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**IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY, TENNESSEE**

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE,	)	
Plaintiff,	)	
v.	)	**Case No. 23-0336-I**
BILL LEE, in his official capacity as Governor for the State of Tennessee, TRE HARGETT, in his official capacity as Secretary of State for the State of Tennessee, and MARK GOINS, in his official capacity as the Coordinator of Elections for the State of Tennessee,	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION

Plaintiff, the Metropolitan Government of Nashville and Davidson County ("Metro Nashville"), moves this Honorable Court to issue a temporary injunction pursuant to Tenn. R. Civ. P. 65, enjoining Defendants Governor Bill Lee, Secretary of State Tre Hargett, and Coordinator of Elections Mark Goins ("State Defendants") from implementing House Bill 48 / Senate Bill 87 (hereinafter, the "Metro Council Reduction Act" or "Act")[1] pending the Court's decision on the merits of Metro Nashville's declaratory judgment action.

Tennesseans voted in 1953 and 1978 to amend multiple provisions of their state Constitution to protect local sovereignty and empower citizens to determine the form of their

[1] The Governor signed the Act into law on the day it was passed, but it has not been assigned a Public Chapter number.

local governments. The Metro Council Reduction Act violates both the letter and the spirit of those amendments.

Metro Nashville was created through one of those amendments, the ninth paragraph of Article XI, Section 9 of the Tennessee Constitution, the "Consolidation Clause." Pursuant to that clause, the General Assembly passed enabling legislation, which instructed counties and cities to draft a charter identifying the structure of their new consolidated government, including the size of their legislative body, for their citizens to ratify or reject. Nashville and Davidson County followed those instructions to the letter, setting the council size at forty in the metropolitan charter that was ratified by Nashville and Davidson County voters in 1962.

Stated simply, the General Assembly and Metro Nashville entered into a constitutional compact: The Constitution authorized the merger of Nashville and Davidson County, the General Assembly outlined the general terms for that merger, and local residents accepted those terms and adopted a charter accordingly. Now, sixty-one years later, the Tennessee General Assembly has reneged on that constitutional compact—by cutting the size of the Metro Nashville Council in half without local voter approval. And if Metro Nashville fails to implement this reduction at the lightning pace arbitrarily required by the General Assembly, current Councilmembers' terms will be extended for an additional year, exceeding the Constitution's four-year cap on such terms.

If the General Assembly can change the size of the Metro Council after-the-fact, then the constitutional requirement for local approval of a consolidated government is meaningless, and the General Assembly will have a blank check to rewrite the rules for other consolidated and home rule cities and counties. This Court must therefore issue an injunction to prevent this unconstitutional legislative overreach.

All four factors decidedly weigh in favor of an injunction here. First, Metro Nashville is likely to succeed on the merits of its constitutional claims. Metro Nashville is a consolidated government under Article XI, Section 9 of the Tennessee Constitution (the "Home Rule Amendment") and not simply an instrumentality of the State. The Metro Council Reduction Act violates the Home Rule Amendment (1) by dismantling Metro Nashville's 40-member Council as established in its original charter and adopted by voters as part of the city/county consolidation process, and (2) by imposing requirements that are local in effect on Metro Nashville without local approval and that constitute "ripper" provisions. The Act also violates Article VII, Section 1 of the Tennessee Constitution (1) by setting a term of office for metropolitan council members greater than four years in one instance and fewer than four years in another, and (2) by ignoring the second paragraph of Article VII, Section 1, which exempts consolidated governments from the 25-member limit on county legislative bodies, thus preempting any legislative effort to apply a similar or lower cap on Metro Nashville's legislative body size.

The balance-of-harm factors also weigh in favor of an injunction. To say that the Metro Council Reduction Act weighs against the public interest is an understatement. Enacted less than five months before the next Metro Nashville Council election, the Act will sow political chaos, create significant voter confusion, dilute voter representation, and jeopardize running the State's largest economic engine. It undermines the will of Metro Nashville voters as reflected both in the original 1962 Metro Nashville Charter and successive elections. And it does all of this in a rushed and haphazard fashion without any purported public policy goal.

Finally, the State will suffer no harm from an injunction. Allowing the metropolitan council of a successful city to continue as it has for sixty years is the antithesis of harm.

Despite the General Assembly's recent claims that the Metro Council is inefficient and that the city's finances are in disarray, Metro Nashville is currently generating more revenue for the State of Tennessee than perhaps in its entire history, enjoys a bond rating of AA+, and has the lowest property tax rate of any major city in the state. Even if the Act were ultimately found constitutional, the State will suffer no harm in waiting to implement it.

All four factors favor the grant of a temporary injunction to halt implementation of this law, which serves no public function, violates the Constitution, and threatens the local election process and an upcoming election. Accordingly, and as discussed in more detail to follow, the Court should enjoin implementation of the Metro Council Reduction Act.

FACTS

I. NASHVILLE AND DAVIDSON COUNTY VOTED TO CONSOLIDATE IN 1962 AND ADOPTED A 40-MEMBER LEGISLATIVE BODY.

Metro Nashville came into existence as the result of several public and private acts that were adopted pursuant to the authority provided in the Consolidation Clause of the Home Rule Amendment. Chapter 120 of the Public Acts of 1957 (the "1957 Public Act") authorized the consolidation of governmental and corporate functions of municipalities and counties with a population greater than 200,000. *Id.* at 423. In 1961, the General Assembly passed Public Acts Chapter 199, which amended the 1957 enabling legislation and authorized charter commissions to be created through private act. The Metro Nashville Charter Commission was created the same year through Chapter 408 of the Private Acts of 1961. 1961 Priv. Acts, ch. 408 at 1487–88. That private act declared that "the [Metro Nashville] charter commission created in Section 1 of th[e] Act shall be vested with all the powers and perform all the duties set forth in Chapter 37, Title 6, of the Tennessee Code Annotated." *Id.* at 1488.

On June 28, 1962, a referendum election was held at which voters exercised their constitutional right to ratify or reject a proposed charter to consolidate Nashville and Davidson County. (1962 Sample Ballot, attached to Jeff Roberts Decl. as Exhibit 1 (Roberts Decl. is Exhibit A to Notice of Filing Decls.); 1962 Metro Nashville Charter, attached to Mot. as Exhibit A.) This was not Metro Nashville's first attempt at consolidation. The first attempt, which failed in 1958, had proposed a charter setting the Metropolitan Council's size at twenty-one members. (*See* discussion in *A Short History of the Creation of Metropolitan Government of Nashville & Davidson County*, written by Davidson County historian Carole Bucy, available at https://filetransfer.nashville.gov/Portals/0/SiteContent/Government/docs/MetroHistoryBucy.pdf and attached to Mot. as Exhibit B.) Metro Nashville's second proposed charter, which voters approved via the 1962 referendum election, increased the size of the Metropolitan Council to forty members, comprised of thirty-five district Councilmembers and five at-large Councilmembers. (1962 Metro Nashville Charter §§ 1.01, 3.01.)

In 2015, an effort to reduce the size of Metro Nashville's Council failed. In an August 6 election that year, voters rejected a proposed Charter amendment that would have reduced the number of Metro Nashville Councilmembers from forty to twenty-seven. (2015 Sample Ballot at 6, attached to Roberts Decl. as Exhibit 2; Aug. 6, 2015, Election Returns, https://www.nashville.gov/departments/elections/election-returns-and-statistics/election-returns/150806.)

II. THE METRO COUNCIL REDUCTION ACT CAPS METRO NASHVILLE'S COUNCIL AT TWENTY MEMBERS.

On March 6, 2023, the Metro Council Reduction Act passed by a vote of 72 ayes and 25 nays in the Tennessee General Assembly's House of Representatives. The Act passed in

the form filed as HB0048 as amended by House Amendment No. 2.[2] On March 9, 2023, the Senate substituted the companion House Bill in place of SB0087 and passed it by a vote of 23 ayes and 7 nays. Governor Bill Lee signed the bill into law the same day. (Metro Council Reduction Act, attached to Mot. as Exhibit C.)

The Metro Council Reduction Act amends Title 7, Chapter 1, of the Tennessee Code Annotated, which the Tennessee Supreme Court has referred to as the "Metropolitan Government Charter Act." *See State ex rel. Metro. Gov't of Nashville & Davidson Cty. v. Spicewood Creek Watershed Dist.*, 848 S.W.2d 60, 61 (Tenn. 1993). Chapters 1 through 3 of Title 7 outline the process for cities and counties electing to consolidate into metropolitan governments—a process authorized by the Consolidation Clause of the Home Rule Amendment.

Subsection 1(a) of the Metro Council Reduction Act sets a 20-member ceiling on the number of councilmembers that a metropolitan government may have, stating: "Notwithstanding a provision of a metropolitan government charter or § 7-2-108 to the contrary, the membership of a metropolitan council must not exceed twenty (20) voting members, as further provided in this section." Before the Act's passage, the Metropolitan Government Charter Act set no floor or ceiling on the number of metropolitan council members that could serve on a metropolitan government's legislative body. Subsection 1(b) of the Metro Council Reduction Act outlines the mandatory process for any metropolitan government that must reduce the size of its council to comply with subsection 1(a).

Under the Metro Council Reduction Act, if a metropolitan government has a council greater than twenty members (i.e., Metro Nashville), its council must approve new council district boundaries by resolution on or before May 1, 2023. If the council fails to effectuate

[2] House Am. No. 2, available at https://www.capitol.tn.gov/Bills/113/Amend/HA0051.pdf.

the Act "prior to the qualifying date for the next general metropolitan election after the effective date of this act as set by the county election commission, then the terms of the current council members are extended for one (1) year and the county election commission shall set a special general metropolitan election to be held the first Thursday in August 2024 to elect the councilmembers for a term of three (3) years with the terms to begin September 1, 2024." Metro Council Reduction Act § 1(b)(1)(A).

Despite the House sponsor's protestations in committee hearings[3] that the Metro Council Reduction Act *may* affect local governments other than Metro Nashville, the legislative record plainly establishes otherwise. The Senate sponsor acknowledged on February 21 "that the only county elections affected by this particular piece of legislation would be Davidson County." *Hearing on S.B. 87 Before the S. State & Local Gov. Comm.*, 2023 Leg., 113th Gen. Assembly (Feb. 21, 2023) (statement of Sen. Bo Watson, R-Hixson).[4] The Corrected Fiscal Note concedes that the Act affects only Metro Nashville. (Corrected Fiscal Note at 2 ("The proposed legislation therefore only applies to Metro, as its governing body exceeds the 20-member cap."), attached to Mot. as Exhibit D.)

Once the bill moved to the full House and Senate floors, legislators dropped all pretense that the reduction requirement might have statewide effect. *See Hearing on S.B. 87 Before the Full Senate*, 2023 Leg., 113th Gen. Assembly (Mar. 9, 2023) (statement of Sen. Watson) (stating that the "opposition" had been heard and "closing with . . . a quote from a member of *the current* Council," meaning the Metro Nashville Council (emphasis added)); *id.*

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[3] *E.g.*, *Hearing on H.B. 48 Before the H. Local Gov't Comm.*, 2023 Leg., 113th Gen. Assembly (Feb. 7, 2023) (statement of Rep. William Lamberth) ("Nashville is the only one I've heard from, so at this point I'm going to assume they're the only one that's going to have to shrink down to twenty, but there may be others for all I know."), available at https://tnga.granicus.com/player/clip/27431?view_id=734&redirect=true&h=14cd683ac0a451084f9ed9f4b5f7c779, timestamp 36:06–16.

[4] Sen. Watson's comments are available at https://tnga.granicus.com/player/clip/27616?view_id=760&redirect=true&h=0413047d8e6c32c7ff1ba6e5188e9ed8, timestamp 31:31–39.

(statement of Sen. Frank Niceley, R-Strawberry Plains) (declaring, "we're not punishing *this Mayor* at all," meaning the Metro Nashville Mayor, and predicting that "if we *do this to Nashville*, there will be no more Republican Metro Council members" (emphasis added)).[5]

III. THE METRO COUNCIL REDUCTION ACT FAILS TO RECOGNIZE THAT THE REDISTRICTING PROCESS REQUIRES CAREFUL PLANNING, INPUT, DELIBERATION, AND EXECUTION.

Under the Metro Council Reduction Act, there are only two paths forward. The first is to ram newly-created districts through Metro Nashville's Council without community input or meaningful deliberation. The second is to create a rump Council with expired terms. Both outcomes will impose needless chaos on Metro Nashville agencies, candidates for Metro Council positions, and Metro Nashville voters.

A. THE METRO COUNCIL REDUCTION ACT THWARTS CANDIDATES' EFFORTS AND DIMINISHES OPPORTUNITY.

To begin, a district's geographic boundaries dictate who is eligible to run. A candidate for district Councilmember must be a resident of the district for which he or she is running for six months preceding the commencement of his or her term. (Tricia Herzfeld Decl. ¶ 10, attached to Notice of Filing Decls. as Exhibit B; Current Metropolitan Government Charter § 3.02, attached to Mot. as Exhibit E.) The next Councilmember election is scheduled for August 3, 3023, and, in the absence of a run-off, terms will begin September 1, 2023. (Herzfeld Decl. ¶ 11.)

Fundraising for these positions is well underway, based on the current district boundary lines. Almost forty potential candidates for district Councilmember have filed Appointment of Treasurer forms with the Election Commission. (*Id.* ¶ 12.) As of March 10,

[5] The full discussion of the Metro Council Reduction Act on the Senate floor is available at https://tnga.granicus.com/player/clip/27897?view_id=704&redirect=true&h=de7ff7e08f979c96cab0f98657867a66. Sen. Watson's closing comments begin at 1:03:10. Sen. Niceley's comments begin at 1:00:11.

2023, another 11 potential candidates for at-large Councilmember have filed appointment of treasurer forms. (*Id.* ¶ 14.) Any reduction in Council size, including the reduction or elimination of at-large Councilmembers, and changes to district boundaries will impact these candidates, in no small part because their current districts will likely cease to exist. Furthermore, the geographic size of districts will necessarily increase, forcing candidates to campaign to a greater number of voters over a greater area in a shorter period. (Jim Shulman Decl. ¶ 14, attached to Notice of Filing Decls. as Exhibit C.) Four Metro Nashville Council candidates filed Appointment of Treasurer forms with the Davidson County Election Commission in 2021. (Herzfeld Decl. ¶ 15.) Another twenty candidates filed appointment forms in 2022. (*Id.*) Based on year-end campaign finance disclosures, Council candidates reported over $522,000 in campaign receipts from July 1, 2022, to January 15, 2023, and had campaign balances of approximately $512,000 as of January 15, 2023. (*Id.*)

In addition, the qualifying deadline for the August 3, 2023, election is noon on May 18, 2023, just over two months away. (*Id.* ¶ 7.) The Governor signed the Metro Council Reduction Act eleven days before the Davidson County Election Commission had intended to make Nominating Petitions available to potential candidates. (*Id.* ¶ 8.) The Election Commission's practice is to allow the maximum time to gather the required twenty-five signatures. This gives potential candidates every opportunity to appear on the ballot, which in turn benefits the public's interest in having multiple candidates to choose from. (*Id.* ¶¶ 5, 6, 9.) The Act thwarts that interest because the new district boundary lines must be decided before Nominating Petitions for the new districts can be made available.

B. THE ACT UNNECESSARILY RUSHES THE REDISTRICTING PROCESS.

The "reduction" contemplated in subsection 1(a) "takes effect as of the next general metropolitan election after the effective date of th[e] act." Metro Council Reduction Act § 1(b)(1)(A). To implement that reduction, the Act instructs the Metro Nashville Planning

Commission to "establish district boundaries using the most recent federal census" "[w]ithin thirty (30) days of the effective date of th[e] act." *Id.* § 1(b)(1)(B). The existing metropolitan council then "shall approve the new council district boundaries by resolution on or before May 1, 2023." *Id.* § 1(b)(1)(C).[6] Though the Metro Council Reduction Act does not instruct the current Metro Nashville Council to set the new number of districts, that is an obvious prerequisite to the Planning Commission proposing new boundaries. (Shulman Decl. ¶ 7; Lucy Kempf Decl. ¶ 14, attached to Notice of Filing Decls. as Exhibit D.) The Metro Council Reduction Act sets only a ceiling on the number of Council seats, leaving the current Council to decide how many districts to have and whether any seats will be at-large. Those crucial decisions necessarily must be made and approved by a majority of the Metro Nashville Councilmembers in far fewer than thirty days from the Act's effective date, which is the Planning Commission's deadline for proposing new districts.

Importantly, however, the decision of how many district and at-large Council seats Metro Nashville should have is a complex civic question implicating voting rights, neighborhood divisions, and political representation. Policymaking related to such issues should be conducted through thoughtful deliberation after receiving input from stakeholders. (Shulman Decl. ¶ 7; Kempf Decl. ¶ 14.)

Redistricting is not simply about drawing lines by pushing a button on a computer program. The process of redrawing boundaries for political offices requires a balancing of numerous interests. (Kempf Decl. ¶ 7.) Districts are drawn intentionally, based on population changes, to prevent substantial under-representation of parts of the county. (*Id.* ¶¶ 3–4.)

[6] The Act is uncertain as to the deadline for Metro Nashville to enact a Council-reduction plan, due to two contradictory provisions. Subsection 1(b)(1)(A) extends current Councilmembers' terms by one year if the Council fails to take the necessary legislative action before the qualifying date for the August 2023 election, which falls on May 18. In contrast, subsection 1(b)(1)(C) requires the Metro Nashville Council to approve new district boundaries by May 1.

When developing districts, the Planning Department must consider and balance the following requirements: roughly equal population as required by the United States Constitution; geographic factors; minority vote dilution under Section 2 of the Voting Rights Act; keeping neighborhoods with shared interests together; and public review and input. (Kempf Decl. ¶ 7.) Simply stated, the Metro Nashville Council, the Planning Department, the Planning Commission, and the Davidson County Election Commission must complete an extraordinary amount of work—critically important work—to comply with the Metro Council Reduction Act's redistricting deadlines. But because the Governor signed the bill on March 9, 2023, and the qualifying deadline for candidates is May 18, 2023, all of that work must be compressed into seventy days. This compressed timeline will negatively affect candidates, Metro Nashville employees and officials, and, most importantly, voters.

To illustrate, the most recent redistricting was based on 2020 United States Census data, and the process spanned from July 2021 to January 2022. (*Id.* ¶¶ 6, 8–13; BL2021-1052.)[7] Throughout this time, Councilmembers, community leaders, national organizations like the NAACP, and other constituents took an active role in the process by providing feedback on the Planning Department's various proposals. (Kempf Decl. ¶¶ 8–13.)

Metro Nashville's Planning Department released "Version A" of the proposed districts on October 15, 2021. (*Id.* ¶ 10.) The Planning Department included information about the number of residents, ethnicity, race, voting age population, geography, and compactness for each of the thirty-five districts in the draft map. Between October 18 and October 27, 2021, the Planning Department held four community meetings, hosted three days of in-person office hours, and held virtual appointments to solicit feedback on the initial plan.

[7] BL2021-1052 includes two substantial attachments which are the proposed maps and parcel numbers for the proposed districts. Due to their voluminous size, they are not included with the attached exhibit.

After considering the feedback, the Planning Department issued "Version B," which was released on November 5, 2021. (*Id.* ¶ 11.) A second round of community engagement followed. (*Id.*)

On December 3, 2021, the Planning Department proposed "Version C." (*Id.* ¶ 12.) To aid in education and transparency, the Planning Department developed a comprehensive website that allowed the public to compare the different versions. (*Id.*) The Planning Commission considered Version C on December 9, 2021. It was then filed with the Metro Council on December 10, 2021; approved by Metro Council on January 18, 2022; and signed by the Mayor on January 24, 2022. (*Id.* ¶ 13.)

This timeline demonstrates a process that prioritizes community engagement and public voice in the most critical element of a democracy—voting. The Metro Council Reduction Act derails that process by allowing only seventy days for the following to occur:

- The Metro Nashville Council to determine the number of districts and at-large seats, if any;
- The Metro Nashville Planning Department to propose new districts and solicit feedback;
- The Council to consider and vote on the new districts;
- The Davidson County Election Commission to authorize Nominating Petitions; and
- Candidates to identify their new districts/potential constituents and qualify for the election.

In short, there is inadequate time to implement the Act's requirements in a responsible and effective manner before the May 18 qualifying deadline. Pending resolution of this lawsuit, however, Planning staff is scheduled to hold an informational session with Councilmembers on Thursday, March 16, 2023. (March 11, 2023, Email from Vice Mayor Shulman to Council, attached to Shulman Decl. as Exhibit 1.) Planning staff also plans to attend the regularly-scheduled Council meeting on Tuesday, March 21, 2023. (*Id.*) If,

however, the Act is later deemed unconstitutional, this work will have been for naught. Worse yet, if the Court does not strike down the Act as unconstitutional until after the May 18 Nominating Petition deadline, then the Court would no longer be able to grant relief consistent with state law. *See* Tenn. Code Ann. § 2-5-101(a)(3) ("Candidates in all other municipal elections shall file their nominating petitions no later than twelve o'clock (12:00) noon, prevailing time, on the third Thursday in the third calendar month before the election.").

In sum, the issues presented here are urgent, and the Metro Council Reduction Act threatens the integrity of the August 2023 election whether or not the Act is ultimately ruled unconstitutional.

C. THE METRO COUNCIL REDUCTION ACT FAILS TO RECOGNIZE THE IMPACT OF A COMPRESSED TIMELINE ON VOTERS.

After the Council determines the number of districts, the Planning Commission draws the new boundary lines, and the Council approves the boundary lines, then the work of the Davidson County Election Commission begins. The Election Commission must match the new district boundary lines with geocoding, correct any issues that arise, match those lines with the State's geocoding, correct any issues that arise, assign polling locations, and print and mail new voter registration cards to the voters. All the while, the Election Commission must try to educate Metro Nashville's voters about their new polling location and Council district assignments. (Herzfeld Decl. ¶ 17.)

If the Davidson County Election Commission is forced to allocate voters to new council districts and educate them about the changes on the Metro Council Reduction Act's condensed timetable, it is likely that mistakes and confusion will be more prevalent. (*Id.* ¶¶ 17, 21–23.) During the 2022 redistricting, for example, mistakes were regrettably made. (*Id.* ¶¶ 19–20.) Hundreds of Nashville voters received new voter registrations cards with

inaccurate voting locations and inaccurate state legislative and congressional districts. (*Id.* ¶ 20.) This mistake caused confusion and led to votes being miscast. (*Id.*) Most importantly, voters lost confidence that their votes counted. (*Id.*) Confusion is even more likely now, as numerous voters would have possessed three separate voter registration cards within the span of approximately twelve months if the Act is not enjoined: a pre-2020 Census redistricting card, a post-2020 Census redistricting card, and a new card following any additional redistricting before the August 3, 2023, election. (*Id.* ¶ 24.)[8]

Finally, the alternative "option" in the Act if redistricting does not occur in time for the August 2023 election—to add a fifth year to current Councilmembers' terms—is not an option. As set forth by Metro Nashville's Vice-Mayor, when he and the other Councilmembers were elected in 2019, they expected to serve four-year terms. (Schulman Decl. ¶¶ 2, 10.) And notwithstanding the Metro Council Reduction Act, there is no guarantee that any current Councilmember will continue to serve after that date. (*Id.* ¶ 12.)

In sum, both "options" under the Metro Council Reduction Act undermine the process by which voters choose their local elected officials. Either districts are set in number and then drawn with rushed community input, or Councilmembers are forced to serve beyond their constitutional term. Neither option is tenable.

APPLICABLE STANDARD

Courts in Tennessee may grant injunctive relief via temporary injunction. Tenn. R. Civ. P. 65.01. "A temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and

[8] Those who received inaccurate information following the post-2020 Census redistricting will have received *four* separate voter registration cards, as they also received corrected post-2020 Census redistricting cards. (*Id.*)

irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual." Tenn. R. Civ. P. 65.04(2).

State and federal courts[9] in Tennessee utilize a four-factor test to determine whether to issue a temporary injunction. Courts examine "(1) the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest." *S. Cent. Tenn. R.R. Auth. v. Harakas*, 44 S.W.3d 912, 919 n.6 (Tenn. Ct. App. 2000) (quoting Robert Banks, Jr. & June F. Entman, *Tennessee Civil Procedure* § 4-3(l) (1999)).

"The issuance of an interlocutory or preliminary injunction is a matter of legal discretion with the chancellor." *Nashville, C. & St. L. Ry. v. R.R. & Pub. Utils. Comm'n*, 32 S.W.2d 1043, 1045 (Tenn. 1930). "Where, as here, the temporary injunction is sought on the basis of an alleged constitutional violation, the third factor—likelihood of success on the merits—often is the determinative factor." *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020) (citations omitted). Great weight should also be given to the public interest in matters that impact "election machinery" that is already "in gear." *Moore v. Lee*, 644 S.W.3d 59, 66 (Tenn. 2022) (citation omitted).

[9] "Federal case law interpreting rules similar to those adopted in this state are persuasive authority for purposes of construing the Tennessee rule." *Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749, 755 (Tenn. 2006).

LEGAL ARGUMENT

I. PLAINTIFF METRO NASHVILLE IS LIKELY TO SUCCEED ON THE MERITS BECAUSE THE METRO COUNCIL REDUCTION ACT VIOLATES ARTICLE XI, SECTION 9 AND ARTICLE VII, SECTION 1 OF THE TENNESSEE CONSTITUTION.

The Metro Council Reduction Act's constitutional infirmities span four different provisions of our State's Constitution. First, the Act violates the Consolidation Clause in the Home Rule Amendment by retroactively dismantling Metro Nashville's structure of government—the very structure that the General Assembly mandated that metropolitan governments propose in their charters, subject to a vote of the people, during the consolidation process. Second, it violates the Local Legislation Clause in the Home Rule Amendment because it imposes a law that is local in form or effect on Metro Nashville without the required local approval and also constitutes a ripper bill. Third, the Act sets a term of office for metropolitan councilmembers in contravention of the mandated four-year term for county legislative bodies in Article VII, Section 1 of the Tennessee Constitution. And finally, the Act's 20-member cap violates the second paragraph of Article VII, Section 1, which exempts consolidated governments from the 25-member limit on county legislative bodies and thus preempts any legislative effort to apply a similar or lower cap to the legislative body of a consolidated government such as Metro Nashville.

Any one of these reasons renders the Metro Council Reduction Act unconstitutional and warrants enjoining its enforcement. But taken together, these arguments reveal that the legislators who wrote and passed the Act were not concerned with the limits articulated by the State's Supreme Law. For these reasons, described in turn below, the Metro Council Reduction Act's implementation must be enjoined.

A. TENNESSEE'S 1953 AND 1977 CONSTITUTIONAL AMENDMENTS ENSHRINED LOCAL SOVEREIGNTY AND LIMITED THE GENERAL ASSEMBLY'S AUTHORITY TO UNILATERALLY ALTER LOCAL GOVERNMENTAL STRUCTURES.

For much of Tennessee's history, local governments were mere "arms or instrumentalities of the state government—creatures of the Legislature, and subject to its control at will." *Grainger Cty. v. State*, 80 S.W. 750, 757 (Tenn. 1904). This one-sided balance of power between State and local governments, however, shifted dramatically in 1953 with the adoption of three amendments to Article XI, Section 9, of the Tennessee Constitution, collectively known as the Home Rule Amendment. The Home Rule Amendment "fundamentally change[d] the relationship between the General Assembly and [home rule governments], because such entities *now derive their power from sources other than the prerogative of the legislature*." *S. Constructors, Inc. v. Loudon Cty. Bd. of Educ.*, 58 S.W.3d 706, 714 (Tenn. 2001) (emphasis added).

The Home Rule Amendment was adopted at the 1953 Constitutional Convention—a thirty-three-day session that was "rife with concern over state encroachment on local prerogatives" and "the General Assembly's abuse of that power." Elijah Swiney, *John Forrest Dillon Goes to School: Dillon's Rule in Tennessee Ten Years After* Southern Constructors, 79 Tenn. L. Rev. 103, 118–19 (2011). The three amendments that make up the Home Rule Amendment were proposed through three different resolutions adopted at the Convention:

- The Local Legislation Clause: Paragraph 2 of Article XI, Section 9, resulting from the "Resolution Relative to Home Rule for Cities and Counties as to Local Legislation." Journal and Debates of the Constitutional Convention of 1953 at 306 (hereinafter "1953 Journal"), excerpts attached to Mot. as Exhibit F.

- The Home Rule for Municipalities Clause: Paragraphs 3 through 8 of Article XI, Section 9, resulting from the "Resolution Relative to Municipal Home Rule." *Id.* at 280–83.

- The Consolidation Clause: Paragraph 9 of Article XI, Section 9, resulting from the "Resolution Relative to Consolidation of Cities and Counties." *Id.* at 312–13.

The 1953 Convention delegates' chief concern was the General Assembly's historic abuses of local power and legislation. Indeed, the "basic reason for the call of this Convention" was "this wicked local bill situation that ha[d] been growing in the State," according to Delegate Lewis Pope (Sumner County), a member of the Convention's Committee on Home Rule and Chair of its Editing Committee. 1953 Journal at 1023. "Ripper bills," which targeted particular local offices by altering their existing salaries, shortening their terms, or removing incumbents from office, were a particular focus of the Convention. *Frazer v. Carr*, 360 S.W.2d 449, 456 (Tenn. 1962). Explaining the prohibition on such bills, Delegate Pope explained, "[T]he legislature cannot under any circumstances pass an act abolishing an office, *changing the term of the office* or altering the salary of the officer pending the term for which he was selected; that is prohibited, and that kind of an act cannot be passed." 1953 Journal at 1113 (emphasis added).

The issue of local sovereignty arose again at the 1977 Limited Constitutional Convention. That Convention "extensively rewrote" Article VII, Section 1 of the Tennessee Constitution and "provided a general framework for the government of Tennessee counties." *State ex rel. Maner v. Leech*, 588 S.W.2d 534, 537 (Tenn. 1979). Those amendments, which were approved by statewide referendum in 1978, also established the county legislative body as a constitutional office, exempted consolidated city/county governments from any limit on the size of their legislative bodies, and allowed the General Assembly to impose an alternate form of county government only with local voter approval. Tenn. Const. art. VII, § 1.

B. THE METRO COUNCIL REDUCTION ACT VIOLATES THE CONSOLIDATION CLAUSE IN ARTICLE XI, SECTION 9 THROUGH FORCED, POST-CONSOLIDATION DISMANTLING OF THE METRO NASHVILLE COUNCIL.

Nashville and Davidson County voters ratified Metro Nashville's consolidation and approved its first charter by a referendum vote on June 28, 1962. (1962 Metro Charter.) That consolidation and ratification process occurred through enabling legislation that the

Tennessee General Assembly adopted pursuant to the Home Rule Amendment's Consolidation Clause. Consistent with the intent of the Home Rule Amendment generally and the Consolidation Clause specifically, that enabling legislation required Metro Nashville to determine the structure of its own government, including setting the size of its Metropolitan Council. Now, sixty years after that legislative-body size was set,[10] the General Assembly seeks to undo the very structure on which Metro Nashville was formed. The Consolidation Clause prohibits this legislative overreach.

1. In 1962, Nashville and Davidson County Consolidated Their Functions and Set Forth a Structure of Government Under the Authority of the Consolidation Clause and Its Enabling Legislation.

Metro Nashville was created by a vote of Nashville and Davidson County citizens in 1962 pursuant to the Home Rule Amendment's Consolidation Clause, which reads as follows:

> The *General Assembly may provide for the consolidation* of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located; *provided, such consolidations shall not become effective until submitted to the qualified voters* residing within the municipal corporation and in the county outside thereof, and *approved by a majority of those voting* within the municipal corporation and by a majority of those voting in the county outside the municipal corporation.

Tenn. Const. art. XI, § 9 ¶ 9 (emphasis added). Because it is not self-executing, the Consolidation Clause was implemented through legislative enactments. *Frazer*, 360 S.W.2d at 451. The 1957 Public Act authorized the consolidation of governmental and corporate functions of municipalities and counties with a population greater than 200,000. *Id.* at 423.[11] Its stated purpose, which paralleled the Consolidation Clause's text, was as follows:

[10] *See* 1962 Metro Nashville Charter § 20.21 (setting effective date of Charter on first Monday in April, 1963).

[11] The 1957 Public Act was later codified at Tenn. Code Ann. §§ 6-3701, *et seq*., and is now contained in Tenn. Code Ann. §§ 7-1-101, *et seq*.

> [T]o provide for the consolidation of all, or substantially all, of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located, and to provide for the creation of metropolitan governments which may be used to fulfill the unique and urgent needs of a modern metropolitan area.

Id. at 424–25. By its terms, the 1957 Public Act was "to be liberally construed as a utilization of the constitutional power granted by Amendment No. 8 to Article XI, Section 9 [i.e., the Consolidation Clause] of the Constitution of Tennessee approved at an election on November 3, 1953." *Id.* at 425. The essential idea was to give counties and cities the choice to consolidate their functions if they followed certain rules and put that decision to a vote of their residents.

The 1957 Public Act set forth numerous requirements for cities and counties that sought to be consolidated under the Consolidation Clause. These included, among others, naming the resulting governmental entity a "metropolitan government" and requiring the creation of a "Metropolitan Government Charter Commission," which would submit a proposed charter to the voters of the city and county for ratification or rejection through referendum election. *Id.* at 423, 426–27, 430–31. The 1957 Public Act also outlined that the proposed metropolitan charter must provide, among other things:

- For the creation of a Metropolitan Government vested with all powers that *cities and counties* "*are, or may hereafter be, authorized or required to exercise* under the Constitution and general laws of the State of Tennessee, as fully and completely as though the powers were specifically enumerated therein, except as provided" in the Act or the proposed charter itself.

- "For a *Metropolitan Council*, *which shall be the legislative body of the Metropolitan Government* and shall be given all the authority and functions of the governing bodies of the county and cities being consolidated, with such exceptions and with such additional authority as may be specified elsewhere in this Act."

- "For the *size*, *method of election*, qualification for holding office, method of removal, *term of office* and procedures of the Metropolitan Council . . . ."

Id. at 435–36 (emphasis added).

In *Frazer v. Carr*, the Tennessee Supreme Court affirmed the constitutionality of the Metro Nashville consolidation, which had been challenged through a declaratory judgment action. 360 S.W.2d at 450, 457–58. In rejecting the argument that the enabling legislation through which the Metro Nashville Charter was adopted constituted an improper delegation of legislative authority,[12] the Court noted that the 1953 Convention gave the General Assembly explicit authority to authorize consolidation and establish the process through which it could occur. *Id.* at 453–54. And significantly, the Court highlighted that "the Convention intended to authorize the procedure adopted by the 1957 statute for the formation of a metropolitan charter; hence that amendment was not violated by the Public Acts of 1957, Chapter 120." *Id.* at 454.

The *Frazer v. Carr* opinion also underscored the Metro Nashville voters' key role in the consolidation process, as outlined in the enabling legislation:

> Moreover, a reading of this Chapter 120 discloses it to be a fact that it, Chapter 120, constructed the framework, or as one brief calls it, 'the guide lines' which should govern the Metropolitan Charter Commission in the preparation of a charter suitable for the needs of the particular governmental entity it was serving. The people apparently so construed it. They approved the constitutional amendment. They approved the commissioners designated to prepare the charter in question here. *They approved the charter which that commission adopted.* So it must be concluded that their understanding of the 8th Amendment was the same as that of this Court. It is concluded that the 1957 Public Act, as amended by Chapter 199, is a constitutional enactment which authorized the charter in question here.

Id. at 454 (emphasis added). In short, the Metro Nashville Charter Commission did precisely what it was authorized by state law to do in recommending the structure of Metro Nashville's

[12] The Metro Nashville consolidation was challenged on several grounds in *Frazer v. Carr*, including that: (1) the private act creating the Metro Nashville Charter Commission was unconstitutional, thereby invalidating the Commission and the charter it proposed; (2) the public act enabling the consolidation was an unconstitutional delegation of legislative authority; (3) the charter violated Article II, Sections 28 and 29, of the Tennessee Constitution; (4) the charter constituted an unconstitutional "ripper" provision by abridging the term of a current officeholder' and (5) the consolidation process abolished a general law by private act. *Id.* at 453–54, 456–57. The Court rejected all five arguments.

Metropolitan Council, and Metro Nashville voters ratified the consolidation based on that structure. And that was that for the ensuing sixty-one years.

2. The Governmental Structure Set Forth in the 1962 Metro Nashville Charter Constitutes a Compact That May Not Be Unwound Without Local Approval.

The enabling legislation that flowed from the Consolidation Clause is now codified as Chapters 1 through 3 of Title 7 in the Tennessee Code.[13] Just like the 1957 Public Act, these enabling provisions must be "liberally construed as a utilization of the constitutional power granted by" the Constitution. Tenn. Code Ann. § 7-1-102(b). To this day, the consolidation process requires preparation of a proposed charter that "shall provide," among other things, "[f]or the *size*, method of election, qualification for holding office, method of removal, *term of office* and procedures of the metropolitan council." *Id.* § 7-2-108(a)(12) (emphasis added). The proposed charter must then be approved by a majority of voters in the city and in the county. *Id.* § 7-2-106.

The General Assembly is free to amend these requirements for "proposed metropolitan charters" going forward. But such an amendment may apply only prospectively—not retroactively to unwind charters that voters approved when they consolidated their city and county functions. This is not to suggest that the General Assembly may not pass general laws *affecting* a government consolidated under the Home Rule Amendment. *Cf. Cty. of Shelby v. McWherter*, 936 S.W.2d 923, 934 (Tenn. Ct. App. 1996) ("Clearly, under the Tennessee Constitution, it is the Legislature that gives counties the right to establish home rule. Because it is the Legislature that gives counties this right, it is the Legislature that may take the right away." (internal citations omitted)). But there is a constitutionally-significant

[13] When a metropolitan government is created, it succeeds all of the rights that the consolidating city and county previously possessed. Tenn. Code Ann. §§ 7-2-108(a)(1), 7-3-101.

difference between adopting a law that sets public policy across the state and unwinding the structure of one local government that was consolidated pursuant to authority set forth in the Constitution and enabling legislation.

The Metro Council Reduction Act goes far beyond simply *affecting* Metro Nashville. It retroactively repeals a provision of the Metro Nashville Charter that the state constitution not only *authorized* but *mandated* be adopted by Nashville and Davidson County voters in 1962. The structure of Metro Nashville's legislative body was *mandatorily* submitted to a vote of the people. Consolidation was ratified based on the contents of the proposed charter itself and the governmental and proprietary powers it set forth. That Charter creates a constitutional compact—a done deal, so to speak—and one that cannot be dismantled merely because the State wishes the rules had been different sixty years ago or opposes a particular city's politics.

The power to consolidate a city and county government in Tennessee flows from the Constitution. Delegates to the Constitutional Convention wrote an amendment that permitted consolidation only with local approval. The General Assembly passed enabling legislation to effectuate that intent. Nashville voters accepted that offer and ratified the change. But the power to make the change originated in the Constitution, the State's Supreme Law. While the General Assembly may regulate certain aspects of consolidated government operations in accordance with its police powers when it passes a law of general application, it cannot reach back and undercut the essential structure of the compact that the Constitution opened the door to realize.

Metro Nashville adopted its charter in 1962—at the direction of the General Assembly and under the authority of the Consolidation Clause—which established a 40-member Metropolitan Council, not the 21-member Metropolitan Council that voters rejected four

years earlier. In seeking to change the rules now and unwind this 61-year-old compact, the General Assembly not only undermines the local control promoted and preserved in the Home Rule Amendment, but it wages an unprecedented attack on the voters of Metro Nashville who ratified that compact. Permitting the General Assembly to retroactively unwind the very provisions of the Metro Nashville Charter that the General Assembly mandated be approved by voters as part of the consolidation process renders the consolidation process meaningless. That is, to undo this structure post-consolidation undermines the entire purpose of consolidation. But the General Assembly may not pass legislation in contravention of the Tennessee Constitution, which is the "supreme law of our state." *Spurlock v. Sumner Cty.*, 42 S.W.3d 75, 78 (Tenn. 2001). Because the Metro Council Reduction Act violates the Consolidation Clause,[14] Metro Nashville is likely to succeed on the merits of this claim.

C. THE METRO COUNCIL REDUCTION ACT VIOLATES THE LOCAL LEGISLATION CLAUSE IN ARTICLE XI, SECTION 9 OF THE TENNESSEE CONSTITUTION BY RETROACTIVELY AMENDING THE METRO NASHVILLE CHARTER THROUGH A LOCAL BILL, WITHOUT LOCAL APPROVAL.

The Local Legislation Clause in the Home Rule Amendment mandates that any act of the General Assembly that is "private or local in form or effect" and "applicable to a particular

[14] For the same reasons, the Metro Council Reduction Act violates the third paragraph in Article VII, Section 1 of the Tennessee Constitution, which permits the General Assembly, with approval of county voters, to provide "alternate forms of county government including the right to charter." *Id.* This paragraph does not empower the General Assembly to impose such a new form of government unilaterally. Rather, the "new form of government shall replace the existing form" only "if approved by a majority of the voters" in a referendum. *Id.* Local approval by referendum was a key consideration in the 1977 Limited Constitutional Convention's deliberations over revisions to Article VII, Section 1. *See, e.g.*, Statement of Julian P. Guinn (Paris), *id.* at 888 (Vol. I) ("[T]he very heart and soul of local government is the theme of allowing local government experimentation. I think in allowing them experimentation it should be specifically understood that anything they elect to do must be done by referendum.").

The Metro Council Reduction Act's radical downsizing of Metro Nashville's legislative body is just such an alternate form of government. *State ex rel. Maner*, 588 S.W.2d at 540 ("The phrase 'alternate form of government' [in Art. VII, § 1] must be construed to mean metropolitan government . . . ."). Therefore, any legislative alteration to the form of a metropolitan government is subject to Section 1's local-referendum requirement.

county or municipality either in its governmental or its proprietary capacity" must "by its terms" require approval by the local legislative body or popular referendum. Without local approval language, such legislation is "absolutely and utterly void." *Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975). The Clause also prohibits legislation that abridges the terms of incumbent local officials before the end of their term.

The Local Legislation Clause reads as follows:

> The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Tenn. Const. art. XI, § 9, ¶ 2.

The Metro Council Reduction Act is local in form or effect under the Local Legislation Clause because it imposes only on Metro Nashville a requirement to reduce the size of its Council. Because it does so without the mandatory local approval language, it violates the Local Legislation Clause in the Home Rule Amendment. Moreover, because the Metro Council Reduction Action

1. The Home Rule Amendment's Local Legislation Clause Prohibits Bills That Are Local in Form or Effect Without Local Approval.

The Local Legislation Clause was a product of the 1953 Convention delegates' chief concern, which was the General Assembly's historic abuses of local power and legislation. As one remedy for this overreach into local affairs, the delegates overwhelmingly approved the "Resolution Relative to Home Rule for Cities and Counties as to Local Legislation" (the "Local Legislation Resolution") by an 85-5 vote on July 15, 1953.

The resolution read in full:

> Be It Resolved, That Article XI, Section 9, of the Constitution of the State of Tennessee be amended by adding at the end of said Section as it now reads, the following:
>
> The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

1953 Journal at 306.

Delegate Pope, the Local Legislation Resolution's primary author, explained that it constituted both a "deprivation of legislative power" *and* a "limitation on legislative power." 1953 Journal at 1024. More specifically, its two distinct purposes were (1) to prohibit a particular category of local bills called "ripper bills," and (2) to require local approval of "any other local bill affecting the county or affecting the town or city." *Id.*

2. A Bill Is "Local in Form or Effect" If Not Potentially Applicable Throughout the State or Throughout the Class Established in the Act.

The Tennessee Supreme Court held in *Farris v. Blanton* that the "sole constitutional test" under the Local Legislation Clause "must be whether the legislative enactment, irrespective of its form, is local in effect and application." 528 S.W.2d at 551. To make that determination, courts examine whether an act is "potentially applicable throughout the State." *Id.* at 552. "The test is not the outward, visible, or facial indices, nor the designation, description or nomenclature employed by the Legislature. Such a criterion would emasculate the purpose of the amendment." *Id.* at 551. Thus, whether the Local Legislation Clause applies does not rely on self-serving language in the challenged legislation, such as labeling it a public act. *Id.* at 554. Instead, "in determining potential applicability, [the court] must

apply reasonable, rational and pragmatic rules as opposed to theoretical, illusory or merely possible considerations." *Id.* at 552. If the act is potentially applicable statewide absent further legislative action, even if "at the time of passage it might have applied to" only one county, it is not local in effect. *Id*. at 552.

To illustrate, the legislation at issue in *Farris* provided for run-off elections in all counties with a mayor as head of the county's executive branch. *Id.* at 550. At the time of passage, Shelby County, by virtue of a private act, had a mayor as head of its executive branch. *Id.* at 552. Supporters of the legislation argued that it was not local in effect because Metro Nashville also had a mayor. *Id.* at 552–53. The Court dispensed with the "fallacy" that those mayors were comparable because one governed a consolidated government while the other governed a "single coordinate branch of government." *Id.* at 553. As a result, the act only governed run-off elections in Shelby County. The act was deemed not "potentially applicable" to other counties because no county other than Shelby *could have* a mayor as head of the county's executive branch "except by the affirmative action of the General Assembly." *Id.* at 552. In so holding, the court declined to "conjecture what the law may be in the future" and was "not at liberty to speculate upon the future action of the General Assembly." *Id.* at 555.

Following *Farris*, the Tennessee Supreme Court has consistently used the "potentially applicable" test to distinguish between local and generally-applicable acts. For example, where the scope of an act was frozen in scope at the time of passage and not potentially applicable to other counties without further legislative action, the court held the act to be local in form or effect. *See, e.g.*, *Leech v. Wayne County*, 588 S.W.2d 270, 274 (Tenn. 1979) (holding that legislation exempting two counties from a "permanent, general provision, applicable in nearly ninety counties" was local in form and effect in violation of the Local

Legislation Clause); *Bd. of Educ. of Shelby Cty., Tenn. v. Memphis City Bd. of Educ.*, 911 F. Supp. 2d 631, 660 (W.D. Tenn. 2012) (striking a statute that allowed municipalities to separate from county school systems where it nominally applied to eight counties but "establishe[d] a series of conditions that ha[d] no reasonable application, present or potential" to any county other than Shelby). Courts have also recognized the General Assembly's authority to pass laws that "could potentially apply within the *class* created by the General Assembly" in the statute at issue, without contravening the Local Legislation Clause. *See, e.g.*, *Bd. of Educ. of Shelby Cty.*, 911 F. Supp. 2d at 656 (citing *Civil Serv. Merit Bd. of City of Knoxville v. Burson*, 816 S.W.2d 725, 730 (Tenn. 1991) (emphasis added).[15]

3. The Metro Council Reduction Act Is "Local in Form or Effect" Under the Local Legislation Clause.

Subsection 1(a) of the Metro Council Reduction Act sets a cap of twenty members for any "metropolitan council," the legislative body of a metropolitan government. Subsection 1(b) then renders that cap retroactive by requiring *any existing metropolitan council* exceeding the cap to shrink to no more than twenty members by May 1, 2023. While the legislation pretends to suggest general applicability in this respect, this is subterfuge. Subsection 1(b) requires only Metro Nashville to act and, as a result of the cap in subsection 1(a), will never apply to any other metropolitan government. Thus, the Act is local in form or effect.

[15] In contrast, where an act applied to a small number of local governments upon passage but used population brackets or form of government provisions to render the act applicable to other counties in the future without further legislative action, the Supreme Court held the Local Legislation Clause did not apply. *See, e.g.*, *Bozeman v. Barker*, 571 S.W.2d 279, 282 (Tenn. 1978) (finding an act generally applicable where it "can become applicable to many other counties depending on what population growth is reflected by any subsequent Federal Census," despite applying to only two counties at passage); *Doyle v. Metro. Gov't of Nashville & Davidson Cty.*, 471 S.W.2d 371, 373 (Tenn. 1971) (finding an act generally applicable where it could apply to any government that became a metropolitan government in the future, despite applying only to Metro Nashville at passage).

The requirement to reduce the size of a council applies only to metropolitan councils in existence at the Metro Council Reduction Act's passage. There are only two metropolitan governments in Tennessee other than Metro Nashville: Lynchburg-Moore County, and Hartsville-Trousdale County. They are not subject to the reduction requirement because their legislative bodies do not have more than twenty members. (Lynchburg-Moore County Charter § 2.01, attached to Mot. as Ex. G; Hartsville-Trousdale County Charter, Article 2, attached to Mot. as Ex. H.)

This is by design. The Act targets the Metro Nashville Council without imposing even the slightest burden on any other local government in the State, no matter how those governments are constituted (e.g., county, charter, town). If, for example, the General Assembly were truly concerned about local legislative bodies exceeding twenty members, it would have included county commissions in the bill, which would have required the Sumner County Commission, which has twenty-four voting members,[16] to shrink to twenty. It did not. Instead, the law targets the Metro Nashville Council, with no other local government in the State affected in any way.

Because subsection 1(6) requires, and could only ever require, Metro Nashville alone to reduce its number of elected councilmembers, the provision is local in form or effect and not potentially applicable throughout the state. *See Leech*, 588 S.W.2d at 274 (holding that legislation exempting two counties from a "permanent, general provision, applicable in nearly ninety counties" was local in form and effect in violation of Art. XI, § 9). It is as if Delegate Leon Easterly (Greene County) was seeing decades into the future when speaking at the 1953 Convention:

[16] Sumner County, Tennessee: Sumner County Commission, https://sumnercountytn.gov/government/county-commission/.

> I am just as certain that the greatest need and most unanimous demand from all parts of our great State of Tennessee is a plan to be incorporated in our basic laws *which will give to the counties protection from the pernicious local legislation showered down on the various counties during every session of the legislature*. Some of these, which may be termed ripper bills, remove certain officials from public office, others change salaries, upward or downward, abolish certain offices and the method of election in certain cases, and *also affect a multitude of other matters of local character*.

1953 Journal at 937–38. Delegate Sims referenced the earlier legislative repeal and replacement of the City of Nashville's charter in arguing for the need for a change in the structural balance between local governments and the state legislature. *Id.* at 911 ("On three successive occasions, the Charter of the City of Nashville was completely repealed and replaced by another Charter . . . .").

4. The Metro Council Reduction Act Is a Ripper Bill.

By replacing Metro Nashville's 40-member legislative body with one at least half its size, the Metro Council Reduction Act is akin to a ripper bill. And by forcing that result by both increasing and reducing Councilmembers' terms from the standard four years, as subsection (b)(1)(A) of the Act does, the Metro Council Reduction Act *is* a ripper bill. *See Shelby Cty. v. Hale*, 292 S.W.2d 745, 747–48 (1956) ("One reading the second paragraph above plainly and understandably finds that the clear language of this section is that *the General Assembly shall have no power to enact legislation* which has the effect of (1) removing an incumbent from a county or municipal office, (2) *abridging the term of such office* or (3) altering the salary of such office during the term thereof." (emphasis added)).

There is no appreciable difference between (1) cutting the Metro Nashville Council in half through legislation and altering its Councilmembers' terms to get there and (2) removing a local official from public office through a private act. The Metro Council Reduction Act is a ripper bill, drawn straight from the pre-Home Rule Amendment playbook and imposed upon Metro Nashville without input, process, or consent. 1953 Journal at 938 ("Many times, these

local acts result from pressure groups or individuals who desire to see a certain thing accomplished to satisfy selfish desires o*r to take revenge upon certain other groups or individuals without taking into consideration its impact upon county affairs*." (emphasis added)).

Because the Metro Council Reduction Act alters the terms of incumbent local officials and imposes the Council reduction requirement on only one local government, Metro Nashville has a strong likelihood of success on its Local Legislation Clause claim.

D. THE METRO COUNCIL REDUCTION ACT VIOLATES ARTICLE VII, SECTION 1 OF THE TENNESSEE CONSTITUTION'S PROVISION MANDATING FOUR-YEAR TERMS FOR MEMBERS OF COUNTY LEGISLATIVE BODIES.

If Metro Nashville fails to enact a Council-reduction plan before the qualifying date for the August 2023 election, which falls on May 18, "the term of the current members of the metropolitan council are extended for one (1) year," and the Davidson County Election Commission must hold a special general metropolitan election on the first Thursday in August 2024 to elect Councilmembers "for a term of three (3) years with the terms to begin September 1, 2024." Metro Council Reduction Act § 1(b)(1)(A). Each of these provisions ignores the constitutional requirement in the first paragraph of Article VII, Section 1 that county officers serve four-year terms, including members of the county legislative body.

The full text of Article VII, Section 1, as adopted by the 1977 Limited Constitutional Convention and approved by voters in 1978, states as follows:

> The qualified voters of each county shall elect for *terms of four years a legislative body*, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly. Any officer shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly.
>
> The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten years based upon the most recent federal census. *The legislative body shall not exceed twenty-five members*, and no more than three representatives shall be

> elected from a district. *Any county organized under the consolidated government provisions of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and a county legislative body as described in this paragraph.*
>
> The General Assembly may provide alternate forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.
>
> No officeholder's current term shall be diminished by the ratification of this article.

Id. (emphasis added).

The first paragraph lists a series of constitutional county offices, including county legislative bodies, and sets their terms of office at four years. The Tennessee Supreme Court has held that this provision applies to metropolitan governments. *See Metro. Gov't of Nashville & Davidson Cty. v. Poe*, 383 S.W.2d 265, 268 (Tenn. 1964); *Glasgow v. Fox*, 383 S.W.2d 9, 10 (Tenn. 1964). And because these county offices derive their power from the State's Constitution, in contrast to other state and local actors whose power flows instead from an enabling statute or ordinance, these county offices must be maintained in the consolidation process. *Poe*, 383 S.W.2d at 268–69.

Because these county offices are vested with constitutional stature, their existence and terms of office are also beyond the meddling of the General Assembly. The legislature may prescribe the qualifications and duties of the offices and prescribe the process of their removal for malfeasance or neglect of duty. But their existence and the duration of their terms—which are explicitly set forth in the Constitution—are fixed. For example, while the General Assembly could set specific standards for how constitutional officers are to be trained, *see, e.g.*, *Boyce v. Tennessee Peace Officer Standards & Training Comm'n*, 354 S.W.3d 737, 741 (Tenn. Ct. App. 2011) (upholding POST training requirements for sheriffs as a constitutional delegation of legislative authority), it cannot abolish the offices. *Fraternal Ord.*

of Police v. Metro. Gov't of Nashville & Davidson Cty., Tenn., 582 S.W.3d 212, 220 (Tenn. Ct. App. 2019) ("Indeed, our Supreme Court has held that the constitutional offices found in Article 7, Section 1 of the Tennessee Constitution cannot be abolished." (citing *Poe*, 383 S.W.2d at 268)). Lengthening the term of a constitutional officer effectively deprives voters of the opportunity to select a constitutionally compliant officer for the period guaranteed by the Constitution. Shortening a term effectively abolishes the office for the length of the differential.

The Metro Council Reduction Act ignores these constitutional mandates. The Act extends by one year the terms of current Metro Nashville Councilmembers and reduces their immediate successors to a three-year term. This expansion and compression of terms is facially unconstitutional. Members of county legislative bodies serve for four years under the express language of Article VII, Section 1, and consolidated county governments are not exempt from this constitutional requirement. Just as constitutional offices cannot be eliminated, *Poe*, 383 S.W.2d at 268, their terms cannot be altered. As Tennessee Supreme Court Justice Wilkes explained long ago:

> It should be noted here that all the cases in this court have gone upon the theory, generally recognized in the American courts, that when the legislature makes or creates an office without a tenure, or independently of constitutional provision, it can abolish it or change its tenure or its compensation at pleasure, *but that when it creates a constitutional office* (that is, one directed or authorized under the constitution or recognized by it, and for which the constitution has provided a tenure) *the legislature cannot* abolish the office, *abridge its term*, or destroy its substantial functions or emoluments.

McCulley v. State (State Rep. Title: The Judges' Cases), 53 S.W. 134, 163 (Tenn. 1899) (Wilkes, J., dissenting) (emphasis added);[17] *see also Waters v. State ex rel. Schmutzer*, 583 S.W.2d 756, 760 (Tenn. 1979) (holding that, in implementing 1978 amendments to Art. VII, § 1, the

[17] In *The Judges' Cases*, the majority held that the General Assembly could transfer a court's jurisdiction to other courts. *See, e.g.*, *State ex rel. Ward v. Murrell*, 90 S.W.2d 945, 946 (Tenn. 1936).

General Assembly could not vest judicial authority in a county officer who serves a four-year term where the Constitution specifies eight-year terms for those officers); *Poe*, 383 S.W.2d at 268, 276–77 (noting that a local government charter cannot abolish constitutional offices); *Fraternal Ord. of Police*, 582 S.W.3d at 220 (explaining that title changes and transfers of certain duties may be permissible, but abolishing a constitutional office is not).

The Metro Council Reduction Act's expansion and shortening of constitutional county officers' terms contravene Section 1's mandate. The Act does not create a new category of public servant that is a creature of the General Assembly's power—it instead purports to convey more power (or obligation) to Metro Nashville's current Councilmembers than the Constitution grants and then withholds that same constitutional power from those elected in 2024. But the Constitution, not the Act, controls. *See, e.g.*, *Mayes v. State*, 50 Tenn. 430, 439 (Tenn. 1872) ("The Constitution is the supreme law; the Legislature is its creature; that the creature shall be greater than, or even equal to its creator, is a legal as well as a natural impossibility."). This clear constitutional defect renders Section 1(b) of the Act—the enforcement provisions to compel Metro Nashville's compliance with Section 1(a)—void and unenforceable.

Moreover, because the enforcement provisions of subsection 1(b) are essential to the implementation of subsection 1(a), the two cannot be severed, and both are invalid. *See* Metro Council Reduction Act § 1(b) (providing that subsection 1(b) applies only if "the membership of a metropolitan council is required to be reduced *in order to comply with subsection (a)*" (emphasis added).) The doctrine of elision is "not favored" under Tennessee law. *Smith v. City of Pigeon Forge*, 600 S.W.2d 231, 233 (Tenn. 1980). The general test for elision is whether the remaining language can stand in keeping with the intent of the legislative body. *Willeford v. Klepper*, 597 S.W.3d 454, 470 (Tenn. 2020). The question is whether the legislature would

have enacted the law in question with the unconstitutional portion omitted. *Id.* at 471. While a severability clause may inform that question, such a clause will not be enforced if it would frustrate the intent of the law. *See Gold Watch, Inc. v. City of Memphis*, No. 1, 1989 WL 61225, at *3 (Tenn. June 12, 1989) ("If possible, it is our duty to give effect to the severability clause, unless observance thereof would frustrate the intent of the passage of said ordinance.").

Applied here, subsections 1(a) and 1(b) are inextricably connected. If either one fails, both must fall, notwithstanding the Act's severability clause. Subsection 1(b) affects only Metro Nashville. If the General Assembly could not have forced an immediate reduction in size of the only metropolitan council in the State larger than twenty, it likely would not have passed the bill. In fact, there is no discernable, good-faith reason[18] for forcing an immediate reduction in the Metro Nashville Council's size; that body has operated with forty members for sixty years. The only plausible conclusion is that the local effect on Metro Nashville *is* the intent of the Act. Without timely enforcement against Metro Nashville, the Act would not serve this purpose, thus "frustrat[ing] the object of its passage." *Franks v. State*, 772 S.W.2d 428, 430 (Tenn. 1989) (asking whether the newly emergent law would "frustrate the object of its passage"). Therefore, the illegal clauses may not be elided, and the entire law must fall.

E. THE METRO COUNCIL REDUCTION ACT VIOLATES THE EXEMPTION FOR CONSOLIDATED COUNTIES FROM THE CONSTITUTIONAL LIMIT ON THE SIZE OF COUNTY LEGISLATIVE BODIES IN ARTICLE VII, SECTION 1.

Section 1(a) of the Metro Council Reduction Act limits the size of a metropolitan government legislative body to no more than twenty voting members. This mandate applies to only one County—Metro Nashville—and is prohibited by Article VII, Section 1.

[18] *See Hearing on S.B. 87 Before the Full Senate, 2023 Leg., 113th Gen. Assembly* (Mar. 10, 2023) (statement of Sen. Campbell, D-Nashville) (describing the "genesis of this legislation" and calling it "a retributive legislative act"), available at https://tnga.granicus.com/player/clip/27897?view_id=704&redirect=true&h=de7ff7e08f979c96cab0f98657867a66, at timestamp 49:10.

Article VII, Section 1's second paragraph specifies various conditions and requirements for county legislative bodies. It empowers such bodies to draw their own legislative districts, so long as they comply with the General Assembly's prescriptions for doing so, and it sets a timeframe for reapportionment. It also limits the size of county legislative bodies to twenty-five members.[19]

But the final sentence of the second paragraph explicitly exempts counties and cities that have consolidated pursuant to Article XI, Section 9 "from having . . . a county legislative body as described in this paragraph." Metro Nashville fits this category. *Jordan v. Knox Cty.*, 213 S.W.3d 751, 771 (Tenn. 2007); *Fraternal Ord. of Police*, 582 S.W.3d at 220.

The effect of the second paragraph, looking only to its text, is to permit consolidated governments like Metro Nashville to exceed the 25-member limit on a county legislative body. There is no other plausible reading of the paragraph's third and fourth sentences in conjunction with each other, which the Court must do. *Davis v. Williams*, 12 S.W.2d 532, 535 (Tenn. 1928) ("The provisions of the Constitution are to be given effect according to their intent, as gathered from the entire instrument."). The third sentence articulates a rule (no bodies larger than twenty-five), and the fourth sentence states that the rule does not apply to consolidated governments like Nashville.

This text makes sense against the backdrop of Metro Nashville's consolidation history and Charter adoption. The delegates at the 1977 Convention knew that Metro Nashville's legislative body, which had been created in 1963, a full fifteen years before the convention, had forty members. *See, e.g.*, Statement of Del. William E. Akin of Nashville, Journal of the

[19] This twenty-five-member limit appears to have been carried over from the 1870 Constitution. Before the 1977 Limited Constitutional Convention, the Tennessee Constitution provided that the General Assembly divide counties into no more than twenty-five districts, with two justices of the peace elected from each district, except that districts that included county towns would elect three justices of the peace. Tenn. Const. art. VI, § 15 (1870); *see also Grainger Cty. v. State*, 80 S.W. 750, 754 (Tenn. 1904).

Debates of the Constitutional Convention, State of Tennessee 901 (Vol. I, 1977) ("*That is what we have in Davidson County*; it takes two-thirds of the elected representatives in our county legislative body, two-thirds of *the forty elected people*, just to put a change on the ballot") (emphasis added), excerpts attached to Mot. as Exhibit I; Statement of Del. Everett Cox of Clinton, *id.* at 1387 (Vol. II) ("I do think that the local county should have the prerogative of electing the people to serve in their county court whom they desire; *whether it is ten members or forty members*." (emphasis added)).

If the 1977 Convention delegates had wanted to set a membership limit for all county legislative bodies no matter their governmental structure, they could have done so. They did not—even in the face of the State's capital city having operated with a 40-member legislative body for the previous fifteen years. Had the delegates wanted to omit the final sentence of the second paragraph from Article VII, Section 1, they could have—meaning Metro Nashville would not have been exempted from the 25-member limit. They did not. In fact, the Convention delegates from Nashville fought hard for this constitutional exemption, which the General Assembly now either ignores or purports to repeal by legislative act. *See* Statement of Del. Duncan V. Crawford of Maryville, *id.* at 1381 (Vol. II) ("There is no mention in Amendment No. 1 of anything that exempts consolidated government from the provisions of the executive officer and the legislative body. Davidson County came in here and fought hard for that; are you going to reverse yourselves on that again?").

Because Metro Nashville is not subject to a 25-member limit under the Constitution, it is certainly not subject to a lower limit imposed by statute and without local approval. The structure created by paragraph two of Article VII permits consolidated governments to select the size of their own legislative bodies through their own charters. The General Assembly thus cannot now arbitrarily set the number at twenty and foist it upon Metro Nashville in

contravention of this constitutional protection. *Spurlock*, 42 S.W.3d at 78 ("[T]he Tennessee Constitution . . . represents the supreme law of our state."). Because the Metro Council Reduction Act imposes a restriction that the Constitution explicitly rejects, Metro Nashville has a high likelihood of success on this claim.

II. IMPLEMENTATION OF THE METRO COUNCIL REDUCTION ACT WILL CAUSE IRREPARABLE HARM TO METRO NASHVILLE AND TO THE PUBLIC INTEREST.

A. THE METRO COUNCIL REDUCTION ACT'S MULTIPLE CONSTITUTIONAL VIOLATIONS EASILY ESTABLISH IRREPARABLE HARM TO METRO NASHVILLE.

Courts routinely hold that a constitutional violation mandates a finding of irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (The loss of a constitutional right, "even for a minimal period[ ] of time, unquestionably constitutes irreparable injury."); *Fisher*, 604 S.W.3d at 415 (Lee, J., concurring in part and dissenting in part) (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("'When constitutional rights are threatened or impaired, irreparable injury is presumed,' especially where (as here) monetary damages cannot make the plaintiffs whole.")). This Court should do the same. For the reasons outlined in Section I above, this prong of the Court's temporary injunction inquiry is easily satisfied.

B. A RUSHED REDISTRICTING AND ELECTION PROCESS IS CERTAIN TO GENERATE ERROR, CONFUSION, AND DIMINISHED VOTER CONFIDENCE.

Not only does the Metro Council Reduction Act force Metro Nashville to restructure its legislative body, but it does so on a timeline that is infeasible and sure to cause chaos in the election machinery, as well as confusion and distrust for voters.

It took Nashville years to decide on the structure of consolidated government that it wanted in the late 1950s and early 1960s; some might characterize that process as inefficient, while others might call it democracy in action. Regardless, the General Assembly's choice to leave that selected structure untouched for sixty years coupled with a directive to find a new

structure within weeks of an election season defies any notion of common sense, understanding of local politics, or reasonable expectation of public input.

1. The Tennessee Supreme Court Recently Held That Disrupting Electoral Processes Immediately Before an Election Is Harmful and Undermines the Public Interest.

The Act will egregiously disrupt the election process leading to Metro Nashville's general election on August 3—just a few short months away. Under the Act, the Metro Nashville Council and Planning Commission must radically reduce the size of the Council by May 1. Metro Council Reduction Act § 1(b)(1)(C). And they must do so without sufficient public input or the constitutionally required voter approval.

On the other hand, if Metro Nashville does not voluntarily reduce its Council size and redraw its districts before the qualifying deadline for the August 2023 Metro Nashville Council election, the election will be cancelled, current Councilmembers' terms will be extended to five years, and new Councilmembers will be elected to a smaller Council in August 2024 and serve three-year terms—all in violation of the State constitution.

Under either option, the General Assembly has radically upended the electoral machinery for the August 2023 election, with no time for Metro Nashville to plan for the change or to pivot. Such untimely interference in the electoral process constitutes significant public harm under the four-factor test for injunctive relief, as recently recognized by the Tennessee Supreme Court. "[E]lections are complex and election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process." *Moore*, 644 S.W.3d at 66. That is precisely the scenario the General Assembly has imposed on Metro Nashville at this late hour.

In *Moore v. Lee*, the Supreme Court vacated a temporary injunction that had enjoined implementation of newly drawn State Senate districts five months before the August 2022 State primary election, in large part because the ruling failed to properly consider the public

interest. 644 S.W.3d at 64.[20] The public interest arose from the injunction's harmful impact on the electoral process. By forcing the General Assembly to redraw State Senate districts at the same time candidates were campaigning and qualifying for election, the Court found that the injunction would: (a) have a "significant detrimental impact on the work of our state and county election officials," (b) risk "voter confusion," and (c) potentially compromise "the integrity of our state's elections." *Id.* at 65.[21]

The *Moore* Court imported the U.S. Supreme Court's "*Purcell* principle" into Tennessee law, noting that the U.S. Supreme Court "has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Id.* at 65 (citation omitted) (citing *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006)). Importantly, Metro Nashville is not asking this Court to disrupt the upcoming Metro Nashville Council election.

[20] While here, the electoral process disruption is caused by the Metro Council Reduction Act, not a lower court injunction, the impact on the public interest is the same. Furthermore, the injury that Metro Nashville has suffered in this case is more severe than the harm to defendants identified as unacceptable in *Moore*. There, the plaintiff's interest in voting in consecutively numbered districts yielded to the defendants' interest in preserving the integrity of elections. *Id.* at 67 ("Here, we observe that Plaintiff Moore's alleged irreparable injury is not to her ability to vote, but rather to her alleged right to vote in a county that has consecutively numbered Senate districts."). Metro Nashville not only seeks to preserve the integrity of an imminent election but also to validate its interest in an election that comports with the Tennessee Constitution. Put another way, Metro Nashville's interest here has the force of *both* parties' interests in *Moore* combined. Metro Nashville is not simply trying to correct a numbering issue. It seeks to preserve its election process in the face of the State foisting upon it a "choice" between two unconstitutional, untenable options.

[21] *Moore*'s procedural posture also bespeaks the importance of the interests that the Court validated. The Court reached down on its own motion to assume jurisdiction over the case based on "a compelling public interest." *Id.* at 63 n.5 (quoting Tenn. Code Ann. § 16-3-201(d)(3)). In addition to deciding that the circumstances satisfied the "compelling public interest" test, the Court directed that the case not be subject to rehearing under Tenn. R. App. P. 39. *Id.* at 67. Speed and finality were crucial in defending the State's interest in having the election proceed. Abuse of discretion—the bar cleared in the *Moore* appeal, *id.* at 63, 67—is a high one. *Cf. Jefferson v. Williams-Mapp*, No. W202101058COAR3CV, 2022 WL 1836926, at *4 n.7 (Tenn. Ct. App. June 3, 2022) (showing abuse of discretion is a "high burden"); *Seven-Up Co. v. O-So Grape Co.*, 179 F. Supp. 167, 172 (S.D. Ill. 1959) ("And judicial precedent is legion which suggests that the likelihood of successfully urging an abuse of discretion in an appellate court is comparable to the chance which an ice cube would have of retaining its obese proportions while floating in a pot of boiling water."). Yet *Moore* was so important as to clear multiple procedural hurdles (decided on affidavits and verified pleadings without any evidentiary hearing) for the Court to rule as it did.

Rather, Metro Nashville is asking this Court to invoke the *Purcell* principle affirmatively and *protect* the integrity of the upcoming election against interference that will violate the State Constitution under either "option" and sow chaos and confusion among voters, candidates, and election officials. To permit a state's legislative body to undermine an election just before it happens, particularly with no discernable, good-faith justification for the Act, would render the *Purcell* principle a nullity. This is particularly true where, as here, the exact same interests bear, where the same harm is imminent, and where the public interest counsels preserving the status quo by allowing Metro Nashville to proceed with its August 2023 council elections for regular four-year terms and no reduction in council size.

The Metro Nashville Council has operated under the same electoral processes since the citizens of Nashville and Davidson County voted to consolidate in 1962. Voters have elected thirty-five district Councilmembers and five at-large Councilmembers in 1962 and for decades after that first election. 1962 Charter §§ 15.01, 20.20; Current Metro Nashville Charter §§ 15.01, 20.20. The General Assembly's failure to raise its purported "concerns" about efficiency and financial issues before now speaks volumes. The Court should not permit the General Assembly to completely upend a local election process at the eleventh hour, particularly to implement an unconstitutional attack on local sovereignty.

2. The Metro Council Reduction Act Will Disrupt Long-Standing Electoral Processes for Electing Metro Nashville Councilmembers.

Metro Nashville will complete a four-year municipal election cycle on August 3 of this year, less than five months from now. Much work has been already done to prepare for that election. The Metropolitan Charter requires the Metro Nashville Planning Commission to redraw the thirty-five Council districts following each decennial census. Metro Nashville

Charter § 18.06.[22] The current set of Metro Nashville Council districts was crafted in 2021 by the Commission and approved by the Metro Nashville Council in January 2022. (Kempf Decl. ¶ 13 & BL2021-1052, attached thereto as Exhibit 1.) The 2022 districts were the result of a deliberative process that lasted months and involved multiple public hearings, numerous community meetings, an online survey, and virtual appointments for soliciting feedback, all to ensure that the resulting map kept communities intact while complying with federal constitutional and statutory voting-rights requirements. (*See generally* Kempf Decl.)

The Act, on the other hand, gives the Metro Nashville Council and the Metropolitan Planning Commission roughly six weeks *both* to reduce the size of the Council and determine the boundaries of the enlarged council districts. As Planning Department Executive Director Lucy Kempf has noted, this would be the first redistricting process with that few districts, by half. (*Id.* ¶ 14.) Even the Act's sponsor conceded that the Act places Metro Nashville "in a very tight timetable." *Hearing on H.B. 48 Before the H. Local Gov't Comm.*, 2023 Leg., 113th Gen. Assembly (Feb. 7, 2023) (statement of Rep. William Lamberth). Such a radically abbreviated timeline to make fundamental and lasting changes to the Metro Nashville Council—changes that can and will affect everything from minority representation to good governance practices—is against the public interest. The Council will effectively be forced to select a reduced number of council seats without meaningful public input. And the Planning Department, subject to Planning Commission approval, will be forced to draw those seats with little time to consider voting rights requirements and solicit sufficient community input.

[22] Under the Metro Nashville Charter, the Commission submits a proposed ordinance to the Metro Nashville Council with its recommended redistricting map, which the Council must either accept or reject without amendment. If the map is rejected by the Council, it is submitted to the people for approval at a special referendum election. The Council can also submit its own plan as part of the referendum. Metro Nashville Charter § 18.06. This process privileges community involvement, and could conceivably take months depending on how the chips fall in the council-voting process.

Indeed, the Metro Council Reduction Act completely ignores a key prerequisite to its implementation—a process that takes deliberation and requires input from stakeholders and the general public. The act sets a ceiling on the number of members in the Metro Nashville Council; it does not set the number itself. Thus, before the Planning Commission can adopt new boundary lines and propose them to the Metro Nashville Council, the Council must set the number. (Shulman Decl. ¶ 7.)

The process of determining how many Council districts are best for Metro Nashville does not amount to pulling a number out of thin air. Nor is it a foregone conclusion that the only option is twenty members if it cannot be forty. Rather, if the Metro Nashville Council is forced to select an appropriate number of members not to exceed twenty, as well as the balance, if any, of district and at-large seats, it must do so deliberatively and with input from city stakeholders and constituents. The Metro Council Reduction Act simply does not provide time for appropriate deliberation over these important issues.

Importantly, any redistricting process is subject to applicable voting rights protections for minority representation. Metro Nashville thrives because of its diversity, and rushing through that process simply to "check the box" cuts against everything that this city is built on. In fact, three letters have already been delivered to State officials and to the Planning Department expressing concern over the Metro Council Reduction Act's potential impact on minority representation on the Metro Nashville Council. (Feb. 22, 2023, Ltr. From Business Community Leaders to Lt. Governor McNally and Speaker Sexton ("Business Cmty. Ltr."), attached to Wynn Decl. as Ex. 1; Mar. 3, 2023, Ltr. from Interdenominational Ministers Fellowship ("IMF") to Governor Bill Lee, Lt. Governor Randy McNally, and Speaker of the House Cameron Sexton ("IMF Ltr."), attached to Davie Tucker Decl. as Ex. 1; Mar. 6, 2023, Ltr. from Latinx Community Leaders to Governor Bill Lee, Lt. Governor Randy McNally, and

Speaker of the House Cameron Sexton ("Latinx Cmty. Ltr."), attached to Sandra Sepulveda Decl. as Ex. 1.)[23]

As the IMF expressed in its letter, the 40-member structure of the Metro Nashville Council "reflects our city's race and gender composition" and "meets the needs of a dynamic community that values grassroots representation and multiple perspectives." (IMF Ltr. at 2.) The March 6, 2023, letter from Latinx community leaders and the February 22, 2023, letter from business leaders expressed similar sentiments. (Latinx Cmty. Ltr. at 1 ("Moreover, the issue of representation is historically paramount to the Metro Nashville community. Our diversity is our strength, and it transcends political alignments."); Business Cmty. Ltr. at 1 ("We believe the economic harm [that the Metro Council Reduction Act and other pieces of legislation] would cause, the legal and governmental chaos they would create, and the impact they would have on minority representation in a community that values and benefits from diversity are significant.").)

The IMF's letter further warned that the IMF "stands ready" to take legal action if necessary to defend rights protected by the Voting Rights Act if impaired by the Metro Council Reduction Act. (IMF Ltr. at 2.) Boundary lines, and even the number of districts/councilmembers from which such lines are drawn, play a key role in protecting minority representation and, more broadly, serving the interests of the community as a whole. It is only prudent, in the face of such warnings and simply in the interest of good government, that Metro Nashville Councilmembers proceed carefully through such a process, and not without hearing from stakeholders. Thirty days to agree on and draw new districts

[23] All of these letters were forwarded to Metro Nashville Planning Director Lucy Kempf. (Wynn Decl. ¶ 4; Sepulveda Decl. ¶ 4; Tucker Decl. ¶ 6, attached to Notice of Filing Decls. as Exhibits E, F, and G, respectively.)

is not just a "tight timeframe"—it is a recipe for litigation and disaster. The General Assembly cannot compel such a false choice on the voters and legislators of Nashville.

"The proper performance of the legislative function demands that legislation designed to restructure county government be adopted *to minimize disruption, promote orderly transition, conserve public funds and respect the interest of the involved citizenry*." *State ex rel. Maner*, 588 S.W.2d at 541 (emphasis added). If the Metro Council Reduction Act is implemented, the opposite will be true here. As *Moore* aptly notes, "requiring the [legislative body] to draw new plans at such a late stage presented its own risks because 'a quick plan [] is not necessarily a good plan,' and voters and candidates are not well served 'by a chaotic, last-minute reordering of districts.'" 644 S.W.3d at 66 (quoting *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1326 (N.D. Ga. 2022)). On this basis alone, this Court should enjoin implementation of the entire Act. There is simply no State interest (let alone emergency) justifying this unconstitutional intervention into an imminent local election.

3. The Metro Council Reduction Act Will Confuse Metro Nashville Voters and Undermine their Confidence in the Electoral Process.

Maintaining confidence in elections is a key consideration in weighing the public interest, according to *Moore*. As noted in the opinion, the U.S. Supreme Court has recognized that "'[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy'" and that abrupt changes to such processes "'can themselves result in voter confusion and consequent incentive to remain away from the polls.'" 644 S.W.3d at 65 (quoting *Purcell*, 549 U.S. at 4–5). The Act will create confusion and undermine confidence in Metro Nashville elections. For example, Davidson County voters received new voter identification cards last year that listed their council, school board, state house, state senate, and congressional districts, along with precinct information. (Herzfeld Dec. ¶ 17.) If

the Council districts are reduced in number and redrawn, then the Davidson County Election Commission will have to prepare and distribute replacement voter identification cards to every Davidson County voter just before the August election to notify them of their new Council districts and related precinct changes. *Cf. Moore*, 644 S.W.3d at 64 ("many county election commissions have already relied on the Senate plan in adjusting voting precinct lines and have notified voters of these changes as required by" state law). Voters, having had over a year to familiarize themselves with the thirty-five council districts adopted in January 2022 and the candidates running in those districts, will have little time to assess the radically new Council structure imposed on them by the General Assembly. Confusion is even more likely now, as numerous voters will have possessed three separate voter registration cards within the span of approximately twelve months if the Act is not enjoined: a pre-2020 Census redistricting card, a post-2020 Census redistricting card, and a new card following any additional redistricting before the August 3, 2023, election. (Herzfeld Decl. ¶ 24.) Simply stated, all of these last-minute changes are sure to create confusion and undermine public confidence in the electoral process.

4. The Metro Council Reduction Act Will Disrupt and Confuse Candidates Who Are Already Campaigning for Existing Metro Nashville Council Seats on the August 3, 2023, Ballot.

Immediate implementation of the Act will also adversely affect the declared candidates for Metro Nashville Council and others who are preparing to run. Metro Nashville Council candidates have been campaigning for the 2023 Council elections for over two years. (*Id.* ¶¶ 14–15.) Four Metro Nashville Council candidates filed Appointment of Political Treasurer forms with the Davidson County Election Commission in 2021. (*Id.* ¶ 15.) Another twenty candidates filed appointment forms in 2022. (*Id.*) Those twenty-four Council candidates reported over $522,000 in campaign receipts from July 1, 2022, to January 15, 2023, and had campaign balances of approximately $512,000 as of January 15, 2023. (*Id.*)

There are now almost forty potential candidates who have designated campaign treasurers. (*Id.*) These and other individuals can pick up qualifying petitions beginning March 20, which must be completed and filed by May 18. (*Id.* ¶¶ 7–8.) Early voting will begin in four months, on July 14. (*Id.* ¶ 28.) In short, the election campaign is well underway.

All of that work is imperiled by the Act, which will either cancel the 2023 election or radically change the offices these candidates seek. Redrawing districts and doubling their size will increase the amount of time and effort required to run a successful campaign and significantly change the legislative responsibilities and time commitments for those who are elected. Current and prospective candidates will have to decide quickly whether they can scale up their campaigns in time and money to reach a new, significantly larger group of voters in an expanded district. They must assess whether they can compete against a new set of opponents, particularly where an open district now becomes a district with one or more incumbents seeking reelection. The Act completely alters the factors on which these candidates decided to run and, if not enjoined, will discourage other potential candidates from running.

All of these reliance interests were relevant to the Supreme Court's decision in *Moore*. 644 S.W.3d at 64–65 (citing declaration testimony, which "explained that many *county election commissions have already relied* on the Senate plan in adjusting voting precinct lines and have notified voters of these changes . . . [and] that election officials, candidates, and *voters have already relied* on the district boundaries in the Senate plan to determine whether voter signatures are valid on nominating petitions that already have been filed") (emphasis added) (citation omitted)). The Act's requirements throw a monkey wrench into the fast-turning gears of Metro Nashville's election process: Metro Nashville redrew its existing districts last year, the Davidson County Election Commission implemented those changes,

and candidates are raising money, courting voters, and pounding the pavement. Yet under the terms of the Act, those current and future Metro Nashville Councilmembers have no idea which district they might be running in or who their constituents might be.

In fact, if the Metro Council Reduction Act is not enjoined and the Metro Nashville Council does not vote to approve new districts immediately, nominating petitions that will be available to candidates on March 20 will be worthless. May 1 is the new deadline for the Metro Nashville Council to approve new districts, and the deadline for submitting petitions is May 18. Thus, in the absence of an injunction, candidates will be forced to circulate new nominating petitions in new districts twice as large as the former ones, obtain the required signatures, and file the petitions in perhaps as few as seventeen days.

If, however, the Council were to adopt new Council districts as required by the Act and the Act is later ruled unconstitutional, those significant redistricting efforts would have been for naught. And if the Court does not strike down the Act as unconstitutional until after the May 18 Nominating Petition deadline, any relief in this case could only be granted by ignoring or extending the state law deadline in Tenn. Code Ann. § 2-5-101(a)(3). Simply stated, the General Assembly's expedited timeline is fraught with peril no matter which path the existing Council elects to travel.

In sum, the Act will completely upend and disrupt a well-functioning, fast-moving election process, threatening the representation rights of citizens, the interests of candidates, and the confidence of voters. Because the citizens of Metro Nashville deserve better, the public-interest factor weighs strongly in favor of granting the requested injunction.

III. THE ABSENCE OF HARM TO THE STATE DEFENDANTS WEIGH AGAINST IMPLEMENTATION OF THE METRO COUNCIL REDUCTION ACT.

In contrast to the significant irreparable harm to Metro Nashville, candidates for Council races, and the general public if the Metro Council Reduction Act is implemented, the

State will experience no harm if the Act is enjoined. Metro Nashville has operated since 1963 with forty Councilmembers. Any suggestion that this is suddenly causing an efficiency problem sixty years later rings hollow. Permitting Metro Nashville to operate as it always has, pending the Court's review of the Act's constitutionality, will cause no harm to the State. Even if the Act were constitutional, it could be implemented at the conclusion of the litigation on a more reasonable timeline. And not only does the State of Tennessee suffer no harm from an injunction, but it is not affected at all by the number of members that serve on Metro Nashville's legislative body.

The Act's legislative history sheds little light on the public policy underlying the legislation. In presenting the bill, the House sponsor claimed that the bill's "genesis" was legislative "efficiency." *Hearing on H.B. 48 Before the H. Subcomm. on Cities & Counties*, 2023 Leg., 113th Gen. Assembly (Feb. 1, 2023) (exchange between Rep. Sam McKenzie and Rep. William Lamberth). The sponsor offered two facts in support of his assertion that Metro Nashville's forty-member council does not "work particularly well": (1) at forty members, the Metro Nashville Council is one of the largest local legislative bodies in the nation; and (2) Metro Nashville's bond rating "is one of the lower bond ratings out there," and Metro Nashville's budget discussions "are constantly in disarray." *Id.*; *Hearing on H.B. 48 Before the H. Local Gov't Comm.*, 2023 Leg., 113th Gen. Assembly (Feb. 7, 2023) (exchange Rep. Harold Love, Jr. and Rep. William Lamberth). In other words, the proffered public justifications were based in efficiency and financial considerations.

The House sponsor's assertions regarding financial imperatives are simply false, and neither assertion demonstrates that the State would be harmed by delaying the Act's implementation. The Metro Nashville Council, with forty members, has been one of the largest local legislative bodies in the nation since 1963, when Metro Nashville consolidated.

That structure has stood for sixty years. The General Assembly could have asserted its purported inefficiency concerns about the Council's size at any time over the last six decades. And contrary to the sponsor's claims, Metro Nashville boasts a strong financial position. Its bond rating is AA+, only one step below the highest possible rating of AAA, and that rating provides strong external validation that its budget is well in order. All the while, Metro Nashville's property tax rate remains the lowest of any major city in the State.

The voters of Nashville have debated the size of the Metro Nashville Council more than a few times since the late 1950s. But the question of whether changing the size of the Metro Nashville Council is good public policy is not before this Court. The question here is whether the General Assembly gets to make that call, imposing its will on Metro Nashville's residents without consent and upending an imminent election. The resounding answer to that question is and must be no, given the clear language of the State's Constitution. The General Assembly's crafting of this bill to affect only Nashville demonstrates that the public policy imperative its sponsors trumpeted is a pretense. And this Court should not tolerate such egregious tampering with the core structure of a consolidated government, particularly not on this timeline. The Constitution of our State requires otherwise.

Enjoining the Metro Council Reduction Act will inflict no damage (material or otherwise) on the State. Accordingly, this factor weighs in favor of an injunction as well.

CONCLUSION

The Court should enjoin implementation of the Metro Council Reduction Act. Plaintiff Metro Nashville is likely to succeed on the merits of this declaratory judgment action because the Act violates the Consolidation Clause and Local Legislation Clause in the Home Rule Amendment, as well as Article VII, Section 1's mandatory four-year term for members of a county's legislative body and exemption for metropolitan governments from any cap on the number of legislators. Harm to the parties and the public also weigh strongly in favor of an

injunction here. Implementation of the hurried timeline set forth in the Metro Council Reduction Act is sure to cause chaos and confusion for candidates, government officials, and voters, and threatens to undermine the August 3, 2023, election. And the State will suffer no harm if an injunction is entered; the current structure of the Metro Nashville Council has existed without State interference for sixty years, and Nashville is experiencing some of its finest days. For these reasons, Metro Nashville respectfully requests that the Court enjoin implementation of the Metro Council Reduction Act.

Respectfully submitted,

DEPARTMENT OF LAW OF THE
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing will be timely served on the defendants along with the Complaint and Summonses.

/s/ *Allison L. Bussell*
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