

Tennessee Secretary of State

Tre Hargett



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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,

A handwritten signature in blue ink that reads "Mark Goins".

Mark Goins
Coordinator of Elections