

**The Governor's Council for Judicial Appointments**

**State of Tennessee**

***Application for Nomination to Judicial Office***

Name: **Kelvin D. Jones**

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**INTRODUCTION**

The State of Tennessee Executive Order No. 54 (May 19, 2016) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in Microsoft Word format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website [www.tncourts.gov](http://www.tncourts.gov)). The Council requests that applicants obtain the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original, hard copy (unbound), completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your hard-copy application, or the digital copy may be submitted via email to [ceesha.lofton@tncourts.gov](mailto:ceesha.lofton@tncourts.gov). See section 2(g) of the application instructions for additional information related to hand-delivery of application packages due to COVID-19 health and safety measures

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

I am presently employed as Circuit Court Judge, Division VIII, for the 20<sup>th</sup> Judicial District (Davidson County), State of Tennessee.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

I was licensed to practice law in the state of Tennessee in 1998 and my Tennessee Board of Professional Responsibility number is 019118.

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

<b>Tennessee</b>	<b>#019118</b>	<b>June 4, 1998</b>	<b>Active</b>
Alabama	#1523S82K	September 7, 1995	Active (Special Membership)
Colorado	#023887	April 26, 1994	Inactive (Non-Practicing/Current Registration)

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

I have never been denied admission to, suspended or placed on inactive status by the Bar of any state.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

1993-1993 **Research Assistant**, Prof. Francis McGovern, University of Alabama Law School

1993-1996	<b>Associate Attorney</b> , Holme Roberts & Owen, LLP, Denver, Colorado
1995-1997	<b>Adjunct Professor</b> , Metropolitan State College of Denver, Colorado
1997-1999	<b>Associate Attorney</b> , Bass, Berry & Sims, Nashville, Tennessee
1999-2003	<b>Special Assistant for Legal Affairs</b> , Office of Mayor Bill Purcell, Nashville, TN
2003-2004	<b>Director</b> , Metropolitan Nashville Transportation Licensing Commission
2004-2010	<b>Executive Director</b> , Metropolitan Nashville Human Relations Commission
2006-2014	<b>Hotel Developer and Franchisee</b> (Wyndham & Choice hotel brands) TN & AL
2010-2014	<b>Founder</b> , The Kelvin Jones Law Group, Nashville, Tennessee
2011-2014	<b>Judicial Commissioner</b> , Metropolitan Nashville General Sessions Court
2014-2021	<b>Circuit Court Judge</b> , Division VIII, Twentieth Judicial District, State of TN

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

**Not Applicable**

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

While I am not currently engaged in the “practice of law”, I am presently serving as a general jurisdiction trial court judge and inasmuch may hear any civil or criminal case that is not already exclusively within the jurisdiction of another court. As a Circuit Court judge, I have presided over nearly 100 jury and hundreds of non-jury cases, the vast majority of which have been civil cases. I have presided over multiple healthcare liability, personal injury, wrongful death, labor and employment, defamation, civil rights claims, workers’ compensation and commercial/contract dispute cases as well as de novo appeals from General Sessions Court. I have also adjudicated chancery, probate, domestic relations (divorces and orders of protection), juvenile dependency and neglect, child custody and criminal cases, by interchange. I routinely preside over “conflict” cases originating from trial courts throughout middle Tennessee (Williamson, Cheatham, Rutherford & Montgomery county circuit and chancery courts).

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you

have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

Throughout law school and in the months immediately following graduation I was the research assistant for my Torts law professor, University of Alabama Law Professor Francis McGovern. Professor McGovern was renowned for his expertise in alternative dispute resolution and his innovative work as a special master and mediator overseeing or advising on the management and settlement of mass tort claims. In my capacity as research assistant I engaged in extensive document reviews and production, reviewed expert witness disclosures and depositions, reviewed and edited trial demonstratives and drafted memoranda regarding pre-trial fact and expert discovery.

In September of 1993, following my law school graduation, I began my legal career as an associate with Holme Roberts & Owen (“HRO”). I drafted securities and finance-related provisions for complex domestic and international business transactions, including mergers and acquisitions. I conducted depositions of plaintiffs in securities litigation lawsuits and drafted legal briefs regarding securities fraud and securities regulation. I also provided general corporate and securities law advice, including corporate governance compliance for public companies. While practicing at HRO I was encouraged to consider teaching a class on Commercial and Corporate Law to business students at the Metropolitan State College of Denver. Over the next two years I taught courses in both the business and philosophy departments at Metro State (Commercial and Corporate Law, The Legal Environment of Business, Business Ethics and Introduction to Philosophy).

During the spring of 1997 I was recruited by Jim Cheek and the law firm of Bass, Berry and Sims (“Bass”) of Nashville to assist the corporate practice group with their increased volume of general corporate and transactional/mergers and acquisitions work. I was responsible for conducting due diligence, drafting, negotiating and reviewing various transaction documents, including prospectuses and other offering documents and memoranda, underwriting and purchase agreements, indentures, intercreditor agreements, security and pledge agreements, asset and stock purchase agreements, stockholders’ agreements, confidentiality agreements and legal opinions. I prepared and reviewed various federal and state filings, including annual reports, quarterly reports, proxy and information statements, with the Securities and Exchange Commission.

In 1999, I had the opportunity to meet then-candidate for mayor of Nashville Bill Purcell. I shared his vision for Nashville’s future and began assisting his campaign as a volunteer. When Bill Purcell was elected mayor of Nashville, he asked me to serve as his special assistant for legal affairs. I joined Mayor Purcell’s administration in September of 1999. In addition to my responsibilities as “in house legal counsel” I served as the Mayor’s representative on the Metropolitan Nashville Airport Authority and as the Mayor’s liaison to the Nashville Sports Authority, Nashville Power Board (NES), Metropolitan Development and Housing Agency, the

Metro Nashville Hospital Authority, the Metro Department of Health, Metro Beer Board, Metro Social Services, the Metro Nashville Convention Center Authority and Metro Human Relations Commission. For approximately a year I also served as the deputy director of the Mayor's Office of Economic and Community Development.

In 2003 I served as the interim director of the Metropolitan Nashville Transportation and Licensing Commission. As director for the seven-member commission (appointed by the Mayor and confirmed by the Metro Council) I was responsible for supervising a staff of four employees. The Transportation Licensing Commission has exclusive jurisdiction of the licensing and regulation of all vehicles for hire, including, but not limited to, taxicabs, wreckers, sedans, limousines and horse drawn carriages.

In 2004 I was selected to lead the Metro Human Relations Commission as its Executive Director. As Executive Director of the seventeen-member Human Relations Commission (appointed by the Mayor and confirmed by the Metro Council) I was responsible for the day-to-day operation of the commission and supervision of a staff of five employees and several interns. It is the responsibility of the Human Relations Commission to resolve complaints and carry out educational programs related to discrimination in the following areas: Employment, including recruiting, hiring, firing, promotion, referral, and compensation; Housing, including advertising, sales, renting, negotiating for the sale or rent, financing, or insuring; Financial services and commercial transactions, including banking, lending, collection, advising, investment management, or brokerage services and the provision of public accommodations. I led or actively participated in dozens of trainings, panel discussions, workshops and seminars related to diversity, equity, inclusion and conflict management.

In 2010 I founded the Kelvin Jones Law Group and had developed a 62-room limited service hotel in Manchester, Tennessee and was developing a 62-room limited service hotel in Marion, Alabama. I held two franchises with Wyndham and Choice hotels and was elected to serve on the board of Wyndham Hotel's Franchise Advisory Committee.

In 2010 I also began representing clients throughout the mid-state in criminal, personal injury, family law, probate, employment discrimination, landlord/tenant and contract matters. I served as a judicial commissioner for the Metro General Sessions Court, as guardian ad litem in juvenile dependency and neglect matters and served as a conservator for inmates with special needs at the Lois M. DeBerry Special Needs Facility.

In 2014 I ran in a contested, countywide election for Circuit Court Judge, Division VIII. I firmly believed that my qualifications and experience as an attorney combined with my proven history of community service would appeal to the voters of Nashville and Davidson County. I won the contested May 2014 primary and had no opposition in the August general election. I took office on September 1, 2014.

I am presently a general jurisdiction trial court judge and inasmuch may hear any civil or criminal case that is not already exclusively within the jurisdiction of another court. As a Circuit Court judge, I have presided over nearly 100 jury and hundreds of non-jury cases, the vast majority of which have been civil cases. I have presided over multiple healthcare liability, personal injury, wrongful death, labor and employment, defamation, civil rights claims, workers' compensation and commercial/contract dispute cases as well as de novo appeals from General Sessions Court. I have also adjudicated chancery, probate, domestic relations (divorces

and orders of protection), juvenile dependency and neglect, child custody and criminal cases, by interchange. I routinely preside over “conflict” cases originating from trial courts in middle Tennessee (Williamson, Cheatham, Rutherford & Montgomery county circuit and chancery courts).

When I ran for Circuit Court Judge my pledge was to treat everyone appearing in court with dignity and respect. I further pledged that I would prepare myself for each case in such a way that I would be familiar with the facts, law and legal arguments to be articulated. I challenge myself and those around me to find the law that appropriately applies to each case and to apply the law to the facts of each case. Every case that I preside over is critically important to the parties and deserves the attention sought by the parties. The policy and practice of the Eighth Circuit Court is be respectful of the time of litigants, counsel and jurors and our pursuit of finding the law that applies to each case can only be described as dogged determination. I firmly believe that, with the assistance of my highly competent staff, I have fulfilled the commitment that made to the citizens of Nashville and Davidson County.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

As a trial judge, I have presided over several “high profile” civil cases which have received local and national media attention. Notwithstanding the forgoing, I firmly believe that every case is of significant import to the parties involved and I treat each case as such.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

**Circuit Court Judge**—20<sup>th</sup> Judicial District (Nashville/Davidson County, TN) September 1, 2014 to present. I challenged an incumbent in a three-candidate race in a May 2014 primary and August 2014 general election.

**Metropolitan Nashville General Sessions Court Judicial Commissioner** --In April of 2011, I was selected/appointed by the Metropolitan Nashville General Sessions Court judges to serve as a judicial commissioner. In this capacity I was responsible for conducting probable cause hearings, issuing warrants and setting bail bonds in criminal cases. Further, I was responsible for determining probable cause for judicial committals from county psychiatric facilities, issuing ex-parte orders of protection (as well as warrants for violations of such orders) and issuing property seizure warrants upon probable cause. I served as a judicial commissioner until I was elected to the Eighth Circuit Court in 2014.

**Special Judge**--On occasion, I sat as a “special judge” for Davidson County Juvenile Court dependency and neglect matters in 2014.

**Tennessee Supreme Court Rule 31 Listed Family Mediator**-- I received formal training and became credentialed as a Tennessee Supreme Court Rule 31 Listed Family Mediator in 2006.

**Tennessee Supreme Court Rule 31 Listed Civil Mediator**-- I received formal training and became credentialed as a Tennessee Supreme Court Rule 31 Listed Civil Mediator in 2004.

**Better Business Bureau Auto Line Arbitrator**— I received formal training and became credentialed as a Better Business Bureau Auto Line Arbitrator in 2004. Under the national program, arbitration was offered to vehicle owners and manufacturers to resolve disputes involving vehicles pursuant to state(s) lemon laws.

11. Describe generally any experience you have serving in a fiduciary capacity, such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

For several years, prior to being elected to the Circuit Court in 2014, I received appointments to serve as a guardian ad litem for children involved in dependency and neglect matters (Nashville/Davidson County Juvenile Court) and as a conservator for inmates housed at the Lois M. DeBerry Special Needs Facility in Nashville (Seventh Circuit Court-Probate).

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

**Chair of the American Bar Association Judicial Division’s Ethics and Professionalism Committee**--In 2017 I was appointed to serve as the Chair of the American Bar Association Judicial Division’s Ethics and Professionalism Committee. The Ethics and Professionalism committee is tasked with examining and reviewing issues of ethics and judicial responsibility affecting the judiciary. The committee identifies and establishes relationships with other American Bar Association entities that undertake issues and projects concerning judicial ethics. The committee proposes programs and continuing judicial education activities on judicial ethics. I was responsible for encouraging judges to give “Ted Talk” style videos and personally gave continuing judicial education lectures to judges participating in American Bar Association conferences.

**Member of the Committee on Pattern Jury Instructions (Civil) of the Tennessee Judicial Conference**-- Since 2015, I have served as a member of the Committee on Pattern Jury Instructions (Civil) of the Tennessee Judicial Conference. Thompson Reuters publishes the Tennessee Pattern Jury Instructions annually. The Committee typically meets three times per year to modify existing instructions and to create new instructions based on changes in caselaw and new statutes.



**Continuing Judicial Education Presenter--**For several years, I have been a frequent presenter of continuing judicial education programs for Tennessee Judicial Conference and American Bar Association programs.

**Continuing Legal Education Presenter--** For several years, I have been a frequent presenter of continuing legal education programs for American Bar Association, National Bar Association, Nashville Bar Association and Napier-Looby Bar Association members and non-members.

**National Judicial College, General Jurisdiction Training—**In April-May of 2015, I completed the multi-week general jurisdiction course for trial judges at the University of Nevada, Reno’s National Judicial College.

**Tennessee Judicial Academy—**I attended the Tennessee Judicial Academy for new judges in Murfreesboro, TN in 2014.

**Belmont University College of Law, Inn of Court--**I have been a member of the Belmont College of Law, Inn of Court and served as the Inn’s Counselor from 2014-2018.

**Wyndham Hotels, Franchise Advisory Committee—**As a nationally elected member to the Franchise Advisory Committee I chaired the “Legal Affairs” sub-committee.

**Nashville Bar Association Board of Directors--**From 2005-2007 I served as an elected member to the Nashville Bar Association Board of Directors. Throughout my tenure on the board I served as a member of the bar association board’s executive committee.

**President, Napier-Looby Bar Association--** From 2004-2005 I served as President of the Napier-Looby Bar Association (an affiliate of the National Bar Association).

**Lawyers’ Association for Women Board Member--** From 2002-2003 I served on the Board of Directors for the Lawyers’ Association for Women (Marion Griffin Chapter). I served as a newsletter editor for two years.

**Legal Mentor--**I enjoy mentoring young lawyers and law students. I have formally mentored law students from the Belmont University College of Law, Nashville School of Law, Vanderbilt Law School, Pepperdine Law School and attorneys through the Napier-Looby Bar Association and Nashville Bar Association.

**Eighth District Counselor--** I was elected and served as the Eighth District Counselor for Omega Psi Phi Fraternity, Inc. from 1994-1996. In this capacity I provided legal counsel to undergraduate and graduate chapters located in Colorado, Iowa, Kansas, Missouri, Nebraska, New Mexico, North and South Dakota.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor’s Council for Judicial Appointments or any predecessor or similar commission

or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

I have not previously submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor or similar commission or body.

### **EDUCATION**

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

**Duke University School of Law, Durham, North Carolina (May 2018-May 2020)**

**LLM/Master of Laws in Judicial Studies** (*Emphasis in Judicial Ethics*)

**University of Alabama School of Law, Tuscaloosa, Alabama (August 1990-May 1993)**

**Juris Doctorate (JD), Law**

*Research Assistant to Professor Francis E. McGovern (Nationally recognized Mass Tort Litigation and Alternative Dispute Resolution Expert)*

*Elected-Honor Council Member, Trial Advocacy, Civil Law Clinic Volunteer, Community Volunteer*

**Howard University, Washington, D.C. (August 1989-August 1990) (Coursework Completed)**

**Graduate School of Arts and Sciences, (Philosophy)**

*Received Graduate Fellowship (Taught undergraduate courses in Logic, Ethics and Introduction to Philosophy)*

*Departed graduate program to pursue law degree at the University of Alabama.*

**Howard University, Washington, D.C. (August 1986-August 1989)**

**Bachelor of Arts (BA) (Honors)**

*Microbiology/Political Science*

*Elected-College SGA President, Residence Hall President, Resident Assistant, Community Volunteer*

**PERSONAL INFORMATION**

15. State your age and date of birth.

I am 53 years of age and my date of birth is [REDACTED] 1968.

16. How long have you lived continuously in the State of Tennessee?

I have lived continuously in the State of Tennessee for 24 years.

17. How long have you lived continuously in the county where you are now living?

I have lived continuously in Nashville (Davidson County), Tennessee for 24 years.

18. State the county in which you are registered to vote.

I am registered to vote in Davidson County.

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

I have not had the honor of serving in the military,

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

I have not pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance.

21. To your knowledge, are you now under federal, state or local investigation for possible

violation of a criminal statute or disciplinary rule? If so, give details.

In January of 2021, a Board of Judicial Conduct complaint (B21-8382) was filed against me by an oft suspended attorney who simultaneously sought to have me disqualify myself from hearing a case (18C1229 -Nashville) in which he and his wife, also an attorney, were subject to sanctions by the court. The singular basis for the "Motion to Disqualify" related to my alleged conduct during my divorce proceedings. The same oft suspended attorney also forwarded the board complaint to the Davidson County District Attorney's office. I denied the oft suspended attorney's "Motion to Disqualify" and the Tennessee Court of Appeals (At Nashville) affirmed my ruling on March 4, 2021. To date, no action has been taken by the Board of Judicial Conduct or the District Attorney regarding the oft suspended attorney's complaint.

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

In twenty years as a practicing attorney, no formal complaints were ever been filed against me with any board of professional responsibility in Colorado, Alabama or Tennessee.

As a judge/judicial officer, I have had four complaints filed by "non-prevailing" parties in civil matters since 2011. These four complaints (B15-5994, B17-6985, B18-7285 & B19-7654) were all dismissed by the Tennessee Board of Judicial Conduct.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

I have not had a tax lien or other collection procedure instituted against me by federal, state, or local authorities or creditors within the last five (5) years.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

I have never filed for bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization).

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were

involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

Yes.

Jones v. Jones, Davidson County, Circuit Court Case No. 19D-1454. Despite not being the filing/initiating party, I was awarded a divorce (as the prevailing party) from my former spouse on November 3, 2020.

First Citizens Bank & Trust Company v. Tennessee Hospitality Group, Inc. (et al), Case No: 3:2012 cv00061 (US District Court, Middle District of Tennessee). I personally guaranteed the debt of a corporation for which I held 100% of the issued and outstanding common stock. The underlying judgment was satisfied in May of 2019.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

**Jefferson Street Baptist Church** (Member & Usher)

**Leadership Coffee County** (Alumnus)

**Leadership Nashville** (Alumnus)

**TN Achieves** (High School Student Mentor)

**Men of Valor Prison Ministry** (Mentor to the formerly incarcerated)

**Hands On Nashville** (Volunteer)

**Second Harvest Food Bank** (Volunteer)

**Nashville Sportsman's Club** (Member & Past President, 2012)

**Rotary Club of Nashville** (Member)

**Middle Tennessee Council, Boy Scouts of America** (Board Member)

**Montgomery Bell Academy** (Father's Club & Mother's Club Volunteer)

**Harding Academy** (Campus School Store, Athletics and Creative Arts Volunteer)

**Duke University Alumni Association** (Nashville Member)

**Youth About Business/ Nashville Summer Business Camp** (Instructor and Volunteer)

**YMCA of Middle Tennessee, Downtown and Northwest** (Past Board Member and Chair)

**Music City Bowl** (Board Member)

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
  - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

My college/graduate fraternity, Omega Psi Phi Fraternity, Inc. restricts its membership to males.

**ACHIEVEMENTS**

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

**Tennessee Trial Judges' Association**, Member since 2015

**Tennessee Judicial Conference**, Member since 2015

**American Bar Association (Judicial Division, Ethics and Professionalism Committee)**, Past Chair, 2017-2018, ABA Member since 2010

**American Bar Association Council for Diversity in the Educational Pipeline**, Committee Member, Panelist and Law Student Mentor, since 2017

**National Bar Association** (Judicial Council), Member since 2015

**Tennessee Bar Association**, Member for most of my career

**Nashville Bar Association**, Executive Committee Member, 2005-2007, Ethics Committee, Member since 1999

**Belmont University College of Law**, Inn of Court (Counselor, 2014-2018)

**Lawyers' Association for Women** (Marion Griffin Chapter), Past Board Member and Newsletter Editor (2002 & 2003), Member since 2000

**Napier Looby Bar Association**, President (2004-2005), Member since 1998

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

**Fellow-Tennessee Bar Foundation Fellow** (2018)

**Fellow-Napier-Looby Bar Foundation**, Fellow (2016)

**J.C. Napier Trailblazer Award-** Napier Looby Bar Association (2015)

**Volunteer of the Year--** YMCA of Middle Tennessee (Northwest, 2012)

**Leadership Coffee County--**Graduate of Coffee County Leadership, Class of 2012

**Certificate of Appreciation—**Alpha Delta Omega Chapter, Alpha Kappa Alpha Sorority, Inc, (2007)

**Candlelight Award-**Jefferson Street United Merchants Partnership (2006)

**Tennessee Supreme Court, Certificate of Appreciation for serving on the “Task Force to Study Attorney Fee Dispute Arbitration”** (April 28, 2005-April 15, 2007)

**Graduate, Tennessee Criminal Defense College--**Tennessee Association of Criminal Defense Lawyers (2005)

**Volunteer of the Year,** Youth About Business/ Nashville Summer Business Camp (2004)

**Fellow--**Nashville Bar Association, Fellow (2004)

**Chairman’s Award--**United Way of Middle Tennessee, MECCC, Chairman’s Award (2002)

**Leadership Nashville--**Graduate of Leadership Nashville, Class of 2002

**“Top 40 Under 40”,** *Tennessean* newspaper (2002)

**Friends of Scouting Award--**Recipient of The Middle Tennessee Council of the Boy Scouts of America’s “Friends of Scouting Award”

**Certificate of Appreciation—**Backfield in Motion (2001)

**Deposition Skills--**Recipient of the National Institute for Trial Advocacy, Advanced Training, Deposition Skills Diploma (1996)

**Trial Advocacy Skills--**Recipient of the National Institute for Trial Advocacy, Advanced Training, Trial Advocacy Skills Diploma (1996)

**International Superior Service Award Recipient—**Omega Psi Phi Fraternity, Inc. (1996)

**African American Spotlight Award--**Recipient of the African American Spotlight Award, Sponsored by Denver’s News 2 and McDonalds (1995)

**Recognition for “Outstanding Contributions”:** The Colorado Business Expo (1994)

**Licensed Pilot--**Federal Aviation Administration, Licensed Pilot (since 1991)

30. List the citations of any legal articles or books you have published.

***TENNESSEE PATTERN JURY INSTRUCTIONS-CIVIL***, *Tennessee Practice*, West Publishing Co., Fifteenth ed. 2015, Sixteenth ed. 2016, Seventeenth ed. 2017, Eighteenth ed. 2018, Nineteenth ed. 2019, Twentieth ed. 2020 and Twenty-First ed. 2021. For several years I have been a member of the Committee on Pattern Jury Instructions (Civil) of the Tennessee Judicial Conference. The Committee typically meets three times per year to modify existing

instructions and to create new instructions based on changes in caselaw and new statutes.

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

**Lunch & Learn w/ Judge Kelvin Jones**, Nashville Bar Association, September 27, 2019, CLE  
**“What to Expect at the Courthouse”**, Nashville Bar Association, August 8, 2019, CLE  
**Judicial Ethics Update**, March 6-8, 2018, 2018 Tennessee Judicial Conference, CLE  
**Judicial Ethics**, April 18-20, 2018, National Judicial Institute & Conclave, Chicago, IL, CLE  
**“Don’t Judge” Seminar**, March 19, 2018, Tennessee State University, Lecture  
**Jury Trials and Trial Preparation**, Nashville Bar Association, December 17, 2018, CLE  
**“Marshall”**, Nashville Bar Association CLE Film Festival, July 12, 2018, CLE  
**Diversity in the Educational Pipeline**, American Bar Association, April 2018, Chicago, IL  
**Diversity in the Educational Pipeline**, American Bar Association, February 2017, Miami, FL, CLE  
**Domestic Violence/Elder Abuse**, Belmont Law School Inn of Court, October 13, 2016, CLE

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

Candidate for Public Defender for Nashville and Davidson County, TN (May, 2006)—Elective Candidate, 8<sup>th</sup> Circuit Court Judge, Nashville/Davidson County, TN (August, 2014)-- Elective

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

I have never been registered as a lobbyist.

34. Attach to this application at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

Attached as requested. 100% personal effort. See **Schedule 34**



**ESSAYS/PERSONAL STATEMENTS**

35. What are your reasons for seeking this position? *(150 words or less)*

The Tennessee Supreme Court should embody and reflect the cumulative legal interests of all Tennesseans. I believe that my background as a small business owner and attorney with over twenty years of experience in commercial transactions, complex litigation, human rights, criminal law, probate, juvenile and family law matters reflects my understanding of the types of cases heard by the Court. My ten years of experience serving as a judicial commissioner and Circuit Court Judge, presiding over healthcare liability, personal injury, wrongful death, labor and employment, defamation, civil rights claims, workers' compensation and commercial/contract dispute cases has provided me judicial experiences which will be of value to the court. My advanced training in the law represents my commitment to legal excellence which I seek to utilize daily for the benefit of litigants, attorneys and students. I feel equipped and would consider it an honor to serve on the Tennessee Supreme Court.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

In years past I have been invited to speak to Kiwanis, Rotary and Civitan service clubs on the American Bar Association's Law Day (celebrating the role of law in our society and to cultivate a deeper understanding of the legal profession) and Rule of Law Initiative (promoting justice economic opportunity and human dignity through the rule of law). I have been recognized for my pro-bono legal work and regularly (pre-COVID) speak to elementary, middle, high school and college students regarding our civil and criminal justice systems and the separation of powers—the three branches of government. As an attorney I regularly provided pro-bono legal services to Nashville non-profit organizations and was an annual instructor participating in Youth About Business' Nashville Summer Business Camp. As a judge I routinely volunteer to judge high school mock trial competitions.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

I seek a judgeship on the Tennessee Supreme Court which is the state's court of last resort. The five justices of the Tennessee Supreme Court may accept appeals of civil and criminal cases from lower state courts. The justices also interpret the laws and Constitutions of Tennessee and the United States. I believe that my experience and formal training as a general jurisdiction trial judge with a background as a transactional attorney, understanding of complex litigation and practical experience a small business owner will compliment the skill sets contributed by the existing four justices and inure to the benefit of all Tennesseans. I will endeavor to treat all parties with dignity and respect and will utilize my skills and abilities to comprehend the intricacies of each case with a keen understanding of and appreciation for the impact each opinion will have on the litigants and the law in our state.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

If appointed to serve on the Tennessee Supreme Court I would continue to participate in and encourage others to donate their time toward community service and/or organizations that educate citizens (both young and not so young) on the rule of law and promote the system of justice. In the past, I have volunteered my time, talent and treasure supporting the Red Cross, Girl Scouts of Cumberland Valley, Alcohol and Drug Council, Alive Hospice, the Tennessee Coalition to End Domestic and Sexual Violence, Boy Scouts of Middle Tennessee, Second Harvest Food Bank, United Way of Nashville, Youth About Business, the YMCA of Middle Tennessee, Big Brothers/Sisters, Hull Jackson Montessori Magnet School, Montgomery Bell Academy, Harding Academy, Hands on Nashville and the Bethlehem Centers of Nashville. I am particularly interested in the Supreme Court's Advancing Legal Education for Students (SCALES) program which has provided an opportunity for approximately 40,000 students statewide to learn more about the Tennessee legal system and the function of the appellate courts. My mentor and former Tennessee Supreme Court Justice Adolpho Birch, Jr. would remind me that it is difficult for youth "to be what they cannot see". People are best served when they feel assured that their representative government leaders can appreciate and seek to address their everyday causes and concerns. I believe that it is critically important that the justices of the Tennessee Supreme Court engage in community service and lead in the effort to broadly promote the rule of law and accessibility to the courts.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

The Greek philosopher Socrates once stated, "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially". During my tenure as a judge my record reflects that I have endeavored to treat everyone who appears in court with dignity and respect... allowing each person the opportunity to be heard. With respect to a judge "answering wisely" I would submit to the Council that I have a proven record of successful trial experience and academic excellence. While certainly not a requirement to be an effective judge, I would submit to the Council that I am the only active state court judge in Tennessee who has earned an advanced degree (LLM) in judicial studies. To this end, I believe that wisdom can be found only at the intersection of intelligence and experience. The manner in which a judge responds to issues presented often reveals his or her relative wisdom. With regard to exercising sober judgment, judges are human and I remind myself daily of the seriousness of my task and the importance of my role in our judicial system. My vast array of life experiences keeps me grounded and enables me to exercise sober judgment. My commitment to deciding matters impartially is rooted in my passion for and proven track record of fighting for and ensuring justice for all. In our system of justice, parties are entitled to judges who make certain that cases are decided solely upon the facts and the law.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes, I will uphold the law even if I disagree with the substance of the law at issue. I have taken an oath to interpret and follow the law as passed by the Tennessee legislature and as interpreted by Tennessee appellate courts. Former United States Supreme Court Justice Antonin Scalia is credited with saying "...the judge who always likes the results he reaches is a bad judge". From time to time I read statutes which contain the language "...the court shall..." or "...the court shall not..." and I ponder (to myself) whether the legislature has "overreached" its power and/or authority. Nevertheless, I understand that my role is to apply the law and not make law. I take solace in knowing that almost any legislation, evenly applied, can have a legitimate public policy as its basis.

**REFERENCES**

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. Tennessee State Senator Brenda Gilmore, [REDACTED] [REDACTED] Nashville, TN 37243. [REDACTED]
B. Tennessee State Representative Vincent Dixie, [REDACTED] [REDACTED] Nashville, TN 37243. [REDACTED]
C. Reverend James "Tex" Thomas, [REDACTED] Smyrna, TN 37167; [REDACTED]
D. Stan Davis, Esq., [REDACTED] Brentwood, TN 37027 [REDACTED]
E. J. Bart Pickett, Esq., [REDACTED] Brentwood, TN 37027-5054. [REDACTED]

**AFFIRMATION CONCERNING APPLICATION**

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Justice of the Supreme Court of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: November 18, 2021.



Signature

When completed, return this application to Ceesha Lofton, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS  
ADMINISTRATIVE OFFICE OF THE COURTS**

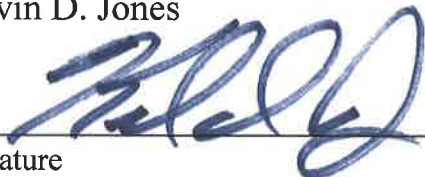
511 UNION STREET, SUITE 600  
NASHVILLE CITY CENTER  
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY  
TENNESSEE BOARD OF JUDICIAL CONDUCT  
AND OTHER LICENSING BOARDS**

**WAIVER OF CONFIDENTIALITY**

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

Kelvin D. Jones

  
\_\_\_\_\_  
Signature

November 18, 2021

BPR #019118

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

Colorado #023887 (Non-Practicing) and  
Alabama #1523S82K (Special Membership)

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# **SCHEDULE 34**

**IN THE EIGHTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

**FRATERNAL ORDER OF POLICE )  
(ANDREW JACKSON LODGE NO. 5), )  
MATTHEW DEAN BOGUSKIE, NOBLE )  
TAYLOR, HAROLD MILTON BURKE, III, )  
ROBERT ALAN YOUNG, and )  
JAMES ANTHONY GAFFORD, )**

**Petitioners,** )

**v.** )

**Docket No. 18C2158**

**METROPOLITAN GOVERNMENT OF )  
NASHVILLE AND DAVIDSON COUNTY, )  
DAVIDSON COUNTY ELECTION )  
COMMISSION, )**

**Respondents, and** )

**COMMUNITY OVERSIGHT NOW,** )

**Intervening Respondent.** )

**FINAL ORDER**

This matter came before this Court on September 14, 2018 for extraordinary relief and an expedited hearing on Petitioner’s Petition for a Writ of Certiorari and Supersedeas and Writ of Mandamus. Also pending before this Court is a Motion to Dismiss pursuant to Tenn. R. Civ. P. 12.02(6) filed by Intervening Respondent, Community Oversight Now. This action challenges the Davidson County Election Commission’s decision to place a Referendum on the November 6, 2018 Ballot. This Court reviews this action pursuant to Tenn. Code Ann. §§ 27-9-101 et seq. (2018), as a Writ of Certiorari and Supersedeas.

A scheduling conference was held on August 30, 2018 and all parties were ordered to submit briefs on the following issues:



1. Whether the August 1, 2018 petition filed by Community Oversight Now with the Metropolitan Clerk requesting that a referendum be held on an amendment to the Metropolitan Nashville Charter satisfies the requirements of Section 19.01 of the Metropolitan Charter to be placed on the November 6, 2018 ballot as determined by the Davidson County Election Commission?
2. For the purpose of determining the number of signatures necessary on this Petition to place the referendum on the ballot, when was the preceding general election {the “Preceding General Election”) as contemplated by Section 19.01 of the Metropolitan Charter?

Based upon the briefs filed, the arguments of counsel, and the entire record as a whole, this Court makes the following findings of fact and conclusions of law:

On August 1, 2018, Community Oversight Now<sup>1</sup> filed a petition (the “Petition”) with the Metropolitan Clerk to include a referendum (the “Referendum”) on the November 2018 ballot to amend the Charter of the Metropolitan Government of Nashville and Davidson County, Tennessee (the “Charter” and “Metro”, respectively) to create a community oversight board of the Metropolitan Nashville Police Department (the “MNPD”). Community Oversight Now obtained an estimated 8,269 signatures on the petition. The Metropolitan Clerk sent the Petition to the Davidson County Election Commission (the “Election Commission”) on August 2, 2018. Staff members of the Election Commission analyzed a total of 6,491 signatures and determined that 4,801 signatures were valid and 1,690 signatures were invalid. The staff members did not

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<sup>1</sup> Community Oversight Now is a coalition of 10 committees and organizations including Gideon’s Army, No Exceptions Prison Collective, Davidson County Chapter of the National Association for the Advancement of Colored People (NAACP), Tennessee State Conference of the NAACP, Black Lives Matter Nashville, Showing Up for Racial Justice (Nashville), Democracy Nashville & Democratic Communities, Workers’ Dignity/Music City Riders United, Nashville Peacemakers, and Justice for Jocques Coalition.

analyze the remaining 1,200 signatures. At the Election Commission meeting on August 15, 2018, the Election Commission passed a motion to place the proposed amendment on the November 6, 2018 ballot. On August 16, 2018, the Election Commission certified the verified signatures to the Metropolitan Clerk. On August 20, 2018, the Metropolitan Clerk certified a copy of the Petition to the Election Commission. On August 21, 2018, the Fraternal Order of Police, Andrew Jackson Lodge No. 5 (the “FOP”), Matthew Boguskie, Noble Taylor, Harold Burke, III, Robert Young, and James Gafford (collectively, hereinafter referred to as the “Petitioners”) filed for a petition for a Writ of Certiorari and Supersedeas and Writ of Mandamus challenging the number of signatures on the petition.

Community Oversight Now filed a Motion to Intervene on August 22, 2018. Upon an Agreed Order entered August 27, 2018, Community Oversight Now was added as an Intervening Respondent to this cause with Metropolitan Government of Nashville and Davidson County and the Election Commission.

The Referendum calls for the creation of the Metropolitan Government of Nashville and Davidson County Community Oversight Board (the “Board”) to review allegations of police misconduct against members of the public. Pet’r Br. 3 (Sept. 6, 2018). The Referendum calls for the Board to be created and operational by January 31, 2019. *Id.* at 2. The Board will consist of 11 members who are residents of Davidson County. *Id.* “The Board members must have a demonstrated knowledge of issues pertaining to civil rights and equity and must have experience with criminal justice and policing practices.” *Id.* The Referendum prohibits employees of any law enforcement agency, anyone who has served in a law enforcement capacity in the past 5 years, any elected official, and the spouse of any of the foregoing persons from serving on the Board. *Id.* at 2-3.

The Referendum empowers the Board to review and investigate allegations that MNPD Officers have committed misconduct against members of the public. The Board would have the powers to: (1) compel attendance of witnesses and production of documents; (2) issue policy advisory and resolution reports assessing allegations of misconduct; (3) recommend monitoring programs for ongoing review and audit of complaint processes of the MNPD; (4) refer a matter to the MNPD Office of Professional Accountability or an equivalent internal affairs program with a recommendation for discipline; (5) require the MNPD to respond in writing to the Board's disciplinary recommendations; and (6) refer factual findings and civil rights violations to the District Attorney, a grand jury, or the United States Attorney. *Id.*

Petitioners have asked this Court to determine which election is the Preceding General Election as required by § 19.01 of the Charter. Petitioners argue that the Preceding General Election was the election held on August 6, 2015 (the "August 2015 Election"). Alternatively, Petitioners argue that if the last Preceding General Election was not the August 2015 Election, it was the May 24, 2018 election (the "May 2018 Election") or the November 8, 2016 Election (the "November 2016 Election"). Petitioners assert that with the August 2015 Election, May 2018 Election, or the November 2016 Election, the Petition filed on August 1, 2018 did not contain the requisite number of signatures to be placed on the November 6, 2018 ballot (the "November 2018 Election"). Respondent Metro argues the Preceding General Election was the August 4, 2016 Election and that the Election Commission was correct in certifying the Petition and placing the Referendum on the ballot for the November 2018 Election.

Respondent Community Oversight Now has filed a Motion to Dismiss pursuant to Tenn. R. Civ. P. 12.02(6), alleging that Petitioners' Complaint failed to state a claim upon which relief can be granted because Petitioners' lack standing as individuals, Petitioner FOP has not met the

requirements for organizational standing, and the alleged harm is merely speculative and not ripe for adjudication.

I. WHETHER PETITIONERS HAVE STANDING TO CHALLENGE THE ELECTION COMMISSION'S DETERMINATION TO PLACE THE REFERENDUM ON THE BALLOT FOR THE NOVEMBER 6, 2018 ELECTION.

This Court first considers whether Petitioners have standing to challenge the number of signatures necessary to place the Referendum on the November 6, 2018 election ballot.

Respondent Community Oversight Now has filed a Motion to Dismiss under Tenn. R. Civ. Pro. 12.02(6) based upon failure to state a claim upon which relief may be granted as the Petitioners lack standing to challenge the Board. The issue this Court examines is whether the Petitioners have standing to challenge the decision of the Election Commission pursuant to T.C.A. § 27-9-101.

Intervening Respondent Community Oversight Now alleges that the Petitioners lack standing to challenge the Election Commission's decision to place the Referendum on the ballot. Respondent Metro subsequently adopted all arguments set forth in Respondent Community Oversight Now's Motion to Dismiss.

When considering a motion to dismiss, "courts must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences." *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31-32 (Tenn. 2007). A trial court will grant a motion to dismiss "only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Crews v. Buckman Labs Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002).

Standing is the judicial doctrine based upon the idea that "[a] court may and properly should refuse to entertain an action at the instance of one whose rights have not been invaded or

infringed.” *Hamilton v. Metro. Gov’t of Nashville*, 2016 Tenn. App. Lexis 791 \*5 (Tenn. Ct. App. 2016) (citing *Mayhew v. Wilder*, 46 S.E.3d 760, 766-67 (Tenn. Ct. App. 2001)). “In determining whether a plaintiff has a personal stake sufficient to confer standing, the focus should be on whether the complaining party has alleged an injury in fact, economic or otherwise, which distinguishes that party, in relation to the alleged violations, from the undifferentiated mass of the public.” *Mayhew*, 46 S.E.3d at 767.

1. WHETHER THE INDIVIDUAL PETITIONERS HAVE STANDING TO CHALLENGE THE NUMBER OF SIGNATURES REQUIRED TO PLACE THE REFERENDUM ON THE NOVEMBER 6, 2018 BALLOT PURSUANT TO T.C.A. §§ 27-9-101 ET SEQ.

In this case, Petitioners assert individual standing for Matthew Dean Boguskie, Noble Taylor, Harold Milton Burke, III<sup>2</sup>, Robert Alan Young, and James Anthony Gafford<sup>3</sup> (the “Individual Petitioners”). Pet. Writ Cert. ¶ 2-4 (Aug. 21, 2018). The Individual Petitioners are members of the FOP and residents, citizens, registered voters, and taxpayers of Metro. *Id.* at ¶ 2-6, 27.

These Individual Petitioners all assert distinct and palpable injuries if the amendment becomes law as a result of the Referendum. *Id.* at ¶ 26. The Individual Petitioners allege injuries by:

changing the daily protocol under which they work as sworn officers of MNP and introducing uncertainty into their duties through Board subpoenas, investigations, monitoring programs, reviews, audits, policy advisories, resolution reports, referrals and recommendations; by negatively impacting their operations and efficiency through changes in disciplinary procedures resulting from Board investigations; referrals and recommendations; by prohibiting them from serving on the Board or on the staff of the Board, particularly when the Board will have such significant impact on their job functions; and by reducing funds available for

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<sup>2</sup> Matthew Dean Boguskie, Noble Taylor and Harold Milton Burke, III are current members of the MNP.

<sup>3</sup> Robert Alan Young and James Anthony Gafford are retired members of the MNP.

the work of the MNPDP through the Board's required annual budget request of no less than \$1,500,000.00 beginning and after fiscal year 2019-2020.

*Id.* at ¶ 27. The Individual Petitioners also allege that the amendment would not provide Due Process protections for sworn MNPDP officers who may only be terminated for just cause. *Id.* at ¶ 28. Petitioners allege sworn MNPDP officers possess a property interest in their continued employment which may not be deprived without Due Process. *Id.* (citing *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 538-39 (1985)). Petitioners also allege that “the amendment provides no protection in the compelled testimony of officers in violation of *Garrity v. New Jersey*, 385 U.S. 493, 496-97 (1967) (choice given to police officers between forfeiting their jobs or incriminating themselves violated the Fourteenth Amendment).” *Id.* The amendment will also “injure the individual Petitioners who are retired MNPDP officers as well as retired officers who are members of the FOP including, without limitation, by prohibiting them from serving on the Board or on the staff of the Board for a period of five years.” *Id.* at ¶ 29.

Respondent Community Oversight Now alleges the Current Officer Petitioners do not have standing to challenge the Petition because the Petition for Writ of Certiorari does not raise “an allegation that [they] suffer[s] from any injury in fact—economic or otherwise—that distinguishes him, in relation to the allegations, from the undifferentiated mass of the public. And, no allegation has been made that [the Individual Petitioners are] member[s] of the Fraternal Order of Police.” Resp’t Mem. Supp. Mot. Dismiss. at 4-5. Respondent Community Oversight Now asserts that “being a ‘citizen, registered voter, taxpayer, and sworn office[r] of the MNPDP’ does not confer standing. The mere status as a taxpayer or voter is not enough [to confer standing].” *Id.* (citing *Mayhew*, 46 S.E.3d at 767). “The plaintiff must not allege that the effect of the statute will impose burdens on him’ ‘not common to the body of the citizens.’” *Id.* (citing

*Patton v. Mayor of Chattanooga*, 108 Tenn. 197, 65 S.W. 414 (1901); *Bennett v. Stutts*, 521 S.W.2d 575 (Tenn. 1975); *Sachs v. Shelby Cnty. Election Comm'n*, 525 S.W.2d 672 (Tenn. 1975)).

Respondent Community Oversight Now alleges the same arguments apply to the Retired Officer Petitioners. Resp't Mem. Supp. Mot. Dismiss. at 4-6. Respondent Community Oversight Now also alleges that the Retired Officer Petitioners will not have standing even if the Referendum passed as the amendment only applies to active-duty officers. *Id.* at 5, fn. p. 5.

All parties fail to address standing as it relates to this case. The issue is whether Petitioners have standing to challenge the number of signatures required to place the Referendum on the ballot; not whether Petitioners have standing to challenge the Board itself. T.C.A. § 27-9-101 provides that “[a]nyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have the order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided by this chapter.” In *McFarland v. Pemberton*, the Tennessee Supreme Court determined the meaning of the phrase “anyone who may be aggrieved,” 530 S.W.3d 76, 105-07 (Tenn. 2017). The Tennessee Supreme Court stated:

A party with standing to file a petition for writ of certiorari under section 27-9-101 is “anyone who may be aggrieved” by the administrative decision at issue. We have recognized:

The doctrine of standing is used to determine whether a particular plaintiff is entitled to judicial relief. *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976). It is the principle that courts use to determine whether a party has a sufficiently personal stake in a matter at issue to warrant a judicial resolution of the dispute. *Suntrust Bank, Nashville v. Johnson*, 46 S.W.3d 216, 222 (Tenn. Ct. App. 2000). Persons whose rights or interests have not been affected have no standing and are, therefore, not entitled to judicial relief. *Lynch v. City of Jellico*, 205 S.W.3d 384, 395 (Tenn. 2006).

‘The sort of distinct and palpable injury that will create standing must be an injury to a recognized legal right or interest.’ *Wood v. Metro. Gov’t of Nashville and Davidson Cnty.*, 196 S.W.3d 152, 158 (Tenn. Ct. App. 2005). Such a legal right or interest may, but not must, be created or defined by statute.

*Metro. Gov’t of Nashville [and Davidson Cnty. v. Bd of Zoning Appeals]*, 477 S.W.3d [750] at 755[(Tenn. 2015)] (quoting *State v. Harrison*, 270 S.W.3d 21, 27-28 (Tenn. 2008)). “Extending the authority to appeal or to seek judicial review to all persons who are ‘aggrieved’ [under section 27-9-101] reflects an intention to ease the strict application of the customary standing principles.” *City of Brentwood v. Metro. Bd. Of Zoning Appeals*, 149 S.W.3d 49, 57 (Tenn. Ct. App. 2004) (quoting *Federal Election Comm’n v. Akins*, 524 U.S. 11, 19, 118 S.Ct. 1777, 141 L.Ed.2d 10(1998)); see *Roten v. City of Spring Hill*, No. M2008-02087-COA-R3-CV, 2009 WL 2632778, at \*3 (Tenn. Ct. App. Aug. 26, 2009). . .

*McFarland*, 530 S.W.3d at 105-07. As in *McFarland*, “we are not aware of any authority limiting the definition of the term “anyone” as used in section 27-9-101 to exclude” the Individual Petitioners. *Id.* at 108. Thus, this Court finds the “Individual Petitioners,” have standing to challenge the number of signatures necessary to place the Referendum on the ballot.

2. WHETHER THE FRATERNAL ORDER OF POLICE HAS STANDING TO CHALLENGE THE DECISION OF THE ELECTION COMMISSION IN CIRCUIT COURT PURSUANT TO T.C.A. § 27-9-101.

Petitioners allege organizational standing for the FOP as the organization advocating on behalf of the MNPd officers. Petitioners also allege standing in that “the FOP will participate in and be in charge of a campaign to inform the voters of Metro Nashville regarding the proposed amendment so they will vote to reject it.” Pet. at ¶ 30. Petitioner FOP cites several cases for the proposition that an individual or organization in charge of a campaign for rejection of a referendum has standing to challenge the Referendum. See *Brackin v. Sumner Cnty. By and Through Sumner Cnty. Bd. Of Cnty. Comm’rs*, 814 S.W.2d 57 (Tenn. 1991); *Rodgers v. White*, 528 S.W.2d 810, 811 (Tenn. 1975); cf. Tenn. Code Ann. § 2-17-101(b) (2018).



Petitioner FOP alleges standing based upon T.C.A. § 2-17-101. T.C.A. § 2-17-101 is captioned “Chancery court; standing” and provides “[a]ny campaign committee or individual which has charge of a campaign for the adoption or rejection of a question submitted to the people may contest the election on the question.” The series of cases Petitioner relies upon are all chancery court cases as well. *Brackin*, 814 S.W.2d at 57; *Rodgers*, 528 S.W.2d at 810. We cannot find jurisdiction for Petitioner FOP based upon T.C.A. § 2-17-101 as this statute only confers jurisdiction upon Petitioner FOP in chancery court.

Respondent Community Oversight Now alleges the FOP does not have standing as the FOP has not alleged a distinct or palpable injury to itself. Resp’t Mem. Supp. Mot. Dismiss. at 6-7. Further, they allege the FOP lacks standing as the individual members of the FOP lack standing. *Id.* at 6. Respondents also argue that the FOP has not alleged a distinct and palpable injury to itself as it must do. *Id.* at 7.

However, as this Court is determining the issue based upon T.C.A. §§ 27-9-101 et seq., this Court find Petitioner FOP has standing as “anyone who may be aggrieved.” As in *McFarland*, “we are not aware of any authority limiting the definition of the term “anyone” as used in section 27-9-101 to exclude” Petitioner FOP, 530 S.W.3d at 108. There is a lack of case law to suggest that “anyone,” given its statutory interpretation, does not include the organization advocating on behalf of the Individual Petitioners. Therefore, this Court finds Petitioner FOP has standing to challenge the decision of the Election Commission pursuant to T.C.A. § 27-9-101.

II. WHETHER PETITIONERS' CHALLENGE TO PLACING THE REFERENDUM ON THE NOVEMBER 6, 2018 BALLOT IS RIPE FOR CONSIDERATION.

Respondents Metro and Community Oversight Now argue that the issue is not ripe for challenge at this time as Petitioners allege future injuries if the Referendum is passed. If an issue is not ripe, the court will not consider it.

Respondents argue the issue is not ripe because the Petitioners allege future injuries if the Referendum is passed. Resp't Mem. Supp. Mot. Dismiss. at 7-8. Respondents rely upon Petitioner's statements that the FOP will be involved in the campaign to persuade voters not to adopt the Referendum. *Id.* Being involved in a future campaign is not sufficient to establish ripeness at this time. Campaigning against the Referendum is exactly the type of "uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 479-80 (1990). Petitioners may not rely upon some future effect the amendment would have on Petitioners if it becomes law. Resp't Mem. Supp. Mot. Dismiss. at 9. This conclusory allegation should not be given any weight by the Court as it is based upon some unknown and speculative special injury, but only if the Referendum is adopted. *Id.*

Petitioners argue that waiting until after the election would render the challenge to the number of signatures on the Petition moot. Petitioners rely upon a series of cases in which the Tennessee Court of Appeals held that a challenge to the measure being placed on the ballot brought after the election is moot. See *Barrett v. Giles Cnty*, M2010-02018-COA-R3-CV 2011 WL 4600431 at \*3-4 (Tenn. Ct. App. Oct. 5, 2011); *James v. State of Tennessee*, M2002-01557-COA-R3-CV, 2003 WL 22136840 at \*4 (Tenn. Ct. App. Sept. 16, 2003).

The central concept of the ripeness doctrine is whether the case involves uncertain or contingent future events that may or may not occur as anticipated or may not occur at all. *Lewis*, 494 U.S. at 479-80. To determine whether a particular dispute is ripe, the court considers (1) whether the issues in the case are ones appropriate for judicial resolution and (2) whether the court's refusal to act will cause hardship to the parties. *B&B Enter. Of Wilson Cnty., LLC., v. City of Lebanon*, 318 S.W.3d 839, 848 (Tenn. 2010). The court will decline to act "where there is no need for the court to act or where the refusal to act will not prevent the parties from raising the issue at a more appropriate time." *Id.* at 849 (citing *AmSouth Erectors, LLC. v. Skaggs Iron Works, Inc.*, No. W2002-01944-COA-R3-CV, 2003 Tenn. App. LEXIS 511 (Tenn. Ct. App. Aug. 5, 2003)). As ripeness applies to pre-election challenges, "[g]enerally, 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." *City of Memphis v. Shelby Cnty Election Comm'n*, 146 S.W.3d 531, 539 (Tenn. 2004 (citing 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)). Thus, a pre-election challenge to the sufficiency of the signatures on a petition referendum is ripe to a challenge to the form of the Referendum.

As Petitioners are challenging the number of signatures on the Petition, not the substance of the Referendum, this issue is ripe for judicial determination. If this Court were to wait until after the election, the injury to Petitioners would have already occurred in that the Referendum will be placed on the ballot and voted on without the requisite number of signatures required.

III. WHAT IS THE PRECEDING GENERAL ELECTION AS DEFINED IN SECTION 19.01 OF THE CHARTER?

1. TO AMEND THE CHARTER THROUGH A REFERENDUM, SECTION 19.01 REQUIRES A PETITION TO BE FILED WITH SIGNATURES EQUAL TO TEN PERCENT OF THE VOTES CAST IN THE PRECEDING GENERAL ELECTION.

This Court has been asked to determine what the Preceding General Election is as stated in Section 19.01 of the Charter. Section 19.01 of the Charter states:

An amendment or amendments may be proposed . . . (2) upon petition filed with the metropolitan clerk, signed by ten (10) per cent of the number of the registered voters of Nashville-Davidson County voting in the preceding general election, the verification of the signatures to be made by the Davidson County Election Commission and certified to the metropolitan clerk.

In determining when the Preceding General Election was, this court reviews the decision of the Election Commission to determine if the decision to place the Petition on the November 2018 Election ballot was illegal, arbitrary, capricious, or beyond its jurisdiction. *Armstrong v. Bd. of Dirs. of Fayette Cnty. Gen. Hosp.*, 553 S.W.2d 77, 80 (Tenn. Ct. App. 1976), *State ex rel. Potter v. Harris*, No. E2007-00806-COA-R3-CV, 2008 WL 3067187 at \*2 (Tenn. Ct. App. Aug. 4, 2008). This Court does not afford the Election Commission's interpretation of the law any deference or presumption of correctness. *McFarland*, 530 S.W.3d at 91. This Court interprets the law de novo. *Id.*

2. WHETHER THE AUGUST 2015 ELECTION IS THE PRECEDING GENERAL ELECTION AS CONTEMPLATED BY SECTION 19.01 OF THE CHARTER.

Petitioners argue that the Preceding General Election was the August 2015 Election. Pet'r's Br. at 23-24. Petitioner relies upon the Tennessee Supreme Court's decision in *Wallace v. Metro Gov't of Nashville and Davidson Cnty.*, to state that the Preceding General Election was the August 2015 Election, 546 S.W.3d 47, 55 (Tenn. 2018). Petitioners argue that the August

2016 Election was not a Charter Section 15.01 general metropolitan election and it, therefore, cannot be the Preceding General Election. Petitioners contend that the Tennessee Supreme Court:

concluded that a regular August election is not a Section 15.01 general metropolitan election, stating that the term ‘general metropolitan election’ is limited to the particular general election at which the Mayor, Vice Mayor, Councilman-at-Large, and District Councilman are elected in August of each fourth odd-numbered year, beginning in 1971, as called for in section 15.01 of the Charter.

Pet’r Br. at 19 (citing *Wallace*, 546 S.W.3d at 55). According to Petitioners in *Wallace*, the “Supreme Court expressly rejected the argument that a regular August election, occurring in August of even-numbered years, was a Section 15.01 general metropolitan election.” Pet’r Br. at 19 (citing *Wallace*, 546 S.W.3d at 55). Petitioners argue that *Wallace* and *Wise*, when read together, leave no room for doubt that the Preceding General Election was the August 2015 Election. *Id.* (citing *Wallace*, 546 S.W.3d at 55 and *State ex rel. Wise v. Judd*, 655 S.W.2d 952, 953 (Tenn. 1983)). Petitioners contend that the Tennessee Supreme Court addressed the issue of whether the even-year regular August election was a general metropolitan election in *Wallace*, and that the Tennessee Supreme Court expressly rejected the argument that an even-year regular August election is a Section 15.01 general metropolitan election. *Id.* (citing *Wallace*, 546 S.W.3d at 54-56). Read together, Petitioners contend that *Wise* and *Wallace* mean the Preceding General Election was the August 2015 Election. *Id.*

Petitioners contend the decisions in *Wise* and *Wallace* compel the conclusion that the Section 19.01 Preceding General Election refers to a Section 15.01 general metropolitan election. *Id.* at 20. Petitioners argue the legislative history supports this conclusion as the Metro government was the first fully unified city-county government of its kind in both Tennessee and

the country. *Id.* at 21. When created, the Charter did away with previous elected officials for the City of Nashville and created the positions of Mayor, Vice-Mayor, Councilmen-at-Large, and District Councilmen. *Id.* The Charter established that these municipal officials would be elected at a Metro-only election known as the general metropolitan election. *Id.* (citing Charter § 20.20). This election is the election held every four years beginning in August 1971, resulting in the last election in August 2015. *Id.* Positions other than the Mayor, etc. are referred to as “‘county constitutional officers,’ including sheriff, trustee, register, etc.” *Id.* The Metro Charter cannot abolish these county officers, *Id.* (citing Tenn. Const. Art. VII, § 1, T.C.A. § 7-2-108(a)(16) (2018), and *Metro. Gov’t v. Poe*, 383 S.W.2d 265, 274 (Tenn. 1964)), nor can the Charter change the election procedures for these officers. *Id.* The county constitutional officers are elected during the “regular August election” which is the “election held on the first Thursday in August of every even-numbered year.” *Id.* (citing Tenn. Const. Art. VII, § 5, T.C.A. § 7-2-104(a)(25) (2018)). Candidates running in these even-numbered year elections are elected by political party, so these elections are partisan elections. T.C.A. § 2-13-203(d)(3) (2018).

The legislative history of Section 19.01 also suggests that the Preceding General Election was the last preceding Metro election. *Id.* at 22. Petitioners cite Councilman James Hamilton’s statements when proposing to change the number of signatures required under Section 19.01 from 20% as initially proposed to 10% for petitions to change the Charter. *Id.* A Tennesseean article from August 16, 1972 states:

[i]n order to initiate charter amendments by referendum, a petition must be obtained bearing the signatures of at least 20% of the registered voters. Councilman James Hamilton has proposed that the number of signatures be changed to 10% of the total number of voter in the last previous Metro general election.

Wayne Whitt, *Council Changes Blue Law on 1<sup>st</sup> Reading*, The Tennessean, Aug. 16, 1972, at A1. This suggests the Metro Council intended for the amendment to refer to the last previous Metro general election, which would be the elections held every four odd-numbered years beginning in August 1971. Pet'r Br. at 22.

Petitioners argue that if the Preceding General Election was the August 2015 Election, then the Petition did not have enough verified signature to qualify to be placed on the ballot. *Id.* The August 2015 Election had 104,757 voters, so 10,475 verified signatures were required. *Id.*

Respondent Metro agrees that the August 2015 Election was *a* preceding general election, but it was not *the* Preceding General Election. Resp't Br. 3-5. Respondent Metro argues the Preceding General Election was the August 2016 Election as discussed below. Respondent Metro recognizes that in *Wise*, the Tennessee Supreme Court refers to both the August 1979 election (a general metropolitan election) and the August 1982 election (a general municipal election) and selects the August 1982 election as the Preceding General Election that is to be used. *Id.* at 5 (citing Exhibit 3, pg. 3; Exhibit 4, pg. 2).

Respondent Metro also contends that this Court does not need to refer to legislative history to determine the phrase Preceding General Election as there is no ambiguity that requires reaching legislative history. *Id.* The newspaper article Petitioners reference uses the phrase "last previous Metro general election." *Id.* There is no indication that the newspaper reporter's phrase was a term of art as the Charter uses the phrase Preceding General Election. *Id.*

In *Wise*, the appellant "filed two petitions for a referendum election on proposed amendments to the charter of the Metropolitan Government of Nashville and Davidson County, Tennessee," 655 S.W.2d. at 952-53. Local officials challenged the number of signatures on the petitions as insufficient based upon the Charter. *Id.* The issue in *Wise* was "whether this

reference [is] to a preceding Metropolitan general election (regularly held in August) or the preceding state general election, which occurred in November, 1982.” *Id.* The Tennessee Supreme Court affirmed the judgment of the Chancellor stating “the charter, § 15.01, provides for Metropolitan general elections and refers to them as such. We think that the reference in § 19.01 under consideration here is clearly to municipal elections.” *Id.* In *Wise*, the Tennessee Supreme Court stated that the Preceding General Election refers to a county general election, not a state or national general election. *Id.*

The August 2015 Election was a general election as contemplated by the Charter based upon dicta in both *Wise* and *Wallace*. In *Wallace*, the Tennessee Supreme Court determined that “the next regularly scheduled general metropolitan election for Mayor is to be held on August 1, 2019.” *Wallace*, 546 S.W.3d at 54. The Supreme Court continued on to state:

Article 15 of the Charter deals exclusively with elections for the offices of Mayor, Vice Mayor, Councilmen-At-Large, and District Councilmen. As noted, section 15.01 provides that the Mayor, Vice Mayor, Councilmen-At-Large, and District Councilmen are elected in a particular type of municipal general election, referred to as a “general municipal election.” The general municipal election for these enumerated offices is held every fourth odd-numbered year beginning in 1971.

*Id.* Using basic math, the preceding general municipal election by which the Mayor, Vice Mayor, Councilmen-At-Large, and District Councilmen were elected was the August 2015 Election.

3. WHETHER THE PRECEDING GENERAL ELECTION WAS THE MAY 2018 ELECTION AS CONTEMPLATED BY SECTION 19.01 OF THE CHARTER.

Petitioners next contend that if the Preceding General Election was not the August 2015 Election, the Preceding General Election was the May 2018 Election. This conclusion is true if this Court concludes that Section 19.01 refers to any general election in which a Metro office was on the ballot. *Id.* at 23. Prior to Community Oversight Now filing the Petition on August 1,



2018, the May 2018 Election was the most recent election in which Metro officials were elected. *Id.* This election was a general election under state law. *Id.* (citing T.C.A. § 2-1-104(7) (2018)).

Respondent Metro contends that Petitioners are incorrect in their definition of a “general election” as any non-primary election. Resp’t Br. 6. While this is the colloquial definition of a general election, the Charter contemplates several forms of elections: general, metropolitan general, referendum elections, and special elections. *Id.* In *Wallace*, the Tennessee “Supreme Court held that the use of distinct phrases is evidence that the intent of the drafters was to draw a distinction between them. Applying this interpretation, the Supreme Court determined a special election was necessary to fill the mayoral vacancy, pursuant to § 15.03 of the Charter.” *Id.* (citing *Wallace*, 546 S.W.3d at 58). Respondent Metro argues that the May 2018 Election cannot be the Preceding General Election as the Supreme Court ordered a special election in *Wallace* to replace the Mayor. *Id.* (citing *Wallace*, 546 S.W.3d at 58).

Respondent Metro argues that a special election cannot be a general election. *Id.* at 7. Special elections are “held when a vacancy in any office is required to be filled by election at other times than those fixed for general elections.” T.C.A. § 2-14-102 (2018). This was emphasized by the Tennessee Supreme Court in *McPherson v. Everett*, 594 S.W.2d 677 (Tenn. 1980). In *McPherson*, the Tennessee Supreme Court stated “there is no such process as a ‘special general’ election. This is a contradiction in terms.” *Id.* at 680, fn. 8. This distinction is also recognized as black letter law. A general election is “[a]n election that occurs at a regular interval of time.” Black’s Law Dictionary 631 (10<sup>th</sup> ed. 2014). A special election is “[a]n election that occurs in an interim between general elections and, usu. [t]o fill a sudden vacancy in office.” Black’s Law Dictionary 632 (10<sup>th</sup> ed. 2014). As a special election cannot be a general election, the May 2018 Election cannot be the Preceding General Election.

In *Wallace*, the Tennessee Supreme Court held that a special election must be held to replace Former Mayor Megan Barry after she stepped down, 546 S.W.3d at 49. The issue in *Wallace* was “whether the vacancy in the Office of Mayor of Metropolitan Nashville and Davidson County may be filled at the August 2, 2018 election, or whether it must be filled at a special election pursuant to section 15.03 of the Metropolitan Charter.” *Id.* The Tennessee Supreme Court looked at Section 15.03 that requires a special election to elect a mayor if a “general municipal election” is not scheduled to be held within one year from the vacancy. *Id.* at 53. The Tennessee Supreme Court looked at the difference between a Section 15.03 that states “general municipal election” and other “general elections” in sections. See Section 19.01. *Id.* at 54. The Tennessee Supreme Court concluded that “‘general metropolitan elections’ are one unique type of the broader category of municipal ‘general elections.’ All municipal ‘general elections,’ however, are not ‘general metropolitan elections.’” *Id.* at 55. The Tennessee Supreme Court ordered the Davidson County Election Commission to “set a special election.” *Id.* at 58. As the Tennessee Supreme Court ordered a special election for the May 2018 Election, a special election cannot be the Preceding General Election. Thus, this Court cannot use the May 2018 Election to determine the number of signatures required for the Petition.

4. WHETHER THE NOVEMBER 2016 ELECTION IS THE PRECEDING GENERAL ELECTION AS CONTEMPLATED BY SECTION 19.01 OF THE CHARTER.

Petitioners contend that, alternatively, the Preceding General Election was the November 2016 Election. *Id.* at 24. The November 2016 Election was a general election at which party membership was not required to participate.

The Tennessee Supreme Court expressly rejected the argument that a state or federal election was the Preceding General Election in Section 19.01 of the Charter. See *Wise*, 655

S.W.2d. at 952-53. The Tennessee Supreme Court held that a Preceding General Election must be a municipal general election. *Id.* Thus, the November 2016 Election cannot be the Preceding General Election.

5. WHETHER THE AUGUST 2016 ELECTION IS THE PRECEDING GENERAL ELECTION AS CONTEMPLATED BY SECTION 19.01 OF THE CHARTER.

Petitioners argue that the “August 2016 Election” cannot be the Preceding General Election as it was not an election at which Metro officials were elected as argued above.

Respondent Metro argues that the Preceding General Election is the August 2016 Election as the Tennessee Supreme Court “has told us that the Charter uses the terms general election and general metropolitan election to mean different things, and that the phrase ‘general election’ in the Charter encompasses more than just general metropolitan elections.” Resp’t Br. at 2. Respondent Metro contends that the Tennessee Supreme Court has held that the Preceding General Election may be a general metropolitan election or a municipal general election. *Id.* at 3. In *Wallace*, the Supreme Court summarized its intentions and stated that the phrase general election used in the Charter encompasses more than the every 4 year general metropolitan election:

That the intent of the drafter of the Charter was to draw a distinction between “general metropolitan elections” and all other “general elections” is evidenced by the use of these distinct phrases within section 15.03 to address different events. We do not read the use of the distinct phrases “general metropolitan election” and “general election” to be merely accidental. Rather, we view the two phrases to have been intentionally and thoughtfully employed to refer to different elections. The former phrase refers to the particular general election at which the Mayor, Vice Mayor, Councilmen-at-Large, and District Councilmen are elected in August of each fourth odd-numbered year, beginning in 1971, as called for in section 15.01 of the Charter. In contrast, the latter phrase refers more broadly to any municipal general election, including but not limited to general municipal elections. In other words, “general metropolitan elections” are one unique type of the broader category of municipal “general elections.” All municipal “general elections,” however, are not “general metropolitan elections.” . . .

Our holding in *Wise* was that the phrase “preceding general election” used in section 19.01 of the Charter refers to *municipal* general elections. . .

*Wallace*, 546 S.W.3d 55, 57-58 (citing *Wise*, 655 S.W.2d at 952). As the August 2016 Election was a municipal general election since the Metro Assessor of Property was elected, the August 2016 Election is *the* Preceding General Election.

Since there was a municipal general election on August 4, 2016, the Preceding General Election cannot be the August 2015 Election as Petitioners contend. An election for the municipal position of Assessor of Property occurred on August 4, 2016. Davidson County Election Commission, *August 4, 2016 Election Results (Unofficial)*, <https://www.nashville.gov/Election-Commission/About/Historical-Information/Election>Returns/160804.aspx> (last visited Sept. 19, 2018). In the “August 2016 Election,” voters selected candidates in the primaries for representatives to the US House of Representatives 5<sup>th</sup> District, Tennessee Senate Districts 18 and 20, and Tennessee House of Representatives Districts 50 – 56 and 58 – 60. *Id.* Voters also choose to either retain or replace several judiciary positions including 3 seats on the Tennessee Supreme Court, 3 seats on the Tennessee Court of Appeals, and 4 seats on the Tennessee Court of Criminal Appeals. *Id.* In addition to the primaries, voters elected representatives to City Council District 1, Assessor of Property, School Board Member Districts 1, 3, 5, 7, and 9. *Id.* The election for Assessor of Property is a municipal general election pursuant to the Charter. Therefore, the Preceding General Election, as contemplated by Section 19.01 of the Charter, was the August 2016 Election.

IT IS THEREFORE ORDERED, ADJUGDED, AND DECREED that the Preceding General Election, as contemplated by § 19.01 of the Charter of the Metropolitan Government of Nashville and Davidson County, Tennessee, was held on August 4, 2016. As 47,074 people

voted in the general election held on August 4, 2016, ten percent of the vote count is 4,707. Therefore, this Court AFFIRMS the decision of the Davidson County Election Commission to place the Referendum upon the ballot for the November 2018 Election.

Court costs are taxed to the Petitioners for which execution may issue, if necessary.

ENTERED THIS 19<sup>th</sup> DAY OF SEPTEMBER, 2018.



JUDGE KELVIN JONES

# **SCHEDULE 34**

IN THE EIGHTH CIRCUIT COURT FOR THE TWENTIETH JUDICIAL DISTRICT  
AT NASHVILLE

2016 DEC 16 PM 12:50

RICHARD M. ROCKER, CLERK

RACHEL AND P.J. ANDERSON )  
 )  
 PLAINTIFFS, )  
 )  
 VS. )  
 )  
 THE METROPOLITAN GOVERNMENT )  
 OF NASHVILLE AND DAVIDSON )  
 COUNTY, )  
 )  
 DEFENDANT. )

*[Signature]*

DOCKET NO. 15C3212

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**INTRODUCTION**

On November 18, 2016, the Court heard Metropolitan Government of Nashville and Davidson County's (Metro) Motion to Alter or Amend or in the Alternative, for a Stay. Metro's motion asks the Court to alter or amend the Court's Order entered October 28, 2016, ("October 28 Order") to conclude that (a) Metro's STRP ordinance is not vague, and, even if it is, (b) it is only vague "as-applied" to the Andersons' property. Metro also requests, in the event that the Court denies their Motion to Alter or Amend on both grounds, the Court enter a stay of its ruling for 200 days in order to allow Metro a chance to amend the STRP ordinance.

On November 18 the Court also heard Rachel Anderson's and P.J. Anderson's (collectively, "the Andersons") Motion for Permanent Injunction and Order for Necessary and Proper Relief ("Motion for Injunction"). The Andersons request an injunction that would prohibit Metro from enforcing the STRP ordinance.

For the reasons stated herein Metro's Motion to Alter or Amend is partially **GRANTED**, Metro's Motion to Stay is **DENIED**, and the Andersons' Motion for Permanent Injunction is **DENIED**.

**METRO'S MOTION TO ALTER OR AMEND**

**I. STANDARD OF REVIEW.**

A Rule 59 motion can be granted in a limited number of circumstances: "(1) when the controlling law changes before a judgment becomes final, (2) when previously unavailable evidence becomes available, or (3) for *sui generis* reasons, when a judgment should be amended to correct a clear error of law or to prevent injustice." *Bradley v.*



*McLeod*, 984 S.W.2d 929, 933 (Tenn. Ct. App. 1998); *see also Vaccarella v. Vaccarella*, 49 S.W.3d 307, 312 (Tenn. Ct. App. 2001). However, a Rule 59 motion that “simply seek[s] to relitigate matters that have already been adjudicated” will not be granted. *Vaccarella*, 49 S.W.3d at 312.

## II. AS-APPLIED CHALLENGE V. FACIAL CHALLENGE.

### A. METRO’S ARGUMENT.

Metro’s Motion to Alter or Amend requests that the Court amend its October 28 Order to reflect that the STRP ordinance at issue is vague “as-applied” to the Andersons. Metro argues that, without a first amendment claim, the Andersons are limited to an “as-applied” challenge to the STRP ordinance because they lack standing to bring a “facial” challenge.

### B. THE ANDERSONS’ ARGUMENT.

The Andersons argue that nothing prohibits them from bringing a facial challenge to the statute because “any plaintiff may argue that a law is vague in all of its application.” (Supp. Brief Re. Facial Challenges).

### C. DISCUSSION.

There is a long line of cases that support Metro’s argument that a party without a first amendment claim is likewise without standing to make a facial challenge.<sup>1</sup> However,

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<sup>1</sup> *United States v. Mazurie*, 419 U.S. 544, 550 (1975) (“[V]agueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand.”); *Chapman v. United States*, 500 U.S. 453, 467 (1991) (“First Amendment freedoms are not infringed by [the challenged statute], so the vagueness claim must be evaluated as the statute is applied to the facts of this case.”); *United States v. Angiulo*, 897 F.2d 1169, 1179 (1st Cir. 1990) (“Rather, in the absence of first amendment considerations, vagueness challenges must be examined in light of a case’s particular facts.”); *United States v. Pungitore*, 910 F.2d 1084, 1104 (3d Cir. 1990) (“[O]utside the First Amendment context, a party has standing to raise a vagueness challenge only insofar as the statute is vague as applied to his or her

the Andersons allege that a facial challenge can be made even in the absence of a first amendment claim if “the enactment is impermissibly vague in all of its applications.” (Pl.’s Supp. Br.) (citing *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982)). The Andersons rely on *Village of Hoffman Estates* as “the seminal case” for analyzing facial challenges to city ordinances. (Supp. Brief Re. Facial Challenges, p. 2).

In *Village of Hoffman Estates*, the plaintiff brought “a pre-enforcement facial challenge to a drug paraphernalia ordinance.” *Vill. of Hoffman Estates*, 455 U.S. at 491. The ordinance made it unlawful for any person “to sell any items, effect, paraphernalia, accessory or thing which is designed or marketed for use with illegal cannabis or drugs, as defined by Illinois Revised Statutes, without obtaining a license therefor.” *Id.* at 492. “[I]nstead of applying for a license or seeking clarification via the administrative procedures that the village had established for its licensing ordinances,” the plaintiff filed suit alleging that the law was “unconstitutionally vague and overbroad.” *Id.* at 491-92. The 10th Circuit Court of Appeals has examined the role of *Village of Hoffman Estates* in vagueness doctrine:

Facial challenges are proper in two circumstances. First, a statute may be challenged on its face when it threatens to chill constitutionally protected conduct, especially conduct protected by the First Amendment. If a statute is so vague that it can reasonably be interpreted to prohibit constitutionally

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specific conduct.”); *Abell v. Potomac Ins. Co. of Illinois*, 946 F.2d 1160, 1167 (5th Cir. 1991) (“[O]utside the First Amendment context, a party has standing to raise a vagueness challenge only insofar as the statute is vague as applied to his or her specific conduct.”); *United States v. Hill*, 167 F.3d 1055, 1063 (6th Cir. 1999) (“In cases such as this, where first amendment interests are not threatened, the court examines whether the statute is unconstitutionally vague as applied to the specific facts of the case; not whether it is unconstitutional on its face.”); *United States v. Lim*, 444 F.3d 910, 915 (7th Cir. 2006) (“Vagueness challenges that do not involve First Amendment freedoms must be analyzed as applied to the specific facts of the case at hand.”); *United States v. Stephenson*, 557 F.3d 449, 456 (7th Cir. 2009) (“Unless a vagueness challenge threatens a First Amendment interest, a court must examine the challenge on an ‘as-applied’ basis—that is, whether the statute is unconstitutionally vague in light of the facts of the case at hand.”).

protected speech as well as conduct the state may constitutionally forbid, people may choose to refrain from speaking rather than challenge the statute's constitutionality in their criminal prosecution. Thus, freedom of speech will be chilled. We allow a person who is prosecuted for conduct which the state may constitutionally forbid to challenge the statute as vague on its face, rather than restricting him to challenging it as applied to his conduct, because those who refrain from speech will never have a chance to make their claims in court.

...

Second, a facial challenge to the constitutionality of a statute may in some instances be appropriate on pre-enforcement review. In a declaratory judgment action no one has been charged so the court cannot evaluate the statute as applied. In these cases, the challenger may attempt to facially attack the statute as "vague in all of its applications." *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497, 102 S.Ct. 1186, 1193, 71 L.Ed.2d 362 (1982). If a statute is vague in all its applications then it will necessarily be vague 'as applied' in every case. The statute would thus be void on its face. On the other hand, since the Colorado statute challenged here does not threaten to chill constitutionally protected conduct, and has been applied to the challengers, we hold that we must examine the statute as applied for vagueness in light of the conduct with which the Gaudreaus are charged.

*United States v. Gaudreau*, 860 F.2d 357, 360–61 (10th Cir. 1988).

In Tennessee, *Village of Hoffman Estates* has been taken to require a high burden for facial challengers: To succeed on a facial challenge "the complainant must prove that the enactment is vague 'not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.'" *State v. Burkhardt*, 58 S.W.3d 694, 699 (Tenn. 2001) (quoting *Vill. of Hoffman Estates*, 455 U.S. at 495, n. 7); *Waters v. Farr*, 291 S.W.3d 873, 921–22 (Tenn. 2009) ("Stated another way, the challenger must demonstrate that the law cannot be constitutionally applied to anyone.").

The Tennessee Supreme Court has also supported a restrained and cautionary analysis when considering facial challenges:

Courts considering a facial challenge to a statute should proceed with caution and restraint because holding a statute facially unconstitutional may result in unnecessary interference with legitimate governmental functions. Accordingly, the courts view facial invalidity as 'manifestly strong medicine' and invoke it sparingly and only as a last resort.

There are at least three reasons for the courts' reticence to invalidate statutes on their face. First, claims of facial invalidity often rest on speculation and thus run the risk of the 'premature interpretation of statutes on the basis of factually barebones records.' Second, facial challenges 'run contrary to the fundamental principle of judicial restraint' by inviting the courts to 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' Third, 'facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution.'

Thus, a successful facial constitutional challenge results in the wholesale invalidation of the statute. While passing on the validity of a statute wholesale may be efficient in the abstract, any gain is often offset by losing the lessons taught by the particular. For this reason, many courts view 'as applied' challenges as the 'basic building blocks' of constitutional adjudication. 'As applied' challenges are preferred because, if they are successful, they do not render the entire statute completely inoperative. In some circumstances, the courts can best fulfill the legislature's intent by prohibiting only the unconstitutional applications of a statute, while allowing the State to enforce the statute in other circumstances.

*Waters v. Farr*, 291 S.W.3d 873, 922-23 (citations omitted).

The Andersons rely on *Smith County v. Enoch* to support their argument that *Burkhart* is not limited to facial challenges to criminal law because the court in that case heard a facial challenge to a land use restriction. No. M199900063COAR3CV, 2003 WL 535914, at \*6 (Tenn. Ct. App. Feb. 26, 2003). However, in that case, the defendant stipulated that the law being challenged applied to him and argued instead that it was

facially vague. *Id.* at \*7. Therefore, the court in *Enoch* was hearing the facial claim as a “last resort.” *Waters*, 291 S.W.3d at 922.

D. ANALYSIS.

This is a situation apart from *Village of Hoffman Estates*. Here, unlike in *Village of Hoffman Estates*, the Andersons actually applied for a non-owner occupied STRP license but were denied. (Compl. ¶ 77) (“The Andersons decided to get a non-owner occupied permit . . . On August 19, 2015, the Andersons simply tried to convert their owner-occupied to a non-owner occupied permit . . . They were denied on that date.”). Further, in their Complaint, the Andersons allege that *they* are exempt from the STRP ordinance. (Compl. ¶¶ 93-97.) This distinguishes the Andersons situation from *Village of Hoffman Estates*, where pre-enforcement review precluded an “as-applied” review due to a dearth of facts; in fact, the Andersons’ pleadings, motions, and arguments are rife with facts concerning their specific circumstances.

That is not the case here; the Court concluded that the STRP ordinance was vague as applied to the Andersons property. Therefore, to go further, would not be granting a facial challenge as a “last resort.” *Id.*

Assuming, *arguendo*, that the Andersons’ do have standing to bring a facial claim, the Court need not determine whether the Andersons have satisfied the burden of proof for a facial claim because the Court concludes that the STRP ordinance is vague “as-applied” to the Andersons property. However, even assuming that the Court should go the step further and adjudicate the facial challenge, the Andersons have simply not met their burden of proving that the STRP ordinance is “impermissibly vague in all of its

applications,” *Vill. of Hoffman Estates*, 455 U.S. at 494, and that “no standard of conduct is specified at all,” *Burkhart*, 58 S.W.3d at 699.

Accordingly, the Court amends its October 28 Order by clarifying that the STRP ordinance was unconstitutionally vague “as-applied” to the Andersons.

### III. VAGUENESS.

#### A. METRO’S ARGUMENT.

Metro’s also asks the Court to amend another part of its October 28 Order. First, Metro argues that the Court committed clear error by not engaging in statutory interpretation, which is required before a legislative act may be deemed vague. Metro argues that after the Court “determined that the STRP ordinances were subject to multiple interpretations, it should have taken the additional step of giving them a reasonable construction rather than striking them down on vagueness grounds merely because they could have been drafted with greater readability.”<sup>2</sup> (Memo. in Supp. of Metro’s Mot. to Alter or Amend, p. 2) (citations omitted). Metro further argues that “there is a reasonable construction of the ordinances that would resolve the ambiguities in the definition of STRP.” *Id.* In support of its argument that the STRP ordinances are not vague, Metro argues the Court can and should consider the primary use of the Andersons property and the applicable land use tables in determining if a property is an STRP.

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<sup>2</sup> Of course, the Court did not “strik[e] them down on vagueness grounds *merely* because they could have been drafted with greater readability,” the Court concluded that “a person of average intelligence would not be able to understand the differences and/or distinctions between STRPs and hotels, bed breakfasts, and boarding houses.” (Oct. 28 Order).

**B. THE ANDERSONS' ARGUMENT.**

The Andersons respond that the ordinance is unconstitutionally vague. Generally, they argue that the ordinance defining STRPs is vague because it does not clearly enough define what distinguishes STRPs from several other classifications of property. Further, they argue that Metro's suggested approach to interpreting the ordinance—i.e., taking the permissible use and zoning district into account—is logically flawed and that there are no tools of statutory interpretation through which the ordinance can be saved from its own ambiguities.

**C. DISCUSSION.**

"The due process clause of the Constitution provides the foundation for the void for vagueness doctrine." *Columbia Nat. Res., Inc. v. Tatum*, 58 F.3d 1101, 1104 (6th Cir. 1995); *State v. Crank*, 468 S.W.3d 15, 22 (Tenn. 2015). The doctrine has "two primary goals": "[f]irst, to ensure fair notice to the citizenry; second, to provide standards for enforcement by the police, judges, and juries." *Columbia Nat. Res., Inc.*, 58 F.3d at 1104.

The U.S. Supreme Court has explained the bedrock values that vague laws offend:

"Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory applications"

*Grayned v. City of Rockford*, 408 U.S. 104, 108–109 (1972)). Accordingly, there are two grounds on which a law may be found to be unconstitutionally vague: (1) if the law

requires or forbids "the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application," or (2) if the law "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id.* The first ground exists in part because it is assumed "man is free to steer between lawful and unlawful conduct," and the requirements of due process demand that "laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly" to keep from trapping "the innocent by not providing fair warning." *Id.* While the first ground concerns notice to those who must comply with the law, the second goal "relates to notice to those who must enforce the law." *Id.* ("If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.").

#### D. ANALYSIS.

There are four definitions at issue:

"Short term rental property (STRP)" means a residential dwelling unit containing not more than four sleeping rooms that is used and/or advertised for rent for transient occupancy by guests as those terms are defined in Section 5.12.010 of the metropolitan code. Dwelling units rented to the same occupant for more than thirty continuous days, bed and breakfast establishments, boarding houses, hotels, and motels shall not be considered short term rental property. Metro Code 17.04.060.

"Bed and breakfast inn" means four through ten furnished guest rooms for pay. Meals may be provided overnight guests. The maximum stay for any guest shall be fourteen consecutive days. Metro Code 17.04.060.

"Boarding house" means a residential facility or a portion of a dwelling unit for the temporary accommodation of persons or families in a rooming unit, whether for compensation or not, who are in need of lodging, personal services, supervision, or rehabilitative services. Metro Code 17.04.060.



"Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes within the area of the jurisdiction of the metropolitan government, and includes any hotel, inn, tourist court, tourist camp, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration. Metro Code 5.12.010.<sup>3</sup>

The fundamental problem in this case is not whether any of the four definitions listed above are vague standing alone; the issue—given that the STRP ordinance specifically exempts hotels, bed and breakfasts, and boarding houses—is whether those definitions are reconcilable in such a way that a person of “ordinary,” “common,” or “average” intelligence has sufficient notice of whether they are an STRP or exempted as one of the other categories to the degree of certainty necessary to satisfy due process.

Accordingly, in its October 28 Order, the Court did not conclude that the Andersons property did not fit the definition of STRP, but that the property fit into both the definition of STRP and the definitions of properties explicitly and specifically exempted from the definition of STRP. Further, given the substantial overlap between the definition of STRP and the definition of property categories excluded from the definition of STRP, the Court could not conclude whether the Andersons were subject to or exempted from the

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<sup>3</sup> Metro argues that the Court should not consider the definition of hotel contained within chapter five of the Metro Code because chapter five limits application of its definitions to that chapter alone. This argument is less persuasive given that the definition of STRP specifically references chapter five for other definitions. Metro Code 17.04.060(B). However, even if the Court ignores the definition of hotel contained in chapter five and instead makes use of the definition of hotel contained within the “most current edition of Webster's Unabridged Dictionary,” as required by Metro Code 17.04.060(A), there is nevertheless still substantial overlap between the definitions of “hotel” and “STRP.” Merriam-Webster's Dictionary, Definition of Hotel, <https://www.merriam-webster.com/dictionary/hotel> (“[A]n establishment that provides lodging and usually meals, entertainment, and various personal services for the public.”).

STRP ordinance. And, because the Court could not make a conclusion with the required degree of certainty, then a person of “ordinary” intelligence could not either.

Metro suggests that this problem can be solved by making reference to the primary use of the Andersons’ property. Metro alleges that “the only way to confuse the incidental short-term rental use of the Andersons’ home with a hotel, bed and breakfast or boarding house is to wholly ignore the primary use of the Andersons’ home as their family’s long-term residence.” (Memo. in Supp. of Metro’s Mot. to Alter or Amend). This argument ignores the fact that the Andersons’ brought this declaratory judgment action in order to define the scope of their rights and responsibilities as a non-owner occupied property. (Compl. ¶ 77). Given that the Andersons brought this action to define their rights under the ordinance as a non-owner occupied STRP, reference to their use of the property as an owner-occupied STRP is irrelevant.

Metro also suggests that the law’s ambiguity can be solved by giving the definition of STRP “a reasonable construction within the context of the Zoning Code.” (Memo. in Supp. of Metro’s Mot. to Alt. or Amend, p. 10) (“The plain language of the STRP ordinances distinguishes between a residential accessory use, like the short-term rental of the Andersons’ home, and commercial (or multi-family) principal uses like hotels, bed and breakfasts and boarding houses.”). While this argument might hold water in reference to bed and breakfasts and hotels, the definition of “boarding house” and “STRP” both contain the word “residential,” which further blurs the line between those two categories.

Ultimately, Metro has presented no arguments that show the Court committed clear error in its October 28 Order, and the Court accordingly stands by its previous

ruling: the STRP ordinance is unconstitutionally vague as-applied to the Andersons' property.

**METRO'S MOTION TO STAY**

Metro further requests, if the Court denies its Motion to Alter or Amend on both grounds, that the Court grant a stay of enforcement for 200 days. (Memo. in Supp. of Metro's Mot. to Alter or Amend.) However, the Court has partially granted Metro's Motion to Alter or Amend, and the Court therefore denies Metro's Motion for a Stay.

**THE ANDERSONS' MOTION FOR PERMANENT INJUNCTION**

The Andersons ask the Court to "permanently enjoin enforcement of the STRP definition and order Metro to cease taking enforcement action based upon the STRP definition." (Andersons' Mot. for Perm. Inj.) Given the Court's decision to limit the Andersons' challenge to an "as-applied" challenge, the Andersons are not entitled to an injunction, as Court concludes that the STRP ordinance is unenforceable against them based on the facts in this case.

**CONCLUSION**

**IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:**

1. Metro's Motion to Alter or Amend is **GRANTED** to the extent that the Court clarifies its October 28 Order to reflect that the STRP ordinance is vague "as-applied" to the Andersons property. In all other respects, Metro's Motion to Alter or Amend is **DENIED**.
2. Metro's alternative Motion for a Stay is **DENIED**.
3. The Andersons Motion for Permanent Injunction is **DENIED**.

ENTERED, this 16<sup>th</sup> day of December, 2016.

  
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JUDGE KELVIN D. JONES  
CIRCUIT COURT JUDGE