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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,	)	**Case No. 23-0336-I**
v.	)	**Chancellor Patricia Head Moskal (Chief Judge)** **Judge Mary L. Wagner** **Chancellor Jerri S. Bryant**
BILL LEE, et al.,	)	
Defendants.	)	

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

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State Defendants' response to Metro Nashville's motion for temporary injunction disregards the purpose behind the Consolidation Clause and the home-rule protection it provides—protection that the delegates to the 1953 and 1977 Constitutional Conventions established to abolish the very sort of radical overreach at issue here. The Metro Council Reduction Act is already causing irreparable harm to Metro Nashville, placing it between the proverbial rock and a hard place: take immediate steps to implement an unconstitutional redistricting or risk operating with an unconstitutionally-established Council. The public is faced with the prospect of a completely different Council map, near or beyond the nominating petition deadline in state law, with little opportunity for input on the number or shape of those districts. In contrast, an injunction will cause no harm to State Defendants. Because the conditions in Rule 65.04 have been satisfied, Metro Nashville respectfully requests that the Court enjoin the Act's implementation pending a decision on the merits.

LIKELIHOOD OF SUCCESS ON THE MERITS

I. ALL OF METRO NASHVILLE'S CLAIMS ARE JUSTICIABLE.

State Defendants argue that two of Metro Nashville's claims are not justiciable, namely (1) that Metro Nashville lacks standing to challenge the provision expanding and

shortening Councilmembers' terms in Section 1(b) of the Act (State Resp. at 21–24); and (2) that Metro Nashville's challenge to Section 1(b)'s requirements is not ripe (*id.* at 18 n.16, 22, 33). As explained below, the Court should reject both arguments.

A. Metro Nashville Has Standing to Assert a Claim Under Article VII, Section 1 of the Tennessee Constitution.

The test for standing assesses whether a plaintiff has suffered a distinct and palpable injury that is not hypothetical or shared with the public, whether the challenged conduct caused plaintiff's injury, and whether the injury is redressable in the lawsuit. *Metro. Gov't of Nashville & Davidson Cty. v. Tennessee Dep't of Educ.*, 645 S.W.3d 141, 148–49 (Tenn. 2022). State Defendants focus only on the first element of standing—whether Metro Nashville has shown a distinct and palpable injury. (State Resp. at 22–23.)

Metro Nashville seeks a declaratory judgment under Tenn. Code Ann. § 29-14-103. Given the declaratory judgment act's explicit directive that it be liberally construed, Tenn. Code Ann. § 29-14-113, establishing standing to bring such a case is a low bar. *See, e.g.*, *Shelby Cty. Bd. of Comm'rs v. Shelby Cty. Q. Ct.*, 392 S.W.2d 935, 941 (Tenn. 1965) ("Under the declaratory judgments Act, it is not necessary that any breach of obligation be first committed, any right invaded, or wrong done to invoke the action of the court . . . ."); *Consol. Waste Sys., LLC v. Metro. Gov't of Nashville & Davidson Cty.*, No. M2002-02582-COA-R3CV, 2005 WL 1541860, at *33 (Tenn. Ct. App. June 30, 2005) ("There can be little doubt that Consolidated met this *low threshold* necessary to obtain a simple declaratory judgment." (emphasis added)). Metro Nashville easily meets that standard.

State Defendants argue that "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." (State Resp. at 22.) This ignores the fundamental role that the Metro Nashville Council plays in local governance. Councilmembers exercise the lawful powers of

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Metro Nashville as its legislators. *See* Metro Nashville Charter §§ 2.01 (specific powers of Metro Nashville), 2.02 (general powers), 3.01 ("The legislative authority of the metropolitan government of Nashville and Davidson County . . . shall be vested in the metropolitan county council . . . ."), Ex. E to Mot. for Temp. Inj. The exercise of Metro Nashville's regulatory authority, contractual arrangements, and bonding authority flow through the Council. By extending the terms of Councilmembers beyond constitutional limits, the Act exposes *Metro Nashville*, through its Council, to legal challenge. Metro Nashville plainly has standing to litigate a change to the fundamental terms of the service of those constitutional officers who are the means by which Metro Nashville exercises its powers.

Furthermore, the Act uses a potential extension of current Metro Nashville Councilmembers' terms as a proverbial "stick" to compel the Council to take immediate steps to implement the Act's constitutionally deficient Council-reduction requirements. As a result, Metro Nashville must (1) expend resources for its Planning Commission to draw new districts; (2) put other important legislative affairs on hold while its personnel, staff, legislators, and leaders debate solutions in public meetings; (3) expend resources on legal services to address legal deficiencies in the Act; and (4) comply with a law that may later be held unconstitutional, rendering all of the work in advance of that determination meaningless. Finally, if current Councilmembers serve a fifth year in office and the additional term is held unconstitutional, Metro Nashville will have paid salaries to Councilmembers who had no legal right to compensation. These are not speculative injuries; they are playing out now. Metro Nashville thus has standing to challenge the Act's conflict with the four-year term requirement in Article VII, Section 1.

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B. Metro Nashville's Challenge to Section 1(b)(1)(A) of the Metro Council Reduction Act Is Ripe for Adjudication.

State Defendants assert that Metro Nashville's challenge to Section 1(b)(1)(A) of the Act is not ripe because the extension of Councilmembers' terms in that provision has not yet occurred. (State Resp. at 18 n.16.)

The ripeness doctrine focuses on whether the dispute has matured to the point that it warrants a judicial decision. *State v. Price*, 579 S.W.3d 332, 338 (Tenn. 2019). Ripeness becomes an issue when a case is anchored in future events that may not occur as anticipated, or at all. *Thomas v. Union Carbide Agricultural Prods. Co.*, 473 U.S. 568, 580 (1985); *Clark v. Cain*, 479 S.W.3d 830, 831-32 (Tenn. 2015). A plaintiff in a declaratory judgment action must establish the existence of a "case or controversy" but need not show a "present injury." *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 837–38 (Tenn. 2008) (citing *Cardinal Chem. C. v. Morton Int'l*, 508 U.S. 83, 95 (1993)); *see also Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 143 (1974) ("Where the inevitability of the operation of a statute against certain individuals is patent, it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect. One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough.").

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Ripeness determinations employ a two-part inquiry: (1) whether the issues in the case are appropriate for judicial resolution, and (2) whether the court's refusal to act will cause hardship on the parties. *Clark v. Cain*, 479 S.W.3d at 832; *B & B Enterprises of Wilson Cty., LLC v. City of Lebanon*, 318 S.W.3d 839, 848 (Tenn. 2010). The prototypical case of hardship arises when a plaintiff faces a choice between immediately complying with a challenged law or risking serious civil or criminal consequences. *Price*, 579 S.W.3d at 338.

The Metro Council Reduction Act is immediately effective and self-executing, and its operation and impact are already in play, making it ripe for adjudication. May 18, the qualifying date for the August 3 election, is only weeks away. Metro Nashville is working in good faith to address the chaos caused by the Act's unreasonable timeline in advance of that May deadline. As a result of the Act, Metro Nashville will be compelled either to extend the terms of its current Councilmembers by a fifth year or to cut the size of its Council at least in half, both of which are unconstitutional. Should either occur before the courts hold the Act unconstitutional, there will be no effective remedy available. Restoring the 40-member Council cannot erase the constitutional injury or practical damage that will have already been done. Redressing such injury is the purpose of equitable and injunctive relief.

Metro Nashville's Complaint raises facial constitutional issues. The facts needed to address those questions are matters of public record or essentially undisputed. State Defendants' vague claim that they "may pursue discovery from Metro Nashville on certain relevant issues" is little more than a pretext for delay. No such evidence that might be obtained during a prolonged, expensive discovery process is relevant. The issues in this case are fit for judicial review now.

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II. <u>THE METRO COUNCIL REDUCTION ACT UNDERMINES THE PURPOSE OF CITY/COUNTY CONSOLIDATION IN VIOLATION OF THE CONSOLIDATION CLAUSE</u>.

A. The Consolidation Process Protects Metropolitan Governments From Legislative Interference in Their Governmental Structures.

Before the Home Rule Amendment's adoption in 1953, city charters were created (and repealed) through private legislation passed by the General Assembly. *See, e.g.*, *Furnace v. City of Dayton*, 274 S.W.2d 6 (Tenn. 1954); *Ruohs v. Town of Athens*, 18 S.W. 400 (Tenn. 1891); *State v. Wilson*, 80 Tenn. 246 (Tenn. 1883). 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).

All of that changed with the Home Rule Amendment. Local governments "now derive their power from sources *other than* the prerogative of of the legislature." *S. Constructors, Inc. v. Loudon Cty. Bd. of Educ.*, 58 S.W.3d 706, 714 (Tenn. 2001) (emphasis added). Article VII, Section 1, and Article XI, Section 9, of the Tennessee Constitution identify three broad forms of local government, each with unique characteristics that dictate what the General Assembly can and cannot do with respect to them. They include county governments, home-rule municipalities, and consolidated (or metropolitan) governments.

The Tennessee Supreme Court has called metropolitan government "an entirely new concept of government," with a purpose of eliminating overlapping services and realizing savings for the taxpayers. *Metro. Gov't of Nashville & Davidson Cty. v. Poe*, 383 S.W.2d 265, 277 (Tenn. 1964). And, unlike a county or municipality that may adopt its own governmental structure with approval from voters, metropolitan governments are the collective result of two or more separate legal entities negotiating a merging of their functions, with the resulting consolidation entitled to special recognition under the Tennessee Constitution. The Consolidation Clause authorizes this form of government and envisions "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." Tenn. Const. art. XI, § 9 ¶ 9. The resulting consolidation must be approved by city and county voters. *Id.*

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State Defendants disregard this status, effectively arguing that the right to local control granted by the Consolidation Clause ends the moment citizens of the city and county vote to consolidate. (State Resp. at 10 ("But the Consolidation Clause requires only that the initial *consolidation* of city and county government be approved by local voters.").) There are numerous flaws in State Defendants' reasoning: it ignores the text and historical context of the Consolidation Clause, fails to distinguish between the legislature's ability to regulate the

powers of a local government and the *structure* of a local government, and relies on inapposite legal authority.

1. The Text and Historical Context of the Constitution

State Defendants' response wholly removes the Consolidation Clause from its original context. The Clause is part of the Home Rule Amendment, which was adopted at the 1953 Constitutional Convention—convened to address "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). That is, the primary purpose of the convention was to limit the General Assembly's ability to dictate the local affairs of local government. It is hard to conceive of an issue more local than the size of the local legislative body. And the Tennessee Supreme Court has plainly acknowledged the special status that a consolidated government achieves, referring to it as a "consolidated home-rule government under a metropolitan charter." *Jordan v. Knox Cty.*, 213 S.W.3d 751, 771 (Tenn. 2007) (citation omitted).

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Second, State Defendants' argument cherry-picks portions of the Constitution's language without appropriate textual context. State Defendants base their argument on the contrast between the Consolidation Clause, which requires local approval of consolidation, and the Local Legislation Clause, which requires local approval of all laws that are private or local in form or effect. This compares apples and oranges.

The Municipal Home Rule Clause (paragraphs 3 through 8 of the Home Rule Amendment) provides a more apt comparison. Paragraph 5 expressly provides that a general act of the General Assembly supersedes a home-rule city charter, including charter provisions dealing with the city's form and structure. Tenn. Const. art. XI, § 9 ¶ 5 ("Any municipality after adopting home rule may . . . adopt and thereafter amend a new charter to provide for its . . . form, structure, personnel and organization of its government, *provided that* no charter

provision . . . shall be effective if inconsistent with any general act of the General Assembly." (emphasis added)). The Consolidation Clause (Paragraph 9 of the Home Rule Amendment), which was drafted and adopted by the same 1953 Convention, contains no such qualifier. Moreover, while the Consolidation Clause allows the General Assembly to "*provide for* the consolidation," it is a leap too far to suggest that such language permits the General Assembly to dispose of the structure of that consolidation after voters approve the charter.[1]

State Defendants' heavy reliance on *County of Shelby v. McWherter*, 936 S.W.2d 923 (Tenn. 1996), also misses the mark. *McWherter* held that a *county's* home-rule charter did not supersede the general law on matters in which the county acts in a governmental or political capacity. *Id.* at 933–34. Because a consolidated government is a different constitutional creation, the ruling has no bearing here. In fact, the Supreme Court excluded metropolitan governments from its holding in *McWherter*, noting that they draw their authority from a different part of the constitution than county governments. *McWherter*, 936 S.W.2d at 934 (citing *Robinson v. Briley*, 374 S.W.2d 382 (Tenn. 1963)) ("[*Robinson*] is distinguishable, because first, it deals with the charter of a metropolitan government under Article XI, Section 9, rather than that of a county government under Article VII.").

2. Legislation Affecting "Powers" Versus "Structure"

State Defendants emphasize language in the Metropolitan Government Charter Act, the enabling legislation that this Act amends, which states that a metropolitan charter shall provide for a metropolitan government vested with "[a]ny and all *powers*" that cities and

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[1] The 1978 amendments to Article VII, Section 1 further support Metro Nashville's position here and undercut State Defendants' textual argument. While Paragraph 2 of the section provides that county legislative bodies "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," it explicitly exempts consolidated governments from this type of legislative control. In short, if Convention delegates had intended for the General Assembly to dictate the form, structure, and organization of a consolidated government, the delegates would have said so.

counties are or may in the future be "authorized or required to exercise under the Constitution and general laws of the state." Tenn. Code Ann. § 7-2-108(a)(1). But there is an inherent difference between "powers" of a local government and "form, structure, or organization" of a local government, as the Home Rule Amendment itself acknowledges. *See* Tenn. Const. art. XI, § 9 ¶ 5 (contrasting "governmental and proprietary powers" with "form, structure, personnel and organization" of government). The Metro Council Reduction Act does not limit the *power* of a local government. It forces a complete restructure of an existing, constitutionally-protected local government. State Defendants ignore this critical distinction.

When a county and its cities seek to consolidate into a metropolitan government, the "powers" they wield under present and future general state laws are vested in the new metropolitan entity. Tenn. Code Ann. §§ 7-2-108(a)(1)(A), (B) (providing that a metropolitan government's proposed charter shall provide for the creation of a government vested with any and 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*") (emphasis added). State law enumerates some of those vested "powers" to include taxation, issuing bonds, regulating alcoholic beverages, zoning, and noise mitigation, *id*. §§ 7-3-101, *et seq*., all of which fall within the General Assembly's police power to promote health, safety, and welfare across the state. The state legislature can exercise this power directly or by delegation to local government. *See, e.g.*, *S. Constructors*, 58 S.W.3d at 713 ("[C]ourts have not taken a narrow view of *local governmental power* when the General Assembly has conferred *general welfare authority* to protect the citizens' health, convenience, and safety." (emphasis added)).

The same statute also requires that a proposed metropolitan charter provide for a "council" that shall be the "legislative body" of the metropolitan government and that the charter set the council's size, method of election, term of office, and procedures. Tenn. Code

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Ann. §§ 7-2-108(a)(11), (12). But unlike the enabling legislation's treatment of "power" in earlier subsections, these statutory provisions on legislative bodies contain no requirement that the council's size or method of election conform to current or future "general laws of the state." In other words, the "powers" vested in a consolidated government are distinct from its legislative structure; "powers" are subject to future acts of the Assembly, but "structure" is not.[2]

Finally, the logical extension of State Defendants' position further highlights its absurdity. Applying the same rationale, the General Assembly could have cut the size of the Metro Nashville Council from forty to twenty in 1963, immediately after the citizens of Nashville and Davidson County voted to consolidate, and despite the General Assembly having specifically told Metro Nashville voters to set that size for themselves. No benefit would be derived from a city and county's consolidation and elimination of overlapping functions if the General Assembly could immediately unwind those consolidated functions after the fact. That is both the logical extension of State Defendants' argument and, given the General Assembly's trajectory of meddling in local affairs,[3] a plausible future outcome.

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[2] For the same reason, State Defendants' reliance on *Entertainer 118 v. Metropolitan Government of Nashville and Davidson County*, No. M2008-01994-COA-R3-CV, 2009 WL 2486195 (Tenn. Ct. App. Aug. 14, 2009), is misplaced. State Defendants cite the opinion for the proposition that metropolitan governments, like cities and counties, "have only those powers expressly granted by or necessarily implied from state statutes." *Id.* at *2. But State Defendants omit the opinion's previous sentence, which provides proper context for the quotation: "The *police power* belongs exclusively to the state and passes to local governments only by legislative enactment." *Id.* (emphasis added). *Entertainer 118* was a pure police-powers case about regulating sexually oriented businesses—not a "structure" case.

Entertainer 118, an unpublished Court of Appeals opinion, also conflicts with *Southern Constructors, Inc. v. Loudon County Board of Education*, 58 S.W.3d 706 (Tenn. 2001), which was decided eight years earlier and expressly states that home-rule municipalities are not subject to Dillon's Rule. *S. Constructors*, 58 S.W.3d at 714 & n.7 (stating that home-rule municipalities "now derive their power from sources other than the prerogative of the legislature" and "are beyond application of Dillon's Rule"). By extension, consolidated governments established under the authority of the Home Rule Amendment's Consolidation Clause are exempted from its application. *Jordan*, 213 S.W.3d at 771 (stating that consolidated governments are a type of "home-rule government").

[3] *See* Steve Cavendish, "Analysis: The State v. Metro," *Nashville Banner First Look*, https://mailchi.mp/nashvillepublicmedia.com/analysis-the-state-vs-metro?e=08bb668888 (Mar. 29, 2023).

B. Other Courts Have Interpreted Home-Rule Status to Preclude the Type of Local Government Restructuring at Issue Here.

Metro Nashville's position on the Consolidation Clause and the scope of its local sovereignty is mainstream of home-rule jurisprudence across the nation. Many state courts have held that a core element of home-rule status is the autonomy it gives to local governments "in choosing how to elect their governing officers." *City of Tucson v. State*, 273 P.3d 624, 632 (Ariz. 2012). This autonomy extends to determining the size of a local legislative body. In *State ex rel. Haynes v. Bonem*, 845 P.2d 150 (N.M. 1992), the New Mexico Supreme Court held that the number of commissioners in the governing body of a home-rule municipality "is precisely the sort of matter intended to fall within the decisionmaking power of a home-rule municipality. It is a subject that is predominantly, if not entirely, of interest to the citizens of the City . . . ." *Id*. at 157.

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The question presented in *State ex rel. Haynes* was whether a state law of general applicability required a home-rule municipality to reduce the size of its commission from eight city commission members elected from four dual-member districts to five members elected from single-member districts. *Id.* at 156–57. Noting that the purpose of home rule was to afford municipalities more latitude in governing their own affairs, the New Mexico high court explained that even if a statute applies to all municipalities throughout the state, "it is not necessarily a general law if it does not relate to a matter of statewide concern."[4] *Id.*

[4] Under the New Mexico Constitution, a home-rule municipality may "exercise all legislative powers and perform all functions not expressly denied by general law or charter." N.M. Const. art. X, § 6 ¶ D. Tennessee's Home Rule Amendment contains similar language. *See* Tenn. Const. art. XI, § 9 ("[T]he General Assembly shall act with respect to such home-rule municipality only by laws which are general in terms and effect."). Also, New Mexico's home rule amendment was adopted for precisely the same purpose as Tennessee's: to provide the maximum level of local control over local affairs. *Compare State ex rel. Haynes*, 845 P.2d at 154 (quoting *Apodaca v. Wilson*, 525 P.2d 876, 880 (N.M. 1974) ("'The purpose of municipal home rule is to 'enable municipalities to conduct their own business and control their own affairs, to the fullest possible extent, in their own way.'")), *with Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975) ("The whole purpose of the Home Rule Amendment was to vest control of local affairs in local governments, or in the people, to the maximum permissible extent.").

at 154–55. As quoted above, the court concluded that the home-rule municipality could regulate its own governing body size by virtue of its status: "The legislature is not constitutionally empowered to deny to home-rule municipalities their powers of local governance." *Id.* at 157.[5]

These same autonomy principles have been applied to local governmental structure in other states. *See, e.g.*, *City of Tucson v. State*, 273 P.3d 624, 629 (Ariz. 2012) ("If the 'home rule' provisions of Article 13, Section 2 are to have effect, they must at the least afford charter cities autonomy in choosing how to elect their governing officers."); *Strode v. Sullivan*, 236 P.2d 48, 54 (Ariz. 1951) ("We can conceive of no essentials more inherently of local interest or concern to the electors of a city than who shall be its governing officers and how they shall be selected."); *Fitzgerald v. City of Cleveland*, 103 N.E. 512, 515 (Ohio 1913) ("The method of electing municipal officers would seem to be a matter peculiarly belonging to the municipality itself."); *Francis v. Morial*, 455 So. 2d 1168, 1171–72 (La. 1984) ("Unless the constitution elsewhere provides justification for such an intrusion, any state law which changes or affects, i.e., produces an alteration in or material influence upon, the local government's structure and organization or the distribution or redistribution of its powers and functions is prohibited."); *Opinion to House of Representatives*, 87 A.2d 693, 695–96 (R.I. 1952) ("[A]fter the qualified electors of a city or town have duly adopted such a home rule charter the relative status of that city or town to the general assembly becomes changed in certain limited respects. For example, in such circumstances the general assembly no longer would

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[5] *State ex rel. Haynes* relied on the Oregon Supreme Court's opinion in *City of Portland v. Welch*, 59 P.2d 228 (1936), which elaborated on the misuse of general legislation to interfere in local affairs. *Welch* explained that because the purpose of home rule "is to prevent legislative interference and intermeddling with purely municipal affairs," the legislature cannot "under the guise of a general law . . . interfere with the exercise of such right." *Id.* at 231. It further noted, "The subject matter of the general legislative enactment must pertain to those things of general concern to the people of the state. A law general in form cannot, under the Constitution, deprive cities of the right to legislate on *purely local affairs germane to the purposes for which the city was incorporated*." *Id.* at 232 (emphasis added).

have the right to legislate, even by a general act, if it would change the form of government under a home rule charter adopted by the qualified electors of such a city or town.").

Tennessee's constitutional history also highlights the 1953 Convention delegates' determination to stop legislative meddling in local government structures. The delegates specifically discussed multiple instances of the General Assembly effectively destroying local governments and their governing bodies. *See* Journal and Debates of the Constitutional Convention of 1953 at 909–11 (referencing ripper bills that had abolished the charters of Memphis and Nashville), excerpt attached hereto as Ex. A. Specifically, Delegate Cecil Sims referenced Chapter 10 of the Public Acts of 1879, which had abolished all municipal offices in Memphis. 1879 Tenn. Pub. Acts ch. X, 13–15, attached hereto as Ex. B. Other Tennessee cities suffered similar fates at the hands of the General Assembly before home rule. *See, e.g.*, 1945 Tenn. Priv. Acts ch. 575, 1750–68 (abolishing and reconstituting the city of Parsons); 1943 Tenn. Priv. Acts ch. 115, 517–26 (abolishing and reconstituting the city of Copperhill).[6]

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Simply stated, the General Assembly is returning to 19th Century methods of local control, expecting the court system to ignore constitutional history and sanction its actions. *See generally* Catherine Fox Siffin, Shadow Over the City: Special Legislation for Tennessee Municipalities 28 (The University of Tennessee Record, Extension Series, Vol. XXVII, No. 3, June 1951) ("The forms of city governments were often altered through private enactments,

[6] In one instance in 1883, the General Assembly passed a law repealing Nashville's charter on one day, and then reconstituted the same body the next day. 1883 Tenn. Pub. Acts ch. CXXX, 176–78 (March 26, 1883) (repealing Nashville charter); 1883 Tenn. Pub. Acts ch. CXIV 141–60 (March 27, 1883) (passing new Nashville charter), attached hereto as collective Ex. C. Media reports from that era could have been drawn from today's headlines. *See What Nashville Asks of the Legislature*, Daily American (Mar. 20, 1883) ("Shall the people of Nashville be allowed to have such city government as they want? Have not other cities and towns been allowed to make any sort of government they chose?"), attached hereto as Ex. D; *Mr. Taylor and City Reform*, Daily American (Mar. 1, 1883) ("Nothing has startled our citizens more than a report made yesterday by the Committee on Corporations of the House of Representatives recommending an amendment to the citizens' reform bill, changing the number of Councilmen from 10 to 14, and that they be elected by the ward system."), attached hereto as Ex. E.

attached hereto as Ex. F. In some instances, statutes of this type only slightly changed the duties of city officials; in other cases, the complete structure of the municipal government was discarded and another erected in its place."). But the 1953 Convention delegates and the citizens of Tennessee explicitly voted to foreclose future nonconsensual legislative meddling in local government structure when they approved the Home Rule Amendment.

As outlined above, there is no statutory, common law, or constitutional support for State Defendants' radical interpretation of the Consolidation Clause. If, however, the Court elects to find implied General Assembly authority under the Consolidation Clause, that authority should be construed narrowly, given the purpose of home-rule protection. The Court should adopt the reasoning in the rulings from other state courts recognizing that a fundamental structural issue, such as the size of a local legislative body, "is precisely the sort of matter intended to fall within the decisionmaking power of a home rule municipality" because it is a subject that is predominantly, if not entirely, of interest to the citizens of the city. *State ex rel. Haynes*, 845 P.2d at 156–57 ("Of what concern is it statewide what the City's residents decide as to the number of commissioners they wish to serve on their city commission?"). To adopt State Defendants' position that the Consolidation Clause requires local approval only of the original consolidation, with the General Assembly having carte blanche to thereafter reconfigure the local government however it pleases, will effectively extinguish home rule in the State of Tennessee. The Court should decline this invitation.

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III. <u>THE METRO COUNCIL REDUCTION ACT VIOLATES THE LOCAL LEGISLATION CLAUSE'S PROHIBITION ON LOCAL BILLS AND RIPPER BILLS</u>.

A. The Reduction Requirements in Section (b) of the Act Are Not Necessary, Transitional Provisions.

State Defendants spend multiple pages of their response arguing that the 20-member *cap* in Section 1(a) of the Act is not local in form or effect. But it is the *reduction requirement* in Section 1(b) that Metro Nashville is challenging under the Local Legislation Clause.

As to Section 1(b), State Defendants argue that 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.'" (State Resp. at 18.) State Defendants' reliance on *Marion County Board of Commissioners v. Marion County Election Commission*, 594 S.W.2d 681 (Tenn. 1980), *Leech v. Wayne County*, 588 S.W.2d 270 (Tenn. 1979), and *State ex rel. Maner v. Leech*, 588 S.W.2d 534 (Tenn. 1979), in support of this position is unavailing. (State Resp. at 18–20.)

These three cases have a common thread that is not present here—they involved a statutory scheme adopted to effectuate a *constitutional amendment*. *Marion Cty. Bd. of Comm'rs*, 594 S.W.2d at 683; *Leech*, 588 S.W.2d at 272; *State ex rel. Maner*, 588 S.W.2d at 540-41. State Defendants acknowledge that the laws at issue in these cases "singled out specific county governments in ways that might have otherwise offended the constitution," but note that the laws were upheld as transitional requirements "made necessary by recent *constitutional* changes." (State Resp. at 18 (emphasis added).)

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No such constitutional amendment renders the purported "transitional provisions" in the Metro Council Reduction Act necessary. In fact, nothing makes Section 1(b) of the Act necessary given Metro Nashville's 60-year existence with a 40-member legislative body. State Defendants argue that these "transitional provisions are necessary to account for unique conditions, like those existing in Metro Nashville." (State Resp. at 20.) But the "unique condition" to which State Defendants obliquely refer is that Metro Nashville is the lone local government in the State of Tennessee that must reduce its legislative body size under the Act. And to permit the General Assembly to pass laws, impose specific requirements on particular local governments to effectuate those laws, and label the specific requirements "transitional" to avoid Home Rule Amendment scrutiny would gut the amendment.

Section 1(b)'s reduction requirement is imposed, and will only ever be imposed, on Metro Nashville. It is not a transitional requirement necessary to effectuate constitutional protections. It ignores constitutional protections.[7]

B. The Reduction Requirements in Section 1(b) of the Metro Council Reduction Act Are Not Severable.

The Metro Council Reduction Act contains a severability clause. But this Court need address severability only if Metro Nashville's sole successful legal challenge is to Section 1(b)'s reduction requirements or expansion/shortening of Councilmembers' terms.

State Defendants admit that the severability doctrine is disfavored under Tennessee law but argue that this presumption is overcome by the Act's severability clause. (State Resp. at 26–27.) Insertion of a severability clause is not conclusive, and such a clause will not be enforced if it would frustrate the legislation's purpose. *See Gold Watch, Inc. v. City of Memphis*, No. 1, 1989 WL 61225, at *3 (Tenn. June 12, 1989). The plain legislative purpose of the Act was to target this year's elections to the Metro Nashville Council. (*See* Metro Nashville Mem. L. in Support of Mot. at 7.) There is no other explanation for the extraordinary speed in which the bill was signed into law by both speakers and the governor.[8] "If speed is sometimes a measure of intent in lawmaking, the Tennessee General Assembly was sending a message when they cut the Metro Council in half . . . . In all, it took a little more than an hour." *See* "Analysis: The State v. Metro," *supra* note 3.

Moreover, in arguing that the Act's severability clause favors elision if Section 1(b) is deemed unconstitutional, State Defendants note that the statute would still require Metro

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[7] State Defendants' suggestion that Section 1(b) does not invoke the Local Legislation Clause because the cap in Section 1(a) applies statewide to all metropolitan governments and municipalities likewise fails. *See Leech v. Wayne Cty.*, 588 S.W.2d at 274 (striking as unconstitutional under the Local Legislation Clause a section of enabling legislation exempting two counties from a "permanent, general provision, applicable in nearly ninety counties").

[8] *See* House Bill 0048 Bill History, https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB0048&GA=113.

Nashville to reduce the size of its Council to twenty members, which State Defendants claim "was clearly the Legislature's ultimate statewide intent for existing and future metropolitan governments and municipalities." (State Resp. at 27.) This argument, however, proves the opposite. If the General Assembly were concerned about other legislative bodies increasing in size *and* believed that Section 1(a) was sufficient to require Metro Nashville to reduce its Council size, then the General Assembly would have omitted Section 1(b) altogether. But it did not. And it did not because it plainly wanted to shove haphazard, rushed reduction requirements onto one local legislative body while no other local government in Tennessee even hinted at increasing the size of its legislative body beyond the arbitrary, desired cap.

C. The Reduction Requirement in the Metro Council Reduction Act Is a Ripper Bill.

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State Defendants next assert that Section 1(b) of the Act is not a ripper bill because it merely *extends* Councilmembers' terms and does not cut them short. But there is no practical difference between cutting a term short and forcing a Councilmember to serve a term he or she did not run for and was not elected to serve. The Tennessee Supreme Court has recognized the broad concern of the 1953 Convention over the General Assembly's abuse of local governments, as addressed in numerous Home Rule Amendment clauses, including but not limited to the ripper bill language. *Cf. Reynolds*, 512 S.W.2d at 9 (stating, in dictum, that the ripper provision "wholly deprives the Legislature of any authority to enact laws affecting incumbent officeholders of any county or municipality").

IV. THE METRO COUNCIL REDUCTION ACT'S REDUCTION REQUIREMENTS FOR METRO NASHVILLE VIOLATE THE FOUR-YEAR TERMS IN ARTICLE VII, SECTION 1.

In response to Metro Nashville's third claim, which alleges that the reduction requirements in Section 1(b) of the Act violate the mandatory, four-year terms in Article VII, Section 1 of the Constitution, State Defendants argue (1) that Metro Nashville does not have standing, (2) that any claim concerning Section 1(b) is not ripe unless and until the Metro

Nashville Council misses the May 18 redistricting deadline, and (3) that the provisions are merely transitional provisions necessary to effectuate the Act.

These arguments fail for the same reasons articulated in Sections I and III.A. above. As to standing and ripeness, Metro Nashville is unquestionably harmed by Section 1(b) of the Act, both now, as it seeks in good faith to comply as much as possible, and later, whether or not the Act is deemed unconstitutional. And while present injury is not required to establish ripeness, the Act mandates Metro Nashville to take action *immediately*.

Moreover, nothing in the Constitution or applicable case law gives the General Assembly a blank check to violate the Home Rule Amendment or any other constitutional provision by recasting offending language as "transitional provisions." As discussed above, rulings on which State Defendants rely such as *State ex rel. Maner* involved transitional provisions necessary to effectuate *constitutional amendments*—a far cry from unnecessary provisions chaotically implementing the General Assembly's *own legislative Act*. Those holdings have no application here, and State Defendants offer no other substantive response to the conflict between the three- and five-year terms established in Section 1(b) of the Act and the four-year term mandated by Article VII, Section 1 of the Constitution.

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V. THE METRO COUNCIL REDUCTION ACT'S 20-MEMBER CAP CONFLICTS WITH ARTICLE VII, SECTION 1'S EXEMPTION FOR CONSOLIDATED GOVERNMENTS.

State Defendants acknowledge (1) the Constitution's 25-member cap on county legislative bodies and (2) the express exemption for consolidated governments from this cap. (State Resp. at 25.) Yet they assert that the omission of an express cap on metropolitan council sizes renders the General Assembly free to set a cap wherever it chooses. Article VII, Section 1, however, must be read harmoniously and in conjunction with other provisions of the Constitution. And as discussed above, Paragraph 5 of the Municipal Home Rule Clause expressly provides that a general act supersedes a home-rule city charter, *including charter*

provisions dealing with the city's form and structure. Tenn. Const. art. XI, § 9 ¶ 5. The Constitution's Consolidation Clause contains no such language. To hold that consolidated governments are subject to legislative caps on their council size would render this language in Paragraph 5 of the Home Rule Amendment meaningless.[9]

HARM TO THE PARTIES

I. METRO NASHVILLE WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF AN INJUNCTION.

In attempting to downplay the confusion and chaos generated by the absurd timeline set forth in Section 1(b) of the Act, State Defendants' response cherry-picks portions of the public discussion surrounding Metro Nashville officials' attempts to comply. This not only misses the point, but completely ignores the complexity of the process Metro Nashville faces. Even if Metro Nashville complies, the human and financial resources expended to do so cannot be restored. The lost trust in the electoral process from the confusing flip-flopping of Council districts cannot be restored. The fact that Metro Nashville has professional staff and processes to make the best of a bad situation is beside the point.

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For example, State Defendants reference Planning Department employee Greg Claxton's statement that Planning Commission staff prepared the 2011 redistricting within thirty days. They omit Mr. Claxton's qualification that in 2011, the redistricting affected only a few districts, while reducing the Council's size by at least half will involve changes to each and every district. (Mar. 16, 2023, Planning Information Session Transcript at 81:20–82:3 ("Now, they were working with the same council – the same number of districts that they

[9] Because the 25-member cap in Article VII, Section 1 merely sets a ceiling, State Defendants' position also begs the question why the General Assembly omitted county legislative bodies from the Act's 20-member cap on local legislative body size. If the interest in efficiency were really at play, that rationale would apply equally to the House sponsor's county (Sumner), which has a 25-member legislative body.

had."), attached as Ex. G.)[10] Election Commission Director Jeff Roberts is understandably trying to streamline where possible as he thinks through what is coming. But none of these good-faith efforts can negate the irreparable harm that will flow from an unconstitutional redistricting process taking place and being reversed later. State Defendants claim that Metro Nashville has an "adequate remedy at law" because it could hold a "special election" for the 40-member Council if it ultimately wins the litigation. (State Resp. at 30.) This ignores the practicalities of the election process, the timeframe in which the process must be conducted, the resources expended to get there, and Tenn. Code Ann. § 2-5-101(a)(3), which sets a May 18 qualifying deadline with no opportunity for extension built into the law.

Moreover, it is short-sighted and inaccurate to suggest that redistricting can or should occur in the timeframe set forth in the Act. As outlined in the attached declaration of current at-large Councilmember Bob Mendes, previous redistricting efforts required only one task: setting district boundaries on maps. (Mendes Decl. ¶¶ 16–17, attached as Ex. H.) But this effort requires two additional, policymaking steps: setting the number of districts and determining how many of them, if any, will be at-large. (*Id.*) Making those decisions without appropriate public input—input that the Act simply does not provide time for—will "unfairly limit the public's opportunity to participate in the process." (*Id.* ¶¶ 28–29.) As Councilmember Mendes states, the process that the Act thrusts upon Metro Nashville, and Metro Nashville alone, creates "substantial, material confusion among [Councilmembers'] constituents and

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[10] Transcripts from this and other recent public meetings are filed herewith as collective Ex. G. These include the Planning Department's information sessions with Metro Nashville Councilmembers on March 16 and March 21, a Council Planning & Zoning Committee Meeting on March 22, and the Council's special-called meeting that immediately followed. These meetings illustrate the complex decisionmaking process that Metro Nashville officials are facing in their efforts to comply with the unreasonable requirements of this Act. Even a cursory review of those transcripts undercuts State Defendants' suggestion that this process is simple and seamless. Rather, these meetings reflect a candid, good-faith discussion of myriad questions, confusion, and concerns, legal and otherwise, that arise when the actual individuals on the ground who are tasked with compliance try to meet the Act's unreasonable expectations. Metro Nashville officials are in an untenable position.

colleagues," paralysis in decisionmaking due to the unpredictable circumstances, and uncertainty across the Nashville community. (*Id.* ¶¶ 11–15.) "The State's calm portrayal does not match the chaotic reality on the ground inside the Metro [Nashville] government." (*Id.* ¶ 9.) This harm is irreparable whether the Act is constitutional or not, as it wastes resources that cannot be recouped and destroys public trust.

II. STATE DEFENDANTS' SPECIOUS CLAIMS OF HARM UNDERSCORE THE METRO COUNCIL REDUCTION ACT'S ATTACK ON HOME RULE.

Ironically, State Defendants argue that the public interest would be significantly harmed "by disrupting the enforcement of legislative enactments made by the duly elected representatives of the people." (State Resp. at 31.) This claim perfectly illustrates how the Act violates the essence of home-rule protection. The "duly elected representatives of the people" who voted in favor of this Act are not the representatives of Metro Nashville[11]—the only local government affected by its impetuous timeline. Metro Nashville's duly elected representatives voted against the Act. And while the rest of the General Assembly's constituents have no interest in the size of Metro Nashville's Council, their representatives passed the Act anyway, disregarding the legitimate legal concerns it raised. If home rule is to have any meaning, it must provide the residents of Davidson County with authority to decide matters that affect only them, such as the size of their local legislative body.

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The public interest is served when the General Assembly acts in a manner consistent with the constitutional protection against infringement on local government sovereignty—the government closest to the people. When legislatures refuse to acknowledge these legitimate, constitutional constraints, courts must step in. The evolution of home rule in this country is the direct result of this type of state government overreach. The Court should

[11] *See* Tennessee General Assembly, HB0048, "Votes" tabulation, at https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0048&GA=113.

protect the public interest here by reining in the General Assembly's radical departure from these basic home-rule protections.[12]

CONSOLIDATION WITH TRIAL ON THE MERITS

Metro Nashville has no objection to its motion for temporary injunction being consolidated with a trial on the merits, so long as such consolidation will not delay the April 4, 2023, hearing or the Court's consideration of the pending motion for temporary injunction. Contrary to State Defendants' position that discovery is needed, the issues before the Court in this declaratory judgment action are questions of law. State Defendants offer no support for their claim that Metro Nashville's efforts to redistrict are relevant to the merits of the constitutionality issues before the Court. Instead, those matters are relevant to the question of whether the Court should grant an injunction and may be properly considered on the temporary injunction filings (including public hearings, certified transcripts, certified exhibits, and sworn declarations). But they have nothing to do with the merits of this case, and State Defendants' unsupported suggestion otherwise should be rejected.

Moreover, for the reasons articulated in Section I.B. of the Likelihood of Success argument above, all issues are ripe for the Court's consideration, regardless of whether redistricting is completed by April 4. Accordingly, there is no need to delay resolution.

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[12] State Defendants' response also mischaracterizes Metro Nashville's argument concerning application of the *Purcell* principle. As *Moore v. Lee*, 644 F.3d 59, 65 (Tenn. 2022), acknowledges, *Purcell* involved review of a judicial injunction. *Moore*, 644 F.3d at 65. But the ruling's relevance does not end there. More broadly, *Purcell* described the harm that interfering with a pending election can cause to the public interest. *Moore* expressly describes the state's "compelling interest in preserving the integrity of the election process," as reflected in *Purcell*. *Moore*, 644 F.3d at 65. The harm that flows from interference with elections can be caused legislatively, as here, just as easily as it can be caused judicially. State Defendants' strained narrowing of the rationale underlying the *Purcell* principle falls flat.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on the 30th day of March, 2023, a true and exact copy of the foregoing was served via the electronic filing system on the following:

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