

**IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

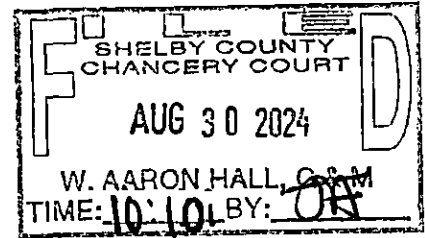
THE MEMPHIS CITY COUNCIL, ACTING
FOR AND ON BEHALF OF THE CITY OF
MEMPHIS,

Petitioner,
v.

No. CH-24-1177-I

SHELBY COUNTY ELECTION COMMISSION
AND COMMISSIONERS, MARK LUTTRELL,
STEVE STAMSON, ANDRE WHARTON,
FRANK ULHORN, and VANECA KIMBROW,

Respondents.



**VERIFIED PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE
FOR INJUNCTIVE RELIEF, OR IN THE ALTERNATIVE FOR DECLARATORY
JUDGMENT**

COMES NOW Petitioner, the Memphis City Council (the "City Council"), the duly elected and acting legislative body of the City of Memphis, files this verified petition for a Writ of Mandamus on behalf of the City of Memphis to compel Respondents to perform their ministerial and nondiscretionary duty to execute a referendum election called by the Memphis City Council in conjunction with the Tennessee state general election on November 5, 2024, or in the alternative, for temporary and injunctive relief, and for declaratory judgment (the "Petition"). In support of the causes of actions and relief sought herein, Petitioner states and will show to the Court as follows:

I. JURISDICTION AND VENUE

1. Petitioner seeks a preemptory writ of mandamus, or in the alternative, injunctive relief and a declaratory judgment. THIS IS THE FIRST APPLICATION BY PETITIONERS FOR THE ISSUANCE OF EXTRAORDINARY PROCESS AND THE AWARD OF EXTRAORDINARY RELIEF PRAYED FOR IN THIS PETITION.

2. Jurisdiction is proper in this Court pursuant to Tennessee Code Annotated Sections 29-1-105, 29-14-102, 29-25-101 and 8-44-106.

3. Venue is proper pursuant to Tennessee Code Annotated section 20-4-101 as all parties have a situs, residence and official elected or appointed office in Shelby County, Tennessee.

II. PARTIES

4. The City of Memphis, ("the City") is a Tennessee home rule municipal corporation that is organized and existing pursuant to and under Article XI, § 9 of the Tennessee Constitution. The City is governed and operated by its elected Mayor and City Council. The Memphis City Council, comprised of thirteen (13) duly elected members, is vested with all legislative power of the City, including the power to adopt all ordinances for the City. The City Council is authorized to bring this action on behalf of the City of Memphis in the furtherance of its legislative power.

5. Respondents are the duly appointed election commissioners for Shelby County, who constitute and act collectively as the Shelby County Election Commission pursuant to Tennessee Code Annotated §2-12-101 (the "Election Commission"). The Election Commission, acting in conjunction with its duly appointed administrator of elections, is the entity responsible for conducting and executing all elections in Shelby County that are permitted or required by

Tennessee law. The Election Commission is charged with the mandatory duty and responsibility for placing on the ballot all elections called for a vote of the people on questions or other propositions authorized by the Tennessee Constitution or by Acts of the General Assembly.

6. Respondents Mark H Luttrell, Vanecia Kimbrow, Steve Stamson, Frank Ulhorn, and Andre Wharton are the duly appointed election commissioners of the Shelby County Election Commission and are residents of Shelby County, Tennessee. They are each sued in their official capacity as Shelby County Election Commission members.

III. FACTS AND ALLEGATIONS

7. Article XI, § 9 of the Tennessee Constitution was approved by the qualified voters of Tennessee on November 3, 1953 and has not been altered, amended or repealed in whole or in part since its approval.

8. Article XI, § 9 of the Tennessee Constitution provides in pertinent part:

Any municipality after adopting home rule may continue to operate under its existing charter, or amend the same, or adopt and thereafter amend a new charter to provide for its governmental and proprietary powers, duties and functions, and for the form, structure, personnel and organization of its government, provided that no charter provision except with respect to compensation of municipal personnel shall be effective if inconsistent with any general act of the General Assembly... [5th Clause].

A charter or amendment may be proposed by ordinance of any home rule municipality.... [6th Clause].

It shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication and such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon [7th Clause].

9. Article XI, § 9 of the Tennessee Constitution gives the City of Memphis, as a home rule municipality, the right to propose an amendment to its home rule charter by ordinance

and to call for a referendum election of its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication.

10. The constitutional right granted to the City to submit a proposed home rule amendment to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication can only be altered, abolished, restrained or denied by the people of Tennessee and not by the legislature, since the ultimate power to alter the constitution resides with the people and not in the General Assembly.

11. The constitutional right granted to the City to submit a proposed home rule amendment to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication cannot be altered, abolished, restrained or denied by legislation of the General Assembly, by an opinion or fiat of a state administrative officer created by legislation of the General Assembly or by a complete abdication by a local election commission of its statutory duties.

12. Once a proposed charter amendment ordinance is enacted by the City Council, signed by the Mayor and published by the Council, the Council's call for a referendum election is complete and absolute under Article XI, § 9 of the Tennessee Constitution and that constitutional provision makes it mandatory that the proposed charter amendment be submitted to the qualified voters of the City at the next occurring general state election.

13. Respondents, acting by and through its administrator of elections, have a mandatory duty under Tennessee Code Annotated § 2-12-201 to execute all regular and properly called elections.

14. Respondents, acting by and through its administrator of elections, have a mandatory duty under Tennessee Code Annotated § 2-12-111 to publish in a newspaper of

general circulation in the county a notice of elections on questions not less than twenty (20) days nor more than thirty (30) days before the day of the election. The notice shall include in its entirety the resolution or other instrument requiring the holding of the election except for signatures or names.

15. In the exercise of this constitutional duties and rights, the City Council of Memphis duly enacted Referendum Ordinance No. 5908 on July 23, 2024. The ordinance was signed by the Chairman of the Council on August 6, 2024 and by the Mayor on August 16, 2024 and was published by the Council after adoption on August 21, 2024 as required by Article XI, § 9 of the Tennessee Constitution. This Referendum Ordinance would amend the Charter of the City of Memphis as set forth in paragraph 18 of this Petition.

16. Referendum Ordinance No. 5908 directed the Comptroller of the City of Memphis to publish the Ordinance after adoption, certify and deliver a copy of the Ordinance to the Shelby County Election Commission, together with a suggested proposal and form of preference of the referendum questions, to be placed on the ballot for a referendum vote in the general state election to be held on the fifth day of November, 2024 in Shelby County. The November 5, 2024 general state election is the first general state election next following adoption and publication of Referendum Ordinance No. 5908.

17. A certified copy of Referendum Ordinance No. 5908 was hand delivered to the election commission's office at 147 Poplar Avenue on August 21, 2024. It was received by election employee, Ms. Hewitt, on that date. A certified copy of the ordinance was also delivered by electronic mail on the same date to Shelby County Administrator of Elections, Linda Phillips, who acknowledged receipt thereof by electronic mail at 12:04 p.m..

18. The suggested proposal and form of preference of the referendum questions in Referendum Ordinance No. 5908 submitted to the Election Commission to be placed on the ballot for a referendum vote in the general state election to be held on the fifth day of November, 2024 in Shelby County are restated as follows:

QUESTION 1

Shall the Charter of the City of Memphis be amended to read:

“1. No person shall be allowed to carry a handgun in the City of Memphis without possessing a valid handgun carry permit.

2. No person shall be allowed to carry, store, or travel with a handgun in a vehicle in the City of Memphis without possessing a valid handgun permit.

3. It shall be unlawful for a person to store a firearm, whether loaded or unloaded, or firearm ammunition, in a motor vehicle or boat while the person is not in the motor vehicle or boat unless the firearm or firearm ammunition is kept from ordinary observation and locked within the trunk, utility or glove box, or a locked container securely affixed to the motor vehicle or boat.”

FOR (YES) _____
AGAINST (NO) _____

QUESTION 2

Shall the Charter of the City of Memphis be amended to read:

“1. The citizens of Memphis hereby find and declare that the proliferation and use of assault weapons pose a threat to the health, safety, and security of all citizens of Memphis.

2. Hereafter, it shall be unlawful and prohibited for a person to possess or carry, openly or concealed, any assault rifles in the City of Memphis. Persons with valid handgun permits are exempt from this restriction when possessing or carrying an assault rifle on their privately owned property or at a shooting range.

3. Hereafter, the commercial sale of assault rifles within the City of Memphis is unlawful and is hereby prohibited.

4. The provisions of this Chapter shall not apply to the commercial sale of assault rifles to:

4.1 Any federal, state, local law enforcement agency;

4.2 The United States Armed Forces or department or agency of the United States;

4.3 Tennessee National Guard, or a department, agency, or political subdivision of a state; or

4.4 A Law Enforcement Officer.

5. Pre-existing owners that can demonstrate that the commercial sale of an assault rifle was completed prior to the

Effective Date of January 1, 2025, which means that prior to January 1, 2025, the purchaser completed an application, passed a background check, and has a receipt or purchase order for said purchase, without regard to whether the purchaser has actual physical possession of the Assault Rifle, shall be considered a pre-existing purchaser.”

FOR (YES) _____
AGAINST (NO) _____

QUESTION 3

Shall the Charter of the City of Memphis be amended to read:

“Section 1. EXTREME RISK PROTECTION ORDERS

A. Definitions

1. “Petitioner” means:

(A) A law enforcement officer or agency, including an attorney for the state;

(B) A member of the family of the respondent, which shall be understood to mean a parent, spouse, child, or sibling of the respondent;

(C) A member of the household of the respondent;

(D) A dating or intimate partner of the respondent;

(E) A health care provider who has provided health services to the respondent;

(F) An official of a school or school system in which the respondent is enrolled or has been enrolled within the preceding month;

2. "Respondent" means the person against whom an order under Section 2 or 3 has been sought or granted.

B. Types of Orders

1. The petitioner may apply for an emergency ex parte order as provided in Section 2 or an order following a hearing as provided in Section 3.

Section 2. EMERGENCY EX PARTE ORDER

(a) Basis for Order. The court shall issue an emergency ex parte extreme risk protection order upon submission of an application by a petitioner, supported by an affidavit or sworn oral statement of the petitioner or other witness, that provides specific facts establishing probable cause that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. The court shall take up and decide such an application on the day it is submitted, or if review and decision of the application on the

same day is not feasible, then as quickly as possible but in no case later than forty-eight hours.

(b) Content of Order. An order issued under this section shall,

- (1) prohibit the respondent from possessing, using, purchasing, manufacturing, or otherwise receiving a firearm;
- (2) order the respondent to provisionally surrender any firearms in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order; and
- (3) inform the respondent of the time and place of the hearing under Section 3 to determine whether he or she will be subject to a continuing prohibition on possessing and acquiring firearms.

(c) Search and Seizure.

(1) If the application and its supporting affidavit or statement establish probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place

for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the return of the firearm as provided in Section 3(c)(3).

(d) Time for Service and Searches. The responsible law enforcement agency shall serve the order on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

SEC. 3. ORDER AFTER HEARING

(a) Order After Hearing. Upon application for an extreme risk protection order, supported by an affidavit or sworn oral statement of the petitioner or other witness that provides specific facts giving rise to the concern about the significant danger or extreme risk described in Section 2, the court may issue an order under this section, which shall be effective for a period of

one (1) year after a hearing. An order issued under this section shall,

(1) prohibit the respondent from possessing, using, purchasing, or otherwise receiving a firearm; and

(2) order the respondent to surrender any firearm in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order.

(b) Basis for order. The court shall issue such an order based on a preponderance of the evidence that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. In determining the satisfaction of this requirement, the court shall consider all relevant facts and circumstances after reviewing the petitioner's application and conducting the hearing described in Section 2(d). The court may order a psychological evaluation of the respondent, including voluntary or involuntary commitment of the respondent for purposes of such an evaluation, to the extent authorized by other law.

(c) Search and Seizure.

(1) If the evidence presented at the hearing establishes probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to a firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the prompt return of the firearm by providing an affidavit to the law enforcement agency affirming his or her ownership of the firearm and providing assurance that he or she will safeguard the firearm against access by the respondent. The law enforcement agency shall return the firearm to the owner upon its confirmation, including by a check of the National Instant Criminal Background Check System and the applicable state firearm background check system, that the owner is not legally disqualified from possessing or receiving the firearm.

(d) Time for Hearings and Service.

(1) A hearing under this section shall be held within three (3) days of the filing of the application, or within one (1) day of the issuance of an emergency ex parte order under Section 2, if such an order is issued. The responsible law enforcement agency shall serve notice of the hearing on the respondent promptly after the filing of the application or issuance of an emergency ex parte order, but notice may be provided by publication or mailing if the respondent cannot be personally served within the specified period. The respondent shall be entitled to one continuance of up to two (2) days on request, and the court may thereafter grant an additional continuance or continuances for good cause. Any emergency ex parte order under Section 2 shall remain in effect until the hearing is held. The court may temporarily extend the emergency order at the hearing, pending a decision on a final order.

(2) The responsible law enforcement agency shall serve an order issued under this section on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

(e) Termination and Renewal of Orders.

(1) A respondent may file a motion to terminate an order under Section 3 one time during the effective period of that order. The respondent shall have the burden of proving, by the same standard of proof required for issuance of such an order, that he or she does not pose a significant danger or extreme risk of personal injury or death to himself or herself or another.

(2) The petitioner may seek renewals of an order under this section for an additional six (6) months at any time preceding its expiration. Renewals after the initial order shall be granted subject to the same standards and requirements as an initial order. The preceding order shall remain in effect until the renewal hearing is held and the court grants or denies a renewed order.

(3) If the respondent fails to appear at, or cannot be personally served in relation to, any hearing or renewal hearing under this section, the default does not affect the court's authority to issue an order or entitle the respondent to challenge the order prior to its expiration. The order will lapse after one (1) year if no eligible petitioner seeks its renewal.

SEC. 4. ENTRY INTO BACKGROUND CHECK SYSTEMS

The court shall forward any order issued under Section 2 or 3 to an appropriate law enforcement agency on the day it is issued. Upon receipt of an order under Section 3, the law enforcement

agency shall make the order available to the National Instant Criminal Background Check System and any state system used to identify persons who are prohibited from possessing firearms.

SEC. 5. VIOLATIONS

The following persons shall be in violation of the City Code of Ordinances:

(1) FILER OF FALSE OR HARASSING APPLICATION. – Any person filing an application under Section 2 or 3 containing information that he or she knows to be materially false, or for the purpose of harassing the respondent.

(2) RESPONDENT NOT COMPLYING WITH ORDER. – Any person who knowingly violates an order under Section 2 or 3, including by possessing or acquiring a firearm in violation of the order or failing to surrender a firearm as required by the order.

(3) PROVIDER OF PROHIBITED ACCESS TO RESPONDENT. – Any person who knowingly provides the subject of an order under Section 2 or 3 access to a firearm, in violation of an assurance the person has provided in an affidavit under Section 2(c)(3) or 3(c)(3) that he or she will safeguard the firearm against access by the respondent.

FOR (YES) _____

AGAINST (NO) _____

See Exhibit 1

19. The City's Referendum Ordinance No. 5908 complied in every way procedurally and substantively with the prerequisite conditions in Tennessee Constitution Article XI, § 9, the City's Charter, and the Election Code of Tennessee and was timely submitted to Respondents in proper form for inclusion of the referendum questions therein on the ballot for the November 5, 2024 general state election.

20. After receipt of Referendum Ordinance No. 5908 by Respondents, Petitioner's counsel received an electronic mail communication from Respondent's counsel, Jacob Swatley, on August 21, 2024 requesting that a summary that complies with Tenn. Code Ann. § 2-5-208(f)(2)(A) for any questions submitted to the voters of the City by the City Council in excess of three hundred (300) words be written by the city attorney of the municipality and delivered to the Election Commission (the "Swatley Letter").

21. On August 22, 2024 counsel for the City and the City Council hand delivered and emailed a letter to Respondents' counsel containing a proposed summary of the third separate question in Referendum Ordinance No. 5908 that complies with Tenn. Code Ann. § 2-5-208(f)(2)(A). Referendum Ordinance No. 5908 was the only one of the four (4) referenda submitted by Petitioner to Respondents on August 21, 2024 that contained a question that exceeded three hundred (300) words.

22. With the exception of the Swatley Letter, Respondents have not made any objections to the form of any of the four (4) referenda submitted by Petitioner to Respondents on August 21, 2024 or to the procedures used by the Council for the adoption and submission to Respondents for inclusion of any referendum question to be included on the ballot for the general state election on November 5, 2024, including Referendum Ordinance No. 5908.

23. Each of the four (4) referenda submitted by Petitioner to Respondents on August 21, 2024 are in substantially identical form, with the exception of the questions presented and each Referendum Ordinance was adopted and published using the same procedure that is required by Article XI, § 9 of the Tennessee Constitution.

24. Respondents, members of the Shelby County Election Commission, have a ministerial duty to place all duly enacted, properly formulated, and timely submitted Referendum questions on the ballot for the election to be held on the November 5, 2024.

25. On August 26, 2024 Respondent's counsel, Jacob Swatley, provided Petitioners with a copy of the attached letter that was sent by State Coordinator of Elections, Mark Goins, ("Coordinator") to the Shelby County Election Commissioners that same day (the "Coordinator's Letter"). The Coordinator's Letter advised Respondents in pertinent part:

The unequivocal declarations by the General Assembly in these state laws facially preempt the referendum proposed in Ordinance No. 5908 and leave no authority for the City of Memphis to propose charter amendments in these fields of regulation. Thus, any proposed referendum pursuant to Ordinance No. is facial void and cannot be placed on the ballot.

See Coordinator's Letter, p. 2 attached hereto as Ex. 2.

26. Respondents gave notice that it would hold a special meeting of the Election Commission on August 27, 2024. On information and belief, Chairman of the Election Commission, Mark Luttrell, announced on August 27, 2024 following a closed thirty-five (35) minute meeting with all commissioner's present that "[w]e discussed this matter with the commission and with legal counsel and there will not be a vote taken by the commission today."

27. Election Commission Chairman also stated that the five (5) members of the Election Commission had decided to "follow the guidance given to us by the state coordinator of elections." The deliberations of the five (5) members of the Election Commission for its decision

to “follow the guidance given to us by the state coordinator of elections.” was conducted intentionally and completely in secret and without a public vote of the five (5) commissioners, who were all present at the special meeting when Chairman Luttrell made his public announcement of the Election Commission’s decision to exclude Referendum Ordinance No. 5908 from the ballot for the November 5, 2024 general state election.

28. Based on information and belief, there were no minutes of the private or public portions of the special meeting that were promptly and fully recorded and made available for public inspection that include a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

29. Based on information and belief, the Election Commission took no “public vote” at its August 27, 2024 special meeting in which each member publicly announced his or her vote individually during a roll call vote or by a voice vote in which the “aye” faction vocally expressed its will in unison and in which the “nay” faction, subsequently, vocally expressed its will in unison.

30. Petitioner does not dispute that Respondents had a right to meet with its attorney to discuss the “litigation” they anticipated pertaining to the Council’s call for a referendum election on the proposed home rule charter amendments in Referendum Ordinance No. 5908. Given Chairman Luttrell’s public disclosure that the five (5) election Commissioners actually made decisions after discussions and deliberations among themselves during its closed and private session about whether to exclude Referendum Ordinance No. 5908 from the ballot for the November 5, 2024 general state election, the meeting was still a “meeting” to which the Open Meetings Act applies.

31. The Election Commission has refused to place the questions contained in Referendum Ordinance No. 5908 on the ballot. The sole reason given by the Election Commission for its refusal to place each of the Ordinance No. 5908 questions on the ballot is its obedience to the guidance and opinion from the Coordinator that the substantive provisions the proposed amendments in Referendum Ordinance No. 5908, which may or may not be approved by the qualified voters of Memphis, are preempted by state law.

32. In a prior lawsuit between the same parties and/or their privies the Tennessee Supreme Court finally determined and decided on the merits the legal principles that apply in determining the authority of the Election Commission to refuse to place home rule charter referenda submitted by the City of Memphis for a vote by the qualified voters of the City on the ballot for a state general election in reliance on guidance from the Coordinator. *City of Memphis v. Shelby Cnty. Election Comm'n*, 146 S.W.3d 531, 536 (Tenn. 2004). A copy is attached as Exhibit 3.

33. The holdings of the Tennessee Supreme Court in *City of Memphis v. Shelby Cnty. Election Comm'n* have preclusive effect in this action based on the principles of res judicata and/or collateral estoppel. In accordance with that decision Petitioner requests this Court to find and conclude as a matter of law as follows:

- A. The Memphis City Council has a constitutional duty under Tennessee Constitution Article XI, § 9 to submit the proposed home rule amendments in Referendum Ordinance No. 5908 to the qualified voters at the first general state election following its adoption and publication.
- B. Referendum Ordinance No. 5908 satisfies all of the prerequisite conditions imposed by the seventh clause of Article XI, § 9 of the Tennessee Constitution for inclusion of all three (3) proposed amendments on the ballot for the general state election to be held on November 5, 2024 as a matter of law.
- C. The Coordinator of Elections and the Election Commission members are ministerial officers who only possess and derive their respective authorities from state election statutes.

- D. The constitutional right granted to the City to submit a proposed home rule amendment to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication cannot be altered, abolished, restrained or denied by legislation of the General Assembly, by an opinion or fiat of a state administrative officer created by legislation of the General Assembly or by a complete abdication by a local election commission of its statutory duties.
- E. The Election Commission lacks the power and duty to perform even an “initial or cursory review” of the substantive legality of measures to be placed on the ballot for referendum.
- F. The Coordinator's statutory duty to approve the “form of the ballot” does not provide him the authority to determine and adjudge whether the proposed home rule amendments referendum questions, like those presented by Ordinance No. 5908 at issue in this case are as a matter of law “preempted” by state statutes.
- G. The Coordinator’s Letter does not indicate that Referendum Ordinance No. 5908 fails in any respect to satisfy all of the prerequisite conditions imposed by the seventh clause of Article XI, § 9 of the Tennessee Constitution for inclusion of all three (3) proposed amendments on the ballot the general state election to be held on November 5, 2024 as a matter of law.
- H. The “forms of ballots on voting machines” and the “form of paper ballots” are prescribed by statute. *See* Tenn. Code Ann. §§ 2–5–206, –207. These statutes describe the proper “form” of the ballot in detail, including, for example, the color of ink and the proper placement of certain titles and candidate names. *See id.* at §§ –206, –207. However, these statutes do not address the substance or legality of ballot measures and do not require or allow the Coordinator to look beyond the four corners of Petitioner’s Ordinance in determining whether the referendum questions proposed therein are otherwise consistent with substantive provisions of Tennessee law.
- I. Although Tennessee Code Annotated section 2–11–202 requires the Coordinator to “authoritatively interpret the election laws for all persons administering them,” this statute does not permit or instruct the Coordinator to provide an authoritative interpretation as to whether a municipal ordinance placing a question on the ballot violates or is preempted by Tennessee statutes.
- J. Neither the Respondents nor the Coordinator have any authority under Tennessee law to declare and adjudge that Ordinances of the City of Memphis or amendments to the Memphis City Charter are ineffective or preempted by state law.
- K. By deciding whether the substantive provisions of a ballot question, as distinguished from its form, is inconsistent with or preempted by the substantive provisions of various state gun laws, as distinguished from election laws, the Coordinator, has performed a judicial function and in doing so has attempted to usurp the functions of the judiciary.
- L. The actions of Respondents and the Coordinator in attempting to adjudicate the validity of the questions in Referendum Ordinance No. 5908 is a blatant violation

of the principles of separation of powers established under Article II, sections 1 and 2 of the Tennessee Constitution.

- M. The actions of Respondents and the Coordinator in attempting to adjudicate the validity of the questions in Referendum Ordinance No. 5908 vastly exceeds their duties and authority which they derive only from Tennessee election statutes.
- N. The Coordinator's guidance and directions to the Respondents on substantive questions of law are void and of no legal effect.
- O. The actions of Respondents and the Coordinator in attempting to adjudicate the validity of the questions in Referendum Ordinance No. 5908 constitute a preemptive interference with the duly authorized legislative functions of the City Council, which has plenary powers over local affairs.
- P. Respondents abdicated their duty to make a decision on whether Referendum Ordinance No. 5908 satisfies all of the prerequisite conditions imposed by the seventh clause of Article XI, § 9 of the Tennessee Constitution for inclusion of all three (3) proposed amendments on the ballot the general state election to be held on November 5, 2024
- Q. The Shelby County Election Commission's refusal to place Referendum Ordinance No. 5908 on the ballot under the circumstances set forth herein constitute an unlawful interference with the duly authorized legislative functions of the City Council, which has a constitutional duty under Tennessee Constitution Article XI, § 9 to submit the proposed home rule charter amendments in Referendum Ordinance No. 5908 to the qualified voters at the first general state election following its adoption and publication.

34. Further, as the Tennessee Supreme Court also expressly held in *City of Memphis v. Shelby County Election Com'n*, the issue of whether the substantive provisions of Referendum Ordinance No. 5908 are effective or preempted by state law is not ripe for determination at this time because the voters of the City may not or may not approve the Charter amendment.

35. Finally, the Coordinator misapprehends the meaning and effect of the doctrine of preemption. First, the existence and extent of preemption are questions of law for a court. If a court finds that an otherwise valid legislative enactment is preempted, in whole or in part, then it is rendered without effect. It is not void. In other words, Referendum Ordinance No. 5908 is not effective to displace conflicting general state law. General state law, however, is transient. It

may be changed at some time in the future; at which point, previously ineffective laws may become effective.

36. Neither Coordinator Goins, nor the Respondents have any statutory or inherent authority or duty to decide disputed questions of substantive law, nor do they have any statutory or inherent authority to decide theoretical questions of law.

37. In the past, the Election Commission and the State Coordinator of Elections have placed various referendum questions on ballots, the subjects of which have later been challenged as unconstitutional and have been held unconstitutional by the courts of Tennessee.

38. The Seventh clause of Article XI, § 9 expressly distinguishes between a proposed amendment to a home rule charter which may be submitted for a vote and an amendment that has become effective and operative only after approval by a majority of the qualified voters of the municipality. Unless and until the voters of the City of Memphis approve the proposed charter amendments allowing the City's Charter to be amended in accordance with the provisions of Referendum Ordinance No. 5908, any challenge as to the preemption or validity of the substance of the proposed amendments in Referendum Ordinance No. 5908 is not ripe, since no amendment would be operative or effective if not approved.

39. Any challenges based on preemption or invalidity of any proposed home rule amendment relate to the effectiveness or potential operation of the charter amendment after it is approved by the voters and do not assert challenges to the procedural sufficiency of Ordinance No. 5908 under Article XI, § 9 of the Tennessee Constitution that would prevent the inclusion of any of the three (3) proposed amendments on the ballot for the general state election to be held on November 5, 2024.

40. If a majority of the qualified voters of the City of Memphis approve any or all of the proposed home rule amendments and allow the City's Charter to be amended in accordance with the provisions of Referendum Ordinance No. 5908, then any person aggrieved by any amendment with standing may challenge the implementation of Referendum Ordinance No. 5908 at the proper time.

IV. COUNT I – WRIT OF MANDAMUS

41. Petitioner reaffirms and restates paragraphs 1 through 40 of this Petition, including subparts as if restated herein.

42. Because Respondents have a ministerial, official duty to place all properly submitted and formatted Referendum questions on the November 5, 2024 ballot and because they have refused to do so, the Writ of Mandamus is the proper remedy to require Respondents to perform their ministerial duties and place the duly enacted Referendum questions set out above on the November 5, 2024 ballot.

43. Based upon the allegations contained herein, Petitioner is entitled to a Writ of Mandamus, as provided in Tenn. Code Ann. §29-25-101, requiring Respondents to perform their official non-discretionary function of placing the Referendum question set forth above and submitted by the Comptroller of the City of Memphis on the ballot for the election to take place on November 5, 2024.

V. COUNT II-VIOLATION OF OPEN MEETINGS LAW

44. Petitioner reaffirms and restates paragraphs 1 through 43 of this Petition, including subparts, as if restated herein.

45. Tennessee Code Annotated § 2-1-113 requires all meetings of the Election Commission shall be open to the public and be subject to Title 8, chapter 44 of Tennessee Code Annotated (the “Act”).

46. Under Tenn. Code Ann. § 8-44-102, all meetings of any governing body are declared to be public meetings open to the public at all times. “Meeting” under the Act means the convening of a governing body of a public body to make a decision or to deliberate toward a decision on any matter.

47. Tenn. Code Ann. § 8-44-104 requires the minutes of a meeting of any governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

48. Tenn. Code Ann. § 8-44-104 also requires that all votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed. As used in the Act, “public vote” means a vote in which the “aye” faction vocally expresses its will in unison and in which the “nay” faction, subsequently, vocally expresses its will in unison.

49. Under Tenn. Code Ann. § 8-44-106 the circuit courts, chancery courts, and other courts which have equity jurisdiction, have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of the Act upon application of any citizen of this state.

50. Tenn. Code Ann. § 8-44-106 also provides that if a court finds that a governing body knew that a meeting of the body was subject to the requirements of the Act and willfully refused to comply, the court may, in its discretion, assess all or part of the reasonable costs

incurred by the petitioners in enforcing the provisions of the Act, including reasonable attorneys' fees, against the governing body.

51. During the Election Commission's Special Meeting on August 27, 2024 Respondents violated the Act by secretly conducting deliberations of the five (5) members of the Election Commission before making its decision to "follow the guidance given to us by the state coordinator of elections."

52. Respondent's deliberations and collective agreement in secret and without a public vote of the five (5) commissioners, who were all present at the special meeting when Chairman Luttrell made his public announcement of the Election Commission's decision to exclude Referendum Ordinance No. 5908 from the ballot for the November 5, 2024 general state election, constitutes a violation of the Act.

53. Respondents violated the Act by failing to take "public vote" at its August 27, 2024 special meeting in which each member publicly announced his or her vote individually during a roll call vote or by a voice vote in which the "aye" faction vocally expresses its will in unison and in which the "nay" faction, subsequently, vocally expresses its will in unison.

54. Respondents violated the Act by failing to promptly and fully record and make available for public inspection minutes of the private or public portions of the special meeting that include a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

55. Although Respondents had a right to meet with its attorney to discuss the "litigation" they anticipated pertaining to the Council's call for a referendum election on the proposed home rule charter amendments in Referendum Ordinance No. 5908, such meeting violated the Act. Given Chairman Luttrell's public disclosure that the five (5) election

Commissioners actually made a decision after discussions and deliberations among themselves during its closed and private session to exclude Referendum Ordinance No. 5908 from the ballot for the November 5, 2024 general state election, the meeting with its counsel was still a “meeting” to which the Open Meetings Act applies.

56. Respondents are charged with knowledge that its meetings must be open to the public and are subject to Title 8, chapter 44 of Tennessee Code Annotated. Respondents willfully conducted secret deliberations and made decisions in secret in violation of the Act to avoid public scrutiny of each Commissioner’s vote on whether to exclude Referendum Ordinance No. 5908 from the ballot for the November 5, 2024 general state election.

57. As a result of Respondents’ violations of the Act, Petitioner is entitled to an award of all or part of the reasonable costs incurred by the Petitioner in enforcing the provisions of the Act, including reasonable attorneys’ fees, against Respondents.

VI. COUNT III – TEMPORARY AND PERMANENT INJUNCTION

58. Petitioner reaffirms and restates paragraphs 1 through 57 of this Petition, including subparts, as if restated herein.

59. Because Respondents have no authority to refuse to put the Referendum question set forth above on the ballot for the election to take place on November 5, 2024, Petitioners are entitled to a temporary and permanent injunction, enjoining all Respondents and their successors from refusing to take any and all necessary actions to place such Referendum question on the ballot for the election to take place on November 5, 2024.

VII. COUNT III -- DECLARATORY JUDGMENT

60. Petitioner reaffirms and restates paragraphs 1 through 59 of this Petition, including all subparts, as if restated herein.

61. Based on the allegations contained in this Petition, Petitioner is entitled to a declaratory judgment, pursuant to Tenn. Code Ann. § 29-14-102, declaring the following: (1) that Respondents lack the authority to refuse to put the Referendum question set forth above on the ballot for the election to be held on November 5, 2024; (2) that the issue of the whether the substantive provisions of Referendum Ordinance No. 5908 are preempted by state law rendering such provisions, if adopted, presently ineffective, is not ripe for decision at this point; and (3) that any attempt by Respondents to declare the substantive provisions of Referendum Ordinance No. 5908 void due to preemption is erroneous and a violation of principals of separation of powers.

WHEREFORE, PETITIONER PRAYS FOR THE FOLLOWING RELIEF:

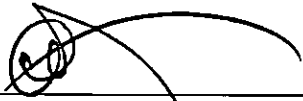
1. That a summons be issued for service on each Respondent.
2. That this Court set an expedited hearing for Writ of Mandamus, for Injunctive Relief, or in the alternative, for declaratory judgment.
3. That this Court immediately issue an alternative Writ of Mandamus as requested and supported in this verified Petition or after a hearing on affidavits or such proof as the Court deems appropriate issue a preemptory Writ of Mandamus directing Respondents to place the Referendum questions set forth above that was duly submitted to them by the Comptroller of the City of Memphis on the ballot for a vote by the qualified voters of the Memphis at the general state election to be held on November 5, 2024

4. That this Court immediately issue a temporary and permanent injunction after a hearing enjoining all Respondents from refusing to take any action necessary to place the Referendum question set forth above and duly submitted to them by the Comptroller of the City of Memphis on the ballot for the election to be held on November 5, 2024;

5. That the Court declare the following: (a) that Respondents lack the authority to refuse to put the Referendum question set forth above on the ballot for the election to be held on November 5, 2024 as long as such Referendum question meets all procedural requirements of Tennessee Constitution, Article 11, § 9, the Charter of the City of Memphis, and the Tennessee Election Code; (b) that the issue of the whether the substantive provisions of Referendum Ordinance No. 5908 are preempted by state law rendering such provisions, if adopted, presently ineffective, is not ripe for decision at this point; and (c) that any attempt by Respondents to declare the substantive provisions of Referendum Ordinance No. 5908 void due to preemption is erroneous and a violation of principals of separation of powers.

6. That the Court grant Petitioner such other and further relief to which the Petitioner may show itself to be entitled.

Respectfully Submitted,

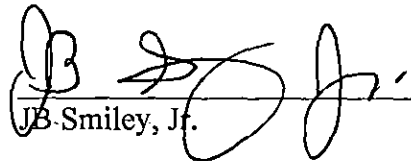


Allan J. Wade (4339)
Brandy S. Parrish (21631)
THE WADE LAW FIRM, PLLC
5050 Poplar Avenue, Suite 1028
Memphis, TN 38103
(901) 322-8005
(901) 322-8007 (facsimile)
Attorneys for Petitioner

VERIFICATION

The undersigned, JB Smiley, Jr., does hereby verify as true and correct, the allegations and facts contained in the foregoing Verified Petition to which this verification is attached, based on facts and information within the undersigned's personal knowledge or where specifically indicated or information obtained from others, which information from others I believe to be true.

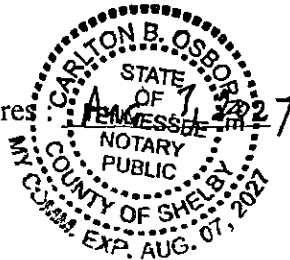
The undersigned does also certify that this Verified Petition is not being presented for any improper purpose and that the allegations and other factual contentions in the Verified Petition have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.


JB Smiley, Jr.

SWORN TO AND SUBSCRIBED before me a Notary Public in and for Shelby County, Tennessee on this the 30 day of August, 2024.


NOTARY PUBLIC

MY Commission expires:



FIAT

TO THE CLERK AND MASTER:

<input type="checkbox"/>	Issue the Alternative Writ of Mandamus as requested in the Petition commanding and directing that directing Respondents to place on the ballot for a vote by the qualified voters of the Memphis at the general state election to be held on November 5, 2024 the Referendum questions set forth in paragraph 18 of this Petition that was duly submitted to them by the Comptroller of the City of Memphis.
<input type="checkbox"/>	Give notice to Respondents to appear in Part ____, Chancery Court on _____, 20__, at ____ o'clock A.M., then and there to show cause, if they have any, why a Peremptory Writ of Mandamus should not issue commanding and directing that directing Respondents to place on the ballot for a vote by the qualified voters of the Memphis at the general state election to be held on November 5, 2024 the Referendum questions set forth in paragraph 10 of this Petition that was duly submitted to them by the Comptroller of the City of Memphis.

CHANCELLOR

DATE: _____ TIME: _____

EXHIBIT 1

ORDINANCE NO. 5908

AN ORDINANCE TO AMEND AND RESTATE REFERENDUM ORDINANCE NO. 5877 THAT PROPOSED AN AMENDMENT TO THE CHARTER OF THE CITY OF MEMPHIS, PURSUANT TO ARTICLE XI, § 9 OF THE CONSTITUTION OF THE STATE OF TENNESSEE (HOME RULE AMENDMENT), SO AS TO PROVIDE PROVISIONS FOR THE REGULATION OF DEADLY WEAPONS

WHEREAS, Referendum Ordinance No. 5877 was approved by the Memphis City Council on July 11, 2023, to be published and submitted by the City of Memphis to its qualified voters during the general election on August 1, 2024; and

WHEREAS, it is the intent of the Council to amend and restate Referendum Ordinance No. 5877 to be published and submitted by the City of Memphis to its qualified voters during the state general election on November 5, 2024; and

WHEREAS, it is deemed advisable and in the best interest of the citizens of the City of Memphis that the City of Memphis Charter be amended by ordinance as provided by Article XI, Section 9 of the Constitution of the State of Tennessee (Home Rule Amendment) for the purpose of regulating deadly weapons in the City of Memphis.

Section 1. Proposed Amendment Authorized.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE, That Referendum Ordinance No. 5877, passed pursuant to Article XI, Section 9 of the Constitution of the State of Tennessee, as amended, to submit a proposal for amending the Charter of the City, is hereby amended and restated pursuant to Article XI, Section 9 of the Constitution of the State of Tennessee, as amended, a proposal for amending the Charter of the City, as set forth in this ordinance, and as so amended and restated shall be published and submitted by the City of Memphis to its qualified voters at the first state general election, which shall be held in the City of Memphis on November 5, 2024, and which shall be held at least sixty (60) days after such publication.

Section 2. Publication of Home Rule Amendment as required by Tennessee Constitution.

BE IT FURTHER ORDAINED, That the Comptroller is hereby directed to cause this Ordinance, as finally adopted, to be published pursuant to provisions of Article XI, Section 9 of the Constitution of the State of Tennessee immediately after adoption by the City Council.

Section 3. Certification and Delivery to Election Commission.

BE IT FURTHER ORDAINED, That upon the adoption of this Ordinance becoming effective as required by law, the Comptroller of the City of Memphis shall immediately certify adoption of this Ordinance and deliver a certified copy thereof to the Shelby County Election Commission in charge of holding the general State election on November 5, 2024, and shall request that the proposed amendment to the Home Rule Charter of the City of Memphis, in the preferred form set forth in this Ordinance, be placed on the ballot.

Section 4. Proposal and preference.

BE IT FURTHER ORDAINED, That the City Council does hereby adopt the suggested proposal and form of separate and independent questions to be placed on the ballot for a referendum vote to amend the Home Rule Amendment to the Charter of the City of Memphis in a State General election to be held on the 5th day of November 2024, which question(s) shall read as follows:

QUESTION NO. 1:

Shall the Charter of the City of Memphis be amended to read:

1. No person shall be allowed to carry a handgun in the City of Memphis without possessing a valid handgun carry permit.
2. No person shall be allowed to carry, store, or travel with a handgun in a vehicle in the City of Memphis without possessing a valid handgun permit.
3. It shall be unlawful for a person to store a firearm, whether loaded or unloaded, or firearm ammunition, in a motor vehicle or boat while the person is not in the motor vehicle or boat unless the firearm or firearm ammunition is kept from ordinary observation and locked within the trunk, utility or glove box, or a locked container securely affixed to the motor vehicle or boat.

I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.

FOR THE AMENDMENT	(YES) _____
AGAINST THE AMENDMENT	(NO) _____

QUESTION NO. 2:

Shall the Charter of the City of Memphis be amended to read:

1. The citizens of Memphis hereby find and declare that the proliferation and use of assault weapons pose a threat to the health, safety, and security of all citizens of Memphis.
2. Hereafter, it shall be unlawful and prohibited for a person to possess or carry, openly or concealed, any assault rifles in the City of Memphis. Persons with valid handgun permits are exempt from this restriction when possessing or carrying an assault rifle on their privately owned property or at a shooting range.
3. Hereafter, the commercial sale of assault rifles within the City of Memphis is unlawful and is hereby prohibited.
4. The provisions of this Chapter shall not apply to the commercial sale of assault rifles to:

- 4.1 Any federal, state, local law enforcement agency;
- 4.2 The United States Armed Forces or department or agency of the United States;
- 4.3 Tennessee National Guard, or a department, agency, or political subdivision of a state; or
- 4.4 A Law Enforcement Officer.

5. Pre-existing owners that can demonstrate that the commercial sale of an assault rifle was completed prior to the Effective Date of January 1, 2025, which means that prior to January 1, 2025, the purchaser completed an application, passed a background check, and has a receipt or purchase order for said purchase, without regard to whether the purchaser has actual physical possession of the Assault Rifle, shall be considered a pre-existing purchaser.

I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.

FOR THE AMENDMENT	(YES) _____
AGAINST THE AMENDMENT	(NO) _____

QUESTION NO. 3:

Shall the Charter of the City of Memphis be amended to read:

Section 1. EXTREME RISK PROTECTION ORDERS

A. Definitions

1. "Petitioner" means:

- (A) A law enforcement officer or agency, including an attorney for the state;
- (B) A member of the family of the respondent, which shall be understood to mean a parent, spouse, child, or sibling of the respondent;
- (C) A member of the household of the respondent;
- (D) A dating or intimate partner of the respondent;
- (E) A health care provider who has provided health services to the respondent;
- (F) An official of a school or school system in which the respondent is enrolled or has been enrolled within the preceding month;

2. "Respondent" means the person against whom an order under Section 2 or 3 has been sought or granted.

B. Types of Orders

1. The petitioner may apply for an emergency ex parte order as provided in Section 2 or an order following a hearing as provided in Section 3.

Section 2. EMERGENCY EX PARTE ORDER

(a) **Basis for Order.** The court shall issue an emergency ex parte extreme risk protection order upon submission of an application by a petitioner, supported by an affidavit or sworn oral statement of the petitioner or other witness, that provides specific facts establishing probable cause that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. The court shall take up and decide such an application on the day it is submitted, or if review and decision of the application on the same day is not feasible, then as quickly as possible but in no case later than forty-eight hours.

(b) **Content of Order.** An order issued under this section shall,

(1) prohibit the respondent from possessing, using, purchasing, manufacturing, or otherwise receiving a firearm;

(2) order the respondent to provisionally surrender any firearms in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order; and

(3) inform the respondent of the time and place of the hearing under Section 3 to determine whether he or she will be subject to a continuing prohibition on possessing and acquiring firearms.

(c) **Search and Seizure.**

(1) If the application and its supporting affidavit or statement establish probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the return of the firearm as provided in Section 3(c)(3).

(d) **Time for Service and Searches.** The responsible law enforcement agency shall serve the order on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

SEC. 3. ORDER AFTER HEARING

(a) Order After Hearing. Upon application for an extreme risk protection order, supported by an affidavit or sworn oral statement of the petitioner or other witness that provides specific facts giving rise to the concern about the significant danger or extreme risk described in Section 2, the court may issue an order under this section, which shall be effective for a period of one (1) year after a hearing. An order issued under this section shall,

(1) prohibit the respondent from possessing, using, purchasing, or otherwise receiving a firearm; and

(2) order the respondent to surrender any firearm in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order.

(b) Basis for order. The court shall issue such an order based on a preponderance of the evidence that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. In determining the satisfaction of this requirement, the court shall consider all relevant facts and circumstances after reviewing the petitioner's application and conducting the hearing described in Section 2(d). The court may order a psychological evaluation of the respondent, including voluntary or involuntary commitment of the respondent for purposes of such an evaluation, to the extent authorized by other law.

(c) Search and Seizure.

(1) If the evidence presented at the hearing establishes probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to a firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the prompt return of the firearm by providing an affidavit to the law enforcement agency affirming his or her ownership of the firearm and providing assurance that he or she will safeguard the firearm against access by the respondent. The law enforcement agency shall return the firearm to the owner upon its confirmation, including by a check of the National Instant Criminal Background Check System and the applicable state firearm background check system, that the owner is not legally disqualified from possessing or receiving the firearm.

(d) Time for Hearings and Service.

(1) A hearing under this section shall be held within three (3) days of the filing of the application, or within one (1) day of the issuance of an emergency ex parte order under Section 2, if such an order is issued. The responsible law enforcement agency shall serve notice of the hearing on the respondent promptly after the filing of the application or issuance of an emergency ex parte order, but notice may be provided by publication or mailing if the respondent cannot be personally served within the specified period. The respondent shall be entitled to one continuance of up to two (2) days on request, and the court may thereafter grant an additional continuance or continuances for good cause. Any emergency ex parte order under Section 2 shall remain in effect until the hearing is held. The court may temporarily extend the emergency order at the hearing, pending a decision on a final order.

(2) The responsible law enforcement agency shall serve an order issued under this section on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

(e) Termination and Renewal of Orders.

(1) A respondent may file a motion to terminate an order under Section 3 one time during the effective period of that order. The respondent shall have the burden of proving, by the same standard of proof required for issuance of such an order, that he or she does not pose a significant danger or extreme risk of personal injury or death to himself or herself or another.

(2) The petitioner may seek renewals of an order under this section for an additional six (6) months at any time preceding its expiration. Renewals after the initial order shall be granted subject to the same standards and requirements as an initial order. The preceding order shall remain in effect until the renewal hearing is held and the court grants or denies a renewed order.

(3) If the respondent fails to appear at, or cannot be personally served in relation to, any hearing or renewal hearing under this section, the default does not affect the court's authority to issue an order or entitle the respondent to challenge the order prior to its expiration. The order will lapse after one (1) year if no eligible petitioner seeks its renewal.

SEC. 4. ENTRY INTO BACKGROUND CHECK SYSTEMS

The court shall forward any order issued under Section 2 or 3 to an appropriate law enforcement agency on the day it is issued. Upon receipt of an order under Section 3, the law enforcement agency shall make the order available to the National Instant Criminal Background Check System and any state system used to identify persons who are prohibited from possessing firearms.

SEC. 5. VIOLATIONS

The following persons shall be in violation of the City Code of Ordinances:

(1) **FILER OF FALSE OR HARASSING APPLICATION.** – Any person filing an application under Section 2 or 3 containing information that he or she knows to be materially false, or for the purpose of harassing the respondent.

(2) **RESPONDENT NOT COMPLYING WITH ORDER.** – Any person who knowingly violates an order under Section 2 or 3, including by possessing or acquiring a firearm in violation of the order or failing to surrender a firearm as required by the order.

(3) **PROVIDER OF PROHIBITED ACCESS TO RESPONDENT.** – Any person who knowingly provides the subject of an order under Section 2 or 3 access to a firearm, in violation of an assurance the person has provided in an affidavit under Section 2(c)(3) or 3(c)(3) that he or she will safeguard the firearm against access by the respondent.

I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.

FOR THE AMENDMENT	(YES) _____
AGAINST THE AMENDMENT	(NO) _____

Section 5. Effective Date of Charter Amendments Amended and Restated.

BE IT FURTHER ORDAINED, That any referendum question proposed by this Ordinance shall take effect for the purposes set forth herein on January 1, 2025, if any of such questions is approved by a majority of the qualified voters voting thereon in an election to be held on the 5th day of November 2024, the public welfare, requiring it.

Section 6. Certification of Results.

BE IT FURTHER ORDAINED, That the Shelby County Election Commission certify the result of said election on the referendum questions to the Comptroller of the City of Memphis, who shall see that said result is made a part of the Minutes of the Council of the City of Memphis.

Section 7. Nonconflicting – Conflicting Laws.

BE IT FURTHER ORDAINED, That from and after the effective date of this Home Rule Amendment, all laws constituting the present Charter of the City of Memphis in conflict with the subject matter of this amendatory Home Rule Ordinance shall be immediately annulled, vacated, and repealed and all laws constituting the present Charter of the City of Memphis not in conflict

with this amendatory Home Rule Ordinance, be and the same are here continued in full force and effect.

Section 8. Severability.

BE IT FURTHER ORDAINED, that if any clause, section, paragraph, sentence or part of this Ordinance shall be held or declared to be unconstitutional and void, it shall not affect the remaining parts of this Ordinance, it being hereby declared to be the legislative intent to have passed the remainder of this Ordinance notwithstanding the parts so held to be invalid, if any.

Section 9. Publication as Required by the City Charter.

BE IT FURTHER ORDAINED, that this Ordinance shall also be published by the Comptroller at the same time and manner as required by the City's Charter for all ordinances adopted by the City Council.

Section 10. Enactment of Referendum Ordinance.

BE IT FURTHER ORDAINED, that the adoption of this Referendum Ordinance shall take effect from and after the date it shall have passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

SPONSORS

Jeff Warren

CHAIRMAN

JB Smiley, Jr.

THE FOREGOING ORDINANCE

5908 PASSED

1st Reading 6/25/24

2nd Reading 7/9/24

3rd Reading 7/23/24

Approved [Signature]
Chairman of Council

Date Signed: 8/6/24

APPROVED:
[Signature]
Mayor, City of Memphis

Date Signed: 8/16/24

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Snipes
Comptroller

PROOF OF PUBLICATION

THE DAILY NEWS PUBLISHING COMPANY, the Publisher of THE DAILY NEWS, a daily newspaper of general circulation printed in the City of Memphis, County of Shelby and State of Tennessee and distributed in Shelby County in Tennessee, states that the hereto attached publication appeared in THE DAILY NEWS on the following dates:

August 21, 2024

THE DAILY NEWS PUBLISHING COMPANY

By: *Audrey Kalman*
Audrey Kalman, Office Administrator

STATE OF TENNESSEE
COUNTY OF SHELBY

**Annexed legal notice
on the following page(s)**

On this 21st day of August 2024, the individual above appeared before me, personally known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn did say that she is an authorized agent of the corporation (or association) of The Daily News Publishing Company, that this instrument was signed and sealed on behalf of the corporation (or association), by authority of its Board of Directors and Audrey Kalman acknowledged the instrument to be the free act and deed of the corporation (or association) and that the corporation has no corporate seal.

This legal notice was published online at www.memphisdailynews.com and www.tnpublicnotice.com for the duration of the run dates listed above. This publication fully complies with all public notice statutes in Tennessee Code Annotated, including all statutes that have gone into effect as of the dates of publication above.

WITNESS my hand and Official Seal at office this 21st day of August 2024.

Sherry Ledet
Notary Public



ORDINANCE No. 5908

AN ORDINANCE TO AMEND AND RESTATE REFERENDUM ORDINANCE NO. 5877 THAT PROPOSED AN AMENDMENT TO THE CHARTER OF THE CITY OF MEMPHIS, PURSUANT TO ARTICLE XI, § 9 OF THE CONSTITUTION OF THE STATE OF TENNESSEE (HOME RULE AMENDMENT), SO AS TO PROVIDE PROVISIONS FOR THE REGULATION OF DEADLY WEAPONS

WHEREAS, Referendum Ordinance No. 5877 was approved by the Memphis City Council on July 11, 2023, to be published and submitted by the City of Memphis to its qualified voters during the general election on August 1, 2024; and

WHEREAS, it is the intent of the Council to amend and restate Referendum Ordinance No. 5877 to be published and submitted by the City of Memphis to its qualified voters during the state general election on November 5, 2024; and

WHEREAS, it is deemed advisable and in the best interest of the citizens of the City of Memphis that the City of Memphis Charter be amended by ordinance as provided by Article XI, Section 9 of the Constitution of the State of Tennessee (Home Rule Amendment) for the purpose of regulating deadly weapons in the City of Memphis.

Section 1. Proposed Amendment Authorized. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE, That Referendum Ordinance No. 5877, passed pursuant to Article XI, Section 9 of the Constitution of the State of Tennessee, as amended, to submit a proposal for amending the Charter of the City, is hereby amended and restated pursuant to Article XI, Section 9 of the Constitution of the State of Tennessee, as amended, a proposal for amending the Charter of the City, as set forth in this ordinance, and as so amended and restated shall be published and submitted by the City of Memphis to its qualified voters at the first state general election, which shall be held in the City of Memphis on November 5, 2024, and which shall be held at least sixty (60) days after such publication.

Section 2. Publication of Home Rule Amendment as required by Tennessee Constitution.

BE IT FURTHER ORDAINED, That the Comptroller is hereby directed to cause this Ordinance, as finally adopted, to be published pursuant to provisions of Article XI, Section 9 of the Constitution of the State of Tennessee immediately after adoption by the City Council.

Section 3. Certification and Delivery to Election Commission.

BE IT FURTHER ORDAINED, That upon the adoption of this Ordinance becoming effective as required by law, the Comptroller of the City of Memphis shall immediately certify adoption of this Ordinance and deliver a certified copy thereof to the Shelby County Election Commission in charge of holding the general State election on November 5, 2024, and shall request that the proposed amendment to the Home Rule Charter of the City of Memphis, in the preferred form set

forth in this Ordinance, be placed on the ballot.

Section 4. Proposal and preference.

BE IT FURTHER ORDAINED, That the City Council does hereby adopt the suggested proposal and form of separate and independent questions to be placed on the ballot for a referendum vote to amend the Home Rule Amendment to the Charter of the City of Memphis in a State General election to be held on the 5th day of November 2024, which question(s) shall read as follows:

QUESTION NO. 1:

Shall the Charter of the City of Memphis be amended to read:

- 1. No person shall be allowed to carry a handgun in the City of Memphis without possessing a valid handgun carry permit.**
- 2. No person shall be allowed to carry, store, or travel with a handgun in a vehicle in the City of Memphis without possessing a valid handgun permit.**
- 3. It shall be unlawful for a person to store a firearm, whether loaded or unloaded, or firearm ammunition, in a motor vehicle or boat while the person is not in the motor vehicle or boat unless the firearm or firearm ammunition is kept from ordinary observation and locked within the trunk, utility or glove box, or a locked container securely affixed to the motor vehicle or boat.**

I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.

FOR THE AMENDMENT (YES)

AGAINST THE AMENDMENT (NO)

QUESTION NO. 2:

Shall the Charter of the City of Memphis be amended to read:

- 1. The citizens of Memphis hereby find and declare that the proliferation and use of assault weapons pose a threat to the health, safety, and security of all citizens of Memphis.**
- 2. Hereafter, it shall be unlawful and prohibited for a person to possess or carry, openly or concealed, any assault rifles in the City of Memphis. Persons with valid handgun permits are exempt from this restriction when possessing or carrying an assault rifle on their privately owned property or at a shooting range.**
- 3. Hereafter, the commercial sale of assault rifles within the City of Memphis is unlawful and is hereby prohibited.**
- 4. The provisions of this Chapter shall not apply to the commercial sale of assault rifles to:**
 - 4.1 Any federal, state, local law enforcement agency;**
 - 4.2 The United States Armed Forces or department or agency of the United States;**
 - 4.3 Tennessee National Guard, or a department, agency, or political subdivision of a state; or**
 - 4.4 A Law Enforcement Officer.**
- 5. Pre-existing owners that can demonstrate that the commercial sale of an assault rifle was completed prior to the Effective Date of January 1, 2025, which means that prior to January 1, 2025, the purchaser completed an**

application, passed a background check, and has a receipt or purchase order for said purchase, without regard to whether the purchaser has actual physical possession of the Assault Rifle, shall be considered a pre-existing purchaser.

I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.

FOR THE AMENDMENT (YES)

AGAINST THE AMENDMENT (NO)

QUESTION NO. 3:

Shall the Charter of the City of Memphis be amended to read:

Section 1. EXTREME RISK PROTECTION ORDERS

A. Definitions

1. "Petitioner" means:

- (A) A law enforcement officer or agency, including an attorney for the state;**
- (B) A member of the family of the respondent, which shall be understood to mean a parent, spouse, child, or sibling of the respondent;**
- (C) A member of the household of the respondent;**
- (D) A dating or intimate partner of the respondent;**
- (E) A health care provider who has provided health services to the respondent;**
- (F) An official of a school or school system in which the respondent is enrolled or has been enrolled within the preceding month;**

2. "Respondent" means the person against whom an order under Section 2 or 3 has been sought or granted.

B. Types of Orders

1. The petitioner may apply for an emergency ex parte order as provided in Section 2 or an order following a hearing as provided in Section 3.

Section 2. EMERGENCY EX PARTE ORDER

(a) Basis for Order. The court shall issue an emergency ex parte extreme risk protection order upon submission of an application by a petitioner, supported by an affidavit or sworn oral statement of the petitioner or other witness, that provides specific facts establishing probable cause that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. The court shall take up and decide such an application on the day it is submitted, or if review and decision of the application on the same day is not feasible, then as quickly as possible but in no case later than forty-eight hours.

(b) Content of Order. An order issued under this section shall

(1) prohibit the respondent from possessing, using, purchasing, manufacturing, or otherwise receiving a firearm;

(2) order the respondent to provisionally surrender any firearms in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement

officer presenting the order or to a law enforcement agency as directed by the officer or the order; and

(3) inform the respondent of the time and place of the hearing under Section 3 to determine whether he or she will be subject to a continuing prohibition on possessing and acquiring firearms.

(c) Search and Seizure.

(1) If the application and its supporting affidavit or statement establish probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the return of the firearm as provided in Section 3(c)(3).

(d) Time for Service and Searches. The responsible law enforcement agency shall serve the order on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

SEC. 3. ORDER AFTER HEARING

(a) Order After Hearing. Upon application for an extreme risk protection order, supported by an affidavit or sworn oral statement of the petitioner or other witness that provides specific facts giving rise to the concern about the significant danger or extreme risk described in Section 2, the court may issue an order under this section, which shall be effective for a period of one (1) year after a hearing. An order issued under this section shall,

(1) prohibit the respondent from possessing, using, purchasing, or otherwise receiving a firearm; and

(2) order the respondent to surrender any firearm in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order.

(b) Basis for order. The court shall issue such an order based on a preponderance of the evidence that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. In determining the satisfaction of this requirement, the court shall consider all relevant facts and circumstances after reviewing the petitioner's application and conducting the hearing described in Section 2

(d). The court may order a psychological evaluation of the respondent, including voluntary or involuntary commitment of the respondent for purposes of such an evaluation, to the extent authorized by other law.

(c) Search and Seizure.

(1) If the evidence presented at the hearing establishes probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to a firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the prompt return of the firearm by providing an affidavit to the law enforcement agency affirming his or her ownership of the firearm and providing assurance that he or she will safeguard the firearm against access by the respondent. The law enforcement agency shall return the firearm to the owner upon its confirmation, including by a check of the National Instant Criminal Background Check System and the applicable state firearm background check system, that the owner is not legally disqualified from possessing or receiving the firearm.

(d) Time for Hearings and Service.

(1) A hearing under this section shall be held within three (3) days of the filing of the application, or within one (1) day of the issuance of an emergency ex parte order under Section 2, if such an order is issued. The responsible law enforcement agency shall serve notice of the hearing on the respondent promptly after the filing of the application or issuance of an emergency ex parte order, but notice may be provided by publication or mailing if the respondent cannot be personally served within the specified period. The respondent shall be entitled to one continuance of up to two (2) days on request, and the court may thereafter grant an additional continuance or continuances for good cause. Any emergency ex parte order under Section 2 shall remain in effect until the hearing is held. The court may temporarily extend the emergency order at the hearing, pending a decision on a final order.

(2) The responsible law enforcement agency shall serve an order issued under this section on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

(e) Termination and Renewal of Orders

(1) A respondent may file a

motion to terminate an order under Section 3 one time during the effective period of that order. The respondent shall have the burden of proving, by the same standard of proof required for issuance of such an order, that he or she does not pose a significant danger or extreme risk of personal injury or death to himself or herself or another.

(2) The petitioner may seek renewals of an order under this section for an additional six (6) months at any time preceding its expiration. Renewals after the initial order shall be granted subject to the same standards and requirements as an initial order. The preceding order shall remain in effect until the renewal hearing is held and the court grants or denies a renewed order.

(3) If the respondent fails to appear at, or cannot be personally served in relation to, any hearing or renewal hearing under this section, the default does not affect the court's authority to issue an order or entitle the respondent to challenge the order prior to its expiration. The order will lapse after one (1) year if no eligible petitioner seeks its renewal.

SEC. 4. ENTRY INTO BACKGROUND CHECK SYSTEMS

The court shall forward any order issued under Section 2 or 3 to an appropriate law enforcement agency on the day it is issued. Upon receipt of an order under Section 3, the law enforcement agency shall make the order available to the National Instant Criminal Background Check System and any state system used to identify persons who are prohibited from possessing firearms.

SEC. 5. VIOLATIONS

The following persons shall be in violation of the City Code of Ordinances:

(1) **FILER OF FALSE OR HARASSING APPLICATION.** - Any person filing an application under Section 2 or 3 containing information that he or she knows to be materially false, or for the purpose of harassing the respondent.

(2) **RESPONDENT NOT COMPLYING WITH ORDER.** - Any person who knowingly violates an order under Section 2 or 3, including by possessing or acquiring a firearm in violation of the order or failing to surrender a firearm as required by the order.

(3) **PROVIDER OF PROHIBITED ACCESS TO RESPONDENT.** - Any person who knowingly provides the subject of an order under Section 2 or 3 access to a firearm, in violation of an assurance the person has provided in an affidavit under Section 2(c)(3) or 3(c)(3) that he or she will safeguard the firearm against access by the respondent.

I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.

FOR THE AMENDMENT (YES)

AGAINST THE AMENDMENT (NO)

Section 5. Effective Date of Charter Amendments Amended and Restated.

BE IT FURTHER ORDAINED, That any referendum question proposed by this Ordinance shall take effect for the purposes set forth herein on January 1, 2025, if any of such questions is approved by a majority of the qualified voters voting thereon in an election to be held on the 5th day of November 2024, the public welfare, requiring it.

Section 6. Certification of Results.

BE IT FURTHER ORDAINED, That the Shelby County Election Commission certify the result of said election on the referendum questions to the Comptroller of the City of Memphis, who shall see that said result is made a part of the Minutes of the Council of the City of Memphis.

Section 7. Nonconflicting - Conflicting Laws.

BE IT FURTHER ORDAINED, That from and after the effective date of this Home Rule Amendment, all laws constituting the present Charter of the City of Memphis in conflict with the subject matter of this amendatory Home Rule Ordinance shall be immediately annulled, vacated, and repealed and all laws constituting the present Charter of the City of Memphis not in conflict with this amendatory Home Rule Ordinance, be and the same are here continued in full force and effect.

Section 8. Severability.

BE IT FURTHER ORDAINED, that if any clause, section, paragraph, sentence or part of this Ordinance shall be held or declared to be unconstitutional and void, it shall not affect the remaining parts of this Ordinance, it being hereby declared to be the legislative intent to have passed the remainder of this Ordinance notwithstanding the parts so held to be invalid, if any.

Section 9. Publication as Required by the City Charter.

BE IT FURTHER ORDAINED, that this Ordinance shall also be published by the Comptroller at the same time and manner as required by the City's Charter for all ordinances adopted by the City Council.

Section 10. Enactment of Referendum Ordinance.

BE IT FURTHER ORDAINED, that the adoption of this Referendum Ordinance shall take effect from and after the date it shall have passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

SPONSORS

Jeff Warren

CHAIRMAN

JB Smiley, Jr.

THE FOREGOING ORDINANCE

#5908 PASSED

1st Reading 6/25/24

2nd Reading 7/9/24

3rd Reading 7/23/24

Approved J.B. Smiley Jr.

Chairman of Council

Date Signed: 8/6/24

Approved:

Paul Young

Mayor, City of Memphis

Date Signed: 8/16/23

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie Snipes

Comptroller

Aug. 21, 2024 Md103951

EXHIBIT 2

Tennessee Secretary of State
Tre Hargett



Elections Division
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

August 26, 2024

Mark H. Luttrell, Jr., Chairman of the Shelby County Election Commission and
Shelby County Election Commission Members
157 Poplar Ave., Suite 137
Memphis, TN 38103-1948

Re: City of Memphis Proposed Charter Amendments for the November 5, 2024 Ballot

Dear Chairman Luttrell and Members of the Shelby County Election Commission:

In July of 2023, the legislative body for the City of Memphis (the "City") adopted Referendum Ordinance No. 5877 with the expectation the proposed charter amendments would be placed on the August 1, 2024, general election ballot, occurring 60 days after the publication of the ordinance. However, based on information received from Mr. Allan Wade, the City Attorney, the City's Comptroller did not adequately publish Ordinance No. 5877 in time to place the proposed charter amendments on the August 1, 2024, general election ballot. The City then adopted Ordinance No. 5908 to amend and restate Referendum Ordinance No. 5877.

The proposed charter amendments are not properly presented for placement on the November 5, 2024 ballot.

The General Assembly expressly preempted the field of firearms regulation and the field of legislation regarding extreme risk protection orders—both of which Ordinance No. 5908 seeks to regulate. This express preemption is obvious from the face of the ordinance, and can be determined without legal interpretation.

To be clear, Tenn. Code Ann. § 39-17-1314(a) expressly states,

Except as otherwise provided by state law or as specifically provided in subsection (b), *the general assembly preempts the whole field of the regulation of firearms, ammunition, or components of firearms or ammunition, or combinations thereof* including, but not limited to, the use, purchase, transfer, taxation, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation thereof, to the exclusion of all county, city, town, municipality, or metropolitan government law, ordinances, resolutions,

enactments or regulation. No county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy any part of the field regulation of firearms, ammunition or components of firearms or ammunition, or combinations thereof. (Emphasis added.)

Thus, the first proposal of Ordinance No. 5908 conflicts with state law on firearms restrictions because it attempts to regulate a preempted field. Furthermore, Tenn. Code Ann. § 39-17-1307(g) generally allows a person who is 21 years old or older to carry a handgun either openly or concealed, but the first proposal prohibits the carrying of a handgun in the City of Memphis without the person having a valid handgun permit.

For similar reasons, the second proposal of Ordinance No. 5908 prohibiting the possession of assault rifles, including the commercial sale of assault rifles, in the City of Memphis without the person's having a valid handgun permit, conflicts with state law because it attempts to regulate a preempted field.

Regarding extreme risk protection orders, state law found at 2024 Public Act No. 1062 states the following:

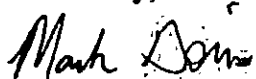
Except as otherwise provided by state law, *the general assembly preempts the entire field of legislation regarding extreme risk protection orders* to the exclusion of all county, city, town, municipality, or metropolitan government law, ordinances, resolutions, enactments, or regulation. (Emphasis added.)

2024 Public Act No. 1062 plainly preempts the field of legislation on extreme risk orders. Thus, the provisions in the third proposal of Ordinance No. 5908, permitting the petitioning for and the granting of extreme risk protection orders, is preempted by state law.

The unequivocal declarations by the General Assembly in these state laws facially preempt the referendum proposed in Ordinance No. 5908 and leave no authority for the City of Memphis to propose charter amendments in these fields of regulation. Thus, any proposed referendum pursuant to Ordinance No. 5908 is facially void and cannot be placed on the ballot.

Let me know if I can be of any further assistance. Thank you for your efforts to conduct elections that comply with our state laws.

Sincerely,



Mark Goins
Coordinator of Elections

EXHIBIT 3

146 S.W.3d 531
Supreme Court of Tennessee,
at Jackson.

THE CITY OF MEMPHIS
v.
SHELBY COUNTY ELECTION COMMISSION, et al.

No. W2004-02182SC-RDM-CV.

Sept. 15, 2004.

Synopsis

Background: City brought action for writ of mandamus, injunctive relief, and declaratory judgment, challenging county election commission's refusal to place tax ordinance referendum on ballot. The Chancery Court, Shelby County, Arnold Goldin, Chancellor, entered judgment for commission. City appealed, and filed motion asking Supreme Court to assume jurisdiction.

Holdings: The Supreme Court, Frank F. Drowota, III, C.J., held that:

Court would grant city's motion requesting court to assume jurisdiction and render expedited decision;

Commission and Coordinator of Elections did not have authority to refuse to place referendum ordinance on ballot based on their belief that ordinance was substantively unconstitutional; and

issue of ordinance's constitutionality was not ripe.

Reversed with instructions.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

*533 Allan J. Wade, Lori Hackleman Patterson, Brandy S. Parrish, Sara L. Hall, Memphis, Tennessee, for the appellant, The City of Memphis.

Paul G. Summers, Attorney General & Reporter; Michael E. Moore, Solicitor General; Ann Louise Vix, Senior Counsel, Charles L. Lewis, Deputy Attorney General, Nashville, Tennessee, for the appellee, Shelby County Election Commission, Gregory M. Duckett, Richard J. Holden and Maura Black Sullivan, Members.

FRANK F. DROWOTA, III, C. J., delivered the opinion of the court, in which E. RILEY ANDERSON, ADOLPHO A. BIRCH, JR., JANICE M. HOLDER, and WILLIAM M. BARKER, JJ., joined.

OPINION

FRANK F. DROWOTA, III, C.J.

In this expedited appeal, this Court is asked to decide whether the Shelby County Election Commission exceeded its authority by refusing to place Referendum Ordinance No. 5072 on the November 2, 2004, ballot based upon the State Election Coordinator's opinion that the Ordinance is unconstitutional. We hold that the Shelby County Election Commission exceeded its authority in refusing to place the measure on the ballot. Accordingly, the judgment of the trial court is reversed, and the Commission is hereby ordered to include Referendum Ordinance No. 5072 on the November 2, 2004, ballot.

I. Motion to Assume Jurisdiction

On September 10, 2004, the City of Memphis ("City") filed a motion pursuant to Tennessee Code Annotated section 16-3-201 requesting that this Court assume jurisdiction of this appeal and render an expedited decision. The City asserted that this is a case of unusual public importance involving constitutional separation of powers issues. The City maintained that expediting the appeal is necessary to enable the Shelby County Election Commission to prepare and to distribute to military personnel by September 18, 2004, the ballots for the November 2, 2004, general election. This Court immediately ordered the parties to submit briefs addressing the following issues: (1) whether the Shelby County Election Commission and Commission Members ("Commission") had the authority to refuse to place Referendum Ordinance No. 5072 on the November 2, 2004, ballot because they believed it to be unconstitutional; and (2) whether Referendum Ordinance No. 5072 is unconstitutional.

Upon due consideration of the well-written and thorough briefs, prepared on short notice,¹ this Court finds that the City's *534 motion is well taken. We agree with the City that this is a case of unusual public importance, presenting a special need for expedited decision and involving issues of constitutional law. *See* Tenn.Code Ann. § 16-3-201 (Supp.2003). Accordingly, we hereby grant the City's motion, assume jurisdiction of this appeal, and, as explained below, reverse the judgment of the trial court.

II. Factual and Procedural Background

Petitioner, the City, is a home rule municipality duly chartered under Article XI, section 9 of the Tennessee Constitution. The Commission is responsible for administering public elections in Shelby County and in the City. On August 17, 2004, the Memphis City Council passed on third and final reading Referendum Ordinance No. 5072. If approved by the voters, this measure would amend the City's Charter by adding the following provision:

The Council of the City of Memphis is authorized by Ordinance to authorize the City of Memphis to levy and collect an additional privilege tax and/or fee on the privilege of engaging in certain vocations, occupations, callings and employment related activities within the City and to authorize the use of revenue derived therefrom for budget expenditures for fire, police and for corresponding reductions of ad valorem taxes for expenditures made from such revenues.

The City's Comptroller delivered to the Commission a copy of Referendum Ordinance No. 5072, along with a suggested referendum question (collectively "Ordinance"), for inclusion on the November 2, 2004, ballot. There is apparently no dispute that the Ordinance was duly enacted by the Memphis City Council, signed by the Mayor, and properly and timely submitted to the Commission for inclusion on the ballot. However, on August 26, 2004, the Commission refused to place the

Ordinance on the ballot. In doing so, the Commission relied upon an August 25, 2004, letter from Brook Thompson, Tennessee Coordinator of Elections ("Coordinator"). In this letter, the Coordinator declared that he would not approve any ballot containing the Ordinance and stated that a privilege/payroll tax, to which the Ordinance ultimately speaks, "is unconstitutional unless and until the General Assembly authorizes cities to impose such a tax."

On August 27, 2004, the City filed a "petition for writ of mandamus, for injunctive relief, and for a declaratory judgment," challenging the Commission's refusal to place the Ordinance on the ballot. A hearing was held on September 7, 2004, before Chancellor Arnold Goldin. Although characterizing the duties of the Commission and the Coordinator as ministerial in nature, the Chancellor concluded that these officials had the authority to refuse to place the Ordinance on the ballot. The Chancellor further found that the Ordinance would be unconstitutional because it would unlawfully increase the taxing power of the City in violation of Article XI, section 9 of the Tennessee Constitution.² The City filed a notice of appeal on September 8, 2004, and, two days later, filed a motion asking this Court to assume jurisdiction of the appeal pursuant to *535 Tennessee Code Annotated section 16-3-201. We granted the City's motion.

III. Authority of the Commission

The City argues that the Commission and the Coordinator are ministerial officials who had no authority to refuse to place the Ordinance on the ballot because they believed it to be unconstitutional. In support of its argument, the City points to several statutes, discussed hereinafter, delineating the duties of the Commission, as well as to several statutes setting forth the duties of the Coordinator whose opinion the Commission relied upon in refusing to place the Ordinance on the ballot. The Commission responds that it has the duty to review proposed referendum measures and to determine initially whether such measures comply with state statutes and with the state constitution.

The City correctly points out that the Coordinator and the Commission are ministerial officers. *Shelby County Election Comm'n v. Turner*, 755 S.W.2d 774, 776 (Tenn.1988) ("[T]he Election Commission has only ministerial duties."); *Peeler v. State ex rel. Beasley*, 190 Tenn. 615, 231 S.W.2d 321, 323 (1950) (holding that the duties of county election commissions are ministerial); *Curtis v. State*, 163 Tenn. 220, 43 S.W.2d 391 (1931); *Taylor v. Carr*, 125 Tenn. 235, 141 S.W. 745, 750 (1911) (holding that "the duties of commissioners of election are only ministerial"); see *State ex rel. Tidwell v. Morrison*, 152 Tenn. 59, 274 S.W. 551, 552 (1924). The trial court in this case accurately characterized the Commission's duties as ministerial. The Commission and the Coordinator respectively perform important functions vital to the maintenance and advancement of our political system. Nonetheless, as ministerial officers, the Commission and the Coordinator have limited discretion.

Black's Law Dictionary defines a "ministerial officer" as "[o]ne who performs specified legal duties when the appropriate conditions have been met, but who does not exercise personal judgment or discretion in performing those duties." Black's Law Dictionary 1113 (7th ed.1999). A "strictly ministerial duty" is defined as: "A duty that is absolute and imperative, requiring neither the exercise of official discretion nor judgment." *Id.* at 522.³ These definitions illustrate how, as ministerial officers performing ministerial acts, the Commission and the Coordinator must implement the election laws, not determine the substantive constitutionality of ballot measures.

Without question, the Commission and the Coordinator have certain statutorily prescribed ministerial duties that allow—indeed require—they to do such things as examine ballot initiatives to determine whether signature requirements are met, determine whether submissions are timely, and determine whether candidates have properly qualified to be placed on the ballot. See Tenn.Code Ann. § 2-1-101 through -216 (2003) et seq. However, these statutes do not require or even permit the Commission to refuse to include a referendum question on the ballot because the Commission believes the question to be substantively unconstitutional. See *536 Tenn.Code Ann. §§ 2-12-101 through 2-12-216 (delineating the duties of the Commission). The Commission contends that it has the power and duty to make an "initial determination" whether the law authorizes the acts it is required to perform. This contention is true with respect to the Commission's performance of its ministerial duties. However, it is inaccurate to say that the Commission has the power and duty to perform an initial or cursory review of the *substantive* constitutionality of measures to be placed on the ballot for referendum. Determining the substantive constitutionality of such measures is a function reserved for the judicial branch of government.

Furthermore, the Coordinator, an appointed, ministerial official, also lacks the statutory authority to forbid the inclusion of a

referendum question based upon the Coordinator's opinion that the measure is substantively unconstitutional. The Coordinator's statutory duty to approve the "form of the ballot" does not provide authority to determine the substantive constitutionality of referendum questions, like the Ordinance at issue in this case. The "forms of ballots on voting machines" and the "form of paper ballots" are prescribed by statute. *See* Tenn.Code Ann. §§ 2-5-206, -207. These statutes describe the proper "form" of the ballot in detail, including, for example, the color of ink and the proper placement of certain titles and candidate names. *See id.* at §§ -206, -207. However, these statutes do not address the substance of ballot measures.

Finally, Tennessee Code Annotated section 2-11-202 does not provide the Coordinator with authority to exclude the Ordinance based upon the Coordinator's opinion that the Ordinance is substantively unconstitutional. Section 2-11-202 provides in relevant part as follows:

(a) The coordinator of elections shall:

(1) Generally supervise all elections;

(2) Prepare instructions for the conduct of registration;

(3) Advise election commissions, primary boards, and administrators of elections as to the proper methods of performing their duties;

(4) Authoritatively interpret the election laws for all persons administering them;....

Tenn.Code Ann. § 2-11-202 (2003). Although the Coordinator must "authoritatively interpret the election laws for all persons administering them," this statute does not permit or instruct the Coordinator to provide an authoritative interpretation as to whether a municipal ordinance placing a question on the ballot violates the Tennessee Constitution.⁴

*537 Indeed, any statute purporting to grant the Coordinator or the Commission such broad interpretive authority would run afoul of the principle of separation of powers embodied in the Tennessee Constitution, Article II, sections 1 and 2.⁵ This Court has explained:

The powers of government, divided into the legislative, executive, and judicial branches, are separate and divisible. The legislative branch has the authority to make, alter, and repeal the law; the executive branch administers and enforces the law; and the judicial branch has the authority to interpret and apply the law. Since the United States Supreme Court decision in *Marbury v. Madison*, it has been the sole obligation of the judiciary to interpret the law and determine the constitutionality of actions taken by the other two branches of government. The Tennessee Constitution [Art. II, § 2] forbids an encroachment by one department upon the powers or functions of another. *Thus, a legislative action vesting executive branch agencies with the authority to determine the constitutionality of statutes would violate the separation of powers doctrine.*

Richardson v. Tennessee Bd. of Dentistry, 913 S.W.2d 446, 453 (Tenn.1995) (internal citations omitted) (emphasis added). Reduced to its essence, the City's assertion is that, regardless of whether the Ordinance unconstitutionally enlarges the City's taxing power, the Commission and the Coordinator clearly violated this constitutional doctrine of separation of powers. The City maintains that the Commission and the Coordinator usurped the judiciary's authority to determine the constitutionality of laws, including municipal ordinances, and encroached upon the Memphis City Council's legislative authority to enact and submit laws to the electorate. The Commission asserts that it had the authority—indeed the duty—to review the Ordinance to determine whether it violated Article XI, section 9 by enlarging the City's taxing authority.

After carefully considering these arguments, we agree with the City that the Coordinator and the Commission violated the constitutional principle of separation of powers by refusing to place the Ordinance on the ballot. With regard to referendum charter amendment ordinances, like the Ordinance at issue in this case, Article XI, section 9 of the Tennessee Constitution clearly states:

It shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters at the first general state election which shall be held at least

sixty (60) days after such publication and such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters thereon.

By refusing to include the Ordinance, the Coordinator and the Commission thwarted the Memphis City Council's constitutional duty to submit the Ordinance to the qualified voters at the first general state election.

*538 Furthermore, the Coordinator and the Commission usurped the power of the judiciary to determine the substantive constitutionality of duly enacted laws. We have found no Tennessee authority, and none has been cited to us, wherein executive or legislative branch officials are permitted to determine the substantive constitutionality of duly enacted, presumptively valid ordinances. *Cf. Kirk v. Olgiati*, 203 Tenn. 1, 308 S.W.2d 471, 473 (1957) (“[T]he necessity and advisability of a City ordinance is for the legislative power to determine and the presumption is that said ordinance is valid and constitutional.”) Indeed, as previously explained, ministerial officials are prohibited from exercising this uniquely judicial function. This Court has emphasized that:

[t]he general public welfare, and more especially the peace and good order of society, will not admit of ministerial officers being the judge of the constitutionality of statutes and ordinances. Their failure and refusal to enforce the law as written, in the absence of any proper adjudication of unconstitutionality, would be intolerable.

Bricker v. Sims, 195 Tenn. 361, 259 S.W.2d 661, 664–65 (1953). Here, ministerial officials adjudged the substantive constitutionality of a duly enacted Ordinance and, based on their judgment, forbade its inclusion on the ballot. We agree with the City that, in doing so, the Coordinator and the Commission overstepped their statutory and constitutional authority.⁶ Accordingly, the trial court's decision on this issue is reversed.

IV. Constitutionality of the Ordinance

The Commission asserts that the Ordinance is unconstitutional because it “clearly, plainly, and on its face would expand Memphis' power of taxation.” The Commission asks this Court not to require it to place the purportedly invalid Ordinance on the ballot. In so arguing, the Commission relies upon this Court's decision in *Brown v. State ex rel. Jubilee Shops, Inc.*, 221 Tenn. 283, 426 S.W.2d 192 (1968), in which this Court reviewed the constitutional challenge to an ordinance before ordering the County Election Commission to place it on a referendum ballot.

The City asserts that the constitutionality of the Ordinance is not ripe for judicial determination. The City maintains that the Commission's reliance upon *Brown* is misplaced because *Brown* involved a constitutional challenge to the *form* of the referendum ordinance whereas, in this case, the Commission challenges the *substantive* constitutionality of the Ordinance.

Upon due consideration, we agree with the City that a challenge to the substantive constitutional validity of the Ordinance is not ripe for judicial determination. The City's voters may or may not approve the Ordinance. If the Ordinance is approved, the City may or may not adopt a privilege tax to which the Ordinance speaks. The City may or may not seek approval by the General Assembly for such a tax, and the General Assembly may or may not approve any such request. In short, we decline to pass upon the constitutionality of a measure that is not now the law and may never become the law. For *539 us to do so at this premature stage would violate the established rule that appellate courts will not render advisory opinions, *Veach v. State*, 491 S.W.2d 81, 82 (Tenn.1973); *Banks v. Jenkins*, 224 Tenn. 23, 449 S.W.2d 712, 717 (1969), and will not decide theoretical issues based on contingencies that may or may not arise. *Donathan v. McMinn County*, 187 Tenn. 220, 213 S.W.2d 173, 178 (1948); *United States Fidelity & Guaranty Co. v. Askew*, 183 Tenn. 209, 191 S.W.2d 533, 534 (1946).

Furthermore, we agree with the City that *Brown* is distinguishable and not controlling. In that case, the constitutional

challenge was to the form of the ordinance, not to its substance. The body of the ordinance was alleged to be broader than its caption in violation of Article II, section 17 of the Tennessee Constitution. Thus, given the challenge to the form of the ordinance, we agreed that mandamus should not issue until and unless the ordinance was determined to be valid. *Brown*, at 287, 426 S.W.2d at 194. However, *Brown* did not present the hypothetical, unripe question of whether the ordinance, if passed, would be unconstitutional. Rather, *Brown* presented the concrete and ripe question of whether the ordinance had been passed in the *form* necessary to legitimately invoke the referendum process. Generally, pre-election challenges to the substantive constitutional validity of referendum measures are not ripe for determination by a court, while pre-election challenges to the form or facial constitutional validity of referendum measures are ripe for judicial scrutiny.⁷ See James D. Gordon III & David B. Magleby, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L.Rev. 298, 314 (1989); see also *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d 119, 122 (1996); *Burnell v. City of Morgantown*, 210 W.Va. 506, 558 S.E.2d 306, 313–14 (2001) (explaining and applying this rule). The authority from other jurisdictions upon which the Commission relies involved pre-election challenges to the form or facial constitutional validity of referendum measures, rather than pre-election challenges to the substantive constitutional validity of such measures. See *Alaska Conservative Political Action Comm. v. Municipality of Anchorage*, 745 P.2d 936, 938 (Alaska 1987) (refusing to require election officials to place on the ballot an initiative that on its face sought to make an appropriation because the Alaska constitution specifically prohibited making appropriations by initiative); *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 827 (Mo.1990) (en banc) (considering, in a pre-election challenge, whether a ballot measure violated a state law requiring that an initiative petition contain no more than one subject and stating that “[o]ur single function is to ask whether the constitutional requirements and limits of power, as expressed in the provisions relating to the *procedure and form* of initiative petitions, have been regarded”); *State ex rel. Hazelwood Yellow Ribbon Comm. v. Klos*, 35 S.W.3d 457, 468 (Mo.Ct.App.2000) (stating that “modern precedents leave no doubt that Missouri courts indeed recognize and follow a general rule against pre-election judicial review concerning the substantive legality of ballot measures”); *State ex rel. Childress v. Anderson*, 865 S.W.2d 384, 390–91 (Mo.Ct.App.1993) (holding a ballot zoning measure invalid because it had not been submitted to the city planning and zoning commission for examination and *540 recommendation prior to consideration by the city council, as required by the city charter); *State ex rel. Brant v. Beermann*, 217 Neb. 632, 350 N.W.2d 18, 21 (1984) (stating that “[u]nless the subject of the proposed petition on its face is invalid or unconstitutional, the Secretary of State cannot pass upon the validity or construction of any proposed law ...” and that “[t]he Secretary of State is required to perform promptly all the ministerial duties imposed by law, except the Secretary of State may determine whether the subject of the petition has the semblance of a law or whether the subject is legally appropriate for the initiative”); *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801, 806 (1992) (refusing, in a pre-election declaratory judgment action brought by the town and various taxpayers, to require the town to place a facially unconstitutional measure on the referendum ballot); *Dixon v. Provo City Council*, 12 Utah 2d 134, 363 P.2d 1115, 1116 (1961) (refusing to compel election authorities to place the ordinance on the ballot because the proposal which called for the election of “three commissioners and an auditor” was facially invalid in light of a generally applicable state statute vesting the authority of municipal government “in a board of commissioners, consisting of a mayor and two commissioners, to be elected at large”).

Regardless of its assertions to the contrary, the Commission’s challenge is to the substantive constitutional validity of the Ordinance, rather than merely to the facial or procedural legality of the measure. This challenge is unlike the challenge in *Brown* which required this Court merely to review the ordinance to determine if its body was broader than its caption in violation of Article II, section 17 of the Tennessee Constitution. Deciding the constitutional challenge in this case would require not only review of the City’s existing charter to determine how broad the City’s taxing powers are at present, but also review of the Ordinance to determine whether it would, upon adoption, actually enlarge or increase the City’s taxing powers in violation of Article XI, section 9.⁸ In short, the challenge in this case strikes at the substantive constitutional validity of the Ordinance. Thus, as previously stated, this pre-election challenge simply is not ripe for judicial determination.

V. Conclusion

As explained herein, the City’s motion requesting that this Court assume jurisdiction of the appeal is well taken and is granted. We hold that the Commission exceeded its statutory and constitutional authority by excluding the Ordinance from the November 2, 2004, ballot. Therefore, the Commission is hereby ordered to include the Ordinance on the November 2, 2004, ballot. The substantive constitutionality of the Ordinance, or any law that may eventually result from the measure, is

not now an issue ripe for judicial determination. This opinion is not subject to rehearing under Tennessee Rule of Appellate Procedure 39, and the Clerk is directed to *541 certify this opinion as final and to immediately issue the mandate. Costs of this appeal are taxed to the Commission for which execution may issue if necessary.

All Citations

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Footnotes

¹ This Court's Order of Friday, September 10, 2004, allowed the City until Monday, September 13, 2004, and the Commission until Tuesday, September 14, 2004, in which to brief this cause.

² Article XI, section 9 of Tennessee's Constitution declares that although home rule municipalities, such as the City, have broad powers to amend their charters by referendum, "the power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly."

³ The City cites a prior edition of Black's Law Dictionary which defines ministerial official as "[o]ne whose duties are purely ministerial, as distinguished from executive, legislative, or judicial functions, requiring obedience to the mandates of superiors and not involving the exercise of judgment or discretion." Black's Law Dictionary 996 (6th ed.1990). That same edition defines a "ministerial act" as "[t]hat which is done under the authority of a superior... That which involves obedience to instructions, but demands no special discretion, judgment, or skill." *Id.*

⁴ In his August 25, 2004, letter, the Coordinator stated that he would "not approve any ballot" that contained the Ordinance. The City correctly points out that, although County Election Commissions must submit for the Coordinator's approval a sample ballot of "candidates" for public offices, the plain language of Tennessee Code Annotated sections 2-5-206(c) and 2-5-207(e) does not appear to require County Election Commissions to submit for the Coordinator's approval a sample ballot of referendum questions. *See* Tenn.Code Ann. § 2-5-206(c) (providing that the election commission "shall prepare a sample ballot of all candidates and mail this sample ballot to the coordinator of elections for approval"); Tenn.Code Ann. § 2-5-207(e) (providing that the election commission "shall prepare a sample ballot of all candidates listed in § 2-13-202 and shall mail this sample ballot to the coordinator of elections for approval"). The Commission disputes the City's assertion and points out that sections -206(c) and -207(e) clearly state that "[n]o ballot shall be printed or funds expended therefor by any county until [the Coordinator's] approval has been granted." Nonetheless, this statute does not define which portions of the ballot the Coordinator must approve prior to printing. As the City asserts, the plain language of the statute appears to require Coordinator "approval" of the sample ballot for "candidates" rather than for referendum questions. Regardless, we need not decide the scope of the Coordinator's approval authority in this appeal.

⁵ Article II, section 1 provides: "The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial." Furthermore, Tennessee Article II, section 2 states: "No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted." Tenn. Const. art. II, §§ 1, 2.

⁶ We realize that the Commission relied upon the advice of the Coordinator, who had relied upon a 1993 Attorney

General's Opinion which had concluded that the City lacked the authority to assess and to enforce a proposed "Occupational Privilege Tax," stating in relevant part that "the privilege it purports to tax has not been declared or defined by state law, and ... no general authority has been delegated to cities to levy such a tax." Tenn. Op. Atty. Gen. No. 93-48. Of course, Attorney General Opinions are not "adjudications." *Bricker*, 259 S.W.2d at 665.

⁷ The caution and restraint which courts typically exercise in reviewing pre-election challenges to the substantive constitutionality of referendum measures further supports this Court's holding that the Commission, a non-judicial, ministerial body, lacked the authority to undertake a initial determination of the substantive constitutionality of the Ordinance.

⁸ As to taxing power, Section 756 of the City's existing charter provides broadly:

The power conferred thus to impose taxes shall apply to every object and subject of taxation within the corporate limits of the city of Memphis. Said power shall extend to every species of property and to privileges and wharfage dues, and all other things upon which the legislature or the city has heretofore laid taxes, rates, or assessments for the support and maintenance of said government, the object being to provide for the exercise of the power herein conferred under the restrictions named as fully as the same could be exercised if the legislature and not the city were exercising the power.