

No. _____

**In the
Supreme Court of the United States**

**CITY OF CHATTANOOGA,
TENNESSEE, CITY COUNCIL,**

Petitioner,

v.

RAMA, INC., D/B/A DISCOUNT LIQUOR,

Respondent.

**On Petition for a Writ of Certiorari to the
Tennessee Court of Appeals at Knoxville**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the action of the Tennessee Court of Appeals ordering a legislative body performing an administrative function violated separation of powers when it directed the City Council to approve the issuance of an alcohol license for this retail liquor store contrary to the Separation of Powers Clause of the United States Constitution?

LIST OF PROCEEDINGS

Tennessee Supreme Court

No. E2022-01506-COA-R3-CV

Rama, Inc. dba Discount Liquor v. City of Chattanooga,
Tennessee, City Council

Petition for Review Denied: March 6, 2024

Court of Appeals of Tennessee at Knoxville

No. E2022-01506-COA-R3-CV

Rama, Inc. dba Discount Liquor v. City of Chattanooga,
Tennessee, City Council

Opinion: October 6, 2023

Chancery Court for the Eleventh Circuit Judicial
District of Tennessee

No. 22-0146

Rama, Inc. dba Discount Liquor v. City of Chattanooga,
Tennessee, City Council

Final Order: September 26, 2022

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PROCEEDINGS.....	ii
TABLE OF AUTHORITIES	v
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	3
STATEMENT OF THE CASE.....	3
STATEMENT OF THE FACTS	6
REASONS FOR GRANTING THE PETITION	9
I. WHETHER A COURT ORDERING A LEGISLATIVE BODY PERFORMING AN ADMINISTRATIVE FUNCTION TO ISSUE A SPECIAL EXCEPTION PERMIT VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE UNITED STATES CONSTITUTION.....	10
CONCLUSION.....	17

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Order Denying Application for Permission to Appeal, Supreme Court of Tennessee (March 6, 2024).....	1a
Opinion Reversing and Directing Approval of License, Court of Appeals of Tennessee (October 6, 2023)	2a
Order Denying Petition for Writ of Certiorari, Chancery Court for the Eleventh Judicial District of Tennessee (September 26, 2022)....	19a

OTHER DOCUMENTS

Chattanooga City Council Denial of Rama, Inc. Permit, Council Meeting Minutes (January 18, 2022).....	33a
---	-----

TABLE OF AUTHORITIES

Page

CASES

<i>Brinkmann v. Town of Southold</i> , 96 F.4th 209 (2d Cir. 2024)	11, 12
<i>Haw. Hous. Auth. v. Midkiff</i> , 467 U.S. 229, 104 S. Ct. 2321 (1984)	11
<i>Keeton v. Gatlinburg</i> , 684 S.W. 2d 97 (Tenn. Ct. App. 1984)	15
<i>Kelo v. City of New London</i> , 545 U.S. 469, 125 S. Ct. 2655 (2005)	14
<i>Lingle v. Chevron U.S.A., Inc.</i> , 544 U.S. 528 (2005)	14
<i>Patchak v. Zinke</i> , 583 U.S. 244 (2018)	10
<i>Pearson v. Grand Blanc</i> , 961 F.2d 1211 (6th Cir. 1992)	11
<i>State ex rel. Howell v. Farris</i> , 562 S.W.3d 432 (Tenn. Ct. App. 2018)	15

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. XIV	11
U.S. Const. Art. I, § 1	3
U.S. Const. Art. II, § 1, Cl 1	3

TABLE OF AUTHORITIES – Continued

Page

STATUTES

28 U.S.C. § 1257(a)	2
Chattanooga City Code § 5-108.....	16
Chattanooga City Code § 5-126.....	13
Chattanooga City Code §§ 5-101 through 5-126.....	12
Chattanooga City Code § 38-185.....	6, 12
Tenn. Code Ann. § 13-7-201	14
Tenn. Code Ann. § 27-9-101	3
Tenn. Code Ann. § 57-3-208	12, 13
Tenn. Code Ann. § 57-3-212	6

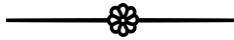
JUDICIAL RULES

Sup. Ct. R. 10	9
Sup. Ct. R. 13	2
Sup. Ct. R. 15	5



PETITION FOR A WRIT OF CERTIORARI

The City of Chattanooga respectfully requests that this Court issue a writ of certiorari to review the decision of the Tennessee Court of Appeals at Knoxville after the Tennessee Supreme Court has failed to grant permission to appeal to that Court due to the importance of the separation of powers issue in this municipal zoning and land use case involving the sale of alcohol.



OPINIONS BELOW

The memorandum opinion of the Hamilton County Chancery Court for case No. 22-0146, *Rama, Inc. d/b/a, Discount Liquor v. City of Chattanooga Tennessee City Council*, was filed on September 26, 2022 (App.19a), dismissing Petitioner's Writ of Certiorari with prejudice at the trial court level and affirmed the action of the Chattanooga City Council in the denial of a special exceptions liquor permit at this location. (App.33a). The Trial Court held there was a voluntary discontinuance of the liquor license by the previous owner because the prior owner's license expired in September of 2021 and the alcohol license was not voluntarily renewed by the deadline in November 2021.

On October 6, 2023, the Tennessee Court of Appeals in Case No. E2022-01506-COA-R3-CV *Rama, Inc d/b/a Discount Liquor v. City of Chattanooga, Tennessee, City Council* issued an opinion that reversed the decision of the trial court and it was remanded back to the trial court for entry of an order consistent with the opinion

of the Court of Appeals. (App.2a). The Court held that because *Rama* met all of the conditions and provisions set forth in the code, the City Council's denial of the application was illegal, arbitrary, and/or capricious. The Court of Appeals ordered the City Council to approve the issuance of an alcohol license for this retail liquor store.

The City of Chattanooga filed an application for permission to appeal to the Tennessee Supreme Court on December 5, 2023, asserting that the action of the Tennessee Court of Appeals violated separation of powers on the issue of directing the City Council to approve the issuance of an alcohol license for this retail liquor store. On March 6, 2024, the Tennessee Supreme Court denied the City's application for permission to appeal to the State Supreme Court. (App.1a).



JURISDICTION

The petitioner, The City of Chattanooga City Council, is filing a Petition for *Writ of Certiorari* to this Court seeking review of a final judgment in the Tennessee Court of Appeals after the denial of an application for a Writ of Certiorari to the Tennessee Supreme Court, which was entered on March 6, 2024. (App.1a). Supreme Court Rule 13 provides that such a petition may be filed to review judgment in any case, civil or criminal, entered by a United States Court of Appeals within ninety (90) days after entry of the judgment by the Tennessee Supreme Court. This Court has jurisdiction under 28 U.S.C. § 1257(a).



CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Respondent originally brought its claim in the Chancery Court of Hamilton County, Tennessee under Tenn. Code Annotated § 27-9-101, *et. seq.* which was denied by the Trial Court and reversed by the Tennessee Court of Appeals. Petitioner is appealing to the United States Supreme Court pursuant to the United States Constitution Art. I § 1; Art. II § 1 Cl 1 on behalf of the Chattanooga City Council.

Tenn. Code Annotated § 27-9-101

Anyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have the order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided by this chapter.

***See also* United States Constitution Art. I § 1, Art. II § 1. cl. 1**



STATEMENT OF THE CASE

The original Petition for a Writ of Certiorari was filed by Respondent, Rama Inc. on February 28, 2022, pursuant to Tenn. Code Annotated § 27-9-101 *et. seq.* which provides a right of review from any final order or judgment of any board or commission functioning under the laws of the state of Tennessee. The Writ was initiated against the City Council of the City of Chat-

tanooga for the denial of a special exception permit for the operation of a liquor store located within the City limits of Chattanooga. The Respondent asserted that the denial of the special exceptions permit for the liquor store by the Chattanooga City Council was illegal, arbitrary, and capricious and there was no evidence to justify the decision. The City filed a response to the Writ of Certiorari on March 31, 2022, which included the transcript of the proceedings before the City Council and denied that the City made any illegal, arbitrary or capricious decision. The City asserted that the Council's decision was supported by evidence in the record.

A Memorandum Opinion was issued by the Hamilton County Chancery Court on September 26, 2022, dismissing the Writ of Certiorari with prejudice. In the opinion, the trial court concluded that the City Council was performing an administrative function, rather than a legislative one, by denying the Special Exceptions Permit. The Court held that Rama was seeking its initial special exceptions permit to begin operating a liquor store and that the discontinuance of the prior operator at this location was voluntary. The Trial Court further held that the City did not exceed its jurisdiction nor did it act fraudulently or arbitrarily based on the record when it denied Rama the Special Exceptions permit.

Rama appealed the decision of the Trial court to the Tennessee Court of Appeals and on October 6, 2023, the Court of Appeals rendered an opinion "that the judgment of the Trial court is reversed and remanded for entry of an order that directs the City Council to approve Rama's Corporate Application for Certificate for Liquor License." On appeal, Rama raised two issues: first, whether the Chancery Court

erred in holding that the decision of the Chattanooga City Council to deny a Special Exceptions Permit to Rama was not arbitrary or capricious or the result of some ulterior motive, and/or that the Chattanooga City Council acted without material evidence to support its decision. The second issue was whether Rama had a vested interest in the Special Exceptions Permit based upon the City of Chattanooga approving the Special Exceptions Permit for a period of approximately forty (40) years.

The Tennessee Court of Appeals held that Rama met all the relevant conditions and provisions set forth in the Chattanooga City Code and that it was arbitrary for the City Council in considering the issuance of a Special Permit to decide that liquor stores were unsuitable for this location, when they have been previously allowed in the past. The Court of Appeals ordered the Chancery Court to enter an order directing the City Council to approve Rama's Corporate Application for Certificate for Liquor License.

The City Council next filed for permission to appeal to the Tennessee Supreme Court, and on March 6, 2024, the Court denied that application without further explanation. This Petition for *Writ of Certiorari* is filed with this Court on June 3, 2024, and is timely filed pursuant to Supreme Court Rule 15.



STATEMENT OF THE FACTS

Discount Liquors (“Rama”) is the name of a business located at 7703 Lee Highway in the City of Chattanooga. This property is zoned C2 – Convenience Commercial Zone by the Chattanooga City Council. Under this zoning designation, Chattanooga City Code Section 38-185 any change in ownership requires liquor stores to obtain a Special Exceptions Permit from the Chattanooga City Council that establishes that the liquor store is properly located from certain uses, that the applicant has no criminal background that would prohibit alcohol sales, and that the distance of the liquor store complies with the zoning distances required in the City Code at the time of the application.

Discount Liquors was a liquor store that previously operated in Chattanooga, Tennessee for a number of years before a change in ownership in 2018. During the majority of this time, Jai Shiva, Inc. previously owned the business and obtained a Special Exceptions Permit from the City Council to operate at that location. Jai Shiva Inc. was later purchased by Ms. Mittakumari Patel in 2018. Ms. Patel assumed the loans against the property and made a down payment of \$250,000 and entered a deed of trust of \$680,000 to this effect. At the time of assuming the new purchase loan in 2018, Ms. Patel did not obtain a liquor license. Instead, this business operated under the new name of Rama and continued to operate under Jai Shiva, Inc’s permit in violation of Tennessee state law for more than three years. *See* Tenn. Code Ann. § 57-3-212.

On November 8, 2021, the Tennessee Alcohol Beverage Commission revoked Discount Liquors' state alcohol license because the business had not renewed its liquor license. The revocation of the City liquor permit was also effective that same day. There was conflicting testimony at trial that Rama purchased the liquor store and the property two days later, on November 10, 2021. The trial court did not find Mr. Patel's testimony on this issue to be persuasive.

On December 1, 2021, Rama submitted its application for a Special Exceptions Permit to the City Council, almost one (1) month after the Tennessee Alcohol Beverage Commission previously revoked Discount Liquors' alcohol license. On January 18, 2022, after a presentation by Karen Rennich, Deputy Director of Planning for the City of Chattanooga and a discussion with Ms. Patel, representing Rama, Inc., the City Council unanimously voted to deny the permit to Rama. During the discussion about Rama's application, the City Council made it clear that it was attempting to "turn this area around."

The record establishes that the City Council has authorized the purchase of housing for low-and moderate-income residents at the former Airport Inn located at 7725 Lee Highway. The City Council's purchase, on October 26, 2021, of the hotel located at 7725 Lee Highway was born out of its desire to improve this area of Chattanooga and provide a safe environment for persons getting out of poverty. Council members discussed this matter in a public meeting and indicated that by making the former hotel location a supportive house for those struggling with housing insecurity, the City was demonstrating its intent to "turn this area around." Councilwoman Berz clearly

stated to a representative of Rama, Inc., during the Special Permit consideration as follows: "As you know, the City is turning that area around to meet some different purposes and there been a consortium meeting with the Silverdale Church, the other church. . . . Let me tell you I've been contacted by the motel owner facing your store to the left of you, plus people from other districts that are working hard to turn this area around."

Rama never operated Discount Liquors in this location, in part because it never received a Special Exceptions Permit for this location. Based upon these facts, the City has asserted that the City Council's denial was within its discretion and the Chancellor's dismissal of the Appellant's Writ of Certiorari was proper.



REASONS FOR GRANTING THE PETITION

This Court should grant the Petition based upon Supreme Court Rule 10, which sets forth considerations governing review on a *Writ of Certiorari*. Supreme Court Rule 10 specifically provides that a petition for *writ of certiorari* may be granted for compelling reasons and that the reasons given by the Tennessee Court of Appeals reversing the actions of the Trial Court and the City Council in the denial of this Special Exceptions Permit for a liquor store are neither controlling nor fully measuring the Court's discretion. The listed reasons for this Court to consider in granting this application for Writ of Certiorari include if the decision:

- (1) conflicts with the decision of another United States Court of Appeals;
- (2) decides an important federal question in a way that conflicts with the decision by a state court of last resort;
- (3) so far departs from the accepted and usual course of judicial proceedings to justify an exercise of this Court's supervisory power;
- (4) decides an important question of federal law previously undecided by the Court; or,
- (5) conflicts with relevant decisions of this Court.

There are at least two (2) reasons why this Writ of Certiorari applied for by the City of Chattanooga should be granted. First, the decision of the Tennessee Court of Appeals so far departs from the accepted and usual course of judicial proceedings to justify an

exercise of this Court's supervisory power. Second, the decision of the Tennessee Court of Appeals conflicts with relevant decisions of this Court.

I. WHETHER A COURT ORDERING A LEGISLATIVE BODY PERFORMING AN ADMINISTRATIVE FUNCTION TO ISSUE A SPECIAL EXCEPTION PERMIT VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE UNITED STATES CONSTITUTION.

One of the fundamental building blocks of our nation's government is the separation of powers doctrine. It is the first thing that many people learn about our nation's system of government—that there are three branches of government: the legislative branch, the executive branch, and the judiciary branch. This Court has stated: “To the legislative department has been committed the duty of making laws; to the executive, the duty of executing them; and to the judiciary the duty of interpreting and applying them in cases properly brought before the courts.” *Patchak v. Zinke*, 583 U.S. 244, 249 (2018).

The Tennessee Court of Appeals decision to reverse the trial court's affirmation of the Chattanooga City Council's decision to deny Rama the Special Exception Permit to operate a liquor store at this location was in error. The Court of Appeals failed to consider the lack of credibility of the witness, Mr. Mayuresh (Michael) Patel. More importantly, Mr. Patel admitted to violating Tennessee state law by operating under another entity's liquor license for over two (2) years before even attempting to obtain a license under Rama's name. The Trial Court was correct in its finding that Rama had notice and an opportunity to be heard by the City on its application and that the constitutional require-

ments of due process had been met when the City denied the Special Exceptions Permit under its Ordinance.

The Sixth Circuit Court of Appeals has stated “The doctrine that governmental deprivations of life, liberty or property are subject to limitations regardless of the adequacy of the procedures employed has come to be known as substantive due process.” *Pearson v. Grand Blanc*, 961 F.2d 1211, 1216 (6th Cir. 1992). The Court goes on to further state that “[t]he right not to be subject to arbitrary or capricious action by a state either by legislative or administrative action is commonly referred to as a substantive due process right.” *Id.* at 1217. Additionally, the Fourteenth Amendment substantive due process requires that both legislative and administrative actions that deprive the citizen of ‘life liberty or property must have some rational basis.” *Id.* at 1223.

The Second Circuit Court of Appeals has stated:

Subject to specific constitutional limitations, when the legislature has decided that something is a public use, the public interest has been declared in terms well-nigh conclusive. Accordingly, In such cases, it is the legislature, not the judiciary is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the district of Columbia . . . or the States legislating local affairs . . . This principle admits of no exception merely because the power of eminent domain is involved.

Brinkmann v. Town of Southold, 96 F.4th 209 (2d Cir. 2024) (Citing *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 104 S. Ct. 2321 (1984)). Although *Brinkmann* is an

eminent domain case, the same principle applies in the case at bar. The City Council is the legislative arm of City government and it has implemented ordinances governing the sale of liquor for the public welfare. The record shows that the City also previously purchased a property near the location sought by Rama to alleviate a public concern, which was supportive housing for the housing insecure. In addition, the Chattanooga City Code section 38-185 states:

The following uses may be permitted as special exceptions by the City Council a authorized by Tennessee Code Annotated 57-3-208 and Chattanooga City Code, part II Sections 5-101 through 5-126:

- (a) Liquor Stores . . .
- (b) Wineries, including vineyards, processing, bottling and sales facilities; and
- (c) Alcohol Distillery, Small to the C-2 Convenience Commercial Zone.

The language of the ordinance is clear with the words “may be permitted . . .” -that the City Council has the discretion to grant or deny a special exceptions permit. The Tennessee Court of Appeals erred in holding that a special exceptions permit is a misnomer and requiring the legislative body to issue a liquor store permit for this location which had already been revoked by the Tennessee Alcohol Beverage Commission at the time this permit was considered by the City Council. Essentially, the case law relied upon by the Court of Appeals places an extraordinary burden upon municipalities to prove that a particular establishment or business may prove harmful to a neighborhood or

district located within the boundaries of that municipality.

The City is authorized by state statute, Tenn. Code Ann. § 57-3-208 to limit the number of liquor stores within the municipality. This statute also requires as a condition precedent to the issuance of a liquor license that a certificate signed by the county mayor, chair of the county commission, city council, or legislative body of the municipality the potential liquor store is located in certifying that the applicant has not been convicted of a felony within the last ten years, that the applicant has secured a location that “complies with all restrictions of any local law, ordinance, or resolution, duly adopted by the local jurisdiction as to the location of the business,” and that the applicant has complied with the local laws, ordinances, or resolutions regulating the number of retail licenses allowed in the jurisdiction. *See* Tenn. Code Ann. § 57-3-208. Pursuant to the Tennessee state statute, the City limited the number of liquor stores allowed in City Code Section 5-126.

In its opinion, while citing another case, the Tennessee Court of Appeals stated: “Metro Council made its decision solely upon the concerns of the residents, instead of upon the factors and criteria set forth in the city code, as it was required to do.” *Rama, Inc. v. City of Chattanooga*, No. E2022-01506-COA-R3-CV, 2023 Tenn. App. LEXIS 417 (Ct. App. Oct. 6, 2023). This line of reasoning is in direct contradiction with case law concerning both substantive due process and separation of powers. As previously referenced herein, the Tennessee Court of Appeals held that since Rama complied with all of the relevant conditions and provisions of the City Code, it was entitled to have its application approved. Owning a liquor store within

the City limits is a privilege, not a right under existing Tennessee law. Additionally, at the hearing on Rama's Writ of Certiorari, it was discovered that this liquor store was operating illegally for over two (2) years prior to their application for the Special Exceptions Permit from the City Council.

This Court also stated, "the legislature, not the judiciary, is the main guardian of the public needs to be served." *Kelo v. City of New London*, 545 U.S. 469, 499, 125 S. Ct. 2655 (2005) (citing *Lingle v. Chevron U.S.A., Inc.* 544 U.S. 528 (2005)). This Court further set forth:

[b]ecause courts are ill equipped to evaluate the efficacy of proposed legislative initiatives, we rejected as unworkable the idea of courts' deciding on what is and is not a governmental function and invalidating legislation on the basis of their view on that question at the moment of decision, a practice which has proved impracticable in other fields.

Id.

According to Tennessee state law, municipalities are granted the power to enact zoning ordinances for the "purpose of promoting the public health, safety, morals, convenience, order, prosperity, and general welfare" of the residents of the municipality. Tenn. Code Ann. § 13-7-201. Additionally, the Tennessee Court of Appeals has held,

[w]here a municipal governing body acts under its delegated police powers in zoning matters, judicial review of such action is restricted by constitutional limitations. The reviewing

court's inquiry is limited as to whether any rational basis exists for the legislative action and, if the issue is fairly debatable, it must be permitted to stand as valid legislation.

Keeton v. Gatlinburg, 684 S.W. 2d 97, 98 (Tenn. Ct. App. 1984).

The City Council acknowledged that the Trial Court and the Court of Appeals had the authority to review the decision of the City Council in a limited scope. The Tennessee Court of Appeals has previously held that “when a board is performing an administrative or quasi-judicial function, review under the common law writ of certiorari is appropriate because de novo review under the statutory writ of certiorari would violate the doctrine of separation of powers.” *State ex rel. Howell v. Farris*, 562 S.W.3d 432,443 (Tenn. Ct. App. 2018) (emphasis supplied).

However, that is not what occurred in this case. The Tennessee Court of Appeals decision to reverse the trial court's affirmation of the Chattanooga City Council's decision to deny Rama the Special Exception Permit was in error. The Court of Appeals failed to consider the lack of credibility of the witness, Mr. Mayuresh (Michael) Patel. More importantly, Mr. Patel admitted to violating Tennessee state law by operating under another entity's liquor license for over two (2) years before even attempting to obtain a license under Rama's name. The Trial Court was correct in its finding that Rama had notice and an opportunity to be heard by the City on its application and that the constitutional requirements of due process had been met.

The Tennessee Court of Appeals not only reversed the decision of the trial court but ordered the trial court to issue an order directing the City Council to approve Rama's application for a liquor license. That ruling was an error of law that violates separation of powers by directing action by the legislative or administrative branch which has an obligation to protect the health and safety of the citizens of this community. The ruling of the Court of Appeals fails to recognize that the trial court is in the best position to determine the credibility of witnesses and weigh the evidence. Additionally, the City Council was in the best position to make decisions regarding the best interests of the City of Chattanooga when it denied the Special Exceptions Liquor permit application by Rama due to changes in the community near this location within five hundred feet which may be considered under zoning provisions in Chattanooga City Code 5-108.



CONCLUSION

The petitioner has identified several compelling reasons for this Court to grant the Petition in this case. For these reasons, the City of Chattanooga and the Chattanooga City Council urge this Court that the Petition for *Writ of Certiorari* should be granted.

Respectfully submitted,

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