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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

Elijah Shaw & Patricia Raynor, Plaintiffs, v. Metropolitan Government of Nashville and Davidson County, Defendant.	))))))	No. 17-1299-II

METRO'S REPLY

The Metropolitan Government submits this Reply in support of its Motion to Dismiss.

Plaintiffs do not appear to contest that protecting the residential nature of neighborhoods is a legitimate governmental interest. Rather, they only dispute whether prohibiting clients or patrons from being served at a home-based business actually protects the residential character of neighborhoods. Essentially, they do not dispute the first part of the rational basis test – whether the Council had a legitimate governmental interest.

They only dispute that the ordinance at issue is rationally related to that interest – the second part of the rational basis test. But importantly, "[w]hether a rational basis exists for a government regulation is a question of law. … The rationality of a governmental policy is 'a question of law for the judge—not the jury—to determine.'" *Bruner v. Zawacki*, 997 F.Supp.2d 691, 696 (E.D. Ky. 2014) (internal citations omitted).

Despite Plaintiffs' argument that this question is not appropriately decided on a motion to dismiss, "under the rational basis test, specific evidence is not necessary to show the relationship between the statute and its purpose. Rather, this Court asks only whether the law is reasonably related to proper legislative interests." *Riggs v. Burson*, 941 S.W. 2d 44, 52 (Tenn. 1997). This is because a court's "standards for accepting a justification for the regulatory scheme are far from daunting. A proffered explanation for the statute need not be supported by an exquisite

evidentiary record; rather we will be satisfied with the government's 'rational speculation' linking the regulation to a legitimate purpose, even 'unsupported by evidence or empirical data.'" *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) (emphasis added); *see also, Wagner v. Haslam*, 112 F.Supp.3d 673, 692–93 (M.D. Tenn. 2015) ("[T]here may be no actual proof supporting [the legislature's] decision (in fact, there could even be proof demonstrating that the policy does not, in fact, achieve the desired result)." (emphasis added).

Metro has provided the Court with numerous reasonable justifications on which the Court can rely in finding that the Council had a rational basis for its enactment. Further, it is plainly obvious that prohibiting clients and patrons from visiting home-based businesses necessarily limits the amount of visible commercial activity that can occur in a residential neighborhood. Discovery may lead to evidence that other commercial activity still occurs in Nashville neighborhoods or that certain business types are more visible than the Plaintiffs' beauty salon and music studio, but these facts (if proven to be true) would not be relevant to the underlying question of whether the ordinance is rationally related to a legitimate governmental purpose.

"Rational basis review does not empower … courts to 'subject' legislative line-drawing to 'courtroom' factfinding designed to show that legislatures have done too much or too little." *DeBoer v. Snyder*, 772 F.3d 388, 404–405 (6th Cir. 2014).

> In sum, where rational basis review applies … the U.S. Constitution allows … legislators and policymakers to make both excellent decisions and terrible decisions, provided that the decisions are based on some conceivable modicum of rationality at the time of their passage or application in practice. The U.S. Constitution does not permit a … court to evaluate or rule upon the wisdom of these decisions, even where the policy may be unfair, misguided, or counter-productive. Thus, when a … court finds that a policy is "rationally related to a legitimate government objective," the court is not endorsing the policy, finding that it is empirically supported, or concluding that it is a wise idea. The court is merely ruling that the U.S. Constitution does not forbid a state or locality from adopting or applying that policy.

Id. at 693 (emphasis added).

Because the home-based business regulations are "based on some conceivable modicum of rationality," they withstand the rational basis test[1] as a matter of law. Therefore, Petitioners' substantive due process and equal protection claims must be dismissed for failure to state a claim.

Respectfully submitted,

DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
JON COOPER, #023571
Director of Law

/s/ Catherine J. Pham
[redacted]

[1] While Plaintiffs argue that the Tennessee Constitution affords greater protection than the U.S. Constitution in some circumstances, they have provided no authority to support that the analysis would be different in this case. For zoning cases like this one, the Tennessee Supreme Court has previously determined that the analysis under the Tennessee Constitution is identical to that under the U.S. Constitution. *See Riggs v. Burson,* 941 S.W.2d 44, 51-52 (Tenn. 1997) ("This Court has held that the 'law of the land' provision of article I, section 8 of the Tennessee Constitution 'is synonymous with the due process clause of the Fourteenth Amendment to the United States Constitution.' *Newton v. Cox, 878 S.W.2d at 110; State ex rel. Anglin v. Mitchell,* 596 S.W.2d 779, 786 (Tenn. 1980). Thus, unless a fundamental right is implicated, a statute comports with substantive due process if it bears 'a reasonable relation to a proper legislative purpose' and is 'neither arbitrary nor discriminatory.' *Newton v. Cox,* 878 S.W.2d at 110. … This Court has said that '[b]oth the United States and Tennessee Constitutions guarantee to citizens the equal protection of the laws.' *Brown v. Campbell County Bd. of Educ.,* 915 S.W.2d 407, 412 (Tenn. 1995), cert. denied, 517 U.S. 1222, 116 S.Ct. 1852, 134 L.Ed.2d 952 (1996). Article I, section 8 and article XI, section 8 of the Tennessee Constitution confer the same protections as the Fourteenth Amendment to the United States Constitution. *See Brown v. Campbell County Bd. of Educ.,* 915 S.W.2d at 413.).