

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

THE METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON COUNTY,)
TENNESSEE,)

Plaintiff,)

And)

DAVIE TUCKER, DELISHIA PORTERFIELD,)
JUDY CUMMINGS, DAVE GOETZ, ALMA)
SANFORD, QUIN EVANS SEGALL,)
SANDRA SEPULVADA, and)
ZULFAT SUARA,)

Plaintiffs,)

v.)

BILL LEE, in his official capacity as Governor)
for State of Tennessee,)
TRE HARGETT, in his official capacity as)
Secretary of State for the State of Tennessee,)
and MARK GOINS, in his official capacity as)
Coordinator of Elections for the State of)
Tennessee,)

Defendants.)

No. 23-0336-I
Consolidated with
No. 23-0395-III(I)

MEMORANDUM AND FINAL JUDGMENT ON
MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY JUDGMENT

These consolidated cases came before the three-judge panel for hearing, via *ZoomGov*, on May 20, 2024, on four motions: (1) *Motion to Dismiss or, in the Alternative, for Summary Judgment* of Plaintiff Metropolitan Government of Nashville and Davidson County (“Metro”); (2) *Motion to Dismiss* of Defendants Governor Bill Lee, Secretary of State Tre Hargett, and Coordinator of Elections Mark Goins (“Defendants”); (3) *Motion for Summary Judgment* of Individual Plaintiffs Davie Tucker, Delishia Porterfield, Judy Cummings, Dave Goetz, Alma Sanford, Quin Segall, Sandra Sepulveda, and Zulfat Suara (“Individual Plaintiffs”); and (4) *Motion*

for Summary Judgment of Defendants. Participating in the hearing were Metropolitan Attorney Allison L. Bussell, representing Metro; Attorney Scott P. Tift, representing Individual Plaintiffs; and Senior Assistant Attorney General Timothy R. Simonds, representing Defendants.

Based on the complaints, motions, memoranda in support and in opposition, exhibits, the entire record, and arguments of counsel, the Court finds that each motion should be GRANTED IN PART and DENIED IN PART for the reasons discussed below. The Court unanimously concludes that all claims challenging Section 1(b) of 2023 Tenn. Pub. Acts, ch. 21 are moot, as conceded by the parties. A majority of the Court further concludes that Section 1(a) of the Act should be declared unconstitutional under the Local Legislation Clause of the Home Rule Amendment, Tenn. Const. Art. XI, § 9, para. 2., and the Exemption Clause, Tenn. Const., Art. VII, § 1, para. 2. Judge Howell concurs in part and dissents in part, for the reasons stated in his separate opinion below.

I. BACKGROUND AND STATEMENT OF CASE

This case involves facial constitutional challenges brought by Metro and the Individual Plaintiffs (collectively, “Plaintiffs”) regarding legislation passed by the Tennessee General Assembly and signed into law by Governor Bill Lee on March 9, 2023, which became effective immediately. 2023 Tenn. Pub. Acts, ch. 21 (House Bill 48/Senate Bill 87) (the “Act”). Section 1(a) of the Act amends Tennessee Code Annotated, Title 7, Chapter 1, the “Metropolitan Government Charter Act,” by adding a new provision establishing a cap on the number of metropolitan council members under a metropolitan government charter to twenty voting members. Section 1(b) of the Act requires any existing metropolitan government that exceeds twenty council members to reduce its council membership to twenty under the process and deadlines specified by the Act, with compliance by the next general metropolitan election after the effective date of the Act. Section 1(c) of the Act applies to metropolitan governments formed after

the effective date of the Act and is not applicable to or challenged in this action. Section 2 applies to municipalities and is also not applicable to or challenged in this action. Section 3 of the Act provides for the severability of any portion of the Act found to be invalid. The Act does not contain a provision requiring approval of the Act by an affected metropolitan council or the voters of the metropolitan government.

Metro is a consolidated metropolitan city and county government authorized under the Tennessee Constitution and the Metropolitan Government Charter Act. Tenn. Const. Art. XI, § 9, ¶ 9; Tenn. Code Ann. §§ 7-1-101, *et seq.* (formerly Tenn. Code Ann. §§ 6-3701, *et seq.*). The former version of the Metropolitan Government Charter Act contained a number of requirements for the formation of metropolitan governments, but it did not address the size or term of office of a metropolitan government’s legislative body, reserving those decisions to the metropolitan charter commission and ratification by the local voters. Tenn. Code Ann. § 7-2-108(a)(12) and § 7-2-106. Section 1(a) of the Act now amends the Metropolitan Government Charter Act to impose a twenty council member cap.

Metro filed its complaint on March 13, 2023, for declaratory judgment challenging the constitutionality of the Act and seeking injunctive relief.¹ Specifically, Metro claims the Act violates the following provisions of the Tennessee Constitution: (1) Article XI, § 9, para. 9 of the Home Rule Amendment (the “Consolidation Clause”), by requiring the reduction of the Metropolitan Council from forty members to twenty members; (2) Article XI, § 9, para. 2 of the Home Rule Amendment (the “Local Legislation Clause”), by imposing requirements that are local

¹ Metro also filed a notice, pursuant to Tenn. Code Ann. § 20-18-101, that this civil action is required to be heard and decided by a three-judge panel. The Supreme Court entered an order on March 14, 2023, affirming the criteria for a three-judge panel case were satisfied, and appointing a panel to hear and decide this case. One of the designated panel members was Judge Mary L. Wagner, but following Justice-Designate Mary L. Wagner’s confirmation to the Supreme Court, the Court replaced Judge Wagner with Judge Joseph T. Howell on March 15, 2024.

in effect and application on Metro without providing for local approval; and (3) Article VII, § 1, para. 2 (the “Exemption Clause”), by ignoring the constitutional exemption of consolidated metropolitan governments from the twenty-five member limit that otherwise applies to county legislative bodies.²

The Individual Plaintiffs filed their separate complaint on March 28, 2023, alleging nearly identical claims as Metro. At the time of filing, the Individual Plaintiffs were Reverend Davie Tucker, Metro Councilmember and Candidate Delishia Porterfield, Reverend Doctor Judy Cummings, Dave Goetz, Alma Sanford, Metro Council Candidate Quin Evans Segall, Metro Councilmember and Candidate Sandra Sepulveda, and Metro Councilmember and Candidate Zulfat Suara. All of the Individual Plaintiffs are residents of Davidson County, are registered to vote in Davidson County, and regularly vote.

Defendant Bill Lee is the Governor of the State of Tennessee. Defendant Tre Hargett is the Secretary of the Tennessee Department of State. Defendant Mark Goins is the Coordinator of Elections for the State of Tennessee. All Defendants are sued in their official capacities. All Defendants maintain that all provisions of the Act are constitutional, and Plaintiffs’ complaints should be dismissed.

Contemporaneously with filing Metro’s complaint, it filed a *Motion for Temporary Injunction*, supported by several exhibits and declarations. Metro requested that implementation of Sections 1(a) and 1(b) of the Act be temporarily enjoined during the pendency of the case under Rule 65.04 of the Tennessee Rules of Civil Procedure. The Individual Plaintiffs are business leaders, community leaders, existing Metro Councilmembers, and then-candidates for the Metro Council, who were actively campaigning and soliciting campaign contributions for the August 3,

² All parties concede the claim brought under Article VII, Section 1’s requirement of four-year terms for members of county legislative bodies is now moot.

2023 general election. On March 31, 2023, the Individual Plaintiffs moved to consolidate their case with Metro’s case, and filed a separate *Motion for Temporary Injunction*, seeking the same injunctive relief as Metro. The Individual Plaintiffs filed declarations verifying the allegations of their complaint, and adopted and incorporated by reference Metro’s memorandum in support of their motion. Also on March 31, 2023, the Supreme Court designated the same three-judge panel in the Metro case to hear and decide the Individual Plaintiffs’ case. On April 3, 2023, the Court entered an order consolidating the two cases and setting a joint hearing on both temporary injunction motions for April 4, 2023.

On April 10, 2023, the Court granted, in part, Metro’s Motion for Temporary Injunction based on the Court’s preliminary determinations that Section 1(b) likely violated the Local Legislation Clause of the Home Rule Amendment, but Section 1(a) likely did not violate any of the constitutional provisions raised by Metro. The Court also denied Individual Plaintiffs’ Motion for Temporary Injunction, based on a preliminary determination that the Individual Plaintiffs likely lacked standing. The Court subsequently set all dispositive motions for hearing on March 26, 2024, which was later continued to May 20, 2024.³

II. LEGAL PRINCIPLES

A. Motion to Dismiss Standard

A Rule 12.02(6) motion to dismiss for failure to state a claim for relief tests the legal sufficiency of a complaint and not the strength of the allegations. *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). A party filing a Rule 12.02(6) motion “admits the truth of all the relevant and material allegations contained in the complaint, but . . . asserts that the allegations fail to establish a cause of action.” *Id.* (citation omitted). Generally, a trial court may only consider the complaint itself when deciding a Rule 12.02(6) motion, with all

³ See *supra* note 1.

exhibits attached to the complaint considered as part of the pleading. Tenn. R. Civ. P. 10.03; *Pagliara v. Moses*, 605 S.W.3d 619, 625 (Tenn. Ct. App. 2020) (citations omitted). A trial court construes the complaint liberally under the notice pleading standard of Rule 8, presumes all factual allegations to be true, and draws all reasonable inferences therefrom in the plaintiff's favor. *Webb*, 346 S.W.3d at 426 (citations omitted). Courts may disregard "assertions that are merely legal arguments or 'legal conclusions' couched as facts." *Id.* at 427 (citing *Riggs v. Burson*, 941 S.W.2d 44, 47-48 (Tenn. 1997)). A trial court can dismiss a complaint for failure to state a claim only when "the plaintiff can establish no facts supporting the claim that would warrant relief." *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999) (internal citation omitted).

B. Summary Judgment Standard

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Tenn. R. Civ. P. 56.04; *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). In determining whether summary judgment is appropriate, courts must decide "(1) whether a *factual* dispute exists; (2) whether the disputed fact is *material* to the outcome of the case; and (3) whether the disputed fact creates a *genuine* issue for trial." *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993) (emphases in original). A "material fact" is one that "must be decided in order to resolve the substantive claim or defense at which the motion is directed." *Id.* at 215 (Tenn. 1993). Irrelevant or unnecessary facts are not material. *Rye*, 477 S.W.3d at 251. A "genuine issue" exists when "a reasonable jury could return a verdict in the nonmoving party's favor." *Byrd*, 847 S.W.2d at 215. In deciding a motion for summary judgment, the court must "take the strongest legitimate view of the evidence in favor of the nonmoving party." *Id.* at 210.

Further, the court must not weigh competing evidence, but must overrule a motion for summary judgment when there is a genuine dispute as to any material fact. *Id.* at 211.

When the party moving for summary judgment bears the burden of proof at trial, that party must produce evidence that, if uncontroverted at trial, would entitle it to a directed verdict. *See TWB Architects, Inc. v. The Braxton, LLC*, 578 S.W.3d 879, 888 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986) (Brennan, J., dissenting)). When the movant does not bear the burden of proof at trial, the moving party must either (i) affirmatively negate an essential element of the non-moving party's claim, or (ii) show that the non-moving party's evidence at the summary judgment stage is insufficient to establish the non-moving party's claim. *Rye*, 477 S.W.3d at 264. In either event, where a summary judgment motion is properly supported, the burden of production shifts to the non-moving party to produce evidence to show there is a genuine issue for trial. *TWB Architects*, 578 S.W.3d at 888.

If there is a genuine dispute regarding a material fact, summary judgment should be denied. Even where it appears the parties do not dispute the material facts, if they disagree about the inferences and conclusions to be drawn from those facts, summary judgment is precluded. *See CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 83, 87 (Tenn. 2010); *Price v. Mercury Supply Co., Inc.*, 682 S.W.2d 924, 929 (Tenn. 1984).

Cross motions for summary judgment are simply claims by each side that he or she alone is entitled to summary judgment. *CAO Holdings*, 333 S.W.3d at 83. A court is required to rule on each party's motion "on an individual and separate basis," and the denial of one motion does not necessarily require the grant of the other. *Id.* (citations omitted).

III. ALLEGATIONS OF THE COMPLAINT AND UNDISPUTED MATERIAL FACTS

For purposes of the parties' motions to dismiss, all factual allegations of Metro's and the Individual Plaintiffs' complaints are presumed true and all reasonable inferences are drawn in

favor of the nonmovant. For purposes of the parties' cross-motions for summary judgment, the Court finds there are no material facts in dispute. Defendants contend some of Plaintiff's statements on summary judgment are immaterial, and Plaintiffs contend some of Defendants' statements are statements of law rather than fact and that others are immaterial. Ultimately, however, the parties do not dispute any material factual matters raised in their respective motions, and the undisputed facts for purposes of the parties' motions to dismiss as well as their cross-motions for summary judgment are as follows.

The original Metro Nashville Charter was approved by referendum on June 28, 1962, and became effective in April 1963. Metropolitan Charter, § 20.21 (original).

Metro's Charter set the size of Metro Nashville's Council at thirty-five district Councilmembers and five at-large Councilmembers. Thus, Metro Nashville has a total of 40 voting council members.

There are only two metropolitan governments in Tennessee other than Metro: Lynchburg-Moore County and Hartsville-Trousdale County. Unlike Metro Nashville, Lynchburg-Moore County and Hartsville-Trousdale County's legislative bodies do not have more than twenty members. Hartsville-Trousdale County has 20 voting commissioners, and Lynchburg-Moore County has 15 voting councilmembers.

Individual Plaintiffs are residents of Davidson County, Tennessee. Each Individual Plaintiff is registered to vote in Davidson County and regularly votes.

House Bill No. 48 was passed by the Tennessee General Assembly and was signed into law by Governor Lee on March 9, 2023. The legislative enactment became Chapter 21 of the 2023 Tennessee Public Acts and is codified at Tenn. Code Ann. § 7-1-113.⁴

⁴ The Act amends Chapter 1 of Title 7 and Chapter 53 of Title 6 of the Tennessee Code by establishing a cap of 20 voting members for metropolitan governments and a cap of 20 voting members for

There are more than 300 municipalities within the State covered by Title 6 of the Tennessee Code, and none of these municipalities has a governing body that exceeds 20 voting members.

IV. ANALYSIS

A. All Claims Under Section 1(b) of the Act Should Be Dismissed as Moot

All parties agree that all claims challenging Section 1(b) of the Act are now moot, since all deadlines set forth in that subsection have expired. As a result, Plaintiffs concede that Section 1(b)'s mootness also renders moot their claims challenging the Act under the Anti-Ripper Bill provision of the Local Legislation Clause (part of Count II) and under the four-year term requirement of Article VII, Section 1 (Count III in its entirety) of the Tennessee Constitution. Therefore, the Court finds that all claims challenging Section 1(b) of the Act should be dismissed as moot.

B. Defendants' Motion to Dismiss Individual Plaintiffs' Remaining Claims for Lack of Standing

Defendants' Motion to Dismiss challenges the standing of Individual Plaintiffs to bring their remaining claims. Individual Plaintiffs assert standing based only on their status as voters and residents of Davidson County.⁵ *See* Ind'l Pls.' Resp. to Defs.' Mot. to Dismiss Ind'l Pls.' Compl., at 2 n.1, Feb. 26, 2024. Defendants argue that Individual Plaintiffs cannot demonstrate any distinct and palpable injury because they assert nothing more than a generalized grievance, common to the general citizenry. "Courts use the doctrine of standing to determine whether a litigant is entitled to pursue judicial relief as to a particular issue or cause of action." *City of*

governing bodies of municipalities. There currently are three metropolitan governments in Tennessee, which are governed by the Act and other provisions of Title 7. Plaintiffs point out these are statements of law rather than fact. The Court finds they are mixed statements of law and fact.

⁵ While standing is being considered in this case within the context of a motion to dismiss rather than a motion for summary judgment, no substantive distinction exists between the relevant allegations of Individual Plaintiffs' Complaint and the relevant statements of fact, which are not disputed by Defendants.

Memphis v. Hargett, 414 S.W.3d 88, 97 (Tenn. 2013) (citing *ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 619 (Tenn. 2006); *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976)).

Standing is a threshold issue. *Fisher v. Hargett*, 604 S.W.3d 381, 396 (Tenn. 2020) (citing *City of Memphis*, 414 S.W.3d at 96).

Our jurisprudence recognizes two categories of standing that govern who may bring a civil cause of action: non-constitutional standing and constitutional standing. Non-constitutional standing focuses on considerations of judicial restraint, such as whether a complaint raises generalized questions more properly addressed by another branch of the government, and questions of statutory interpretation, such as whether a statute designates who may bring a cause of action or creates a limited zone of interests. Constitutional standing, the issue in this case, is one of the “irreducible . . . minimum” requirements that a party must meet in order to present a justiciable controversy.

City of Memphis, 414 S.W.3d at 98 (citations & footnote omitted). Constitutional standing requires a plaintiff to establish three elements: (1) a distinct and palpable injury that is not conjectural, hypothetical, or based on an interest shared in common with the general public; (2) a causal connection between the alleged injury and the challenged conduct; and (3) the injury must be capable of being redressed by a favorable decision of the court. *Fisher*, 604 S.W.3d at 396 (citing *City of Memphis*, 414 S.W.3d at 97). “The plaintiff bears the burden of establishing these elements by the same degree of evidence as other matters on which the plaintiff bears the burden of proof.” *Metro. Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.*, 645 S.W.3d 141, 149 (Tenn. 2022) (internal quotations omitted).

“The sort of distinct and palpable injury that will create standing must be an injury to a recognized legal right or interest.” *Metro. Gov’t of Nashville & Davidson Cnty. v. Bd. of Zoning Appeals*, 477 S.W.3d 750, 755 (Tenn. 2015) (quoting *Wood v. Metro. Gov’t of Nashville & Davidson Cnty.*, 196 S.W.3d 152, 158 (Tenn. Ct. App. 2005)). Courts have “repeatedly refused to recognize a generalized grievance against allegedly illegal governmental conduct as sufficient for standing to invoke the federal judicial power.” *United States v. Hays*, 414 U.S. 737, 743 (1995)

(citations omitted); *see also Hamilton v. Metro. Gov't of Nashville*, No. M2016-00446-COA-R3-CV, 2016 WL 6248026, at *4 (Tenn. Ct. App. Oct. 25, 2016) (quoting *Moncier v. Haslam*, 1 F. Supp. 3d 854, 859 (E.D. Tenn. 2014)) (citations omitted) (alterations in original). “[W]hen a plaintiff asserts that the law has not been followed, the plaintiff’s ‘injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that [the Supreme Court] ha[s] refused to countenance in the past.’” *Id.* Standing directs the court to focus on the party bringing the lawsuit rather than the merits of the claim. *Fisher*, 604 S.W.3d at 396; *see also Metro. Gov't of Nashville & Davidson Cnty.*, 645 S.W.3d at 149.

Here, Defendants argue Individual Plaintiffs have not established an injury in fact based on their status as registered voters and residents of Davidson County. Defendants contend the Individual Plaintiffs’ right to vote is not being infringed upon, nor will they be prevented from voting. And while the pool of candidates they may vote for and which district they may vote in could be affected by the Metro Council’s reduction and redistricting to 20 legislative seats under the Act, these purported injuries are not particular to the Individual Plaintiffs. Individual Plaintiffs argue in response, relying on *Walker v. Dunn*, 498 S.W.2d 102 (Tenn. 1972), that when the Tennessee Constitution provides an express right to vote related to a specific governmental action, individual voters have standing to challenge legislation from the General Assembly that does not allow them to exercise that right. In *Walker*, the Tennessee General Assembly had convened a special session to ratify the Twenty-Sixth Amendment to the federal Constitution, despite the Tennessee Constitution prohibiting both a Convention and the General Assembly from acting upon such an amendment unless they had been elected after submission of the amendment. *Id.* at 103. Several citizens brought suit, “assert[ing] injury based on the defendants’ deprivation of [their] right ‘indirectly’ to vote on the ratification through their vote for their legislators.” *Id.* at 104. The Tennessee Supreme Court concluded that this was enough for purposes of standing. *Id.* at 105

(“We are of opinion that these averments are sufficient to satisfy the requirement of special injury or real interest in the suit.”). The Court analyzes Plaintiffs’ remaining claims under *Walker*.⁶

Local Legislation Clause of Home Rule Amendment. Under the Local Legislation Clause of the Home Rule Amendment, the General Assembly may not pass an act “local in form or effect” unless the legislation “requires the approval by a two-thirds vote of the local legislative body of the municipality or county, *or requires approval in an election by a majority of those voting in said election in the municipality or county affected.*” Tenn. Const. art. XI, § 9, ¶ 2 (emphasis added). The Local Legislation Clause expressly gives individual voters the right to approve local legislation, either directly by their own vote or indirectly by the vote of their local legislators. Plaintiffs argue that the Act forces a change upon the legislative body of Metro alone without local approval by the Metro Council or Davidson County voters. The Court is persuaded this is sufficient under *Walker*, and concludes that Individual Plaintiffs have standing to bring their Local Legislation Clause claim.

Consolidation Clause. Under the Consolidation Clause of the Home Rule Amendment, the General Assembly may provide for the consolidation of municipal and county governments into a metropolitan form of government; such consolidation, however, cannot “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. Thus, an express right to vote is provided for under the Tennessee Constitution for

⁶ See also *Parents’ Choice Tennessee v. Golden*, M2022-01719-COA-R3-CV, 2024 WL 1670663, at *1, 7 (Tenn. Ct. App. Apr. 18, 2024) (holding that the trial court erred in its application of the generalized grievance concept in finding lack of standing in a case brought by parents on behalf of their public school children against the Williamson County Board of Education). The “fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance. . . .” *Id.* at *7 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 n.7 (2016)). Here, the Individual Plaintiffs allege injuries as Davidson County voters, which are distinct from the generalized grievance of statewide voters.

initial consolidation. Plaintiffs argue this initial consolidation created a constitutional compact between the State and Metro that the General Assembly cannot alter without submitting the changes once again to the local voters. The Court does not agree. The express right to vote in the Consolidation Clause is provided for only on initial consolidation, and not on later changes by the General Assembly to the enabling legislation. Accordingly, the Court holds that Individual Plaintiffs lack standing to pursue their Consolidation Clause claim.⁷

Exemption Clause. Finally, the Exemption Clause under Article VII, Section 1, paragraph 2 of the Tennessee Constitution establishes several requirements for county governments. This provision also exempts “[a]ny county organized under the consolidated government provisions of Article XI, Section 9, of this Constitution,” i.e., a metropolitan government, from those requirements. Tenn. Const. art. VII, § 1, ¶ 2. One such requirement is that “[t]he legislative body shall not exceed twenty-five members.” Plaintiffs argue that the General Assembly violated Metro’s constitutional exemption from this requirement by lowering the cap on its legislative body to twenty. Article VII, Section 1 does not provide an express right to vote by Individual Plaintiffs in this situation, so the holding in *Walker* does not apply. Accordingly, the Court finds that the Individual Plaintiffs’ alleged injury under Article VII, Section 1 is a generalized grievance that does not support their standing.

To summarize, the Court concludes Defendants’ motion to dismiss the Individual Plaintiffs’ claims for lack of standing should be granted in part and denied in part. Individual Plaintiffs have standing to pursue their claim under the Local Legislation Clause, but lack standing

⁷ Individual Plaintiffs also rely on a relatively recent statutory provision to support standing for their claims. That statute provides: “Notwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action. A cause of action shall not exist under this chapter to seek damages.” Tenn. Code Ann. § 1-3-121. While providing a cause of action, the provision does not relieve Individual Plaintiffs from the requirements of standing. Therefore, their reliance is misguided.

to pursue their claims under the Consolidation Clause and the Exemption Clause, and the State's motion to dismiss those claims should be granted. Because Individual Plaintiffs lack standing as to the latter two claims, the Court also concludes that their corresponding Motion for Summary Judgment should be denied with respect to their Consolidation Clause and Exemption Clause claims.

C. Metro's Motion to Dismiss Remaining Claims as Moot

As discussed above, all parties agree Section 1(b) of the Act is now moot. Based upon this shared concession, Metro seeks the dismissal of the remaining claims on the premise that, because Section 1(b) is moot, Section 1(a) is now unenforceable and renders moot all of Metro's remaining constitutional claims against Defendants. In response, Defendants first argue that Metro's Motion to Dismiss is procedurally improper because Rule 12 motions to dismiss are defensive and thus may only be brought by the party or parties against whom relief has been sought. *See* Tenn. R. Civ. P. 12.02. Defendants also argue that Section 1(a) is not moot and remains fully enforceable, provided the Court elides Section 1(b) from the Act.

First, the procedural propriety of Metro's Motion to Dismiss is not an issue where mootness is raised, which presents a question of justiciability. A case must be justiciable from its beginning to its end. *See Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203–04 (Tenn. 2009) (citations omitted). In other words, mootness cannot be waived, and it can be raised at any time by any party or by the court. *See Rainwaters v. Tenn. Wildlife Resources Agency*, No. W2022-00514-COA-R3-CV, 2024 WL 2078231, at *4 (Tenn. Ct. App. May 9, 2024) (quoting *Dominy v. Davidson Cnty. Election Comm'n*, No. M2022-00427-COA-R3-CV, 2023 WL 3729863, at *4 (Tenn. Ct. App. May 31, 2023)) (citing *Recipient of Final Expunction Ord. in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch*, 645 S.W.3d 160, 167 (Tenn. 2022); *Wilcox v. Webster Ins., Inc.*, 982 A.2d 1053, 1065 (Conn. 2009)).

Turning to the substantive issue, “a moot case is one that has lost its justiciability either by court decision, acts of the parties, or some other reason occurring after commencement of the case.” *Norma Faye Pyles Lynch Family Purpose LLC*, 301 S.W.3d at 204 (citations omitted). “If a case no longer serves as a means to provide some sort of judicial relief to the prevailing party it will be considered moot.” *Stacey Fair v. Clarksville Montgomery Cnty. School Sys.*, No. M2017-00206-COA-R3-CV, 2017 WL 4773424, at *3 (Tenn. Ct. App. Oct. 23, 2017) (citing *Norma Faye Pyles Lynch Family Purpose LLC*, 301 S.W.3d at 203–04).

Metro argues that, because Section 1(b) was the only mechanism by which to implement Section 1(a) as to Metro, and is now moot, Section 1(a) no longer applies to Metro and Metro’s constitutional claims under 1(a) are also moot. Specifically, Metro points to the final clause in Section 1(a) in support of its argument:

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.***

2023 Tenn. Pub. Acts, ch. 21, § 1(a) (emphasis added). The only other section of the Act that applies to Metro is Section 1(b). But since Section 1(b) is moot, as all parties concede, Metro insists that the legislative member cap in Section 1(a) can no longer be applied to Metro. Relying upon the canon of statutory construction against superfluous language, Metro asserts that to ignore the final clause of Section 1(a) would be to ignore the plain language and clear intent of the General Assembly. *See Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004) (citing *Tennessee Growers, Inc. v. King*, 682 S.W.2d 203, 205 (Tenn. 1984)) (“The statute must be construed in its entirety, and it should be assumed that the legislature used each word purposely and that those words convey some intent and have a meaning and a purpose.”). Defendants respond by pointing to the Act’s severability clause in Section 3 to argue that the entirety of Section 1(b), together with the final clause of Section 1(a), can both be elided from the Act. Thus, they

contend, any linguistic issue would be eliminated because of the General Assembly's clear command that the Act remain in effect if at all possible, absent constitutionally defective or otherwise invalid portions of the statute.

The Court, however, cannot simply elide Section 1(b) from the Act because it has not been adjudicated as unconstitutional or invalid. Tenn. Code Ann. § 1-3-110 provides for the severability of state statutes as follows:

If any one (1) or more sections, clauses, sentences or parts shall for any reason be questioned in any court, ***and shall be adjudged unconstitutional or invalid***, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one (1) or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

(Emphasis added.) “Under the doctrine of elision, a court may, under appropriate circumstances and in keeping with the expressed intent of a legislative body, elide an ***unconstitutional*** portion of a statute and find the remaining provisions to be constitutional and effective.” *Willeford v. Klepper*, 597 S.W.3d 454, 471 (Tenn. 2020) (emphasis added).

In this case, Section 1(b) is moot, and the Court is without jurisdiction to adjudicate its validity or constitutionality. As a result, the Court finds Section 1(b) and the last phrase of Section 1(a) are not subject to elision, as Defendants suggest. Nor is Section 1(a) moot, as Metro suggests. The Court concludes that Metro's Motion to Dismiss Section 1(a) of the Act on the basis of mootness should be denied.

D. Cross Motions for Summary Judgment on Plaintiffs' Constitutional Challenge to Section 1(a) Under the Local Legislation Clause

Metro and Individual Plaintiffs separately move for summary judgment on the issue that Section 1(a) of the Act violates the Local Legislation Clause of the Home Rule Amendment. Defendants cross move for summary judgment in their favor that Section 1(a) does not violate the

Local Legislation Clause and is constitutional. The Local Legislation Clause is set forth in Article XI, § 9, paragraph 2 of the Home Rule Amendment, and provides, in pertinent part, as follows:

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

Tenn. Const., Art. XI, § 9, ¶ 2. Any act passed by the General Assembly that comes within this provision is void unless, by its terms, requires local approval. The Tennessee Supreme Court has held that that the Local Legislation Clause establishes three requirements: “1) the statute in question must be local in form or effect; 2) it must be applicable to a particular county or municipality; and 3) it must be applicable to the particular county or municipality in either its governmental or proprietary capacity.” *Metro. Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.*, 645 S.W.3d 141, 150 (Tenn. 2022).

In interpreting the Local Legislation Clause, the Tennessee Supreme Court has held that the General Assembly’s designation or description of an act as either “public” or “private” does not control whether the Home Rule Amendment applies. *Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975). The Court in *Farris* explained

The test is not the outward, visible or facial indices, nor the designation, description or nomenclature employed by the Legislature. Such a criterion would emasculate the purpose of the amendment. 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. The sole constitutional test must be whether the legislative enactment, irrespective of its form, is local in effect and application.

Id.

In *Farris*, members of the Shelby County Quarterly Court brought a declaratory judgment action challenging a public act which sought to require a run-off election in counties with a mayor as the head of the executive branch. *Id.* at 550. The Tennessee Supreme Court explained that “we must determine whether this legislation was designed to apply to any other county in Tennessee, for it is potentially applicable throughout the state it is not local in effect even though at the time of its passage it might have applied to Shelby County only.” *Id.* at 552. The *Farris* Court found that under the law in existence at that time only Shelby County could possibly have a mayor as the head of the executive branch. *Id.* The act at-issue could not apply to any other county without an affirmative act of the General Assembly to adopt or change the then-existing law. *Id.* at 553. Therefore, the Tennessee Supreme Court found that the public act violated the Local Legislation Clause. *Id.* 555.

Several cases have discussed the standard set by *Farris*. As explained in *Board of Education of Shelby County, Tennessee v. Memphis City Board of Education*, for example, a court considering a challenge under the local legislation clause must consider whether the legislation “was designed” to apply to any other county. 911 F. Supp. 2d 631, 653 (W.D. Tenn. 2012). The local legislation clause does not require the legislation to apply to “every part of” or “everywhere” in Tennessee. *Id.* at 656. The word “throughout” as used in *Farris* refers to the class created by the General Assembly. *Id.* Under the local legislation clause, the class cannot be so narrow as to apply to only one county, unless there is a provision for local approval. “Potential applicability turns on the substance of a statute, not its form.” *Id.* at 652. To consider the legislative intent, there must be doubts about a statute’s application or ambiguities in the text. *Id.* at 653.

By its terms, the Act at issue does not require local approval. Plaintiffs challenge Section 1(a) of the Act under the Local Legislation Clause of the Home Rule Amendment on the grounds that the Act is local in effect and application. Under the constitutional test set forth in *Farris*, the

Court must determine whether Section 1(a) of the Act is local in effect and application, designed to apply only to Metro, and not potentially applicable throughout the State. *Farris*, 528 S.W.2d. at 552, 555.

Plaintiffs argue that Section 1(a), despite feigning general application, in reality imposes the twenty-member cap on Metro and Metro alone because it is the only metropolitan government affected by and subject to the reduction provisions of the Act set forth in Section 1(b). Plaintiffs highlight that the Act’s legislative history evidences the General Assembly’s clear intent by repeatedly acknowledging that Metro and only Metro is subject to the Act, much like the Court found persuasive in the legislative history in *Farris*. 528 S.W.2d at 555–58. Metro looks to the plain language of Section 1(a) of the Act, including the final phrase, which provides that “[n]otwithstanding 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.***”

Defendants argue Section (1)(a) applies to all metropolitan governments. Currently, there are three such governments—Nashville-Davidson County, Lynchburg-Moore County, and Hartsville-Trousdale County. Only Metro is required to make any changes as the size of the legislative bodies of the other two is 20 or less. As the *Farris* Court explained, “in determining potential applicability we must apply reasonable, rational and pragmatic rules as opposed to theoretical, illusory or merely possible considerations.” 528 S.W.2d at 552. The potential that Section 1(a) could apply theoretically to Lynchburg-Moore County or Hartsville-Trousdale County sometime in the future in the event they were to propose amendments to their charters to increase the size of their legislative bodies to more than twenty (with the design to run afoul of Section 1(a)) and such charter amendments were approved by local voters, seems speculative and illusory, and not a reasonable or rational application of Section 1(a). The Court finds Section 1(a)

applies, and was designed to apply, to Metro alone. Section 1(a) is not a statute of statewide application; indeed, its application to a lone county is the clearest possible example of local in effect. *See Civil Service Merit Bd. of City of Knoxville v. Burson*, 816 S.W.2d 725, 729 (Tenn. 1991) (discussing the Court’s holding in *Farris* that “ostensibly applicable” statewide was not enough when “the legislature must have intended the provision to have a local effect.”).

The Court concludes that Section 1(a) is local in form and effect and designed to apply to Metro. Because the Act does not provide for local approval, it violates the Local Legislation Clause, and Metro and Individual Plaintiffs’ Motions for Summary Judgment on this issue should be granted, and Defendants’ Motion for Summary Judgment should be denied.

E. Cross Motions for Summary Judgment on Plaintiffs’ Constitutional Challenge to Section 1(a) Under the Consolidation Clause

Metro and Individual Plaintiffs also move for summary judgment on their claims that Section 1(a) of the Act violates the Consolidation Clause of the Home Rule Amendment, set forth in Article IX, Section 9, of the Tennessee Constitution. The Court has determined that Individual Plaintiffs lack standing to assert this claim for the reasons discussed above. Defendants cross move that Section 1(a) is constitutional under the Consolidation Clause and Plaintiffs’ claims should be dismissed. The Consolidation Clause 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. IX, § 9, ¶ 9.

Metro argues that when the voters of Nashville and Davidson County agreed to consolidate their city and county governments into the Metropolitan Government of Nashville and Davidson

County, Metro and the General Assembly entered into a constitutional compact. Under this compact, the local voters accepted the general terms of consolidation as set forth in the enabling legislation. Plaintiffs argue that the Act, changes the terms of consolidation after the fact and, without local approval, violates this constitutional compact and therefore Article IX, Section 9. Plaintiffs acknowledge that the General Assembly can amend the enabling legislation for consolidated governments—it may do so only prospectively. Plaintiffs insist the General Assembly has no authority to amend a completed consolidation.

Defendants respond that Metro’s initial consolidation in 1962 did not create a constitutional compact or precluded the General Assembly from passing new legislation affecting existing consolidated governments or their charters. Defendants further argue that the Consolidation Clause grants the authority to the legislature to provide for consolidation, but does not limit or restrict that authority beyond requiring the approval of local voters for the initial consolidation. *See* Tenn. Const., art. IX, § 9, para. 9; Tenn. Code Ann. § 7-2-108(a)(1). Plaintiffs counter that such an interpretation of the Consolidation Clause would permit the General Assembly to perform a “bait and switch,” rendering the Consolidation Clause meaningless, and such an interpretation should be rejected. They submit the Consolidation Clause is forward-looking because it provides the power to consolidate a city and county government *dependent* upon local approval.

The Court concludes that the Consolidation Clause of the Home Rule Amendment only applies to *initial* consolidation of a metropolitan government. The Court does not find any language within the Consolidation Clause requiring it to also be applied to the Act under the facts of this case, and Section 1(a) does not violate the Consolidation Clause. Accordingly, Metro’s Motion for Summary Judgment on its Consolidation Clause claim should be denied, and Defendants’ Motion for Summary Judgment should be granted.

F. Cross Motions for Summary Judgment on Metro’s Constitutional Challenge to Section 1(a) Under the Exemption Clause

Article VII, Section 1, paragraph 2 of the Tennessee Constitution establishes the size of county legislative bodies and also exempts from that constitutional provision consolidated governments, as follows:

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 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 provision 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.***

Tenn. Const., Art. VII, § 1, para. 2 (emphasis added).

As discussed above, the Court has determined that Individual Plaintiffs lack standing to assert their claim under the Exemption Clause. Metro challenges the constitutionality of Section 1(a) of the Act under the last two sentences of the Exemption Clause, which establishes a twenty-five member cap on **county** legislative bodies, but exempts from that limit **consolidated governments** “having a county executive and legislative body as described in this paragraph.” Metro argues this provision creates a constitutional exemption for metropolitan governments from any cap on legislative seats, or at least from a cap lower than twenty-five seats. Defendants respond that this exemption applies only to those specific terms contained within the Exemption Clause, and not as a general exemption to any cap on the number of seats in legislative bodies for metropolitan governments. To support this argument, Defendants rely on the general grant of legislative authority to the General Assembly set forth in Article II, § 3 of the Tennessee Constitution. But, the General Assembly’s broad grant of legislative powers does not allow it to accomplish by statute that which is expressly prohibited under the Constitution. Therefore, the Court concludes that Section 1(a) of the Act violates the Exemption Clause of Article VII, Section

1 of the Tennessee Constitution. Accordingly, on this issue, Metro's Motion for Summary judgment should be GRANTED, and Defendants' Motion for Summary Judgment should be denied.

F. Severability of Section 1(a) of the Act

Having concluded that Section 1(a) of the Act is unconstitutional under the Local Legislation Clause and the Exemption Clause, the Court addresses whether Section 1(a) can be elided from the Act or if the entire Act is unconstitutional. *See Willeford*, 597 S.W.3d at 471. Here, the General Assembly has manifested its intent that portions of the Act are severable by including a severability clause at Section 3:

If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

2023 Tenn. Pub. Acts, ch. 21, § 3.

Other provisions of the Act do not apply to Metro. For example, Section 1(c) of the Act establishes a twenty member legislative cap on *future* metropolitan governments formed after the effective date of the Act, which is independent of the member cap established in Section 1(a). Section 1(d) provides that the Act does not preempt a metropolitan government from specifying how special elections for council vacancies may be conducted, and Section 1(e) provides that the Act does not preempt future changes to the size of a metropolitan council so long as they do not exceed twenty members,. These two provisions do not rely on Section 1(a) to be effective with respect to future metropolitan government formed under Section 1(c). Likewise, Section 2, providing for a legislative member cap for municipalities, does not rely on Section 1(a) to be effective. Accordingly, the Court concludes that Section 1(a) can be severed from the remainder of the Act and, therefore, should be elided from the Act.

IV. CONCLUSION

Based on the foregoing, the Court concludes that the parties' motions should be GRANTED IN PART and DENIED IN PART for the reasons stated above.

It is, accordingly, ORDERED, ADJUDGED and DECREED that:

A. Metro's *Motion to Dismiss* is GRANTED, in part, on the issue of mootness as to those claims challenging the constitutionality of Section 1(b) of the Act, based on the concession of all parties, and those claims are hereby DISMISSED, as moot. Metro's *Motion to Dismiss* is DENIED, in part, on the issue of mootness as to all remaining claims challenging Section 1(a) of the Act.

B. Defendants' *Motion to Dismiss* the Individual Plaintiffs' Complaint is GRANTED, in part, as to their claims challenging Section 1(a) of the Act under the Consolidation Clause and the Exemption Clause of Article VII, Section 1, based on lack of standing, and those claims are hereby DISMISSED. Defendants' *Motion to Dismiss* the Individual Plaintiffs' Complaint is DENIED, in part, as to their claim challenging Section 1(a) of the Act under the Local Legislation Clause of the Home Rule Amendment.

C. Metro's *Motion for Summary Judgment*, in the alternative, is GRANTED, in part, as to Metro's claims challenging Section 1(a) of the Act under the Local Legislation Clause of the Home Rule Amendment and the Exemption Clause in Article VII, Section 1, of the Tennessee Constitution. Metro's *Motion for Summary Judgment* is DENIED, in part, challenging Section 1(a) of the Act under the Consolidation Clause.

D. Individual Plaintiffs' *Motion for Summary Judgment* is DENIED, in part, on their claims challenging Section 1(a) under the Consolidation Clause and the Exemption Clause of Article VII, Section 1 due to their lack of standing. Individual Plaintiffs' *Motion for Summary*

Judgment is GRANTED, in part, on their claim challenging Section 1(a) of the Act under the Local Legislation Clause of the Home Rule Amendment.

E. Defendants' *Motion for Summary Judgment* is DENIED, in part, on Metro's and the Individual Plaintiffs' claims challenging Section 1(a) of the Act under the Local Legislation Clause of the Home Rule Amendment and as to Metro's claim challenging Section 1(a) of the Act under the Exemption Clause of Article VII, Section 1 of the Tennessee Constitution. Defendants' *Motion for Summary Judgment* is GRANTED, in part, with respect to Metro's claim challenging Section 1(a) of the Act under the Consolidation Clause of the Home Rule Amendment.

It is further ORDERED, ADJUDGED and DECREED that Section 1(a) of the Act is hereby DECLARED unconstitutional, invalid, and of no effect under the Local Legislation Clause of the Home Rule Amendment and the Exemption Clause of the Tennessee Constitution. It is further declared that Section 1(a) is SEVERED and elided from the remainder of the Act. Defendants are permanently ENJOINED from enforcing Section 1(a) of the Act.

The Clerk and Master is directed to enter this Memorandum and Order as a final judgment under Rule 58 of the Tennessee Rules of Civil Procedure.

/s/ Jerri S. Bryant
CHANCELLOR JERRI S. BRYANT

/s/ Patricia Head Moskal
CHANCELLOR PATRICIA HEAD MOSKAL,
CHIEF JUDGE

Howell, Judge, Concurring in Part and Dissenting in Part.

I generally concur in the conclusions of the majority except as to two issues on which I must respectfully disagree.

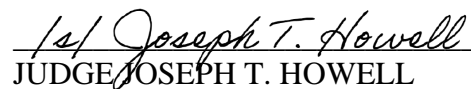
First, I would hold that Section 1(a) does not violate the Local Legislation Clause. In *Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 725 (Tenn. 1991), the Tennessee Supreme Court examined whether legislation “affecting municipal civil service boards in Tennessee’s most populous counties violate[d] the home rule provisions of Article XI, Section 9 of the Tennessee Constitution.” Such a civil service board for the City of Knoxville challenged the law, asserting it violated the home rule provisions because it affected only Knoxville. *Id.* at 728. The Court explained that while “only the Knoxville board will be required to take affirmative steps to comply with the statute. . . . the other two counties are certainly *affected* by the statute, because they will have to maintain compliance with [it].” *Id.* at 730 (emphasis in original). The Court noted it previously had “upheld legislation that applied *only to counties with a metropolitan form of government*, even though, at the time, Davidson County was the only county in the state with a consolidated, metropolitan form of government” because the “*enabling provisions for the creation of a metropolitan government were extant and potentially available to all counties statewide.*” *Id.* at 729 (citing *Doyle v. Metro. Gov’t of Nashville & Davidson Cnty.*, 471 S.W.2d 371 (Tenn. 1971); *Metro. Gov’t of Nashville & Davidson Cnty. v. Reynolds*, 512 S.W.2d 6, 9–10 (Tenn. 1974)) (emphasis added).

In my view, the situation before the Court is more similar to the facts of *Burson* than the facts of *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975) or *Board of Education of Shelby County, Tennessee v. Memphis City Board of Education*, 911 F. Supp. 2d 631 (W.D. Tenn. 2012). Section (1)(a) applies to any metropolitan government, existing now or in the future. Indeed, Metro, like Knoxville in *Burson*, is the only local government required to make any changes as the other two

are already in compliance. The Act, however, applies to all three because Lynchburg-Moore County and Hartsville-Trousdale County must *maintain* compliance under the provisions of the Act. Further, in viewing the Act as a whole, the clear intent of the Act is to limit all metropolitan governments, those in existence now and any formed in the future, to no more than twenty-member councils. Accordingly, I would hold that Section 1(a) of the Act is general in effect and therefore does not violate the Local Legislation Clause.

Second, I would hold that Section 1(a) does not violate the Exemption contained in Article VII, Section 1. In my view, the plain language of that provision makes clear that paragraph 2 of Article VII, Section 1 does not apply to metropolitan governments. Thus, the Exemption has no applicability to the present case, and Section 1(a) does not violate it.

Finally, as a consequence of these conclusions, I would further hold that Section 1(a) is constitutionally valid and grant Defendants' Motion for Summary Judgment and deny Plaintiffs' Motions for Summary Judgment, leaving the Act intact. For these reasons, I respectfully dissent from the majority's order on these issues and concur in the remainder.


JUDGE JOSEPH T. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded via electronic service or U.S. Mail first-class, postage prepaid, as applicable to the following:

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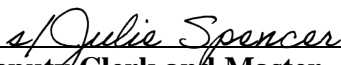
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7/29/24

Date