

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

Colby Sledge,
Robert J. Mendes, and
Sandra Sepulveda,

Plaintiffs,

v.

BILL LEE, in his official capacity as
Governor for the State of Tennessee,
RANDY MCNALLY, in his official
capacity as Lieutenant Governor
and Speaker of the Senate for the
State of Tennessee, and CAMERON
SEXTON, in his official capacity as
Speaker of the House of
Representatives for the State of
Tennessee,

Defendants.

Case No. _____

COMPLAINT

Plaintiffs are members of the Metro Council of Nashville and Davidson County, as well as voters in the Nashville metropolitan area, seeking a declaratory judgment and injunctive relief from implementation of Chapter 364 of the 2023 Public Acts (hereinafter, “Public Chapter 364” or “the Act”). The Act, which Defendant Governor Bill Lee signed into law on May 5, 2023, declares as against public policy—and therefore void—any metropolitan government ordinance, resolution, or charter provision that requires a supermajority vote to improve, renovate, or demolish a metropolitan government-owned facility that will be used for substantially the same purpose as before the improvement, renovation, or demolition. The Act then substitutes the same voting requirement that generally applies to the legislative body’s ordinances—a simple majority—in place of the supermajority requirement.

Public Chapter 364 applies and will only ever apply to Metro Nashville. Indeed, Public Chapter 364 was adopted for the stated purpose of modifying Metro Nashville’s Charter. But

Metro Nashville is a consolidated government under Article XI, Section 9 of the Tennessee Constitution (the “Home Rule Amendment”), not simply an instrumentality of the State. Public Chapter 364 violates the Home Rule Amendment’s Local Legislation Clause because it is applicable to Metro Nashville in its governmental or proprietary capacity and is local in form or effect but lacks the required local approval language.

Accordingly, the Court should declare Public Chapter 364 unconstitutional and enjoin its enforcement. In support of their request for a declaratory judgment and permanent injunctive relief, Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over this action pursuant to Tenn. Code. Ann. § 16-11-102.

2. This Court has the power to enter a declaratory judgment and issue injunctive relief pursuant to Tenn. Code Ann. § 1-3-121, § 29-1-101, §§ 29-14-102 to -103, and Tenn. R. Civ. P. 65.

3. Venue is proper in this judicial district pursuant to Tenn. Code Ann. §§ 4-4-104 and 20-4-101(a), as this cause of action arose in Davidson County, Tennessee.

PARTIES

4. Plaintiff Colby Sledge lives in Davidson County. He has been elected and currently serves as a member of the Metro Council of Nashville and Davidson County representing the 17th District. He is registered to vote in Davidson County, Tennessee. Councilman Sledge is against the proposed development at the Nashville Fairgrounds as proposed by the Nashville Mayor’s Office to the Metropolitan Board of Fair Commissioners.

5. Plaintiff Robert J. Mendes lives in Davidson County. He has been elected and currently serves as an at-large member of the Metro Council of Nashville and Davidson County using the name “Bob Mendes.” He is registered to vote in Davidson County,

Tennessee. Councilman Mendes is against the proposed development at the Nashville Fairgrounds as proposed by the Nashville Mayor's Office to the Metropolitan Board of Fair Commissioners.

6. Plaintiff Sandra Sepulveda lives in Davidson County. She has been elected and currently serves as a member of the Metro Council of Nashville and Davidson County representing the 30th District. She is registered to vote in Davidson County, Tennessee. Councilwoman Sepulveda is against the proposed development at the Nashville Fairgrounds as proposed by the Nashville Mayor's Office to the Metropolitan Board of Fair Commissioners.

7. Defendant Bill Lee is the Governor of the State of Tennessee. The Tennessee Constitution vests the Governor with "the supreme executive power of this state." Tenn. Const. art. III, § 1. As the Chief Executive for the State of Tennessee, Governor Lee has a constitutional obligation to "take care that the laws be faithfully executed," *id.*, including that they be executed consistent with Tennessee constitutional mandates. Governor Lee is sued in his official capacity and may be served through the Tennessee Attorney General and Reporter's Office.

8. Defendant Randy McNally is the Lieutenant Governor for the State of Tennessee and the Speaker of the Senate for the Tennessee General Assembly. Lieutenant Governor McNally is sued in his official capacity and may be served through the Tennessee Attorney General and Reporter's Office.

9. Defendant Cameron Sexton is the Speaker of the Tennessee House of Representatives. Speaker Sexton is sued in his official capacity and may be served through the Tennessee Attorney General and Reporter's Office.

FACTUAL ALLEGATIONS

I. METROPOLITAN CHARTER SECTION 11.602(d) REQUIRES A SUPER-MAJORITY VOTE BY THE METRO COUNCIL TO DEMOLISH EXISTING FAIRGROUNDS FACILITIES, WHERE THE USE OF SUCH FACILITIES WILL BE SUBSTANTIALLY THE SAME AFTER SUCH DEMOLITION.

1. Section 11.602(d) of the Metro Charter states as follows:

All activities being conducted on the premises of the Tennessee State Fairgrounds as of December 31, 2010, including, but not limited to, the Tennessee State Fair, Expo Center Events, Flea Markets, and Auto Racing, shall be continued on the same site. No demolition of the premises shall be allowed to occur without approval by ordinance receiving 27 votes by the Metropolitan Council or amendment to the Metropolitan Charter.

2. The above language was added in 2011 through the Metro Charter amendment process. It was adopted pursuant to a referendum properly before Davidson County voters and approved by a 2-1 margin on August 4, 2011.

3. Nashville voters were, therefore, clear on their position regarding Section 11.602(d) of the Metro Charter and improvement, renovation, or demolition of Fairgrounds property.

II. PUBLIC CHAPTER 364 WAS ADOPTED FOR THE STATED PURPOSE OF CHANGING METRO CHARTER SECTION 11.602(d).

4. On January 30, 2023, House Bill (H.B.) 864 / Senate Bill (S.B.) 832 was filed for introduction as a caption bill.

5. On March 21, 2023, the Senate State and Local Government Committee considered Senate Amendment 1 (SA0243). Because S.B. 832 was filed as a caption bill, the Amendment was necessary to provide the substance of the bill (i.e., “make[] the bill”).

6. In the committee hearing, the amendment’s sponsor, Senator Jon Lundberg (R-Bristol), explained the bill’s purpose as “clarify[ing] language for allowing Metro Council to approve improvements at the historic Nashville Fairgrounds by a simple majority, which is 21 votes, rather than a supermajority of 27 votes. Supermajority votes are generally

implemented to make something more difficult to pass, and the proposed improvements to the Fairgrounds are an economic driver and a positive project for the State and obviously welcomed by voters.”

7. Senate Amendment 1 was adopted, and S.B. 832, as amended, passed in the State and Local Government Committee.

8. The House version came before the House of Representatives’ Local Government Committee on April 4, 2023.

9. There, Rep. John C. Crawford (R-Bristol / Kingsport) discussed the meaning of House Amendment 1 (HA0354), which he sponsored. Because H.B. 864 was filed as a caption bill, House Amendment 1 was necessary to provide the substance of the bill.

10. Section 1 of House Amendment 1 stated as follows:

The general assembly encourages the improvement of public property and facilities, which can include the use of public-private partnerships. Therefore, notwithstanding the provisions of another law to the contrary, a metropolitan government ordinance, resolution, or charter provision that requires a supermajority vote of the local legislative body in order to make improvements to, renovations to, or the demolition and replacement of existing facilities owned by the metropolitan government when such facilities are to be used for substantially the same use and purpose as the use prior to improvement, renovation, or demolition and replacement is declared to be contrary to public policy and is void. Rather, the voting requirement for improvements, renovations, or the demolition and replacement of existing facilities owned by the metropolitan government that are to be used for substantially the same use as the use prior to improvement, renovation, or demolition and replacement, including the lease of the property to a private entity for the purpose of making the improvement, renovation, or demolition and replacement, or operation of the facility, must be the same voting requirement applicable to ordinances of the legislative body in general.

11. Rep. Crawford explained during the Local Government Committee hearing that he and other unidentified persons (“we”) want to renovate and improve the Nashville Fairgrounds and that this bill would allow such renovation and improvement with a simple majority vote of the local legislative body rather than a supermajority vote.

12. H.B. 364 passed in the Local Government Committee, as amended by House Amendment 1.

13. H.B. 364 passed for a vote on the House floor on April 10, 2023.

14. There, Rep. Crawford again explained that the bill's intent, as reflected in House Amendment 1, was to permit renovations at the Metro Nashville Fairgrounds with a simple majority vote instead of requiring a supermajority vote. He stated as follows:

Basically changing two words, and this is to match up with the Metro's Charter, we're changing or adding the word demolition and replacement. It simply means that if something is removed at the Fairgrounds, it must be replaced, it has to be used for the same purpose as it was when they started. [H.B.] 864 serves as a clarifying language to allow Metro Council to approve improvements to the historic Nashville Fairgrounds by a simple majority vote. This legislation will allow for events such as NASCAR, different music events, any entertainment, that it would be held on the fairgrounds property. That's what this bill does.

15. No discussion followed Rep. Crawford's explanation of the bill on the House floor.

16. The House voted to adopt H.B. 864, as amended by Amendment 1, by a vote of 82 ayes, 10 nays, and 2 abstentions.

17. S.B. 832 was presented for a vote on the Senate floor on April 17, 2023.

18. There, the Senate substituted the companion House Bill, H.B. 864, in place of S.B. 832.

19. Senator Richard Briggs (R-Knoxville), who had proposed Senate Amendment 1(SA0243), obtained clarification from the Clerk that House Amendment 1, which the House had previously adopted and was now part of the bill, was "substantially similar" to Senate Amendment 1.

20. Sen. Briggs then explained that the House amendment "makes the bill" and "allows the Metro Council to approve improvements, renovations, or replacements of existing

facilities at the Nashville fairgrounds by a simple majority vote rather than a supermajority vote of the Metro Council.”

21. Sen. Briggs further explained that “there were some technical changes made to the bill on the House side to clarify the replacement of existing facilities . . . and refers to “demolition and replacement of existing facilities.” As Sen. Briggs acknowledged, “This language is consistent with the language used in Metro’s Charter. It simply means if something is removed at the Fairgrounds, it must be replaced.”

22. With the House amendment having been adopted, Sen. Briggs withdrew Senate Amendment 1 without objection.

23. There was no additional discussion on the bill, as amended, and the Senate passed the substitute H.B. 864 by a vote of 25 ayes and 6 nays.

24. Governor Bill Lee signed H.B. 864 into law on May 5, 2023.

25. H.B. 864 was assigned to Chapter 364 of the 2023 Public Acts.

26. Metro Nashville is the only local government in Tennessee to which Public Chapter 364 applies and will ever apply.

III. PUBLIC CHAPTER 364 INVALIDATES SECTION 11.602(d) OF METRO NASHVILLE’S CHARTER.

27. Public Chapter 364 amends Title 7, Chapter 2 of the Tennessee Code Annotated, which is located within the Metropolitan Government Charter Act, by adding Section 7-2-109 as a new section.

28. Section 1 of the Act states as follows:

The general assembly encourages the improvement of public property and facilities, which can include the use of public-private partnerships. Therefore, notwithstanding the provisions of another law to the contrary, a metropolitan government ordinance, resolution, or charter provision that requires a supermajority vote of the local legislative body in order to make improvements to, renovations to, or the demolition and replacement of existing facilities owned by the metropolitan government when such facilities are to be used for substantially the same use and purpose as the use prior to improvement,

renovation, or demolition and replacement is declared to be contrary to public policy and is void. Rather, the voting requirement for improvements, renovations, or the demolition and replacement of existing facilities owned by the metropolitan government that are to be used for substantially the same use as the use prior to improvement, renovation, or demolition and replacement, including the lease of the property to a private entity for the purpose of making the improvement, renovation, or demolition and replacement, or operation of the facility, must be the same voting requirement applicable to ordinances of the legislative body in general.

29. Public Chapter 364 voids the portion of Section 11.602(d) that requires a supermajority vote to demolish the Nashville Fairgrounds facilities, “[r]ather,” making the voting requirement “the same voting requirement applicable to ordinances of the legislative body in general.” Public Chapter 362, Section 1.

30. Public Chapter 364’s intent and purpose are to override the overwhelming support of Nashville voters regarding the manner in which the Metro Nashville Council can vote to improve, renovate, or demolish the Nashville Fairgrounds.

31. Public Chapter 364 was, by its language and legislative history, drafted specifically to target Section 11.602(d) of the Metro Charter. The Act also alters the provision to include “improvement” and “renovation” in addition to the “demolition” that is included in the Metro Charter’s text.

32. Public Chapter 364’s plain language seeks to void an existing provision of the Metro Charter (i.e., requiring a supermajority vote for demolition) and prescribes the substitute language for those voided provisions (i.e., requiring a simple majority vote for improvement, renovation, or demolition).

33. No other metropolitan government charter provision, ordinance, or resolution contains language to which Public Chapter 364 applies or will ever apply.

CAUSE OF ACTION

DECLARATORY JUDGMENT THAT PUBLIC CHAPTER 364 IS UNCONSTITUTIONAL UNDER THE LOCAL LEGISLATION CLAUSE IN ARTICLE XI, SECTION 9 OF THE TENNESSEE CONSTITUTION.

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

35. Adopted in 1953, Article XI, Section 9 of the Tennessee Constitution is commonly referred to as the Home Rule Amendment.

36. 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 Construction*, 79 Tenn. L. Rev. 103, 118-19 (2011).

37. 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.

38. The Local Legislation Clause renders void any legislation creating a requirement local in form or effect that does not contain an explicit requirement for approval by the local legislature or electorate. The constitutional provision states as follows:

any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Tenn. Const. art XI, § 9.

39. Any legislation to which the Local Legislation Clause applies but that omits local approval language is “absolutely and utterly void.” *Farris*, 528 S.W.2d at 551.

40. Public Chapter 364 declares as void an existing provision of the Metro Charter and affects no other charter, ordinance, or resolution in the State of Tennessee. Moreover, by its plain language and intent, the provision is local in form or effect and not potentially applicable throughout the state.

41. Because Public Chapter 364 imposes this requirement on Metro Nashville alone without the local approval language required by the Local Legislation Clause in the Home Rule Amendment, it is void and of no effect.

42. Plaintiffs request that the Court enter a declaratory judgment holding Public Chapter 364 unconstitutional under the Local Legislation Clause and an order enjoining its enforcement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants Bill Lee, Randy McNally, and Cameron Sexton, in their official capacities, and pray that the Court award the following relief:

1. A judgment and order declaring Public Chapter 364 facially unconstitutional under the Local Legislation Clause in Article XI, Section 9 of the Tennessee Constitution and therefore null and void;

2. A permanent injunction preventing Defendants from further implementing Public Chapter 364; and

3. Such further and general relief as the Court deems appropriate.

Respectfully submitted,

s/ Kevin C. Klein
Saul Solomon (BPR No. 11689)
Kevin C. Klein (BPR No. 23301)
Wesley Dozier (BPR No. 37735)
KLEIN SOLOMON MILLS, PLLC
1322 4th Avenue North
Nashville, Tennessee 37208
saul.solomon@kleinpllc.com
kevin.klein@kleinpllc.com
wesley.dozier@kleinpllc.com

Counsel for Plaintiffs

Certificate of Service

I hereby certify that a true and exact copy of the foregoing will be served on the 1st day of June, 2023, via U.S. mail on the following:

Office of the Attorney
General and Reporter
P.O. Box 20207
Nashville, TN 37202-0207
Telephone: (615) 741-3491
Fax: (615) 741-2009

s/ Kevin Klein
Kevin Klein