

197 U.S. 11 (1905). Jacobson has been implicitly overruled, but even if it was still valid law, this case is inapposite to the situation of Covid-19 and the Knox County Bd. of Health's mask mandate. Briefly, Plaintiffs' lay out the basis for the inapplicability of Jacobson in regards to the case herein, to provide context for the allegations following therein.

A. Jacobson Expresses Restraint on National Government Power, and Is Not a Springboard for Increased State Police Power. Government authorities, including the Tennessee Attorney General, rely upon Jacobson as though this case – opining about the role of the United States Constitution in controlling state police power as understood in 1905 – grants states and local governments an affirmative carte blanche to enact disease control measures, regardless of any state constitutional limitations. Jacobson, however, only spoke to the extent to which the United States Constitution and its Bill of Rights, as understood in 1905, placed limitations on the state and local governments' power to engage in state disease control efforts. State and local governments err by construing Jacobson as authority to overlook their own state's constitutional limitations on the police power to engage in disease prevention and mitigation measures.

B. Jacobson Has Been Abrogated By Implication. The reliance upon Jacobson fails to recognize the implicit overruling that modern civil liberties jurisprudence enacted, including the right of bodily integrity. Jacobson's rationale led to the case of Buck v. Bell, the infamous 1927 US Supreme Court decision that found no restriction was placed on states' police power by the US Constitution regarding a state's public policy initiative to engage in involuntary sterilization of a woman who was purported to be of low intelligence. 274 US 200 (1927). The Sixth Circuit noted in Fieger v. Thomas, however, that Buck's ruling has been repudiated. 74 F.3d 740, 750 (6th Cir. 1996).

To repudiate Buck is to repudiate Jacobson and the concept that the state's police power (again from the perspective of the federal Constitution) is legitimate so long as the regulation bears a real or substantial relation to the protection of the public health and public safety. Buck simply carried the rationale of Jacobson to its logical conclusion. In the days of Buck, the Virginia legislature, exercising its legislative discretion, found that the welfare of society may be promoted by the sterilization of mental defectives, and this finding overrode the individual rights of Carrie Buck. The Buck court said specifically that the principle established in Jacobson sustaining compulsory vaccination was in turn broad enough to cover the cutting of fallopian tubes. Buck, 274 US at 207. If courts now recognize that Buck was repudiated, then courts must recognize that which breathed life into the Buck decision also is repudiated.

Jacobson did leave open a door for future refinement, by conceding that a local community or state could exercise police powers in an arbitrary or unreasonable manner. 197 US at 28. What evolved as a boundary for government action in pursuit of societal welfare with respect to potential encroachment upon individual rights came not as a refinement to Jacobson, but through the rise of modern civil liberties afforded to citizens, which shattered the Jacobson framework for government action in furtherance of the health and safety of its citizens. Since Jacobson, the Supreme Court has recognized many limits on health and safety regulations as part of its civil liberties jurisprudence, including but not limited to the right against involuntary restraint¹, decisions about marriage², contraception³, procreation⁴, family relationships⁵,

¹ Addington v. Texas, 441 U.S. 418 (1979) ; O'Connor v. Donaldson, 422 U.S. 563 (1975)

² Loving v. Virginia, 388 U.S. 1 (1967)

³ Griswold v. Connecticut, 381 U.S. 479 (1965)

⁴ Roe v. Wade, 410 U.S. 113 (1973) ; Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992)

⁵ Prince v. Massachusetts, 321 U.S. 158 (1944) ; Moore v. City of East Cleveland, 431 U.S. 494 (1977)

sexual relationships⁶, child rearing and education⁷, and the right to refuse life-saving treatment⁸. This evolution is recognized, and the implicit overruling of Jacobson is suggested in the recent opinion in County of Butler et al v. Wolf et al. ___ F.Supp. 3d ___, 2020 WL 5510690, p.6 (D. Penn 2020).

In addition to the rights itemized supra, the Supreme Court recognized and continues to recognize the right of bodily integrity, which was the category of freedom from government action, the higher order, under which the specific rights described in Roe as well as Cruzan fell. E.g., Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 915 (“One aspect of this liberty is a right to bodily integrity, a right to control one’s person.”). In Cruzan, Chief Justice Rehnquist reiterated in his majority opinion, “every human being of adult years and sound mind has a right to determine what shall be done with his own body” Cruzan, 479 US at 269.

Tennessee also recognizes the right to bodily integrity as a fundamental right. E.g., Lynch v. City of Jellico, 205 S.W.3d 384, 391 (Tenn. 2006). Furthermore, Tennessee recognizes that an individual’s right to personal liberty and freedom from government restraint is a fundamental right. Doe v. Norris, 751 S.W.2d 834, 841 (Tenn. 1988). Additionally, Tennessee jurisprudence recognizes that the law and public policy of Tennessee favors the unrestricted use of real property by its owners⁹, and a real property owner’s right to own, use, and enjoy private property is a fundamental right. Hughes v. New Life Development Corp., 387 S.W.2d 453, 474 (Tenn. 2012).

⁶ Lawrence v. Texas, 539 U.S. 558 (2003)

⁷ Meyer v. Nebraska, 262 U.S. 390 (1923) ; Pierce v. Society of Sisters, 268 U.S. 510 (1925) ; Wisconsin v. Yoder, 406 U.S. 205 (1972)

⁸ Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261 (1990)

⁹ McArthur v. East Tennessee Natural Gas Co., 813 S.W.2d 417, 419 (Tenn. 1991).

C. Tennessee Jurisprudence Provides That US Constitution Bill of Rights Are a Floor for Tennesseans' Freedoms from Government Intervention.

Although Planned Parenthood of Middle Tennessee v. Sundquist has been superseded by constitutional amendment, nothing about the case's recounting of Tennessee's jurisprudence on fundamental liberties is nullified. 38 S.W.3d 1, 12-15 (Tenn. 2000). The amendment took away the application of fundamental liberties analysis from the issue of abortion, but the amendment does not impact the understanding that Tennesseans are not "relegated" to the lowest levels of constitutional protection, those guaranteed by the United States Constitution. Planned Parenthood, 38 SW3d at 15, quoting State v. Black, 815 S.W.2d 166, 193 (Tenn. 1991).

The Tennessee Supreme Court has repeatedly stated the black letter law of Tennessee, regarding the treatment of fundamental rights in the context of a state or county regulation – where a fundamental right is at issue, in order for the regulation which interferes with that right to be upheld, the regulation must withstand strict scrutiny. Planned Parenthood 38 S.W.3d at 15; see also, e.g., Gallaher v. Elam, 104 S.W.3d 455, 460 (Tenn. 2003); Doe, 751 S.W.2d at 841. Any government defendant in Tennessee who denies that this test, strict scrutiny, is the test under the Tennessee Constitution applicable to fundamental rights afforded to Tennesseans, is intellectually dishonest at best, lying at worst. Under the strict scrutiny standard, it is the government defendant's burden to show that the regulation is justified by a compelling state interest and narrowly tailored to achieve that interest. E.g., Planned Parenthood 38 S.W.3d at 18.

The Knox County Bd. of Health's Regulation No. 2020-1 is not justified by a compelling government interest, and even if the interest were compelling, the Regulation is not narrowly tailored to achieve that interest.

II. PARTIES

1. Dr. Steven J. Smith is a resident and citizen of Knoxville, Knox County, Tennessee and is a licensed physician who has his own practice in the State of Tennessee. Dr. Smith is a Plastic Surgeon with an office in Knox County, Tennessee, and has been practicing for over 20 years. Dr. Smith is certified by the American Board of Plastic Surgery and the American Board of Otolaryngology.

2. Dr. Jason J. Hall is a resident and citizen of Knoxville, Knox County, Tennessee and is a licensed physician with his own practice in the State of Tennessee. Dr. Hall is a Plastic Surgeon with an office in Knox County, Tennessee. Dr. Hall is certified by the American Board of Plastic Surgery.

3. Defendant Knox County, Tennessee, is a political subdivision of the State of Tennessee, operating under a charter form of government as provided by TCA §5-1-201 et seq., and as leading process has already been served, Defendant may be served with this amended pursuant via David L. Buuck, Esq., at the City-County Building, Suite 612, 400 Main St., Knoxville, TN 37902, pursuant to TRCP 5.

4. With Ordinance No. O-96-3-102, §V(D), now codified as Sec. 38-33 of the Knox County, Tennessee Code of Ordinances, Defendant Knox County established a Board of Health pursuant to TCA §68-2-601, which operationally exists as a department of Knox County, but has powers enabled, inter alia, by TCA §68-2-601(f). Because the Knox County Board of Health is a department of Knox County operationally, Knox County is the proper defendant to be served.

5. The Attorney General for the State of Tennessee, Herbert H. Slatery III, is not made a party herein, but a summons and this amended complaint shall be provided to him at his

official address of 425 5th Ave. N., Nashville, TN 37243 or by other means, pursuant to TRCP 24.04 and TCA §29-14-107 (b).

II. DECLARATORY JUDGMENT JUSTICIABILITY – REAL INTEREST, REAL QUESTION, PARTY OPPOSING THE DECLARATION THAT IS SOUGHT

6. Plaintiffs are proceeding under TCA §29-14-103, which allows a plaintiff whose rights, status, or other legal relations have been affected by a statute to have the validity of said statute be tested via a declaratory judgment action. Plaintiffs also proceed under the authority of TCA §29-14-106 and TCA §29-14-113, which provide that the enumeration of issues that may be addressed through declaratory judgment actions are not exhaustive. Plaintiff aver that regulations issued by a county Board of Health, which carry the force and weight of law and are punishable by statutory criminal sanctions, are tantamount to a statute or municipal ordinance and also are subject to this court's power to entertain declaratory judgment actions.

7. Dr. Steven Smith owns real property that lies within the boundaries of Knox County, commonly identified as 9239 Park West Blvd, Knoxville, TN 37923, and also designated as Parcel ID 11901858.

8. Dr. Smith's medical practice is located on this real property, contains indoor waiting rooms, and is open to the public. This real property falls under the definition of a health facility pursuant to definitions further addressed below.

9. As further pleaded below, Dr. Smith's rights are affected by Regulation No. 2020-1 issued by the Knox County Bd. of Health on July 1, 2020, which requires a person who owns, manages, operates, or otherwise controls any indoor public place to post signs of the required wearing of face coverings, and to comply with the provisions of Regulation No. 2020-1.

Therefore Dr. Smith has a real interest in the questions of validity posed by this declaratory judgment action.

10. Furthermore, Dr. Smith has a real interest in the questions of the validity posed by this declaratory judgment action because he has never been diagnosed with suffering from the condition of Covid-19, nor has he in actuality suffered from the condition of Covid-19.

11. Dr. Jason Hall has a leasehold interest in a portion of real property that lies within the boundaries of Knox County, commonly identified as 9239 Park West Blvd, Suite 202, Knoxville, TN 37923, and also designated as Parcel ID 11901858.

12. Dr. Hall's medical practice is located in Suite 202, contains indoor waiting rooms and is open to the public. The real property described in the leasehold interest falls under the definition of a health facility pursuant to definitions further addressed below.

13. Dr. Hall's leasehold interest makes him a manager, operator, and controller of an indoor public place.

14. As further pleaded below, Dr. Hall's rights are affected by Regulation No. 2020-1 issued by the Knox County Bd. of Health on July 1, 2020, which requires a person who owns, manages, operates, or otherwise controls any indoor public place to post signs of the required wearing of face coverings, and to comply with the provisions of Regulation No. 2020-1. Therefore Dr. Hall has a real interest in the questions of validity posed by this declaratory judgment action.

15. Furthermore, Dr. Hall has a real interest in the questions of validity posed by this declaratory judgment action because he has never been diagnosed with suffering from the condition of Covid-19, nor has he in actuality suffered from the condition of Covid-19.

16. Plaintiffs aver that Regulation No. 2020-1 is unconstitutional because it violates Plaintiffs' rights of bodily integrity.

17. Plaintiffs aver that Regulation No. 2020-1 is unconstitutional because it violates Plaintiffs' rights of personal liberty and the rights to be free from government physical restraint.

18. Plaintiffs aver that Regulation No. 2020-1 is unconstitutional because it unconstitutionally interferes with Plaintiff's fundamental rights of the unrestricted use of their private property.

19. Plaintiffs aver that Regulation No. 2020-1 is unconstitutional because it violates Plaintiffs' rights to be free from unreasonable seizure of their persons.

20. Plaintiffs aver that Regulation No. 2020-1 is unconstitutional because it violates Plaintiffs' rights against compelled speech.

21. Additionally, Plaintiffs aver that TCA §68-2-601 (f) is an unconstitutional delegation of legislative discretion, in violation of the separation of powers doctrine articulated in Tennessee Constitution, Article II, Sections 1-2, 3, and 17-20.

22. Defendant Knox County Tennessee denies that Regulation No. 2020-1 is unconstitutional, and denies that Regulation No. 2020-1 has been promulgated in violation of the separation of powers doctrine.

III. FACTS

23. On January 29, 2020, POTUS Donald Trump established a coronavirus interagency task force, relating to a coronavirus emanating from Wuhan, China.

24. On January 31, 2020, POTUS Donald Trump proclaimed travel restrictions on persons seeking to travel from China.

25 On February 11, 2020, the World Health Organization (“WHO”) named the coronavirus from Wuhan “Covid-19.”

26. On March 12, 2020, Tennessee Gov. Bill Lee declared a state of emergency to facilitate Tennessee’s response to Covid-19.

27. On March 13, 2020, POTUS Donald Trump declared Covid-19 (“Covid”) outbreak as a national emergency.

28. On March 24, 2020, The National Vital Statistics System introduced a new ICD code for the coding of people who died either from Covid-19 or while infected with Covid, “U07.1 Covid19.”

29. This new coding method departs from the traditional method of reporting deaths by disease, in that it allows doctors to identify Covid as a cause of death without confirmation by testing.¹⁰

30. On July 1, 2020, the Knox County Bd. of Health issued Regulation No. 2020-1, which is attached as Exhibit 1.

31. Regulation No. 2020-1 (“Knox County mask mandate”) requires, with certain exceptions, that “no person age twelve (12) years or older shall be within six (6) feet of any other person, other than a person residing in the same household, in any indoor public place within Knox County without wearing a face covering.”

32. The Knox County mask mandate also requires that owners, operators, managers, or other persons in control of indoor public places must clearly and conspicuously post signs indicating the requirement of wearing a face covering.

¹⁰ <https://www.cdc.gov/nchs/data/nvss/vsrg/vsrg03-508.pdf> Guidance for Certifying Deaths Due to Coronavirus Disease 2019 (COVID–19)

33. A knowing failure to comply with the Knox County mask mandate subjects a person not in compliance with the penalty provided in TCA §68-2-602, which is equivalent to a Class C misdemeanor, punishable by up to 30 days in jail and a \$50 fine.

34. On July 6, 2020, Gov. Bill Lee issued Executive Order 54 purportedly providing the authority to issue a mask mandate for local governments with no Board of Health.

35. The only mention of the word “pandemic” in the Tennessee Code is found at T.C.A. § 56-8-104 (B)(1)(b)(1), where it states, “[t]he director of the centers for disease control and prevention of the department of health and human services has issued alerts or warnings regarding serious health-related conditions or an epidemic or pandemic alert or response . . .”, but a pandemic is generally considered to be an epidemic that has spread internationally.

36. Tennessee R. and Reg. 1200-14-01-.01(1)(k) defines an epidemic as the “occurrence in a community or region of one or more cases of illness that is in excess of normal expectancy.”

37. This definition has no meaning with regard to Covid-19, as this disease has never occurred before, therefore one case could be considered an epidemic, as there was no expectancy of this disease before it arose.

38. There is no one established criteria for defining a new epidemic, however the CDC has previously established thresholds for determination of whether pneumonia and influenza combined are an epidemic, by comparing the amount of deaths from the pneumonia and influenza to the amount of total deaths during that particular period. This threshold varies from approximately 5% to 7% depending upon the time of the year.

39. Plaintiffs aver the CDC threshold is itself too low of a threshold to justify government encroachment on civil liberties, and governments in the United States have never

attempted universal lockdowns and mask mandates for epidemic levels of pneumonia and influenza combined, nevertheless, this threshold does at least exclude from consideration as an epidemic such communicable respiratory diseases that may be widespread but relatively harmless, such as the common cold, which is mostly caused by rhinoviruses, coronaviruses, RSV, and parainfluenza viruses.

40. At the time the Knox County mask mandate was implemented, July 1, 2020, neither the Tennessee Government's nor the Knox County government's interest in protecting its citizens from Covid-19 was a compelling government interest, for reasons including but not limited to the following:

a. In Tennessee, the first deaths of people who were reported to have either died from Covid-19 or died while infected with Covid-19 occurred during the week ending on March 28, 2020.¹¹

b. By the week ending on June 27, 2020, out of 21,266 deaths occurring in Tennessee during this time span, only 603 were identified as having either died from Covid-19 or died while infected with Covid-19, which equals only 2.8% of all causes of death in Tennessee, if the Covid-19 death cause is accurate for all 603.¹²

c. Thus Covid-19 didn't even meet the CDC threshold of an epidemic for a communicable respiratory disease.

¹¹<https://data.cdc.gov/NCHS/Provisional-COVID-19-Death-Counts-by-Week-Ending-D/r8kw-7aab>
Provisional COVID-19 Death Counts by Week Ending Date and State

¹² data.cdc.gov/nchs/provisional-COVID-19-death-counts-by-week-ending-d/r8kw-7aab Provisional Covid-19 Death Counts by Week Ending Date and State.

d. Plaintiffs dispute that the 603 deaths during this 14 week period, or any period, attributed in Tennessee to Covid-19 deaths is an accurate statistic for reasons including, but not limited to the following:

i. The reverse-transcriptase polymerase chain reaction (“RT-PCR”) test used to identify these deaths, as well as infections of Covid-19, was never intended to be used as a diagnostic tool for the diagnosis of disease, and is not approved by the FDA to be used as such. It's a DNA manufacturing process.

ii. The enzymes used to copy the DNA (or RNA) sequences make mistakes, thus any mistake is amplified and would cause positives from other genome sequences, which is why the author of the RT-PCR test, Dr. Kary Mullis, disclaimed its use as a diagnostic tool.

iii. RT-PCR does not provide any information about the viral load of live Covid-19 in a person.

iv. The number of cycle thresholds, 34 to 40, used in some testing protocols to ostensibly identify Covid-19 viral RNA, far exceed what is recognized as the valid number of levels – 24-33 – thus leading to inaccuracy through false positives, because the RT-PCR can amplify any amount of viral RNA to measurable levels.

v. The Covid-19 virus RNA has never been fully sequenced from a purified viral sample, so that a true DNA primer template could be created. The Covid-19 sequence is based upon speculation of what a clinical specimen should be, created from characterized stocks of in vitro transcribed full length RNA (N gene; GenBank accession: MN908947.2) of known titer (RNA copies/ μ L) spiked

into a diluent consisting of a suspension of human A549 cells and viral transport medium (VTM)¹³.

vi. Some DNA primers used in testing have sequence identity with human genome sequences, thus meaning any person would test positive.

vi. At least one testing protocol, the Pasteur protocol, uses a DNA primer that matches the same DNA genome sequence found on Chromosome 8 of the Human genome.

vii. The Defendant Knox County's representative admitted on behalf of Knox County during a press conference in July 2020 that false positives exist, and that if a person has two tests, one with a negative result and one with a positive result, Knox County will count the result as a positive, because "there's no way to know if the positive's right or the negative is right".¹⁴

e. All the Tennesseans who were reported to have died with or from some type of respiratory ailment during this 14-week period of March 28-June 27, 2020, including Covid-19, influenza, pneumonia, and chronic lower respiratory diseases totaled 2187, which is 10.3% of the total deaths from all causes.¹⁵

f. During the same 14-week period for the previous six years, respiratory-related deaths averaged 8.7%, meaning that if every death attributed to Covid-19 in 2020 is accurate, prior to July 1, Covid-19 raised the percentage of deaths attributable to respiratory diseases by only 1.6%.

¹³ <https://www.fda.gov/media/134922/download>

¹⁴ <https://www.wvlt.tv/2020/07/29/kchd-says-false-positive-covid-19-tests-counted-as-positive-as-precaution/>

¹⁵ data.cdc.gov/NCHS/Weekly-Death-Counts-2019-2020/muzy-jte6, Weekly Counts of Deaths by State and Select Causes, 2019-2020

41. Plaintiffs aver that a complaint contemplates pursuant to TRCP 8.01 only a short and plain statement of the claim showing that the pleader is entitled to relief, and consequently Plaintiffs will not provide a written narrative of all evidence in support of their allegations that will be offered at trial should Defendant Knox County deny this allegation, but aver that the following allegations provided herein alone demonstrate that Covid-19 at the time of filing this amended complaint is not a compelling state interest that would warrant encroachment on civil liberties, especially in the context of the Knox County Bd. of Health's previous responses to yearly influenza, or the State of Tennessee's governmental response to yearly influenza or historical responses to other more serious diseases such as yellow fever, cholera, and smallpox.

a. The statistics upon which Plaintiffs rely, Knox County Tennessee Health Department Data and Benchmarks ("Knox County data") from April 10, May 1, May 31, July 8, July 30, August 29, September 28, and October 29, 2020 are not hearsay, but are admissions from a party opponent, and may be considered by this court for the purpose of a Temporary Restraining Order. The statistics are attached as Exhibits 2-9.

b. The Knox County data indicate the following Knox County death statistics attributed to Covid-19 as of October 29, 2020, stratified by age: 0 -17, zero deaths; 18-44, 5 deaths; 45-64, 21 deaths; 65-74, 25 deaths; 75+, 52 deaths.

c. Knox County's 103 deaths as of 10/29/2020, out of 13,538 cases equals a Case Fatality Rate of .76%, a case fatality rate ("CFR") being the proportion of people diagnosed with a disease who die from the disease.

d. There are three diseases addressed specifically as epidemic diseases in TCA §68 1-201, yellow fever, cholera, and smallpox, and the CFR of untreated victims for these diseases is as follows: yellow fever, 15%¹⁶; cholera, 3.2%¹⁷; smallpox, 30%.¹⁸

e. In comparison to Covid-19 or influenza, the CFR for H1N1 “swine” flu was 2.98%, with 3,433 deaths out of 115,318 cases. President Obama also declared swine flu to be a national emergency¹⁹, yet neither Knox County nor Tennessee attempted mitigation efforts such as universal lockdowns or mask mandates.

f. The Asian Flu of 1957 is estimated to have resulted in 116,000 deaths in the United States²⁰, which adjusted for population is about 216,000, yet neither Knox County nor Tennessee attempted mitigation efforts such as universal lockdowns or mask mandates.

g. The Hong Kong flu of 1968 is estimated to have resulted in 100,000 deaths in the United States²¹, which adjusted for population is about 160,833, yet neither Knox County nor Tennessee attempted mitigation efforts such as universal lockdowns or mask mandates.

h. Knox County's population was estimated to be 470,313 as of July 2019²², therefore if the population is the same or higher as of the filing of this amended complaint, the percentage of Knox Countians who have died from Covid-19 is .022% or

¹⁶ <https://www.cdc.gov/globalhealth/newsroom/topics/yellowfever/index.html>

¹⁷ <https://www.cdc.gov/cholera/general/index.html>

¹⁸ <https://www.cdc.gov/smallpox/history/history.html>

¹⁹ <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/declaration-a-national-emergency-with-respect-2009-h1n1-influenza-pandemic-0>

²⁰ <https://www.cdc.gov/flu/pandemic-resources/1957-1958-pandemic.html>

²¹ <https://www.cdc.gov/flu/pandemic-resources/1968-pandemic.html>

²² <https://www.census.gov/quickfacts/fact/table/knoxcountytennessee/PST045219>

smaller if the tests are accurate, and the number of Knox Countians diagnosed with Covid-19 is 2.88% or smaller if the tests are accurate.

i. An Infection Fatality Rate (“IFR”) is the proportion of people infected by a disease-causing agent, including asymptomatic and undiagnosed infections, who die from the disease; it cannot be higher than the CFR and is often much lower.

j. Currently, CDC estimates Covid-19 IFR stratified by age as follows: 0-19, .003%; 20-49, .02%; 50-69, .5%; 70+, 5.4%.²³

k. Although the CDC has provided an estimate as to the percentage of cases that are asymptomatic (40%), the CDC has not provided an estimate of the number of persons infected with Covid-19, but Dr. Mike Ryan, the executive director of the World Health Organization’s health emergencies program, has stated that the WHO estimates 10% of the worlds’ population of 7.82 billion has been infected with Covid-19, and it places the number of deaths worldwide at 1,198,569 as of November 2020, meaning that the IFR for Covid-19 is estimated to be .153%.²⁴

l. During the 2016-2017 influenza season, which is the last flu season for which the estimation process was completed, the overall influenza IFR is estimated to be .136%, 38,000 deaths out of 29,000,000 estimated illnesses.²⁵

m. CDC estimates that during the 2017-18 influenza season, there were a total of 61,099 deaths out of 44,802,629 cases for an overall IFR of .136%.²⁶

n. During the week ending on June 27, 2020, characterized as week 26 by the CDC, which was the last week for which data was available to the Knox County Bd. of

²³ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>

²⁴ <https://covid19.who.int/>

²⁵ <https://www.cdc.gov/flu/about/burden/index.html>

²⁶ <https://www.cdc.gov/flu/about/burden/2017-2018.htm>

Health before implementing the Knox County mask mandate, the epidemic threshold was at approximately 5.9%²⁷.

o. Counting only the total deaths that had accrued from the week ending March 28, 2020 (week 13) through the week ending June 27, 2020 (week 26), which were 21,266, Tennessee had attributed only 578 deaths to Covid-19 (underlying cause of death), equal to 2.7% of all deaths, far below the epidemic threshold.²⁸

p. During the week ending on October 17, 2020, characterized as week 42 by the CDC, which was the last week for which data was available before the preparation of this amended complaint, the epidemic threshold was at approximately 6.0%²⁹

q. As of the filing of this amended complaint, counting only the total deaths that had accrued from the week ending March 28, 2020 (week 13) through the week ending October 17, 2020 (week 42), which were 47,196, Tennessee had attributed only 2708 deaths to Covid-19 (underlying cause of death), equal to 5.7% of all deaths, also below the epidemic threshold.³⁰

43. Regardless of whether the government has a compelling interest in its response to Covid-19, Knox County government's responses have not been narrowly tailored, including the implementation of the Knox County Mask Mandate.

44. A necessary component of a narrowly tailored regulation is the regulation must actually accomplish what it purports to accomplish.

²⁷ <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/pdf/covidview-07-03-2020.pdf>

²⁸ data.cdc.gov/NCHS/Weekly-Death-Counts-2019-2020/muzy-jte6, Weekly Counts of Deaths by State and Select Causes, 2019-2020

²⁹ <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html>, Key Updates for Week 42, ending October 17, 2020

³⁰ data.cdc.gov/NCHS/Weekly-Death-Counts-2019-2020/muzy-jte6, Weekly Counts of Deaths by State and Select Causes, 2019-2020

45. The wearing of face coverings is not an effective method of eliminating or slowing down the transmission of Covid-19, if those are compelling interests, for reasons including but not limited to the following:

a. Whereas the number of weekly deaths in Tennessee attributed to Covid-19 or with Covid-19 before the Tennessee mask mandate ranged between 11 and 74, the first full week after Executive Order 54 was issued, week 28, the number of weekly Covid-19 deaths jumped to 105 and have been no less than 105 since then, as of week 42.

b. With regard to Knox County, as of April 10, 2020, Knox County had four deaths attributed to Covid-19, and as of May 31, 2020 Knox County had only six deaths.

c. According to Knox County Health Department data updated as of July 8, 2020, Knox County still had only six deaths.

d. By the end of July 2020, after the Knox County mask mandate had been implemented, the number of deaths in Knox County rose to 31.

e. As of October 29, 2020, the number of deaths in Knox County rose to 103.

f. Thus, at the end of June 2020, more than 90 days into the declaration by Gov. Bill Lee of a Covid-19 pandemic, Knox County had an average of two deaths per month, but after the Knox County mask mandate, Knox County averaged over 24 deaths per month attributed to Covid-19.

g. Covid-19 virions range from .06 -1.4 μm in size.

h. There is no evidence to a reasonable degree of scientific certainty that a facial covering can protect a person from breathing in Covid-19 virions.

- i. There is no evidence to a reasonable degree of scientific certainty that a facial covering can stop or inhibit the transmission from a person infected with the Covid-19 virions.
- j. The CDC recently observed that out of 154 persons identified as positive for Covid-19, 71% always used cloth face coverings, but nevertheless became infected.³¹
- k. N95 Mask packaging indicates protection down to .3 μm , therefore Covid-19 particles are not impeded by the fibers of these masks, particularly during plosive-force generating events such as coughs or sneezes.
- l. Furthermore, efficacy of respirator-type masks such as N95 is conditional upon proper training, fit testing, cleaning, and oversight.³²
- m. Additionally, N95 masks are not to be used by the general public; these are to be reserved for medical personnel, therefore the Defendant cannot rely upon purported efficacy of N95 masks, if any, as justification for a face covering mandate, the debate must focus on surgical and/or cloth masks.
- n. According to OSHA, the purpose of surgical masks is to catch splashes and spray; surgical masks only prevent the transmission of respiratory infections by large droplets (not aerosolized virions), and will not protect a wearer against airborne transmission infectious agents due to loose fit, lack of seal, or inadequate filtration.³³
- o. Cloths masks have no efficacy in protecting from transmission of Covid-19 virions.

³¹ https://www.cdc.gov/mmwr/volumes/69/wr/mm6936a5.htm?s_cid=mm6936a5_w

³² <https://www.osha.gov/SLTC/covid-19/covid-19-faq.html>

³³ <https://www.osha.gov/SLTC/covid-19/covid-19-faq.html>

46. Additionally, real-world experiences from “face covering” a/k/a mask mandates in other states or other countries demonstrate that a mask mandate is not an effective method of eliminating or slowing down the transmission of Covid-19, as follows:

a. In Israel, a mask mandate was implemented on April 9, 2020, and the number of new daily cases per million rose from approximately 50 to approximately 675 on or about September 24, 2020.

b. In France, a mask mandate was implemented on July 20, 2020, and the number of new daily cases per million rose from approximately 10 to approximately 150 on or about September 16, 2020.

c. In Spain, a mask mandate was implemented on May 19, 2020, and the number of new daily cases per million rose from approximately 15 to approximately 225 on or about September 13, 2020.

d. In Peru, a mask mandate was implemented on April 7, 2020, and the number of new daily cases per million rose from approximately 10 to approximately 260, and then declined to approximately 180 on or about September 13, 2020.

e. In the Philippines, a mask mandate was implemented on April 2, 2020, and the number of new daily cases rose from approximately 3 to approximately 37 on or about September 13, 2020.

f. In West Virginia, a mask mandate was implemented on July 6, 2020 and the number of new daily cases per million rose from approximately 45 to approximately 95 on or about August 30, 2020.

g. In Kansas, a mask mandate was implemented on July 3, 2020, and the number of new daily cases per million rose from approximately 120 to over 200, and now has declined to approximately 190, on or about August 28, 2020.

h. In Hawaii, a mask mandate was implemented on April 20, 2020, and the number of new daily cases per million rose from approximately 10 to approximately 170, on or about August 30, 2020.

i. In light of real-world experiences with face covering/mask mandates, masks have no material impact on the rise and fall of the number of new daily cases.

47. A government regulation cannot be narrowly tailored if it is arbitrary. The Knox County mask mandate is arbitrary for reasons including but not limited to the following:

a. Persons in a restaurant or bar can be within 6 feet of each other without a face covering, simply by being in the act of actively eating or drinking and not violate the Knox County mask mandate, but be in the same position at the same table while not actively eating or drinking, and be in violation of the Knox County mask mandate; begging the question of how Covid-19 does not spread while a person is eating and drinking and within 6 feet of other persons, but will spread while not eating and drinking and within 6 feet of other persons, or also standing in line or waiting to be seated at a table and within 6 feet of other persons.

b. If a mother is watching a child for a friend without pay and only as a favor, and takes her two children and the unrelated child to a fast food restaurant, the mask mandate does not apply, but if the same unrelated child is taken to school the next day for the purpose of carpooling, everyone in the car must wear a mask.

c. Based upon the statistics of the Knox County deaths attributed to Covid-19, compiled as of October 29, 2020, 75% of the deaths were people aged 65 and older, and therefore this demographic is the most susceptible population to dying from Covid-19, yet those in nursing homes, retirement homes, long-term care facilities, or system-living facilities are exempt from wearing face coverings.

d. There is no enforcement mechanism to be used against those who ignore the face covering mandate exceptions and require ubiquitous wearing of face coverings and thus no protection against arbitrary enforcement beyond what is imposed by the Knox County mask mandate.

e. The word “public” in relation to provision 5(g) is so imprecise that it is void for vagueness. For example, having a home that is the proverbial gathering place for neighborhood children could be considered “frequented by the public”; or the regulation could likewise be interpreted as only private homes that are, for example, conducting an “open house” for sale purposes, and thus the regulation does not provide adequate notice as to who would be covered by the exception.

f. There is no evidence to a reasonable degree of scientific certainty as to why the age range of those required to wear a face covering under the regulation should be 12 and older, and this age threshold is arbitrary.

g. There is no evidence to a reasonable degree of scientific certainty of the transmission of Covid-19 by someone who has contracted Covid-19 but is asymptomatic, which was the basis for the mask mandate, and thus the requirement that all persons must wear a face covering regardless of whether they have contracted Covid-19 is arbitrary.

48. Wearing masks can cause harm to the wearer, for reasons including but not limited to the following:

a. There is evidence to a reasonable degree of scientific certainty that mask wearing causes increased headaches.

b. There is evidence to reasonable degree of scientific certainty that mask wearing causes hypoxia.

c. Wearing masks can lead to increased dryness of mouth because of the tendency to breathe through the mouth, which in turn leads to increased cavities and inflammation and gums.

d. Wearing masks leads to occurrence of impetigo and acne.

e. Wearing masks places the wearer under future threat of fibrosis, due to inhalation of microscopic particles.

49. As the Covid-19 disease threat does not rise to the level of a compelling governmental interest, and further because Knox County's response with the Knox County Bd. of Health Regulation No. 2020-1 is not narrowly tailored, the regulation violates provisions of the Tennessee and United States constitutions.

50. Findings of the Knox County Bd. of Health are not legislative findings, are entitled to no deference from the Court, and are not substantive evidence.

51. The United States Supreme Court case Jacobson v. Massachusetts, 197 U.S. 11, (1905), has no impact on the constitutional rights acknowledged by the Tennessee Constitution as belonging to Tennesseans.

52. Jacobson v. Massachusetts is inapposite to the issue of constitutional rights acknowledged by the United States Constitution as belonging to United States citizens, having

been overruled by implication via the evolution of modern civil liberties such as the right to bodily integrity.

IV. COUNT I – DECLARATORY JUDGMENT

UNCONSTITUTIONAL INFRINGEMENT ON THE RIGHT OF BODILY INTEGRITY

53. Plaintiffs have a right of bodily integrity under the 14th Amendment of the United States Constitution and Article I, section 8 of the Tennessee Constitution.

54. As part of their right of bodily integrity, Plaintiffs have a right to be free from wearing a government-mandated face covering while inside any building located on real property for which they have a right of occupancy or possession.

55. As part of their right of bodily integrity, Plaintiffs have a right to be free from wearing a government-mandated face covering while located inside any building for which they are an invitee, guest, or licensee.

56. As part of their right of bodily integrity, Plaintiffs have a right to be free from wearing a government-mandated face covering while located inside any building owned by any government entity.

57. The Knox County mask mandate, requiring the wearing of a face covering in any indoor public place within Knox County while within 6 feet of another person, unconstitutionally infringes on Plaintiffs' rights of bodily integrity as alleged hereinabove.

V. COUNT II – DECLARATORY JUDGMENT

UNCONSTITUTIONAL INFRINGEMENT ON THE RIGHT TO PERSONAL LIBERTY AND FREEDOM FROM PHYSICAL RESTRAINT BY THE GOVERNMENT

58. Plaintiffs have a right of personal liberty and freedom from physical restraint by the government under the 14th amendment of the United States Constitution and Article I, Section 8 of the Tennessee Constitution.

59. As part of this right of personal liberty and freedom from physical restraint by the government, Plaintiffs have a right to be free from wearing a government-mandated face covering while inside any building located on real property for which they have a right of occupancy or possession.

60. As part of this right of personal liberty and freedom from physical restraint by the government, Plaintiffs have a right to be free from wearing a government-mandated face covering while located inside any building for which they are an invitee, guest, or licensee.

61. As part of this right of personal liberty and freedom from physical restraint by the government, Plaintiffs have a right to be free from wearing a government-mandated face covering while located inside any building owned by any government entity.

62. The Knox County mask mandate, requiring the wearing of a face covering in any indoor public place within Knox County while within 6 feet of another person, unconstitutionally infringes on Plaintiffs' rights of personal liberty and freedom from physical restraint by the government, as alleged hereinabove.

VI. COUNT III – DECLARATORY JUDGMENT

UNCONSTITUTIONAL INFRINGEMENT

ON THE FUNDAMENTAL RIGHT TO OWN, USE, AND ENJOY PRIVATE PROPERTY

63. The law and public policy of Tennessee favors unrestricted use of real property by its owners, and Plaintiff Dr. Smith's right to the use and enjoyment of his private real property is

a fundamental right, inter alia, by virtue of the 14th amendment of the United States Constitution and Article I, Section 8 of the Tennessee Constitution.

64. The scope of Plaintiff Dr. Hall's leasehold interest during his period of tenancy is equivalent to that of an owner, and Plaintiff Dr. Hall's right to the use and enjoyment of his leasehold real property during his leasehold term is a fundamental right, inter alia, by virtue of the 14th amendment of the United States Constitution and Article I, Section 8 of the Tennessee Constitution.

65. As part of Plaintiffs' fundamental right to the use and enjoyment of their real property interests, Plaintiffs have the right to enjoy their property unencumbered by a government mandate that persons inside buildings lying on said real property must wear a face covering when they are within 6 feet of any other person.

66. The Knox County mask mandate, requiring the wearing of a face covering in any indoor public place within Knox County while within 6 feet of another person, unconstitutionally infringes on Plaintiffs' fundamental rights to the use and enjoyment of their real property interests.

VII. COUNT IV – DECLARATORY JUDGMENT

UNREASONABLE SEIZURE OF THEIR PERSONS

67. Plaintiffs have a right to be free from unreasonable seizures of their persons pursuant to the Fourth Amendment of the United States Constitution and Article I, Section 7 of the Tennessee Constitution.

68. The Knox County mask mandate is tantamount to a seizure of their persons by requiring the wearing of a face covering while inside an indoor public place and within 6 feet of other persons who do not reside in their household.

69. The amount of time they have to spend wearing a mask as a result of the Knox County mask mandate, if they comply with the mask mandate, would result in this face covering mandate being an unreasonable seizure of their persons.

70. Plaintiffs aver that the Knox County mask mandate is an unreasonable seizure of their persons because it requires the wearing of a face covering regardless of whether a person has been infected with Covid-19.

71. Plaintiffs aver that the Knox County mask mandate is an unreasonable seizure of their persons because Covid-19's threat of lethality to the overall Knox County population, including Plaintiffs, is insufficient to warrant a government interest in initiating a seizure for the purpose of preventing the spread of Covid-19, in comparison to other seizures that are considered reasonable, such as a Terry Stop.

VIII. COUNT V – DECLARATORY JUDGMENT

COMPELLED SPEECH

72. Plaintiffs have a right against compelled speech under the First Amendment of the United States Constitution and Article I, Section 19 of the Tennessee Constitution

73. Plaintiffs oppose the posting of a sign consistent with Regulation No. 2020-1, as purportedly required by Regulation No. 2020-1 (6).

74. This sign is a form of government-mandated speech.

75. Plaintiffs aver that Regulation No. 2020-1 is an unconstitutional infringement on their patients' rights, and they have no legal duty to propagate an unconstitutional regulation.

76. Plaintiffs oppose the message conveyed by Regulation No. 2020-1.

77. Plaintiffs desire to not utter the message conveyed by Regulation No. 2020-1

78. Regulation No. 2020-1 does not promote any compelling government interest, and Defendants lack any evidence or sufficient evidence to demonstrate the existence of such an interest.

79. The requirement in Regulation No. 2020-1(6) that Plaintiffs, who fall under the definition of an owner, operator, manager, or other person in control of indoor spaces, must post Regulation No. 2020-1 at the entrance of their real property interests violates Plaintiffs rights against compelled speech.

VIII. COUNT VI – DECLARATORY JUDGMENT

TENN. CODE ANN. §68-2-601 (f)(3)

IS UNCONSTITUTIONAL AS APPLIED TO PLAINTIFFS

80. Article II, Sec. 1 of the Tennessee Constitution provides that the Tennessee government consists of three branches, legislative, executive, and judicial.

81. Article II, Sec. 2 of the Tennessee Constitution provides that no person or persons belonging to one branch shall exercise the powers of the other branch, except as otherwise laid out in the Tennessee Constitution.

82. Article II of the Tennessee Constitution grants the legislative power, i.e. the power of making law, to the legislature, which is the General Assembly, as demonstrated in Sections 3, 17 – 20.

83. In legislating TCA §68-2-601(f)(3), the General Assembly purported to grant to the unelected Knox County Bd. of Health unbridled discretion as to what the law/policy will be

with respect to laws that “may be necessary or appropriate to protect the general health and safety of the citizens” of Knox County, so long as the rules or regulations are at least as stringent as the state law or regulation covering the same matter.

84. Defendant Knox County is a subdivision of the State of Tennessee, and its Board of Health is not a part of the legislative branch, but is a part of the executive branch of Knox County government.

85. The delegation by the General Assembly in TCA §68-2-601(f)(3) provides no sufficient guidelines to prevent Knox County Bd. of Health from issuing an arbitrary or unconstitutional rule or regulation.

86. Regulation No. 2020-1 issued by the Knox County Bd. of Health pursuant to its purported authority arising out of TCA §68-2-601(f)(3) is arbitrary and otherwise unconstitutional, and was promulgated as a result of exercising discretion as to what the policy should be for Knox County’s response to Covid-19, rather than administering policy created by a legislative body.

87. Knox County Bd. of Health admits that it exercises discretion as to what the law shall be with respect to health and safety issues, rather than either the General Assembly or the Knox County Commission, stating on its website, “The Board of Health is responsible for making policy decisions for Knox County as it relates to public health.”

88. Under the Tennessee Constitution, agencies and boards may not be afforded discretion as to the determination of policy, but only discretion in implementing policy that has been decided by a legislative body, in this case either the General Assembly or the Knox County Commission.

89. The delegation to the Knox County Bd. of Health of lawmaking power via TCA §68-2-601(f)(3) is a violation of the separation of powers doctrine described in Article II, Sections 1 and 2 of the Tennessee Constitution.

90. The General Assembly unconstitutionally delegated lawmaking power to the Knox County Bd. of Health via TCA §68-2-601(f)(3), and therefore TCA §68-2-601(f)(3) is invalid and unenforceable as applied to Plaintiffs.

IX. COUNT VII – DECLARATORY JUDGMENT

TENN. CODE ANN. §68-2-601 (f)(3) IS FACIALLY UNCONSTITUTIONAL

91. TCA §68-2-601(f)(3) purports to grant local boards of health, including the unelected Knox County Bd. of Health, the unbridled discretion as to what the law/policy will be with respect to laws that “may be necessary or appropriate to protect the general health and safety of the citizens” of a county so long as the rules or regulations are at least as stringent as the state law or regulation covering the same matter.

92. Under the Tennessee Constitution, there are no circumstances under which an unelected board of health should have unbridled discretion as to what the law shall be with respect to laws that “may be necessary or appropriate to protect the general health and safety of the citizens” of a particular county so long as the rules or regulations are at least as stringent as the state law or regulation covering the same matter.

93. The delegation by the General Assembly in TCA §68-2-601(f)(3) provides no sufficient guidelines to prevent a county board of health from issuing an arbitrary or otherwise unconstitutional rule or regulation.

94. Furthermore, the county boards of health are granted unbridled discretion as to what the policy shall be with respect to laws that county boards of health may deem to be necessary or appropriate to protect the general health and safety of the citizens of a particular county when there is no state rule or regulation covering the same matter.

95. TCA §68-2-601(f)(3) violates the separation of powers doctrine articulated in Tennessee Constitution, Article II, Sections 1-2.

96. TCA §68-2-601(f)(3) is facially unconstitutional, and therefore invalid.

X. COUNT VIII – INJUNCTIVE RELIEF

97. Plaintiffs have suffered distinct and palpable injuries described hereinabove since July 1, 2020, not suffered by all other Knox County citizens, because not all Knox County citizens own, operate, manage, or control indoor public places.

98. Also, Plaintiffs have suffered distinct and palpable injuries described hereinabove since July 1, 2020, not suffered by all other Knox County citizens, because some Knox County citizens have been infected with Covid-19, whereas Plaintiffs have not.

99. These injuries were inflicted upon Plaintiffs through the Knox County Bd. of Health's Regulation No. 2020-1.

100. Plaintiffs refusal to comply with the wearing of face coverings in indoor public places, refusal to require that persons in the indoor public places of their real property must wear face coverings, and refusal to comply with the posting requirement subjects them to fines and prosecution per TCA §68-2-602 as well as the threats of closure of their businesses and revocation of their licenses, as stated in Regulation No. 2020-1(8).

101. The unconstitutional infringements on civil liberties described hereinabove are in and of themselves immediate and irreparable injury. Elrod v. Burns, 427 U.S. 347, 373-374 (1976).

102. Plaintiffs aver that they will continue to be subject to immediate and irreparable injury before a final hearing can be held in this matter, and also before Knox County can be heard in opposition.

103. Defendants will suffer no financial prejudice as a result of a temporary restraining order issued against them, and therefore Plaintiff's aver that the cost bond for issuance of a temporary restraining order should be nominal, no more than \$1000.

104. Plaintiffs aver that this court should issue a Temporary Restraining Order against Defendant Knox County, restraining the enforcement of Regulation No. 2020-1 against Plaintiffs, and restraining Defendant Knox County's Board of Health from issuing any further regulations reliant upon TCA §68-2-601(f)(3) for authority, or any further regulations that infringe upon Plaintiffs' rights of bodily integrity; infringe upon Plaintiffs' rights of personal liberty and freedom to be free from government physical restraint; infringe upon Plaintiff's rights to own and use private property; unlawfully seize Plaintiffs' persons; and unlawfully compel speech.

XI. MOOTNESS DOCTRINE INAPPLICABLE

105. The Knox County Bd. of Health has implemented and rescinded regulations since it imposed Regulation No. 2020-1.

106. If Knox County Bd. of Health rescinds Regulation No. 2020-1 before this litigation is concluded, this court should continue to entertain this litigation pursuant to exceptions to the mootness doctrine for the following reasons: 1) this issue is of great public

importance; 2) the challenged conduct of issuing a face coverings mandate or some other regulation encroaching upon the civil liberties of Knox Countians based upon TCA §68-2-601 (f) is capable of repetition and of such duration that these actions will evade judicial review; 3) collateral consequences remain from encroachment upon civil liberties.

107. This issue is of great public importance, because the unelected Knox County Bd. of Health, an unelected body of government, has suppressed the civil liberties of Plaintiffs, their customers, and Knox Countians in general, in a manner essentially unprecedented since implementation of the current Tennessee Constitution and adoption of the Knox County Charter.

108. Although the scope of actions taken by the Knox County Bd. of Health are unprecedented, the regulations can be short-lived, such as Regulation No. 2020-6, which lasted from September 18, 2020 through October 28, 2020. This is too short a time span to allow for a full litigation to take place under current procedural rules. The challenged conduct is capable of repetition and evasion of judicial review, particularly in light of anticipated additional waves of Wuhan Covid-19.

109. A violation of constitutional liberties is in and of itself an irreparable injury, and therefore collateral consequences remain, even if the Knox County Bd. of Health ceases to violate plaintiffs' constitutional rights with regulations.

110. Voluntary cessation is not a reason to terminate this case for mootness, because Plaintiffs can reasonably expect constitutional infringements from the Knox County Bd. of Health in the future, given the Board of Health's conduct thus far, in light of public opposition and warning to the board even from the Knox County Law Dir.'s office as to the unconstitutionality of its initiatives.

X's II. SUBJECT MATTER JURISDICTION, PROPER PERSONS JOINED, VENUE

111. Knox County Chancery Court has subject matter jurisdiction pursuant to TCA §16-11-101, 102, as well as TCA §29-1-101, et seq.

112. The proper parties for this lawsuit are already joined in this lawsuit. A future declaratory judgment action filed under the same theories would be covered by the outcome of this case through the doctrine of offensive non mutual collateral estoppel. Regarding the interests of any member of the public who opposes the declaratory judgment sought by Plaintiffs, the Tennessee Supreme Court has already declared in Cummings v. Shipp that their interests are protected by the Tennessee Attorney General, and by implication, the Knox County Law Director's Office. 3 S.W.2d 1062 (Tenn. 1928) (the name and citation found in the comments of TRCP 24.04 are incorrect). Therefore, there is no concern as to a multiplicity of lawsuits and inconsistent outcomes with regard to any other persons whose interests may be affected, and thus their interests are too remote in this case for joinder.

113. Knox County Chancery Court is the proper venue.

WHEREFORE, Plaintiffs pray for the following relief:

1. A summons would be issued for Herbert Slatery, and this amended complaint be served upon him.
2. This Court would enter a Temporary Restraining Order as requested in paragraph 104.
3. This court would entertain a hearing on a Temporary Injunction, extending the relief granted in the Temporary Restraining Order until a final hearing, and include the findings, not limited to the following: 1) that Regulation No. 2020-1 is unconstitutional, for the reasons pleaded hereinabove; 2) that TCA § 68-2-601(f)(3) is facially unconstitutional and

unconstitutional as applied to Plaintiffs and their customers, and therefore is invalid and cannot be the basis for regulations from make Board of Health.

4. This court would hold a final hearing and in a final judgment, grant judgment to Plaintiffs including findings, inter alia, set out in prayer for relief paragraph 3, hereinabove.


5. This court would tax costs to the Defendants pursuant to TCA §29-14-111.

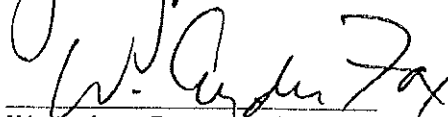
6. Grant such other relief pursuant to TCA § 29-14-110, and such other, good, and further relief to which this court finds Plaintiffs may be entitled.

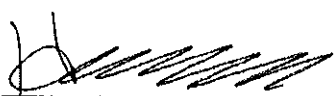
THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF

Respectfully submitted this 6 day of November, 2020.


Dr. Steven Smith


Dr. Jason Hall


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STATE OF TENNESSEE
COUNTY OF _____

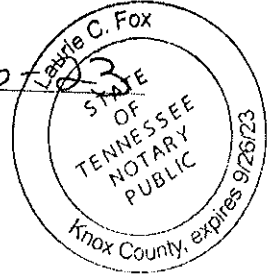
I, Steve J. Smith, MD, after being duly sworn, according to law, hereby make oath that I have read the foregoing Verified Amended Complaint; that the statements contained therein are true to the best of my knowledge, information, and belief.

Steven J. Smith, MD
Steven J. Smith, MD

Sworn to and subscribed before me on this 6 day of November, 2020.

Laurie C. Fox
NOTARY PUBLIC

My commission expires: 9-26-23



STATE OF TENNESSEE
COUNTY OF _____

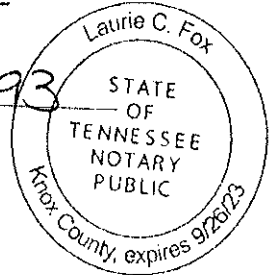
I, Jason J. Hall, MD, after being duly sworn, according to law, hereby make oath that I have read the foregoing Verified Amended Complaint; that the statements contained therein are true to the best of my knowledge, information, and belief.

Jason J. Hall, MD
Jason J. Hall, MD

Sworn to and subscribed before me on this 6 day of November, 2020.

Laurie C. Fox
NOTARY PUBLIC


My commission expires: 9/26/23




COST BOND

We hereby acknowledge ourselves as surety for the costs and taxes in this cause in accordance with T.C.A. § 20-12-120.


Dr. Steven Smith


Dr. Jason Hall

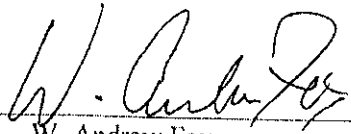

W. Andrew Fox


Daniel A. Herrera

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Verified Amended Complaint has been served upon the following by email, facsimile, hand delivery, or by placing the same in the United States mail, properly addressed and with sufficient postage affixed thereto to ensure delivery this the 6 day of November, 2020:

David M. Sanders
Senior Deputy Law Director
400 Main Street, Suite 612
City-County Building
Knoxville, TN, 37902


W. Andrew Fox