IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY et al.,

Plaintiffs,

v.

TENNESSEE DEPARTMENT OF EDUCATION et al., No. 20-0143-II

Defendants

and

NATU BAH et al.,

Intervenor-Defendants.

GREATER PRAISE CHRISTIAN ACADEMY;
SENSATIONAL ENLIGHTENMENT ACADEMY INDEPENDENT SCHOOL;
CIERA CALHOUN; ALEXANDRIA MEDLIN; AND DAVID WILSON, SR.'S
RESPONSE AND MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT I OF THE COMPLAINT

TABLE OF CONTENTS

INTRODUCTION

Plaintiffs' Motion for Summary Judgment addresses only one claim: that the Education Savings Account (ESA) Pilot Program violates the Home Rule clause of the Tennessee Constitution. The plain text of that provision dictates that its local approval requirement goes into operation only when "a particular county" is impacted by an act of the General Assembly. Because multiple counties are affected by the ESA Pilot Program, the home-rule clause has no application to this case.

SUMMARY OF ARGUMENT[1]

The Home Rule clause only prohibits legislation targeting one specific county. Specifically, it prohibits, without local approval, "any act of the General Assembly private or local in form or effect applicable to *a particular county or municipality* . . . ." Tenn. Const. Art. XI, § 9 (emphasis added).

Plaintiffs allege that the ESA Pilot Program violates the Home Rule clause because it currently affects only three school districts located in two counties. Compl. ¶¶ 175-188; Plaintiffs' Statement of Undisputed Facts No. 7. However, this provision of the constitution applies only when a legislative act affects a single ("particular") county. *See, e.g., Lawler v. McCanless*, 417 S.W.2d 548, 553 (Tenn. 1967); *Chattanooga-Hamilton Cty. Hosp. Auth. v. Chattanooga*, 580 S.W.2d 322, 328 (Tenn. 1979); *Farris v. Blanton*, 528 S.W.2d 549, 552 (Tenn. 1975); *First Util. Dist. v. Clark*, 834 S.W.2d 283, 287 (Tenn. 1992).

A law that applies to multiple counties, even if small in number, does not violate the

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[1] This Summary of Argument is adapted from the March 9, 2020 Greater Praise Intervenor-Defendants' Motion to Dismiss under Rule 12.02(8) and Rule 12.02(6) at Page 7, Section II, first three paragraphs.

Home Rule clause. *See Bozeman v. Barker*, 571 S.W.2d 279 (Tenn. 1978) (two counties); *Civil Serv. Merit Bd. v. Burson*, 816 S.W.2d 725, 730 (Tenn. 1991) (three counties); *Frazer v. Carr*, 360 S.W.2d 449 (Tenn. 1962) (four counties).

ARGUMENT

I. The Home Rule clause only prohibits legislation targeting one specific county.

A. The text of the Home Rule clause is clear that it applies to laws affecting one county, and the text of the ESA Pilot Program is clear that it applies to three school districts located in two counties.

The Home Rule clause of the Tennessee Constitution reads in its entirety 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 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 (emphasis added).

This is one of two legal provisions at the core of this motion. The other is the ESA Pilot Program, itself, which is established for a student if he or she:

> (i) Is zoned to attend a school in an LEA, excluding the achievement school district (ASD), with ten (10) or more schools:
> (a) Identified as priority schools in 2015, as defined by the state's accountability system pursuant to § 49-1-602;
> (b) Among the bottom ten percent (10%) of schools, as identified by the department in 2017 in accordance with § 49-1-602(b)(3); and
> (c) Identified as priority schools in 2018, as defined by the state's accountability system pursuant to § 49-1-602; or
> (ii) Is zoned to attend a school that is in the ASD on May 24, 2019;

Tenn. Code Ann. § 49-6-2602(3)(C). It is undisputed that, by the terms of the ESA Pilot Program, it will be established for initial evaluation in three school districts: Shelby County

Schools, Metropolitan Nashville Public Schools, and the Achievement School District. As of the enactment date of the ESA Pilot Program on May 24, 2019, all three of those school districts operate schools located in two counties: Shelby County and Davidson County. Plaintiffs' Statement of Undisputed Material Facts No. 7.

B. When the language of the law is clear, Tennessee courts apply its plain meaning.

"The interpretation of a constitutional provision should begin with its text." *Planned Parenthood v. Sundquist*, No. 01A01-9601-CV-00052, 1998 Tenn. App. LEXIS 562, at *62 (Tenn. Ct. App. Aug. 12, 1998), attached as Exhibit A. When the language of the constitution is plain, the judge's task is at an end: "The Court, in construing the Constitution must give effect to the intent of the people that are adopting it, as found in the instrument itself, and it will be presumed that the language thereof has been employed with sufficient precision to convey such intent; and where such presumption prevails nothing remains except to enforce such intent." *Shelby Cty. v. Hale*, 292 S.W.2d 745, 748 (Tenn. 1956).

Similarly, the courts of Tennessee follow this same principle when construing contracts, *Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tenn., Inc*., 566 S.W.3d 671, 676 (Tenn. 2019), statutes, *Thurmond v. Mid-Cumberland Infectious Disease Consultants*, 433 S.W.3d 512, 517 (Tenn. 2014), and rules, *Fair v. Cochran*, 418 S.W.3d 542, 544 (Tenn. 2013). The plain-meaning rule applies in all these circumstances because the subject under examination is a legal text; the type of legal text does not matter to the method employed in reading it. Antonin Scalia, *A Matter of Interpretation, Federal Courts and the Law* (Princeton Univ. 1997) at 38.

This plain-meaning rule is not simple pablum the court recites every time it hears a construction case; rather, the Tennessee Supreme Court has said "to follow the plain meaning" is

"the cardinal rule" of construction. *Jackson v. General Motors Corp*., 60 S.W. 3d 800, 804 (Tenn. 2001). When the "language is clear and unambiguous, we apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the [provision's] application." *State v. White*, 362 S.W.3d 559, 566 (Tenn. 2012); *accord* Opinion of Attorney General Robert E. Cooper, Jr., No. 11-45, at *3 (May 18, 2011) (same), attached as Exhibit B; Opinion of Attorney General Robert E. Cooper, Jr., No. 09-160, at *3 (Sept. 28, 2009) (same), attached as Exhibit C; Opinion of Attorney General Robert E. Cooper, Jr., No. 08-127 (July 24, 2008) (same), attached as Exhibit D. This is what Plaintiffs seek—to force an expanded interpretation that goes beyond the plain meaning of the words in their normal and accepted use to achieve the outcome their clients seek. This the Court cannot permit.

C. The plain meaning of "county" in the Home Rule clause is clearly and unambiguously singular.

The plain meaning of "a particular county" is obvious: the law must apply to one county that has been singled out, either "in form" (by name) or "in . . . effect" (by definitive reference). Tenn. Const. art. XI, § 9. The ESA Pilot Program is a definitive reference to portions of two counties by criteria rather than by name; thus, the Home Rule clause does not apply.

The constitutional provision's framers used the singular form "a particular county," and the courts are bound to respect their choice of the singular form. *See Hosp. Corp. of Am. v. Shackelford*, 1984 Tenn. App. LEXIS 2976, at *5 (Tenn. Ct. App. July 6, 1984), attached as Exhibit E ("It is also significant that the word, contract, is singular, not plural. The use of the singular form indicates that only one contract was designated rather than several."). When a text uses the singular form, single means one and only one. *Five Oaks Golf & Country Club, Inc. v. Farr*, No. M2013-01896-COA-R3-CV, 2014 Tenn. App. LEXIS 159, at *6 (Tenn. Ct. App. Mar. 20, 2014), attached as Exhibit F ("The [statutory] term 'prevailing party' is in the singular form,

indicating that there can be only one prevailing party."); *Modern Serv. Cas. Ins. Co. v. Aetna Cas. & Sur. Co*., No. 02A01-9401-CV-00006, 1994 Tenn. App. LEXIS 745, at *12 (Tenn. Ct. App. Dec. 19, 1994), attached as Exhibit G ("The singular use of the word 'policy,' especially when the statute was amended to expand its application, is indicative of the legislature's intention to confine the statute to a single auto insurance policy."); *Am. Ins. Co. v. Allison Constr. Co.*, No. 2, 1990 Tenn. App. LEXIS 914, at *9 (Tenn. Ct. App. Dec. 28, 1990), attached as Exhibit H (singular versus plural usage meaningful in contract interpretation); *accord* Tenn. Op. Att'y Gen. No. 05-004, at *3 (Jan. 5, 2005), attached as Exhibit I (use of the singular form in a statute means only one); Tenn. Op. Att'y Gen. No. 96-034, at *2-3 (Mar. 7, 1996), attached as Exhibit J (same); Tenn. Op. Att'y Gen. No. 77-110, at *1 (Apr. 7, 1977), attached as Exhibit K (same). Courts are bound to respect the singular form as the considered choice of the text's drafter(s). *See Walker v. Sunrise Pontiac-GMC Truck, Inc*., 249 S.W.3d 301, 309 (Tenn. 2008).

If the framers had intended what Plaintiffs contend, they should have written "particular counties" rather than "a particular county." *See, e.g., State v. Johnson*, 53 S.W.3d 628, 632 (Tenn. 2001) ("Significantly, the statute uses the plural 'parts' rather than the singular 'part.'"); *Harrison v. Shelby Cty. Bd. of Educ*., No. W2015-01543-COA-R3-CV, 2016 Tenn. App. LEXIS 219, at *9 (Tenn. Ct. App. Mar. 30, 2016), attached as Exhibit L (relying on the difference between singular "evaluation" and plural "evaluations" when interpreting a statute); *Fox v. Osterhout*, 03A01-9811-CV-00370, 1999 Tenn. App. LEXIS 694, at *2-3 (Tenn. Ct. App. Oct. 15, 1999), attached as Exhibit M (relying on the difference between singular "defendant" and plural "defendants" when interpreting an order); Tenn. Op. Att'y Gen. No. 17-38, at *6 (Sept. 1, 2017), attached as Exhibit N (legislative choice to use the plural rather than the singular form is assumed to be intentional and must be respected). But the framers of the constitutional text did

not use the plural form, and courts should not rewrite a text from the singular to the plural by judicial fiat. *Bates v. Dennis*, 203 S.W.2d 928, 932 (Tenn. 1946).

This plain meaning is especially obvious when the entire clause is read. The language of the Home Rule clause uses numerous singular nouns: "a particular county or municipality," "its governmental or its proprietary capacity," "the local legislative body of the county or municipality," and "the county or municipality affected." Tenn. Const. Art. XI, § 9. Not only do Plaintiffs ask this Court to change "a particular county" to "the particular counties," but they also ask it to change the constitution to read "in their governmental or proprietary capacities," "the local legislative bodies of the affected counties or municipalities" and "the counties or municipalities affected." The language of the provision, as a whole, demands only one conclusion: the plain meaning of the clause is singular.

When the singular form is clear, no further resort to legislative history or other sources of guidance is necessary. Tenn. Op. Att'y Gen. No. 15-20, at *4-5 (Mar. 13, 2015), attached as Exhibit O ("The consistent use of the singular when referring to the offense or charge to be included in a warrant leaves no ambiguity. Since there is no ambiguity, there is no need to look to rules of statutory construction."). "When statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, . . . without reference to the broader statutory intent, legislative history, or other sources." *Carter v. Bell,* 279 S.W.3d 560, 564 (Tenn. 2009). When the text is clear, "it is not permissible to resort to legislative history." Tenn. Op. Att'y Gen. No. 99-177, at *3 (Sept. 17, 1999), attached as Exhibit P.[2]

[2] The numerous pages of Plaintiffs' memorandum detailing the sausage-making of the legislative process for the ESA Pilot Program may be interesting or even sympathy-inducing, but they are irrelevant to the legal question before this Court. Also, the Court should bear in mind the inherently unreliable nature of such sources: "Relying on legislative history is a step to be taken

CONCLUSION

Count I of the Complaint should be resolved on a simple, logical syllogism. The constitutional text requires home-rule approval when a legislative enactment applies to "a particular county." "A particular county" is singular and means only one county. The ESA Pilot Program is operative in two particular counties; thus, the Home Rule clause is not applicable. Therefore, the Plaintiffs' Motion for Summary Judgment should be dismissed.

Respectfully Submitted,

/s/ Brian K. Kelsey
Brian K. Kelsey (TN B.P.R. #022874)
Bkelsey@Libertyjusticecenter.Org
Local Counsel
Daniel R. Suhr (WI Bar No. 1056658)
Dsuhr@Libertyjusticecenter.Org
Lead Counsel, Pro Hac Vice
Liberty Justice Center
190 S. Lasalle Street, Suite 1500
Chicago, Illinois 60603
Telephone: (312) 263-7668
Attorneys for Intervenor-Defendants Greater Praise Christian Academy; Sensational Enlightenment Academy Independent School; Ciera Calhoun; Alexandria Medlin; And David Wilson, Sr.

cautiously. Legislative records are not always distinguished for their candor and accuracy. . . Rather than reflecting the issues actually debated by the legislature, legislative history frequently consists of self-serving statements favorable to particular interest groups prepared and included in the legislative record solely to influence the courts' interpretation of the statute. Even the statements of sponsors during legislative debate should be evaluated cautiously." *BellSouth Telcoms. v. Greer*, 972 S.W.2d 663, 673-74 (Tenn. Ct. App. 1997).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been sent to the attorneys listed below via Davidson County Chancery Court E-filing R. 4.01 and TN S.Ct. R. 46A and via the electronic mail addresses below on this 23rd day of April, 2020.

Robert E. Cooper, Jr., Esq., Director of Law
Lora Barkenbus Fox, Esq.
Allison L. Bussell, Esq.
Department of Law of the Metropolitan Government of Nashville and Davidson County
lora.fox@nashville.gov
allison.bussell@nashville.gov
Counsel for Plaintiffs Metropolitan Government of Nashville and Davidson County and Metropolitan Nashville Board of Public Education

Marlinee C. Iverson, Esq., Shelby County Attorney
E. Lee Whitwell, Esq.
Shelby County Attorney's Office
marlinee.iverson@shelbycountytn.gov
lee.whitwell@shelbycountytn.gov
Counsel for Plaintiff Shelby County Government

Herbert H. Slatery, III, Esq., Attorney General and Reporter
Stephanie A. Bergmeyer, Esq., Senior Assistant Attorney General
Office of Tennessee Attorney General
Stephanie.Bergmeyer@ag.tn.gov
Counsel for Defendants Tennessee Department of Education; Penny Schwinn, in her official capacity as Education Commissioner for the Tennessee Department of Education; and Bill Lee, in his official capacity as Governor for the state of Tennessee, Defendants

Jason I. Coleman, Esq.
jicoleman84@gmail.com

Arif Panju, Esq.
apanju@ij.org
David Hodges, Esq.
dhodges@ij.org
Keith Neely, Esq.
kneely@ij.org
Institute for Justice
Counsel for Intervenor-Defendants Natu Bah and Builguissa Diallo

Braden H. Boucek
Beacon Center
braden@beacontn.org
Counsel for Intervenor-Defendants Bria Davis and Star Brumfield

/s/ Brian K. Kelsey
Brian K. Kelsey