

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CHIVANADA; DANIEL)	
YARZAGARAY; WILLIAM)	
LOFBACK; RIFFS HOSPITALITY;)	
EILEEN MALTESE;)	
MIKEY’S PIZZA, LLC)	
)	
PLANTIFFS,)	
)	Case No. _____
V.)	
)	
CITY OF MT. JULIET,)	
TENNESSEE)	
)	
DEFENDANT.)	

COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, AND NOMINAL DAMAGES

INTRODUCTION

1. Plaintiffs are Nashville-area entrepreneurs and their food truck businesses. Plaintiffs’ food trucks sell a range of delicious food to satisfied customers across Middle Tennessee. Daniel Yarzagaray runs the food truck Chivanada—a family business that sells Colombian-style empanadas. William “B.J.” Lofback runs Funk Seoul Brother, an award-winning food truck specializing in Korean and Japanese food. Eileen Maltese and her husband Michael operate Mikey’s Pizza, a food truck that specializes in selling New York style pizza. Despite the differences in the type of food they offer, Plaintiffs share the desire to earn a living and make Tennesseans happy by offering tasty food from their food trucks.

2. Because they are mobile, food trucks can—and often do—serve consumers in many locations. When a tornado ravaged Defendant City of Mt. Juliet in 2020, for example, Mr. Lofback rallied food trucks to the city to give out free food to Mt. Juliet residents in need. When Mt. Juliet waived its food truck restrictions to provide residents with a safe alternative to restaurants during the Coronavirus pandemic, Chivanada and Funk Seoul Brother continued to serve many satisfied Mt. Juliet residents.

3. Mt. Juliet soon reimposed its food truck restrictions. In July 2023, the city enacted a pilot program designed to make it prohibitively expensive for food trucks from outside Mt. Juliet to serve the city’s residents. In particular, the Mt. Juliet ordinance charges food trucks who are not located in the city \$100/day for a permit to do business in Mt. Juliet. It waives the same fee requirement for food trucks located in the city, and charges such food trucks a permit fee of just \$100/year. As Mt. Juliet’s officials stated, the ordinance was motivated by a desire to protect its brick-and-mortar businesses.

4. This civil rights lawsuit asserts claims under the federal and Tennessee constitutions. Mt. Juliet’s \$100/day fee for out-of-town food trucks is unrelated to any legitimate concern in protecting the health and safety of its residents, but driven solely by an illegitimate concern of economic protectionism. *See Craigmiles v. Giles*, 312 F.3d 220, 229 (6th Cir. 2002). Therefore, Mt. Juliet’s imposition of a \$100/day fee on Plaintiffs merely because they wish to drive from other cities to serve Mt. Juliet residents violates both the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, as well as the equal protection guarantees of the Tennessee Constitution. Because the fee makes it prohibitively expensive for Plaintiffs to earn a

living in Mt. Juliet, it also violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Law of the Land Clause of the Tennessee Constitution.

JURISDICTION AND VENUE

5. Plaintiffs bring this civil rights lawsuit pursuant to 42 U.S.C. § 1983 for the violation of their equal protection and due process rights secured by the Fourteenth Amendment to the United States Constitution. Plaintiffs also allege violations of their rights under the Tennessee Constitution.

6. This Court has jurisdiction over Plaintiffs' federal claims under 28 U.S.C. § 1331 (federal question) and § 1343(a)(3) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201. This Court has jurisdiction over Plaintiffs' state-law claims under 28 U.S.C. § 1367 (supplemental jurisdiction).

7. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because Defendant is based in this district and because a substantial part of the events or omissions giving rise to the claim occurred and continue to occur in this district.

PARTIES

8. Plaintiff Daniel Yarzagaray owns and operates Plaintiff Chivanada, a food truck that sells empanadas in Middle Tennessee. Mr. Yarzagaray and Chivanada have served residents in Mt. Juliet and wish to do so today. Because Mr. Yarzagaray resides in Nashville, he cannot serve customers in Mt. Juliet unless he pays \$100 per day for a permit.

9. Plaintiff B.J. Lofback is the sole member of Plaintiff Riffs Hospitality and owner of Funk Seoul Brothers, an award-winning food truck that sells Korean and Japanese street food in Middle Tennessee. Mr. Lofback and Funk Seoul Brother have served residents in Mt. Juliet and wish to do

so today. Because Mr. Lofback resides in Nashville, he cannot serve customers in Mt. Juliet unless he pays \$100 per day for a permit.

10. Plaintiff Eileen Maltese and her husband Michael own and operate Mikey's Pizza, a food truck that sells New York style pizza in Middle Tennessee. Mikey's Pizza is incorporated as Plaintiff Mikey's Pizza, LLC. Because Ms. Maltese and her husband reside in College Grove, they cannot serve customers in Mt. Juliet unless they pay \$100 per day for a permit.

11. Defendant City of Mt. Juliet, Tennessee, is a municipality and political subdivision of the State of Tennessee. A municipality is a person within the meaning of 42 U.S.C. § 1983. At all times relevant, Mt. Juliet has acted and continues to act under the color of law.

FACTUAL ALLEGATIONS

Benefits of Food Trucks

12. Food trucks are commercial vehicles that enable entrepreneurs to travel from place to place, or remain in a fixed location, in order to sell and serve food to customers.

13. Food trucks are now extremely popular and offer diverse cuisines. For example, Plaintiffs use their food trucks to sell various cuisines such as New York style pizza, Korean street food, and Colombian empanadas.

14. Food trucks are mobile, so they can serve consumers in different locations based on demand. Food trucks may serve consumers in different places in the same city. Food trucks may also serve consumers in different cities.

15. The initial operating costs for starting a food truck are generally lower than the initial operating costs for a brick-and-mortar restaurant. Therefore, it is generally easier for an entrepreneur to start a food truck business compared to a brick-and-mortar restaurant business.

16. Food trucks provide employment, not only to the owners of the food trucks, but to the employees that many food trucks hire. Food trucks also provide jobs to those who build, equip, and maintain the trucks.

17. Food trucks can enrich communities by providing exciting new cuisine and can help bring new energy to many local communities.

Plaintiffs' Food Truck Businesses

18. Plaintiff Daniel Yarzagaray is an entrepreneur and lifelong resident of Middle Tennessee.

19. Mr. Yarzagaray is the owner of Plaintiff Chivanada, a family-owned business that serves Colombia-style empanadas to customers in Middle Tennessee.

20. In 2020, Mr. Yarzagaray took Chivanada to Mt. Juliet and gave free food to Mt. Juliet residents after a tornado swept through the city. That same year, Chivanada served as many as 50 customers in one day in a residential neighborhood in Mt. Juliet when the city suspended its food truck restrictions during the Coronavirus pandemic.

21. Plaintiff B.J. Lofback is an entrepreneur and owner of Plaintiff Riffs Hospitality. Mr. Lofback and Riffs Hospitality own and operate Funk Seoul Brother, an award-winning food truck that serves Korean and Japanese street food.

22. Mr. Lofback organized food trucks to assist Mt. Juliet with recovery efforts after a tornado hit the city in 2020. As part of that mission, Funk Seoul Brother gave out free food to Mt. Juliet residents.

23. Along with her husband Michael, Eileen Maltese runs Mikey's Pizza—a food truck that sells pizza to customers in Middle Tennessee. Mikey's Pizza, incorporated as Plaintiff Mikey's Pizza, LLC, has served customers at schools, music festivals, and other community events in

Tennessee. Ms. Maltese would like to bring Mikey’s Pizza to Mt. Juliet and would do so if not for the \$100 per day permit fee.

Mt. Juliet’s Out-of-City Food Truck Fee

24. Before 2020, Mt. Juliet permitted food trucks to operate only if they received permits to host a temporary event—which could take place no more than six times a year.

25. In 2020, Mt. Juliet suspended its food truck restrictions. The city suspended those restrictions so that food trucks could help Mt. Juliet residents in the wake of a tornado and to provide residents with a safe way to order food when many restaurants were closed during the COVID-19 pandemic.

26. In 2020, Chivanada, Funk Seoul Brothers, and other food trucks served Mt. Juliet residents. There were no health and safety issues associated with Chivanada, Funk Seoul Brothers, or any other food truck that served customers in Mt. Juliet.

27. In April 2020, Mt. Juliet reimposed its food truck restrictions. The city stated that one reason for reimposing the food truck restrictions to protect local restaurants who were now opening back up for in-person dining.¹ According to a post on Mt. Juliet’s official government website, the city needed to reimpose restrictions on food trucks to “protect [its] brick and mortar businesses” and because “the majority of the food trucks are not businesses based out of the city” and “food trucks take business from local businesses.”

28. In early 2023, Mt. Juliet city council members debated a proposed pilot program that would allow food trucks to return to residential and industrial neighborhoods.

¹ <https://www.mtjuliet-tn.gov/CivicAlerts.aspx?AID=52&ARC=72>

29. One city council member complained that she might have to “see food trucks everywhere, seven days a week.” She added that most food trucks will be “from outside of the city” and that the city’s “brick and mortars spend a lot of money to build.”²

30. In July 2023, the city council voted to enact the pilot program through Ordinance 2023-31. The Ordinance became effective on August 15, 2023, and sunsets on February 15, 2023.

31. Ordinance 2023-31 provides food truck regulations for residential and industrial zoning districts. The Ordinance specifies that “[n]o mobile food service vehicle may operate within the city without a mobile food vendor permit issued by the city.” An “application for a mobile food vendor permit must be accompanied by payment of an application fee of \$100 per day per mobile food service vehicle” (“the out-of-city food truck fee”).

32. Ordinance 2023-31 exempts in-city food trucks from the \$100 per day fee. It states: “For businesses located within the city limits of Mt. Juliet who are required to pay City of Mt. Juliet Sales Tax and have a current City of Mt. Juliet Business License the \$100 per day permit shall be waived” and such businesses “shall only be subject to a \$100 Annual Permit.”

33. Operation of a food truck without a valid permit is a violation of Mt. Juliet law. Each day and each separate location constitute a separate violation. The city codes enforcement officers, permit administrator, or police officer of the city may issue a citation to the operator of the food truck, any of the food truck’s employees, or the owner of the property on which the food truck is operating.

² Laurie Everett, *Mt. Juliet May Allow Food Trucks for Six Months*, The Chronicle of Mt. Juliet (May 23, 2023), <https://mainstreetmediatn.com/articles/chronicleofmtjuliet/mt-juliet-may-allow-food-trucks-for-six-months/>

The Effect of Mt. Juliet's Out-of-City Food Truck Fee on Plaintiffs

34. Plaintiffs Daniel Yarzagaray and Chivanada have served Mt. Juliet residents in residential zoning districts and wish to do so again. Mr. Yarzagaray resides in Nashville and must therefore pay \$100 per day for a permit to serve Mt. Juliet residents.

35. The \$100 per day out-of-city food truck fee makes it unfeasible for Mr. Yarzagaray and Chivanada to serve Mt. Juliet residents. Mr. Yarzagaray and Chivanada would serve Mt. Juliet residents if they only had to pay for a \$100 annual permit.

36. If not for the out-of-city food truck fee, Mr. Yarzagaray and Chivanada would have served residents in Mt. Juliet between August 15, 2023, and today. Mr. Yarzagaray and Chivanada are ready, able, and eager to serve Mt. Juliet residents once the out-of-city food truck fee is abolished.

37. Plaintiffs B.J. Lofback's and Riffs Hospitality's food truck, Funk Seoul Brother, served Mt. Juliet residents in residential zoning districts and wish to do so again. Mr. Lofback resides in Nashville and must therefore pay \$100 per day for a permit to serve Mt. Juliet residents.

38. The \$100 per day out-of-city food truck fee makes it unfeasible for Mr. Lofback and Riffs Hospitality to serve Mt. Juliet residents. Mr. Lofback and Riffs Hospitality would serve Mt. Juliet residents if they only had to pay for a \$100 annual permit.

39. If not for the out-of-city food truck fee, Mr. Lofback and Riffs Hospitality would have served residents in Mt. Juliet between August 15, 2023, and today. Mr. Lofback and Riffs Hospitality are ready, able, and eager to serve Mt. Juliet residents once the out-of-city food truck fee is abolished.

40. Plaintiffs Eileen Maltese and Mikey's Pizza, LLC, wish to serve Mt. Juliet residents in residential zoning districts. Ms. Maltese resides in College Grove and must therefore pay \$100 per day for a permit to serve Mt. Juliet residents.

41. The \$100 per day out-of-city food truck fee makes it unfeasible Ms. Maltese and Mikey's Pizza, LLC, to serve Mt. Juliet residents. Ms. Maltese and Mikey's Pizza, LLC, would serve Mt. Juliet residents if they only had to pay for a \$100 annual permit.

42. If not for the out-of-city food truck fee, Ms. Maltese and Mikey's Pizza, LLC, would have served residents in Mt. Juliet between August 15, 2023, and today. Ms. Maltese and Mikey's Pizza, LLC, are ready, able, and eager to serve Mt. Juliet residents once the out-of-city food truck fee is abolished.

LEGAL CLAIMS

FIRST CLAIM FOR RELIEF

Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

43. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits government from treating similarly situated persons differently unless the differential treatment bears a rational relationship to a legitimate governmental interest.

44. The out-of-city food truck fee draws an arbitrary and irrational distinction between in-city food trucks who may serve consumers in Mt. Juliet for \$100/year and out-of-city food trucks who must pay \$100/day to serve customers in Mt. Juliet.

45. The difference in the permitting fee is not determined by whether a food truck offers safe or affordable food. It is determined instead by the arbitrary criteria of whether the business has an owner that is also a Mt. Juliet resident.

46. Plaintiffs are as qualified in all relevant respects to sell food as food trucks who are exempt from the \$100/day fee requirement.

47. The difference in the permitting fee is not determined by the revenue that Mt. Juliet receives from a food truck. No legal prohibition prevents Mt. Juliet from ensuring that food trucks all pay the City the same amount in fees or taxes. Further, Mt. Juliet has no evidence that any differences in fees that it generates from in-city and out-of-city food trucks are as stark as the differences in permitting fees that it charges in-city and out-of-city food truck operators.

48. The effect of the out-of-city food truck fee is to arbitrarily deny Plaintiffs the ability to operate in Mt. Juliet while allowing those similarly situated to do the same solely to protect the latter from competition.

49. The out-of-city food truck fee serves only the illegitimate goal of protecting businesses based in Mt. Juliet from competition. And regardless of its ends, the out-of-city food truck fee uses the illegitimate means of economic protectionism to achieve its goals.

50. By enforcing this requirement, Mt. Juliet, acting under color of law, is irrationally and arbitrarily discriminating against Plaintiffs in favor of Mt. Juliet-based businesses and therefore denies Plaintiffs their right to equal protection of the laws.

51. Plaintiffs are suffering and will continue to suffer substantial and ongoing harm unless the discrimination established by the out-of-city food truck fee unless the fee is declared unlawful and enjoined by this Court.

SECOND CLAIM FOR RELIEF

Article I, Section 8, and Article XI, Section 8 of the Tennessee Constitution (Equal Protection)

52. Article I, Section 8 of the Tennessee Constitution guarantees “[t]hat no man shall be . . . disseized of his freehold, liberties or privileges, or . . . in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.”

53. These two clauses guarantee Plaintiffs the right to equal protection under the law.

54. The out-of-city food truck fee charges Plaintiffs’ food trucks \$100 per day for a permit to serve individuals in Mt. Juliet. Food trucks owned by individuals who reside in Mt. Juliet are exempt from the fee and need only pay \$100 per year to serve individuals in Mt. Juliet.

55. Mt. Juliet’s differential treatment of Plaintiffs and other food trucks with owners who do not reside in Mt. Juliet does not further any legitimate governmental interest.

56. Article XI, Section 8 of the Tennessee Constitution further provides that the government may not “pass any law granting to any individual or individuals, rights, privileges, immunitie[s], or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.”

57. Plaintiffs have no other adequate remedies at law for vindicating their rights under Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution. Thus, Plaintiffs are entitled declaratory and injunctive relief against Mt. Juliet’s enforcement of the out-of-city food truck fee.

THIRD CLAIM FOR RELIEF

Due Process Clause of the Fourteenth Amendment to the United States Constitution

58. The Due Process of Law Clause of the Fourteenth Amendment to the U.S. Constitution protects the right to earn a living free from unreasonable government interference. Under this

provision, no person may be deprived of his or her right to earn a living unless the law is rationally related to a legitimate government interest.

59. Mt. Juliet prohibits Plaintiffs and their food trucks from serving customers in Mt. Juliet unless they pay \$100 per day for a permit.

60. Plaintiffs are fit, willing, and able to provide serve Mt. Juliet residents, and Plaintiffs Yarzagaray, Chivanada, Lofback, and Riffs Hospitality have all previously served customers in Mt. Juliet. Yet Mt. Juliet's out-of-city food truck fee makes it prohibitively expensive for Plaintiffs to earn a living in Mt. Juliet.

61. The out-of-city food truck fee does not bear a rational relationship to protecting the public health, safety, or welfare.

62. Nor is the out-of-city food truck fee rationally related to any other legitimate governmental interest that the city purports to have.

63. The out-of-city food truck fee serves only the illegitimate end of economic protectionism. And regardless of its ends, the out-of-city food truck fee uses the illegitimate means of economic protectionism to achieve its goals.

64. By enforcing the arbitrary, irrational, and fundamentally unfair out-of-city food truck fee, Defendant Mt. Juliet, acting under the color of state law, is depriving Plaintiffs of their constitutional right to earn a living in their chosen profession without due process of law.

65. Plaintiffs are suffering and will continue to suffer substantial irreparable harm unless the out-of-city food truck fee is declared unlawful and enjoined by this Court.

FOURTH CLAIM FOR RELIEF

Article I, Section 8 of the Tennessee Constitution (Law of the Land Clause)

66. Article I, Section 8 of the Tennessee Constitution guarantees “[t]hat no man shall be . . . disseized of his freehold, liberties or privileges, or . . . in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.”

67. Under this provision, Plaintiffs have a right to earn an honest living through their food truck businesses.

68. The out-of-city food truck fee deprives Plaintiffs of both their liberty and property in contravention of the law of the land.

69. Mt. Juliet’s enforcement of the out-of-city food truck fee deprives Plaintiffs of their liberty and property without sufficiently furthering any legitimate government interest.

70. Plaintiffs have no other adequate remedies at law for vindicating their rights under Article I, Section 8 of the Tennessee Constitution. Thus, Plaintiffs are entitled declaratory and injunctive relief against Mt. Juliet’s enforcement of the out-of-city food truck fee.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court:

1. Enjoin Defendant City of Mt. Juliet, its employees, agents, successors, assigns, and all persons acting in concert with Mt. Juliet from enforcing the out-of-city food truck fee, codified in Ordinance 2023-31;

2. Declare Mt. Juliet’s out-of-city food truck fee, codified in Ordinance 2023-31, unconstitutional under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, Article I, Section 8 and Article XI, Section 8 of the

Tennessee Constitution, and the Law of the Land Clause contained in Article I, Section 8 of the Tennessee Constitution;

3. Issue an award of nominal damages;
4. Issue an award of attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988; and
5. Issue such other relief as the Court deems just and proper.

Dated: November 17, 2023

Respectfully submitted,

s/ Wencong Fa

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