No. M2023-01686-SC-R3-CV

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

GARY WYGANT and FRANCIE HUNT,
Plaintiffs,

v.

BILL LEE, et al.,
Defendants.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO STAY PENDING APPEAL

The Davidson County Chancery Court struck down as unconstitutional the legislative redistricting map for the Tennessee Senate and ordered the General Assembly to adopt a remedial map by January 31, 2024. Defendants—the Tennessee Governor, Secretary of State, and Coordinator of Elections—have appealed that order of the chancery court, and the order should be stayed pending appeal.

The chancery court's order is likely to be reversed on appeal because Plaintiff Francie Hunt lacked standing to bring her constitutional claim. The panel's decision to the contrary ran afoul of bedrock principles about standing and the proper role of courts. Unless this Court issues a stay, the State will be irreparably harmed because it cannot enforce a duly enacted law and because the General Assembly must either abandon the

enacted Senate Map or cede its sovereign map-drawing authority to the judiciary. The remaining equitable factors likewise favor granting a stay because Ms. Hunt will not be harmed by a temporary stay pending appeal and the public has an interest in the State's laws—especially its redistricting maps—being enforced.

BACKGROUND

The Tennessee Constitution vests the General Assembly with the responsibility and authority to apportion legislative districts. *See* Tenn. Const. art. II, § 4. The General Assembly carried out that obligation after the most recent decennial census and adopted an updated map for the State Senate.

Ms. Hunt challenged the constitutionality of the Senate Map in a lawsuit initiated in the Davidson County Chancery Court.[1] She claimed that the newly drawn senate districts in Davidson County violate the Tennessee Constitution, which requires that, "[i]n a county having more than one senatorial district, the districts shall be numbered consecutively." Tenn. Const. art. II, § 3.[2] Ms. Hunt alleged that the four

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[1] At the outset of the lawsuit, Akilah Moore was the plaintiff challenging the constitutionality of the Senate Map. The chancery court later substituted Ms. Hunt for Ms. Moore.

[2] Another plaintiff in this lawsuit, Gary Wygant, challenged the constitutionality of the redistricting map for the Tennessee House of Representatives, but the chancery court upheld the House Map as constitutional. Wygant appealed that ruling and has moved for an expedited appeal. Contemporaneously with their motion to stay, Defendants have opposed Wygant's motion to expedite his appeal regarding the House Map.

districts in Davidson County are not consecutively numbered and thus are unconstitutional. As a resident of an allegedly misnumbered district, Ms. Hunt sought an order requiring the General Assembly to correct that alleged deficiency by adopting a new map.

Shortly after filing the lawsuit, the plaintiffs moved for a temporary injunction to prevent the Senate Map from being used during the 2022 election. And on April 6, 2022—one day before the candidate filing deadline—a majority of the three-judge panel assigned to the case granted the injunction. The State filed an emergency application for an extraordinary appeal in the Court of Appeals along with a motion to stay. *See Moore v. Lee*, 644 S.W.3d 59, 61–62 (Tenn. 2022).

This Court assumed jurisdiction over that application because the appeal raised issues of "compelling public interest." *Id.* at 62 n.5. The Court vacated the temporary injunction because whatever harm the plaintiff experienced from the alleged constitutional defect in the Senate Map was "outweighed by the significant harm the injunction will inflict on the Defendants and the public interest." *Id.* at 67. That harm was amplified by the timing of the injunction—the chancery court issued its order on the eve of the candidate filing deadline, which created substantial uncertainty about the upcoming election. *See id.*

The case was tried over three days in April 2023. On November 22, 2023, the chancery court—in a split decision—held that Ms. Hunt had standing, struck down the Senate Map as unconstitutional, and ordered the General Assembly to enact a remedial plan by January 31, 2024. Memorandum and Final Order at 1–2, *Wygant v. Lee*, No. 22-287-IV

(Davidson Cnty. Chancery Ct. Nov. 22, 2023); *see id.*, Separate Opinion of Chancellor Perkins, at 9–17. Chancellor Steven W. Maroney dissented, reasoning that Ms. Hunt lacked standing because she had not pled or proven a legally cognizable injury. *See id.*, Separate Opinion of Chancellor Maroney, at 37–46.

Defendants have appealed and now move that this Court stay pending appeal the judgment of the chancery court with respect to the Senate Map.

LEGAL STANDARD

Tennessee Rule of Appellate Procedure 7 empowers courts to issue a stay pending appeal. Although stay motions are usually first presented to the trial court, parties may file stay motions in the appellate court when moving before the trial court would be impracticable. Tenn. R. App. P. 7(a).

While this Court has not articulated a standard for determining when a stay pending appeal is warranted, federal-court decisions applying analogous rules of procedure are instructive. Those decisions require courts to consider (1) whether the movant will likely succeed on appeal, (2) whether the movant will be irreparably harmed without a stay, (3) whether the other parties will be injured by a stay, and (4) whether the public interest favors a stay. *See L.W. by and through Williams v. Skrmetti*, 73 F.4th 408, 414 (6th Cir. 2023); *cf. Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020) ("Like the federal courts, Tennessee trial courts consider four factors in determining whether to issue a temporary injunction . . . .").

ARGUMENT

I. This Court Should Decide the Stay Motion Because Moving for a Stay in the Trial Court Is Impracticable.

The State has not sought a stay from the chancery court because doing so "is not practicable." Tenn. R. App. P. 7(a). By virtue of the chancery-court decision, the clock for the General Assembly to enact a remedial map is running, so it is imperative that the State obtain a definitive answer as soon as possible on whether the chancery court's decision will be stayed. The General Assembly is scheduled to reconvene in five weeks—on January 9, 2024. And under the chancery court's ruling, the General Assembly will have just three weeks from then—until January 31, 2024—to develop a remedial plan for the Senate Map. Defendants respectfully submit that, under these circumstances, there simply is not sufficient time for them to first file and await a decision on a motion to stay before the three-judge panel in the chancery court.

II. A Stay Should Be Granted Because Defendants Are Likely to Succeed on Appeal.

Defendants will likely succeed on appeal in showing that Ms. Hunt lacked standing to bring her claim, and that the chancery court consequently erred in striking down the Senate Map. The likelihood of success is "the most important" factor to consider, so the strength of the State's appeal strongly favors granting a stay. *Priorities USA v. Nessel*, 860 F. App'x 419, 422 (6th Cir. 2021) (citation omitted).

Standing "is the principle that courts use to determine whether a party has a sufficiently personal stake in a matter at issue to warrant a

judicial resolution of the dispute." *Metro. Gov't of Nashville v. Bd. of Zoning Appeals of Nashville*, 477 S.W.3d 750, 755 (Tenn. 2015) (quoting *State v. Harrison*, 270 S.W.3d 21, 27–28 (Tenn. 2008)). To establish that she has standing to bring a claim, a plaintiff must show (1) a "distinct and palpable" injury; (2) "a causal connection between the alleged injury and the challenged conduct"; and (3) that the alleged injury is "capable of being redressed" by a favorable court decision. *City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013). The burden of proof is on the plaintiff, *ACLU v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006), and here, Ms. Hunt failed to establish any of these elements.

A. Ms. Hunt suffered no legally cognizable injury.

"The doctrine of standing restricts '[t]he exercise of judicial power'" only "to litigants who can show 'injury in fact' resulting from the action which they seek to have the court adjudicate." *ACLU*, 195 S.W.3d at 620 (citations omitted). An injury must be "distinct and palpable" to the plaintiff. *City of Memphis*, 414 S.W.3d at 98. Allegations of harm that "are conjectural, hypothetical, or predicated upon an interest that a litigant shares in common with the general citizenry are insufficient." *Id.*

Ms. Hunt did not suffer any cognizable injury—the evidence presented at trial shows that Ms. Hunt raised only a generalized grievance about the Senate Map. Neither the chancery court's reasoning nor the arguments offered by Ms. Hunt below support a finding that Ms. Hunt had standing in this case.

1. Ms. Hunt proved no "distinct and palpable" injury.

The trial evidence shows that Ms. Hunt brought this suit only to vindicate her generalized interest in constitutional governance. Ms. Hunt testified that she was injured because "the word of the Constitution"—specifically, the consecutive-numbering provision—was not "being followed to the letter." (Trial Tr. Vol. I at 81 (copy attached as Exhibit A).) She sued not just for herself, but "also [her] neighborhood, [her] city of Nashville, and everybody who shares the same values." (*Id.*) And the "injury" identified by the panel was to the "constitutional right" of Ms. Hunt "to vote in a senatorial district consecutively numbered with the other senatorial districts in her county of residence." (Perkins Op. 14)—a "right" she shares with all Tennesseans living in multi-district counties. Indeed, Article II, § 3 of the Tennessee Constitution confers no *individual* rights—voting or otherwise. That provision simply states that, "[i]n a county having more than one senatorial district, the districts shall be numbered consecutively." Tenn. Const. art. II, § 3.

This kind of generalized interest does not suffice to confer standing. Plaintiffs who seek "vindication of the rule of law," rather than "remediation of [their] own injury," are not entitled to bring their disputes into court. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 106 (1998).[3] Citizens "may feel sincerely and strongly" that Tennessee's

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[3] Tennessee's standing doctrine "mirrors the federal courts' [doctrine]," *Metro. Gov't of Nashville*, 477 S.W.3d at 755, so it is appropriate to rely on federal precedent as persuasive authority in this case, *see, e.g.*, *ACLU*, 195 S.W.3d at 619–20 (citing U.S. Supreme Court cases to define the scope of Tennessee's standing doctrine).

laws "should comply with [the] Constitution," but "that kind of interest does not create standing," *Carney v. Adams*, 141 S. Ct. 493, 499 (2020), because "an asserted right to have the Government act in accordance with law" does not satisfy the bedrock requirement that each litigant suffer some concrete and particularized harm, *Whitmore v. Arkansas*, 495 U.S. 149, 160 (1990) (citation omitted). Merely asserting a constitutional violation, as Ms. Hunt did here, is not enough to prove injury in fact. *See, e.g.*, *ACLU*, 195 S.W.3d at 615, 619–27 (finding no standing despite the allegation that the state defendants violated the Constitution).

Likewise, that Ms. Hunt resides in an allegedly misnumbered district does not suffice to establish the requisite injury. In *Lance v. Coffman*, 549 U.S. 437 (2007) (per curiam), several voters challenged the constitutionality of a court-ordered redistricting plan. The voters argued that *their district* violated the Elections Clause of Article I, § 4, of the U.S. Constitution because it was drawn by a court rather than a legislature. *See Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1332 (11th Cir. 2007) (per curiam) (describing the claim asserted in *Lance*). Even though the voters resided in the allegedly unconstitutional district, the Supreme Court nonetheless held that they lacked standing. "The only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed." *Coffman*, 549 U.S. at 442. And that "is precisely the kind of undifferentiated, generalized grievance about the conduct of government that [the Court] ha[s] refused to countenance in the past. *Id.* Here, too, the only injury Ms. Hunt asserted is that the law—Tennessee Constitution, art. II, § 3—has not been followed.

Ms. Hunt failed to show an injury because she failed to show how she is concretely and individually harmed by living in a misnumbered district.

This case illustrates the importance of the standing doctrine. The injury-in-fact requirement ensures that courts are not "called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions." *ACLU*, 195 S.W.3d at 620. It also prevents "a profusion of lawsuits" from individuals with generalized grievances. *See id.* (citation omitted). To allow litigants like Ms. Hunt who have no concrete injury "to require a court to rule on important constitutional issues in the abstract would create the potential for abuse of the judicial process, distort the role of the Judiciary in its relationship to the Executive and the Legislature, and open the Judiciary to an arguable charge of providing 'government by injunction.'" *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 222 (1974) (citation omitted).

2. The panel erred in finding that Ms. Hunt had standing.

The chancery-court panel erred at each step of its standing analysis. The panel concluded that a "voter's injury does *not* have to be individualized for that voter to have standing to bring a constitutional challenge to a legislative redistricting plan." (Perkins Op. 14 (emphasis added).) The panel thus determined that that Ms. Hunt's "injury" was the constitutional violation *itself*. And the panel also observed that finding standing, and thus proceeding to consider the merits of Ms. Hunt's claim, was particularly appropriate because "the legislature

arguably had knowledge to a substantial certainty that the Senate plan was unconstitutional." (*Id.*)

First, the panel was wrong to dispense with the individualized-injury requirement. The "[f]oremost" standing requirement is that the plaintiff suffer an "injury in fact," and this requirement applies even in the redistricting context. *Gill v. Whitford*, 138 S. Ct. 1916, 1929–31 (2018). As discussed above, that requirement is not satisfied unless the plaintiff proves that he has suffered the "invasion of a legally protected interest" that "affect[s] the plaintiff in a personal and individual way." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 & 560 n.1 (1992). The panel's conclusion that a "voter's injury does *not* have to be individualized" flies in the face of this precedent. (Perkins Op. 14 (emphasis added).)

Second, the panel erred by finding that the constitutional violation by itself qualified as a cognizable injury. Ample authority supports the principle that there must be some concrete harm flowing from a constitutional violation for a litigant to have standing. *See, e.g., United States v. Richardson*, 418 U.S. 166, 178 (1974) (finding no standing despite "an arguable violation of an explicit prohibition of the Constitution" because there was no individualized injury). Again, Ms. Hunt has shown no such concrete harm.

Third, the panel erred by considering the merits of the constitutional claim as part of the standing inquiry. This Court has made clear that standing "'in no way depends on the merits' of the claim." *Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d 141, 149 (Tenn. 2022) (citation omitted). Standing is "not merely

a troublesome hurdle to be overcome if possible so as to reach the 'merits' of a lawsuit which a party desires to have adjudicated." *United States v. Texas*, 599 U.S. 670, 675 (2023) (citation omitted). The standing doctrine rests "on the judiciary's understanding of the intrinsic role of judicial power, as well as its respect for the separation of powers doctrine" in the Tennessee Constitution. *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County*, 301 S.W.3d 196, 202–03 (Tenn. 2009).

This Court's decision in *City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001), is instructive. There, the plaintiff challenged the constitutionality of certain policies implemented by the City of Chattanooga. "Despite the probable unconstitutionality of [those] policies," this Court dismissed the challenge because the plaintiff "failed to show any particularized injury or harm" from the alleged constitutional violation. *Id.* at 280. The Court acknowledged that some "have criticized adherence to the particularized injury requirement of the standing doctrine," and it recognized that some States have abrogated that requirement in cases raising constitutional questions of "great public importance." *Id.* (citation omitted). But the Court declined to follow suit and dismissed the claim. Dismissal of Ms. Hunt's claim is likewise required here, as well.

3. Plaintiff's other arguments are unavailing.

None of the other arguments Ms. Hunt raised below provide any plausible basis for finding standing. Ms. Hunt primarily relied on gerrymandering and one-person-one-vote cases to support her "injury" claim. (*See* Perkins Op. at 16–17.) But those cases are easily

distinguishable; while the litigants in such cases were held to have standing even though their injuries were shared by others, all the litigants in those cases nevertheless demonstrated *individualized* injuries and *concrete* harm. The one-person-one-vote cases, for example, "were expressly premised on the understanding that the injuries giving rise to those claims were 'individual and personal in nature,' because the claims were brought by voters who alleged 'facts showing disadvantage to themselves as individuals.'" *Gill*, 138 S. Ct. at 1930 (citation omitted). In other words, the plaintiffs had standing because their individual votes had been diluted. The plaintiffs in gerrymandering cases likewise suffered an injury in fact because their individual votes were unlawfully diluted. *See id.* at 1929–31. Ms. Hunt has not shown any similar disadvantage to herself as an individual caused by the alleged constitutional defect.

Ms. Hunt also argued below that standing must exist because "mis-numbering claims" have previously been adjudicated on the merits. (*See* Perkins Op. 15 (collecting cases).) But as Chancellor Maroney explained in his dissent, Ms. Hunt identified no authority "analyzing standing within the context of the state constitutional requirement of non-consecutive numbering of Senate districts." (Maroney Op. 45.) The decisions on which Ms. Hunt relied simply do not support her standing argument here because standing was not addressed in those cases. "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having

been so decided as to constitute precedents." *Webster v. Fall*, 266 U.S. 507, 511 (1925).

B. Ms. Hunt cannot show causation and redressability.

Ms. Hunt also failed to establish causation or redressability, and consideration of the reasoning of the chancery-court panel shows why. The panel suggested that the alleged constitutional violation deprives Ms. Hunt "of the benefit of a stable senatorial delegation as prescribed by Article II, Section 3 of the Tennessee Constitution." (Perkins Op. 13.) It reasoned that "[t]he consecutive numbering requirement is grounded in the specific constitutional concern about avoiding turnover in Senate representation in populous counties and in preserving institutional knowledge and experience." (*Id.*) By requiring candidates in even-numbered districts to run for re-election in different years from candidates in odd-numbered districts, the panel observed, the consecutive-numbering provision avoids turnover and provide stability because only two of the four seats in Davidson County should be up for election at the same time. (*Id.*)

But if instability in the Davidson County senatorial delegation is the injury on which to base Ms. Hunt's standing, it is not caused by the challenged conduct nor is it redressable through the requested relief. *See City of Memphis*, 414 S.W.3d at 98. First, Ms. Hunt did not establish that turnover or instability in the Davidson County senate delegation *has* happened or *will* happen. And even if she had, whether a senatorial delegation is subject to turnover (and is thus considered "unstable") depends on the will of the voters—not on the numbering of the district.

Although the numbering of districts will obviously affect *when* the election occurs, "no one can tell what the result of an election will be," *State ex rel. Hammond v. Wimberly*, 196 S.W.2d 561, 135 (Tenn. 1946). So Ms. Hunt cannot show, or even say, that she "will be adversely affected" by having three districts up for re-election in one cycle as opposed to two districts. *Id.* In short, any "instability" is caused by the voters, rather than the Senate Map. Furthermore, any such injury is not redressable by the requested relief, because renumbering the districts would not ensure that there will be no turnover in the future.

III. A Stay Should Be Granted Because the State Will Suffer Irreparable Harm without a Stay.

The State will "plainly suffer irreparable harm" if "the stay [is] not granted." *Karcher v. Daggett*, 455 U.S. 1303, 1306 (1982) (Brennan, J., in chambers). After all, "[u]nder the [chancery c]ourt order[,] the legislature must either adopt an alternative redistricting plan" or "face the prospect that the [chancery c]ourt will implement its own redistricting plan." *Id.* That will force the General Assembly either to abandon its enacted legislative map or cede its sovereign redistricting authority to the court. Defendants should be given the opportunity to obtain this Court's review before the remedial order is given effect because "legislative apportionment plans created by the legislature are to be preferred to judicially constructed plans." *Id.* at 1307.

Even setting aside the special context of redistricting, the panel's order inflicts irreparable harm on the State because it forbids Tennessee from enforcing a "statute[] enacted by representatives of its people."

Maryland v. King, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). "When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013); *see New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.").

IV. A Stay Should Be Granted Because the Remaining Equitable Factors Favor Granting A Stay.

The remaining two factors of the applicable standard—the balance of the harms and the public interest—likewise favor granting a stay.

First, a stay of the chancery-court judgment pending appeal will not substantially injure Ms. Hunt. A stay pending appeal "simply suspend[s] judicial alteration of the status quo" until the appellate court finally resolves the disputed issues. *Nken v. Holder*, 556 U.S. 418, 429 (2009) (citation omitted). As discussed above, Ms. Hunt did not establish any actual injury from the alleged constitutional violation. Consequently, she also cannot show that she would be harmed by a temporary stay of the chancery court's order.

Second, the public interest favors a stay. Redistricting "is a legislative task" that "courts should make every effort not to pre-empt." *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978) (Op. of White, J.) (collecting cases). And by virtue of being enacted by the General Assembly, the

Senate Map "is in itself a declaration of public interest." *Virginian Ry. Co. v. System Fed'n No. 40*, 300 U.S. 515, 552 (1937); *see Berman v. Parker*, 348 U.S. 26, 32 (1954) ("when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive"). The presumption of constitutionality that attaches to the Senate Map likewise is an equitable factor "to be considered in favor of applicants in balancing hardships." *Walters v. Nat'l Ass'n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers).

Staying the chancery-court order pending appeal also accords with the traditional practice for federal cases in a similar posture. The United States Supreme Court has "repeatedly emphasized" that the "balance of equities" favors proceeding with elections under "plans created by the legislature," rather than "judicially constructed plans," when liability has not been finally resolved. *Karcher*, 455 U.S. at 1307. Accordingly, the Supreme Court regularly stays injunctions issued against redistricting plans to preserve the status quo until appellate review concludes. *See, e.g.*, *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (order); *Perry v. Perez*, 565 U.S. 1090 (2011) (order); *Bullock v. Weiser*, 404 U.S. 1065 (1972) (order); *Whitcomb v. Chavis*, 396 U.S. 1055 (1970) (order); *Kirkpatrick v. Preisler*, 390 U.S. 939 (1968) (order).

CONCLUSION

For the reasons stated, Defendants' Motion to Stay Pending Appeal should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Memorandum of Law in Support of the Motion to Stay Pending Appeal has been served by email and U.S. mail on this the 5th day of December, 2023, on the following:

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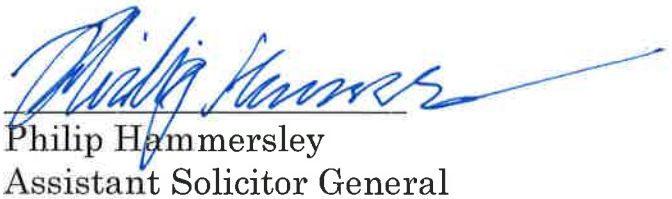

Philip Hammersley
Assistant Solicitor General

Exhibit A

In the Matter of:

WYGANT, et al.

vs

LEE, et al.

TRANSCRIPT OF PROCEEDINGS - VOLUME I

April 17, 2023

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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV

TELISE TURNER, GARY WYGANT, and FRANCIE HUNT,	)	
Plaintiffs,	)	
vs.	)	Case No. 22-287-IV
BILL LEE, Governor, TRE HARGETT, Secretary of State, MARK GOINS, Tennessee Coordinator of Elections; All in their Official Capacity Only,	)	Russell T. Perkins, Chief Judge
	)	J. Michael Sharp, Judge
	)	Steven W. Maroney, Chancellor
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

Volume I

Monday, April 17, 2023

Reported by:
Sarah M. Motley, LCR

A. I think that Davidson County is the only one that is not in congruence with the Constitution.

Q. And I believe you testified you live in 17; is that right?

A. Yes.

Q. So would you say that you live in a district that is not consecutively numbered with the other three?

A. That's right.

Q. In a given year, if the districts were consecutively numbered, how many state senators in Davidson County would be up for election?

A. Well, I think that's the problem there, is that three would be up. Because we have four total. And because they're not consecutively numbered, my understanding -- and I'm no lawyer -- is that the advantage of having staggered numbers that -- or consecutive numbers is that it ensures proper staggering of elections.

And so as it currently stands, it means that, in one year, three of our districts would be up during a gubernatorial election, and then only one of them would be up during a presidential.

And that's really the core of the problem there.

Q. You talked a lot about your, sort of,

political advocacy work.

What's the significance of being up for election in a gubernatorial election year versus a presidential election year?

A. Yeah. It's a huge issue. You know, just understanding it from an advocate standpoint, it's pretty, unfortunately, common knowledge that under a gubernatorial election, there is -- there are fewer people. I mean, a presidential election will drive turnout.

So that creates a big problem, in terms of making sure that there's some fair and equitable representation in my county, in particular for my district and for me.

Q. You heard -- you've been in the courtroom this morning; is that correct?

You've been in this courtroom this morning?

A. Yes.

Q. So you heard the State's opening argument. You heard about whether you have a distinct and palpable injury, concrete harm, or that there's been any benefit deprived to you as a voter by this nonconsecutive numbering.

Can you tell the Court a little bit about the impact on you as a voter and a resident of Davidson County to have the delegation when -- this 3-1 pattern, instead

of the 2-2 pattern?

A. Sure.

I mean, I'm actually deeply offended to hear that I don't get to use my voice to even raise this as an issue as a voter in my district. Because, to me, if I as a voter can't have a say in how my voice is represented, then, kind of, what's the point?

But I think to speak to the injury directly, you know, to contextualize it, in this moment, I think it's really clear that even as we've seen with the -- all the talks around the Tennessee Three happening right now, there's a deep suspicion around the legitimacy of democracy right now.

And I have felt this now, as someone who really cares about an individual's right to bodily autonomy and to my right to make my own private decisions over my own healthcare. As a mother. As someone who's had a miscarriage. You know, I think that those decisions around a person's healthcare and their pregnancy need to absolutely be left up to that individual person and not left up to Government.

And, you know, when Roe fell last year, I mean, I felt that. That was not a cerebral injury. That was, like, a very deep injury that I personally felt.

And I think that, for me, if we can't rely on

protecting the Constitution that is plainly written, then what is the meaning of it? I mean, that's kind of where I feel like, you know --

I think that what our -- what governor -- what the governor and the State of Tennessee has done in terms of our rights and our voice, I don't agree with that. But if I knew that the rules that we were following by and that the word of the Constitution was being followed to the letter, I at least could live with that. And that's, to me, what -- what's at stake. That's, to me, what I so personally bring to this.

And it's not -- it's me, for sure. But it's also my neighborhood, my city of Nashville, and everybody who shares the same values that I do.

Q. You talked about "our rights and our voice and the city of Nashville."

From your perspective, with the non-consecutively numbered senate districts, what is the impact on Nashville's voice in the state legislature?

MR. SWATLEY: Your Honor, objection, for relevance. Nashville isn't a party here. There's only an individual plaintiff.

CHIEF JUDGE: I'm going to ask Counsel to rephrase.

BY MR. SPRAGENS:

REPORTER'S CERTIFICATE

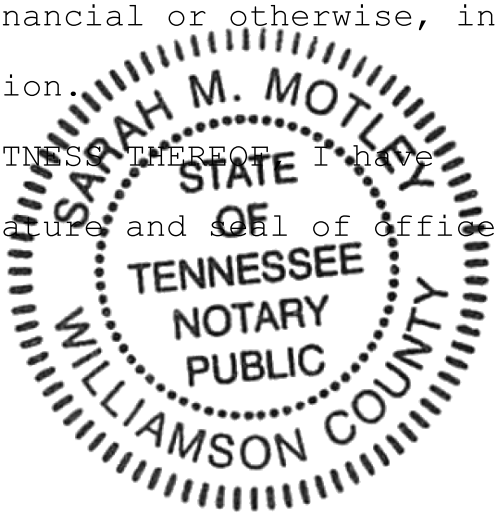
STATE OF TENNESSEE }

COUNTY OF WILLIAMSON }

I, Sarah M. Motley, Licensed Court Reporter and Notary Public for the State of Tennessee at Large, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS THEREOF, I have hereunto affixed my official signature and seal of office this 3rd day of May, 2023.



SARAH M. MOTLEY, LCR
NOTARY PUBLIC FOR THE STATE OF TENNESSEE
LCR No. 383 Expires 6/30/2024
Notary Expires 1/11/2025