

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**M2023-01686-SC-R3-CV**



**GARY WYGANT**

**Appellant-Plaintiff**

**and**

**FRANCIE HUNT,**

**Appellee-Plaintiff,**

**v.**

**BILL LEE, Governor,  
TRE HARGETT, Secretary of  
State, and MARK GOINS,  
Coordinator of Elections  
In Their Official Capacities Only,**

**Appellees / Appellants-Defendants,**

**On Appeal from the Three-Judge  
Panel, Chancery Court of Davidson  
County, Case Number 22-0287-IV**

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**APPELLEE-PLAINTIFF HUNT'S RESPONSE IN OPPOSITION  
TO THE STATE APPELLANTS' MOTION TO STAY**

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In early 2022, the Tennessee General Assembly reapportioned the Tennessee Senate, with the newly enacted Senate map including four senatorial districts in Davidson County numbered 17, 19, 20, and 21. Yet, Tennessee's Constitution requires that in "a county having more than one senatorial district, the districts shall be numbered consecutively." Tenn. Const. art. II, Sec. 3.

Over 18 months ago, on April 6, 2022, the Trial Court enjoined the Senate map based on this clear constitutional violation. The State Appellants promptly applied for an extraordinary appeal pursuant to Appellate Rule 10. On April 13, 2022, this Court determined that redrawing the Senate map after the statutory candidate qualifying deadline had already passed<sup>1</sup> and just four months prior to the August 4, 2022, primary elections endangered the public interest in ensuring orderly elections and avoiding voter confusion. On this basis, this Court vacated the injunction and remanded this matter to the Trial Court.<sup>2</sup>

In the intervening year and a half, the Parties litigated this case through a three-day trial in April 2023. The State Appellants only challenged Appellee Hunt's standing at trial, not the merits of her claim. On November 22, 2023, the Trial Court issued its Memorandum and Final Order, in which it again enjoined the Senate Map for violating the Constitution's consecutive numbering mandate. In its order, the Trial Court provided the General Assembly until January 31, 2024, to enact a new Senate plan that complies with the Constitution's consecutive numbering mandate.

Now, the State Appellants seek to stay the Trial Court's injunction to allow for a standard-schedule appeal even though the sole issue on appeal—*i.e.*, Appellee

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<sup>1</sup> The Trial Court's April 6, 2022, injunction reset the April 7, 2022, candidate qualifying deadline to May 5, 2022.

<sup>2</sup> This Court's Opinion vacating the Trial Court's injunction did not address the merits of Appellee Hunt's constitutional challenge to the Enacted Senate Map.

Hunt’s standing—can be resolved swiftly by this Court, with ample time remaining for the General Assembly to enact a revised Senate map by the same time it did so in 2022 and months prior to the April 4, 2024, candidate qualifying deadline.<sup>3</sup> Appellee Hunt has already requested that this appeal be expedited, has proposed a schedule that would allow the Court to resolve all claims on appeal by January 2024, and has noted that this appeal can be bifurcated if the Court denies Appellant Wygant’s Motion for Expedited Appeal but agrees the issue of Ms. Hunt’s standing can be resolved expeditiously before the 2024 Senate elections.

The State Appellants’ request to stay the Trial Court’s injunction should be denied because this Court can adjudicate the State Appellants’ appeal on an expedited basis, thereby providing the General Assembly with sufficient time to enact a revised map on a similar schedule as it did in 2022, and months before the April 4, 2024, qualifying deadline. If, instead, the Court grants the State Appellants’ Motion to Stay and denies Appellee Hunt’s Motion for Expedited Appeal, Davidson County voters will have had to vote in, and be represented by, senatorial districts that violate the Tennessee Constitution not only in 2022 but also in 2024, even though the Trial Court enjoined the districts before each election. The second of these two constitutional violations can and should be avoided.

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<sup>3</sup> See Key Dates link on the website of the Tennessee Secretary of State: <https://sos.tn.gov/elections/calendar>.

**I. This appeal can be heard and decided by January 2024, allowing for enactment of a new Senate map well before the 2024 elections.**

If this Court grants Appellee Hunt’s Motion for Expedited Appeal, this Court can resolve the State Appellants’ appeal of the Trial Court’s injunction by the middle of January 2024.<sup>4</sup> Doing so would provide the General Assembly and the State’s election officers sufficient time for a revised Senate Map to be enacted on the same timeline the General Assembly used in 2022 and put into effect well before the April 4, 2024, candidate qualification deadline.

In 2022, the General Assembly enacted the challenged Senate map in late-January, and the Governor signed the legislation on February 6. If this Court hears and adjudicates the State Appellants’ appeal of the Trial Court’s decision regarding Appellee Hunt’s standing<sup>5</sup> by the week of January 8, 2024, the General Assembly can complete a new remedial map in late January, as it did in 2022. And, unlike would have happened in 2022 if the General Assembly had been required to enact a remedial map following the Trial Court’s April 6, 2022, injunction, the General Assembly’s remedial map here would be enacted well before the 2024 candidate qualification deadline, which will fall on April 4, 2024.<sup>6</sup>

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<sup>4</sup> Appellee Hunt’s Motion for Expedited Appeal seeks deadlines to file primary appellate briefs on December 15, 2023; to file response briefs on December 29, 2023; to file reply briefs on January 8, 2024; and seeks a hearing on the week of January 8, 2024.

<sup>5</sup> The State Appellants did not contest the merits of Appellee Hunt’s claim.

<sup>6</sup> See, Footnote 3, *above*.

## **II. The General Assembly can and should work on a remedial map while this Court hears the State Appellants' appeal.**

If the Court grants Appellee Hunt's Motion for Expedited Appeal and denies the State Appellants' Motion to Stay, the General Assembly will have sufficient time to complete the work required to enact a remedial map while the expedited appeal proceeds and before the Trial Court's January 31, 2024, deadline.

In 2022, on the day following the Trial Court's issuance of its order enjoining the Senate Map, Lieutenant Governor McNally's spokesperson noted as follows: "While Lt. Governor McNally remains confident the appeal will be successful, the Senate will start work on an alternative map so that it can be passed in the allotted timeframe, if it becomes necessary."<sup>7</sup> At the time, the Trial Court had ordered the General Assembly to enact a remedial map within 15 days. By comparison, as of this filing, 55 days remain before the Trial Court's January 31, 2024, deadline.

During the coming eight weeks, while the Court hears the State Appellants' appeal on an expedited basis, the General Assembly can draft a remedial map, to be enacted after this Court issues its opinion, if and only if this Court upholds the Trial Court's injunction. Notwithstanding the State Appellants' red herring plea that the General Assembly does not reconvene until January 9, 2024, members of the

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<sup>7</sup> See <https://www.newschannel5.com/news/republicans-tennessee-attorney-general-plan-to-appeal-decision-on-tennessee-senate-maps> (last visited December 5, 2023).

General Assembly and their staff can begin working on a remedial map today, including with opportunities for public input later this month or in January.<sup>8</sup> If, instead, the Court stays the injunction, the General Assembly can reasonably postpone this preliminary legislative work until after this Court issues its decision on the State Appellants' appeal, with the resulting effect of delaying the enactment of a remedial map for another election cycle, until 2026.<sup>9</sup>

**III. Given that an expedited appeal can be completed well before the Trial Court's January 31, 2024, deadline, a stay is unnecessary.**

As the State Appellants note in their Motion to Stay, this Court has not articulated a standard for determining when a stay pending appeal is warranted. This approach recognizes that no two requests to stay are alike. Here, for instance, the federal courts' four-prong test fits imperfectly with the reality that this Court can

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<sup>8</sup> The General Assembly does not have to be in session for members of the General Assembly and their staff to complete legislative work. In late 2021, members of the General Assembly completed draft reapportionment plans, convened public meetings, and convened committee meetings focused on reapportionment even though the General Assembly was out of session. (*See* Separate Memorandum of Chancellor Steven W. Maroney, dated November 22, 2023, at 5.)

<sup>9</sup> As noted in Appellee Hunt's Motion for Expedited Appeal, the uncontested expert testimony demonstrated that the constitutional defects of the Enacted Senate Map can be cured by altering the boundaries of fewer than five current senatorial districts. (Trial Transcript, Vol. I, filed in the Trial Court on May 16, 2023, at 220-223.) This reality provides all the more reason that the General Assembly can prepare a remedial map for post-decision enactment during the coming eight weeks.

fully adjudicate the State Appellants’ appeal before the date by which the Trial Court’s deadline requires action.

For instance, while the State Appellants and Appellee Hunt both assert the likelihood of success on appeal falls in their favor, this forward-looking factor is of limited relevance where the Trial Court’s injunction does not require the General Assembly to act until weeks after this Court will have adjudicated an expedited appeal.<sup>10</sup> Similarly, the Trial Court’s injunction stands no chance of irreparably harming the State Appellants when this Court can hear the appeal before the Trial Court’s January 31 deadline for legislative action. Either the Senate map will have been definitively invalidated before that date or, if not, the injunction will be vacated before the deadline. The Trial Court’s injunction will not, therefore, “force the General Assembly either to abandon its enacted legislative map or cede its sovereign redistricting authority to the court.” (Memo. in Support of Motion to Stay, at 14.)

Here, it is in the public interest for the Trial Court’s injunction to remain in place while this Court hears an expedited appeal because proceeding with an

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<sup>10</sup> Appellee Hunt does not brief her likelihood of success on appeal in detail herein because the factor is irrelevant given the opportunity for an expedited appeal. Appellee Hunt does, however, adamantly disagree with the State Appellants’ argument that they are likely to succeed on appeal. Like myriad plaintiffs over the past decades, Ms. Hunt has standing to pursue a redistricting / reapportionment challenge as a resident and voter in the exact, specific legislative district challenged herein. The Trial Court correctly analyzed Appellee Hunt’s standing, and Appellee Hunt will brief her standing in detail in her responsive appellate brief.

expedited appeal, while the General Assembly proceeds with preliminary legislative work, will ensure that the voters of multiple Middle Tennessee senatorial districts do not have to vote in, and be represented by, unconstitutional legislative districts in 2024 and beyond. The public interest, therefore, favors the swift, definitive resolution of this appeal, rather than allowing a Senate map that the State Appellants did not defend on the merits and that the Trial Court has twice enjoined to remain in place for a second of this decade's five legislative elections.<sup>11</sup>

### CONCLUSION

The State Appellants' Motion to Stay should be denied and Appellee Hunt's Motion for Expedited Appeal should be granted, as such action by this Court will ensure the definitive resolution of this constitutional challenge to the Enacted Senate map sufficiently in advance of the 2024 elections to ensure that Tennessee voters need not vote in unconstitutional senatorial districts for the second time during the course of this litigation.

Dated: December 7, 2023

Respectfully Submitted,

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<sup>11</sup> Appellee Hunt's Motion for Expedited Appeal notes that even if this Court determines Appellant Wygant's appeal of his challenge to the Enacted House Map does not justify expedited treatment, the Court should bifurcate the appeal and resolve the State Appellants' Senate map appeal on an expedited basis to avoid subjecting the voters of Tennessee to a second election in senatorial districts that the Trial Court has now determined violate the Tennessee Constitution based on a full trial record.

/s/ Scott P. Tift

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**CERTIFICATE OF SERVICE**

Pursuant to Rules 5 and 20 of the Tennessee Rules of Appellate Procedure, I hereby certify that a true and accurate copy of the foregoing *Appellee-Plaintiff Hunt's Response in Opposition to the State Appellants' Motion to Stay* has been served on the following individuals by placing the same, postage prepaid in the United States Mail on this the 7th day of December, 2023 and by sending the same to the following individuals by electronic mail.

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