

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

TY TIMMERMANN, *et al.*,

Plaintiffs,

v.

CITY OF MEMPHIS, *et al.*,

Defendants.

No. CH-25-0388

Part II



ORDER OF DISMISSAL WITHOUT PREJUDICE
FOR LACK OF SUBJECT MATTER JURISDICTION

THIS CAUSE came to be heard on August 22, 2025, before the Honorable James R. Newsom III, Chancellor for Part II of the Chancery Court of Shelby County, Tennessee upon the *Complaint for Declaratory and Injunctive Relief* [Complaint] filed by Plaintiffs Ty Timmermann, Gun Owners of America, Inc., Gun Owners Foundation, and Tennessee Firearms Association [Plaintiffs] against Defendants City of Memphis [City] and Cerelyn Davis, in her Official Capacity as Chief of the Memphis Police Department [Davis] initially filed in the Circuit Court of Shelby County as Case No. CT-4797-24, the Declarations of Ty Timmermann, Erich M. Pratt,

and C. Richard Archie in support of the Complaint, upon the initial and amended Motions to Dismiss filed on behalf of City and Davis, the Order of Transfer from Circuit Court dated March 21, 2025, Plaintiffs' *Response in Opposition to the Motion to Dismiss*, upon the memorandum briefs submitted by the parties, upon the argument in open court on August 22, 2025 of Allan J. Wade and Bruce McMullen for Defendants in support of the Motions to Dismiss, and the argument of John T. Harris III for Plaintiffs in opposition, and upon the entire record in this case.

For the reasons that follow, the Court concludes that Plaintiffs lack subject matter jurisdiction and that this cause should be dismissed without prejudice pursuant to Tenn. R. Civ. P. 12.02(1).

Plaintiffs brought the instant action to challenge a recent amendment [Amendment] to the City's Charter. The Amendment was proposed via Referendum Ordinance No. 5908, which was adopted by the City Council and submitted to the qualified voters of the City in accordance with the provisions of Art. IX, § 9 of the Tennessee Constitution [Home Rule Amendment or HRA]. Plaintiffs assert that the Ordinance violates Tenn. Code Ann. § 39-17-1314.

On March 7, 2025 the City Council adopted Memphis Ordinance No. 5926 [Ordinance]. The Ordinance codified the substance of Referendum Ordinance No. 5908, but provides that the Ordinance shall take effect on the thirtieth day following the passage of any enabling legislation by the Tennessee General Assembly or the United States Congress or the final entry or judgment of a court declaring the Tennessee municipalities and/or the City are authorized under Tennessee or federal law to enforce ordinances that regulate firearms or providing for prosecution of emergency ex parte orders. As such, the substantive provisions of the charter amendment described in Referendum Ordinance No. 5908 are not presently effective or operative. Further, the Tennessee General Assembly adopted Public Chapter 329 (S.B. 1360) on May 2, 2025, with an effective date of July 1, 2025, making numerous amendments to Tenn. Code Ann. § 39-17-1314.

If implemented, the Ordinance, contrary to present State law, would require (1) a ban on unlicensed handgun carry, whether on one's person or within one's vehicle and a requirement that firearms stored in an unattended vehicle be locked out of plain view; (2) a ban on the possession and commercial sale of "assault rifles," an undefined term; and (3) an "extreme risk

protection order” or red flag law, authorizing the issuance of court orders to search and seize firearms from individuals who have committed no crime but nevertheless are deemed to be “dangerous” following an ex parte hearing.

The Court concludes that the provisions of the Ordinance are not enforceable or self-executing and require additional governmental action for their enforcement and implementation. The Ordinance expressly conditions the effectiveness of the substantive provisions objected to by Plaintiffs on enabling state or federal legislation or court action. Accordingly, Plaintiffs’ claims are not justiciable and are due for dismissal.

PLAINTIFFS LACK STANDING TO BRING THIS ACTION

Justiciability encompasses several distinct doctrines, two of which are applicable to the instant case, namely, ripeness and mootness. Under the doctrine of justiciability, courts will “stay their hand in cases that do not involve a genuine and existing controversy requiring the present adjudication of present rights.” *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994) (citing *State ex rel. Lewis v. State*, 208 Tenn. 534, 347 S.W.2d 47, 48 (1961); *Dockery v. Dockery*, 559 S.W.2d 952, 954 (Tenn. Ct. App. 1977)). Cases must remain justiciable throughout the entire litigation, including appeal. *Id.*

Defendants contend that the instant matter was not ripe at the time that the Complaint was filed and that the action is now moot as result of legislative actions subsequent thereto.

In Tennessee, the doctrine of ‘standing’ considers whether a particular litigant is properly situated to have a court decide issues the litigant raises in a particular action. *American Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d 612, 619 (Tenn. 2006). Thus, a plaintiff must show three indispensable elements to establish standing: (1) a distinct and palpable injury; (2) a causal connection between the claimed injury and the challenged conduct; and (3) a showing that the alleged injury can be redressed by a favorable decision. *Id.* With respect to the first element, the injury alleged cannot be “conjectural, hypothetical, or predicated upon an interest that a litigant shares in common with the general citizenry.” *City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013).

Plaintiffs’ alleged injury falls short of meeting the indispensable requirement that the injury be “distinct and palpable.” Section 10 of the Ordinance explicitly states that it will “become effective as otherwise provided by law.” Moreover, Plaintiffs’ allegations underscore the hypothetical nature

of their claimed harm. Plaintiffs state that they are fearful of enforcement of the Ordinance (Complaint at ¶ 6) and that “imminent enforcement of the unlawful Ordinance will cause Plaintiffs irreparable harm.” *Id.* at ¶¶ 36, 39, 51. Plaintiffs allege no facts suggesting that the Ordinance has been enforced against them (or at all). Rather, they base their claims on subjective fear and belief that the Ordinance will cause them harm. *Id.* Likewise, Plaintiffs do not assert that the City or its agents have threatened enforcement against them, nor do Plaintiffs assert any facts showing that there is a substantial risk of such enforcement. Plaintiffs’ asserted harm is hypothetical in that it is based on subjective speculation and unsubstantiated fears. Such “harm” is insufficient to confer constitutional standing. *See Hargett*, 414 S.W.3d at 98.

The Court notes that the Ordinance and those who proposed it engaged in “virtue signaling” in that the Ordinance is as dead as a proverbial doornail as a matter of Tennessee law. The HRA provides that “no charter provision . . . shall be effective if inconsistent with any general act of the General Assembly.” The Ordinance, as written, “is ineffective insofar as it is ‘inconsistent with any general act of the General Assembly.’” The General

Assembly could be no more clear that the Ordinance is a dead letter. Despite this, Plaintiffs' claims are not ripe and they are moot.

Plaintiffs' Claims Are Not Ripe

Plaintiffs' claims were not ripe at the time that the instant action was filed because Referendum Ordinance 5908 was not self-executing. The doctrine of ripeness is intended to aid "the courts in determining whether a particular case presents a justiciable legal issue." *B & B Enter. of Wilson Cnty., LLC v. City of Lebanon*, 318 S.W.3d 839, 848 (Tenn. 2010) (citing *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203 (Tenn. 2009)). "The ripeness doctrine focuses on whether the dispute has matured to the point that it warrants a judicial decision." *Id.* Ripeness "is closely related to the 'exhaustion of [] remedies' doctrine." *Id.* (citation omitted).

Courts use a two-part inquiry to determine whether a particular dispute is ripe. "The first question is whether the issues in the case are ones appropriate for judicial resolution. The second question is whether the court's refusal to act will cause hardship to the parties." *B & B Enter.*, 318 S.W.3d at 848. A court should decline to act "where there is no need for the court to act

or where the refusal to act will not prevent the parties from raising the issue at a more appropriate time.” *Id.* at 849.

Referendum Ordinance 5908 is not self-executing and therefore, does not violate Tenn. Code Ann. § 39-17-1314 because it does not occupy the field of regulation of firearms, ammunition or components of firearms or ammunition. *Parks v. Alexander*, 608 S.W.2d 881, 892 (Tenn. Ct. App. 1980) (holding that where legislative action is required to implement constitutional amendment, plaintiffs’ present rights are not affected). Here, like in *Parks*, the controversy between the parties is theoretical and contingent upon the enacting of future legislation.

In the Alternative, Plaintiff’s Claims Are Moot

A case may be deemed moot if it loses its justiciability “either by court decision, acts of the parties, or some other reason occurring after commencement of the case.” *Norma Faye*, 301 S.W.3d at 204 (citing *West v. Vought Aircraft Indus., Inc.*, 256 S.W.3d 618, 625 (Tenn. 2008); *McCanless v. Klein*, 182 Tenn. 631, 188 S.W.2d 745, 747 (1945); *McIntyre*, 884 S.W.2d at 137)). It will be considered moot if the case can no longer serve as a means of providing some type of judicial relief to the prevailing party. *Id.*

In February 2025, after the Complaint was filed, the Memphis City Council took further legislative action in accordance with authority conferred by the amendment of the Ordinance. The City adopted the Ordinance on third and final reading on February 4, 2025. It was signed by the City's mayor on March 7, 2025 and foreclosed any possible violation of Tenn. Code Ann. § 39-17-1314. The Ordinance provides in its preface in relevant part:

WHEREAS, the provisions of Ordinance No. 5908 are not automatically enforceable or self-executing because they lack the specific details needed for their enforcement and implementation but rather establish the maximum authority of the City Council to adopt ordinances and policies to implement such Charter provisions.

WHEREAS, the Council has no present intention to authorize enforcement and implementation of any provisions of Ordinance No. 5908 that are inconsistent with state law but intends to create legislation that authorizes and supports vigorous enforcement of gun laws adopted by the Tennessee General Assembly.

WHEREAS, it is the intent of this ordinance to adopt the following provisions, which were approved by the qualified voters of the City of Memphis during the state general election on November 4, 2024, in order to declare which state misdemeanor offenses committed within the City, as so approved by Memphis voters, shall be enforced as misdemeanors within the City to be effective upon approval by the Tennessee General Assembly of such laws as may necessary to allow for police and judicial enforcement of violations of such provisions in the City.

WHEREAS, it is the intent of this Ordinance to request the City Administration and the Memphis Police Department to provide advice on policies, procedures and directives that the Council can adopt in order to abate violation of existing provisions of state gun laws.

(emphasis added).

More importantly for the Court's analysis, the text of the Ordinance provides as follows with respect to its effective date:

SECTION 5. Effective Date.

BE IT FURTHER ORDAINED that, notwithstanding any other provision of law to the contrary, this Ordinance shall take effect, and to the extent permitted, on the thirtieth 30th day following the occurrence of either of the following circumstances in the interests of the public welfare, namely:

1. The passage of any enabling legislation adopted by the Tennessee General Assembly or the United States Congress that authorizes municipalities and/or the City of Memphis to enforce ordinances that regulate the use, purchase, transfer, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation firearms within the City; or
2. The passage of any enabling legislation adopted by the Tennessee General Assembly or the United States Congress that authorizes municipalities and/or the City of Memphis to enforce ordinances that provide for obtaining and prosecuting violations of Emergency Ex Parte Orders;

3. The entry of a final decree or judgment by a court of competent jurisdiction declaring or deciding that Tennessee municipalities and/or the City of Memphis are authorized under Tennessee or federal law (i) to enforce ordinances that regulate the use, purchase, transfer, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation firearms within the City or (ii) to enforce ordinances that provide for obtaining and prosecuting violations of Emergency Ex Parte Orders;

As a result, implementation of the provisions of Referendum Ordinance 5908, which were not self-executing, is expressly conditioned, via the Ordinance, on further action by *state* or federal government to trigger enforcement. Under the circumstances, the City has not by adoption of Referendum Ordinance No. 5908 or the Ordinance violated Tenn. Code Ann. § 39-17-1314 by “occupying” any part of the field of firearms regulation. Any such violation would require some further and uncertain legislative action of the Memphis City Council. There is no present live controversy regarding whether Plaintiffs or any other person is subject to the challenged provisions of Referendum Ordinance 5908 or the Ordinance.

Shaw v. Metro. Gov’t of Nashville & Davidson Cnty., 651 S.W.3d 907, 916–17 (Tenn. 2022) is instructive. *Shaw* dealt with when and whether a lawsuit challenging a City ordinance becomes moot by virtue of a subsequent repeal

or amendment of the challenged ordinance. The Court noted that “[w]here a lawsuit challenges a statute or ordinance and seeks only prospective relief, and the statute or ordinance is simply repealed, the case will ordinarily be dismissed as moot because it is no longer possible for the court to grant any effectual relief.” *Id.*, 651 S.W.3d at 916–17. Where the challenged law is amended or is repealed and replaced with a new law, the court must analyze whether the “challenged law is changed so as to clearly cure the alleged defect or in such a way that it no longer applies to the plaintiff.” *Id.* at 917. In such a case, there remains no “live controversy” for the court to decide. *Id.*

The case sub judice is arguably in a unique posture because Plaintiffs have sought immediate relief pursuant to the damage provisions of Tenn. Code Ann. § 39-17-1314(g), which could provide relief despite the recent adoption of the Ordinance if, and only if, Referendum Ordinance No. 5908 independently violated the provisions of § 39-17-1314. As explained herein, Referendum Ordinance No. 5908 did not and does not violate § 39-17-1314 because it does not “occupy any part of the field regulation of firearms, ammunition or components of firearms or ammunition, or combinations thereof.” Thus, any relief Plaintiffs might have obtained regarding

Referendum Ordinance 5908 is prospective in nature because future legislative action would be required to implement the challenged provisions. Moreover, adoption of the Ordinance, which expressly forestalls and conditions any implementation of the challenged provisions unless and until authorized by Tennessee state law, renders Plaintiffs' action moot.

Plaintiffs' Claims Against Davis Fail for Lack of Subject Matter Jurisdiction

Plaintiffs assert an "official capacity" claim against Defendant Davis, the City's Chief of Police. Plaintiffs sue Davis in her official capacity. Complaint at ¶ 11. Tennessee law is clear—" '[o]fficial-capacity' suits are in essence another way of pleading an action against the entity represented by the individual defendant." *Autry v. Hooker*, 304 S.W.3d 356, 364 (Tenn. Ct. App. 2009) (citations omitted).

The Court of Appeals analyzed this issue in *Siler v. Scott*, 591 S.W.3d 84 (Tenn. Ct. App. 2019). There, the plaintiff brought GTLA claims against the county sheriff, his chief deputy, and five deputy sheriffs, and the subject county. *Id.* at 90-91. Plaintiff sued the sheriff and his chief deputy in their individual and official capacities. *Id.*

The Court of Appeals affirmed the trial court's dismissal of the official capacity claims against the sheriff and the chief deputy, finding that the official capacity claims should be considered as the same as those against the county. *Id.* at 102. The court stated:

Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. Official-capacity suits, in contrast, “generally represent only another way of pleading an action against an entity of which an officer is an agent.” As long as the government entity receives notice and an opportunity to respond, *an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity.* Thus, while an award of damages against an official in his personal capacity can be executed only against the official's personal assets, a plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself.

Id. at 101-102 (emphasis added) (citing *Doe v. Pedigo*, No. E2002-01311-COA-R3-CV, 2003 WL 21516220, at *2 (Tenn. Ct. App. June 20, 2003) quoting *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985)). Plaintiffs lack subject matter jurisdiction to sue Davis for the same reasons as their claims against the City.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that pursuant to Tenn. R. Civ. P. 12.02(1) this action is dismissed without prejudice for lack of subject matter jurisdiction. Costs assessed against Plaintiffs.

This 22nd day of October, 2025.



CHANCELLOR

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Order of Dismissal Without Prejudice for Lack of Subject Matter Jurisdiction has been served via U.S. Mail, hand-delivery and/or electronic mail on the 22nd day of October 2025, on the following:

John Harris, III
SCHULMAN, LEROY & BENNETT, PC
3310 West End Avenue, Suite 460
Nashville, TN 37203
jharris@slblawfirm.com
Attorney for Plaintiffs

Bruce McMullen
Jennie Vee Silk
Ian W. Reagan
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC
165 Madison Avenue
Memphis, Tennessee 38103
bmcullen@bakerdonelson.com
jsilk@bakerdonelson.com
ireagan@bakerdonelson.com
Attorneys for Defendants
City of Memphis and Chief Cerelyn Davis
in her Official Capacity as
Chief of the Memphis Police Department

Allan J. Wade
Brandy S. Parrish
The Wade Law Firm, PLLC
5050 Poplar Avenue, Suite 1028
Memphis, Tennessee 38157
awade@thewadefirm.com
Attorneys for Memphis City Council and City of Memphis


Deputy Clerk

