



Case No. 21-0433-IV

**BRIEF OF AMICI CURIAE NASHVILLE AREA CHAMBER OF
COMMERCE AND TENNESSEANS FOR SENSIBLE ELECTION
LAWS IN SUPPORT OF PETITIONER**

Counsel for Amici Curiae

I. INTRODUCTION

Throughout the history of the Metropolitan Government, approved referendum petitions supported by a sufficient number of signatures prescribed—and were then held on—the following election dates¹:

REFERENDUM PETITION	ELECTION DATE PRESCRIBED BY REFERENDUM PETITION	DATE ELECTION HELD
Police and Fire Pay Plan	November 4, 1986	November 4, 1986
Department of Audit	August 1, 1991	August 1, 1991
Term Limits	November 8, 1994	November 8, 1994
Vote on Property Taxes	November 7, 2006	November 7, 2006
English Only Referendum I	November 4, 2008	N/A—No election
Right to Amend Charter	January 22, 2009	January 22, 2009
English Only Referendum II	January 22, 2009	January 22, 2009
Save the Fairgrounds	August 4, 2011	August 4, 2011
Local Hire	August 6, 2015	August 6, 2015
Community Oversight	November 6, 2018	November 6, 2018
4 Good Government	“May 28, 2021 or June 14, 2021”	July 27, 2021

The reason why “one of these things is not like the others” is that “one of these things doesn’t belong.” Sesame Street, *One of These Things* - *Circles*, YOUTUBE (Apr. 27, 2007), <https://www.youtube.com/watch?v=FCIGhto1vIg>. Specifically, by approving 4 Good Government’s defective multi-date referendum petition and then unlawfully setting the election for 4 Good Government’s petition on an entirely different *third* date, the Davidson County Election Commission committed two errors of law, both of which require reversal.

First, in contravention of Metro Charter § 19.01, the Election Commission voted to approve a legally defective referendum petition that

¹ See Collective Attach. 1 (approved referendum petitions); Collective Attach. 2 (election returns regarding approved referendum petitions).

unlawfully prescribed two different election dates—“May 28, 2021 or June 14, 2021, whichever is earlier as permitted by Metro Charter § 19.01”—on which 4 Good Government’s proposed referendum election would be held.² 4 Good Government’s multi-date petition was legally invalid, because Metro Charter § 19.01 provides without ambiguity that a petition “shall . . . prescribe **a date**” on which a proposed referendum will be held. *Id.* (emphasis added). As detailed below, reserving multiple dates does not satisfy this requirement; it deprives opponents of fair notice; and it neither strictly complies nor substantially complies with a mandatory Metro Charter provision. 4 Good Government’s petition was legally defective as a consequence.

Second, the Election Commission erred by setting the election on 4 Good Government’s petition for July 27, 2021³—a date that was *neither* the prescribed “May 28, 2021” date *nor* the prescribed “June 14, 2021” date. This decision contravened Metro Charter § 19.01’s similarly unambiguous requirement that the date prescribed by a referendum petition is the date “at which the electorate of the metropolitan government will vote to ratify or to reject the amendments proposed.” *Id.* Further, as another part of this Court has held, “§ 19.01 does not provide for amendments to th[e] date” that a petitioner prescribes.⁴ That holding was correct, and it is also the position that—as recently as April 15, 2021—4 Good Government itself formally advanced at least thirty-two

² A.R. 624.

³ A.R. 569.

⁴ Order at 3, Nashville English First, et al. v. Davidson County Election Commission, et al., Davidson County Chancery Court No. 08-1912-I (Sep. 5, 2008) (Attach. 3).

separate times regarding the specific petition at issue in this case. *See* Amended Expedited Verified Complaint at 20, ¶ 4, 4 Good Government and the 14,010 Registered Voters Who Signed the Nashville Taxpayer Protection Act v. The Davidson County Election Commission and the Metropolitan Government of Nashville-Davidson County, Davidson County Chancery Court No. 21-300-IV (Apr. 15, 2021) (Attach. 4) (seeking an order “directing the Election Commission to comply with its ministerial duty to place the ballot initiative on the June 14, 2021 election ballot”); *id.* at 2 (“***time is of the essence to place a duly-qualified citizen-sponsored ballot on a June 14, 2021 election date.***”); *id.* at ¶ 3 (“June 14, 2021 election”); ¶ 7 (“The Petition stated June 14, 2021 as the election day when Davidson County registered voters would cast their ballots”); ¶ 10 (indicating that referendum belongs on the “June 14, 2021 ballot”); ¶ 40 (same); ¶ 48 (same); ¶ 52 (indicating the referendum belongs on the “June 14, 2021 election ballot”); ¶ 53 (same); ¶ 54 (same); ¶ 55 (same); ¶ 59 (same); ¶ 60 (same); ¶ 62 (same); ¶ 63 (same); ¶ 64 (same); ¶ 65 (same); ¶ 66 (same); ¶ 67 (same); ¶ 69 (same); ¶ 70 (same); ¶ 71 (same); ¶ 75 (same); ¶ 76 (same); ¶ 77 (same); ¶ 81 (same); ¶ 82 (same); ¶ 83 (same); 20, ¶ 7 (same); *id.* at 1 (“the June 14, 2021 ballot”); *id.* at 2 (“a June 14, 2021 election date”); *id.* at 21, ¶ 12 (seeking an order “directing the Election Commission to place initiatives on June 14, 2021 [sic] election ballot[.]”).

Both of these errors—approving a legally defective petition that prescribed two potential election dates, and setting the election on that petition for an unlawful *third* date—are unprecedented. Never before

has a referendum petition purported to prescribe and reserve two election dates in contravention of Metro Charter § 19.01's straightforward "prescribe a date" requirement. Never before has the Election Commission violated Metro Charter § 19.01's mandate that the election date prescribed by a referendum petition be the date "at which the electorate of the metropolitan government will vote to ratify or to reject the amendments proposed," either. *Id.* For the reasons detailed below, these unprecedented errors also mandate reversal. As a consequence, the Election Commission's illegal actions should be **REVERSED**.

II. LEGAL STANDARDS AND STANDARD OF REVIEW

A. SCOPE OF REVIEW

"[P]re-election challenges to the form or facial constitutional validity of referendum measures are ripe for judicial scrutiny." *City of Memphis v. Shelby Cty. Election Comm'n*, 146 S.W.3d 531, 539 (Tenn. 2004). Where, as here, the Election Commission acts illegally by approving an invalid referendum petition and exceeds its jurisdiction by setting an election for an unlawful date, affected litigants may obtain relief via a writ of certiorari. *See Harding Acad. v. Metro. Gov't of Nashville & Davidson Cty.*, 222 S.W.3d 359, 363 (Tenn. 2007) (holding that review "is limited to determining whether the [Election Commission] **exceeded its jurisdiction**, followed an unlawful procedure, **acted illegally**, arbitrarily, or fraudulently, or acted without material evidence to support its decision.") (emphases added) (citing *Lafferty v. City of Winchester*, 46 S.W.3d 752, 759 (Tenn. Ct. App. 2000)). Additionally, when questions of law involving the Metropolitan Charter are presented,

this Court’s review is “de novo with no presumption of correctness given” to the Election Commission’s decision. *Id.* (citing *Lafferty*, 46 S.W.3d at 759). *See also Wallace v. Metro. Gov’t of Nashville*, 546 S.W.3d 47, 52 (Tenn. 2018) (“We thus independently review the relevant provisions of the Charter without any deference to the interpretations of the Commission or the trial court.”).

B. MANDATORY COMPLIANCE WITH THE METROPOLITAN CHARTER

The Metropolitan Charter is “the organic law of the municipality to which all its actions are subordinate.” *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988) (citing *Marshall & Bruce Co. v. City of Nashville*, 109 Tenn. 495, 512, 71 S.W. 815, 819 (1902); *Wilgus v. City of Murfreesboro*, 532 S.W.2d 50, 52 (Tenn. App. 1975). As such, the Tennessee Supreme Court has held—repeatedly—that “[t]he **provisions of the charter are mandatory**, and must be obeyed by the city and its agents.”” *Id.* (emphasis added) (quoting *Barnes v. Ingram*, 217 Tenn. 363, 373, 397 S.W.2d 821, 825 (1965) (in turn quoting *Marshall & Bruce Co. v. City of Nashville*, 109 Tenn. 495, 71 S.W. 815, 819 (1903))).

Thus, “[w]hen a municipality fails to act within its charter or under applicable statutory authority, the action is ultra vires and void or voidable.” *Id.* (citing *Crocker v. Town of Manchester*, 178 Tenn. 67, 70, 156 S.W.2d 383, 384 (1941)). “Under Tennessee law, a municipal action may be declared ultra vires for either of two reasons: (1) because the action was wholly outside the scope of the city’s authority under its charter or a statute, or (2) because the action was not undertaken consistent with the mandatory provisions of its charter or a statute.” *Id.*

C. INTERPRETING THE METROPOLITAN CHARTER

When interpreting the Metropolitan Charter, familiar principles of statutory construction apply. *Wallace*, 546 S.W.3d at 52–53 (“The principles of statutory construction guide us in our interpretation of the Charter.”) (citing *Renteria-Villegas v. Metro. Gov't of Nashville & Davidson Cnty.*, 382 S.W.3d 318, 321 (Tenn. 2012); *Jordan v. Knox Cnty., Tenn.*, 213 S.W.3d 751, 763 (Tenn. 2007)). “The overriding purpose of a court in construing a statute is to ascertain and effectuate the legislative intent, without either expanding or contracting the statute’s intended scope.” *Id.* (citing *Ray v. Madison Cnty., Tenn.*, 536 S.W.3d 824, 831 (Tenn. 2017); *Pressley*, 528 S.W.3d at 512). “Legislative intent is first and foremost reflected in the language of the statute.” *Id.* (citing *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010)).

Thus, where the Metro Charter’s text “is clear and unambiguous, [courts] need look no further than the language of the [Charter] itself.” *Id.* at 53 (citing *Lee Medical*, 312 S.W.3d at 527). If the Metro Charter’s text presents genuine ambiguity, though, a reviewing court may consult external sources, including “the broader statutory scheme, the history and purpose of the legislation, public policy, historical facts preceding or contemporaneous with the enactment of the statute, and legislative history.” *Wallace*, 546 S.W.3d at 53. Further, unlike the Davidson County Election Commission’s interpretation of the Metropolitan Charter, when *the Metropolitan Government*—“the body responsible for the promulgation of” the Metro Charter—“has construed and applied its own rules or policies,” *id.* at 52, n.7, “considerable deference will be

granted to [its] interpretation of its own regulation unless the interpretation is inconsistent with the terms of the regulation.” *Gay v. City of Somerville*, 878 S.W.2d 124, 127 (Tenn. Ct. App. 1994).

D. REQUIREMENTS OF A REFERENDUM PETITION UNDER METRO CHARTER § 19.01

To amend the Metropolitan Charter by “petition and popular vote,” Metro Charter § 19.01 mandates compliance with three requirements:

First, “an amendment or amendments may be proposed . . . upon petition[.]” *Id.*

Second, Petitioners must convince “ten (10) per cent of the number of the registered voters of Nashville-Davidson County voting in the preceding general election” to sign their petition then file their petition and accompanying signatures “with the metropolitan clerk[.]” *Id.*

Third, Petitioners “shall also prescribe a date . . . at which the electorate of the metropolitan government will vote to ratify or to reject the amendments proposed.” *Id.*

Until now, prospective petitioners have uniformly complied with these requirements. In fact, because Metro Charter § 19.01’s “prescribe a date” requirement is not ambiguous in any respect, no submitted petition in Metro’s history has ever even *attempted* to prescribe multiple election dates,⁵ which the Charter unmistakably prohibits.

Because Metro Charter § 19.01 establishes that the date prescribed by a valid referendum petition is the date “at which the electorate of the metropolitan government will vote to ratify or to reject the amendments

⁵ See Collective Attach. 1.

proposed,” *id.*, until now, the Davidson County Election Commission has never failed to schedule an election on the date prescribed by a referendum petition, either.⁶ Tenn. Code Ann. § 2-3-204(c) does afford the Election Commission discretion to “reset the date of the election on a question to coincide with [a] regular primary or general election” under circumstances when “the date for an election on a question . . . falls within ninety (90) days of an upcoming regular primary or general election being held in the jurisdiction voting on the question.” *Id.* Otherwise, though, no provision of either state law or the Metro Charter affords the Election Commission authority to set an election on a § 19.01 referendum petition for any date other than the date prescribed.

Given this context, the Election Commission has long taken the position that when it comes to setting an election prescribed by a petition filed under Metro Charter § 19.01, the Election Commission’s duties are purely “ministerial,” because the petition itself “set[s] a date for the election[.]” *See* Davidson County Election Commission’s Motion to Dismiss at 12-13, *Nashville English First*, No. 08-1912-I (Sep. 23, 2008) (Attach. 5). *See also* Davidson County Election Commission’s Responses to Chancellor’s Questions at 1, *Nashville English First*, No. 08-1912-I (Sep. 4, 2008) (Attach. 6) (expressing agreement with Chancellor’s indication that “petitioners[] . . . set the election date (so long as it is at least 80 days after the date of filing the petition)”). Of note, another Part of this Court has also concurred with that position, which the Election Commission successfully maintained in contested litigation. *See* Order

⁶ *See* Collective Attachs. 1–2.

at 3, *Nashville English First*, No. 08-1912-I (Sep. 5, 2008) (Attach. 3) (holding that “[t]he Plaintiff prescribed the date of November 4, 2008 and . . . § 19.01 does not provide for amendments to th[e] date” that a petitioner selects) (emphasis added).

III. RELEVANT FACTS

In early 2021, an amorphous entity calling itself “4 Good Government” began collecting signatures for a petition to amend the Metropolitan Charter. 4 Good Government’s petition did not “prescribe a date” for the election on its proposed amendments, though, as Metro Charter § 19.01 requires. Instead, 4 Good Government’s petition purported to reserve two potential election dates by stating that its proposed amendments “would be voted on by the citizens on May 28, 2021 or June 14, 2021, whichever is earlier as provided by Metro Charter § 19.01.”⁷ 4 Good Government also told prospective signatories the same thing. Motion for Expedited Hearing at Ex. A, p. 1, *4 Good Government et al.*, Davidson County Chancery Court No. 21-0300-IV (Apr. 5, 2021) (Attach. 7) (“**The vote shall be on May 28, 2021 or June 14, 2021, whichever is earlier as permitted by Metro Charter § 19.01**”).

Given the nature of 4 Good Government’s petition, its proposed amendments and prescribed election dates were covered extensively by local media. *See, e.g.,* Yihyun Jeong, *Renewed petition effort again seeks to limit Nashville property tax rate*, THE TENNESSEAN (Feb. 9, 2021) <https://www.tennessean.com/story/news/politics/2021/02/09/nashville-property-tax-rate-emerges-petition/4437006001/> (“the new petition also

⁷ A.R. 624.

seeks to hold an election on either May 28 or June 14”); Emily Luxen, *Group launches new effort to roll back Nashville’s 34% property tax increase*, WTVF (Feb. 9, 2021), <https://www.newschannel5.com/news/group-launches-new-effort-to-roll-back-nashvilles-34-property-tax-increase> (“The group is hoping for a special election on May 28 or June 14.”); Ryan Breslin, *Renewed push to overturn Metro’s 34 percent property tax increase*, WSMV (Feb. 10, 2021), https://www.wsmv.com/news/renewed-push-to-overturn-metros-34-percent-property-tax-increase/article_122aa8ba-6b8f-11eb-8fc6-5b50e4cf6ada.html (“The group wants people to sign onto this petition so an election can be held on May 28 or June 14 of this year.”). Ultimately, 4 Good Government filed its petition and signatures with the Metropolitan Clerk on March 25, 2021.⁸ As a result, 4 Good Government’s prescribed May 28, 2021 election date ran afoul of § 19.01’s 80-day rule, leaving the alternatively prescribed June 14, 2021 election date as the only date that was plausibly available among 4 Good Government’s two reserved options.

The Election Commission did not act to set a June 14th election after 4 Good Government filed its petition, though. Thus, on April 2, 2021, 4 Good Government—and all of the signatories to its petition—filed suit.⁹ Significantly, 4 Good Government—and all of the signatories to its petition—also maintained repeatedly that Metro Charter § 19.01 required the Election Commission to schedule an election for the “June

⁸ A.R. 621.

⁹ Expedited Verified Complaint, *4 Good Government et. al.*, No. 21-300-IV (April 2, 2021) (Attach. 8).

14, 2021” election date prescribed by 4 Good Government’s Petition. *See supra*, p. 4 (noting thirty-two separate occasions when that claim was asserted). Consequently, 4 Good Government—and all of the signatories to its petition—sought an order from another Part of this Court directing the Election Commission “to comply with its ministerial duty to place the ballot initiative on the June 14, 2021 election ballot[,]” *see* Amended Expedited Verified Complaint at 20, ¶ 4, *4 Good Government et al.*, No. 21-300-IV (Apr. 15, 2021) (Attach. 4), and they emphasized that “***time is of the essence to place a duly-qualified citizen-sponsored ballot on a June 14, 2021 election date.***” *Id.* at 2.

Despite this known urgency, though—and despite their actual knowledge that the Election Commission had a legal obligation to set an election for June 14, 2021 if their petition was deemed valid—following an apparent discussion with DCEC Chairman Jim DeLanis, 4 Good Government and all of the signatories to its petition moved to continue their time-sensitive claims.¹⁰ Shortly thereafter, they also abandoned their claims entirely by voluntarily dismissing their lawsuit.¹¹

The Davidson County Election Commission conducted several hearings thereafter and retained private counsel.¹² The Election Commission neither sought nor obtained counsel regarding whether the

¹⁰ Plaintiffs’ Expedited Motion for Continuance, Case No. 21-300-IV (Apr. 16, 2021) (Attach. 9) (referencing “the support of Jim DeLanis” and having “been advised by Commissioner Delanis” that “he supports the continuance”).

¹¹ Plaintiffs’ Notice of Voluntary Nonsuit, *4 Good Government et al.*, No. 21-300-IV (Apr. 28, 2021) (Attach. 10) (“Plaintiffs hereby file their notice of voluntary nonsuit in this matter.”).

¹² A.R. 553–70.

multiple election dates contained on 4 Good Government's petition rendered it defective, however.¹³ According to the Election Commission's private counsel, that issue was "outside the scope" of the Election Commission's "limited" engagement.¹⁴ Eventually, the Election Commission's counsel called the issue "kind of immaterial at this point."¹⁵

Ultimately, the Election Commission voted 3-2 to set an election on 4 Good Government's petition for July 27, 2021.¹⁶ The vote was strictly partisan. Specifically, all of the Election Commission's Republican members voted to hold an election on 4 Good Government's petition, and all of the Election Commission's Democratic members voted not to do so.¹⁷

As to the unlawful nature of 4 Good Government's multi-date petition, the record reflects Election Commission Chairman Jim DeLanis's awareness that 4 Good Government's petition did not strictly comply with Metro Charter § 19.01. Thus, he vigorously argued for application of a reduced "substantial compliance" standard instead.¹⁸ No further discussion occurred on the issue, though, and the Election Commission never formally voted on the matter.

Finally, with respect to the unlawful July 27, 2021 election date that the Election Commission selected, the record does not reflect the Election Commission's consideration of its own longstanding position and

¹³ A.R. 122, lines 20–25.

¹⁴ *Id.*

¹⁵ A.R. 323, lines 20–21.

¹⁶ A.R. 569.

¹⁷ *Id.*

¹⁸ A.R. 151, line 22–153, line 22.

interpretation regarding § 19.01 that a petition itself determines the proper election date—a position that the Election Commission now fully disavows on appeal.¹⁹ Neither does it reflect any discussion of the fact that selecting an entirely new date for a petition-based referendum election exceeds the Election Commission’s jurisdiction. The record does not reflect any consideration of the fact that the Election Commission’s decision to set a July 27, 2021 election date conflicted with its longstanding public position on the matter and the position that it had previously maintained—successfully—in litigation, either. *See Davidson County Election Commission’s Motion to Dismiss at 12-13, Nashville English First*, No. 08-1912-I (Sep. 23, 2008) (Attach. 5) (arguing that an amendment-initiating petition itself “set[s] a date for the election”); Davidson County Election Commission’s Responses to Chancellor’s Questions at 1 *Nashville English First*, No. 08-1912-I (Sep. 4, 2008) (Attach. 6), (expressing agreement with Chancellor’s indication that “petitioners[] . . . set the election date (so long as it is as at least 80 days after the date of filing the petition)”; Order at 3, *Nashville English First*, No. 08-1912-I (Sep. 5, 2008) (Attach. 3) (holding that “[t]he Plaintiff prescribed the date of November 4, 2008 and . . . **§ 19.01 does not provide for amendments to th[e] date**” that a petitioner selects) (emphasis). Thereafter, this lawsuit followed.

¹⁹ *See* Election Commission’s Pre-Trial Brief, pp. 55–56 (arguing incorrectly, without citation, and against extensive, uniform precedent and historical practice—including its own previous representations during litigation in which it prevailed—that “Petitioners have identified no requirement that the Election Commission set an election on the precise date that a petition requests; and there is no such requirement,” and claiming further that state law which does not conflict with § 19.01 is “preeminen[t]” and entirely replaces it).

IV. SUMMARY OF ARGUMENT

The Election Commission acted illegally by approving 4 Good Government’s unlawful multi-date referendum petition. Metro Charter § 19.01 provides without ambiguity that a petition “shall . . . prescribe a **date**” on which a proposed referendum will be held. *Id.* (emphasis added). This provision is not ambiguous, and it means what it says. In particular, “a” does not mean “multiple,” and “date” does not mean “dates.” Further, because § 19.01’s “prescribe a date” requirement is mandatory, and because 4 Good Government’s petition unmistakably failed to comply with it—either strictly or substantially—4 Good Government’s petition was legally defective.

The Election Commission also acted illegally—and it exceeded its jurisdiction—by setting the election on 4 Good Government’s petition for an unlawful date. The July 27, 2021 election date that the Election Commission selected was *neither* of the two dates that 4 Good Government’s referendum petition prescribed. Under Metro Charter § 19.01, though, the date “at which the electorate of the metropolitan government will vote to ratify or to reject the amendments proposed” is the date prescribed by a petition. *Id.* Accordingly, the Election Commission acted illegally and exceeded its jurisdiction by selecting an unlawful election date without legal authority to do so.

Because § 19.01’s requirements are mandatory, the Election Commission’s illegal decisions were “*ultra vires* and void or voidable.” *See City of Lebanon*, 756 S.W.2d at 241. As such, the Election Commission’s illegal actions should be reversed, and the scheduled July 27, 2021, election should be vacated.

V. ARGUMENT

A. 4 GOOD GOVERNMENT’S PETITION DID NOT COMPLY WITH METRO CHARTER § 19.01’S REQUIREMENT THAT PETITIONERS “PRESCRIBE A DATE” FOR A REFERENDUM ELECTION.

1. **“A date” means one date, not multiple dates.**

Metro Charter § 19.01 provides, in pertinent part, as follows:

An amendment or amendments may be proposed (1) by the adoption of a resolution by the council favoring the same and submitting it or them to the people for approval. The affirmative vote for adoption of such resolution in the council shall be not less than two-thirds of the membership to which the council is entitled, and such resolution when adopted need not be submitted to the mayor for his or her approval; or (2) upon petition filed with the metropolitan clerk, signed by ten (10) per cent of the number of the registered voters of Nashville-Davidson County voting in the preceding general election, the verification of the signatures to be made by the Davidson County Election Commission and certified to the metropolitan clerk. **Such resolution or petition shall also prescribe a date** not less than eighty (80) [days] subsequent to the date of its filing for the holding of a referendum election at which the electorate of the metropolitan government will vote to ratify or to reject the amendments proposed.

Id. (emphasis added).

The bolded provision above is not ambiguous. “A” is singular, not plural, and “date” does not mean “dates.” Several reasons support this inescapable conclusion.

First, as a threshold matter, in its ordinary and usual use, the word “a” is singular, not plural. Several courts have held as much under similar circumstances. *See, e.g., Dulaney v. Nat’l Pizza Co.*, 733 So. 2d 301, 305 (Miss. Ct. App. 1998) (“It is necessary to interpret statutes

consistent with reason and common sense. The word ‘a’ is singular, not plural.”); *Piburn v. SAIF Corp.*, 199 Or. App. 494, 497 (2005) (“the article ‘a’ is singular”); *State v. Fowler*, 311 Kan. 136, 150 (2020) (“‘A’ is singular but nonspecific.”) (citing Webster’s New World College Dictionary 1 (5th ed. 2014)); *Douglas Press, Inc. v. Arrow Int’l Inc.*, No. 95 C 3863, 1999 WL 35110172, at *8 (N.D. Ill. Feb. 4, 1999) (“it remains that the ordinary meaning of ‘a’ is singular. There is no reason, either in the claim language or the specifications, to ignore that meaning.”).

Second, in context, the phrase “a date” in Metro Charter § 19.01 means one election date, not multiple election dates. *Cf. Chehardy v. Democratic Exec. Comm. for Jefferson Par.*, 259 La. 45, 50, 249 So. 2d 196, 198 (1971) (“‘A’ in its ordinary and usual use means ‘one’ unless the words preceding or following are indicative of a contrary meaning.”); *Pleasants Invs. Ltd. P’ship v. Dep’t of Assessments & Tax’n*, 141 Md. App. 481, 498 (2001) (“we conclude that ‘a ... plan’ in the context of TP § 822 means one approved plan”); *Holladay Duplex Mgmt. Co. v. Howells*, 2002 UT App 125, ¶ 7 (“we conclude that in the context it is used, ‘a’ means one.”); *Banuelos v. Barr*, 953 F.3d 1176, 1181 (10th Cir. 2020) (“in most contexts, the singular article ‘a’ refers to only one item.”). The sentence in which the phrase “a date” appears within Metro Charter § 19.01— “[s]uch resolution or petition shall also prescribe a date not less than eighty (80) [days] subsequent to the date of its filing for the holding of a referendum election at which the electorate of the metropolitan government will vote”—uses the article “a” coupled with a singular noun. *See id.* *Cf. Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1483 (2021)

(“Here again we encounter an article coupled with a singular noun (‘the Notice’), a combination that once more seems to suggest a discrete document.”). Thus, it contemplates exactly one date on which the electorate “will vote to ratify or to reject the amendments proposed[,]” *see id.*—something that common sense independently reflects as well.

Most revealingly, though, when the drafters of Metro Charter § 19.01 wanted to specify that either a singular or plural meaning was intended, they did so. *See* Metro Charter § 19.01 (“an amendment or amendments”); (“it or them”). By contrast, though, § 19.01’s “prescribe a date” provision mandates that petitioners prescribe “a date” only. *Id.* These textual differences—which appear within the same statute—carry meaning. *See, e.g., Stevens ex rel. Stevens v. Hickman Cmty. Health Care Servs., Inc.*, 418 S.W.3d 547, 560 (Tenn. 2013) (“legislative silence in this particular context offers a strong suggestion that the legislature intended Tenn. Code Ann. §§ 29–26–121 and –122 to function differently. If the legislature had intended to punish a plaintiff’s failure to comply with the requirements of Tenn. Code Ann. § 29–26–121(a)(2)(E) by requiring courts to dismiss all such cases with prejudice, the legislature could easily have done so, as it did in Tenn. Code Ann. § 29–26–122.”).

For all of these reasons, “a date,” as used in Metro Charter § 19.01, means exactly one date, not multiple dates.

2. 4 Good Government’s Petition did not “prescribe a date.”

4 Good Government’s petition did not “prescribe a date” in compliance with Metro Charter § 19.01. Instead, 4 Good Government’s petition prescribed and reserved multiple dates, and it purported to

provide that its proposed amendments “would be voted on by the citizens on May 28, 2021 or June 14, 2021, whichever is earlier as provided by Metro Charter § 19.01.”²⁰

This attempted end-run around § 19.01’s “prescribe a date” requirement did not comply with the Metro Charter. As detailed in the section that follows, that violation also renders 4 Good Government’s petition’s legally defective, because petitioners must strictly comply with § 19.01’s mandatory “prescribe a date” requirement.

Until now, no petition in Metro’s history has ever attempted to prescribe multiple potential dates for a referendum election, either. *See* Collective Attach. 1. Other petitioners have also been prohibited from reaching the ballot due to comparable non-compliance with § 19.01. *See* Order at 3, *Nashville English First*, No. 08-1912-I (Sep. 5, 2008) (Attach. 3) (affirming Election Commission’s decision refusing to place English Only I’s petition on the November 4, 2008 ballot due to conflict with § 19.01’s two-year prohibition, and holding that “[t]he Plaintiff prescribed the date of November 4, 2008 and the law regulating Charter amendment frequency at § 19.01 does not provide for amendments to that date.”). Significantly, if those petitioners had been permitted to prescribe multiple potential election dates in the manner that 4 Good Government did here, that result would not have come to pass. Thus, 4 Good Government’s petition is the first petition in Metro’s history to violate § 19.01’s “prescribe a date” requirement, and overlooking that violation would result in 4 Good Government receiving disparately favorable

²⁰ Attach. 7.

treatment that was not afforded to previous petitioners.

B. PETITIONERS MUST STRICTLY COMPLY WITH § 19.01'S PRESCRIBE A DATE REQUIREMENT.

1. **Compliance with Metro Charter provisions is mandatory.**

§ 19.01's "prescribe a date" requirement is mandatory and requires strict compliance. As the Tennessee Supreme Court has held, "[t]he provisions of the charter are mandatory, and must be obeyed by the city and its agents." *City of Lebanon*, 756 S.W.2d at 241 (quoting *Barnes v. Ingram*, 217 Tenn. 363, 373, 397 S.W.2d 821, 825 (1965)). Thus, even if the Election Commission wanted to excuse compliance with § 19.01's "prescribe a date" requirement, the Election Commission lacked any legal authority to do so. *Id.*

Significantly—as the Tennessee Supreme Court has similarly cautioned the Election Commission in recent litigation involving § 19.01—mandatory compliance with the Metro Charter also remains essential even if such compliance would present a hardship. *See Wallace*, 546 S.W.3d at 59, n.14 ("What Metro and the Commission suggest is tantamount to inviting us to judicially amend the statute. We recognize that consequences of the result reached here today include additional expense to Metro, scheduling issues, and logistical problems in conducting a special election. However, we are unable to consider these consequences in reaching our decision. Our responsibility remains resolute: To interpret the law rather than make the law. As a result, we decline this invitation by Metro and the Commission."). As such, the Election Commission's failure to comply with the Metro Charter by

excusing 4 Good Government’s non-compliance with § 19.01’s mandatory “prescribe a date” requirement renders its action ultra vires and void. *City of Lebanon*, 756 S.W.2d at 241 (“When a municipality fails to act within its charter or under applicable statutory authority, the action is ultra vires and void or voidable.”) (citing *Crocker*, 156 S.W.2d at 384). That unlawful decision must be reversed accordingly.

2. Overwhelming authority reflects that petitioners must strictly comply with Metro Charter § 19.01 in particular.

Beyond the fact that amending the Metropolitan Charter—a constitutional document and “the organic law of the municipality to which all its actions are subordinate,” *id.*—is a serious matter generally, *cf. Stovall v. Gartrell*, 332 S.W.2d 256, 263 (Ky. 1960) (“Strict compliance with constitutional provisions pertaining to amendments is required.”) (citing 11 Am. Jur., Const. Law, Sect. 28), abundant authority also instructs that petitioners must strictly comply with the requirements of Metro Charter § 19.01, specifically. Five independent reasons compel this conclusion:

a. “[S]hall” is mandatory, not directory.

The plain text of Metro Charter § 19.01’s “prescribe a date” requirement establishes that strict compliance with § 19.01 is mandatory. § 19.01 provides, in straightforward terms, that a “petition **shall** also prescribe a date” for an election on the proposed amendments. *Id.* (emphasis added). As the Tennessee Supreme Court has explained, “[i]n general, use of the word ‘shall’ in a statute indicates that the statutory provision is mandatory, not discretionary.” *Emory v. Memphis*

City Sch. Bd. of Educ., 514 S.W.3d 129, 144, n.11 (Tenn. 2017) (emphasis added). “To determine whether the use of the word ‘shall’ in a statute is mandatory or merely directory, [courts] look to see ‘whether the prescribed mode of action is of the essence of the thing to be accomplished.’” *Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 309 (Tenn. 2012) (quoting 3 Norman J. Singer & J.D. Singer, *Sutherland Statutes and Statutory Construction* § 57:2 (7th ed. 2008)).

With respect to Metro Charter § 19.01’s “prescribe a date” requirement, the “essence of the thing to be accomplished” is to provide notice of the date that a referendum election will be held. *Id.* The point, then, is “to inform the voters of the time, place, and purpose of the election.” *See Nelson v. Haywood Cty.*, 87 Tenn. 781, 11 S.W. 885, 892 (1889). *See also Opinion of the Justs.*, 251 Ala. 78, 87, 36 So. 2d 499, 509 (1948) (“The purpose of having the notice of the election published is only to bring to the attention of the electorate the fact that the election is to be held on a certain date and to apprise the electorate of the nature of the proposed constitutional amendment.”).

Prescribing *two* potential election dates fails to accomplish this purpose.²¹ It wholly deprives opponents of a proposed referendum of the

²¹ The purpose of such notice notwithstanding, the Election Commission has defended the 4 Good Government Petition’s obvious two-date illegality as textually compliant with Metro Charter § 19.01 on the asserted basis that: “By using the disjunctive ‘or,’ the Petition indicates that only one date is prescribed for holding the referendum election.” *See* Election Commission’s Pre-Trial Brief, p. 54. This is not how words work, though. Prescribing two potential dates for an election quite plainly is not the same thing as “prescribing a date . . . for the holding of a referendum election[.]” *See* Metro Charter § 19.01. If the drafters of the Metro Charter had wished to permit such an approach, then Metro Charter § 19.01 would instruct petitioners to “prescribe potential dates” instead.

ability to know—in advance of filing—when a proposed election will take place and to prepare to advocate accordingly. The fact that petitioners may force an election on a petition to amend the Metro Charter a mere “eighty (80) [days] subsequent to the date of its filing,” *see* Metro Charter § 19.01, also renders that lack of notice unusually prejudicial.

Worse: Permitting petitioners to prescribe and reserve multiple potential election dates would give petitioners a seriously unfair advantage over their opponents. Petitioners alone control when their petition is filed with the Metro Clerk. Accordingly, by prescribing two or more election dates on a petition and providing that the election is to be held on “whichever [date] is earlier as permitted by Metro Charter § 19.01,” as 4 Good Government did here,²² petitioners can control the date of a referendum election based on the date they choose to turn in their signatures. Under such circumstances, regardless of how many dates a petition prescribes, petitioners will always know—in advance of filing—when an election will be held, because petitioners will know when they intend to file their petition with the clerk. By contrast, when multiple election dates are prescribed on a petition, *opponents* of a petition—who have no way of knowing when a petition will be filed—will necessarily be left to guess the date of the election on a referendum petition until the moment the Metro Clerk receives the petition.

The unfair advantage that such superior knowledge affords petitioners cannot be overstated. For example, it would allow petitioners (and only petitioners) to buy, in advance of filing their petition with the

²² Attach. 7.

Metro Clerk, the bulk of prime advertising spots “during the pivotal final days before the election,” *Tennesseans for Sensible Election Laws v. Tennessee Bureau of Ethics & Campaign Fin.*, No. M2018-01967-COA-R3-CV, 2019 WL 6770481, at *20 (Tenn. Ct. App. Dec. 12, 2019)—or even the critical “weeks immediately before” an election—because only petitioners will know in advance of filing when election day will be. *Cf. Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 334 (2010) (“It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held. There are short timeframes in which speech can have influence.”). Additionally, with a potential campaign period as short as 80 days, *see* Metro Charter § 19.01, such an unfair advantage may and frequently will be insurmountable.

There is also no plausible reading of § 19.01 that suggests that strict compliance regarding its provisions was excused by § 19.01’s drafters. *Cf. Littlefield v. Hamilton Cty. Election Comm’n*, No. E2012-00489-COA-R3CV, 2012 WL 3987003, at *13 (Tenn. Ct. App. Sept. 12, 2012) (“Despite outdated case law to the contrary, the legislature has not allowed for ‘substantial compliance’ regarding the matter before us.”). Legislators know how to permit substantial compliance in the context of referendum petitions when that is their intention. *See, e.g.,* Tenn. Code Ann. § 2-1-107(c) (“A person's regular signature shall be accepted just as such person's legal signature would be accepted. For example, for the purposes of this section ‘Joe Public’ shall be accepted just as ‘Joseph Q. Public’ would be accepted.”). The drafters of Metro Charter § 19.01, however, did not do so, and the Election Commission lacks authority to invent a

substantial compliance standard that the text of Metro Charter § 19.01 does not support.

- b. *Anything less than strict compliance creates a need for expedited pre-election litigation and guarantees partisan outcomes regarding what is supposed to be the neutral process of administering elections.*

Permitting anything less than strict compliance with the requirements of § 19.01 also invites serious and inevitable adverse consequences. In particular, it creates a need for expedited pre-election litigation and guarantees partisan outcomes regarding what is supposed to be the neutral process of administering elections—both of which this litigation evidences in spades.

First, with respect to ensuring pre-election litigation: permitting anything less than strict compliance with the requirements of § 19.01 requires “impossible line-drawing” and guarantees pre-election litigation over whether the requisite level of compliance has been achieved. *Cf. Nevadans for Nevada v. Beers*, 122 Nev. 930, 949, 142 P.3d 339, 351 (2006) (“anything less than strict compliance would require courts to assume an impossible line-drawing function, weighing or measuring differences between a circulated and filed petition in order to determine whether the circulated petition was properly certified for the ballot.”). As a result, departing from a strict compliance standard “is almost certain to be followed sooner or later by trouble of some kind.” *See Bullitt v. City of Philadelphia*, 230 Pa. 544, 549, 79 A. 752 (1911) (“To hold municipal authorities to strict compliance with constitutional and legislative requirements involves no measure of hardship or inconvenience. On the

other hand, it is easy to observe them, and, when they are plainly laid down as rules of municipal action, departure from them is almost certain to be followed sooner or later by trouble of some kind. Public authorities ought to understand this, especially after the repeated efforts of courts to enlighten them; and, when the requirements of the Constitution and the statutes are disregarded, it becomes the plain duty of courts to enforce them.”). The fact that this is precisely what has happened in this case—the first time the Election Commission has ever excused a non-compliant petition filed pursuant to § 19.01—is thus unsurprising.

Given Metro Charter § 19.01’s short 80-day timeline, such pre-election litigation must also be expedited to enable it to conclude within a heavily constricted time period. Again, this case itself illustrates the problem. Expedited litigation of this sort should not be a routine occurrence; it creates difficulties for courts and interested litigants, and it risks confusing the public about the status of a forthcoming election. As a consequence, courts *strongly* disfavor such litigation—even when constitutional rights are at stake. *See, e.g., Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (“Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.”). Under a substantial compliance standard, though, such expedited pre-election litigation is guaranteed. By contrast, mandating strict compliance with Metro Charter § 19.01 prevents such litigation in the first instance.

Second, with respect to promoting partisan outcomes regarding election administration: because Tennessee has partisan election commissions, *see* Tenn. Code Ann. § 2-12-103(a) (“Three (3) members

shall be members of the majority party and two (2) members shall be members of the minority party.”), affording the Election Commission discretion to excuse defects in petitions filed under Metro Charter § 19.01 invites partisan election commissioners to find substantial compliance with § 19.01 when they agree with the substance of a petition—and to find otherwise when they do not. Again, the partisan breakdown in this very case—one that is not seriously attributable to a neutral dispute over compliance with procedural Charter requirements—makes the point.

Put directly: the concerns expressed by some onlookers that Republican Election Commission Chairman Jim DeLanis:

(1) advocated for 4 Good Government’s petition to reach the ballot during the proceedings below specifically because he supported the substance of 4 Good Government’s proposed amendments;

(2) rejected the advice of the Metropolitan Department of Law regarding the defective nature of 4 Good Government’s petition;

(3) retained ideologically aligned lawyers to represent the Election Commission—including one who had just sued the Election Commission (unsuccessfully) regarding a § 19.01 issue²³—at enormous taxpayer expense to ensure that 4 Good Government’s petition reached the ballot instead; and

(4) endeavored to prevent an opposing referendum supported unanimously by the Metropolitan Council from reaching the ballot at the same time—all for nakedly partisan reasons that were motivated by

²³ See *Fraternal Ord. of Police v. Metro. Gov't of Nashville*, 582 S.W.3d 212 (Tenn. Ct. App. 2019), *appeal denied* (May 20, 2019).

something other than neutral election administration—is not something that any member of public should ever have to worry about. *See, e.g.,* Steve Cavendish, *Election Commission Puts Anti-Tax Measure on Ballot, Declines to Do the Same for Council; Metropolitik: Says Councilmember Bob Mendes, ‘Jim DeLanis has been running a circus over here’*, THE NASHVILLE SCENE (May 18, 2021), <https://www.nashvillescene.com/news/columns/article/21147388/election-commission-puts-antitax-measure-on-ballot-declines-to-do-the-same-for-council> (Attach. 11) (“It would be naive to say that politics have never played a part in the election commission’s work, but it’s hard to point to an instance where they’ve been this naked. At least now, with everything in litigation, we can quit pretending that this was about anything else.”).

Regrettably, though, it is. The record in this case gives rise to exceedingly reasonable concerns that naked partisanship not only affected but *saturated* the Election Commission’s decisions. By contrast, limiting the Election Commission’s role in matters of this nature to determining whether a petition strictly complies with the unambiguous provisions of Metro Charter § 19.01 prevents such partisan influence from contaminating what is supposed to be the neutral process of election administration.

- c. *Until now, the Election Commission has maintained a strict compliance standard with respect to Metro Charter § 19.01, including with respect to its date requirements.*

Suggesting that the Election Commission should enforce strict compliance with Metro Charter § 19.01’s requirements also is not some novel, after-the-fact notion. Indeed, until 4 Good Government’s petition

came along, the Election Commission had uniformly maintained a strict compliance standard with respect to Metro Charter § 19.01's requirements, including its date requirements. This established practice created reasonable reliance interests. Consequently, as far as opponents of 4 Good Government's petition were concerned—people and entities who had no reason to advocate against the petition, given its facially defective nature—the Election Commission's sudden and unexplained departure from its prior established practice presents serious due process concerns. *Cf. George v. Hargett*, 879 F.3d 711, 727 n. 9 (6th Cir. 2018) (“If, instead, the State officials had altered or departed from the established practice prior to the 2014 election without giving adequate notice of the change to the citizenry, then a stronger due process claim would be made out.”).

Take § 19.01's signature requirement, for example. Never before has the Election Commission suggested that *nearly* reaching the relevant signature threshold or *substantially* complying with § 19.01's signature requirement is sufficient. Unsurprisingly, all of the litigation that has arisen over that requirement also confirms the Election Commission's longstanding position that it is not. *See Fraternal Ord. of Police v. Metro. Gov't of Nashville*, 582 S.W.3d 212 (Tenn. Ct. App. 2019), *appeal denied* (May 20, 2019); *State ex rel. Wise v. Judd*, 655 S.W.2d 952, 953 (Tenn. 1983).

The same is true of § 19.01's date requirements.²⁴ The Election

²⁴ Metro Charter § 19.01 has two related date requirements. The first is that petitioners must “prescribe a date” for the election that is “not less than eighty (80) [days] subsequent to the date of its filing” *Id.* The second is that the date

Commission has previously advocated that § 19.01's date requirements are "very strict and are enforced," and thus, that "Metropolitan Charter 19.01 is akin to another statutory time deadline—a statute of limitation" that "courts cannot simply 'suspend' or waive . . . where a Plaintiff has incorrectly filed." *See Davidson County Election Commission's Motion to Dismiss* at 13, n.9, *Nashville English First*, No. 08-1912-I (Sep. 23, 2008) (Attach. 5). Following litigation on the matter regarding an otherwise-valid petition, another Part of this Court also *adopted* the Election Commission's position that § 19.01's date requirements are inflexible, holding that:

The Charter governs the frequency of petition submissions. It states that the petition shall prescribe the date for the election at which voters will ratify or reject the proposed Charter amendment. The Plaintiff prescribed the date of November 4, 2008 and **the law regulating Charter amendment frequency at § 19.01 does not provide for amendments to that date. This lack of flexibility is common in election law** because other interconnected deadlines set by law must also be met.

See Order at 3, *Nashville English First*, No. 08-1912-I (Sep. 5, 2008) (Attach. 3) (emphasis added).

This holding—and the Election Commission's previous position regarding § 19.01's strictly enforced date requirements—was correct. As indicated by the Election Commission's prior litigation on the issue, previous petitioners have also had their otherwise-valid petitions invalidated for failure to comply with the date requirements. *See id.* And

prescribed may not result in an "amendment or amendments be[ing] submitted by petition more often than once in each two years." *Id.*

here, 4 Good Government's non-compliant petition should be treated no differently. Put another way, as the Election Commission itself did:

The charter . . . doesn't say [its date requirements apply] **unless you come close.**

And I don't mean to be a stickler, but that's how legal statutory election laws work. . . . [T]hat's just how election laws are. **They're very strict.** . . .

These dates mean something. And what they mean is that everyone out here knows what the rules are, and they know how to follow them. There's no secrets. There's no special exceptions for anyone just because you know someone or just because you've been around a long time. We all have the same rules, and we all have to follow them.

And frankly, **that's the most important reason this needs to be enforced in this situation, for the fairness of anyone else who wants to file a petition.**

Transcript of Proceedings at 74, line 11 – 75, line 2, *Nashville English First*, No. 08-1912-I (Attach. 12) (emphases added).

In sum: the Election Commission's established practice dictated that it would invalidate petitions that did not comply with § 19.01's strictly enforced date requirements. *Id.* Consequently, as a matter of due process, opponents of 4 Good Government's petition were entitled to rely on the Election Commission's established practice, which obviated the need to advocate against 4 Good Government's defective petition by encouraging people not to sign it. *See George*, 879 F.3d at 727, n. 9 ("If, instead, the State officials had altered or departed from the established practice prior to the 2014 election without giving adequate notice of the change to the citizenry, then a stronger due process claim would be made out."). Without notice, though, the Election Commission abruptly

departed from its established practice regarding § 19.01's strictly enforced date requirements with respect to 4 Good Government's petition alone. Thus, without either explanation or discussion, it determined that prescribing and reserving two potential election dates on a § 19.01 petition suffices—the Charter's mandatory requirement that petitioners “prescribe **a date**” notwithstanding. *Id.* (emphasis added).

This was error. It afforded 4 Good Government disparate and comparatively favorable treatment that no other petitioner has ever been afforded. It also prejudiced opponents of 4 Good Government's petition who were entitled to rely on the Election Commission's established strict compliance standard—a standard that the Election Commission had never indicated that it had abandoned. Reversal of the Election Commission's decision is warranted accordingly.

- d. *Metro is entitled to deference with respect to its reasonable, pre-litigation interpretation of § 19.01's “prescribe a date” requirement.*

Enforcing strict compliance with Metro Charter § 19.01's “prescribe a date” requirement is also required for yet another reason: it is the standard that Metro indicated applied well in advance of the Election Commission's vote on the matter. And significantly, unlike the Election Commission's contrary interpretation of § 19.01, Metro's pre-vote interpretation of § 19.01 is entitled to deference.

The Tennessee Supreme Court recently addressed this issue in *Wallace*, 546 S.W.3d at 52, n.7. There, it indicated without ambiguity that when it comes to interpreting the Metro Charter, only “the body responsible for the promulgation of the provision” is entitled to deference

regarding its interpretation. *Id.* By contrast, interpretations furnished by the Election Commission, the State Election Coordinator, and others who are not Metro are “not entitled to deference.” *Id.* In full, the *Wallace* Court held that:

Metro and the Commission assert that the Court must afford deference to the Commission's and the State Election Coordinator's construction of section 15.03 of the Charter. We disagree. This is not a case in which an administrative agency has construed and applied its own rules or policies. The issue in this case is the proper construction of a provision of the Charter. In contrast to *Gay v. City of Somerville*, 878 S.W.2d 124, 127 (Tenn. Ct. App. 1994), relied on by Metro and the Commission, the construction of the relevant provision of the Charter in this case was by the Commission, not by the body responsible for the promulgation of the provision. To the extent that the Commission's interpretation of the Charter is akin to an agency's interpretation of its controlling statutes, we are not bound by that interpretation, particularly where the controlling statute is not ambiguous. *Pickard v. Tenn. Water Quality Control Bd.*, 424 S.W.3d 511, 523 (Tenn. 2013). The Commission's interpretation of the Charter is certainly entitled to our respect; however, it is not entitled to our deference. *H & R Block E. Tax Servs., Inc. v. State, Dep't of Commerce & Ins., Div. of Ins.*, 267 S.W.3d 848, 854-55 (Tenn. Ct. App. 2008).

While the State Election Coordinator is statutorily charged with authoritatively interpreting the election laws, see Tenn. Code Ann. § 2-11-202(4); *Pemberton*, 530 S.W.3d at 92, the relevant provisions of the Charter at issue in this case are not State election laws subject to his authoritative interpretation under the statute. See Charter, § 15.04. To the extent that the State Election Coordinator offered an interpretation of the Charter in this case, it is not entitled to deference.

Id.

The instant dispute between Metro and the Election Commission may be resolved on this basis alone. While the Election Commission’s interpretation of Metro Charter § 19.01’s “prescribe a date” requirement is “not entitled to deference,” *id.*, given that Metro is “the body responsible for the promulgation of the provision,” Metro’s contrary interpretation is. *Id.* And here, prior to the DCEC’s vote, Metro made clear that under its interpretation of § 19.01, Metro Charter § 19.01’s “prescribe a date” requirement must be strictly enforced. Specifically, in a thorough, reasonable, and detailed opinion, Metro advised that:

[T]he Petition does not satisfy Charter requirements to be placed on the ballot, is defective in form, . . . for the following reasons:

- A petition must “prescribe *a date* not less than eighty (80) [days] subsequent to the date of its filing for the holding of a referendum election.” Metropolitan Charter § 19.01 (emphasis added). The Petition prescribes two dates and therefore is defective.

* * * *

I. THE PETITION FAILS TO COMPLY WITH THE REQUIREMENTS OF METROPOLITAN CHARTER § 19.01.

A. The Petition Fails to Comply With § 19.01’s Requirement to “Prescribe a Date” for Holding the Referendum Election.

The 4GG Petition states that the proposed amendments are “to be voted on by the citizens on May 28, 2021 or June 14, 2021, whichever is earlier as permitted by Metro Charter § 19.01.”

Metropolitan Charter § 19.01 does not permit the inclusion of multiple election dates on a petition. Rather,

Section 19.01 states that a petition must set a specific election date:

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 resolution or petition shall also prescribe a date not less than eighty (80) [days] subsequent to the date of its filing for the holding of a referendum election* at which the electorate of the metropolitan government will vote to ratify or to reject the amendments proposed.

Id. (emphasis added).

Failure to provide a specific date on a referendum election petition is not a mere technicality. Section 19.01 prescribes a process by which the petitioner selects an election date, discloses that date on the petition to potential signers, and then has until eighty days before the election date to file the petition. The process is simple, clear, and understandable.

4GG improperly seeks to “game the system” by listing multiple election dates on the petition, violating the Charter and creating confusion and ambiguity.

The Charter’s language is mandatory and unambiguous. In *Littlefield v. Hamilton Cty. Election Comm’n*, 2012 WL 3987003, (Tenn. Ct. App. 2012), the Tennessee Court of Appeals enforced strict compliance with mandatory referendum petition requirements under state election law:

The Election Commission asserts that the Supreme Court has held that “only a substantial compliance, rather than a strictly literal compliance, with the election laws is required.” *Lanier v. Revell*, 605 S.W.2d

821, 822 (Tenn.1980). Accordingly, the Election Commission argues that the court should not find the recall invalid for noncompliance with the “requirement of the date for signatures obtained.”

Despite outdated case law to the contrary, the legislature has not allowed for “substantial compliance” regarding the matter before us. Subsection (h) of Tennessee Code Annotated section 2–5–151 provides that “[t]he county election commission **shall** certify whether or not the completed petition meets **all applicable requirements** within thirty days of filing of the completed petition.” (Emphasis added). The legislature did not give authority to the Election Commission to certify partial compliance or to pick and choose which of the applicable requirements were sufficient for compliance. This issue is meritless.

Id. at *13. This same rule of strict compliance would apply to petition requirements under the Metropolitan Charter’s election laws, which similarly use the mandatory “shall,” and failure to comply would be a disqualifying defect in form.

Requiring strict compliance is appropriate when a petition seeks to amend a government’s “organic and fundamental law,” as it promotes stability and avoids involving courts in “impossible line drawing.” *Nevadans for Nevada v. Beers*, 142 P.3d 339, 350-51 (Nev. 2006). The Metropolitan Charter is the “constitution” for the Metropolitan Government and its mandatory requirements should be enforced for the same reasons. See also *Wallace v. Metro. Gov’t of Nashville & Davidson Cty.*, 546 S.W.3d 47, 57, n.11 (Tenn. 2018) (“The shortened election period, however, is not the result of our construction of the Charter. Rather, it is the result of the statutory time-frame for special elections. . . . It is not our place to judge the wisdom of this statute or of the Charter provision at issue.”). 4GG’s inclusion of two dates for the election, contrary to the Charter’s clear instructions, is

a defect in form that disqualifies the Petition.²⁵

For the reasons detailed above, unlike the Election Commission's contrary view of Metro Charter § 19.01, Metro's interpretation of § 19.01 is entitled to deference. *See Wallace*, 546 S.W.3d at 52, n.7. Affording deference to Metro's interpretation of § 19.01—that “[4 Good Government's] Petition prescribes two dates and therefore is defective,”²⁶ is also outcome-determinative of this case. Reversal of the Election Commission's ruling is warranted as a consequence.

e. *Other jurisdictions require strict compliance under similar circumstances.*

To the extent the issue is not settled by the foregoing authority, this Court should adopt a strict compliance standard with respect to the requirements of Metro Charter § 19.01 because it is the better rule. In addition to Tennessee's application of this standard for petitioning, *see Littlefield*, 2012 WL 3987003, at *13 (“Despite outdated case law to the contrary, the legislature has not allowed for ‘substantial compliance’ regarding the matter before us.”), a wealth of other jurisdictions apply a strict compliance standard under the circumstances presented here. *See, e.g., State ex rel. Barletta v. Fersch*, 99 **Ohio** St. 3d 295, 297 (2003) (“The settled rule is that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision expressly states that it is.”); *State ex rel. Husted v. Brunner*, 123 Ohio St. 3d 288, 293 (2009) (“[T]he general rule is that,

²⁵ A.R. 676, 679–80.

²⁶ *Id.*

unless there is language allowing substantial compliance, election statutes are mandatory and must be strictly complied with”); *W. Devcor, Inc. v. City of Scottsdale*, 168 **Ariz.** 426, 429 (1991) (“[W]hile recognizing the historical importance of the referendum to our state, we have required strict compliance to ensure that the constitutional right is not abused or improperly expanded. *Id.* at 48, 653 P.2d at 696; see also *Direct Sellers*, 109 **Ariz.** at 6. Accordingly, courts must closely examine referendum petitions to determine whether they comply with constitutional and statutory requirements.”); *Nevadans for Nevada v. Beers*, 122 **Nev.** 930, 949 (2006) (“anything less than strict compliance would require courts to assume an impossible line-drawing function, weighing or measuring differences between a circulated and filed petition in order to determine whether the circulated petition was properly certified for the ballot.”); *Paxton v. City of Bellingham*, 129 **Wash.** App. 439, 447 (2005) (“Because the Initiative failed to comply with the requirements of state law, chapter 35.21 RCW, and the City Charter, the City did not have a clear duty to place the Initiative on the November 2004 election ballot. (citing *State ex rel. Uhlman v. Melton*, 66 **Wash.** 2d 157, 161 (1965) (recognizing that strict compliance with “statutory requirements is mandatory and jurisdictional, and that failure to so comply is fatal to” petitions for referendum).”)); *Schumacher v. Byrne*, 237 **N.W.** 741, 747 (**N.D.** 1931) (“It is true that where electors seek, by referendum provision, to suspend the operation of a legislative act, they are attempting to suspend the will of the people as expressed by its agent, the legislative assembly, and therefore there must be a strict compliance

“with the mandatory constitutional provisions under which a referendum is authorized.”) (citing *State ex rel. Baker v. Hanna et al.* 31 N. D. 570.)); *Pilla v. Karnsombob*, 39 N.Y.S.3d 174, 177-78, 142 A.D.1116, 1119(N.Y. 2016) (“The Court of Appeals has held that, ‘[w]hile substantial compliance is acceptable as to details of form, there must be strict compliance with statutory commands as to matters of prescribed content” (citing *Matter of Hutson v. Bass*, 54 N.Y.2d 772, 774, 443 N.Y.S.2d 57; *Matter of Stoppenbach v. Sweeney*, 98 N.Y.2d 431, 433, 749 N.Y.S.2d 210)); *Matter of Canary v. N.Y. State Bd. of Elections*, 131 A.D.3d 792, 793 (App. Div. 3rd Dept. 2015) (“Strict compliance with Election Law § 6-130 is mandated, as its requirements constitute “a matter of substance and not of form.”); *Watland v. Lingle*, 104 **Hawai‘i** 128 (2004) (holding that the publication and disclosure language mandated by the Hawaii Constitution is clear and unambiguous and, therefore, it must be construed as written); *McGee v. Secretary of State*, 896 A.2d 933, 947 (Me. 2006) (Clifford, J., concurring) (explaining that the requirements in a provision that “‘are of the very essence of the thing to be done and the ignoring of which would practically nullify the vital purpose of the [provision] itself are regarded by the courts as mandatory’” (quoting *In re Opinion of the Justices*, 124 **Me.** 453 (1924))); *Andrews v. Governor of Maryland*, 294 **Md.** 285, 289 (Md. 1982) (concluding that “strict observance of every substantial requirement is essential to the validity of the proposed [constitutional] amendment” (quoting *Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803, 806 (1944))); *Ferguson v. Sec’y of State*, 240 A.2d 232, 235 (Md. 1968) (holding that referendum petitions

must strictly comply with the requirements set forth in the Maryland Constitution); *Moore v. Brown*, 350 **Mo.** 256, 165 S.W.2d 657, 659–60 (1942) (noting that “it is fundamental that the people, themselves, are bound by their own Constitution,” and “[w]here they have provided therein a method for amending it, they must conform to that procedure”); *McWhirter v. Bridges*, 249 **S.C.** 613, 155 S.E.2d 897, 899 (1967) (noting that “[t]he provisions of [South Carolina's] Constitution relating to its amendment are mandatory and must be strictly adhered to; and a strict compliance with every substantial requirement relating to the amendatory procedure is essential to the validity of any proposed amendment”); *Coleman v. Pross*, 219 **Va.** 143, 246 S.E.2d 613, 619 (1978) (indicating that the prerequisites for the amendment of Virginia's Constitution are “set forth in precise language and minute detail evidencing the importance attached to these functions,” and the “amendatory processes specified in the Virginia Constitution must be followed if a valid amendment is to be effected”); *Bingo Coal. for Charity-Not Pol. v. Bd. of State Canvassers*, 215 **Mich.** App. 405, 410 (1996) (“[T]his Court is to enforce strict compliance with constitutionally mandated procedures relating to the exercise of the referendum power”); *Sears v. Treasurer & Receiver Gen.*, 327 **Mass.** 310, 320–21, 98 N.E.2d 621, 629 (1951) (“Since the people have themselves adopted the Constitution with its amendments for their government, they are bound by the provisions and conditions which they themselves have placed in it, and when they seek to enact laws by direct popular vote they must do so in strict compliance with those provisions and conditions.”); *Opinion of*

the Justices, 422 Mass. 1212 (1996) (noting that when the people seek to enact laws by direct popular vote they must strictly comply with the requirements of the state constitution); *Petition of Voters*, 234 Ill. App. 3d 294, 298–99 (1992) (“Considering the Supreme Court's history of disapproving referendum proposals not in strict compliance with applicable requirements, the absence of authority that characterizes the timely publication requirement at issue as directory, plus the strong language of section 28–4, we hold that the timely publication requirement here is mandatory.”); *Ibarra v. City of Carson*, 214 Cal. App. 3d 90, 99, 262 Cal. Rptr. 485, 490 (Ct. App. 1989) (“Where the purpose of the statutory requirement is to give information to the public to assist the voters in deciding whether to sign or oppose the petition, the substantial compliance argument is often rejected and strict compliance held essential. (citing *Creighton v. Reviczky* (1985) 171 Cal.App.3d 1225, 1233, 217 Cal.Rptr. 834 [referendum petition did not contain full text of ordinance sought to be repealed]; *Chase v. Brooks* (1986) 187 Cal.App.3d 657, 664, 232 Cal.Rptr. 65 [same]; *Myers v. Patterson*, supra, 196 Cal.App.3d at pp. 138–139, 241 Cal.Rptr. 751 [petition did not contain a copy of the notice of intent to circulate, although the notice had otherwise been published].)); *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662, 684 (1948) (Miller, J., dissenting) (acknowledging that a change in the constitution requires strict adherence to the rules therein); *Bullitt v. City of Philadelphia*, 230 Pa. 544, 549, 79 A. 752 (1911) (“To hold municipal authorities to strict compliance with constitutional and legislative requirements involves no measure of hardship or inconvenience. On the

other hand, it is easy to observe them, and, when they are plainly laid down as rules of municipal action, departure from them is almost certain to be followed sooner or later by trouble of some kind. Public authorities ought to understand this, especially after the repeated efforts of courts to enlighten them; and, when the requirements of the Constitution and the statutes are disregarded, it becomes the plain duty of courts to enforce them.”).

For the same reasons, to the extent that the issue is not already settled by the plain text of the Metro Charter; by policy considerations; by the Election Commission’s historical position on strict compliance; by the judiciary’s recognition of a strict compliance standard with respect to § 19.01; and by Metro’s interpretation that strict compliance with its Charter is required, this Court should adopt a strict compliance standard because it is the better rule.

C. 4 GOOD GOVERNMENT’S PETITION DID NOT SUBSTANTIALLY COMPLY WITH § 19.01’S “PRESCRIBE A DATE” REQUIREMENT.

During the proceedings below, Election Commission Chairman Jim DeLanis argued at length that despite 4 Good Government’s readily apparent failure to comply with § 19.01’s “prescribe a date” requirement, substantial compliance with that requirement should be sufficient.²⁷ For the reasons detailed in the preceding sections, though, as a matter of law, this position is textually unsupportable; it guarantees expedited pre-election litigation and partisan policy outcomes; it represents a significant departure from the Election Commission’s and the judiciary’s

²⁷ A.R. 151, line 22–153, line 22.

previous approach to § 19.01's requirements; it fails to afford deference to Metro's interpretation of its own governing Charter; and a wealth of other jurisdictions have rejected such a standard with significant reason for doing so. Significantly, though, even if substantial compliance with Metro Charter § 19.01's "prescribe a date" requirement had been the appropriate standard, 4 Good Government's petition failed to achieve substantial compliance with § 19.01's "prescribe a date" requirement, either.

"Substantial compliance' has been defined as 'actual compliance in respect to the substance essential to every reasonable objective of the statute.'" *Myers v. Hidden Valley Lakes Trustees, Inc.*, No. M2008-01677-COA-R3-CV, 2009 WL 1704419, at *5 (Tenn. Ct. App. June 16, 2009) (cleaned up). As detailed above, the objective of Metro Charter § 19.01's "prescribe a date" requirement is to inform the electorate when an election will be held. *Cf. Nelson*, 87 Tenn. 781 ("The notice has no function except to inform the voters of the time, place, and purpose of the election."). Prescribing two dates on a petition, however—as 4 Good Government did—does not achieve this purpose.

Put another way: rather than complying with "the substance essential to every reasonable objective of" Metro Charter § 19.01's "prescribe a date" requirement, *Myers*, 2009 WL 1704419, at *5, 4 Good Government's petition complied with *none* of them. It also unfairly disadvantaged opponents in the process. *See supra*, pp. 23–24. *See also* A.R. 679–80 (noting that: "Failure to provide a specific date on a referendum election petition is not a mere technicality. Section 19.01 prescribes a process by which the petitioner selects an election date,

discloses that date on the petition to potential signers, and then has until eighty days before the election date to file the petition. The process is simple, clear, and understandable. 4GG improperly seeks to ‘game the system’ by listing multiple election dates on the petition, violating the Charter and creating confusion and ambiguity.”).

This failure is fatal. *See, e.g., Matter of Referendum Petition No. 94-1*, 1996 OK CIV APP 50, 920 P.2d 531, 532 (“The rule of substantial compliance was intended to save a referendum petition from challenges grounded on technical and clerical defects, but cannot be invoked to excuse noncompliance with the critical requirement of notice to the electorate of the specific legislative act they are called upon to approve or repeal.”). Thus, even if Metro Charter § 19.01’s “prescribe a date” requirement were subject to a lesser substantial compliance standard, that standard has not been achieved, either. 4 Good Government’s petition is defective as a result, and reversal of the Election Commission’s decision is warranted accordingly.

D. THE ELECTION COMMISSION ACTED UNLAWFULLY AND EXCEEDED ITS JURISDICTION WHEN IT SELECTED AN ENTIRELY DIFFERENT *THIRD* DATE TO HOLD AN ELECTION ON 4 GOOD GOVERNMENT’S PETITION.

Also in violation of § 19.01, the Election Commission failed to schedule “the holding of a referendum election at which the electorate of the metropolitan government will vote to ratify or to reject the amendments proposed” on any of the dates prescribed by 4 Good Government’s petition. *Id.* This decision, too, was both erroneous and unprecedented. Without any lawful basis, it treated § 19.01’s “prescribe a date . . . for the holding of a referendum election” requirement as if it

were voluntary and had no meaning. This error—made plain by § 19.01’s text—is not only a problem identified by opponents of 4 Good Government’s petition after the fact, either. Instead, it is the position that 4 Good Government and all of the signatories to its petition have advanced themselves. *See* Amended Expedited Verified Complaint at 20, ¶ 4, *4 Good Government et al.*, No. 21-300-IV (Apr. 15, 2021) (Attach. 4) (seeking an order “directing the Election Commission to comply with its ministerial duty to place the ballot initiative on the June 14, 2021 election ballot”).

The reality that the Election Commission lacks authority to disregard the date prescribed by a petition filed under Metro Charter § 19.01 and to select its own alternative date unilaterally is not seriously subject to dispute. Metro Charter § 19.01 provides without ambiguity that petitioners determine the date for the referendum election they seek. *See id.* (providing that the date “at which the electorate of the metropolitan government will vote to ratify or to reject the amendments proposed” is the date prescribed by a petition). Thus, as long as the date selected by petitioners is at least 80 days after a petition is filed—and as long as the date prescribed does not violate Metro Charter § 19.01’s two-year prohibition—the election date for a petition-based referendum is exclusively within the province of petitioners themselves. *See, e.g.,* Davidson County Election Commission’s Responses to Chancellor’s Questions at 1, *Nashville English First*, No. 08-1912-I (Sep. 4, 2008) (Attach. 6) (expressing agreement with Chancellor’s indication that “petitioners[] . . . set the election date (so long as it is at least 80 days after the date of filing the petition)”).

Beyond the fact that Metro Charter § 19.01’s “text is clear and unambiguous” on the matter, *see Wallace*, 546 S.W.3d at 53, permitting petitioners to select and provide notice of a prescribed election date supports important interests. For one thing, it enables petitioners to pursue strategic considerations. *See, e.g.,* Chris Butler, *Davidson County Election Commission Provides Tennessee Code Citation It Says Allows It to Move Date of Nashville Taxpayer Protection Act Referendum to December 15*, TENNESSEE STAR (Oct. 8, 2020), <https://tennesseestar.com/2020/10/08/davidson-county-election-commission-provides-tennessee-code-citation-it-says-allows-it-to-move-date-of-nashville-taxpayer-protection-act-referendum-to-december-15/>

(Attach. 13) (“The Nashville Taxpayer Protection Act prescribed Saturday, December 5 [sic] as the date of the election, for several reasons. First, greater turnout was anticipated on a Saturday, and second, 20 days before Christmas provided more time before Christmas Holiday events. In addition, it provided a buffer of more than 30 days after the November 3 general election.”). It also provides critical notice—in advance of filing—regarding when an election will take place to both proponents of a petition²⁸ (who may, for example, sign based on whether they plan to be present to vote on the matter or available to campaign in advance of it), as well as opponents,²⁹ all of whom are affirmatively misled under

²⁸ *See, e.g.,* Attach. 7 (informing prospective signatories that: “**The vote shall be on May 28, 2021 or June 14, 2021, whichever is earlier as permitted by Metro Charter § 19.01**”).

²⁹ *See supra*, pp. 22–23. *See also* A.R. 679–80 (“Failure to provide a specific date on a referendum election petition is not a mere technicality. Section 19.01 prescribes a process by which the petitioner selects an election date, discloses that date on the

circumstances when the Election Commission takes it upon itself to disregard a prescribed date and select an alternative date unilaterally.

Given this context, as another Part of this Court has held, § 19.01 establishes that the date of a petition-based referendum election is the date *prescribed on a petition*. See Order at 3, *Nashville English First*, No. 08-1912-I (Sep. 5, 2008) (Attach. 3) (“The Charter governs the frequency of petition submissions. It states that **the petition shall prescribe the date for the election at which voters will ratify or reject the proposed Charter amendment.**”) (emphasis added). The Election Commission itself has long taken this position, too, representing that it has no discretion to alter a prescribed election date and that its duties are entirely ministerial in this context. See, e.g., Davidson County Election Commission’s Motion to Dismiss at 12-13, *Nashville English First*, No. 08-1912-I (Sep. 23, 2008) (Attach. 5) (arguing that an amendment-initiating petition itself “set[s] a date for the election”). Nor has this reality ever been contested, given that § 19.01’s unambiguous text is not realistically susceptible to any other interpretation.

Thus, with only a single glaring exception, in the entire history of the Metropolitan Government, approved referendum petitions prescribed—and were then held on—the specific dates prescribed by petitioners³⁰:

petition to potential signers, and then has until eighty days before the election date to file the petition. The process is simple, clear, and understandable. 4GG improperly seeks to ‘game the system’ by listing multiple election dates on the petition, violating the Charter and creating confusion and ambiguity.”).

³⁰ Collective Attach. 1; Collective Attach. 2.

REFERENDUM PETITION	ELECTION DATE PRESCRIBED BY REFERENDUM PETITION	DATE ELECTION HELD
Police and Fire Pay Plan	November 4, 1986	November 4, 1986
Department of Audit	August 1, 1991	August 1, 1991
Term Limits	November 8, 1994	November 8, 1994
Vote on Property Taxes	November 7, 2006	November 7, 2006
English Only Referendum I	November 4, 2008	N/A—No election
Right to Amend Charter	January 22, 2009	January 22, 2009
English Only Referendum II	January 22, 2009	January 22, 2009
Save the Fairgrounds	August 4, 2011	August 4, 2011
Local Hire	August 6, 2015	August 6, 2015
Community Oversight	November 6, 2018	November 6, 2018
4 Good Government	May 28, 2021 or June 14, 2021	July 27, 2021 ³¹

When interpreting a statute, such history matters. *See, e.g., McCord v. S. Ry. Co.*, 187 Tenn. 247, 266, 213 S.W.2d 184, 192 (1948) (“this conclusion is forcefully substantiated by historical interpretation and practice.”). This is the first and only time in Metro’s history that the Election Commission has violated Metro Charter § 19.01 by setting a petition-based referendum election on a date other than the date that a petitioner has prescribed. There is also no ambiguity or plausible source of authority that permits the Election Commission to do so. Metro

³¹ With respect to English Only Referendum I: The Davidson County Election Commission voted that this petition’s prescribed election date would violate Metro Charter § 19.01’s prohibition against submitting an “amendment or amendments . . . by petition more often than once in each two years,” and thereafter, another Part of this Court upheld that vote. *See Davidson County Chancery Court Case No. 08-1912-I*. Even in that case, though, the referendum petitioners—represented by attorney James D.R. Roberts—asserted that the Election Commission had “not performed its ministerial acts mandated by the Metropolitan Charter by omitting this duly-qualified petitioner from the November 4, 2008 general election ballot”—the specific date that the English Only I referendum petition had prescribed. *See Alternative Writ of Mandamus* (Sep. 3, 2008), Davidson County Chancery Court Case No. 08-1912-I.

Charter § 19.01 does not allow it, and neither does any provision of state law.³² Notably, 4 Good Government’s own counsel has also maintained the same position for upwards of twelve years. *See, e.g.*, Complaint in Intervention of Nashville English First and Eric Crafton, at 3, ¶8, *Rosa A. Quinteros v. Metropolitan Government of Davidson County*, Davidson County Chancery Court Case No. 08-02535-I (Jan. 22, 2009) (Attach. 15) (arguing that: “At that point, the Davidson County Election Commission had a ministerial duty to call the election for January 22, 2009, and place the initiatives on the ballot.”).

Instead, the one and only circumstance in which the Election Commission may select a different date for a petition-based referendum filed under Metro Charter § 19.01 is when it “reset[s]” the election to coincide with another upcoming election as contemplated by Tenn. Code Ann. § 2-3-204(c). *See id* (“If the date for an election on a question, as set by a county election commission or by two (2) or more commissions jointly, falls within ninety (90) days of an upcoming regular primary or general election being held in the jurisdiction voting on the question, the commission or commissions may reset the date of the election on a question to coincide with the regular primary or general election, even though this may be outside of the time period established herein.”). Notably, though, even *that* authority has been disputed by 4 Good Government and its counsel. *See* Attach. 13 (“Metro is dishonestly

³² Indeed, beyond the fact that Metro Charter § 19.01 is unambiguous, where, as here, a petition has been filed between 75 and 90 days before a prescribed election date, there is not even a *potential* conflict with state law. *See* Tenn. Code Ann. § 2-3-204(a)–(b).

relying on authority the election commission has to move election dates, but **they don't have the power to change the date that the people have selected,**' Roberts told The Star.") (emphasis added).

Regardless, that is not what happened here. July 27, 2021 is *neither* of the dates prescribed by 4 Good Government's petition. It also is not the date of "an upcoming regular primary or general election being held in the jurisdiction voting on the question[.]" *See* Tenn. Code Ann. § 2-3-204(c). Instead, it is a date that was unilaterally selected by three members of the Election Commission in unprecedented violation of Metro Charter § 19.01.

Significantly, selecting an unlawful election date in contravention of § 19.01 also was not some modest or immaterial overreach. In addition to eviscerating the entire purpose of § 19.01's "prescribe a date" requirement—providing notice to the electorate—it would allow the Election Commission to interfere with a neutral election process by selecting dates that are either favorable or unfavorable to petitioners based strictly on Commissioners' own substantive preferences. It also allows the Election Commission to interfere with the timing of *future* referendum efforts, given Metro Charter § 19.01's prohibition against submitting an "amendment or amendments . . . by petition more often than once in each two years[.]" *Id.* Indeed, if the Election Commission's actions are permitted to stand, the Election Commission could presumably abuse its authority by selecting an alternative date within § 19.01's two-year prohibition, and then invalidating a petition as a consequence.

None of this is actually within the Election Commission's

jurisdiction, though. Instead, as another Part of this Court has held before, “the law regulating Charter amendment frequency at § 19.01 does not provide for amendments” to the date that a petition prescribes. *See* Order at 3, *Nashville English First*, No. 08-1912-I (Sep. 5, 2008) (Attach. 3). As a result, the Election Commission violated Metro Charter § 19.01 by amending the dates prescribed on 4 Good Government’s petition and selecting a third date of its own choosing instead.

For all of these reasons, the Election Commission acted unlawfully and exceeded its jurisdiction by selecting an illegal date for the election on 4 Good Government’s petition. Accordingly, the Election Commission’s order setting a July 27, 2021 election date was *ultra vires*, and reversal of the Election Commission’s decision is required. *See Harding*, 222 S.W.3d at 363; *City of Lebanon*, 756 S.W.2d at 241.

E. 4 GOOD GOVERNMENT ACQUIESCED IN THE ELECTION COMMISSION’S ILLEGALITY, AND ALL OF ITS SIGNATORIES HAVE WAIVED ANY CLAIM TO PREJUDICE ON THE MATTER.

If there is anything clearer than the unlawful nature of the Election Commission’s decision to select an unpermitted date for the referendum election on 4 Good Government’s proposed amendments, it is the fact that 4 Good Government knew that the Election Commission was acting illegally when it did so. As noted in this Brief’s introduction, barely eight weeks ago, 4 Good Government initiated litigation on the matter and formally represented to another Part of this Court thirty-two separate times that if its petition was valid, the Election Commission had a legal, ministerial duty to place it on the “June 14, 2021” ballot. *See* Amended Expedited Verified Complaint at 11, ¶ 48, *4 Good Government et al.*, No.

21-300-IV (Apr. 15, 2021) (Attach. 4) (“the petition must be included on the June 14, 2021 ballot.”); *id.* at 20, ¶ 4 (seeking an order “directing the Election Commission to comply with its ministerial duty to place the ballot initiative on the June 14, 2021 election ballot”); *id.* at 2 (“***time is of the essence to place a duly-qualified citizen-sponsored ballot on a June 14, 2021 election date.***”); *id.* at ¶ 3 (“June 14, 2021 election”); ¶ 7 (“The Petition stated June 14, 2021 as the election day when Davidson County registered voters would cast their ballots”); ¶ 10 (indicating that referendum belongs on the “June 14, 2021 ballot”); ¶ 40 (same); ¶ 52 (indicating the referendum belongs on the “June 14, 2021 election ballot”); ¶ 53 (same); ¶ 54 (same); ¶ 55 (same); ¶ 59 (same); ¶ 60 (same); ¶ 62 (same); ¶ 63 (same); ¶ 64 (same); ¶ 65 (same); ¶ 66 (same); ¶ 67 (same); ¶ 69 (same); ¶ 70 (same); ¶ 71 (same); ¶ 75 (same); ¶ 76 (same); ¶ 77 (same); ¶ 81 (same); ¶ 82 (same); ¶ 83 (same); *id.* at 20, ¶ 7 (same); *id.* at 1 (“the June 14, 2021 ballot”); *id.* at 2 (“a June 14, 2021 election date”); *id.* at 21, ¶ 12 (seeking an order “directing the Election Commission to place initiatives on June 14, 2021 [sic] election ballot[.]”).

Significantly, along with 4 Good Government, every signatory to 4 Good Government’s Petition was a party to Case No. 21-300-IV. *See id.* at 1 (identifying “4 Good Government and the 14,010 registered voters who signed the Nashville taxpayer protection act” as the plaintiffs). Also significantly—and notwithstanding their actual knowledge that “***time is of the essence to place a duly-qualified citizen-sponsored ballot***

on a June 14, 2021 election date[.]”³³—4 Good Government and every person who signed its petition knowingly abandoned their claims on the matter³⁴ following a discussion with Election Commission Chairman Jim DeLanis.³⁵

Given this context, even if 4 Good Government’s petition had not been fatally defective due to its failure to prescribe “a date” as Metro Charter § 19.01 requires, vacating the scheduled July 27, 2021, election would *still* be appropriate, because it would not result in any unwarranted prejudice to either 4 Good Government or the signatories to its petition—all of whom voluntarily abandoned their known rights on the matter. As evidenced by the litigation they initiated and then maintained through April 29, 2021,³⁶ 4 Good Government—and all of the signatories to its petition—had actual knowledge that the only lawful election date when their desired referendum election could be held was June 14, 2021. *See* Amended Expedited Verified Complaint at 11, ¶48, *4 Good Government, et al.*, No. 21-300-IV (Apr. 15, 2021) (Attach. 4) (contending that “the petition must be included on the June 14, 2021 ballot.”); *id.* at 20, ¶ 4 (seeking an order “directing the Election Commission to comply with its ministerial duty to place the ballot

³³ Amended Expedited Verified Complaint at 2, *4 Good Government, et al.*, No. 21-300-IV (Apr. 15, 2021) (Attach. 4).

³⁴ *See* Notice of Voluntary Nonsuit, *4 Good Government, et al.*, No. 21-300-IV (Apr. 28, 2021) (Attach. 10) (“Plaintiffs hereby file their notice of voluntary nonsuit in this matter.”).

³⁵ *See* Expedited Motion for Continuance, *4 Good Government, et al.*, No. 21-300-IV (Apr. 16, 2021) (Attach. 9).

³⁶ *See* Attachs. 8, 4, 9, 10.

initiative on the June 14, 2021 election ballot”); *id.* at 2 (emphasizing that **“time is of the essence to place a duly-qualified citizen-sponsored ballot on a June 14, 2021 election date.”**). Nonetheless, 4 Good Government—and all of the signatories to its petition—moved to continue their time-sensitive claims and then voluntarily abandoned their known rights to a June 14, 2021 election,³⁷ preventing this Court from providing the only relief to which they would have been entitled: a June 14, 2021 election date. 4 Good Government and the signatories to its petition also declined to file a writ of certiorari appealing the Election Commission’s erroneous decision to set an election for a date other than June 14, 2021 thereafter. They expressly declined to intervene in appellate proceedings before this Court³⁸ despite their demonstrated knowledge of the Election Commission’s unlawful conduct, too.³⁹

Under longstanding law, such an intentional relinquishment of a known right is properly characterized as a waiver. *See, e.g., Regions Bank v. Thomas*, 422 S.W.3d 550, 561 (Tenn. Ct. App. 2013) (“We have long held that ‘waiver is an intentional relinquishment of a known right and is a doctrine of very broad and general application. It concedes a right, but assumes a voluntary relinquishment of it. Our courts have held that there must be clear, unequivocal and decisive acts of the party of an

³⁷ Attachs. 9–10.

³⁸ *See* 4 Good Government and the 14,010 Davidson County Registered Voters Who Signed the Nashville Taxpayer Protection Act’s Notice of Striking Their Motion to Intervene, *The Metropolitan Government of Nashville Davidson County v. Davidson County Election Commission*, Davidson County Chancery Court Case No. 21-433-IV (May 20, 2021) (Attach. 14).

³⁹ *See generally* Attach. 4.

act which shows determination not to have the benefit intended in order to constitute a waiver.”) (cleaned up). Put in straightforward terms: although 4 Good Government—and all of the signatories to its petition—had actual knowledge that the Election Commission was acting illegally and pursued a time-sensitive claim on the matter, they continued and then withdrew that claim thereafter, and they have since acquiesced in the Election Commission’s illegality with clear eyes. As a consequence, neither 4 Good Government nor any of the signatories to its petition can complain of prejudice now. As a result, this Court should not hesitate to issue the only relief that is proper under these circumstances: vacating the Election Commission’s *ultra vires* action, and cancelling the unlawfully scheduled July 27, 2021 election date on 4 Good Government’s Petition as a consequence. *See City of Lebanon*, 756 S.W.2d at 241.

VI. CONCLUSION

For the foregoing reasons, the Election Commission acted illegally by approving 4 Good Government’s facially defective, multi-date petition in contravention of Metro Charter § 19.01. The Election Commission also acted illegally and exceeded its jurisdiction by scheduling an election on 4 Good Government’s petition for a date other than the two dates prescribed by 4 Good Government’s petition. Both actions were *ultra vires*. As a consequence, the Election Commission’s unlawful actions should be **REVERSED**.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 4th day of June, 2021, I have caused a true and correct copy of the foregoing and all attachments to be sent electronically, via the Court's e-filing system, to the following:

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