E-FILED
3/27/2023 11:44 AM
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY
AT NASHVILLE

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 Coordinator of Elections for the State of Tennessee,	)	
Defendants.	)	

DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION

Plaintiff, Metropolitan Government of Nashville and Davidson County, Tennessee ("Metro Nashville"), has filed a motion for temporary injunction ("Motion") seeking to enjoin the enforcement of 2023 Tenn. Pub. Acts, ch. 21, pending a final decision by the Court on Plaintiff's constitutional challenge to this Act. Defendants, Governor Bill Lee, Secretary of State Tre Hargett, and State Election Coordinator Mark Goins oppose the Motion and, for the reasons set forth below, ask that it be denied.

BACKGROUND

The Act: 2023 Tennessee Public Acts, Chapter 21

The Tennessee General Assembly "has very broad powers and discretion with respect to the structure of local governments." *Leech v. Wayne County*, 588 S.W.2d 270, 272 (Tenn. 1979). And the General Assembly has enacted many laws governing the formation, structure, and operation of local governments. Many of those laws are found in Title 5 (county governments), Title 6 (municipalities), and Title 7 (metropolitan governments) of the Tennessee Code.

The General Assembly enacted Chapter 21 of the 2023 Tennessee Public Acts (the "Act"[1]), effective as of March 9, 2023. The Act amends Chapter 1 of Title 7 and Chapter 53 of Title 6 of the Tennessee Code by establishing a cap of 20 voting council/commission members for metropolitan governments and a cap of 20 voting members for the governing bodies of municipalities. Act §§ 1(a) and 2(a).

Metropolitan governments must implement the cap "as of the next general metropolitan election" after the Act's effective date, and the Act includes certain transitional provisions applicable to any metropolitan government required to reduce the number of its voting council/commission members to comply with the 20-member cap. *Id.* § 1(b)(1). Specifically, any metropolitan government required to reduce the size of its council must take "necessary legislative action" to implement appropriate redistricting "prior to the qualifying date for the next general metropolitan election after the effective date of the" Act. *Id.* § 1(b)(1)(A).

There are currently three metropolitan governments in Tennessee governed by Title 7:

[1] Throughout its brief, Metro Nashville refers to the Act as the "Metro Council Reduction Act." That is not the official name of the Act, nor is it a generally accurate description of the Act.

Metro Nashville (Nashville-Davidson County), Lynchburg-Moore County, and Hartsville-Trousdale County. At present, Metro Nashville has 40 voting councilmembers, Hartsville-Trousdale County has 20 voting commissioners, and Lynchburg-Moore County has 15 voting councilmembers. There are more than 300 municipalities within the State covered by Title 6 of the Tennessee Code; none of those municipalities currently has a governing body that exceeds 20 voting members. TENNESSEE BLUE BOOK (2022) at 869, 875–77[2]; *see Metro Govt Lynchburg*, MTAS[3]; *Metro Govt Hartsville*, MTAS[4].

Metro Nashville's next general metropolitan election is August 3, 2023, and the qualifying deadline for that election is May 18, 2023. (2023 Davidson County Election Calendar, Metropolitan Nashville and Davidson County.)[5] Consequently, the Act requires Metro Nashville's planning commission to establish new district boundaries by April 8, 2023 (i.e., within 30 days after the effective date of the Act), and Metro Nashville Council must approve new council-district boundaries that are compliant with the Act on or before May 1, 2023. Act § 1(b)(1)(A)–(D).

If Metro Nashville fails to implement appropriate redistricting in time (i.e., by the May 18, 2023, qualifying deadline) to elect a new slate of 20 or fewer councilmembers during its regularly scheduled general election on August 3, 2023, then Metro Nashville's council is required to implement redistricting in time for a special election to be held in August 2024. In that event, "the terms of the current members of metropolitan council are extended for one (1) year and the county election commission shall set a special general metropolitan election to be held the first Thursday

[2] *Available at* https://sos.tn.gov/publications/services/2021-2022-tennessee-blue-book.
[3] *Available at* https://www.mtas.tennessee.edu/city/lynchburg-moore-county.
[4] *Available at* https://www.mtas.tennessee.edu/city/hartsville-trousdale-county.
[5] *Available at* https://www.nashville.gov/sites/default/files/2023-03/2023_Davidson_County_Election_Calendar_2.pdf.

in August 2024 to elect the councilmembers for a term of three (3) years with the terms to begin September 1, 2024." Following the three-year terms, the "members of the metropolitan council shall serve terms of four (4) years." *Id.* § 1(b)(1)(A)–(D).

Metro Nashville's Challenge to the Act.

Metro Nashville filed this declaratory-judgment action on March 13, 2023, challenging the validity of the Act under the Tennessee Constitution as it applies to Metro Nashville. Metro Nashville makes four claims: (1) that the Act violates the Consolidation Clause in article XI, section 9; (2) that the Act violates the Local Legislation Clause in article XI, section 9; (3) that the Act runs afoul of the four-year-term requirement in article VII, section 1; and (4) that the Act ignores the exemption for consolidated counties in article VII, section 1. (Compl. 19, 20, 23, 25.)

Metro Nashville's Steps to Comply with the Act.

Despite filing a lawsuit to challenge the Act, Metro Nashville has taken certain initial steps necessary for meeting the Act's compliance deadlines.

In an email sent to all members of the Metro Nashville Council on March 11, 2023, Vice Mayor Schulman informed all councilmembers about the passage of the Act and the scheduling of a series of expedited meetings of the Metro Nashville Council and Planning Commission to address the redistricting required by the Act. (Schulman Decl. ¶ 16, Ex. 1.) The actions taken by Metro Nashville following the Vice Mayor's March 11 email include: (1) filing a proposed resolution (the "Resolution") with the Metro Nashville Council on March 14, 2023, "directing [Metro Nashville's] Planning Department to prepare a Council redistricting plan consisting of 17 district councilmembers and 3 councilmembers at-large to comply with state law, requesting the Metropolitan Planning Commission to hold the necessary meeting(s) to approve the redistricting

plan, and requesting the Vice Mayor to call any special Council meeting(s) that may be required to effectuate the redistricting plan"[6]; (2) convening an informational meeting on March 16 between councilmembers and the Planning Commission staff to review the Act and discuss redrawing Council districts[7]; (3) making Planning Commission staff available during the regularly scheduled Metro Nashville Council meeting on Tuesday, March 21, 2023, to answer additional questions from councilmembers regarding redistricting[8]; and (4) scheduling and conducting special meetings of the Metro Nashville Council and its Planning and Zoning Committee on March 22, 2023, to vote on the Resolution[9].

During the March 22 special meeting, however, Metro Nashville Council voted to delay taking any additional action on redistricting until its April 4, 2023, meeting, including giving any guidance to the Planning Commission on the redrawing of district maps. *Meeting of the Metro Nashville Council*, March 22, 2023, at 26:00–34:00.[10]

As of March 24, 2023, Metro Nashville's Planning Commission staff has already prepared and released two draft redistricting maps for public review and comment—one map with 15 districts and 5 at-large seats, and another map with 17 districts and 3 at-large seats. Also listed are

[6] Resolution RS2023-2062, March 14, 2023, *available* at https://nashville.legistar.com/LegislationDetail.aspx?ID=6068022&GUID=C787EDC6-82AE-4A6D-8C49-61A74C241251&FullText=1.
[7] *Public Information Session of Metro Council and Metro Planning Commission*, March 16, 2023, *available at* https://www.youtube.com/watch?v=2gGU3AMzzIY.
[8] *Metro Council Meeting*, March 21, 2023, *available at* https://www.youtube.com/watch?v=jLg5JN-2png.
[9] *Meeting of the Metro Nashville Council*, March 22, 2023, at 26:00–34:00, *available at https://www.youtube.com/watch?v=rV_5z47Zy9g*.
[10] *Available at https://www.youtube.com/watch?v=rV_5z47Zy9g*.

four different public input opportunities occurring at various times and locations throughout the metropolitan area occurring during the week of March 27, 2023.[11]

ARGUMENT

The motion for a temporary injunction should be denied.[12] The Act is a valid exercise of legislative authority, and none of the arguments raised by Metro Nashville is a proper basis for this Court to find the Act unconstitutional.

There is no likelihood that Metro Nashville's challenge to the Act will succeed on the merits. The 20-member cap on local legislative bodies is a law of general application, and Section 1(b) of the Act contains transitional provisions so that governments currently not in compliance have a clear path to get there. Nor does the Act cause Metro Nashville irreparable harm, whereas the issuance of any injunction *would* cause harm to the State and the public interest.

I. A Temporary Injunction Is Not Warranted Under Tenn. R. Civ. P. 65.04.

A temporary injunction is an "extraordinary" remedy that should be granted "with great caution." *Moore v. Lee*, 644 S.W.3d 59, 52 (Tenn. 2022); *Hall v. Britton*, 292 S.W.2d 524, 531 (1953); *see Galyon v. First Tennessee Bank Nat. Ass'n*, No. 03A01-9106CH00219, 1991 WL 259473, at *1 (Tenn. Ct. App. Dec. 11, 1991) (noting that "injunctive relief" is "an extraordinary equitable remedy"). For that reason, "the decision to grant an injunction should not be a perfunctory one." *Alexandria-Williams v. Goins*, No. W2018-01024-COA-R10-CV, 2018 WL

[11] *See* https://redistricting-nashville.hub.arcgis.com, last visited on March 24, 2023.

[12] In its March 20, 2023, order setting a briefing schedule and hearing on the motion for temporary injunction, the Court asked the parties to address whether a final hearing on the merits should be consolidated with the temporary-injunction hearing pursuant to Tenn. R. Civ. P. 65.04(7). For the reasons discussed in Section II below, Defendants submit that consolidation would be inappropriate.

3198799, at *2 (Tenn. Ct. App. June 26, 2018). Indeed, "there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion or is more dangerous in a doubtful case." *Id.* (quoting *Mabry v. Ross*, 48 Tenn. 769, 774 (1870)).

In accordance with these principles, the Tennessee Rules of Civil Procedure permit awards of injunctive relief only when "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 that "the movant will suffer immediate and 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. When considering requests for injunctive relief under this rule, Tennessee trial courts consider four factors: (1) the threat of irreparable harm to the party requesting injunctive relief if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the party opposing the relief; (3) the probability that the requesting party will succeed on the merits; and (4) the public interest. *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020); *Moody v. Hutchison*, 247 S.W.3d 187, 199–200 (Tenn. Ct. App. 2007); *see also S. Cent. Tennessee R.R. Auth. v. Harakas*, 44 S.W.3d 912, 919 n.6 (Tenn. Ct. App. 2000) (recognizing that this "four-factor test" is "[t]he most common description of the standard for preliminary injunction in federal and state courts"). Further, when adjudicating a motion for a temporary injunction, the court need not take facts in the complaint as true or view all facts in a light most favorable to the plaintiff. *See Berry v. Mortg. Elec. Reg'n Sys.*, No. W2013-00474-COA-R3-CV, 2013 WL 5634472, at *3 (Tenn. Ct. App. Oct. 15, 2013).

A. Metro Nashville has no likelihood of success on the merits.

Metro Nashville alleges that the Act is unconstitutional under article VII, section 1, and

article XI, section 9, of the Tennessee Constitution. (Compl. 19–28.) But Metro Nashville cannot show a likelihood of success on the merits of its claims.

In all cases involving constitutional challenges to state statutes, the court begins with a strong presumption in favor of the constitutionality of statutes passed by the General Assembly, and courts uphold the constitutionality of the challenged statute wherever possible. *State v. Pickett*, 211 S.W.3d 696, 700 (Tenn. 2007); *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006). The court must "indulge every presumption and resolve every doubt in favor of the statute's constitutionality." *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003). Because courts have a "duty to save, in so far as constitutionally permissible, legislative enactments," when a statute "is susceptible of two constructions or interpretations, one which will preserve and one which will destroy, that must be given it which will preserve it." *Bayless v. Knox Cnty.*, 286 S.W.2d 579, 583-84 (Tenn. 1956). And "[d]ue to the strong presumption that acts of the General Assembly are constitutional, the party attacking the constitutionality of a statute 'must bear a heavy burden in establishing some constitutional infirmity of the Act in question.'" *Gallaher v. Elam*, 104 S.W.3d 455, 460 (Tenn. 2003) (quoting *West v. Tenn. Hous. Dev. Agency*, 512 S.W.2d 275, 279 (Tenn. 1974)).[13]

Metro cannot meet that heavy burden in this case, and its constitutional challenge must fail

[13] In this lawsuit, Metro Nashville contends that the Act is facially unconstitutional. (Compl. 19–28.) If the Court considers Metro Nashville's constitutional challenge to be a facial one, the presumption of constitutionality applies with even greater force. *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003). To prevail on a facial challenge, a party must demonstrate that the statute cannot be constitutionally applied in any circumstance. *Lynch*, 205 S.W.3d at 390. Consequently, a facial challenge is "the most difficult challenge to mount successfully since the challenger must establish that no set of circumstances exist under which the Act would be valid." *State v. Crank*, 468 S.W.3d 15, 27-28 (Tenn. 2015). Courts view facial invalidity of a statute as strong medicine and invoke it sparingly and only as a last resort. *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973).

as a matter of law, especially in view of the strong legal presumption of constitutionality afforded the Act. Much of Metro Nashville's challenge is based on the assertion that it will be difficult for it to comply with the redistricting deadlines established in the Act. But "difficulty of compliance is not a persuasive ground for deeming [a legislative enactment] unconstitutional." *Disc. Inn, Inc. v. City of Chicago*, 803 F.3d 317, 327 (7th Cir. 2015); *see also Mobile & O. R. Co. v. State*, 29 Ala. 573, 587 (1857) ("unconstitutionality of [a] law is not a consequence of the magnitude of the difficulty in complying with the condition which it imposes").

1. The Act does not violate the "Consolidation Clause" in art. XI, § 9, of the Tennessee Constitution.

Metro Nashville's first claim is based on what it refers to as the "Consolidation Clause" in Tenn. Const. art. XI, § 9. (Compl. 19.) Section 9 of article XI authorizes the General Assembly to permit the consolidation of municipal and county governments:

> 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, cl. 9. The General Assembly exercised this power by enacting what is now codified in Title 7, Chapters 1-3, of the Tennessee Code. *See State ex rel. Metro. Gov't of Nashville & Davidson Cnty. v. Spicewood Creek Watershed Dist.,* 848 S.W.2d 60, 62 (Tenn. 1993); *see also* Tenn. Code Ann. § 7-1-103(a) ("Each county in this state, without regard to population, and the municipal corporations within such county, may consolidate all, or

substantially all, of their governmental and corporate functions in the manner and with the consequences provided in this chapter.").

This enabling legislation outlines the process for the creation of a consolidated metropolitan government, beginning with the creation of a charter commission. *See* Tenn. Code Ann. § 7-2-101. A charter, after being proposed by a charter commission and certified to the county election commission, must then be approved in a referendum vote by the citizens of the county and city proposing to consolidate. *See id*. § 7-2-106. If a majority of those voting in the principal city and a majority of those voting in the county outside the principal city vote to approve the charter, the charter is deemed ratified and adopted. *Id*. In addition to defining the process for consolidation, the General Assembly established certain requirements for what must be included in a proposed metropolitan charter. *See* Tenn. Code Ann. § 7-2-108(a). Requirements include, but are not limited to, the name of the metropolitan government, that the territorial boundaries of the metropolitan government include the entire county, and that the metropolitan government is a public corporation. *Id.*

Metro Nashville contends that the Act violates the Consolidation Clause because when it adopted its charter in 1962, it entered into a "compact" with the State. That charter, Metro Nashville insists, can therefore not be unwound or changed without local approval. (Pl. Mem. 23–24.) But the Consolidation Clause requires only that the initial *consolidation* of city and county government be approved by local voters. In contrast to the Home Rule provision in art. XI, § 9, which prohibits the General Assembly from passing a law that is private or local in form or effect without providing for approval by the local government, the Consolidation Clause does not render

a metropolitan government's charter untouchable—so long as a future law affecting the metropolitan government is of general application.

Indeed, the General Assembly has expressly recognized the potential for future laws of general applicability, including laws that may limit or restrict the powers of metropolitan government and/or that could affect a metropolitan government's charter. Under Tenn. Code Ann. § 7-2-108, a proposed charter must provide for:

> (A) Any and all powers that cities are, *or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state*, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state, *except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter*; and
>
> (B) Any and all powers that counties are, *or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state*, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state, *except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter*.

Id. § 7-2-108(a)(1) (emphasis added).[14] In other words, the provisions of metropolitan charters are limited by the general law, specifically including Chapters 1-6 of Title 7, which at least part of the Act amends. *See* 2023 Tenn. Pub. Acts, ch. 21, § 1 (amending Title 7, Chapter 1, of the Tennessee Code).

Tennessee courts have had occasion to consider the effect of subsequent changes in the law on a local government's charter. For example, in *County of Shelby v. McWherter*, 936 S.W.2d 923

[14] Metro's own charter contains a provision acknowledging the applicability of future general laws and potential limitations and restrictions found in the metropolitan consolidated government enabling legislation. *See* Ex. E to Plaintiff's Motion for Temporary Injunction, Section 2.02 (". . . except only for *such limitations and restrictions as are provided in Tennessee Code Annotated, section 7-1-101 et seq., as amended*, or in this charter") (emphasis added).

(Tenn. Ct. App. 1996), the Court of Appeals considered whether Shelby County's charter superseded the general law of the Educational Improvement Act with respect to selection of board of education members. The county took the position that since the State had passed home-rule-enabling legislation, and because the county had acted on the home-rule legislation, the State could not change it. *Id*. at 933.

The court disagreed, holding that there was "no constitutional provision that prohibits the Legislature from enacting laws which in some form or fashion are contrary to a local law set forth in a county's home rule charter." *Id*. at 933-34. "To the contrary," the court observed, "there is ample authority for the proposition that when the Legislature acts through general legislation, the Legislature retains power over a county, despite the county's home rule status, and this is true even with respect to functions that are governmental or political in nature." *Id*. at 934. "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." *Id*. (citations omitted).

The General Assembly likewise gives counties and cities the right to consolidate. *See* Tenn. Const. art. XI, § 9, cl. 9. ("*The General Assembly may provide for*" a consolidation.) (emphasis added). And while article XI, section 9, of the Tennessee Constitution prohibits the Legislature from passing special, local, or private laws that would effectively amend or repeal a specific local government's charter, the General Assembly is not prohibited from passing laws of *general* application that may potentially have such an impact. *See County of Shelby*, 936 S.W.2d at 932; *see also Frazer v. Carr*, 210 Tenn. 565, 582–83, 360 S.W.2d 449, 456 (1962) ("Then the Chancellor correctly concludes, in the opinion of this Court, 'that the municipal or county offices

which have been abolished, or the terms of certain local offices abridged, result from the provisions of a General Act, not a Private Act.'"); *Winter v. Allen*, 212 Tenn. 84, 92, 367 S.W.2d 785, 789 (1963) ("Since such duties and functions are prescribed by law they may be repealed, abolished or transferred by a new and different law provided it be of equal dignity, with the law fixing such duties and responsibilities.").

"It has long been the law in Tennessee that cities and counties have only those powers expressly granted by or necessarily implied from state statutes. *A metropolitan government is no different in this regard.*" *Entertainer 118 v. Metro. Sexually Oriented Bus. Licensing Bd.*, M2008-01994-COA-R3-CV, 2009 WL 2486195, at *2 (Tenn. Ct. App. Aug. 14, 2009) (internal citations omitted) (emphasis added). Moreover, "the sources of authority for the consolidated government are the Tennessee Constitution, chapters 1-3 of Title 7 in the Tennessee Code Annotated (*and any subsequent legislative acts applying to Metro*), and prior functions of the city or county retained by the Metro Charter." *Id*. at *3 (emphasis added).

Thus, as long as the General Assembly is acting through laws of general applicability that are not private or local in form or effect, the General Assembly may enact laws that "affect" a metropolitan government's charter. And as discussed in further detail in the subsection that follows, the Act is a law of general applicability—it is not a law that is local in form or effect.

2. The Act does not violate the "Local Legislation Clause" in art. XI, § 9, of the Tennessee Constitution.

Metro Nashville's second claim is based on what it refers to as the "Local Legislation Clause" of article XI, section 9, of the Tennessee Constitution—more commonly known as the "Home Rule Amendment." (Compl. 20.) The Home Rule Amendment provides:

> 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, cl. 2.

In short, to support its argument that the Act is invalid because it violates the Home Rule Amendment, Metro Nashville must meet each one of 3 requirements. It must show that the Act (1) is local in form or effect; (2) is applicable to a particular county or municipality; AND (3) is applicable to Metro Nashville its governmental or proprietary capacity. *See Metro. Gov't of Nashville & Davidson Cnty.*, 645 S.W.3d at 150.

Metro Nashville alleges in part that the Act violates the Home Rule Amendment because the Act is local in form or effect. (Compl. 22, ¶¶ 123-27.) But the Act is a statute of general application and therefore constitutional under the Home Rule Amendment.

In determining whether an Act is "local" in nature for purposes of the Home Rule Amendment, the "test is not the outward, visible or facial indices, nor the designation, description or nomenclature employed by the Legislature." *Farris*, 538 S.W.2d at 551. Instead, the "sole constitutional test must be whether the legislative enactment, irrespective of its form, is local in effect and application." *Id.* But not every statutory provision affecting a single local government will run afoul of the Home Rule Amendment. The court "must determine whether [an act] was designed to apply to any other county in Tennessee, for if it is potentially applicable throughout the state it is not local in effect even though at the time of its passage it might have applied to [one

county] only." *Id*. at 552. And in making this determination, the court "must apply reasonable, rational and pragmatic rules as opposed to theoretical, illusory or merely possible considerations." *Id*.

In *Farris*, the Supreme Court invalidated an election law that purportedly applied to every county headed by a mayor. The Court observed that Shelby County was the only county affected by the statute when it was passed, and, importantly, that no other county could potentially have the type of government that Shelby County had without some further affirmative act of the legislature. *Id*. Therefore, the act in question was local in effect. *Id*. at 554. By contrast, however, in *Civil Service Merit Board of City of Knoxville v. Burson*, 816 S.W.2d 725 (Tenn. 1991), the Court distinguished *Farris* "on the ground that *enabling provisions for the creation of metropolitan government were extant and potentially available to all counties statewide*, whereas the unique form of mayor-county government involved in *Farris v. Blanton* was created by private act, and no similar enabling provisions existed." 816 S.W.2d at 729 (emphasis added). The Court also observed that it had "upheld legislation that applied only to counties with a metropolitan form of government, even though Davidson County was at the time the only county in the state with a consolidated, metropolitan form of government." *Id.* (citing *Doyle v. Metro. Gov't of Nashville & Davidson Cnty.*, 471 S.W.2d 371 (Tenn. 1971)); see also *Bozeman v. Barker*, 571 S.W.2d 279 (Tenn. 1978) (cited in *Burson*) (upholding a law that at the time of its passage was applicable only to two counties but could ultimately become applicable to other counties depending on population growth).

The law at issue in *Burson* set uniform qualifications for members of civil service boards in Tennessee's largest counties. 816 S.W.2d at 728. Members of the Knoxville board whose

tenures were threatened by the legislation challenged it as unconstitutional under the Home Rule Amendment arguing that, in effect, it applied only to Knoxville. *Id.* The Court acknowledged that the civil service commissions in Davidson County and Shelby County were already in compliance with the legislation, so only the Knoxville board was required to take affirmative steps to comply with the statute. *Id.* at 730. However, the Court emphasized that those counties were "certainly *affected* by the statute" because those counties had to maintain compliance. *Id.* Additionally, other counties would eventually come within the purview of the statute at issue as populations increased. *Id.*

The same reasoning applies here. The Act is not local in form or effect; it applies not just to Metro Nashville, but also to all other existing metropolitan governments and to metropolitan governments formed after the effective date of the Act. *See* Act § 1. The Act also applies to existing municipalities (whose total now exceeds 300), and municipalities formed after the effective date of the Act. *See* Act § 2.

Section 1 of the Act amends Title 7, Chapter 1, of the Tennessee Code and caps the voting membership of metropolitan councils at 20. *See Id.* § 1(a). There are currently three counties with metropolitan governments: Davidson, Moore, and Trousdale. TENNESSEE BLUE BOOK (2022) at 869, 875–77.[15] The Act applies to all three. The fact that the legislative bodies of Moore (15 members) and Trousdale (20 members) are already in compliance with the Act, and that only Metro Nashville (40 members) needs to take action to reach compliance, is legally irrelevant. The consolidated governments in Moore County and Trousdale County are subject to and affected by

[15] *Available at* https://sos.tn.gov/publications/services/2021-2022-tennessee-blue-book.

the statute because those governments must still maintain compliance with the statute. *See Burson*, 816 S.W.2d at 730.

Furthermore, the Act *potentially affects* other metropolitan governments because it also applies to metropolitan governments formed after the effective date of the Act. *See* Act § 1(c). Thus, any county and municipality desiring to form a metropolitan government in the future would come within the Act's purview. *See Doyle*, 471 S.W.2d at 373 ("It is quite apparent that this Act applies throughout the State to all those who desire to come within its purview."). That the Act will automatically affect other metropolitan governments formed after its effective date distinguishes it from the legislation at issue in *Farris*, which would have required further action on the part of the General Assembly before it could have applied to other counties. *See* Tenn. Code Ann. § 7-1-103; *Burson*, 816 S.W.2d at 729.

Finally, the Act also places a similar membership cap on all *municipalities* and future municipalities in Tennessee. *See* Act § 2(a). Like metropolitan governments, municipalities currently in compliance with the Act are nevertheless affected by the Act because they are required to maintain compliance. The Act is therefore applicable to all existing metropolitan governments and municipalities, as well as future metropolitan governments and municipalities in Tennessee. For that reason, the Act is not local in form or effect.

Metro Nashville's argument focuses on one subparagraph of the Act, Section 1(b), which provides a transitional framework for metropolitan governments not in compliance with the membership cap set by the Act. Such metropolitan governments, like Metro Nashville, are required to take legislative action to come into compliance before the next general metropolitan election. Act § 1(b). In the event Metro Nashville is unable to come into compliance by the August

2023 election, the General Assembly has provided a mechanism by which it can come into compliance by August 2024, more than a year after the effective date of the Act. *Id*. § 1(b)(1)(A).[16]

To ensure statewide compliance with a statute of general application that requires individualized action by local governments to achieve compliance, the General Assembly may include transitional provisions in the general legislation applicable to specific local governments that establish procedures for compliance even if the transitional parts, standing alone, might be deemed unconstitutional if enacted as a "special, local or private act." For example, after the adoption of Article VII, Section 1 in 1978, the General Assembly sought to implement the framework statewide while accounting for the unique aspects of each existing county government. *See* 1978 Tenn. Pub. Acts, ch. 934. Although parts of that legislation singled out specific county governments in ways that might have otherwise offended the constitution, the Supreme Court upheld the legislation as "part of a transitional plan made necessary by recent constitutional changes." *Leech v. Wayne Cnty*., 588 S.W.2d 270, 272 (Tenn. 1979); *see also Marion Cnty. Bd. of Comm'rs v. Marion Cnty. Election Com*., 594 S.W.2d 681, 683 (Tenn. 1980) ("We recognized,

[16] Because Metro is taking steps to comply with the May 1, 2023, and May 18, 2023, deadlines and possibly complete the redistricting process in time for the August 2023 election, it may never be required to follow the alternative procedure found in Section 1(b)(1)(A) of the Act that requires a special election in August 2024. Accordingly, Metro's constitutional challenge of the alternative procedure is not ripe for adjudication, and the Court should not consider it until the alternative procedure is triggered (if that ever occurs). It is well settled in Tennessee that the courts will not pass on the constitutionality of a statute, or any part of a statute, unless it is absolutely necessary for the determination of the case and of the present rights of the parties to the litigation. *State of Tennessee v. Murray*, 480 S.W.2d 355, 357 (Tenn. 1972); *West v. Carr*, 212 Tenn. 367, 381, 370 S.W.2d 469 (1963); *State ex rel. Loser v. National Optical Stores Co*., 189 Tenn. 433, 225 S.W.2d 263 (1949).

and tacitly approved this scheme, by dicta, in *Leech v. Wayne County*, 588 S.W.2d 270, 272 (Tenn. 1979). Now we expressly approve it.").

The Tennessee Supreme Court has previously considered transitional provisions of a statute in the context of a challenge under article XI, section 9. In *State ex rel. Maner v. Leech*, 588 S.W.2d 534 (Tenn. 1979), Knoxville commissioners and members of the Knox County Quarterly Court challenged portions of 1978 Tenn. Pub. Acts, ch. 934, which contained transitional provisions applicable only to Knox County. The Supreme Court held that the transitional provisions were not unconstitutional. A "general law of statewide application, containing transitory provisions necessitated because of unique conditions in certain specified counties," is not "local in effect and application." *Id*. at 541. The Court therefore allowed the Knox County executive and members of the county legislative body elected at the general election of 1980 to serve for two years "to bring Knox County into synchronization with the general statutory scheme." *Id*. at 542. The Court explained why statutory transitional provisions with local effect do not work to render the statute invalid under the Home Rule Amendment:

> By parity of reasoning if Article XI, Section 9, precludes the transitional provisions with respect to Knox County on the basis that it is "private or local in form or effect applicable to a particular county," then the entire Act is suspect. This follows from the fact that the provisions are local in effect as to any given county. From this it would follow that the Legislature could not enact a valid law applicable to all municipalities without following Article XI, Section 9, and having referenda, county by county. Such a result would be untenable. *This is a general law. The right of the Legislature to provide a basic structure for Tennessee counties is not fairly debatable.*

Id. at 541 (emphasis added).

This Court should apply *Maner*'s reasoning and likewise conclude that the transitional provisions in Section 1(b) do not cause the Act to run afoul of the Home Rule Amendment. The

Act as a whole is "a general law of statewide application," because it applies to all existing and future metropolitan governments and municipalities. The transitional provisions are necessary to account for unique conditions, like those existing in Metro Nashville. If the Legislature has authority to alter the size of metropolitan government councils—and it does, as discussed above—then it must also have authority to include transitional provisions for bringing currently noncomplying councils into compliance. Concluding otherwise "would be untenable." *State ex rel. Maner*, 588 S.W.2d at 541.

By extension, the General Assembly may establish specific procedures for non-compliant local governments to come into compliance with the law. If the Act did not include a detailed transition process, Metro Nashville would be left without any direction on how to proceed, potentially leading to (1) confusion and chaos among councilmembers and the public regarding the upcoming general election, and/or (2) a lengthy delay in Metro Nashville's compliance with the Act. The Legislature chose instead to provide, in Section 1(b) of the Act, express guidance for an orderly transition.

The end result for all metropolitan governments and municipalities is the same: a maximum of 20 individuals on the metropolitan council or governing body. The Home Rule Amendment was not adopted to prevent the Legislature from passing general laws applicable to metropolitan governments, nor was it meant to prohibit the Legislature from prescribing plans to ensure efficient compliance with a generally applicable law.

Metro Nashville also alleges that the Act violates art. XI, § 9, because it constitutes a "ripper" bill—a law that "target[s] particular local offices by altering their existing salaries, shortening their terms, or removing incumbents from office." (Compl. 21–22 ¶¶ 119-22.) The

Home Rule Amendment does prohibit enactment of 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." Tenn. Const. art. XI, § 9, cl. 2 (emphasis added). But as discussed above, the Act is not a "special, local, or private act." It is a state law of general applicability that includes transitional provisions necessary to ensure to allow non-complying metropolitan governments to come into compliance.

The Act does not remove (or "rip") an incumbent councilmember from office, nor does it abridge a sitting councilmember's term. 2023 Tenn. Pub. Acts, ch. 21. In fact, rather than abridging a councilmember's term in office, the Act increases by one year a councilmember's term in office only in the event Metro Nashville is unable to comply with the Act prior to the May 1, 2023, deadline. *Id*. § 1(b)(1)(A). Finally, the Act does not alter a councilmember's salary. *Id.* To the extent a councilmember's term is extended for an additional year or a councilmember's *future* term is abridged (to three years), these transitional provisions do not violate Article XI, Section 9 and are necessary for bringing Metro Nashville into compliance with the Act, as discussed in the preceding paragraphs. Moreover, these transitional provisions related to an August 2024 election come into effect only if Metro Nashville fails to redistrict its council districts in time for its upcoming August 2023 election.

3. The Act does not violate the four-year-term provision in art. VII, § 1, of the Tennessee Constitution.

Metro Nashville bases its third claim on four-year-term provision in Tenn. Const. art. VII, § 1, which specifies that the "qualified voters of each county shall elect for terms of four years a legislative body." (Compl. 23.) Metro Nashville specifically contends that the transitional-compliance procedure in Section 1(b)(1)(A) of the Act violates this provision because it authorizes

an extension of the terms of existing councilmembers for an additional year and limits the terms of those future councilmembers elected in a special election in August 2024 to three years. (Pl. Mem. 33.) This claim fails for two reasons. First, Metro Nashville lacks standing to raise it. Second, and as previously discussed, even if Metro Nashville had standing to raise the claim, the claim is not ripe for adjudication. This alternative procedure comes into play *only* if Metro Nashville fails to redistrict its council districts in time for its upcoming August 2023 election.[17]

To establish standing a plaintiff must show: (1) an injury that is distinct and palpable; (2) a causal connection between the alleged injury and the challenged conduct; and (3) an injury capable of being redressed by a favorable decision. *City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013). When considering whether standing exists, a court must focus on the party bringing the lawsuit rather than the merits of the claim. *Fisher v. Hargett*, 604 S.W.3d, 381, 396. "While standing 'often turns on the nature and source of the claim asserted,' it 'in no way depends on the merits' of the claim." *Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d at 149 (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)).

Metro Nashville, the plaintiff here, can show no distinct and palpable injury under art. VII, § 1, because Metro Nashville was not elected to any legislative term. *Cf. Metro. Gov't of Nashville & Davidson Cnty. v. Tennessee Dep't of Educ.*, 645 S.W.3d at 149 (holding that the plaintiff governments established standing to challenge constitutionality of statute under art. XI, § 9, by

[17] Again, because Metro is required and is taking steps to complete the required redistricting process in time for the August 2023 election, the Court should not consider Metro's constitutional challenge of the Act's alternative procedure found in Section 1(b)(1)(A), including the one-year term extension for incumbent councilmembers and the abbreviated three-year term for those elected in an August 2024 special election, until that procedure is actually triggered, which has not occurred yet.

"alleging the [statute] violates their constitutionally protected interest in local control of local affairs").

As a general matter, a political subdivision may seek a declaratory judgment regarding the validity of a statute, but it must be "'asserting rights that are its own'"; it "cannot merely 'assert the collective individual rights of [others].'" *City of Memphis*, 414 S.W.3d at 100 (citation omitted). Here, Metro Nashville is not asserting rights of its own with respect to its claim that the Act violates the four-year-term requirement in article VII, section 1. It is asserting the rights of, and alleging injury to, *others*—namely, voters, incumbent councilmembers, and councilmembers yet to be elected. (*See* Compl. ¶¶ 136–37.) Metro Nashville therefore lacks standing to challenge the Act under article VII, section 1, of the Tennessee Constitution.

In any event, the General Assembly may effectively alter the constitutionally established terms of local government officers by means of a transitional statute, and as discussed above at section I.A.2. Section 1(b)(1)(A) of the Act is a constitutionally permissible, transitional provision. It does not violate art. VII, § 1.

In *Leech v. Wayne Cnty.*, 588 S.W.2d 270 (Tenn. 1979), the Supreme Court considered the constitutionality of legislation enacted shortly after the adoption of article VII, section 1, in 1978. The General Assembly sought to implement the county-government framework statewide while accounting for the unique aspects of each existing county government. *See* 1978 Tenn. Pub. Acts, ch. 934. Although parts of that legislation singled out specific county governments in ways that might have otherwise offended the Constitution, the Supreme Court upheld the legislation as "part of a transitional plan made necessary by recent constitutional changes." *Leech*, 588 S.W.2d at 272; *see also Marion Cnty. Bd. of Comm'rs v. Marion Cnty. Election Com.*, 594 S.W.2d 681, 683

(Tenn. 1980) ("We recognized, and tacitly approved this scheme, by dicta, in *Leech v. Wayne County*, 588 S.W.2d 270, 272 (Tenn. 1979). Now we expressly approve it.").

In *State ex rel. Maner*, as discussed above, the Supreme Court also allowed the election of the Knox County executive and county legislative body at the general election of 1980 to serve for two years "to bring Knox County into synchronization with the general statutory scheme." *Id*. at 542. On two occasions, then, the Supreme Court has upheld temporary transitional statutes establishing a term of office for local government officials that differs from the four-year term provided for under art. VII, § 1.

Section 1(b)(1)(A) of the Act is a short-term transitional provision similar to the statutory provisions the Court found acceptable in *Leech* and *Maner*. Indeed, it is evident from the inclusion of this alternative procedure in the Act that the General Assembly recognized that a metropolitan government's transition to a 20-member council might require additional time. And this is the same concern that the Supreme Court called "commendable" in *Maner*. 588 S.W.2d at 538.

As discussed above at section I.A.2, the Act's 20-member limit on legislative bodies of local metropolitan governments and municipalities is a law of general application. And the transitional provision was reasonably included in the Act as an alternative procedure in the event a non-complying metropolitan government could not complete its redistricting in time for the next general election. If triggered in Metro Nashville's case, this provision would operate to synchronize the election of Metro Nashville's councilmembers back to its regular election cycle. Omitting this provision would have left Metro Nashville without a defined option if it failed to redistrict its council seats by May 1, 2023. The Act does not violate art. VII, § 1.

4. The Act does not "ignore" the exemption for consolidated governments in art. VII, § 1, of the Tennessee Constitution.

Metro Nashville's fourth claim is based on that part of article VII, section 1, which states that metropolitan governments formed under article XI, section 9, of the Tennessee Constitution are exempt from article VII's 25-member cap on county legislative bodies. (Compl. 25.) Metro Nashville asserts that the Act's 20-member cap "ignores" this exemption and alleges that "no such cap may be placed on metropolitan governments." (Compl. 25, 26, ¶ 148.) This claim also fails.

Although the Tennessee Constitution establishes no caps or limits for the number of members in a metropolitan legislative body, it does not preclude the General Assembly from enacting laws that create such limits. Indeed, the Constitution's silence on that point leaves the Legislature with discretion. *See* Tenn. Const. art. II, § 3 ("The Legislative authority of this State shall be vested in a General Assembly . . . ."). While metropolitan governments consolidated under art. XI, § 9, may be exempt from the *constitutional* limit of 25 members for county legislative bodies under art. VII, § 1, this section says nothing about the Legislature's authority to impose a *statutory* cap.

In arguing that the Act conflicts with art. VII, § 1, Metro Nashville points out that the delegates to the 1977 Constitutional Convention were aware of Metro Nashville's 40-member council at the time the exemption was written into the Constitution, suggesting that the exemption was meant to tacitly authorize a legislative body of that size. (*See* Pl. Mem. 36–37.) But the delegation's knowledge of the existence of a 40-member metropolitan council actually cuts *against* Metro Nashville's argument. Just as the delegates did not set a cap on the membership of metropolitan government legislatures, neither did they include a provision in the Constitution prohibiting the General Assembly from setting such caps by statute. The delegates could have

taken affirmative steps at the Constitutional Convention to protect the size of Metro Nashville Council and the councils of other metropolitan governments, but they did not. In the absence of any constitutional limitations to that effect, the passage of the Act by the General Assembly is a lawful exercise of its "very broad powers and discretion with respect to the structure of local government." *Leech*, 588 S.W.2d at 272.

5. The transition provisions of the Act are severable from the remainder of the Act.

In support of its bid for temporary injunctive relief, Metro Nashville argues that the transitional provisions in Section 1(b)(1) of the Act cannot be severed from Section 1(a), which establishes the 20-member cap for all metropolitan governments. (Pl. Mem. 34–35.) But this is incorrect. Even if this Court were to conclude that Metro Nashville is likely to succeed on its claim that Section 1(b)(1) is unconstitutional, it may sever that portion and leave the rest of the statute intact.

In Tennessee, "a court may, under appropriate circumstances and in keeping with the expressed intent of a legislative body, elide an unconstitutional portion of a statute and find the remaining provisions to be constitutional and effective." *Lowe's Companies, Inc. v. Cardwell*, 813 S.W.2d 428, 430 (Tenn. 1991). To be sure, the doctrine of elision is not favored, *see Gibson Cty. Special Sch. Dist. v. Palmer*, 691 S.W.2d 544, 551 (Tenn. 1985) (citing *Smith v. City of Pigeon Forge*, 600 S.W.2d 231 (1980)), and "Tennessee law permits severance only when 'it is made to appear from the face of the statute that the legislature would have enacted it with the objectionable features omitted,'" *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 466 (6th Cir. 1999) (citing *State v. Harmon*, 882 S.W.2d 352, 355 (Tenn. 1994)).

But elision is appropriate here. By including a severability clause in Section 3 of the Act, the General Assembly made clear its intention to keep the remainder of the Act in force if any portion of the Act were to be declared unconstitutional. "The inclusion of a severability clause in the statute has been held by [the Tennessee Supreme Court] to evidence an intent on the part of the legislature to have the valid parts of the statute in force if some other portion of the statute has been declared unconstitutional." *Gibson Cty. Special Sch. Dist.*, 691 S.W.2d at 551 (citing *Catlett v. State,* 207 Tenn. 1, 336 S.W.2d 8 (1960)).

The Act's severability clause should also be read in conjunction with the general severability statute (Tenn. Code. Ann. § 1-3-110) applicable to the entire Tennessee Code. That statute provides as follows:

> It is hereby declared that the sections, clauses, sentences and parts of the Tennessee Code are severable, are not matters of mutual essential inducement, and any of them shall be exscinded if the code would otherwise be unconstitutional or ineffective. If any one (1) or more sections, clauses, sentences or parts shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one (1) or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Tenn. Code. Ann. § 1-3-110.

If Section 1(b) were elided from the Act, the statute would still require Metro Nashville to reduce the size of its council to 20 members, which was clearly the Legislature's ultimate, statewide intent for existing and future metropolitan governments and municipalities. The cap on the size of metropolitan councils in Section 1(a) of the Act applies regardless whether a metropolitan government's council exceeded 20 members when the Act became effective. While

the transitional components of Section 1(b) of the Act may not apply to governments that currently have councils of 20 or fewer members, Section 1(a) does.

Metro Nashville's assertion that the General Assembly "likely would not have passed the bill" if it "could not have forced an immediate reduction in the size of" Metro Nashville Council is nothing more than speculation; it also ignores the inclusion of a severability clause in the Act and an alternative compliance procedure giving Metro Nashville an additional year to transition to a 20-member legislative body. (*See* Pl. Mem. 35.) If any portion of Section 1(b) were to be ultimately declared unconstitutional, it could be severed from the remainder of the Act, including the 20-member cap on metropolitan councils in Section 1(a).

B. Metro Nashville will not suffer any irreparable harm or injury in the absence of a temporary injunction.

Metro Nashville's assertions that it will suffer irreparable harm and injury if enforcement of the Act is not enjoined are not supported by the record. Metro Nashville claims that the passage of the Act has caused, and is causing, chaos and confusion among Metro Nashville officials and voters. (Pl. Mem. 38.) Yet Metro Nashville is moving forward with efforts to redistrict before the May 1 deadline. During a recent public informational session convened by Metro Nashville Council and Metro Nashville's Planning Commission on March 16, 2023, Davidson County Election Commission ("DCEC") Director Jeff Roberts indicated DCEC planned to begin issuing candidate nomination petitions for the existing thirty-five council districts and five at-large seats for the upcoming August 2023 election and has provided notice to candidates that the petitions may ultimately be declared void, requiring a new petition. However, Mr. Roberts indicated that DCEC intends to find a way to preserve signatures obtained by candidates for use in re-drawn districts to the extent possible. Public Information Session of Metro Nashville Council and Metro

Planning Commission, March 16, 2023, at 35:45–38:10.[18] During the same meeting, DCEC Director Roberts commented that the task of redistricting for Metro Nashville's council elections will not be as complex or time consuming as redistricting for Tennessee State House or Senate races. *Id*. at 39:33–39:54 ("Normally, during redistricting, you're redistricting congressional, house seats, senate seats, council seats, school board. Now, we're only doing council. So, it's a smaller subset that we're having to work with. It shouldn't take as long."). Further, the census data required for redistricting is already available. *Id.* at 1:08:00.

During the meeting, Greg Claxton, staff for the Planning Commission noted that in past redistricting cycles, the federal census has come out in March immediately preceding an August election with similar time constraints that the Act imposes. *Id.* at 1:36:15–1:37:11. Mr. Claxton indicated that in 2011, staff for the Planning Commission was successfully able to put together a map within thirty days that was broadly accepted by the Metro Nashville Council and the community. *Id*. When asked how long it takes to create a district map, Mr. Claxton responded, "To make one map, it takes a few hours. It goes pretty quickly with the redistricting software that we have." Mr. Claxton also noted, "The one silver lining of the timing of all of this is that the process that we went through—the community relationships we built, the community engagement . . . our understanding of how the communities see themselves and their neighbors—is all still very fresh in mind." *Id*. at 1:48:25. Indeed, Planning Commission staff has already released two draft maps for public review and comment—one map with 15 districts and 5 at-large seats, and another map with 17 districts and 3 at-large seats. Also listed are four different public input opportunities occurring at various times and locations throughout the metropolitan area occurring during the

[18] Available at https://www.youtube.com/watch?v=2gGU3AMzzIY.

week of March 27, 2023.[19] These revelations indicate that the completion of Metro Nashville's redistricting process is feasible by the May 18 qualifying deadline if Metro Nashville proceeds expeditiously.[20]

It is contemplated that Metro Nashville's lawsuit will proceed in an expedited manner so that a final decision on the merits will be reached before Metro Nashville's regularly scheduled election this coming August. Consequently, if Metro Nashville completes its redistricting by the May deadlines and thereafter prepares for an election to select its newly constituted 20-member Council in August, it will suffer no irreparable harm or injury regardless of the outcome of its constitutional challenge. If the Act is upheld *in toto* or if only the transitional provisions of Section 1(b) are invalidated, Metro Nashville would have already achieved compliance with the law. If, on the other hand, the entire Act is declared unconstitutional but Metro Nashville does not have sufficient time after the Court's ruling to conduct an election of councilmembers in August 2023 utilizing the original district map, Metro Nashville could pursue a special election of a 40-member Council. Therefore, if the Act is set aside, Metro Nashville would have an adequate legal remedy. And when "there is an adequate remedy at law for an alleged injury, it is not irreparable." *LEBS P'ship, Ltd. v. Nw. Mut. Life Ins. Co*., No. 965, 1992 WL 25001, *4 (Feb. 14, 1992) (citing *Fort v. Dixie Oil Co*., 170 Tenn. 464, 466, 95 S.W.2d 931, 932 (1936)).

Likewise, if Metro Nashville does not complete its redistricting by the May deadlines and the compliance deadlines are automatically extended pursuant to Section 1(b) of the Act, Metro

[19] *See* https://redistricting-nashville.hub.arcgis.com, last visited on March 24, 2023.

[20] Metro Nashville Council's decision during its March 22 hearing to delay further actions on redistricting until after the Court's April 4 hearing, however, may jeopardize its ability to approve a new district map in time to meet the Act's May 1 deadline and the May 18 qualifying deadline for the August 2023 general election.

Nashville could await the Court's expedited decision on the constitutionality of the Act. If the Act is upheld, then Metro Nashville would be required to complete its redistricting in time for the August 2024 special election mandated by Section 1(b)(1)(a) of the Act. If the Act is invalidated, Metro Nashville could pursue a special election. In none of these scenarios does Metro Nashville suffer any irreparable harm or injury that justifies the issuance of a temporary injunction staying compliance with the Act.

C. The harm to the State and the public interest if injunctive relief is granted outweighs any potential harm to Metro Nashville.

Even if the Court were to find that Metro Nashville will be harmed in some way if the requested injunctive relief is not granted, that harm must still be balanced against the harm to the State and the public interest if such relief *is* granted. *See Eluhu v. HCA Health Servs. of Tenn., Inc.*, M2008-01152-COA-R3-CV, 2009 WL 3460370, at *22 (Tenn. Ct. App. Oct. 27, 2009). And that latter harm would be considerable here.

Whenever a state government is enjoined by a court from enforcing its own laws, it suffers a form of irreparable injury. *See generally Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2324 (recognizing that enjoining a State from enforcing its laws would "seriously and irreparably harm the State"). If the Court stays enforcement of the Act, the public interest would be significantly harmed by disrupting the enforcement of legislative enactments made by the duly elected representatives of the people. Further, if a temporary injunction were issued until a final ruling is made by the Court in this lawsuit, Metro Nashville would have no incentive to comply with the redistricting mandates of the Act and would be free to proceed with electing a slate of 40 councilmembers for four-year terms at its August 2023 election. If that happens and if the Act is

then eventually upheld, the harm and injury to the State and its people would be further exacerbated, as the State would be faced with the exceedingly difficult task of enforcing the redistricting requirements of the Act *after* the fact. That enforcement process would require, *inter alia*, the unseating of 40 new councilmembers ostensibly elected for four-year terms through an election that violated state law. The transitional provisions of the Act were undoubtedly included to avoid this very scenario. This harm to the State and the public interest far exceeds the minimal harm Metro Nashville would experience by being required to comply with the Act's timeline.

In sum, when the significant harm the State would suffer if injunctive relief were granted against the minimal harm that Metro Nashville might experience if the Act remains in effect while the lawsuit is pending, the equities and practicalities weigh heavily in favor of the State and require the denial of Metro Nashville's motion for temporary injunction.

D. The Purcell Rule does not support Metro Nashville's motion for temporary injunction.

In *Moore v. Lee*, 644 S.W.3d 59 (Tenn. 2022), the Tennessee Supreme Court recognized that judicial intervention on the eve of an election could result in voter confusion and serve as an incentive for voters to stay away from the polls. The Court therefore adopted what is known as "the *Purcell* principle," which is named after the United States Supreme case holding that lower courts should not intervene on the eve of an election. *Id.* at 65 (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006)).

Metro Nashville invokes the *Purcell* principle here to argue, paradoxically, that this Court *should* intervene in this case and issue an injunction to stay enforcement of the Act. (*See* Pl. Mem. 41.) But both *Moore* and *Purcell* call for judicial *restraint*—they do not call for the issuance of injunctive relief that would alter the timing or procedures legislatively determined for an upcoming

local election. The *Purcell* principle has no application here; the Court should consider Metro Nashville's request for injunctively relief only under the four factors established by Tennessee law under Tenn. R. Civ. P. 65.04, none of which support Metro Nashville's motion.

II. The Court Should Not Consolidate the Temporary Injunction Hearing with a Trial on the Merits Pursuant to Tenn. R. Civ. P. 65.04(7).

Although the State desires an expeditious resolution of Metro Nashville's lawsuit, Defendants respectfully submit that consolidation of the April 4 temporary-injunction hearing with a trial on the merits under Tenn. R. Civ. P. 65.04(7) would be inappropriate for two reasons. First, certain issues raised by Metro Nashville in its constitutional challenge may not be ripe for final adjudication at that time. Specifically, Metro Nashville's challenge to the alternative compliance procedure found in Section 1(b)(1)(a) of the Act is justiciable only if Metro Nashville fails to complete redistricting in time for the upcoming August 2023 election. That question will be answered when Metro either completes its redistricting in time (thereby rendering moot its legal challenge of the alternative compliance procedure) or fails to do so by the relevant compliance deadlines (May 1 and May 18). In any event, since it is highly unlikely that redistricting will be completed before the Court's April 4 hearing, a trial on the merits should take place only after all issues are properly before the Court. Second, the State may pursue discovery from Metro Nashville on certain relevant issues, in which case additional time would be needed to complete discovery. Defendants do, however, support an expedited trial schedule for this declaratory-judgment action pursuant to Tenn. R. Civ. P. 57.

CONCLUSION

For the reasons stated above, the Court should deny Metro Nashville's Motion for Temporary Injunction.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

s/ Timothy R. Simonds
TIMOTHY R. SIMONDS, BPR No. 13952
Senior Assistant Attorney General
JAMES P. URBAN, BPR No. 33599
Deputy Attorney General
JONATHAN M. SHIRLEY, BPR No. 37738
Assistant Attorney General
ZACHARY L. BARKER, BPR No. 35933
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 532-7405 (T. Simonds phone)
(615) 741-3739 (J.P. Urban phone)

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify on this 27th day of March 2023, that a copy of **Defendants' Response in opposition to Plaintiff's Motion for Temporary Injunction** was served on Plaintiff's legal counsel by e-mail and first-class mail, postage prepaid, as follows:

WALLACE W. DIETZ
ALLISON L. BUSSELL
MELISSA ROBERGE
JOHN K. WHITAKER
DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
Metropolitan Courthouse, Suite 108
P.O. Box 196300
Nashville, Tennessee 37219
allison.bussell@nashville.gov
melissa.roberge@nashville.gov
john.whitaker@nashville.gov

ROBERT E. COOPER, JR.
MICHAEL C. TACKEFF
BASS, BERRY & SIMS, PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201
bob.cooper@bassberry.com
michael.tackeff@bassberry.com

A copy of this Response is also being forwarded to the Office of the Three-Judge Panel Coordinator by electronic mail to danielle.lane@tncourts.gov in accordance with the Court's Order dated March 20, 2023.

s/ Timothy R. Simonds
Timothy R. Simonds
Senior Assistant Attorney General