

Plaintiffs, several residents of and/or owners of businesses in Williamson County, Tennessee and a not-for-profit corporation², filed this action seeking declaratory and injunctive relief related to the face covering requirement adopted by Williamson County Mayor Rogers Anderson for purposes of slowing the spread of COVID-19 in Williamson County, as set forth in Declarations and Orders issued by him on July 6, 2020, August 3, 2020, October 22, 2020 and October 30, 2020. (Compl., ¶ 3.) Plaintiffs challenge the authority of Mayor Anderson to issue the face covering requirement and further challenge the authority of Governor Bill Lee to delegate such authority under Executive Order No. 54, pursuant to Tenn. Code Ann. § 58-2-107, asserting that the statute is an unconstitutional delegation of legislative authority. Plaintiffs ask the Court to enjoin Mayor Anderson's October 30, 2020 Declaration of Public Health Emergency and declare the Williamson County face covering requirement ordered therein unenforceable and Tenn. Code Ann. § 58-2-107 unconstitutional.

Defendants would show unto the Court that Plaintiffs can establish no set of facts entitling them to declaratory or injunctive relief against Defendants because Plaintiffs have failed to establish the existence of a justiciable case or controversy. Specifically, because Plaintiffs cannot

is not the appropriate vehicle for resolution of a declaratory judgment action where a case or controversy exists. Accordingly, if the Defendants prevail on one of the justiciability issues raised herein, the Motion to Dismiss should be granted. Alternatively, if they prevail on the merits, a declaratory summary judgment, and summary judgment denying injunctive relief, should be granted.

² Plaintiffs Citizens for Limited Government and Constitutional Integrity, Inc., d/b/a Tennessee Stands, Gary Humble, and Rodney Lunn, Jr. are currently parties to a pending case in Davidson County, Tennessee, challenging the same statute and the Governor's delegation of authority under same to Williamson County Mayor Rogers Anderson. *Off the Wagon Tours, LLC v. Metro. Gov't of Nashville & Davidson County*, Case No. 20-0766-I (Davidson Cnty. Chancery Ct. 2020). (SUMF ¶ 1.) Should the decision in that case be adverse to these Plaintiffs, they are collaterally estopped from raising the same arguments in this case, as are any Plaintiffs whose interests in challenging the statute and delegation of authority were adequately represented in the Davidson County litigation.

establish standing, dismissal under Rule 12 of the Tennessee Rules of Civil Procedure is appropriate.

Alternatively, if this Court decides that Plaintiffs have presented a justiciable case or controversy, Defendants would show that there are no genuine issues of material fact necessary for resolution of Plaintiffs' claims and that Defendants are entitled to judgment as a matter of law.

Governor Lee clearly delegated authority to county mayors, including Mayor Anderson, to adopt face covering requirements in their jurisdictions, and such delegation of authority is expressly contemplated by the plain language of Tenn. Code Ann. § 58-2-107. Tennessee Code Annotated § 58-2-107 endows the Governor with specific powers in the event of a declaration of emergency, including, but not limited to, the power to “[u]tilize all available resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency” and to “[t]ake measures concerning the conduct of civilians[.]” Tenn. Code Ann. § 58-2-107(e)(2), (11). Pursuant to Tenn. Code Ann. § 58-2-107(a)(1), in exercising his emergency powers, “[t]he governor is authorized to delegate such powers as the governor may deem prudent.” Mayor Anderson, in adopting a face covering requirement in Williamson County, had a duty to presume that the Governor's delegation of authority pursuant to the statute was constitutionally valid.

Tennessee Code Annotated § 58-2-107, the statute pursuant to which Governor Lee issued Executive Order No. 54 and subsequent extensions thereof, authorizing Mayor Anderson to issue the October 30 Declaration, does not offend separation of powers principals. The Davidson County Chancery Court has held that the statute is facially constitutional and does not violate the doctrine of separation of powers. *Allen v. Lee*, No. 20-405-IV (Davidson Cnty. Chancery Ct. May 26, 2020). The *Allen* plaintiffs appealed the Chancery Court's ruling on June 26, 2020, and the case is

currently pending in the Tennessee Court of Appeals. This Court should adopt the reasoning of the *Allen* Court and find that Tenn. Code Ann. § 58-2-107 is facially constitutional and does not violate separation of powers principles or, at the very least, this Court should defer ruling on the constitutionality of Tenn. Code Ann. § 58-2-107 while the issue is pending in the Tennessee Court of Appeals.

Moreover, the important issue of when and how the executive branch of government should be permitted to exercise emergency powers is best addressed by the legislature comprised of duly elected representatives of the people of Tennessee, rather than through the extraordinary judicial relief sought by Plaintiffs in this action. In enacting Tenn. Code Ann. § 58-2-107, the General Assembly expressly delegated emergency powers to the Governor and has expressly bestowed the Governor with the authority to delegate emergency functions as he sees fit, such as to local officials. Because both Governor Lee's Executive Order No. 54, as subsequently extended, and Mayor Anderson's October 30, 2020 Declaration issued pursuant thereto are substantially related to protecting Tennessee residents during an international health crisis and are not "beyond all question, a plain, palpable invasion" of the rights of Tennessee citizens, *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 25-31 (1905), Defendants would urge this Court to decline Plaintiffs' invitation to unnecessarily invade the province of the other branches of government and dismiss this action.

Summary judgment is appropriate as to Plaintiffs' request for injunctive relief because Plaintiffs have not shown that they will incur any legally cognizable injury if injunctive relief is denied.

In support of their Motion to Dismiss, Defendants challenge the sufficiency of the Complaint and submit the attached Memorandum of Law. In support of their alternative Motion

for Summary Judgment, Defendants submit the attached Memorandum of Law and Statement of Undisputed Material Fact with exhibits thereto.

Respectfully submitted,

BUERGER, MOSELEY & CARSON, PLC

/s/Lisa M. Carson

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and Mayor Rogers Anderson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed and delivered via the Court's electronic filing system to Larry Crain, Attorney for Plaintiffs, 5214 Maryland Way, Brentwood, Tennessee 37027 and via email to Janet Kleinfelter, Janet.Kleinfelter@ag.tn.gov; Deputy Attorney General for the State of Tennessee, 301 6th Avenue North, Nashville, TN 37241 on this 15th day of December, 2020.

/s/Lisa M. Carson

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