

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

COMMITTEE TO STOP AN UNFAIR TAX,)
and EMILY EVANS, individually, and as)
chairwoman of Committee to Stop an Unfair)
Tax,)

Plaintiffs,)

vs.)

FREDDIE O’CONNELL, in his official capacity)
as Mayor of the Metropolitan Government of)
Nashville-Davidson County,)
THE METROPOLITAN GOVERNMENT)
OF NASHVILLE-DAVIDSON COUNTY and)
the DAVIDSON COUNTY ELECTION)
COMMISSION,)

Defendants.)

Case No. 24-1427-II

FINAL MEMORANDUM AND ORDER

The trial in this matter was heard before the Court on January 8, 2025. Plaintiffs Committee to Stop An Unfair Tax and Emily Evans (“Plaintiffs”) sued Mayor Freddie O’Connell, in his official capacity, and the Metropolitan Government of Nashville-Davidson County and the Davidson County Election Commission (generally “Metro”) pursuant to the Tennessee contested elections statute, Tenn. Code Ann. § 2-17-101, *et seq.* (the “Election Contest Act”), and the Declaratory Judgment Act, codified at Tenn. Code Ann. § 29-14-101, *et seq.* With this action Plaintiffs seek a finding and declaration that the November 5, 2024 referendum election approving a .5% sales tax surcharge for transportation and infrastructure projects be invalidated, and that the Court enjoin Metro from implementation of the surcharge. Metro asserts that the challenged election result was valid in all respects, and that regardless, Plaintiffs’ challenge is not a proper election contest, and that the action should be dismissed.

Both Plaintiffs and Metro had the opportunity to exchange discovery and present testimony and evidence at the trial regarding Plaintiffs' challenges to the election. The Court has considered all of the facts and evidence before it, as well as the applicable law, and is ready to rule.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs

Plaintiffs are the Committee to Stop an Unfair Tax and Emily Evans. The Committee to Stop an Unfair Tax is a single-measure committee established through the Tennessee Bureau of Ethics and Campaign Finance pursuant to an application dated July 30, 2024. (Exh. 6). The identified measure it was formed to oppose is "half percent sales tax increase for public transportation and other items." The treasurer is James Troy Brewer. (*Id.*). Emily Evans is a Davidson County citizen. It is undisputed and stipulated that Plaintiffs are appropriate parties to bring an election contest action pursuant to the Election Contest Act set out at Tenn. Code Ann. § 2-17-101, *et seq.* for Metro's referendum election.

The Election Contest Act

The Election Contest Act establishes a mechanism for challenges to election outcomes including the adoption or rejection of a question submitted to the people of the subject jurisdiction. Tenn. Code Ann. § 2-17-101(b). Declaratory and injunctive relief are the primary remedies available under that statute and appropriate for inclusion in a lawsuit such as this.

The Tennessee Court of Appeals explained the purpose of an election contest in *Barrett v. Giles County*:

Under Tennessee law, a court has the power to void an election on either of two grounds:

First, "upon a sufficient quantum of proof that fraud or illegality so permeated the election as to render it incurably uncertain, even though it can not be shown to a mathematical certainty that the result might have been

different.” *Emery v. Robertson County Election Comm'n*, 586 S.W.2d 103, 109 (Tenn. 1979); *see also State ex rel Davis v. Kivett*, 180 Tenn. 598, 177 S.W.2d 551 (1944); *Ingram v. Burnette*, 204 Tenn. 149, 316 S.W.2d 31 (1958). Secondly, where some ballots are found to be illegal, [and] the number of illegal votes cast is equal to, or exceeds the margin by which the certified candidate won. *Emery v. Robertson County Election Comm'n*, *supra*; *Hilliard v. Park*, 212 Tenn. 588, 370 S.W.2d 829 (1963).

Forbes, 816 S.W.2d at 719–20 (quoting *Millar v. Thomas*, 657 S.W.2d 750, 751 (Tenn. 1983)). Thus, the grounds for voiding an election involve (1) fraud and illegality rendering the election uncertain or (2) enough illegal ballots having been cast to call the election into doubt.

Barrett v. Giles County, No. M2010–02018–COA–R3–CV, 2011 WL 4600431, at *3 (Tenn. Ct. App. Oct. 5, 2011).

The Election Contest Act contemplates the trial including testimony taken orally or by deposition through witnesses and the submission of documentary evidence including the “official records” of the election that would vary depending upon the type of election challenged and the nature of the challenge. Tenn. Code Ann. §§ 2-17-108, -109. The Court’s responsibility is to either confirm or declare void the election or, in limited circumstances, order a recount in an appropriate election contest action. Tenn. Code Ann. §§ 2-17-112, -117.

The IMPROVE Act

In 2017, the Tennessee General Assembly passed the 2017 Tax Cut Act, or the “Improving Manufacturing, Public Roads and Opportunities for a Vibrant Economy Act,” known as the IMPROVE Act. Tenn. Code Ann. § 67-4-3201, *et seq.* (the “IMPROVE Act”). Its purpose was, in part, to “[a]llow[] local governments to increase revenue for public transit by levying surcharges on a variety of local taxes, such as the sales tax, business tax, and rental car tax, after a local referendum[.]” (Exh. 5). The IMPROVE Act sets out the requirements for local governments such as Metro to levy a surcharge for these purposes.

Under the IMPROVE Act, local governments are authorized to increase local taxes to support investment in a transit improvement program (“TIP”), which is defined as “a program consisting of specified public transit system projects and services.” Tenn. Code Ann. § 67-4-3201(5). “Public transit system” is defined as:

any mass transit system intended for shared passenger transport services to the general public, together with any building, structure, appurtenance, utility, transport support facility, transport vehicles, service vehicles, parking facility, or any other facility, structure, vehicle, or property needed to operate the transportation facility or provide connectivity for the transportation facility to any other non-mass transit system transportation infrastructure, including, but not limited to, interstates, highways, roads, streets, alleys, and sidewalks[.]

Tenn. Code Ann. § 67-4-3201(3).

Any county meeting certain population requirements, including Metro, is authorized to levy a surcharge upon adoption of a TIP. Tenn. Code Ann. §§ 67-4-3201(2) and -3202(a). Before a surcharge may be imposed, a TIP “shall be developed and adopted in accordance with [§ 67-4-3206]” and approved by a majority of voters voting in a referendum election on the surcharge. Tenn. Code Ann. §§ 67-4-3206(a) and -3202(b).

The IMPROVE Act establishes statutory criteria that must be met prior to adoption of a TIP by the local legislative body. First, there is required TIP content, including that it must “indicate and describe in reasonable detail the public transit system projects and services to be funded and implemented under the program” and include certain details related to the type and rate of the surcharge, the conditions for the surcharge’s termination, other sources of funding, cost estimates, the implementing agencies, and the geographic location of the projects. Tenn. Code Ann. §§ 67-4-3206(b), (c)(1)–(6). Second, the IMPROVE Act has procedural prerequisites that must be met before local legislative approval, including soliciting public comment and making reasonable efforts to notify or coordinate with surrounding local governments. Tenn. Code Ann. §

67-4-3206(d)(1)–(2). Finally, the IMPROVE Act requires the local government to prepare a “plan of financing” that demonstrates the proposed TIP’s “financial feasibility” and to obtain a “determination or opinion” from an independent accounting firm, whose selection is approved by the Tennessee Comptroller of the Treasury, that the local government’s assumptions provide a reasonable basis for the local government’s forecasts supporting its financial feasibility analysis. Tenn. Code Ann. § 67-4-3206(d)(3).

After these prerequisites are met, before the surcharge can be levied, the TIP must be adopted by ordinance or resolution of the local legislative body and approved by majority vote in a referendum election. Tenn. Code Ann. §§ 67-4-3206(e)(1), -3202(b). The language of the referendum must be 250 words or less, and clearly and concisely summarize the TIP with reference to the surcharge and other elements of the plan. Tenn. Code Ann. § 67-4-3202(b)(1), -3206(f). Once approved and implemented, the surcharge revenue is collected by the state Department of Revenue and remitted to the local government, which can, in turn: (a) transfer that revenue to implementing agencies to carry out the TIP; (b) pledge the revenue to the payment of bonds to finance capital investments set out in the TIP; and (c) combine the revenue with other funding generated by local, state, or federal governments from taxes, fees, or fares or with private moneys which allows private entities to participate in development of transportation facilities as part of a public-private partnership initiative pursuant to Tenn. Code Ann. §§ 54-6-101 *et seq.* Tenn. Code Ann. § 67-4-3205(b).

The IMPROVE Act requires that the tax revenue be used on costs associated with “public transit system projects” that are part of the TIP. Tenn. Code Ann. § 67-4-3205(a). If, however, any public transit project in the TIP “becomes unfeasible, impossible, or not financially viable,” surcharge revenue may be expended on a different project if it both (i) meets the statutory

requirements of a public transit system project and (ii) has been approved by both the local legislative body and the voters in a referendum. Tenn. Code Ann. §67-4-3205(c)(1).

Metro's "Choose How You Move" Transit Plan and Referendum

In early 2024, the Mayor's Office began working on a transit plan to submit to the voters for qualification under the IMPROVE Act. As part of this process, it brought on Michael Briggs, who testified at trial in this matter as the lone witness produced by either set of parties. Briggs, who was working at Vanderbilt University at the time as its Director of Transportation and Mobility, had worked for a prior mayoral administration on a transit initiative in 2018 and had deep experience in regional transportation planning. In 2024, Briggs was on the leadership team in the Mayor's Office that ultimately drafted the Choose How You Move initiative that was adopted by the Metro Council and is the subject of the challenged referendum (the "Plan").

The team working on developing a plan, including representatives of the Mayor's Office, began meeting with Metro Council members, individual residents and businesses, and community groups in February of 2024. (Exh.11). A draft of the Plan was posted on Metro's website in April of 2024, but it was not finalized and released by the Mayor's Office until June 7, 2024. (Exh. 3). Beginning on February 1, 2024, Metro tracked the data regarding these meetings including the type of meeting or session or event, the number of attendees, the meeting organizer, if the Mayor was present, and his staff leads in attendance. (Exh. 11). The data, which includes events occurring February 1 through November 3, 2024, shows: 10,178 touchpoints, 379 meetings/events, 225 sessions (transit talks), 16 bus events, 18 booth events, 11 advisory committee meetings/check ins and 38 distinct Council member listening sessions. (*Id.*). In addition, Metro operated an informational website that allowed for public questions and comments.

Briggs, who was the meeting organizer for many of the sessions Metro tracked, also testified regarding his meetings with other local governments and entities regarding the Plan. Those included the following: the Regional Transportation Authority, which has representatives from Clarksville to Murfreesboro; the Greater Nashville Regional Council, which is a regional transportation planning organization of Nashville and surrounding counties¹; Williamson, Inc. (the Williamson County chamber of commerce organization); and the WeGo Star Study, involving surrounding communities serviced by the WeGo Star. Briggs also participated in meetings with State of Tennessee representatives including Butch Eley, Deputy Governor and Commissioner of Transportation, and Governor Bill Lee. The Mayor and other city officials also attended those meetings. Briggs also personally worked with Tennessee Department of Transportation engineers regarding state highways that would be impacted by the Plan.

As part of the process Metro's Director of Finance, Kevin Crumbo, contacted the State of Tennessee Comptroller Jason Mumpower on January 23, 2024, requesting approval of Metro's Scope of Work "to review the reasonableness and financial feasibility of a future transit improvement plan". (Exh. 7). On February 8, 2024, the Comptroller provided that approval, stating "It is imperative that Metro and the successful CPA firm understand that final approval is required by the Comptroller and that once the firm is approved, the Comptroller must also approve the procedures the firm will use to evaluate the proposed financing of the transit improvement plan." (*Id.*).

On February 27, 2024, the Metro Finance Director requested approval of Metro's selection of Kraft CPAs PLLC ("Kraft") and, on March 1, 2024, the Comptroller gave that approval. (*Id.*).

¹ Sumner, Robertson, Wilson, Williamson, Cheatham and Rutherford.

In April of 2024, Metro developed the Plan of Finance for the proposed TIP, which was to provide the basis for the required financial feasibility analysis. (*Id.*).

On April 26, 2024, the Metro Finance Director requested approval of Kraft's procedures for performing this work, including Management's Assertions on behalf of Metro and a List of Planned Procedures. (*Id.*). On April 24, 2024, the Comptroller approved the selection of Kraft and the proposed procedures to be utilized with its analysis. In that approval letter, the Comptroller stated:

The Comptroller's Office has completed its initial mandates under the IMPROVE Act. It is important to note that we will not render an opinion about the financial feasibility, accuracy of development, correctness of financing plan assumptions, or the ultimate success of the transit improvement plan. We realize there are many variables associated with a project of this magnitude, and the information included in the transit improvement plan is subject to change.

(*Id.*; Exh. 2).

Kraft issued its Independent Accountant's Report on May 13, 2024. In its letter summarizing its findings, the firm stated:

We have examined management of the Metropolitan Government of Nashville and Davidson County's ("Metro Nashville") assertions related to the Plan of Finance ("Plan of Finance") for a proposed transit improvement program that demonstrates the program's financial feasibility. . . For the purposes of this report, management's assertions about the "financial feasibility" mean the transit improvement program is likely to be viable after taking into account the anticipated costs, risks, and liabilities of the transit improvement program, the anticipated revenue generated by the surcharges, federal funding, farebox collections, long-term financing, and Metro Nashville's financial position. Metro Nashville is responsible for its assertions. Management's assertions specifically relate to criteria found in Sections 67-4-3201 through 67-4-3206, *Tennessee Code Annotated*. Our responsibility is to express an opinion on management's assertions related to the Plan of Finance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the examination to obtain reasonable assurance

about whether management’s assertions related to the Plan of Finance are presented in accordance with criteria set forth in Sections 67-4-3201 through 67-4-3206, *Tennessee Code Annotated*, in all material respects. The examination involved performing procedures to obtain evidence about management’s assertions related to the Plan of Finance. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material misstatement of management’s assertions related to the Plan of Finance, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

There will usually be differences between the forecasted and actual results because events and circumstances frequently do not occur as expected, and those differences may be material.

...

In our opinion, management’s assertions related to the Plan of Finance about the methodology and assumptions used in the financial forecasts and projections supporting its analysis that the proposed transit program is financially feasible, and assertions about the amount of the transit improvement program’s infrastructure to be financed through bonds, sales tax surcharges, and other financing methods, provide a reasonable basis for Metro Nashville’s Plan of Finance and are presented in accordance with criteria set forth in Sections 67-4-3201 through 67-4-3206, *Tennessee Code Annotated*, in all material respects.

(Exh. 7).

On June 7, 2024, the Mayor’s Office issued a media release entitled “Choose How You Move ordinance, ballot language filed with Metro Council” explaining “Choose How You Move, An All-Access Pass to Sidewalks, Signals, Service, and Safety would offer dedicated funding for Nashville’s transportation system through a half cent sales tax surcharge.” (Exh. 3). The Plan is a 96-page document and also includes the 15-page Plan of Finance. (Exh. 12). In addition, there is an 8-page introductory section that includes a prominent discussion of the Plan’s relationship to the IMPROVE Act and the intention that it be a qualifying TIP. Further, that it “use[s] ‘transportation’ instead of ‘transit’ in the title to underscore the impact of the wide variety of transit related improvements slated for Nashvillians on our transportation network.” (*Id.* at pg. I). The Plan, in the introduction, also cites the IMPROVE Act’s definition of “public transit system” and

some of its legal requirements for a TIP with reference to Plan page numbers. (*Id.* at pgs. II-III). Finally, as to the introduction, the Plan sets out a timeline for steps towards obtaining the funding through the IMPROVE Act culminating in the November 5, 2024 election. (*Id.* at pg. III).

The Plan (Exh. 12) substance is broken down into sections which are described in detail as follows:

1. Sidewalks, Signals, Streets and Safety (pgs. 23-38): “The TIP’s Investment in doing the basics brilliantly – delivering safe and efficient streets and sidewalks – are the enabling infrastructure for transit improvements throughout the region and also facilitate safe walking access to transit while promoting efficient traffic management.” (Pg. 23). Briggs testified that the proposed network of new sidewalks and traffic light coordination and road improvements are along the public transit corridors, with reference to the maps included in this section of the Plan. (Pgs. 26, 28, 32 and 37).

2. All-Access Corridors (pgs. 39-44): “We call these All-Access Corridors because upgrades along these routes improve service for everyone, whether you drive, ride, walk or roll. Nashville’s most heavily-traveled routes get it all: more frequent transit service, more sidewalks, improved signals, and safer travel conditions for all users. The TIP implements dedicated transit lanes for fast, reliable, convenient service on a majority of Nashville’s business corridors. Built with the future in mind, All-Access Corridors serve today’s demand and tomorrow’s increased ridership, making moving around Nashville more convenient and affordable.” (Pg. 39). The maps and charts in this section show the referenced corridors and the length of highway/road improvements included in the Plan. (Pgs. 42-43).

3. WeGo Essentials (pgs. 45-56): “Our transportation infrastructure will be modern, clean, attractive, and perceived as a community benefit. It will be easy and safe to park your car

and hop on a bus to see a Titans game. Neighborhoods will have newly built and cleverly design [sic] transit centers and, in some instances, coupled with community parks and high-quality homes that are affordable and attractive. All of this is part of our TIP.” (Pg. 45). The section details new transit center adjacent parking spaces, bus stop improvements, new transit centers and bus garages, and more buses.

4. WeGo Service Enhancers (pgs. 57-74): “[W]e are committing significant resources to ramping up the frequency of the transit network. The TIP proposes an **80% increase in overall service hours**. . .” (Pg. 57, emphasis in original). The section details new routes and frequency of service, as well as express service to tie in future service expansions to surrounding counties in the future, as well as improvements to the WeGo Star train system.

5. Places for Everyone (pgs. 75-78): “The TIP provides an opportunity to dramatically reduce transportation costs for Nashvillians, which are a large component of cost of living here. The TIP also proposes investments that make intelligent, generational improvements not only in our transportation infrastructure, but in the neighborhoods that receive it.” (Pg. 75). This section details the inclusion of investment in land “use[d] to improve the neighborhoods around transit infrastructure” and “developed with a variety of transit-connected community needs, such as thoughtfully designed affordable housing. . .walkable to transit[.]” (Pgs. 76-77).

6. Innovation & Technology (pgs. 79-83): “We’re providing relief to our more rural residents who want and need better transit by expanding WeGo Link, Nashville’s microtransit pilot, countywide. Via a few swipes and touches on a phone, residents living in the county’s more rural areas, or just out of the way of fixed-service routes, can dial up transit service. WeGo Link helps get all our residents where they want to go, without a car and even without a local bus route.” (Pg. 79).

The Plan is concluded with a detailed implementation plan, including a description of funding sources through the IMPROVE Act (pgs. 83-94), and the Plan of Finance. The Plan of Finance includes assumptions regarding sales tax surcharge revenues, revenue bonds, federal and state grants, farebox revenue and other cash flow line items, as well as capital program and operating plan costs. (*Id.*, Tab A). It projects capital costs for 2025-2039 to be \$3,096,000,000. Briggs explained this was an “in today’s dollars” calculation and that over time, with consideration of inflation, the actual dollars expended would be \$6,934,000,000, which figure was also included in the Plan of Finance. (*Id.*, Tab A, pgs. 7-8). The Plan of Finance further shows the breakdown of funds among the sections of the Plan as follows:

- \$1,022,000,000 or 33% for Sidewalks, Signals, Streets, & Safety
- \$1,352,000,000 or 44% for All Access Corridors
- \$653,000,000 or 21% for WeGo Essentials²
- \$34,000,000 or 1% for Places for Everyone
- \$35,000,000 or 1% for Innovation & Technology

(Exh. 12, Plan – Tab A, pg. 7).

The Plan was introduced to the Metro Council, pursuant to Bill No. BL2024-427, on June 18, 2024 (the “Ordinance”). (Exh. 12). The Ordinance, which includes the Plan and the Plan of Finance, was passed after three readings on June 18, 2024, July 2, 2024 and July 16, 2024. It was approved and enacted on July 19, 2024. (*Id.*). During that process, the Plan was reviewed by three different Metro Council committees – Budget and Finance, Transportation and Infrastructure, and Planning. At least one of the Metro Council meetings included a public comment period. The Ordinance approves the Plan pursuant to Tenn. Code Ann. § 67-4-3206, and requests that the Metro

² WeGo Service Enhancers is not broken out in the Plan of Finance; thus, the Court assumes they are incorporated into this item.

Election Commission hold a referendum election to allow voters to vote for or against the Plan, with the following ballot language:

Passage of this measure adopted by Ordinance BL2024-427, allows the Metropolitan Government to complete the entire priority sidewalk network when combined with annual capital spending, provide significantly expanded 24-hour public transportation service 365 days a year including frequent service on major routes, add more neighborhood transit centers, improve safety for all roadway users, and upgrade and modernize nearly two-thirds of the city's signalized intersections.

This program's capital cost is estimated to have a current cost of \$3,096,000,000. Once construction is complete, the estimated value of recurring annual operating and maintenance costs is approximately \$111,000,000. The Metropolitan Transit Authority (WeGo), Nashville Department of Transportation and Multimodal Infrastructure, Metro Planning Department, and Mayor's Office, in partnership with other Metro departments, will undertake implementation of the program.

This program will be funded by federal grants, revenues from transportation system fares, debt, and a sales tax surcharge of 0.5%. The tax surcharge will end once all debt issued for the transit improvement program has been paid and the Metropolitan Council determines by resolution that the revenues from the tax surcharges are no longer needed for operation of the program.

FOR or AGAINST

(Id.).³

On July 24, 2024, the Metro Clerk sent a certified copy of the Ordinance to the Davidson County Election Administrator, Jeff Roberts, including the Metro Council's request that the Metro Election Commission (the "Commission") have a referendum election on November 5, 2024. (Exh. 9).

The Commission held a public meeting on August 1, 2024 and considered the Metro Council's request. The public was allowed to comment and three citizens made comments.⁴ State

³ The Court takes judicial notice this ballot language includes 185 words, not including "FOR or AGAINST".

⁴ The Commission minutes do not identify the subject matter of the public comments. It appears the requested referendum was the only matter of substance on the agenda; thus, the Court finds it is most likely those public comments regarded that subject.

Election Coordinator Mark Goins and Metro Legal Director Wally Dietz issued opinion letters that the Ordinance met all legal requirements to be placed on the November 5, 2024 ballot. The Commission voted unanimously to put it on the ballot as requested. (Exh. 8).

The referendum election was held November 5, 2024 (the “Referendum Election”). The ballot language was the same as included in the Ordinance. The certified election results of the Referendum are that the Plan was approved 183,663 to 96,544. (Exh. 8).

Prior to the election, as required by Tenn. Code Ann. § 67-4-3206(e)(2), Metro provided a copy of the Plan to the Tennessee Department of Revenue. (Exh. 10).⁵

The Election Contest Claim

Plaintiffs challenge the outcome of the Referendum Election pursuant to the Election Contest Act at Tenn. Code Ann. § 2-17-101, *et seq.* The Court finds Plaintiffs met the time limits for filing such an action and have standing as a proper party to bring the action pursuant to the requirements set out in the Election Contest Act at Tenn. Code Ann. § 2-17-101(b) and -105. The question, however, is whether this challenge is a proper election contest under the Election Contest Act. The Court finds it is not.

In *Barrett v. Giles County*, the Court of Appeals found that a challenge to a candidate’s qualifications to be on a ballot after the election concluded was not a proper election contest and not sufficient grounds to void the election, even though it turned out the candidate was included in error. There was no allegation of fraud or illegality in the actual election process. Rather, a candidate was allowed to run in error. The *Barrett* court advised that “[e]lection contests are about the manner and form of the election itself or the qualifications of the winner to hold the office to

⁵ Exhibit 10 is an e-mail between Metro Legal and the Commissioner of Revenue to evidence this step in the process. The Court notes the typo in the email that references “TCA 67-4-320” in error. The correct citation to the requirement is 67-4-3206(e)(2).

which she has been elected.” *Barrett*, 2011 WL 4600431 at *3 (citing *Hatcher v. Bell*, 521 S.W.2d 799, 802 (Tenn. 1974)). The Court found that “[t]he vote of the people is the most significant step in the election process,” and “there is no evidence in this record that the election results did not reflect the will of the electorate.” *Id.*

In *Fraternal Order of Police v. Metro. Gov’t of Nashville and Davidson Cnty.*, 582 S.W.3d 212 (Tenn. Ct. App. 2019), the Court of Appeals held that “[c]hallenges to what should be on the ballot ‘should ordinarily be brought before the election – preferably in time for the issue to be resolved before the ballots have to be printed and before the state of absentee and early voting.’” *Id.* at 217 (quoting *Barrett*, 2011 WL 4600431, at *4). In that case, the plaintiff did file the action prior to the election challenging the Election Commission’s determination that a charter-amendment referendum petition had sufficient signatures to be placed on the ballot, and Metro argued that the case was actually an election contest that should have been brought *after* the election pursuant to the Election Contest Act. The Court found “This case does not involve allegations of illegal ballots or fraud. This matter is not an election contest.” *Id.* In so finding, the Court noted that the case did not challenge the outcome of an election, but rather “what should be on the ballot” which should be filed before the election. *Id.* at 217, n.4.

Here, there is no challenge to the conduct of the election such as allegations of illegal ballots or fraud. While part of Plaintiffs’ claim is that the Mayor intentionally misled the voters and included transportation projects in the Plan which were purportedly not authorized by the IMPROVE Act in order to pass the Plan, the Court does not find such an allegation to rise to the level of an election contest as contemplated by the statute. Plaintiffs do not allege that votes were illegally cast or that votes were illegally counted. It is undisputed that the certified results of the Referendum Election reflect the votes that were cast. As such, Plaintiffs’ lawsuit is not an election

contest properly brought pursuant to the Election Contest Act, and those claims are therefore DISMISSED and any relief requested thereunder is DENIED.

Alternatively, if it is determined that this matter is a proper election contest pursuant to the Election Contest Act, the Court incorporates the analysis set forth below and the findings therein, and hereby CONFIRMS the Referendum Election.

The Declaratory Judgment Act Claim

Plaintiffs also brought this action pursuant to the Declaratory Judgment Act, which provides an avenue to obtain relief, at Tenn. Code Ann. § 29-14-103, as follows:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

The Court takes this claim as challenging the validity of the Ordinance, and specifically whether the Plan qualifies as a TIP under the IMPROVE Act. The Court reiterates that the scope of the allowable challenge is limited to the issues of whether the Plan meets the definition of a TIP as set out in the IMPROVE Act including the necessary elements required, whether the ballot initiative met the requirements of the IMPROVE Act in terms of its contents and language, and if prior to adopting the Plan and resulting Ordinance, Metro did what it was required to do under the IMPROVE Act. The Court finds in the affirmative on all three issues.

As a preliminary matter, the Court finds the IMPROVE Act clear and unambiguous and that the legislative intent can be derived from the text. *Wallace v. Metro. Gov't of Nashville*, 546 S.W.3d 47, 52 (Tenn. 2018); *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 526-27 (Tenn. 2010). The words used in a statute are to be given their natural and ordinary meaning and are to be construed in the context in which they appear and in light of the general purpose of the statute.

Wallace, 546 S.W.3d at 52 (citing *Lee Medical*, 312 S.W.3d at 526). “When a statute’s text is clear and unambiguous, we need look no further than the language of the statute itself.” *Id.* (citing *Lee Medical*, 312 S.W.3d at 527). “We simply apply the plain meaning without complicating the task.” *Id.* (quoting *Tenn. Dep’t of Corr. v. Pressley*, 528 S.W.3d 506, 513 (Tenn. 2017)). Thus, the Court makes its findings based upon a common sensical application of the IMPROVE Act to the Plan and the Ordinance.

First, the Court finds the Plan meets the definition of a TIP in the IMPROVE Act so as to be eligible for the local tax surcharge set out therein. The Court finds, as a matter of law, that the Plan is, in all of its elements, a transit improvement program. It consists of specified public transit system projects and services as required by Tenn. Code Ann. § 67-4-3201(5). Plaintiffs’ assertion that the TIP can only be limited to the mass transit system element of the public transit system misses the context of the definition of public transit system in the IMPROVE Act. The definition is broad, including anything else to operate a transportation facility “*or provide connectivity for the transportation facility to any other non-mass transit system transportation infrastructure.*” Tenn. Code Ann. § 67-4-3201(3) (emphasis added). It “*include[es], but [is] not limited to, interstates, highways, roads, streets, alleys, and sidewalks.*” *Id.* (emphasis added). The IMPROVE Act gives the local government broad discretion in how to use surcharge funds, as long as they are related to the TIP. The Plan elements, as explained at trial by Briggs, involve more than simply mass transit vehicles or facilities, but are all adjacent or appurtenant to those elements, and allow resident access to them. The roads and sidewalks are in the mass transit corridors. The real property to be acquired are adjacent to WeGo facilities and are for those who need to access those facilities, whether it is to live or park or otherwise easily get there because of close proximity.

Second, the Court finds that the ballot language used in the Ordinance meets the requirements of the IMPROVE Act. Tenn. Code Ann. §§67-4-3202(b)(1) and 67-4-3206(f). The ballot language is 185 words, within the 250-word limit. It includes the options to vote “FOR” or “AGAINST” at the bottom. It explains the type of surcharge and includes a brief summary of the Plan. It is written in a clear and coherent manner using words with common everyday meanings. It explains the conditions upon which the surcharge will end, other funding sources and an estimate of the initial and recurring costs. It also includes identification of the implementing agencies and the geographic location of the system. Plaintiffs challenge whether the initial cost of the system is accurate and argues that Metro should not have used the current cost number of \$3,096,000,000 as established by today’s dollars versus the \$6,934,000,000 figure that takes into account inflation. Respectfully, the expectation is that the language used be simple, include everyday words and sentence structures to convey information in a way that is easy for anyone to grasp, avoiding jargon or complex phrasing that might confuse the reader in under 250 words. Plaintiffs can split hairs about how the cost was explained but cannot credibly argue that the cost figure used, which is in the Plan of Finance, is not accurate or does not meet the statutory requirements.

Third, and finally, the Court finds that Metro has demonstrated that it met the IMPROVE Act requirements for Plan approval and qualification. Those requirements, set out at Tenn. Code Ann. § 67-4-3206, are clear and unambiguous. The proof was undisputed that Metro met all requirements, and the Court details those steps herein in describing the process that led to the Referendum Election. Although Plaintiffs quibble with whether the public had a serious opportunity to become informed or weigh in on the Plan, the Court finds undisputably that Metro met the requirements to solicit public comment and make reasonable efforts to notify or coordinate with other local governments regarding the Plan.

Likewise, Plaintiffs' challenge to the financial feasibility of the Plan is also without merit. They provided no proof that it is not financially feasible, or that the review by Kraft, or the material that it relied upon in doing its review, was suspect or inaccurate. Even if some of the management assumptions forecasting costs or revenue turn out to be different than the actual results, which Kraft stated usually happens "because events and circumstances frequently do not occur as expected, and those differences may be material", the IMPROVE Act takes that into account. It provides that if a qualifying TIP "becomes infeasible, impossible, or not financially viable" the surcharge revenue can be directed to another TIP that is developed and approved by Metro. Plaintiffs are not entitled, through their declaratory judgment action, to an independent assessment by the Court that the Plan is financially feasible. Rather, they are entitled to a review of Metro's actions to obtain an appropriate determination, consistent with the IMPROVE Act's terms, that it is financially feasible. The Court finds that Metro has done that, and this challenge does not provide a basis to find the Ordinance invalid.

The Court therefore finds that the Ordinance is VALID and LEGAL, and that Metro is entitled to proceed pursuant to its terms, including the imposition of the surcharge pursuant to the IMPROVE Act.

It is therefore ORDERED, ADJUDGED AND DECREED that Plaintiffs' claims in this matter are DISMISSED.

Costs are taxed to Plaintiffs.

s/Anne C. Martin

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CHANCELLOR

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RULE 58 CERTIFICATION

A copy of this Order has been served by U.S. Mail or the Court's Electronic Filing System upon all parties or their counsel named above.

s/Megan Carter
Deputy Clerk & Master

January 13, 2025
Date