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STATEMENT OF THE ISSUES

I. Whether the Trial Court erred in granting Defendant/Appellee's Rule 12.02(6) motion to dismiss.

II. Whether the Trial Court erred in denying Plaintiffs/Appellants' Rule 59.04 motion to amend final order.

STATEMENT OF THE CASE

Appellants, Tennessee Firearms Association ("TFA") and International Gun-A-Rama, Inc. d/b/a Bill Goodman's Gun & Knife Show ("Goodman"), brought this action alleging that Defendant, Metropolitan Government of Nashville and Davidson County ("Nashville Metro"), by and through its Fair Board, acted outside its authority and in violation of Metro Government of Nashville and Davidson County, Tennessee Charter Section 11.602(d) in implementing a policy banning gun shows at the Nashville Fairgrounds. Section 11.602(d) requires that "[a]ll activities being conducted on the premises of the Tennessee State Fairgrounds as of December 31, 2010, including, but not limited to, the Tennessee State Fair, Expo Center Events, Flea Markets, and Auto Racing, shall be continued on the same site." R. 72. Goodman, of course, has been regularly holding gun shows at the Nashville Fairgrounds for over three decades.

Upon motion of TFA and Goodman, the Trial Court granted a temporary injunction against Nashville Metro precluding the Fair Board from scheduling any other activities at the Nashville Fairgrounds for the dates and buildings Goodman had requested. In the meantime, Nashville Metro moved to dismiss TFA and Goodman's claims, and the motion to dismiss and injunction arguments were heard together on July 5, 2016. On July 20, 2016, the Trial Court granted the motion to dismiss and lifted the temporary injunction. R. 104. TFA and Goodman moved the Trial Court pursuant to Rule 59.04 to amend its July 20, 2016 order to correct clear

error of law underlying such. On September 29, 2016 the Trial Court denied TFA and Goodman's Rule 59.04 hearing. R. 142. Appeal was originally noticed as to the order on Nashville Metro's motion to dismiss, R. 127, and was then amended to include the order on TFA and Goodman's Rule 59.04 hearing. R. 144.

STATEMENT OF THE FACTS

TFA is a Tennessee not-for-profit corporation formed to promote the right to keep and bear arms, restoring government to citizen control and giving full effect to the original intent of the Bill of Rights to the United States Constitution as well as to the provisions of the Tennessee Constitution with an emphasis on the 2nd and 10th Amendments to the United States Constitution and Article I, Section 26 of the Tennessee Constitution. TFA's members consist primarily of residents of the State of Tennessee and include residents in Middle Tennessee and Davidson County, Tennessee. *See*, R. 1, pg. 1, ¶ 1. Goodman is a Kentucky Corporation doing business as an organizer and promoter of gun shows in, among other places, Nashville, Tennessee. *Id.*, pg. 2, ¶ 2. Nashville Metro is a metropolitan government authorized and created by the State of Tennessee pursuant to Article XI, Section 9 of the Constitution of Tennessee and in conformity with section 7-1-101 *et seq.* of Tennessee Code Annotated. *Id.*, ¶ 3. Pursuant to Section 11.601 of its Charter, Nashville Metro created the Metropolitan Board of Fair Commissioners (the "Fair Board").

Pursuant to Section 11.602 of its Charter, Nashville Metro specifies the functions and duties of the Fair Board. Defendant has withheld from the Fair Board the right and ability to sue or be sued separately from Nashville Metro, and Nashville Metro is responsible for the actions of the Fair Board. *Id.* Defendant, by and through the Fair Board, owns and operates the Tennessee State Fairgrounds ("Nashville Fairgrounds"). *Id.*, pg. 2, ¶ 4. The Fair Board regularly makes its

facilities at the Nashville Fairgrounds available for rent for the conduct of various activities. *Id.*, pg. 2, ¶ 5. Goodman has been holding and promoting gun shows at the Nashville Fairgrounds on a regular basis without incident for over three decades. *Id.* Goodman, TFA, and TFA's members wish for gun shows, including the Goodman shows, to continue at the Nashville Fairgrounds going forward. *Id.*, pg. 3, ¶ 17.

* * * *

On or around November 2, 2015, the Fair Board presented Goodman with a "draft" proposal, which included, among other things, prohibitions on legal private party sales of firearms at Goodman's gun shows. *Id.*, pg. 4, ¶ 18. On December 1, 2015, Nashville Metro, through its Fair Board, voted to terminate Goodman's 2016 contracts and to end all gun shows at the Nashville Fairgrounds going forward unless Goodman and any other promoters agreed to require further restrictions on the sale of firearms at its gun shows, well beyond what is required by law. *Id.*, pg. 4, ¶ 19. Although the Fair Board elected to honor Goodman's 2016 contracts, it has refused to rent facilities at the Nashville Fairgrounds to Goodman going forward absent agreement further *ultra vires* restrictions on the sale of firearms at gun shows. *Id.*, pg. 4, ¶ 20.

On March 15, 2016, having confirmed that the facilities were available on the dates requested, pursuant to standard custom and practice, Goodman submitted a request to reserve the Agriculture Building and/or the Vaugh Building at the Nashville Fairgrounds for gun shows on certain 2017 dates. *Id.*, pg. 6, ¶¶ 21-22. That same day, Steve Burdon, Director of Events for the Nashville Fairgrounds, a subdivision of the Defendant, notified Goodman that "by the current directive of the Fair Board, I cannot book any 2017 dates for the Gun Shows." *Id.*, pg. 6, ¶ 23. Plaintiffs have brought the present action for declaratory judgment and injunctive relief seeking an order precluding the Fair Board from enforcing its illegal ban on gun shows.

ARGUMENT

This action is not an attempt to force the Fair Board to contract with any particular gun show promoter. This action is not an attempt to seek money damages from Nashville Metro arising from the implementation of its illegal gun show ban. This action is merely an attempt by Goodman, who was denied access to the Nashville Fairgrounds after decades of regularly promoting shows there, and TFA, whose constituents are representative of Goodman's show attendees, to challenge the legality of the ban enforced against them. The Trial Court erroneously concluded that Goodman and TFA lacked standing to seek declaratory judgment and that the Fair Board's gun show ban was not prohibited by Nashville Metro Charter Section 11.602(d) which requires that "[a]ll activities being conducted on the premises of the Tennessee State Fairgrounds as of December 31, 2010 ... shall be continued on the same site." Moreover, the Trial Court erred in concluding that it did not have authority under Rule 59.04 to amend its ruling to correct a clear error in law absent new evidence or legal basis.

I. THE TRIAL COURT ERRED IN GRANTING NASHVILLE METRO'S RULE 12.02(6) MOTION TO DISMISS.

A Rule 12.02(6) motion challenges only the legal sufficiency of the complaint, not the strength of the proof or evidence. *See, Highwood Props., Inc. v. City of Memphis*, 297 S.W.3d 695, 700 (Tenn. 2009). "The resolution of the motion is determined by an examination of the pleadings alone." *Leggett v. Duke Energy Corp.*, 308 S.W.3d 843, 851 (Tenn. 2010). Dismissal under Rule 12.02(6) is warranted only when the facts allege will not entitle the plaintiff to relief or when the complaint is totally lacking in clarity and specificity. *See, Pendleton v. Mills*, 73 S.W.3d 115, 120 (Tenn. Ct. App. 2001). Such a motion "admits the truth of all the relevant and material allegations contained in the complaint, but ... asserts that the allegations fail to establish a cause of action." *See, Brown v. Tenn. Title Loans, Inc.* 328 S.W.3d 850, 854 (Tenn. 2010).

An appeal from a trial court's grant of a motion to dismiss is reviewed *de novo*, taking all allegations of fact in the complaint as affording the trial court's legal conclusions no presumption of correctness. *See*, Tenn. R. App. P. 13(d); *Mid-South Indus., Inc. v. Martin Mach. & Tool, Inc.*, 342 S.W.3d 19, 25 (Tenn. Ct. App. 2010).

A. **Goodman and TFA Have Standing To Challenge Nashville Metro's Illegal Gun Show Ban.**

The Trial Court erred in ruling that Goodman and TFA lack standing to bring the present action. For decades, Goodman invested time, money, and other resources in promoting its shows in and around the Nashville Metro area, particular at the Nashville Fairgrounds. Goodman worked for decades to build a reputation and brand recognition through consistently and reliably promoting quality shows at the Nashville Fairgrounds. Interruption of this consistency is damaging both to Goodman's business and the people of Middle Tennessee who have for decades attended gun shows at the Nashville Fairgrounds, and Goodman and TFA both have standing to challenge such.

1. **Goodman has standing to challenge the Fair Board's denial of its requests to rent facilities at the Nashville Fairgrounds.**

Although the Fair Board's initial action was to declare a cancellation of all gun shows going forward beyond 2015, the Fair Board ultimately acknowledged that it had contracts with Goodman for a number of gun shows in 2016. The Fair Board honored its obligations under those contracts, and this lawsuit has nothing to do with the 2016 contracts. Rather, this case is about the fact that Goodman attempted to book gun shows in 2017 and, despite confirmation that the requested dates were available, the Fair Board refused to rent facilities at the Nashville Fairgrounds to Goodman for 2017 and beyond absent agreement to require further restrictions on the sale of firearms at future gun shows beyond what is required by law.

On March 15, 2016, having confirmed that the facilities were available on the dates requested, pursuant to standard custom and practice, Goodman submitted a request to reserve the Agriculture Building at the Nashville Fairgrounds for gun shows on the following 2017 dates: January 7-8, April 8-9, May 6-7, June 10-11, July 8-9, August 5-6, October 7-8, November 4-5, and December 2-3 and to reserve the Vaughn Building at the Nashville Fairgrounds for gun shows on the following 2017 dates: February 11-12, and March 11-12. Complaint., pg. 4-5, ¶¶ 20-21. Pursuant to its illegal ban, Nashville Metro refused to rent the fairgrounds to Goodman. *Id.*, pg. 5, ¶ 22.

Goodman's requests to rent facilities at the Nashville Fairgrounds in 2017 were denied due to the implementation of the Fair Board's illegal policy, and Goodman's damages are set forth both in the complaint and Dave Goodman's affidavit in support of Appellants' injunction motion. R. 1, R. 24. As the Trial Court was authorized under Tennessee Code § 29-14-103 to declare the rights and status of the parties with regard to this dispute, Goodman has standing to seek a declaration that the Fair Board's acted contrary to the law in refusing to rent facilities to it at the Nashville Fairgrounds pursuant to its illegal policy.

2. **The Tennessee Firearms Association has standing to challenge the Fair Board's illegal gun show ban.**

"An organization may have standing to assert an injury to it regardless of whether its members also have standing." *See, Hayes v. City of Memphis*, 2015 Tenn. App. LEXIS 672, *26 (Tenn. Ct. App. 2015) (ruling that Sons of Confederate Veterans Camp # 215 had standing to challenge action by the City of Memphis to re-name parks). Moreover, an organization may also establish standing to sue solely as a representative of its members by showing that: "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted, nor the

relief requested, requires the participation of individuals in the lawsuit.” *Id.*, citing, *Am. Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d 612, 626 (Tenn. 2006). Here, the Tennessee Firearms Association has standing both in its own right and on behalf of its members arising out of the Fair Board’s illegal termination of gun shows at the Nashville Fairgrounds that are attended by members of the Tennessee Firearms Association.

B. There Is No “Private Right Of Action” Issue In This Case To Preclude Goodman And TFA From Seeking The Relief Requested.

The Trial Court erred in concluding that some mechanism, other than the declaratory judgment statute, was required to create a “private right of action” to preclude the Fair Board from enforcing its illegal policy. However, the question of whether a “private right of action” exists to challenge government violations of the law relates solely to the issue of monetary damages. The present case, however, is for declaratory judgment and injunctive relief. Nonetheless, in support of its position, the Fair Board cited *Gillespie v. City of Memphis* which, noting that the declaratory judgment issue was moot because the city had changed its policy, expressly did not rule on the question of whether declaratory or injunctive relief was available, but merely addressed whether monetary damages may be awarded. *See, Gillespie v. City of Memphis*, 2008 Tenn. App. LEXIS 340 at *16 (Tenn. Ct. App. 2008). The language could not have been clearer that the court was addressing nothing more than whether “the civil service provisions of the City's charter and code of ordinances create a private right of action under which [the plaintiffs] are entitled to damages.” *Id.*, at *26 (emphasis added). In fact, the court’s entire discussion of the issue is found under the heading “Damages Pursuant to a Private Right of Action for Civil Service Violations.”

Likewise, the case of *Johnson v. City of Memphis*, 2008 WL 2331027 (W.D. Tenn. 2008), relied upon by the Fair Board below, did not foreclose a plaintiff's efforts to obtain declaratory or injunctive relief such as what Goodman and TFA are presently seeking under Tennessee Code § 29-14-103. Specifically, addressing only monetary relief, the court expressly acknowledged its own ruling as to the invalidity of the city's action on the plaintiffs' declaratory judgment claim and, in addressing the question of the private right of action, leaves no question as to the extent of that issue:

The mere fact that a statue has been allegedly violated and some person harmed, does not automatically give rise to a private right of action for monetary relief in favor of that person.

Id., *50 (emphasis added). Thus, having already granted summary judgment on the plaintiffs' declaratory judgment claim, the court merely declined to award money -- either in damages or by way of a retroactive promotion (i.e., monetary damages) -- absent express statutory language:

Finally, there is nothing explicit or implicit in either provision that indicates any intent to provide a private right of action for monetary relief or retroactive promotions to enforce these provisions.

Id., at * 52.

Thus, the Trial Court erred in concluding that anything other than Tennessee Code § 29-14-103 is required in order for Goodman and TFA to obtain the relief requested.

C. Defendant's Gun Show Ban Is A Violation Of Metro Government Of Nashville And Davidson County, Tennessee Charter Section 11.602(D).

The Trial Court erred as a matter of law in concluding that the Fair Board's ban on gun shows at the Nashville Fairgrounds was not a violation of Metro Government of Nashville and Davidson County, Tennessee Charter Section 11.602(d). Section 11.602(d) requires that "[a]ll activities being conducted on the premises of the Tennessee State Fairgrounds as of December

31, 2010, including, but not limited to, the Tennessee State Fair, Expo Center Events, Flea Markets, and Auto Racing, shall be continued on the same site.” Here, it is irrefutable that Goodman was regularly conducting gun shows on the premises of the Tennessee State Fairgrounds as of December 31, 2010 in the same manner and with the same regularity that it had been doing so for decades, and Goodman brought this action seeking declaratory and injunctive relief to overturn the Fair Board’s gun show ban in part on the basis of 11.602(d).

Although the Fair Board argued below that the “provision appears designed to primarily protect the Fairgrounds property itself, not individual events,” the express language of the provision unequivocally requires the Fair Board to continue “all activities” (including gun shows) not just “some activities” (excluding gun shows). The plain language of the Charter reveals that the Nashville Metro Counsel carefully drafted this provision not to limit the definition of “all activities,” as “but not limited to” and “all activities” cannot be read to have no real meaning at all.

Moreover, Metropolitan Charter § 11.602(a) does nothing to erase and dissolve the plain meaning of 11.602(d). Instead, it merely references the law authorizing the Fair Board to act within its prescribed authority. Under Section 11.602(d), banning gun shows is not an act within its prescribed authority. Although the Fair Board’s argument below focused heavily (or entirely) on speculative and theoretical problems that nobody is raising concerning demand (or lack thereof) for use of the Nashville Fairground facilities, there is no question here as to the demand and the popularity of Goodman’s gun shows. Metropolitan Charter § 11.602(a) was not enacted to ensure demand -- that is not something that a legislative body such as the Nashville Metro Council can do. But it was most certainly enacted to ensure that the Fair Board did not contravene its will by denying access where that demand is present -- such as in the present case.

Thus, the Trial Court erred in concluding that the Fair Board's gun show ban was somehow not in violation of Metropolitan Charter § 11.602(a).

D. Tennessee Code Annotated § 39-17-1311 Does Not Operate To Permit The Fair Board To Act In Violation Of Metropolitan Charter Section 11.602(D).

The Trial Court erred in concluding that T.C.A. § 39-17-1311 operated to permit the Fair Board to enact a gun show ban contrary to Metro Government of Nashville and Davidson County, Tennessee Charter Section 11.602(d). T.C.A. § 39-17-1311 limits carry of weapons in certain circumstances "in or on the grounds of any public park, playground, civic center or other building facility, area or property owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes." *See*, T.C.A. § 39-17-1311(a) (emphasis added). As a preliminary matter, the Court erred as a matter of law in deeming a privately rented facility that is closed to the public when not being utilized for a scheduled activity to be a facility used by a municipal, county or state government, or instrumentality thereof, for recreational purposes. It simply is not. Instead, it is a facility made available to rent to others who use it as they contract to use it. The mere naming of the facility of as the "Nashville Fairgrounds" is not determinative, and the Trial Court should have rejected the position or, at the least, permitted discovery into its uses, etc.

Additionally, as whether the Nashville Fairgrounds falls within the scope of T.C.A. § 39-17-1311 is necessarily a question of fact, one key piece of evidence would be whether Nashville Metro treated the Nashville Fairgrounds as if it fell within T.C.A. § 39-17-1311. Specifically, prior to 2015, each chief administrator of public recreational property was required by law to post signage concerning such:

Each chief administrator of public recreational property shall display in prominent locations about the public recreational property a sign, at least six inches (6") high and fourteen inches (14") wide, stating: MISDEMEANOR. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF ELEVEN (11) MONTHS AND TWENTY-NINE (29) DAYS AND A FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) FOR CARRYING WEAPONS ON OR IN PUBLIC RECREATIONAL PROPERTY.

See, T.C.A. § 39-17-1311(c)(1). The Trial Court should have permitted discovery into whether Nashville Metro treated it as such (which it did not) by posting the required signage prior to 2015, and the Trial Court erred by making a determination of fact that a publicly owned building that is closed except when rented to private organizations necessarily falls within the scope of T.C.A. § 39-17-1311.

Furthermore, even if the Nashville Fairgrounds may be deemed to fall within the scope of T.C.A. § 39-17-1311, T.C.A. § 39-17-1311(b)(1)(J)(iii) expressly permits administrators to authorize the possession of weapons when attending or conducting gun and knife shows. Here, as the Fair Board is a creation of Nashville Metro and may only exercise such authority as is granted to it under the Charter, the Fair Board was forbidden by Nashville Metro to refuse to authorize possession under T.C.A. § 39-17-1311(b)(1)(J)(iii). Thus, irrespective of whether T.C.A. § 39-17-1311 applies to the Nashville Fairgrounds, the Fair Board's refusal to authorize possession of firearms in connection with gun shows at the facility is beyond the scope of its authority under the Metro Charter and, in keeping with the mandate of Metropolitan Charter § 11.602(a), extension of authority under T.C.A. § 39-17-1311(b)(1)(J)(iii) is necessarily required.

II. THE TRIAL COURT ERRED IN DENYING APPELLANTS' MOTION TO AMEND FINAL ORDER.

The purpose of a Rule 59.04 motion to alter or amend a judgment is to provide the trial court with an opportunity to correct errors before the judgment becomes final. *See, Kirk v. Kirk*, 447 S.W. 3d 861, 869 (Tenn. Ct. App. 2013). A Rule 59.04 motion should be granted when: 1) the controlling law changes before the judgment becomes final, 2) when previously unavailable evidence becomes available, or 3) to correct a clear error of law or to prevent injustice. *Id.* A Rule 59 motion should not be used to raise or present new, previously untried or unasserted theories or legal arguments. *Id.* An appeal of a determination of a question of law is reviewed *de novo*, affording the trial court's legal conclusions no presumption of correctness. *See, State v. Walls*, 62 S.W.3d 119, 121 (Tenn. 2001); *Weston v. State*, 60 S.W.3d 57, 59 (Tenn. 2001).

By way of a timely motion, Appellants moved the trial court to set aside the July 20, 2016 Order to correct a clear error of law or to prevent injustice. R. 130. The Trial Court acknowledged that no new evidence or new arguments were presented. R. 142. In denying review of whether the July 20, 2016 order was based on clear error of law, the Trial Court created a standard that renders the third prong of the test for granting a Rule 59.04 motion a nullity. Specifically, the Trial Court deemed a request to review the prior ruling without presenting new evidence or legal theories to be an attempt to "relitigate" and, therefore, improper. The Trial Court correctly noted that case states that a Rule 59.04 motion "should not be granted when the movant is simply seeking to relitigate a matter that has already been adjudicated." *See, Morrison v. Morrison*, 2002 Tenn. App. LEXIS 763, *2 (2002); citing *Bradley v. McLeod*, 984 S.W.2d 929, 933 (Tenn. Ct. App. 1998). The Trial Court, however, erroneously deemed Appellants' motion to be an attempt to relitigate.

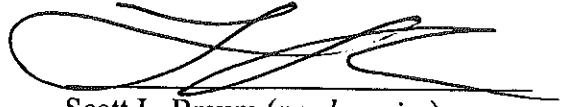
If a request for rehearing to discern whether the court committed a clear error of law without the submission of new evidence or new arguments is precluded, then the third prong of the test in *Kirk* means nothing. That cannot be the case. At the same time, the language from *Bradley* prohibiting the use of Rule 59.04 to “relitigate a matter that has already been adjudicated” must mean something as well. What is meant is evident from the context in *Bradley*, as the movant there specifically sought to introduce both a new legal defense and new evidence on a 59.04 motion that it had not presented prior to the original summary judgment hearing which gave rise to the order that it sought to have amended.

Presently, rather than try to do a “better job” with new or different evidence or legal theories, Goodman and TFA merely requested that the Trial Court amend its ruling before it became final in order to correct a clear error of law. The Trial Court erred in ruling that a motion to amend under Rule 59.04 to correct a clear error of law without the submission of any new evidence or new legal theories constituted an improper attempt to “relitigate,” and Goodman and TFA should have received a hearing on the merits of their Rule 59.04 motion.

CONCLUSION

Goodman and TFA have standing to bring the present action for declaratory judgment and injunctive relief against Nashville Metro in response to the Fair Board’s illegal ban on gun shows at the Nashville Fairgrounds. The Fair Board’s ban is barred by law, and the Trial Court is authorized Tennessee Code § 29-14-103 to declare the rights of the parties in this dispute. Thus, having stated a claim for which relief maybe granted, it was error for the Trial Court to dismiss Goodman and TFS’s complaint. Likewise, as Goodman and TFA’s Rule 59.04 motion to amend was properly before the Trial Court, it was error for the Trial Court to decline to rule on the substance of their motion to amend to correct a clear error of law and prevent injustice.

Respectfully submitted,



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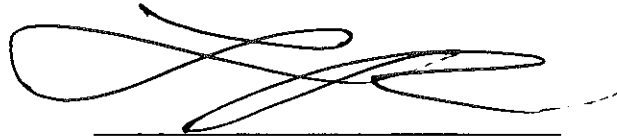
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was forwarded to the Court via FedEx Overnight and upon counsel for Defendant-Appellant via regular U.S. Mail on this 27th day of January, 2017:

Attorney for Defendant-Appellee

Lora Fox
Metro Courthouse, Suite 108
Nashville, Tennessee 37219-6300

A handwritten signature in black ink, appearing to read "Scott L. Braum", written over a horizontal line.

Scott L. Braum (0070733)
Timothy R. Rudd (0075490)

