

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

ROSA A. QUINTEROS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 METROPOLITAN GOVERNMENT )  
 OF NASHVILLE AND DAVIDSON )  
 COUNTY and DAVIDSON COUNTY )  
 ELECTION COMMISSION, )  
 )  
 Defendants. )

Case No. 08-2535-I

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES**

The Metropolitan Government of Nashville and Davidson County, Tennessee ("Metropolitan Government") and the Davidson County Election Commission ("Election Commission") hereby respond to Plaintiff's Complaint as follows:

**ANSWER**

**I. NATURE OF THE ACTION**

1. Responding to the first sentence in ¶ 1 of Plaintiff's Complaint, Defendants admit that Plaintiff seeks a declaratory judgment and injunctive relief to enjoin the special election scheduled for January 22, 2009. Responding to the second sentence in ¶ 1 of Plaintiff's Complaint, Defendants admit the allegations therein.

**II. PARTIES, VENUE & JURISDICTION**

2. Responding to ¶ 2 of Plaintiff's Complaint, Defendants are without sufficient information to admit or deny the allegations therein, and therefore, deny the same.

3. Responding to ¶ 3 of Plaintiff's Complaint, the Metropolitan Government admits that it is a political subdivision of the State of Tennessee. Defendants deny the remainder of the allegations in ¶ 3.

4. Responding to ¶ 4 of Plaintiff's Complaint, Defendants do not dispute that venue is proper in this Court; however, Defendants deny that the Court has subject matter jurisdiction to adjudicate pre-election challenges to the substantive constitutionality of a proposed amendment to the Metropolitan Charter. See Memphis v. Shelby County Election Commission, 146 S.W.3d 531, 538-39 (2004) ("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 us to do so at this premature stage would violate the established rule that appellate courts will not render advisory opinions, and will not decide theoretical issues based on contingencies that may or may not arise." ).

### III. STANDING

5. Responding to ¶ 5 of Plaintiff's Complaint, Defendants deny the allegations therein. See ACLU of Tennessee et al v. Darnell et al, 195 S.W.3d 612, 620 (Tenn. 2006) (holding that there are three indispensable elements a plaintiff must show to establish standing, including a distinct and palpable injury that is not hypothetical or conjectural).

6. Responding to the first sentence in ¶ 6 of Plaintiff's Complaint, Defendants deny that Plaintiff has a distinct and palpable injury that is not hypothetical or conjectural. Defendants are without sufficient information to admit or deny the remainder of the allegations in the first sentence of ¶ 6, and therefore, deny the same. Responding to the second sentence in ¶ 6 of Plaintiff's Complaint, Defendants deny the allegations therein.

7. Responding to ¶ 7 of Plaintiff's Complaint, Defendants admit that Plaintiff asserts taxpayer status; however, Defendants deny that Plaintiff has standing to present a pre-election challenge to the substantive constitutionality of a proposed amendment to the Metropolitan Charter. See Memphis v. Shelby County Election Commission, 146 S.W.3d 531 (Tenn. 2004).

8. Responding to ¶ 8 of Plaintiff's Complaint, Defendants admit that the Metropolitan Government is preparing to spend more than \$300,000 on a special election, and

that one of the two issues to be voted on is a proposed Charter amendment that is substantively unconstitutional. Defendants deny that the proposed amendment is *ultra vires*, except insofar as it is substantively unconstitutional. Defendants are without sufficient information to admit or deny the remainder of the allegations in ¶ 8, and therefore, deny the same.

9. Responding to ¶ 9 of Plaintiff's Complaint, Defendants admit that the January 22, 2009 special election will be paid for by disbursement of funds raised, at least in part, through taxes. Defendants are without sufficient information to admit or deny the remainder of the allegations in ¶ 9, and therefore, deny the same.

10. Responding to ¶ 10 of Plaintiff's Complaint, Defendants admit that Plaintiff asserts taxpayer status; however, Defendants deny that Plaintiff has standing to present a pre-election challenge to the substantive constitutionality of a proposed amendment to the Metropolitan Charter. See Memphis v. Shelby County Election Commission, 146 S.W.3d 531 (Tenn. 2004).

### III. FACTUAL BACKGROUND

11. Responding to the first sentence in ¶ 11 of Plaintiff's Complaint, Defendants admit the allegations therein. Responding to the second sentence in ¶ 11 of Plaintiff's Complaint, Defendants admit that the proposed amendment is substantively unconstitutional, although Defendants deny that the proposed amendment is "facially unconstitutional" as that term is used in Memphis v. Shelby County Election Commission, 146 S.W.3d 531, 540 (Tenn. 2004).

### IV. LEGAL BASIS FOR THE CONSTITUTIONAL CHALLENGE

12. Responding to ¶ 12 of Plaintiff's Complaint, Defendants deny that the proposed amendment is not justified by any legitimate or rationale interest; however, Defendants state that "rational basis" is not the appropriate test for evaluating the constitutionality of a law affecting

free speech and the right to petition government. Defendants admit the remainder of the allegations in ¶ 12.

13. Responding to ¶ 13 of Plaintiff's Complaint, Defendants admit the allegations therein.

14. Responding to ¶ 14 of Plaintiff's Complaint, Defendants admit that speech in any language is speech, but deny the remainder of the allegations therein.

15. Responding to the first sentence in ¶ 15 of Plaintiff's Complaint, Defendants are without sufficient information to admit or deny the allegations therein, and therefore, deny the same. Responding to the second sentence in ¶ 15 of Plaintiff's Complaint, Defendants state that any Equal Protection challenge is subsumed by Plaintiff's First Amendment challenge. See Orin v. Barclay, 272 F.3d 1207, 1213 fn3 (9<sup>th</sup> Cir. 2001) ("It is generally unnecessary to analyze laws which burden the exercise of First Amendment rights by a class of persons under the equal protection guarantee, because the substantive guarantees of the Amendment serve as the strongest protection against the limitation of these rights.") (quoting John E. Nowak, Ronald D. Rotunda & J. Nelson Young, Handbook on Constitutional Law (1978)).

16. Responding to the first sentence in ¶ 16 of Plaintiff's Complaint, Defendants admit the allegations therein. Responding to the second sentence in ¶ 16 of Plaintiff's Complaint, Defendants deny the allegations therein.

17. Responding to ¶ 17 of Plaintiff's Complaint, Defendants admit that "pre-election challenges to the form or facial constitutional validity of referendum measures are ripe for judicial scrutiny," see Memphis v. Shelby County Election Commission, 146 S.W.3d 531, 540 (Tenn. 2004), but deny the remainder of the allegations therein.

18. Responding to the first sentence in ¶ 18 of Plaintiff's Complaint, Defendants deny the allegations therein. Responding to the second sentence in ¶ 18 of Plaintiff's Complaint,

Defendants admit that the Metropolitan Charter does not specifically address what language(s) local government officials may speak or communicate in, but deny the remainder of the allegations therein. Responding to the third sentence in ¶ 18 of Plaintiff's Complaint, Defendants deny the allegations therein.

19. Responding to the allegations in ¶ 19 of Plaintiff's Complaint, Defendants deny the allegations therein.

20. Responding to the allegations in ¶ 20 of Plaintiff's Complaint, Defendants admit the allegations therein.

21. Responding to the first sentence in ¶ 21 of Plaintiff's Complaint, Defendants admit that Plaintiff has a substantial likelihood of success on the issue of whether the proposed Charter amendment is substantively unconstitutional. Responding to the second sentence in ¶ 21 of Plaintiff's Complaint, Defendants deny that the proposed amendment is "facially unconstitutional" as that term is used in Memphis v. Shelby County Election Commission, 146 S.W.3d 531, 540 (2004). Furthermore, Defendants deny that there will be immediate and irreparable harm, loss, or injury, nor would there be a chilling effect on free speech should the election proceed and the "English Only" referendum fail.

#### **RELIEF SOUGHT**

22. Responding to § 22 of Plaintiff's Complaint, Defendants incorporate by reference their responses to paragraphs one through 21.

23. Responding to § 23 of Plaintiff's Complaint, Defendants admit that Plaintiff seeks injunctive relief enjoining the Davidson County Election Commission from preparing for, organizing, or holding a referendum election on the proposed "English Only" Charter amendment, and a declaration that the proposed amendment is unconstitutional, void, and unenforceable. Defendants affirmatively state that under the Tennessee Supreme Court's

holding in Memphis v. Shelby County Election Commission, 146 S.W.3d 531 (2004), the Court does not have subject matter jurisdiction to consider Plaintiff's pre-election challenge to the substantive constitutionality of the proposed amendment.

24. Responding to the first sentence in ¶ 24 of Plaintiff's Complaint, Defendants admit the allegations therein. Responding to the second sentence in ¶ 24 of Plaintiff's Complaint, Defendants deny the allegations therein.

**GENERAL DENIAL**

Any allegation not specifically admitted is denied and strict proof is demanded thereof.

**AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint fails for lack of subject matter jurisdiction.
2. Plaintiff's Complaint does not present a live case or controversy.
3. This matter is not ripe for adjudication.
4. Plaintiff does not have standing to adjudicate this matter.
5. Plaintiff has failed to join an indispensable party, Eric Crafton.

**PRAYER FOR RELIEF**

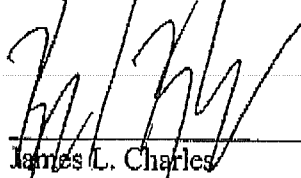
WHEREFORE, having answered Plaintiff's Complaint, the Metropolitan Government prays:

1. That this be accepted as its Answer herein;
2. That Eric Crafton be joined as an indispensable party.
3. For such other relief as the Court deems appropriate.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE  
METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY  
SUE B. CAIN, #9380

Director of Law



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been forwarded via facsimile and U.S. Mail, postage prepaid, on this 21<sup>st</sup> day of November, 2008 to:

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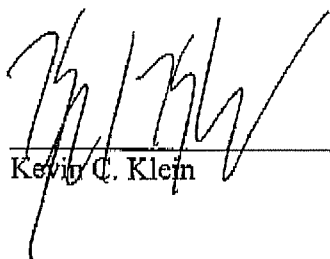
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*Attorneys for Eric Crafton*

  
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