

**IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS
DIVISION EIGHT**

**TY TIMMERMANN,
GUN OWNERS OF AMERICA, INC.
GUN OWNERS FOUNDATION, and
TENNESSEE FIREARMS
ASSOCIATION**

Plaintiffs,

v.

**CITY OF MEMPHIS, and
CERELYN DAVIS, in her official
capacity as the Chief of the Memphis
Police Department,**

Defendants.

Case No: CT-4797-24

**PLAINTIFFS’ REPLY TO DEFENDANT CITY OF MEMPHIS’S RESPONSE IN
OPPOSITION TO PLAINTIFFS’ MOTION FOR A TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, AND/OR PERMANENT INJUNCTION**

Although freely admitting that the anti-gun Referendum Ordinance No. 5908 (hereinafter “Ordinance”)¹ the Memphis City Council adopted as a proposed ballot measure and Memphis voters approved as charter amendments plainly violates and is preempted by state law, Defendant City of Memphis² (“Defendant”) nonetheless opposes Plaintiffs’ request for a restraining order and a preliminary injunction. Defendant posits that Plaintiffs’ suit is premature because the

¹ For clarity, the Ordinance which the City adopted provided that its provisions setting forth proposed charter amendments would go into effect on a specified date – thereby amending the City Charter – if the electorate approved and enacted those charter amendments via majority vote in a November 2024 general election.

² Defendant Cerelyn Davis, sued in her official capacity as the Chief of Police of the Memphis Police Department, was served by the Shelby County Sheriff on December 18, 2024. Baker, Donelson, Bearman, Caldwell & Berkowitz, PC had already filed a notice of appearance on behalf of Chief Davis on December 5, 2024. Nevertheless, Defendant City’s Response in Opposition filed on December 20, 2024 does not include Chief Davis, who has not filed any responsive pleading as of the date of this Reply. Having therefore failed to object to Plaintiffs’

Ordinance “is unenforceable” until “the Tennessee Legislature changes the law as it currently exists so that the Ordinance is no longer preempted.” City of Memphis’s Response in Opposition (“Opp.”) at 3 (“There is no dispute that Ordinance No. 5908 is preempted by Tennessee state law as it currently stands.”).

Ignoring (i) the Ordinance’s plain language that it “*shall* take effect ... on January 1, 2025,” (ii) the plain language of Article XI, Section 9 of the Tennessee Constitution which mandates that any ordinance “*shall* become effective sixty (60) days after approval by ... voters,” or January 4, 2025, and (iii) the Shelby County Chancery Court’s conclusion that Article XI, Section 9 imposes a “*mandatory* requirement,”³ Defendant charts a different path, asserting that “the Ordinance will only become effective if Tennessee [statutory] law is changed.” Opp. 10.

In support of this curious position, Defendant relies entirely on its own naked assurances, along with seven words plucked from Section 10⁴ of the Ordinance passed by the Memphis City Council – which states that its provisions will “become effective as otherwise provided by law.” Opp. 3. Defendant labels Section 10 “the most critical provision of the Ordinance.” *Id.* And, based on the head-scratching theory that an ordinance may somehow “take effect” but nevertheless not “become effective,” Defendant claims that Plaintiffs do not have standing (Opp. 5-7), that Plaintiffs’ claims are not ripe (Opp. 8-9), and that Plaintiffs will suffer no irreparable harm at the hands of the Ordinance (Opp. 9-10). But because Defendant’s central premise (its

requested relief, injunctive relief should issue against Chief Davis.

³ Order on Petitioner’s Verified Petition for Issuance of Writ of Mandamus, Injunctive Relief and Declaratory Judgment at 2, *Memphis City Council ex rel. City of Memphis v. Shelby Cnty. Election Comm’n*, No. CH-24-1177-I (Shelby Cnty. Chancery Ct. Sept. 13, 2024) (Defendant’s “Exhibit B”).

⁴ The provisions of Section 10 of the Ordinance were not included in the ballot referendum containing the proposed charter amendments that was submitted to the voters.

misreading of Section 10’s language) fails, so too do each of its derivative claims.

1. Memphis Voters Did Not Vote on or Approve “Section 10.”

For starters, Defendant’s “Exhibit A” is not the language that was presented to and approved by Memphis voters. Rather, Defendant’s Exhibit A is a copy of Ordinance No. 5908 as adopted by the City Council on August 6, 2024. It is not a copy of the Memphis ballot⁵ that was submitted to voters on November 5, 2024. Tellingly, the “Section 10” that was adopted by the City Council is conspicuously absent from the ballot language that was presented to voters. In other words, what Defendant labels “the most critical provision of the Ordinance” (Opp. 3) in fact is not part of the voters’ charter amendments *at all*.

Memphis voters simply were not presented with Section 10’s language or any other language that stated that the ballot provisions would only “become effective as otherwise provided by law.” To the contrary, the only ballot language about Ordinance No. 5908 being effective appeared in “Question 2 of 3,” which discusses “the commercial sale of an assault rifle [that] was completed prior to the Effective Date of January 1, 2025....” Thus, any reasonable voter would have concluded that the Ordinance took effect *either* on January 1, 2025, as described by Question 2, *or* potentially on January 4, 2025, as provided by Tennessee Constitution, Article XI, Section 9 (assuming the voters were even aware of that constitutional provision). In contrast, no reasonable voter would have reached Defendant’s tenuous conclusion that the Ordinance’s proposed charter amendments, if approved by the voters, *would not become effective at all*, based on secret language that the City Council knowingly omitted from the language that was presented to the voters on the ballot.

This Court’s role is to interpret the plain words of the ballot’s charter amendments that

⁵ <https://tinyurl.com/yc5rezmb>; see also Compl. ¶3 n.1 and attached hereto as Exhibit 1.

was *approved by the voters*, not some cryptic language hidden in earlier drafts of an ordinance promulgated by the City Council, whose purpose was to place only a portion of the Ordinance’s language on the ballot as proposed charter amendments for the voters to approve or reject. The operative language at issue in this case is no more and no less than the language the voters approved and enacted. Defendant’s self-serving attempt to supplement the language approved by the voters is a nonstarter.

2. Defendant’s Reliance on Legislative Intent Focuses on the *Wrong* Legislative Body.

As explained, the notion is nonsensical that, after *voters* enact certain charter amendment provisions, Defendant may respond ‘well, what the *City Council* really meant was....’ Nevertheless, Defendant says its understanding of Section 10’s language is confirmed by “a clear intent and understanding *by the City* that the Ordinance is unenforceable....” Opp. 3. In support of that claim, Defendant references “a quick internet search [which] corroborates the intent of *the City Council*,” and a single statement by “Memphis *City Council* Chairman JB Smiley Jr.,” who previously asserted that ““*the council* should approve the measures and have an ordinance on the books should state law change.”” *Id.* at 3-4; *see also id.* at 7 (“members of the Memphis *City Council* have described the Ordinance as a trigger law”). But as noted above, neither “the City” nor “the City Council” approved the referendum provisions on November 5, 2024 – that action was solely the decision of the voters.

Moreover, it is axiomatic that purported legislative intent cannot override the text. *See* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 30 (Thompson/West 2012) (“the objective of interpretation is to discern the law-giver’s ... intent,” which “is to be derived solely from the words of the text,” and any focus on “*subjective* intent, as opposed to the objective words that the drafters agreed to invites fuzz-mindedness.”); Oliver Wendell

Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417, 419 (1899) (“We do not inquire what the legislature meant; we ask only what the statute means.”); *Carson Creek Vacation Resorts, Inc. v. State Dep’t. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993) (“legislative intent is to be ascertained from the plain and ordinary meaning of the statutory language used.”); *In re Hedrick*, 524 F.3d 1175, 1188 (11th Cir. 2008) (“[w]e interpret and apply statutes, not [legislative] purposes.”).

In other words, whatever Memphis City Council Chairman JB Smiley (one of 13 members of the Council) personally stated about the Ordinance, or his subjective purpose for supporting it, is irrelevant. See *Hamblen Cnty. Educ. Ass’n v. Hamblen Cnty. Bd. of Educ.*, 892 S.W.2d 428, 434 n.4 (Tenn. Ct. App. 1994) (“comments of legislators, or even sponsors of the legislation, before its passage are not effective to change the clear meaning of the language of the act.”); *Elliott Crane Serv. v. H. G. Hill Stores*, 840 S.W.2d 376, 379 (Tenn. Ct. App. 1992) (“legislative intent ... clearly stated in a legislative act ... cannot be limited or modified by any oral expression during debate.”). The text therefore controls. Reading Law at 56 (“The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.”).

But more fundamentally, the views of the City Council are entirely irrelevant to this case *because it was not the City Council that approved the charter amendments* at the November 5, 2024 general election – it was the voters. To be sure, the City Council *drafted* Ordinance No. 5908, and voted that a portion of the Ordinance be submitted to Memphis voters as a proposed charter amendment. But at that point, the City Council’s role ceased, and the voters took over.⁶

⁶ The procedure and the limited role of a city council are constitutionally established. Article XI, Section 9 provides, in relevant part “A charter or amendment may be proposed by ordinance of any home rule municipality.... It shall be the duty of the legislative body of such

That which was approved on November 5, 2024 is entirely based on the power exercised by the voters, operating in their legislative role, to amend the City Charter – not the City Council, which had no role to play in the process once it submitted the proposed amendments for inclusion on the ballot. *See Chattanooga-Hamilton Cnty. Hosp. Auth. v. City of Chattanooga*, 580 S.W.2d 322, 327 (Tenn. 1979) (“the legislature and the electorate are co-ordinate legislative bodies”).

At best, the City Council’s role was akin to that of an initiative sponsor, who garners a requisite number of signatures on a petition in order to have a referendum measure placed on the ballot. And in such cases, “[t]he opinion of drafters or of legislators who sponsor an initiative is not relevant since such opinion does not represent the intent of the electorate and we cannot say with assurance that the voters were aware of the drafters’ intent.” *Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Comm’n*, 799 P.2d 1220, 1232 n.10 (Cal. 1990); *see also State v. §223,405.86*, 203 So. 3d 816, 831 (Ala. 2016) (same); *League of Women Voters of Mich. v. Sec’y of State*, 959 N.W.2d 1, 19 n.1 (Ct. App. Mich. 2020) (Riordan, J., concurring) (“the drafters’ intent ... does not necessarily reflect the intent of the ratifiers and, thus, it is not particularly helpful in discerning their common understanding...”); *Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 499 (Fla. 2008) (Wells, J., concurring and dissenting) (“whether a drafter intended a certain effect does not matter nearly as much as the probable intent of the voters as evidenced by the materials they had available.”); *Roe v. TeleTech Customer Care Mgmt. (Colo.) LLC*, 257 P.3d 586, 590 (Wash. 2011) (“The court’s purpose when determining the meaning of a statute enacted by the initiative process is to determine the intent of the voters who enacted the measure. ... This court focuses on the language of the statute ‘as the average informed voter voting on the

municipality to publish any proposal so made and to submit the same to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication and

initiative would read it.”); *Ariz. Citizens Clean Elections Comm’n v. Brain*, 322 P.3d 139, 142 (Ariz. 2014) (“the drafter of a voter initiative is not competent to testify about the voters’ intent in passing that initiative.”).

Because the City Council is *the wrong legislative body* – one whose “intent” is entirely irrelevant to this Court’s review of the Charter Amendments as enacted by the voters – this Court should look no further than the text that approved on November 5, 2024. The City Council’s secretive agenda, which apparently was to con the voters into enacting and making “effective” something the Council had no intention actually take effect, cannot override the text of what the voters approved.

3. Defendant’s Cherry-Picked Language from Section 10 Does Not Describe Ordinance No. 5908.

Next, the phrase Defendant cherry-picks out of Section 10 – “become effective as otherwise provided by law” – is entirely inapposite here, because it does not reference Ordinance No. 5908 – neither the version of the Ordinance that was voted on by the City Council to be submitted to the voters nor the charter amendments that were approved by voters. Rather, Section 10’s language plainly refers to Ordinance No. 5877, which previously was promulgated by the City Council. Indeed, Section 10’s language expressly refers to the “Referendum Ordinance,” which “shall take effect from and after the date it shall have [sic] passed by the Council...” And each time that term “Referendum Ordinance” appears, it refers to “Referendum Ordinance No. 5877.” *See id.* at Preamble (“Referendum Ordinance No. 5877 was approved by the Memphis City Council”), Section 1 (“Referendum Ordinance No. 5877 ... ordained by the Council of the City of Memphis, Tennessee”), Section 10 (“Referendum Ordinance ... passed by

such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.”

the Council....”).

In contrast, when Ordinance No. 5908 references *itself* – *i.e.*, the ballot measure as it was approved by the Memphis City Council to be submitted to the voters – it uses the phrase “this Ordinance.” *Id.* at Section 1 (“this ordinance ... submitted by the City of Memphis to its qualified voters”), Section 3 (“this Ordinance ... placed on the ballot”); Section 5 (“this Ordinance ... approved by a majority of the qualified voters”). Thus, Section 10’s language – “become effective as otherwise provided by law” – plainly refers to Ordinance No. 5877 previously passed by the City Council, and not to Ordinance No. 5908 as submitted to the voters. Not only is Section 10 not “the most critical provision of the Ordinance,” in fact it has nothing to do with interpreting the voter-passed charter amendments at all.

Indeed, while Ordinance No. 5877 clearly titles itself “*Referendum* Ordinance No. 5877,”⁷ Ordinance No. 5908 conspicuously differs, adopting the title “Ordinance No. 5908” instead. How Section 10, which clearly references “Referendum Ordinance” – *i.e.*, “Referendum Ordinance No. 5877,” somehow informs interpretation of “Ordinance No. 5908,” Defendant does not say.

With this proper understanding of the text, the meaning of Section 10’s language becomes obvious. As Section 10 explains, after the proposal was “passed by the Council, signed by the Chairman,” and “delivered to the Office of the Mayor in writing by the Comptroller,” it would “become effective as otherwise provided by law.” This phrase – “as provided by law” – is plainly in reference to the process mandated by Article XI, Section 9, which “provide[s]” the “law” on how such proposals become effective as charter amendments. As Section 9 describes, the City Council is to “propose[] by ordinance ... a charter or amendment,” then “publish any

⁷ <https://tinyurl.com/yy8ms7jm> (emphasis added) attached hereto as Exhibit 2.

proposal” and “submit the same to its qualified voters,” whereupon “such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.” This is quite obviously the process “provided by law” to which Section 10 refers. Section 10 does not require a ‘super-secret decoder ring’ to uncover some hidden meaning.⁸ See Reading Law at 69 (“Interpreters should not be required to divine arcane nuances or to discover hidden meanings.”).

4. Defendant Fails to Note that Section 10’s Effective-Date Text Is Boilerplate Language Found in All Manner of Other Ordinances Not Requiring Further Statutory Effectuation.

Section 10 of the Ordinance – which provides that the Ordinance “shall ... become effective as otherwise provided by law” – is no unique text. Indeed, contrary to Defendant’s claim that such language “evidences a *clear intent*” that, “unless and until ... the Tennessee Legislature changes the law as it currently exists,” the “Ordinance is unenforceable,” Opp. 3 (emphasis added), the *same exact language* exists in all manner of other ordinances the City Council adopts – ordinances which do not require enabling or triggering State legislation to be effective or enforceable. Such language therefore cannot “clear[ly]” state what Defendant claims.

For example, Ordinance No. 5913 – which asked voters whether candidates for City Council and Mayor should hold certain qualifications in the *same referendum*⁹ as Ordinance No. 5908 – also contained a verbatim effective-date provision, providing that Ordinance No. 5913

⁸ Indeed, the language submitted to voters asked not whether Ordinance No. 5908’s provisions merely “*should*” be added to some sort of City Council legislative wish list (Opp. 2), but rather whether the provisions “*shall*” be enacted with a clearly set effective date, just as other proposed amendments routinely provide. See Section 4, *infra*.

⁹ See *2024 Memphis Area Election Results*, Com. Appeal, <https://tinyurl.com/4ppka82j> (Nov. 6, 2024).

“shall ... become effective as otherwise provided by law.”¹⁰ Likewise, Ordinance No. 5912 – which raised vehicle registration fees – contained the same provision.¹¹ Even an ordinance renaming a park pavilion after a notable Memphian used the same text – that it “shall ... become effective as otherwise provided by law.”¹² Yet there is no question that *those* amendments are effective. How such boilerplate language in Ordinance 5908 can “evidence[] a clear intent” of unenforceability absent triggering legislation, in light of myriad other ordinances using the same “effective date” language, Defendant does not say. Of course, these sorts of “self-serving litigating positions are entitled to no weight. What counts is what the [text] says, and that is entirely clear.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 665-66 (2012).

5. Defendant Misrepresents What the Ordinance Says.

Resisting the obvious meaning of Section 10’s plain language, Defendant claims that the Ordinance “contains language *expressly* stating it is ineffective unless otherwise provided by law.” Opp. 6 (emphasis added); *see also id.* at 8-9 (“Ordinance contains clear language evidencing that the Ordinance becomes effective and enforceable only upon a change to Tennessee law.”); *id.* at 9 (“enforcement of the Ordinance is precluded by the express language of the Ordinance”). But there is nothing “clear” or “express” in Section 10 that says what Defendant claims. Section 10 has literally nothing to say about the circumstances under which the Ordinance’s proposed charter amendments are “*ineffective*” or “*unenforceable*.” It says nothing about what future events, *i.e.*, the alleged “trigger,” would impact the charter amendments’ enforceability. Further, nothing in the ballot provisions that were submitted to the voters contained any language at all suggesting in any way that the charter amendments would

¹⁰ <https://tinyurl.com/3y7t74bj> (Ordinance No. 5913, § 10) attached hereto as Exhibit 3.

¹¹ <https://tinyurl.com/mub5j4ef> (Ordinance No. 5912, § 4) attached hereto as Exhibit 4.

¹² <https://tinyurl.com/4my9mpmf>, § 5.

require changes to the state’s preemption statutes. Defendant’s strained interpretation requires adding words and providing explanations that do not appear in the charter amendments that were placed on the ballot and approved by the voters.

For example, after quoting Section 10’s language, Defendant posits that, “in other words, if and when the Tennessee legislature reverses course and changes the body of law currently preempting the statute [sic, Ordinance],” *then* the Ordinance will “become effective....” Opp. 9-10 (emphasis added); *see also id.* at 7 (“meaning that the Ordinance is not in effect unless and until the Tennessee legislature changes the body of law preempting the Ordinance”). Of course, the Ordinance says nothing about further action being required by the Tennessee legislature, and instead states quite clearly that “this Ordinance shall take effect ... on January 1, 2025.” Defendant’s “in other words” interpretation of Section 10 requires adding a bunch of “other words” that do not appear in the Ordinance or the ballot language of the charter amendments. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 328 (2014) (“the need to rewrite clear provisions of the statute should have alerted EPA that it had taken a wrong interpretive turn.”); *id.* (Defendant “may not rewrite clear ... terms to suit its own sense of how the [Ordinance] should operate.”); *see also Tex. Med. Ass’n v. HHS*, 587 F. Supp. 3d 528, 542 (E.D. Tex. 2022) (“the Rule adds several key words not in the statute. ... The Rule thus impermissibly ‘rewrite[s] statutory language by ascribing additional, material terms.’”).

Similarly, Defendant claims that the Ordinance is a “trigger law,” a term which it defines as “a currently unenforceable law that upon the occurrence of an event ... becomes enforceable.” Opp. 4 & n.4. But nowhere is Ordinance No. 5908’s purported “trigger law” status evident from its text, which says nothing of the sort (either in form or substance).¹³ Nothing in the ballot

¹³ Nor does Article XI, Section 9 contain any sort of “trigger law” aspect. Instead, the

language presented to voters states or even suggests that the amendments would function as “trigger laws.” And, as noted above, any “legislative intent ... that ... the Ordinance acts as a trigger law” (Opp. 10), or the fact that “members of the Memphis City Council have described the ordinance as a trigger law” (Opp. 7) is entirely irrelevant to the charter amendments that were approved by the voters.

Had the City Council desired to draft a real “trigger law,” then Defendant’s Opposition provides a roadmap of how to do it. If the Council had desired that “the Ordinance is not in effect unless and until the Tennessee legislature” acts (Opp. 7), then that is the language it should have used. Similarly, the City Council could have included in the Ordinance a proviso that the charter amendments as presented to the voters were “preempted by Tennessee state law as it currently stands.” *See* Opp. 3. But again, that language is missing.

Indeed, if the City Council wanted an example of a trigger law, it did not have far to go. Just a few years ago, the Tennessee legislature considered an actual “trigger law” bill, which banned abortion within the State and *expressly provided* that it was a contingent statute that would only become effective if specific events were to occur in the future:

this act shall become effective, and to the extent permitted, on the thirtieth day following the occurrence of either of the following circumstances:
(1) The issuance of the judgment in any decision of the United States Supreme

Tennessee Constitution provides a much more direct example question – “Shall this municipality adopt home rule?” – and its consequence – that, “[i]n the event of an affirmative vote[,] ... such municipality shall be a home rule municipality....” *Id.* (emphasis added). Article XI, Section 9 likewise provides that all “proposal[s] shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.” *Id.* The Tennessee Constitution therefore clearly establishes the procedures municipalities must use when adopting proposed amendments for popular vote. Because “[m]unicipalities derive their power from their charters, ... their ordinances must conform to the constitution and general law of the state. It follows that an ordinance of a municipality not sanctioned by its charter, or obnoxious to the constitution and general law, is ipso facto void.” *Bennett v. Mayor of Town of Pulaski*, 52 S.W. 913, 915 (Tenn. Ct. Chancery App. 1899). Section 10 “should be interpreted in a way that avoids placing its constitutionality in doubt” (Reading Law at 247) – *i.e.*, that it is *not* a “trigger” provision.

Court which overrules, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), thereby restoring to the states their authority to prohibit abortion; or
(2) Adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states their authority to prohibit abortion.¹⁴

The Ordinance at issue here contains no such limiting language, instead stating in no uncertain terms that “this Ordinance shall take effect ... on January 1, 2025.” *Id.* at Section 5. Likewise, the ballot language for the charter amendments that the voters considered and adopted contained no such limiting or triggering language.¹⁵ To the contrary, courts routinely “presume[] that a legislature enacts a statute *with the intent that it be enforced.*” *Bryant v. Woodall*, 1 F.4th 280, 286 (4th Cir. 2021) (emphasis added). Defendants offer no theory to depart from that axiom.

6. The Specific Governs the General.

Defendant’s Opposition provides no counterargument on this point, never once attempting to reconcile why the Ordinance – if it was designed to *not become effective* – would explicitly announce the *specific date of its effectiveness*. Indeed, anyone attempting to draft an ordinance that would *not* be effective on January 1, 2025 likely would *not* expressly list January 1, 2025 as the effective date. And once again, the only date that was provided in the ballot language for the charter amendments indicated that the provisions would be effective starting January 1, 2025. This is not the language of ineffectiveness.

¹⁴ <https://www.capitol.tn.gov/Bills/111/Bill/SB1257.pdf>.

¹⁵ Subsequent to the voters’ adoption of the charter amendments and Plaintiffs’ filing of this civil action, the City Council expressed its intention in December 2024 to *modify* the language adopted by voters, to now include express triggering language. *See* Motion of Memphis City Council to Dismiss Complaint and to Deny Plaintiff’s [sic] Request for Injunctive Relief and Incorporated Memorandum of Law at 6 and Defendant’s Exhibit A. This constitutes an all-but-express acknowledgement that the language the City Council previously promulgated and which the voters approved is *not* a “trigger law,” but instead requires modification to become

As noted above, the language in Section 10 of the Ordinance does not describe Ordinance No. 5908 in the first place. And any legislative “intent” is not to be derived from prior iterations of the Ordinance considered by the City Council, but rather by the more truncated ballot text approved by voters. But even if Defendant was able to divine some hidden meaning in Section 10’s “as provided by law” language, Defendant would still lose, because it is a well-settled principle of statutory construction that “[s]pecific provisions relating to a particular subject must govern in respect to that subject, as against general provisions in other parts of the law which otherwise might be broad enough to include it.” *Cont’l Tenn. Lines, Inc. v. McCanless*, 354 S.W.2d 57, 58-59 (Tenn. 1962); *see also State v. Davis*, 173 S.W.3d 411, 415 (Tenn. 2005); *Goodman v. City of Savannah*, 148 S.W.3d 88, 92 (Tenn. 2003); Reading Law at 183 (“If there is a conflict between a general provision and a specific provision, the specific provision prevails....”).

The reason for this principle is simple: “where the mind of the legislature has been turned to the details of a subject and they have acted upon it, a statute treating the subject in a general manner should not be considered as intended to affect the more particular provision.” *Arnwine v. Union Cnty. Bd. of Educ.*, 120 S.W.3d 804, 809 (Tenn. 2003) (citation omitted). Thus, “[i]f two statutes appear to be in conflict with one another, the more specific statute will govern over the more general statute.” *State v. Robinson*, 676 S.W.3d 580, 585 (Tenn. 2023). This Court must give effect to the specific language “shall take effect ... on January 1, 2025,” as well as the express mandate contained in Article XI, Section 9, and reject Defendant’s attempts to read hidden “gotcha” meanings into Section 10’s general language “as otherwise provided by law.” *See also Reading Law* at 174 (“If possible, every word and every provision is to be given

one.

effect.... None should be ignored. None should needlessly be given an interpretation that causes it to ... have no consequence.”).

7. Defendant’s Derivative Arguments Against Plaintiffs’ Standing, Ripeness, and Irreparable Harm Fall Flat.

Because Defendant has grossly misinterpreted as well as misapplied the language contained in Section 10 of Ordinance No. 5908 as adopted by the City Council, each of Defendant’s remaining arguments fail, because each is entirely derivative of Defendant’s Section 10 interpretation. *See* Opp. 10 (“[f]or the same reasons”). Indeed, absent this Court’s intervention, the Ordinance will take effect (i) by its plain terms, (ii) by operation of Article XI, Section 9, and (iii) by the Chancery Court’s prior finding that this ballot measure is subject to Article XI, Section 9’s “mandatory requirement.” Thus, Plaintiffs will be “subject to the” Ordinance, which may be “enforced against” them. *See* Opp. 6 (opining that “neither are [sic] true”); *see also* Tenn. Code Ann. § 39-17-1314(h)(1)(C) (Plaintiffs are “subject to” the Ordinance for preemption purposes merely by being “physically present within the boundaries of the political subdivision for any reason”). Further, Memphis has established default fines for violations of its charter and ordinances such that these would apply even if the charter amendments do not contain specific fines. Memphis, Tenn. Mun. Code § 1-24-1.

Next, Plaintiffs suffer from a “credible threat of enforcement” from Memphis’s “recently enacted” and “non-moribund” Ordinance, and the City has not disavowed an intent to enforce the Ordinance once effective. *See* Memorandum in Support of Plaintiffs’ Motion for a Temporary Restraining Order at 5-6; *cf.* Opp. 7.

Next, Plaintiffs’ claims clearly are ripe. *Cf.* Opp. 8-9. Indeed, the City Council’s own lawyer repeatedly stated in the prior Chancery Court litigation that “any challenge as to the preemption or validly [sic] of the substance of the proposed amendments in Referendum

Ordinance No. 5908 is not ripe ... *[u]nless and until* the voters of the City of Memphis approve the proposed charter amendments...” Verified Petition for Writ of Mandamus, or in the Alternative for Injunctive Relief, or in the Alternative for Declaratory Judgment ¶38, *Memphis City Council ex rel. City of Memphis v. Shelby Cnty. Election Comm’n*, No. CH-24-1177-I (Shelby Cnty. Chancery Ct. Aug. 30, 2024) (emphasis added); *see also id.* ¶40 (“If a majority of the qualified voters of the City of Memphis approve any or all of the proposed home rule amendments ... then any person aggrieved by any amendment with standing may challenge the implementation of Referendum Ordinance No. 5908 at the proper time.”). Because the voters *did* approve the Ordinance, and Plaintiffs *are* now “subject to” its terms and therefore are “aggrieved,” their claims are ripe for review.

Finally, Plaintiffs clearly will suffer irreparable harm in the absence of this Court’s intervention. *Cf.* Opp. 9-10. As the Ordinance takes effect as early as January 1, 2025 or perhaps as late as January 4, 2025 (based on Article XI, Section 9), Plaintiffs who lawfully carry firearms without a permit will be required to forego such exercise of their right to bear arms, or else suffer likely prosecution by the City. This inevitably will foreseeably involve *unlawful* police detention of armed gun owners who are *lawfully* exercising an enumerated constitutional right, a potentially dangerous situation that this Court should enjoin. Next, unable to “demonstrate” a previously “complete[d] ... application” (something that does not exist) to own purported “assault rifles” (whatever that vague and pejorative term means), Plaintiffs will be required to move lawfully owned firearms that they *suspect* to be “assault weapons” out of the City or, again, risk police enforcement. Finally, Plaintiffs will be subject to the ever-present threat that they will be “red flagged” through the City’s new “extreme risk protection order” scheme, deprived of their constitutional rights through secretive and *ex parte* proceedings, and

disarmed by City police operating entirely outside the umbrella of any lawful authority.

In contrast, Defendant agrees that the Ordinance as proposed by the City Council as a ballot initiative and that was approved and enacted by the voters is unlawful and unenforceable under the state’s preemption statutes. It is therefore hard to see how Defendant will suffer any harm by being enjoined from enforcing something it claims to be unenforceable. To the contrary, a declaratory ruling by this Court and the issuance of the requested restraining order and preliminary injunction will make clear to anyone who may be in Memphis – particularly its law enforcement officers – that these Charter Amendments are unenforceable – as the City unequivocally concedes in its Opposition.

8. Defendant’s Admission that the Charter Amendments Are Preempted By State Law Means They Were Adopted in Violation of the Tennessee Constitution.

In its response, the City concedes that the Charter Amendments cannot be enforced without violating State law. Opp. at 3. Yet that same admission is likewise an admission that enactment of the Charter Amendments exceeded the City’s constitutional authority – *i.e.*, an *ultra vires* act – under the “home rule” provisions of the Tennessee Constitution, Article XI, Section 9. Although this issue was raised by the State Attorney General in the prior Chancery Action,¹⁶ the Chancellor did not specifically address the issue whether the ballot measures contained in Ordinance No. 5908 violated the state constitution, finding only that the measure must be placed on the ballot and submitted to voters. Chancery Opinion p. 4. But now that voters approved the Charter Amendments, the question whether those provisions violate the state constitution’s limitations on the authority of “home rule” municipalities, such as Memphis, to enact charter amendments is ripe. Tennessee Constitution, Article XI, Section 9 provides, in relevant part, that

¹⁶ See Respondents’ Opposition to Petition for Writ of Mandamus, filed on September 9, 2024, at pp. 5-10, in *Memphis City Council ex rel. City of Memphis v. Shelby Cnty. Election*

“no charter provision except with respect to compensation of municipal personnel shall be effective if inconsistent with any general act of the General Assembly.” Memphis, being a home rule municipality, “may exercise only those express or necessarily implied powers delegated to [it] by the Legislature in their charters or under statutes.” *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988). Further, Memphis cannot act in areas where the Tennessee Legislature has spoken, and that constitutional denial of authority would be especially true where, as here, the Legislature has expressly preempted the exercise of local authority.

Tennessee courts have enforced this boundary on home-rule authority by rejecting unauthorized local action. See, e.g. *Jones v. Haynes*, 221 Tenn. 50, 424 S.W.2d 197 (1968); *State ex. Rel. Cheek v. Rollings*, 202 Tenn. 608, 308 S.W.2d 393 (1957). As explained by the Supreme Court:

Local self-government by municipalities has run throughout the decisions from the beginning of time and is carried in many State Constitutions, and our decisions generally have construed this right, that is the right to local self-government, in harmony with State statutes. We in this State have the inherent right of self-government but this inherent right does not go beyond the legislative control of such right. [*DeCaro v. City of Collierville*, 213 Tenn. 254, 260, 373 S.W.2d 466, 469 (1963).]

Consequently, whenever local action is in conflict with state law, such as the Charter Amendments enacted by the voters, the state constitution prohibits that action from taking effect: “[w]hen a municipality fails to act within its charter or under applicable statutory authority, the action is ultra vires and void or voidable.” *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988) (quoting *Crocker v. Town of Manchester*, 156 S.W.2d 383, 384 (1941) (emphasis added)).

Thus, the City’s admission that the charter amendments are preempted by state law unless and until state law changes, is itself an admission that the City’s adoption of these charter

amendments was outside of its authority as a home rule municipality, an *ultra vires* act by it, and thus not only unenforceable but also either “void or voidable.”

CONCLUSION

Defendant’s attempts to rewrite the Ordinance and ballot charter amendments into a “trigger law,” in spite of the plain text to the contrary, fails even to clear the starting gate. And because Defendant readily admits that the charter amendments proposed by Referendum Ordinance No. 5908 are preempted by State law and unenforceable, this Court should temporarily restrain or preliminarily enjoin enforcement of the charter provisions, with a permanent injunction soon to follow.

Respectfully submitted,

/s/ John I. Harris III
John I. Harris III - 12099
Schulman, LeRoy & Bennett PC
3310 West End Avenue, Suite 460
Nashville, Tennessee 37203
Tel: (615) 244 6670
jharris@slblawfirm.com

CERTIFICATE OF SERVICE

A copy of the foregoing has been mailed and emailed to the Defendants in care of Bruce McMullen, Jennie Vee Silk, and Ian W. Reagan at Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C., 165 Madison Avenue, Memphis, Tennessee, 38103, through the Court Clerk’s electronic filing system and a courtesy copy has been sent to the Memphis City Council, c/o Allan J. Wade and Brandy S. Parrish, 5050 Poplar Avenue, Suite 1028, Memphis, TN 38157 by through the Court Clerk’s electronic filing system and by email on the 3rd day of January, 2025.

/s/ John I. Harris III