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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

ROSA A. QUINTEROS, )  
Plaintiff, )

vs. )  
METROPOLITAN GOVERNMENT )

OF NASHVILLE AND DAVIDSON )  
COUNTY and DAVIDSON COUNTY )  
ELECTION COMMISSION )

Defendants. )

Civil Action No. 08-2535-I

COMPLAINT

COMES NOW Plaintiff and for cause of action would show as follows:

I. NATURE OF THE ACTION

1. This is a constitutional challenge under the Tennessee and United States Constitutions seeking a declaratory judgment and injunctive relief to enjoin the "English-Only" Metro-Nashville Davidson County charter amendment special election from occurring on January 22, 2009 (with early voting scheduled to begin January 2, 2009) and to further declare the amendment unconstitutional and *ultra vires*. The Davidson County Election Commission voted on Monday, November 17, 2007 to call a special election for January 22nd with early voting to start January 2<sup>nd</sup>.<sup>1</sup>

II. PARTIES, VENUE & JURISDICTION

2. Plaintiff Rosa A. Quinteros is a resident of Davidson County, Tennessee. She has Department of Homeland Security authorization to live, work and reside in the United States under a grant of Temporary Protected Status for nationals of El Salvador. She speaks Spanish and has limited proficiency in English. She is legally domiciled in

<sup>1</sup> Special Election on English Requirement is Set for Jan. 22, THE TENNESSEAN, Nov, 18, 2008.

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the United States and Davidson County and has the need to speak with and communicate with departments and employees of Metropolitan Nashville Davidson County, Tennessee.

3. Defendant Metropolitan Government of Nashville and Davidson County (hereinafter "Metro") is a political subdivision of the State of Tennessee responsible for oversight, rule making, compliance with state and Federal law, and control of Defendant Davidson County Election Commission, (hereinafter "DCEC") which Metro oversees.

4. The acts, errors and omissions complained of herein were committed within Metropolitan Nashville and Davidson County, Tennessee, and as such, this Court has proper venue and jurisdiction over the matter under the laws of Tennessee.

### III. STANDING

5. Plaintiff has standing to pursue this matter.

6. Plaintiff has a distinct and palpable injury (chilled speech, assembly and petition rights) and is particularly aggrieved by the proposed amendment because of her foreign language speaking and limited English proficiency (LEP) status. The amendment would close the door on any speech or communication with or by the government, particularly in the amendment's language: "No person shall have a right to government services in any other language."

7. Alternatively, Plaintiff allege municipal taxpayer standing (sales tax).

8. Davidson County is preparing to expend more than \$300,000 on a special election for a facially unconstitutional/*ultra vires* measure which uniquely affects Plaintiff by virtue of her language status (limited English proficiency).

9. Plaintiff avers that the unconstitutional behavior complained of in this Complaint by the Defendants will be furthered and occasioned by disbursement of funds raised indirectly through taxes paid by Plaintiff.

10. Plaintiff would show that the expenditure of Metro funds to advance the unconstitutional activities complained of invests Plaintiff with standing as a taxpayer to complain of the unconstitutional actions.

### III. FACTUAL BACKGROUND

11. This action is brought to enjoin an upcoming special election of a proposal to amend the Metro Charter by including an "English-only" charter amendment. Plaintiffs aver the proposed amendment<sup>2</sup> is facially unconstitutional by violating the constitutionally protected rights of free speech and the right to petition and redress government for grievances.

### IV. LEGAL BASIS FOR THE CONSTITUTIONAL CHALLENGE

12. Plaintiffs aver the proposed amendment violates the free speech and right to petition government clauses of the Tennessee Constitution<sup>3</sup> as well as the First and

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<sup>2</sup> The ballot measure advanced by a group known as "Nashville English First" seeks to add a new section, numbered 1.08 to Article 1 of the Metropolitan Charter. The proposed new section is:

"English is the official language of the Metropolitan Government of Nashville and Davidson County, Tennessee. Official actions which bind or commit the government shall be taken only in the English language, and all official government communications and publications shall be in English. No person shall have a right to government services in any other language. All meetings of the Metro Council, Boards, and Commissions of the Metropolitan Government shall be conducted in English. The Metro Council may make specific exceptions to protect public health and safety. Nothing in this measure shall be interpreted to conflict with federal or state law."

<sup>3</sup> "The free communication of thoughts and opinions, is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject . . ." TENNESSEE CONSTITUTION, Art. I § 19; "That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address of remonstrance." " TENNESSEE CONSTITUTION, Art. I § 23.

Fourteenth Amendments to the United States Constitution, and is not justified by any legitimate or rational interest.<sup>4</sup>

13. The wide reach of the initiative chills the exercise of protected speech, and there is no construction that can cure the unconstitutionality of the proposed amendment<sup>5</sup>.

14. Speech in any language is still speech and the decision to speak in another language is a decision involving speech alone and is constitutionally protected.<sup>6</sup>

15. Plaintiff is foreign-born and a foreign language speaker. The amendment violates equal protection by invidiously discriminating against foreigners and foreign language speakers, thereby creating a suspect classification.

16. Tennessee already has a law that governs the use of the English language in government<sup>7</sup>. Accordingly, a city or county lacks the power to declare what language to conduct business in and no level of government is authorized to impose such constraints upon the manner in which persons communicate with one another and with their elected representatives<sup>8</sup>.

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<sup>4</sup> See *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183 (Alaska,2007).

<sup>5</sup> See *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183 (Alaska,2007).

<sup>6</sup> *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 936 (9th Cir.1995) (en banc), vacated as moot sub nom. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997).

<sup>7</sup> T. C. A. § 4-1-404 Official language, provides:

English is hereby established as the official and legal language of Tennessee. All communications and publications, including ballots, produced by governmental entities in Tennessee shall be in English, and instruction in the public schools and colleges of Tennessee shall be conducted in English unless the nature of the course would require otherwise.

<sup>8</sup> *Bogota v. Donovani*, 907 A.2d 433, 388 N.J. Super. 248 (N.J. Super. 2006). The court in this case noted:

“If we were to conclude that Bogota could adopt English as its official language, logic would require that another municipality in the State could pass a similar ordinance adopting another language as its official language. If one municipality were to adopt English as its official language, while another adopted Spanish and yet another Japanese, the wheels of government could come to a halt. In our judgment, passage of such an ordinance is not within the powers of a municipality.”

17. Where a referendum is sought to add or amend local law it is proper for a court to enjoin, *prior to* an election or ballot measure, any effort to pass such ordinance or amendment<sup>9</sup> which is facially unconstitutional and *ultra vires*.

18. The ballot initiative amendment process seeking to limit Metro Nashville governmental action to “English-only” via an amendment to the Metro Charter (via Metro Charter Art. 19) is beyond the power of the amendment process (Section 19.01) and *ultra vires* as an act of Metro government (Section 1.05).<sup>10</sup> The Metro Charter does not address or relate in any way to the issue of what language(s) local government officials may speak or communicate in. Accordingly, there is no power or provision to

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<sup>9</sup> *Bogota v. Donovan*, 907 A.2d 433, 388 N.J. Super. 248 (N.J. Super. 2006) (emphasis supplied).

<sup>10</sup> Nothing in the Metro Charter invests the local government with the power to control speech or specify an “official” language. Accordingly the proposed measure/charter amendment is *ultra vires*. <sup>10</sup> *Bogota v. Donovan*, 907 A.2d 433, 388 N.J. Super. 248 (N.J. Super. 2006) Sec. 1.05 of the Metro Charter defines the powers of Metro:

**Functions within general services district and urban services district.**

The metropolitan government may exercise within its general services district those powers and functions which have heretofore been exercised by the County of Davidson or the City of Nashville, or both, and shall supply the residents of said general services district with those governmental services which are now, or hereafter may be, customarily furnished by a county government in a metropolitan area.

The metropolitan government may exercise within its urban services district those powers and functions which have heretofore been exercised by the City of Nashville or the County of Davidson, and shall supply the residents of said urban services district with those kinds of governmental services which are now, or hereafter may be, customarily furnished by a city government in a metropolitan area.

The functions of the metropolitan government to be performed, and the governmental services to be rendered throughout the entire general services district shall include: general administration, police; courts, jails; assessment; health; welfare; hospitals; housing for the aged; streets and roads; traffic; schools; parks and recreation; library; auditorium, fairgrounds; airport; public housing; urban redevelopment; urban renewal; planning; electrical code; building code; plumbing code; housing code; electricity; transit; refuse disposal; beer supervision; and taxicab regulation.

The additional functions of the metropolitan government to be performed and the additional governmental services to be rendered within the urban services district shall include: additional police protection; fire protection; water; sanitary sewers; storm sewers; street lighting; street cleaning; refuse collections and wine and whiskey supervision.

Nothing in the foregoing enumeration and assignment of functions shall be construed to require the continued maintenance or furnishing of any governmental service which the council by ordinance has determined to be obsolete and unnecessary.

Nothing in this section shall be deemed to limit the power of the metropolitan government to exercise other governmental functions in either the urban services district or the general services district, or to provide new and additional governmental services in either the urban services district or the general services district.

*amend* and the proposed amendment is a *revision* of the charter to add an *ultra vires* power<sup>11</sup>.

19. Where, as here, a proposed amendment to the Metro Charter is facially unconstitutional and/or is beyond the power of a governmental entity or municipality, ripeness, a case or controversy and justiciability exist and a court may enjoin the ballot measure.<sup>12</sup>

20. The proposed/scheduled election on January 22, 2009 (with early voting on January 2, 2009) in Davidson County is expected to cost the Metro government (and therefore taxpayers) \$300,000-\$350,000.<sup>13</sup> This figure does not include the substantial costs and inconvenience of voters driving to the polls, missing time from work, etc.

21. Based upon existing precedent and law Plaintiff has a substantial likelihood of success on the merits<sup>14</sup>. Furthermore, there will be an immediate and

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<sup>11</sup> *Bogota v. Donovan*, 907 A.2d 433, 388 N.J. Super. 248 (N.J. Super. 2006)

<sup>12</sup> *City of Memphis v. Shelby County Election Commission*, 146 S.W. 3d 541 (Tenn. 2004) (“preelection challenges to the form or facial constitutional validity of referendum measures are ripe for judicial scrutiny”); *Bogota v. Donovan*, 907 A.2d 433, 388 N.J. Super. 248 (N.J. Super. 2006) (election enjoined; court held that referendum question of whether English should be adopted as the municipality’s official language was issue on which municipality could not act); *1000 Friends of Washington v. McFarland*, 159 Wash.2d 165, 149 P.3d 616 (Wash.,2006)(in cases in which proposed ballot/amendment initiatives or referenda attempt to graft power *ultra vires* to governmental entity courts “will exercise their inherent power to keep such matters from the ballot.”); Enjoining an election is proper where, as here, the proposal/amendment is “patently” unconstitutional, see *Otey v. Common Council of City of Milwaukee*, 281 F.Supp. 264, 274-280 (E.D.Wis.1968) (federal district court enjoined submission of resolution to the electorate because it “patently” violated the equal protection clause of the Fourteenth Amendment).

<sup>13</sup> *Special Election on English Requirement is Set for Jan. 22*, THE TENNESSEAN, Nov, 18, 2008.

<sup>14</sup> See Metro-Nashville Government RESOLUTION NO. RS2008-402

A resolution requesting the citizens of Nashville and Davidson County not to sign the English-only Charter amendment petition cards and not to support it if placed on the ballot.

WHEREAS, a petition drive is currently underway to place a proposed amendment to the Metropolitan Charter on the November 2008 ballot to designate English as the official language of the Metropolitan Government and to require that government services and official communications be provided only in English; and

WHEREAS, in February 2007, former Mayor Bill Purcell vetoed Substitute Ordinance No. BL2006-1185, which would have declared English as the official language of the Metropolitan Government, and would have required that all government communications, publications and telephone answering systems be in English, except

irreparable harm, loss and injury, and a chilling of free speech should the election proceed on the proposed amendment which is facially unconstitutional.<sup>15</sup>

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when required by federal law or when necessary to protect or promote public health, safety or welfare; and

WHEREAS, in his veto message to the Council dated February 12, 2007, Mayor Purcell referenced an opinion of the Metropolitan Department of Law that Ordinance No. BL2006-1185 was unconstitutional; and

WHEREAS, unlike the language contained in Substitute Ordinance No. BL2006-1185, the proposed ballot language contains no exception for public health, safety or welfare, which makes the ballot measure more likely to be found by the courts to be unconstitutional; and

WHEREAS, English is the common and unifying language of the United States of America, and is already the official and legal language of Tennessee; and

WHEREAS, English acquisition among new immigrants and refugees is a critical factor in their ability to obtain gainful employment, participate fully in the community, integrate successfully into American society, and qualify for United States citizenship; and

WHEREAS, the Metropolitan Government of Nashville and Davidson County conducted an Immigrant Community Assessment in 2003 (contract #14830) "to gauge the adjustment of immigrants in the Nashville-Davidson county area," finding that roughly one-third of Nashville's foreign-born residents are "linguistically isolated," and making several recommendations to improve integration, which included:

1. "Increasing English-language instructional opportunities that are offered during non-working hours."
  2. "Offering more English-language instruction at proficiency levels higher than the elementary level."
  3. "Increasing the supply of bilingual emergency-service receptionists and providers";
- and

WHEREAS, an "English Only" Charter amendment would further reduce government services for limited English proficient (LEP) individuals, with a potentially detrimental impact on those who are already linguistically isolated; and

WHEREAS, in addition, such a Charter amendment sends a message to prospective individuals and organizations seeking to locate in Nashville that we do not value diversity in our community; and

WHEREAS, defending a lawsuit challenging the constitutionality of the English Only Charter amendment would cost the taxpayers of Davidson County hundreds of thousands of dollars at a time when Metropolitan Government employees are being laid off and services are being reduced due to the substantial strain on government resources; and

WHEREAS, it is in the best interest of the taxpayers of the Metropolitan Government that this proposed Charter amendment not be placed on the November ballot.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Metropolitan County Council hereby goes on record as requesting the citizens of Nashville and Davidson County not to sign the English-only Charter amendment petition cards, nor support the measure at the November 2008 election in the event it appears on the ballot.

<sup>15</sup> *Lillard v. Burson*, 933 F. Supp. 698, 704 (W.D. Tenn. 1996) ("The loss of constitutional guarantees, even for a minimal period of time, unquestionably constitutes irreparable injuries for purposes of an injunction.").

RELIEF SOUGHT

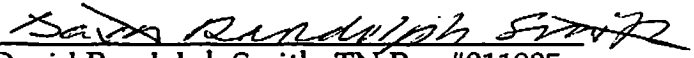
22. Wherefore, Plaintiffs incorporates the allegations of the preceding paragraphs as if fully set forth herein.

23. Plaintiffs seek pursuant to Rule 65 of the Tennessee Rules of Civil Procedure an immediate restraining order and in due course a temporary and permanent injunction which enjoins the Davidson County Election Commission from preparing for, organizing and holding a referendum election on the proposed "English-Only" Metro-Nashville Davidson County charter amendment and that said charter amendment be declared, pursuant to Rule 57 of the Tennessee Rules of Civil Procedure, unconstitutional, void and unenforceable.

24. 42 U.S.C. § 1983 prohibits Defendants from depriving Plaintiffs of "rights, privileges and immunities secured by the constitutional laws" in the United States. Plaintiffs request and are entitled to an award of attorney's fees and litigation related costs pursuant to 42 U.S.C. § 1988.

Respectfully Submitted,

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