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M2025-00072-SC-R11-CV

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

COMMITTEE TO STOP AN UNFAIR TAX, and EMILY EVANS, individually, and as chairwoman of Committee to Stop An Unfair Tax,	)	
Appellants/Plaintiffs,	)	**M2025-00072-COA-R3-CV**
vs.	)	
	)	**DAVIDSON CHANCERY**
FREDDIE O'CONNELL, in his official capacity as Mayor of the Metropolitan Government of Nashville-Davidson County, THE METROPOLITAN GOVERNMENT OF NASHVILLE-DAVIDSON COUNTY And the DAVIDSON COUNTY ELECTION COMMISSION,	)	**CASE NO. 24-1427-II**
	)	**HON. ANNE C. MARTIN**
Appellees/Defendants.	)	

APPELLANTS' RULE 11 APPLICATION FOR REVIEW

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JUDGMENT OF THE COURT OF APPEALS

This Application for Permission to Appeal is made to the Tennessee Supreme Court pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure. The judgment from which Plaintiffs/Appellants seek to appeal was entered by the Tennessee Court of Appeals on or about April 15, 2025. No petition for rehearing was filed. *See* Appendix, attached hereto.

STATEMENT OF QUESTIONS FOR REVIEW

I. WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT DEFENDANTS' TRANSIT IMPROVEMENT PLAN WAS AUTHORIZED UNDER THE LANGUAGE OF THE IMPROVE ACT;

II. WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT THE VOTERS WERE NOT MISLED BY DEFENDANTS TO VOTE FOR THE TRANSIT IMPROVEMENT PLAN;

III. WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT THE REFERENDUM LANGUAGE COMPLIED WITH THE REQUIREMENTS OF THE IMPROVE ACT.

STATEMENT OF FACTS

For purposes of this application, the Plaintiffs/Appellants adopt the facts as set forth in the Court of Appeals Opinion. *See* Opinion, pp. 1-4.

LAW AND ARGUMENT SUPPORTING REVIEW BY THE SUPREME COURT

I. THE SUPREME COURT'S SUPERVISORY AUTHORITY IS WARRANTED AS THE COURT OF APPEALS ERRONEOUSLY FOUND THAT DEFENDANTS' TRANSIT IMPROVEMENT PLAN WAS AUTHORIZED PURSUANT TO THE LANGUAGE OF THE IMPROVE ACT.

A. INTRODUCTION

In 2017, the Tennessee General Assembly passed the IMPROVE Act, which essentially reduced sales tax on food, but increased taxes on gas, diesel, car registration, etc.. The intent of increasing taxes was so that more money would be afforded to the state and local governments to complete transportation projects related to roads and bridges. Additionally, the IMPROVE Act included the Local Option, which was a mechanism for the four largest counties, including Davidson County, to raise taxes, such as the sales tax, to generate revenue locally to complete mass transit system projects, however, the local government must first submit a transit improvement plan to the local legislature and then such must be approved by the voters via a referendum election. In 2024, Defendant Metropolitan Nashville-Davidson Government ("Metro") misused this Local Option to raise sales tax by .05% with the explicit intent to fund projects which were not authorized under the Local Option of the IMPROVE Act, such as sidewalks, bike lanes, streets, signals and affordable housing. Due to Metro misleading the voters, such was

approved by referendum in the November 2024 election. The primary argument of Plaintiffs in this case is that the referendum election should be declared void as the Metro's Transit Improvement Plan ("Plan") is not authorized under the IMPROVE Act. The IMPROVE Act only authorizes "public transit system" projects under the Local Option. A public transit system is defined as follows:

> [A]ny mass transit system *intended for shared passenger transport services to the general public*, together with any building, structure, appurtenance, utility, transport support facility, transport vehicles, service vehicles, parking facility, or any other facility, structure, vehicle, or property needed to operate the transportation facility or provide connectivity for the transportation facility to any other non-mass transit system transportation infrastructure, including, but not limited to, interstates, highways, roads, streets, alleys, and sidewalks; . . .

T.C.A. §67-4-3201(3). In finding that the Plan was authorized pursuant to the foregoing statute, which largely consisted of sidewalks, bike lanes, streets and signals, the Court of Appeals effectively approved the complete abandonment of the Tennessee General Assembly's intent as to the IMPROVE ACT, which was to allow local governments to improve their mass transit systems by raising certain types of taxes with the approval of the voters. Metro skewed the plain and unambiguous language of T.C.A. § 67-4-3201(3) in an effort to raise taxes on its citizens so that it can construct sidewalks, bike lanes and roads, which, notably, such projects are already paid for by citizens through payment of taxes on gas, diesel, cars, etc.. Thus, without the Supreme Court's intervention,

Metro will be allowed to use the taxes paid by citizens for projects which are not authorized under the IMPROVE Act.

In upholding the Trial Court's ruling, the Court of Appeals seemed to ignore the context and plain language of this statute and instead focused on the term "connectivity" in the aforementioned statute. The Court of Appeals adopted the reasoning of the Trial Court as follows: " . . . [T]he sidewalks and roads are in the corridors. Along with the improved signals and bike routes, they connect the mass transit system to neighborhoods, apartment buildings, and other concentrations of people." *See* Opinion, p. 10. Accordingly, the Court of Appeals held that the term "connectivity" was undefined and stated, "In light of the discretion given by the act in this area, we find that the proposal approve by the electorate is fully consistent with the IMPROVE Act . . ." *See* Opinion, p. 10. Plaintiffs respectfully submit that the Court of Appeals reasoning is erroneous as such an interpretation effectively gives every local government the right to raise taxes to complete any transportation project. If a project merely needs to be part of the "connectivity" between a citizen's origin and a bus station or a bus stop, which is the practical result of the finding of the Court of Appeals, then there are no statutory limits on what constitutes a "public transit system". This clearly was not the intent of the Tennessee General Assembly as it carved out the Local Option and specifically defined "public transit system". Without the Supreme Court exercising its supervisory authority and providing clarity to the interpretation of T.C.A. § 67-4-3201(3), local governments,

including Metro, will continue to mislead voters in proposing tax raises for projects which should be paid for through revenue from the gas tax; a tax almost all citizens pay for on a regular basis. Thus, the Supreme Court supervisory authority is needed to protect tax payers and to REVERSE this finding of the Court of Appeals.

B. THE PLAN DOES NOT QUALIFY AS A TIP AS DEFINED UNDER THE IMPROVE ACT.

This Court has held, "The most basic principle of statutory construction is to ascertain and give effect to legislative intent *without broadening the statute beyond its intended scope*. When statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, *without a forced interpretation that would extend the meaning of the language . . .*." *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009)(emphasis added). The Court must construe the words in the context that they appear in the statute. *See Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010)("And because these words are known by the company they keep, courts must also construe these words in the context in which they appear in the statute and in light of the statute's general purpose."). Further, the Court should "presume that the General Assembly used every word deliberately and that each word has a specific meaning and purpose." *Id.* at 527. The interpretation of a statute is an issue of law. *See U.S. Bank, N.A. v. Tennessee Farmers Mut. Ins. Co.*, 277 S.W.3d 381, 386 (Tenn.

2009)("Questions regarding the interpretation of a statute and the statute's application to undisputed facts involve issues of law."). This Court's review of an issue of law is *de novo* with no presumption of correctness. *See Raley v. Brinkman*, 621 S.W.3d 208, 227–28 (Tenn. Ct. App. 2020)(Our review of a trial court's determinations on issues of law is de novo, without any presumption of correctness.")(citations omitted).

As outlined herein, *see infra.* subsection D, the Plan largely consists of projects for sidewalks, bike lanes, streets, signals and affordable housing, however, these projects do not qualify as public transit system projects. A transit improvement program (sometimes referred to as a "TIP"), is defined under the Act as "a program consisting of specified public transit system projects and services." *See* T.C.A. § 67-4-3201(6). The term "Public Transit System" is not a generic or general term; it is explicitly defined as follows under the Act:

> [A]ny mass transit system *intended for shared passenger transport services to the general public*, together with any building, structure, appurtenance, utility, transport support facility, transport vehicles, service vehicles, parking facility, or any other facility, structure, vehicle, or property needed to operate the transportation facility or provide connectivity for the transportation facility to any other non-mass transit system transportation infrastructure, including, but not limited to, interstates, highways, roads, streets, alleys, and sidewalks; . . .

See T.C.A. § 67-4-3201(3)(emphasis added). Given the plain language of the statute and considering that the purpose of statute cannot be

broadened "outside its intended scope", *see Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009), a TIP may consist of projects of elements which are needed to operate a mass transit system transportation facility, including, 1) buildings; 2) structures; 3) appurtenances; 4) utility; 5) transport support facility; 6) transport vehicles; 7) service vehicles; 8) parking facility; 9) any other facility, structure, vehicle or property needed to operate the facility; and/or 10) any *other facility, structure, vehicle* or property needed to provide connectivity for the transportation facility *to* any other non-mass transit system transportation infrastructure, which includes interstates, highways, roads, streets, alleys, and sidewalks. It is patently obvious from this list of elements that if the General Assembly intended that streets and sidewalks were to be part of a public transit system, the General Assembly would have listed these as one of the elements, but it did not. The General Assembly only listed streets and sidewalks as "non-mass transit system transportation infrastructure", which means, by definition, that these elements cannot be part of a mass transit system infrastructure. Additionally, if sidewalks, streets and roads were a part of the definition of a "public transit system" there would be no need for the General Assembly to outline that connectivity to sidewalks, streets and roads were part of a public transit system. The meaning of the statute could not be more unambiguous. It is clear what the General Assembly intended was that the revenue from an increase in taxes approved by the electorate could be used to build bus stations and bus stops and

purchase buses to operate between the bus stations and bus stops, however, nothing within the aforementioned statute suggests that sidewalks, bike lanes, streets and signals are contemplated by the term "public transit system".

Further, the operative term in the definition of "public transit system" is "any mass transit system intended for *shared passenger transport services*". *See* T.C.A. § 67-3201(3)(emphasis added). This immediately excludes sidewalks and bike lanes as they clearly are not intended for shared passenger transport services. Sidewalks and bike lanes are used by individuals and, thus, such modes of transportation are not "shared" with the other members of the public.

The Act does use the term "connectivity" in the definition of "public transit system", however, the term is not used in the manner as the Court of Appeals suggests. The Court of Appeals reasoning seems to be that because the sidewalks, bike lanes and roads are "in corridors", "they connect the mass transit system to neighborhoods, apartment buildings, and other concentration of people" and, therefore, such Plan is "consistent with the IMPROVE Act." *See* Opinion, p. 10. As explained in the prior paragraph, "sidewalks", "streets" and "bike lanes" are logically not a part of a mass transit system as they are not for "shared passenger transport services to the general public". Indeed, the statute define these transportation elements as "non-mass transit system infrastructure". Thus, in effect both the Trial Court and the Court of Appeals found that despite the General Assembly specifically stating

that "sidewalks" and "streets" ("bike lanes" are in the same category) are "non-mass transit system infrastructure", by implication, through the term "connectivity", the General Assembly opened up the definition of "mass transit system" or "public transit system" to mean anything that may be used by a person to access a mass transit vehicle and/or that which a mass transit vehicle may use. This begs the question which neither Defendants nor any of the Courts could answer: why would the General Assembly use such a circuitous route in opening up the definition of "public transit system" to basically mean all transportation elements, including sidewalks, bike lanes and streets? The Legislature could have simply put these terms within the definition "public transit system", which it did not and we must presume that the General Assembly used each word intentionally. *See Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010). Defendants have unilaterally expanded the term "public transit system" by reading the term "connectivity" too broadly and in contravention of the plain language of the statute, which is a violation of the main tenets of statutory construction. *See Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009).

Plaintiffs would respectfully submit that a proper reading of the term "connectivity" is that it is limited by the elements of a "mass transit system" as follows: "'Public transit system' means any mass transit system intended for shared passenger transport services to the general public, together with . . .*any other facility, structure, vehicle, or*

property needed to . . . provide connectivity for the transportation facility ***to*** any other non-mass transit system transportation infrastructure. . . .” T.C.A. § 67-4-3201(3)(emphasis added). Using the plain meaning of the words of the statute, as the law requires, it is clear that the term “connectivity” is not meant to be an expansive term contemplating every sidewalk, bike-lane, street and highway in the city of Nashville, but is only referencing “any facility, structure, vehicle or property” which is needed to connect a transportation facility *to* “interstates, highways, roads, streets, alleys, and sidewalks”. If the Court accepts the assertion that sidewalks, streets and bike lanes are contemplated by the definition of “public transit system”, these elements will have to fall into one of the categories set forth in the definition, i.e. facility, structure, vehicle, or property. We can immediately eliminate the terms “vehicle” and “property” without discussion. As to the term “structure”, the “ordinary and natural meaning”, is “something (such as a building) that is constructed”[1] and, thus, this term would not apply. For similar reasons, the term “facility” would not apply. A “facility” is defined as “something (such as a hospital) that is built, installed, or established to serve a particular purpose.”[2] Clearly, the aforementioned elements would not fall into this category as the term is more akin to a building. This argument is supported by the fact that the term “facility” is used in the definition of

[1] Available at https://www.merriam-webster.com/dictionary/structure.
[2] Available at https://www.merriam-webster.com/dictionary/facility

"public transit system" with reference to buildings, i.e. "support facility", "transport facility" and "parking facility". *See* T.C.A. §67-4-3201(3). In addition to applying common sense, the Court also should use the maxim *Ejusdem generis,* "Under this doctrine of statutory construction, 'where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.'". Streets, sidewalks and bike lanes are not in the same category as those listed in the definition, i.e. support facility, transport facility, parking facility, vehicle, structure or property. The Court of Appeals, the Trial Court nor Metro has explained how sidewalks, streets and bike lanes fit into the category of elements which are outlined in the definition of a "public transit system" and, thus, the Court of Appeals finding is not supported by the basic principles of statutory construction.

Further, the Court of Appeals seems to be persuaded, in part, by the fact that the streets, roads and bike lanes are "in the corridor", meaning they are connected to busier parts of Metro's transportation infrastructure. Indeed, Metro argued in its brief, "The Plan's sidewalk projects . . . are focused on connecting the busiest neighborhoods to major transit routes. While Metro has identified approximately 1,900 miles of missing sidewalks that need to be built within the county, the Plan only funds the 86 miles of sidewalks that connect to Nashville's busiest transit routes. Id. at 409–11. The Plan does not use the transit surcharge for sidewalks with no relationship to transit needs."

Appellees' Brief, p. 24. Thus, Metro is attempting to expend the definition by claiming that as long as the project connects to "busy" streets and highways which include bus stops and/or bus stations, they are authorized under the IMPROVE Act. While Metro provided no evidence where the "busiest transit routes" are located in Nashville, even accepting this supposition, Metro's argument must fail. The definition does not use or even make reference to the nebulous term "busy". The plain language of the definition makes it quite apparent that the location of the projects is immaterial; it is the *nature* of the project which is germane in determining what projects are authorized under the Act and they must be part of a "mass transit system intended for shared passenger transportation services to the general public". *See* T.C.A. § 67-4-3201. Sidewalks, streets and bike lanes clearly are not intended for "shared passenger transportation" used by the "general public", even if they are constructed in the "busy" part of Nashville.

During oral argument, the Court of Appeals focused on the fact that sidewalks are connected to bus stops and buses use roads and, thus, sidewalks and roads are needed to operate a bus system, thus, sidewalks and streets are part of the "public transit system". However, respectfully, the flaw in this reasoning is that the IMPROVE Act was not passed in a vacuum; it was passed with the understanding that sidewalks and roads already exist in the four major cities in Tennessee. It is highly probable that the Tennessee General Assembly in its collective wisdom understood that when a local government was

improving its public transit system, upgrading the local transportation system, including roads and sidewalks, may be efficient or even necessary. However, the General Assembly addressed this possibility by designing the IMPROVE so that a local government could combine revenue from a local tax increase with other funds to construct and/or upgrade sidewalks, streets and bike lanes. "Revenue from the surcharge may be: (1) Combined with other funding generated by local, state, or federal governments from taxes, fees, or fares, and may be used to match state aid funds and federal grants; . . .." T.C.A. § 67-4-3205(a). Therefore, if additional sidewalks, bike lanes and roads are needed in Nashville, Metro is certainly allowed to do so; however, it must use funds from other sources for these elements of the overall project which do not meet the definition of a public transit system project. As set forth in the following section, pursuant to the IMPROVE Act, the Legislature intended to provide additional revenue to the local government for general transportation infrastructure. Therefore, when the IMPROVE Act is read as whole, the reasoning that without sidewalks, bike lanes and roads, citizens have no way to get to the mass transit system or use the mass transit system should not be employed to unnaturally expand the legislative intent as revealed in the plain and unambiguous language of T.C.A. § 67-4-3201(3).

Finally, the Court of Appeals finding that the affordable housing and land is not contemplated by T.C.A. § 67-4-3201(3) is not consistent with its finding that such statute contemplates sidewalk, streets, bike

lanes and signals. The Court of Appeals properly found that affordable housing and land were not contemplated by the term "public transit system". The Court of Appeals held,

> We fail to see how the purchase of property for housing development and parks is consistent with Tenn. Code Ann. § 67-4-3201(3). Property purchased with the surcharge must be used for the public transit system as defined in Tenn. Code Ann. § 67-4-3201(3). Yet the purchase of land for housing development and parks is not a purchase for the transit system, nor does it "provide connectivity for the transportation facility to any other non-mass transit system transportation infrastructure, including, but not limited to, interstates, highways, roads, streets, alleys, and sidewalks[.]" Tenn. Code. Ann. § 67-4-3201(3). Such property is a place of origination or destination. Metro's goal is laudable, but the IMPROVE Act does not provide the means. Metro will have to find other funds to accomplish this goal.

See Opinion, pp. 10 & 11. The Court of Appeals seems to be making the distinguishment that because housing is a place of origination or destination, it does not provide connectivity, such as a sidewalk or bike lane. Respectfully, such a rationale does not seem logical. If a sidewalk is considered part of a public transit system because it provides connectivity to a bus station, which is then used to board a bus, logically, housing, which is "connected" to a sidewalk, would also be contemplated by the term "connectivity" as interpreted by the Court of Appeals. The only distinguishment is that housing is the origin point of the transportation journey and the sidewalk is within the journey. But if the term "connectivity" contemplates any element which is needed to connect to the "public transit system", it seems that housing would be

included in that definition as well, as after all, without the housing, or the origin point, there is no transportation journey. Thus, the reasoning used by Court of Appeals that housing and land are not contemplated by the definition of "public transit system" demands the finding that sidewalks, bike lanes and streets are not contemplated by the statutory definition.

C. THE LEGISLATION HISTORY OF THE IMPROVE ACT DEMONSTRATES THAT THE LOCAL OPTION WAS NOT INTENDED TO FUND TRANSPORTATION PROJECTS.

The Trial Court found that the IMPROVE Act is "clear and unambiguous and that the legislative intent can be derived from the text". *See* TR V, p. 719. The Plaintiffs agree with this finding, however, as the construction of a statute is an issue of law and this Court's review is *de novo*, in the alternative, should the Court find that the language of the IMPROVE Act which is at issue in this matter is ambiguous, the legislative history clearly establishes that the legislative intent was that the revenue from the Local Surcharge Option could only be used from Public Transit System projects and not streets, sidewalks, bike lanes and affordable housing.

Should the Court find that the statute is ambiguous, the Court can consider the circumstances surrounding the Act and the legislative history. *See Wachovia Bank Of N. Carolina, N.A. v. Johnson*, 26 S.W.3d 621, 624 (Tenn. Ct. App. 2000) ("If the statute is ambiguous, we invoke the various rules of statutory construction. *A statute is ambiguous if it*

is capable of conveying more than one meaning.")(emphasis added). The Tennessee Supreme Court has held, "In ascertaining the legislative intent, the Court may 'consider the existing state of the law, the circumstances contemporaneous to the enactment of the new law, the facts which induced the new law, and the evil sought to be remedied.'"(citations omitted). *See Id.* at 624. *See also Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527–28 (Tenn. 2010) ("When courts are attempting to resolve a statutory ambiguity, the rules of statutory construction authorize them to consider matters beyond the text of the statute being construed. The courts may consider, among other things, public policy, historical facts preceding or contemporaneous with the enactment of the statute being construed, and the background and purpose of the statute. The courts may also consider earlier versions of the statute, the caption of the act, the legislative history of the statute and the entire statutory scheme in which the statute appears.") A review of the context and the legislative history of the Local Option demonstrates that the Local Option was for mass transit projects and not general transportation infrastructure projects such as sidewalk, streets, bike lanes and affordable housing.

Initially, it should be noted that the primary focus of the Act was *not* the Local Option which is at issue in this matter, but instead it was the elaborate legislation that reduced taxes on groceries (and other taxes) and raised the gas and diesel tax (or, as the politicians like to call it, a "user fee") over three years. According to a summary of the

IMPROVE Act published by the Tennessee Comptroller's Office in July of 2017, the revenue from the tax increase would go directly to the "highway fund" and pay for "over 900 transportation projects". *See* TR. 7, Ex. 5, p. 1. The summary outlined the IMPROVE Act as follows:

> Money for building and maintaining roads and bridges comes from three main sources: state taxes on fuel, including gasoline and diesel; motor vehicle registration fees; and federal revenue. Fuel taxes and registration fees are sometimes referred to as "user fees," meaning that users, or the people driving cars and trucks, pay for using the roads.
>
> The **IMPROVE** Act enhances taxes on fuel - phased in over a period of three years - and increases annual registration fees beginning July 1, 2017. While some of the increased revenue goes to cities and counties, the state's portion of the new money goes to the highway fund and is intended to fund 962 transportation projects identified in the act.

See Id.. Further, the summary explained, "The gasoline tax is Tennessee's main source of state transportation funding." *See Id.* at p. 2. Importantly, under the IMPROVE Act revenue in the fiscal year 2017-18 was "expected to generate between $134.8 and $137.0 million in new money. Of that, the state highway fund will receive 61.9 percent, or about $83.5 to $84.8 million. *Local governments will receive between $51.4 and $52.2 million – $34.2 to $34.8 million for counties, and $17.1 to $17.4 million for cities.*" (emphasis added). Additionally, from the increase in the diesel tax, "[r]oughly $30.8 to $31.5 million, or 73.7 percent, will go to the highway fund; *about $7.3 to $7.5 million will*

flow to counties, and $3.7 to $3.8 million to cities."(emphasis added). Therefore, the main thrust of the IMPROVE Act was to raise funds to be used specifically for "transportation projects" and some of that revenue would be funneled to local governments to be used on local transportation infrastructure projects.

In addition to local government receiving tax revenue for transportation infrastructure projects, the Act created the Local Option to deal with mass transit issues. Importantly, the summary explains, "The IMPROVE Act creates additional local funding options for *public transit*. Currently, local governments may levy a variety of local taxes, ... Maximum rates for these taxes are capped in law, however, and may have statutory earmarks for the resulting revenue, potentially limiting a local government's ability to increase revenues for certain types of programs." *See Id.* at p. 5 (emphasis added). Under the Act, however, "local governments [have] an option to generate new revenue specifically for public transit programs. Following a local referendum, counties with populations over 112,000 and cities with more than 165,000 people may levy a surcharge on top of several current local taxes, ..." *See Id..* The population limitations are important in understanding the meaning of the term "public transit systems", as the Local Option was limited to the largest counties and cities, including "[t]he four largest cities – Memphis, Nashville, Knoxville, and Chattanooga . . .". Logically, smaller counties and cities do not traditionally have mass transit or public transit issues; only large local

governments with larger populations would have a need for bus or train systems and, hence, the Local Option. Therefore, the circumstances surrounding the passage of the IMPROVE Act strongly suggest that the increase in the gas and diesel tax would be used from "transportation projects" while the "Local Option" would be used for public transit projects. It defies common sense that the General Assembly had redundant revenue streams for general transportation projects. The logical interpretation given the context of the IMPROVE Act is that the money from the "highway fund" would be used for "roads and bridges", while the revenue for the Local Option would be used exclusively on public transit projects.

Further, the Legislative debates fully support Plaintiffs' assertion of the proper interpretation of the IMPROVE Act. On the floor of the Tennessee House of Representatives, Representative Barry Doss, one of the sponsors of the bill, was asked about the Local Option. He explained as follows[3]:

> [T]he local option is something as you know, we've got uh, especially the four major cities, uh, have come approached the state many times, asking for the state to help solve their mass transit needs within their city, . . .the state feels that it's . . .locals . . . duty to solve their specific needs. We do help by the user fee and and their transit and their uh or infrastructure needs, but the four big cities and . . . the largest 12 counties in the state . . .do have mass transit needs. And we need to give them the ability to be able to raise money . . . to solve their specific problems and they're all different problems within each city and county. But this fee gives them the local option, gives them the right for the cities

[3] Available at 1:59:55, https://tnga.granicus.com/player/clip/13656?view_id=354&meta_id=297572&redirect=true

> or counties to increase a list of taxes. There are six of them, . . . it gives them the right to increase those taxes, . . . but once they vote on it, then they have to put it to a referendum for the people to vote on it.

See TR VII, Exhibit 1. Additionally in subcommittee, in response to a question, Representative Doss explained the Local Option as follows:

Rep. McDaniel: So we are going to change the way we do the hotel motel tax, we're gonna allow the people on a referendum to address the question of whether or not they raised that hotel motel tax.

> Rep. Barry Doss: I may be corrected, but let me tell you the way I understand it. We're not gonna change the way we do it, but if they choose to raise these particular taxes for a particular mass transit solution, then they would have to go before the people. If they currently raise the hotel motive [sic] tax or any other tax for another reason, they would do like we do now. They would come before the state legislature and we would approve or disapprove of them doing so. So, but if they do it for . . . a mass transit solution, and if they do it to solve their mass transit problem, they would be able to approve it within that municipality and go to a referendum before the people for that reason.

See Id.. Given the context and legislative history of the Local Option, there should not be a genuine question that the intent of the term "public transit system" is to address mass transit issues, not transportation infrastructure projects such as sidewalks, bike lanes and roads (and certainly not housing).

D. THE VAST MAJORITY OF THE PROJECTS IN THE PLAN DO NOT QUALIFY AS PUBLIC TRANSIT SYSTEM PROJECTS.

Having established that under the plain language of the Act, a TIP must only include public transit system projects explicitly outlined in T.C.A. § 67-4-3201(3), which do not include sidewalks, streets, bike lanes, signals and affordable housing, an examination of the Plan demonstrates that a vast majority of the Plan consists of projects which do not qualify under the Act and, thus, the Plan is in violation of the IMPROVE Act. The Plan addresses six areas of projects: Sidewalk, Signals, Streets & Safety; All-Access Corridors; WeGo Essentials; WeGo Service Enhancers; Places for Everyone; Innovation & Technology. Of these six categories, the only categories which do not have any projects which do not meet the definition of a Public Transit System project are the two WeGo categories. The other categories are mostly projects which do not meet the definition of a Public Transit System. Of the $3.096 billion cost of the Plan (in current dollars, the actual expenditure will be $6.9 billion), the four elements of the Plan which contain projects which cannot be a part of a TIP equal $2.619 billion, or 84% of the Plan. The Act is unequivocal in its mandate that revenue from the surcharge "must be used for costs associated with . ..construction . . . of public transit system projects that are part of a transit improvement program." T.C.A. § 67-4-3205(a). Thus, the import of having established that public transit system project cannot include sidewalks, bike lanes, roads or other aspects of transportation that are not part of a "mass transit system intended for shared passenger service", is that pursuant

to T.C.A. § 67-4-3205(a), as the Plan largely consists of streets, sidewalks and affordable housing, the Plan cannot be implemented and, therefore, the surcharge cannot be legally collected under the Act.

1. Sidewalks, Signals, Streets & Safety

The Plan states, "Nashville's Vision Zero goals by expanding Complete Streets by 39 miles, improving safety for pedestrians, bicyclists, drivers, and transit users. Improvements will aim to decrease the 1.5 pedestrian fatalities for every 100,000 Nashvillians, nearly double the national average. More sidewalks and bike paths will ensure improved access to buses with increased frequencies. Once on the vehicle, travelers will reap the benefits of modern traffic signal technologies that alleviate the gridlock keeping both personal vehicles and transit vehicles from moving us where we need to go, when we need to be there." TR Vol. VII, Ex. 12, p. 23. The Plan boasts "installation of 86 miles of sidewalks that, when combined with annual capital spending, complete the priority sidewalk network identified in WalkNBike. Safety improvements at 35 High Injury Intersections identified in the Vision Zero Implementation Plan." *Id.* As for bike lanes, the Plan states, "The TIP will also make significant improvements to Nashville's bikeway network by incorporating up to 35 miles of new or upgraded bike facilities identified as part of the WalkNBike Bikeway Network." *Id.*at 36. The cost of this category is listed at $1.02 billion and it is evident from the Plan that this category

almost entirely consists of projects which are not authorized under the Act.

2. All Access Corridors

The Plan is somewhat ambiguous as to what is included in the All-Access Corridors, but to the extent the Plan explains the use of funds under this category, it is apparent that a large portion of the funds are for projects which are not Public Transit System projects. The Plan states that "Nashvillians will have: 54 miles of high-capacity corridors, including *some* bus rapid transit routes." *See* TR Vol. VII, Ex. 12, p. 39 (emphasis added). The Plan explains further, "All-Access Corridors include a high-frequency bus line with strategically located dedicated transit-only lanes, ensuring increased service reliability for passengers. These routes have more frequent service times and higher quality stop/station amenities than standard bus routes. *These corridors will include transportation upgrades for pedestrians and cyclists and signal upgrades*, including transit signal priority that allows buses to move through intersections quicker than cars and new or upgraded sidewalks within a 1/4- or 1/2-mile." *See Id.* at p. 41 (emphasis added). The cost of this category is $1.35 billion. While there is an argument that lanes or roads which are purely dedicated to mass transit vehicles could be a part of a public transit system, the Plan is vague regarding how much of the funds will be used for this aspect of the Plan and, more importantly, many aspects of this category are clearly not Public Transit System projects.

3. Places for Everyone

The Plan states, "This program proposes funding to acquire and prepare property close to transit centers . . . so that it could be developed with a variety of transit-connected community needs, such as thoughtfully designed affordable housing." TR Vol. VII, Ex. 12, p. 77. The cost of this aspect of the Plan is $34 million. Metro's inclusion of affordable housing in the Plan is the illogic conclusion of the specious theory that any element of one's "transit journey" is contemplated by the Act. After all, everyone's "transit journey" begins from home, so surely, according to the Defendants' logic, a home close to a transit stop is part of a public transit system. But this corollary exposes the fundamental flaw in Defendants' position as it is not the practical nexus of one's "transit journey" to a transit system that determines what projects may be included in a TIP; it is the plain and unambiguous language of what constitutes a public transit system project, which even under the most strained interpretation, which is not the standard of statutory construction, it cannot be concluded that housing is a public transit system project as defined under the Act.

4. Innovation & Technology

The Plan states, "We're providing relief to our more rural residents who want and need better transit by expanding WeGo Link, Nashville's micro transit pilot, countywide. Via a few swipes and touches on a phone, residents living in the county's more rural areas, or just out of the way of fixed-service routes, can dial up transit service.

WeGo Link helps get all our residents where they want to go, without a car and even without a local bus route." TR Vol. VII, Ex. 12, p. 79. The WeGo Link is a euphemism for Uber. Additionally, the Plan states, "We're making technology work on the roads, too. New adaptive signals are coming to 50% of downtown intersections, thanks to 50 miles of new fiber optic cable. Coupled with upgrades to the new Traffic Management Center (TMC), NDOT will have the ability to manage congestion in real time and respond to event traffic in ways that keep people moving." TR Vol. VII, Ex. 12, p.79. The details of the "Traffic Management Center" are minimal in the Plan, but it is clear that the TMC is not used to handle the mass transit system, but traffic in general. The cost of this aspect of the Plan is $35 million.

This category of the Plan, like the others, relies on the specious logic that anything used to get to a bus stop is contemplated by the TIP. However, an Uber ride is not "intended for shared passenger transport service to the general public" as it is a private service normally used for one person or group of people traveling together. Further, the TMC and upgraded "new adaptive signals" do not fall under the definition of a public transit system project as they are not needed to "operate the transportation facility or provide connectivity for the transportation facility to any other non-mass transit system transportation infrastructure." *See* Tenn. Code Ann. § 67-4-3201(3). In short, Metro's attempt to fit the square peg of its politically popular transportation

system in the round hole of the definition of a "public transit system" should fail.

II. THE SUPREME COURT'S SUPERVISORY AUTHORITY IS WARRANTED AS THE COURT OF APPEALS ERRONEOUSLY FOUND THAT THE DEFENDANTS' TRANSIT IMPROVEMENT PLAN WAS AUTHORIZED UNDER THE ACT DESPITE THE FACT IT CONTAINED AFFORDABLE HOUSING PROJECTS.

As noted in the previous section, the Court of Appeals correctly found that affordable housing and the purchase of any land to be used therefore is not authorized under the IMPROVE Act. However, the Court of Appeals erroneously held in a footnote:

> We note that the loss of this small part of the plan, approximately 1 percent of the surcharge revenue, will not invalidate the plan. Tennessee Code Annotated section 67-4-3205(c) provides that: "If either a transit improvement program or a public transit system project that is part of a transit improvement program becomes unfeasible, impossible, or not financially viable, the revenue from the surcharge for the transit improvement program may be directed to and utilized for a separate transit improvement program or public transit system project that: (1) Has been approved by: (A) The local government's legislative body, as required in § 67-4-3206(e)(1); and (B) A majority of the number of registered voters of the local government voting in an election pursuant to the procedures in § 67-4-3202; and (2) Otherwise meets the requirements of this part."

See Opinion, p. 11, n. 2. Plaintiffs respectfully submit that the Court of Appeals finding is erroneous for two reasons. First, it is a misinterpretation of the plain language of statute as the statute does not reference "illegality". Second, it ignores the fact that the voters were

misled to believe that the revenue from the increase in taxes would be used to construct affordable housing. Given these arguments, Plaintiffs respectfully submit that the Court should use its supervisory authority to accept review of this matter and REVERSE the Court of Appeals opinion in this regard.

When interpretating a statute, Court must determine the legislative intent pursuant to the plain and natural meaning of the words used therein. *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009). The Court of Appeals interpretation is erroneous as it overlooks the plain language of the statute. The statute references "unfeasible, impossible or financially viable" as conditions which allows a local government to use the funds dedicated from one project on another project approved by the local government and the legislature. The statute does not reference illegality. Plaintiffs respectfully submit that such is the case because the IMPROVE Act requires that all funds be used for "public transit projects", *see* T.C.A. § 67-4-3205(a), and, thus, the local government has very clear guidance from the language of the statute regarding the projects on which the funds may be used. A local government's failure to follow the plain and unambiguous language of the aforementioned statutes cannot be undone by simply transferring the funds to another project. If we are to accept the Court of Appeals' rationale, there remains no incentive for a local government to abide by the language of the IMPROVE Act. A local government could pass a referendum, just as Metro did, promising affordable housing, new

government buildings and other popular projects in order to increase the chances the electorate will approve its plan. Then should a court find that such projects are not authorized under the IMPROVE Act, the local government could transfer the funds to the remainder of the projects. This defeats the apparent purpose of having the electorate approve the plan, which is that if taxes are to be raised on the citizens, they must be informed of how the money will be spent. The Court of Appeals interpretation of the IMPROVE Act allows a "bait and switch" on the voters which undercuts the intent of the General Assembly that revenue from a plan can only be used on a transit improvement plan approved by the voters. While the Court notes that the projects related to affordable housing is only 1% of the Plan, this does not account for the fact that the Mayor's office was persistent in pushing the Plan by highlighting affordable housing projects, *see infra.* Section III(B), and that many voters could have voted for the referendum precisely because the Plan included affordable housing. In short, the IMPROVE Act does not explicitly allow for the entire plan to be found legal if a portion of it is found illegal and, thus, the Court should accept Plaintiff's application and REVERSE the Court of Appeals in this regard.

III. THE SUPREME COURT'S SUPERVISORY AUTHORITY IS WARRANTED AS THE COURT OF APPEALS ERRONEOUSLY FOUND THAT THE VOTERS WERE NOT MISLED BY DEFENDANTS' PLAN AND/OR THE LANGUAGE OF THE REFERENDUM BALLOT.

A. INTRODUCTION

This Court has held "that the test of the sufficiency of the abbreviated question was whether the notice on the ballot conveyed a reasonable certainty of meaning so that a voter could intelligently cast a vote for or against the proposal with full knowledge of the consequence of his vote. *Rodgers v. White*, 528 S.W.2d 810, 813 (Tenn. 1975). It is Plaintiffs' position that the election should be declared void as the voters were misled to believe the Plan was authorized under the Act and/or the ballot language did not comply with the IMPROVE Act and, therefore, the Plan was not approved by the voters as the IMPROVE Act requires. As noted previously, the Court of Appeals found that notwithstanding the fact that many of the projects in the Plan consist of sidewalks, bike lanes, and streets, Metro's Plan was authorized under the parameters of the IMPROVE Act. *See* Opinion, pp. 10 – 11. The Court of Appeals also found that despite the fact the referendum language only included the "current" cost of the future projects, the referendum language was compliant with the requirements under the IMPROVE Act. *See* Opinion p. 9. These were

findings as a matter of law as they involve interpretation of statutes and, thus, must be reviewed *de novo* by this Court. *See Raley v. Brinkman*, 621 S.W.3d 208, 227–28 (Tenn. Ct. App. 2020). Plaintiffs respectfully submit that the foregoing findings of the Court of Appeals warrant the supervision of this Court and should be REVERSED as the Plan does not constitute a TIP and/or the referendum language did not meet the statutory requirement of the IMPROVE Act.

B. THE DEFENDANTS MISLED THE VOTERS BY FOCUSING ON PROJECTS IN THE PLAN WHICH WERE NOT AUTHORIZED UNDER THE IMPROVE ACT.

As set forth in detail herein, *see supra.* Section I, the Plan does not constitute a Transit Improvement Plan as a vast majority of the projects therein do not qualify as public transit system projects as defined pursuant to T.C.A. § 67-4-3201(3). However, both in Defendants' efforts to promote and advocate for the Plan and within the language of the Referendum, the Mayor misled the voters to believe that the surcharge they were voting for was authorized under the law. As to the Mayor's efforts to mislead the voters outside the language of the Referendum, it

started with the first page of the Plan and continued throughout the entirety of the Plan.

The Trial Court found that on June 7, 2024, approximately five months before the referendum election, the Mayor's Office released the Plan titled, "Choose How You Move, An All-Access Pass to Sidewalk, Signal Service, and Safety." *See* TR Vol. V, p. 712. The name alone reveals the attempt to mislead the voters as it does not even reference a mass transit system but focuses on sidewalks and other non-mass transportation infrastructure. The misguidance continues on the first page of the Plan, which sets forth verbatim the definition of "Public Transit System" as defined pursuant to T.C.A. § 67-4-3201. The Plan then explicitly asserts that the Plan is legal. "Legally, the IMPROVE Act requires that specific items be presented in a TIP. Figure 1 shows the timeline and steps towards enacting the TIP. Table 1 lists those items and where they can be found. Chapter 3 provides details on the investments included in the TIP." *See* TR Vol. VII, Ex. 12, p. 11. In the Mayor's letter to the public found within the Plan, the Mayor is blatant in his attempt to convince the voters the Plan has very little to do with

the public transit system in Nashville. He outlines a summary of the Plan as follows:

> The program includes almost **600 smart signals** to replace current traffic lights that use technology to watch traffic, learn its flow, and adapt based on demand so we can get where we're going more reliably and more safely. It adds **24/365 transit service** and builds **54 miles of All-Access Corridors with** more frequent, reliable, and accessible transit service. It builds **86 miles of sidewalks** and walkable paths to ensure Nashville completes the WalkNBike Nashville priority sidewalk network and connects our busiest neighborhoods to major routes. The program makes safety improvements on 78 miles of the Vision Zero High-Injury Network, creating safer streets for pedestrians, bicyclists, drivers, and transit users alike.

Id. at p. viii. Though "transit service" is mentioned, the primary focus of the Mayor's explanation is on non-mass transit system infrastructure such as sidewalks, walking paths, bike lanes, "All-Access Corridors" and street signals. As set forth herein, *see supra.* Section I(D), the Plan is replete with examples of the Mayor focusing on non-mass transit system infrastructure improvements not authorized under the IMPROVE Act. *Four of the six categories are almost exclusively non-mass transit system infrastructure projects* and, thus, the primary focus of the Plan is on projects which cannot be funded with the revenue from the increase in

the local sales tax pursuant to the IMPROVE Act. And this focus is not a mistake. The Plan explains unequivocally that the Plan is a response to what Metro believed Nashvillians would vote for. "We're not inventing anything new here – we're responding to what you've already told us. *You've said the same things over and over: that it's not safe to walk or bike, that buses aren't dependable, that sidewalks are a mess, and that personal transportation costs are rising just like housing prices*." *See Id.* at p. 2. (emphasis added). The Mayor and his allies at Metro made very clear the focus of the Plan and it's not the "mass transit problems" that the Local Option were intended to address.

Additionally, the Mayor and his agents made efforts to convince voters to vote for the Plan by focusing on the parts of the Plan not authorized under the Act. In the June 7th, 2024 media release, the summary again focused on non-mass transit system infrastructure: "86 miles of new and improved sidewalk; Nearly 600 smart signalized intersections that can read and improve flow; 24/7/365 bus service . . .; Funds for safer, complete streets and 12 community transit centers; Added security for WeGo, so security grows as the system grows . . ." TR

Vol. VII, Exhibit 3. Further, Michael Biggs, who testified at trial and at all relevant times was the "Director of Transportation Planning in the Mayor's Office", attended 104 meetings in which he specifically outlined the non-mass transit system infrastructure found in the Plan to the general public as part of the campaign to pass the Referendum. Mr. Briggs testified as follows:

> Q. . . .And at these meeting, you explained the various aspects of the plan to include sidewalks, signals, bus stops, affordable housing, is that true?
>
> A. Yes . . .
>
> . . . . .
>
> Q. . . . [I]s it fair to say that each one of these meeting – I think you said you went to 104 – all these elements of the plan were explained to the public, is that correct?
>
> A. Yes

See TP, pp. 59:13 – 60:3. The focus on sidewalks, streets and signals is apparent in the Mayor's office's communication with the public and such is a stark contrast to the very purpose of the Local Option of the IMPROVE ACT, which is mass transit system projects. The attempt to mislead the voters with popular non-mass transit infrastructure projects

culminated in the Mayor's office drafting referendum language that only briefly references the public transit system of Nashville.

Mr. Biggs testified that the Mayor's office drafted the referendum which ultimately was adopted by the Metro Council. *See* TP p. 61:20-24. Therefore, the Mayor had full control of what was placed on the ballot. The referendum language read as follows:

> Passage of this measure adopted by Ordinance BL2024-427, allows the Metropolitan Government to complete the entire priority sidewalk network when combined with annual capital spending, provide significantly expanded 24-hour public transportation service 365 days a year including frequent service on major routes, add more neighborhood transit centers, improve safety for all roadway users, and upgrade and modernize nearly two-thirds of the city's signalized intersections. This program's capital cost is estimated to have a current cost of $3,096,000,000. Once construction is complete, the estimated value of recurring annual operating and maintenance costs is approximately $111,000,000. The Metropolitan Transit Authority (WeGo), Nashville Department of Transportation and Multimodal Infrastructure, Metro Planning Department, and Mayor's Office, in partnership with other Metro departments, will undertake implementation of the program. This program will be funded by federal grants, revenues from transportation system fares, debt, and a sales tax surcharge of 0.5%. The tax surcharge will end once all debt issued for the transit improvement program has been paid and the Metropolitan Council determines by resolution that the revenues from the tax surcharges are no longer needed for operation of the program. FOR or AGAINST

See TR Vol. VII, Exhibit 12. Whether the ballot language complied with the IMPROVE Act requirements will be addressed in the following section, but it is clear that the focus of the ballot language again is on non-mass transit infrastructure projects; namely sidewalks, traffic signals and road safety. Indeed, the first objective of the referendum is "to complete the entire priority sidewalk network".

The undisputed fact upon review of the Metro's efforts to promote and advocate for the Referendum is that the Metro focused on sidewalks, streets and signals, all of which are non-mass transit system infrastructure as defined in T.C.A. § 67-4-3201(3). More importantly, the voters had every expectation that what was being presented to them by their government was authorized under the law. But should the Court find that the projects which included streets, sidewalks and signals are not authorized as public transit system projects, no argument is needed to conclude that the voters were misled and did not "intelligently cast a vote" for the referendum and did not "have full knowledge of the

consequences" of their vote. *See Rodgers v. White*, 528 S.W.2d 810, 813 (Tenn. 1975).

C. THE REFERENDUM LANGUAGE DID NOT COMPLY WITH THE STATUTORY REQUIREMENTS OF THE IMPROVE ACT.

The IMPROVE Act states that prior to the surcharge becoming effective, it must be "approved by a majority of the number of registered voters of the local government voting in an election on the question of whether the surcharge shall be levied . . .." T.C.A. § 67-4-3202(b). The Act outlines the requirement of the ballot language and states that a brief summary of the TIP must be "written in a clear and coherent manner using words with common everyday meanings, and not exceeding two hundred fifty (250) words in length, and must include" a description "in reasonable detail the public transit system projects and services to be funded and implemented under the program" and, *inter alia*, "[a] estimate of the initial and recuring cost of the program". . .. *See* T.C.A. § 67-4-3206 (b)-(c) & (f). It also requires "[t]he ballots used in the election shall have printed on them the surcharge and the brief summary of the transit improvement program from the ordinance or resolution adopted

pursuant to § 67-4-3206". *See* T.C.A. § 67-4-3202(b)(1). The Plaintiffs asserted, inter *alia*, that the ballot language did not comply with IMPROVE Act as it only listed the "initial" cost in current dollars in the amount of $3.096 million, instead of listing the actual cost of the project as outlined in the Plan of $6.9 million. However, the Trial Court and The Court of Appeals were not persuaded by this argument. The Court of Appeals found,

> The legislature said "initial" cost. It provided no definition or example of the word "initial." Thus, we are left with the natural and ordinary meaning of the word. "Initial" means "of or relating to the beginning." . . . Synonyms include "earliest," "first," "leadoff," and "inaugural." *Id*. Without further instruction from the legislature, we cannot conclude that the word "initial" means ten years down the road.

See Opinion, p. 9. Plaintiffs respectfully submit the Supreme Court's supervisory authority is warranted as the Court of Appeals' interpretation completely undercuts the legislative intent, as set forth in the plain language of the statute, that the voters need to be fully informed of the cost of the TIP on which they are voting. Thus, without the Supreme Court's intervention, the voters will be left with paying for a

transit improvement plan which Metro represented to the voters was less than half the actual cost of the Plan.

The Mayor, with the acquiescence of the Metro Council who adopted the referendum and the Plan, mislead the voters by failing to list the "initial cost" of the TIP. Instead the Mayor listed the "current cost", to wit: $3,096,000,000. *See* TR Vol. VII, Ex. 12, Tab A, p. 7. However, the initial cost as outlined in the Plan is $6.934 billion, over twice as much as listed on the ballot. The Trial Court found that the "current" cost, which is in "today's dollars" met the statutory requirements. Specifically, the Court held,

> Plaintiffs challenge whether the initial cost of the system is accurate and argues that Metro should not have used the current cost number of $3,096,000,000 as established by today's dollars versus the $6,934,000,000 figure that takes into account inflation. Respectfully, the expectation is that the language used be simple, include everyday words and sentence structures to convey information in a way that is easy for anyone to grasp, avoiding jargon or complex phrasing that might confuse the reader in under 250 words. Plaintiffs can split hairs about how the cost was explained but cannot credibly argue that the cost figure used, which is in the Plan of Finance, is not accurate or does not meet the statutory requirements.

TR Vol. V, p. 721. Respectfully, the Court of Appeals analysis misconstrues the plain meaning of the term "initial" costs, which is the term used by the Tennessee General Assembly. The determination of what constitutes "initial" cost, like all other statutory construction efforts, must start with the natural and ordinary meaning of the language. *See Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009). It also must be read in the context of the scheme of the statute. *See Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010). One of the important statutory requirements of the IMPROVE Act is "financial feasibility", which requires that the local government make at least a 10-year forecast. *See* T.C.A. § 67-4-3206(d)(3). In a 10-year forecast, "current cost" has no relevance; it is only the cost in the year of expenditure which is important if the intent is to determine financial feasibility for the life of the Plan. Therefore, "initial cost" should be determined by using the cost in the year of expenditure, not the cost in "current dollars".

With respect to the natural and ordinary meaning of the term "initial", such clearly is referencing those costs which are "initially" calculated, as opposed to cost calculated as the project progresses.

Naturally, cost overruns, unforeseen circumstances and changes in the cost for labor and materials will inevitably change the cost of any construction project, especially one that spans more than 10 years. Thus, logically, the General Assembly only required the "initial" costs of the TIP to be listed as the local government could not be expected to foresee changes which would come throughout the life of the project. However, the meaning of "initial" is not synonymous with "current". In fact, using the "current" cost as the Defendants did in this matter is not consistent with the forecasting requirements of the IMPROVE Act.

One of the requirements of a local government pursuant to the IMPROVE Act is to "[p]repare a plan of financing that demonstrates a proposed transit improvement program's financial feasibility that includes the methodology and assumptions used in the financial forecasts and projections supporting the plan's analysis." *See* T.C.A. § 67-4-3206(d)(3). Specifically, the statute requires, "The plan of financing's analysis will be based on forecasts and projections *for at least a ten-year period* after the planned inception date for the program." *See Id.* (emphasis added). Additionally, financial feasibility is dependent on such

forecasts. "A local government shall obtain a determination or opinion in accordance with the attestation standards from an independent certified public accounting firm that the assumptions in the local government's plan of financing provide a *reasonable basis for the local government's forecast or projection* given the hypothetical assumptions supporting its analysis that the proposed transit improvement program is financially feasible." *Id.*. (emphasis added). Logically, if the local government and, in turn, the independent CPA, are to determine if the "forecast and projection" are financially feasible, the "current" costs of the TIP are wholly irrelevant; the determination must be made as to what the cost will be in the year of expenditure so that the determination can be made that the revenue collected in the year of expenditure (or prior to) will be sufficient to financially support the TIP and, hence, be financially feasible, which is an explicit requirement of the IMPROVE Act. Therefore, when attempting to interpret the meaning of the term "initial cost" and reading such term in harmony with the requirements of "financial feasibility", it is patently obvious that the "current" costs play no role in determining the "initial cost" of the TIP; the relevant

calculation is the "initial cost" as determined by the year of expenditure, which in the case *sub judice*, is $6.934 billion.

Defendants' failure to include the initial costs of the TIP on the ballot should render the election referendum void as it cannot be argued with any sincerity that the voters intelligently voted for the TIP or understood the consequences of their vote. The $6.934 billon is more than twice as much as the amount listed on the ballot, to wit: $3.094 billion. The fact alone that Defendants attempted to obfuscate the true cost of the project should reveal to the Court the impact of revealing the true cost would have had on the outcome of the Referendum. But more importantly, the ballot language materially did not meet the statutory requirements, which would render the referendum election void or would mean that the surcharge cannot be implemented as it was not adopted pursuant to the IMPROVE Act. "No surcharge under this part shall become effective unless approved by a majority of the . . . voters . . . pursuant to the procedures in subsection (b)". T.C.A. § 67-4-3202(b). Subsection (b)(1) requires that the ballot meet the requirements of T.C.A. § 67-4-3206, which states that "The brief summary shall be placed on the

ballot" and must include, *inter alia,* "An estimate of the initial and recurring cost of the program . . .". Therefore, without listing the initial costs, the surcharge was not legally adopted and cannot be implemented or collected pursuant to the IMPROVE Act.

CONCLUSION

Given the foregoing law and argument, Plaintiffs respectfully submit that the Supreme Court should grant this application and review the issues raised herein.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Tennessee Supreme Court Rule 46, §3.02, this brief contains 10,814, as calculated by Microsoft Word, in 14-point Century font.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been forwarded to the attorneys and addresses listed below by placing same in the U.S. Mail with sufficient postage attached thereto and/or electronically via Rule 5.02(2) and via electronic filing system on this the 9th day of May, 2025:

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