

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

CITIZENS FOR LIMITED)
GOVERNMENT AND)
CONSTITUTIONAL INTEGRITY, INC.)
D/B/A TENNESSEE STANDS,)
GARY P. HUMBLE, AND)
RODNEY H. LUNN, JR.)
)
Plaintiffs,)
)
v.)
)
GOVERNOR WILLIAM B. LEE, in his)
official capacity)
)
Defendant.)
)

COMPLAINT

Plaintiffs Citizens for Limited Government and Constitutional Integrity, Inc. d/b/a Tennessee Stands, Gary P. Humble, and Rodney H. Lunn, Jr., for their cause of action against the Defendant William B. Lee in his official capacity, state and allege as follows:

INTRODUCTORY STATEMENT

1. T.C.A. § 58-2-107 is the means in which Governor William B. Lee has delegated unlimited power to municipalities and county executives via numerous executive orders. The General Assembly's purported delegation of power to the Governor violates Article I, Article II, and Article III of the Tennessee Constitution.
2. However well-intentioned the delegation of power may have been, it is nonetheless illegal and unconstitutional and must be declared void. It is during times of emergency that our

Courts must endeavor to ensure that our constitutional rights are not diminished by arbitrary and capricious exercise of authority.

3. Plaintiffs challenge the constitutionality of T.C.A. § 58-2-107, on grounds that the statute violates Article I, Article II, §§ 2 and 3, Article III, § 10, and Article VII, § 1 of the Tennessee Constitution.

PARTIES

4. Plaintiff Citizens For Limited Government And Constitutional Integrity, Inc. D/B/A Tennessee Stands is a nonprofit corporation organized under the laws of the State of Tennessee. Plaintiff Gary P. Humble is the founder and president of Tennessee Stands, which was created to inform Tennessee citizens of their constitutional rights and to defend against governmental overreach. Tennessee Stands has circulated a petition demanding that Governor William B. Lee cease and desist from continuing to issue executive orders in violation of the Tennessee Constitution. The petition is available at <https://www.tennesseestands.org>.
5. Plaintiff Gary P. Humble is a citizen and resident of Williamson County, Tennessee.
6. Plaintiff Rodney H. Lunn, Jr. is a citizen and resident of Williamson County, Tennessee.
7. Plaintiffs, as residents of Williamson County, are subject to all the delegated authority of the Governor via T.C.A. § 58-2-107 to the Williamson County Mayor.
8. Defendant William B. Lee is the Governor of the State of Tennessee who derives his power from Article III of the Tennessee Constitution. The Governor can be served through the Attorney general and reporter of Tennessee, Herbert W. Slatery, III at P.O. Box 20207, Nashville, Tennessee 37202. At all times material hereto, Governor Lee was acting in his official capacity and under color of state law.

ALLEGATIONS OF FACT

9. On March 12, 2020, Governor Bill Lee began taking executive action pertaining to the State of Tennessee's response to the COVID-19 virus per the emergency powers delegated to him by the General Assembly in T.C.A § 58-2-107.
10. On March 22, 2020, Governor Bill Lee issued Executive Order No. 17 restricting the social gathering of individuals across the state to no more than ten (10) persons, restricted restaurants, bars, nightclubs, and other similar establishments to serving food and drink by carry-out option only, forced the closure of gyms, fitness centers, and other similar businesses, and declared this activity to be in accordance with the President's Coronavirus Guidelines for America and guidance from the CDC.
11. On March 30, 2020, Governor Bill Lee issued Executive Order No. 21, amending Executive Order No. 17 to begin the process of declaring businesses "essential" or "non-essential" and as such per state order, which businesses could remain open and those which would need to close.
12. On March 30, 2020, Governor Lee issued Executive Order No. 22 and began declaring the message that people were "safer at home," mandated the closure of all "non-essential" businesses, limited the activity of "essential" businesses, and defined "essential activity" and "essential travel" for citizens of the state of Tennessee, but did not *mandate* a stay-at-home order "because protecting personal liberty is deeply important."
13. On April 2, 2020, Governor Lee issued Executive Order No. 23, amending Executive Order No. 22 by "requiring" citizens by order to stay home.
14. On April 13, 2020, Governor Lee extended Executive Order Nos. 17, 21, 22, and 23 to be effective through April 30, 2020 at 11:59PM CDT.

15. On May 22, 2020, Governor Bill Lee issued Executive Order No. 38 introducing the Tennessee Pledge and authorizing Tennesseans to return to work as well as issuing safety guidelines for businesses to follow for both staff and guests and issued these guidelines for 89 of Tennessee's 95 counties. Executive Order No. 38 purports to delegate authority to the six (6) metro county health departments (Davidson, Hamilton, Knox, Madison, Shelby, and Sullivan) to issue their own guidelines and/or regulations as to how businesses would open or remain limited and/or closed per local authorities. The six (6) metro county health departments have taken action, including closing businesses, threatening arrest, and arresting Tennessee citizens who violate any local orders. A copy of Executive Order No. 38 is attached hereto as **Exhibit A**.
16. On June 29, 2020, Governor Lee issued Executive Order No. 50 which urges Tennesseans, *inter alia*, to continue limiting activity and stay home when possible, as well as following health guidelines and maintaining social distancing. Executive Order 50 extended Executive Orders 36 and 38, and states that, pursuant to T.C.A. § 58-2-107(e), "the Governor is authorized to suspend laws and rules regarding the conduct of state business if necessary to cope with an emergency." A copy of Executive Order No. 50 is attached hereto as **Exhibit B**.
17. On July 3, 2020, Governor Bill Lee issued Executive Order No. 54 delegating authority to the eighty-nine (89) county mayors without locally-run health departments across the state of Tennessee to issue mask mandates in their counties within the guidelines stipulated within the order and enforceable by law pursuant to T.C.A § 58-2-120 with a violation resulting in a Class A misdemeanor. A copy of Executive Order No. 54 is attached hereto as **Exhibit C**.

18. On July 6, 2020 the Williamson County Mayor utilized the powers delegated by Executive Order No. 54 to issue a mask mandate, requiring all citizens to wear face coverings in public places. A copy of the Order is attached hereto as **Exhibit D**. According to the Order, violation of the order shall constitute a Class A Misdemeanor. Plaintiffs are therefore subject to citation, arrest and/or incarceration for any violation of the Order.
19. On August 3, 2020, Governor Bill Lee issued Executive Order No. 55, extending Executive Order No. 54 through August 29, 2020 and thereby extending the authority of county mayors to issue mask mandates in their respective counties. A copy of Executive Order No. 55 is attached hereto as **Exhibit E**.
20. On August 3, 2020, the Williamson County Mayor issued a declaration extending the mask mandate and provisions of the July 6, 2020 Order until August 29, 2020. A copy of the Williamson County Order is attached hereto as **Exhibit F**.
21. T.C.A. § 58-2-107(a)(1) states:

“The governor is responsible for addressing the dangers presented to this state and its people by emergencies. In the event of an emergency beyond local control, the governor, or, in the governor's absence, the governor's successor as provided by law, may assume direct operational control over all or any part of the emergency management functions within this state, and such person has the power through proper process of law to carry out this chapter. The governor is authorized to delegate such powers as the governor may deem prudent.”
22. T.C.A. § 58-2-107(a)(2) provides an overwhelming and sweeping grant of authority that is contrary to the Tennessee Constitution:

“Pursuant to the authority vested in the governor under subdivision (a)(1), the governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules have the force and effect of law.”
23. Tenn. Code Ann. § 58-2-107(e) is likewise directly contrary to the constitution of Tennessee. It states:

“In addition to any other powers conferred upon the governor by law, the governor may:

Suspend any law, order, rule or regulation prescribing the procedures for conduct of state business or the orders or rules or regulations of any state agency, if strict compliance with any such law, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.”

24. Although T.C.A. § 58-2-107 is unconstitutional, it serves as the basis of authority for the various public health orders imposing various obligations on Tennessee citizens upon threat of citation, arrest and incarceration by virtue of the “delegation” of the Governor’s authority and his ability to “suspend all other laws.”
25. Because arrest and prosecution has already occurred and the threat of arrest and prosecution are apparent, Plaintiffs have standing to challenge the constitutionality of T.C.A. § 58-2-107.

CAUSE OF ACTION

COUNT I:

DECLARATORY JUDGMENT

T.C.A. § 58-2-107 Violates the Tennessee Constitution

26. The Tennessee Uniform Declaratory Judgments Act, T.C.A. § 29-14-103, authorizes this Court to determine the rights, status, or other legal relations affected by a statute or municipal ordinance and to obtain a declaration of rights, status or other legal relations thereunder.
27. The Tennessee Constitution first drafted in 1796 serves to further secure the rights and liberties of all Tennesseans. The Tennessee Constitution ascribes powers to the Governor, the General Assembly, and the Judiciary, as well as how powers are to be distributed and delegated amongst the divisions of government.
28. Article II, § 1 of the Tennessee Constitution provides: “The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.”

29. Article II, § 2 makes these separations of power clear: “No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.”
30. The authority to make laws rests solely with the General Assembly, not the Governor. Article II, § 3 provides: “**The Legislative authority of this State shall be vested in a General Assembly**, which shall consist of a Senate and House of Representatives, both dependent on the people. [...]” (emphasis added).
31. Because the Legislature has the sole authority to create law under Art. II, § 3 of the Tennessee Constitution, T.C.A. § 58-7-107 is unconstitutional. The Legislature cannot delegate its power to another department pursuant to the strict mandates of Tenn. Const. Art. II, § 3.
32. Because the Legislature’s claimed delegation of its authority violates Art. II, § 3, the Governor has no authority to suspend any laws, make new laws, or to delegate these powers to any municipality or county, including Williamson County.
33. Article III of the Tennessee Constitution contains provisions applicable to the authority of the Governor. Article III authorizes no law-making power to the Executive Department and Section 10 gives power to the Governor only to “take care that the laws be faithfully executed.”
34. Article VII, § 1 of the Tennessee Constitution states:
“The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a sheriff, a trustee, a register, a county clerk and an assessor of property.
Their qualifications and duties shall be prescribed by the General Assembly.”
(emphasis added).

35. Because the duties of the county executive may only be prescribed by the General Assembly under Article VII, § 1 of the Tennessee Constitution, the Governor has no constitutional authority to delegate powers to county mayors in the State of Tennessee.

36. Plaintiffs therefore request that this Court declare that T.C.A. § 58-2-107 is unconstitutional.

37. Because T.C.A. § 58-2-107 is unconstitutional, Plaintiffs request that this Court further declare that:

- a. The General Assembly has no authority to delegate powers to the Governor;
- b. That the Governor has no authority to delegate powers under T.C.A. § 58-2-107 to county mayors; and
- c. That the various public health mandates, including the mask mandate in Williamson County, is null void and to no effect.

COUNT II:
INJUNCTIVE RELIEF

38. Because T.C.A. § 58-2-107 is unconstitutional, Plaintiffs request that this Court issue a permanent injunction enjoining and restraining Governor Lee from utilizing T.C.A. § 58-2-107.

WHEREFORE, Premises Considered, Plaintiffs pray:

1. That process issue, requiring the Defendant to answer in the time prescribed by law;
2. That this Court declare upon final hearing that T.C.A. § 58-2-107 is unconstitutional;
3. That this Court declare upon final hearing that the General Assembly has no authority to delegate powers to the Governor;
4. That this Court declare upon final hearing that the Governor has no authority to delegate powers under T.C.A. § 58-2-107 to county mayors;

5. That this Court declare upon final hearing that the various public health mandates, including the mask mandate in Williamson County, is null void and to no effect;
6. That upon final hearing, this Court issue a permanent injunction enjoining and restraining Governor Lee from utilizing T.C.A. § 58-2-107; and
7. For such other, general relief to which Plaintiffs are entitled.

Respectfully submitted,

THE BLACKBURN FIRM, PLLC

/s/ W. Gary Blackburn
W. Gary Blackburn (#3484)

And,

/s/ Bryant Kroll
Bryant Kroll (#33394)
213 Fifth Avenue North, Suite 300
Nashville, TN 37219
P: (615) 254-7770
F: (866) 895-7272
gblackburn@wgaryblackburn.com
bkroll@wgaryblackburn.com
Attorneys for Plaintiffs