

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

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TY TIMMERMANN,	)	
GUNOWNERS OF AMERICA, INC.,	)	
GUN OWNERS FOUNDATION, and	)	
TENNESSEE FIREARMS ASSOCIATION,	)	
	)	
<i>Plaintiffs,</i>	)	Case No. CT-4797-24
	)	Div. VIII
v.	)	
	)	
CITY OF MEMPHIS and	)	
CERELYN DAVIS, in her Official	)	
Capacity as Chief of the Memphis	)	
Police Department,	)	
	)	
<i>Defendants.</i>	)	

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

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Defendant the City of Memphis (“the City”) hereby files the following Response in Opposition to Plaintiffs’ Motion for a Temporary Restraining Order, Preliminary Injunction, and/or Permanent Injunction (“Motion for TRO”).

The Court should deny Plaintiffs’ Motion for TRO because Plaintiffs lack standing to bring their claims, the claims are not ripe for adjudication, and Plaintiffs will not suffer immediate injury if the temporary injunction is not granted.

**I. BACKGROUND**

On November 14, 2024, Plaintiffs Ty Timmermann, Gun Owners of America, Inc., Gun Owners Foundation, and Tennessee Firearms Association (collectively, “Plaintiffs”) filed their Motion for TRO. Plaintiffs request “a Temporary Restraining Order against Defendants from enforcing the Ordinance, to preserve the status quo, followed by a preliminary and then

permanent injunction.” (Pls.’ Mot., at p. 3.) The Ordinance referenced by Plaintiffs is Ordinance No. 5908, attached hereto as Exhibit A.

The at-issue Ordinance presented three “Questions” to the City of Memphis electorate, all three of which were approved by the voters.<sup>1</sup> Question No. 1 asked voters whether handgun permits should be required for carrying handguns and storing handguns in vehicles within the City of Memphis. (See Exhibit A, at p. 2.) Question No. 2 asked voters whether assault weapons should be deemed a threat to the health, safety, and security of Memphis citizens; whether it should be unlawful for a person to possess or carry, openly or concealed, any assault rifles within the City of Memphis, with the exception of individuals with a handgun permit who possess or carry an assault rifle on their privately owned property or at a shooting range; and whether the commercial sale of assault rifles within the City of Memphis should be unlawful and prohibited. (See Exhibit A, at pp. 2–3.)

Finally, Question No. 3 asked voters whether there should be a “red-flag law” which essentially prevents an individual from “possessing, using, purchasing, or otherwise receiving a firearm” if certain enumerated criteria are met. (See Exhibit A, at pp. 3–7.) Question No. 3 also asked whether law enforcement should be allowed to conduct searches and seize firearms under certain circumstances, if it is established by probable cause that certain individuals have access to a firearm. (See Exhibit A, at pp. 3–7.)

Plaintiffs’ Motion for TRO alleges that, pursuant to Section 5 of the Ordinance, the proposed measures take effect on January 1, 2025. (See Pls.’ Mot., at p. 1.) Despite Plaintiffs’ contention as to the effective date of the Ordinance, the Shelby County Chancery Court in

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<sup>1</sup> *2024 Memphis area Election Results*, COMMERCIAL APPEAL (Nov. 6, 2024, 8:15 AM), <https://www.commercialappeal.com/elections/results/2024-11-05/tennessee/00000/memphis-area>.

*Memphis City Council v. Shelby County Election Commission, et al.*, Case No. CH-24-1177-1, explicitly found “that the effective date provision in Section 5 of Ordinance No. 5908 is elided from the ordinance without effect on the validity and enforceability of the remaining provisions of said ordinance or the mandatory application and operation of the effective date provisions of Article XI, Section 9 of the Tennessee Constitution.”<sup>2</sup> Importantly, Article XI, Section 9 of the Tennessee Constitution provides that any referendum ordinance “shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.” Accordingly, the actual effective date is January 6, 2025, not January 1, 2025.

Moreover, Plaintiffs fail to acknowledge the most critical provision of the Ordinance.

Specifically, Section 10 of the Ordinance states:

Section 10. Enactment of Referendum Ordinance.

BE IT FURTHER ORDAINED, that the adoption of this Referendum Ordinance shall take effect from and after the date it shall have passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

(Exhibit A, at p. 8 (emphasis added)). There is no dispute that Ordinance No. 5908 is preempted by Tennessee state law as it currently stands. *See* Tenn. Code Ann. 39-17-1314(a).

Moreover, the language of Section 10 underlined above evidences a clear intent and understanding by the City that this Ordinance is unenforceable, unless and until it “become[s] effective as otherwise provided by law,” in other words, the Tennessee Legislature changes the law as it currently exists so that the Ordinance is no longer preempted. (Exhibit A, at p. 8.) Furthermore, a quick internet search corroborates the intent of City Council to enact Ordinance

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<sup>2</sup> A copy of the relevant Shelby County Chancery Court Order is attached hereto as Exhibit B.

5908 as a “trigger law.”<sup>3</sup> Memphis City Council Chairman JB Smiley Jr. said, “the council should approve the measures and have an ordinance on the books should state law change.”<sup>4</sup>

With this background in mind, this Court should deny Plaintiffs’ Motion because Plaintiffs are unlikely to succeed on the merits, the issue is not ripe for adjudication, and Plaintiffs face no immediate or irreparable harm.

## II. LEGAL STANDARD

The Tennessee Rules of Civil Procedure govern the permissibility of a temporary injunction, and provide:

**(2) When Authorized.** A temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant’s rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

Tenn. R. Civ. P. 65.04(2) (emphasis in original). Moreover, “[l]ike federal courts, Tennessee trial courts consider four factors in determining whether to issue a temporary injunction,” specifically considering:

(1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.

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<sup>3</sup> The Merriam-Webster Dictionary defines a “trigger law” as “a currently unenforceable law that upon the occurrence of an event (such as a court decision) becomes enforceable.” MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/trigger%20law> (last visited Dec. 20, 2024). Here, the “event” making the Ordinance enforceable would be a change to state preemption law.

<sup>4</sup>Stacey Shrader Joslin, TENNESSEE BAR ASSOCIATION (Nov. 7, 2024), <https://www.tba.org/?pg=LawBlog&blAction=showEntry&blogEntry=115972>; *see also* Lucas Finton, COMMERCIAL APPEAL (Nov. 7, 2024, 10:19 AM), <https://www.commercialappeal.com/story/news/local/2024/11/07/memphis-ballot-measures-passed-reaction/76092590007/>.

*Moore v. Lee*, 644 S.W.3d 59, 63 (Tenn. 2022) (quoting *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020)). While some circumstances may justify the imposition of a preliminary injunction, the Tennessee Supreme Court “observed more than 150 years ago that ‘there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion or is more dangerous in a doubtful case’ than the discretion of granting an injunction.” *Moore*, 644 S.W.3d at 63–64 (quoting *Mabry v. Ross*, 48 Tenn. 769, 774 (Tenn. 1870) (emphasis added)).

### III. ARGUMENT

#### A. **Plaintiffs are unlikely to succeed on the merits because Plaintiffs’ claims are non-justiciable.**

##### 1. **Plaintiffs do not have standing.**

##### a) **Plaintiffs do not have standing under the Tennessee Firearm Preemption Statute.**

Plaintiffs contend that the relevant preemption statute confers standing for them to challenge the Ordinance on preemption grounds. Pls.’ Mot., at p. 2–5; Tenn. Code Ann. § 39-17-1314. It is an axiomatic principle of Tennessee law, that “[w]hen the language of [a] statute is clear and unambiguous, then this Court usually applies the plain language of the statute to resolve the issue.” *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000) (citing *State v. Nelson*, 23 S.W.3d 270, 271 (Tenn. 2000)). Contrary to Plaintiffs’ arguments, the plain language of the statute shows that Plaintiffs do not have statutory standing pursuant to Tenn. Code Ann. § 39-17-1314. The statute provides:

(g)(1)(A) Notwithstanding title 29, chapter 20; title 9, chapter 8; and § 20-13-102, a party may file an action in a court of competent jurisdiction against any of the persons or entities listed in subdivisions (g)(1)(A)(i) and (ii), if the party is adversely affected by:

(i) An ordinance, resolution, policy, rule, or other enactment that is adopted or enforced by a county, city, town, municipality, or metropolitan

government or any local agency, department, or official that violates this section; or

....

(h) As used in subsection (g), a party is “adversely affected” if:

(1) The party is an individual who:

(A) Lawfully resides within the United States;

(B) May legally possess a firearm under Tennessee law; and

(C) Is or was subject to the ordinance, resolution, policy, rule, or other enactment or was included as an entry on a database, registry, or collection of records, that is the subject of an action filed under subsection (g). An individual is or was subject to the ordinance, resolution, policy, rule, or other enactment if the individual is or was physically present within the boundaries of the political subdivision for any reason; or

(2) The party is a membership organization that:

(A) Includes two (2) or more individuals described in subdivision (h)(1); and

(B) Is dedicated in whole or in part to protecting the rights of persons who possess, own, or use firearms for competitive, sporting, defensive, or other lawful purposes.

Tenn. Code Ann. § 39-17-1314(g)(1)(A); (h) (emphasis added).

Plaintiffs’ arguments for statutory standing fail based on the plain language of the statute, that an individual (or individuals within a membership organization) have standing *if* the individual “is or was subject to the ordinance.” *Id.* at (h)(1)–(2). Critically, Plaintiffs’ Motion for TRO fails to explain how Plaintiffs are or were “subject to the ordinance.” (*See* Pls.’ Mot., p. 4.) An individual cannot be subject to an ordinance that: (1) is preempted by state law; and (2) contains language expressly stating it is ineffective unless otherwise provided by law (in other words, the state preemption law changes). An individual is only subject to the Ordinance if it is enforced against him, or at a minimum, the threat of enforcement is imminent. Neither are true here.

Accordingly, Plaintiffs are unlikely to succeed on the merits, in part, because Plaintiffs do not have statutory standing to pursue the claims underlying their request for injunctive relief.

**b) Plaintiffs do not have standing under traditional standing requirements.**

Under Tennessee law, “[t]he doctrine of ‘standing’ considers whether a particular litigant is properly situated to have a court decide issues the litigant raises in a particular action.”

*Durham v. Haslam*, No. M2014-02404-COA-R3-CV, 2016 WL 1301035, at \*5 (Tenn. Ct. App. Apr. 1, 2016) (citing *Am. Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d 612, 619 (Tenn. 2006)). Based on this:

Our Supreme Court has opined that a plaintiff must show three indispensable elements to establish standing: (1) a distinct and palpable injury; (2) a causal connection between the claimed injury and the challenged conduct; and (3) a showing that the alleged injury can be redressed by a favorable decision.

*Durham*, 2016 WL 1301035, at \*5 (citing *Darnell*, 195 S.W.3d at 619).

Plaintiffs contend that “[i]n a pre-enforcement challenge to governmental action, a plaintiff satisfies the injury-in-fact requirement when he alleges ‘an intention to engage in a course of conduct arguably affected with a [protected] interest, but proscribed by [law], and there exists a credible threat of prosecution thereunder.’” (Pls.’ Mot., p. 5.) Plaintiffs’ arguments as to injury fall short, specifically because there is no “credible threat of prosecution” under the Ordinance. The Ordinance itself states that it “become[s] effective as otherwise provided by law,” meaning that the Ordinance is not in effect unless and until the Tennessee legislature changes the body of law preempting the Ordinance. Again, members of the Memphis City Council have described the Ordinance as a trigger law and have acknowledged it is preempted and thus unenforceable. Thus, there is no credible threat of prosecution pursuant to the Ordinance.

Accordingly, Plaintiffs are unlikely to succeed on the merits because Plaintiffs lack standing to pursue the claims underlying their request for injunctive relief.

## 2. Plaintiffs' claims are not ripe for adjudication.

Under Tennessee law, “[t]he ripeness doctrine focuses on whether the dispute has matured to the point that it warrants a judicial decision.” *B&B Enters. of Wilson Cnty., LLC v. City of Lebanon*, 318 S.W.3d 839, 848 (Tenn. 2010). Moreover, “[t]he central concern of the ripeness doctrine is whether the case involves uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all.” *Id.* (citing *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 479–80 (1990)). As stated by the Tennessee Court of Appeals:

The Court’s determination of ripeness involves two questions: first, whether the claim is “appropriate for judicial resolution”; and second, whether the Court’s “refusal to act” would prejudice the claimants’ ability to seek redress for their grievances. In other words, has the claimants’ alleged injury occurred or might it occur in the future? And if the injury has not yet occurred, will the claimants be able to seek relief when it does occur?

*Metropolitan Gov. of Nashville and Davidson Cnty., et al. v. Tenn. Dept. of Ed., et al.*, No. M2022-01786-COA-R3-CV, 2024 WL 107017, at \*9 (Tenn. Ct. App. Jan. 10, 2024) (internal citations omitted).

As evidenced by Plaintiffs’ Motion, this is precisely the kind of case that “involves uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all.” *B&B Enters. of Wilson Cnty.*, 318 S.W.3d at 848. Plaintiffs argue, in part, that “[v]iolations of the Ordinance carry monetary penalties of up to \$250 per infraction,” that the Ordinance provides the ability to enter “a court order [that] results in the loss of Second Amendment rights and seizures of the person – up to and including death – at the hands of law enforcement if one resists the patently unlawful seizure or is caught off-guard during the execution of a warrant.” (See Pls.’ Mot., p. 7.) These are clearly “uncertain or contingent future events” that would only occur to Plaintiffs upon enforcement of the Ordinance. *B&B Enters. of Wilson Cnty.*, 318 S.W.3d at 848. This is particularly true because the Ordinance contains clear



language evidencing that the Ordinance becomes effective and enforceable only upon a change to Tennessee law. See Exhibit A, at p. 8, Sect. 10; *supra* n. 3.

Since enforcement of the Ordinance is precluded by the express language of the Ordinance, “there is no need for the court to act.” *B&B Enters. of Wilson Cnty.*, 318 S.W.3d at 849 (citation omitted). Moreover, the Court’s “refusal to act” in this case “will not prevent the parties from raising the issue at a more appropriate time,” because Plaintiffs may bring their lawsuit if the Ordinance is ever enforced against them. *Id.* (citations omitted).

Thus, Plaintiffs alleged injury completely presupposes enforcement of the Ordinance, which is disclaimed by both the language of the Ordinance and the public statements of the Memphis City Council. Since enforcement of the Ordinance is “hypothetical and contingent [on] future events that may never occur,” any dispute “has [not] matured to the point that it warrants a judicial decision.” *Id.* at 848. Accordingly, Plaintiffs are unlikely to succeed on the merits because the claims underlying their request for injunctive relief are not ripe for adjudication.

**B. A preliminary injunction is inappropriate because Plaintiffs will not suffer immediate and irreparable injury in the absence of a preliminary injunction.**

Assuming, *arguendo*, that Plaintiffs’ claims are justiciable, a preliminary injunction is unnecessary because Plaintiffs will not suffer immediate and irreparable injury in the absence of a preliminary injunction.

Plaintiffs’ request for a preliminary injunction, insofar as immediate and irreparable injury are concerned, presupposes that the Ordinance will go into effect (and be enforced) on January 1, 2025.<sup>5</sup> This presumption is incorrect. Specifically, the Ordinance provides that it will “become effective as otherwise provided by law,” in other words, if and when the Tennessee

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<sup>5</sup> The actual effective date is January 6, 2024, despite Plaintiffs’ contention. See *supra* Sect. I.

legislature reverses course and changes the body of law currently preempting the statute. (*See Exhibit A*, p. 8, Sect. 10.) The language is corroborated by the stated legislative intent of the Ordinance that (1) the Ordinance acts a trigger law; (2) the Ordinance is unenforceable based on the current state of Tennessee law; and (3) the Ordinance will only become effective if Tennessee law is changed. *See supra* n. 3.

Take for instance Plaintiffs contention that “Plaintiffs’ loss of their statutory protections and abilities to carry handguns without permits, acquire and possess ‘assault rifles,’ and be free from ‘extreme risk protection order’ cannot be quantified with money damages.” (Pls.’ Mot., p. 13.) Even assuming that this is true, Plaintiffs’ can only be harmed if the Ordinance is in effect and enforced against them.

Furthermore, Plaintiffs risk of irreparable harm is not “immediate” enough to justify the imposition of a preliminary injunction. Tenn. R. Civ. P. 65.04(2); *Exhibit A*, p. 13–15. It is axiomatic that “a mere possibility of irreparable harm is insufficient to justify the drastic remedy of a preliminary injunction.” *Saidak v. Schmidt*, 501 F. Supp. 3d 577, 598 (E.D. Tenn. 2020) (citation omitted); *see also Regan v. Vinick & Young*, 862 F.2d 896, 902 (1st Cir. 1988) (“Speculation or unsubstantiated fears about what may happen in the future cannot provide the basis for a preliminary injunction.”) For the same reasons addressed in Sect. A. Part 2 *supra*, Plaintiffs proposed harm is not immediate because it is speculative, hypothetical, and “a mere possibility.” *Saidak*, 501 F. Supp. 3d at 598; *see also supra* Sect. A. Part 2.

Accordingly, the Court should deny Plaintiffs’ request for a preliminary injunction because Plaintiffs have not shown they will suffer immediate and irreparable injury in the absence of a preliminary injunction.

**IV. CONCLUSION**

Based on the foregoing, the City respectfully requests that the Court deny Plaintiffs' request for a preliminary injunction because Plaintiffs are unlikely to succeed on the merits and Plaintiffs will not suffer immediate or irreparable injury in the absence of a preliminary injunction.

Respectfully submitted,

s/ Bruce McMullen

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*Attorneys for Defendants City of Memphis and  
Chief Cerelyn Davis in her Official Capacity as  
Chief of the Memphis Police Department*

### **CERTIFICATE OF SERVICE**

I hereby certify that I have on this 20<sup>th</sup> day of December 2024, caused a copy of the foregoing to be served upon the following parties via email and e-filing:

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s/ Bruce McMullen

ORDINANCE NO. 5908

AN ORDINANCE TO AMEND AND RESTATE REFERENDUM ORDINANCE NO. 5877 THAT PROPOSED AN AMENDMENT TO THE CHARTER OF THE CITY OF MEMPHIS, PURSUANT TO ARTICLE XI, § 9 OF THE CONSTITUTION OF THE STATE OF TENNESSEE (HOME RULE AMENDMENT), SO AS TO PROVIDE PROVISIONS FOR THE REGULATION OF DEADLY WEAPONS

WHEREAS, Referendum Ordinance No. 5877 was approved by the Memphis City Council on July 11, 2023, to be published and submitted by the City of Memphis to its qualified voters during the general election on August 1, 2024; and

WHEREAS, it is the intent of the Council to amend and restate Referendum Ordinance No. 5877 to be published and submitted by the City of Memphis to its qualified voters during the state general election on November 5, 2024; and

WHEREAS, it is deemed advisable and in the best interest of the citizens of the City of Memphis that the City of Memphis Charter be amended by ordinance as provided by Article XI, Section 9 of the Constitution of the State of Tennessee (Home Rule Amendment) for the purpose of regulating deadly weapons in the City of Memphis.

Section 1. Proposed Amendment Authorized.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE, That Referendum Ordinance No. 5877, passed pursuant to Article XI, Section 9 of the Constitution of the State of Tennessee, as amended, to submit a proposal for amending the Charter of the City, is hereby amended and restated pursuant to Article XI, Section 9 of the Constitution of the State of Tennessee, as amended, a proposal for amending the Charter of the City, as set forth in this ordinance, and as so amended and restated shall be published and submitted by the City of Memphis to its qualified voters at the first state general election, which shall be held in the City of Memphis on November 5, 2024, and which shall be held at least sixty (60) days after such publication.

Section 2. Publication of Home Rule Amendment as required by Tennessee Constitution.

BE IT FURTHER ORDAINED, That the Comptroller is hereby directed to cause this Ordinance, as finally adopted, to be published pursuant to provisions of Article XI, Section 9 of the Constitution of the State of Tennessee immediately after adoption by the City Council.

Section 3. Certification and Delivery to Election Commission.

BE IT FURTHER ORDAINED, That upon the adoption of this Ordinance becoming effective as required by law, the Comptroller of the City of Memphis shall immediately certify adoption of this Ordinance and deliver a certified copy thereof to the Shelby County Election Commission in charge of holding the general State election on November 5, 2024, and shall request that the proposed amendment to the Home Rule Charter of the City of Memphis, in the preferred form set forth in this Ordinance, be placed on the ballot.

Section 4. Proposal and preference.

BE IT FURTHER ORDAINED, That the City Council does hereby adopt the suggested proposal and form of ~~separate and independent~~ questions to be placed on the ballot for a referendum vote to amend the Home Rule Amendment to the Charter of the City of Memphis in a State General election to be held on the 5th day of November 2024, which question(s) shall read as follows:

QUESTION NO. 1:

Shall the Charter of the City of Memphis be amended to read:

1. No person shall be allowed to carry a handgun in the City of Memphis without possessing a valid handgun carry permit.
2. No person shall be allowed to carry, store, or travel with a handgun in a vehicle in the City of Memphis without possessing a valid handgun permit.
3. It shall be unlawful for a person to store a firearm, whether loaded or unloaded, or firearm ammunition, in a motor vehicle or boat while the person is not in the motor vehicle or boat unless the firearm or firearm ammunition is kept from ordinary observation and locked within the trunk, utility or glove box, or a locked container securely affixed to the motor vehicle or boat.

*I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.*

FOR THE AMENDMENT	(YES) _____
AGAINST THE AMENDMENT	(NO) _____

QUESTION NO. 2:

Shall the Charter of the City of Memphis be amended to read:

1. The citizens of Memphis hereby find and declare that the proliferation and use of assault weapons pose a threat to the health, safety, and security of all citizens of Memphis.
2. Hereafter, it shall be unlawful and prohibited for a person to possess or carry, openly or concealed, any assault rifles in the City of Memphis. Persons with valid handgun permits are exempt from this restriction when possessing or carrying an assault rifle on their privately owned property or at a shooting range.
3. Hereafter, the commercial sale of assault rifles within the City of Memphis is unlawful and is hereby prohibited.
4. The provisions of this Chapter shall not apply to the commercial sale of assault rifles to:

- 4.1 Any federal, state, local law enforcement agency;
  - 4.2 The United States Armed Forces or department or agency of the United States;
  - 4.3 Tennessee National Guard, or a department, agency, or political subdivision of a state; or
  - 4.4 A Law Enforcement Officer.
5. Pre-existing owners that can demonstrate that the commercial sale of an assault rifle was completed prior to the Effective Date of January 1, 2025, which means that prior to January 1, 2025, the purchaser completed an application, passed a background check, and has a receipt or purchase order for said purchase, without regard to whether the purchaser has actual physical possession of the Assault Rifle, shall be considered a pre-existing purchaser.

*I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.*

FOR THE AMENDMENT	(YES) _____
AGAINST THE AMENDMENT	(NO) _____

QUESTION NO. 3:

Shall the Charter of the City of Memphis be amended to read:

**Section 1. EXTREME RISK PROTECTION ORDERS**

A. Definitions

1. "Petitioner" means:

- (A) A law enforcement officer or agency, including an attorney for the state;
- (B) A member of the family of the respondent, which shall be understood to mean a parent, spouse, child, or sibling of the respondent;
- (C) A member of the household of the respondent;
- (D) A dating or intimate partner of the respondent;
- (E) A health care provider who has provided health services to the respondent;
- (F) An official of a school or school system in which the respondent is enrolled or has been enrolled within the preceding month;

2. "Respondent" means the person against whom an order under Section 2 or 3 has been sought or granted.

B. Types of Orders

1. The petitioner may apply for an emergency ex parte order as provided in Section 2 or an order following a hearing as provided in Section 3.

## **Section 2. EMERGENCY EX PARTE ORDER**

(a) **Basis for Order.** The court shall issue an emergency ex parte extreme risk protection order upon submission of an application by a petitioner, supported by an affidavit or sworn oral statement of the petitioner or other witness, that provides specific facts establishing probable cause that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. The court shall take up and decide such an application on the day it is submitted, or if review and decision of the application on the same day is not feasible, then as quickly as possible but in no case later than forty-eight hours.

(b) **Content of Order.** An order issued under this section shall,

(1) prohibit the respondent from possessing, using, purchasing, manufacturing, or otherwise receiving a firearm;

(2) order the respondent to provisionally surrender any firearms in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order; and

(3) inform the respondent of the time and place of the hearing under Section 3 to determine whether he or she will be subject to a continuing prohibition on possessing and acquiring firearms.

(c) **Search and Seizure.**

(1) If the application and its supporting affidavit or statement establish probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the return of the firearm as provided in Section 3(c)(3).

(d) **Time for Service and Searches.** The responsible law enforcement agency shall serve the order on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.



### **SEC. 3. ORDER AFTER HEARING**

(a) Order After Hearing. Upon application for an extreme risk protection order, supported by an affidavit or sworn oral statement of the petitioner or other witness that provides specific facts giving rise to the concern about the significant danger or extreme risk described in Section 2, the court may issue an order under this section, which shall be effective for a period of one (1) year after a hearing. An order issued under this section shall,

(1) prohibit the respondent from possessing, using, purchasing, or otherwise receiving a firearm; and

(2) order the respondent to surrender any firearm in his or her possession or control, and any license or permit allowing the respondent to possess or acquire a firearm, to any law enforcement officer presenting the order or to a law enforcement agency as directed by the officer or the order.

(b) Basis for order. The court shall issue such an order based on a preponderance of the evidence that the respondent's possession or receipt of a firearm will pose a significant danger or extreme risk of personal injury or death to the respondent or another person. In determining the satisfaction of this requirement, the court shall consider all relevant facts and circumstances after reviewing the petitioner's application and conducting the hearing described in Section 2(d). The court may order a psychological evaluation of the respondent, including voluntary or involuntary commitment of the respondent for purposes of such an evaluation, to the extent authorized by other law.

(c) Search and Seizure.

(1) If the evidence presented at the hearing establishes probable cause that the respondent has access to a firearm, on his or her person or in an identified place, the court shall concurrently issue a warrant authorizing a law enforcement agency to search the person of the respondent and any such place for firearms and to seize any firearm therein to which the respondent would have access.

(2) The court may subsequently issue additional search warrants of this nature based on probable cause that the respondent has retained, acquired, or gained access to a firearm while an order under this section remains in effect.

(3) If the owner of a firearm seized pursuant to this subsection is a person other than the respondent, the owner may secure the prompt return of the firearm by providing an affidavit to the law enforcement agency affirming his or her ownership of the firearm and providing assurance that he or she will safeguard the firearm against access by the respondent. The law enforcement agency shall return the firearm to the owner upon its confirmation, including by a check of the National Instant Criminal Background Check System and the applicable state firearm background check system, that the owner is not legally disqualified from possessing or receiving the firearm.

(d) Time for Hearings and Service.

(1) A hearing under this section shall be held within three (3) days of the filing of the application, or within one (1) day of the issuance of an emergency ex parte order under Section 2, if such an order is issued. The responsible law enforcement agency shall serve notice of the hearing on the respondent promptly after the filing of the application or issuance of an emergency ex parte order, but notice may be provided by publication or mailing if the respondent cannot be personally served within the specified period. The respondent shall be entitled to one continuance of up to two (2) days on request, and the court may thereafter grant an additional continuance or continuances for good cause. Any emergency ex parte order under Section 2 shall remain in effect until the hearing is held. The court may temporarily extend the emergency order at the hearing, pending a decision on a final order.

(2) The responsible law enforcement agency shall serve an order issued under this section on the respondent and carry out any search authorized under subsection (c)(1), promptly following issuance of the order. If a search is authorized under subsection (c)(1), the agency may serve the order on the respondent concurrently with or after the execution of the search.

(e) Termination and Renewal of Orders.

(1) A respondent may file a motion to terminate an order under Section 3 one time during the effective period of that order. The respondent shall have the burden of proving, by the same standard of proof required for issuance of such an order, that he or she does not pose a significant danger or extreme risk of personal injury or death to himself or herself or another.

(2) The petitioner may seek renewals of an order under this section for an additional six (6) months at any time preceding its expiration. Renewals after the initial order shall be granted subject to the same standards and requirements as an initial order. The preceding order shall remain in effect until the renewal hearing is held and the court grants or denies a renewed order.

(3) If the respondent fails to appear at, or cannot be personally served in relation to, any hearing or renewal hearing under this section, the default does not affect the court's authority to issue an order or entitle the respondent to challenge the order prior to its expiration. The order will lapse after one (1) year if no eligible petitioner seeks its renewal.

#### **SEC. 4. ENTRY INTO BACKGROUND CHECK SYSTEMS**

The court shall forward any order issued under Section 2 or 3 to an appropriate law enforcement agency on the day it is issued. Upon receipt of an order under Section 3, the law enforcement agency shall make the order available to the National Instant Criminal Background Check System and any state system used to identify persons who are prohibited from possessing firearms.

**SEC. 5. VIOLATIONS**

The following persons shall be in violation of the City Code of Ordinances:

(1) **FILER OF FALSE OR HARASSING APPLICATION.** – Any person filing an application under Section 2 or 3 containing information that he or she knows to be materially false, or for the purpose of harassing the respondent.

(2) **RESPONDENT NOT COMPLYING WITH ORDER.** – Any person who knowingly violates an order under Section 2 or 3, including by possessing or acquiring a firearm in violation of the order or failing to surrender a firearm as required by the order.

(3) **PROVIDER OF PROHIBITED ACCESS TO RESPONDENT.** – Any person who knowingly provides the subject of an order under Section 2 or 3 access to a firearm, in violation of an assurance the person has provided in an affidavit under Section 2(c)(3) or 3(c)(3) that he or she will safeguard the firearm against access by the respondent.

***I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.***

FOR THE AMENDMENT	(YES) _____
AGAINST THE AMENDMENT	(NO) _____

**Section 5. Effective Date of Charter Amendments Amended and Restated.**

**BE IT FURTHER ORDAINED,** That any referendum question proposed by this Ordinance shall take effect for the purposes set forth herein on January 1, 2025, if any of such questions is approved by a majority of the qualified voters voting thereon in an election to be held on the 5th day of November 2024, the public welfare, requiring it.

**Section 6. Certification of Results.**

**BE IT FURTHER ORDAINED,** That the Shelby County Election Commission certify the result of said election on the referendum questions to the Comptroller of the City of Memphis, who shall see that said result is made a part of the Minutes of the Council of the City of Memphis.

**Section 7. Nonconflicting – Conflicting Laws.**

**BE IT FURTHER ORDAINED,** That from and after the effective date of this Home Rule Amendment, all laws constituting the present Charter of the City of Memphis in conflict with the subject matter of this amendatory Home Rule Ordinance shall be immediately annulled, vacated, and repealed and all laws constituting the present Charter of the City of Memphis not in conflict

with this amendatory Home Rule Ordinance, be and the same are here continued in full force and effect.

Section 8. Severability.

BE IT FURTHER ORDAINED, that if any clause, section, paragraph, sentence or part of this Ordinance shall be held or declared to be unconstitutional and void, it shall not affect the remaining parts of this Ordinance, it being hereby declared to be the legislative intent to have passed the remainder of this Ordinance notwithstanding the parts so held to be invalid, if any.

Section 9. Publication as Required by the City Charter.

BE IT FURTHER ORDAINED, that this Ordinance shall also be published by the Comptroller at the same time and manner as required by the City's Charter for all ordinances adopted by the City Council.

Section 10. Enactment of Referendum Ordinance.

BE IT FURTHER ORDAINED, that the adoption of this Referendum Ordinance shall take effect from and after the date it shall have passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

SPONSORS

Jeff Warren

CHAIRMAN

JB Smiley, Jr.

THE FOREGOING ORDINANCE  
# 5908 PASSED  
1st Reading 6/25/24  
2nd Reading 7/19/24  
3rd Reading 7/23/24  
Approved [Signature]  
Chairman of Council

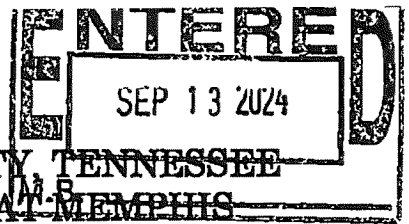
Date Signed: 8/6/24

APPROVED:  
[Signature]  
Mayor, City of Memphis

Date Signed: 8/16/24

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

[Signature]  
Comptroller



IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

THE MEMPHIS CITY COUNCIL,  
ACTING FOR AND ON BEHALF OF  
THE CITY OF MEMPHIS,



Petitioner,  
v.

No. CH-24-1177-1

SHELBY COUNTY ELECTION  
COMMISSION AND  
COMMISSIONERS, MARK  
LUTTRELL, STEVE STAMSON,  
ANDRE WHARTON, FRANK  
ULHORN, and VANECLA KIMBROW,

Respondents.

ORDER ON PETITIONER'S VERIFIED PETITION FOR ISSUANCE  
OF WRIT OF MANDAMUS, INJUNCTIVE RELIEF AND  
DECLARATORY JUDGMENT

Before the Court is Petitioners' Verified Petition for a writ of mandamus, injunctive relief and declaratory judgment (the "Petition"). The Court convened and presided over a hearing on the Petition on September 11, 2024 in which counsel for the respective parties participated. Upon careful consideration of the entire record, including sworn pleadings, affidavits, declarations, motions, briefs, authorities presented to the Court, and other written submissions of the respective parties, and in consideration

of oral arguments of their respective counsel in open court, the Court hereby determines and concludes that Petitioner's application for a writ of mandamus, injunctive relief and declaratory judgment as requested in the Verified Petition should be granted and that Respondents' opposition thereto, including Respondents' objections to Petitioner's standing, authorization to initiate this action and to the form, due approval and validity of Ordinance No. 5908, should be denied, except as otherwise provided in this Final Decree.

Notwithstanding the foregoing findings and conclusions, the Court determines and concludes that the effective date provision in Section 5 of Ordinance No. 5908 is inconsistent with the effective date provision in Article XI, Section 9 of the Tennessee Constitution and is therefore void and of no effect, but the Court also finds and concludes that the elimination of the effective date provision in Section 5 from Ordinance No. 5908 does not (i) affect the validity and enforceability of remaining parts the Ordinance, which are in still full force and effect in accordance with their terms or (ii) change the application and operation of the mandatory requirement in Article XI, Section 9 of the Tennessee Constitution which provides that any proposed charter amendment shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.

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

1. A preemptory Writ of Mandamus is hereby immediately issued directing Respondents to include the referendum questions in the form stated in City of Memphis Ordinance No. 5908 on the ballot for a vote by the qualified voters of Memphis at the general state election to be held on November 5, 2024 (the “November 5, 2024 Election”).

2. A permanent injunction is hereby immediately issued enjoining all Respondents and all persons acting in concert with them in connection with their administration and execution of the November 5, 2024 Election from taking any action or refusing to take any action that would prevent the Referendum Questions as stated in City of Memphis Ordinance No. 5908 from being included on the ballot and submitted to the qualified voters of Memphis for a vote by the qualified voters of Memphis at the general state election to be held on November 5, 2024.

3. The Court does hereby find, adjudge and declare (a) that Respondents lack the authority to refuse to put the Referendum questions contained in Ordinance 5908 on the ballot for the November 5, 2024 Election as long as Ordinance No. 5908 meets all the procedural requirements of Tennessee Constitution, Article XI, § 9, the Charter of the City of Memphis,

and the Tennessee Election Code; (b) that the issue of whether any of the substantive provisions of Ordinance No. 5908 would be preempted by any general act of the General Assembly so as to render such provisions ineffective, if approved by Memphis voters, is not ripe for decision at this time; (c) that any attempt by Respondents to declare the substantive provisions of Ordinance No. 5908 void due to preemption is erroneous and a violation of principles of separation of powers.

4. The Court hereby orders that the effective date provision in Section 5 of Ordinance No. 5908 is elided from the ordinance without effect on the validity and enforceability of the remaining provisions of said ordinance or the mandatory application and operation of the effective date provisions of Article XI, Section 9 of the Tennessee Constitution.

5. All other claims, defenses or objections raised by the parties in any pleading, motion or other submission to the Court not heretofore addressed and decided by the Court in this Final Decree are hereby denied as if specifically addressed and denied herein.

6. This Final Decree is expressly declared to be and is directed to be entered as a final judgment that adjudicates all of the claims and defenses of all parties based on the express determination that there is no just reason for delay in its entry as a final judgment. The costs of this cause prepared by



the Clerk and Master shall be assessed against Petitioner.

Melanie Taylor Jefferson  
MELANIE TAYLOR JEFFERSON

DATE: September 13, 2024

APPROVED FOR ENTRY AS TO FORM ONLY:

/s/ Allan J. Wade  
Allan J. Wade (4339)  
Brandy S. Parrish (21631)  
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[awade@thewadefirm.com](mailto:awade@thewadefirm.com)  
[bparrish@thewadefirm.com](mailto:bparrish@thewadefirm.com)  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I certify that I forwarded a copy of the foregoing document to all counsel of record, including the following individuals by Hand Delivery, U.S. mail, postage prepaid, electronic means of service by filing with this Court or electronic mail, as indicated below on this the 13th day of September, 2024.

<input type="checkbox"/>	Hand Delivery	JAY C. BALLARD (BPR 017242) Senior Deputy Attorney General <a href="mailto:jay.ballard@ag.tn.gov">jay.ballard@ag.tn.gov</a>
<input type="checkbox"/>	E-service	
<input checked="" type="checkbox"/>	Email	

U.S Mail	<p>KEVIN KREUTZ (BPR 040686) Deputy Attorney General <a href="mailto:kevin.kreutz@ag.tn.gov">kevin.kreutz@ag.tn.gov</a></p> <p>ZACHARY BARKER (BPR 035933) Senior Assistant Attorney General <a href="mailto:zachary.barker@ag.tn.gov">zachary.barker@ag.tn.gov</a> General Litigation Division Office of the Attorney General P.O. Box 20207 Nashville, Tennessee 37202-0207 Phone: (615) 741-5031 Fax: (615) 532-4994 <i>Counsel for Respondents</i></p>
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**s/ Allan J. Wade**

Allan J. Wade/ Brandy S. Parrish