

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

Ludye N. Wallace,	§	
	§	
<i>Petitioner-Appellant,</i>	§	M2018-00481-SC-RDM-CV
	§	
v.	§	
	§	Chancery Court No. 18-0254-I
Metropolitan Government of Nashville and Davidson County,	§	
<i>et al.,</i>	§	Chancellor Claudia Bonnyman
	§	
<i>Respondents-Appellees.</i>	§	

PETITIONER-APPELLANT'S PRINCIPAL BRIEF

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ORAL ARGUMENT REQUESTED

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I. TABLE OF CONTENTS

I. TABLE OF CONTENTS _____ ii

II. TABLE OF AUTHORITIES _____ iv

III. STATEMENT REGARDING CITATIONS _____ vii

IV. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW _____ viii

V. STANDARD OF REVIEW _____ ix

VI. INTRODUCTION _____ 1

VII. STATEMENT OF THE CASE _____ 6

VIII. STATEMENT OF FACTS _____ 8

IX. ARGUMENT _____ 11

A. THE PLAIN LANGUAGE OF THE METRO CHARTER UNAMBIGUOUSLY DEFINES “GENERAL METROPOLITAN ELECTIONS” AS THE ELECTIONS HELD EVERY FOURTH AUGUST DURING WHICH THE MAYOR, VICE MAYOR, AND THE METROPOLITAN COUNCIL ARE ELECTED AT ONCE. _____ 11

- 1. The Respondents must hold a special election to fill a mayoral vacancy “whenever such vacancy shall exist more than twelve (12) months prior to the date of the next general metropolitan election.” _____ 11
- 2. Metro Charter § 15.01 expressly defines the term “general metropolitan election.” _____ 12
- 3. Metro Charter § 15.02 establishes that there is only one type of “general metropolitan election.” _____ 13

B. THE LEGISLATIVE HISTORY OF METRO CHARTER § 15.03 CONFIRMS THAT “A SPECIAL ELECTION [MUST] BE HELD TO FILL A VACANCY IN THE OFFICE OF MAYOR . . . WHENEVER MORE THAN

TWELVE (12) MONTHS REMAIN IN THE UNEXPIRED TERM.”	16
1. The legislative history of Metro Charter § 15.03 is written, unambiguous, and points in only one direction.	16
2. The ballot summary provided to voters controls § 15.03’s meaning.	20
C. RESPONDENTS’ POSITION CREATES AN ABSURD RESULT. IF THE RESPONDENTS’ POSITION WERE CORRECT, THEN THE ENTIRE METROPOLITAN COUNCIL WAS ELECTED AT THE WRONG TIME FOLLOWING THE 1980 AND 2000 CENSUSES.	23
D. METRO CHARTER § 15.03 MUST BE INTERPRETED IN ACCORDANCE WITH NASHVILLE’S LONGSTANDING PUBLIC POLICY OF ENSURING THAT ITS LOCAL ELECTIONS ARE NOT CONTAMINATED BY PARTISAN FEDERAL AND STATE INFLUENCES.	26
E. RESPONDENTS’ CONTRARY ARGUMENTS ARE UNPERSUASIVE.	29
1. <i>Wise v. Judd</i> did not hold that a “general metropolitan election” is any election where metropolitan offices are on the ballot. Further, the issue presented in this case was neither raised nor argued by any party to <i>Wise</i> , and the provision at issue has since been amended.	30
2. The specific definition of “general metropolitan election” set forth in the Metro Charter prevails over the Tennessee Attorney General’s broad definition of the term “general election” concerning election statutes generally.	35
F. THE NEXT GENERAL METROPOLITAN ELECTION IS IN AUGUST 2019. ACCORDINGLY, A SPECIAL ELECTION IS REQUIRED.	36
X. CONCLUSION	38
CERTIFICATE OF SERVICE	39

II. TABLE OF AUTHORITIES

Cases

<i>Alley v. Bell</i> , 101 F. Supp. 2d 588 (W.D. Tenn. 2000)	26
<i>Amador Valley Joint Union High Sch. Dist. v. Bd. of Equalization</i> , 22 Cal. 3d 208 (1978)	21, 22
<i>Astoria Fed. Sav. & Loan Ass'n v. Solimino</i> , 501 U.S. 104 (1991)	28, 29
<i>Carter v. Quality Outdoor Prods., Inc.</i> , 303 S.W.3d 265 (Tenn. 2010)	ix
<i>Carver v. Citizen Utils. Co.</i> , 954 S.W.2d 34 (Tenn. 1997)	14, 15
<i>Garrison v. Bickford</i> , 377 S.W.3d 659 (Tenn. 2012)	16
<i>George v. Hargett</i> , 879 F.3d 711 (6th Cir. 2018)	19
<i>Graham v. Caples</i> , 325 S.W.3d 578 (Tenn. 2010)	35
<i>In re Advisory Opinion to the Atty. Gen. re Additional Homestead Tax Exemption</i> , 880 So. 2d 646 (Fla. 2004)	20
<i>Kiser v. Wolfe</i> , 353 S.W.3d 741 (Tenn. 2011)	ix
<i>Knox Cty. ex rel. Kessel v. Lenoir City</i> , Tenn., 837 S.W.2d 382 (Tenn. 1992)	13
<i>Lee Med., Inc. v. Beecher</i> , 312 S.W.3d 515 (Tenn. 2010)	16

<i>Owens v. State</i> , 908 S.W.2d 923 (Tenn. 1995)	18
<i>State ex rel. Wise v. Judd</i> , 655 S.W.2d 952 (Tenn. 1983)	passim
<i>State v. Flemming</i> , 19 S.W.3d 195 (Tenn. 2000)	23, 26
<i>State v. Nashville Baseball Club</i> , 154 S.W. 1151 (1913)	34
<i>State v. Perrier</i> , 536 S.W.3d 388 (Tenn. 2017)	16
<i>Rhode Island v. Massachusetts</i> , 37 U.S. 657 (1838)	21
<i>State v. Sliger</i> , 846 S.W.2d 262 (Tenn. 1993)	20
<i>Zukerberg v. Bd. of Elections & Ethics</i> , 97 A.3d 1064 (D.C. 2014)	21

Statutes and Rules

Metro Charter § 15.01	passim
Metro Charter § 15.02	passim
Metro Charter § 15.03	passim
Metro Charter § 15.04	35, 37
Metro Charter § 18.06	5, 23, 25
Metro Charter § 19.01	2, 18, 31, 32

Tenn. Code Ann. § 2-14-102	6, 7, 11, 37, 38
Tenn. Code Ann. § 2-14-102(a)	7, 37
Tenn. Code Ann. § 2-14-102(b)	7
Tenn. Code Ann. § 2-14-102(b)(1)	7, 37

Additional Authorities

Brian T. Fitzpatrick, <i>Errors, Omissions, and the Tennessee Plan</i> , 39 U. MEM. L. REV. 85 (2008)	22, 34
William N. Eskridge, <i>Public Values in Statutory Interpretation</i> , 137 U. PA. L. REV. 1007 (1989)	28

III. STATEMENT REGARDING CITATIONS

Citations to the technical record are abbreviated as “R. at (page number)” without reference to the Volume. All citations are footnoted throughout Appellant’s brief unless a citation in the body of the brief improves clarity.

IV. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Mr. Wallace presents only the following issue for this Court's review:

1. Does the Metro Charter require that a special election be held to fill a vacancy in the office of mayor whenever more than twelve months remain in the unexpired term?

V. STANDARD OF REVIEW

The sole question presented for this Court's review is a question of statutory interpretation. "Statutory interpretation, of course, presents a question of law and [this Court's] review is de novo with no presumption of correctness." *Kiser v. Wolfe*, 353 S.W.3d 741, 745 (Tenn. 2011) (citing *Carter v. Quality Outdoor Prods., Inc.*, 303 S.W.3d 265, 267 (Tenn. 2010)).

VI. INTRODUCTION

On August 2, 2007, Davidson County voters approved a referendum requiring near-immediate special elections in the event that the office of mayor became vacant with more than twelve months remaining in an outgoing mayor's unexpired term.¹ In bold, the Respondents' ballot summary stated: **"This amendment would require that a special election be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term."**² "An overwhelming 83 percent of voters approved the amendment, and it carried every single precinct in the county."³ As a result, the voters' will was codified at the present version of Metro Charter § 15.03.⁴

On March 6, 2018, former Nashville Mayor Megan Barry resigned her office.⁵ Her resignation created an undisputed vacancy in the office of mayor

¹ R. at 103.

² R. at 91.

³ Steve Cavendish, *Metro Legal Could Cost the City Money for Another Election METROPOLITIK: Why are the city's lawyers so dug-in on the issue of election dates?*, THE NASHVILLE SCENE (Mar. 26, 2018), <https://www.nashvillescene.com/news/columns/article/20998110/metro-legal-could-cost-the-city-money-for-another-election>.

⁴ R. at 103.

⁵ R. at 42-43.

with approximately eighteen (18) months remaining in her unexpired term.⁶ Accordingly, the 2007 referendum—now codified at Metro Charter § 15.03—“require[d] that a special election be held to fill [the] vacancy. . . .”⁷

Despite the crystal-clear ballot summary set forth in the 2007 referendum, the Respondents declined to hold a special election.⁸ Instead, they opted to set Nashville’s mayoral election for August 2, 2018,⁹ reasoning that the ballot summary that they had provided to voters in 2007 did not convey its “actual” meaning.¹⁰ *But see* R. at 107, Metro Charter § 19.01 (“The ballot shall be prepared so as to set forth a brief description of the amendment worded so as to convey the meaning of said amendment, said description to be set forth in the original amendatory resolution”). Critically, however, the Respondents’ position is not only *inconsistent* with the applicable ballot summary—it is *irreconcilable* with it. As such, the Respondents’ interpretation of § 15.03, if permitted, operates to pull a bait-and-switch on a supermajority of Nashville’s voters that effectively nullifies

⁶ R. at 156, lines 22-25.

⁷ R. at 91.

⁸ R. at 75.

⁹ *Id.*

¹⁰ R. at 82 (dismissing the ballot summary as a mere “shorthand explanation” that did not reflect “the actual language of the amendment”).

their clearly expressed will by fiat.

Ludye Wallace is a candidate for Mayor whose standing to challenge the Respondents' interpretation of Metro Charter § 15.03 is not disputed.¹¹ Mr. Wallace does not have the resources to mount an extended campaign for Mayor, and he submits that the Metro Charter compels the Respondents to hold a prompt special election to fill the existing vacancy.¹² Mr. Wallace also submits that his interpretation of "next general metropolitan election"—as that term is used in Metro Charter § 15.03—is bolstered by every tool of statutory construction that is traditionally used by courts to interpret statutory text. Four principal arguments are advanced to support this view.

First, Mr. Wallace's position is supported by the plain text of Metro Charter § 15.01—a provision entitled "when general metropolitan elections held."¹³ Metro Charter § 15.01 unambiguously defines Nashville's "general metropolitan elections" as the elections "held on the first Thursday in April, 1966, and on the first Thursday in August of 1971, and each four (4) years thereafter," during which the "mayor, vice-mayor, five (5) councilmen-at-

¹¹ See R. at 117-20.

¹² R. at 19.

¹³ R. at 102.

large and thirty-five (35) district councilmen” all stand for election at once.¹⁴ Further, the Charter provision that immediately follows Metro Charter § 15.01—Metro Charter § 15.02—does not merely refer to “a” general metropolitan election.¹⁵ Instead, Metro Charter § 15.02 refers to “*the* general metropolitan election,” it does so seven separate times, and it describes only a single possible election: the election during which the mayor, vice-mayor, and Nashville’s forty district councilmembers all stand for election at the same time.¹⁶ Based on the clarity of this definition, the plain and unambiguous text of Metro’s Charter alone ends the inquiry.

Second, Mr. Wallace’s interpretation of Metro Charter § 15.03 is supported by its unusually transparent legislative history, which was conveniently provided *in writing* to the voters who ratified it.¹⁷ As noted above, in advance of the voters’ ratification, the Respondents stated that the proposed referendum “**would require that a special election be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term.**”¹⁸ Voters, of

¹⁴ R. at 102.

¹⁵ R. at 102-03.

¹⁶ *Id.* (emphasis added).

¹⁷ R. at 91.

¹⁸ R. at 91 (partial emphasis added).

course, were entitled to take the Respondents at their word, and any contrary conclusion would severely undermine the integrity of the democratic process. Thus, given the crystal-clear ballot summary provided by Metro Charter § 15.03's framers to the voters who ratified it, the written legislative history conveying the intended meaning of Metro Charter § 15.03 powerfully affirms Mr. Wallace's position.

Third, the Respondents' favored definition of the term "general metropolitan election" creates an absurd result that conflicts with a widely accepted definition of "general metropolitan election" set forth in a separate provision of the Metro Charter. Metro Charter § 18.06 provides for the election of district councilmembers "at the next general metropolitan election" following post-census redistricting.¹⁹ Accordingly, if the Respondents' position were correct, then the entire Metropolitan Council was elected at the wrong time following the 1980 and 2000 censuses. Because statutes must be read to avoid absurdities, Metro Charter § 15.03 must be construed to avoid such a conflict.

Fourth and finally, Mr. Wallace's interpretation of Metro Charter § 15.03 is supported by the canon that plain statements are required to

¹⁹ R. at 135.

overcome statutory conflicts with strongly held public values. For the entirety of its existence, the Metro Charter has embodied a deeply held, consistently reaffirmed public policy of ensuring that Nashville's non-partisan local elections are not contaminated by the influence of partisan state and federal politics. Thus, even if the text or the legislative history of Metro Charter § 15.03 were ambiguous (and they are not), the Respondents' conflicting interpretation of Metro Charter § 15.03 would still fail, because Metro Charter § 15.03 does not contain a plain statement of intent to overcome Nashville's longstanding public policy against having elections for local offices coincide with partisan federal and state contests.

For all of these reasons, Mr. Wallace's interpretation of Metro Charter § 15.03 must prevail. Consequently, the Trial Court's decision should be reversed, and this Court should remand this case with instructions that the Trial Court order a special election to fill the vacancy on a date permitted by Tenn. Code Ann. § 2-14-102.

VII. STATEMENT OF THE CASE

On March 6, 2018, former Nashville Mayor Megan Barry resigned her office, creating an immediate vacancy.²⁰ Accordingly, on March 9, 2018, the

²⁰ R. at 42-43.

Davidson County Election Commission held a meeting to set an election to fill the vacancy.²¹ Through counsel, Mr. Wallace appeared at the meeting and averred that a special election must be held in May 2018 as required by Metro Charter § 15.03 and Tenn. Code Ann. § 2-14-102.²² Following a 3-2 vote, the Election Commission set the election for August 2, 2018 instead.²³

On Monday, March 12, 2018, Mr. Wallace filed the instant action in Davidson County Chancery Court.²⁴ Mr. Wallace's petition sought a writ certiorari, a declaratory judgment, and a writ of mandamus compelling the Respondents to set a special election to fill the vacancy on a date permitted by Tenn. Code Ann. § 2-14-102(a)-(b).²⁵ Thereafter, the Respondents promptly moved to dismiss Mr. Wallace's petition on its merits.²⁶

An emergency hearing on Mr. Wallace's petition was held on March 14, 2018.²⁷ In a Final Order entered on March 16, 2018, the Trial Court held: (1)

²¹ R. at 75.

²² *Id.* Tenn. Code Ann. § 2-14-102(a) requires that special elections be held within 75-80 days of a vacancy, but Tenn. Code Ann. § 2-14-102(b)(1) permits special elections to be held on the date of a pre-scheduled election if the date "falls within thirty (30) days of an upcoming regular primary or general election being held in that district" *Id.*

²³ *Id.*

²⁴ R. at 1.

²⁵ R. at 8.

²⁶ R. at 74-84.

²⁷ R. at 147.

that the term “general metropolitan election includes elections where metropolitan government offices are on the ballot and where all registered voters may vote,” and (2) that “[t]he definition of general metropolitan election is not limited to the election every four years where the mayor and councilmembers are elected.”²⁸ Accordingly, the Trial Court ruled that “the Election Commission did not err in setting the mayoral election for August 2, 2018” and dismissed Mr. Wallace’s petition.²⁹ This appeal followed.

VIII. STATEMENT OF FACTS

On March 6, 2018, former Nashville Mayor Megan Barry resigned from office,³⁰ creating a vacancy in the office of mayor with approximately eighteen (18) months remaining in her unexpired term.³¹ The Petitioner, Mr. Ludy Wallace, is a former Metro Councilmember who wishes to fill that vacancy.³² Accordingly, Mr. Wallace pulled a qualifying petition and qualified to run for Mayor on March 12, 2018.³³

The last time that Nashville held a mayoral election, candidates

²⁸ R. at 148.

²⁹ *Id.*

³⁰ R. at 42-43.

³¹ R. at 156, lines 22-25.

³² R. at 19.

³³ R. at 51-52.

cumulatively spent nearly \$17 million over the course of more than two full years.³⁴ Mr. Wallace does not have the resources to run such an extended, expensive campaign, which he contends would put him at a significant disadvantage relative to other candidates.³⁵ If, however, a special election to fill the vacancy were held in May 2018 as required, then Mr. Wallace's candidacy would be viable.³⁶

Critically, “the viability of [Mr. Wallace’s] candidacy is buttressed by the decision of [Nashville’s] voters in August of 2007,” who required “a special election for vacancies in the office of Mayor whenever more than twelve (12) months remain in the unexpired term.”³⁷ Specifically, on August 2, 2007, Davidson County voters approved an amendment to the Metro Charter that the Respondents’ summarized at the time as follows: **“This amendment would require that a special election be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term.”**³⁸ After being supported by a

³⁴ R. at 19.

³⁵ R. at 19.

³⁶ R. at 19.

³⁷ R. at 19.

³⁸ R. at 91.

supermajority of Davidson County’s voters, the referendum was codified at Metro Charter § 15.03.³⁹

Based on Metro Charter § 15.03, Mr. Wallace appeared before the Davidson County Election Commission⁴⁰ and contended that—as reflected by the Respondents’ own ballot summary—Metro Charter § 15.03 “require[d] that a special election be held to fill [the] vacancy. . . .”⁴¹ However, following a 3-2 vote, Respondents declined to hold a special election.⁴² Instead, they opted to set Nashville’s mayoral election for August 2, 2018, when it would coincide with partisan federal and state primary contests.⁴³ Respondents subsequently justified their disregard for the 2007 ballot summary on the basis that it did not convey the amendment’s “actual” meaning.⁴⁴

It is, however, undisputed that Metro Charter § 15.03 determines whether a special election must be held to fill a mayoral vacancy. In pertinent part, Metro Charter § 15.03 provides that:

[T]here shall be held a special metropolitan election to fill a

³⁹ R. at 103.

⁴⁰ R. at 75.

⁴¹ R. at 91.

⁴² R. at 75.

⁴³ R. at 75; R. at 26.

⁴⁴ R. at 82 (dismissing the ballot summary as a mere “shorthand explanation” that did not reflect “the actual language of the amendment”).

vacancy for the unexpired term in the office of mayor . . . whenever such vacancy shall exist more than twelve (12) months prior to the date of the next general metropolitan election.⁴⁵

Thus, whether a special election must be held to fill the vacancy created by former Mayor Barry's resignation turns entirely on the definition of "general metropolitan election" as that term is used in Metro Charter § 15.03. Because, according to Mr. Wallace, the next general metropolitan election is not until August 2019, Mr. Wallace submits that a special election is required and must be held on a date permitted by Tenn. Code Ann. § 2-14-102.

IX. ARGUMENT

A. The plain language of the Metro Charter unambiguously defines "general metropolitan elections" as the elections held every fourth August during which the Mayor, Vice Mayor, and the Metropolitan Council are elected at once.

1. The Respondents must hold a special election to fill a mayoral vacancy "whenever such vacancy shall exist more than twelve (12) months prior to the date of the next general metropolitan election."

Metro Charter § 15.03 provides that: "There shall be held a special metropolitan election to fill a vacancy for the unexpired term in the office of mayor . . . whenever such vacancy shall exist more than twelve (12) months prior to the date of the next general metropolitan election."⁴⁶ Here, the office

⁴⁵ R. at 103.

⁴⁶ R. at 103.

of mayor became vacant on March 6, 2018.⁴⁷ Thus, whether the Respondents must hold a special election depends on whether there is a “general metropolitan election” before March 6, 2019.

If, as Mr. Wallace argues, “the next general metropolitan election” is not until August 2019, then all Parties agree that a special election must be held.⁴⁸ If, however, “the next general metropolitan election” refers to any county-wide election, then a special election is unnecessary, and the Respondents did not err in refusing to hold one. Because every tool of statutory construction favors Mr. Wallace’s interpretation of “general metropolitan election,” however, and because the Respondents’ contrary interpretation turns on little more than a misreading of this Court’s decision in *State ex rel. Wise v. Judd*, 655 S.W.2d 952 (Tenn. 1983), Mr. Wallace’s position must prevail.

2. Metro Charter § 15.01 expressly defines the term “general metropolitan election.”

Conveniently, “general metropolitan elections” are expressly defined by Metro Charter § 15.01.⁴⁹ Of note, Metro Charter § 15.01 is also entitled:

⁴⁷ R. at 42-43.

⁴⁸ *Id.*

⁴⁹ R. at 102.

“When general metropolitan elections held”⁵⁰—an objective indicator of its meaning to which this Court must give effect. *See Knox Cty. ex rel. Kessel v. Lenoir City, Tenn.*, 837 S.W.2d 382, 387 (Tenn. 1992) (“intent must be derived from a reading of the statute in its entirety, including the caption of the Act.”).

Metro Charter § 15.01 specifically defines “general metropolitan elections” as the elections that are “held on the first Thursday in April, 1966, and on the first Thursday in August of 1971, and each four (4) years thereafter,” during which the “mayor, vice-mayor, five (5) councilmen-at-large and thirty-five (35) district councilmen” all stand for election at once.⁵¹ All Parties agree that the next such election will be held in August of 2019. Further, because August 2019 is indisputably more than twelve months away from March 6, 2018, a special election is required.⁵²

3. Metro Charter § 15.02 establishes that there is only one type of “general metropolitan election.”

Even assuming, for the sake of argument, that Metro Charter § 15.01 were unclear, Metro Charter § 15.02 conclusively resolves the ambiguity.⁵³

⁵⁰ R. at 102.

⁵¹ R. at 102.

⁵² *See* Metro Charter § 15.03; R. at 103.

⁵³ R. at 102-03.

Metro Charter § 15.02—which uses the term “general metropolitan election” repeatedly⁵⁴—indisputably contemplates only a single election. Further, because the two provisions operate in harmony, examining Metro Charter § 15.02 for the purpose of interpreting Metro Charter § 15.01 is appropriate. *See Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997) (“Our goal is to adopt a reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws. Statutes relating to the same subject or sharing a common purpose shall be construed together (‘in *pari materia*’) in order to advance their common purpose or intent.”) (internal citation omitted).

The Respondents’ definition of “general metropolitan election” includes any election other than a referendum where “metropolitan government offices are on the ballot and where all registered voters may vote. . . .”⁵⁵ However, that interpretation cannot be reconciled with Metro Charter § 15.02, which does not merely refer to “a” general metropolitan election.⁵⁶ Instead, Metro Charter § 15.02 refers to “**the** general metropolitan

⁵⁴ R. at 102.

⁵⁵ R. at 148.

⁵⁶ R. at 102-03.

election,”⁵⁷ it does so seven separate times, and it incontrovertibly describes only a single possible election: The election held every four years during which the mayor, vice-mayor, and Nashville’s district councilmembers all stand for election at once. See R. at 102-03 (“In **the general metropolitan election** those qualified persons who receive a majority of the votes cast for mayor, vice-mayor and district councilman for each of the thirty-five (35) districts shall be elected to their respective offices”); (“In **the general election** if no candidate shall receive a majority”); (“the two (2) candidates who received the highest number of votes cast for such office which failed to be filled at **the general election**”); (“in **the general election** if less than five (5) candidates receive a majority”); (“those who in **the general election** received the highest vote”) (“three (3) weeks subsequent to **the general election** held in that year”); (“the runoff election shall be held on the second Thursday in September, being five (5) weeks subsequent to **each general election** held after 1995.”) (emphases added).

Because Metro Charter § 15.02 must be read in harmony with Metro Charter § 15.01, see *Carver*, 954 S.W.2d at 35, and because only Mr. Wallace’s definition of “general metropolitan election” permits Metro

⁵⁷ R. at 102-03 (emphasis added).

Charter § 15.01 and Metro Charter § 15.02 to operate harmoniously, Mr. Wallace's position must prevail. *Id.*

B. The legislative history of Metro Charter § 15.03 makes clear that “a special election [must] be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term.”

1. The legislative history of Metro Charter § 15.03 is written, unambiguous, and points in only one direction.

Based on the clarity of Metro Charter §§ 15.01 and 15.02, the Charter's clear and unambiguous text begins and ends this Court's inquiry. *See, e.g., Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010) (“When a statute's text is clear and unambiguous, the courts need not look beyond the statute itself to ascertain its meaning.”). *See also State v. Perrier*, 536 S.W.3d 388, 397 (Tenn. 2017) (“When statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would extend the meaning of the language, and enforce the language without reference to the broader statutory intent, legislative history, or other sources.”) (cleaned up⁵⁸). Accordingly, further examination of Metro Charter § 15.03's legislative history is unnecessary. *See Garrison v. Bickford*, 377 S.W.3d 659, 663

⁵⁸ Jason P. Steed, *Cleaning Up Quotations in Legal Writing*, AMERICAN BAR ASS'N (Dec. 7, 2017), <https://www.americanbar.org/groups/litigation/committees/appellate-practice/articles/2017/fall2017-cleaning-up-quotations-in-legal-writing.html>.

(Tenn. 2012) (“Our task is to examine the text of the statute and, if the language used is unambiguous, we simply apply the plain meaning of the words used in the statute.”). If the legislative history behind Metro Charter § 15.03 is considered, however, there is no clearer indication that Mr. Wallace’s position must prevail.

In this unusual case, the intent of Metro Charter § 15.03 cannot seriously be contested, because it was conveyed to Nashville’s voters *in writing* when they were called upon to ratify it.⁵⁹ The ballot summary provided to the voters who ratified Metro Charter § 15.03 also points to just a single, uniform conclusion: that Metro Charter § 15.03 “**require[s] that a special election be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term.**”⁶⁰

Critically, the meaning conveyed by the Respondents’ crystal-clear 2007 ballot summary squares perfectly with Mr. Wallace’s reading of Metro Charter § 15.03, but it is irreconcilable with the Respondents’. Incredibly, *the Respondents also do not dispute this reality.* Instead, they have argued that the 2007 ballot summary may be disregarded as a mere “shorthand

⁵⁹ R. at 91.

⁶⁰ R. at 91 (partial emphasis added).

explanation” that should not be considered an indication of Metro Charter § 15.03’s “actual” meaning.⁶¹

The Respondents’ position is unsupportable. “The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995). Rarely, if ever, is the legislative history of a contested provision so clear. Prior to § 15.03’s enactment, both legislators and voters uniformly understood that—if adopted—the proposed amendment to Metro Charter § 15.03 would require “that a special election be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term.” *See* R. at 37 (legislators); R. at 91 (voters).

Most critically, however, because Metro Charter § 15.03 was amended by referendum, the Respondents were required *by law* to “convey the meaning” of the proposed amendment to voters before they voted on it. *See* R. at 37 (“Section 19.01 . . . requires to be set forth in the adoption resolution a brief description of each amendment so worded as to convey the meaning of said amendment”); R. at 107, Metro Charter § 19.01 (“The ballot shall be prepared so as to set forth a brief description of the amendment **worded so**

⁶¹ R. at 82.

as to convey the meaning of said amendment, said description to be set forth in the original amendatory resolution”) (emphasis added). In compliance with this requirement, the Respondents conveyed to voters that the proposed amendment carried the following meaning: **“This amendment would require that a special election be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term.”**⁶² Having done so, however, the Respondents now boldly insist that the “actual” meaning of Metro Charter § 15.03 was different than the one supplied.⁶³

In other words: after Metro Charter § 15.03 was sold to and ratified by voters under a specifically defined set of terms with advance notice as to its meaning, the Respondents claim now that § 15.03 carries an alternative meaning.⁶⁴ Such a position presents serious and possibly insurmountable due process problems. *See, e.g., George v. Hargett*, 879 F.3d 711, 727 n. 9 (6th Cir. 2018) (“If, instead, the State officials had altered or departed from the established practice prior to the 2014 election without giving adequate notice of the change to the citizenry, then a stronger due process claim would

⁶² R. at 91.

⁶³ R. at 82.

⁶⁴ R. at 82.

be made out.”). Accordingly, Metro Charter § 15.03 must be read to avoid such a conflict. *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993) (“It is also our duty to adopt a construction which will sustain a statute and avoid constitutional conflict if any reasonable construction exists that satisfies the requirements of the Constitution.”).

If Respondents’ electoral bait-and-switch were tolerated, it is also difficult to predict just how damaging such a ruse would be to the integrity of the democratic process. *Cf. In re Advisory Opinion to the Atty. Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004) (“The citizen initiative constitutional amendment process relies on an accurate, objective ballot summary for its legitimacy.”). Without exaggeration, the Respondents are seeking judicial approval of a position that necessarily means that they misled voters about the meaning of a proposed amendment to their governing Charter. For self-evident reasons, such an argument should not be permitted to stand. Accordingly, voters’ understanding of § 15.03 at the time of its ratification should be controlling.

2. The ballot summary provided to voters controls § 15.03’s meaning.

Independent of the Respondents’ obligations to convey an accurate ballot summary to voters,⁶⁵ the ballot summary provided to voters by §

⁶⁵ See R. at 107.

15.03's framers on the Metro Council controls its meaning regardless of any supposed ambiguity in the underlying amendment's "actual" language.⁶⁶ See, e.g., *Amador Valley Joint Union High Sch. Dist. v. Bd. of Equalization*, 22 Cal. 3d 208, 245-46 (1978) ("when, as here, the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language."). In other words: Mr. Wallace advances the uncontroversial position that "the summary is very important, because it will likely form the basis of a voter's decision." *Zukerberg v. Bd. of Elections & Ethics*, 97 A.3d 1064, 1079 n. 77 (D.C. 2014).

The threshold principle that the framers' understanding of a constitutional provision controls its meaning has been a lodestar of constitutional interpretation for centuries. See, e.g., *Rhode Island v. Massachusetts*, 37 U.S. 657, 721 (1838) (holding that the interpretation of a constitutional provision "must necessarily depend on the words of the constitution [and] the meaning and intention of the convention which framed and proposed it for adoption and ratification . . ."). At the time that § 15.03 was considered for ratification, both legislators and voters understood it to mean that a special election would be required as a matter

⁶⁶ R. at 82.

of course whenever—as in the instant case—twelve months remained in an outgoing mayor’s unexpired term.⁶⁷ Thus, in interpreting Metro Charter § 15.03, legislators’ and voters’ understanding of Metro Charter § 15.03 at the time that it was ratified controls its meaning. *See id.*

Here, when the Metro Council’s legislative framers submitted Metro Charter § 15.03 for ratification, and when Davidson County voters ratified it, they all did so under the assumption that the amendment “would require that a special election be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term.”⁶⁸ And even if Metro Charter § 15.03’s text could fairly be regarded as ambiguous—and it cannot—this assumption matters. *See Amador*, 22 Cal. 3d at 245-46. *See also* Brian T. Fitzpatrick, *Errors, Omissions, and the Tennessee Plan*, 39 U. MEM. L. REV. 85, 110 (2008) (“we should not see constitutional interpretation as the exclusive domain of political elites, but rather, as a dialogue with the public.”). The framers’ and voters’ understanding of Metro Charter § 15.03’s meaning at the time of its ratification—not the post-hoc pronouncements of Metro’s lawyers and Election Commissioners—should control accordingly. *Id.*

⁶⁷ R. at 37 (legislators); R. at 91 (voters).

⁶⁸ R. at 37 (legislators); R. at 91 (voters).

C. Respondents’ position creates an absurd result. If the Respondents’ position were correct, then the entire Metropolitan Council was elected at the wrong time following the 1980 and 2000 censuses.

Mr. Wallace’s interpretation of the term “general metropolitan election” must also prevail over the Respondents’ conflicting view for yet another reason: the Respondents’ position creates an absurd result. See *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000) (“we will not apply a particular interpretation to a statute if that interpretation would yield an absurd result.”). Specifically, if the Respondents’ position were correct, then the entire Metropolitan Council was elected at the wrong time following the 1980 and 2000 censuses, and nobody appears to have noticed.

The Metro Charter contains another important use of the term “general metropolitan election” that provides clear insight into its narrow, singular meaning. Specifically, Metro Charter § 18.06—which governs post-census elections after redistricting—provides that:

Within six (6) months after the decennial census of 1970 and each one thereafter is published by the United States Census Bureau showing the population in the area of the metropolitan government, it shall be the duty of the planning commission to recommend to the council whether redistricting of the councilmanic districts is necessary to prevent substantial underrepresentation of particular areas as the result of population changes. . . . Upon approval thereof by the mayor, or passage over his veto, redistricting shall be accomplished and **district councilmen shall be elected accordingly at the**

next general metropolitan election.⁶⁹

Based on this provision, after each census, councilmembers are elected to represent newly-drawn districts at “the next general metropolitan election.”⁷⁰

As noted, the Respondents’ definition of “general metropolitan election” encompasses any election in which “metropolitan government offices are on the ballot and where all registered voters may vote. . . .”⁷¹

Assuming the accuracy of this definition, after a census, the Metro Council should not simply be elected at the next August election described in Metro Charter § 15.01 and Metro Charter § 15.02, as Mr. Wallace contends. Instead, as the Respondents would have it, the Metro Council should be elected at the next election in which “metropolitan government offices are on the ballot and where all registered voters may vote. . . .”⁷²

Tellingly, however, this has never happened. After the 2000 census, for example, Nashville’s Metropolitan Council was not reelected in August 2002—which served as “the next” election when metropolitan government

⁶⁹ R. at 135 (emphasis added).

⁷⁰ R. at 135.

⁷¹ R. at 148.

⁷² R. at 148.

offices were on the ballot and where all registered voters could vote.⁷³ Instead, in keeping with Mr. Wallace’s definition of the term, the Metro Council was elected as usual at the regular August 2003 election described by Metro Charter § 15.01 and Metro Charter § 15.02.⁷⁴

Similarly, following the 1980 census, “the next” election during which metropolitan government offices were on the ballot and where all registered voters could vote took place on August 5, 1982—the “County General Election.”⁷⁵ Even so, the Respondents did not hold an election for District Councilmembers on August 5, 1982, which Metro Charter § 18.06 would presumably have required if the Respondents’ position were accurate. Instead, the Respondents held the election on August 4, 1983,⁷⁶ because for the entirety of the Charter’s existence, the election that takes place every fourth August has been understood to be the only “general metropolitan election” that exists.

In sum: the Respondents’ position in this case is flatly irreconcilable

⁷³ DAVIDSON CTY. ELECTION COMM’N, *Election Statistics*, <http://www.nashville.gov/Election-Commission/About/Historical-Information/Election-Statistics.aspx> (last visited Mar. 27, 2018) (“August 1, 2002: State Primary and County General”).

⁷⁴ *See id.* (“August 7, 2003: Metropolitan General”).

⁷⁵ *Id.* (“August 5, 1982: State Primary and County General Election”).

⁷⁶ *Id.* (“August 4, 1983: Metro General Election”).

with their own previous actions, and it triggers a result that can fairly be described as absurd. *Flemming*, 19 S.W.3d at 197. Thus, given their own longstanding, conflicting interpretation of the term “general metropolitan election,” the Respondents’ “argument refutes itself, and requires no further analysis.” *Alley v. Bell*, 101 F. Supp. 2d 588, 630 (W.D. Tenn. 2000), *aff’d*, 307 F.3d 380 (6th Cir. 2002). Accordingly, the Respondents’ present interpretation of “general metropolitan election” should be rejected, and Mr. Wallace’s position should prevail.

D. Metro Charter § 15.03 must be interpreted in accordance with Nashville’s longstanding public policy of ensuring that its local elections are not contaminated by partisan federal and state influences.

Since its inception, the Metro Charter has embodied a public policy of ensuring that Nashville’s non-partisan local elections are not contaminated by the influence of partisan federal or state politics. In furtherance of this cherished value, municipal elections are held in August every four odd-numbered years, which ensures that they never coincide with any federal or state contests.

Significantly, this longstanding tradition of non-partisanship for local offices—and Metro’s interest in preventing local offices from “coinciding” with partisan contests—was reaffirmed as a deeply held public value by

resolution of the Metro Council as recently as 2011.⁷⁷ At that time, in response to a direct threat to this longstanding public policy, the Council adopted a resolution that declared:

WHEREAS, the founders of the Metropolitan Government of Nashville and Davison County chose to make local elected offices non-partisan;

and WHEREAS, the offices of Metropolitan Mayor, Vice Mayor, and Council have been non-partisan since the Charter became effective in 1963; and

* * * *

WHEREAS, having Metropolitan elections coincide with partisan Presidential elections **would negatively impact the democratic process and destroy the purpose of having a non-partisan elected body;**

* * * *

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

Section 1. That the Metropolitan County Council hereby goes on record as opposing any state legislation that would change the Metropolitan Mayor, Vice Mayor, and/or Council terms of office to coincide with November partisan elections.⁷⁸

When approaching questions of statutory interpretation, a public value as fundamental to Nashville's Charter as ensuring that its local races are free

⁷⁷ See R. at 34.

⁷⁸ See R. at 34 (emphasis added).

from federal and state partisan contamination carries substantial influence. *See generally* William N. Eskridge, *Public Values in Statutory Interpretation*, 137 U. PA. L. REV. 1007, 1018-19 (1989) (“the gravitational force of a public value will have a decisive influence on the statutory orbit when the force is strong (for example, a constitutional value to which we are deeply committed) and the statutory language less clear.”). The influence of such a public value on the proper interpretation of statutory text is also especially significant where, as here, a litigant has raised a claim of ambiguity regarding a disputed provision’s meaning. *See id.* Accordingly, a plain statement of intent to violate Metro’s longstanding public value against partisan federal and state contamination is required in order for the Respondents’ interpretation to prevail. *See, e.g., Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991) (“Rules of plain statement and strict construction prevail only to the protection of weighty and constant values, be they constitutional”).

Mr. Wallace’s interpretation of Metro Charter § 15.03, which requires a special election that is independent of any federal or state partisan contest, is in harmony with this longstanding public value. In contrast, however, the Respondents’ interpretation of Metro Charter § 15.03 would eviscerate it. Holding an election to fill the vacancy in the office of mayor in August 2018

would result in that election being placed on the same ballot as partisan primaries for offices including U.S. Senator, U.S. Congressman, Governor, State Senator, and State Representative for the first time in Metro's history.⁷⁹

There is no indication whatsoever from the text of Metro Charter § 15.03 that such a possibility was ever contemplated. And to the contrary, there is significant evidence to indicate that it was not.⁸⁰ Accordingly, given the absence of a plain statement expressing an intention to violate Metro's fundamental public value of preventing non-partisan local elections from coinciding with partisan federal and state contests, Mr. Wallace's interpretation of Metro Charter § 15.03 should prevail. *Astoria*, 501 U.S. at 108.

E. Respondents' contrary arguments are unpersuasive.

The Respondents make two contrary arguments. First, they contend that this Court's holding in *Wise v. Judd* controls this case. Second, they insist that the term "general metropolitan election" should be defined by reference to Tenn. Op. Atty. Gen. No. 98-172 (Aug. 27, 1998). For the reasons that follow, each claim is unpersuasive.

⁷⁹ See R. at 26.

⁸⁰ See R. at 34 (emphasis added).

1. *Wise v. Judd* did not hold that a “general metropolitan election” is any election where metropolitan offices are on the ballot. Further, the issue presented in this case was neither raised nor argued by any party to *Wise*, and the provision at issue has since been amended.

Respondents initially argue that their interpretation of Metro Charter § 15.03 was affirmed by this Court in *State ex rel. Wise v. Judd*, 655 S.W.2d 952 (Tenn. 1983). However, *Wise v. Judd* contains no such holding. Additionally, because the issue presented in this case was neither raised, nor argued, nor briefed by any party to *Wise*, such a holding would not control this case even if the *Wise* Court had adopted it. Moreover, because the holding that the Respondents divine from *Wise* conflicts with the amendment to Metro Charter § 15.03 that Davidson County voters adopted in 2007, any such holding would have been overruled by subsequent legislation. Thus, for several reasons, the Respondents’ reliance upon *Wise* is misplaced.

The Respondents contend that this Court has “conclusively settled”⁸¹ this case by holding previously that Charter § 15.01 refers to any “general election where Metropolitan offices are on the ballot.”⁸² In support of this proposition, the Respondents point to this Court’s 1983 decision in *Wise v.*

⁸¹ See Respondents’ Response in Opposition to Petitioner Wallace’s Emergency Motion to Assume Jurisdiction, p. 3.

⁸² R. at 78.

Judd, 655 S.W.2d at 953.⁸³ However, a cursory reading of *Wise* reflects that it neither ruled upon nor even intimated what the Respondents claim it “conclusively settled.”⁸⁴ To the contrary, *Wise* stands for precisely the opposite proposition for which the Respondents have cited it.

In *Wise*, this Court was called upon to determine which election qualified as “the preceding general election” for purposes of Metro Charter § 19.01. *See id.* In that case, the Metropolitan Department of Law argued—incorrectly—that the preceding “general election” was “the state general election held in November 1982[.]” *Id.* In contrast, the *Wise* petitioners argued that either “the August 1982 or August 1979 Metropolitan elections”—but *not* the state general election—could qualify as the preceding general election under the Metro Charter. *Id.* Ultimately, the petitioners prevailed.

Contrary to the Respondents’ argument in this case, however, the *Wise* Court never held that the August 1982 election qualified as a “general metropolitan election.” *Id.* Further, because resolving that question was unnecessary to its holding, it did not need to.

⁸³ R. at 78.

⁸⁴ *See* Respondents’ Response in Opposition to Petitioner Wallace’s Emergency Motion to Assume Jurisdiction, p. 3.

Instead, this Court did precisely what Mr. Wallace has done here: it looked to the definition of “general metropolitan election” that is expressly established by Metro Charter § 15.01. *See Wise*, 655 S.W.2d at 953. Specifically, the *Wise* Court explained that: “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 clearly is to municipal elections.” *Id.* That is the full extent of the *Wise* Court’s analysis of the matter, and as Mr. Wallace himself has argued in this case, the text of Metro Charter § 15.01 controls the relevant inquiry.

Reaching for an interpretation of *Wise* that supports its position in this case, however, the Respondents more specifically direct this Court not to *Wise* itself, but to the Chancery Court’s 1982 opinion in the case—which the Respondents insist that this Court “was affirming.”⁸⁵ The Chancellor’s 1982 holding on this point, however, is unavailing for several reasons.

First, the Chancellor’s holding that all county-wide Metro elections qualify as “general metropolitan elections” is nowhere to be found in this Court’s opinion in *Wise*. Instead, as noted above, *Wise* stated only that the definition of “general metropolitan elections” is found in Charter § 15.01, which “provides for Metropolitan general elections and refers to them as

⁸⁵ R. at 78.

such.” *Wise*, 655 S.W.2d at 953. There is no indication whatsoever from *Wise* that this Court affirmed the Chancellor’s holding that the August 1982 election qualified as a general metropolitan election. *Id.* No such ruling exists, and Mr. Wallace respectfully submits that this omission was not an oversight. *Id.*

Second, neither party in *Wise* advanced the position that Mr. Wallace is advocating here. As noted, the petitioners in *Wise* argued that both the August 1982 Metro election and the August 1979 Metro election qualified as general metropolitan elections. *Id.* In contrast, the defendant in *Wise* argued that those two elections plus “the previous state general election” held in November 1982 qualified as general metropolitan elections under the Metro Charter. *Id.* In this case, however, Mr. Wallace is arguing a position that neither party to *Wise* advanced. Specifically, Mr. Wallace contends that only the August 1979 Metro election—and none other—qualified as a “general metropolitan election” under Metro Charter § 15.01.

This distinction is significant for several reasons, not the least of which is that the *Wise* Court’s holding on the matter comports much more closely with Mr. Wallace’s view than the Respondents’. Most importantly, however, it means that even if the Respondents’ reading of *Wise* were correct—and it is not—*Wise* would not control this case, because the argument that Mr.

Wallace presents now was not advanced. *See, e.g., State v. Nashville Baseball Club*, 154 S.W. 1151, 1155 (1913) (“It is a familiar principle that stare decisis only applies with reference to decisions directly upon the point in controversy” and “only arises in respect of decisions directly upon the points in issue”) (quotation omitted). *See also* Fitzpatrick, 39 U. MEM. L. REV. at 100 (“It is a common principle of stare decisis that the doctrine does not apply to arguments that were never considered in previous decisions. Indeed, the Tennessee Supreme Court adopted this principle almost one hundred years ago[.]”) (citations omitted). As such, the Respondents’ reliance on *Wise* is misplaced.

Third, even if *Wise* stood for the proposition for which the Respondents have cited it—and even if that decision governed Mr. Wallace’s claim in this case—the Metro Charter has since been amended to reflect an interpretation that is fundamentally at odds with the interpretation that the Respondents now advance. As discussed at length above, in 2007, the Metro Charter was amended to “require that a special election be held to fill a vacancy in the office of mayor . . . whenever more than twelve (12) months remain in the unexpired term.”⁸⁶ Significantly, that amendment postdated *Wise* by nearly three decades. Consequently, the present version of Metro

⁸⁶ R. at 91.

Charter § 15.03 was not the subject of this Court’s decision in *Wise*, and it has been materially amended since. Thus, for this reason, too, *Wise* cannot be considered controlling.

2. The specific definition of “general metropolitan election” set forth in the Metro Charter prevails over the Tennessee Attorney General’s broad definition of the term “general election” concerning election statutes generally.

The Respondents also argue that based on a 1998 Attorney General opinion defining the term “general election” with respect to election statutes generally, a general metropolitan election “includes any election in which all registered voters in the city are eligible to participate.”⁸⁷ However, this contention is easily dispatched as well, because it is elementary that “a more specific statutory provision takes precedence over a more general provision.” *Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010). Notably, the Metro Charter itself also contains an explicit savings clause on the matter.⁸⁸ Specifically, Metro Charter § 15.04 expressly states that “the general election laws of the state” do not apply where “otherwise provided in this article.”⁸⁹

For the reasons previously advanced, “general metropolitan election”

⁸⁷ See R. at 80 (quoting Tenn. Op. Atty. Gen. No. 98-172 (Aug. 27, 1998), 1998 WL 661341).

⁸⁸ See R. at 103, Metro Charter § 15.04.

⁸⁹ *Id.*

is both specifically and narrowly defined by the Metro Charter.⁹⁰ Further, the “general” definition of “general metropolitan election” that Respondents advance: (1) conflicts with Metro Charter § 15.03’s clearly expressed legislative history; (2) violates longstanding Metro public policy; and (3) creates an absurd result that is inconsistent with decades of Respondents’ clearly established prior usage.⁹¹ Accordingly, the Respondents’ reliance upon Tenn. Op. Atty. Gen. No. 98-172—which, it should be noted, does not purport to be interpreting the Metro Charter—is without merit.

F. The next general metropolitan election is in August 2019. Accordingly, a special election is required.

For the foregoing reasons, based on the clarity of both Metro Charter § 15.01 and Metro Charter § 15.02—and based further on legislative history of Metro Charter § 15.03, the Respondents’ historical interpretation of the term “general metropolitan election,” and the Metro Charter’s longstanding public policy against partisan federal and state contamination—the term “general metropolitan election” describes only a single possible election: the election held every fourth August during which the mayor, vice-mayor, and Nashville’s forty councilmembers all stand for election at the same time.⁹²

⁹⁰ See Section IX-A, *supra*.

⁹¹ See Section IX-B, C, & D, *supra*.

⁹² See Section IX-A, B, C, & D, *supra*.

The next time that this election will be held is in August 2019.⁹³ March 6, 2018—the date of former Mayor Barry’s resignation—is also indisputably more than twelve months prior to that date. Accordingly, Metro Charter § 15.03 requires that a special election be held to fill the vacancy.⁹⁴

The Parties are in agreement that Tenn. Code Ann. § 2-14-102—which governs the timing of special elections⁹⁵—affords Respondents two options for setting the election. Under Tenn. Code Ann. § 2-14-102(a), Respondents may set the special election “not less than seventy-five (75) days nor more than eighty (80) days after” March 6, 2018. *Id.* Alternatively, under Tenn. Code Ann. § 2-14-102(b)(1), Respondents may set the special election on May 1, 2018, because the special election would “fall[] within thirty (30) days of an upcoming regular primary or general election being held in th[e] district.”⁹⁶ *Id.* The Respondents enjoy discretion to choose between these two options, and they are entitled to select either one. *Id.*

⁹³ R. at 156, lines 22-25.

⁹⁴ R. at 103.

⁹⁵ *See* R. at 103, Metro Charter § 15.04.

⁹⁶ R. at 87 (“The May 1, 2018 ballot will include the Primary elections for Chancery Court Part II, Circuit Court Clerk, County Clerk, Criminal Court Clerk, Criminal Court Judge, Division 2, General Sessions Judge, Division 3, General Sessions Judge, Division 10, Juvenile Court Clerk, Public Defender, Register of Deeds, Sheriff, and Trustee and the Transit referendum.”).

X. CONCLUSION

For the foregoing reasons, the Trial Court's Order dismissing Mr. Wallace's petition for a writ of certiorari and a writ of mandamus should be **REVERSED**; a declaratory judgment declaring that "the next general metropolitan election" is not until August 2019 should **ISSUE**; and this Court should **REMAND** this case with instructions that the Trial Court order a special election to fill the vacancy in the office of mayor on May 1, 2018 or "not less than seventy-five (75) days nor more than eighty (80) days after" March 6, 2018 pursuant to Tenn. Code Ann. § 2-14-102.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2018, a copy of the foregoing was mailed, postage prepaid, and transmitted by e-mail to the following:

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By: 
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⁹⁷ Mr. Hiland is not a party to this case, but he filed a parallel action in the Trial Court. Mr. Hiland has not filed a notice of appeal.