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

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, Plaintiff, vs. BILL LEE, in his official capacity as Governor of the State of Tennessee, RANDY MCNALLY, in his official capacity as Speaker of the Senate of the State of Tennessee, CAMERON SEXTON, in his official capacity as Speaker of the House of the State of Tennessee, Defendants, and METRPOLITAN NASHVILLE AIRPORT AUTHORITY, Intervenor-Defendant.	Case No. 23-0778-II Chancellor Anne C. Martin, Chief Judge Judge Mark L. Hayes Judge Zachary R. Walden

MEMORANDUM AND FINAL ORDER

Before the Court are the Cross-Motions for Summary Judgment of Plaintiff Metropolitan Government of Nashville and Davidson County ("Metro"), Defendants Bill Lee, Governor of the State of Tennessee, Randy McNally, Speaker of the Senate of the State of Tennessee, and Cameron Sexton, Speaker of the House of Representatives of the State of Tennessee, in their official capacities, and Intervenor-Defendant Metropolitan Nashville Airport Authority ("MNAA"). Metro filed suit to enjoin 2023 Public Acts ch. 488 (the "Act"), arguing that Section 2 of the Act violates the Home Rule Amendment and the Equal Protection Guarantee of the Tennessee Constitution. Metro further argues that the other sections of the Act are inextricably intertwined

with Section 2 and must therefore also be enjoined. Alternatively, Metro argues Sections 2, 4, 6, 7, 8, and 9 also violate the Equal Protection Guarantee of the Tennessee Constitution. Defendants argue, however, that the Act is of general application and therefore does not violate the Tennessee Constitution. MNAA takes no position as to Section 2 of the Act but argues that the remaining sections of the Act do not implicate the constitutional provisions raised by Metro. MNAA points to the severability clause in Section 10 of the Act as evidence of a legislative intent that the remainder of the Act remain in effect even if Section 2 is invalidated.

Counsel for all sides appeared before the Court[1] in Nashville on October 6, 2023. Having considered the motions, statements of fact, briefs of the parties, arguments of counsel, and the applicable caselaw, we are now ready to issue our decision. For the reasons that follow, the Cross-Motions for Summary Judgment are **GRANTED IN PART AND DENIED IN PART**. Section 2 of the Act is hereby **DECLARED** to be in violation of Article XI, Section 9 of the Tennessee Constitution and, alternatively, in violation of Article I, Section 8, and Article XI, Section 8 of the Tennessee Constitution. Sections 6, 7, 8, and 9 of the Act are hereby **DECLARED** to be in violation of Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution. Defendants are immediately **ENJOINED** from enforcing those provisions. Because we find the remaining sections of the Act severable, however, the aforementioned, unconstitutional provisions are elided from the Act.

[1] Presiding over this matter is a three-judge panel appointed by the Tennessee Supreme Court pursuant to Tenn. Code Ann. §§ 20-18-101 *et seq.* and Supreme Court Rule 54. Order, No. 23-0778-II, at *1, June 27, 2023.

BACKGROUND

Governor Lee signed the Act into law on May 19, 2023. Broadly speaking, the Act makes a number of changes to the existing Metropolitan Airport Authority Act (the "Original Act"),[2] which governs metropolitan airport authorities. The Original Act provides that "[a]ny city or metropolitan government having a population of not less than one hundred thousand (100,000), or any county including any such city, may create a metropolitan airport authority in the manner provided in this section." Tenn. Code Ann. § 42-4-104(a). "The governing body of the creating municipality[3] shall adopt, and its executive officer shall approve, a resolution calling a public hearing on the question of creating an authority."[4] *Id.* § 42-4-104(b)(1). Once an authority is created, the Original Act also provides that

> [t]he governing body of the authority shall be a board of commissioners of seven (7) persons[5] appointed by the executive officer of the creating municipality and approved by its governing body, at least five (5) of whom shall be residents of the creating municipality, who shall have no financial interest in an airport or its concessions.

Id. § 42-4-105(a)(1)(A). Section 2[6] of the Act, however, amends the Original Act by providing that

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[2] The Court uses this term inclusively of both the initial statute and additional amendments made prior to the passage of the Act.

[3] The "creating municipality is "any city or metropolitan government having a population of not less than one hundred thousand (100,000), or any county in which any such city shall be situated, that shall create an authority pursuant to [the Original Act]." Tenn. Code Ann. § 42-4-103(6); *see also id.* § 42-4-104(a).

[4] The "authority" is defined as "a metropolitan airport authority created pursuant to [the Original Act]." Tenn. Code Ann. § 42-4-103(2); *see also id.* § 42-4-104(a).

[5] The precise composition of the Metro-appointed MNAA Board of Commissioners was different than for other authorities but the appointment power itself was the same. *See infra* note 6.

[6] Section 1 of the Act repeals Tenn. Code Ann. § 42-4-105(a)(1)(B), which provided for a board of ten commissioners with specific demographic criteria if the airport authority was in a county with a metropolitan form of government and a population less than 700,000. 2023 Pub. Acts ch. 488, § 1 (S.B. 1326); *see* Tenn. Code Ann. § 42-4-105(a)(1)(B) (2007). Davidson County grew out of these criteria as of the 2020 Federal Census. *See QuickFacts: Davidson County, Tennessee*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/davidsoncountytennessee/PST045222.

> [t]he board of commissioners of the authority in a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2020 federal census or a subsequent federal census, is vacated and reconstituted to consist of eight (8) commissioners . . . .

2023 Pub. Acts ch. 488, § 2(1)(A) (S.B. 1326). Of these new commissioners, the Speaker of the Tennessee House of Representatives, the Speaker of the Tennessee Senate, the Governor, and the mayor of the county having the metropolitan form of government each appoint two. *Id.* This portion of the Act took immediate effect. *Id.* § 11. Subsection 2(1)(C) of the Act provides for staggered end dates for the terms of each of these new commissioners:

> (i) Commissioners appointed under subdivision (d)(1)(A)(iii) serve initial terms that expire on June 30, 2025;
> (ii) Commissioners appointed under subdivision (d)(1)(A)(i) serve initial terms that expire on June 30, 2026;
> (iii) Commissioners appointed under subdivision (d)(1)(A)(ii) serve initial terms that expire on June 30, 2027; and
> (iv) Commissioners appointed under subdivision (d)(1)(A)(iv) serve initial terms that expire on June 30, 2028 . . . .

Id. § 2(1)(C). Subsection 2(1)(D) explains that each subsequent term after the term expiring in Subsection 2(1)(C) will be four years.

Section 3 of the Act adds language clarifying that "[a]ll land and other property and privileges acquired and used by or on behalf of an authority" for the purposes set forth in the Original Act "are declared to be acquired and used for public and governmental purposes and as a matter of public necessity." *Id.* § 3. Section 4 of the Act provides that the metropolitan airport authorities, meeting the same form of government and population requirements as Section 2, shall appoint a number of specific officers as well as an independent auditing firm. *Id.* § 4. Section 5 provides that the metropolitan airport authorities shall present their annual operating budget to the Tennessee Governor, Speaker of the Tennessee House of Representatives, and Speaker of the Tennessee Senate for review. *Id.* § 5. Section 6 of the Act provides those metropolitan airport

authorities that meet the same form of government and population requirements as Section 2 with the authority to acquire property by eminent domain proceedings. *Id.* § 6. Section 7 of the Act provides those metropolitan airport authorities that meet the same form of government and population requirements as Section 2 with the authority to modify sections of a public "street or other public way, ground, place or space, or public utility" provided "the authority owns all of the real property abutting the street or other public way, ground, place or space, or public utility." *Id.* § 7. Section 7 also allows those metropolitan airport authorities that meet the same form of government and population requirements as Section 2 to "regulate aircraft hazards, compatible land use, or other factors impacting the safe and efficient operation of the airport" subject to additional conditions. *Id.* § 7. Section 8 provides the process metropolitan airport authorities must use to exercise the eminent domain authority in Section 6. *Id.* § 8. Section 9 provides that those metropolitan airport authorities that qualify for the regulatory authority set forth in Section 7 must exercise the authority in the manner there provided. *Id.* § 9. Section 10 provides a severability clause. *Id.* § 10. Finally, Section 11 provided for the change in appointment authority to take immediate effect, and all other parts of the bill to become law on July 1, 2023. *Id.* § 11.

On June 12, 2023, Metro filed this action for declaratory and injunctive relief against Defendants in response to the passage of the Act. Three days later, MNAA sought to intervene. On July 1, 2023, the rest of the Act, including the vacation of the Metro-appointed MNAA Board of Commissioners (the "old Board") and the seating of the MNAA Board of Commissioners appointed predominantly by Defendants (the "new Board"). *Id.* § 11. All parties now seek summary judgment in favor of their respective positions.

LEGAL STANDARDS

I. Tennessee Rule of Civil Procedure 56

Summary judgment "shall be rendered forthwith if 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 a judgment as a matter of law." Tenn. R. Civ. P. 56.04; *Lemon v. Williamson Cnty. Schs.*, 618 S.W.3d 1, 12 (Tenn. 2021). "Whether the nonmoving party is a plaintiff or a defendant—and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense—at the summary judgment stage, '[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.'" *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 889 (Tenn. 2019) (quoting *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 265 (Tenn. 2015)) (alteration in original). "In adjudicating motions for summary judgment, courts must view the evidence in the light most favorable to the nonmoving party and resolve doubts concerning the existence of genuine issues of material fact in favor of the nonmoving party." *Thompson v. Memphis City Sch. Bd. of Educ.*, 395 S.W.3d 616, 622 (Tenn. 2012) (citing *Martin v. Norfolk S. Ry.*, 271 S.W.3d 76, 83 (Tenn. 2008)).

II. Constitutional Challenges to State Statutes

The Tennessee courts are "charge[d] . . . to uphold the constitutionality of a statute wherever possible." *Waters v. Farr*, 291 S.W.3d 873, 882 (Tenn. 2009). When presented with a question of the constitutionality of a statute, the Court must "begin with the presumption that an act of the General Assembly is constitutional" and "indulge every presumption and resolve every doubt in favor of the statute's constitutionality." *State v. Pickett*, 211 S.W.3d 696, 700 (Tenn.

2007) (quoting *Gallaher v. Elam*, 104 S.W.3d 455, 569 (Tenn. 2003)); *see also Waters*, 291 S.W.3d at 917 (Koch, J., concurring in part and dissenting in part) (citing *Gallaher*, 104 S.W.3d at 459–60; *In re Adoption of E.N.R.*, 42 S.W.3d 26, 31 (Tenn. 2001); *State ex rel. Maner v. Leech*, 588 S.W.2d 534, 540 (Tenn. 1979)) ("This presumption places a heavy burden on the person challenging the statute."); *Perry v. Lawrence Cnty. Election Comm'n*, 411 S.W.2d 538, 539 (Tenn. 1967) (quoting *Frazer v. Carr*, 360 S.W.2d 449 (Tenn. 1962)); *Bell v. Bank of Nashville*, 7 Tenn. 269 (1823) ("'[T]he Legislature of Tennessee, like the legislature of all other sovereign states, can do all things not prohibited by the Constitution of this State or of the United States.' . . . 'To be invalid a statute must be plainly obnoxious to some constitutional provision.'").

III. Standing

In Tennessee, "the province of a court is to decide, not advise, and to settle rights, not to give abstract opinions." *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203 (Tenn. 2009) (quoting *State v. Wilson*, 70 Tenn. (2 Lea) 204, 210 (1879)). One doctrine utilized by our courts to ensure the appropriate exercise of judicial power is standing. *See id.* "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 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)). It is "rooted in the traditional understanding of a case or controversy." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). "Grounded upon 'concern about the proper—and properly limited—role of the courts in a democratic society,' the doctrine of standing precludes courts from adjudicating 'an action at the instance of one whose rights have not been invaded or infringed.'" *Darnell*, 195 S.W.3d at 619–20 (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975); *Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001)).

Standing thus presents a threshold issue. *Fisher v. Hargett*, 604 S.W.3d 381, 396 (Tenn. 2020) (citing *City of Memphis*, 414 S.W.3d at 96) ("The question of standing is one that ordinarily precedes a consideration of the merits of a claim."). The doctrine also 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 ("The proper focus of a determination of standing is a party's right to bring a cause of action, and the likelihood of success on the merits does not factor into such an inquiry.").

> 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, an injury that is not conjectural, hypothetical, or predicated upon an interest that a litigant shares 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). Although it "in no way depends upon the merits" of Metro's claims, standing "often turns on the nature and source of the claim asserted." *Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d 141, 149 (Tenn. 2022) (quoting *Warth*, 422 U.S. at 500). So the Court addresses standing below within the context of the claims for which Defendants raise standing as an issue.

FINDINGS OF FACT

As acknowledged by counsel during the prior hearing on Metro's motion for a temporary injunction, the Court finds that there are no material facts in dispute that would preclude the entry of summary judgment. Indeed, the following statements are, unless otherwise noted, admitted as undisputed by the parties for purposes of summary judgment.

Senate Bill 1326 was passed by the General Assembly on April 21, 2023, and signed into law by Governor Lee on May 19, 2023. This legislative enactment became the Act. The Act makes several changes to the Original Act, which governs metropolitan airport authorities, including MNAA. Metro created MNAA in 1970 pursuant to Resolution No. 70-872. Upon the filing of the Resolution, MNAA constituted "a body politic and corporate,"[7] and MNAA immediately assumed the responsibilities of a metropolitan airport authority as set forth in the Original Act. After the Resolution went into effect, Metro and MNAA entered into a contract for the orderly transfer from Metro to MNAA of all airport properties, functions, and outstanding obligations of Metro in accordance with the provisions of the Original Act. *See* Notice of Filing of Documents in Supp. of Defs.' Mot. for Summ. J., Ex. C, Aug. 25, 2023 (providing the contract between Metro and MNAA, pursuant to which Metro transferred significant property to MNAA).

There are four airport authorities currently in existence in Tennessee that were created pursuant to the Original Act: (1) MNAA, (2) Memphis-Shelby County Airport Authority, (3) Metropolitan Knoxville Airport Authority, and (4) Chattanooga Metropolitan Airport Authority. Metro has a metropolitan form of government and a population that exceeds 500,000. The only other metropolitan governments in Tennessee, Lynchburg-Moore County and Hartsville-Trousdale County, do not currently meet the (1) the statutory criteria for becoming a creating

[7] The parties dispute whether this established MNAA as an independent governmental entity, a legal conclusion relevant to the parties' arguments in this matter.

municipality under the Original Act or (2) the five hundred thousand population requirement under the Act. The City of Memphis and Shelby County have considered consolidating their local governments into a metropolitan government multiple times in the past but have not done so. Chattanooga and Hamilton County, as well as Knox and Knox County, have similarly made unsuccessful attempts at consolidation. Per the 2020 federal census, the population of Lynchburg-Moore County is 6,641; the population of Hartsville-Trousdale County is 11,615; the population of Knox County is 478,971; the population of Shelby County is 929,744; the population of Hamilton County is 366,207; and the population of Davidson County is 715,884.[8] Davidson County and Shelby County are the only two counties in Tennessee that have populations in excess of 500,000 as reported in the 2020 federal census.

Per the FAA, Nashville International Airport ("BNA") is the busiest passenger airport in Tennessee, with 9,829,062 boarded passengers in 2022. Memphis International Airport was a distant second with 2,163,692 boarded passengers in the same year. In 2021, BNA had 7,594,049 boarded passengers, and Memphis International Airport had 1,793,073 boarded passengers. Memphis International Airport, however, is the FedEx World Hub and thus the world's busiest cargo airport. McGhee Tyson Airport, operated by the Knoxville Metropolitan Airport Authority, estimates that its economic impact is one billion dollars. The Chattanooga Airport is currently undergoing its largest ever expansion to its passenger terminal. BNA served 21.9 million passengers and opened a new 200,000 square foot grand lobby during the 2023 fiscal year. It estimated a nearly ten-billion-dollar economic impact on the region in 2019. All the metropolitan airport authorities in Tennessee are funded primarily by operating revenues. The Tennessee

[8] With respect to the population of Davidson County, the Court takes judicial notice of this fact. *See QuickFacts: Davidson County, Tennessee*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/davidsoncountytennessee/PST045222.

Department of Commerce and Insurance's April 4, 2023 State of Tennessee Fiscal Year 2024 Budget presentation grouped together the "5 Major Airports" for state funding purposes. For 2021–2022, the Tennessee Department of Transportation's Aeronautics Division provides Transportation Equity Funding revenues to sixty-nine General Aviation Airports and five commercial service airports. Section 2 of the Act does not currently apply to Shelby, Hamilton, or Knox Counties.

Prior to the passage of the Act, the members of the old Board were serving terms scheduled to expire in 2024, 2025, 2028, and 2029. Those positions were vacated under the terms of the Act.

The parties do not dispute that the following statements were made, but Defendants dispute their relevance to this action. As we discuss below in our analysis, *see infra* Analysis § I.A.1, legislative history, particularly the statement of a lone legislator, is of limited importance, but limited importance is not the same as immateriality. Senator Paul Bailey, the Act's Senate sponsor, stated:

> I'm more than willing to bring legislation back next year relative to all of those other airports throughout the state. In looking at that, they're not all metro-governed. They are city and county governments relative to those airports. Specifically, I had requested a lot of information regarding the Nashville Metro Airport. That's information that I structured this legislation based on. But I can assure you come next year we will be filing legislation to assist those four other airports in the state.

State Representative Johnny Garrett, the Act's House sponsor, stated:

> I can't answer what could come down, or what might happen in the future. This legislation only relates to this particular airport, with this particular situation. There's no way I could predict or try to create a hypothetical about what might happen to the other airports. What I probably would say is that they would want a great, sustaining relationship with the State to make sure that they have a strategic long-term plan, would be my guess.

When answering a follow-up question asking whether BNA's relationship with the State was "strained," Representative Garrett responded, "Not that I'm aware of." Representative Garrett also stated:

> The airport authority, in the area that it is, it's not funded by that particular area. It's actually funded by the entire State of Tennessee. So the board is not representative from the entire state of Tennessee, through us, through our various speakers. They now will be representative by the board of this new airport authority from the people rather than one particular area.

Looking to documents provided to the Court during the litigation of Metro's Motion for Temporary Injunction, the Court notes that for the fiscal year ending June 30, 2022, MNAA received $29,469,266 in financial assistance from the State of Tennessee. Metropolitan Nashville Airport Authority, *Annual Comprehensive Financial Report July 1, 2021 – June 30, 2022* 141 (2022), *available at* https://flynashville.com/wp-content/uploads/2022/11/ACFR-063022-FS-Revised.pdf. MNAA received $26,265,848 in financial assistance from the federal government. *Id.* MNAA's total operating revenue for that fiscal year was $210,228,864. *Id.* at 36.

ANALYSIS

I. Home Rule Amendments

Expounding upon the proposed arrangement between state governments and the federal government in what would become the United States Constitution, James Madison explained the substantial sovereignty retained by each state: "The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." James Madison, *The Federalist* No. 45 (1788). No comparable arrangement existed, however, between the state government and its constituent local governments. As an extension of the state government's ample authority described by Madison, local polities were considered to be mere

"arms or instrumentalities of the state government—creatures of the Legislature, and subject to its control at will. It [could] establish and abolish at pleasure." *Grainger Cnty. v. State*, 80 S.W. 750, 757 (Tenn. 1904) (citing *Luehrman v. Taxing Dist.*, 70 Tenn. (2 Lea) 425, 433 (1879); I, 88 Tenn. 290, 293, 12 S. W. 721 (1889); Thomas M. Cooley, *Constitutional Limitations* 230, 231). That arrangement changed in Tennessee, however, after the adoption of a series of provisions known collectively as the Home Rule Amendments, which originated with the 1953 Tennessee Constitutional Convention. *See S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 714 & n.7 (Tenn. 2001) ("The effect of the home rule amendments was to fundamentally change the relationship between the General Assembly and these types of municipalities, because such entities now derive their power from sources other than the prerogative of the legislature."). That Convention 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, 118–119 (2011)). Indeed, the main reason for the Convention was the "wicked local bill situation that ha[d] been growing in the State." *Journal and Debates of the Constitutional Convention of 1953* 1023 [hereinafter "1953 Journal"]).

A. Local Legislation Clause

The Local Legislation Clause of the Home Rule Amendments requires that any act passed by the General Assembly that is "private or local in form or effect" and applies to a particular county or municipality either in its governmental or propriety capacity is void unless, by its terms, requires local approval. *See* Tenn. Const. art. XI, § 9, cl 2 (". . . 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."). The Tennessee Supreme Court has held that this provision lends itself to three requirements for when a particular law must obtain local approval: "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." *Tenn. Dep't of Educ.*, 645 S.W.3d at 150. The Act includes no provision requiring local approval. *See* 2023 Tenn. Laws Pub. Ch. 488. Metro and Defendants disagree as to all three requirements; we address each in turn.

1. *Local in Form or Effect*

> 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.

Farris v. Blanton, 528 S.W.2d 549, 551 (Tenn. 1975) (emphasis added). "Within the framework of the test . . . we must determine whether this legislation was designed to apply to any other county in Tennessee, for if it is potentially applicable throughout the state it is not local in effect even though at the time of its passage it might have applied to [one county] only." *Id.* at 552. In *Farris*, for example, the challenged statute provided for run-off elections in all counties with a mayor as a head of the county's executive branch. *Id.* at 550. Shelby County, through a private act of the General Assembly, was the only county with such a government. *Id.* at 552. Absent further legislation from the General Assembly, no county other than Shelby could have such a government, and the Supreme Court would not speculate on such legislative action. *Id.* Thus, the Court deemed the challenged statute applicable only to Shelby County. *Id.* at 555.

In *Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 725 (Tenn. 1991), the 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 omitted). 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)). Those enabling provisions for the formation of a metropolitan government remain open and available. *See* Tenn. Code Ann. §§ 7-1-101, *et seq.*

But the principle that the statute is "potentially applicable" is not unlimited. The United States District Court of the Western District of Tennessee struck down a statute that, theoretically, was potentially applicable to additional counties but nevertheless "establishe[d] a series of conditions that ha[d] no reasonable application, present or potential, to any other county." *Bd. of Educ. of Shelby Cnty. v. Memphis City Bd. of Educ.*, 911 F. Supp. 2d 631, 660 (W.D. Tenn. 2012). The District Court explained the legislation "establishe[d] three separate but necessary criteria for the creation of municipal school districts. Population is only one criterion; it is not the focus of

the classification created by the Tennessee General Assembly." *Id.* at 657. "The Court must address [the statute] in its entirety, applying reasonable, rational, and pragmatic rules of construction to determine its potential application to counties other than Shelby." *Id.* Indeed, we are instructed to look at substance over form in determining whether the challenged statute is local in form and effect. *Id.* at 652; *Farris*, 528 S.W.2d at 551. This review may include a consideration of legislative history, but the Court affords such history only limited weight—particularly stray comments by legislators that cannot be attributed to the entire body—with a presumption of good faith intentions. *Bd. of Educ. of Shelby Cnty.*, 911 F.Supp.2d at 653, 660; *Farris*, 528 S.W.2d at 555–56. Our task is to resolve whether the law actually is or was designed to be limited locally, and could not potentially be applicable to other localities or throughout the state. *Burson*, 816 S.W.2d at 729 (quoting *Farris*, 528 S.W.2d at 552)). And in doing so,

> "[w]e close our eyes to realities if we do not see in [the statute] the marks of legislation that is special and local in terms and in effect." [The statute] was tailored to address unique circumstances that had arisen in Shelby County. The conditions to which it applies are "so unusual and particular [and] precisely fitted" to Shelby County, that "only by a most singular coincidence could [it] be fitted to any other [county]."

Bd. of Educ. of Shelby Cnty., 911 F.Supp.2d at 660 (quoting *In re Elem St.*, 158 N. 24, 26 (N.Y. 1927)); *see also Metro. Gov't of Nashville & Davidson Cnty. v. Lee*, No. 23-0670-I, Mem. & Final Order on Cross-Mots. for Summ. J., at *10–13 (Tenn. Ch. Ct., Davidson Cnty. Sep. 21, 2023) (noting that, while applicability to other counties was "theoretically possible," it was "not reasonable, rational, or pragmatic" and fell short of satisfying "the Local Legislation Clause").

Here, we conclude likewise. First, the timeframe provided in Section 2(1)(C), when read in conjunction with the limitations of Section 2(1)(A), establishes a closed class of counties that encompasses only Davidson County and Shelby County.[9] Only Davidson County presently

[9] The potential applicability of the Act to Shelby County is dubious at best, as we discuss below.

satisfies all the criteria. And other than Davidson, only Shelby satisfies the population requirement in a federal census prior to the dates provided in Section 2(1)(C). Thus, no other county in Tennessee, even if it consolidates into a metropolitan form of government, could come within the purview of the Act until the release of the 2030 federal census. Section 2(1)(C), however, provides for the terms of the newly appointed board members to "expire on June 30, 2025," "June 30, 2026," "June 30, 2027," and "June 30, 2028." 2023 Pub. Acts ch. 488, § 2(1)(C). Section 2(1)(C) therefore could never apply to any county besides Davidson or Shelby. A statute is not applicable or potentially applicable statewide simply because it applies or could apply to more than one county. The question is whether the Act applies to a class that remains open to encompass additional counties. *See Doyle*, 471 S.W.2d 371 at 373 ("This Act is not in its purport nor in its substance 'private or local in form or effect' and in addition it is quite apparent that this Act applies throughout the State to all those who desire to come within its purview. 'It is a general rule that "a statute which relates to persons or things as a class, is a general law, while a statute which relates to particular persons or things of a class is special."'"). And the class here encompassed by Section 2(1)(C) is closed to all but Davidson and, should it desire rather soon to be included, Shelby County. Section 2(1)(C) is consequently local in form or effect. *See Farris*, 528 S.W.2d at 552.

Second, the layering of two criteria to exclude counties besides Davidson County distinguishes the Act from the statute at issue in *Burson*. While it is true "that enabling provisions for the creation of metropolitan government [remain] extant and potentially available to all counties statewide," *Burson*, 816 S.W.2d at 729, the additional criterion for applicability of population renders such application only "theoretically . . . possible." *Bd. of Educ. of Shelby Cnty.*, 911 F. Supp. 3d at 652 (quoting *Farris*, 528 S.W.2d at 552). A theoretical application does not satisfy Article XI, Section 9. Examining multiple statutory hurdles that render the Act inapplicable

to all but one county in light of statements made by the sponsors of the Act about that same county leads to the Court to the inescapable conclusion that the Act is—and was intended to be—applicable to Metro alone. Accordingly, we conclude that Section 2 of the Act is local in form or effect.

2. *Applicable to Metro*

Next, we examine whether the Act is actually applicable to Metro. The Supreme Court has interpreted "applicable to a particular county or municipality" to mean that the statute must govern or regulate that entity. *Metro. Gov't of Nashville & Davidson Cnty.*, 645 S.W.3d at 151–52. The Court explained further that this means "to adjust by rule or method, to direct, to rule, to govern, to methodize, to arrange. Every element of this definition involves restraint, *the exercise of a power over a thing by which its activities are ruled or adjusted, or directed to certain ends*." *Id.* at 152 (quoting *State ex rel. Saperstein v. Bass*, 152 S.W.2d 236, 238 (Tenn. 1941)) (emphasis in original). In that case the Court determined the challenged statute governed local education agencies rather than the plaintiff local governments because it assigned responsibilities to the agencies rather than the local governments. *Id.* at 152–53. The Court rejected the argument that the agencies were so closely intertwined with their respective governments that they were one and the same. *Id.* at 153. Their financial connections were not enough to hold otherwise. *Id.* at 154.

Here, however, the Court notes the Act eliminates Metro's appointment authority as it was constituted under the Original Act and replaces it with a direct appointment authority for two of the new Board's eight members invested in the office of Metro's mayor. In addition to reducing the Metro Mayor's role to appointing only two of the commissioners, this change strips Metro Council's role entirely. Previously for Metro—and as is still the case for other creating municipalities—appointments to the authority's "board of commissioners" were "approved by [the

creating municipality's] governing body." *See* Tenn. Code Ann. § 42-4-105(a)(1)(A); *supra* notes 5–6. Such approval is no longer required. *See* 2023 Pub. Acts ch. 488, § 2. Further still, as once again previously was the case for Metro and still is for other creating municipalities,

> [a] commissioner may be removed from office by a two-thirds (2/3) vote of the governing body of the creating municipality, but only after notice of the cause of such removal has been served upon the commissioner, and only after the commissioner has been granted an opportunity for a public hearing on the cause.

Tenn. Code Ann. § 42-4-105(d)(4). The Act, however, provides an alternate scheme for a creating municipality that meets the exclusionary criteria already discussed, i.e., Metro:

> (1) Notwithstanding this section to the contrary:
>
> . . .
>
> (G) A commissioner:
>
> . . .
>
> (ii) *May be removed by the commissioner's appointing authority with or without cause.* A vacancy created by the removal of a commissioner is filled by the appointing authority in the same manner as the original appointment;

2023 Pub. Acts ch. 488, § 2(1)(G) (emphasis added). Unlike the statute before the Tennessee Supreme Court in *Tennessee Department of Education*, 645 S.W.3d 141, the Act not only eliminates Metro Council's responsibilities as to MNAA but also reassigns a reduced portion of Metro's prior appointment authority for the reconstituted body to the Metro Mayor. Both in a negative sense—removing appointment authority for most of the commissioners from the Metro Mayor and approval and removal authority from Metro Council entirely—and in a positive sense—providing the reduced appointment authority to the Metro Mayor—the Act governs or regulates Metro. We therefore conclude the Act is applicable to Metro.

3. *Governmental or Proprietary Capacity*

Defendants dispute that the Act applies to Metro in its governmental or proprietary capacity because the Act governs MNAA and *its* governmental capacity not Metro. For the same reasons

we concluded that the Act applies to Metro itself and not just MNAA, we are unpersuaded by Defendants' argument. Metro exercised its governmental authority in establishing MNAA as its instrumentality. It continued to do so in appointing members to the old Board. By stripping Metro of that appointment power, the Act applies to Metro in its governmental or proprietary capacity.

Having concluded that Section 2 of the Act satisfies all three requirements of the Local Legislation Clause and that it does not provide for local approval, the Court must further conclude that Section 2 is unconstitutional. With respect to this section, Metro's Motion for Summary Judgment is **GRANTED**, and Defendants' Motion for Summary Judgment is **DENIED**.

B. Anti-Ripper Bill Clause

Ripper bills target particular local offices by altering their existing salaries, shortening their terms, or removing incumbents from office. *See Frazer v. Carr*, 360 S.W.2d 449, 456 (Tenn. 1962)); *Metro. Gov't of Nashville & Davidson Cnty. v. Bill Lee*, No. 23-0336-I, Mem. & Order on Pls.' Mots. For Temp. Inj., at * 17 (Tenn. Ch. Ct., Davidson Cnty. Apr. 10, 2023) ("In light of the history of this amendment, the Court finds that the prohibitions against 'abridging the term' or 'altering the salary' are directed toward cutting or diminishing an incumbent's term of office or salary . . . ."); 1953 Journal, at 1113. The Tennessee Constitution expressly prohibits such bills in the Home Rule Amendment: "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 . . . ." Tenn. Const. art. XI, § 9, ¶ 2. The parties do not contest the removal of the old commissioners from office but whether (i) Metro has standing to bring an anti-ripper bill claim, (ii) a commissioner is a municipal or county office, and (iii) the Act is a special, local, or private act.

1. *Standing*

Defendants first argue that Metro lacks standing to bring its anti-ripper bill claim because the officers in question—the commissioners of the old Board—are officers of MNAA rather than Metro. This is one of the substantive issues of Metro's claim, requiring the Court to examine the merits of the claim to resolve whether Metro has standing.

2. *Officers of Metro*

When a position is "appointed or elected in a manner prescribed by law, . . . has a designation or title given to him by law, and . . . exercises the functions concerning the public assigned to him by law," that individual is considered a public official under Tennessee law. *Gamblin v. Town of Bruceton*, 803 S.W.2d 690, 692–93 (Tenn. Ct. App. 1990) (quoting *Sitton v. Fulton*, 566 S.W.2d 887 (Tenn. Ct. App. 1978) (quoting in turn 67 C.J.S. *Officers* § 2)). The commissioners of the old board were appointed and carried out their authority in the manner prescribed by the Original Act. Thus, the commissioners are officers of MNAA. The Court must determine, however, whether it follows that those commissioners were therefore also officers *of Metro*.

The parties do not dispute that the Act abridges the terms of the old Board. *See* 2023 Pub. Acts ch. 488, §§ 2(1)(A), 11. The Tennessee Constitution does not define "municipal or county office." *See* Tenn. Const. art. XI, § 9. Metro points to the Original Act's express declaration that metropolitan airport authorities act as "agencies and instrumentalities of the creating and participating municipalities." Tenn. Code Ann. § 42-4-402(a). Thus Metro argues that, because MNAA is an agent and instrumentality of Metro, MNAA's officers are Metro officers.

Defendants, however, emphasize that MNAA and Metro are distinct legal and political entities. *See Metro. Gov't of Nashville & Davidson Cnty. v. Metro. Employees Ben. Bd.*, No.

M2006-00720-COA-R3-CV, 2007 WL 1805151, at *8 (Tenn. Ct. App. June 22, 2007) (discussing, in the context of a benefits statute, that "the MNAA was a separate political subdivision of the State of Tennessee: it was a political entity independent of Metro Nashville and was empowered to establish its own fire and police departments."); *City of Memphis v. Civ. Serv. Comm'n*, No. No. W2003-02799-COA-R3-CV, 2004 WL 3021120 (Tenn. Ct. App. Dec. 29, 2004) (citing Tenn. Code Ann. §§ 42-4-102, -104(c)(2), (d)(1), -107(2)–(4), (8), -108, -109(a)(1) (2003)) (holding that "the Airport Authority, once created, constitutes a separate and distinct entity"). Officers of one entity, argue Defendants, are not necessarily officers of the other. *See Chattanooga-Hamilton Cnty. Hosp. Auth. v. City of Chattanooga*, 580 S.W.2d 322, 328–29 (Tenn. 1979) (citing *Williams v. Cothron*, 288 S.W.2d 698 (1956)) (holding the hospital authority was a "public instrumentality acting on behalf of the County" and "the office of trustee of the Hospital Authority [wa]s not a county office . . . , but rather an office of an independent governmental entity."). Even if MNAA is an agent and instrumentality of Metro, Defendants continue, it does not follow that MNAA officers are Metro officers. Defendants thus urge the Court conclude the Act does not rip *Metro* officers from office and therefore Metro lacks standing to bring its anti-ripper claim, and, even if it had standing, the Act does not constitute a ripper bill for the same reason.

MNAA's status as an independent entity, Metro insists, has no bearing on whether MNAA's officers are also officers of Metro. And MNAA officers, Metro argues, continue to be public county officers, i.e., Metro officers. Metro points to county school boards as an example, noting that similar to metropolitan airport authorities, county school boards also may sue and be sued, may enter into contracts and lease their properties, etc. *See* Tenn. Code Ann. §§ 49-2-203(b)(4)(B), (10), (d)(1)(A); *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, No. M2014-02269-COA-R3-CV, 2015 WL 6550563, at *4 (Tenn. Ct. App. Oct. 28, 2015). Tennessee recognizes

county school board members as public officers of the county despite the legal distinction between the school board and the county government. *See Reed v. Rhea Cnty.*, 225 S.W.2d 49, 50 (Tenn. 1949) ("A County Board of Education 'is a part of the state's educational system' and is 'endowed with county . . . functions.' The county's operation and maintenance of its schools is through the agency of a County Board of Education. 'The operation of the public school system is undoubtedly a governmental function.' It follows that a County Board of Education is a county government entity exercising a governmental function in the operation and maintenance of the schools of the County."); *State ex rel. Boles v. Groce*, 280 S.W. 27, 28 (Tenn. 1926) (citing *State ex rel. Milligan v. Jones*, 224 S.W. 1041 (Tenn. 1920)) ("It will thus be seen that the supervision and control of the schools of the county, the employment of teachers, the fixing of salaries, erecting of buildings, etc., is entirely taken from the county court and vested in the county board of education. The members of this board are county officers.").

Notably, none of these cases deal with whether the officers of a county instrumentality are officers of that county under Article XI, Section 9. *See Chattanooga-Hamilton Cnty. Hosp. Auth.*, 580 S.W.2d at 329 (deciding in the context of Article XI, Section 17); *Groce*, 280 S.W. at 28 (predating the Home Rule Amendments); *Reed*, 225 S.W.2d at 50 (predating the Home Rule Amendments); *Jones*, 224 S.W. at 1042 (predating the Home Rule Amendments). We are nevertheless inclined to conclude that the commissioners of the old Board were Metro officers. MNAA carries out public, governmental functions on behalf of Metro as its instrumentality. Those commissioners were appointed by the chief executive of Metro, and they were approved, and subject to removal, by the legislative body of Metro. Accordingly, we hold that the commissioners of MNAA's old Board were officers of Metro. And consequently, Metro has standing to bring its anti-ripper bill claim.

3. *Special, Local, or Private Act*

Having already held that the Act is local in effect, *see supra* Analysis § I.A.1, the Court finds this element of Metro's anti-ripper bill claim satisfied.

Having found that the Act is a local act that prematurely removes county officers from their offices, the Court holds in the alternative that Section 2 of the Act violates the Anti-Ripper Bill Clause of Article XI, Section 9 of the Tennessee Constitution.

II. Equal Protection Guarantee

We now turn to Metro's equal protection challenge against the Act. Beyond its argument that all the sections of the Act are inextricably intertwined and must be struck down together, Metro does not challenge Sections 1, 3, or 5 of the Act. Therefore, Sections 2, 4, 6, 7, 8, and 9 are all before the Court as pertains to Metro's equal protection claim.

Equal protection of the laws of Tennessee is guaranteed by Article I, Section 8 and Article XI, Section 8 of our state Constitution. *McClay v. Airport Mgmt. Servs., LLC*, 596 S.W.3d 686, 695 (Tenn. 2020). Together, these two constitutional provisions confer "essentially the same protection" as the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Gallaher v. Elam*, 104 S.W.3d 455, 460 (Tenn. 2003) (citing *State v. Tester*, 879 S.W.3d 823, 827 (Tenn. 1994)). Thus, in Tennessee "all persons similarly circumstanced shall be treated alike." *Doe v. Norris*, 751 S.W.2d 834, 841 (Tenn. 1988) (quoting F.*S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)) (citing *Plyler v. Doe*, 457 U.S. 202 (1982); *State ex rel. Dep't of Social Servs. v. Wright*, 736 S.W.2d 84 (Tenn. 1987)). Tennessee courts have "followed the framework developed by the United States Supreme Court for analyzing equal protection claims." *Newton v. Cox*, 878 S.W.2d 105, 109 (Tenn. 1994) (citing *Tenn. Small School Sys. v. McWherter*, 851 S.W.2d 139, 152–54 (Tenn. 1993)). That framework involves three standards of

scrutiny: strict scrutiny, heightened scrutiny, and reduced scrutiny. *Hughes v. Tenn. Bd. of Probation & Parole*, 514 S.W.3d 707, 715 (Tenn. 2017) (citing *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994)). And when applying reduced scrutiny, or rational basis review,[10]

> state legislatures have the initial discretion to determine what is "different" and what is "the same" and that they are given considerable latitude in making those determinations. Our inquiry into legislative choice usually is limited to whether the challenged classifications have a reasonable relationship to a legitimate state interest.

Gallaher, 104 S.W.3d at 461 (citations omitted). But "[it] is not necessary that the reasons for the classification appear in the face of the legislation." *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439, 442 (1978) (citing *State ex rel. Melton v. Nolan*, 30 S.W.2d 601 (Tenn. 1930)); *see also Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992) ("To be sure, the Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification."). "If any possible reason can be conceived to justify the classification, it will be upheld and deemed reasonable." *Stalcup*, 577 S.W.2d at 442 (citing *Stratton v. Morris*, 15 S.W. 87 (Tenn. 1890)); *see also Nordlinger*, 505 U.S. at 15 (requiring a purported purpose to be "conceivably or 'may reasonably have been the purpose and policy' of the relevant governmental decisionmaker").

The Court then must here inquire whether each of the challenged sections of the Act make classifications that subject Metro "to the burden of certain disabilities, duties, or obligations, not imposed upon the community at large." *Burson*, 816 S.W.2d at 731 (quoting *The Stratton Claimants v. The Morris Claimants*, 15 S.W. 87, 92 (Tenn. 1891)). And if so, whether that classification is reasonable. *Id.* First, however, we address Defendants challenge to Metro on the basis of standing.

[10] Neither Metro nor Defendants suggest strict or heightened scrutiny would apply in this case.

A. Standing

Defendants first argue Metro lacks standing to bring its equal protection claim against the Act because local government entities do not have constitutional rights under the Fourteenth Amendment. *See City of Newark v. New Jersey*, 262 U.S. 192, 196 (1923) ("The regulation of municipalities is a matter peculiarly within the domain of the state. . . . The city cannot invoke the protection of the Fourteenth Amendment against the state."); *see also Greater Heights Academy v. Zelman*, 522 F.3d 678 (6th Cir. 2008) (citations omitted) ("It is well established that political subdivisions cannot sue the state of which they are part under the United States Constitution."). Metro brings this action under not the United States Constitution, however, but the Tennessee Constitution. And while our state Constitution may confer "essentially the same protection" as the United States Constitution, *Gallaher*, 104 S.W.3d at 460, the unique history and language of our equal protection provisions have led to a more expansive view as to upon whom that protection is bestowed. *See Burson*, 816 S.W.2d at 731 (citing *White v. Davidson Cnty.*, 360 S.W.2d 15, 19 (Tenn. 1962)). ("Moreover, the provisions of Article I, Section 8, protect cities and counties as well as individuals."). Thus, Metro may clearly assert an equal protection claim under the Tennessee Constitution.

Defendants additionally argue Metro lacks standing because it is asserting the rights of MNAA rather than its own rights. MNAA is an agency and instrumentality of Metro under the Original Act. *See* Tenn. Code Ann. § 42-4-102(a) ("It is declared that airport authorities created pursuant to this chapter shall be public and governmental bodies acting as agencies and instrumentalities of the creating and participating municipalities . . . ."). For purposes of standing, an agency is part of its creating government. *See Biden v. Nebraska*, 143 S. Ct. 2355, 2366–67 (2023) (citations omitted) ("The plan's harm to MOHELA is also a harm to Missouri. MOHELA

is a 'public instrumentality' of the State. . . . The Secretary and the dissent assert that MOHELA's injuries should not count as Missouri's because MOHELA, as a public corporation, has a legal personality separate from the State. Every government corporation has such a distinct personality; it is a corporation, after all, 'with the powers to hold and sell property and to sue and be sued.' Yet such an instrumentality—created and operated to fulfill a public function—nonetheless remains '(for many purposes at least) part of the Government itself.'").

Aside from MNAA's status as an instrumentality, however, the Court finds the Act gives rise to standing for Metro in a number of other ways. First, as discussed above, Section 2 of the Act directly regulates the conduct of Metro in its removal of the Metro Council's role in commissioner approval and removal and the reduction of the Metro Mayor's role. *See supra* Analysis § I.A.2. Section 2 would also effectively remove MNAA as an instrumentality of Metro by handing appointment authority of the majority of the new Board to Defendants. Additionally, Sections 6 through 9 of Act confer substantial power upon MNAA by granting it the authority to exercise eminent domain within Davidson County and giving it extensive authority over zoning within Davidson County. Further, Section 7 impedes Metro's authority over streets and rights of way by vesting the same authority in MNAA.

Accordingly, the Court concludes Metro has standing to assert its equal protection claim.

B. Rational Basis Review

Metro asserts the Act violates the Tennessee guarantee of equal protection because it treats MNAA differently from similarly situated airport authorities. Every other airport authority in the state has its commissioners appointed by its creating municipality or county. Memphis and Shelby County, Knoxville and Knox County, and Chattanooga and Hamilton County all have airport authorities similar to MNAA. Yet only the governance of MNAA is altered by the Act. The

question turns to whether the General Assembly had a rational basis for its statutory classification—i.e., whether the classification has a reasonable relationship to a legitimate state interest. *Gallaher*, 104 S.W.3d at 46. This burden is not heavy, but the classification cannot be arbitrary. *See id.* (citing *State v. Robinson*, 29 S.W.3d 476, 480 (Tenn. 2000)) ("State legislatures have the initial discretion to determine what is 'different' and what is 'the same' and that they are given considerable latitude in making those determinations."); *Tester*, 879 S.W.2d at 829 (quoting *State v. Nashville, C. & St. L. Ry. Co.*, 135 S.W. 773, 775–76 (Tenn. 1911)) (alteration in original) ("[T]he classification must not be mere arbitrary selection.").

1. *Section 2*

As discussed above, Section 2 of the Act replaced—"in a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2020 federal census or a subsequent federal census," i.e., Metro—the old Board with the new Board "consist[ing] of eight (8) commissioners." 2023 Pub. Acts ch. 488, § 2(1)(A). The Speaker of the Tennessee House of Representatives, the Speaker of the Tennessee Senate, the Governor, and the Metro Mayor each appoint two of those commissioners. *Id.*

As also discussed above in the standing context, Section 2 removes substantial appointment authority from Metro and also vests that authority elsewhere. *See supra* Analysis § II.A. The Court must then determine whether the population and form-of-government criteria that single out Metro have a reasonable basis for infringing upon its authority. Metro asserts that no such basis exists for the classification beyond an impermissible targeting of Nashville and Davidson County. Defendants contend the Act is intended, in part, to recognize BNA's flagship status and support its continued success. Defendants also claim the legislature wanted to ensure that MNAA was accountable to more than just the residents of Davidson County. Defendants argue these rationales

are present in the language of the Act. We disagree. These bases do little more than confirm that Metro was singled out. Such explanations are unreasonable when the world's busiest cargo airport is excluded. Indeed, the qualifying criteria and the legislative history demonstrate rather that the Act is solely about Metro. Highlighting the point, counsel for Defendants, when asked at the hearing on the instant motions what would happen if the qualifying criteria were struck from each provision, made clear that other metropolitan airport authorities acquiring these enhanced powers would be an undesirable outcome. The sponsors of the legislation specifically refer to Metro and MNAA rather than a category of airports or airport authorities, and we are unable to discern another legislative purpose from the Act. Nothing in the record points to a reasonable basis for this classification. And the Court recognizes such basis need not be in the record. But we must be able to discern some sort logical nexus between the statute—in its, preferably, language or in its history—and the rationale for the classification. The offered bases are inconsistent with the statutory language and the legislative history, and so the Court cannot rely upon them. Nor will we speculate further on post hoc rationalizations.

Accordingly, the Court holds in the alternative that Section 2 of the Act violates the Equal Protection Guarantee of the Tennessee Constitution. With respect to this section, Metro's Motion for Summary Judgment is **GRANTED**, and Defendants' Motion for Summary Judgment is **GRANTED**.

2. *Section 4*

> SECTION 4. Tennessee Code Annotated, Section 42–4–106(b), is amended by deleting the subsection and substituting instead the following:
>
> << TN ST § 42–4–106 >>
>
> (b) The president shall appoint, and the board shall confirm, the following additional officers: secretary, auditor, legal counsel, treasurer, and chief engineer. Notwithstanding this section to the contrary, for a board of commissioners of the authority in a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2020 federal census

> or a subsequent federal census, the president shall appoint, and the board shall confirm, an independent financial auditing firm and the following additional officers: secretary, chief financial officer, general counsel, and chief operating officer.

2023 Pub. Acts ch. 488, § 4. In short, Section 4 requires airport authorities in the qualifying counties to appoint a different set of officers including an independent financial auditing firm. The Court need not reach a determination on whether the classification is reasonable in this instance because, as MNAA argues, there is no disability or obligation placed upon Metro itself. Accordingly, we conclude Metro cannot state an equal protection claim as to Section 4. With respect to this section, Metro's Motion for Summary Judgment is **DENIED**, and MNAA's and Defendants' Motions for Summary Judgment are **GRANTED**.

3. *Sections 6, 7, 8, and 9*

> SECTION 6. Tennessee Code Annotated, Section 42–4–107(3), is amended by deleting the subdivision and substituting instead the following:
>
> << TN ST § 42–4–107 >>
>
> (3) Acquire real or personal property or an interest in real or personal property by gift, lease, or purchase, or for an authority in a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2020 federal census or a subsequent federal census, by eminent domain proceedings, for any of the purposes provided by this chapter, including the elimination, prevention, or marking of airport hazards; sell, lease, or otherwise dispose of any such property; and acquire real property or any interest in real property in areas most affected by aircraft noise for the purpose of resale or lease, subject to restrictions limiting its use to industrial or other purposes least affected by aircraft noise;

2023 Pub. Acts ch. 488, § 6. Section 6, for our purposes, grants eminent domain authority to metropolitan airport authorities in qualifying counties, i.e. Davidson County. This places a burden on those qualifying counties by bestowing an additional—and potentially conflicting—source of eminent domain authority within the county.

> SECTION 7. Tennessee Code Annotated, Section 42–4–107, is amended by adding the following as new subdivisions:
>
> << TN ST § 42–4–107 >>

> (20) Notwithstanding a general law or charter provision to the contrary, an authority in a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2020 federal census or a subsequent federal census, may regulate aircraft hazards, compatible land use, or other factors impacting the safe and efficient operation of the airport by submitting a map to the county or to an applicable contiguous county that requires the review and approval, conditional approval, or denial of building permits within the designated boundaries;
> (21) Notwithstanding a general law or charter provision to the contrary, an authority in a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2020 federal census or a subsequent federal census, may construct, authorize, widen, narrow, relocate, vacate, change in the use, accept, acquire, sell, or lease any street or other public way, ground, place or space, or public utility, whether publicly or privately owned, pursuant to an agreed upon license agreement or prescriptive or express easement, or any portion thereof; provided, that the authority owns all of the real property abutting the street or other public way, ground, place or space, or public utility, or owns all of the real property abutting the portions thereof that are to be constructed, authorized, widened, narrowed, relocated, vacated, changed in use, accepted, acquired, sold, or leased;

Id. § 7. Thus, Section 7 confers ample zoning and regulatory powers on the metropolitan airport authorities in qualifying counties. As with Section 6, it places a burden on the qualifying county by elevating an agency to a competing entity in the exercise of those powers. Sections 8 and 9 are largely corollaries of Sections 6 and 7, respectively. Section 8 sets forth the process for qualifying counties to exercise the eminent domain authority conferred in Section 6. *See id.* §§ 6, 8. And Section 9 requires airport hazards to be regulated by qualifying counties pursuant to the statutory language in Section 7. *See id.* §§ 7, 9.

The Court must again determine whether the population and form-of-government criteria for qualification provided in each of these sections have a reasonable basis for infringing upon Metro's authority. Metro continues to assert that no basis exists for the classification beyond an impermissible targeting of Nashville and Davidson County. Defendants and MNAA on the other hand suggest an interest in efficiency is at least partially behind the drive of city and county governments to consolidate and that these additional powers are granted to airport authorities in

such counties because they allow the authority to act with greater efficiency. Further, according to Defendants and MNAA, the population threshold recognizes that it is those airport authorities and local governments in high-population counties that have higher demands placed upon them and would benefit from the increased efficiency. Thus, the argument goes, the qualifying criteria seeks to enhance the powers of those metropolitan airport authorities whose local governments have demonstrated their interest in increased efficiency and also have the greater demands of large populace. We are unpersuaded. An interest in efficiency does not explain why the other major airports in this state should not be given these same enhanced governmental powers. We reiterate that the qualifying criteria and the legislative history demonstrate rather that the Act is solely about Metro, and that the sponsors of the legislation specifically refer to Metro and MNAA rather than a category of airports or airport authorities. As discussed above, the Court is simply unable to discern another basis for the classification. *See supra* Analysis § II.B.2.

Accordingly, the Court concludes that the classifications made in Sections 6 through 9 have no rational basis and therefore violate the equal protection provisions of the Tennessee Constitution. With respect to these sections, Metro's Motion for Summary Judgment is **GRANTED**, and MNAA's and Defendants' Motions for Summary Judgment are **DENIED**.

III. Severability

Now remaining before the Court is Section 4 of the Act, as well as the other sections not directly challenged by Metro. Metro argues all sections of the Act are inextricably intertwined with those we have declared unconstitutional and therefore must also be struck down. On this subject, the Tennessee Supreme Court has explained:

> "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." Thus, once the court can appropriately elide the "objectionable features" of the statute, the remainder is "valid and enforceable."

Willeford v. Klepper, 597 S.W.3d 454, 471 (Tenn. 2020) (citations omitted). This doctrine traditionally, however, "is not favored." *Lowe's Companies, Inc. v. Cardwell*, 813 S.W.2d 428, 430 (Tenn. 1991) (quoting *Gibson Cnty. Special Sch. Dist. v. Palmer*, 691 S.W.2d 544, 551 (Tenn. 1985)). But

> . . . the General Assembly has approved the practice of elision through the enactment of a general severability statute." "[T]he legislature's endorsement of elision does not automatically make it applicable to every situation; however, when a conclusion can be reached that the legislature would have enacted the act in question with the unconstitutional portion omitted, then elision of the unconstitutional portion is appropriate."

Willeford, 597 S.W.3d at 471 (citations omitted). Additionally, the Supreme Court has held the inclusion of a severability clause within a particular statute as evidence of legislative intent that the remainder of that law continue to be enforced even if other parts are declared unconstitutional. *Cardwell*, 813 S.W.2d at 430 (quoting *Palmer*, 691 S.W.2d at 551). The valid remainder of the legislative act, however, must contain "enough of the act for a complete law capable of enforcement." *Id.*

Here, the Act contains a severability clause. 2023 Pub. Acts ch. 488, § 10. The remaining sections do not rely on the unconstitutional provisions for their application. Thus, we are inclined to, and indeed do, follow the intent expressed by the General Assembly and elide the offending provisions from the Act.

CONCLUSION

For the foregoing reasons, the Court holds that Section of the Act violates the Local Legislation Clause and the Anti-Ripper Bill Clause of Article XI, Section 9, and the Equal Protection Guarantee of Article I, Section 8, and Article XI, Section 8. The Court likewise holds

that Sections 6, 7, 8, and 9 violate the Equal Protection Guarantee of Article I, Section 8, and Article XI, Section 8. Thus, the statutory makeup of the new Board and the expansion of powers afforded MNAA are unconstitutional, we strike them from the Act.

Metro's Motion for Summary Judgment is **GRANTED** as to Sections 2, 6, 7, 8, and 9 of the Act, and Defendants' Motion for Summary Judgment is **DENIED** as to those same provisions. MNAA's Motion for Summary Judgment is likewise **DENIED** as to Sections 6, 7, 8, and 9. Metro's Motion for Summary Judgment is **DENIED** as to Section 4, and Defendants' and MNAA's Motions for Summary Judgment are **GRANTED** as to Section 4. Sections 2, 6, 7, 8, and 9 are **DECLARED** unconstitutional. Defendants are immediately **ENJOINED** from enforcing Sections 2, 6, 7, 8, and 9 of the Act. Thus, the new Board is vacated, and the old Board is reinstated without the additional powers and responsibilities contained in Sections 6, 7, 8, and 9 of the Act. Because we find the Act severable, the offending provisions are elided from the Act.

This represents a final order in this case. All other claims for relief not specifically addressed herein are hereby **DENIED**. The costs of the action are assessed against Defendants and MNAA, for which execution may issue if necessary.

It is so ORDERED.

s/ Anne C. Martin
CHANCELLOR ANNE C. MARTIN, CHIEF JUDGE

s/ Mark L. Hayes
JUDGE MARK L. HAYES

s/ Zachary R. Walden
JUDGE ZACHARY R. WALDEN

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RULE 58 CERTIFICATION

A copy of this Order has been served by U.S. Mail upon all parties or their counsel named above.

s/Megan Broadnax
Deputy Clerk & Master

10-31-23
Date