ORIGINAL

IN THE SUPREME COURT OF TENNESSEE

GARY WYGANT
and FRANCIE HUNT,

Plaintiffs / Appellants,

v.

BILL LEE, Governor;
TRE HARGETT, Secretary of State;
and MARK GOINS,
Coordinator of Elections;
in their Official Capacities Only,

Defendants / Appellees.

Case No. M2023-01686-SC-R3-CV

Appeal from the Final Judgment of the Three-Judge Panel,
Davidson County Chancery Court, Case No. 22-0287-IV

RESPONSE / REPLY BRIEF OF APPELLANTS

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ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Appellees' fourth numbered issue presented for review wrongly assumes as fact that the Trial Court determined Appellant Hunt asserts only a generalized interest in constitutional government. This issue should be reframed as follows.

Was the Trial Court correct in holding that Appellant Hunt has standing to challenge the Enacted Senate Map?

ARGUMENT[1]

I. The Enacted House Map.

Concerning the Enacted House Map, Plaintiffs' / Appellants' initial brief details the applicable legal standard, the Trial Court's misinterpretation of that standard, and Defendants' failure to meet that standard at trial. Plaintiffs rest primarily on the analysis in their initial brief and further respond to Defendants' / Appellees' brief as follows:

a. The House claim is justiciable.

Forty years ago, this Court rejected the State's political-question / separation-of-powers defense and held that constitutional county-splitting claims are justiciable. *State ex rel. Lockert v. Crowell*, 631 S.W.2d 702, 705-706 (Tenn. 1982) ("*Lockert I*"). Last year, the United States Supreme Court agreed, rejecting a similar attempt by North Carolina's legal team to insulate the redistricting process from judicial review. *Moore v. Harper*, 600 U.S. 1 (2023). The political question and separation of powers doctrines do not render constitutional redistricting challenges nonjusticiable.[2]

Lacking viable political question or separation of powers grounds for non-justiciability, Defendants' non-justiciability argument rests on the erroneous claim

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[1] All citations herein to "T.R" refer to the Technical Record filed by the Clerk of the Appellate Courts on April 5, 2024.

[2] Appellees cite zero examples of a state supreme court insulating the redistricting process from judicial review on political question or separation of power grounds.

that the legal standard this Court articulated in its 1980s decisions is not workable. This critique fails because it mistakenly assumes that this Court's prior holdings require proof of mathematical precision rather than proof of a good faith effort to cross county lines only as necessary to comply with federal law.

Collectively, this Court's decisions from the 1980s articulated the following legal standard: in county-splitting cases, plaintiffs must first demonstrate that a district map divides at least one county. The State must then prove that the Legislature undertook an honest and good faith effort to divide counties only as required by federal law. Finally, if the State meets its burden, plaintiffs must prove bad faith or improper motive to prevail. This deferential standard does not force the Legislature into a game of "Russian roulette" between federal and state law compliance. Rather, so long as the State can meet the deferential standard of showing that the Legislature undertook the required good faith effort, the resulting redistricting map will be upheld even if the Legislature hypothetically could have divided fewer counties.

The county-splitting cases adjudicated in Tennessee to date reflect the workability of this standard: In *Lockert II* (*State ex rel. Lockert v. Crowell*, 656 S.W.2d 836 (Tenn. 1983)), this Court rejected a House plan with 57 county splits after the State defendants made "no serious attempt to justify the extent of the county line violations" at trial and when alternative House maps demonstrated that the

Legislature could have divided far fewer counties while still complying with federal law. *Id.* at 842. In *Lincoln County v. Crowell*, 701 S.W.2d 602 (Tenn. 1985), by contrast, this Court upheld the challenged House map because its compliance with the Court's *Lockert II* guidance for 1980s House maps reflected the Legislature's good faith effort to divide counties only as necessary to comply with federal law and because the plaintiffs failed to prove bad faith or improper motive.[3]

In *Rural West Tennessee African-American Affairs Council, Inc. v. McWherter*, 836 F. Supp. 447, 450 (W.D. Tenn. 1993), the State unsuccessfully sought to defend a challenged House map by arguing that the map met *Lockert II*'s purported 30-split safe harbor and 14% population variance safe harbor rather than by offering proof that the Legislature sought in good faith to divide counties only as necessary to comply with federal law. The State's decision to rely on non-existent safe harbors, rather than proffering evidence of a good faith effort to divide counties only as necessary to comply with federal law, fatally undermined the State's defense, particularly when paired with an alternative map that divided three fewer counties

[3] *Lincoln County* demonstrates the inaccuracy of Defendants' claim that the "good faith" prong and the "bad faith or improper motive" prong of the burden of proof cannot co-exist. In *Lockert II*, this Court provided the General Assembly with 1980s-specific guidance that a House map with no more than 30 county splits and with no more than a 14% population variance would presumptively pass constitutional muster. Because the Legislature then met those thresholds in its revised House map, the map on its face reflected a good faith effort to cross county lines only as necessary to comply with federal law. Even so, had the plaintiffs proffered evidence that one or more divided counties had actually been motivated by incumbency protection, for example, that evidence of bad faith would have overcome the presumption of good faith gleaned from the House map's compliance with *Lockert II*'s 1980s-specific threshold.

and that reduced the total variance from the 13.9 % down to 9.847%.[4]

Finally, in *Moore v. State*, 436 S.W.3d 775 (Tenn. Ct. App. 2014), the State defended a challenged Senate map. The Court first clarified the burden of proof, confirming that once plaintiffs demonstrate that a district map crosses county lines, the burden rests on the State "to demonstrate that the Act fulfills the requirements of equal protection while fulfilling, insofar as possible, state constitutional requirements." *Id.* at 785. The Court then upheld the challenged Act because its total population variance fell within the presumptively constitutional 10% threshold and because the only alternative maps proffered at trial had total population variances exceeding the presumptively constitutional 10% threshold. *Id.* at 786-88.

These cases reflect the workability of the applicable burden of proof. When the State proves a good faith effort to cross county lines only as necessary to comply with federal law, the State prevails absent evidence of bad faith or improper motive. When the State chooses not to proffer evidence of such a good faith effort, the State's failure of proof, particularly when paired with illustrative alternative maps, results in the invalidation of the challenged district map.

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[4] The *Rural West* court analyzed and expressly rejected the argument that *Lockert II* created a 30-split safe harbor. This holding directly refutes Defendants' claim that the existence of a 30-split safe harbor has been "the consensus reading of *Lockert II* among the legislature and the courts." (Appellees' Opening Brief, at 44.)

b. Wygant did not waive claims.

The Enacted House map divides Gibson County, where Wygant lives and votes, and the Complaint alleges that "Gibson County would not need to be divided if the General Assembly had endeavored to divide as few counties as necessary to ensure compliance with the equal population provisions of the Tennessee Constitution."[5] Plaintiffs' expert proved this fact at trial, and Defendants' expert agreed. Wygant did not waive any claims.

c. Wygant has standing.

Plaintiffs fully briefed Wygant's standing in their opening brief and principally rely on that briefing in response to Defendants' arguments. In short, Wygant has standing to challenge the Enacted House Map for the following reasons.[6]

Article II, Section 5 of the Tennessee Constitution prohibits dividing counties when drawing House districts. The Enacted House Map divides Gibson County. Wygant lives and votes in Gibson County. Thus, Wygant has standing to challenge the Enacted House Map because it dilutes the political power of his vote by denying him the full-county representation the Constitution guarantees. Whether the Legislature was justified in dividing Gibson County and 29 other counties is a merits issue that does not alter Wygant's standing.

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5 T.R. 682: Third Amended Complaint, at 695 ¶ 69.

6 The legislature bolstered standing for individuals like Wygant by enacting TENNESSEE CODE ANNOTATED § 1-3-121 in 2018, as discussed in Section II.b.ii, below.

Gibson County is one of 20 counties in Tennessee that "don't have enough population for a full district."[7] These 20 counties must be paired with one or more counties to create sufficiently populated districts, but they can either be kept whole or divided in doing so. Defendants' expert testified that there is no way to analyze each of these 20 counties in isolation and "say whether they have to be divided or could be kept whole and paired with another county."[8]

Given this demographic reality, the Enacted House Map cannot be justified or invalidated without analyzing the map as a whole and applying the statewide standard articulated in the 1980s and applied in Tennessee ever since—namely, does the map divide counties only as necessary to comply with federal law or did the Legislature undertake an honest and good faith effort to do so. For these reasons, Wygant has standing to challenge the Enacted House Map.[9]

d. The Tennessee Constitution does not permit the Legislature to disregard its ban on dividing counties.

The Tennessee Constitution has prohibited dividing counties when drawing Senate districts since 1796 and when drawing House districts since 1965.[10] Defendants' argument that Article II, Section 4 permits the Legislature to supersede

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7 Transcript, Vol. III, Doug Himes Expert Testimony, 532:6-10, 592:24-593:4.

8 *Id.*

9 In the alternative, even if this Court framed Wygant's standing as limited to challenging the division of his resident county, the proof and remedy must still address the map statewide.

10 *See, below,* Section II.B.i.

these bans in favor of other redistricting factors is unsupported by the Constitution's actual text, by the history of Section 4, and by the evidence presented at trial.

The primacy of the constitutional text within our legal system requires courts to tread lightly when asked to render constitutional text inoperable. Our canons of constitutional interpretation reflect this bedrock principle, including the whole text canon (when "construing the Constitution, the whole instrument must be taken into consideration, and no part so construed as to impair or destroy any other part"[11]); the harmonious reading canon (when constitutional provisions "seem to conflict it is [the courts'] duty to harmonize these portions and favor the construction which will render every word operative rather than one which would make some words idle and meaningless."[12]); the surplusage canon ("No words in our constitution can properly be said to be surplusage."[13]); and others.

Article II, Section 4 authorizes the Legislature to include "geography, political subdivisions, substantially equal population and other criteria as factors" when redistricting, but Defendants have provided no compelling reason to read this open-ended use of the generic, plural term, "factors," as license for the Legislature to elevate any one factor over the Constitution's express ban on county splitting. Absent express language authorizing the Legislature to override the Constitution's

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11 *Vollmer v. City of Memphis*, 792 S.W.2d 446, 448 (Tenn. 1990).

12 *Shelby Cnty. v. Hale*, 292 S.W.2d 745, 748–49 (Tenn. 1956).

13 *Planned Parenthood of Middle Tennessee v. Sundquist*, 38 S.W.3d 1, 14 (Tenn. 2000).

ban on dividing counties, Article II, Section 4 simply reflects the framers' clarification that the Legislature remains free to consider other redistricting factors in addition to complying with federal law and with the Constitution's express ban on county splitting.[14]

The history of Article II, Section 4's addition to the Constitution also illustrates that the language on which Defendants rely does not permit the Legislature to jettison Section 5's ban on county divisions. In 1963, the Supreme Court held that the "Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Reynolds v. Sims*, 377 U.S. 533, 568 (1963). Two years later, Tennesseans amended Article II, Section 4 to reflect this new standard by adding the following language: "The apportionment of Senators and Representatives shall be substantially according to population." The 1965 Amendment concurrently added the sentence at issue herein. Read together, these two additions reflect the framers' desire to memorialize Tennessee's commitment to comply with the newly articulated federal standard but also to permit the continued use of traditional redistricting factors where possible.

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[14] In drawing district lines for 99 House districts across 95 counties, the Legislature will regularly have opportunities to respect geographic lines, political subdivisions, incumbents' residences, and prior district cores without undermining compliance with federal law or dividing additional counties. House Map 13d_e reflects this fact, as it pairs the same small number of incumbents as the Enacted House Map and retains the same percentage of prior district cores as the Enacted House Map while dividing 6 fewer counties and achieving a lower total population variance.

Finally, even if this Court determined that Article II, Section 4 permits the Legislature to choose to divide counties in service of other redistricting factors, Wygant would still prevail because Defendants proffered no evidence that the Legislature chose to elevate any redistricting factor above the county-dividing ban when completing the current redistricting. Defendants shielded all fact evidence concerning the motivations underlying the Enacted House Map's district lines behind the attorney-client privilege, and the legislative history reveals the Legislature pursued a goal of dividing no more than 30 counties rather than dividing counties only as necessary to comply with federal law. Were the Legislature permitted by Article II, Section 4 to jettison Article II, Section 5's county dividing ban, Defendants would have had to provide proof of a deliberate intent to do so. Defendants provided no such proof at trial.

II. The Enacted Senate Map.

The Trial Court majority correctly held that Hunt has standing to challenge the violation of her right to vote in a senatorial district consecutively numbered with Davidson County's other three senatorial districts.

a. Defendants did not contest the Senate claim on its merits.

In the Enacted Senate Map, Davidson County's four senatorial districts are numbered nonconsecutively, as Senate Districts 17, 19, 20, and 21. Defendants do not contest the fact that this nonconsecutive numbering violates Article II, Section

3's mandate that, "[i]n a county having more than one senatorial district, the districts shall be numbered consecutively."

Hunt lives in Senate District 17, voted in District 17 in all three 2022 elections, and intends to continue voting in District 17 in future elections.[15] Based on these facts, the Trial Court majority correctly held that Hunt has standing to challenge the nonconsecutive numbering of Senate District 17.

b. Hunt has standing to pursue the Senate claim.

Defendants seek to shield all violations of Article II, Section 3 from judicial review by arguing that voters from populous counties who are forced to vote in nonconsecutively numbered Senate districts suffer no injury. Yet, the misnumbering of one populous county's Senate districts injures the citizens of the misnumbered district by diluting the political weight of their votes as compared to the votes of the citizens of the State's other populous counties.

i. The Tennessee Constitution's county-based protections.

The Tennessee Constitution has always prioritized the county unit over other political subdivisions by giving *counties'* citizens additional, unique voting rights. In the original 1796 Constitution, Article I, Section 4 concerned the Senate and included the following mandate: "When a District shall be composed of two or more Counties, they shall be adjoining, and no County shall be divided in forming a

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15 Transcript, Vol. I, 73:25-74:10, 76:9-77:5.

District."[16] This prohibition on dividing counties has remained in the Constitution ever since, having moved to Article II, Section 6 in the 1834 Constitution.

In 1982, this Court recognized that the Constitution's county-protective redistricting mandates give citizens of Tennessee's counties unique voting rights. In *Lockert I*, this Court noted that seemingly abstract constitutional requirements like the prohibition on county-splitting are grounded in "excellent policy reasons" such as citizens' "constitutional right to be represented in the State Senate as a political group by senators subject to election by all voters within that political group." 631 S.W.2d at 709 (approvingly quoting complaint).

In 1965, Tennessee's citizens expanded the Constitution's county-protective redistricting mandates.[17] Prior to 1965, Senators served two-year terms, with all seats elected every two years. The populace approved amendments in 1965 that extended Senate terms to four years and staggered Senate elections such that approximately half of the 33 Senate districts would be elected every two years. The 1965 Amendments also applied the staggered-term mechanism to the populous counties represented by more than one State Senator. By including this provision in the 1965 Constitution, the amendment endowed the voters in populous counties with the political power to elect staggered-term legislative delegations regardless of the unique dynamics of any given election.

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16 *See* https://sos.tn.gov/civics/guides/tennessee-state-constitution.

17 *See Journals and Debates of the Constitutional Convention of 1965.*

Courts have long recognized that staggered-term legislatures confer benefits to citizens in the form of stability, continuity, and seniority within a legislative body. *See, e.g., Legislature v. Reinecke*, 516 P.2d 6, 12 (Cal. 1973) ("The state may rationally consider stability and continuity in the Senate as a desirable goal which is reasonably promoted by providing for four-year staggered terms."). The Trial Court majority recognized this rational state interest, noting that Article II, Section 3's consecutive numbering provision is "grounded in the specific constitutional concern about avoiding turnover in Senate representation in populous counties and in preserving institutional knowledge and experience."[18] For this reason, the Trial Court identified the consecutive numbering provision as a "straightforward example" of the "enduring state constitutional value" of "county-intactness."[19]

Grounded in this history and in the express language of Article II, Section 3, Hunt suffers an individualized injury every time she votes in District 17 because District 17's misnumbering dilutes the political power of her vote as compared to the voters in the state's other populous counties.[20] The Trial Court agreed, holding that Hunt's injury "is an injury distinct to her; the injury is palpable, readily perceptible, tangible, noticeable and admittedly directly caused by the challenged

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18 T.R. 3476, Separate Opinion of Chancellor Russell T. Perkins, at 3489.

19 *Id.* at 3480, 3489.

20 Whether any given election actually causes broad turnover in Davidson County's Senate seats does not affect the injury analysis because the misnumbering of Davidson County's senate seats infringes Hunt's right to vote every time she votes by diluting the political power of that vote.

legislation," and holding that "the Senate map has infringed upon Ms. Hunt's constitutional right to vote in a senatorial district consecutively numbered with the other senatorial districts in her county of residence."[21, 22] Defendants' claim that the Trial Court majority did not identify an individualized injury is incorrect, and the majority's decision should be upheld on these grounds.

ii. TENNESSEE CODE ANNOTATED § 1-3-121 confirms Hunt's standing.

In 2018, the Tennessee General Assembly confirmed that Tennesseans have standing to challenge the constitutionality of state actions that affect their constitutional interests by codifying a cause of action for persons who have been "affected" by constitutional violations. TENNESSEE CODE ANNOTATED § 1-3-121 states as follows:

> Notwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action. A cause of action shall not exist under this chapter to seek damages.

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21 T.R. 3476, Separate Opinion of Chancellor Russell T. Perkins, at 3490.

22 Defendants misleadingly quote a handful of lines from Hunt's trial testimony to argue that Hunt only seeks to insure constitutional governance through this lawsuit. Hunt testified that the intra-county staggering of terms promotes "expertise in leadership" and "institutional knowledge," and agreed that "nonconsecutive numbering of the senate districts diminishes the voice of [her] as a voter." *See* Transcript, Vol. I, 85, 93, 115-16. This testimony, as well as the uncontested fact that Hunt lives and votes in misnumbered District 17, amply supports Hunt's claim that the misnumbering of District 17 violates "her right to vote in a senatorial district constructed in compliance with the Tennessee Constitution." *See* T.R. 682: Third Amended Complaint, at 696, ¶ 76. That she also believes the Legislature should be required to comply with the Tennessee Constitution as a matter of principle does not undermine the fact that she pled and proved individualized injury sufficient to support standing.

Plaintiff Hunt would have suffered injury sufficient to support standing prior to Section 1-3-121's enactment for the reasons described above, but the Legislature's recent creation of an express cause of action for declaratory and injunctive relief when a governmental action affects a person's constitutional interests confirms Hunt's standing to sue.[23]

To the extent the Court considers the term "affected person" as used in Section 1-3-121 to be ambiguous, the statute's legislative history makes clear that the Section was designed to confer standing on a wide swath of Tennesseans affected by constitutional violations. During the House floor debate, Section 1-3-121's sponsor, Representative Casada, explained: "This legislation . . . has to do with giving the right of the citizen to take government to court if they violate our state law or our constitutional rights. It makes it very clear and cold we have that right." House Floor Session, 110 Gen. Assemb., 1:07:09–1:07:27 (Mar. 15, 2018), https://bit.ly/3dLdagE. Representative Clemmons then asked Representative Casada, "Well you still have a standing issue. The standing issue, is that what you're trying to address? Or are you saying everybody regardless if they're impacted or not has standing?" *Id.* at 1:08:52–1:09:03. Representative Casada responded, "No, I'm giving standing to the citizens in that particular jurisdiction that they—so, I'm giving standing, you are correct." *Id.* at 1:09:03–1:09:10.

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[23] Plaintiffs pled Section 1-3-121. *See* T.R. 686 ¶ 13.

After Representative Clemmons asked for clarification, Representative Casada referred the question to the late Representative Carter, then Chair of the House Civil Justice Committee. *Id.* at 1:09:12–1:09:33. Representative Clemmons restated his question: "Are you trying to create standing for everyone to bring a cause of action whether or not they actually have standing as that's defined in the rules and the law?" *Id.* at 1:09:44–1:10:01. Representative Carter responded, "Currently, the law generally in Tennessee is that a taxpaying citizen does not have standing to bring a case. This changes that and says if you are affected and are a taxpayer you can bring a case." *Id.* at 1:10:04–1:10:17. Representative Casada subsequently added, "I think we as taxpaying citizens of this state have a right to take our government to court if they don't comply with, for example, state law." *Id.* at 1:11:32–1:11:40. Representative Casada later elaborated, "[C]ourts have opined that citizens don't have this right. So we're making it very clear that we as citizens of this state do have a right to take our governments to court." *Id.* at 1:13:07–1:13:17.[24]

As a voter in the only current Senate district that violates Article II, Section 3's consecutive numbering mandate, Plaintiff Hunt has been affected by the

[24] The Tennessee Court of Appeals has opined that TENNESSEE CODE ANNOTATED § 1-3-121 "does not relax the particularized injury requirement for standing." *Grant v. Anderson*, No. M2016-01867-COA-R3-CV, 2018 WL 2324359, at *9 (Tenn. Ct. App. May 22, 2018). But *Grant* does not bind this Court, and there is no indication that the Court in *Grant* considered the legislative history presented here. Moreover, Grant was decided before this Court broadly construed TENNESSEE CODE ANNOTATED § 1-3-121 as waiving the State's sovereign immunity defense in *Recipient of Final Expunction Order v. Rausch*, 645 S.W.3d 160, 168–69 (Tenn. 2022).

Legislature's decision to violate the black letter law of the Constitution. Under both traditional standing analysis and the reach of Section 1-3-121, Hunt has standing.[25]

iii. Hunt's district-specific allegations do not amount to generalized grievances against governmental action.

Even though Hunt asserts a district-specific injury that the voters of Tennessee's other 32 Senate districts do not share, Defendants attempt to avoid judicial review by arguing that Hunt's claims amount to generalized grievances concerning the government's failure to comply with the Constitution. The caselaw on generalized grievances refutes Defendants' position.

The United States Supreme Court's decision in *United States v. Hays*, 515 U.S. 737 (1995), is one of the Court's most often cited precedents concerning

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[25] The United States Supreme Court encourages looking to legislative enactments to determine whether an individualized harm is sufficiently concrete to meet the injury element of standing. In *TransUnion, LLC v. Ramirez*, 594 U.S. 413 (2021), the Court explained that while Congress cannot bestow standing where no injury exists, courts "must afford due respect to Congress's decision to impose a statutory prohibition or obligation on a defendant, and to grant a plaintiff a cause of action to sue over the defendant's violation of that statutory prohibition or obligation." *Id.* at 425. In this way, "Congress may 'elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.'" *Id.* When undertaking such analyses, "history and tradition offer a meaningful guide to the types of cases" that courts can hear. *Id.* at 424.

In the case at bar, history joins Section 1-3-121 in supporting Hunt's standing, as the Tennessee Constitution has included county-intactness rights since its inception in 1796 and added the county-protective consecutive numbering right in 1965. Furthermore, over 40 years ago, this Court permitted a consecutive numbering challenge to proceed to merits adjudication as one of the claims asserted in *Lockert I*, noting as guidance to the General Assembly that "constitutional standards which must be dealt with in any plan include . . . consecutive numbering of districts." *Lockert I*, 631 S.W.2d at 715.

Finally, *TransUnion* exclusively concerned purported statutory rights. Here, the Tennessee Constitution, rather than a mere statute, enshrines county intactness rights, and Section 1-3-121 confirms that those rights can be pursued by affected Tennesseans.

generalized grievances in the redistricting context. In *Hays*, several Louisiana voters challenged the state's congressional map for violating the Constitution by including a racially gerrymandered congressional district. *Id.* at 739. The Court dismissed the action on standing grounds because the plaintiffs did "not live in the district that is the primary focus of their racial gerrymandering claim." *Id.* Because the voters could not plausibly allege that they had been injured by the constitutional deficiencies of a district where they neither lived nor voted, the Court determined that their challenge amounted only to a "generalized grievance against allegedly illegal governmental conduct," insufficient to establish standing. *Id.* at 743.

Like in *Hays*, the plaintiffs in *Gill v. Whitford*, 585 U.S. 48 (2018), brought constitutional gerrymandering challenges (here, partisan gerrymandering) but failed to show that the districts where they lived had been affected by partisan gerrymandering. *Id.* at 69-72. Again, the Court held that the plaintiffs lacked standing because their concerns about districts where they did not live amounted to generalized grievances concerning governmental action. *Id.* at 72.

The decisions in *Hays* and *Gill* illustrate the fallacy of Defendants' claim that Hunt alleges a generalized grievance insufficient to support the injury element of standing. To the contrary, unlike the plaintiffs in *Hays* and *Gill*, Hunt lives and votes in the single Senate district that she alleges has the effect of degrading her right to vote by diluting the political power of her vote as compared to the citizens of the

State's other populous counties.[26] Were voters from one of the State's other 32 Senate districts to have brought these claims, *Hays* and *Gill* would have required dismissal on standing grounds because those voters, unlike Hunt, would not have been able to establish that District 17's constitutional deficiency degraded their individual right to vote.

The cases Defendants cite on generalized grievances do not alter this analysis. Defendants cite and discuss *Lance v. Coffman*, 549 U.S. 437 (2007). But in *Lance*, four Colorado citizens challenged the fact that the state's entire congressional map had been drawn by a court after the state legislature failed to draw a congressional map based on 2000 census results. *Id.* at 437-38. The Court held that the voters lacked standing to challenge the statewide map because doing so amounted merely

[26] Defendants misleadingly claim the Trial Court majority disavowed the individualized injury element of standing. To the contrary, the Trial Court majority found as follows: "This injury is an injury distinct to her; the injury is palpable, readily perceptible, tangible, noticeable and admittedly directly caused by the challenged legislation." T.R. 3476, Separate Opinion of Chancellor Russell T. Perkins, at 3490. Ignoring this express finding of individualized injury, Defendants misconstrue the majority's subsequent rejection of the notion that a voter cannot assert individualized injury if she shares her injury with any other voter. On this argument, the Court stated, "The fact that Ms. Hunt shares her injury with other voters in the Davidson County portion of Senate District 17, in contrast to voters in Tennessee's other populous counties, does not operate to close the courthouse doors to her. A voter's injury does not have to be individualized for that voter to have standing . . ." *Id.* Viewed in isolation, the Court's imprecise use of "individualized" instead of "individual" or "unique" in this two-sentence excerpt could be misconstrued as the Court having disavowed the individualized injury prong of standing. But the majority's fulsome discussion of Hunt's standing, including the above-quoted sentence, makes clear that the majority determined that Hunt alleged, and proved, an individualized injury that meets the injury element of the three-prong test for standing.

to a generalized grievance "seeking relief that no more directly and tangibly benefits [them] than it does the public at large." *Id.* at 439.[27]

CONCLUSION

For the reasons stated in Plaintiffs' opening brief and herein, this Court should reverse the Trial Court majority upholding the Enacted House Map and should uphold the Trial Court majority invalidating the Enacted Senate Map. The Court should then set a deadline for the General Assembly to remedy the invalidated maps' constitutional deficiencies, per TENNESSEE CODE ANNOTATED § 20-18-105.

[27] Defendants also cite *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), *Carney v. Adams*, 592 U.S. 53 (2020), and *Whitmore v. Arkansas*, 495 U.S. 149 (1990). None of these cases concern redistricting. Rather, they present or discuss classic examples of citizen attempts to challenge generally applicable governmental actions.

Dated: June 20, 2024

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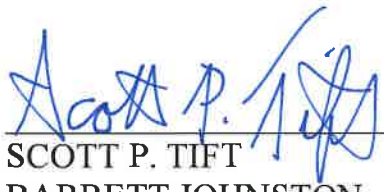
CERTIFICATE OF COMPLIANCE

Pursuant to Tennessee Rule of Appellate Procedure 30(e), I hereby certify that this brief contains 4,998 words, excluding the Title/Cover page, Table of Contents, Table of Authorities, Certificate of Compliance, Attorney Signature Block, and Certificate of Service.



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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2024, a true and exact copy of the foregoing *Response / Reply Brief of Appellants* was served via first class U.S. Mail, postage prepaid, as well as by electronic mail, on the following counsel for the Appellees:

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