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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.)
)
 and)
)
 NASHVILLE ENGLISH FIRST, INC.)
 and ERIC CRAFTON,)
)
 Defendants / Plaintiffs)
 in Intervention.)

Case No. 08-2535-I

ORDER

This matter came to be heard on December 3, 2008 on Defendants' Motion to Dismiss. Based upon the Court's review of all of the pleadings and documents submitted into evidence, the arguments of counsel, and the relevant statutes and caselaw, it is **ORDERED, ADJUDGED, and DECREED** that Defendants' Motion to Dismiss is hereby **GRANTED**. Plaintiff's Complaint is dismissed for lack of subject matter jurisdiction because the instant case is not ripe for review.

By way of background, Plaintiff seeks to enjoin a special election on a proposed amendment to the Metropolitan Charter, which Plaintiff characterizes as an "English Only" amendment. Defendants assert that Plaintiff's challenge is not ripe for review because it challenges the substantive constitutionality of the proposal, citing Memphis v. Shelby County Election Commission, 146 S.W.3d 531 (Tenn. 2004). The Court finds that Memphis v. Shelby County is dispositive. In Memphis v. Shelby County, the Tennessee Supreme Court held that a pre-election challenge to the substantive constitutionality of a proposed referendum is not ripe

for review, stating: “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.” Id. at 539.

Based upon the Tennessee Supreme Court’s decision in Memphis v. Shelby County, and a review of the authority the Court cited in support of the foregoing proposition, this Court concludes that pre-election challenges are only ripe for review under the following limited circumstances: (1) the proposal violates procedural or technical requirements incident to placing the measure on the ballot; or (2) the proposal involves a subject matter that is beyond the scope of the initiative or referendum power. Memphis v. Shelby County, 146 S.W.3d at 539 (citing James D. Gordon III & David B. Magleby, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L. Rev. 298, 314 (1989); 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 (W.Va. 2001)). Conversely, a pre-election challenge to the substantive constitutional validity of a referendum measure – even a facial challenge to a measure’s substantive constitutionality – is not ripe for review.

In the instant case, Plaintiff does not assert that the proposed amendment violates procedural or technical requirements incident to placing the measure on the ballot. Furthermore, the Court finds that the proposal does not involve a subject matter that is beyond the scope of the Metropolitan Government’s initiative or referendum power. Plaintiff’s remaining assertion – that the proposed amendment, if enacted, would on its face violate the United States and Tennessee Constitutions – presents a challenge to the proposal’s substantive constitutionality. Accordingly, under Memphis v. Shelby County, this challenge is not ripe for review. Thus, Plaintiff’s Complaint must be dismissed for lack of subject matter jurisdiction.

There being no just reason for delay, the Court expressly states that this constitutes a Final Order disposing of Ms. Quinteros's Complaint under Tenn. R. Civ. P. 54.02.¹ Because the Court dismisses Plaintiff's Complaint for lack of subject matter jurisdiction, the Court declines to address the issue of Plaintiff's standing or any other issues raised in Defendants' Motion to Dismiss.

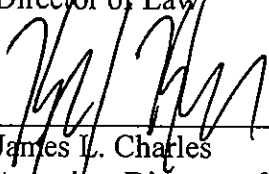
Costs are taxed to the Plaintiff.

Chancellor Claudia Bonnyman

APPROVED FOR ENTRY:

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

Director of Law



James L. Charles

Associate Director of Law, # 9007

Lora Barkenbus Fox, # 17243

Kevin C. Klein, # 23301

Assistant Metropolitan Attorneys

Metropolitan Courthouse, Suite 108

P.O. Box 196300

Nashville, Tennessee 37219-6300

(615) 862-6341

*Attorneys for the Metropolitan Government and
the Davidson County Election Commission*

¹ The Court announced its decision in a detailed ruling from the bench. This ruling has been transcribed and is attached hereto and incorporated herein by reference.

DAVID R. SMITH (BY PERMISSION - ECK)

David Randolph Smith
Law Offices of David Randolph Smith
and Edmund J. Schmidt III
1913 21st Avenue South
Nashville, Tennessee 37212
E-mail: drs@drslawfirm.com

Sean Lewis
144 Second Avenue North, Suite 150
Nashville, Tennessee 37219

Attorneys for Plaintiff

JIM ROBERTS (BY PERMISSION - KCK)

James D.R. Roberts, Jr., #017537
Janet L. Layman, #021569
Roberts & Layman, Attorneys at Law
701 Broadway, Customs House
Suite 401, Mailbox 1
Nashville, Tennessee 37203
(615) 242-2002 office
(615) 242-2042 facsimile
Jim.Roberts@RobertsandLayman.com
Email: jimrob001@aol.com

Attorneys for Eric Crafton and Nashville English First

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded via facsimile or e-mail and U.S. Mail, postage prepaid, on this 5th day of December, 2008 to:

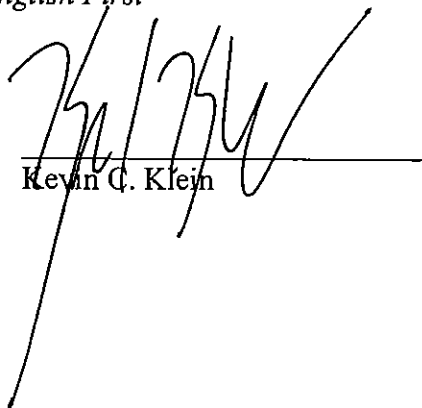
David Randolph Smith
Law Offices of David Randolph Smith
and Edmund J. Schmidt III
1913 21st Avenue South
Nashville, Tennessee 37212
E-mail: drs@drsfirm.com

Sean Lewis
144 Second Avenue North, Suite 150
Nashville, Tennessee 37219

Attorneys for Plaintiff

James D.R. Roberts, Jr., #017537
Janet L. Layman, #021569
Roberts & Layman, Attorneys at Law
701 Broadway, Customs House
Suite 401, Mailbox 1
Nashville, Tennessee 37203
Jim.Roberts@RobertsandLayman.com
Email: jimrob001@aol.com

Attorneys for Eric Crafton and Nashville English First


Kevin C. Klein

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

ROSA A. QUINTEROS,)	
)	
Plaintiff/Defendant in Intervention)	
)	
vs.)	Case No.:
)	08-2535-I
METROPOLITAN GOVERNMENT OF NASHVILLE)	
and DAVIDSON COUNTY ELECTION COMMISSION,)	
)	
Defendant/Defendant in Intervention,)	
)	
)	
NASHVILLE ENGLISH FIRST, INC., and)	
ERIC CRAFTON,)	
)	
Plaintiffs in Intervention.)	

Excerpt of Transcript of the Proceedings Before the
Honorable Claudia Bonnyman
December 3, 2008

TAMI R. WEBB, RPR-CCR
ACCURATE COURT REPORTING
The Pilcher Building
144 Second Avenue North, Suite 230
Nashville, TN 37201
(615) 244-DEPO or 244-3376

I N D E X

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Ruling 3

A P P E A R A N C E S

For the Plaintiff/
Defendant in Intervention:

David Randolph Smith, Esquire
1913 21st Avenue South
Nashville, TN 37212

-and-

Sean Lewis, Esquire
144 Second Avenue North
Suite 150
Nashville, TN 37201

-and-

Joseph Johnston, Esquire
2815 Belmont Boulevard
Nashville, TN 37212

For the Defendant/
Defendant in Intervention:

Kevin Klein, Esquire
Lora Fox, Esquire
Metropolitan Department of Law
One Public Square, Suite 108
Nashville, TN 37219

For the Plaintiffs
in Intervention:

James D.R. Roberts, Jr., Esquire
Roberts & Layman
701 Broadway, Customs House
Suite 401, Mailbox 1
Nashville, TN 37203

1 (The above-captioned cause came to be heard
2 before the Honorable Claudia Bonnyman, Davidson County
3 Chancery Court, December 3, 2008, Nashville, Tennessee.
4 The following excerpt of the proceedings were had before
5 the Court, to wit:)

6 * * * * *

7 THE COURT: All right, lawyers. The Court is
8 now prepared to rule on the motions. As to the ruling,
9 there'll be findings and conclusions of law and the
10 statement of the issues. Now, although at the beginning
11 of this case, the Court stated that the plaintiff has the
12 burden of proof to show there's jurisdiction over this
13 pre-election challenge, and it's always true that the
14 plaintiff has to show the jurisdiction, the defendants
15 have the burden as movants to show that their theory of
16 dismissal fits within the procedural demands or framework
17 of Rule 12 of the Tennessee Rules of Civil Procedure.

18 This lawsuit brought by Ms. Quinteros is a
19 pre-election challenge to a referendum by petition as
20 authorized by the Metro Charter. The Court holds that
21 based upon the Tennessee Supreme Court decision in the
22 *City of Memphis versus Shelby County Election Commission*
23 at 146 S.W.3d 3 -- 531 (Tennessee 2004) and the reasoning
24 in the cases cited by that Court, this Court lacks
25 subject-matter jurisdiction because the case is not ripe.

1 Ripeness does not address the person or the cause of the
2 parties or the ripeness of their cause, but it instead
3 referred to the timing of the challenge and the power the
4 Court has or does not have to become involved in the
5 legislative process.

6 The Court makes no finding about standing. And
7 implicitly, I'm finding your standing -- at least with
8 this threshold decision, the law allows the Court to reach
9 ripeness before reaching any other issues. And further,
10 as I understand the law, that cases are much less clear
11 about standing than about ripeness.

12 The issues in the case: The statement of issues
13 by the parties directs the Court to the questions that
14 must be addressed to resolve the case. And of course
15 after listening to the arguments, after reading all of the
16 papers, the many cases that the parties gave me, the
17 lawyers gave me, reading the excellent briefs, then the
18 Court articulates what the issue is that the Court will
19 address to resolve the case. It's not always matching
20 what the parties say, but sometimes it's pretty close and
21 should be.

22 The plaintiff contends that although
23 pre-election challenges to the substantive constitutional
24 validity of referendum measures are not ripe for the Court
25 to decide, pre-election challenges to the form or facial

1 constitutional validity of a referendum measure are ripe
2 for judicial review.

3 The plaintiff and the defendants both, or all,
4 rely upon their reading and interpretation of Tennessee
5 Supreme Court's case *City of Memphis versus Shelby County*
6 *Election Commission* as authority for their positions. The
7 parties read this case and the authority's analyzed in the
8 case but come to opposite conclusions. The plaintiff
9 concedes the Court must avoid constitutional questions
10 unless it is necessary to reach their constitutionality.
11 But the plaintiff contends that this referendum by
12 petition is so egregious and so obviously a violation of
13 the speech and the other rights of the plaintiff that it
14 must be ruled invalid and that it -- it is
15 unconstitutional on its face and must be ruled invalid.

16 Although the plaintiff relies on the quality of
17 the referendum itself, that is, its language that is on
18 its face, the plaintiffs also filed affidavits to expand
19 upon the harm caused the plaintiff. She states that the
20 referendum is so dire that her speech is chilled. She
21 is -- she says she is able to get help from Metro agencies
22 at this time because Metro agencies have Spanish-speaking
23 workers to help her. She fears what will happen when this
24 referendum is passed, if it's passed, and applied.

25 The plaintiff relies upon cases cited in the

1 *City of Memphis versus Shelby County*. She contends that
2 these Tennessee cases recognized cases in other states in
3 which elections were enjoined or stopped because they were
4 facially flawed -- constitutionally facially flawed, just
5 as is this referendum. The plaintiff notes that elections
6 can be enjoined when they're procedurally flawed or do not
7 meet the form required in the amending document, and the
8 amending document here, as you know, is the Metro Charter.

9 The defendants contend this lawsuit fits
10 squarely within the general rule, that pre-election
11 challenges to referendum are not ripe for Court review or
12 intervention if the challenge is a challenge to the
13 substance of the constitutionality of the matter. The
14 defendants contend the *City of Memphis and Shelby County*
15 *Election Commission* requires this Court to decline to
16 address this referendum by petition because Court review
17 would be advisory and theoretical. And the defendant
18 notes the Court can address problems with the former
19 procedure set out in the amended petition, and implicit in
20 that is the defendant concedes that you could because the
21 referendum was fatally flawed procedurally.

22 For example, the Court can review a petition
23 when it's alleged that the proper signatures were not
24 certified. That's an example of -- according to the
25 defendant -- of the kinds of procedural matters that can

1 be addressed, and a ballot could be enjoined -- possibly
2 enjoined -- in that situation.

3 But, says the defendant, "The Court must avoid
4 interfering with the legislative branch of government.
5 This is not a lawsuit -- this is not a lawsuit which
6 challenges the subject matter that is acceptable under the
7 charter, but a challenge to the substance of the
8 referendum by petition."

9 So this Court is deciding the threshold issue of
10 whether it has subject-matter jurisdiction or is this
11 pre-election challenge ripe for adjudication. And
12 inherent in these issues is that raised by the plaintiff,
13 which does the -- does Tennessee recognize the situation
14 in which the referendum is so bad, so egregious, that the
15 election must be stopped; that is, it is facially
16 unconstitutional and the election must be stopped. Or is
17 Tennessee in the majority of states which either have not
18 confronted that situation or have decided to intervene
19 only when the legislation -- proposed legislation -- has
20 serious form or procedural problems or where the subject
21 matter is prohibited under the charter which is to be
22 amended.

23 As to the facts which the plaintiff and the
24 defendants have proposed: Here, I'm going to read the
25 amending charter provision that allows resolution by

1 popular vote and amendment to the charter, and it says,
2 "This charter may be amended subsequent to its adoption in
3 the following manner: An amendment or amendments may be
4 proposed, one, by the adoption of a resolution by the
5 council favoring the same and submitting it or them to the
6 people for approval. The affirmative vote for adoption of
7 such resolution in the council shall be not less than
8 two-thirds of the membership to which the council is
9 entitled, and such resolution when adopted need not be
10 submitted to the mayor for his approval. Or upon petition
11 filed with the Metro clerk signed by ten percent of the
12 number of the registered voters of the Nashville-Davidson
13 County voting in the preceding general election, the
14 verification of the signatures to be made by Davidson
15 County Election Commission and certified to the
16 Metropolitan clerk. Such resolution or petition shall
17 also prescribe a date not less than 80 days subsequent to
18 the date that it's filing for the holding of a referendum
19 election at which the electorate of the Metropolitan
20 Government will vote to ratify or to reject the amendments
21 proposed."

22 And the remainder of the -- of Section 19.01 of
23 Article 19, which is captioned "Amending Charter"
24 discusses what happens during the vote and what happens
25 when the returns come in, and these are not relevant to

1 the argument or the lawsuit that we're looking at here.
2 And so the Court doesn't read that part into the record.

3 Another fact is the referendum which will
4 appear -- this is not the only referendum which will
5 appear, but the one that we're looking at today, closely
6 today, is as follows: "English is the official language
7 of the Metropolitan Government of Nashville and Davidson
8 County, Tennessee. Official actions which bind or commit
9 the government shall be taken only in the English language
10 and all official government communications and
11 publications shall be in English. No person shall have
12 the right to government services in any other language.
13 All meetings of the Metropolitan council, boards, and
14 commissions of the Metropolitan Government shall be
15 conducted in English. The Metro council may make specific
16 exceptions to protect public health and safety. Nothing
17 in this measure shall be interpreted to conflict with
18 federal or state law."

19 And the second referendum is not the subject of
20 this lawsuit.

21 As to other facts, Ms. Quinteros proposed or
22 filed her affidavit in which she describes that she came
23 to this country in 1998 from Honduras, that she has
24 temporary protected immigration status, that she was born
25 in Honduras, that she wants to learn English, that she

1 is -- she desires to become a US citizen but it's very
2 difficult to do that while she's raising her son, that she
3 has problems speaking in English. She has trouble
4 understanding officials at her son's school and in Metro
5 departments. She says her son is in the second grade.
6 She says her son, who's in second grade, is a US citizen
7 and speaks better English than she does. She states that
8 she has her own -- her own home, that she pays a mortgage,
9 that she pays property taxes to Metro Government.

10 She has to have many of these documents
11 translated for her into Spanish by someone. She says she
12 had problems speaking in English when she got water
13 services. She needed to have an interpreter. And she
14 says now NES has Spanish-speaking customer representatives
15 and now she can talk in Spanish when she has questions.
16 She says she fears the election will make it harder for
17 her to communicate with her son's school. She already has
18 problems communicating with her son's school, or with her
19 government. She worries that the election will stir up
20 anti-immigrant feelings and make it harder for her at work
21 and for her son at school. She notes and assures the
22 Court that she has read the complaint and that it was
23 translated for her.

24 Another affidavit that was filed is from Win
25 Myint, Mr. Win Myint. He came to this country from Burma

1 and is a naturalized US citizen since 1965. He has been a
2 professor of mathematics at Tennessee State University
3 since 1965 and he has been teaching for 42 years. He's
4 presently retired. He expresses his concern that he hears
5 divisive and harmful sentiments in the community,
6 particularly in the immigration community, that -- he
7 believes that immigrants and non-English speaking persons
8 in Metro-Nashville are being harmed by the fact that the
9 referendum is taking place, and that they're being harmed
10 by the idea that they will lose their free speech rights
11 to talk and communicate with their local government. And
12 he said the anti-immigrant tone at the election is
13 unmistakable. He says there's a real tension and fear in
14 the community in which he lives, that this election will
15 deprive persons who do not speak English well of these
16 local programs where language assistance is in place at
17 this time. He -- he swears that the pendency of the
18 election is harmful in itself and the mere fact that local
19 government has placed this measure on the ballot is
20 promoting present hostility between persons who do not
21 speak English and persons who are in favor of the
22 referendum. He is a member of the Southeast Asian
23 community and -- and he believes there's a substantial
24 threat to all the non-English speaking persons in
25 Nashville from this referendum.

1 And those are the facts that have been presented
2 to the Court. And the Court looks at facts, which is
3 affidavits, when deciding whether there is subject-matter
4 jurisdiction.

5 As to conclusions of law -- not conclusions of
6 law, but principles of law, this is a lawsuit. It's a
7 pre-election lawsuit. It is also a lawsuit brought under
8 the Tennessee Declaratory Judgment Act. And under that
9 act, the Courts may declare the rights, statuses, and
10 other legal relations and make -- the Court may construe
11 and determine the validity of any written instrument,
12 statute, ordinance, contract, or franchise. The act
13 authorizes the trial court to grant relief in addition to
14 the declaration of rights whenever necessary or proper.
15 And the principal purpose of the Declaratory Judgment Act
16 is to settle and afford relief from uncertainty and
17 insecurity with respect to rights, status, and other legal
18 relations.

19 A declaratory judgment action cannot be used to
20 decide a theoretical question. There must be a
21 justiciable controversy in existence before the act may be
22 applied or followed. Actions involving issues that are
23 theoretical, not real, and that seek advisory opinions are
24 not justiciable under the Tennessee Declaratory Judgment
25 Act.

1 Generally, courts will grant declaratory relief
2 under the Declaratory Judgment Act only when the case
3 involves present rights that have accrued under presently
4 existing facts. That is generally the case.

5 And now, the Court is looking at the *City of*
6 *Memphis versus Shelby County Election Commission* because
7 some of the vocabulary and language in that case have
8 caused these two tables to go in very different
9 directions. And that's certainly understandable even
10 though it's the same case.

11 Here is what the Supreme Court says about the
12 issues that we have been addressing in this case. "The
13 powers of government divided into the legislative,
14 executive, and judicial branches are separate and
15 divisible. The legislative branch has the authority to
16 make, alter, and repeal the law. The executive branch
17 administers and enforces the law. And the judicial branch
18 has the authority to interpret and apply the law."

19 The Tennessee Constitution, Article II,
20 Section 2, forbids an encroachment by one department upon
21 the powers or functions of another. Thus, a legislative
22 action vesting executive branch agencies with the
23 authority to determine the constitutionality of statutes
24 would violate the Separation of Powers Doctrine. And this
25 was the case in this -- Tennessee Supreme Court case --

1 where the election commissioner was in effect ruling that
2 a referendum question was unconstitutional, and therefore
3 he was refusing to place it on the ballot. And the
4 Supreme Court found that the commissioner of elections is
5 executive in the executive branch, that the legislature --
6 in this case, it was a -- a referendum -- that the
7 referendum from the city council came from the legislative
8 branch, and the judicial branch wasn't even involved when
9 the controversy arose. But each branch has its own role
10 and the branches should not, except when necessary -- or
11 at least the judicial branch should not, except when
12 necessary, opine about the power and the authority and the
13 action taken by the legislature or by citizens who propose
14 legislation.

15 The Supreme Court in that case also said that
16 generally pre-election challenges to the substantive
17 constitutional validity of referendum measures are not
18 ripe for determination by a Court, while pre-election
19 challenges to the form or facial constitutional validity
20 of referendum measures are ripe for judicial scrutiny.
21 That is what the case says.

22 And then if you read the authority which the
23 Court cites for that position, then one can see -- this
24 includes the *Notre Dame Law Review* article by Gordon and
25 Magleby, I believe it is, "Pre-election Judicial Review of

1 Initiatives and Referendums," what you see when you -- you
2 read those cases -- and I'm going to read parts of those
3 cases into the record -- is that the Court had to have
4 met -- by facial constitutional validity -- had to have
5 met the validity of the subject matter, that is the
6 subject matter from the amending document, in this case,
7 the Metro -- Metro Charter.

8 It -- it's clear when you read the law review
9 article and the two cases that are cited, *Donovan versus*
10 *Priest*, which is an Arkansas case, and *Burnell versus City*
11 *of Morgantown*. Those cases are very careful to tell the
12 Court not to enjoin elections except under very limited
13 circumstances, and neither of the two cases, the Arkansas
14 case nor the West Virginia case, address the theory that
15 the plaintiff has in this lawsuit that an egregious
16 unconstitutional referendum, that if such a thing is -- is
17 determined to be placed on the ballot then the election
18 must be stopped. It appears that Tennessee has not
19 addressed a situation where an egregious and terrible and
20 clearly unconstitutional law, already deemed
21 unconstitutional by the state court or by the federal
22 courts -- Tennessee has not confronted that and this case
23 does not address that situation.

24 Now, looking at -- let's see, first I'm going to
25 look at the -- not the *Donovan* case, but -- but a case,

1 H-E-R-B-S-T, *Herbst Gaming, Inc., versus Heller*, it's a
2 Nevada case -- because I think the language is helpful.
3 And in -- in Nevada, the Supreme Court stated, "Although
4 an initiative or referendum is subject to pre-election
5 challenge to its threshold validity, when a proposed
6 initiative or referendum meets all threshold procedural
7 requirements, pre-election review of substantive
8 challenges is not generally permitted. But we also
9 observed the opponents of an initiative are not left
10 without judicial remedy since the substantive validity of
11 all legislation may be challenged after it is enacted."
12 And that Court goes on to talk about the issue of
13 ripeness. "Although the question of ripeness closely
14 resembles the question of standing, ripeness focuses on
15 the timing of the action rather than on the party bringing
16 the action."

17 And that's what this Court has done here in
18 ruling upon ripeness.

19 As to the *Burnell versus City of Morgantown* case
20 and the *Donovan* case, these are the last two cases that
21 I'm going to take the law from for principles of law
22 because those are the two cases that our state Supreme
23 Court said are examples of what they're talking about when
24 they say that a pre-election challenge can be successful
25 or effective under very limited circumstances. And the

1 Court only cited two cases for its general principle.

2 When I say "the Court," I mean the City of Memphis Court.

3 In *Burnell versus City of Morgantown*, the Court
4 stated, "A Court may undertake pre-election judicial
5 review of a proposed voter initiative or referendum only
6 to the extent that such direct legislation is alleged to
7 either, one, violate procedural or technical requirements
8 incident to placing the measure on the ballot," or, two,
9 "involve the subject matter that is beyond the scope of
10 the initiative or referendum power. The Courts of this
11 jurisdiction are otherwise prohibited from undertaking to
12 adjudicate the substantive validity of an initiative or
13 referendum during the pre-election phase of its
14 consideration." And that is the first case that the state
15 Supreme Court relied upon to explain its position.

16 And another quote from that case which the Court
17 found helpful in -- in understanding the context of this
18 case we're looking at here today: "By confining
19 pre-election judicial review to instances where voter
20 petitions are either technically defective or otherwise
21 wholly extraneous by embracing the subject matter that is
22 expressly or impliedly precluded, we limit ourselves to
23 adjudicating present and justiciable controversies
24 concerning whether proposed measures are, from a
25 fundamental standpoint, legally authorized. Any other

1 approach would entail the undesirable task of judicial
2 usurpation of the legislative process," colon.

3 And in the rest of this case, the Court
4 concludes that the subject matter -- if the amending
5 document says that certain subject matter is precluded or
6 prohibited, that is an example of a technical deficiency
7 or subject matter that's expressly or impliedly precluded.

8 Back to the quote: "There is a natural and
9 intended tension between the judicial and legislative
10 branches of government. Should courts attempt to encroach
11 on the prerogatives of the legislature, members of that
12 institution have not only the resources to resist but also
13 a self-interested goal of preserving institutional
14 autonomy. Popular legislation, in contrast," which is
15 what we have here, "is only a process and not an
16 institution. The danger of judicial usurpation of that
17 process is therefore ever present.

18 "Courts that take it upon themselves to restrict
19 the operation of the process before it has run its course
20 only derogate validity and utility." Popular legislation.

21 And so *Burnell versus City of Morgantown* in
22 its -- in its decision line says, "We are not straying
23 from the time-tested approach reflected by our previous
24 cases. We hold the Court may undertake pre-election
25 judicial review of a proposed voter initiative only to the

1 extent that it is alleged to either violate procedural or
2 technical requirements or involve a subject matter that is
3 beyond the scope of the initiative or referendum power."
4 That's the first case the City of Memphis Court relied on.

5 The second case was the Arkansas case of *Donovan*
6 *versus Priest*. And the legal principle from that case
7 is -- "Regarding justiciability in general, this Court has
8 previously stated that declaratory relief will lie where
9 there is justiciable controversy, it exists between
10 parties with adverse interests, and those seeking relief
11 have a legal interest in the controversy."

12 As to the issue of ripeness, the federal courts
13 have viewed it largely as matter of timing. "Based on
14 decisions of this Court as well as other Courts, we hold
15 that our review of the sufficiency of a proposed measure
16 includes a review of whether the measure's proponents are
17 entitled to invoke the direct initiative process when such
18 issue is properly presented.

19 "We do not conclude that we will entertain
20 substantive constitutional challenges to proposed measure,
21 such as whether it violates the free speech provision of
22 the First Amendment before an election has been held. We
23 distinguish such substantive constitutional challenges
24 from procedural challenges in that the former involve
25 fact-specific issues and thus are not ripe for review

1 until a proposed measure becomes law and a case in
2 controversy arises."

3 And so lawyers, looking at those two cases and
4 also the law review article that all the parties gave
5 me -- and I might add that in the law review article, the
6 Notre Dame Law Review, the authors say, you know, there's
7 a rare case that involves a present significant
8 irreparable injury to a fundamental public interest, and
9 if such an issue arises, the Court should be able to
10 review pre-election challenges to substantive validity.
11 But the Court says there's got to be a better way than
12 stopping the election. And so basically the authors of
13 this law review are very critical of a Court who would
14 stop a popular direct initiative in almost any
15 circumstance, in almost any circumstance.

16 So in answer to the issues and the questions
17 that the Court said is the core of the case, Tennessee has
18 not recognized the facial unconstitutional category for
19 pre-election review so far. Tennessee recognizes two
20 categories for pre-election adjudication: The form or
21 procedure or the subject matter. And in this particular
22 case, the section -- Article 19 and Section 19.1 which
23 addresses all the steps that parties and people must go
24 through to have a referendum by petition does not limit
25 the subject matter. And subject matter is really not

1 raised -- subject matter limitation is really not raised
2 as it is described in the *Donovan* case and the *Burnell*
3 case.

4 Tennessee's general rule which applies here is
5 that the referendum goes to the ballot absent these two
6 categories or one of them. And so consequently, the Court
7 takes no pleasure in dismissing the lawsuit filed by
8 Ms. Quinterison -- Ms. Quinteros, but the Court does
9 dismiss the case because there is no subject-matter
10 jurisdiction given that the case is not ripe.

11 And so lawyers, I know there are other parts to
12 this lawsuit than -- than what the Court ruled upon.
13 Is there -- are there any housekeeping issues?

14 MR. SMITH: No, Your Honor.

15 THE COURT: Okay.

16 MR. KLEIN: None from this end, Your Honor.

17 THE COURT: It does strike me, and I'll just say
18 now, that this pre-election review can be severed from the
19 rest of the case and made final if that is -- if that
20 comes up.

21 MR. SMITH: Yes, Your Honor, I would be --

22 THE COURT: I don't know what the parties want
23 to do.

24 MR. SMITH: Yes, Your Honor, I'd like -- I'd ask
25 that, you know, this be made a final judgment on the issue

1 of pre-election subject-matter jurisdiction so that we
2 could appeal.

3 THE COURT: Anybody have a problem?

4 MR. ROBERTS: No, Your Honor. My only question:
5 We were allowed to intervene -- as for Mr.. Crafton and
6 Nashville English First, as -- part of the ruling that you
7 put down doesn't address that we had also asked to file --
8 to intervene and file a complaint. That was not mentioned
9 in your order. I don't want to -- that's sort of a
10 house-cleaning matter.

11 THE COURT: Okay. I think that I issued an
12 order granting intervenor status.

13 MR. ROBERTS: Correct.

14 THE COURT: And so you should file your
15 complaint.

16 MR. ROBERTS: That's correct.

17 THE COURT: Okay.

18 MR. ROBERTS: You didn't say specifically.

19 THE COURT: Did I do --

20 MR. ROBERTS: I just wanted --

21 THE COURT: Thank you.

22 MR. ROBERTS: -- to clear that up. Thank you.

23 THE COURT: I appreciate you doing that.

24 MR. SMITH: Does Your Honor contemplate a simple
25 written order based upon the comments made upon the record

1 so that we can proof it?

2 THE COURT: I would like for the bench ruling to
3 be ordered.

4 MR. SMITH: Okay.

5 THE COURT: And I'd like for Metro Government
6 and the intervenors to probably work together to draft the
7 order.

8 MR. KLEIN: Okay.

9 THE COURT: Probably want to sign it by one
10 person and send it around. I hope you have -- well, I --
11 I don't want to create more expense. I don't know how
12 long it took me to -- to make the ruling, but I guess
13 you're just going to have to order it.

14 So I can't think of anything else. It seems
15 like there's an agreement when we have Rule 54 Final
16 Order.

17 MR. SMITH: Yes, Your Honor. And I would just
18 ask that that be entered as quickly as it can so that we
19 can appeal because that's -- we can't --

20 THE COURT: Okay.

21 MR. SMITH: -- appeal until we get an order in.

22 THE COURT: Absolutely.

23 MR. KLEIN: I -- yeah, I think that's --

24 THE COURT: And --

25 MR. KLEIN: -- probably appropriate.

1 THE COURT: -- you can -- if you would like --
2 Mr. Smith, if you want to go ahead and propose the order,
3 I'll hold it until the bench ruling comes in with the --
4 with the summary of the bench ruling.

5 MR. SMITH: Okay.

6 THE COURT: And then we won't have to wait on
7 your notification. We'll just have it here and I'll sign
8 it.

9 MR. SMITH: Okay.

10 THE COURT: Okay. We're now adjourned.

11 (Proceedings adjourned, 5:18 p.m.)
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1 STATE OF TENNESSEE)
2 COUNTY OF WILLIAMSON)

3 I, TAMI R. WEBB, RPR-CCR, Notary Public, in and
4 for the State of Tennessee,

5 DO HEREBY CERTIFY the foregoing proceedings were
6 taken at the time and place set forth in the caption
7 thereof; the witness therein was duly sworn on oath to
8 testify the truth; the proceedings were stenographically
9 reported by me in shorthand; and the foregoing proceedings
10 constitute a true and correct transcript of said
11 proceedings to the best of my ability.

12 I FURTHER CERTIFY I am not a relative or
13 employee or attorney or counsel of any of the parties
14 hereto, nor a relative or employee of such attorney or
15 counsel, nor do I have any interest in the outcome or
16 events of this action.

17 IN WITNESS WHEREOF, I have hereunto affixed my
18 official seal and signature this 4th day of December,
19 2008, at Nashville, Davidson County, Tennessee.

20
21
22 Tami R. Webb, RPR-CCR
23 Notary Public at Large
State of Tennessee

24 My Commission Expires: February 22, 2011
25