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**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE**

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|---|---|---|
| **SAVE OUR FAIRGROUNDS,** | ) | |
| **NEIL CHAFFIN, DUANE DOMINY,** | ) | |
| **and RICK WILLIAMS,** | ) | |
| **Plaintiffs,** | ) | |
| | ) | |
| **v.** | ) | **No. 17-1280-III** |
| | ) | |
| **METROPOLITAN GOVERNMENT OF** | ) | |
| **NASHVILLE AND DAVIDSON COUNTY,** | ) | |
| **TENNESSEE,** | ) | |
| **Defendant.** | ) | |

**METROPOLITAN GOVERNMENT'S MOTION TO DISMISS**

The Metropolitan Government hereby files this Motion to Dismiss pursuant to TENN. R. CIV. P. 12.01(1) and (6). Grounds for this motion are:

- Plaintiffs do not have standing to challenge Fair Board decisions related to the use of the Nashville Fairgrounds property, because they have shown no particularized injury.
- Plaintiffs' claims are speculative and not ripe for review.
- There is no private right of action to enforce the Metro Charter through declaratory judgment or injunctive relief.
- The Complaint does not state a claim for mandamus or meet the requirements of a mandamus.

**FACTS**

This lawsuit is brought by Save Our Fairgrounds, Neil Chaffin, Duane Dominy and Rick Williams. Complaint, ¶¶ 1-4. According to the Complaint, Save Our Fairgrounds is a non-profit formed to promote and protect the Tennessee State Fairgrounds. *Id.*, ¶ 1. Neil Chaffin is a former member of the Fair Board. *Id.*, ¶ 2. Duane Dominy is a former Metro Councilperson and president of Save Our Fairgrounds. *Id.*, ¶ 3. Rick Williams is the Secretary of Save Our Fairgrounds. *Id.*, ¶ 4.

The Complaint alleges that the Fair Board voted to approve a lease of up to 12 acres of Fairgrounds property to the Sports Authority for a Major League Soccer stadium, and that the Fair Board will not be compensated under the terms of the lease. *Id.*, ¶ 19. The Complaint further alleges that the Fair Board voted to approve a 99-year lease of 10 acres of Fairgrounds property to a private entity for no consideration. *Id*, ¶ 20.

Finally, the Complaint alleges that the Fair Board voted to enter into a Memorandum of Understanding with the Metro Parks Department related to the construction of recreational soccer fields and a greenway on Fairgrounds property. *Id.*, ¶ 21. Metro strongly disagrees with Plaintiffs' characterization of the policy decisions made by the Fair Board, but recognizes that it cannot dispute the facts as stated in the Complaint for purposes of a motion to dismiss.[1] The Complaint corrects part of this mischaracterization by acknowledging that no MOU has been executed or approved at this time. *Id.*, ¶ 22.

Plaintiffs suggest that these decisions by the Fair Board will negatively affect the Fair Board's ability to conduct the annual State Fair. *Id.*, ¶ 26, 30-36.

## ANALYSIS

### I. THE PLAINTIFFS DO NOT HAVE STANDING TO CHALLENGE FAIR BOARD DECISIONS RELATED TO THE USE OF FAIRGROUNDS PROPERTY, WHERE THEY DEMONSTRATE NO DISTINCT INJURY.

"A declaratory judgment is not a ticket to bypass standing; standing must still be established in a declaratory judgment action." *Massengale v. City of East Ridge,* 399 S.W.3d 118, 127 (Tenn. Ct. App. 2012). To demonstrate standing as an organizational plaintiff, the organizational plaintiff must establish that:

(1) its members would otherwise have standing to sue in their own right;

[1] For example, the Complaint alleges that the Fair Board has voted to approve leases with the Sports Authority and a private party, but the only action taken by the Fair Board related to the proposed soccer stadium and private development has been the approval of a memorializing resolution.

(2) the interests it seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

*Howe v. Haslam*, No. M2013-01790-COA-R3CV, 2014 WL 5698877, at *6 (Tenn. Ct. App. Nov. 4, 2014).

Standing for individual members requires that they show the three *Lujan* factors:

> To establish standing, a party must demonstrate (1) that it sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct, and (3) that the injury is apt to be redressed by a remedy that the court is prepared to give.

*Metro. Air Research Testing Auth., Inc. v. Metro. Government*, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992) (citations omitted). Tennessee has not adopted a "public rights" exception to the requirement of standing. *Howe v. Haslam*, 2014 WL 5698877 at *7, *citing City of Chattanooga v. Davis*, 54 S.W.3d 248, 280–81 (Tenn.2001).

Being very interested in a matter is not sufficient. *State, ex rel. Deselm v. Tennessee Peace Officers Standards Comm'n*, 2008 WL 4614523, *3 (Tenn. Ct. App. Oct. 16, 2008) (affirming dismissal for lack of standing where Plaintiffs claimed that their special interest or injury was being "public spirited citizens" trying to protect local taxpayers.); *Moyers v. Sherrod* 525 S.W.2d 126, 128 (Tenn. 1975) ("Private citizens, as such, cannot maintain an action complaining of the wrongful act of public officials unless such private citizens aver special interest or a special injury not common to the public generally.").

For example, in *Coleman v. Henry* a "citizen, taxpayer and qualified voter" sought a declaratory judgment to determine the duty of a Senator's campaign manager to file a financial statement of campaign expenditures. 201 S.W.2d 686, 687 (Tenn. 1947). The Supreme Court determined that the plaintiff did not have standing to bring the suit:

> The complainant as a 'citizen, taxpayer and qualified voter' has no such special interest in the matters upon which a declaration is sought as entitled him to a declaration. The general rule is that a party having only such interest as the public

> generally has, can not maintain an action for a Declaratory Judgment... Future and contingent rights, and remote possibilities, are not properly the subject of a declaration.

*Id*. at 687 (emphasis added, citations omitted).

Importantly, the Plaintiffs cannot bypass a standing analysis by forming a "coalition," or other public-interest association. Instead, as discussed above, the group's members must show that they have standing to sue in their own right, and the Complaint must present the harm being suffered. *Howe v. Haslam,* 2014 WL 5698877 at *16 ("In the case now before us, however, neither the TEP nor the TTPC has identified any member who was in fact adversely impacted by the repeal of the 2011 amendment to the Metro Code.").

Here, Save Our Fairgrounds does not present a distinct injury. It claims only that it was formed to "promote and protect the Tennessee State Fairgrounds" and that the Fair Board's decisions negatively affect the Board's ability to conduct an annual State Fair. Complaint, ¶ 1, 33. Affinity for the Fairgrounds and the State Fair is a general sentiment that might be expressed by members of the public generally. It would be conjecture for this Court to assume that there are any other interests that rise to the level of an "injury" – and one that would be distinct to Save Our Fairgrounds members. Because the Complaint does not demonstrate how the members have standing to sue in their own right, Save Our Fairgrounds does not have standing, and its case should be dismissed.

Like Save Our Fairgrounds, the individual Plaintiffs have not demonstrated any distinct injury due to the Fair Board's possible plans for the Fairgrounds property. Being a former councilperson or a former Fair Board member does not create a distinct injury – even being a *current* legislator would not create standing:

> [W]e fail to see how the plaintiffs have alleged facts sufficient to show that they have standing to complain about the effect of the budget and revenue bills. They do not allege that they have sustained any injury not common to the "undifferentiated mass of the public." … A legislator does not have a special

standing to challenge a statute where the statute does not impede his legislative power.

*Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001).

The individual Plaintiffs may wish to maintain the Fairgrounds in a manner consistent with their interpretation of the Metro Charter, but this does not create standing; and as presented below in the third section of this Motion, there is no private right of action to enforce the Charter.

Because the Plaintiffs lack standing to bring this suit, their claims must be dismissed.

## II. PLAINTIFFS' CLAIMS ARE SPECULATIVE AND NOT RIPE FOR REVIEW.

"Tennessee's courts believe[] that 'the province of a court is to decide, not advise, and to settle rights, not to give abstract opinions.' Accordingly, they limit[] their role to deciding 'legal controversies.' A proceeding qualifies as a 'legal controversy' when the disputed issue is real and existing, and not theoretical or abstract, and when the dispute is between parties with real and adverse interests." *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County*, 301 S.W.3d 196, 203 (Tenn. 2009). "Although a showing of present injury is not required in a declaratory judgment action, a real 'case' or 'controversy' must nevertheless exist." *Thomas v. Shelby Cty.*, 416 S.W.3d 389 (Tenn. Ct. App. 2011).

Courts will not address issues that are not yet ripe for review. *City of Memphis v. Shelby Cty. Election Com'n*, 146 S.W.3d 531, 539 (Tenn. 2004). Ripeness requires a court to determine "whether the dispute has matured to the point that it warrants a judicial decision." *B & B Enters. of Wilson Cty., LLC v. City of Lebanon*, 318 S.W.3d 839, 848 (Tenn. 2010). "The central concern of the ripeness doctrine is whether the case involves uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all." *Id.* at 848 (citing *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 479–80 (1990)).

No allegation in the Complaint demonstrates that the State Fair is presently harmed by the decisions of the Fair Board related to the use of the Fairgrounds property (to the extent the

Fair Board has even made such decisions). In fact, the Complaint acknowledges that the MLS franchise is not yet a guarantee, and no MOU related to the 45 acres of the property currently used for parking has yet been executed or approved by the Fair Board. Even if the soccer and park uses are added to the Fairgrounds, there is no reason to believe that they cannot exist along with existing uses.

Nor is it settled that the State Fair will always occur in Nashville, because the Metropolitan Government's control of the State Fair has been superseded by state law through the enactment of TENN. CODE ANN. § 4-57-101, *et seq*., the "Tennessee State Fair and Exposition Act." A state law of general application preempts a local charter provision on the same subject. *Jordan v. Knox Cty.*, 213 S.W.3d 751, 782 (Tenn. 2007).

In addition, "[t]he courts must always presume that governmental officials and agencies discharge their duties in good faith, and in the manner prescribed by law," *Metro. Gov't of Davidson Cty. v. Tatum,* 2008 WL 4853073, *6 (Tenn. Ct. App. Nov. 7, 2008), so it is unreasonable to assume that the Fair Board will not abide by applicable state and local law.

In short, Plaintiffs' assertions, that leasing part of the Fairgrounds for a soccer stadium and building recreational soccer fields and a greenway path will negatively affect the Board's ability to put on a State Fair and will violate the Metro Charter, are based on speculation and "on hypothetical and contingent future events that may never occur." *West v. Schofield,* 468 S.W.3d 482, 491 (Tenn. 2015). Therefore, this case is not ripe for review and must be dismissed.

## III. THERE IS NO PRIVATE RIGHT OF ACTION TO ENFORCE THE METRO CHARTER.

Tennessee courts have consistently held that the burden of proving the existence of a private right of action is on the plaintiff. *See Premium Finance Corp. of America v. Crump Ins. Services of Memphis, Inc.,* 978 S.W.2d 91, 93 (Tenn. 1998) (affirming dismissal for failure to state a claim where insurance company failed to comply with state statute requiring it to return

certain premiums for canceled insurance and where there was no private cause of action in the statute); *Hardy v. Tournament Players Club at Southwind, Inc.*, 2017 WL 922482, at *9 (Tenn. Mar. 8, 2017) (finding no private right of action in the State's "tip" statute where an employee asserted she had been underpaid by a private dining club); *see also,* Tenn. Code Ann. § 1-3-119 (a)-(b) (Legislation must contain express language to create or confer a private right of action under a statute, and no court may construe a statute to impliedly create a private right of action in the absence of such language.).

It is irrelevant that Plaintiffs are pursuing declaratory and injunctive relief rather than damages. Tennessee courts have long held that "the Declaratory Judgment Act has not given the courts jurisdiction over any controversy that would not be within their jurisdiction if affirmative relief were being sought." *Hill v. Beeler*, 286 S.W.2d 868, 871 (Tenn. 1956). Likewise, injunctive relief is a remedy, not a cause of action in and of itself. *Goryoka v. Quicken Loan, Inc.,* 519 Fed.Appx. 926, 929 (6th Cir. 2013).

The Court of Appeals (in the context of this same Metro Charter provision) has very recently reiterated that, even when a plaintiff requests declaratory and/or injunctive relief, *a private right of action is nevertheless required to support the claim*:

> On appeal, Goodman does not analyze these factors or legal principles. Instead, he insists that "[t]here is no 'private right of action' issue in this case" to preclude the relief requested. Goodman contends that the question of whether a private right of action exists "relates solely to the issue of monetary damages." As such, Goodman claims that the trial court erred in dismissing his claims for declaratory judgment and injunctive relief (regarding the Metro Charter provision) due to the court's finding regarding the absence of a private right of action. Goodman asserts that "there is no need" for a private right of action and that the Tennessee Declaratory Judgment Act provides all the authority that is required for him to obtain the declaratory relief he sought. We disagree.
>
> Tennessee appellate courts have considered whether a private right of action existed in a number of cases seeking a declaratory judgment and/or injunctive relief… We reject Goodman's insistence that the Declaratory Judgment Act provides an independent basis for him to allege a violation of the Metro Charter regardless of any issue regarding a private right of action. "'A litigant's request for

> declaratory relief does not alter a suit's underlying nature. Declaratory judgment actions are subject to the same limitations inherent in the underlying cause of action from which the controversy arose.'" *Carter v. Slatery*, No. M2015–00554–COA–R3–CV, 2016 WL 1268110, at *6 (Tenn. Ct. App. Feb. 19, 2016), *perm. app. denied* (Tenn. Aug. 18, 2016), *cert. denied*, 137 S. Ct. 669 (2017) (quoting 26 C.J.S. *Declaratory Judgments* § 124).[7]
>
> In sum, we discern no merit in Goodman's assertion that the trial court erred in requiring a "private right of action" to support his claim for declaratory and injunctive relief regarding the Metro Charter. Because this issue is dispositive, Goodman's challenge to the trial court's alternative holding regarding the meaning of the Charter provision is pretermitted…
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> Ftnt 7: As aptly noted by the Sixth Circuit, the absence of a private right of action "stops [the] declaratory judgment action in its tracks." *Michigan Corr. Org. v. Michigan Dep't of Corr.*, 774 F.3d 895, 907 (6th Cir. 2014). "No private right of action means no underlying lawsuit" and "no declaratory relief." *Id.*

*Tennessee Firearms Ass'n v. Metro. Gov't of Nashville & Davidson Cty.*, 2017 WL 2590209, at *8–10 (Tenn. Ct. App. June 15, 2017) (emphasis added).

In determining whether a private right of action exists under a statute, "we begin by examining the language of the statute. If no cause of action is expressly granted therein, then we must determine whether such action was intended by the legislature and thus is implied in the statute. To do this, we consider whether the person asserting the cause of action is within the protection of the statute and is an intended beneficiary." *Premium Finance*, 978 S.W.2d at 93 (emphasis added).

The Metro Charter amendment at issue reads:

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

Metro Charter § 11.602(d). Because no cause of action is expressly authorized by this provision, the language must be further examined to determine whether the voters intended to imply a cause of action. *Premium Finance*, 978 S.W.2d at 93.

Generally, statutes designed to benefit the public in general do not create an implied right of action. *See Image Outdoor Advertising, Inc. v. CSX Transp., Inc.*, 2003 WL 21338700, *7 (Tenn. Ct. App. June 10, 2003) (finding no implied private right of action in the Billboard Act when the statute was designed to protect the public's interest, not that of outdoor advertising companies); *Premium Finance*, 978 S.W.2d at 94 (finding no implied private right of action in the Premium Finance Company Act, which was designed to protect the insurance-financing public).

In addition, the Metro Charter provisions may be enforced using the tools *provided in the Charter itself*, such as the Council's authority to manage each department's budget (Metro Charter § 6.06), or the remedy of ouster (Metro Charter § 15.05) – not by enforcement of the courts where no right of action exists. *Parker v. Lowery*, 2013 WL 1798958, *6 (Tenn. Ct. App. 2013) ("We also fail to see why this alleged injury [failure to renew a probationary teacher's contract or provide the teacher with a hearing] should be reviewed by this court when Director is employed by the Board and may simply be removed if he acted without authorization or encroached upon the responsibilities of the Board."); *Varner v. City of Knoxville*, 2001 WL 1560530, *3 (Tenn. Ct. App. Nov. 29, 2001) ("Courts are not 'super' legislatures. They do not decide whether a challenged legislative action is wise or unwise. It is not the role of judges to set public policy for local governments, nor do we decide if a municipality has adopted the 'best,' in our judgment, of two possible courses of action."); *Nat'l Loans, Inc. v. Tennessee Dep't of Fin. Institutions*, 1997 WL 194992, *4 (Tenn. Ct. App. Apr. 23, 1997) ("[T]he doctrine of separation of powers embodied in Tenn. Const. art. II, §§ 1 and 2 counsels the courts to proceed cautiously when asked to scrutinize enforcement or prosecution decisions by state and local officials.").

Here, the Metro Charter amendment at issue discusses the Fairgrounds property for the benefit of the public, generally, rather than these particular Plaintiffs. Further, there is no reason

to believe that the voters intended to create a private right of action when there is no mention of such an action in the amendment and when the Charter contains other non-judicial methods of enforcement. Because there is no private right of action to enforce this provision of the Metro Charter, Plaintiffs' claims should be dismissed.

## IV. THE COMPLAINT DOES NOT STATE A CLAIM FOR MANDAMUS, AND IT DOES NOT MEET THE REQUIREMENTS OF A MANDAMUS.

Mandamus is a summary remedy, extraordinary in its nature, and to be applied only when a right has been clearly established. *Peerless Constr. Co. v. Bass*, 14 S.W.2d 732, 733 (Tenn. 1929); *Jones v. Anderson*, 250 S.W.3d 894, 897 (Tenn. Ct. App. 2007).

The Tennessee Supreme Court has held that mandamus is not appropriate for doubtful obligations or actions requiring discretion:

> "It is the universally recognized rule that mandamus will only lie to enforce a ministerial act or duty and will not lie to control a legislative or discretionary duty." The distinction between ministerial duties and discretionary acts is generally
>
> > 'that, where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial, but where the act to be done involves the exercise of discretion and judgment it is not deemed merely ministerial.'"
>
> Furthermore, "'[t]he office of mandamus is to execute, not adjudicate. It does not ascertain or adjust mutual claims or rights between the parties. If the right be doubtful, it must be first established in some other form of action: mandamus will not lie to establish as well as enforce a claim of uncertain merit. It follows therefore that mandamus will not be granted where the right is doubtful.'" Nevertheless, even in those cases in which a ministerial duty may clearly be found, enforcing that duty by mandamus may not always be automatic when the consequences of enforcement would manifestly prejudice the public interest, and the court may decline to exercise its discretion upon considering all the facts and circumstances of the case. In short, "[t]he writ of mandamus will not lie to control official judgment or discretion, but it is the proper remedy where the proven facts show a clear and specific legal right to be enforced, or a duty which ought to be and can be performed, and relator has no other specific or adequate remedy."

*State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn. 1988) (emphasis added, citations omitted.)

A writ of mandamus may only be issued by a court where the plaintiff's right to the relief sought is "clearly established," the defendant has a "clear duty to perform the act" at issue, and "no other plain, adequate, and complete method of obtaining the relief" exists. *State ex rel. Metro. Gov't of Nashville & Davidson Cty. v. State*, 2017 WL 1227239, at *3 (Tenn. Ct. App. Apr. 3, 2017), appeal denied Aug. 18, 2017.

Here, Plaintiffs request a Writ of Mandamus "ordering the respondent to take verifiable steps to insure an annual State Fair can and will be held in a timely manner." Complaint, ¶ 8. The Complaint does not identify a ministerial act to be performed by the Fair Board – it does not even specify a particular action. Rather, it requests the Court entangle itself in the Metro Council and Fair Board's policy decisions in leasing the Fairgrounds property. The discretionary nature of this issue means that it is not a ministerial duty appropriate for mandamus:

> In determining whether an act is a ministerial act for which mandamus may lie, courts look to whether the law defines the duties to be performed "with such precision and certainty as to leave nothing to the exercise of discretion or judgment"….

*Jones v. Anderson*, 250 S.W.3d 894, 897 (Tenn. Ct. App. 2007) (denying mandamus to plaintiff who redeemed property sold at a tax sale and sought to compel the clerk and master to issue a deed); *Beazley v. Kennedy*, 52 S.W. 791, 793 (Tenn. Ch. App. 1899) ("[W]e take it to be equally settled that, in all matters where a discretion is lodged with the municipal authorities, that discretion will never be interfered with by the courts, and the courts will not undertake to decide those questions which the law has made it the duty of such municipal officers to decide.")

In addition, the Complaint in this case does not meet the requirements for bringing a mandamus. First, mandamus must be brought in the name of the state ("ex rel") not the individual. *Whitesides v. Stuart*, 20 S.W. 245 (Tenn. 1892). Second, a mandamus must be properly supported by a sworn petition. *Blair v. State*, 555 S.W.2d 709 (Tenn. 1977); TENN.

CODE ANN. § 29-25-101 ("[C]hancellors have power to issue writs of mandamus, upon petition or bill, supported by affidavit.") (emphasis added).

In this case the lawsuit was not brought in the name of the state – it was brought in the names of three individuals, Neil Chaffin, Duane Dominy and Rick Williams, and an organization, Save Our Fairgrounds. They are not proper parties to bring this lawsuit because these parties do not have standing and a mandamus action may only be brought in the name of the State (*e.g.*, "State ex rel."). In addition, the Complaint is not verified.

Because these requirements are not met, and because the actions Plaintiffs seek to compel are not ministerial in nature, the mandamus action should be dismissed.

## CONCLUSION

Plaintiffs' lawsuit voices their fears that additional uses that may occur at the Fairgrounds will prevent the State Fair from being held on site. However, these fears are speculative at best. And, there is no indication here that additional uses cannot co-exist.

In addition, the Plaintiffs have not met the mandatory jurisdictional prerequisites of showing standing, ripeness, and a private right of action. Nor do they state a claim for which relief can be granted. For all these reasons, the lawsuit should be dismissed.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
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**THIS MOTION IS EXPECTED TO BE HEARD ON THE 15TH DAY OF DECEMBER, 2017, AT 9:00 A.M. FAILURE TO FILE A TIMELY WRITTEN RESPONSE TO THIS MOTION MAY RESULT IN THE SAME BEING GRANTED WITHOUT FURTHER HEARING BY THE COURT.**

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing has been mailed to:

James D. R. Roberts, Jr.
Creditor Law Center
P.O. Box 331606
Nashville, TN 37203

on this 1st day of December, 2017.

*/s/ Catherine J. Pham*
Catherine J. Pham