 signatures had not been analyzed.

23. For purposes of this Petition, several relevant elections occurred before the Petition was submitted on August 1, 2018. Those elections include:

<b>Date of Election</b>	<b>Offices on Ballot</b>	<b>Number of Votes Cast</b>
May 24, 2018	Mayor of Nashville, a District Metro Council position	82,368
Nov. 8, 2016	President and Vice-President, Congress, Tennessee Senate and House of Representatives, and City Commissioners for Belle Meade, Forest Hills and Goodlettsville	252,926
Aug. 4, 2016	Primary election for U.S. Congress, primary elections for Tennessee Senate and House of Representatives, Republican and Democratic Party Executive Committee positions, five Davidson County School Board positions, a District Metro Council position, appellate court retention elections and Assessor of Property	47,074
Aug. 6, 2015	Mayor, Vice-Mayor, 5 Metro Council-at-Large positions and 35 District Metro Council positions	104,757

24. At the Election Commission meeting on August 15, 2018, the Election Commission passed a motion to place the proposed amendment on the ballot for the November 6, 2018, election. As part of this motion, the Election Commission found that the number of verified signatures met the requirements of Metro Nashville Charter Section 19.01 by improperly relying on 10% of the votes of the August 2016 Election.

25. On August 16, 2018, the Election Commission certified the verified signatures to the Metro Clerk. On August 20, 2018, the Metro Clerk certified to the Election Commission a copy of the Petition. A copy of the Metro Clerk's August 20, 2018, letter to the Election Commission, is attached hereto as **Exhibit B**.

**Effect the amendment would have on the Petitioners if it becomes law**

26. The Petitioners will each incur distinct and palpable injuries as a result of the amendment if it becomes law as a result of the referendum. The injuries may be redressed and prevented by a favorable decision of this Court as requested herein.

27. The amendment, if it becomes law, will injure the individual Petitioners who are active, sworn MNPB officers as well as the other 1,212 active, sworn officers of the FOP, including, without limitation: by changing the daily protocol under which they work as sworn officers of MNPB and introducing uncertainty into their duties through Board subpoenas, investigations, monitoring programs, reviews, audits, policy advisories, resolution reports, referrals and recommendations; by negatively impacting their operations and efficiency through changes in disciplinary procedures resulting from Board investigations, referrals and recommendations; by prohibiting them from serving on the Board or on the staff of the Board, particularly when the Board will have such a significant impact on their job functions; and by reducing funds available for the work of the MNPB through the Board's required annual budget request of no less than \$1,500,000.00 beginning and after fiscal year 2019-2020.

28. The amendment, if it becomes law, gives the Board the power to issue subpoenas to compel testimony and conduct hearings. The amendment provides for no Due Process protections for sworn MNPB officers who may be terminated only for just cause. Sworn MNPB officers possess a property interest in their continued employment which may not be deprived without Due Process. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538-39 (1985). The amendment provides no protection in the compelled testimony of officers in violation of *Garrity v. New Jersey*, 385 U.S. 493, 496-97 (1967) (choice given to police officers between forfeiting their jobs or incriminating themselves violated the Fourteenth Amendment). Moreover, recommendations for sanctions against officers emanating from the Board will affect officers' off-duty employment and impact the reputation of officers after they leave MNPB employment.

29. The amendment, if it becomes law, will injure the individual Petitioners who are retired MNPB officers as well as retired officers who are members of the FOP including, without

limitation, by prohibiting them from serving on the Board or on the staff of the Board for a period of five years after their service as law enforcement officers ended.

30. In the event the referendum election on the amendment goes forward, the FOP will participate in and be in charge of a campaign to inform the voters of Metro Nashville regarding the proposed amendment so they will vote to reject it.

### ISSUE

31. This action presents the issue of which election is the “preceding general election” under Metro Nashville Charter Section 19.01 for purposes of the Petition and whether the Election Commission erred when it voted to place the proposed amendment on the ballot for the November 6, 2018, election.

32. The “preceding general election” before August 1, 2018, when the Petition was filed, was the May 24, 2018, election (“May 2018 Election”), in which at least 82,368 votes were cast. The Petition does not meet the requirements of Section 19.01 because the Election Commission verified only 4,801 signatures and only approximately 1,200 signatures remained for review. Since the May 2018 Election was the preceding general election, 8,237 verified signatures (i.e. 10% of the 82,368 votes cast in the May 2018 Election) are required. The Petition has not met and cannot meet the requirements of Section 19.01. The Election Commission erred when it voted to place the proposed amendment on the ballot for the November 6, 2018, election.

33. The May 2018 Election is the most recent “general election” in which officials of the Metropolitan Government stood for election before August 1, 2018, when the Petition was filed. A general election is one in which membership in a political party is not required in order to participate. *See* Tenn. Code Ann. § 2-1-104(7). A general election contrasts with a primary election, which is a preliminary election for purposes of selecting party nominees with

participation limited “to members of the respective political parties, whereas, the general election is the ultimate selection process.” *Comer v. Ashe*, 514 S.W.2d 730, 735 (Tenn. 1974). Interpreting Section 19.01 of the Metro Nashville Charter, the Supreme Court in *State ex rel. Wise v. Judd*, 655 S.W.2d 952, 953 (Tenn. 1983), stated that the intent of Section 19.01 “was to refer to the number of votes cast in a Metropolitan election rather than to the number in a state or national election.”

34. The May 2018 Election was a general election and was the most recent general election before the Petition was filed. Membership in a political party was not required to vote in the May 2018 Election. Indeed, the May 2018 Election was entirely non-partisan and served as the “ultimate selection process” for Mayor of Nashville and a District Council position. Additionally, the May 2018 Election was a Metropolitan election. The only offices on the ballot were Metropolitan offices, i.e. Mayor and a District Council position.

35. If the May 2018 Election does not qualify as the “preceding general election,” then the November 8, 2016, election (“November 2016 Election”) or the August 6, 2015, general metropolitan election (“August 2015 Election”) does. The Petition does not have the 25,293 verified signatures to comply with Section 19.01 if the November 2016 Election is the preceding general election, nor does the Petition have the 10,476 verified signatures required if the August 2015 Election is the preceding general election. The November 2016 Election was clearly a “general election” because membership in a political party was not required to participate. In fact, the November 2016 Election ballot contained no primary elections whatsoever. Alternatively, the “preceding general election” is the August 2015 Election because it is the most recent general metropolitan election that occurred before August 1, 2018, when the Petition was filed. Evidence of the legislative intent of the relevant provision of Section 19.01 suggests that



the signature threshold was to be established by the most recent general metropolitan election, which, here, is the August 2015 election.

36. The Election Commission's use of the August 2016 Election was an error. The Election Commission overlooked two more recent general elections, one of which was a Metropolitan election (i.e. the May 2018 Election), in making its decision.

37. Additionally, the use of the August 2016 Election was an error because even if the "preceding general election" is not the May 2018 Election or the November 2016 Election, then the August 2015 Election is the "preceding general election." Evidence of the legislative intent of the relevant provision of Section 19.01 suggests that the signature threshold was to be established by the most recent general metropolitan election, which, here, is the August 2015 election. In *Wallace v. Metropolitan Government*, the Supreme Court held that the regularly scheduled election occurring in August of even-numbered years is not a general metropolitan election, 546 S.W.3d, 47, 56 (2018), thus, the August 2016 Election cannot be the preceding general election.

#### **WRIT OF CERTIORARI AND SUPERSEDEAS**

38. This Court has jurisdiction to issue a writ of certiorari and supersedeas pursuant to Tenn. Code Ann. § 16-10-101 *et seq.*, § 16-11-102, § 27-8-101 *et seq.*, and § 27-9-101 *et seq.*

39. Petitioners seek a writ of certiorari to the Election Commission to review the proceedings of the Election Commission relating to the Petition and cause the Election Commission to have a record of the proceedings prepared and submitted to this Court.

40. Petitioners request that the Court issue a writ of supersedeas directed to the Election Commission to stay the putting into effect of the Election Commission's motion to place the proposed amendment on the ballot for the November 6, 2018, election.

41. Upon review of the Election Commission's decision relating to the Petition, Petitioners request that the Court reverse the decision of the Election Commission and determine that the Petition does not contain a sufficient number of verified signatures to meet the Metro Nashville Charter Section 19.01 requirement that the Petition be signed by 10% of the number of registered voters of Nashville-Davidson County voting in the preceding general election.

42. Petitioners request expedited review of this matter due to the decision by the Election Commission to place the proposed amendment on the ballot for the November 6, 2018 election.

#### **WRIT OF MANDAMUS**

43. This Court has jurisdiction to issue a writ of mandamus pursuant to Tenn. Code Ann. § 5-1-107, § 16-10-101 *et seq.*, § 16-11-102, and § 29-25-101 *et seq.*

44. Petitioners seek a peremptory writ of mandamus because their right to the relief sought has been clearly established.

45. The Election Commission has a clear duty to determine that the Petition does not contain a sufficient number of verified signatures to meet the Metro Nashville Charter Section 19.01 requirement that the Petition be signed by 10% of the number of registered voters of Nashville-Davidson County voting in the preceding general election. There is no other adequate and complete method of obtaining the relief that the Petitioners are entitled under the law to receive.

46. Petitioners' only adequate and complete method of obtaining relief is by the Court issuing a writ of mandamus compelling the Election Commission to deny the request to place the proposed amendment on the ballot for the November 6, 2018, election.

47. Petitioners request expedited review of this matter due to the decision by the Election Commission to place the proposed amendment on the ballot for the November 6, 2018 election.

WHEREFORE, the Petitioners, Andrew Jackson Lodge No. 5, Fraternal Order of Police, Matthew Dean Boguskie, Noble Taylor, Harold Milton Burke, III, Robert Alan Young and James Anthony Gafford, respectfully request:

1. that the Court issue a writ of certiorari to the Election Commission to review the proceedings of the Election Commission relating to the Petition and cause the Election Commission to have a record of the proceedings prepared and submitted to this Court;

2. that the Court issue a writ of supersedeas directed to the Election Commission to stay the putting into effect of the Election Commission's motion to place the proposed amendment on the ballot for the November 6, 2018, election;

3. that the Court review the Election Commission's decision relating to the Petition, reverse the decision of the Election Commission and determine that the Petition does not contain a sufficient number of verified signatures to meet the Metro Nashville Charter Section 19.01 requirement that the Petition be signed by 10% of the number of registered voters of Nashville-Davidson County voting in the preceding general election;

4. that the Court issue a peremptory writ of mandamus compelling the Election Commission to deny the request to place the proposed amendment on the ballot for the November 6, 2018, election;

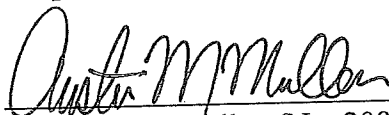
5. that the Court act on an expedited basis to preserve the rights of the Petitioners in advance of the referendum election scheduled for November 6, 2018, by the Election Commission; and

6. that the Court grant the Petitioners such other and further relief as is just and appropriate.

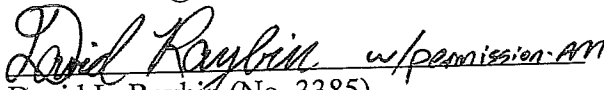
THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.

DATED: August 21, 2018

Respectfully submitted,



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*Attorneys for Petitioners*

VERIFICATION

STATE OF TN )  
 )  
COUNTY OF \_\_\_\_\_ )

The undersigned, being duly sworn on oath, does hereby depose and state that I am the PRESIDENT of the Andrew Jackson Lodge No. 5, Fraternal Order of Police, a Plaintiff in this matter. I do hereby state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief or are an accurate summary of the records of the Andrew Jackson Lodge No. 5, Fraternal Order of Police.

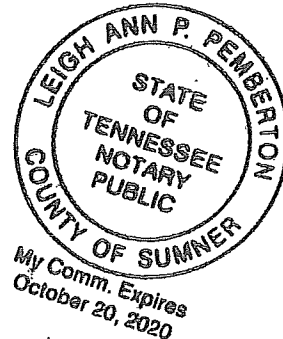
ANDREW JACKSON LODGE NO. 5,  
FRATERNAL ORDER OF POLICE

[Signature]  
By: JAMES SMALLWOOD  
Title: PRESIDENT

Subscribed and sworn to before me on this 11th day of August, 2018.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 10/20/20



VERIFICATION

STATE OF Tennessee )  
COUNTY OF Sumner )

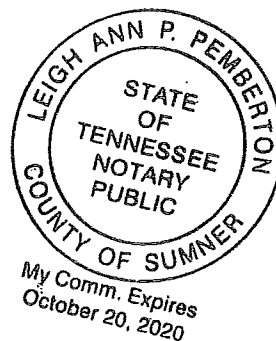
The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.

Matthew Boguskie  
Name: Matthew Boguskie

Subscribed and sworn to before me on this 17<sup>th</sup> day of August, 2018.

Leigh Ann P. Pemberton  
NOTARY PUBLIC

My Commission Expires: 10/20/20



**VERIFICATION**

STATE OF Tennessee )  
COUNTY OF Sumner )

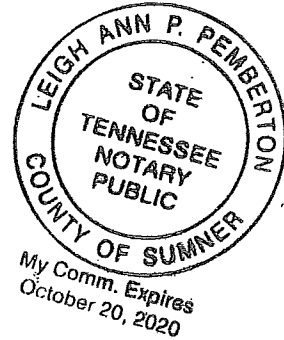
The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.

*Noble Taylor*  
Name: Noble Taylor

Subscribed and sworn to before me on this 17th day of August, 2018.

*Leigh Ann P. Pemberton*  
NOTARY PUBLIC

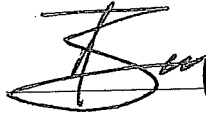
My Commission Expires: 10/20/20



**VERIFICATION**

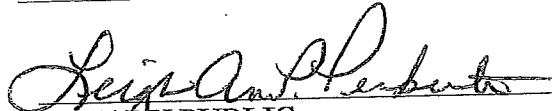
STATE OF Tennessee )  
COUNTY OF Sumner )

The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.

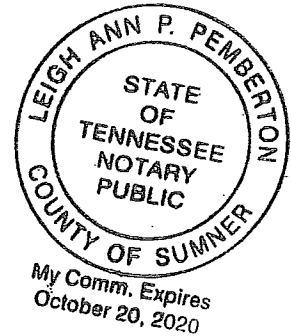


Name: HAROLD M BURKE III

Subscribed and sworn to before me on this \_\_\_\_\_ day of August, 2018.

  
NOTARY PUBLIC

My Commission Expires: 10/20/20

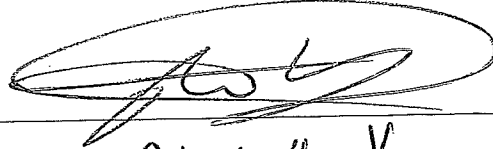




VERIFICATION

STATE OF Tennessee )  
COUNTY OF Sumner )

The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.



Name: Robert Alan Young

Subscribed and sworn to before me on this 17th day of August, 2018.

Leigh Ann P. Pemberton  
NOTARY PUBLIC

My Commission Expires: 10/20/20



VERIFICATION

STATE OF Tennessee )  
COUNTY OF Sumner )

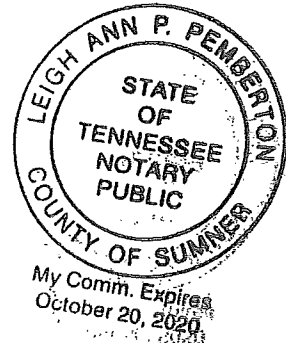
The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.

James A Gafford  
Name: James A Gafford

Subscribed and sworn to before me on this 17th day of August, 2018.

Leigh Ann P. Pemberton  
NOTARY PUBLIC

My Commission Expires: 10/20/20



**EXHIBIT A**

**FOR THE BALLOT SUMMARY**

This amendment would establish The Metropolitan Government of Nashville and Davidson County Community Oversight Board, which will have independent authority to investigate allegations of misconduct by The Metropolitan Nashville Police Department (MNPd), offer and implement remedies to police accountability, and issue advisory and resolution reports to institutions involved in public safety and the administration of justice.

**ACTUAL LANGUAGE**

Article 11 of The Metropolitan Government of Nashville and Davidson County shall be amended by adding Chapter 13 to the following new paragraph at the end thereof:

**“Sec. 11.1301 - Created; qualifications, term and selection of members**

There is hereby created The Metropolitan Government of Nashville and Davidson County Community Oversight Board, sometimes in this chapter called “the Board,” to be operational no later than January 31, 2019. The Board shall consist of eleven (11) Members, who are residents of Davidson County and shall serve three (3) year terms without compensation. The Board members must have a demonstrated knowledge of issues pertaining to civil rights and equity, and must have experience with criminal justice and policing practices. Board members are to receive related orientation and training, including the completion of Metropolitan Nashville’s Citizen Police Academy or an equivalent training, and ongoing civil rights and equity training from entities concerned with police oversight. Ineligible persons for the Board and the supporting staff include current employees of any law enforcement agency; anyone who has served in a law enforcement capacity in the past five years; any elected official; and the spouses of the foregoing persons. Seven (7) of the Board members shall be persons who are nominated by community organizations or private petition signed by fifty (50) Davidson County residents and approved by majority vote of the Council. At least four (4) of the seven (7) members must reside in economically distressed communities. Two (2) of the members shall be persons who are nominated by Council Representatives, and then approved by majority vote of the Council. Two (2) of the members shall be persons who are nominated by the Mayor, and then approved by majority vote of the Council. Except for the initial appointees who shall serve at least a one-year (1) term, the successive Board members shall serve staggered three-year terms. The initial Board members shall develop rules for determining staggered terms for the succeeding appointees to the Board.

**Sec. 11.1302 - Powers and duties**

The Board shall have the following powers and duties, and shall by majority approval adopt procedures for their implementation:

1. The Board shall have the power to investigate allegations that MNPd officers have committed misconduct against members of the public, as well as issue policy advisory and resolution reports assessing allegations of misconduct by MNPd, recommendations to agencies involved in public safety and the administration of justice, and have the option of establishing a monitoring program that provides an ongoing review or audit of the complaint process administered by the MNPd Office of Professional Accountability (“OPA”) or equivalent internal affairs program in MNPd.
2. Where the Board finds a basis to believe that an officer has committed misconduct in violation of MNPd policy, the Board may refer such matter to the MNPd OPA and recommend that discipline be given within the parameters of civil service rules and regulations of article 12 of this Charter. MNPd shall be required to respond to the Board’s disciplinary recommendations in writing.
3. The Board has the option of forwarding resolution reports that produce factual findings of criminal misconduct and civil rights violations to the District Attorney, the Grand Jury, or the United States Attorney.
4. The Board shall have all powers, including the power to compel, afforded to other metropolitan government agencies, Boards, and entities identified in Section 18.10 of the metropolitan government Charter.
5. The Board shall submit to the mayor, through the director of finance, an annual budget request of no less than \$1,500,000.00 beginning and after the fiscal year 2019-2020, and it shall be the duty of the council to determine if this amount is sufficient for the operation of the Board and staff.

**Sec. 11.1303 – Support Staff and Personnel**

No later than March 29, 2019 and through a special appropriation lasting through the end of the fiscal year, the Board shall be fully operational and staffed by sufficient numbers of personnel in order to promptly, competently, and thoroughly carry out its duties. The salaries and benefits of the following support staff and personnel shall be as fixed in the pay plan adopted pursuant to article 12 of this Charter: Executive Director, Assistant Executive Director, a minimum of three investigators to investigate alleged misconduct and factual matters relevant to the development of policy advisory and resolution reports, a minimum of two research analysts, a minimum of one community engagement liaison to receive and solicit input from community members, and a legal resource advisor.”

We the undersigned registered voters of Metropolitan Nashville, in the county of Davidson, State of Tennessee, hereby request that the above amendment to the Charter of The Metropolitan Government of Nashville and Davidson County be submitted to the voters of Metropolitan Nashville and Davidson County for ratification to be voted on in the election to be held on the sixth day of November, 2018. We request that such amendment be printed on the official ballot.

(You must include your name and address *as they appear on your voter registration card.*)

Printed Name	Street Address, City, State, Zip Code	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**EXHIBIT B**

DAVID BRILEY  
MAYOR



**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

August 20, 2018

ELIZABETH WAITES  
METROPOLITAN CLERK  
1 PUBLIC SQUARE, SUITE 205  
NASHVILLE, TENNESSEE 37201  
PHONE: (615) 862-6770  
FAX: (615) 880-3733  
metro.clerk@nashville.gov

Mr. Jim DeLanis, Chairman  
Davidson County Election Commission  
P. O. Box 650  
Nashville, TN 37202

Dear Mr. DeLanis and Commissioners:

This letter certifies the attached copy of the referendum petition concerning the creation of a Community Oversight Board, in accordance with Section 19.01 of the Metropolitan Charter, which was filed in the Metropolitan Clerk's Office on August 1, 2018. I have received the Davidson County Election Commission's letter dated August 16, 2018, certifying that sufficient signatures affixed to the petition meet the requirements of Metropolitan Charter Section 19.01. Accordingly, the petition will be placed on the ballot of the November 6, 2018 election, pursuant to the procedures outlined in Metropolitan Charter Section 19.01.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Waites", written over a horizontal line.

Elizabeth Waites  
Metropolitan Clerk

Enclosure

Cc: Mr. Jeff Roberts  
Mr. Jon Cooper

**IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE**

---

Fraternal Order of Police <i>et al.</i> ,	§	
	§	
<i>Petitioners-Appellants,</i>	§	M2018-01717-COA-R3-CV
	§	
v.	§	
	§	Circuit Court No. 18C-2158
Metropolitan Government of Nashville and Davidson County, <i>et al.</i> ,	§	
	§	
<i>Respondents-Appellees,</i>	§	
	§	
&	§	
	§	
Community Oversight Now,	§	
	§	
<i>Intervening Respondent-Appellee.</i>	§	

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**INTERVENING RESPONDENT-APPELLEE'S MOTION TO  
DISMISS APPEAL AS MOOT**

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Comes now Community Oversight Now, through undersigned counsel, and pursuant to Tenn. R. App. P. 22(a), respectfully moves to dismiss this action. As grounds, Community Oversight Now respectfully states that:

- (1) The election process is already underway;
- (2) The relief Appellants seek would violate the *Purcell* principle; and
- (3) The relief Appellants seek can no longer be provided, rendering this

case moot.

For each of these reasons, the instant case should be **DISMISSED**.

Further, given that subject matter jurisdiction over this case is now lacking, *see Nonprofit Hous. Corp. v. Tennessee Hous. Dev. Agency*, No. M2014-01588-COA-R3-CV, 2015 WL 5096181, at \*5 (Tenn. Ct. App. Aug. 27, 2015) (“The court lacks subject matter jurisdiction over a case that has become moot.”), this Court should adjudicate this Motion before adjudicating the Appellants’ September 25, 2018 Motion to Expedite.

### **I. Facts**

During the proceedings below, this case was fully adjudicated against the Appellants on its merits. Thereafter, as set forth in the Declaration of Jim Roberts—previously filed as Exhibit #1 to Metro’s September 21, 2018 *Response Opposing Expedited Briefing Schedule and Hearing*—the election process began, and it is now underway. *See Exhibit #1*. Specifically, “[m]ilitary and overseas ballots were mailed September 20, 2018.” *Id.* Additionally, the Election Commission was required “to publish notice of the election in a newspaper of general circulation by September 22, 2018.” *Id.*

Notably, the challenged Metro Charter provision that is at the heart of this case is not new, and the Appellants could have sought a declaratory judgment as to any one of their proposed interpretations of the term



“preceding general election” months or even years ago.<sup>1</sup> Instead, however, the Appellants waited until the last possible moment to initiate this action. Now—just six weeks removed from the November 6, 2018 election at issue—the consequence of the Appellants’ strategic litigation choice is to render the Appellants’ claims irreparable.

## II. Argument

The November 6, 2018 election process is already underway. See Exhibit #1. Further, the relief that the Appellants seek would violate the *Purcell* principle and is no longer feasible. The instant case should be dismissed accordingly.

As the Sixth Circuit recently explained:

When an election is “imminen[t]” and when there is “inadequate time to resolve [ ] factual disputes” and legal disputes, courts will generally decline to grant an injunction to alter a State’s established election procedures. See *Purcell v. Gonzalez*, 549 U.S. 1, 5–6, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006) (per curiam). That is especially true when a plaintiff has unreasonably delayed bringing his claim. . . . See *Operating Engineers Local 324 Health Care Plan v. G & W Constr. Co.*, 783 F.3d 1045, 1053 (6th Cir. 2015); *Nader v. Blackwell*, 230 F.3d 833, 835 (6th Cir. 2000); *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980). Call it what you will—laches, the *Purcell* principle, or common sense—

---

<sup>1</sup> The Appellants have never attempted to advance a consistent definition of “preceding general election” at any point during this lawsuit. See **Exhibit #2** (Appellant’s *Verified Petition*), pp. 8-10 (arguing that “the preceding general election’ before August 1, 2018 . . . was the May 24, 2018 [special] election,” or else “the November 8, 2016 [federal] election,” or else “the August 6, 2015 general metropolitan election.”). Essentially, the Appellants have argued that “preceding general election” means any election that prevents the public from voting on a measure that they oppose politically.

the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.

No such reason appears here. The challenged rules are not new.

*Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016).

Here, as in *Crookston*, “[t]he challenged rules are not new.” *Id.* Similarly, the Appellants “chose to wait” to initiate this case, *id.*, notwithstanding the fact that they could have sought a declaratory judgment as to one of their proposed definitions of the term “preceding general election” months or even years ago. *See* Exhibit #2, pp. 8-10.

The result of the Appellants’ strategic delay in initiating this action has been to introduce significant uncertainty into an imminent referendum election that is now just six weeks away. No doubt, this is a *feature* from the Appellants’ perspective, who themselves pleaded that they initiated this action because they oppose the potential *result* of the referendum election to be decided by voters on November 6, 2018. *See* Exhibit #2, p. 2, ¶ 8 (alleging harm if the referendum they disfavor “is adopted and the proposed Charter amendment becomes law”). *See also* *Petitioner’s [Second] Motion for an Expedited Briefing Schedule and Hearing*, p. 3, ¶ 5 (alleging—baselessly—that “public safety” is at risk if police officers are subject to civilian oversight, and asserting further that the “public interest” favors granting expedited review because it will enable continued opposition to the reform they seek to

prevent voters from voting on).

Given that the election process is already underway, however, *see* Exhibit #1, the Appellants' litigation strategy has brought this case to a point that now forecloses further adjudication. “[C]ourts will not disrupt imminent elections absent a powerful reason for doing so.” *Crookston*, 841 F.3d at 398. Such disruption, however, is precisely what the Appellants seek.

Specifically, the Appellants demand that this Court forbid Metro from “plac[ing] the proposed amendment on the ballot for the November 6, 2018, election.” *See* Exhibit #2, p. 12, ¶ 4. They now continue to demand this relief even though ballots for the November 6, 2018, election that contain the amendment at issue have already been printed and mailed out to military and overseas voters, and even though notice of the election that the Appellants seek to prevent has already been published and circulated to the public. *See* Exhibit #1.

In sum: In addition to being judicially disfavored, *see Purcell v. Gonzalez*, 549 U.S. 1, 5–6, (2006), at this juncture, providing the relief that the Appellants demand has become impossible. “Mootness results when events occur during the pendency of a litigation which render the court unable to grant the requested relief.” *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986). In the instant case, this Court is plainly unable to

remove an election from ballots that have already been printed and mailed out to the military and overseas voters. See Exhibit #1. The instant case should be dismissed as moot accordingly.

### **III. Conclusion**

For the foregoing reasons, this Court should decline to disrupt the imminent November 6, 2018 election pursuant to the *Purcell* principle. Additionally, because the relief that the Appellants seek can no longer be provided, this Court should dismiss this action as moot. Further, because mootness affects this Court's subject matter jurisdiction, see *Nonprofit Hous. Corp.*, 2015 WL 5096181, at \*5, this Court should adjudicate this Motion before adjudicating the Appellants' September 25, 2018 Motion to Expedite.

Respectfully submitted,

By: /s/ Daniel A. Horwitz  
Daniel A. Horwitz, BPR #032176  
1803 Broadway, Suite #531  
Nashville, TN 37203  
(615) 739-2888  
daniel.a.horwitz@gmail.com

Jamie R. Hollin, BPR #025460  
511 Rosebank Avenue  
Nashville, TN 37206  
(615) 870-4650  
j.hollin@icloud.com

*Counsel for Intervenor  
Respondent—Appellee,  
Community Oversight Now*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of September, 2018, a copy of the foregoing was mailed, postage prepaid, transmitted by e-mail, and/or served via the Court's e-filing system to the following:

Austin L. McMullen  
Bradley Arant Boult Cummings  
1600 Division St., Suite 700  
Nashville, Tennessee 37203  
amcmullen@bradley.com

Lora Barkenbus Fox  
Metropolitan Dept. of Law  
108 Metropolitan Courthouse  
Nashville, Tennessee 37219  
lora.fox@nashville.gov

David L. Raybin  
Raybin & Weissman, P.C.  
424 Church St., Suite 2120  
Nashville, Tennessee 37219  
draybin@nashvilletnlaw.com

By: /s/ Daniel A. Horwitz  
Daniel A. Horwitz, Esq.

IN THE TENNESSEE COURT OF APPEALS

FRATERNAL ORDER OF POLICE	)	
(ANDREW JACKSON LODGE NO. 5),	)	
MATTHEW DEAN BOGUSKIE,	)	
NOBLE TAYLOR, HAROLD MILTON	)	
BURKE, III, ROBERT ALAN YOUNG	)	Appeal No. M2018-01717-COA-R3-CV
and JAMES ANTHONY GAFFORD,	)	
Petitioners,	)	Davidson County Circuit No. 18C2158
v.	)	
METROPOLITAN GOVERNMENT	)	
OF NASHVILLE AND DAVIDSON	)	
COUNTY & DAVIDSON COUNTY	)	
ELECTION COMMISSION,	)	
Respondents, and	)	
COMMUNITY OVERSIGHT NOW,	)	
Intervening Respondent.	)	

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**DECLARATION OF JEFF ROBERTS**

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I, Jeff Roberts, swear and affirm under the penalties of perjury as follows:

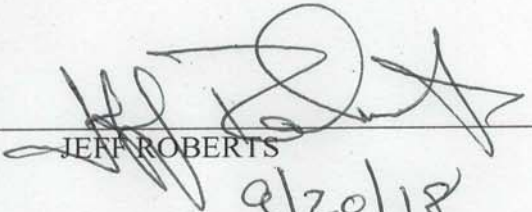
1. I am over the age of 18 years and am competent to testify to the matters stated herein, and if called to testify would state as follows:
2. I am the Administrator of Elections for Davidson County. I have served in this capacity since June 20, 2016.
3. I am appointed by the Davidson County Election Commission, and I serve as the Chief Administrative Officer of the Commission. I am responsible for the daily operations of the office of the Election Commission, and I am responsible for the execution of all elections.
4. Here are the deadlines for preparing the November 6, 2018 ballot:
  - Military and overseas ballots were mailed September 20, 2018. In order to meet this deadline, all decisions concerning the ballot were made by September 10, 2018. The

Document received by the TN Court of Appeals.

September 10 deadline was necessary to allow adequate time for printing and preparing the mailings.

- The Commission must publish notice of the election in a newspaper of general circulation by September 22, 2018.
- Absentee ballots must be printed no later than October 7, 2018.
- A sample ballot must be mailed to households by October 12, 2018.
- Early voting begins October 17, 2018.
- Early voting ends November 1, 2018.
- Election day is November 6, 2018.

Further, declarant saith not.

  
\_\_\_\_\_  
JEFF ROBERTS  
9/20/18  
\_\_\_\_\_  
DATE

FILED  
2018 AUG 21 PM 1:57  
RICHARD R. RODGER, CLERK  
D.C.

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

FRATERNAL ORDER OF POLICE )  
(ANDREW JACKSON LODGE NO. 5), )  
MATTHEW DEAN BOGUSKIE, )  
NOBLE TAYLOR, HAROLD MILTON )  
BURKE, III, ROBERT ALAN YOUNG )  
and JAMES ANTHONY GAFFORD, )

Petitioners, )

v. )

No. \_\_\_\_\_

METROPOLITAN GOVERNMENT )  
OF NASHVILLE AND DAVIDSON )  
COUNTY and DAVIDSON COUNTY )  
ELECTION COMMISSION, )

Defendants. )

VERIFIED PETITION FOR WRIT OF CERTIORARI AND SUPERSEDEAS  
AND WRIT OF MANDAMUS

Come now the Petitioners, Fraternal Order of Police (Andrew Jackson Lodge No. 5), Matthew Dean Boguskie, Noble Taylor, Harold Milton Burke, III, Robert Alan Young and James Anthony Gafford, and for their cause of action against the Defendants, Metropolitan Government of Nashville and Davidson County and Davidson County Election Commission, would respectfully state as follows:

PARTIES

1. Petitioner Fraternal Order of Police (Andrew Jackson Lodge No. 5) ("FOP"), is a Tennessee public benefit corporation with its principal office located at 440 Welshwood Drive, Nashville, Tennessee 37211. The FOP has existed since at least 1954 and counts as members 1,212 sworn police officers of the Metropolitan Government of Nashville and Davidson County ("Metro Nashville"). Of those members, 698 live in Davidson County. Metro Nashville, via a



memorandum of understanding, has recognized the FOP as the authorized representative of the sworn members of the Metro Nashville Police Department (“MNPD”).

2. Petitioner Matthew Dean Boguskie is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Boguskie is an active, sworn officer of the MNPD.

3. Petitioner Noble Taylor is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Taylor is an active, sworn officer of the MNPD.

4. Petitioner Harold Milton Burke, III, is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Burke is an active, sworn officer of the MNPD.

5. Petitioner Robert Alan Young, is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Young is a retired officer of the MNPD.

6. Petitioner James Anthony Gafford is a resident, citizen, registered voter and taxpayer of Metro Nashville. Mr. Gafford is a retired officer of the MNPD.

7. Defendant Metro Nashville is a political subdivision of the State of Tennessee. Metro Nashville is responsible for the oversight, rulemaking, compliance with applicable law and control of Defendant Davidson County Election Commission (“Election Commission”).

8. In the event a referendum occurs based on the Petition, as defined herein, FOP will be involved in the campaign against adoption of the referendum. Members of the FOP, along with the sworn police officers who are members of the FOP, will be distinctly and significantly affected by the referendum if it is adopted and the proposed Charter amendment becomes law.

#### **JURISDICTION AND VENUE**

9. The Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 16-10-101 *et seq.*, § 16-11-102, § 27-8-101 *et seq.*, § 27-9-101 *et seq.*, and § 29-25-101.

10. Venue is proper in this Court pursuant to Tenn. Code Ann. § 20-4-101 *et seq.*

## FACTUAL BACKGROUND

### Relevant Provision of the Metro Charter

11. Metro Nashville Charter Section 19.01, which governs amendments to the Charter, includes the following relevant requirements:

This Charter may be amended subsequent to its adoption in the following manner:

An amendment or amendments may be proposed . . . upon petition filed with the metropolitan clerk, signed by ten (10) per cent of the number of the registered voters of Nashville-Davidson County voting in the preceding general election, the verification of the signatures to be made by the Davidson County Election Commission and certified to the metropolitan clerk. Such . . . 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 Petition

12. On August 1, 2018, a Petition ("Petition") was filed with the Metro Nashville Metropolitan Clerk ("Metro Clerk") requesting that a referendum be held on an amendment to the Metro Nashville Charter. A copy of the Petition, without signatures, is attached hereto as

### Exhibit A.

13. The amendment proposed by the Petition establishes The Metropolitan Government of Nashville and Davidson County Community Oversight Board ("Board").

14. The amendment requires the Board to submit to the Metro Nashville Mayor, through the Director of Finance, an annual budget request of no less than \$1,500,000.00 beginning and after fiscal year 2019-2020. The amendment imposes on the Metro Nashville Metropolitan Council ("Metro Council") the duty to determine if this amount is sufficient for the operation of the Board and staff.

15. The amendment requires that, no later than March 29, 2019, through a special appropriation lasting through the end of the fiscal year, the Board must be fully operational and staffed. The amendment requires that the salaries and benefits of the following staff and personnel of the Board be fixed: Executive Director, Assistant Executive Director, a minimum of three investigators, a minimum of two research analysts, a minimum of one community engagement liaison and a legal resource advisor.

16. The amendment provides that the Board must be operational by January 31, 2019. The amendment states that the Board shall consist of 11 members who are residents of Davidson County and shall serve terms of three years each. The Board members must have a demonstrated knowledge of issues pertaining to civil rights and equity and must have experience with criminal justice and policing practices. The amendment prohibits the following persons from serving on or working for the Board: employees of any law enforcement agency; anyone who has served in a law enforcement capacity in the past five years; any elected official; the spouse of any of the foregoing persons.

17. The amendment provides that seven Board members shall be persons who are nominated by community organizations or private petition signed by 50 Davidson County residents and approved by a majority vote of the Metro Council. Four of these seven must reside in economically distressed communities. Two members of the Board shall be persons nominated and approved by a majority vote of the Metro Council. The remaining two members shall be persons nominated by the Metro Mayor and approved by a majority vote of the Metro Council.

18. The amendment assigns the Board the power to investigate allegations that MNPD officers have committed misconduct against members of the public. The amendment gives the Board the power to compel attendance of witnesses and production of documents. The amendment empowers the Board to issue policy advisory and resolution reports assessing

allegations of misconduct by the MNPDP, to recommend to agencies involved in public safety and the administration of justice and to establish a monitoring program for ongoing review or audit of the complaint process administered by the MNPDP Office of Professional Accountability or equivalent internal affairs program in MNPDP. The amendment also empowers the Board, where it finds a basis to believe that an officer has committed misconduct in violation of MNPDP policy, to refer the matter to the MNPDP Office of Professional Accountability with a recommendation for discipline within the parameters of civil service rules and regulations. In this situation, the amendment would require the MNPDP to respond in writing to the Board's disciplinary recommendations. The amendment provides that the Board may forward to the District Attorney, the Grand Jury or the United States Attorney reports that produce factual findings of criminal misconduct and civil rights violations.

19. The Petition requests that the amendment be submitted to the Metro Nashville voters for ratification by referendum election as part of the November 6, 2018, election.

**Submission and Review of the Petition**

20. The Petition filed with the Metro Clerk on August 1, 2018, with a statement that it contained an estimated 8,269 signatures.

21. On August 2, 2018, the Metro Clerk transmitted the Petition to the Election Commission, and a staff committee of the Election Commission began to analyze the signatures for verification purposes.

22. At the Election Commission meeting on August 15, 2018, the Election Commission staff committee that had been analyzing signatures announced that it had reviewed 6,491 signatures, it had verified 4,801 signatures and it had rejected 1,690 signatures. The committee also announced that approximately 1,200 signatures had not been analyzed.

23. For purposes of this Petition, several relevant elections occurred before the Petition was submitted on August 1, 2018. Those elections include:

<b>Date of Election</b>	<b>Offices on Ballot</b>	<b>Number of Votes Cast</b>
May 24, 2018	Mayor of Nashville, a District Metro Council position	82,368
Nov. 8, 2016	President and Vice-President, Congress, Tennessee Senate and House of Representatives, and City Commissioners for Belle Meade, Forest Hills and Goodlettsville	252,926
Aug. 4, 2016	Primary election for U.S. Congress, primary elections for Tennessee Senate and House of Representatives, Republican and Democratic Party Executive Committee positions, five Davidson County School Board positions, a District Metro Council position, appellate court retention elections and Assessor of Property	47,074
Aug. 6, 2015	Mayor, Vice-Mayor, 5 Metro Council-at-Large positions and 35 District Metro Council positions	104,757

24. At the Election Commission meeting on August 15, 2018, the Election Commission passed a motion to place the proposed amendment on the ballot for the November 6, 2018, election. As part of this motion, the Election Commission found that the number of verified signatures met the requirements of Metro Nashville Charter Section 19.01 by improperly relying on 10% of the votes of the August 2016 Election.

25. On August 16, 2018, the Election Commission certified the verified signatures to the Metro Clerk. On August 20, 2018, the Metro Clerk certified to the Election Commission a copy of the Petition. A copy of the Metro Clerk's August 20, 2018, letter to the Election Commission, is attached hereto as **Exhibit B**.

**Effect the amendment would have on the Petitioners if it becomes law**

26. The Petitioners will each incur distinct and palpable injuries as a result of the amendment if it becomes law as a result of the referendum. The injuries may be redressed and prevented by a favorable decision of this Court as requested herein.

27. The amendment, if it becomes law, will injure the individual Petitioners who are active, sworn MNPB officers as well as the other 1,212 active, sworn officers of the FOP, including, without limitation: by changing the daily protocol under which they work as sworn officers of MNPB and introducing uncertainty into their duties through Board subpoenas, investigations, monitoring programs, reviews, audits, policy advisories, resolution reports, referrals and recommendations; by negatively impacting their operations and efficiency through changes in disciplinary procedures resulting from Board investigations, referrals and recommendations; by prohibiting them from serving on the Board or on the staff of the Board, particularly when the Board will have such a significant impact on their job functions; and by reducing funds available for the work of the MNPB through the Board's required annual budget request of no less than \$1,500,000.00 beginning and after fiscal year 2019-2020.

28. The amendment, if it becomes law, gives the Board the power to issue subpoenas to compel testimony and conduct hearings. The amendment provides for no Due Process protections for sworn MNPB officers who may be terminated only for just cause. Sworn MNPB officers possess a property interest in their continued employment which may not be deprived without Due Process. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538-39 (1985). The amendment provides no protection in the compelled testimony of officers in violation of *Garrity v. New Jersey*, 385 U.S. 493, 496-97 (1967) (choice given to police officers between forfeiting their jobs or incriminating themselves violated the Fourteenth Amendment). Moreover, recommendations for sanctions against officers emanating from the Board will affect officers' off-duty employment and impact the reputation of officers after they leave MNPB employment.

29. The amendment, if it becomes law, will injure the individual Petitioners who are retired MNPB officers as well as retired officers who are members of the FOP including, without

limitation, by prohibiting them from serving on the Board or on the staff of the Board for a period of five years after their service as law enforcement officers ended.

30. In the event the referendum election on the amendment goes forward, the FOP will participate in and be in charge of a campaign to inform the voters of Metro Nashville regarding the proposed amendment so they will vote to reject it.

### ISSUE

31. This action presents the issue of which election is the “preceding general election” under Metro Nashville Charter Section 19.01 for purposes of the Petition and whether the Election Commission erred when it voted to place the proposed amendment on the ballot for the November 6, 2018, election.

32. The “preceding general election” before August 1, 2018, when the Petition was filed, was the May 24, 2018, election (“May 2018 Election”), in which at least 82,368 votes were cast. The Petition does not meet the requirements of Section 19.01 because the Election Commission verified only 4,801 signatures and only approximately 1,200 signatures remained for review. Since the May 2018 Election was the preceding general election, 8,237 verified signatures (i.e. 10% of the 82,368 votes cast in the May 2018 Election) are required. The Petition has not met and cannot meet the requirements of Section 19.01. The Election Commission erred when it voted to place the proposed amendment on the ballot for the November 6, 2018, election.

33. The May 2018 Election is the most recent “general election” in which officials of the Metropolitan Government stood for election before August 1, 2018, when the Petition was filed. A general election is one in which membership in a political party is not required in order to participate. *See* Tenn. Code Ann. § 2-1-104(7). A general election contrasts with a primary election, which is a preliminary election for purposes of selecting party nominees with

participation limited “to members of the respective political parties, whereas, the general election is the ultimate selection process.” *Comer v. Ashe*, 514 S.W.2d 730, 735 (Tenn. 1974). Interpreting Section 19.01 of the Metro Nashville Charter, the Supreme Court in *State ex rel. Wise v. Judd*, 655 S.W.2d 952, 953 (Tenn. 1983), stated that the intent of Section 19.01 “was to refer to the number of votes cast in a Metropolitan election rather than to the number in a state or national election.”

34. The May 2018 Election was a general election and was the most recent general election before the Petition was filed. Membership in a political party was not required to vote in the May 2018 Election. Indeed, the May 2018 Election was entirely non-partisan and served as the “ultimate selection process” for Mayor of Nashville and a District Council position. Additionally, the May 2018 Election was a Metropolitan election. The only offices on the ballot were Metropolitan offices, i.e. Mayor and a District Council position.

35. If the May 2018 Election does not qualify as the “preceding general election,” then the November 8, 2016, election (“November 2016 Election”) or the August 6, 2015, general metropolitan election (“August 2015 Election”) does. The Petition does not have the 25,293 verified signatures to comply with Section 19.01 if the November 2016 Election is the preceding general election, nor does the Petition have the 10,476 verified signatures required if the August 2015 Election is the preceding general election. The November 2016 Election was clearly a “general election” because membership in a political party was not required to participate. In fact, the November 2016 Election ballot contained no primary elections whatsoever. Alternatively, the “preceding general election” is the August 2015 Election because it is the most recent general metropolitan election that occurred before August 1, 2018, when the Petition was filed. Evidence of the legislative intent of the relevant provision of Section 19.01 suggests that



the signature threshold was to be established by the most recent general metropolitan election, which, here, is the August 2015 election.

36. The Election Commission's use of the August 2016 Election was an error. The Election Commission overlooked two more recent general elections, one of which was a Metropolitan election (i.e. the May 2018 Election), in making its decision.

37. Additionally, the use of the August 2016 Election was an error because even if the "preceding general election" is not the May 2018 Election or the November 2016 Election, then the August 2015 Election is the "preceding general election." Evidence of the legislative intent of the relevant provision of Section 19.01 suggests that the signature threshold was to be established by the most recent general metropolitan election, which, here, is the August 2015 election. In *Wallace v. Metropolitan Government*, the Supreme Court held that the regularly scheduled election occurring in August of even-numbered years is not a general metropolitan election, 546 S.W.3d, 47, 56 (2018), thus, the August 2016 Election cannot be the preceding general election.

#### **WRIT OF CERTIORARI AND SUPERSEDEAS**

38. This Court has jurisdiction to issue a writ of certiorari and supersedeas pursuant to Tenn. Code Ann. § 16-10-101 *et seq.*, § 16-11-102, § 27-8-101 *et seq.*, and § 27-9-101 *et seq.*

39. Petitioners seek a writ of certiorari to the Election Commission to review the proceedings of the Election Commission relating to the Petition and cause the Election Commission to have a record of the proceedings prepared and submitted to this Court.

40. Petitioners request that the Court issue a writ of supersedeas directed to the Election Commission to stay the putting into effect of the Election Commission's motion to place the proposed amendment on the ballot for the November 6, 2018, election.

41. Upon review of the Election Commission's decision relating to the Petition, Petitioners request that the Court reverse the decision of the Election Commission and determine that the Petition does not contain a sufficient number of verified signatures to meet the Metro Nashville Charter Section 19.01 requirement that the Petition be signed by 10% of the number of registered voters of Nashville-Davidson County voting in the preceding general election.

42. Petitioners request expedited review of this matter due to the decision by the Election Commission to place the proposed amendment on the ballot for the November 6, 2018 election.

#### **WRIT OF MANDAMUS**

43. This Court has jurisdiction to issue a writ of mandamus pursuant to Tenn. Code Ann. § 5-1-107, § 16-10-101 *et seq.*, § 16-11-102, and § 29-25-101 *et seq.*

44. Petitioners seek a peremptory writ of mandamus because their right to the relief sought has been clearly established.

45. The Election Commission has a clear duty to determine that the Petition does not contain a sufficient number of verified signatures to meet the Metro Nashville Charter Section 19.01 requirement that the Petition be signed by 10% of the number of registered voters of Nashville-Davidson County voting in the preceding general election. There is no other adequate and complete method of obtaining the relief that the Petitioners are entitled under the law to receive.

46. Petitioners' only adequate and complete method of obtaining relief is by the Court issuing a writ of mandamus compelling the Election Commission to deny the request to place the proposed amendment on the ballot for the November 6, 2018, election.

47. Petitioners request expedited review of this matter due to the decision by the Election Commission to place the proposed amendment on the ballot for the November 6, 2018 election.

WHEREFORE, the Petitioners, Andrew Jackson Lodge No. 5, Fraternal Order of Police, Matthew Dean Boguskie, Noble Taylor, Harold Milton Burke, III, Robert Alan Young and James Anthony Gafford, respectfully request:

1. that the Court issue a writ of certiorari to the Election Commission to review the proceedings of the Election Commission relating to the Petition and cause the Election Commission to have a record of the proceedings prepared and submitted to this Court;

2. that the Court issue a writ of supersedeas directed to the Election Commission to stay the putting into effect of the Election Commission's motion to place the proposed amendment on the ballot for the November 6, 2018, election;

3. that the Court review the Election Commission's decision relating to the Petition, reverse the decision of the Election Commission and determine that the Petition does not contain a sufficient number of verified signatures to meet the Metro Nashville Charter Section 19.01 requirement that the Petition be signed by 10% of the number of registered voters of Nashville-Davidson County voting in the preceding general election;

4. that the Court issue a peremptory writ of mandamus compelling the Election Commission to deny the request to place the proposed amendment on the ballot for the November 6, 2018, election;

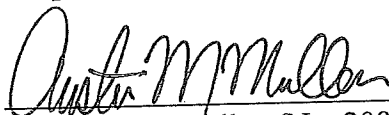
5. that the Court act on an expedited basis to preserve the rights of the Petitioners in advance of the referendum election scheduled for November 6, 2018, by the Election Commission; and

6. that the Court grant the Petitioners such other and further relief as is just and appropriate.

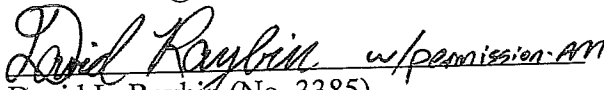
THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.

DATED: August 21, 2018

Respectfully submitted,



Austin L. McMullen (No. 20877)  
BRADLEY ARANT BOULT CUMMINGS, LLP  
1600 Division Street, Suite 700  
P. O. Box 340025  
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Phone: (615) 252-2307  
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David L. Raybin (No. 3385)  
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Nashville, Tennessee 37219  
Phone: 615-256-6666  
Fax: 615-254-4254  
DRaybin@NashvilleTnLaw.com

*Attorneys for Petitioners*

**VERIFICATION**

STATE OF TN )

COUNTY OF \_\_\_\_\_ )

The undersigned, being duly sworn on oath, does hereby depose and state that I am the PRESIDENT of the Andrew Jackson Lodge No. 5, Fraternal Order of Police, a Plaintiff in this matter. I do hereby state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief or are an accurate summary of the records of the Andrew Jackson Lodge No. 5, Fraternal Order of Police.

ANDREW JACKSON LODGE NO. 5,  
FRATERNAL ORDER OF POLICE

[Signature]

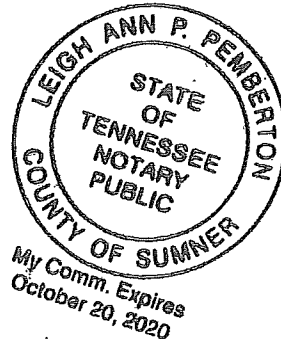
By: JAMES SMALLWOOD

Title: PRESIDENT

Subscribed and sworn to before me on this 11th day of August, 2018.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 10/20/20



VERIFICATION

STATE OF Tennessee )  
COUNTY OF Sumner )

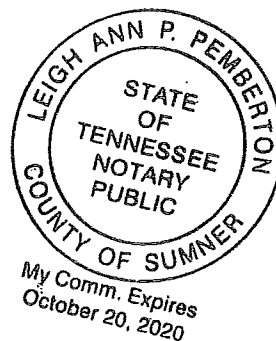
The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.

Matthew Boguskie  
Name: Matthew Boguskie

Subscribed and sworn to before me on this 17<sup>th</sup> day of August, 2018.

Leigh Ann P. Pemberton  
NOTARY PUBLIC

My Commission Expires: 10/20/20



**VERIFICATION**

STATE OF Tennessee )  
COUNTY OF Sumner )

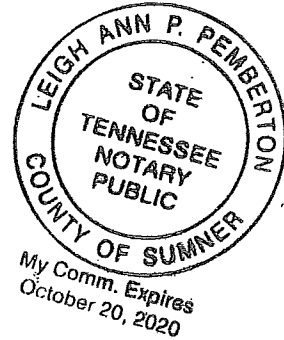
The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.

*Noble Taylor*  
Name: Noble Taylor

Subscribed and sworn to before me on this 17th day of August, 2018.

*Leigh Ann P. Pemberton*  
NOTARY PUBLIC

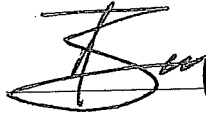
My Commission Expires: 10/20/20



**VERIFICATION**

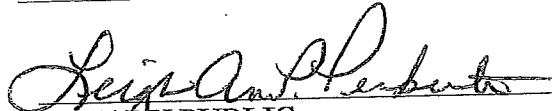
STATE OF Tennessee )  
COUNTY OF Sumner )

The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.

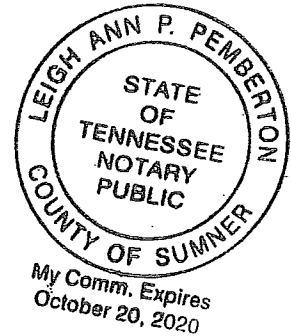


Name: HAROLD M BURKE III

Subscribed and sworn to before me on this \_\_\_\_\_ day of August, 2018.

  
NOTARY PUBLIC

My Commission Expires: 10/20/20

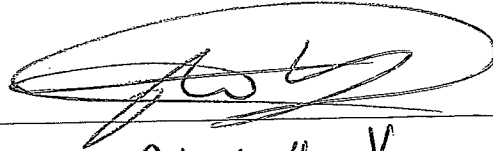




VERIFICATION

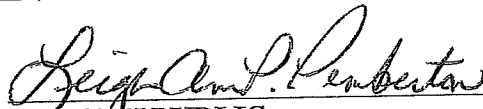
STATE OF Tennessee )  
COUNTY OF Sumner )

The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.



Name: Robert Alan Young

Subscribed and sworn to before me on this 17th day of August, 2018.

  
NOTARY PUBLIC

My Commission Expires: 10/20/20



VERIFICATION

STATE OF Tennessee )  
COUNTY OF Sumner )

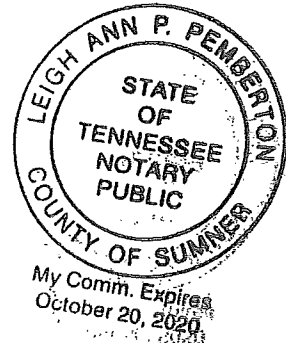
The undersigned, being duly sworn on oath, does hereby depose and state that I have read the foregoing allegations and that the allegations contained herein are true and correct based on my personal knowledge and belief.

James A Gafford  
Name: James A Gafford

Subscribed and sworn to before me on this 17th day of August, 2018.

Leigh Ann P. Pemberton  
NOTARY PUBLIC

My Commission Expires: 10/20/20



**EXHIBIT A**

**FOR THE BALLOT SUMMARY**

This amendment would establish The Metropolitan Government of Nashville and Davidson County Community Oversight Board, which will have independent authority to investigate allegations of misconduct by The Metropolitan Nashville Police Department (MNPd), offer and implement remedies to police accountability, and issue advisory and resolution reports to institutions involved in public safety and the administration of justice.

**ACTUAL LANGUAGE**

Article 11 of The Metropolitan Government of Nashville and Davidson County shall be amended by adding Chapter 13 to the following new paragraph at the end thereof:

**“Sec. 11.1301 - Created; qualifications, term and selection of members**

There is hereby created The Metropolitan Government of Nashville and Davidson County Community Oversight Board, sometimes in this chapter called “the Board,” to be operational no later than January 31, 2019. The Board shall consist of eleven (11) Members, who are residents of Davidson County and shall serve three (3) year terms without compensation. The Board members must have a demonstrated knowledge of issues pertaining to civil rights and equity, and must have experience with criminal justice and policing practices. Board members are to receive related orientation and training, including the completion of Metropolitan Nashville’s Citizen Police Academy or an equivalent training, and ongoing civil rights and equity training from entities concerned with police oversight. Ineligible persons for the Board and the supporting staff include current employees of any law enforcement agency; anyone who has served in a law enforcement capacity in the past five years; any elected official; and the spouses of the foregoing persons. Seven (7) of the Board members shall be persons who are nominated by community organizations or private petition signed by fifty (50) Davidson County residents and approved by majority vote of the Council. At least four (4) of the seven (7) members must reside in economically distressed communities. Two (2) of the members shall be persons who are nominated by Council Representatives, and then approved by majority vote of the Council. Two (2) of the members shall be persons who are nominated by the Mayor, and then approved by majority vote of the Council. Except for the initial appointees who shall serve at least a one-year (1) term, the successive Board members shall serve staggered three-year terms. The initial Board members shall develop rules for determining staggered terms for the succeeding appointees to the Board.

**Sec. 11.1302 - Powers and duties**

The Board shall have the following powers and duties, and shall by majority approval adopt procedures for their implementation:

1. The Board shall have the power to investigate allegations that MNPd officers have committed misconduct against members of the public, as well as issue policy advisory and resolution reports assessing allegations of misconduct by MNPd, recommendations to agencies involved in public safety and the administration of justice, and have the option of establishing a monitoring program that provides an ongoing review or audit of the complaint process administered by the MNPd Office of Professional Accountability (“OPA”) or equivalent internal affairs program in MNPd.
2. Where the Board finds a basis to believe that an officer has committed misconduct in violation of MNPd policy, the Board may refer such matter to the MNPd OPA and recommend that discipline be given within the parameters of civil service rules and regulations of article 12 of this Charter. MNPd shall be required to respond to the Board’s disciplinary recommendations in writing.
3. The Board has the option of forwarding resolution reports that produce factual findings of criminal misconduct and civil rights violations to the District Attorney, the Grand Jury, or the United States Attorney.
4. The Board shall have all powers, including the power to compel, afforded to other metropolitan government agencies, Boards, and entities identified in Section 18.10 of the metropolitan government Charter.
5. The Board shall submit to the mayor, through the director of finance, an annual budget request of no less than \$1,500,000.00 beginning and after the fiscal year 2019-2020, and it shall be the duty of the council to determine if this amount is sufficient for the operation of the Board and staff.

**Sec. 11.1303 – Support Staff and Personnel**

No later than March 29, 2019 and through a special appropriation lasting through the end of the fiscal year, the Board shall be fully operational and staffed by sufficient numbers of personnel in order to promptly, competently, and thoroughly carry out its duties. The salaries and benefits of the following support staff and personnel shall be as fixed in the pay plan adopted pursuant to article 12 of this Charter: Executive Director, Assistant Executive Director, a minimum of three investigators to investigate alleged misconduct and factual matters relevant to the development of policy advisory and resolution reports, a minimum of two research analysts, a minimum of one community engagement liaison to receive and solicit input from community members, and a legal resource advisor.”

We the undersigned registered voters of Metropolitan Nashville, in the county of Davidson, State of Tennessee, hereby request that the above amendment to the Charter of The Metropolitan Government of Nashville and Davidson County be submitted to the voters of Metropolitan Nashville and Davidson County for ratification to be voted on in the election to be held on the sixth day of November, 2018. We request that such amendment be printed on the official ballot.

(You must include your name and address *as they appear on your voter registration card.*)

Printed Name	Street Address, City, State, Zip Code	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**EXHIBIT B**

DAVID BRILEY  
MAYOR



**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

August 20, 2018

ELIZABETH WAITES  
METROPOLITAN CLERK  
1 PUBLIC SQUARE, SUITE 205  
NASHVILLE, TENNESSEE 37201  
PHONE: (615) 862-6770  
FAX: (615) 880-3733  
metro.clerk@nashville.gov

Mr. Jim DeLanis, Chairman  
Davidson County Election Commission  
P. O. Box 650  
Nashville, TN 37202

Dear Mr. DeLanis and Commissioners:

This letter certifies the attached copy of the referendum petition concerning the creation of a Community Oversight Board, in accordance with Section 19.01 of the Metropolitan Charter, which was filed in the Metropolitan Clerk's Office on August 1, 2018. I have received the Davidson County Election Commission's letter dated August 16, 2018, certifying that sufficient signatures affixed to the petition meet the requirements of Metropolitan Charter Section 19.01. Accordingly, the petition will be placed on the ballot of the November 6, 2018 election, pursuant to the procedures outlined in Metropolitan Charter Section 19.01.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Waites", written over a horizontal line.

Elizabeth Waites  
Metropolitan Clerk

Enclosure

Cc: Mr. Jeff Roberts  
Mr. Jon Cooper