

In the Chancery Court for Davidson County, Tennessee

**NASHVILLE ENGLISH FIRST and
ERIC CRAFTON,**

Plaintiffs,

v.

**DAVIDSON COUNTY ELECTION
COMMISSION and A.J. STARLING,
EDDIE BRYAN, ANA ESCOBAR
BURCHWELL, LYNN GREER, and
PATRICIA HEIM, in their official
capacities as Davidson County
Election Commissioners,**

Defendants,

No. 08-1912-I

and

**NASHVILLE AREA CHAMBER OF
COMMERCE, AMERICAN CIVIL
LIBERTIES UNION OF TENNESSEE,
SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL
205, TENNESSEE IMMIGRANT
AND REFUGEE RIGHTS
COALITION, MICHAEL JAMESON,
and JAMES ZRALEK,**

Intervenors.

**Pleading in Intervention on Behalf of the Nashville Area Chamber of
Commerce, the American Civil Liberties Union of Tennessee, the Service
Employees International Union Local 205, the Tennessee Immigrant and
Refugee Rights Coalition, Michael Jameson, and James Zralek**

The Nashville Area Chamber of Commerce, the American Civil Liberties
Union Foundation of Tennessee, the Service Employees International Union
Local 205, the Tennessee Immigrant and Refugee Rights Coalition, Councilman

Michael Jameson, and Mr. James Zralek ("Intervenors") respectfully submit this Pleading in Intervention pursuant to Rule 24.03 of the Tennessee Rules of Civil Procedure.

I. INTERVENING PARTIES

1. The Nashville Area Chamber of Commerce (the "Chamber") is a nonpartisan domestic nonprofit organization with its principal office in Nashville, Davidson County, Tennessee. The Chamber is a federation of more than 2,500 businesses in ten Middle Tennessee counties, including Davidson County. The Chamber's International Business Council, which promotes international trade, also has individual members who are registered voters in Davidson County. The Chamber's mission is to advocate on behalf of area businesses and to facilitate community leadership to create economic prosperity. Members of the Chamber have existing or potential business interests in non-English speaking parts of the world. The Chamber works with the Metropolitan Government of Nashville and Davidson County ("Metro") in public-private partnerships such as the Partnership 2010 initiative, and together with Metro it communicates with business leaders in English and many other languages to promote area economic development through relocation of foreign-owned businesses to the area and creating economic relationships with foreign businesses, leaders, and individuals. The Chamber, through its affiliates and programs, led a trade mission to China in 2007, is leading another one to Germany and Sweden at this time, and has coordinated other trade missions to

European countries to build economic relationships for the benefit of the economy in the Nashville area. The Chamber, through its affiliates and programs, has hosted trade delegations for business and political leaders from a variety of countries around the world. The Chamber has been vocal in its opposition to the proposed English-only referendum in this case and against prior English-only proposals by the Plaintiffs. The Chamber opposes the English-only initiative because, among other reasons, it will hurt economic development in the Nashville area and it portrays the city in a negative light. The Chamber also opposes the inclusion of the initiative on the ballot because it believes many petition signers thought they were signing an "English First" amendment when in reality it is an "English Only" amendment, which would create many serious legal and financial challenges for Nashville.

2. The American Civil Liberties Union of Tennessee, Inc. ("ACLU"), is a nonpartisan domestic nonprofit organization with its principal office in Nashville, Davidson County, Tennessee. ACLU has individual members throughout Tennessee, including many who are residents and registered voters in Davidson County. ACLU's mission is to promote and protect constitutional rights in Tennessee. ACLU has worked to protect voting rights and improve the election system in Davidson County and throughout Tennessee for four decades, through voter education, election monitoring, petitioning legislators and elections officials, and litigation. ACLU has led public campaigns against the

proposed English-only referendum in this case and against prior English-only proposals by the Plaintiffs.

3. Local 205 of the Service Employees International Union ("SEIU") represents public sector workers in the Metro General Government departments, the Metro Hospital Authority, the Davidson County Sheriff's Office, the Metro Action Commission, Nashville Electric Service, and the Metropolitan Development and Housing Agency, and support staff in the Metro Nashville Public School system. SEIU's public sector members often need to communicate with members of the public in languages other than English in order to provide basic health, public safety, and educational services to Nashville residents. Many of SEIU's public sector members are registered voters in Davidson County. SEIU and its members are active participants in Metro elections, through candidate and issue forums, endorsements, phonebanking voters, reaching voters through direct mail, worksite mobilization, and going door-to-door.

4. The Tennessee Immigrant and Refugee Rights Coalition ("TIRRC") is a nonpartisan domestic nonprofit organization with its principal office in Nashville, Davidson County, Tennessee. TIRRC has individual members throughout Tennessee, including many who are residents and registered voters in Davidson County. TIRRC's mission is to empower immigrants and refugees in Davidson County and throughout Tennessee to develop a unified voice, defend their rights, and create an atmosphere in which they are viewed as positive contributors to our community. TIRRC has worked to promote voter

engagement and improve the election system in Davidson County and throughout Tennessee since 2001, through its Welcoming Tennessee Initiative, voter education and mobilization, citizenship workshops, and by petitioning public officials. TIRRC has led public campaigns against the proposed English-only referendum in this case and against prior English-only proposals by the Plaintiffs.

5. Michael Jameson ("Councilman Jameson") is the District 6 Council member for the Metropolitan Government of Nashville and Davidson County ("Metro"). Councilman Jameson is a member of the Charter Revision and Rules-Confirmations-Public Elections committees of the Metro Council. He is a Davidson County citizen, resident, registered voter, and business and property owner. On February 6, 2007, after speaking against it on the Metro Council floor and publicly, Councilman Jameson voted against Substitute Ordinance BL2006-1185 which sought to amend the Metropolitan Code of Laws by requiring all government communications to be in English (with certain exceptions). On November 21, 2006, Councilman Jameson co-sponsored and voted in support of Resolution RS2006-1650, which requested the Mayor to study the impact of "English Only" or "English First" legislation, to survey the agencies of the Metro Government whose current programs would be affected, and to determine how restrictions on language accommodation services might affect the speed of English acquisition among immigrants and refugees who are linguistically isolated. On August 7, 2008, Councilman Jameson co-sponsored and voted in

support of RS2008-402, a resolution requesting the citizens of Nashville and Davidson County not to sign the English-only amendment petition cards and not to support the petition if placed on the ballot. On August 19, 2008, Councilman Eric Crafton sought to introduce Ordinance BL2008-287, which sought to require Metro departments and agencies to develop an "interpreter fee" to be charged to non-English speaking permit applicants. On the Council floor, Councilman Jameson successfully moved to table Councilman Crafton's motion, prompting his eventual withdrawal of the bill.

6. James Zralek is a Davidson County citizen, resident, and registered voter opposed to Plaintiffs' proposed referendum. On August 22, 2008, Mr. Zralek through counsel wrote to the Metro Clerk and the Davidson County Election Commission objecting to placing the English-only referendum on the ballot, arguing that the referendum was untimely under Article 19 of the Metro Charter and that the description of the English-only petition presented to voters being asked to sign it was deceptive and did not convey the true meaning of the proposed charter amendment.

II. ANSWER AND DEFENSES TO PLAINTIFFS' COMPLAINT

A. First Defense - Response to Allegations

7. Intervenors provide the following paragraph-by-paragraph response to Plaintiff's Complaint for Declaratory Judgment, Injunction and Mandamus:

1. Admitted.

2. To the extent this paragraph sets forth the text of provisions of the Davidson County Charter, no response is necessary as the Charter speaks for itself. The remaining allegations and the subparts of Paragraph 2 are denied.

PARTIES

3. Intervenors admit that Exhibit A is a blank copy of the petition circulated by Plaintiffs in an effort to obtain signatures to place the initiative on the November 4, 2008 ballot. Intervenors are without knowledge or information sufficient to for a belief as to the truth of any remaining allegations in Paragraph 3 of the Complaint.

4. Intervenors admit that Mr. Crafton is a member of the Nashville Council but are without knowledge or information sufficient to for a belief as to the truth of any remaining allegations in Paragraph 4 of the Complaint.

5. Intervenors admit that the Davidson County Election Commission (the Commission) is the body that oversees elections. The remaining allegations are legal conclusions for which no response is necessary.

6. Denied.

7. Intervenors admit that the Commission voted against placing the English Only initiative on the November 4, 2008 ballot. Intervenors deny all remaining allegations of Paragraph 7.

8. Upon information and belief, the allegations set forth in Paragraph 8 are admitted.

9. Intervenor's admit that the Commission approved a motion regarding the number of signatures obtained on the petition and that the transcript of the Commission's proceedings speaks for itself as to actions taken by the Commission. To the extent this paragraph calls for a legal conclusion, no response is necessary.
10. Intervenor's admit that the Commission approved a motion refusing to place the English Only initiative on the ballot and that the transcript of the Commission's proceedings speaks for itself as to actions taken by the Commission. To the extent this paragraph calls for a legal conclusion, no response is necessary.
11. Upon information and belief, Intervenor's admit the transcript of the Commission's proceedings speak best to the actions and votes taken by commission members. To the extent this paragraph calls for a legal conclusion, no response is necessary.

FACTS

12. Upon information and belief, Paragraph 12 is admitted.
13. Upon information and belief the prior initiative proposal was on the November 7, 2006 ballot. To the extent this paragraph calls for a legal conclusion, no response is necessary and any remaining allegations are denied.
14. Upon information and belief, Intervenor's admit that the petitions seeking a vote on the English Only initiative was filed with the clerk on or about August 15, 2008. To the extent this paragraph calls for a legal

conclusion, no response is necessary and any remaining allegations are denied due to lack of knowledge or information sufficient to form a belief as to the truth therein.

15. This paragraph calls for legal conclusions and thus no response is necessary and any allegations in Paragraph 15 are denied.

16. Denied.

17. Upon information and belief, it is admitted that Sue Cain sent an opinion letter to Mr. Bryan and that the letter speaks for itself as to what it says.

18. ?????

19. Denied.

20. Intervenors admit that the transcript of the Commission's action speaks for itself. To the extent this paragraph calls for a legal conclusion, no response is necessary and any remaining allegations are denied.

21. Intervenors admit that the transcript of the Commission's action speaks for itself. To the extent this paragraph calls for a legal conclusion, no response is necessary and any remaining allegations are denied.

22. Intervenors admit that the transcript of the Commission's action speaks for itself. To the extent this paragraph calls for a legal conclusion, no response is necessary and any remaining allegations are denied.

23. Intervenors admit that the transcript of the Commission's action speaks for itself. To the extent this paragraph calls for a legal conclusion, no response is necessary and any remaining allegations are denied.

24. Intervenors admit that the transcript of the Commission's action speaks for itself. To the extent this paragraph calls for a legal conclusion, no response is necessary and any remaining allegations are denied.

25. Intervenors admit that the Commission voted against placing the English Only initiative on the November 4, 2008 ballot but again state that the transcript of the Commission's action speaks for itself as to the vote. To the extent this paragraph calls for a legal conclusion, no response is necessary and any remaining allegations are denied.

26. Upon information and belief, the allegations of Paragraph 26 are admitted as the decision not to place the English Only initiative on the November 4, 2008 ballot.

27. Denied.

28. Denied.

COUNT ONE – VIOLATION OF SECTION 19.01

29. Intervenors in turn incorporate their previous responses to the allegations incorporated by reference in Paragraph 29.

30. To the extent this paragraph calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions.
31. To the extent this paragraph calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions.
32. Denied. To the extent this paragraph calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions.
33. To the extent this paragraph calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions.
34. To the extent this paragraph calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions.
35. Denied.
36. Denied.
37. Denied.
38. Denied.

COUNT TWO – VIOLATION OF CONSTITUTIONAL RIGHTS

39. Intervenors in turn incorporate their previous responses to the allegations incorporated by reference in Paragraph 39.

40. To the extent this paragraph calls for a legal conclusion, no response is necessary.
41. To the extent this paragraph calls for a legal conclusion, no response is necessary.
42. To the extent this paragraph calls for a legal conclusion, no response is necessary.
43. To the extent this paragraph calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions.
44. To the extent this paragraph calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions.
45. To the extent this paragraph calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions.
46. To the extent this paragraph calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions.
47. To the extent the paragraph beginning “**NOW THEREFORE**” and its subparts calls for a legal conclusion, no response is necessary and Intervenors hereby deny the allegations and conclusions therein. Intervenors deny that Plaintiff has been harmed or that any relief

(requested by Plaintiffs in subparagraphs 1 through 8) to Plaintiffs is available or warranted.

48. Any allegations of the Complaint not specifically admitted or denied are hereby denied.

8. Intervenor further deny the Plaintiffs' allegations as recited in the Court's Alternative Writ of Mandamus issued on September 3, 2008.

9. All allegations of the Complaint and Alternative Writ of Mandamus not specifically admitted or denied are hereby denied.

B. Second Defense - Failure to State a Claim

10. The Complaint fails to state a claim upon which relief may be granted.

C. Affirmative Defense of Misrepresentation

11. Section 19.01 of the Metro Charter states that a referendum "ballot shall be prepared so as to set forth a brief description of the amendment worded so as to convey [its] meaning"

12. The description of the English-only petition presented to voters being asked to sign it was deceptive and did not convey the true meaning of the proposed charter amendment. The titles used on the signature cards (*see*, Compl. Exs. A & B-1) were "Let the People VOTE on Making ENGLISH Nashville's Government's OFFICIAL LANGUAGE" and "Let the People Vote on English as Official Language." However, English was and is already the official language of Metro under state law. *See*, Tenn. Code Ann. § 4-1-404 (2008).

13. Plaintiffs called the English-only petition an "English First" petition on the website and in the e-mail they used to gather signatures and named their effort and/or organization "Nashville English First" (see, Compl. Ex. A). The truth is that the actual language of the petition would require the use of English "only," not English first. The petition does not even contain a public health or safety exception: "... Official actions (those which bind or commit the government) shall be taken only in the English language, and all official government communications and publications shall be published only in English"

14. For the Davidson County Election Commission to certify a petition that was presented in a deceptive manner to the voters of Davidson County would fatally undermine the validity of any verification procedure, would make unlawful any description of the amendment on the ballot, and would violate the Metro Charter and applicable state and federal law.

IV. PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth above, the Intervenors respectfully request that the Court deny all relief requested by Plaintiffs; that the Court refuse to issue a Peremptory Writ of Mandamus against the Defendants; that the Court enjoin any party to this action from taking actions to place Plaintiffs' English-only initiative on the November 4, 2008 ballot; that the Court grant an expedited hearing to Intervenors; and award Intervenors' costs and expenses and grant such other relief as deemed just and equitable.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served by hand delivery today, September 3, 2008, on Plaintiffs' counsel James D.R. Roberts, Esq., Roberts & Layman, The Customs House, Suite 401, 701 Broadway, Nashville, TN 37203 and Defendants' counsel Sue B. Cain, Esq., Metropolitan Department of Law, Metropolitan Courthouse, Suite 108, Nashville, TN 37219-6300.

Paul W. Ambrosius