



Meeting Agenda

Ethics Commission

Thursday, July 27, 2023

12:00 PM

Board Room

CALL TO ORDER

APPROVAL OF MINUTES

1. Consideration Of Approval Of Minutes
June 27, 2023 Ethics Commission Meeting
July 6, 2023 Ethics Commission Meeting

NEW BUSINESS

2. PUBLIC HEARING: Consideration Of Ethics Complaint Against Alderman Gabrielle Hanson Relative To Correspondence To Douglas E. Kreulen, President And CEO Of The Metropolitan Nashville Airport Authority, And The BNA Board Of Commissioners Regarding Their Support And/Or Funding Of The Franklin Justice And Equity Coalition.
 1. Complaint Filed By Emily Jenkins
 2. Complaint Filed By Peggy Kingsbury
 3. Complaint Filed By Kate Osher
 4. Complaint Filed By Damon Rogers
 5. Complaint Filed By Janet Shouse
 6. Complaint Filed By Rod Berger
 7. Complaint Filed By Joseph Jenson

OTHER BUSINESS

ADJOURN

Anyone needing accommodations due to disabilities please contact the ADA Coordinator at 615-791-3277 at least 24 hours prior to the meeting.



Meeting Minutes

Ethics Committee

Tuesday, June 27, 2023

12:00 PM

Board Room

CALL TO ORDER

Chairman Martin called the meeting to order at 12:00 PM

Board Members Present: Jerry Sharber, Vona Wilson, Jim Martin

Board Members Absent: Juanita Patton (recused)

Staff Present: Shauna Billingsley, Tabitha Langley, Angie Johnson

APPROVAL OF MINUTES

1. **Consideration Of Approval Of Minutes
June 15, 2023 Ethics Commission Meeting**

Sponsors:

A motion was made by Commissioner Sharber, seconded by Commissioner Wilson to approve the June 15, 2023 Ethics Commission Minutes. The motion passed 3-0.

NEW BUSINESS

2. **Consideration Of The Merits Of Ethics Complaints Filed Against Alderman Gabrielle Hanson**

Sponsors:

The Commissioners discussed the item. This discussion can be referenced in the Court Reporter's transcript.

A motion was made by Commissioner Wilson, seconded by Commissioner Sharber to recommend moving forward with a Public Hearing to examine the Ethics Complaints against Alderman Gabrielle Hanson because there was a determination of violation of Chapter 8, Section 1-805, 1-807, and 1-808 of the Franklin Municipal Code. The motion passed 3-0.

OTHER BUSINESS

A motion was made by Commissioner Sharber, seconded by Commissioner Wilson to extend Alderman Hanson's deadline to respond to the complaints until 12 PM on July 17, 2023. The motion passed 3-0.

A meeting was scheduled for July 6, 2023 at 12 PM to appoint a substitute member for the Public Hearing.

The Public Hearing was scheduled for July 27, 2023 at 12PM.

ADJOURN

A motion was made by Commissioner Sharber, seconded by Commissioner Wilson to Adjourn the Meeting. The motion passed 3-0.

Meeting Adjourned @ 1:05 PM

Jim Martin, Chair

Minutes Prepared by Cayce Anderson, Deputy City Recorder, and Sarah Schilling, Assistant Deputy City Recorder, City Administrator's Office - 7/19/23, 3:10 PM

**The following contains the complete transcript
and exhibits for the June 27, 2023 City of
Franklin Ethics Commission Meeting.**

**Prepared by Tammy K. Benefield, RPR, CLR,
LCR of Elite-Brentwood Reporting Services.**

CITY OF FRANKLIN ETHICS COMMISSION MEETING

TRANSCRIPT OF PROCEEDINGS

June 27, 2023



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**CITY OF FRANKLIN
ETHICS COMMISSION MEETING**

JUNE 27, 2023

12:00 p.m. CST

**109 3rd Avenue South
Franklin, TN 37064**

TRANSCRIPT OF PROCEEDINGS

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A P P E A R A N C E S

BOARD MEMBERS:

MR. JIM MARTIN, CHAIR

MR. JERRY SHARBER

MS. VONA WILSON, REVEREND

ALSO PRESENT:

MS. SHAUNA BILLINGSLEY, ATTORNEY AT LAW

MS. KAITLIN PARHAM, ATTORNEY AT LAW

* * *

MR. MARTIN: Thank you. This is the scheduled meeting of the Franklin Ethics Commission.

Mr. Jerry Sharber to my left is present.
Vona Wilson to my right is present. I'm Jim Martin.
I'm the chairperson. Our fourth person, Juanita
Patton, has recused herself so she will not be
present here today.

You're having trouble hearing us?

Is that better? Can you turn this mic up some?

Thank you.

The first item of business is the minutes from the meeting of June the 15th. Have each of you received these minutes?

MR. SHARBER: I have.

MR. MARTIN: Do we have any changes, corrections, additions, or deletions to the minutes?

MR. SHARBER: Mr. Chairman, I don't have any changes or corrections. I'll even make a motion it be approved. But in other business where Commissioner Patton recused herself, I would like to bring up a subject in old business of our meeting today that's connected to that.

MR. MARTIN: Go ahead.

1 MR. SHARBER: Do you want me to wait and
2 do it?

3 MR. MARTIN: Do it now.

4 MR. SHARBER: Do it now? Okay.

5 MS. BILLINGSLEY: Well, first, we've got
6 a motion on the table. Is there a second? Because
7 we need to just go ahead and get that cleared up
8 before we talk about your --

9 MS. WILSON: I'll second the motion.

10 MR. SHARBER: Okay.

11 MR. MARTIN: Then we have a motion to
12 second. Now the discussion. Go ahead, Mr. Sharber.

13 MR. SHARBER: In Section 306 of the
14 ethics code, it says, if you don't mind me just
15 reading: The ethics commission and its attorney
16 shall be governed by and subject to this chapter. If
17 members of the ethics commission have a conflict of
18 interest or must disqualify themselves under this
19 ethics code or by law, the remaining members shall at
20 that time choose an alternate person mutually agreed
21 upon to hear that matter.

22 That's what it says in 306. What that
23 says to me is that the three of us are going to
24 select a fourth person to replace Juanita for that
25 one meeting that she has a conflict with.

1 So how do we proceed?

2 MR. MARTIN: Let me take a look at your
3 section.

4 MR. SHARBER: There it is.

5 MS. WILSON: I've got it.

6 MR. SHARBER: Okay.

7 MS. WILSON: It does say shall.

8 MR. SHARBER: I stumbled across this
9 while looking for something else.

10 MR. MARTIN: Well, one, I appreciate you
11 bringing this to our attention. Number two, when
12 Ms. Patton recused herself at the last meeting, she
13 did so because it was evident that an issue that was
14 going to come before us involved an organization in
15 which she is a member, and that's the African
16 American Heritage Association.

17 But we didn't act on it. So I don't
18 think there was anything that we had to have a member
19 for present at that time. In other words, she
20 recused herself from consideration. The only thing
21 we did was to set it for a hearing today to determine
22 probable cause. Now the question becomes: Should we
23 have another member today? I think, isn't that
24 where we are under this section?

25 Ms. Billingsley, how do you read this?

1 MS. BILLINGSLEY: Well, because the
2 initial determination hearing is a creation of your
3 own bylaws, I think you can have this hearing today
4 and decide whether or not you -- well, it's really
5 just a discussion whether or not it's a colorable
6 claim. If you decide to move this forward and set it
7 for hearing, you will need that fourth person at that
8 point.

9 So my suggestion would be have this
10 hearing today, decide whether or not it is a
11 colorable claim. If it is, then during other
12 business, we would set a hearing or another meeting
13 to nominate and appoint this fourth member before we
14 have the actual hearing on the merits. I do not
15 think you have to have one today.

16 MR. MARTIN: So what do you do if you
17 have the meeting and decide that there is a colorable
18 claim, you select a fourth member, and that person
19 says, but if I had been present, I would not have
20 agreed with you?

21 MS. BILLINGSLEY: That still would have
22 just been one vote.

23 MR. MARTIN: I'm sorry?

24 MS. BILLINGSLEY: It still would have
25 just been one vote.

1 MR. MARTIN: Well, right.

2 MS. BILLINGSLEY: And you would have
3 moved forward.

4 MR. MARTIN: And suppose we've got a
5 split today where we've got two for, one against, and
6 that fourth would have given us a stalemate. Do you
7 understand what I'm saying?

8 MS. BILLINGSLEY: I do.

9 MR. MARTIN: So it seems to me that if
10 we're going to have to have a fourth person to
11 participate in this, they need to be involved in the
12 initial determination.

13 MS. BILLINGSLEY: I mean, that's really
14 your call. I don't think that they're needed until
15 you have -- the only thing that's contemplated in the
16 code is a public hearing on the merits, not the
17 initial determination hearing which was created as
18 part of your bylaws. And that is where you need to
19 have all members present.

20 MR. MARTIN: Okay.

21 MS. BILLINGSLEY: Even your substitute
22 members.

23 MR. MARTIN: So your distinction is
24 between the provisions of the Franklin Municipal Code
25 and what's required and what our bylaws have

1 provided --

2 MS. BILLINGSLEY: That's right.

3 MR. MARTIN: -- in terms of our initial
4 determination?

5 MS. BILLINGSLEY: Because you don't need
6 a substitute member if you don't go to public
7 hearing.

8 MR. MARTIN: Okay. I understand.

9 Mr. Sharber, what are your thoughts?

10 MR. SHARBER: I agree with Shauna in that
11 the notification was provided by a member that
12 they're going to have a conflict. And the
13 notification is that they would not be here today
14 because of this is just an initial determination
15 meeting to determine whether the complaints are
16 colorable or not.

17 So it seems to be that if you go to the
18 next -- I'll just call it the next step -- that
19 you're going to need a -- I'm going to say a
20 replacement for the one member that has a conflict.
21 And that replacement ironically is determined by us,
22 not the Board of Mayor & Aldermen. Now, we also have
23 a vacancy, as you know, and the Board of Mayor &
24 Aldermen will determine that.

25 But this is like -- and it says shall.

1 The remaining members shall at that time choose an
2 alternate person. I mean, it doesn't even give us
3 the latitude of proceeding on with three members,
4 which is a majority. So I do think we're going to
5 have to have a fourth member. It's a matter of when.

6 And I agree with what Shauna told us. I
7 think we could probably have an -- unfortunately
8 another meeting just to determine who the fourth
9 person is and then proceed on, if that's what we
10 decide today. If we decide these are not colorable
11 claims today, all of this is moot. It doesn't mean
12 anything.

13 MR. MARTIN: Ms. Wilson, what's your
14 thought?

15 MS. WILSON: I think we have our meeting
16 today and decide if we need a hearing. And if we
17 need a hearing, then we have to schedule an extra
18 meeting to find our fourth person.

19 MR. MARTIN: And, Ms. Billingsley, is
20 there any procedure for making suggestions to the
21 Commission of whom might be willing to serve, that
22 kind of thing?

23 MS. BILLINGSLEY: Yes. In the bylaws we
24 have adopted Robert's Rules, and the way Robert's
25 Rules work in situations like this, you would need to

1 do your own sort of homework. So, hopefully, by the
2 end of the day during other business, if you decide
3 to move forward, we will set the public hearing today
4 as well.

5 So we'll have two dates we'd have to set.
6 You would need to talk with the people you would like
7 to nominate and let them know that this is the
8 hearing date. So they have to be available on that
9 date. We have to work within those 60 days.

10 At that point when we come to the meeting
11 to nominate the fourth person, each of you have the
12 right to nominate and we open the floor. So you
13 would say, I'm opening the floor for nominations.
14 Everybody throws names in, and then you will take
15 them one at a time. And the person that has the most
16 votes is your fourth member.

17 That's how Robert's Rules contemplates
18 nominations.

19 MR. MARTIN: But we need to know from
20 persons that we nominate their willingness to
21 serve --

22 MS. BILLINGSLEY: You would have to have
23 that conversation with them before you come and
24 nominate them. And they have to live in the city.
25 That's the requirement.

1 MR. SHARBER: Mr. Chairman, I'll make a
2 point here. In thinking through after I read this,
3 that's one of the -- that's the reason I said I move
4 to approve the meeting minutes, but there's a subject
5 in old business -- excuse me, other business -- that
6 I want to bring up today in our meeting in other
7 business.

8 Because if we decide today these claims
9 are not colorable claims, then this whole discussion
10 is moot. So I think we should continue this
11 discussion -- vote on our meeting minutes and
12 continue this discussion in other business, if that
13 makes sense.

14 MR. MARTIN: That's fine. Then we'll go
15 ahead and approve the minutes?

16 MR. SHARBER: Yeah. I made a motion. I
17 don't --

18 MR. MARTIN: And it's been seconded.

19 MR. SHARBER: Okay.

20 MR. MARTIN: So all in favor say aye.

21 MR. SHARBER: Aye.

22 MS. WILSON: Aye.

23 MR. MARTIN: So we all approve the
24 minutes. I vote in favor as well.

25 The next order of business, then, is to

1 consider the complaints that have been filed. Can
2 y'all hear me all right? Is it loud enough now?

3 So the next order of business is to
4 consider the complaints that have been filed. There
5 are seven complaints, and each of you should have
6 copies of these complaints.

7 Do you, Ms. Wilson?

8 MS. WILSON: Uh-huh.

9 MR. MARTIN: Mr. Sharber?

10 MR. SHARBER: Yes.

11 MR. MARTIN: Very good.

12 The first was filed on June the 7th, and
13 the latest was filed June the 14th. They're timely
14 based on our provisions. And all of the complaints
15 allege violation of the Franklin Municipal Ethics
16 provisions as found in the code and they emanate from
17 a letter that was written by Alderman Gabrielle
18 Hanson on June the 25th of 2023, if my understanding
19 is correct. Or maybe it was May the 25th.

20 MS. WILSON: May 25th.

21 MR. MARTIN: Is it May the 25th, 2023?

22 MR. SHARBER: May.

23 MR. MARTIN: Let's see. I had the date
24 on that letter.

25 The letter is reproduced a couple times,

1 but the date of it was not -- let's see if I can find
2 it.

3 MS. WILSON: It was an e-mail and I don't
4 find a date --

5 MR. MARTIN: You don't find a date
6 either?

7 MS. WILSON: -- associated with the
8 e-mail.

9 It does reference -- the e-mail itself
10 references some things that are related to time --
11 you know, to a timeline. I don't know that we have
12 that. I don't know that we have the actual date of
13 the e-mail.

14 MR. MARTIN: Is there a date on the
15 letter?

16 MR. SHARBER: The date of the e-mail?

17 MS. WILSON: We have the e-mail but
18 everywhere it's offered to us, it is not offered --

19 MR. MARTIN: Okay. In Mr. -- here we go.

20 In Mr. Jensen's complaint, he alleges
21 that it was sent June the 5th of 2023. June the 5th
22 of 2023. Okay. That's as close as we can come to
23 dating it based on these complaints. And then the
24 first complaint we have was June the 7th, and then
25 the last one was June the 14th. So they're all

1 timely is what I was trying to get to.

2 The code requires that the complaint be
3 made within 30 days of the alleged conduct that
4 complainant believes constitutes a violation of the
5 ethics provisions of the code.

6 So then we have complaints from
7 Ms. Jenkins on June the 7th, Ms. Kingsbury on
8 June 8th, Ms. Rogers on June the 9th, Ms. Shouse on
9 June the 9th, Ms. Osher on June the 9th, Mr. Berger
10 on June the 11th, and Mr. Jensen on June the 14th.

11 The letter in question was a letter to
12 Mr. Kreulen, K-R-E-U-L-E-N, and the Board of BNA
13 Airport. And the sections of the Franklin Municipal
14 Code which are alleged to have been violated are 805,
15 807, and 808. And as Mr. Sharber mentioned earlier,
16 the purpose of today's proceeding is to make a
17 determination on whether or not the allegations of
18 the complaint are sufficient to constitute an ethical
19 claim, if proven; and if not, what are the
20 deficiencies and whether the complaint is incomplete.

21 So if we turn to 805, which is the first
22 code section that's alleged to have been violated,
23 that code section essentially says that, and I'm
24 redacting as I read here: No official may solicit
25 anything of value for themselves or any other person

1 if it tends to influence the official discharge of
2 their duties or gives a reasonable basis of improper
3 influence over the discharge of official duties, or
4 they have a financial interest which may be
5 substantially or materially affected by the
6 performance of their duties. That's in Section 1.

7 Section 2 talks about gifts and
8 gratuities that are prohibited because they're listed
9 in the Tennessee Ethics Commission Act.

10 And then Section 3 talks about attendance
11 at events and that kind of thing.

12 So members of the Commission, if you read
13 805, then the question becomes: Was there a
14 solicitation by an official on behalf of another
15 person, which -- and that's when the if comes into
16 play -- would influence that official in the
17 discharge of their duties or give a reasonable basis
18 for the impression of improper influence over the
19 discharge of official duties; or in which they have a
20 financial interest or where they would be materially
21 affected.

22 Now, is that a fair reading of the
23 section?

24 MS. WILSON: I think so.

25 MR. MARTIN: You think so?

1 MR. SHARBER: I think so.

2 MR. MARTIN: So that's 805 summarized.

3 Then we get to 807, and this is dealing
4 with municipal time, facilities, et cetera. And,
5 Ms. Wilson and Mr. Sharber, I have trouble here. I'm
6 not clear how any of the allegations fit within 807.
7 So y'all will have to help me on that.

8 The letter of June the 5th of 2023
9 doesn't appear to me to have been generated on
10 municipal time, facilities, or equipment or supplies;
11 nor was it done for private gain or advantage to the
12 author.

13 MR. SHARBER: Mr. Chairman.

14 MR. MARTIN: Yes.

15 MR. SHARBER: Ms. Jenkins makes a
16 reference to 807(2) in her complaint.

17 MR. MARTIN: Okay.

18 MR. SHARBER: There's actually several
19 parts of her complaint. But she makes a reference to
20 807(2), determined by the governing body has to be in
21 the best interests of the municipality from
22 Section 807(2), and the question of whether there was
23 a legitimate contract or lease to do that. She makes
24 that point.

25 We do not see, or I have not seen, a

1 contract or a lease the City has in order for
2 Ms. Hanson to represent the governing body. I think
3 that's what Ms. Jenkins is saying, if that makes
4 sense.

5 In other words, Alderman Hanson could
6 have functioned on behalf of the City if there was a
7 lease or a contract, but there was not one.
8 Therefore, based on what I understand from
9 Ms. Jenkins, Alderman Hanson was not operating.

10 MR. MARTIN: Well, the quotation in the
11 complaint filed by Emily Jenkins, that's the one
12 you're referring to?

13 MR. SHARBER: Yes. That's correct.

14 MR. MARTIN: And it's on page 2 of her
15 complaint at the top. And it says, The ethics policy
16 further states.

17 MR. SHARBER: Yes. Ethics policy. See,
18 then she quotes 807(2) and she said they may not use
19 the authority unless -- or except, as it says -- it
20 is authorized by a legitimate contract or lease that
21 is determined by the governing body to be in the best
22 interests of the municipality.

23 I undertook -- I understood what
24 Ms. Jenkins was saying is that she sent the e-mail --
25 the letter from her City address using her official

1 title in order to wrongfully extort funds for the
2 AAHA, which is a violation of the ethics policies.
3 Now, she didn't say it this way, but it brings up the
4 question of: Was Ms. Hanson operating in
5 representing the City because there is a legitimate
6 contract or lease. Do you follow me?

7 MR. MARTIN: No. I do hear what you're
8 saying.

9 MR. SHARBER: Now, she didn't -- she,
10 being Ms. Jenkins -- did not exactly express it that
11 way, but she did quote the section which is 807(2).

12 MS. WILSON: I don't see where 807 is
13 particularly in this situation. I understand it was
14 listed, but the use of municipal time, facilities,
15 equipment or supplies...

16 MR. SHARBER: And it's very possible
17 that's what Ms. Jenkins was making reference to. And
18 if that's all she was making reference to, then I
19 think you're totally correct. I think we would have
20 to discard that part.

21 MR. MARTIN: I think she's quoting from
22 808 not 807.

23 MS. WILSON: Right.

24 MR. MARTIN: I think she's quoting from
25 808(2) and not 807.

1 MR. SHARBER: I'm sorry. Maybe I --
2 Mr. Chairman, did you say that you thought 807 was
3 not...

4 MR. MARTIN: Yeah. I don't see 807 as
5 being -- I mean, it's referenced by some of the
6 complainants. But I think Ms. Jenkins in her
7 complaint in paragraph 2 is actually -- even though
8 she didn't number it this way -- is referring to
9 Section 1-808(2). And that one, redacted, says:
10 Officials may not use or attempt to use their
11 position to secure any privilege or exemption for
12 themselves or others not authorized by charter,
13 general law, ordinance, or policy of the
14 municipality.

15 Now, that's the first sentence of 808(2).

16 MR. SHARBER: Well, that could be the
17 issue. It could be that the section that she used
18 was really 808.

19 MR. MARTIN: Yeah. And she just -- it
20 wasn't actually numbered.

21 MS. WILSON: It wasn't numbered.

22 MR. SHARBER: Right. It was not
23 numbered.

24 MR. MARTIN: Yeah.

25 MR. SHARBER: You had to take what she

1 said and try to find that in the charter.

2 MR. MARTIN: Yeah. And I think that
3 she's really referring to 808(2). And essentially
4 what she's complaining is -- and I'm talking about
5 Ms. Hanson. When you read the e-mail from Ms. Hanson
6 to Mr. Kreulen and the Board, the complaint is that
7 they have made a pledge to the Franklin Justice and
8 Equity Coalition, and Ms. Hanson wants them to commit
9 to make a pledge of comparable amount to the African
10 American Heritage Association.

11 MR. SHARBER: And that is in a different
12 section of Ms. Jenkins' complaint. That's her
13 Item 2.

14 MR. MARTIN: Yes. That's Item 2.

15 MR. SHARBER: Yeah.

16 MR. MARTIN: On page 2.

17 MR. SHARBER: I'm sorry. I thought you
18 were talking about Item 3. Yeah. She did make that
19 in Item 2. That's correct.

20 MR. MARTIN: Yeah.

21 MR. SHARBER: In her Item 2 she's
22 referencing 808(2).

23 MR. MARTIN: That's right.

24 MR. SHARBER: Yeah.

25 MR. MARTIN: And she didn't actually --

1 MR. SHARBER: Say that but that's what --

2 MR. MARTIN: She quotes from it.

3 MR. SHARBER: Yeah.

4 MR. MARTIN: And when you read that
5 section, redacted, it reads: Officials may not use
6 their position to secure any privilege or exemption
7 for themselves or others not authorized by the
8 charter, general law, ordinance, or policy of the
9 municipality or attempt to do so.

10 MR. SHARBER: Correct.

11 MR. MARTIN: You can't use it.

12 MR. SHARBER: Yeah.

13 MR. MARTIN: Or attempt to do it.

14 So the issue, then, is: Does the
15 communication of June the 5th, 2023, constitute a
16 violation of that prohibition, at least in terms of a
17 colorable claim?

18 Now, we'd have to hear from the
19 complainant. We'd have to hear from Ms. Hanson
20 and --

21 MR. SHARBER: Exactly.

22 MR. MARTIN: But it may be that after
23 hearing all of it, we would conclude that there's no
24 colorable claim or there's no violation.

25 MR. SHARBER: Yeah. We would just have

1 to make that determination at that point in time --

2 MR. MARTIN: That's right.

3 MR. SHARBER: -- after having heard from
4 Ms. Jenkins and Ms. Hanson, Alderman Hanson.

5 MR. MARTIN: So let me see if we can
6 summarize where we are.

7 If you go back to 805, which is one of
8 the sections that's quoted. And I read that in a
9 redacted format a minute ago.

10 MR. SHARBER: And that's fine.

11 MR. MARTIN: Yeah. So reading it again
12 in redacted format, it says: No official may solicit
13 anything of value for themselves or any other person.
14 And then it starts with a new sentence: In addition,
15 it's a violation of the code if any gift is to be
16 received under these circumstances here.

17 So if you look at the first -- I mean,
18 there seem to be two prohibitions in 805(1). Okay?
19 One is the first sentence, which is a standalone
20 sentence: Except as provided in this section, no
21 official may knowingly solicit anything of value for
22 themselves or any other person or any member of their
23 family.

24 Then the question is: Is there an
25 exception that would authorize the solicitation? And

1 the exceptions are gifts, gratuities, and honoraria
2 authorized by the Ethics Commission Act, and then
3 things when the official attends an event and the
4 official electronically reports the information in
5 Subsection (3).

6 None of those sections apply. None of
7 those exceptions apply.

8 MS. WILSON: Right.

9 MR. SHARBER: Right.

10 MR. MARTIN: So we have an allegation
11 under 805, then you have 807. And this is where I
12 was. When I read the communication of June the 5th,
13 2023, I can't fit it within any of the allegations --
14 excuse me -- any of the provisions of 807. But
15 let's -- y'all take a look at it independently.

16 There's no claim here that there was a
17 use of municipal time, facilities, equipment, or
18 supplies for private gain or advantage either to
19 Ms. Hanson or to a private person or entity, unless
20 I'm overlooking something.

21 MR. SHARBER: You're in 807?

22 MR. MARTIN: I'm at 807, yeah. I just --
23 I could be overlooking something and you bring it to
24 my attention if you see it. But I didn't see in any
25 of the complaints an allegation that there was a use

1 of municipal time, facilities, equipment, or supplies
2 for private gain or advantage to Ms. Hanson or the
3 use of municipal time, facilities, equipment or
4 supplies for private gain or advantage to any private
5 person or entity, other than her.

6 MS. WILSON: I do not see it. Do you,
7 Mr. Sharber?

8 MR. SHARBER: Well, is your thinking --
9 is associated with the -- may not use the municipal
10 facilities, equipment, supplies for private gain or
11 advantage, is that what you're saying --

12 MR. MARTIN: Well --

13 MR. SHARBER: -- is that that does not
14 meet what Ms. Jenkins was saying?

15 MR. MARTIN: I just don't find any
16 evidence, any colorable claim, that there was a use
17 of municipal time, facilities, equipment, or
18 supplies. In other words, we don't have any evidence
19 that the --

20 MR. SHARBER: I agree with that. But it
21 goes on to say, except as authorized by legitimate
22 contract or lease that is --

23 MR. MARTIN: Well, that's in
24 Subsection (2).

25 MR. SHARBER: That's correct.

1 MR. MARTIN: So I was looking at
2 Subsection (1). Then you go to Subsection (2) and
3 this --

4 MR. SHARBER: Oh, you're breaking it up
5 into two -- okay.

6 MR. MARTIN: Then you go to
7 Subsection (2), and that's the use of municipal time,
8 facilities, equipment, or supplies for private gain
9 or advantage to someone else, except as authorized by
10 contract or lease.

11 MR. SHARBER: Correct.

12 MR. MARTIN: Well, I don't see where
13 we've got the allegation of that either.

14 MR. SHARBER: Well, we don't know if
15 there's a contract or a lease.

16 MR. MARTIN: Well, you don't -- yes. But
17 the predicate to that is the use of municipal time,
18 facilities, equipment, or supplies.

19 MS. PARHAM: Commission members --

20 MR. MARTIN: So in other words unless I'm
21 overlooking it, we don't have an allegation, for
22 example, that Ms. Hanson was using a City computer to
23 compose her e-mail or that she was using a City
24 facility or that she was using City time or City
25 supplies. Do you see what I'm saying?

1 MR. SHARBER: Uh-huh.

2 MR. MARTIN: So the whole predicate to
3 Subsection (2) dealing with an advantage to someone
4 else is that you've still got to have the use of
5 municipal time, facilities, equipment, or supplies.
6 If you do, then you get to the question of contracts
7 and leases.

8 MR. SHARBER: Well, see, it says "or,"
9 and it says "except as authorized."

10 MR. MARTIN: Well --

11 MR. SHARBER: See, the way I'm seeing
12 that is, to me, it doesn't make any difference what
13 Alderman Hanson was using. The question becomes:
14 Was she acting under a contract or a lease that the
15 City had.

16 MS. PARHAM: Commission members, my name
17 is Kaitlin Parham, and I'm outside counsel for the
18 City of Franklin. And I just wanted to point out
19 that in Ms. Jenkins' complaint, Section 3, it appears
20 she's alleging that the use of Ms. Hanson's provided
21 City e-mail address violates 807(2), and her title.
22 So I just wanted to clarify that.

23 MR. SHARBER: Okay. So it's your opinion
24 that's what she was complaining about?

25 MS. PARHAM: From the complaint it looks

1 like she was quoting 807(2) and then adding that she
2 believes Ms. Hanson's use of her provided City e-mail
3 address with her official title does violate 807(2).

4 MR. SHARBER: Yeah. That's exactly what
5 it says in her complaint.

6 MR. MARTIN: But let me back up.

7 But when you read the June 5th, 2023,
8 communication, it's signed Sincerely, Gabrielle
9 Hanson, City of Franklin, Alderman At-Large, with a
10 telephone number. How do you -- where is the
11 allegation that she's using a City of Franklin e-mail
12 address? Where is that?

13 MS. PARHAM: She would have to prove it
14 in her hearing.

15 MR. MARTIN: Do what?

16 MS. PARHAM: She would have to prove it.

17 MR. MARTIN: No. But where is it
18 alleged? I mean, it says it's an e-mail from
19 Alderman Hanson, then the e-mail is quoted.

20 MR. SHARBER: The e-mail is actually
21 copied in her complaint, but --

22 MR. MARTIN: You're talking about
23 Ms. Jenkins?

24 MR. SHARBER: Correct.

25 MR. MARTIN: Yeah. Well, it's copied

1 several times.

2 MR. SHARBER: Yeah.

3 MR. MARTIN: I mean, Mr. Jensen's got it
4 in his complaint as well, but...

5 MS. WILSON: Mr. Chairman, one of the
6 things that I think of is that since 808 specifically
7 addresses position --

8 MR. MARTIN: Well, we'll get to 808 --

9 MS. WILSON: Okay.

10 MR. MARTIN: Let's kill 807 first.

11 MS. WILSON: Okay.

12 MR. MARTIN: Let me go back. Is there
13 any allegation in any of these complaints that
14 Alderman Hanson used her City e-mail address in the
15 communication? Because I may have overlooked it. If
16 I did, then I need to be corrected.

17 MS. PARHAM: Give me one second, and I'll
18 double-check.

19 MS. BILLINGSLEY: We're going to pull it
20 up on the screen so you can see it.

21 MS. PARHAM: We're going to pull it up.

22 MS. WILSON: It does say Ms. Hanson sent
23 the letter from her City-provided e-mail address,
24 using her official title --

25 MR. MARTIN: Whose complaint?

1 MS. WILSON: Ms. Jenkins. That is what
2 Ms. Jenkins says.

3 MR. MARTIN: Okay.

4 MS. WILSON: We don't see it --

5 MR. MARTIN: Then I stand corrected. You
6 can't tell it from the face of the e-mail itself.

7 MS. WILSON: Right. You can't.

8 MR. SHARBER: No, you cannot.

9 MR. MARTIN: But the allegation is there?

10 MR. SHARBER: Yes.

11 MS. WILSON: Right.

12 MR. MARTIN: All right. Fair enough.

13 Then let's go to 808.

14 808, let's see, again, if we redact it,
15 says: Officials may not use their position to secure
16 any privilege for themselves or others not authorized
17 by charter, general law, or ordinance of the
18 municipality or attempt to do so. That's the first
19 sentence of 808(2).

20 MR. SHARBER: And that's the reference
21 Ms. Jenkins is -- you said 808(2), correct?

22 MR. MARTIN: Right.

23 MR. SHARBER: That's the reference
24 Ms. Jenkins is making in her Item 2.

25 MS. WILSON: Uh-huh.

1 MR. MARTIN: Right. But when you read
2 Alderman Hanson's communication, a fair reading of it
3 is the communication to Mr. Kreulen and the members
4 of the board of BNA complaining that they've made
5 this pledge to the Franklin Justice and Equity
6 Coalition and that they need to make a similar
7 contribution to the African American Heritage
8 Association.

9 MR. SHARBER: That's correct.

10 MR. MARTIN: She represents herself as an
11 elected official and she signs it as an Alderman
12 At-Large for the City of Franklin.

13 MS. WILSON: Right.

14 MR. SHARBER: Correct.

15 MR. MARTIN: So the question is whether
16 that presents, then, a colorable claim or violation
17 of any of the provisions of the Franklin Municipal
18 Code on Ethics.

19 MR. SHARBER: Correct.

20 MR. MARTIN: And that thread runs
21 throughout all of the complaints.

22 MS. WILSON: Uh-huh.

23 MR. SHARBER: It does.

24 MR. MARTIN: Okay. So do we have a
25 motion?

1 MR. SHARBER: On all of them or just that
2 one?

3 MR. MARTIN: I mean, we've talked about
4 805. We've talked about 807, and that's the use of
5 municipal time. And now we've talked about 808.

6 MS. WILSON: I make a motion --

7 MR. MARTIN: Okay. Go ahead.

8 MS. WILSON: I make a motion that we move
9 forward with a hearing to understand, based on these
10 specific areas of the ethical code that are in
11 question, and that we would like to understand more.

12 MR. MARTIN: So the motion is that the
13 Commission finds that there is a colorable claim --

14 MS. WILSON: Yes.

15 MR. MARTIN: -- that the communication
16 has, in fact, violated Sections 805, 807, and 808 of
17 the Franklin Municipal Code?

18 MS. WILSON: Yes.

19 MR. SHARBER: Mr. Chairman, I have a
20 question about Ms. Wilson's motion.

21 MR. MARTIN: All right.

22 MR. SHARBER: Does that encompass all
23 seven complaints or just a specific complaint? I
24 understand we're going about this from a perspective
25 of looking at the sections of the charter, but we

1 just said most all these complaints have reference to
2 this. The reason I think this is important is that
3 all seven would have an opportunity to present their
4 complaint by our procedures.

5 MR. MARTIN: I think it's Ms. Wilson's
6 intent -- and she'll have to speak for herself --
7 that the finding by the Commission at this stage is
8 that all seven complainants have stated a claim -- a
9 colorable claim.

10 MS. WILSON: Yes.

11 MR. SHARBER: That answers my question.

12 MS. WILSON: Yes.

13 MR. SHARBER: If that's a yes, then I'll
14 second your motion.

15 MR. MARTIN: We've got a motion and a
16 second.

17 MR. SHARBER: And I have a comment. I
18 came at this from a little different direction. In a
19 previous meeting, I brought up the fact of what the
20 First Amendment of the United States Constitution
21 grants you in freedom of speech.

22 However, the United States Supreme Court
23 has ruled -- made many rulings on free speech, one of
24 which is called the Brandenburg principle. And the
25 Brandenburg principle, which is codified in the

1 United States Constitution as Section 395 U.S. 444
2 says -- if you don't mind me just reading this.

3 MR. MARTIN: No. Go ahead.

4 MR. SHARBER: A state may not forbid
5 speech advocating the use of force or unlawful
6 conduct unless this advocacy is directed to inciting
7 or producing imminent lawless action and is likely to
8 incite or produce such action. That's the
9 Brandenburg principle.

10 So after reading that and reading through
11 all these, the way I came about this is basically the
12 freedom of speech is sort of negated if there's an
13 imminent lawless action, which ethical violations and
14 breaking the municipal code is an imminent lawless
15 action.

16 So I went after -- or I went after -- I
17 read through all the complaints thinking, okay.
18 Looking at this against this section of a charter, is
19 there a potential imminent lawless action here? If
20 there is, then you cannot hide behind the freedom of
21 speech.

22 Do you see how I went about this? I
23 don't know if that's rational or not, but...

24 MR. MARTIN: Well, no, it's not
25 irrational. And I think that ultimately a court

1 might get into the question of -- the First Amendment
2 is what you're talking about.

3 MR. SHARBER: Sure.

4 MR. MARTIN: But here what we're charged
5 with is to determine whether the allegations in the
6 seven complaints that we've got regarding the
7 communication of June 5th, 2023, present a colorable
8 claim that there's been a violation of these code
9 sections.

10 MR. SHARBER: And I think all seven
11 reference what is a colorable claim.

12 MR. MARTIN: They do. They do.

13 MR. SHARBER: And that's the reason I'm
14 more than happy to second Vona's motion. I just want
15 to let y'all know how I went about it, which was a
16 little different.

17 MR. MARTIN: And I understand how you
18 did. And I went about it by parsing the sections as
19 I did during the course of this meeting.

20 MR. SHARBER: Yeah.

21 MR. MARTIN: And I agree with both of you
22 that there has been a colorable claim stated with
23 respect to the violation of all three sections, 805,
24 807, and 808. But I do need some help in the
25 meantime, I think, before we have a full-blown public

1 hearing on this question. And that is this -- and
2 let me share this with y'all because you may disagree
3 on it.

4 But when you read 805, it talks about
5 soliciting gifts and things of value for any other
6 person. And the question in my mind is: Is a
7 not-for-profit organization a, quote, person within
8 the meaning of the code? Okay?

9 And then we had the same issue in 808,
10 and this is -- I've been looking at Subsection (2),
11 and that's the prohibition against using your
12 position to secure an exemption for yourself or
13 others. And the question is: Does the word "other"
14 under Section 808(1) -- excuse me -- 808(2), rather,
15 include a not-for-profit organization? Okay?

16 We just have to get our legal counsel to
17 give us an answer on that.

18 MS. PARHAM: Yes. And that is something
19 myself and Ms. Ashworth, outside counsel, can brief
20 for the formal hearing.

21 MR. MARTIN: Okay. Have you come to a
22 conclusion?

23 MS. PARHAM: We will brief it.

24 MR. MARTIN: All right. You haven't done
25 it yet?

1 MS. PARHAM: Not yet.

2 MR. MARTIN: I'm hard of hearing, and I
3 apologize.

4 So I think those questions will have to
5 be addressed, but they don't have to be addressed
6 until we have our public hearing.

7 But, Mr. Sharber and Ms. Wilson, do you
8 see what I'm saying?

9 MR. SHARBER: I do. And I have several
10 questions about several items and, again, I'll tell
11 you how I fell down on this.

12 I went to our own bylaws and procedures,
13 thinking that if we have a hearing, how is that going
14 to work? And so it's going to be an opportunity for
15 not only the complainant, but the official, to
16 present their case or their position before us.

17 MR. MARTIN: That's right.

18 MR. SHARBER: And it also says -- and I
19 think this is really important: Cross-examination of
20 any party by another party shall generally not be
21 permitted. All such comments shall be addressed to
22 the Commission.

23 The next section says: Any member of the
24 Commission may directly question the staff, the
25 complainant, the official, public members who spoke

1 during the public hearing, or witnesses appearing
2 before the Commission at any time during the
3 testimony.

4 I say that to say this, that we're going
5 to have questions during the process, and we're open
6 to ask those questions at that point in time. And I
7 think your question about -- you know, is that a
8 person, I think that's a very good question.

9 MR. MARTIN: Well, that's really a
10 question of law as opposed to a question of fact that
11 we'll need help on.

12 MS. WILSON: Mr. Chairman, I also -- and
13 y'all may know this. I just don't. Under
14 Section 805, Item 2: The gifts, gratuities,
15 honoraria and other things listed in the Tennessee
16 Ethics Commission Act (specifically but not
17 exclusively) -- and it names a code -- shall not be
18 prohibited.

19 I have no idea what that list is.

20 MR. MARTIN: Yes.

21 MS. WILSON: I feel like I want to know
22 what that list is.

23 MS. PARHAM: And we will bring that to
24 the hearing as well.

25 MS. WILSON: Thank you.

1 MS. PARHAM: Yes. I'll make a note of
2 that.

3 MR. MARTIN: Very well. Then I concur
4 with both of you that a colorable claim has been
5 stated by all seven complainants. We'll have a
6 hearing. We'll be able to hear from each of the
7 complainants. Ms. Hanson will be entitled to respond
8 to each of the complaints.

9 With that being said, do we need another
10 meeting to pick a fourth --

11 MS. BILLINGSLEY: Well, you've got to
12 vote first.

13 MR. MARTIN: Do what?

14 MS. BILLINGSLEY: You've got to vote
15 first. You've got a motion and a second.

16 MR. SHARBER: Yeah. We've got to vote.

17 MR. MARTIN: All in favor say aye.

18 MR. SHARBER: Aye.

19 MS. WILSON: Aye.

20 MR. MARTIN: Aye.

21 That's all of us. It's unanimous. I
22 thought I made that clear.

23 MS. BILLINGSLEY: We just need it for the
24 record.

25 MR. MARTIN: So we need a meeting, then,

1 to pick a fourth person to serve. The problem, of
2 course, is that we've gone through this analysis,
3 made a determination that there's a colorable claim,
4 and now we're bringing a fourth person on board that
5 hasn't had the benefit of this analysis.

6 But that's the way we elected to proceed,
7 so...

8 MR. SHARBER: Yeah. We're limited to
9 that process.

10 MR. MARTIN: That's fine.

11 MS. BILLINGSLEY: I will also say this is
12 being videotaped and on live channels now. They can
13 watch it.

14 MR. SHARBER: Yeah.

15 MS. BILLINGSLEY: So anybody that you
16 pick --

17 MR. SHARBER: That's an excellent point.

18 MS. BILLINGSLEY: Or if you want, they
19 can come back and watch it. Anybody that you are
20 thinking about nominating.

21 MR. SHARBER: We can get -- the City will
22 get them the information, and then they can watch it
23 and get caught up pretty rapidly.

24 MS. WILSON: And then may I ask -- when
25 we schedule the hearing, it will be public knowledge,

1 so anyone that wants to be a part of that will be
2 here. And do we have responsibility for contacting
3 any specific persons that we want to hear from?

4 MS. BILLINGSLEY: So we will reach out to
5 the seven complainants. You will today set two
6 meetings, one for the fourth member and the final
7 public hearing today. I would like for you to
8 schedule that today so we know what we're working on.

9 We will reach out to the seven
10 complainants and let them know the day and time. If
11 there's anyone that you're interested in hearing
12 from, you let us know, and we will reach out to them
13 as well.

14 But just because someone did not file an
15 actual complaint doesn't mean they're not allowed to
16 speak. It's a public hearing. So once the
17 complainants speak, the public will get an
18 opportunity to also address the Commission.

19 MS. WILSON: Thank you.

20 MR. MARTIN: And here's -- and I envision
21 it, Mr. Sharber and Ms. Wilson, that we're going to
22 have to have a sign-up sheet. And we're going to --

23 MS. BILLINGSLEY: We know how to -- we
24 are pros at public comments.

25 MR. MARTIN: Right.

1 MR. SHARBER: They are. They're very
2 good at that.

3 MR. MARTIN: Right. And we're going to
4 have to -- we've got seven complainants. They
5 obviously will be allowed to present. Ms. Hanson is
6 going to be able to respond to each of them. She may
7 want to respond to all of them en masse or one at a
8 time, and that will be up to her. And then we also,
9 according to our provisions, are allowing members of
10 the public to speak.

11 Well, we also have the right to put time
12 limits on it, and we're going to have to. So we need
13 a sign-up sheet to figure out how many people want to
14 address the Commission and then decide how much time
15 to give each one. And that's the way I envision this
16 going.

17 MR. SHARBER: Excellent.

18 MR. MARTIN: Otherwise it could stretch
19 into the early morning hours.

20 MS. BILLINGSLEY: That's right. And
21 normally we have a sign-up sheet -- well, it's really
22 a sign-up paper that you would sign and you would say
23 you want to speak and some information about you.
24 And we can number them so we can find out before your
25 meeting starts how many people have signed up to

1 speak. And at that point, you can decide how you
2 want to proceed.

3 And that's generally how we do it when we
4 know we have hundreds of people that want to speak.

5 MR. SHARBER: And that works well.

6 MS. BILLINGSLEY: We're comfortable with
7 this. We know how --

8 MR. SHARBER: That works well.

9 MS. WILSON: Thank you.

10 MR. MARTIN: All right. So let's set a
11 date for --

12 MR. SHARBER: I have one question,
13 Mr. Chairman.

14 MR. MARTIN: Yes.

15 MR. SHARBER: And I apologize. I don't
16 know exactly where I read this. I meant to make a
17 note and I did not. Alderman Hanson has 30 days to
18 respond.

19 MR. MARTIN: Right. That's in our
20 bylaws.

21 MR. SHARBER: It's in our bylaws.

22 MR. MARTIN: So let me give you that.

23 MR. SHARBER: That period has not passed,
24 has it or has --

25 MS. BILLINGSLEY: No, it hasn't. It's

1 30 days from June 7th.

2 MR. SHARBER: Okay.

3 MS. BILLINGSLEY: And that's if she wants
4 to. She's not required --

5 MR. SHARBER: She may not want to.

6 MS. BILLINGSLEY: Right.

7 MR. SHARBER: But we'll know, let me just
8 say July the 7th, as to whether she has submitted in
9 writing or not, correct?

10 MS. BILLINGSLEY: (Moves head up and
11 down.)

12 MR. SHARBER: Okay. So it comes that
13 quickly to --

14 MR. MARTIN: All right. Let me back up.

15 So, Ms. Billingsley, if I look in our
16 bylaws page 407, Roman numeral VI, paragraph 4, it
17 says: If the Commission holds that the complaint
18 states facts sufficient to move forward, the official
19 against whom the complaint was filed shall reply in
20 writing.

21 So it's not mandatory -- I mean, it's not
22 elective. There must be a written response from the
23 official. Okay? Shall reply. That's number one.

24 Such reply shall be filed within 30 days
25 of the date the official received the complaint from

1 the City Recorder. The Commission, however, may
2 shorten or extend the time for the deadline.

3 So, one, do we know when Ms. Hanson
4 received each of these complaints from the City
5 Recorder?

6 MS. BILLINGSLEY: We do.

7 MR. MARTIN: We do?

8 MS. BILLINGSLEY: We do. They were the
9 same day. So if we received them in a day -- on that
10 day, she received them that same day.

11 MR. MARTIN: Okay. So if the complaint
12 from Mrs. Jenkins came in on June the 7th, it went
13 straight then to Ms. Hanson on June the 7th?

14 MS. BILLINGSLEY: I think that's -- yeah.
15 But within hours, yes.

16 MR. MARTIN: Okay. And then the last one
17 was received June the 14th. She would have received
18 it then?

19 MS. BILLINGSLEY: Well, let me back up.
20 We received it on June the 7th, but we
21 received it overnight. So technically no one opened
22 it until June the 8th. So it was -- everyone got it
23 around June 8th.

24 MR. MARTIN: So let me suggest to the
25 Commission this. To make it straightforward and so

1 Ms. Hanson knows what she needs to do, let's extend
2 time across the board for her to respond to the
3 complaints to a specific day.

4 In other words, the bylaws give her
5 30 days. So if you apply this, it would be June the
6 8th. July the 8th on the first one would be her
7 deadline. July the 14th would be -- or July 15th,
8 one or the other, would be the latest deadline. So
9 my thoughts are just ask her to respond in writing to
10 the complaints by a specific date.

11 MS. WILSON: I agree. I agree with that.

12 MR. MARTIN: All of them. And we have
13 the authority under our bylaws to shorten or extend
14 the reply deadline. And my thinking is July the 15th
15 should be appropriate because that's just shortly
16 beyond the 30 days, and it encompasses all of them.

17 MS. BILLINGSLEY: The 15th is a Saturday,
18 so do you want to say the 14th?

19 MR. MARTIN: Right. I'd take it over to
20 Monday.

21 MS. BILLINGSLEY: Okay. Monday.

22 MR. MARTIN: So her time for response to
23 all of the written complaints will be noon on
24 July the 17th. Is that satisfactory, Ms. Wilson?

25 MS. WILSON: Yes.

1 MR. MARTIN: Mr. Sharber?
2 MR. SHARBER: Correct.
3 MR. MARTIN: Do we have a motion to that
4 effect?
5 MR. SHARBER: So moved.
6 MS. WILSON: Second.
7 MR. MARTIN: All in favor?
8 MS. WILSON: Aye.
9 MR. MARTIN: Aye.
10 So it's done. So July the 17th would be
11 her time to respond to all of the complaints in
12 writing.
13 So we need to set a date, then, to pick
14 our fourth person. Do we have any suggestions on
15 when you would like to do that?
16 Let's work backwards. Ms. Billingsley,
17 it says: Within 60 days of receipt of the complaint,
18 the Commission shall conduct a formal public hearing.
19 MS. BILLINGSLEY: Your deadline is
20 August 6th.
21 MR. MARTIN: August 6th.
22 MS. BILLINGSLEY: So work from there.
23 MR. MARTIN: All right. So let's --
24 thank you. That's what I'm looking for.
25 MS. BILLINGSLEY: I will let you know

1 that Gail Ashworth is available on August 2nd, 3rd,
2 or 4th, if that helps.

3 MR. MARTIN: And I am not. I'm out of
4 town on -- that whole week I'm out of town. The 1st
5 through the 5th I'm out of town.

6 MS. BILLINGSLEY: She's also available on
7 the 31st and the 28th of July.

8 MR. MARTIN: The 28th of July works for
9 me.

10 MS. BILLINGSLEY: The 28th?

11 MS. WILSON: I'm not available that day.

12 MR. MARTIN: You're not?

13 MS. WILSON: I am on the 31st.

14 MR. SHARBER: You're available the 31st?

15 MS. WILSON: Uh-huh.

16 MR. MARTIN: And I'm not.

17 MR. SHARBER: You're not?

18 MR. MARTIN: That week of the 31st, I am
19 out.

20 MS. WILSON: What about the 26th or 27th?

21 MR. MARTIN: 27th, I can certainly do it.

22 MR. SHARBER: 27th, I'm fine.

23 MS. BILLINGSLEY: So we have a Planning
24 Commission meeting that night so that might be a
25 problem.

1 MR. SHARBER: You have a what?

2 MR. MARTIN: The Planning Commission
3 meets that night.

4 MR. SHARBER: Oh, yeah. They always take
5 a long time.

6 MR. MARTIN: What if we do it at noon?
7 Just do it at noon on the 27th.

8 MR. SHARBER: Noon the 26th?

9 MS. BILLINGSLEY: Gail can't be here on
10 the 27th, but Kaitlin can. So I think we can work
11 with that.

12 MR. SHARBER: Would the 26th be better?
13 It would still be within our 60 days.

14 MR. MARTIN: Well, what's the pro and con
15 of doing it at noon on the 27th?

16 MS. BILLINGSLEY: The only con would be
17 that Gail is not available, but Kaitlin is available.
18 So you will have counsel. We just want to make sure
19 you have counsel here, because I can't advise you on
20 the actual merits of the --

21 MR. MARTIN: No. I understand. So the
22 27th --

23 MS. BILLINGSLEY: So there is no con
24 really.

25 MR. MARTIN: So the 27th at noon.

1 Mr. Sharber, what about you on that day?

2 MR. SHARBER: I'm fine.

3 MS. BILLINGSLEY: Except that we have to
4 be out by 5 because the Planning Commission starts at
5 5. So you have --

6 MR. MARTIN: We're going to set time
7 limits.

8 MS. BILLINGSLEY: Yep.

9 MR. MARTIN: So we're going to certainly
10 be done by 5 or earlier.

11 So noon, the Ethics Commission hearing,
12 that will be July the 27th. All right. Very good.

13 So let's back up from that. We know that
14 Ms. Hanson's time for response in writing is
15 July the --

16 MR. SHARBER: 17th.

17 MR. MARTIN: -- 17th. Then we need --
18 between now and the 27th, we need to pick our fourth
19 person. Okay? So when do y'all want to do that?

20 MR. SHARBER: And the sooner, the better
21 really.

22 MR. MARTIN: Yeah. Oh, I agree.

23 MR. SHARBER: It is --

24 MR. MARTIN: Ms. Billingsley, how much
25 public notice do you have to give for one of our

1 Commission meetings?

2 MS. BILLINGSLEY: Well, we like to work
3 with around -- at least three days.

4 MR. MARTIN: At least three days?

5 MS. BILLINGSLEY: Yeah. We do have to
6 publish it in the newspaper, so that's kind of our --
7 our hang-up is making sure we can make it into a
8 newspaper with three days' notice. So our
9 deadline --

10 MR. MARTIN: So what about July the 6th?
11 Are y'all available for July the 6th to pick our
12 fourth person?

13 MR. SHARBER: I can be here.

14 MS. WILSON: I can be.

15 MR. MARTIN: Okay. Noon on the 6th.
16 That's for the purpose of selecting --

17 MS. BILLINGSLEY: Yeah. We can make
18 notice for July 6th.

19 MR. MARTIN: So it will be noon on the
20 6th. This will be an Ethics Commission meeting for
21 the purpose of selecting a replacement to hear this
22 matter in lieu of Juanita Patton.

23 MS. BILLINGSLEY: That's a lot of
24 business that you handled just now.

25 MR. MARTIN: Well, the question I --

1 MR. SHARBER: You've taught us well.

2 MR. MARTIN: Yeah. In deliberating over
3 who that fourth person should be, are we governed by
4 the Open Meetings statute? In other words, do we
5 have to deliberate in public?

6 MS. BILLINGSLEY: Yes. You have to
7 deliberate in public. The three of you cannot talk
8 together to come up with your nominations. You're
9 just going to have to kind of go out and if you don't
10 have a nomination, you don't have one. If you want
11 to talk with me about trying to, you know, see
12 what you -- who you might nominate -- if you have any
13 questions about that, I can help you.

14 But the two of you can't meet with the
15 third person who you think might be a good fit. Only
16 one of you can do that.

17 MR. SHARBER: Only one of us can meet
18 with the person that we're willing to...

19 MS. BILLINGSLEY: Yes.

20 MR. MARTIN: So each of us can bring a
21 nominee forth for discussion on July the 6th, but no
22 prior communication among ourselves regarding the
23 merits of that nominee?

24 MS. BILLINGSLEY: That's right.

25 MS. WILSON: And we should have talked to

1 them to see if they're willing --

2 MS. BILLINGSLEY: Yeah. Please make
3 sure they're available on July 27th at noon. If
4 they're not, then move on.

5 MR. SHARBER: We sure don't want to --

6 MS. BILLINGSLEY: Because we really
7 are --

8 MS. WILSON: Exactly.

9 MS. BILLINGSLEY: Yeah. We're tight on
10 time.

11 MR. MARTIN: Well, they need to be
12 available and they need to be willing to serve.

13 MS. BILLINGSLEY: Right.

14 MR. MARTIN: And they need to be willing
15 to listen to or view our proceedings today to
16 understand what we did and why we did it.

17 MS. WILSON: The video.

18 MR. SHARBER: In the interest of doing
19 things correctly, I totally agree with what you said.
20 But should we appoint somebody -- if something
21 happened catastrophically or something and they
22 cannot be there -- at that point we don't have to
23 make a replacement because we've already done that,
24 and we still have a majority.

25 MS. BILLINGSLEY: That's right. So it

1 doesn't contemplate for someone missing if they were
2 sick or if something like that happened.

3 MR. MARTIN: Sure.

4 MS. BILLINGSLEY: But it's only if they
5 recuse themselves for a conflict.

6 MR. SHARBER: It's only for recusal sake.

7 MS. BILLINGSLEY: Right.

8 MR. SHARBER: Okay.

9 MR. MARTIN: Very well. Is there any
10 other business before the Commission today?

11 MR. SHARBER: I make a motion we adjourn.

12 MS. WILSON: Second.

13 MR. MARTIN: All in favor say aye.

14 MR. SHARBER: Aye.

15 MS. WILSON: Aye.

16 MR. MARTIN: Aye.

17 We are adjourned. Thank you very much.

18 (WHEREUPON, the foregoing meeting was
19 adjourned at 1:05 p.m. CST.)
20
21
22
23
24
25

1 REPORTER'S CERTIFICATE

2
3 STATE OF TENNESSEE

4 COUNTY OF WILLIAMSON

5 I, Tammy K. Benefield, Notary Public and
6 Court Reporter, with offices in Franklin, Tennessee,
7 hereby certify that I reported the foregoing meeting
8 of THE ETHICS COMMISSION by machine shorthand to the
9 best of my skills and abilities, and thereafter the
10 same was reduced to typewritten form by me. I am not
11 related to any of the parties named herein, nor
12 related to their counsel, and have no interest,
13 financial or otherwise, in the outcome of the
14 proceedings.

15 I further certify that in order for this
16 document to be considered a true and correct copy, it
17 must bear my original signature and that any
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20 

21 TAMMY K. BENEFIELD, RPR, CLR, LCR

22 Tennessee LCR No. 479

23 Expires: 6/30/2024

24 Notary commission expires: 5/23/2026



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Meeting Minutes

Ethics Committee

Thursday, July 6, 2023

12:00 PM

Board Room

CALL TO ORDER

Chairman Martin called the meeting to order at 12:00 PM

Board Members Present: Jim Martin, Jerry Sharber, Vonna Wilson

Board Members Absent: Juanita Patton (recused)

Staff Present: Eric Stuckey, Shauna Billingsley, Tabitha Langley, Angie Johnson

NEW BUSINESS

1. **Nomination Of Temporary Ethics Commission Member For Public Hearing For Alderman Gabrielle Hanson**

Sponsors:

A motion was made by Chairman Martin to approve the nomination of Ronald Crutcher as a temporary Ethics Commission Member. The motion failed for lack of a second.

A motion was made by Commissioner Sharber to approve the nomination of Scott Speedy as a temporary Ethics Commission Member. The motion failed for lack of a second.

A motion was made by Commissioner Wilson, seconded by Commissioner Sharber to approve the nomination of Machel Thompson as a temporary Ethics Commission Member. The motion passed unanimously.

OTHER BUSINESS

A motion was made by Commissioner Sharber, seconded by Commissioner Wilson to Adjourn the Meeting. The motion passed unanimously.

Chairman Martin reopened the Meeting to discuss the logistics of public comment and other meeting procedures for the July 27, 2023 Ethics Commission Public Hearing.

ADJOURN

Again, a motion was made by Commissioner Sharber, seconded by Commissioner Wilson to Adjourn the Meeting. The motion passed unanimously.

Meeting Adjourned @ 12:15 PM

Jim Martin, Chair

Minutes Prepared by Sarah Schilling, Assistant Deputy City Recorder, City Administrator's Office - 7/10/23, 10:29 AM



File #: 21-04933

DATE: July 17, 2023

TO: Ethics Commission

SUBJECT:

PUBLIC HEARING: Consideration Of Ethics Complaint Against Alderman Gabrielle Hanson Relative To Correspondence To Douglas E. Kreulen, President And CEO Of The Metropolitan Nashville Airport Authority, And The BNA Board Of Commissioners Regarding Their Support And/Or Funding Of The Franklin Justice And Equity Coalition.

1. Complaint Filed By Emily Jenkins
2. Complaint Filed By Peggy Kingsbury
3. Complaint Filed By Kate Osher
4. Complaint Filed By Damon Rogers
5. Complaint Filed By Janet Shouse
6. Complaint Filed By Rod Berger
7. Complaint Filed By Joseph Jenson

PURPOSE:

The purpose of this memorandum is to provide information to the Franklin Ethics Commission concerning the Ethics Complaint filed by Emily Jenkins, Peggy Kingsbury, Kate Osher, Damon Rogers, Janet Shouse, Rod Berger, and Joseph Jensen against Alderman Gabrielle Hanson.

BACKGROUND/STAFF COMMENTS:

On June 27, 2023, the Ethics Commission held an Initial Determination Hearing to determine whether the Ethics Complaint filed by Emily Jenkins, Peggy Kingsbury, Kate Osher, Damon Rogers, Janet Shouse, Rod Berger, and Joseph Jensen alleged facts sufficient to constitute an ethical claim against Alderman Gabrielle Hanson.

During the Initial Determination Hearing, the Ethics Commission determined the Ethics Complaint filed by Emily Jenkins, Peggy Kingsbury, Kate Osher, Damon Rogers, Janet Shouse, Rod Berger, and Joseph Jensen contained facts sufficient to constitute an ethical claim against Alderman Gabrielle Hanson. As a result and in accordance with the Ethics Commission Amended Bylaws and Procedures dated May 17, 2023, the Ethics Commission shall conduct a formal Public Hearing in accordance with the requirements of due process.

The first Ethics Complaint being considered during the July 27, 2023 Ethics Commission Hearing was filed on June 27, 2023 by Emily Jenkins against Alderman Gabrielle Hanson as the result of her correspondence to Douglas E. Kreulen, President and CEO of the Metropolitan Nashville Airport Authority, and the BNA Board of Commissioners regarding their support and/or funding of the Franklin Justice and Equity Coalition.

Angie Johnson

From: Emily Jenkins <jenkinsemilyp@gmail.com>
Sent: Wednesday, June 7, 2023 9:00 PM
To: Admin Recorder
Subject: Ethics Complaint- Gabrielle Hanson

Follow Up Flag: Flag for follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

City of Franklin Ethics Commission,

I would like to register a formal ethics complaint against Gabrielle Hanson for sending the correspondence attached below to the BNA Airport Board, under color of her position as an elected official of the City of Franklin. This correspondence is problematic for reasons that could be the basis of a civil action, including but not limited to tortious interference with contract, extortion and defamation. As far as the ethics commission is concerned, I believe there are multiple violations of the ethics policy in the municipal code that require her removal from office.

1. The ethics policy states:

Except as provided in this section, no officials or employees, either for themselves or for their immediate family, or for any other person, may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor, promise or any thing of value for themselves, any other person or any member of the immediate family of such official. In addition, it shall also be a violation of this ethics code for any gift as defined in this chapter to be received by any such person as specified in this section if:

(a) It tends to influence the official or employee in the discharge of official duties or gives a reasonable basis for the impression of improper influence over the discharge of official duties;

Hanson's letter is a direct solicitation of funds for the AAHS, and Ms. Hanson has voted multiple times in favor of the AAHS. She has also had private meetings with the head of the AAHS and has made promise to secure funds for their organization. Additionally, she attempted to block permitting for the FJEC's Juneteenth event in favor of the event being hosted by the AAHS. All of these actions constitute a violation of the ethics policy.

2. The ethics policy further states:

Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

Ms. Hanson sent this letter and specifically stated that she was demanding a donation "as an elected official" and signed it with her official title of alderman. This attempt to use her status as an elected official to secure a donation for the AAHS is a clear violation of the ethics policy.

3. Finally, the ethics policy states:

Officials or employees may not use or authorize the use of municipal time, facilities, equipment or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.

Ms. Hanson sent the letter from her City provided email address, using her official title in order to wrongfully extort funds for the AAHS, which is a violation of the ethics policy.

For the foregoing reasons, I am requesting that the Ethics Commission take prompt corrective action against Ms. Hanson and remove her from office, before she further damages the reputation of the City and its' community nonprofits by engaging in extortion, defamation and interference under color of City authority. While I do not know to what extent the AAHS was aware of or involved with Ms. Hanson's actions, I further request that any member of the Ethics Commission with a conflict of interest due to their involvement in the AAHS recuse themselves from consideration of this matter.

I appreciate your consideration of my complaint.

Emily P. Jenkins
215 Franklin Road, Franklin TN 37064

Email from Alderman Hanson:

Dear Mr. Kreulen and Board of BNA Airport:

Over the course of the weekend, I have had over 20 Franklin residents reach out to me with concern over BNA paying thousands of dollars in taxpayer money to support what is equivalent to Franklin's local BLM chapter, Franklin Justice and Equity Coalition. It is incomprehensible to think that an airport in Nashville would want to support an organization, in one of America's most revered small town's, that believes in defunding the police, reparations and other radical social justice platforms. Please see the link below that show your support dollars and approval of their agenda.

https://us01.z.antigena.com//UQSwpNnj644BKEw-OHq3c3UJk2u5j_ap6~Szg33G7u4keo-vi~iNqvyN3vrQ2-fHxuvqGGO6FvzZzHfmbLpc9R3_ONXObi5HXmEs4Rmlqpnj6L9EokyJt2onIkM_qhJgA5YPhabfRyloXIzi6DGBFSJ

Perhaps you aren't aware that this organization only came about during the heat of BLM rioting across America, as they say, in response to George Floyd, Breanna Taylor and others. Perhaps you aren't aware of the division they caused in our community last year when they asked the city to back them and take Juneteenth away from the African American Heritage Society, who had been our Juneteenth stalwart for

decades. The African American Heritage Society has represented the achievements and successes, along with accurate black history in our community for decades. They have preserved the legendary McLemore House and provide annual scholarships to black youth in our community. Yet, they were targeted by the City of Franklin and FJEC and were asked for tens of thousands of dollars to move forward with Juneteenth BLM style or face not having Juneteenth at all. But because of many citizens in Franklin who became involved, AAHS was able to have their own Juneteenth without FJEC.

To put it mildly, our citizens are outraged and angry. I have to agree, I don't want my tax dollars or fees off of plane tickets going to radical agenda's either. I am floored that your board would approve of allocating money in this way. These citizens are prepared to post publicly and link this support to each and every board member, along with their business interests so that the public will know that the board of BNA is financially supporting, and in agreement with, radical social justice agenda's in towns where they literally should have no voice.

Is it the mission of BNA to support African American organizations? Is it the mission of BNA to support Juneteenth? Is it the mission of BNA to support radical agenda's that are dividing our country? That is the question our citizens would like answered.

As an elected official I am respectfully requesting that you either withdraw the financial support and public endorsement of FJEC, or write a check to the African American Heritage Society and allow them to advertise you as a sponsor, providing the same financial level of funding that you did to the Franklin Justice and Equity Coalition. It appears that you want to support African American causes in Franklin, and, particularly, Juneteenth. If you are going to support one entity, you need to support ALL entities providing the Juneteenth experience in our community, particularly those who don't veer off of the course of accurate black history and seek provide an uplifting message of hope and inspiration.

I have copied Alma McLemore, the head of the African American Heritage Society on this email.

Sincerely,

Gabrielle Hanson

City of Franklin

Alderman At-Large

615-946-4200

| | | |

Sarah Schilling

From: peggy@peggykingsbury.com
Sent: Thursday, June 8, 2023 5:58 PM
To: Admin Recorder
Subject: Ethics Compliant/Alderman Hanson

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

I am filing an ethics complaint against Alderman Gabrielle Hanson.

Alderman Hanson's correspondence to the BNA Board clearly violates the ethics code in three separate instances.

First, Sec.1-805 has been violated by Hanson's attempt to extort money from BNA. The section specifically reads "...may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor or promise or any thing of value for themselves, any other person or any member of the immediate family of such official."

Alderman Hanson also violated Sec. 1-108 which states in paragraph (2) Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

Hanson violated this section by making her demand as an official officer of the City of Franklin. This "shake down" of BNA was done without authorization of the city.

Lastly, Hanson used her City provided email and title as she attempted to gain a donation for a private entity. This is in violation of Sec. 1-807 (2).

Please take swift action against Alderman Hanson.

Peggy Kingsbury

220 Winter Hill Rd.
Franklin, TN 37069
931-993-1162

Angie Johnson

From: Kate Osher <katelyonosher@gmail.com>
Sent: Friday, June 9, 2023 3:53 PM
To: Admin Recorder
Subject: Gabrielle Hanson

Follow Up Flag: Flag for follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

Dear City Recorder:

This shall serve as a formal complaint against Alderman Gabrielle Hanson, who is once again using her position for her own benefit and creating unnecessary drama for the city.

Section 1-801, et seq, of the code can and does apply, as she misused city email and sought a donation to a private entity, and did it under claiming authority as an elected official.

Per the Williamson Herald, "As an elected official," Hanson's email continues, "I am respectfully requesting that you either withdraw the financial support and public endorsement of FJEC, or write a check to the African American Heritage Society and allow them to advertise you as a sponsor, providing the same financial level of funding that you did to the Franklin Justice and Equity Coalition."

It is worth noting that the article goes on to state the following: "After AAHS President Alma McLemore found out about Hanson's email, she wrote a statement to BNA 'First, allow me to apologize on behalf of the African American Heritage Society for the nature and tone of the email ... from Alderman Hanson,' she wrote. 'We had been notified by Ms. Hanson that she was going to make a huge financial ask for AAHS based on your commitment to FJEC — but she did not disclose the full intentions of her outreach. Nor did she share her correspondence in advance of it being sent.'"

Alderman Hanson continues to be a loose cannon, and her behavior cannot be excused. She is a liability to the City. She refuses to ever take responsibility for her behavior or lies. Our City and residents deserve so much better.

I hope that you will consider this complaint.

Sincerely,

Kate Lyon Osher
109 Bromley Park Lane
Franklin, TN 37069

--

Kate Lyon Osher
323-828-8151
www.katelyonosher.com

Angie Johnson

From: Damon Rogers <damonarogers@gmail.com>
Sent: Friday, June 9, 2023 3:01 PM
To: Admin Recorder; recorder@franklintn.com
Subject: Re: Gabrielle Hanson

Follow Up Flag: Flag for follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

On Fri, Jun 9, 2023 at 10:48 AM Damon Rogers <damonarogers@gmail.com> wrote:

Like Dolly Parton sings, here we go again!

Gabrielle Hanson has violated at least 3 ethics codes as I read her correspondence to BNA BOARD. They are:

Sec.1-805

Sec.1-807 (2)

Sec.1-108

I urge you to take appropriate action against Alderman Gabrielle Hanson. She is a liability to the community I was born and raised!

Damon Akin Rogers
431 Boyd Mill Ave, Franklin, TN 37064
615-554-2042
6th Generation Native Williamson County

Angie Johnson

From: janet@shouse.com
Sent: Friday, June 9, 2023 2:05 PM
To: Admin Recorder
Subject: Fwd: Ethics concerns regarding Alderman Gabrielle Hanson
Attachments: Gabrielle Hanson BNA letter.png

Follow Up Flag: Flag for follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

Hello,

I am writing because I am concerned that actions by Alderman Gabrielle Hanson seem to have violated Franklin's ethics code for the Board of Mayor and Aldermen.

I recently received the attached email, which appears to have been written by Alderman Hanson. The letter, as I read it, is demanding money from the BNA board for the African American Heritage Society, which the alderman apparently prefers over the Franklin Justice and Equity Coalition. This demand would violate the ethics code, would it not?

Alderman Hanson appears to be making this demand as an elected city official of Franklin. I believe this also violates the ethics code.

Although the attached file doesn't make it clear, I am assuming that Alderman Hanson used her official city email account to send this demand to the BNA board. Would this not also be a violation of the ethics code?

Alderman Hanson has been sowing division in our city, which makes me very sad.

I hope that this ethics complaint and swift action against Alderman Hanson will encourage her to take a more thoughtful approach to how she chooses to try to govern the city of Franklin.

Thank you.

Sincerely,

Janet Shouse
409 Crofton Park Lane
Franklin, TN 37069
615-202-5259

Dear Mr. Kreulen and Board of BNA Airport:

Over the course of the weekend, I have had over 20 Franklin residents reach out to me with concern over BNA paying thousands of dollars in taxpayer money to support what is equivalent to Franklin's local BLM chapter, Franklin Justice and Equity Coalition. It is incomprehensible to think that an airport in Nashville would want to support an organization, in one of America's most revered small town's, that believes in defunding the police, reparations and other radical social justice platforms. Please see the link below that show your support dollars and approval of their agenda.

https://us01.z.antigena.com/l/UQSwpNnj644BKEw-OHq3c3UJk2u5j_ap6~Szg33G7u4keo-vi~iNqvyN3vrQ2-fHxuvqGGO6FvzZzHfmbIpc9R3_ONXObi5HXmEs4Rmlqpnj6L9EokyJt2onIkM_qhJgA5YPhabfRyloXlzi6DGBFSJ

a8dcfdee.png

Perhaps you aren't aware that this organization only came about during the heat of BLM rioting across America, as they say, in response to George Floyd, Breanna Taylor and others. Perhaps you aren't aware of the division they caused in our community last year when they asked the city to back them and take Juneteenth away from the African American Heritage Society, who had been our Juneteenth stalwart for decades. The African American Heritage Society has represented the achievements and successes, along with accurate black history in our community for decades. They have preserved the legendary McLemore House and provide annual scholarships to black youth in our community. Yet, they were targeted by the City of Franklin and FJEC and were asked for tens of thousands of dollars to move forward with Juneteenth BLM style or face not having Juneteenth at all. But because of many citizens in Franklin who became involved, AAHS was able to have their own Juneteenth without FJEC.

To put it mildly, our citizens are outraged and angry. I have to agree, I don't want my tax dollars or fees off of plane tickets going to radical agenda's either. I am floored that your board would approve of allocating money in this way. These citizens are prepared to post publicly and link this support to each and every board member, along with their business interests so that the

member, along with their business interests so that the public will know that the board of BNA is financially supporting, and in agreement with, radical social justice agenda's in towns where they literally should have no voice.

Is it the mission of BNA to support African American organizations? Is it the mission of BNA to support Juneteenth? Is it the mission of BNA to support radical agenda's that are dividing our country? That is the question our citizens would like answered.

As an elected official I am respectfully requesting that you either withdraw the financial support and public endorsement of FJEC, or write a check to the African American Heritage Society and allow them to advertise you as a sponsor, providing the same financial level of funding that you did to the Franklin Justice and Equity Coalition. It appears that you want to support African American causes in Franklin, and, particularly, Juneteenth. If you are going to support one entity, you need to support ALL entities providing the Juneteenth experience in our community, particularly those who don't veer off of the course of accurate black history and seek provide an uplifting message of hope and inspiration.

I have copied Alma McLemore, the head of the African American Heritage Society on this email.

Sincerely,

Gabrielle Hanson

City of Franklin

Alderman At-Large

[615-946-4200](tel:615-946-4200)

Angie Johnson

From: Rod Berger <berger.rod@gmail.com>
Sent: Sunday, June 11, 2023 2:54 PM
To: Admin Recorder
Cc: Gabrielle Hanson; Ken Moore; Clyde Barnhill; Alderman Potts; Brandy Blanton; bev@aldermanburger.com; Patrick Baggett; Matt Brown; Shauna Billingsley; Lisa Mooring
Subject: Re: Call to remove Gabrielle Hanson as Franklin Alderman
Attachments: June 11 BOMA Official Ethics Complaint.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

Dear Franklin Civic Leaders,

I have attached a formal ethics complaint against Alderman Hanson. I have included the appropriate email 'recorder' address in this thread. I know that I am not the only citizen of Franklin to file a complaint so I am hopeful that those entrusted to lead our city are able to collaborate with local citizens to ward off hateful speech, ilinformed and public proclamations, and overall weaponization of public office. I sincerely appreciate your time and consideration as you collectively review local media coverage and individual and formal complaints.

Regards,

Rod Berger
615-720-6611

On Fri, Apr 21, 2023 at 12:42 PM Rod Berger <berger.rod@gmail.com> wrote:

Franklin Leaders and members of the local and national media,

I am sure that I am not the first Franklin citizen calling for Alderman Hanson's removal. The link below and the 9-minute audio clip of Hanson discussing the tragedy at Covenant are horrible, inaccurate, and a terrible representation of Franklin and TN. I call on the media on this thread to seek official comment from the mayor of Franklin and fellow alderman and inquire about the next steps to remove Hanson from her post. I would also encourage the media to look into Hanson's bigotry (Franklin Pride Permit issue and posting 'what ifs') along with her cozy affiliation with Mom's For Liberty.

This is an embarrassment to our city, the families that call Franklin home, and the businesses that choose to work in our community. Sadly the world is watching our city and state, and the reviews are downright pathetic. We need to be better!

<https://twitter.com/TheTNHoller/status/1649425095075438594?s=20>

Regards,
Rod



June 11, 2023

Dear BOMA,

Please regard this correspondence as a formal ethics complaint against Gabrielle Hanson. Previous attempts to censure, expel, and/or publicly acknowledge the damage Alderman Hanson is waging against the city of Franklin has fallen on the deaf ears of BOMA and associated legal representatives. The most recent and inflammatory abuse of her public office not only proved her lack of due diligence but, more importantly, shed light on Hanson's abuse of public office.

The last time I reached out to BOMA, I was told that Alderman Hanson does not speak for BOMA. That claim cannot be used this time – Alderman Hanson went on record utilizing her title with the city of Franklin to incite a cross-county argument without consent from BOMA, BNA, and multiple non-profits. She spewed nonsensical propaganda intimating fraudulent tax practices by BNA in addition to false claims of giving and requests from non-profits without their consultation and/or endorsement.

I want to highlight an observation – this is the second time that I have been contacted by city officials asking for assistance in filing a complaint against Alderman Hanson. This tells me that the current BOMA roster of officials feels, at some level, unsafe or not protected to raise considerable concerns among city leaders. It also intimates a lack of power to adequately represent the citizens of Franklin in a decisive manner that condemns radical and civic stupidity, sadly marking our city as deeply ignorant and replete of a community of inclusiveness.

The current correspondence from Alderman Hanson is problematic for reasons that could be the basis of a civil action, including but not limited to tortious interference. I believe there are multiple violations of the ethics policy in the municipal code that require her removal from office.

1. *Except as provided in this section, no officials or employees, either for themselves or for their immediate family, or for any other person, may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor, promise or anything of value for themselves, any other person or any member of the immediate family of such official. In addition, it shall also be a violation of this ethics code for any gift as defined in this chapter to be received by any such person as specified in this section if: (a) It tends to influence the official or employee in the discharge of official duties or gives a reasonable basis for the impression of improper influence over the discharge of official duties.* Alderman Hanson's letter is a direct solicitation of funds for the AAHS. Hanson has voted multiple times in favor of the AAHS. It is public knowledge that Hanson has also had private meetings with the head of the AAHS and has made promises to secure funds for their organization. She also attempted to block permitting for the FJEC's Juneteenth event in favor of the event being hosted by the AAHS. These actions constitute a violation of the ethics policy.

2. *Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.* Alderman Hanson sent this letter and specifically stated that she was demanding a donation “as an elected official” and signed it with her official title of alderman. This attempt to use her status as an elected official to secure a donation for the AAHS is a clear violation of the ethics policy for the city of Franklin.
3. *Officials or employees may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by a legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.* Alderman Hanson sent the letter from her city-provided email address, using her official title, in order to wrongfully extort funds for the AAHS, which is a violation of the ethics policy. AAHS publicly said as much through the press in recent days.

I am requesting that the Ethics Commission take prompt corrective action against Alderman Hanson and remove her from office before she further damages the reputation of Franklin and its’ community non-profits by engaging in extortion, defamation, and interference under the guise of Franklin's authority.

I further request that any member of the Ethics Commission with a conflict of interest due to their involvement in the AAHS recuse themselves from consideration of this matter.

In closing, I lean on the professional shoulders of BOMA to collaborate with concerned citizens – not just deflect official complaints with vague efforts of disassociation with a rogue member of the board.

I appreciate your time, consideration, and contributions to our great city.

Regards,

Rod Berger
615-720-6611

CITY OF FRANKLIN, TENNESSEE

ETHICS COMPLAINT AGAINST AN ELECTED OFFICIAL

DATE: JUNE 14, 2023

SUBMITTED TO: RECORDER@FRANKLINTN.GOV, AND

VIA HAND DELIVERY TO:

CITY OF FRANKLIN, TENNESSEE
ATTN.: CITY RECORDER
109 THIRD AVENUE SOUTH
FRANKLIN, TENNESSEE 37064

COMPLAINANT: JOSEPH J. JENSEN
106 MISSION COURT, SUITE 903, 1ST FLOOR
FRANKLIN, TENNESSEE 37067

P. O. BOX 682305
FRANKLIN, TENNESSEE 37068-2305

TEL: 615-905-5777

E-MAIL: JOE@J3LAW.COM

SUBJECT OF COMPLAINT:

GABRIELLE HANSON

ETHICS COMPLAINT

1. The Complainant both resides in and maintains an office in Franklin, Williamson County, Tennessee.
2. The subject of the complaint, Gabrielle Hanson ("Ms. Hanson" herein), is a member of the City of Franklin Board of Mayor and Alderman, and therefor is an "Official" as defined in City of Franklin Code Section 1-802.

ORIGINAL

3. City of Franklin Code Section 1-808(2) provides, in pertinent part:

(2) Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. ...

4. On or about June 5, 2023, Ms. Hanson sent the following e-mail message to Mr.

Doug Kreulen, the CEO of the Metropolitan Nashville Airport Authority:

“Dear Mr. Kreulen and Board of BNA Airport:

“Over the course of the weekend, I have had over 20 Franklin residents reach out to me with concern over BNA paying thousands of dollars in taxpayer money to support what is equivalent to Franklin’s local BLM chapter, Franklin Justice and Equity Coalition. It is incomprehensible to think that an airport in Nashville would want to support an organization, in one of America’s most revered small town’s [sic], that believes in defunding the police, reparations and other radical social justice platforms. Please see ([this link](#)) that show your support dollars and approval of their agenda.

“Perhaps you aren’t aware that this organization only came about during the heat of BLM rioting across America, as they say, in response to George Floyd, Breanna Taylor and others. Perhaps you aren’t aware of the division they caused in our community last year when they asked the city to back them and take Juneteenth away from the African American Heritage Society, who had been our Juneteenth stalwart for decades. The African American Heritage Society has represented the achievements and successes, along with accurate black history in our community for decades. They have preserved the legendary McLemore House and provide annual scholarships to black youth in our community. Yet, they were targeted by the City of Franklin and FJEC and were asked for tens of thousands of dollars to move forward with Juneteenth BLM style or face not having Juneteenth at all. But because of many citizens in Franklin who became involved, AAHS was able to have their own Juneteenth without FJEC.

“To put it mildly, our citizens are outraged and angry. I have to agree, I don’t want my tax dollars or fees off of plane tickets going to radical agenda’s either. I am floored that your board would approve of allocating money in this way. These citizens are prepared to post publicly and link this support to each and every board member, along with their business interests so that the public will know that the board of BNA is financially supporting, and in agreement with, radical social justice agenda’s in towns where they literally should have no voice.

“Is it the mission of BNA to support African American organizations? Is it the mission of BNA to support Juneteenth? Is it the mission of BNA to support radical agenda’s that are dividing our country? That is the question our citizens would like answered.

“As an elected official I am respectfully requesting that you either withdraw the financial support and public endorsement of FJEC, or write a check to the African American Heritage Society and allow them to advertise you as a sponsor, providing the same financial

level of funding that you did to the Franklin Justice and Equity Coalition. It appears that you want to support African American causes in Franklin, and, particularly, Juneteenth. If you are going to support one entity, you need to support ALL entities providing the Juneteenth experience in our community, particularly those who don't veer off of the course of accurate black history and seek provide an uplifting message of hope and inspiration.

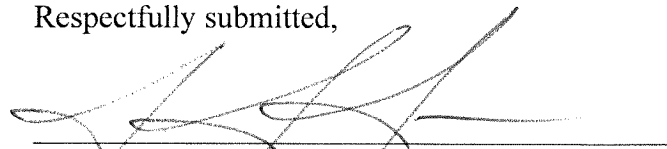
"I have copied Alma McLemore, the head of the African American Heritage Society on this email."

5. Ms. Hanson is, and in her e-mail identifies herself as an Official. Ms. Hanson's e-mail uses or attempts to use her position as an Official to secure a privilege or exemption for others – whether it be that "BNA" withdraw its support of one non-profit organization which she appears to disfavor, or that BNA provide its support to a different non-profit organization. Nowhere within the e-mail message is it indicated that what Ms. Hanson is requesting has been authorized by the charter, general law, or ordinance of policy of the City of Franklin.

6. The content of Ms. Hanson's e-mail message fits squarely within the prohibition of, and therefore the sending of that e-mail message is a violation of City of Franklin Code Section 1-808(2).

7. Complainant requests that the City of Franklin Ethics Commission convene pursuant to City of Franklin Code Section 1-812, for the purpose of determination of this Complaint, and upon doing so issue punishment as it believes to be appropriate under City of Franklin Code Section 1-813(1)

Respectfully submitted,



Joseph J. Jensen
106 Mission Court, Suite 903, 1st Floor
Franklin, Tennessee 37067
P. O. Box 682305
Franklin, Tennessee 37068-2305
Tel: 615-905-5777
E-mail: joe@j3law.com

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WWW.HORWITZ.LAW
O: (615) 739-2888

July 13, 2023

VIA EMAIL

Gail Vaughn Ashworth, Esq.
Wiseman Ashworth Trauger
511 Union Street, Suite 800
Nashville, TN 37219-1743
Telephone: 615-254-1877
Fax: 615-254-1878
gail@watlawgroup.com

Eric Stuckey, Franklin City Administrator
Eric.stuckey@franklinton.gov

Re: Response of Alderman Gabrielle Hanson to June 30, 2023 Ethics Commission Letter Threatening Adverse Action Resulting from Alderman Hanson's Constitutionally Protected Advocacy and Constituent Representation

Ms. Ashworth:

I represent Alderman Gabrielle Hanson regarding the seven ethics complaints that have been filed against her in response to her lawful—and constitutionally protected—public advocacy and representation of her constituents. For the reasons detailed below, Alderman Hanson's constitutionally protected advocacy and constituent representation was not merely lawful and compliant with applicable *ethics regulations*, though both of those things are clear. Instead, Alderman Hanson's advocacy was so clearly protected by *the First Amendment*—and it was so integral to her duties as an elected official—that any effort by the Ethics Commission to take adverse governmental action against her for it would itself be illegal.

Given this context, please ensure that your clients understand that proceeding with the threatened ethics hearing will result in the City of Franklin and the members of the

Ethics Commission being sued, individually, for violating Alderman Hanson’s clearly established First Amendment rights. You should accordingly ensure that your clients comply with a litigation hold regarding this matter and preserve their communications in the event that your clients intend to continue down this inadvisable road. I also encourage you to review the law that applies to these circumstances as detailed below; apprise your clients of it promptly; and advise the Ethics Commission to rescind, immediately, its vote to schedule a public hearing on the complaints asserted against Alderman Hanson. At minimum, I encourage the Ethics Commission to cancel the scheduled public hearing on a temporary basis pending judicial review of the legality of pursuing ethics complaints under the circumstances presented here, which Alderman Hanson is happy to assist the Commission in expediting if desired.

I. ETHICS COMPLAINTS ARISING FROM ALDERMAN HANSON’S CONSTITUTIONALLY PROTECTED ADVOCACY AND CONSTITUENT REPRESENTATION.

As you know, Alderman Hanson has been subjected to seven substantially similar ethics complaints—complaints that were initiated by complainants who repeatedly disclose their political opposition to Alderman Hanson regarding unrelated matters—for expressing her constituents’ and her own concerns about an expenditure of public funds by the Metropolitan Nashville Airport Authority. Your June 30, 2023 letter advises that a “formal public hearing” on the complaints arising from that constitutionally protected advocacy is set for “**July 27, 2023 at 12:00 p.m.,**” and that a written response to the complaints is due by July 17, 2023. See **Ex. 1**, Letter from Gail Ashworth to Gabrielle Hanson (June 30, 2023), at 1. Your letter goes on to state that the Ethics Commission is not merely considering whether to *censure* Alderman Hanson; instead, you explain that:

In addition, other penalties may be imposed pursuant to any and all other applicable state and municipal laws, ordinances and regulations, including but not limited to T.C.A. 8-47-101, et. seq, Tennessee’s Removal of Officers Law, commonly known as the “Ouster” law.

See id. at 2.

Given the gravity of these explicit threats, the underlying advocacy giving rise to the ethics complaints that have been asserted against Alderman Hanson merits discussion. The complaints—all of which concern the same correspondence—allege that, on June 5, 2023, Alderman Hanson emailed the CEO of the Metropolitan Nashville Airport Authority, which is a public entity. In that email, Alderman Hanson expressed that: “Over the course of the weekend, I have had over 20 Franklin residents reach out to me with concern over BNA paying thousands of dollars in taxpayer money to support what is equivalent to Franklin’s local BLM chapter[.]” Alderman Hanson thereafter explained why she opposed that expenditure, and she stated that “[i]t is incomprehensible to think that an airport in Nashville would want to support” the organization that was set to benefit from an appropriation of public funds.

After explaining the basis for her opposition to what Alderman Hanson and her constituents considered an inadvisable expenditure of taxpayer money, Alderman

Hanson requested that the Airport Authority “either [1] withdraw the financial support and public endorsement” of the organization that it had chosen to support, or “[2] write a check to the African American Heritage Society and allow them to advertise you as a sponsor, providing the same financial level of funding that you did to the Franklin Justice and Equity Coalition.” Of note, no complainant has alleged that Alderman Hanson had any personal financial or familial interest in the African American Heritage Society, and she does not. Instead, the organization is simply a valued non-profit entity in the Franklin community that Alderman Hanson considers to be more worthy of public support. As its mission statement reflects: “The African-American Heritage Society is a non-profit organization whose mission is to collect, preserve, and interpret artifacts pertaining to Williamson County’s African American culture and increase understanding and appreciation of our heritage for future generations.” See **Ex. 2**, African American Heritage Society of Williamson County, *Our Mission*, <https://aahswc.org/about> (last visited July 13, 2023).

II. CONSTITUTIONAL PROTECTIONS APPLICABLE TO ELECTED OFFICIAL ADVOCACY AND CONSTITUENT REPRESENTATION.

The U.S. Supreme Court has held repeatedly and without ambiguity that “[t]he manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy.” See *Bond v. Floyd*, 385 U.S. 116, 135–36 (1966). Put another way: “The role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance.” See *Wood v. Georgia*, 370 U.S. 375, 395 (1962). Thus, the U.S. Supreme Court has explained that:

Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes. . . . Suppression of the right . . . to praise or criticize governmental agents and to clamor and contend for or against change . . . muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free.

Mills v. Alabama, 384 U.S. 214, 218–19 (1966).

Given this context, “[r]estrictions on a public official’s participation necessarily affect that individual’s First Amendment associational rights and Fourteenth Amendment equal protection rights.” See *Peeper v. Callaway Cnty. Ambulance Dist.*, 122 F.3d 619, 623 (8th Cir. 1997); see also *Boquist v. Courtney*, 32 F.4th 764, 780 (9th Cir. 2022) (“In light of ‘[t]he manifest function of the First Amendment in a representative government’ and the ‘require[ment] that legislators be given the widest latitude to express their views of policy,’ we conclude that an elected official’s speech is protected regardless whether the official is speaking ‘as a citizen upon a matter of public concern’”) (quoting *Bond*, 385 U.S.

at 135–36). It should also go without saying that Alderman Hanson’s role as a public official includes participating in governmental affairs and representing her constituents’ interests—*especially* regarding expenditures of taxpayer funds, which is properly characterized as her “job.” As the U.S. Supreme Court recently explained:

The right to “examin[e] public characters and measures” through “free communication” may be no less than the “guardian of every other right.” Madison’s Report on the Virginia Resolutions (Jan. 7, 1800), in 17 Papers of James Madison 345 (D. Mattern, J. Stagg, J. Cross, & S. Perdue eds. 1991). And the role that elected officials play in that process “‘makes it all the more imperative that they be allowed to freely express themselves.’” *Republican Party of Minn. v. White*, 536 U.S. 765, 781, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002).

Houston Cmty. Coll. Sys. v. Wilson, 212 L. Ed. 2d 303, 142 S. Ct. 1253, 1261 (2022).

Tennessee law, for its part, consistently embraces this view and accordingly ensures that public officials will always have wide latitude to speak their minds. *See, e.g., Cornett v. Fetzer*, 604 S.W.2d 62, 63 (Tenn. Ct. App. 1980) (noting that “the importance of legislators freely speaking their minds” warrants absolute legislative immunity as a policy matter); Tenn. Code Ann. § 29-20-201(b)(1) (“Members of boards, commissions, authorities, and other governing agencies must be permitted to operate without concern for the possibility of litigation arising from the faithful discharge of their duties.”); Franklin Code Section 2-307(2)(j) (“Each member of the ethics commission retains the right to: . . . participate fully in public affairs in a manner which does not materially compromise his efficiency or integrity as a member of the ethics commission or the neutrality, efficiency or integrity of the ethics commission.”). Abundant additional authority supports the conclusion that constituent representation of the sort at issue here is protected as part of a legislator’s official duties as well. *See, e.g., Thornton v. City of St. Helens*, 231 F. Supp. 2d 1019, 1024 (D. Or. 2002) (“[d]ecisions encompassing discretion and policymaking, including services to constituents, are considered” integral to the legislative function); *Almonte v. City of Long Beach*, 478 F.3d 100, 107 (2d Cir. 2007) (“Meeting with persons outside the legislature—such as executive officers, partisans, political interest groups, or constituents—to discuss issues that bear on potential legislation, and participating in party caucuses to form a united position on matters of legislative policy, assist legislators in the discharge of their legislative duty. These activities are also a routine and legitimate part of the modern-day legislative process.”) (citing *Bruce v. Riddle*, 631 F.2d 272, 280 (4th Cir. 1980) (observing that “[m]eeting with ‘interest’ groups, professional or amateur, regardless of their motivation, is a part and parcel of the modern legislative procedures through which legislators receive information possibly bearing on the legislation they are to consider”))).

Given the weight of this authority, there should be no dispute that Alderman Hanson’s advocacy—on her own behalf and on behalf of her constituents—regarding how taxpayer funds should be expended was both within her official role and enjoys robust constitutional protection. Accordingly, the central question remaining is whether the City of Franklin’s ethics regulations can or do operate to forbid Alderman Hanson from

advocating on her constituents' behalf. As detailed below, the correct answer to these questions is that they cannot and do not. As importantly, taking adverse action against Alderman Hanson for her constitutionally protected advocacy would also violate the First Amendment.

III. THE ILLEGALITY OF RETALIATING AGAINST ALDERMAN HANSON FOR ENGAGING IN CONSTITUTIONALLY PROTECTED ADVOCACY AND CONSTITUENT REPRESENTATION.

The overwhelming weight of authority establishing that “[t]he manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy” notwithstanding, *see Bond*, 385 U.S. at 135–36, the Ethics Commission has voted “to move forward to a Public Hearing on the complaints” against Alderman Hanson, which inarguably arise from her advocacy concerning how she and her constituents think that public funds should be used. *See Ex. 3*, City of Franklin Ethics Committee, Meeting Minutes (June 27, 2023). Though that decision may seem rote or trivial, it constitutes a breathtaking interference into representative government, the democratic process, and the rights—and duties—of elected officials to represent their constituents.

That is not hyperbole, either. Instead, each of the seven complaints at issue here literally claims that it was illegal for Alderman Hanson to urge a governmental entity to expend taxpayer funds differently than it had proposed. The effect of that constitutionally illiterate perspective—which, at least for the time being, appears to have been entertained by the Ethics Commission—would be to ensure that viewpoints favored by supporters of a government expenditure are unchallenged, and that elected officials in a representative democracy are powerless to advocate a competing view on their constituents' behalf. Such an approach, of course, would be bafflingly illegal regardless of any other matter, and your clients should walk it back immediately as a result. *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829, 115 S. Ct. 2510, 2516, 132 L. Ed. 2d 700 (1995) (“Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”).

To be clear: The fact that Alderman Hanson's speech giving rise to the complaints at issue here is constitutionally protected is not actually subject to any reasonable dispute, various complainants' ridiculous position that it was “extortion” or “defamation” notwithstanding.¹ The correspondence at issue—a petition to a government official to redress Alderman Hanson's own and her constituents' grievances—is also independently protected by the *petition* clauses of the federal and Tennessee Constitutions, which provide separate and overlapping constitutional protection for her advocacy. *Cf. Smith v.*

¹ I note, for context, that nobody involved in the Airport Authority is a complainant, and that Alderman Hanson's request that the referenced Airport Authority appropriation be modified does not appear to have succeeded. These facts make claims of “extortion” by unaffected complainants who have eagerly disclosed their unrelated political opposition to Alderman Hanson all the more absurd. Nobody was extorted. Indeed, nobody whom the complainants claim was extorted has even complained, presumably because other public officials recognized that there was nothing untoward about a petition to redress her own and her constituents' grievances regarding a proposed appropriation of public funds.

Bluecross Blueshield of Tennessee, No. E2022-01058-COA-R3-CV, 2023 WL 3903385, at *6 (Tenn. Ct. App. June 9, 2023) (“The Tennessee Constitution is unambiguous on this point: citizens have a right ‘to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance.’”) (quoting Tenn. Const. Art. I, § 23). Further, as noted above, any governmental action that functions to ensure that only one viewpoint regarding a public expenditure may be expressed while forbidding advocacy of competing viewpoints would be flagrantly impermissible in its own right.

With this context in mind, there are serious constitutional problems with proceeding with the Ethics Commission’s threatened hearing and corresponding penalties under the circumstances presented here. Such government-sponsored retaliation—complete with a threat of ouster and other sanctions—in response to Alderman Hanson’s constitutionally protected advocacy would also be an actionable First Amendment violation. *See, e.g., Velez v. Levy*, 401 F.3d 75, 97–98 (2d Cir. 2005) (“the plaintiff’s pleadings clearly make out a colorable First Amendment retaliation claim. We cannot permit a state official to oust an elected representative of the people on the bald ground that she voices unsympathetic political views—that is, that she engages in an activity that is at the core of what is protected by the First Amendment. Such an action by a state official, if allowed, would offend the basic purposes of the Free Speech clause—the facilitation of full and frank discussion in the shaping of policy and the unobstructed transmission of the people’s views to those charged with decision making.”) (citing *Bond*, 385 U.S. at 135–36 (“The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy.”)); *Mousaw v. Bd. of Educ. of Colton Pierrepont Cent. Sch. Dist.*, No. 7:07-CV-1006, 2011 WL 1667909, at *6 (N.D.N.Y. May 3, 2011) (“State officials may not ‘oust an elected representative of the people’ for engaging in speech on a matter of public concern, which is protected by the First Amendment.”); *Houston Cmty. Coll. Sys.*, 142 S. Ct. at 1260 (materially adverse action—including, without limitation, “dismissal from governmental employment”—in response to protected speech constitutes First Amendment retaliation); *Warren v. DeSantis*, No. 4:22CV302-RH-MAF, 2023 WL 345802, at *16 (N.D. Fla. Jan. 20, 2023) (“Mr. Warren’s advocacy and his political affiliations—were protected by the First Amendment. These were factors that, as a matter of federal law, could not properly be the basis of a suspension.”); *McGuinn v. Smith*, No. 11-CV-4761 (CS), 2015 WL 12731755, at *5 (S.D.N.Y. Aug. 28, 2015) (a claim for “retaliation for the exercise of First Amendment free speech or association rights” will lie where plaintiff demonstrates adverse action); *Monteiro v. City of Elizabeth*, 436 F.3d 397 (3rd Cir. 2006) (city council member presented a jury question on a claim of violation of free speech where the member was ejected from a meeting for speaking out against the proposed city budget and deprived of his opportunity to vote on the budget); *X-Men Sec., Inc. v. Pataki*, 196 F.3d 56, 70 (2d Cir. 1999) (“No case of which we are aware has recognized a right in any individual under the First Amendment or the Equal Protection Clause, or any other constitutional provision, to prevent legislators from exercising their rights merely to express their views. . . . [A]dvocacy without threats, intimidation, or coercion is protected by the First Amendment.”). Accordingly, I encourage your clients to proceed further here with caution.

The fact that your clients are headed down a constitutionally impermissible road that will result in each of them being sued is the bad news. There is also good news, though, which is that—because the Ethics Commission has not *yet* subjected Alderman Hanson to any materially adverse action—the contemplated constitutional violation at issue has not yet ripened, since the investigation has not yet commenced. *See, e.g., McGuinn*, 2015 WL 12731755, at *6 (rejecting First Amendment retaliation claim where the process “was far from concluded; indeed, it hardly began, as Defendants never even commenced the investigation that might or might not have led them to bring charges against [public official].”). Under these circumstances, then, the Ethics Commission still has an easy off-ramp to avoid committing a constitutional violation, and the appropriate response is clear: Cancel the scheduled hearing; rescind the Commission’s earlier motion permitting the illicit ethics inquiry to commence; and be a great deal more careful about wielding governmental authority to punish transparently protected speech and constituent representation at the behest of complainants who initiate baseless complaints based on transparently political pretense² going forward.

IV. NO IDENTIFIED ETHICS PROVISION WOULD OR COULD PROHIBIT ALDERMAN HANSON FROM ENGAGING IN CONSTITUTIONALLY PROTECTED ADVOCACY AND CONSTITUENT REPRESENTATION.

As a straightforward statutory matter, there is also no world in which Alderman Hanson’s email could plausibly have violated any of the ethics regulations identified by the various admitted political opponents who have initiated these complaints. Review of the complaints—which I have attached to this correspondence for ease of reference as **Ex. 4**, Letters from Angie Johnson, City Recorder, to Gabrielle Hanson (June 8, 9, 12, and 14, 2023)—reflects the complainants’ belief that an elected official advocating that a public appropriation be rescinded or appropriated to a different organization violates:

1. Franklin Code Section 1-805(1) (providing that “no officials or employees, either for themselves or for their immediate family, or for any other person, may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor, promise or any thing of value for themselves, any other person or any member of the immediate family of such official.”);

² By way of example: Janet Shouse’s complaint asserts—unrelated to the ethics allegations that she maintains—that: “Alderman Hanson has been sowing division in our city, which makes me very sad.” *See Ex. 4* at 6. Similarly, Damon Akin Rogers’s complaint asserts—unrelated to the ethics allegations that he maintains—that: “Like Dolly Parton sings, here we go again! . . . [Alderman Hanson] is a liability to the community I was born and raised! [sic].” *Id.* at 8. Kate Osher’s complaint asserts—unrelated to the ethics allegations that she maintains—that: “Alderman Hanson continues to be a loose cannon, and her behavior cannot be excused. She is a liability to the City. She refuses to ever take responsibility for her behavior or lies. Our City and residents deserve so much better.” *Id.* at 9. Rod Berger’s complaint asserts—unrelated to the ethics allegations that he maintains—that: “I am sure that I am not the first Franklin citizen calling for Alderman Hanson’s removal. The link below and the 9-minute audio clip of Hanson discussing the tragedy at Covenant are horrible, inaccurate, and a terrible representation of Franklin and TN. I call on the media on this thread to seek official comment from the mayor of Franklin and fellow alderman and inquire about the next steps to remove Hanson from her post. I would also encourage the media to look into Hanson’s bigotry (Franklin Pride Permit issue and posting ‘what ifs’) along with her cozy affiliation with Mom’s For Liberty.” *Id.* at 11.

2. Franklin Code Section 1-807(2) (“Officials or employees may not use or authorize the use of municipal time, facilities, equipment or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.”); or
3. Franklin Code Section 1-808(2) (prohibiting officials or employees from using their position “to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality”).

None of these provisions is implicated here, though. To start, taxpayer funds cannot reasonably be construed as being a “gratuity, gift, honoraria, loan, favor, promise or any thing of value” within the meaning of Franklin Code Section 1-805(1), which is a provision designed to ensure that elected officials do not use their positions to secure private benefits for themselves or others. If they were, then all legislative advocacy regarding how taxpayer money should be expended—in other words, the most important job of any elected official—would constitute an ethics violation. It also goes without saying that if the drafters of this provision had intended to outlaw essentially all advocacy and constituent representation regarding how taxpayer money should be spent, then they would have said so, and the provision must be construed with that consideration in mind. *See, e.g., Emergency Med. Care Facilities, P.C. v. Div. of TennCare*, No. M2020-01358-SC-R11-CV, 2023 WL 3639482, at *10 (Tenn. May 25, 2023) (“a legislature ‘does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.’”) (quoting *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001)). *Accord W. Virginia v. Env’t Prot. Agency*, 213 L. Ed. 2d 896, 142 S. Ct. 2587, 2609 (2022) (“both separation of powers principles and a practical understanding of legislative intent make us ‘reluctant to read into ambiguous statutory text’ [an extraordinary] delegation claimed to be lurking there. To convince us otherwise, something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to ‘clear congressional authorization’ for the power it claims.”).

Regardless, as detailed above, it is not constitutionally permissible to forbid elected officials from advocating their own or their constituents’ views regarding how taxpayer money should be expended. It *certainly* is not permissible to suppress opposing viewpoints about an expenditure decision that has already been made by forbidding an elected official from advocating that the expenditure be rescinded or redirected. Doing so strikes at the heart of democratic governance, strips constituents of their right to effective representation, and constitutes categorically unlawful viewpoint discrimination besides. As a result, each of these considerations requires that Franklin Code Section 1-805(1) be construed to permit elected officials to advocate their own and their constituents’ views about how taxpayer money should be spent without triggering an ethics investigation. *See Esquinance v. Polk Cnty. Educ. Ass’n*, 195 S.W.3d 35, 47 (Tenn. Ct. App. 2005) (“The court has ‘a duty to adopt a construction which will sustain a statute

and avoid constitutional conflict any reasonable construction exists....”) (quoting *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn.1993)). Thus, simply stated, Franklin Code Section 1-805(1) cannot permissibly be interpreted in a manner that forbids quintessential constituent representation that lies at the heart of an elected official’s duties.

The same defects are inherent in the remaining code provisions that various complainants identify to support their asserted ethics complaints, too. As to Franklin Code Section 1-807(2), for instance, the theory appears to be that using a Franklin email address to advocate that the Metro Airport Authority spend taxpayer money differently than it planned constituted the illicit use of city “time, facilities, equipment or supplies . . . for private gain or advantage to any private person or entity” This is nonsense, of course. Setting aside the reality that sending an email falls into none of these categories, Alderman Hanson’s *use of email* did not constitute a “private gain or advantage to any private person” at all. Instead, the underlying complaint is that she *advocated for a governmental expenditure* that would have (if her advocacy had been successful) benefited a different Franklin non-profit entity. That is fundamentally different from letting a private party use city employees, “facilities, equipment, or supplies” for a private purpose, though, and that fact is obvious enough that it should not require further explanation. As noted above, advocating that public money be expended in a way that her constituents desire is also Alderman Hanson’s job, duty, and formal responsibility. Thus, once more, construing Franklin Code Section 1-807(2) in a manner that forbids such essential democratic and constitutionally protected advocacy would be impermissible, because such a construction would provoke a constitutional conflict. *See Esquinance*, 195 S.W.3d at 47.

Finally, as to Franklin Code Section 1-808(2) (prohibiting officials or employees from using their position “to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality”)—it does not even theoretically apply here, either. The Airport Authority may expend public funds as it pleases in accordance with the “general law.” Whether due to competing advocacy or otherwise, the Airport Authority apparently made the decision to expend public funds in a particular manner in accordance with that general law. In response, Alderman Hanson then did the job that her constituents elected her to do: She used the exact same right to speech and petition enjoyed by every other member of the public to advocate—consistent with the general law—that the Airport Authority’s proposed expenditure be rescinded or redirected. How such constitutionally protected advocacy would or even could run afoul of Franklin Code Section 1-808(2) under these circumstances is not meaningfully explained by any complainant, and the reason why is obvious: It does not.

* * *

In summary: Alderman Hanson’s advocacy and constituent representation were constitutionally protected, and the Ethics Commission and its members may not lawfully take any adverse action against her for it without violating the First Amendment. Further, nothing in the email giving rise to the complaints against Alderman Hanson plausibly violated any cited ethics provision. As a result, the Ethics Committee’s June 27, 2023 vote

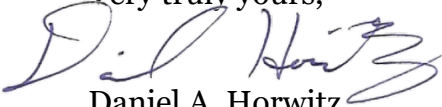
“to move forward to a Public Hearing on the complaints” should be rescinded immediately. See **Ex. 3**, City of Franklin Ethics Committee, Meeting Minutes (June 27, 2023). If it is not, I intend to take the same action on behalf of Alderman Hanson that I recently took against the School Board of Metropolitan Nashville and Davidson County when it illicitly attempted to stifle similar constituent representation and discussion of how public funds should be expended. In particular, I will file suit against your clients for the First Amendment violations detailed above, and it is my expectation that your clients—like Nashville—will end up paying my law firm a substantial sum of money as a result. See **Ex. 5**, Memorandum and Order, *Frogge et al. v. Joseph, et al.*, Davidson County Chancery Court Case No. 20-420-IV(III) (September 15th, 2020) (order granting unlawfully gagged public officials summary judgment on their First Amendment claims); **Ex. 6**, Agreed Final Order, *Frogge et al. v. Joseph, et al.*, Davidson County Chancery Court Case No. 20-420-IV(III) (July 26, 2022) (post-affirmance remand order that “**JUDGMENT SHALL ISSUE** for the Plaintiffs against the Defendants in the amount of **ONE HUNDRED AND TEN THOUSAND DOLLARS AND NO CENTS** (\$110,000.00) pursuant to 42 U.S.C. § 1988(b), payable to the Law Office of Daniel A. Horwitz IOLTA by the Metropolitan Government within thirty (30) days of entry of this order, for which execution may issue if necessary.”). Thus, please confirm to me in writing **by no later than July 20, 2023, at 4:30 p.m. CST** that the Ethics Committee’s June 27, 2023 vote “to move forward to a Public Hearing on the complaints[,]” **Ex. 3**, City of Franklin Ethics Committee, Meeting Minutes (June 27, 2023), has been rescinded and that the scheduled July 27, 2023 hearing has been cancelled.

Perhaps you hold a different view of the law that applies to constitutionally protected advocacy and constituent representation. Upon review of this correspondence, I will also allow for the possibility that your clients will continue to believe (however incorrectly) that some ethics provision of the Franklin Code allows the Ethics Commission to restrict elected officials’ First Amendment rights and interfere with the basic machinery and expectations of representative democracy in a way that is inherently viewpoint-based. That position would be wrong, and clearly so. However, assuming that you or your clients believe that it can be maintained in good faith, Alderman Hanson has a simple proposal that would settle the matter.

In particular, Alderman Hanson will agree to seek judicial review—whether by certiorari or a petition for declaratory relief—regarding: (1) whether the ethics complaints giving rise to the scheduled hearing state any cognizable claim for an ethics violation; and (2) whether any ethics provision of the Franklin Code can constitutionally be applied to prohibit an elected official from advocating their own and their constituents’ preferences regarding how public funds should be expended. I will emphasize that such litigation would be a wasteful use of resources, because both the impropriety and the illegitimacy of the ethics complaints giving rise to this matter are obvious. Even so, to the extent that the Ethics Commission genuinely believes, following review of this correspondence, that its currently contemplated action is or could be lawful, Alderman Hanson invites the Commission to join her in seeking judicial review of that determination before moving forward with a hearing.

If you have any questions regarding this correspondence, please contact me

immediately. For avoidance of doubt, all rights and claims that Alderman Hanson has—or may have—against your clients are expressly reserved.

Very truly yours,

Daniel A. Horwitz

Enclosures as stated

ATTORNEYS

Thomas A. Wiseman III*
Gail Vaughn Ashworth**
Byron R. Trauger
Margaret J. Moore
Kimberly G. Silvus
Michele T. Marsicano
Anthony C. Bills
Bradley M. Dowd ***
Jordan J. Couch
Andrew Merritt
Kaitlin R. Parham
Johnson Laney ****

* CERTIFIED AS A CIVIL TRIAL AND
MEDICAL MALPRACTICE SPECIALIST

** TENNESSEE SUPREME COURT
RULE 31 MEDIATOR

*** ALSO LICENSED IN MISSOURI

**** ALSO LICENSED IN GEORGIA

June 30, 2023

Via Electronic Mail

Alderman Gabrielle Hanson

Gabrielle.hanson@franklintn.gov

**Re: *Extension of Time to File Response to Seven (7) Ethics Complaints;
Notice of Setting Public Hearing July 27, 2023 at 12:00 p.m.***

Dear Alderman Hanson,

My law firm has been retained by the City of Franklin to represent the City of Franklin before the Ethics Commission concerning seven (7) ethics complaints that have been filed against you by the following individuals: Emily Jenkins, Peggy Kingsbury, Kate Osher, Damon Rogers, Janet Shouse, Rod Berger, and Joseph J. Jensen. You have previously been provided with all of the complaints on June 8, 2023.

On June 27, 2023, and pursuant to the City of Franklin's Ethics Commission Amended Bylaws and Procedures Section IV, the Ethics Commission met and determined by vote that all seven (7) complaints filed against you allege facts sufficient to constitute ethical claims. The City of Franklin's Ethics Commission Amended Bylaws and Procedures Section VI, No. 4., states "[i]f the Commission holds that the complaint states facts sufficient to move forward, the official against whom the complaint was filed shall reply in writing." The Ethics Commission also decided pursuant to the same Section VI, No. 4., to extend the amount of time you are allowed to file a written reply to all seven (7) complaints to July 17, 2023. You must submit your written reply/replies to the City Administrator, Eric Stuckey, via email at eric.stuckey@franklintn.gov on or before July 17, 2023.

Please be advised that the formal public hearing concerning the seven (7) ethics complaints filed against you is set to be heard on July 27, 2023, at 12:00 p.m. in the Boardroom of City Hall located at 109 Third Avenue South, Franklin, Tennessee 37064. The formal public hearing is conducted in accordance with the requirements of due process. The procedures for the formal public hearing are outlined in the City of Franklin's Ethics Commission Amended Bylaws and Procedures Section VII, a copy of which is attached.

PLAINTIFF'S
EXHIBIT

1

At the formal public hearing on July 27, 2023, the Commission by majority vote determines that no specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of the ethics code or determines that no violation occurred, it may dismiss the complaint. If the Commission determines that specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of the ethics code, then it shall render a written decision stating facts supporting that finding, conclusions of law and censure, as appropriate.

In addition, other penalties may be imposed pursuant to any and all other applicable state and municipal laws, ordinances and regulations, including but not limited to T.C.A. 8-47-101, et. seq, Tennessee's Removal of Officers Law, commonly known as the "Ouster" law.

Please provide a copy of this correspondence to your attorney if you are represented by counsel.

Sincerely,



Gail Vaughn Ashworth

cc: Shauna R. Billingsley, City Attorney
Eric Stuckey, Franklin City Administrator



OUR MISSION

The African-American Heritage Society is a non-profit organization whose mission is to collect, preserve, and interpret artifacts pertaining to Williamson County's African American culture and increase understanding and appreciation of our heritage for future generations.

OUR HISTORY

Ex-slave Harvey Mclemore purchased four lots in Hard Bargain in 1880. He built one of the first residential dwellings in the subdivision. The home served as a model of community development in Hard Bargain, the first subdivision of its kind in Franklin – a black middle-class neighborhood of teachers, carpenters, masons, and farmers.

During an age where very few homes purchased by former slaves remain in existence, it is quite remarkable that the McLemore House is still standing. Also remarkable is the fact that from 1880 until 1997, a member of the McLemore family maintained ownership of the homestead. The house was purchased through the joint efforts of the Williamson County Habitat for Humanity and the Heritage Foundation of Franklin and Williamson County.

The one remaining parcel of the original four lots was divided into two lots, and the newly formed African American Heritage Society, with the assistance of the Heritage Foundation, purchased the lot on which the dwelling sits. The African-American Heritage Society views its commitment to the museum as a way to promote cultural and historic preservation, encourage tourism, create family legacies, and educate our community about the deep, rich black heritage of Franklin, Williamson County, and the larger Middle Tennessee region.





Meeting Minutes

Ethics Committee

Tuesday, June 27, 2023

12:00 PM

Board Room

CALL TO ORDER

Chairman Martin called the meeting to order at 12:00 PM

Board Members Present: Jerry Sharber, Vona Wilson, Jim Martin

Board Members Absent: Juanita Patton, recused

APPROVAL OF MINUTES

**1. Consideration Of Approval Of Minutes
June 15, 2023 Ethics Commission Meeting**

Sponsors:

A motion was made by Commissioner Sharber, seconded by Commissioner Wilson to approve the Minutes. The motion passed 3-0.

NEW BUSINESS

2. Consideration Of The Merits Of Ethics Complaints Filed Against Alderman Gabrielle Hanson

Sponsors:

A motion was made by Commissioner Wilson, seconded by Commissioner Sharber to move forward to a Public Hearing on the complaints. The motion passed 3-0.

OTHER BUSINESS

A motion was made by Commissioner Sharber, seconded by Commissioner Wilson to extend Alderman Hanson's reply to the complaints to noon on July 17, 2023. The motion passed 3-0.

A meeting was set up on July 6, 2023 at 12PM to appoint substitute members for the Public Hearing.

A meeting was set for Public Hearing on July 27, 2023 at 12PM.

ADJOURN

A motion was made by Commissioner Sharber, seconded by Commissioner Wilson to Adjourn the Meeting. The motion 3-0.

PLAINTIFF'S
EXHIBIT

3

HISTORIC
FRANKLIN
TENNESSEE

June 14, 2023

Alderman Gabrielle Hanson
5085 Donovan Street
Franklin, TN 37064**Re: Ethics Complaints Received – Group 4**

Alderman Hanson,

The City Recorder's Office has received the attached Ethic Complaint against you relative to a correspondence sent to Mr. Kreulen and the BNA Airport Board.

Pursuant to the Franklin Municipal Code 2-310, any person may file a complaint against an elected official. Upon receipt, the Recorder must file the complaint immediately with the City Attorney and the Ethics Commission Chair, which will also happen today. You have thirty (30) days to file a written reply if you so choose. Within sixty (60) days, the Ethics Commission shall hold a public hearing on the matter.

Respectfully submitted,

Angie Johnson
City Recorderc: Ethics Commission
Shauna Billingsley, City Attorney
Eric Stuckey, City AdministratorPLAINTIFF'S
EXHIBIT**4**

CITY OF FRANKLIN, TENNESSEE

ETHICS COMPLAINT AGAINST AN ELECTED OFFICIAL

DATE: JUNE 14, 2023

SUBMITTED TO: RECORDER@FRANKLINTN.GOV, AND

VIA HAND DELIVERY TO:

CITY OF FRANKLIN, TENNESSEE
ATTN.: CITY RECORDER
109 THIRD AVENUE SOUTH
FRANKLIN, TENNESSEE 37064

COMPLAINANT: JOSEPH J. JENSEN
106 MISSION COURT, SUITE 903, 1ST FLOOR
FRANKLIN, TENNESSEE 37067

P. O. BOX 682305
FRANKLIN, TENNESSEE 37068-2305

TEL: 615-905-5777

E-MAIL: JOE@J3LAW.COM

SUBJECT OF COMPLAINT:

GABRIELLE HANSON

ETHICS COMPLAINT

1. The Complainant both resides in and maintains an office in Franklin, Williamson County, Tennessee.
2. The subject of the complaint, Gabrielle Hanson ("Ms. Hanson" herein), is a member of the City of Franklin Board of Mayor and Alderman, and therefor is an "Official" as defined in City of Franklin Code Section 1-802.

ORIGINAL

3. City of Franklin Code Section 1-808(2) provides, in pertinent part:

(2) Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. ...

4. On or about June 5, 2023, Ms. Hanson sent the following e-mail message to Mr.

Doug Kreulen, the CEO of the Metropolitan Nashville Airport Authority:

“Dear Mr. Kreulen and Board of BNA Airport:

“Over the course of the weekend, I have had over 20 Franklin residents reach out to me with concern over BNA paying thousands of dollars in taxpayer money to support what is equivalent to Franklin’s local BLM chapter, Franklin Justice and Equity Coalition. It is incomprehensible to think that an airport in Nashville would want to support an organization, in one of America’s most revered small town’s [sic], that believes in defunding the police, reparations and other radical social justice platforms. Please see ([this link](#)) that show your support dollars and approval of their agenda.

“Perhaps you aren’t aware that this organization only came about during the heat of BLM rioting across America, as they say, in response to George Floyd, Breanna Taylor and others. Perhaps you aren’t aware of the division they caused in our community last year when they asked the city to back them and take Juneteenth away from the African American Heritage Society, who had been our Juneteenth stalwart for decades. The African American Heritage Society has represented the achievements and successes, along with accurate black history in our community for decades. They have preserved the legendary McLemore House and provide annual scholarships to black youth in our community. Yet, they were targeted by the City of Franklin and FJEC and were asked for tens of thousands of dollars to move forward with Juneteenth BLM style or face not having Juneteenth at all. But because of many citizens in Franklin who became involved, AAHS was able to have their own Juneteenth without FJEC.

“To put it mildly, our citizens are outraged and angry. I have to agree, I don’t want my tax dollars or fees off of plane tickets going to radical agenda’s either. I am floored that your board would approve of allocating money in this way. These citizens are prepared to post publicly and link this support to each and every board member, along with their business interests so that the public will know that the board of BNA is financially supporting, and in agreement with, radical social justice agenda’s in towns where they literally should have no voice.

“Is it the mission of BNA to support African American organizations? Is it the mission of BNA to support Juneteenth? Is it the mission of BNA to support radical agenda’s that are dividing our country? That is the question our citizens would like answered.

“As an elected official I am respectfully requesting that you either withdraw the financial support and public endorsement of FJEC, or write a check to the African American Heritage Society and allow them to advertise you as a sponsor, providing the same financial

level of funding that you did to the Franklin Justice and Equity Coalition. It appears that you want to support African American causes in Franklin, and, particularly, Juneteenth. If you are going to support one entity, you need to support ALL entities providing the Juneteenth experience in our community, particularly those who don't veer off of the course of accurate black history and seek provide an uplifting message of hope and inspiration.

"I have copied Alma McLemore, the head of the African American Heritage Society on this email."

5. Ms. Hanson is, and in her e-mail identifies herself as an Official. Ms. Hanson's e-mail uses or attempts to use her position as an Official to secure a privilege or exemption for others – whether it be that "BNA" withdraw its support of one non-profit organization which she appears to disfavor, or that BNA provide its support to a different non-profit organization. Nowhere within the e-mail message is it indicated that what Ms. Hanson is requesting has been authorized by the charter, general law, or ordinance of policy of the City of Franklin.

6. The content of Ms. Hanson's e-mail message fits squarely within the prohibition of, and therefore the sending of that e-mail message is a violation of City of Franklin Code Section 1-808(2).

7. Complainant requests that the City of Franklin Ethics Commission convene pursuant to City of Franklin Code Section 1-812, for the purpose of determination of this Complaint, and upon doing so issue punishment as it believes to be appropriate under City of Franklin Code Section 1-813(1)

Respectfully submitted,



Joseph J. Jensen
106 Mission Court, Suite 903, 1st Floor
Franklin, Tennessee 37067
P. O. Box 682305
Franklin, Tennessee 37068-2305
Tel: 615-905-5777
E-mail: joe@j3law.com



HISTORIC
FRANKLIN
TENNESSEE

June 12, 2023

Alderman Gabrielle Hanson
5085 Donovan Street
Franklin, TN 37064

Re: Ethics Complaints Received – Group 3

Alderman Hanson,

The City Recorder's Office has received the attached Ethics Complaints against you relative to a correspondence sent to Mr. Kreulen and the BNA Airport Board.

Pursuant to the Franklin Municipal Code 2-310, any person may file a complaint against an elected official. Upon receipt, the Recorder must file the complaint immediately with the City Attorney and the Ethics Commission Chair, which will also happen today. You have thirty (30) days to file a written reply if you so choose. Within sixty (60) days, the Ethics Commission shall hold a public hearing on the matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Angie Johnson', is written over a horizontal line.

Angie Johnson
City Recorder

c: Ethics Commission
Shauna Billingsley, City Attorney
Eric Stuckey, City Administrator

Angie Johnson

From: janet@shouse.com
Sent: Friday, June 9, 2023 2:05 PM
To: Admin Recorder
Subject: Fwd: Ethics concerns regarding Alderman Gabrielle Hanson
Attachments: Gabrielle Hanson BNA letter.png

Follow Up Flag: Flag for follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

Hello,

I am writing because I am concerned that actions by Alderman Gabrielle Hanson seem to have violated Franklin's ethics code for the Board of Mayor and Aldermen.

I recently received the attached email, which appears to have been written by Alderman Hanson. The letter, as I read it, is demanding money from the BNA board for the African American Heritage Society, which the alderman apparently prefers over the Franklin Justice and Equity Coalition. This demand would violate the ethics code, would it not?

Alderman Hanson appears to be making this demand as an elected city official of Franklin. I believe this also violates the ethics code.

Although the attached file doesn't make it clear, I am assuming that Alderman Hanson used her official city email account to send this demand to the BNA board. Would this not also be a violation of the ethics code?

Alderman Hanson has been sowing division in our city, which makes me very sad.

I hope that this ethics complaint and swift action against Alderman Hanson will encourage her to take a more thoughtful approach to how she chooses to try to govern the city of Franklin.

Thank you.

Sincerely,

Janet Shouse
409 Crofton Park Lane
Franklin, TN 37069
615-202-5259

Dear Mr. Kreulen and Board of BNA Airport:

Over the course of the weekend, I have had over 20 Franklin residents reach out to me with concern over BNA paying thousands of dollars in taxpayer money to support what is equivalent to Franklin's local BLM chapter, Franklin Justice and Equity Coalition. It is incomprehensible to think that an airport in Nashville would want to support an organization, in one of America's most revered small town's, that believes in defunding the police, reparations and other radical social justice platforms. Please see the link below that show your support dollars and approval of their agenda.

https://us01.z.antigena.com/l/UQSwpNnj644BKEw-OHq3c3UJk2u5j_ap6-Szg33G7u4keo-vi-iNqvyN3vrQ2-fHxuvqGG06FvzZzHfmbIpc9R3_ONXObi5HXmEs4Rmiqpnj6L9EokyJt2onlkM_qhJgA5YPhabfRyloXlzi6DGBFSJ

a8dcfdee.png

Perhaps you aren't aware that this organization only came about during the heat of BLM rioting across America, as they say, in response to George Floyd, Breanna Taylor and others. Perhaps you aren't aware of the division they caused in our community last year when they asked the city to back them and take Juneteenth away from the African American Heritage Society, who had been our Juneteenth stalwart for decades. The African American Heritage Society has represented the achievements and successes, along with accurate black history in our community for decades. They have preserved the legendary McLemore House and provide annual scholarships to black youth in our community. Yet, they were targeted by the City of Franklin and FJEC and were asked for tens of thousands of dollars to move forward with Juneteenth BLM style or face not having Juneteenth at all. But because of many citizens in Franklin who became involved, AAHS was able to have their own Juneteenth without FJEC.

To put it mildly, our citizens are outraged and angry. I have to agree, I don't want my tax dollars or fees off of plane tickets going to radical agenda's either. I am floored that your board would approve of allocating money in this way. These citizens are prepared to post publicly and link this support to each and every board member, along with their business interests so that the

member, along with their business interests so that the public will know that the board of BNA is financially supporting, and in agreement with, radical social justice agenda's in towns where they literally should have no voice.

Is it the mission of BNA to support African American organizations? Is it the mission of BNA to support Juneteenth? Is it the mission of BNA to support radical agenda's that are dividing our country? That is the question our citizens would like answered.

As an elected official I am respectfully requesting that you either withdraw the financial support and public endorsement of FJEC, or write a check to the African American Heritage Society and allow them to advertise you as a sponsor, providing the same financial level of funding that you did to the Franklin Justice and Equity Coalition. It appears that you want to support African American causes in Franklin, and, particularly, Juneteenth. If you are going to support one entity, you need to support ALL entities providing the Juneteenth experience in our community, particularly those who don't veer off of the course of accurate black history and seek provide an uplifting message of hope and inspiration.

I have copied Alma McLemore, the head of the African American Heritage Society on this email.

Sincerely,

Gabrielle Hanson

City of Franklin

Alderman At-Large

[615-946-4200](tel:615-946-4200)

Angie Johnson

From: Damon Rogers <damonarogers@gmail.com>
Sent: Friday, June 9, 2023 3:01 PM
To: Admin Recorder; recorder@franklintn.com
Subject: Re: Gabrielle Hanson

Follow Up Flag: Flag for follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

On Fri, Jun 9, 2023 at 10:48 AM Damon Rogers <damonarogers@gmail.com> wrote:

Like Dolly Parton sings, here we go again!

Gabrielle Hanson has violated at least 3 ethics codes as I read her correspondence to BNA BOARD. They are:

Sec.1-805

Sec.1-807 (2)

Sec.1-108

I urge you to take appropriate action against Alderman Gabrielle Hanson. She is a liability to the community I was born and raised!

Damon Akin Rogers
431 Boyd Mill Ave, Franklin, TN 37064
615-554-2042
6th Generation Native Williamson County

Angie Johnson

From: Kate Osher <katelyonosher@gmail.com>
Sent: Friday, June 9, 2023 3:53 PM
To: Admin Recorder
Subject: Gabrielle Hanson

Follow Up Flag: Flag for follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

Dear City Recorder:

This shall serve as a formal complaint against Alderman Gabrielle Hanson, who is once again using her position for her own benefit and creating unnecessary drama for the city.

Section 1-801, et seq, of the code can and does apply, as she misused city email and sought a donation to a private entity, and did it under claiming authority as an elected official.

Per the Williamson Herald, "As an elected official," Hanson's email continues, "I am respectfully requesting that you either withdraw the financial support and public endorsement of FJEC, or write a check to the African American Heritage Society and allow them to advertise you as a sponsor, providing the same financial level of funding that you did to the Franklin Justice and Equity Coalition."

It is worth noting that the article goes on to state the following: "After AAHS President Alma McLemore found out about Hanson's email, she wrote a statement to BNA 'First, allow me to apologize on behalf of the African American Heritage Society for the nature and tone of the email ... from Alderman Hanson,' she wrote. 'We had been notified by Ms. Hanson that she was going to make a huge financial ask for AAHS based on your commitment to FJEC — but she did not disclose the full intentions of her outreach. Nor did she share her correspondence in advance of it being sent.'"

Alderman Hanson continues to be a loose cannon, and her behavior cannot be excused. She is a liability to the City. She refuses to ever take responsibility for her behavior or lies. Our City and residents deserve so much better.

I hope that you will consider this complaint.

Sincerely,

Kate Lyon Osher
109 Bromley Park Lane
Franklin, TN 37069

--

Kate Lyon Osher
323-828-8151
www.katelyonosher.com

Angie Johnson

From: Rod Berger <berger.rod@gmail.com>
Sent: Sunday, June 11, 2023 2:54 PM
To: Admin Recorder
Cc: Gabrielle Hanson; Ken Moore; Clyde Barnhill; Alderman Potts; Brandy Blanton; bev@aldermanburger.com; Patrick Baggett; Matt Brown; Shauna Billingsley; Lisa Mooring
Subject: Re: Call to remove Gabrielle Hanson as Franklin Alderman
Attachments: June 11 BOMA Official Ethics Complaint.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

Dear Franklin Civic Leaders,

I have attached a formal ethics complaint against Alderman Hanson. I have included the appropriate email 'recorder' address in this thread. I know that I am not the only citizen of Franklin to file a complaint so I am hopeful that those entrusted to lead our city are able to collaborate with local citizens to ward off hateful speech, ilinformed and public proclamations, and overall weaponization of public office. I sincerely appreciate your time and consideration as you collectively review local media coverage and individual and formal complaints.

Regards,
Rod Berger
615-720-6611

On Fri, Apr 21, 2023 at 12:42 PM Rod Berger <berger.rod@gmail.com> wrote:

Franklin Leaders and members of the local and national media,

I am sure that I am not the first Franklin citizen calling for Alderman Hanson's removal. The link below and the 9-minute audio clip of Hanson discussing the tragedy at Covenant are horrible, inaccurate, and a terrible representation of Franklin and TN. I call on the media on this thread to seek official comment from the mayor of Franklin and fellow alderman and inquire about the next steps to remove Hanson from her post. I would also encourage the media to look into Hanson's bigotry (Franklin Pride Permit issue and posting 'what ifs') along with her cozy affiliation with Mom's For Liberty.

This is an embarrassment to our city, the families that call Franklin home, and the businesses that choose to work in our community. Sadly the world is watching our city and state, and the reviews are downright pathetic. We need to be better!

<https://twitter.com/TheTNHoller/status/1649425095075438594?s=20>

Regards,
Rod

June 11, 2023

Dear BOMA,

Please regard this correspondence as a formal ethics complaint against Gabrielle Hanson. Previous attempts to censure, expel, and/or publicly acknowledge the damage Alderman Hanson is waging against the city of Franklin has fallen on the deaf ears of BOMA and associated legal representatives. The most recent and inflammatory abuse of her public office not only proved her lack of due diligence but, more importantly, shed light on Hanson's abuse of public office.

The last time I reached out to BOMA, I was told that Alderman Hanson does not speak for BOMA. That claim cannot be used this time – Alderman Hanson went on record utilizing her title with the city of Franklin to incite a cross-county argument without consent from BOMA, BNA, and multiple non-profits. She spewed nonsensical propaganda intimating fraudulent tax practices by BNA in addition to false claims of giving and requests from non-profits without their consultation and/or endorsement.

I want to highlight an observation – this is the second time that I have been contacted by city officials asking for assistance in filing a complaint against Alderman Hanson. This tells me that the current BOMA roster of officials feels, at some level, unsafe or not protected to raise considerable concerns among city leaders. It also intimates a lack of power to adequately represent the citizens of Franklin in a decisive manner that condemns radical and civic stupidity, sadly marking our city as deeply ignorant and replete of a community of inclusiveness.

The current correspondence from Alderman Hanson is problematic for reasons that could be the basis of a civil action, including but not limited to tortious interference. I believe there are multiple violations of the ethics policy in the municipal code that require her removal from office.

1. *Except as provided in this section, no officials or employees, either for themselves or for their immediate family, or for any other person, may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor, promise or anything of value for themselves, any other person or any member of the immediate family of such official. In addition, it shall also be a violation of this ethics code for any gift as defined in this chapter to be received by any such person as specified in this section if: (a) It tends to influence the official or employee in the discharge of official duties or gives a reasonable basis for the impression of improper influence over the discharge of official duties.* Alderman Hanson's letter is a direct solicitation of funds for the AAHS. Hanson has voted multiple times in favor of the AAHS. It is public knowledge that Hanson has also had private meetings with the head of the AAHS and has made promises to secure funds for their organization. She also attempted to block permitting for the FJEC's Juneteenth event in favor of the event being hosted by the AAHS. These actions constitute a violation of the ethics policy.

2. *Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.* Alderman Hanson sent this letter and specifically stated that she was demanding a donation “as an elected official” and signed it with her official title of alderman. This attempt to use her status as an elected official to secure a donation for the AAHS is a clear violation of the ethics policy for the city of Franklin.
3. *Officials or employees may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by a legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.* Alderman Hanson sent the letter from her city-provided email address, using her official title, in order to wrongfully extort funds for the AAHS, which is a violation of the ethics policy. AAHS publicly said as much through the press in recent days.

I am requesting that the Ethics Commission take prompt corrective action against Alderman Hanson and remove her from office before she further damages the reputation of Franklin and its’ community non-profits by engaging in extortion, defamation, and interference under the guise of Franklin’s authority.

I further request that any member of the Ethics Commission with a conflict of interest due to their involvement in the AAHS recuse themselves from consideration of this matter.

In closing, I lean on the professional shoulders of BOMA to collaborate with concerned citizens – not just deflect official complaints with vague efforts of disassociation with a rogue member of the board.

I appreciate your time, consideration, and contributions to our great city.

Regards,

Rod Berger
615-720-6611



HISTORIC
FRANKLIN
TENNESSEE

June 8, 2023

Alderman Gabrielle Hanson
5085 Donovan Street
Franklin, TN 37064

Re: Ethics Complaints Received

Alderman Hanson,

The City Recorder's Office has received the attached Ethics Complaint against you relative to a correspondence sent to Mr. Kreulen and the BNA Airport Board.

Pursuant to the Franklin Municipal Code 2-310, any person may file a complaint against an elected official. Upon receipt, the Recorder must file the complaint immediately with the City Attorney and the Ethics Commission Chair, which will also happen today. You have thirty (30) days to file a written reply if you so choose. Within sixty (60) days, the Ethics Commission shall hold a public hearing on the matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Angie Johnson'.

Angie Johnson
City Recorder

c: Ethics Commission
Shauna Billingsley, City Attorney
Eric Stuckey, City Administrator

Sarah Schilling

From: peggy@peggykingsbury.com
Sent: Thursday, June 8, 2023 5:58 PM
To: Admin Recorder
Subject: Ethics Compliant/Alderman Hanson

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

I am filing an ethics complaint against Alderman Gabrielle Hanson.

Alderman Hanson's correspondence to the BNA Board clearly violates the ethics code in three separate instances.

First, Sec. 1-805 has been violated by Hanson's attempt to extort money from BNA. The section specifically reads "...may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor or promise or any thing of value for themselves, any other person or any member of the immediate family of such official."

Alderman Hanson also violated Sec. 1-108 which states in paragraph (2) Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

Hanson violated this section by making her demand as an official officer of the City of Franklin. This "shake down" of BNA was done without authorization of the city.

Lastly, Hanson used her City provided email and title as she attempted to gain a donation for a private entity. This is in violation of Sec. 1-807 (2).

Please take swift action against Alderman Hanson.

Peggy Kingsbury

220 Winter Hill Rd.
Franklin, TN 37069
931-993-1162



HISTORIC
FRANKLIN
TENNESSEE

June 9, 2023

Alderman Gabrielle Hanson
5085 Donovan Street
Franklin, TN 37064

Re: Ethics Complaints Received

Alderman Hanson,

The City Recorder's Office has received the attached Ethics Complaint against you relative to a correspondence sent to Mr. Kreulen and the BNA Airport Board.

Pursuant to the Franklin Municipal Code 2-310, any person may file a complaint against an elected official. Upon receipt, the Recorder must file the complaint immediately with the City Attorney and the Ethics Commission Chair, which will also happen today. You have thirty (30) days to file a written reply if you so choose. Within sixty (60) days, the Ethics Commission shall hold a public hearing on the matter.

Respectfully submitted,

Angie Johnson
City Recorder

c: Ethics Commission
Shauna Billingsley, City Attorney
Eric Stuckey, City Administrator

Angie Johnson

From: Emily Jenkins <jenkinsemilyp@gmail.com>
Sent: Wednesday, June 7, 2023 9:00 PM
To: Admin Recorder
Subject: Ethics Complaint- Gabrielle Hanson

Follow Up Flag: Flag for follow up
Flag Status: Flagged

ATTENTION COF staff: This email originated from outside the City of Franklin. Please use discretion when clicking on attachments & links from unknown senders or suspicious emails.

City of Franklin Ethics Commission,

I would like to register a formal ethics complaint against Gabrielle Hanson for sending the correspondence attached below to the BNA Airport Board, under color of her position as an elected official of the City of Franklin. This correspondence is problematic for reasons that could be the basis of a civil action, including but not limited to tortious interference with contract, extortion and defamation. As far as the ethics commission is concerned, I believe there are multiple violations of the ethics policy in the municipal code that require her removal from office.

1. The ethics policy states:

Except as provided in this section, no officials or employees, either for themselves or for their immediate family, or for any other person, may knowingly solicit, receive benefit from, accept or agree to accept any gratuity, gift, honoraria, loan, favor, promise or any thing of value for themselves, any other person or any member of the immediate family of such official. In addition, it shall also be a violation of this ethics code for any gift as defined in this chapter to be received by any such person as specified in this section if:

(a) It tends to influence the official or employee in the discharge of official duties or gives a reasonable basis for the impression of improper influence over the discharge of official duties;

Hanson's letter is a direct solicitation of funds for the AAHS, and Ms. Hanson has voted multiple times in favor of the AAHS. She has also had private meetings with the head of the AAHS and has made promise to secure funds for their organization. Additionally, she attempted to block permitting for the FJEC's Juneteenth event in favor of the event being hosted by the AAHS. All of these actions constitute a violation of the ethics policy.

2. The ethics policy further states:

Officials or employees may not use or attempt to use their position to secure any privilege or exemption for themselves or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

Ms. Hanson sent this letter and specifically stated that she was demanding a donation "as an elected official" and signed it with her official title of alderman. This attempt to use her status as an elected official to secure a donation for the AAHS is a clear violation of the ethics policy.

3. Finally, the ethics policy states:

Officials or employees may not use or authorize the use of municipal time, facilities, equipment or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.

Ms. Hanson sent the letter from her City provided email address, using her official title in order to wrongfully extort funds for the AAHS, which is a violation of the ethics policy.

For the foregoing reasons, I am requesting that the Ethics Commission take prompt corrective action against Ms. Hanson and remove her from office, before she further damages the reputation of the City and its' community nonprofits by engaging in extortion, defamation and interference under color of City authority. While I do not know to what extent the AAHS was aware of or involved with Ms. Hanson's actions, I further request that any member of the Ethics Commission with a conflict of interest due to their involvement in the AAHS recuse themselves from consideration of this matter.

I appreciate your consideration of my complaint.

Emily P. Jenkins
215 Franklin Road, Franklin TN 37064

Email from Alderman Hanson:

Dear Mr. Kreulen and Board of BNA Airport:

Over the course of the weekend, I have had over 20 Franklin residents reach out to me with concern over BNA paying thousands of dollars in taxpayer money to support what is equivalent to Franklin's local BLM chapter, Franklin Justice and Equity Coalition. It is incomprehensible to think that an airport in Nashville would want to support an organization, in one of America's most revered small town's, that believes in defunding the police, reparations and other radical social justice platforms. Please see the link below that show your support dollars and approval of their agenda.

https://us01.z.antigena.com//UQSwpNnj644BKEw-OHq3c3UJk2u5j_ap6~Szg33G7u4keo-vi~iNqvyN3vrQ2-fHxuvqGGO6FvzZzHfmbIpc9R3_ONXObi5HXmEs4Rmlqpnj6L9EokyJt2_onIkM_qhJgA5YPhabfRyloXlzi6DGBFSJ

Perhaps you aren't aware that this organization only came about during the heat of BLM rioting across America, as they say, in response to George Floyd, Breanna Taylor and others. Perhaps you aren't aware of the division they caused in our community last year when they asked the city to back them and take Juneteenth away from the African American Heritage Society, who had been our Juneteenth stalwart for

decades. The African American Heritage Society has represented the achievements and successes, along with accurate black history in our community for decades. They have preserved the legendary McLemore House and provide annual scholarships to black youth in our community. Yet, they were targeted by the City of Franklin and FJEC and were asked for tens of thousands of dollars to move forward with Juneteenth BLM style or face not having Juneteenth at all. But because of many citizens in Franklin who became involved, AAHS was able to have their own Juneteenth without FJEC.

To put it mildly, our citizens are outraged and angry. I have to agree, I don't want my tax dollars or fees off of plane tickets going to radical agenda's either. I am floored that your board would approve of allocating money in this way. These citizens are prepared to post publicly and link this support to each and every board member, along with their business interests so that the public will know that the board of BNA is financially supporting, and in agreement with, radical social justice agenda's in towns where they literally should have no voice.

Is it the mission of BNA to support African American organizations? Is it the mission of BNA to support Juneteenth? Is it the mission of BNA to support radical agenda's that are dividing our country? That is the question our citizens would like answered.

As an elected official I am respectfully requesting that you either withdraw the financial support and public endorsement of FJEC, or write a check to the African American Heritage Society and allow them to advertise you as a sponsor, providing the same financial level of funding that you did to the Franklin Justice and Equity Coalition. It appears that you want to support African American causes in Franklin, and, particularly, Juneteenth. If you are going to support one entity, you need to support ALL entities providing the Juneteenth experience in our community, particularly those who don't veer off of the course of accurate black history and seek provide an uplifting message of hope and inspiration.

I have copied Alma McLemore, the head of the African American Heritage Society on this email.

Sincerely,

Gabrielle Hanson

City of Franklin

Alderman At-Large

615-946-4200

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

AMY FROGGE, JILL SPEERING, and)
FRAN BUSH, individually, and in their)
official capacities as members of the)
Metropolitan Nashville Board of)
Public Education,)

Plaintiffs,)

vs.)

No. 20-420-IV(III)

SHAWN JOSEPH, and THE)
METROPOLITAN GOVERNMENT)
OF NASHVILLE AND DAVIDSON)
COUNTY, acting by and through)
THE METROPOLITAN NASHVILLE)
BOARD OF PUBLIC EDUCATION,)

Defendants.)

**MEMORANDUM AND ORDER: (1) GRANTING PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT; AND (2) DENYING
MOTIONS TO DISMISS FILED BY EACH DEFENDANT**

For the reasons detailed below, the Court finds that there is no material dispute that the Nondisparagement Clause contained in the Severance Agreement entered into by the Defendants does not promote a compelling governmental interest, that it is unconstitutional, and that it is an overbroad and unenforceable speech restriction. Accordingly, the Plaintiffs’ motion for summary declaratory judgment is granted.

It is therefore ORDERED that the Nondisparagement Clause contained in ex-Director Joseph’s Severance Agreement is declared unenforceable as a matter of law on

PLAINTIFF’S
EXHIBIT

5

the grounds that it is unconstitutional both facially and as applied to the Plaintiffs individually, and enforcement of the clause is permanently enjoined. The term “Nondisparagement Clause” is used in the above Order and herein to refer collectively to pages 1-2, paragraph 1(f) of the Severance Agreement attached as Exhibit 1 to the *Complaint*.

It is further ORDERED that the respective motions to dismiss filed by Defendant Joseph and Defendant Metro are denied.

It is also ORDERED that the Plaintiffs are entitled to recover their reasonable costs and attorney’s fees pursuant to 42 U.S.C. § 1988, which the Plaintiffs state in their *Complaint* is to be donated to charitable purposes.

To quantify the fees and costs to be awarded to the Plaintiffs, it is ORDERED that by September 25, 2020 the Plaintiffs shall file their application to recover their fees and costs along with their fee statements required by Local Rule § 5.05. By October 9, 2020 the Defendants shall file their response to the fee application, and a Reply shall be filed by October 16, 2020.

The undisputed material facts and law on which this decision is based are as follows.

The content below quotes and paraphrases extensively from the Plaintiffs’ filings, both in the interest of a timely issuance of this ruling and because of the comprehensiveness of the research and analysis provided by Plaintiffs’ Counsel.

Standard for Summary Judgment and Burden of Proof

Tennessee Rule of Civil Procedure 56.01 provides that:

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of thirty (30) days from the commencement of the action or after service of a motion supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

Where the disputed issues turn on questions of law, summary judgment is appropriate. See *B & B Enters. of Wilson Cty., LLC v. City of Lebanon*, 318 S.W.3d 839, 844 (Tenn. 2010) (“Summary judgments are appropriate in virtually every civil case that can be resolved on the basis of legal issues alone.” (citing *Green v. Green*, 293 S.W.3d 493, 513 (Tenn. 2009); *Frugé v. Doe*, 952 S.W.2d 408, 410 (Tenn. 1997); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993))). Summary judgment is also particularly appropriate where “the issues presented to this Court primarily involve the interpretation and construction of written instruments[,]” *Cellco P’ship v. Shelby Cty.*, 172 S.W.3d 574, 586 (Tenn. Ct. App. 2005), because “[i]ssues relating to the interpretation of written instruments involve legal rather than factual issues[,]” *id.* (quoting *The Pointe, LLC v. Lake Mgmt. Ass’n, Inc.*, 50 S.W.3d 471, 474 (Tenn. Ct. App. 2000)).

As to the First Amendment, “[w]hen the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.” *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 210 (2014) (quoting *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 816 (2000)). Further, when the Government restricts speech based on its content and the viewpoint expressed, the restriction is “presumptively

unconstitutional and may be justified only if the government proves that [it is] narrowly tailored to serve compelling state interests.” *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (quoting *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015)) (internal quotation marks omitted). See also *Playboy Entm’t Grp.*, 529 U.S. at 817 (“‘Content-based regulations are presumptively invalid,’ and the Government bears the burden to rebut that presumption.” (quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992))).

By its own motion, a party may demonstrate its entitlement to summary judgment “by affirmatively negating an essential element of the nonmoving party’s claim” *Rye v. Women’s Care Center of Memphis, M PLLC*, 477 S.W.3d 235, 264 (Tenn. 2015). Thus, in this case the Plaintiffs are entitled to summary judgment if they can demonstrate beyond material dispute that the Nondisparagement Clause is not narrowly tailored to further a compelling governmental interest. See *Reed*, 135 S. Ct. at 2226 (“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”) (collecting cases). The Plaintiffs are also entitled to summary judgment as to their overbreadth claim if they can demonstrate beyond material dispute that “‘a substantial number of [the Nondisparagement Clause’s] applications are unconstitutional, judged in relation to [its] plainly legitimate sweep.’” *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008)) (internal quotation marks omitted).

Undisputed Materials Facts

1. The Plaintiffs are elected officials who serve on the Metropolitan Nashville Board of Public Education. They represent the constituents of Metro School Districts 3, 6 and 9.

2. On April 17, 2019, the Metropolitan Nashville Board of Public Education (the “School Board”) and Dr. Shawn Joseph, Metro’s former Director of Schools, entered into the Severance Agreement that is attached to the Plaintiffs’ Complaint as Exhibit #1.

3. Section 1(f) of the Severance Agreement provides as follows:

f. (1) For purposes of the subsection (f), these terms have the following meanings:

“Disparaging” means a false and injurious statement that discredits or detracts from the reputation of another person.

“Defamatory” means a statement or communication tending to harm a person’s reputation by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person’s business.

(2) The Board will not make any disparaging or defamatory comments regarding Dr. Joseph and his performance as Director of Schools. This provision shall be effective for the Board collectively and binding upon each Board member individually. Dr. Joseph does not waive any right to institute litigation and seek damages against any Board member in his/her individual capacity who violates the terms and conditions this [sic] Article of the agreement.

4. Section 2(e) of the Severance Agreement provides as follows:

e. (1) For purposes of the subsection (e), these terms have the following meanings:

“Disparaging” means a false and injurious statement that discredits or detracts from the reputation of another person.

“Defamatory” means a statement or communication tending to harm a person’s reputation by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person’s business.

(2) Dr. Joseph will not make any disparaging or defamatory comments regarding Metro, the Board, individual members of the Board, and/or any METRO AFFILIATES, or their respective current or former officers or employees in any respect. Dr. Joseph agrees that the Board does not waive any right to institute litigation and seek damages against him if he violates the terms and conditions of this Article of the agreement.

5. On April 9, 2019, the School Board voted 5–3 to terminate Joseph’s employment contract and approve the terms of his Severance Agreement.

6. An accurate and authentic copy of the minutes of the School Board’s April 9, 2019 meeting minutes is attached to the Plaintiff’s Complaint as Exhibit #2.

7. Each of the Plaintiffs voted against the Resolution to accept the terms of the Severance Agreement with Defendant Joseph.

8. During his tenure as Metro’s Director of Schools, Defendant Joseph was the subject of reporting on several alleged controversies.

9. During Defendant Joseph’s tenure as Metro’s Director of Schools, the Tennessee State Board of Education proposed a one-year suspension of his educator’s license due to his alleged failure to report teacher misconduct.

10. The Severance Agreement states that it is “entered into . . . by and between” Metro and Defendant Joseph.

Parties’ Positions

Seeking a declaration that the Nondisparagement Clause is unlawful, the Plaintiffs have moved for a summary declaratory judgment that the Nondisparagement Clause is unenforceable and void on several bases. As grounds, the Plaintiffs have specifically contended that:

1. The Nondisparagement Clause is a viewpoint-based speech restriction that presumptively contravenes the First Amendment and triggers strict scrutiny, *see Pls.’ Mem. in Supp. of Their Mot. for Summ. J.*, pp. 11-13;

2. The Nondisparagement Clause is a content-based speech restriction that presumptively contravenes the First Amendment and triggers strict scrutiny, *id.* at 13-14;

3. The Nondisparagement Clause is a speaker-based speech restriction that presumptively contravenes the First Amendment and triggers strict scrutiny, *id.* at pp. 14-15;

4. The Nondisparagement Clause cannot withstand strict scrutiny because it does not further a compelling governmental interest, *id.* at pp. 15-19;

5. The Nondisparagement Clause cannot withstand strict scrutiny because it is not narrowly tailored to achieve any compelling governmental interest, *id.* at pp. 19-20;

6. The Nondisparagement Clause is unconstitutionally overbroad, *id.* at pp. 20-26;

7. The Nondisparagement Clause contravenes the substantially stronger provisions of art. I, section 19 of the Tennessee Constitution, *id.* at pp. 26-27;

8. The Nondisparagement Clause violates public policy—including, but not remotely limited to, statutory public policy established by Tennessee Code Annotated § 8-50-602(a), the Public Employee Political Freedom Act, *id.* at pp. 27–32;

9. The Nondisparagement Clause cannot be enforced against the Plaintiffs because they did not assent to be bound by it, *id.* at p. 32; and

10. The Nondisparagement Clause unlawfully purports to waive the Plaintiffs’ absolute legislative immunity. *Id.* at pp. 33–34.

In opposition to the Plaintiffs’ motion for summary judgment and in support of its motion to dismiss, Metro draws upon the wording of the Severance Agreement that:

- the Board is the party who entered into the Severance Agreement not the Plaintiffs, and
- the Board is the entity prohibited in the Severance Agreement from engaging in the prohibited speech.

Metro also relies upon the fact that it is not a natural person so the First Amendment does not apply.

From these facts Metro argues,

- the Plaintiffs do not have standing,

- the Plaintiffs’ claims are speculative and not ripe for review,
- the *Complaint* fails to state a claim for violation of the First Amendment by the School Board, and
- the *Complaint* fails to state a claim under Tennessee Code Annotated section 8-50-602(a), the Public Employee Political Freedom Act (“PEPFA”).

Defendant Joseph opposes summary judgment on the grounds that the Plaintiffs’ claims are governed by *Garcetti v. Ceballos*, 547 U.S. 410 (2006), and under that case law the Plaintiffs bear the burden of proof on their First Amendment claims.

Analysis

State Action, Clause Applies to Plaintiffs, Strict Scrutiny

Beginning with Metro’s opposition and its motion to dismiss, the Court, adopts the reasoning and authorities of the Plaintiffs as follows and rejects Metro’s position.

With respect to Metro’s argument that the Plaintiffs’ claims are not a product of state action, rendering the First Amendment inapplicable to the parties’ dispute, the undisputed facts are that the Nondisparagement Clause was adopted, agreed to, and approved by a formal School Board Resolution, and therefore it is a product of official state action as a consequence.

All legislation—including a governmental Resolution—is state action. This is expressly incorporated into the text of 42 U.S.C. § 1983 itself. *See* 42 U.S.C.A. § 1983 (“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of

any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress”). *See, e.g., Garden State Equal. v. Dow*, 434 N.J. Super. 163, 204, 82 A.3d 336, 359–60 (Law. Div. 2013) (“[I]t defies common sense to suggest that the passage of a statute by the New Jersey Legislature is not state action.”); *U.S. Sound & Serv., Inc. v. Twp. of Brick*, 126 F.3d 555, 559 (3d Cir. 1997) (“[W]e conclude that the Board's resolution restricted protected speech in violation of U.S. Sound's right to free expression under the First Amendment.”); *Am. Humanist Ass'n v. Baxter Cty., Arkansas*, 143 F. Supp. 3d 816, 823 (W.D. Ark. 2015) (“There is no dispute that on December 10, 2014, Judge Pendergrass signed and approved a unanimous resolution of the Baxter County Quorum Court entitled ‘A RESOLUTION APPROVING THE DISPLAY OF A CRÈCHE ACCOMPANIED BY A DISCLAIMER TO BE PLACED ON THE COURTHOUSE PROPERTY DURING THE CHRISTMAS SEASON.’ . . . Defendants' argument that there is no state action fails.”).

The additional fact that the School Board itself is a party to the Severance Agreement renders it fundamentally different from speech restrictions set forth in “an agreement between two private parties” and therefore is a matter of the government’s involvement. *Overbey v. Mayor of Baltimore*, 930 F.3d 215, 229, n. 14 (4th Cir. 2019) (“[T]he enforcement of a generally applicable law governing an agreement between two

private parties—is fundamentally different from the state action challenged here.”). Thus, when the government is a party to a contract, any content- and viewpoint-based speech restrictions included in the contract do not become “government speech,” as Metro suggests; instead, they remain content- and viewpoint-based restrictions on speech. *See, e.g., Amawi v. Pflugerville Indep. Sch. Dist.*, 373 F. Supp. 3d 717, 748 (W.D. Tex. 2019) (finding that a speech restriction in Texas contracts prohibiting boycotts of Israel “is not ‘government speech.’ It is a content- and viewpoint-based restriction on speech.”), *vacated and remanded as moot sub nom. Amawi v. Paxton*, 956 F.3d 816 (5th Cir. 2020).

With respect to Metro’s argument that the Nondisparagement Clause does not apply to the Plaintiffs but only to the Board as a collective entity, the Court rejects this argument because the text of the Severance Agreement clearly states without ambiguity that it is “binding upon each Board Member”—and not merely as a collective body as Metro contends, but “individually” as well. “**This provision shall be effective** for the Board collectively **and binding upon each board member individually**.” (emphases added). It additionally references, with specificity, Joseph’s “right to institute litigation and seek damages against **any Board member in his/her individual capacity** who violates the terms and conditions this [sic] Article of the agreement,” *id.* (emphases added)—a provision that would be unnecessary if the Nondisparagement Clause exclusively applied to the Board as a collective entity.

If the Nondisparagement Clause only applied to the School Board collectively, then the sentence that follows it—“This provision shall be effective for the Board collectively

and binding upon each board member individually”—would make no sense, and the words “each” and “individually” in that sentence would have to be ignored. *Id.* Neither would the threat of damages “against any Board member in his/her individual capacity . . .” be comprehensible if the Nondisparagement Clause applied only collectively. *Id.* And although Metro makes strong arguments for why the provision ought to be subject to a contrary interpretation given the clearly unconstitutional result produced by the Nondisparagement Clause’s otherwise unambiguously stated terms, “[t]he courts may not make a new contract for parties who have spoken for themselves,” *Realty Shop, Inc. v. RR Westminster Holding, Inc.*, 7 S.W.3d 581, 597 (Tenn. Ct. App. 1999) (citing *Petty v. Sloan*, 197 Tenn. 630, 640, 277 S.W.2d 355, 359 (1955)).

It is well-settled that courts “may not make a new and different contract for the parties that they did not intend to make for themselves.” *Ament v. Wynne*, No. M2004-01876-COA-R3-CV, 2007 WL 2376333, at *5 (Tenn. Ct. App. Aug. 20, 2007) (citing *Humphries v. West End Terrace, Inc.*, 795 S.W.2d 128 (Tenn. Ct. App. 1990)). As such, courts are not permitted to “make new contracts for the parties under the guise of unwarranted interpretation.” *Id.* (citing *Rogers v. First Tenn. National Bank Association*, 738 S.W.2d 635 (Tenn. Ct. App. 1987)). We must therefore construe contracts “fairly and reasonably, and we should avoid rewriting these agreements under the guise of “construing” them.” *Id.* (citing *Elliott v. Elliott*, 149 S.W.3d 77, 84 (Tenn. Ct. App. 2004)).

Moore v. Moore, No. E2019-00503-COA-R3-CV, 2020 WL 2511234, at *4 (Tenn. Ct. App. May 15, 2020).

For all of these reasons, this Court lacks the authority to judicially amend an unambiguous contract to conform to the meaning asserted by the Defendants. Thus, the Nondisparagement Clause—as it is written—restricts the Plaintiffs’ constitutionally

protected speech on the basis of both viewpoint and content, and strict constitutional scrutiny applies.

But even if the Nondisparagement Clause is given Metro's interpretation, it is still unconstitutional. As members of the School Board that is collectively bound by the Nondisparagement Clause and given that the Plaintiffs remain subject to the threat of damages in their "individual capacity" for violations, the Plaintiffs remain "affected" by the Nondisparagement Clause within the meaning of Tenn. Code Ann. § 1-3-121 even under the Defendants' interpretation.

Neither Defendant has provided an explanation as to how an elected governmental body could lawfully contract away either its legislative authority or its latitude to express its views (whether collectively or otherwise) as part of an employee severance agreement. *Cf. Bond v. Floyd*, 385 U.S. 116, 135–36 (1966) ("The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy."). The Defendants have not explained how the School Board could do so in exchange for the employee's mutual agreement not to criticize the government, which evidences the bargain that the Defendants struck here and actively seek to preserve. See Plaintiffs' SUMF Exhibit #1, p. 2, ¶ 1(f)(2) (the Nondisparagement Clause); *id.* at pp. 2–3, ¶ 2(e)(2) ("Dr. Joseph will not make any disparaging or defamatory comments regarding Metro, the Board, individual members of the Board, and/or any METRO AFFILIATES, or their respective current or former officers or employees in any respect."). *But see 281 Care Comm. v. Arneson*, 638 F.3d 621, 634

(8th Cir. 2011) (“A government entity cannot bring a libel or defamation action.” (citing *N.Y. Times v. Sullivan*, 376 U.S. 254, 291 (1964) (noting no court “of last resort in this country has ever held, or even suggested, that prosecutions for libel on government have any place in the American system of jurisprudence” (internal quotations omitted)))). See also *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966) (“[C]riticism of government is at the very center of the constitutionally protected area of free discussion. Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized.”).

As stated by the Plaintiffs,

Given these extreme constitutional defects, the Defendants’ strategic litigation position and joint collusion to prevent even truthful criticism of one another—which the Defendants assert that no one has standing to challenge despite its transparent harm to third parties—is insufficient to eliminate the existence of a constitutional injury, to preclude judicial review of the illicit censorship clauses at issue in this controversy, or to foreclose this Court from awarding relief. See *Citizens United v. F.E.C.*, 558 U.S. 310, 356 (2010) (“When Government seeks to use its full power . . . to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful.”); *City of San Diego v. Roe*, 543 U.S. 77, 82 (2004) (“Underlying the decision in *Pickering* is the recognition that public employees are often the members of the community who are likely to have informed opinions as to the operations of their public employers, operations which are of substantial concern to the public. Were they not able to speak on these matters, the community would be deprived of informed opinions on important public issues. The interest at stake is as much the public’s interest in receiving informed opinion as it is the employee’s own right to disseminate it.” (internal citation omitted)); *Playboy Ent. Grp.*, 529 U.S. 809, 812 (2000) (“To prohibit this much speech is a significant restriction of communication between speakers and willing adult listeners, communication which enjoys First Amendment protection.”); *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976) (“[W]here a willing speaker exists, . . . the protection afforded [by the First Amendment] is to the communication, to its source and to its

recipients both.”); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“It is now well established that the Constitution protects the right to receive information and ideas” and that this right is “is fundamental to our free society.”).

Plaintiffs’ Collective Reply to the Defendants’ Responses to Plaintiffs’ Motion for Summary Judgment, July 29, 2020, pp. 15-16

Accordingly, the challenged Nondisparagement Clause: (1) unambiguously applies to the Plaintiffs; (2) remains unconstitutional even under the Defendants’ interpretation; and (3) still affects the Plaintiffs in several respects. For all of these reasons, this matter is fully justiciable.

Defendant Joseph opposes summary judgment on the grounds that the Plaintiffs’ claims are governed by *Garcetti v. Ceballos*, 547 U.S. 410 (2006), and under that case law the Plaintiffs bear the burden of proof on their First Amendment claims. The Court again adopts the Plaintiffs’ analysis and rejects Defendant Joseph’s arguments.

First, whether or not *Garcetti* governs the Plaintiffs’ claims, the government must still satisfy strict scrutiny when it restricts speech on the basis of viewpoint or content even within a framework that is accorded reduced First Amendment protection. Facial viewpoint discrimination, content discrimination, and speaker discrimination all nonetheless trigger strict scrutiny even where inferior and proscribable classes of speech are concerned. See *Valley Broad. Co.*, 107 F.3d at 1331, n.3 (“*R.A.V.* requires that the content-based regulation of proscribable classes of speech be subject to strict review”).

The U.S. Supreme Court conclusively settled this matter in *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 383–84 (1992), while analyzing the propriety of government regulation of unprotected categories of speech. The Supreme Court explained as follows.

We have sometimes said that these categories of expression are “not within the area of constitutionally protected speech,” *Roth, supra*, 354 U.S., at 483, 77 S.Ct., at 1308; *Beauharnais, supra*, 343 U.S., at 266, 72 S.Ct., at 735; *Chaplinsky, supra*, 315 U.S., at 571–572, 62 S.Ct., at 768–769; or that the “protection of the First Amendment does not extend” to them, *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 504, 104 S.Ct. 1949, 1961, 80 L.Ed.2d 502 (1984); *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 124, 109 S.Ct. 2829, 2835, 106 L.Ed.2d 93 (1989). Such statements must be taken in context, however, and are no more literally true than is the occasionally repeated shorthand characterizing obscenity “as not being speech at all,” Sunstein, *Pornography and the First Amendment*, 1986 Duke L.J. 589, 615, n. 146. What they mean is that these areas of speech can, consistently with the First Amendment, be regulated because of their constitutionally proscribable content (obscenity, defamation, etc.)—**not that they are categories of speech entirely invisible to the Constitution, so that they may be made the vehicles for content discrimination unrelated to their distinctively proscribable content. Thus, the government may proscribe libel; but it may not make the further content discrimination of proscribing only libel critical of the government.** We recently acknowledged this distinction in *Ferber*, 458 U.S., at 763, 102 S.Ct., at 3357–3358, where, in upholding New York’s child pornography law, we expressly recognized that there was no “question here of censoring a particular literary theme....” See also *id.*, at 775, 102 S.Ct., at 3364 (O’CONNOR, J., concurring) (“As drafted, New York’s statute does not attempt to suppress the communication of particular ideas”).

Id. (emphases added).

Accordingly, following *R.A.V.* (which itself invalidated a regulation targeting fighting words—an unprotected category of speech—as facially unconstitutional in light of the regulation’s content discrimination and viewpoint discrimination, see *id.*), courts have uniformly held that facial viewpoint discrimination and content discrimination still

trigger strict scrutiny even within wholly unprotected categories of speech—something that public employee speech decidedly is not. *See, e.g., Hamilton v. City of San Bernardino*, 325 F. Supp. 2d 1087, 1090 (C.D. Cal. 2004) (“A governmental entity may not constitutionally proscribe a subclass of otherwise proscribable speech based on protected content elements”); *Coplin v. Fairfield Pub. Access Television Comm.*, 111 F.3d 1395, 1402 (8th Cir. 1997) (“Although the government can regulate such areas of speech on the basis of content, that regulation must be viewpoint-neutral”); *Animal Legal Def. Fund v. Kelly*, 434 F. Supp. 3d 974, 998 (D. Kan. 2020), *amended*, No. CV 18-2657-KHV, 2020 WL 1659855 (D. Kan. Apr. 3, 2020) (“[I]n a few limited categories, government may regulate speech consistently with the First Amendment. Importantly, however, the government may not use such categories as ‘vehicles for content discrimination unrelated to their distinctively proscribable content.’”) (quoting *R.A.V.*, 505 U.S. at 383, 112 S.Ct. 2538); *Nat’l Rifle Ass’n of Am. v. City of Los Angeles*, No. 219CV03212SVWGJS, 2019 WL 9042815, at *5 (C.D. Cal. Dec. 11, 2019) (“[E]ven if the City is regulating conduct or speech unprotected by the First Amendment, the Ordinance will still be subject to strict scrutiny if it discriminates on the viewpoint of the messenger.”); *Walker v. Kiouisis*, 93 Cal. App. 4th 1432, 1447, 114 Cal. Rptr. 2d 69, 81 (2001) (“[C]ontent-based regulations are invalid even where they target only speech which the government could prohibit entirely without offending the Constitution.”); *People v. Stanistreet*, 29 Cal. 4th 497, 507, 58 P.3d 465, 471 (2002) (“The ordinance in *R.A.V.* was facially unconstitutional as content-based discrimination because it discriminated among fighting words based on race, color, creed,

religion, or gender.”); *Hornell Brewing Co. v. Minnesota Dep't of Pub. Safety, Liquor Control Div.*, 553 N.W.2d 713, 717 (Minn. Ct. App. 1996) (“The R.A.V. Court accepted the Minnesota Supreme Court's statement that the ordinance applies only to expressions that constitute “fighting words,” and assumed, “arguendo, that all of the expression reached by the ordinance is proscribable under the ‘fighting words’ doctrine.” *Id.* at 381, 112 S.Ct. at 2542. Nevertheless, the Court concluded the ordinance was facially unconstitutional because it applied only to “specified disfavored topics” and because it went “beyond mere content discrimination, to actual viewpoint discrimination.” *Id.* at 391, 112 S.Ct. at 2547.”); *State v. Boettger*, 450 P.3d 805, 809 (Kan. 2019) (“Outside those circumstances, a restriction targeting one of those categories of speech may be unconstitutional and will be if it discriminates based on content. Thus, for example, ‘the government may proscribe libel; but it may not make the further content discrimination of proscribing only libel critical of the government.’ 505 U.S. at 383-84, 112 S.Ct. 2538.”), *cert. denied*, 140 S. Ct. 1956 (2020).

As such, regardless of whether or not the Plaintiffs’ speech as elected officials is subject to regulation under *Garcetti*, given that the Nondisparagement Clause is a facially viewpoint-based, content-based, and speaker-based speech restriction, it must nonetheless satisfy strict constitutional scrutiny in order to be enforceable. *See id.* *Cf. Buttaro* 2016 WL 4926179, at *10 (“While the *Pickering* balancing discussed above may justify the FDNY’s decision to bar firefighters from wearing expressive t-shirts in lieu of department-

authorized clothing, it does not justify enforcing that policy in a way that favors one controversial or potentially disruptive viewpoint over another.”).

Separately, because the overwhelming majority of courts have rejected the notion that the speech of elected public officials—which the Supreme Court has protected for decades, *see Bond*, 385 U.S. at 135–36 (“The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy.”)—is subject to regulation under *Garcetti*’s less protective framework,¹ *see Werkheiser*, 210 F. Supp. 3d at 638 (“The majority of courts . . . have

¹ *Nordstrom v. Town of Stettin*, No. 16-CV-616-JDP, 2017 WL 2116718, at *3 (W.D. Wis. May 15, 2017) (“Neither the Supreme Court nor the Seventh Circuit has directly addressed whether *Garcetti* applies to elected officials’ political speech, *Siefert v. Alexander*, 608 F.3d 974, 991 (7th Cir. 2001) (Rovner, J., dissenting in part and arguing that “[n]either this court nor the Supreme Court . . . has ever held that the[] decisions limiting the speech of public employees can be applied to elected officials’ speech”), but most of the courts that have addressed the question have held that *Garcetti* does not apply. This court will follow the majority.”) (citing *Werkheiser v. Pocono Twp.*, 210 F. Supp. 3d 633, 640 (M.D. Pa. 2016) (“*Garcetti* does not apply to publicly elected officials.”); *Hoffman v. Dewitt County*, 176 F. Supp. 3d 795, 811 (C.D. Ill. 2016) (declining to apply *Garcetti* to an elected official); *Melville v. Town of Adams*, 9 F. Supp. 3d 77, 102 (D. Mass. 2014) (“*Garcetti* does not apply to elected officials’ speech, at least to the extent it concerns official duties.”); *Alsworth v. Seybert*, 323 P.3d 47, 57-58 (Alaska 2014) (“Limiting elected officials’ speech protections runs counter to the jurisprudence of the U.S. Supreme Court....”); *Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 543 (9th Cir. 2010) (noting, without discussing *Garcetti*, that the parties did not contest that an elected official’s votes and statements to reporters “were protected by the First Amendment”); *Van De Yacht v. City of Wausau*, 661 F. Supp. 2d 1026, 1033-36 (W.D. Wis. 2009) (assuming that an elected official’s “political speech on behalf of her constituents was constitutionally protected” but holding that “the right of elected officials to be free from retaliation for political speech was not clearly established at the time of the alleged conduct”); *Jenevein v. Willing*, 493 F.3d 551, 558 (5th Cir. 2007) (“We are persuaded that the preferable course ought not draw directly upon the *Pickering–Garcetti* line of cases for sorting the free speech rights of employees elected to state office.”); *Conservation Comm’n of Town of Westport v. Beaulieu*, No. CIV.A. 07-11087-RGS, 2008 WL 4372761, at *4 (D. Mass. Sept. 18, 2008) (“There is, however, a significant difference with *Garcetti*—plaintiffs in this case are appointed *public officials*, not public employees. . . . Thus, *Garcetti* does not dispose of plaintiffs’ retaliation claims.”); *Willson v. Yerke*, No. 3:10-CV-1376, 2013 WL 6835405, at *10–11 (M.D. Pa. Dec. 23, 2013) (“Since *Bond*, the Supreme Court has maintained the importance of preserving the free speech rights of publicly elected officials The Court finds such reasoning sound and will adopt the portion of Judge Mehalchick’s R & R which concluded that *Garcetti* does not apply to Plaintiffs’ speech.”); *aff’d*, 604 F. App’x 149 (3d Cir. 2015); *Zerla v. Stark Cty., Illinois*, No. 119CV01140JESJEH, 2019 WL 3400622, at *3 (C.D. Ill. July 26, 2019) (“In this district, we have treated county board members as legislators subject to the First Amendment protections

found *Garcetti* inapplicable to elected officials.”) (collecting cases), this Court similarly rejects Defendant Joseph’s claim to the contrary.

Having rejected the Defendants’ opposition to application of strict scrutiny, the Court concludes from the case law cited above that it is the Government who bears the burden of proving the unconstitutionality of its actions.

Applicable Constitutional Standards

Prior Restraints

“[P]rior restraints on speech . . . are the most serious and the least tolerable infringements on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559

set forth in *Bond*. See *Hoffman v. Dewitt County*, 176 F. Supp. 3d 795, 811–12 (C.D. Ill. 2016). The Seventh Circuit appears to agree that elected legislative actors are subject to different First Amendment analyses than “public employees” writ large The Court concludes that Plaintiff was acting in his capacity as a legislator on the Stark County Board in attempting to speak on the budget issue, and the First Amendment protected his right to participate in legislative functions.”); *Butler v. Bridgehampton Fire Dist.*, No. 14-CV-1429(JS)(AYS), 2017 WL 4402465, at *3 (E.D.N.Y. Sept. 30, 2017) (“Judge Shields considered Plaintiff’s argument that *Garcetti* does not apply because Plaintiff was an elected official and not an employee of the District. . . . Judge Shields reviewed cases outside the Second Circuit and adopted the rule promulgated by the majority of courts that have considered the issue—that *Garcetti* does not apply to the speech of elected officials.”); *Hedquist v. Patterson*, No. 14-CV-0045-J, 2017 WL 10831413, at *12 (D. Wyo. Apr. 14, 2017) (“The case before the Court is more akin to *Bond*, where the plaintiff suffered retaliation from his legislative peers. *Bond*, 385 U.S. at 136. This Court does not see the value in restricting the debate on public issues as it pertains to elected officials. A debate, the U.S. Supreme Court in *Bond* said, ‘should be uninhibited, robust, and wide-open.’ *Id.*”) *aff’d sub nom. Hedquist v. Beamer*, 763 F. App’x 705 (10th Cir. 2019); *Marchman v. Crawford*, 237 F. Supp. 3d 408, 430 (W.D. La. 2017) (“[T]he majority of courts that have addressed this issue have at least partially agreed with *Jenevein* and *Rangra* by holding that *Garcetti*’s ‘as a citizen’ requirement does not apply to First Amendment retaliation claims by elected officials.”), *aff’d*, 726 F. App’x 978 (5th Cir. 2018); *Wilson v. Houston Cmty. Coll. Sys.*, 955 F.3d 490, 498 (5th Cir. 2020) (“Breaking from *Scott*, we held that the Pickering balancing test did not apply to elected employees of the state. Instead, we adopted strict scrutiny to assess the government’s regulation of an elected official’s speech to his constituency.”) (citing *Jenevein v. Willing*, 493 F.3d 551, 557–58 (5th Cir. 2007)); *Zimmerlink*, No. 10–237, 2011 U.S. Dist. LEXIS 53186, at *6–7, 8–11 (denying defendants’ motion to dismiss because “governmental interest in regulating speech of public employees to promote efficient operations does not apply to speech of an elected official”); *Carson v. Vernon Twp.*, Civ. No. 09–6126, 2010 WL 2985849, at *14 (D.N.J. July 21, 2010) (denying motion to dismiss claim of deprivation of free speech, at least in part, because elected official’s political expression on township matters was “unquestionably protected under the First Amendment.”).

(1976). Prohibitions restricting the right to speak on a particular topic are especially disfavored, see *id.* at 558, and thus, “[a]ny system of prior restraints of expression comes . . . bearing a heavy presumption against its constitutional validity[.]” *Bantam Books v. Sullivan*, 372 U.S. 58, 70 (1963) (collecting cases). The Supreme Court has additionally recognized that prior restraints on speech harm not only speakers themselves, but the listening public as well. See, e.g., *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978) (“[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.”); see also *McCarthy v. Fuller*, 810 F.3d 456, 462 (7th Cir. 2015) (“An injunction against speech harms not just the speakers but also the listeners (in this case the viewers and readers).”).

Viewpoint Discrimination

Viewpoint discrimination is presumptively forbidden by the First Amendment, see *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984) (“[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others .”) (collecting cases), and it is regarded as “an egregious form of content discrimination[.]” see *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Accordingly, viewpoint discrimination triggers strict scrutiny, which requires the Government to demonstrate that the Nondisparagement Clause is “narrowly tailored to serve compelling state interests.” *Reed*, 135 S. Ct. at 2226. See also *Bible Believers v. Wayne Cty.*, 805 F.3d 228, 248 (6th Cir. 2015) (“Both content-

and viewpoint-based discrimination are subject to strict scrutiny.” (citing *McCullen v. Coakley*, 134 S. Ct. 2518, 2530, 2534 (2014))). “No state action that limits protected speech will survive strict scrutiny unless the restriction is narrowly tailored to be the least-restrictive means available to serve a compelling government interest.” *Id.* (citing *Playboy Entm’t Grp.*, 529 U.S. at 813).

Content Discrimination Generally

“Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.” *Regan v. Time, Inc.*, 468 U.S. 641, 648–49 (1984) (citation omitted). Such a defect triggers strict scrutiny, which only permits the Government to “regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest.” *Sable Commc’ns of Cal., Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989).

Speaker-Based Discrimination

“A law that allows a message but prohibits certain speakers from communicating that message is content-based” and triggers strict scrutiny. *Thomas v. Bright*, 937 F.3d 721, 731 (6th Cir. 2019) (citing *Turner Broadcasting Sys., Inc. v. F.C.C.*, 512 U.S. 622, 658 (1994); *Greater New Orleans Broad. Ass’n, Inc. v. United States*, 527 U.S. 173, 193–94 (1999)). The U.S. Supreme Court has also made clear that speaker-based discrimination—the governmental practice of permitting speech by some people, but not others, based only on the identity of the speaker—is flagrantly, and perhaps insurmountably, unconstitutional

in all cases. *See, e.g., Thomas v. Chicago Park Dist.*, 534 U.S. 316, 325 (2002) (“Granting waivers to favored speakers (or, more precisely, denying them to disfavored speakers) would of course be unconstitutional”); *Police Dep’t of City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972) (“[W]e have frequently condemned such discrimination among different users of the same medium for expression.”); *Citizens United v. F.E.C.*, 558 U.S. 310, 340 (2010) (“Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others.” (citing *First Nat’l Bank of Boston*, 435 U.S. at 784 (1978))); *Juzwick v. Borough of Dormont*, No. CIV.A. 01-310, 2001 WL 34369467, at *3 (W.D. Pa. Dec. 12, 2001) (“‘Speaker’ discrimination lies at the intersection of the First and Fourteenth Amendments. The Supreme Court, on numerous occasions, has condemned government actions that have discriminated based upon the identity of the speaker.”) (internal citation omitted), *no app. filed*; *City of Madison, Joint Sch. Dist. No. 8 v. Wis. Employment Relations Comm’n*, 429 U.S. 167, 175–76 (1976) (“To permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees. Whatever its duties as an employer, when the board sits in public meetings to conduct public business and hear the views of citizens, it may not be required to discriminate between speakers on the basis of their employment, or the content of their speech.” (citing *Mosley*, 408 U.S. 92, 96 (1972))); *Greater New Orleans Broad. Ass’n*, 527 U.S. at 194 (“[D]ecisions that select among speakers conveying virtually identical messages are in serious tension with the principles undergirding the First Amendment.”).

Article I, Section 19 of the Tennessee Constitution

Like its federal counterpart, article I, section 19 of the Tennessee Constitution compels strict scrutiny of content-based speech regulations. *See generally Doe v. Doe*, 127 S.W.3d 728, 732 (Tenn. 2004). Thus, where the Government fails to demonstrate that a content-based speech restriction is “necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end[,]” the law must be invalidated as one that “violates free speech rights under Article I, section 19 of the Tennessee Constitution[.]” *Id.* at 737.

Overbreadth

Under the overbreadth doctrine established by the U.S. Supreme Court, “a law may be invalidated as overbroad if ‘a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.’” *Stevens*, 559 U.S. at 473 (quoting *Wash. State Grange*, 552 U.S. at 449 n.6). Accordingly, if the Nondisparagement Clause restricts a substantial amount of protected speech in relation to the speech that it may restrict legitimately, then this Court may invalidate it as unconstitutionally overbroad. *See id.*

Application of Law to Summary Judgment Record

Neither Defendant argues that the Nondisparagement Clause furthers a compelling governmental interest. *See generally Defendant Joseph’s Response in Opposition to Plaintiffs’ Motion for Summary Judgment* (“Joseph’s Response”); *Metropolitan Government’s Memorandum in Response to Plaintiffs’ Motion for Summary Judgment* (“Metro’s Response”). Additionally, neither Defendant argues that the Nondisparagement Clause is

narrowly tailored to achieve any governmental interest. *Id.* Nor has either Defendant introduced any evidence in response to the Plaintiffs' Motion for Summary Judgment. *Id.* Metro, then, has failed to meet its burden of proving that the Nondisparagement Clause satisfies strict scrutiny, and the clause must be invalidated accordingly.

As to the Plaintiffs' overbreadth claims, and their claims with respect to art. I, section 19 of the Tennessee Constitution, and their legislative immunity claims, neither Defendant has addressed, responded to, or constructed any argument to oppose those claims. See Joseph's Response; see Metro's Response. Accordingly, the Defendants' opposition to these claims is waived, and the Nondisparagement Clause is invalidated on each of these grounds. See *Sneed*, 301 S.W.3d at 615 ("It is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.").

Remaining Opposition

The remaining arguments of the Defendants in opposition to summary judgment and in support of their motions to dismiss are addressed as follows.

Metro argues that because the Plaintiffs are not Parties to the contract, their claims cannot be maintained. See Metro's Response, p. 2. However, the opposite is true. The Plaintiffs can maintain their claims, individually, because the contract that they are challenging expressly states that it binds them, and it still affects them and purports to subject them to individual damages liability. Yet, because the Plaintiffs did not assent to

be bound by the Nondisparagement Clause, the Clause cannot lawfully be enforced against them or subject them to damages in any regard. *See Pls.’ Mem. in Supp. of Their Mot. for Summ. J.*, p. 32 (citing *Johnson v. Hunter*, No. M1998- 00314-COA-R3-CV, 1999 WL 1072562, at *6 (Tenn. Ct. App. Nov. 30, 1999) (“[O]ne of the elements essential to the formation of a contract is a manifestation of agreement or mutual assent by the parties to its terms”).

With respect to the Plaintiffs’ PEPFA claim, both Defendants perceive the claim to be one concerned with “liability” for a “cause of action” for damages. *See Metro’s Response*, p. 10; *Joseph’s Response*, p. 4. In their filings, however, the Plaintiffs have clarified that the PEPFA claim is, instead, a (small) component of the Plaintiffs’ much broader claim for declaratory relief that the Nondisparagement Clause violates public policy. *See Pls.’ Mem. in Supp. of Their Mot. for Summ. J.*, pp. 31–32. Other than Defendant Joseph’s argument that the Plaintiffs should be considered public employees for First Amendment purposes but not for PEPFA purposes, neither Defendant explains how the Nondisparagement Clause—which substantially prohibits the Plaintiffs, three elected officials, from communicating with one another and their fellow Board Members regarding the former Director of Schools—could be compatible with Tennessee’s established public policy that “[n]o public employee shall be prohibited from communicating with an elected public official for any job-related purpose whatsoever.” Tennessee Code Annotated § 8-50-602(a). The Defendants do not respond to the several additional arguments that the

Plaintiffs advanced to support their public policy claims, either. *See Pls. ' Mem. in Supp. of Their Mot. for Summ. J.*, pp. 27–31.

For the foregoing reasons, the Court has granted the Plaintiffs' Motion for Summary Judgment; has declared the Nondisparagement Clause unconstitutional, both facially and as applied to the Plaintiffs individually; has ordered that the Nondisparagement Clause's continued enforcement is permanently enjoined; and has denied the Defendants' respective motions to dismiss.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR

cc: Due to the pandemic, and as authorized by the COVID-19 Plan of the Twentieth Judicial District of the State of Tennessee, as approved by the Tennessee Supreme Court, this Court shall send copies solely by means of email to those whose email addresses are on file with the Court. If you fit into this category but nevertheless require a mailed copy, call 615-862-5719 to request a copy by mail.

For those who do not have an email address on file with the Court, your envelope will be hand-addressed and mailed with the court document enclosed, but if you have an email address it would be very helpful if you would provide that to the Docket Clerk by calling 615-862-5719.

Daniel A. Horwitz
Charles W. Cagle
J. Brooks Fox

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

AMY FROGGE, JILL SPEERING, and §
FRAN BUSH, individually, and in their §
official capacities as members of the §
Metropolitan Nashville Board of §
Public Education, §

Plaintiffs, §

v. §

Case No.: 20-420-IV (III)

SHAWN JOSEPH, §

and §

THE METROPOLITAN GOVERNMENT §
OF NASHVILLE AND DAVIDSON §
COUNTY, acting by and through §
THE METROPOLITAN NASHVILLE §
BOARD OF PUBLIC EDUCATION, §

Defendants. §

AGREED FINAL ORDER

This case came before the Court upon remand from the Court of Appeals for resolution of the issue of attorney's fees on appeal. *See Frogge v. Joseph*, No. M2020-01422-COA-R3-CV, 2022 WL 2197509, at *19 (Tenn. Ct. App. June 20, 2022) ("We conclude that Plaintiffs qualify as prevailing parties within the meaning of 42 U.S.C. § 1988 and are entitled to an award of reasonable attorney's fees incurred on appeal related to their constitutional claims. The trial court must determine a reasonable amount of fees on remand.") (citing *Murrell v. Bd. of Admin. City of Memphis Pension & Ret. Sys.*, No. W2020-00187-COA-R3-CV, 2021 WL 1233500, at *5 (Tenn. Ct. App. Mar. 31, 2021) *perm. app. denied* (Tenn. Sept. 22, 2021)). As evidenced by the signatures of adversary

PLAINTIFF'S
EXHIBIT

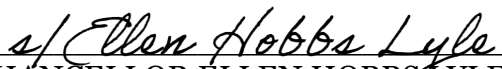
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counsel below, the Parties represent that they have settled and compromised all outstanding issues related to attorney's fees, costs, and pre- and post-judgment interest on the original judgment. Accordingly, the Parties stipulate that **JUDGMENT SHALL ISSUE** for the Plaintiffs against the Defendants in the amount of **ONE HUNDRED AND TEN THOUSAND DOLLARS AND NO CENTS (\$110,000.00)** pursuant to 42 U.S.C. § 1988(b), payable to the Law Office of Daniel A. Horwitz IOLTA by the Metropolitan Government within thirty (30) days of entry of this order, for which execution may issue if necessary.

This order constitutes a final judgment in Case No.: 20-420-IV. The Clerk shall enter judgment pursuant to Tenn. R. Civ. P. 58. Court costs are taxed to the Defendants, for which execution may issue if necessary.

IT IS SO ORDERED.

ENTERED this the ____ day of _____, 2022.


CHANCELLOR ELLEN HOBBS LYLE

APPROVED FOR ENTRY BY:

/s/ Daniel A. Horwitz

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20 th day of July, 2022, a copy of the foregoing was sent via the Court's electronic filing system and/or via email to the following parties:

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