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IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT

DAVIE TUCKER,	)	
DELISHIA PORTERFIELD,	)	
JUDY CUMMINGS,	)	
DAVE GOETZ,	)	
ALMA SANFORD,	)	
QUIN SEGALL,	)	
SANDRA SEPULVEDA, and	)	
ZULFAT SUARA,	)	
	)	
***Plaintiffs*,**	)	
	)	
v.	)	**CASE NO. _____**
	)	
	)	
BILL LEE, Governor,	)	
TRE HARGETT, Secretary of State,	)	
MARK GOINS, Tennessee Coordinator of Elections; all in their official capacity only,	)	
	)	
***Defendants*.**	)	

COMPLAINT

This is a related action to a previously filed case entitled *Metropolitan Government of Nashville & Davidson County, Tennessee v. Lee, et al.* (Case Number 23-0336-I). Plaintiffs assert the same claims asserted in this previously filed action, and Plaintiffs, therefore, submit this action should be assigned to the same three-judge panel overseeing the Metropolitan Government's case.

In this action, voters, candidates for Metropolitan Council, and current Metropolitan Councilmembers challenge the Tennessee General Assembly's passage of an Act seeking to force the reduction of the size of the Metropolitan Council from 40 members to 20 or fewer members, contrary to the will of the people of Nashville and Davidson County. Plaintiffs are engaged citizens who have channeled their public engagement through many different pathways over decades of service. Reverend Davie Tucker and Reverend Dr. Judy Cummings are faith leaders, who have

served their faith communities and the entire Nashville community on a wide range of issues for decades. Dave Goetz is a business leader who served as Tennessee's Commissioner of Finance and Administration from 2003 to 2010 and who served as President of the Tennessee Chamber of Commerce & Industry before that time. Alma Sanford is a lifelong community advocate, having served on multiple Metro boards and having worked on countless community projects and issues in Nashville and throughout the entire county. Quin Segall is a current candidate for an At Large seat on the Metropolitan Council, as well as a current member of the Metro Industrial Development Board. Councilmembers Delishia Porterfield and Sandra Sepulveda are current members of the Metropolitan Council, representing Districts 29 and 30, respectively. Councilmember Zulfat Suara is a current At Large member of the Metropolitan Council. Councilmembers Porterfield, Sepulveda, and Suara are all currently seeking reelection for a second four-year term on the Metropolitan Council.

The Plaintiffs all live in Davidson County, all vote in Davidson County, and all ask the Court to enforce their rights, under the Constitution of the State of Tennessee, to vote on all amendments to the Metropolitan Charter, to vote on all fundamental changes to the structure of their consolidated metropolitan government, and to vote for a new Metropolitan Council every four years. Plaintiffs also assert their rights, under the Tennessee Constitution's Home Rule Amendment, to be free from laws in which the Tennessee General Assembly singles out Metropolitan Nashville and Davidson County, Tennessee, in an effort to reconstitute the fundamental structure of the Metropolitan government without voter approval. Finally, plaintiffs seek to enjoin the imposition of a breakneck reapportionment and redistricting schedule upon the people of Nashville and Davidson County, Tennessee.

Plaintiffs ask the Court to invalidate House Bill 48 / Senate Bill 87 (hereinafter, the "Metro Council Reduction Act" or "Act"), which Defendant Governor Bill Lee signed into law on March 9, 2023. The Metropolitan Government has filed a pending action challenging the Act, titled *Metropolitan Government of Nashville & Davidson County, Tennessee v. Lee, et al.* (Case Number 23-0336-I). Plaintiffs' instant action challenges the Act based on the same underlying facts and law, and it seeks the same relief. Therefore, most of the paragraphs set forth below are excerpted in their entirety from the Metropolitan Government's Complaint. Yet, while this case and the Metropolitan Government's case challenge the same Act based on the same facts and overarching legal reasoning, this Action is unique because it is brought by voters, by candidates for Metropolitan Council, and by current Metropolitan Councilmembers, who are each endowed by the Tennessee Constitution with the voting rights asserted herein and who will personally experience the various injuries alleged herein if the Act is permitted to take effect.

The Court should declare the Metro Council Reduction Act unconstitutional and enjoin its enforcement. In support of its request for a declaratory judgment and injunctive relief, Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This matter should be heard by a three-judge panel pursuant to Tennessee Code Annotated § 20-18-101(a) because it challenges the constitutionality of a state statute, seeks declaratory or injunctive relief, and is brought against state officials acting in their official capacities.

2. The empaneled three-judge court has jurisdiction pursuant to Tennessee Code Annotated §§ 20-18-101, *et seq.*, as well as Tennessee Code Annotated § 16-11-102.

3. The empaneled three-judge court has jurisdiction to grant the injunctive and declarative relief sought herein pursuant to Tennessee Code Annotated §1-3-121, § 29-1-101, §§ 29-14-102 and -103, and Tennessee Rule of Civil Procedure 65.

4. Venue is proper in the Twentieth Judicial District, and before a three-judge panel seated therein, pursuant to Tennessee Code Annotated § 20-18-102 and Tennessee Supreme Court Rule 54 because Plaintiffs reside in Davidson County, Tennessee.

PARTIES

I. PLAINTIFFS

5. Reverend Davie Tucker lives in Davidson County, Tennessee, in current Metro Council District 6. Reverend Tucker is registered to vote in Davidson County, regularly votes in Davidson County, and intends to continue voting regularly in Davidson County in the future. Reverend Tucker is the Senior Pastor at Beech Creek Missionary Baptist Church, is the President of the Interdenominational Ministers Fellowship, and is the Executive Director of the Metro Human Relations Commission.

6. Reverend Dr. Judy Cummings lives in Davidson County, Tennessee, in current Metro Council District 1. Reverend Dr. Cummings is registered to vote in Davidson County, regularly votes in Davidson County, and intends to continue voting regularly in Davidson County in the future. Reverend Dr. Cummings recently retired as the Senior Pastor at New Covenant Christian Church (DOC), having served as Senior Pastor for ten years. Reverend Dr. Cummings is a former President of the Interdenominational Ministers Fellowship. In addition, Reverend Dr. Cummings has run for Metro Council (District 1), helped create the District 1 United Community Group, and remains engaged in community efforts and issues of injustice through organizations

including Forward Tennessee, the Southern Christian Coalition, and the African American Clergy Coalition of Tennessee.

7. Dave Goetz lives in Davidson County, Tennessee, in current Metro Council District 24. Plaintiff Goetz is registered to vote in Davidson County, regularly votes in Davidson County, and intends to continue voting regularly in Davidson County in the future. Dave Goetz is a business leader who served as Tennessee's Commissioner of Finance and Administration from 2003 to 2010 and who served as President of the Tennessee Chamber of Commerce & Industry before that time.

8. Alma Sanford lives in Davidson County, Tennessee, in current Metro Council District 33. Plaintiff Sanford is registered to vote in Davidson County, regularly votes in Davidson County, and intends to continue voting regularly in Davidson County in the future. Plaintiff Sanford has served as a member of the Solid Waste Region Board and as a member of the Board of Zoning Appeals, and Plaintiff Sanford has served as the Secretary of her homeowner's association since its creation.

9. Quin Segall lives in Davidson County, Tennessee, in current Metro Council District 18. Plaintiff Segall is registered to vote in Davidson County, regularly votes in Davidson County, and intends to continue voting regularly in Davidson County in the future. Plaintiff Segall began campaigning for an At Large seat on the Metropolitan Council in late 2022. Plaintiff Segall has raised over $78,000 in campaign contributions to date, has pulled her election petition, has begun gathering petition signatures, and has been actively campaigning for months. Plaintiff Segall currently serves as a member and Vice Chair of the Metro Industrial Development Board. Plaintiff Segall also serves on the Steering Committee for Belmont-Hillsboro Neighbors, Inc. and as Chair of its Beautification Committee.

10. Councilmember Delishia Porterfield lives in Davidson County, Tennessee. Councilmember Porterfield was elected to serve as the councilmember for Council District 29 in 2019 and is currently serving her first full four-year term as a Metro Councilmember.[1] Councilmember Porterfield currently serves as the Chair of the Metro Council's Minority Caucus. Councilmember Porterfield is registered to vote in Davidson County, regularly votes in Davidson County, and intends to continue voting regularly in Davidson County in the future. Councilmember Porterfield has appointed a Treasurer for this year's election campaign. Councilmember Porterfield previously worked as a special education teacher in the Metro Nashville Public School system.

11. Councilmember Sandra Sepulveda lives in Davidson County, Tennessee. Councilmember Sepulveda was elected to serve as the councilmember for Council District 30 in 2019 and is currently serving her first four-year term as a Metro Councilmember. Councilmember Sepulveda is registered to vote in Davidson County, regularly votes in Davidson County, and intends to continue voting regularly in Davidson County in the future. Councilmember Sepulveda is currently running for reelection, has raised approximately $20,000 in campaign contributions, has pulled her election petition, and is in the process of beginning to collect petition signatures.

12. Councilmember Zulfat Suara lives in Davidson County, Tennessee. Councilmember Suara was elected to serve as an At Large member of the Metro Council in 2019 and is currently serving her first four-year term as a Metro Councilmember. Councilmember Suara is registered to vote in Davidson County, regularly votes in Davidson County, and intends to continue voting regularly in Davidson County in the future. Councilmember Suara is currently

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[1] Councilmember Porterfield was elected in March 2019 to complete the unexpired term of her predecessor. Councilmember Porterfield was elected to her first full four-year term in August 2019.

running for reelection, having raised over $30,000 in political contributions, and having pulled her election petition. Councilmember Suara is a past Chair of the American Muslim Advisory Council and is a board member of the PENCIL Foundation and the Women's Fund of the Community Foundation of Middle Tennessee. Councilmember Suara is also a past state President of the Business and Professional Women of Tennessee.

II. DEFENDANTS

13. Defendants in this action are:

a. Bill Lee, Tennessee Governor, who holds office pursuant to Article III of the Tennessee Constitution, having been duly elected by the citizens of the State of Tennessee.

b. Tre Hargett, Tennessee Secretary of State, who holds office pursuant to Article III, Section 17 of the Tennessee Constitution. Mr. Hargett, as Secretary of State, appointed Mr. Goins as Tennessee Coordinator of Elections, and has unfettered authority to terminate Mr. Goins from that position.

c. Mark Goins, Tennessee Coordinator of Elections, who is appointed by the Secretary of State pursuant to TENN. CODE ANN. § 2-11-201. Mr. Goins is charged with obtaining and maintaining "uniformity in the application, operation and interpretation of the election code," and acts under the authority of the Tennessee Secretary of State. Id.

14. Defendants are sued in their official capacity only, and not individually, and they may each be served through the Tennessee Attorney General and Reporter's Office.

FACTUAL ALLEGATIONS

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

15. Article XI, Section 9 of the Tennessee Constitution is commonly referred to as the Home Rule Amendment.

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

17. Tennessee voters duly approved the Convention's changes to the Constitution on November 3, 1953.

18. As the Tennessee Supreme Court declared in *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975), "[t]he 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." *Id.* at 551.

19. The Home Rule Amendment "fundamentally change[d] the relationship between the General Assembly and [home rule governments], because such entities now derive their power from sources other than the prerogative of the legislature." *S. Constructors, Inc. v. Loudon Cty. Bd. of Educ.*, 58 S.W.3d 706, 714 (Tenn. 2001).

20. The three amendments that make up the Home Rule Amendment were proposed through three different resolutions adopted at the 1953 Convention:

> The Local Legislation Clause: Paragraph 2 of Article XI, Section 9, resulting from the "Resolution Relative to Home Rule for Cities and Counties as to Local Legislation."

The Home Rule for Municipalities Clause: Paragraphs 3 through 8 of Article XI, Section 9, resulting from the "Resolution Relative to Municipal Home Rule."

The Consolidation Clause: Paragraph 9 of Article XI, Section 9, resulting from the "Resolution Relative to Consolidation of Cities and Counties."

21. The issue of local sovereignty arose again at the 1977 Limited Constitutional Convention.

22. That Convention "extensively rewrote" Article VII, Section 1 of the Tennessee Constitution and "provided a general framework for the government of Tennessee counties." *State ex rel. Maner v. Leech*, 588 S.W.2d 534, 537 (Tenn. 1979).

23. Those amendments, which voters approved in a statewide referendum on March 7, 1978, also established the county legislative body as a constitutional office, exempted consolidated city/county governments from any limit on the size of their legislative bodies, and allowed the General Assembly to impose an alternate form of county government only with local voter approval. Tenn. Const. art. VII, § 1.

II. NASHVILLE AND DAVIDSON COUNTY VOTED TO CONSOLIDATE IN 1962 AND ADOPTED A 40-MEMBER LEGISLATIVE BODY PURSUANT TO ENABLING LEGISLATION.

24. The Consolidation Clause in the last paragraph of the Home Rule Amendment provides as follows:

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

Tenn. Const., art. XI, § 9 ¶ 9 (emphasis added).

25. Metro Nashville came into existence as the result of several public and private acts that were adopted pursuant to the authority provided in the Consolidation Clause.

26. Chapter 120 of the Public Acts of 1957 (the "1957 Public Act") authorized the consolidation of governmental and corporate functions of municipalities and counties with a population greater than 200,000.

27. The 1957 Public Act set forth numerous requirements for cities and counties that sought to consolidate under the Consolidation Clause.

28. These requirements included, among others, naming the resulting governmental entity a "metropolitan government" and requiring the creation of a "Metropolitan Government Charter Commission," which would submit a proposed charter to the voters of the city and county for ratification or rejection through referendum election.

29. The 1957 Public Act also outlined that a proposed metropolitan charter must provide, among other things:

- For the creation of a Metropolitan Government vested with all powers that cities and counties "are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the State of Tennessee, as fully and completely as though the powers were specifically enumerated therein, except as provided" in the Act or the proposed charter itself. 1957 Public Act § 10(a).
- "For a Metropolitan Council, which shall be the legislative body of the Metropolitan Government and shall be given all the authority and functions of the governing bodies of the county and cities being consolidated, with such exceptions and with such additional authority as may be specified elsewhere in this Act." *Id.* § 10(k).
- "For the size, method of election, qualification for holding office, method of removal, term of office and procedures of the Metropolitan Council . . . ." *Id.* § 10(l).

30. In 1961, the General Assembly passed Public Acts Chapter 199, which amended the 1957 enabling legislation and authorized charter commissions to be created through private act.

31. The Metro Nashville Charter Commission was created in 1961 through Chapter 408 of the Private Acts of 1961. That private act declared that "the [Metro Nashville] charter commission created in Section 1 of th[e] Act shall be vested with all the powers and perform all the duties set forth in Chapter 37, Title 6, of the Tennessee Code Annotated [the Metropolitan Government Charter Act]."

32. Consistent with the intent of the Home Rule Amendment generally and the Consolidation Clause specifically, this enabling legislation required Metro Nashville to determine the structure of its own government, including setting the size of its legislative body, the Metropolitan Council.

33. On June 28, 1962, Nashville and Davidson County voters ratified Metro Nashville's consolidation and approved its first charter by a referendum vote.

34. Metro Nashville's first charter, which, by its terms, became effective on the first Monday in April 1963, set the size of the Metropolitan Council at forty members, comprised of thirty-five Councilmembers from geographic districts and five Councilmembers elected at-large by all voters in the county. Metro Nashville Charter § 3.01.

35. The successful 1962 vote to consolidate was not Metro Nashville's first attempt at forming a metropolitan government.

36. The first attempt, which failed in 1958, had proposed a charter setting a metropolitan council size at twenty-one members.

37. In 2015, an effort to reduce the size of Metro Nashville's Council failed. In an August 6 election that year, voters rejected a proposed Charter amendment that would have reduced the number of Metro Nashville Councilmembers from forty to twenty-seven.

III. THE METRO COUNCIL REDUCTION ACT CAPS METRO NASHVILLE'S COUNCIL AT TWENTY MEMBERS, HALF ITS ORIGINAL AND CURRENT SIZE.

38. On March 6, 2023, the Metro Council Reduction Act passed by a vote of 72 ayes and 25 nays in the Tennessee General Assembly's House of Representatives. The Act passed in the form filed as HB0048 as amended by House Amendment No. 2.

39. On March 9, 2023, the Senate substituted the companion House Bill in place of SB0087 and passed it by a vote of 23 ayes and 7 nays.

40. Governor Bill Lee signed the bill into law the same day.

41. The Metro Council Reduction Act amends Title 7, Chapter 1, of the Tennessee Code Annotated, the Metropolitan Government Charter Act.

42. Chapters 1 through 3 of Title 7 outline the process for cities and counties electing to consolidate into metropolitan governments—a process authorized by the Consolidation Clause of the Home Rule Amendment.

43. Subsection 1(a) of the Metro Council Reduction Act sets a 20-member ceiling on the number of councilmembers that a metropolitan government may have, stating: "Notwithstanding a provision of a metropolitan government charter or § 7-2-108 to the contrary, the membership of a metropolitan council must not exceed twenty (20) voting members, as further provided in this section."

44. Before the Metro Council Reduction Act's passage, the Metropolitan Government Charter Act set no floor or ceiling on the number of metropolitan council members that could serve on a metropolitan government's legislative body.

45. Subsection 1(b) of the Metro Council Reduction Act outlines the mandatory process for any metropolitan government that must reduce the size of its council to comply with subsection 1(a).

46. Under the Act, if a metropolitan government with a council greater than twenty members fails to take the steps outlined in subsection 1(b) "prior to the qualifying date for the next general metropolitan election after the effective date of this act as set by the county election commission, then the terms of the current members of the 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 in August 2024 to elect the councilmembers for a term of three (3) years with the terms to begin September 1, 2024." Metro Council Reduction Act § 1(b)(1)(A). The qualifying date for Metro Nashville's next general metropolitan election is May 18, 2023.

47. When Metro Nashville Councilmembers were lawfully elected in 2019, they expected to serve four-year terms as set forth in the Tennessee Constitution and the Metro Nashville Charter. Notwithstanding the Metro Council Reduction Act's passage, there is no guarantee or requirement that any current Councilmember will continue to serve after the anticipated end of his or her four-year term.

48. The only local government in Tennessee required to reduce the size of its legislative body because of the reduction requirement in the Metro Council Reduction Act is Metro Nashville.

49. On February 7, 2023, in comments addressing the bill's scope, House sponsor William Lamberth (R-Portland) stated, "Nashville is the only one I've heard from, so at this point I'm going to assume they're the only one that's going to have to shrink down to twenty, but there may be others for all I know."

50. Despite Rep. Lamberth's statements, other legislators acknowledged that the Metro Council Reduction Act affects only Metro Nashville. At the State and Local Government Committee hearing on February 21, 2023, the Senate sponsor, Sen. Bo Watson (R-Hixson), stated,

"My understanding is that the only county elections affected by this particular piece of legislation would be Davidson County."

51. Once the bill moved to the full House and Senate floors, legislators dropped all pretense that the size-reduction requirement might have statewide effect.

52. On March 9, 2023, Sen. Watson stated on the Senate floor that the "opposition" had been heard, and then he "clos[ed] with . . . a quote from a member of *the* current Council," thereby confirming his understanding that the legislation affected only one Council. (emphasis added). Sen. Watson was speaking of the Metro Nashville Council, the only legislative body affected by the Act.

53. Sen. Frank Niceley (R-Strawberry Plains) also noted, "[W]e're not punishing *this Mayor* at all," meaning the Metro Nashville Mayor, and predicted that "if we *do this to Nashville*, there will be no more Republican Metro Council members." (emphasis added).

54. The Corrected Fiscal Note for the Metro Council Reduction Act concedes that the Act affects no local governments other than Metro Nashville by stating that "[t]he proposed legislation therefore only applies to Metro, as its governing body exceeds the 20-member cap."

IV. THE REDISTRICTING PROCESS REQUIRES CAREFUL PLANNING, INPUT, DELIBERATION, AND EXECUTION, WHICH CANNOT BE ACCOMPLISHED UNDER THE METRO COUNCIL REDUCTION ACT'S UNWORKABLE DEADLINES.

A. THE ACT UNNECESSARILY RUSHES THE REDISTRICTING PROCESS, WHICH LIMITS COMMUNITY INPUT, THREATENS MINORITY REPRESENTATION, AND UNDERMINES VOTER CONFIDENCE.

55. The council-size reduction required in subsection 1(a) of the Metro Council Reduction Act "takes effect as of the next general metropolitan election after the effective date of th[e] act." Metro Council Reduction Act § 1(b)(1)(A). Metro Nashville's next general metropolitan election is on August 3, 2023, four and a half months away.

56. To implement that reduction, the Act instructs the Metro Nashville Planning Commission to "establish new district boundaries for the reduced Council "using the most recent federal census" "[w]ithin thirty (30) days of the effective date of th[e] act." *Id.* § 1(b)(1)(B). As the Act's effective date was March 9, 2023, the Commission must establish new district boundaries on or before April 8, 2023.

57. The existing metropolitan council then "shall approve the new council district boundaries by resolution on or before May 1, 2023." *Id.* § 1(b)(1)(C).

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

59. "[E]lections are complex and election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process." *Moore v. Lee*, 644 S.W.3d 59, 66 (Tenn. 2022).

60. Not only does the Metro Council Reduction Act force Metro Nashville to restructure its legislative body, but it does so on a timeline that is impracticable, fails to provide time for sufficient community input and deliberation, and is sure to cause chaos in the election machinery, as well as confusion and distrust among voters.

61. The Metro Council Reduction Act sets only a ceiling on the number of Council seats, leaving the current Council to decide how many districts to have and how many seats, if any, will be at-large seats.

62. Though the Metro Council Reduction Act does not instruct the current Metro Nashville Council to vote to set the new number of districts, deciding that number and how it should be divided between geographic and at-large districts is a prerequisite to the Planning Commission recommending new district boundaries to the Council for approval.

63. Those crucial decisions must be made and approved by a majority of the Metro Nashville Councilmembers in far fewer than thirty days from the Act's effective date, which is the Planning Commission's deadline for proposing new district boundaries. The Metro Nashville Council would then have to vote to approve that proposal (or a different proposal if it rejects the first one) by the May 1, 2023, deadline in the Act.

64. Redistricting is a complex process that must be conducted with care, deliberation, and debate, particularly for a jurisdiction as large as Metro Nashville. Districts are drawn intentionally, based on population changes, to prevent substantial under-representation of parts of the county.

65. When developing districts, the Metro Nashville Planning Department must consider and balance the following requirements: roughly equal population as required by the United States Constitution; geographic factors; minority vote dilution under Section 2 of the Voting Rights Act; keeping neighborhoods with shared interests together; and public review and input.

66. The Metro Nashville Council, the Planning Department, the Planning Commission, and the Davidson County Election Commission must complete an extraordinary amount of work to comply with the Metro Council Reduction Act's redistricting deadlines.

67. Because the Act became effective on March 9, 2023, and the qualifying deadline for candidates is May 18, 2023, all of this work must be compressed into seventy days.

68. This compressed timeline is likely to cause chaos and confusion, which will negatively affect candidates, Metro Nashville employees and officials, and, most importantly, Metro Nashville voters.

69. The Metro Council Reduction Act provides inadequate time to implement the Act's requirements in a responsible and effective manner before the May 18 qualifying deadline.

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

71. The Metro Council Reduction Act's House sponsor, Rep. William Lamberth, conceded that the Act places Metro Nashville "in a very tight timetable."

72. Three letters have already been delivered to State officials and to the Planning Department's Executive Director Lucy Kempf expressing concern over the Metro Council Reduction Act's potential impact on minority representation on the Metro Nashville Council: a March 6, 2023, Letter from Latinx community leaders to Governor Bill Lee, Lt. Governor Randy McNally, and Speaker of the House Cameron Sexton; a March 3, 2023, Letter from the Interdenominational Ministers Fellowship ("IMF") to the Governor, Lt. Governor, and Speaker of the House ("IMF Ltr."); and a February 22, 2023, Letter From Business Community Leaders to the Lt. Governor and Speaker of the House. All of those letters were forwarded to Executive Director Kempf on March 7, 2023.

73. As the IMF expressed in its letter, the 40-member structure of the Metro Nashville Council "reflects our city's race and gender composition" and "meets the needs of a dynamic

community that values grassroots representation and multiple perspectives." The March 6, 2023, letter from Latinx community leaders and the February 22, 2023, letter from business leaders expressed similar sentiments.

74. The IMF's letter further warned that the IMF "stands ready" to take legal action if necessary to defend rights protected by the Voting Rights Act if impaired by the Metro Council Reduction Act.[2]

75. Boundary lines, and even the number of districts/Councilmembers from which such lines are drawn, play a key role in protecting minority representation and, more broadly, serving the interests of the community as a whole. Good government demands that Metro Nashville Councilmembers proceed carefully through a redistricting process, with significant input from stakeholders.

76. The Metro Nashville Charter requires the Planning Commission to redraw the thirty-five Council districts following each decennial census.

77. The current set of Metro Nashville Council districts was crafted in 2021 by the Planning Commission and approved by the Metro Nashville Council in January 2022.

78. That redistricting was based on 2020 United States Census data, and the process spanned from July 2021 to January 2022.

79. The 2022 districts were the result of a deliberative process that lasted months and involved multiple public hearings, numerous community meetings, an online survey, and virtual appointments for soliciting feedback, all to ensure that the resulting map kept communities intact while complying with federal constitutional and statutory voting-rights requirements.

[2] Plaintiff Tucker is the President of IMF and signed the letter described herein as its President. IMF is not a plaintiff in this action.

80. Throughout this time, Councilmembers, community leaders, national organizations like the NAACP, and other constituents took an active role in the process by providing feedback on the Planning Department's various proposals.

81. Metro Nashville's Planning Department released "Version A" of the proposed districts on October 15, 2021.

82. Version A included information about the number of residents, ethnicity, race, voting age population, geography, and compactness for each of the thirty-five districts in the draft map.

83. Between October 18 and October 27, 2021, the Planning Department held four community meetings, hosted three days of in-person office hours, and held virtual appointments to solicit feedback on the initial plan.

84. After considering the feedback, the Planning Department prepared "Version B" of the proposed districts, which was released on November 5, 2021.

85. A second round of community engagement followed Version B's release.

86. On December 3, 2021, the Planning Department proposed "Version C" of the proposed districts. To aid in education and transparency, the Planning Department developed a comprehensive website that allowed the public to compare the different versions.

87. The Planning Commission considered Version C on December 9, 2021.

88. Version C was filed with the Metro Council on December 10, 2021; approved by Metro Council on January 18, 2022; and signed by the Mayor on January 24, 2022.

89. Under the Metro Council Reduction Act, after the Metro Nashville Council approves new districts, the Davidson County Election Commission must match the new district boundary lines with geocoding, correct any issues that arise, match those lines with the State's

geocoding, correct any issues that arise, assign polling locations, and print and mail new voter registration cards to the voters.

90. The Election Commission must also try to educate Metro Nashville's voters about their new polling location and Council district assignments.

91. Davidson County voters received new voter identification cards last year that listed their council, school board, state house, state senate, and congressional districts, along with precinct information. Confusion is likely if the Metro Council Reduction Act is implemented, as numerous voters would have possessed at least three separate voter registration cards within the span of approximately twelve months: a pre-2020 Census redistricting card, a post-2020 Census redistricting card, and a new card following any additional redistricting before the August 3, 2023, election.

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

92. Any reduction in Council size, including the reduction or elimination of at-large Councilmembers, and corresponding changes to district boundaries will impact existing and future Council candidates, in no small part because the current districts will cease to exist.

93. A reduction will necessarily increase the geographic size of districts, forcing candidates to campaign to a greater number of voters over a greater area in a shorter period.

94. In Metro Nashville, a Council district's geographic boundaries dictate who is eligible to run for one of the thirty-five district seats.

95. A candidate for district Councilmember must be a resident of the district for which he or she is running for six months before his or her term commences.

96. The next Councilmember election in Metro Nashville is scheduled for August 3, 3023, only four and a half months from now. In the absence of a run-off, terms will begin September 1, 2023.

97. Fundraising for these positions is well underway, based on the current district boundary lines.

98. As of March 10, 2023, almost forty potential candidates for district Councilmember have filed 2023 Appointment of Treasurer forms with the Election Commission.

99. As of March 10, 2023, another eleven potential candidates for at-large Councilmember have filed Appointment of Treasurer forms.

100. Many of these candidates have been campaigning for an extended period. Four Metro Nashville Council candidates filed Appointment of Treasurer forms with the Davidson County Election Commission in 2021. Another twenty candidates filed appointment forms in 2022.

101. Based on year-end campaign finance disclosures, Council candidates reported over $522,000 in campaign receipts from July 1, 2022, to January 15, 2023, and had campaign balances of approximately $512,000 as of January 15, 2023.

102. The qualifying deadline for the August 3, 2023, election is noon on May 18, 2023, just over two months away.

103. The Governor signed the Metro Council Reduction Act eleven days before the Davidson County Election Commission had intended to make Nominating Petitions available to potential candidates.

104. The Election Commission's practice is to allow the maximum time to gather the required twenty-five signatures.

105. This gives potential candidates maximum opportunity to appear on the ballot, which in turn benefits the public's interest in having multiple candidates to choose from. The Act thwarts that interest because the new district boundary lines must be decided before Nominating Petitions for the new districts can be made available.

106. If the Metro Council Reduction Act is not enjoined and the Metro Nashville Council does not vote to approve new districts until after nominating petitions are made available on March 20, those nominating petitions will be worthless. Candidates will be forced to circulate new nominating petitions in new districts twice as large as the former ones (on May 1 or earlier if Council were to approve districts before the deadline), obtain the required signatures, and file the petition in perhaps as few as seventeen days (by May 18).[3]

107. In summary, absent an injunction, the Metro Council Reduction Act will radically upend the electoral machinery for the August 2023 election, with no time for Metro Nashville or its candidates and voters to plan for the change.

CAUSES OF ACTION

I. DECLARATORY JUDGMENT THAT THE METRO COUNCIL REDUCTION ACT IS UNCONSTITUTIONAL UNDER THE CONSOLIDATION CLAUSE IN ARTICLE XI, SECTION 9 OF THE TENNESSEE CONSTITUTION.

108. Plaintiffs adopt and incorporate all allegations in the preceding paragraphs as if fully set forth herein.

109. The power to consolidate a city and county government flows from the Consolidation Clause in the Home Rule Amendment to the Tennessee Constitution.

[3] As addressed in Paragraph 58 above, due to the conflict between subsection 1(b)(1)(A)'s reference to the qualifying date for the August 2023 election (May 18) and subsection 1(b)(1)(C)'s May 1 deadline for the Metro Nashville Council to approve new district boundaries, the "deadline" for redistricting is uncertain.

110. Delegates to the 1953 Constitutional Convention drafted the Consolidation Clause to permit consolidation only with local approval.

111. The Tennessee General Assembly passed enabling legislation to effectuate that intent, which explicitly required consolidated governments to set the size of their legislative bodies through voter approval of a proposed metropolitan charter.

112. Metro Nashville adopted its charter in 1962—under the authority of the Consolidation Clause—which established a 40-member Metropolitan Council, not the 21-member Metropolitan Council that voters had rejected four years earlier.

113. The General Assembly and Metro Nashville entered into a constitutional compact in 1962: The Constitution authorized the merger of Nashville and Davidson County, the General Assembly provided the general terms for that merger, and local voters accepted those terms and adopted a charter accordingly.

114. In seeking to unwind this foundational component of a metropolitan government, the General Assembly not only undermines the local control established by the Consolidation Clause in the Home Rule Amendment, but it wages an unprecedented disenfranchisement of the voters of Metro Nashville who ratified the original compact with the State.

115. Permitting the General Assembly to retroactively unwind the very provisions of the Metro Nashville Charter that the General Assembly mandated be approved by voters as part of the consolidation process renders the consolidation process meaningless.

116. Because the Metro Council Reduction Act violates the Consolidation Clause, which is the "supreme law of our state," *Spurlock v. Sumner Cty.*, 42 S.W.3d 75, 78 (Tenn. 2001), the Act is unconstitutional.

117. Plaintiffs are all voters in Metro Nashville and Davison County, and so the Metro Council Reduction Act violates their rights under the Consolidation Clause to vote on fundamental changes to the structure of the consolidated Metropolitan Government and its Charter.

118. Plaintiffs request that the Court enter a declaratory judgment holding the Metro Council Reduction Act unconstitutional under the Consolidation Clause and an order permanently enjoining its enforcement.

II. DECLARATORY JUDGMENT THAT THE METRO COUNCIL REDUCTION ACT IS UNCONSTITUTIONAL UNDER THE LOCAL LEGISLATION CLAUSE IN ARTICLE XI, SECTION 9 OF THE TENNESSEE CONSTITUTION.

119. Plaintiffs adopt and incorporate all allegations in the preceding paragraphs as if fully set forth herein.

120. The delegates' chief concern at the 1953 Tennessee Constitutional Convention was the General Assembly's historic abuses of local sovereignty.

121. As one remedy for this overreach into local affairs, the delegates overwhelmingly approved the "Resolution Relative to Home Rule for Cities and Counties as to Local Legislation" (the "Local Legislation Resolution") by an 85-5 vote on July 15, 1953. Journal and Debates of the Constitutional Convention of 1953 at 306 (hereinafter "1953 Journal").

122. The Local Legislation Resolution read in full:

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

Id.

123. The same language makes up the Local Legislation Clause in paragraph two of the Home Rule Amendment.

124. Delegate Lewis Pope (Sumner County), the Local Legislation Resolution's primary author, explained that it constituted both a "deprivation of legislative power" *and* a "limitation on legislative power." 1953 Journal at 1024.

125. More specifically, its two distinct purposes were (1) to prohibit a particular category of local bills called "ripper bills" and (2) to require local approval of "any other local bill affecting the county or affecting the town or city." *Id.*

126. Ripper bills, which targeted particular local offices by altering their existing salaries, shortening their terms, or removing incumbents from office, were a particular focus of the Convention. *Frazer v. Carr*, 360 S.W.2d 449, 456 (Tenn. 1962).

127. Explaining the prohibition on such bills, Delegate Pope explained, "[T]he legislature cannot under any circumstances pass an act abolishing an office, *changing the term of the office* or altering the salary of the officer pending the term for which he was selected; that is prohibited, and that kind of an act cannot be passed." 1953 Journal at 1113 (emphasis added).

128. Leon Easterly (Greene County) commented on ripper bills at the 1953 Convention as well:

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

1953 Journal at 937-38 (emphasis added).

129. By replacing Metro Nashville's 40-member legislative body with one no more than half its size, and by forcing that result by both increasing and reducing Councilmembers' terms from the standard four years, as subsection (b)(1)(A) of the Act does, the Metro Council Reduction Act violates the Local Legislation Clause's prohibition on ripper bills.

130. The second purpose of the Local Legislation Resolution (and the Local Legislation Clause that followed) was to mandate that any act of the General Assembly that is "private or local in form or effect" and "applicable to a particular county or municipality either in its governmental or its proprietary capacity" must "by its terms" require approval by the local legislative body or popular referendum.

131. Any legislation to which the Local Legislation Clause applies but that omits local approval language is "absolutely and utterly void." *Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975).

132. Not only is Metro Nashville required to reduce the size of its Council through the Metro Council Reduction Act, but it is the *only* metropolitan government, county, or municipality required to do so.

133. Because subsection 1(b) of the Metro Council Reduction Act requires, and could only ever require, Metro Nashville alone to reduce its number of elected Councilmembers, the provision is local in form or effect and not potentially applicable throughout the state.

134. Because the Metro Council Reduction Act imposes this requirement on Metro Nashville alone without the mandatory local approval language, it violates the Local Legislation Clause in the Home Rule Amendment.

135. Plaintiffs are all voters in Metro Nashville and Davison County, and so the Metro Council Reduction Act violates their rights under the Local Legislation Clause to vote whether or not to ratify the Act.

136. Plaintiffs request that the Court enter a declaratory judgment holding the Metro Council Reduction Act unconstitutional under the Local Legislation Clause and an order enjoining its enforcement.

III. DECLARATORY JUDGMENT THAT THE METRO COUNCIL REDUCTION ACT UNCONSTITUTIONALLY ALTERS THE TERMS OF CURRENT COUNCILMEMBERS FROM THE MANDATORY FOUR-YEAR TERM IN ARTICLE VII, SECTION 1 OF THE TENNESSEE CONSTITUTION.

137. Plaintiffs adopt and incorporate all allegations in the preceding paragraphs as if fully set forth herein.

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

> The qualified voters of each county shall elect for *terms of four years a legislative body*, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly. Any officer shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly.
>
> The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten years based upon the most recent federal census. *The legislative body shall not exceed twenty-five members*, and no more than three representatives shall be elected from a district. *Any county organized under the consolidated government provisions of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and a county legislative body as described in this paragraph.*
>
> The General Assembly may provide alternate forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.

No officeholder's current term shall be diminished by the ratification of this article.

Id. (emphasis added).

139. The first paragraph lists a series of constitutional county offices, including county legislative bodies, and sets their terms of office at four years.

140. The Tennessee Supreme Court has held that this provision applies to metropolitan governments. *See Metro. Gov't of Nashville & Davidson Cty. v. Poe*, 383 S.W.2d 265, 268 (Tenn. 1964); *Glasgow v. Fox*, 383 S.W.2d 9, 10 (Tenn. 1964).

141. Because these county offices derive their power from the State's Constitution, in contrast to other state and local actors whose power flows instead from an enabling statute or ordinance, these county offices must be maintained in the consolidation process.

142. Members of county legislative bodies serve for four years under the express language of Article VII, Section 1, and consolidated county governments are not exempt from this constitutional requirement. Just as constitutional offices cannot be eliminated, *Poe*, 383 S.W.2d at 268, their terms cannot be altered.

143. The legislature may prescribe the qualifications and duties of these offices and prescribe the process of their removal for malfeasance or neglect of duty. But their existence and the duration of their terms—which are explicitly set forth in the Constitution—are fixed.

144. Lengthening the term for a constitutional officer effectively deprives voters of the opportunity to select a constitutionally compliant officer for the period guaranteed by the Constitution. Shortening a term abolishes the office for the length of the differential.

145. Subsection 1(b) of the Metro Council Reduction Act ignores these constitutional mandates, by extending by one year the terms of current Councilmembers and reducing their immediate successors' terms by one year.

146. Because the enforcement provisions of subsection 1(b) in the Metro Council Reduction Act are essential to the implementation of subsection 1(a), the two cannot be severed, and both are invalid. *See* Metro Council Reduction Act § 1(b) (providing that subsection 1(b) applies only if "the membership of a metropolitan council is required to be reduced in order to comply with subsection (a)" (emphasis added)).

147. Subsection 1(b) of the Metro Council Reduction Act affects only Metro Nashville. If the General Assembly could not have immediately forced Metro Nashville to reduce the size of its Council, the General Assembly would not have passed the bill.

148. Thus, the enforcement provision in subsection 1(b) lengthening and shortening Councilmembers' terms may not be elided from the Act.

149. Plaintiffs are all voters in Metro Nashville and Davison County, and so the Metro Council Reduction Act violates their constitutional right to a four-year Metro Council and to vote each four years on both district and At Large council races.

150. The Metro Council Reduction Act further violates the rights of the Plaintiffs who are current Metro Councilmembers to serve the full four-year term they were constitutionally elected to serve without having to serve an unconstitutional fifth year of their term.

151. The Metro Council Reduction Act further violates the rights of Plaintiff Segal and of the Plaintiffs who are current Metro Councilmembers to continue the election campaigns they have already begun as anticipated, in advance of the constitutionally prescribed August 2023 elections for Metro Council.

152. Plaintiffs request that the Court enter a declaratory judgment holding the Metro Council Reduction Act unconstitutional under Article VII, Section 1 as outlined herein and an order enjoining its enforcement.

IV. DECLARATORY JUDGMENT THAT THE METRO COUNCIL REDUCTION ACT UNCONSTITUTIONALLY IGNORES THE EXEMPTION FOR CONSOLIDATED COUNTIES FROM THE CONSTITUTIONAL LIMIT ON THE SIZE OF COUNTY LEGISLATIVE BODIES IN ARTICLE VII, SECTION 1.

153. Plaintiffs adopt and incorporate all allegations in the preceding paragraphs as if fully set forth herein.

154. Article VII, Section 1's second paragraph limits the size of county legislative bodies to twenty-five members, stating:

> The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten years based upon the most recent federal census. *The legislative body shall not exceed twenty-five members*, and no more than three representatives shall be elected from a district. Any county organized under the consolidated government provisions of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and a county legislative body as described in this paragraph.

Id. (emphasis added).

155. The final sentence of the second paragraph, however, explicitly exempts counties and cities that have consolidated pursuant to Article XI, Section 9 "from having . . . a county legislative body *as described in this paragraph*." Tenn. Const. art. VII, § 1 (emphasis added).

156. Metro Nashville is a consolidated government and is therefore "exempt from having . . . a county legislative body as described in this paragraph." *Id.*

157. When the amendments to Article VII, Section 1 were adopted at the 1977 Convention, Metro Nashville had already operated with a 40-member Council for fifteen years.

158. 1977 Convention delegates were aware of the size of Metro Nashville's Council at the time. *See* Statement of Del. William E. Akin (Nashville), Journal of the Debates of the Constitutional Convention, State of Tennessee 901 (Vol. I, 1977) ("*That is what we have in Davidson County*; it takes two-thirds of the elected representatives in our county legislative body,

two-thirds of *the forty elected people*, just to put a change on the ballot") (emphasis added); Statement of Del. Everett Cox (Clinton), *id*. at 1387 (Vol. II) ("I do think that the local county should have the prerogative of electing the people to serve in their county court whom they desire; *whether it is ten members or forty members*." (emphasis added)).

159. The only plausible reading of the interplay between the twenty-five-member cap on county legislative bodies in sentence three of Article VII, Section 1 and the exemption for metropolitan governments in sentence four is that no such cap may be placed on metropolitan governments.

160. Because Metro Nashville is not subject to a 25-member limit under the Constitution, it is not subject to a lower limit imposed by statute and without local approval.

161. Despite this exemption, the Metro Council Reduction Act sets a cap on Metro Nashville's Council size *even lower* than the twenty-five-member cap on county legislative bodies in Article VII, Section 1.

162. Because the Metro Council Reduction Act imposes a restriction that Article VII, Section 1 explicitly rejects, the Act is unconstitutional.

163. Plaintiffs are all citizens and voters in Metro Nashville and Davison County, and so the Metro Council Reduction Act violates their rights under the Constitution to have the number of councilmembers determined by the voters of Nashville and Davidson, County through Charter Amendments without the General Assembly reducing the number of councilmembers by statute.

164. Plaintiffs request that the Court enter a declaratory judgment holding the Metro Council Reduction Act unconstitutional under Article VII, Section 1 as outlined herein and an order enjoining its enforcement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants Bill Lee, Tre Hargett, and Mark Goins, in their official capacities, and prays that the Court award the following relief:

1. A judgment and order declaring the Metro Council Reduction Act facially unconstitutional under the Consolidation Clause in Article XI, Section 9 of the Tennessee Constitution and therefore null and void;

2. A judgment and order declaring the Metro Council Reduction Act facially unconstitutional under the Local Legislation Clause in Article XI, Section 9 of the Tennessee Constitution and therefore null and void;

3. A judgment and order declaring the Metro Council Reduction Act facially unconstitutional under Article VII, Section 1 of the Tennessee Constitution because it alters constitutionally mandated four-year terms for Metro Nashville Councilmembers and therefore null and void;

4. A judgment and order declaring the Metro Council Reduction Act facially unconstitutional under Article VII, Section 1 of the Tennessee Constitution because it places a twenty-member cap on the size of the Metro Nashville Council and therefore null and void;

5. A judgment and order declaring the Metro Council Reduction Act violates Plaintiffs' fundamental right to vote as a result of the above-pled facial violations of the Tennessee Constitution;

6. A judgment and order declaring the Metro Council Reduction Act violates the rights of the candidate and elected Plaintiffs to serve only the four-year term to which they were elected, with no unconstitutional fifth year extension, and to continue their already begun election campaigns as anticipated in advance of the constitutionally prescribed August 2023 elections; and

7. A temporary and permanent injunction preventing Defendants from implementing the Metro Council Reduction Act in any way, and directing that the August 3, 2023, Metro Nashville election proceed as planned before the Metro Council Reduction Act's passage; and

Such further and general relief as the Court deems appropriate.

Dated: March 28, 2023

Respectfully submitted,

/s/ Scott P Tift

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