

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY
TWENTIETH JUDICIAL DISTRICT
THE STATE OF TENNESSEE**

CLAY CAPP, *in his official and individual capacity as a Metropolitan Nashville Councilmember*; BRENDA GADD, *in her official and individual capacity as a Metropolitan Nashville Councilmember*; DELISHIA PORTERFIELD, *in her official and individual capacity as a Metropolitan Nashville Councilmember*; SANDRA SEPULVEDA, *in her official and individual capacity as a Metropolitan Nashville Councilmember*; ZULFAT SUARA, *in her official and individual capacity as a Metropolitan Nashville Councilmember*; TERRY VO, *in her official and individual capacity as a Metropolitan Nashville Councilmember*; GINNY WELSCH, *in her official and individual capacity as a Metropolitan Nashville Councilmember*.

Plaintiffs,

v.

GLENN FUNK, *in his official capacity as the District Attorney for the Twentieth Judicial District*; JONATHAN SKRMETTI, *in his official capacity as the Attorney General and Reporter for the State of Tennessee*,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY
RELIEF

COMPLAINT

INTRODUCTION

1. This case challenges the constitutionality of Sections 7 and 8 of Senate Bill No. 6002 (the “Act”), which was enacted by the 114th Tennessee General Assembly in its First Extraordinary Session (Pub. Ch. 1) and goes into effect on July 1, 2025. Attached as Exhibit 1.

2. The Act imposes *felony* criminal liability, including the possibility of 1-6 years of imprisonment, for local officials who adopt, enact or even vote for policies that conflict with the State’s mandated views on immigration enforcement. The Act then subjects local officials to removal from office for the same.

3. This is the first known instance in American history where a state has imposed felony liability on local officials simply for the viewpoint expressed in their votes. In an alleged democracy, our legislative chambers have been reduced to crime scenes.

4. Tennessee sends a clear message with the Act: the State has spoken on the issue of immigration, and all who dissent (even in the form of symbolic, ineffective votes) will be imprisoned. But in criminalizing voting itself, Tennessee has cast a net of criminality over the entire local democratic process and has warped the foundational democratic principle that elected representatives must be free to debate issues without fear of recrimination.

5. Section 7 of the Act amends Tenn. Code Ann. § 7-68-103, to make it a Class E felony for local government officials to “vote in the affirmative” for policies deemed to be “sanctuary policies” as vaguely defined by state law. The provision is an unprecedented effort to criminalize legislative speech, debate and deliberation (for which legislators are absolutely immune) and to restrict speech that is protected by the First Amendment to the United States Constitution and Art. I, §19 of the Tennessee Constitution.

6. Section 8 amends Tenn. Code Ann. §7-68-104 to require the Attorney General to initiate proceedings to remove from office any local government official who has both failed to comply with a court order issued under Tenn. Code Ann. § 7-68-104(d) and been subsequently convicted under Section 7. This multi-stage removal provision compounds the constitutional violations by imposing an additional severe penalty on protected speech.

7. The challenged provisions are also unconstitutionally vague because they fail to provide fair notice of what conduct is prohibited and invite arbitrary and discriminatory enforcement, in violation of the Due Process Clause of the Fourteenth Amendment and the due process protections afforded by art. I, §8 of the Tennessee Constitution. Section 7 fails to identify a requisite mental state for violating its terms—a failure that often dooms laws to being found unconstitutionally vague—and “sanctuary policy” is defined in broad, unclear terms that leave officials on both sides of enforcement speculating as to its meaning.

8. Under the Act’s terms, a “sanctuary policy” could be any “directive, order, ordinance, resolution, practice, or policy, whether formally enacted, informally adopted, or otherwise effectuated” that, among other things, merely “[l]imits or prohibits any local governmental entity or official from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien” or “[p]revents law enforcement agencies from inquiring as to the citizenship or immigration status of any person.” Tenn. Code Ann. § 7-68-102. These broad proscriptions leave local officials guessing as to which policies, even if the policies’ primary purpose is not to be a “sanctuary policy,” could land them in prison.

9. The Tennessee General Assembly and Governor Bill Lee, at the urging of the federal government, have recently placed immigration enforcement at the center of the State’s legislative and executive functions. Shortly after the Act was passed, the General Assembly came within one

chamber of passing additional legislation (House Bill 973/ Senate Bill 836) that would have required public K-12 schools to verify students' immigration status and allowed them to charge tuition—or completely bar enrollment of—children unable to prove legal immigration status.¹

10. More recently, Nashville has found itself at the center of unprecedented immigration enforcement activities conducted in coordination by the Tennessee Highway Patrol (“THP”) and Immigration Customs and Enforcement (“ICE”), resulting in over 500 traffic stops in predominately Latino neighborhoods over a period of just a few days.

11. On May 29, 2025, the city of Nashville was publicly named by the United States Department of Homeland Security (“DHS”) as a “sanctuary city” that is “deliberately and shamefully obstructing the enforcement of federal immigration laws endangering American communities.”² A few days later, this list was removed from its public posting but federal officials confirm that they are still privately reviewing the list of “sanctuary cities” and intend to enforce President Donald Trump’s April 28, 2025 Executive Order calling for enhanced scrutiny of so-called sanctuary jurisdictions.³

¹ Ironically, a few short weeks after outlawing dissent-by-vote for local officials, the General Assembly exerted the powers of its own democratic process to vote for, and nearly pass, a law that blatantly violates controlling federal caselaw. *See Plyler v. Doe*, 457 U.S. 202 (1982) (finding refusal to enroll undocumented students violates the Fourteenth Amendment of U.S. Constitution).

² Department of Homeland Security, *Sanctuary Jurisdictions Defying Federal Immigration Law* (May 29, 2025), <https://www.dhs.gov/sanctuary-jurisdictions> (last visited May 30, 2025).

³ Ximena Bustillo, *Homeland Security Pulls Down List of ‘Sanctuary’ Cities and Counties after Backlash*, NPR (June 2, 2025), [https://www.npr.org/2025/06/02/nx-s1-5421232/homeland-security-sanctuary-cities-immigration#:~:text=DHS%20pulls%20down%20list%20of%20%27sanctuary%27%20cities,criticism%20from%20some%20mayors%20and%20law%20enforcement.&text=In%20practice%2C%20sanctuary%20jurisdictions%20prohibit%20local%20law,assisting%20federal%20immigration%20officials%20on%20immigration%2Drelated%20operations; see also Press Release, The White House, Fact Sheet: President Donald J. Trump Protects American Communities from Criminal Aliens \(April 28, 2025\), https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-protects-american-communities-from-criminal-aliens/](https://www.npr.org/2025/06/02/nx-s1-5421232/homeland-security-sanctuary-cities-immigration#:~:text=DHS%20pulls%20down%20list%20of%20%27sanctuary%27%20cities,criticism%20from%20some%20mayors%20and%20law%20enforcement.&text=In%20practice%2C%20sanctuary%20jurisdictions%20prohibit%20local%20law,assisting%20federal%20immigration%20officials%20on%20immigration%2Drelated%20operations; see also Press Release, The White House, Fact Sheet: President Donald J. Trump Protects American Communities from Criminal Aliens (April 28, 2025), https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-protects-american-communities-from-criminal-aliens/).

12. The nation has also seen an unprecedented wave of arrests of elected officials engaged in protesting or otherwise opposing federal immigration enforcement efforts. At least five officials, including a locally elected state judge, have been arrested in recent weeks.⁴

13. This snapshot of the political climate demonstrates the State's aggressive anti-immigrant stance and the federal government's equally aggressive efforts to attack any local governmental entities or officials that stand in the way of their immigration enforcement goals. Local officials, therefore, face a profound and concrete likelihood of criminal prosecution under the Act.

14. Plaintiffs, duly elected Councilmembers of the Metropolitan Council of Nashville and Davidson County ("Metropolitan Council"), bring this action seeking declaratory relief to prevent the enforcement of Sections 7 and 8 of the Act against them.

PARTIES

15. Plaintiff Clay Capp is a duly elected councilmember on the Metropolitan Council. Mr. Capp represents District 6. He works and resides in Davidson County, Tennessee.

16. Plaintiff Brenda Gadd is a duly elected councilmember on the Metropolitan Council. Ms. Gadd represents District 24. She works and resides in Davidson County, Tennessee.

17. Plaintiff Delishia Porterfield is a duly elected councilmember on the Metropolitan Council. Ms. Porterfield is an at-large councilmember. She works and resides in Davidson County, Tennessee.

⁴ Karina Tsui, *At Least 5 Elected Officials Have Been Arrested or Confronted by Police While Protesting Trump's Immigration Policies*, CNN (June 18, 2025), <https://www.cnn.com/2025/06/18/us/elected-officials-confronted-immigration-enforcement-hnk#:~:text=6%20min%20read-,At%20least%205%20elected%20officials%20have%20been%20arrested%20or%20confronted,while%20protesting%20Trump%27s%20immigration%20policies&text=New%20York%20City%20Comptroller%20Brad,in%20New%20York%2C%20on%20Tuesday.&text=New%20York%20City%20comptroller%20and,Here%27s%20what%20we%20know>.

18. Plaintiff Sandra Sepulveda is a duly elected councilmember on the Metropolitan Council. Ms. Sepulveda represents District 30. She works and resides in Davidson County, Tennessee.

19. Plaintiff Zulfat Suara is a duly elected councilmember on the Metropolitan Council. Ms. Suara is an at-large councilmember. She works and resides in Davidson County, Tennessee.

20. Plaintiff Terry Vo is a duly elected councilmember on the Metropolitan Council. Ms. Vo represents District 17. She works and resides in Davidson County, Tennessee.

21. Plaintiff Ginny Welsch is a duly elected councilmember on the Metropolitan Council. Ms. Welsch represents District 16. She works and resides in Davidson County, Tennessee.

22. The Metropolitan Council is comprised of 35 district representatives and five at-large members. As the legislative body for the metropolitan Nashville government, the Metropolitan Council has the authority under the Metropolitan Nashville Charter to promulgate ordinances and policies necessary for the health, convenience, safety and general welfare of the inhabitants of Davidson County. Metro Charter, Art. 2, § 2.01.40, Art. 3 §3.05,6. This includes the authority to regulate the Metropolitan Nashville Police Department and Metropolitan Nashville Public Schools through ordinances and policy directives aimed at protecting public safety and ensuring effective delivery of municipal services.

23. Defendant Glenn Funk is Tennessee's elected District Attorney for the 20th judicial district, which includes Davidson County. Mr. Funk has criminal enforcement authority and an affirmative statutory obligation to "prosecute in the courts of the district all violations of the state criminal statutes and perform all prosecutorial functions attendant thereto[.]" Tenn. Code Ann. § 8-7-103(1). He is sued in his official capacity only.

24. Defendant Jonathan Skrmetti is the Attorney General and Reporter of the State of Tennessee. The Attorney General/Reporter is headquartered at 500 Dr. Martin Luther King Jr.

Blvd., Nashville, TN 37219. Under Tenn. Code Ann. § 8-6-109(b)(9), Defendant Skrmetti has the duty to “defend the constitutionality and validity of all legislation of statewide applicability.” Under Tenn. Code Ann. § 8-7-106(a)(2), the Attorney General is responsible for seeking appointment of a district attorney pro tem should the elected district attorney categorically refuse to prosecute a crime. Defendant Skrmetti is also charged with removing local government officials who violate the Act under Tenn. Code Ann. §7-68-104 (e). Defendant Skrmetti is sued in his official capacity.

JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction over this action pursuant to Tenn. Code Ann. §1-3-121; Tenn. Code Ann. §16-11-101, *et seq.*, as well as Tenn. Code Ann. § 29-14-101, *et seq.*

26. This Court has personal jurisdiction over Defendants pursuant to Tenn. Code Ann. §§ 20-2-222 and 20-2-223 on the grounds that their principal place of business is in Tennessee and that the wrongful conduct and resulting injuries alleged herein substantially occurred in Tennessee.

27. Venue is proper in this Court pursuant to Tenn. Code Ann. §20-18-102 because Plaintiffs reside in Davidson County.

FACTUAL ALLEGATIONS

28. On February 12, 2025, Governor Bill Lee signed into law a wide-reaching immigration enforcement bill (SB6002) that includes Sections 7 and 8; those Sections amend Tenn. Code Ann. § 7-68-103 and 104.

Section 7

29. Section 7 of the Act designates the existing language of Tenn. Code Ann. § 7-68-103 as subsection (a) and adds a new subsection (b) that states: “It is unlawful for an official to violate

subsection (a). A violation of subsection (a) is a Class E felony. For purposes of this subsection (b), each official who, in their capacity as a member of the governing body of a local government, votes in the affirmative to adopt a sanctuary policy is in violation of this section.”

30. Tenn. Code Ann. § 7-68-103(a) prohibits local governmental entities or officials from adopting any ordinance or policy that is a “sanctuary policy.”

31. Tenn. Code Ann. § 7-68-102 defines “sanctuary policy” broadly to include any “directive, order, ordinance, resolution, practice, or policy, whether formally enacted, informally adopted, or otherwise effectuated” that:

- (A) Limits or prohibits any local governmental entity or official from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien;
- (B) Grants to aliens unlawfully present in the United States the right to lawful presence within the boundaries of this state in violation of federal law;
- (C) Violates 8 U.S.C. § 1373;
- (D) Restricts in any way, or imposes any conditions on, a state or local governmental entity's cooperation or compliance with detainers from the United States department of homeland security, or other successor agency, to maintain custody of any alien or to transfer any alien to the custody of the United States department of homeland security, or other successor agency;
- (E) Requires the United States department of homeland security, or other successor agency, to obtain a warrant or demonstrate probable cause before complying with detainers from the department to maintain custody of any alien or to transfer any alien to its custody; or
- (F) Prevents law enforcement agencies from inquiring as to the citizenship or immigration status of any person.

32. The section of federal law referenced in the definition of “sanctuary policy,” 8 U.S.C. § 1373, likewise prohibits any Federal, State, or local government entity or official from restricting the voluntary sharing of information regarding the immigration status of any individual to and from the Immigration and Naturalization Service. It does not contain any civil or criminal penalties for government entities or actors who violate §1373 nor does it require local governmental entities to collect or share immigration information.

33. Section 7’s penalty—a Class E felony conviction—creates an impermissible chilling effect on the free speech rights of local government officials and substantially impairs their ability to engage in open, honest, and uninhibited legislative deliberation.

34. Under Tennessee Code Annotated, Title 39, Chapter 12, the criminal liability established by Section 7 would extend not only to officials who actually vote for a “sanctuary policy,” but also to officials who: (a) Attempt to enact such a policy (Tenn. Code Ann. § 39-12-101); (b) Solicit others to support or vote for such a policy (Tenn. Code Ann. § 39-12-102); or (c) Conspire with others to enact such a policy (Tenn. Code Ann. § 39-12-103). Moreover, under Tennessee’s accomplice liability statute, any person who solicits, directs, aids, or attempts to aid another person in violating Section 7, with intent to promote or assist the commission of the offense, is equally criminally responsible for the conduct. Tenn. Code Ann. § 39-11-402(2). Similarly, any person who knowingly aids another in planning or committing a violation of Section 7 may be guilty of criminal facilitation. Tenn. Code Ann. § 39-11-403.

35. Pursuant to Tenn. Code Ann. § 39-12-107, which establishes the grading of inchoate offenses, an attempt or conspiracy to violate Section 7 would constitute a Class A misdemeanor, while solicitation would constitute a Class B misdemeanor. Criminal facilitation of a Class E felony constitutes a Class A misdemeanor under Tenn. Code Ann. § 39-11-403(b)(1). Accomplice liability under § 39-11-402 carries the same penalty as the underlying offense—a Class E felony.

36. These provisions mean that merely discussing, debating, advocating for, attempting to schedule a vote on, providing administrative support for, or drafting a policy that might be deemed a “sanctuary policy” could subject not only elected officials but also city staff, clerks, attorneys, and other municipal employees to criminal prosecution. The Act thus criminalizes *the entire*

legislative and administrative process surrounding any policy proposal that could potentially be characterized as a “sanctuary policy.”

37. Section 7 does not require a knowing, intentional, or criminally reckless state of mind to commit this crime. It does not specify any criminal intent, or mens rea, at all.

38. The lack of mens rea becomes particularly problematic for local officials considering policies that have multiple purposes and effects. For example:

a. A policy primarily aimed at improving community policing and building trust with immigrant communities to increase citizens reports of criminal activity might be characterized as a “sanctuary policy” if, to increase trust and reporting, the policy discourages or prohibits pro-active collection or reporting of the immigration status of crime victims by local police to federal immigration authorities;

b. A policy designed to allocate limited local law enforcement resources toward violent crime prevention might be deemed a “sanctuary policy” if it de-prioritizes certain immigration enforcement cooperation efforts;

c. A policy focused on ensuring equal access (regardless of national origin) to public health or housing services by requiring non-disclosure of health or rental application records that contain immigration information to local police or federal immigration authorities might be deemed a “sanctuary policy” even if its primary purpose is public health and safety;

d. A policy establishing protocols for Nashville schools to protect student safety during immigration enforcement actions on or near school grounds might be deemed a “sanctuary policy” if it incidentally limits immediate communication with federal immigration authorities, even though such policies are designed to ensure educational continuity and comply with federal educational privacy laws;

e. A policy directing Metropolitan Nashville Public Schools not to collect or verify students immigration status, or limiting cooperation with federal immigration enforcement on school grounds to ensure educational continuity and comply with federal educational privacy laws, might be deemed a “sanctuary policy” even though such policies are designed to protect students’ right to education as established in *Plyler v. Doe*, 457 U.S. 202 (1982) and maintain a safe educational environment.

39. These policies could, incidentally, “[l]imit or prohibi[t]” a local governmental entity “from communicating or cooperating with federal agencies or officials to verify or report” immigration information. Tenn. Code. Ann. §7-68-102 (A).

40. The Act fails to provide clear guidance on how officials should determine whether a policy with mixed purposes or effects crosses the line into becoming a “sanctuary policy.” This ambiguity

forces officials to self-censor and avoid even discussing or debating any policy proposal that might potentially affect immigration enforcement, regardless of its other legitimate purposes or regardless of any intention to violate the Act.

41. The vagueness of the term “sanctuary policy” additionally places local officials in impossible compliance scenarios where compliance with federal law may subject them to criminal liability under the Act.

42. Consider the following scenarios:

- a. An official votes for a policy limiting public schools’ sharing of student information with local law enforcement and federal immigration authorities to only the extent allowed by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232. She may face criminal liability under the Act, if the policy is deemed to “prevent law enforcement agencies from inquiring as to the citizenship or immigration status of any person” or to “limit or prohibit” schools’ communication with federal agencies about immigration status even though such limitation may be required by FERPA;
- b. An official verbally advocates for policies protecting patient information in local health departments, regardless of the patients’ immigration status. She faces criminal liability under the Act if she votes or asks others to vote to limit sharing patient information with federal immigration authorities, while potentially violating the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d-6, if she votes to permit such disclosure;
- c. An official circulates a draft resolution that encourages the sheriff to not comply with immigration detainer requests without a finding of probable cause in order to avoid Fourth Amendment violations as identified in cases like *Hernandez v. United States*, 939 F.3d 191, 200–01 (2nd Cir. 2019); *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015). He may face prosecution under the Act for his actions;
- d. An official introduces for debate a policy aimed at complying with Title VI of the Civil Rights Act’s prohibitions against discrimination based on national origin in the provision of services by city agencies. He may face criminal liability if the policy incidentally limits cooperation with federal immigration enforcement in a way deemed to create a “sanctuary policy”;
- e. An official advocates for a policy requiring Metropolitan Nashville Public Schools to maintain enrollment procedures that comply with *Plyler v. Doe*, 457 U.S. 202 (1982), by not inquiring about or verifying students’ immigration status during enrollment, as required by federal constitutional law. She faces criminal liability under the Act if such a policy is deemed to “limit” MNPS’s ability to “cooperate” with federal authorities’ requests to “report” on a student’s immigration status.

43. These impossible compliance scenarios render the Act unconstitutionally vague because officials cannot determine which legal obligation to prioritize when federal and state requirements directly conflict, particularly when the consequence of guessing wrong, or simply not knowing the contours of all applicable state and federal law, includes potential felony conviction and removal from office.

44. Not only does this Section of the Act lack an ordinary meaning, but it subjects officials to arbitrary enforcement by prosecutors and police officers who will be sorting through complex conflicts of state, federal and local law in order to criminally prosecute local officials. Defendant Funk may find himself prosecuting a Councilmember for “violations” of the Act that are not only entirely consistent with federal law—but required by it.

45. The potential conflicts between state and federal law posed by the Act have harrowing historical parallels to Jim Crow era laws that attempted to criminalize local legislative activities deemed threatening to Southern states’ radical anti-desegregation agenda. During that era, Southern states enacted laws that criminalized the activities of local officials who sought to implement civil rights protections or comply with federal desegregation orders. In the 1950s and 1960s, states like Louisiana passed “interposition acts” that made it illegal for local officials to comply with federal court desegregation orders, and Mississippi enacted statutes that penalized officials who facilitated school integration. These laws were eventually struck down by federal courts, including in cases like *Bush v. Orleans Parish School Board*, 188 F. Supp. 916 (E.D. La. 1960), and *Cooper v. Aaron*, 358 U.S. 1 (1958), which affirmed that state officials could not be punished for fulfilling their duties as locally elected officials complying with federal law.

Section 8

46. Under Section 8 of the Act, which amends Tenn. Code Ann. § 7-68-104, the Attorney General is required to initiate removal proceedings only after two conditions are met: (1) a court has issued an order pursuant to § 7-68-104(d) directing an official to comply with state immigration law, and (2) the official has both failed to comply with that order and been subsequently convicted under § 7-68-103(b). The amended § 7-68-104(e) provides that “Upon the failure of an official to comply with an order in accordance with subsection (d), and the official's subsequent conviction pursuant to § 7-68-103(b), the attorney general and reporter shall initiate an action to remove the official from office pursuant to title 8, chapter 47, as soon as practicable.”

47. While the Attorney General is mandated to begin removal proceedings, the removal process of Section 8 depends on initiation of a suit brought by a person who “resid[es] in a municipality or county,” Tenn. Code Ann. §7-68-104(a), creating an extreme risk of arbitrary enforcement.

48. Moreover, Section 8 does not detail the standard of proof required to determine whether a court order under 104(d) has not been complied with or what effect an appeal of the criminal conviction under Section 7 may have on the removal proceedings.

Increased Immigration Enforcement

49. Tennessee has a modest immigrant population (about 6.1 percent of the state’s overall population).⁵ Tennessee’s immigrants (documented and undocumented) contribute to Tennessee’s workforce, pay taxes (over \$4.4 billion dollars), study at Tennessee’s institutions of higher

⁵ American Immigration Council, *Immigrants in Tennessee*, <https://map.americanimmigrationcouncil.org/locations/tennessee/> (last visited May 23, 2025).

education, and otherwise participate in their communities.⁶ Immigrant populations commit fewer crimes than their U.S.-born counterparts.⁷

50. Since the beginning of 2025, immigration enforcement activity in Nashville has dramatically escalated. ICE detainer requests at Nashville jails surged immediately after President Trump took office in January 2025, with ICE agents picking up nearly four times as many people from Nashville jails in February 2025 compared to February 2024 under the previous administration.⁸

51. On May 3, 2025, Tennessee Highway Patrol ("THP") and federal immigration officials conducted what they termed a "targeted enforcement operation" in predominantly Latino neighborhoods in South Nashville.⁹ Over the course of several days, THP made approximately 500 traffic stops in coordination with ICE, resulting in the detention of 196 undocumented immigrants according to federal officials.¹⁰

52. The operation has had a severe chilling effect on Nashville's immigrant communities. Community organizations report that families are afraid to leave their homes, children are missing school, and essential services in immigrant communities are being disrupted.¹¹

⁶ *Id.*

⁷ American Immigration Council, *Debunking the Myth of Immigrants and Crime*, (October 2024), available at https://www.americanimmigrationcouncil.org/sites/default/files/research/debunking_the_myth_of_immigrants_and_crime.pdf.

⁸ Steven Hale, *ICE Enforcement Up Almost 300 Percent in Davidson County During First Month of Trump Administration*, Nashville Banner (Mar. 5, 2025), <https://nashvillebanner.com/2025/03/05/nashville-immigration-enforcement-trump/>.

⁹ Sarah Grace Taylor, *ICE, State Troopers Make 150 Stops, Detain and Remove Dozens of People from South Nashville*, Nashville Banner (May 4, 2025), <https://nashvillebanner.com/2025/05/04/ice-immigration-operation-nashville/>.

¹⁰ Sarah Grace Taylor, *Nashville Area ICE Raids Likely to End This Weekend, as Troopers Near 500 Stops*, Nashville Banner (May 8, 2025), <https://nashvillebanner.com/2025/05/08/tennessee-ice-detentions-legal-aid/>.

¹¹ Sarah Grace Taylor and Laura Dean, *"It Destroys the Web"—ICE Raids Rattle Nashville's Latino Community*, Nashville Banner (May 7, 2025), <https://nashvillebanner.com/2025/05/07/it-destroys-the-web-ice-raids-rattle-nashvilles-latino-community/>.

53. The enforcement operation was conducted by state and federal authorities with little to no notice to Nashville city officials, leaving local officials completely in the dark about THP’s involvement with ICE in conducting hundreds of traffic stops and detentions on Nashville’s streets.¹²

54. Federal officials have since specifically targeted Nashville Mayor O’Connell and city policies in public statements. Recently, Nashville Mayor, Freddie O’Connell has come under fire from both the Department of Homeland Security¹³ and U.S. Representative Andy Ogles¹⁴ for the Belonging Fund¹⁵, which provides financial assistance to non-profits providing essential services for immigrants in Nashville.

55. This enforcement environment creates the exact conditions that the Act is designed to exploit. Local officials who might consider policies to address the concerns of their immigrant constituents—such as increasing privacy when accessing local health and education services, or establishing community policing policies that build trust with immigrant communities—now face the realistic prospect of immediate criminal prosecution under the Act’s broad and vague terms.

Plaintiffs’ Activities as Metropolitan Councilmembers

56. As members of the Metropolitan Council, Plaintiffs are regularly called upon to address issues raised by and affecting their constituents—including constituents that have immigrated to

¹² Travis Loller, *Authorities Arrest Over 100 People on Tennessee Roads in Support of Trump’s Deportation Plan*, Associated Press (May 10, 2025), <https://apnews.com/article/immigration-arrests-nashville-ice-tennessee-0fe523bc9d0ed143e105da0e96ad0c6c>.

¹³ Press Release, Department of Homeland Security, DHS Announces Successful Operation with 287g Partners in Nashville Resulting in Arrests of MS-13 Affiliate, Murderer, Sex Offenders, and Illegals with Assault Convictions (May 13, 2025), <https://www.dhs.gov/news/2025/05/13/dhs-announces-successful-operation-287g-partners-nashville-resulting-arrests-ms-13>.

¹⁴ Press Release, Rep. Andy Ogles Urges Judiciary and Homeland Security Committees to Investigate Nashville Mayor Freddie O’Connell for Obstructing ICE Operations (May 16, 2025), <https://ogles.house.gov/media/press-releases/rep-ogles-urges-judiciary-and-homeland-security-committees-investigate>.

¹⁵ Press Release, Mayor’s Office, The Belonging Fund Launches to Provide Emergency Support for Immigrants in Nashville (May 5, 2025), <https://www.nashville.gov/departments/mayor/news/belonging-fund-launches-provide-emergency-support-immigrants-nashville>.

the United States. Plaintiffs address these issues by, among other activities, drafting, introducing, and debating ordinances and resolutions to be voted upon and passed by members of the Metropolitan Council.

57. Since the Act's passage, Plaintiff Capp's constituents, for example, have asked him what efforts he can take to protect immigrants in their community without facing criminal liability. Constituents have expressed fear that councilmembers like Plaintiff Capp will not be able to discuss—much less effectively address—their political interests once the Act goes into effect. Indeed, once the Act goes into effect constituents petitioning Plaintiffs could be indicted for soliciting a crime by asking for Plaintiffs to vote for policies that may be considered “sanctuary policies.”

58. Plaintiffs Sepulveda, Suara, and Vo are members of the immigrant caucus of the Metropolitan Council— Plaintiff Vo is the Chairperson. The immigrant caucus is comprised of councilmembers who immigrated or are children of those who immigrated to the United States. As members of the immigrant caucus, Plaintiffs Sepulveda, Suara and Vo are especially focused on addressing the concerns of immigrant constituents in Nashville.

59. All Plaintiffs regularly discuss proposed ordinances, constituent concerns, or other measures with other Councilmembers during public meetings and work sessions. Plaintiffs routinely solicit other Councilmembers' support when considering ordinances and other measures that Plaintiffs support.

60. Because of the greatly increased immigration enforcement activity in Nashville and recent efforts to prevent immigrant students from enrolling in Tennessee's public schools, Plaintiffs are considering introducing several resolutions related to local law enforcement priorities, local

education agencies, and resource allocation that could potentially be construed as “sanctuary policies” under the broad definition in Tenn. Code Ann. § 7-68-102.

61. These potential ordinances include:

- a. An ordinance prohibiting Metropolitan Nashville Public Schools from collecting or sharing students’ personal identifying information (PII) with local, state or federal law enforcement for immigration enforcement purposes (except pursuant to lawful forms of disclosure under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g)).
- b. A non-binding resolution requesting that the Davidson County Sheriff’s Department refrain from entering into a 287(g) agreement (under the Immigration and Nationality Act) with the Department of Homeland Security.
- c. An ordinance prohibiting the sharing of patient’s immigration information by the Metropolitan Nashville Health Department to local, state, or federal immigration authorities (except pursuant to lawful forms of disclosure under Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d-6).
- d. An ordinance tasking the Metropolitan Police Department with creating policies that encourage crime reporting regardless of the victim’s national origin and prioritize the collection of personal information of victims that is not related to immigration status.

62. Plaintiff Sandra Sepulveda would like to introduce a proposed resolution (“Proposed Resolution A,” attached as Exhibit 2). Proposed Resolution A directs Metropolitan Nashville Public Schools to create policies that prohibit the disclosure of student information, including information relating to immigration status, outside the processes outlined in FERPA.

63. Similarly, Plaintiff Brenda Gadd would like to introduce another proposed resolution. (“Proposed Resolution B” attached as Exhibit 3). Proposed Resolution B directs the Metropolitan Nashville Police Department to create policies that encourage crime reporting regardless of the victim’s national origin and prioritize the collection of personal information of victims that is not related to immigration status.

64. The remaining Plaintiffs would all debate, discuss and consider voting for, or otherwise advocating for, Proposed Resolutions A and B.

65. Neither Proposed Resolutions A and B, nor the other potential ordinances or resolutions listed above, are clearly intended, as their primary purpose, to be “sanctuary policies.”

66. Plaintiffs wish to advocate publicly for these ordinances during Council hearings, to solicit support from other councilmembers, to introduce the same or similar ordinances for debate, and to vote in favor of these ordinances.

67. However, because of the Act’s criminal penalties and mandatory removal provisions, Plaintiffs face immediate and concrete harm from the Act’s enforcement. The censorship has already begun: Plaintiffs have been forced to refrain from advocating for these policies and have chosen to not even introduce these ordinances rather than risk felony prosecution and removal from office for themselves and any party involved.

68. Per Rules 9 and 13 of the Rules of Procedure of the Council of the Metropolitan Government of Nashville and Davidson County, Councilmembers *must* introduce legislation through Council Office.¹⁶ Council Office is then responsible for reviewing and distributing proposed legislation to Councilmembers.

69. Council Office staff has already expressed to Plaintiffs that they fear criminal liability for assisting councilmembers with introducing resolutions that may be considered “sanctuary policies.” Indeed, Council Office staff could be criminally indicted for accepting, reviewing, editing, and publishing proposed ordinances for introduction, as could those who facilitate the Council’s vote on proposed ordinances like clerks and technological assistants who distribute copies of the ordinance, calendar Metropolitan Council meetings, or tally votes.

¹⁶ Rules of Procedure of the Council of the Metropolitan Government of Nashville and Davidson County, available at <https://www.nashville.gov/sites/default/files/2025-04/Rules-of-Procedure-2023-2027-Amended-3.18.25.pdf?ct=1744895045>.

70. To be considered by July 1, 2025, Proposed Resolutions A and B would have needed to be filed on June 20, 2025 and published by June 25, 2025. Council Office staff and legal counsel would have needed to review the Proposed Resolutions and facilitate their filing and publication. Fearing criminal liability for themselves and staff after the Act takes effect, Plaintiffs have not taken any of these requisite actions—effectively silencing their voices on these important public issues.

71. Plaintiffs wish to fully participate in robust debate, discussion, and deliberation regarding the above-outlined proposals. They wish to advocate for positions that might be disfavored by the state government but that they believe are in the best interests of their constituents or are otherwise required by federal law. But Sections 7 and 8 of the Act force Plaintiffs to choose between exercising their constitutional rights to engage in legislative speech and debate on matters of vital public concern or avoiding criminal prosecution and removal from office.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE FIRST AMENDMENT AND FREE SPEECH CLAUSE OF TENNESSEE CONSTITUTION

72. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

73. The First Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, protects freedom of speech and expression, including legislative speech and debate. Article I, §19 of the Tennessee Constitution similarly protects every citizen’s right to “freely speak, write, and print on any subject...”

74. Speech and debate by elected officials on matters of public concern in their official legislative capacities constitute protected expression under the First Amendment and Tennessee Constitution. Speech and debate are essential to the deliberative democratic process—and are core

political speech. As the Supreme Court has recognized, “the manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy.” *Bond v. Floyd*, 385 U.S. 116, 136 (1966) (finding refusal to seat duly-elected state legislator because of legislator’s statements opposing Vietnam War violated legislator’s First Amendment rights).

75. The combined effect of Sections 7 and 8, along with Tennessee’s criminal attempt, solicitation, conspiracy, facilitation, and accomplice liability provisions, is to criminalize not only the actual adoption of policies that might be deemed “sanctuary policies,” but also the entire legislative process leading up to such votes. This includes committee discussions, public hearings, floor debates, and even private conversations among officials about potential policies with multiple purposes or effects—all of which could be criminally indicted.

76. Section 8’s mandatory removal provision unconstitutionally amplifies this chilling effect by requiring the Attorney General to initiate removal proceedings against convicted officials, eliminating any discretion by the Attorney General or the official’s voting constituents that might otherwise mitigate the impact on legislative speech and independence.

77. Moreover, when faced with uncertainty about whether a policy with multiple legitimate purposes might also be characterized as a “sanctuary policy,” officials are forced to adopt one of two equally troubling approaches: a. Avoid any discussion, debate, consideration or passage of policies that might tangentially affect immigration enforcement, even when those policies serve vital local interests in public safety, public health, resource allocation, or community relations; or b. Risk criminal prosecution and removal from office by engaging in the full and robust debate required for effective local governance.

78. The Act’s criminalization of legislative speech and debate—that is, speech and expressive conduct leading up to and concerning proposed legislative activity—therefore imposes an unconstitutional penalty on the exercise of free-speech rights by local elected officials like Plaintiffs. As the Supreme Court has held, “legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them.” *Bond v. Floyd*, 385 U.S. 116, 136-37 (1966).

79. The Act also completely bans speech of a particular viewpoint by threatening criminal penalties against officials who vote in a way that supports disfavored policy outcomes. While the act of voting may be a legislative activity, the Act takes the unprecedented step of prohibiting votes based exclusively on the viewpoint expressed by the vote. That is, only votes that contravene the State’s majoritarian views are prohibited—in violation of the First Amendment. *See Nevada Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 125 (2011) (stating that laws that engage in viewpoint discrimination may still be subject to heightened scrutiny even for unprotected speech); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 392 (1992) (“The point of the First Amendment is that majority preferences must be expressed in some fashion other than silencing speech on the basis of its content.”) (striking down statute that proscribed otherwise unprotected speech because statute prohibited only some “fighting words” based on viewpoint espoused).

80. Sections 7 and 8 fail strict scrutiny review. The State’s purported interest in enforcing state laws concerning international immigration is weak. *See, e.g., Arizona v. U.S.*, 567 U.S. 387, 395 (2012) (“The federal power to determine immigration policy is well settled.”) In the field of immigration enforcement, state efforts are pre-empted by federal enforcement regimes. *Id.* The

state's already weak legal interest is furthered weakened by the fact that Tennessee's immigrant population is small, law-abiding, and unlikely to experience a surge of growth given that Tennessee is not a border state. These weak interests, therefore, do not justify this severe and wide-sweeping infringement on core political speech. Thus, Sections 7 and 8 of the Act are not narrowly tailored to serve a compelling government interest and fail heightened scrutiny review.

81. By enacting and enforcing Sections 7 and 8 of the Act, Defendants, acting under color of state law, have deprived and will continue to deprive Plaintiffs of rights secured by the First Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983.

COUNT II

UNCONSTITUTIONAL RESTRICTION ON LEGISLATIVE INDEPENDENCE

82. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

83. Legislative immunity and privilege are deeply rooted in American constitutional tradition, protecting legislators from being “questioned in any other Place” for “Speech or Debate in either House” as stated in the U.S. Constitution's Speech or Debate Clause (Art. I, § 6, cl. 1); *see also* Tenn. Const. art. II, §13.

84. The principles of legislative immunity and privilege have long protected legislators' freedom to engage in robust debate, deliberation, and decision-making without fear of criminal or civil liability for their legislative activities. *Bogan v. Scott-Harris*, 523 U.S. 44, 52 (1998) (“Regardless of the level of government, the exercise of legislative discretion should not be inhibited by judicial interference or distorted by the fear of personal liability.”); *see also Miller v. Wyatt*, 457 S.W.3d 405, 411-12 (Tenn. Ct. App. 2014) (relying on *Bogan* to find city council member's statements cloaked in absolute legislative immunity).

85. While the Speech or Debate Clause, and Tennessee's corollary constitutional clause, directly applies to federal and state legislators, courts have recognized that the principles of legislative immunity extend to local legislators as a matter of common law and constitutional structure. *Bogan v. Scott-Harris*, 523 U.S. 44, 52 (1998); *see also Miller v. Wyatt*, 457 S.W.3d 405, 411-12 (Tenn. Ct. App. 2014).

86. Section 7 of the Act impermissibly exposes local legislators to criminal liability for legislative actions for which they have been historically absolutely immune.

87. Section 8 of the Act, by mandating that the Attorney General initiate removal proceedings against local officials who fail to comply with a court order and are subsequently convicted under Section 7, unconstitutionally interferes with legislative independence by creating a direct mechanism for the state executive branches to remove local legislative officials based on the content of their legislative activities.

88. The removal provision bypasses the democratic process, and threatens to collapse the separation of powers, based solely on the official's engagement in protected legislative speech and activities, effectively eviscerating the legislative privilege of local elected officials.

89. By enforcing Sections 7 and 8 of the Act, Defendants, acting under color of state law, have deprived and will continue to deprive Plaintiffs of rights secured the United States Constitution, in violation of 42 U.S.C. § 1983.

COUNT III
VOID FOR VAGUENESS
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT AND ART. 1, §8 OF THE TENNESSEE CONSTITUTION

90. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

91. The Due Process Clause of the Fourteenth Amendment and Art. I, § 8 of the Tennessee Constitution prohibit the enforcement of laws that are unconstitutionally vague.

92. A law is unconstitutionally vague when it fails to provide a person of ordinary intelligence fair notice of what is prohibited or is so standardless that it authorizes or encourages arbitrary enforcement. *Johnson v. U.S.*, 576 U.S. 591 (2015) (“The prohibition of vagueness in criminal statutes “is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law,” and a statute that flouts it “violates the first essential of due process.”) (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)); *see also State v. Crank*, 468 S.W.3d 15, 23 (Tenn. 2015) (“In evaluating whether a statute provides fair warning, the determinative inquiry is whether [the] statute’s ‘prohibitions are not clearly defined and are susceptible to different interpretations as to what conduct is actually proscribed.’”) (internal quotation omitted).

93. A statute’s lack of mens rea both increases the likelihood that proscribed conduct is committed unknowingly and that the statute will be arbitrarily enforced without specific guidelines to law enforcement. *See Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 201 (Tenn. Ct. App. 2017) (“[T]he constitutionality of a vague statutory standard is closely related to whether that standard incorporates a requirement of *mens rea*.”) (internal citation omitted).

94. Heightened scrutiny applies to laws that impose criminal liability or burden the exercise of constitutional rights. *See Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498 (1982); *City of Knoxville v. Ent. Res., LLC*, 166 S.W.3d 650, 655 (Tenn. 2005) (“Vague laws implicating the First Amendment to the United States Constitution and Art. I, § 19 of the Tennessee Constitution are subject to a more stringent standard than laws in other contexts because of the danger of chilling protected speech.”). Sections 7 and 8 do both.

95. Sections 7 and 8 of the Act, in conjunction with the definition of “sanctuary policy” in Tenn. Code Ann. § 7-68-102, are unconstitutionally vague because: a. They fail to provide fair notice to local government officials like Plaintiffs as to what specific speech, debate, or votes would constitute a criminal violation; b. The term “sanctuary policy” (particularly Tenn. Code Ann. § 7-68-102(A) and (F)) is defined so broadly and ambiguously that reasonable officials cannot know with certainty which policies fall within its scope; c. Section 7 does not specify the requisite mental state for criminal liability; d. Section 7 and 8 do not clearly establish whether officials can be prosecuted for engaging in speech and debate that leads to policies that have multiple purposes or effects, only some of which might fall within the broad definition of “sanctuary policy”; e. They fail to provide clear standards to guide law enforcement and prosecutors in determining which legislative activities to criminalize, thereby inviting arbitrary and discriminatory enforcement; f. They do not specify whether officials can be prosecuted for engaging in speech and debate that leads to policies that are later determined to violate state law, even if the illegality was not apparent at the time of the discussion or vote; g. They do not clarify whether officials can be prosecuted for engaging in speech and debate that leads to policies they reasonably believed were lawful based on legal advice; and, h. They place local officials in impossible compliance scenarios where federal law and the Act conflict.

96. The vagueness problems are further amplified by Section 8’s removal provision, which fails to specify: a. The standards by which a court determines whether an official has failed to comply with an order under subsection (d), particularly when compliance may involve complex policy considerations; b. Whether officials are entitled to any administrative or discretionary review before removal proceedings are initiated; c. Whether removal is still mandatory if the

felony conviction is being appealed; and d. Whether removal proceedings must be initiated even in cases where special circumstances might otherwise warrant discretion

97. By enacting and enforcing Sections 7 and 8 of the Act, Defendants, acting under color of state law, have deprived and will continue to deprive Plaintiffs of rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Due Process Clause Tennessee Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that Sections 7 and 8 of the Act violate the First Amendment to the United States Constitution and Art. I, §19 of the Tennessee Constitution;
- B. Declare that Sections 7 and 8 of the Act unlawfully infringe upon legislative immunity and independence;
- C. Declare that Sections 7 and 8 of the Act are unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Art. I, § 8 of the Tennessee Constitution;
- D. Award Plaintiffs reasonable attorneys' fees and costs; and
- E. Grant such other and further relief as the Court deems just and proper.

Dated: June 24, 2025

Respectfully submitted,

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