IN THE CHANCERY COURT OF
DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

HOME BUILDERS ASSOCIATION OF MIDDLE TENNESSEE,	)	
Plaintiff,	)	
v.	)	**No. 17-386-II**
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,	)	
Defendant.	)	

SURREPLY IN OPPOSITION TO MOTION TO DISMISS

The Home Builders Association of Middle Tennessee (HBAMT) respectfully seeks leave to submit the following surreply to address the new issues raised by Metro in its reply brief.[1] Specifically, Metro's labored effort to distinguish between types of takings claim fails to appreciate that this is an exactions claim and, as such, the "substantially advances" test Metro utilizes is not germane. Moreover, Metro wrongly contends that the case of *Tennessee. Firearms Association v. Metro*, 2017 Tenn. App. LEXIS 405 (Tenn. Ct. App. June 15, 2017), released since Metro filed its original motion, supports its argument that the Declaratory Judgment Act (DJA) does not provide an independent basis to challenge Metro's Inclusionary Zoning law as *ultra vires*. This

[1] Surrreplies are appropriate under this Court's authority to control its own docket and proceedings, particularly when parties raise new arguments in a reply brief. *See Demquarter Healthcare Investors, L.P. v. OP Chattanooga, LLC*, 2016 Tenn. App. LEXIS 1001, at *16 (Tenn. Ct. App. May 25, 2016) (copy of opinion attached).

case does not help Metro; citizens are not without redress when localities attempt to nullify state law.

I. In Metro's revised takings analysis, it fundamentally misunderstands the nature of an exaction claim.

This case is ripe for review. Metro's insistence that it is not ripe by illustrating, in a table inserted, for the first time in its reply brief, "showing the different types of takings doctrine" (Def's Br. at 1-2), demonstrates its fundamental misunderstanding of HBAMT's claims. HBAMT alleges that Metro violated the Fifth Amendment rights of its members when it conditioned receipt of development entitlements on the inclusion of affordable housing in the proposed project or in a separate project, or on the payment of an in-lieu fee. (Compl. at 10-11, ¶¶ 40-50.)

Metro's confusion regarding the bases for HBAMT's takings claim is readily apparent. HBAMT does not assert a physical invasion of property, deprivation of economically beneficial use of land, or a regulatory taking. Rather, as detailed in the Complaint, HBAMT asserts its takings claim under the unconstitutional conditions doctrine. (*Id*.) Despite the exhaustive treatment of taking cases related in Metro's reply, it neglected to mention the Supreme Court's most recent taking case, *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013) – an exaction case where the Supreme Court ruled that "[e]xtortionate demands for property in the land-use permitting context run afoul of the Taking Clause not because they take property but because they impermissibly burden the right not to have taken without just compensation." *Id*. at 2596.

HBAMT does not seek monetary damages because, not only would that be improper since the appropriate remedy for an unconstitutional exaction is declaratory and

injunctive relief declaring the condition unconstitutional, but it also would make no sense. HBAMT, like the plaintiff in *Koontz*, does not contend that Metro has yet to "take" anything such that its members are due just compensation. Rather, HBAMT contends that the constitutional wrong it has suffered is Metro forcing its members to choose between: a) foregoing development opportunities, while preserving their Fifth Amendment rights; and, b) sacrificing those rights in order to obtain authorization from Metro to carry out development.

Metro's argument with respect to ripeness can be boiled down to the following: Metro contends that in *Lingle v. Chevron U.S.A.*, 544 U.S. 528 (2005), the United States Supreme Court outlawed all facial takings challenges and that HBAMT can only bring an as-applied takings claim for just compensation, and that HBAMT can only bring such a takings claim in state court. As explained below, the Court's rejection of takings claims brought under the "substantially advances" test has absolutely no impact on HBAMT's case because it is based on an unconstitutional exaction. The Court explicitly stated that exaction claims brought under the unconstitutional conditions doctrine, like HBAMT's, remain intact as a means to challenge regulations imposing unconstitutional conditions on property owners. In short, Metro is incorrect, as explained more fully below.

A. An exaction claim contests the propriety of an imposed permitting condition.

While HBAMT understands that detailed discussion of the unconstitutional conditions doctrine may be better suited for briefing on the merits, Metro's confusion makes it necessary to provide a brief discussion here.

Through a series of cases developed over the last three decades, the United States Supreme Court has made clear that the Fifth Amendment not only protects one from a

physical taking, but also from governments that misuse the power of land-use regulations. *Koontz*, 133 S. Ct. at 2591; *see generally Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987). Known as the "unconstitutional conditions doctrine," it is well-settled that "the government may not require a person to give up a constitutional right … in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship to the propriety." *Dolan*, 512 U.S. at 385.

Through those cases, the Supreme Court laid out the test for determining whether a condition violates the unconstitutional conditions doctrine and thus, the Fifth Amendment. Under the *Nollan* and *Dolan* test, a "government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." *Koontz*, 133 S. Ct. at 2591.

In *Lingle*, the United States Supreme Court distinguished between takings claims seeking just compensation for imposed regulatory restrictions and exactions claims contesting the validity of an imposed permitting condition. 544 U.S. at 547. Claims seeking just compensation for imposed *regulatory* restrictions are advanced under *Lucas v. South Carolina Coastal Commission*, 505 U.S. 1003 (1992), or *Penn Central Transportation v. New York City*, 438 U.S. 104 (1978), and acknowledge the government's authority to impose the regulation in question, while seeking compensation on a theory that the imposed restriction has proven too burdensome. *See Lingle*, 544 U.S. at 539. By contrast, an *exactions* claim is advanced under a distinct line of cases (*Nollan* and *Dolan*), and contests the propriety of the government's conduct where permit

approval is subject to a requirement to surrender protected rights. *Id*. at 545-48; *see also Koontz*, 133 S. Ct. at 2591.

In writing for the Court in the *Lingle* case, again, the very case Metro asserts obsoleted HBAMT's position (Def's Repl. at 5), Justice O'Connor stressed this distinction to ensure *Lingle* would not repudiate *Nollan* and *Dolan*. *Lingle*, 544 U.S. at 545-46. Notably, *Lingle* concerned whether the Takings Clause requires government defendants to demonstrate that a challenged zoning restriction "substantially advances" a legitimate government interest, as previously suggested in *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980). The *Lingle* Court rejected the "substantially advances" test because the Takings Clause looks to the burden imposed on the landowner, not to the justification for a regulatory enactment. 544 U.S. at 543.

But while emphasizing that the Takings Clause is generally unconcerned with the *propriety* of the government's conduct, Justice O'Connor carefully explained the unique nature of exactions claims like the one asserted by HBAMT here. Specifically, the Court opined that the nexus and rough proportionality tests set forth in *Nollan* and *Dolan*, constitute a "special application" of the unconstitutional conditions doctrine. *Lingle*, 544 U.S. at 547 (citing *Dolan*, 512 U.S. at 385). Thus, unlike other takings tests, *Nolan* and *Dollan*, ask whether the challenged regulatory action can be enforced. *See* Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 Harv. L. Rev. 1413, 1463 (1989) (explaining that government must demonstrate how an imposed condition relates to an asserted state interest).

B. The constitutional injury occurs with imposition of a repugnant choice between acquiring a permit and waiving Fifth Amendment rights.

The Supreme Court's 2013 decision in *Koontz* offers additional guidance. As Justice Alito explained, the unconstitutional conditions doctrine recognizes a constitutional injury where the government has forced a choice upon a property owner "between (a) foregoing development opportunities, while preserving Fifth Amendment rights and (b) sacrificing those rights in order to obtain authorization to carry out development." Luke A. Wake & Jarod M. Bona, *Legislative Exactions After Koontz v. St. Johns River Management*, 27 Geo Int'l Envtl. L. Rev. 539, 569 (2015). As such, an exaction claim ripens with the imposition of this impossible choice. *Koontz*, 133 S. Ct. at 2596.

In *Koontz*, the Supreme Court held that the government violated the Takings Clause when authorities indicated they would not issue a development permit without an agreement to dedicate money to public use.[2] Thus, the fact that the government ultimately denied Mr. Koontz's permit application (on account of his refusal to accede to an extortionate condition) was beside the point. He had *already suffered a violation* of his constitutional rights under *Nollan* and *Dolan*: he could not develop his land because he was unwilling to waive his Fifth Amendment rights. The same analysis and injury awaits HBAMT's members.

[2] "The Florida Supreme Court puzzled over how the government's demand for property can violate the Takings Clause even though 'no property of any kind was ever taken,' but the unconstitutional conditions doctrine provides a ready answer. Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation. … [T]he impermissible denial of a governmental benefit is a constitutionally cognizable injury." *Koontz*, 133 S. Ct. at 2596 (internal citations omitted).

C. The exclusive constitutional remedy for an unconstitutional exaction is injunctive relief.

In marked contrast to one another, a suit for just compensation proceeds on the theory that a constitutional violation will occur unless just compensation is paid, whereas in an exactions case, a claimant invoking *Nollan* and *Dolan* maintains that he is *already suffering a constitutional injury*. *Compare First English Evangelical Lutheran Church of Glendale v. Los Angeles Cty.*, 482 U.S. 304, 321 (1987) (holding that "where the government's activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective"); with *Koontz*, 133 S. Ct. at 2596 (recognizing that imposition of an impermissible condition is a constitutional injury in itself). In an exactions case, the constitutional injury will continue absent a court order invalidating the imposed condition. So long as an unconstitutional condition remains in place the owner faces an unconscionable dilemma: either surrender protected rights in order to accept the benefits of a needed permit or remain in limbo indefinitely. *Koontz*, 133 S. Ct. at 2596.

Accordingly, injunctive relief provides the only adequate constitutional remedy. For one, injunctive relief makes sense for a claim contesting the legitimacy of an act of government. But more fundamentally, it is the only remedy that will cure the constitutional defect in an exactions case. Moreover, injunctive relief is the traditional remedy in unconstitutional conditions cases. *See Frost & Frost Trucking Co. v. RR Comm'n of Cal.*, 271 U.S. 583, 592-94 (1926) (invalidating regulation requiring waiver of rights and noting: "It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence."); *Liquormart, Inc. v. Rhode*

Island, 517 U.S. 484, 512-13 (1996) (striking down a law conditioning the right to do business on waiver of constitutional rights). This is equally true in land use permitting cases. *See Nollan*, 483 U.S. at 828-29 (observing that the superior court struck down the contested condition); *id*. at 837-42 (holding that the contested condition was "not a valid regulation"); *Dolan*, 512 U.S. at 385 (ruling that "government may not require a person to give up a constitutional right … in exchange for a discretionary benefit conferred by the government where the benefit has little or no relationship to the property"). Injunctive relief alone, not compensation, is what HBAMT seeks because only an injunction actually addresses the constitutional infraction.

Nonetheless, in this case Metro insists that HBAMT should have pursued a claim for just compensation. (Def's Repl. at 8). That theory fails because one can only seek just compensation if the authorities actually took private property. But, in an exactions case, the property in question (i.e., the demanded ransom) has neither been appropriated nor transferred. *See, e.g.*, *Nollan*, 483 U.S. at 828-29 (owner refused to convey the demanded easement, but instead sought invalidation of the condition). While the contested conditions demand an exaction as a toll on the right to enjoy the benefits of a development entitlement such as a permit or zoning amendment, the imposed restrictions have yet to affirmatively "take" anything. *See Lingle*, 544 U.S. at 546-47 (emphasizing that *Nollan* and *Dolan* both asked "whether the government could, without paying the compensation that would otherwise be required upon effective such a taking, demand the easement as a condition for granting a development permit the government was entitled to deny"). In other words, the problem is not the burden on the property *per se* but the burden on the right itself. It makes no sense to demand compensation.

If the government denies a permit, however, on account of the owner's refusal to accede to an extortionate condition, a potential claim for just compensation may arise under *Penn Central*'s reasoning. In any event, *Nollan*, *Dolan*, and *Koontz* unequivocally reject the notion that a landowner must choose between a development entitlement denial and acceptance of an unconstitutional condition. Jane C. Needleman, *Exactions: Exploring Exactly When Nollan and Dolan Should Be Triggered*, 28 Cardozo L. Rev. 1563 (2006). And these cases squarely repudiate the contention that such claims should be relegated to review under *Penn Central*, which, after all, concerns regulatory takings, not physical ones, such as here.

D. *Williamson County* does not bar HBAMT's state court takings claim.

Metro makes a number of arguments in its Reply regarding *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), and its assertion that HBAMT's unconstitutional exactions claim is unripe for review by this state court. (Def's Repl. at 3-8.) To briefly address the arguments Metro raises in its reply, four (4) key reasons exist why *Williamson County* does not bar HBAMT's case:

- Most importantly, applying *Williamson County* to HBAMT's takings claim and requiring HBAMT to seek just compensation when there has yet to be an actual "taking," makes no sense because as previously explained, the *only* proper remedy for an unconstitutional exaction is injunctive relief.

- *Williamson County* applies to takings claims brought in *federal* court, not *state* court. *id*. at 194-97. The Tennessee Court of Appeals recognized as much in *STS/BAC Joint Venture v. City of Mount Juliet*, 2004 Tenn. App. LEXIS 821, when it stated: "The requirement that a landowner pursue state remedies for just compensation before bringing a claim based on violation of the Fifth Amendment is a ripeness requirement applicable to *federal* courts."[3] *Id*. at *23 (emphasis added).

[3] It is worth noting that the finding in *STS/BAC Joint Venture* raised by Metro (Def's Br. at 9) that the developer's claim was in fact an inverse condemnation claim and thus barred by the statute of limitations, is inapplicable to this case because there the developer sought damages for a temporary taking, alleging that

- *Consolidated Waste* is directly applicable to this case and the court expressly found that the *Williamson County* ripeness requirements do not apply to parties "challenging the constitutionality of a zoning ordinance" in Tennessee state courts. 2005 Tenn. App. LEXIS 382, *97 (2005). While the plaintiff in *Consolidated Waste* brought a substantive due process claim, it was grounded in a takings claim, and the courts analysis of *Williamson County* was directly related to the underlying takings claim.

- Finally, as explained at length in HBAMT's Response *Williamson County* does not apply to HBAMT's unconstitutional exactions claim, because it is a facial challenge and facial claims seeking to invalidate state laws or regulations are "generally ripe the moment the challenged regulation or ordinance is passed." *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 736 n.10 (1997).

II. The *Tennessee Firearms* case does not change the analysis.

Metro's argument all along has been, regardless of whether its Inclusionary Zoning Ordinance was flatly illegal, no citizen – HBAMT included – may challenge it because no express cause of action exists. Metro relies on the recent *Tennessee Firearms* case to contend that, irrespective of whether it had acted with patent disregard of state law, the Court of Appeals "recently restated the rule" that absent an express cause of action, plaintiffs may not request a declaratory judgment. (Def. Repl. at 13). This extreme defense of *de facto* nullification is not supported by *Tennessee Firearms* and is not the law. As extensively related in HBAMT's original brief, long have private parties challenged municipal ordinances as *ultra vires* under the DJA (Pl's. Br. at 25-26) (citing cases), and thus, were Metro correct, the helplessness of citizens in the face of defiant localities would make for a major development.

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the city interfered with completion of a development by arbitrarily refusing to grant necessary permits. *Id*. at *2. Here, HBAMT does not seek damages, does not assert an as-applied challenge, does not allege a temporary taking, and does not allege denial of a permit.

That local governments may be called to court by citizens when they act in violation of their delegated powers is not a controversial proposition. Indeed, Metro itself understands this. As it wrote in a recent legal opinion concluding that it could not become a sanctuary city in defiance of state law and its own charter: "An ordinance is not enforceable if it violates the Metropolitan Charter, state law, or federal law. *See City of Bartlett v. Hoover*, 571 S.W.2d 291, 292 (Tenn. 1978); *Farmer v. City of Nashville*, 127 Tenn. 509, 515-516, 156 S.W. 189, 190 (Tenn. 1913)." Metro Opinion No. 2017-01, at 1 (June 26, 2017). In fact, both of the cases Metro cited – *Farmer* and *Hoover* – involved citizens challenging local ordinances as exceeding their delegated powers, either under state law or city charter. Yet Metro insists here that it can enforce its own laws, no matter how much they conflict with state law, and there is nothing any person may do in response.

The *Tennessee Firearms* case changes nothing, for the reasons explained below:

- Every wrong must have a remedy under the Tennessee's Open Court's Claus of its Constitution. Metro's interpretation invites a constitutional clash;

- The *Tennessee Firearms* case precluded declaratory actions based on violations of Metro's Charter. It allowed them based on state preemption;

- The *Tennessee Firearms* case did not involve the other, independent causes of action in this case, namely, Section 1983 and the inherent equitable powers of this Court; and,

- The Tennessee Supreme Court in *Colonial Pipeline Co. v. Morgan,* 263 S.W.3d 827 (Tenn. 2008) settled the issue. The DJA is a basis for challenging *ultra vires* legislation in cases not involving monetary damages.

A. Metro's interpretation invites a constitutional conflict because it would not allow a remedy for a wrong.

Metro defense of nullification invites a constitutional conflict. As a matter of constitutional law, every wrong must have a remedy. *See Whisnant v. Byrd*, 525 S.W.2d 152, 153 (Tenn. 1975) (Article I, Section 17 embodies the "clear and unequivocal declaration[s] of the public policy of this State . . . that every man shall have a remedy by due course of law for an injury sustained by him"). *Cf. State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993) ("It is also our duty to adopt a construction which will … avoid constitutional conflict if any reasonable construction exists that satisfies the requirements of the Constitution."). Thus, interpretation of any case must begin with the principal that accepts as prerequisite that citizens must have a remedy if Metro acts in defiance of state law. Metro contends, according to its interpretation of *Tennessee Firearms*, even if its Inclusionary Zoning law was illegal, no citizen has a remedy. This constitutional clash is easily avoided because *Tennessee Firearms* has little bearing on this case. Simply stated, it is inapposite.

B. *Tennessee Firearms* did not hold that state preemption could not be raised absent an express cause of action. It involved a violation of the municipal charter.

The most obvious reason why *Tennessee Firearms* does not have any sway here, is that the case involved both a claim that state law had preempted the challenged law and that Metro's charter did not authorize it. Although the Court of Appeals did rule that the DJA did not provide a basis for a challenging the charter issue, its analysis was confined to the charter issue. *Tennessee Firearms Ass'n.*, 2017 Tenn. App. LEXIS 405, *25-26 ("We reject Goodman's insistence that the Declaratory Judgment Act provides an independent basis for him to allege a violation of the Metro Charter regardless of any

issue regarding a private right of action."). The Court's treatment of the state preemption issue was markedly different. In contrast to the charter claim, the Court substantively considered the state preemption issue, ultimately finding it unconvincing. *Id.* at 19 ("Accordingly, the Board did not run afoul of the preemption provision of Tennessee Code Annotated section 39-17-1314(a) …."). In other words, the Court entertained a state preemption issue absent an express cause of action. *Tennessee Firearms* provides an instance of consideration of state preemption under the DJA – precisely the opposite of what Metro asks. Thus, *Tennessee Firearms* is hardly precedent that supports Metro, nor does it affect HBAMT's claims. HBAMT does not make a claim based on a violation of Metro's charter. HBAMT's claims are based entirely on state preemption. (Compl. at 12-15, ¶ ¶ 51-75). Accordingly, they are appropriate for consideration.

C. *Tennessee Firearms* did not involve the multiple, independent basis for this Court to consider the legality of Metro's ordinance.

This is hardly the only salient distinction between this case and *Tennessee Firearms*. HBAMT did not only bring this matter under the DJA. This Court has the power to consider the claims under 42 U.S.C. § 1983, and this Court's inherent equitable power. Neither basis was at issue in *Tennessee Firearms*, providing yet another distinction.

This Court has the ability to hear § 1983 actions. *See Martinez v. California*, 444 U.S. 277 (1980). Section 1983 is a vehicle for all the claims herein, not merely the taking claim because § 1983 protects not only constitutional rights but also property interests which state law in turn, defines. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538-39 (1985). In order to determine whether Metro has impermissibly impacted

HBAMT's property interests, it is necessary to adjudicate what is permissible under state law. Thus, the preemption claims are cognizable.

Chancery courts, furthermore, enjoy all the inherent powers to do equity "rightfully incident to a court of equity." Tenn. Code Ann. § 16-11-101 (LexisNexis 2017); *J.S. Kelly & Co. v. Conner*, 123 S.W. 622, 627 (Tenn. 1909). And, as pointed out in HBAMT's original brief (Pl's. Br. at 21), the inherent powers of a chancery court include, among other things: a) all actions where an injunction is a substantial part of the relief; b) actions to prevent illegally damaging a person's property; and c) to halt enforcement of an illegal ordinance. *Barnes v. Ingram*, 397 S.W.2d 821, 824 (Tenn. 1965) ("equity will enjoin a municipal officer from doing an irreparable harm to someone by doing some act not authorized by the Constitution or the laws of this State") (citation omitted); William H. Inman, *Gibson's Suits in Chancery* § 4 (7th ed. 1988); 18 McQuillin Mun. Corp. § 52:24 (3d ed.). This Chancery Courts have been doing since their inception. *See, e.g., see Trading Stamp Co. v. Memphis*, 47 S.W. 136, 137 (Tenn. 1898). They may continue to do so.

The closest Metro comes to even addressing this is to cursorily argue, "[l]ikewise injunctive relief is a remedy, not a cause of action." (Def's Repl. at 13) (citing *Goryoka v. Quicken Loans, Inc.*, 519 Fed. Appx. 926, 929 (6th Cir. Mar. 18, 2013)). Whatever the relative weight of this one, unpublished Sixth Circuit case, it ignores the key difference between federal courts and this one. Federal courts are of limited jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) ("Federal Courts are courts of limited jurisdiction."). Unlike this Court, federal courts "possess only that power authorized by Constitution and statute, (citation omitted), which is not to be

expanded by judicial decree." *Id.* (citation omitted). This contrasts sharply with this Court, one of general jurisdiction and robed with all the ancient powers of equity that trace all the way back to " the high court of chancery in England." *J.W. Kelly & Co.*, 123 S.W. at 627. Even if it were true then that the DJA does not provide a basis to consider the legality of Metro's actions, this Court still can entertain the preemption claim. Federal law is quite beside the point.

D. The controlling case of *Colonial Pipeline* held that the DJA provides a vehicle for challenging *ultra vires* legislation.

The question of whether the DJA provides a procedural vehicle for consideration of *ultra vires* legislative enactments was put to rest by the Tennessee Supreme Court in *Colonial Pipeline Co. v. Morgan,* 263 S.W.3d 827, 853 (Tenn. 2008). The *Colonial Pipeline* case even involved a suit against the state, therefore implicating questions of sovereign immunity not so much as an issue here. Yet, even in the face of sovereign immunity, the Court held that it was proper to challenge legislation as *ultra vires*, precisely because the DJA "grants subject matter jurisdiction to the Davidson County Chancery Court to address the constitutional issues. As stated, the Plaintiff does not seek monetary damages or a refund of paid taxes; the relief sought is a declaration of unconstitutionality." *Id.* The *Colonial Pipeline* ruling settled this question.

While it might have been debatable in the past, it is no longer. The Court was candid in *Colonial Pipeline* that, throughout its jurisprudence, it had not been entirely consistent on the nature of the DJA. *Id.* at 851 (noting that this decision represent a choice between "our conflicting opinion[s]"). On the one hand, there were cases such as *Hill v. Beeler*, 286 S.W.2d 868, 871 (Tenn. 1956), that concluded that the DJA does not provide an independent basis for courts to adjudicate matters. On the other, were cases

such as *Stockton v. Morris & Pierce*, 110 S.W.2d 480 (Tenn. 1937) that allowed declaratory and injunctive actions to proceed. Faced with these competing precedents, the Court chose a side, ruling against Metro's position: "we believe that *Stockton* offers the better alternative."[4] *Colonial Pipeline*, 263 S.W.3d at 851. The Court then concluded that the DJA provided a means to contest the law in question, so long as it did not seek monetary damages. *Id.* at 853. Likewise, HBAMT may ask for a declaration that Metro's ordinance is preempted under the DJA, even in the absence of an statutory cause of action. Undoubtedly, if this case involved monetary damages the analysis would be different. Regardless, to the extent that an inferior court in *Tennessee Firearms* case concluded in an unpublished case that the DJA, even in suits that do not seek monetary damages, does not allow declaratory and injunctive which challenge legislation as *ultra vires*, it would conflict with *Colonial Pipeline* and is not precedent.

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[4] Metro actually relies upon *Hill* (Def's Repl. at 13), even though the *Colonial Pipeline* decision disavowed the *Hill* reasoning, at least with respect to cases not involving money. 263 S.W. at 851-52.