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May 4, 2026

VIA ELECTRONIC MAIL

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RE: Councilman Jouvence's Complaint

Mr. Rader,

I am in receipt of your report dated April 28, 2026, regarding Councilman's Jouvence complaint dated April 10, 2026 ("Complaint"). Respectfully, the finding that the Complaint should be dismissed is not consistent with the City Charter or Robert's Rules of Order. As I set forth in my letter dated April 23, 2026, the facts establish conclusively that Mayor Brown intentionally violated Robert's Rules of Order ("Robert's Rules") to effectuate the result she wanted with respect to Councilman's motion regarding the Phoenix Project ("Motion"). It is well known that the mayor is a strong proponent of the Phoenix Project and because she feared it would be submitted for a referendum, she interrupted the vote to inject commentary to persuade the Council members to vote against the Motion. Given such, the facts unequivocally establish the mayor's actions were a violation of the doctrine of separation of powers and the Gallatin city charter ("City Charter") and, most importantly, was a violation of her oath mandated under the City Charter. Accordingly, her actions should have been found to be unlawful.

In reviewing your report, I believe the reason that your conclusion is in such contrast to the relevant facts and applicable laws is because you only investigated the Complaint with respect to Robert's Rules and, crucially, not the Robert's Rules as they are written, but how they are used informally at the City of Gallatin Council meetings and relative to your experience as to the informality of council meetings in middle Tennessee. Respectfully, this was not the purpose of the Complaint. Councilman Jouvence requested an investigation into "whether Paige Brown's actions were lawful and consistent with established procedures". Recall, when I asked you about the parameters of your investigation, you acknowledged that your investigation was pursuant to Councilman Jouvence's Complaint and that it could contemplate violations of the City Charter or the doctrine of the separation of powers. While your report does briefly address the doctrine of the separation of powers, your findings foreclosed a thorough analysis as you found that in the recent matter of *Jouvence v. Brown* that Chancellor Louis Oliver ruled that because Mayor

Brown is a member of the Council, she cannot interfere with the legislative process. Respectfully, this conclusion is not supported by the Court's Order or the City Charter and is in stark contrast to the fundamentals of the doctrine of the separation of powers. In order to further understand our concerns with your report, below please find a rebuttal of four important conclusions found within your report.

1. The Vote was not Interrupted.

Without citing to Robert's Rules, your report makes the finding that the Mayor did not interrupt the vote because she only spoke between the voice vote and the roll vote. This finding is based on the flawed premise that voting ends before the vote is announced. Presumably, you accept this premise because, as you correctly noted, a member can change their vote before the vote is announced. *See* RONR (12th Ed.) 45:8. However, it is not a corollary that debate can occur between a voice vote and a roll call vote or at any time between when the vote begins and the vote is announced. Indeed, the plain language of Robert's Rules militates against such a conclusion. "But if the chair gives ample opportunity for members to claim the floor before he puts the question, and no one rises, the right to debate cannot be claimed after the voting has commenced. . . . When a vote is taken a second time for purposes of verification—as when a Division is demanded—debate cannot be resumed except by unanimous consent (4:58–63)." RONR (12th Ed.) 43:7 ("Division" is when a member requests the vote to be confirmed by rising, *see id.* at 29:1). The mayor certainly had the authority to confirm the vote. *See* RONR (12th Ed.) 45:14. However, confirming the vote is not the same as attempting to change the vote and there is nothing within Robert's Rules which affords the mayor the authority to attempt to affect the outcome of the vote upon seeking confirmation of the vote. Indeed, Robert's Rules strictly prohibits the mayor's actions.

To get past the unambiguous language of Robert's Rules, you seem to imply that the Council meetings are run "properly", but informally. While I do not disagree with this finding, I do disagree with your conclusion that this excuses the mayor's actions.¹ The essential function of the Council is to vote on resolutions and ordinances, *see* Charter, Art. III, Sec. 6, and while informality as to how the meeting is conducted and debate is handled is a reasonable and common approach as long as it does not interfere with the independent and thorough debate of the Council, I would respectfully submit that informality in the voting process cannot be tolerated. Given your findings, even though debate has closed and the voting has begun, if the mayor does not like the outcome of a vote, she can request a roll call vote and then attempt to change the vote with her own commentary. This obviously would give the mayor's voice greater influence on the vote, which is an untenable outcome which completely undermines the legislative process. Just as the election process is sacred to our democracy, so too is the voting process by members of legislative bodies. If the voting process has no formality, the entire integrity of the Council is brought into question, which can undermine the legitimacy of ordinances which govern the citizens of Gallatin. Indeed, Councilman Jouvence took the time to

¹ It is also indicated in the report that because Gallatin law provides that the validity of an ordinance is not affected by the failure to follow Robert's Rules, even assuming the mayor failed to follow Robert's Rules, her actions were appropriate. However, Councilman Jouvence is not questioning the validity of an ordinance; he is questioning the mayor's actions of interfering with the voting process. Further, the premise of your finding is necessarily that because strict adherence to Robert's Rules is not required then abandonment of Robert's Rules is allowed. Such a conclusion is not supported by Gallatin law which requires that Robert's Rules be used as guide in Council meetings. *See* Gallatin Code § 2-93.

make the Complaint because some of his constituents expressed concerns and, thus, he seeks to ensure that, in the future, the integrity of the voting process is maintained.

2. The Mayor Cannot Interfere with the Legislative Process.

This is a stunningly erroneous finding which is in direct contradiction with the doctrine of the separation of powers.² This finding, however, seems to be based on your misinterpretation of Chancellor Oliver's recent ruling in the matter of *Jouvence v. Brown, et al.*, Sumner County Chancery Court, Case No. 25-CV-263. Initially, it should be noted that the matter before the Court was regarding the mayor preventing the use of visual aids during the debate in which the mayor participates, not interfering with the voting process in which the mayor, as matter of routine, does not participate. Further, when reading the context of the Court's ruling, it is evident that the Court did not find that the mayor cannot interfere with the legislative process. The Court found as follows:

The Mayor is legally charged with presiding over City Council meetings, and has the enumerated right to take action required by the duties of her office. The Council, of which the Mayor is member, is charged with the legislative authority of the City, and as such, was the appropriate body to submit this dispute over informal practices.

In other words, the mayor only has enumerated duties as set forth in the law and the Council should handle "informal practices" during debate internally. The Court's acknowledgement that the mayor is the presiding officer of the Council is nothing more than an accurate recitation of the law. However, nothing in the Court's ruling even suggests that the legislative function is not within the exclusive purview of the Council as such is not supported by the law. The City Charter is eminently clear that legislative branch of Gallatin is the Council. "[T]he legislative and other powers, except as otherwise provided by this charter, are hereby delegated to and vested in the City Council . . ." Charter, Art. III, Sec. 6. Additionally, the Council "shall serve as the legislative body of the City of Gallatin". See Charter, Art. II, Sec. 2-27. Notably, the City Charter states that the "City Council . . . shall be composed of seven (7) aldermen.", which does not include the mayor. See Charter Art. III, Sec. 1. Finally, it is undisputed that the mayor does not have a vote unless there is a tie, see Charter, Art. V, Sec. 1, which, by the design of an odd number of aldermen, is a very rare occurrence.

Given the above, the Court's acknowledgement that the mayor does preside over the City Council cannot negate the clear directive of the City Charter that the legislative body is made up of seven (7) aldermen, who vote on resolutions and ordinances. This is no different than the structure of our federal government. The vice president presides over the U.S. Senate and has a vote if there is a tie, see U.S. Constitution, Article 1, Sec. 3, however, there is no indication in the law that the concept of separation of powers does not exist at the federal level. To the contrary; it is an integral and vital part of the structure of our federal government, as well as the essential to the protection of our fundamental rights. In the words of Supreme Court Justice Antonin Scalia:

² The report reads, ". . . [T]he Chancellor for Sumner County specifically ruled that the Mayor is part of the Council, the legislative body. In that presiding capacity, the Mayor cannot possibly 'interfere' with the legislative body of which she is herself an active and integral part." p. 4.

But it is a mistake to think that the Bill of Rights is the defining, or even the most important, feature of American democracy. Virtually all the countries of the world today have bills of rights. You would not feel your freedom secure in most of them . . . They are what the Framers of our Constitution called “parchment guarantees,” because the real constitutions of those countries—the provisions that establish the institutions of government—do not prevent the centralization of power in one man or one party, thus enabling the guarantees to be ignored. Structure is everything. The constitutional structure of the United States has two main features: (1) separation and equilibration of powers and (2) federalism. Each functions to safeguard individual liberty in isolation, but they provide even greater protection working together.

83 NOTRE DAME L. REV. 1417, 1417 (2008). The importance of the separation of powers has been recognized by the Tennessee Courts. The Tennessee Court of Appeals held:

Our democracy is based on a constitutional form of government. . . .It has been declared that the division of governmental powers into executive, legislative, and judicial represents probably the most important principle of government declaring and guaranteeing the liberties of the people, and that it is a matter of fundamental necessity, and is essential to the maintenance of a republican form of government.”

Anderson Cnty. Quarterly Court v. Judges of 28th Judicial Circuit, 579 S.W.2d 875, 877 (Tenn. Ct. App. 1978)(citations omitted)(emphases added). Further, there is no question that the doctrine of separation of powers is essential at the municipal level of government. The Tennessee Supreme Court has held: “. . . [T]he division of powers of the Constitution is maintained to some extent at the municipal level, although the executive and legislative branches are more closely bonded for the sake of efficiency; however, the fundamental principles served by the separation of powers are no less operative.” See *Summers v. Thompson*, 764 S.W.2d 182, 196 (Tenn. 1988)(emphasis added). To find that the mayor cannot interfere with the legislative process because she presides over the Council meeting is to completely ignore the City Charter and the fundamental concept of the separation of powers.

3. The Initial Vote on the Motion did not Pass.

Your point in this regard is well taken; however, it is immaterial to the analysis of whether Mayor Brown violated the law. Upon reviewing the video again and the applicable law, you are both factually and legally correct. Councilman Fann did not vote in the initial voice vote, but did vote against the Motion in the roll call vote. Further, the City Charter is clear that an “affirmative vote of a majority of the . . .Council” is required. See Charter Art. III, Sec. 15. However, despite this conclusion, your analysis misses the point that Mayor Brown *believed* that the Motion passed or, at minimum, she had concerns that it had passed. This conclusion is easily reached as it is an undisputed fact that Mayor Brown spoke against the vote in her comments between the voice vote and the roll call vote and allowed EDA Director Rosemary Bates to do so, as well. If Mayor Brown believed that the vote did not pass, there would be no need for her to address the legalities of the Motion as, logically, if the Motion failed, the legality of Motion is moot. It is clear Mayor Brown erroneously believed or had concerns that the vote had passed and because she was afraid a referendum would interfere with the Phoenix Project, of which she is an unabashed supporter, she moved for a roll call vote to afford herself opportunity to affect the outcome of the vote. Therefore, while you are correct the vote did not initially pass, it has no

bearing on the question of whether Mayor Brown's actions were unlawful as she interrupted the vote in violation of Robert's Rules to ensure the Motion did not pass.

4. The Motion for a Referendum was in Violation of the Law.

While we generally agree with your analysis that referendums are only allowed in limited circumstances under the law, your report accurately states, albeit in a footnote, that "some general obligation bonds can in some circumstances be submitted to a referendum". Notably, the city attorney has not provided an opinion as to whether Councilman's Jouvence Motion was in violation of the law and she certainly did not provide this opinion during the meeting at issue. However, even assuming that the Motion was not supported by the law, this conclusion is not germane to the issue of whether Mayor Brown's intentional acts were illegal. Mayor Brown's concerns regarding the legality of the Motion should have been brought up before or during the debate, which she failed to do.³ The mayor only addressed the legality of the issue when she was concerned the Motion had passed. There is no support in the law, or respectfully, in logic in the implicit finding that because the Motion was illegal, the mayor's actions thereafter were legal. Proverbially, two wrongs, do not make a right. If the Mayor genuinely believed the Motion was unlawful, she should have raised the issue before the vote or not allowed the Motion to move forward. Instead, it is apparent from her comments that she was not certain of her legal position (the city attorney did not confirm her position), and, thus, she sought to ensure the Motion did not pass by speculating that a referendum was not legal. Therefore, whether the Motion was legal is not dispositive of whether the mayor's actions were legal.

CONCLUSION

The doctrine of the separation of powers is not merely an abstract concept, it is inextricably woven into the foundation of our liberties as so noted by Justice Scalia, the Tennessee Supreme Court and the Tennessee Court of Appeals. Thus, the doctrine of the separation of powers is more important than the First Amendment, Second Amendment, etc.. Why? Because as Justice Scalia explained, the separation of powers prevents "the centralization of power in one man or one party". Or one woman. Thus, the separation of powers, even at the municipal level, must be jealously guarded. This is precisely why Councilman Jouvence brought his Complaint. To allow the mayor to interfere with the voting process and attempt to affect the outcome of the vote is to cede to the mayor legislative authority. This is in direct contravention of the City Charter.

It is important to understand that it is not our position that the mayor cannot participate in the debate or preside over the meetings as this is the precise design of the City Charter as noted herein and in my previous letter. It is our position that she unlawfully interfered with the voting process, which is exclusively a function of the legislative body, to wit: the Council. To state it another way, under the design of the City Charter, the mayor can influence the outcome of the vote during the debate with her own commentary; what she cannot do, under Robert's Rules, is interrupt the voting process if she does not like the outcome of a vote. This is a blatant and damaging violation of the separation of powers. The mayor took an oath to "support . . . the charter and the ordinances of the city", *see* Charter, Article III, Section 16, and she intentionally

³ See RONR (12th Ed.) 4:16, "In principle, the chair must state the question on a motion immediately after it has been made and seconded, unless he is obliged to rule that the motion is not in order . . ."; and 10:26, "No main motion is in order that conflicts with the corporate charter, constitution, or bylaws . . .".

violated both as demonstrated herein. Thus, respectfully, Councilman Jouvence's Complaint does have merit and a finding should have been made that Mayor Brown's actions were unlawful.

Thank you for your time and consideration.

Sincerely,

/s/ Kirk L. Clements

KIRK L. CLEMENTS

Cc: Client
Susan High-McAuley, Esq. (via email)