IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

HAMILTON COUNTY, TENNESSEE, by and through LARRY L. HENRY, as CHAIRMAN of the HAMILTON COUNTY BOARD OF COUNTY COMMISSIONERS, *Plaintiff*, *v.* HOPE ALEXANDER, PATRICIA BAZEMORE, HEIDI DAVIS, JOY DAY, FRANK EATON, HOWARD HAYES, LANDON HOWARD, SAM MCKINNEY, SHANE PINSON, OCCUPY CHATTANOOGA, JOHN DOES and MARY DOES, *Defendants*.	**Case 1:12-CV-00008** **Hon. Curtis L. Collier**

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF JURISDICTION

INTRODUCTION

Hamilton County's argument in support of jurisdiction relies on several errors of law. First, the County fails to recognize that Defendants' jurisdictional challenge raises a threshold issue that cannot be overcome as a matter of judicial discretion. Second, the County misunderstands the relevance of the governing Supreme Court case, *Franchise Tax Board v. Construction Laborers Vacation Trust,* 463 U.S. 1 (1983), because the County considers only one of the two distinct holdings in that case and ignores the holding that governs this case. Third, the alternative authorities on which the County relies are inapposite. Finally, the County relies on facts and assumptions that are irrelevant to the purely legal question at issue here.

Under a straightforward application of *Franchise Tax Board*, this Court lacks jurisdiction and should dismiss the case.

ARGUMENT

Federal Courts Lack Jurisdiction Over Suits Seeking To Have A State Or Local Law Declared Valid.

In *Franchise Tax Board*, the Supreme Court unanimously held that federal courts lack jurisdiction over a lawsuit seeking a declaration that a state or local law is valid. 463 U.S. at 20-22. That principle disposes of this case.

For the reasons that follow, the County's arguments to the contrary are unavailing.

A. The existence of federal subject-matter jurisdiction is a threshold question of law, not a matter of judicial discretion.

The County's response to the motion to dismiss reflects a fundamental misunderstanding about the nature of the question before this Court. The County repeatedly characterizes the jurisdictional issue as one of "discretion" rather than constitutional rule. *See, e.g.*, Response in Opp. to Mot. To Dismiss (dkt. #25) ("Response"), at 1 (characterizing the "sole" issue as "whether this Court should, in its discretion, find" that the County can proceed with its lawsuit); *id.* at 11 (suggesting that the jurisdictional issue should be "analyzed in terms of *discretionary* authority" as opposed to "*adjudicatory* authority" (emphasis in original)). Indeed, almost one third of the County's argument is directed toward the proposition that this Court should exercise discretion to hear the case. *See id.* at 15-20.

Although the County is correct that a court has discretion to decide whether to issue a declaratory judgment, this discretion may be exercised only if the court has jurisdiction over the case as an initial matter. Discretion as to a particular form of relief does not displace the threshold rule that federal courts cannot adjudicate disputes over which they lack jurisdiction. *See, e.g., Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937) ("The Declaratory Judgment Act . . . authorizes relief which is consonant with the exercise of the judicial function in the

determination of controversies to which under the Constitution the judicial power extends."); *United States v. West Virginia*, 295 U.S. 463, 475 (1935) (explaining that the Declaratory Judgment Act "does not purport to alter the character of the controversies which are the subject of the judicial power under the Constitution"); *Fieger v. Mich. S. Ct.*, 553 F.3d 955, 961 (6th Cir. 2009) ("[T]he Declaratory Judgment Act permits a court to enter declaratory relief only in a case of actual controversy[.]" (internal citations, quotation marks, and alterations omitted)). The County expresses concern at the potential for confusion over the concept of jurisdiction, Response at 10-11, but it is the Country that seems to be confused. Fundamentally, there can be no "discretion" to adjudicate a case that is not within the power of the federal courts in the first place. Because it is this very power—in other words, the existence of this Court's jurisdiction—that is in question in this motion, the County's appeal to this Court's discretion is unavailing.

B. *Franchise Tax Board* is squarely on point and forecloses jurisdiction here.

To the extent the County addresses the relevant question—whether the Court has the *power* to hear this case—the County's legal analysis founders on its incomplete reading of the controlling case, *Franchise Tax Board*. In that case, the Supreme Court considered whether either of *two* separate causes of actions sufficed to invoke the jurisdiction of the federal courts. The Court separately considered whether there was federal jurisdiction over each cause of action, and it announced two distinct holdings. The County discusses only one of these holdings—the one that does not apply to this case. Reading the whole opinion in *Franchise Tax Board* leads unavoidably to the conclusion that this Court lacks jurisdiction here.

In *Franchise Tax Board*, a state taxing authority sued a trust over a tax that the trust had indicated it did not intend to pay because it believed the tax was preempted under federal law. 463 U.S. at 5-7. The state's suit against the trust asserted two causes of action, which the

Supreme Court carefully delineated and analyzed separately. First, the state raised a claim under its own state tax law for nonpayment of the tax. *Id.* at 5-6. Second, the state sought declaratory relief that its tax law was valid notwithstanding the defendant's claim that a federal law (ERISA) preempted it. *Id.* at 6-7. The Supreme Court analyzed each cause of action in turn and determined, for separate reasons, that neither one came within the federal judicial power.

As the County correctly recounts, the Supreme Court first held that the well-pleaded complaint rule foreclosed federal jurisdiction over the first cause of action, because the cause of action arose under a state statute and federal preemption was merely a defense, not part of the plaintiff's claim. *Id.* at 13. But the opinion did not end there. The Court went on to consider whether the taxing authority's second cause of action—for a declaration that the state's own tax law was valid and not preempted by federal law—could serve as a basis for federal jurisdiction. *See id.* at 14-22. The Court unequivocally answered this question in the negative. *Id.* at 20 ("[D]oes a declaratory judgment suit by the State 'arise under' federal law? We think not.").[1]

The County's analysis only discusses the Supreme Court's disposition of the first of the two causes of action, i.e., the Court's application of the well-pleaded complaint rule to the tax board's cause of action under state tax law. *See* Response at 14-15 (arguing that *Franchise Tax Board* is distinguishable because the County's "claim for declaratory relief does not anticipate a federal claim as a defense," and minimizing *Franchise Tax Board*'s "unremarkable holding . . . that claims arising under state law cannot form a basis for subject matter jurisdiction"). But

[1] The Court so held even though the usual criterion for jurisdiction over a declaratory judgment suit—whether the declaratory judgment defendant could have sued the declaratory judgment plaintiff in federal court—was satisfied. *See id.* at 19-20; *see also id.* at 21 (explaining the Court's reasoning), *quoted in* Defs.' Memo. of Law in Support of Mot. To Dismiss (dkt. #16) ("Defs.' Memo."), at 5. The remainder of the Court's opinion considered and rejected an alternative argument for jurisdiction—specifically, that the structure and scope of ERISA exerted such preemptive force so as to convert every lawsuit involving the interpretation of ERISA into a case "arising under" federal law. *See* 463 U.S. at 22-27.

Defendants' motion to dismiss is based on the *second* holding in *Franchise Tax Board*, in which the Court rejected jurisdiction over the tax board's declaratory judgment action because the state was asking a federal court to uphold the state's own law. *See, e.g.*, Defs.' Memo. at 2, 5. The County offers no basis to distinguish the relevant holding of *Franchise Tax Board* from this case, and indeed there is none. *Franchise Tax Board* prohibited exactly what the County seeks to do here: obtain a declaration from a federal court that a government's own law is valid. Under this controlling Supreme Court authority, this Court lacks jurisdiction.

C. The cases on which the County relies are inapposite.

The County does not address any of the Defendants' additional supporting authorities, including two federal appellate decisions and one ruling from another district in this circuit, illustrating the applicability of the *Franchise Tax Board* rule to cases such as this one. *See* Defs.' Memo. at 5-6. Instead, the County relies on three other cases, none of which is relevant.

In *Texas v. Knights of the Ku Klux Klan*, 853 F. Supp. 958 (E.D. Tex. 1994), *aff'd*, 58 F.3d 1075 (5th Cir. 1995), a district court and the Fifth Circuit considered Texas's request for a declaratory judgment that the state could lawfully reject the Ku Klux Klan's application to participate in the state's adopt-a-highway program. As the County rightly concedes, neither court even discussed, much less resolved, whether it had jurisdiction. *See* Response at 8 n. 29. The County nonetheless reads the case as implicitly holding that jurisdiction existed; the County reasons that because a federal court always has a duty to consider whether it has jurisdiction, "the presumption should be, and is, that the Court considered its jurisdiction and found such jurisdiction to be present." *Id.* But the Supreme Court has repeatedly and explicitly rejected this line of reasoning: "When a potential jurisdictional defect is neither noted nor discussed in a federal decision, the decision does not stand for the proposition that no defect existed." *Ariz.*

Christian Sch. Tuition Org. v. Winn, 131 S. Ct. 1436, 1448 (2011); *accord, e.g., Hagans v. Lavine*, 415 U.S. 528, 535 n.5 (1974); *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952). Thus, when the Eighth Circuit analyzed its jurisdiction in a case similar to *Texas v. KKK*, the court correctly distinguished the Fifth Circuit decision on the ground that it had not addressed the jurisdictional question. *See Missouri ex rel. Mo. Hwy. & Transp. Comm'n v. Cuffley*, 112 F.3d 1332, 1337 n.6 (8th Cir. 1997). Instead, the Eighth Circuit applied *Franchise Tax Board* and held federal jurisdiction was lacking. *See id.* at 1336-37.

Another of the County's authorities, *Board of Education of Shelby County v. Memphis City Board of Education*, No. 11-2101, 2011 WL 3444059 (W.D. Tenn. Aug. 8, 2011), did consider the question of its jurisdiction, but its resolution of that issue was fully consistent with *Franchise Tax Board*. In a complex, multi-party, multi-claim case testing the legality of the decision by the City of Memphis to dissolve its school district and transfer control of its schools to the educational authorities of surrounding Shelby County, the court first discussed at length why it had federal-question jurisdiction over Shelby County's equal protection, due process, and state-law claims against the actions by various Memphis government entities. *See id.* at *11-17. The court then went on to take *supplemental* jurisdiction under 28 U.S.C. § 1367 over the other claims, counterclaims, and cross-claims of the various parties, *see id. at* *17-18, including the Shelby County Commission's counterclaim seeking to validate its decision to expand and reconstitute its board of education in response to the actions of Memphis. *See id.* at *9-10, 17-18.[2] Thus, the only declaratory judgment claims as to which the court asserted *original* jurisdiction were those of one government entity attacking the actions of another entity (rather

[2] In fact, given that another party, Shelby County Board of Education, was already asserting a claim questioning the legality of the County Commission's actions vis-à-vis the Board, *see id.* at *6, it is questionable whether the County Commission's request that the court uphold its actions was properly considered a "counterclaim" or simply a defense to the Board's claim.

than seeking to uphold its own actions), and the County Commission's claim seeking to uphold its own actions was not a basis for original jurisdiction but only of supplemental jurisdiction. The *Shelby County* decision does not call into question the applicability of *Franchise Tax Board* where, as here, a local government seeks *original* federal jurisdiction over its request for judicial validation of its *own* actions.

The County's reliance on *Fort Wayne Community Schools v. Fort Wayne Education Ass'n*, 735 F. Supp. 907 (N.D. Ind. 1990), is also unavailing. Although *Fort Wayne* discussed and distinguished *Franchise Tax Board*, it addressed only the portion of *Franchise Tax Board* applying the well-pleaded complaint rule, and not that case's separate holding—the holding applicable here—that a government cannot use a federal court to validate its own law. *See id.* at 910-11. The latter principle was not relevant to the factual context of the *Fort Wayne* case, in which a local school board was asking for a declaratory judgment to determine whether it should comply with an arbitrator's judgment that it was contractually obligated to deliver intra-school mail to its teachers, or with the opinion of the federal Postal Service that delivering mail without postage violated federal criminal law. *See id.* at 908-09. Thus, the plaintiff government entity was not seeking to validate its own action or regulation; rather, it was seeking to resolve a "dilemma of incompatible legal obligations" to two separate parties. *Id.* at 909. In citing *Fort Wayne*, the County repeats the mistake reflected in its discussion of *Franchise Tax Board*: once again, the County focuses on the part of *Franchise Tax Board* case that does not apply to this case and avoids the part that does.

D. The County's factual averments and innuendos concerning Defendants' motives are irrelevant.

The remainder of the County's argument consists of suggestions that there is something problematic about Defendants' position in light of facts that the County either assumes or

improperly introduces. For instance, the County deems the Defendants' motion to dismiss "curious" and suggests that they should instead "welcome the ability to defend their activities in a federal court." Response at 3. The County finds it "surprising[]" that the Defendants whom the County has chosen to sue are not necessarily interested in participating in the County's lawsuit and risking liability for court costs for the privilege of doing so. *Id.* And the County assumes that it must know the motivations of all of the Defendants based on an Occupy Chattanooga newsletter in which an individual who is not even a party to this case expresses a vague intent to remain on the courthouse lawn "until the social and economic injustices . . . in the United States are corrected." *See id.* (citing Pl.'s Ex. A).

The County's speculation about the Defendants' interests cannot establish federal-court jurisdiction over this suit. As the County concedes, what is now before the Court is a purely facial attack on jurisdiction in which facts are assumed rather than proven and the issues resolved as a matter of law. *See* Response at 2; *accord O'Bryan v. Holy See*, 556 F.3d 361, 375-76 (6th Cir. 2009). No additional factual development is necessary or appropriate, and the County's expressions of curiosity and surprise are beside the point.

Defendants' argument is simple: assuming as true the facts in the County's complaint, this Court lacks jurisdiction under *Franchise Tax Board*. Defendants' legal arguments, none of which the County has persuasively rebutted, are sufficient to resolve this case.

CONCLUSION

For the reasons stated herein and in Defendants' moving papers, this Court should dismiss the case for lack of jurisdiction.

Dated: February 23, 2012

Respectfully Submitted,

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