

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

**TELISE TURNER, GARY WYGANT,)
and FRANCIE HUNT,)
)
Plaintiffs,)
)
v.)
)
BILL LEE, Governor, TRE HARGETT,)
Secretary of State, MARK GOINS,)
Tennessee Coordinator of Elections; All)
in their Official Capacity Only,)
)
Defendants.)**

**NF
CASE NO. 22-287-IV**

**Russell T. Perkins, Chief Judge
J. Michael Sharp, Judge
Steven W. Maroney, Chancellor**

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ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This lawsuit challenges the constitutionality of the Tennessee House and Senate reapportionment maps enacted by the General Assembly in 2022. Plaintiffs allege that the legislature’s reapportionment of the House of Representatives map divides more counties than necessary to ensure that all districts have approximately equal populations and that the reapportionment of the Senate map fails to consecutively number the four senatorial districts included in Davidson County. On March 1, 2022, pursuant to Tenn. Sup. Ct. R. 54, the Tennessee Supreme Court ordered a three-judge panel (“Panel”) to preside over this case pursuant to Tenn. Code Ann. § 20-18-101. The Panel consists of The Honorable Russell T. Perkins, J. Michael Sharp, and Steven W. Maroney.

On January 20, 2023, Plaintiffs and Defendants filed competing motions for summary judgment. The motions for summary judgment came before the Panel for hearing on Tuesday, March 7, 2023 at 1:00 p.m. As more fully discussed herein, the motions for summary judgment

are GRANTED in part and DENIED in part. Given the Panel’s mixed ruling on the parties’ motions for summary judgment, this matter will proceed to trial on April 17, 2023 at 9:00 a.m.

I. Introduction

The Tennessee Constitution provides that, “in a county having more than one senatorial district, the districts shall be numbered consecutively.” Tenn. Const. art. II, § 3. The Senate map enacted by the General Assembly numbers Davidson County’s four senatorial districts 17, 19, 20, and 21. The Senate map is codified at Tenn. Code Ann. § 3-1-102. Plaintiffs seek a judgment that, as a matter of law, Tenn. Code Ann. § 3-1-102 violates the Tennessee Constitution.¹ Plaintiffs ask this Panel to direct the General Assembly to remedy these alleged violations as required by Tenn. Code Ann. § 20-18-105.

The Tennessee Constitution requires the House to be divided into 99 districts and that “no county shall be divided in forming such a district.” Tenn. Const. art. II, § 5. In light of the United States Constitution’s equal population and equal protection requirements, the Tennessee Supreme Court has held that Tennessee House districts must “cross as few county lines as is necessary to comply with federal constitutional requirements.” *Lockert v. Crowell*, 656 S.W.2d 836, 838 (Tenn. 1983)(“*Lockert II*”). The enacted House map crosses 30 county lines. Plaintiffs assert that Defendants cannot show that the 30 county splits were necessary to comply with federal constitutional requirements. Plaintiffs ask this Panel to determine that, as a matter of law, Tenn. Code Ann. § 3-1-103 violates the Tennessee Constitution and to direct the General Assembly to remedy these alleged violations as required by Tenn. Code Ann. § 20-18-105.

The Tennessee Constitution requires an injury in fact to bring suit. *See City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013); *ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn.

¹ Defendants do not contest this claim on the merits.

2006). Defendants assert that Plaintiffs cannot demonstrate an injury in fact sufficient to convey standing to challenge the Senate map. Defendants further assert that Plaintiffs cannot demonstrate that the General Assembly acted in bad faith or with improper motive when enacting the House map. For these reasons, Defendants seek summary judgment in their favor pursuant to Tenn. R. Civ. P. 56.04.

II. Factual Allegations on Summary Judgment

Telise Turner is a resident of Shelby County, residing in House District 90, which district was removed from Shelby County in the 2022 reapportionment. Ms. Turner is registered to vote in Shelby County. For the decade preceding the General Assembly's 2022 reapportionment of the Tennessee House of Representatives, Shelby County contained 14 House districts. The 2022 reapportionment eliminated one of those districts, District 90, where Ms. Turner lives. Plaintiffs allege the newly enacted House map violates Ms. Turner's constitutional right, as a Shelby County resident and voter, to representation by a Shelby County House delegation constructed in compliance with the Tennessee Constitution and her right to vote in a House district constructed in compliance with the Tennessee Constitution.

Gary Wygant is a resident and registered voter of Gibson County. For the decade preceding the General Assembly's 2022 reapportionment of the Tennessee House of Representatives, Gibson County was not divided between two House districts. Rather, Gibson County fell wholly within House District 79. Under the General Assembly's 2022 reapportionment, Gibson County will be split between two House districts, with each district paired with a neighboring county or counties. Plaintiffs allege that the newly enacted House map violates Mr. Wygant's constitutional right to countywide representation by a single House member and his right to vote in a House district constructed in compliance with the Tennessee Constitution.

Francie Hunt is a resident of Davidson County and resides within Senate District 17, which was created by the legislature's 2022 reapportionment. Ms. Hunt is registered to vote in Davidson County. Senate District 17 is not consecutively numbered with the other three Davidson County senatorial districts, which are numbered 19, 20, and 21. Plaintiffs allege that the newly enacted Senate map violates Ms. Hunt's constitutional right, as a Davidson County resident and voter, to representation by a consecutively numbered county senatorial delegation and her right to vote in a senatorial district constructed in compliance with the Tennessee Constitution.

Reapportionment

The Tennessee Constitution requires the General Assembly to reapportion both houses of the General Assembly after each decennial census made by the Bureau of Census of the United States is available to the General Assembly. *See* Tenn. Const. art. II, § 4. The Tennessee Constitution permits the General Assembly to use geography, political subdivisions, and substantially equal population as considerations when drawing legislative districts. *See id.* The Tennessee Constitution requires the General Assembly to apportion the House of Representatives into 99 districts. *See* Tenn. Const. art. II, § 5. The Tennessee Constitution sets the length of individual senate terms at four years. *See* Tenn. Const. art II, § 3. Further, the Tennessee Constitution staggers the election of senatorial districts such that half of Tennessee's Senate seats are up for election every two years.

The House Map

After the 2020 census, the legislature reapportioned the districts for the Tennessee House of Representatives ("House"). The initial bill, House Bill 1035, was introduced on February 10, 2021. This plan contains 99 single member districts; is wholly based on 2020 census geography

and population data; and establishes 99 contiguous districts. The plan has an overall variance of approximately 9.91%, splits a total of 30 counties, and maintains 13 majority-minority districts.

During the legislative process, State Representative Bob Freeman proposed an alternative House map with only 23 county divisions. This alternate proposal included a range of districts whose populations deviated from the equal population ideal in a range from -4.74% to +4.98% with a total variance of 9.72%. This alternative proposed House map divided seven fewer counties than the enacted House map while achieving a smaller total population variance and a superior average deviation from the ideal district population across all districts. Additionally, the alternate proposed House map divided fewer political subdivisions (18) than the enacted map (65).

The House voted to adopt House Bill 1035. It was then referred to the Tennessee Senate (“Scnate”) (Senate Bill 0779, Pub. Chap. 598 (“SB 0779”)). The Tennessee General Assembly completed its latest decennial reapportionment of the House through its enactment of SB 0779. The House passed SB 0779 on January 24, 2022 with a vote of 70 in favor and 27 opposed. The Senate passed SB 0779 on January 26, 2022 with a vote of 23 in favor and 6 opposed. Tennessee Governor Bill Lee signed SB 0779 on February 6, 2022. Under the enacted map, House District 71 will comprise four counties, three of which – Lawrence, Hardin, and Maury – are divided.

The 2020 census identified 6,910,840 people as the total population of Tennessee. By dividing this total population among Tennessee’s 99 House districts, each House district would contain 69,806 people, if every House district contained an equal population. The House map created by SB 0779 includes a range of districts whose populations deviate from the equal population ideal in a range from -4.82% to +5.09%, with a total variance of approximately 9.91%. The enacted House map also divides 30 counties in the creation of multi-county districts: Anderson, Bradley, Carroll, Carter, Claiborne, Dickson, Fentress, Gibson, Hamblen, Hardeman,

Hardin, Hawkins, Haywood, Henderson, Henry, Jefferson, Lawrence, Lincoln, Loudon, Madison, Maury, Monroe, Obion, Putnam, Roane, Sevier, Sullivan, Sumner, Williamson, and Wilson. The House map is codified at Tenn. Code Ann. § 3-1-103.

The Senate Map

In 2022, the legislature reapportioned the districts for the Senate. The initial bill, Senate Bill 0780, was introduced on February 9, 2021. The plan had an overall deviation of 6.17%, split 10 counties, paired no incumbents, and had four majority-minority districts. Senate Bill 0780 was referred to the Senate Judiciary Committee and was recommended for passage on January 18, 2022. When Senate Bill 0780 came before the full Senate for third and final consideration on January 20, 2022, Senator Yarbrow introduced Amendment 2, which presented a new and different plan for reapportionment. Amendment 2 had an overall deviation of 7.7%, split 8 counties, paired no incumbents, and had 3 majority-minority districts. Amendment 2 was ultimately tabled, and the Senate voted to adopt Senate Bill 0780.

Senate Bill 0780 created four senatorial districts within Davidson County. Three of these districts are wholly within Davidson County. These three districts are numbered 19, 20, and 21. The fourth district includes a portion of Davidson County as well as all of Wilson County. This district is numbered 17.

The Tennessee General Assembly completed its latest decennial reapportionment of the Senate through its enactment of Senate Bill 0780, Pub. Chap. 596. The Tennessee Senate passed SB-0780 on January 20, 2022, with a vote of 26 in favor and 5 opposed. The Tennessee House of Representatives passed SB 0780 on January 24, 2022 with a vote of 71 in favor and 26 opposed. Governor Lee signed SB 0780 on February 6, 2022. The Senate map is codified at Tenn. Code Ann. § 3-1-102.

III. Procedural History

Approximately two and a half weeks after both the House and Senate redistricting plans became law, Plaintiffs filed their Complaint, challenging the constitutionality of each map. Plaintiffs allege that the House plan violates the Tennessee Constitution by excessively dividing counties and that the Senate Plan violates the Tennessee Constitution by failing to consecutively number the districts in Davidson County. On March 11, 2022, together with an Amended Verified Complaint, Plaintiffs sought a temporary injunction. On April 6, 2022, a majority of the Panel granted a temporary injunction with respect to the Senate plan. On April 7, 2022, Defendants filed for extraordinary appeal pursuant to Tenn. R. App. P. 10.

The Tennessee Supreme Court assumed jurisdiction and granted the application for extraordinary appeal. On April 13, 2022, the Tennessee Supreme Court vacated the temporary injunction, determining that Plaintiffs failed to demonstrate that their alleged harms outweighed the electoral harm created by delaying the Senatorial candidate filing deadline and its subsequent harms on the administration of the upcoming election. On remand, Plaintiffs filed a Second Amended Complaint on June 16, 2022, which reflected that relief was now sought in advance of the 2024 elections. On October 17, 2022, Plaintiffs filed their Third Amended Complaint, which substituted Plaintiff Francie Hunt for Plaintiff Akilah Moore.

After the Tennessee Supreme Court vacated the Panel's temporary injunction enjoining the implementation of the Senate plan on grounds unrelated to Defendants' challenge to standing or their assertion that the Senate plan was constitutional, Defendants later stated in the technical record that they were no longer defending the substantive constitutionality of the Senate plan, asserting that their sole defense of the Senate plan would be on standing. In this same time frame, the Panel ruled that information relevant to legislative intent and redistricting approaches discussed

by the legislature behind closed doors were not discoverable. Given Defendants' concession that they would not be defending the Senate plan on the merits, the information shielded from discovery relates most directly to the House plan.

On January 20, 2023, Defendants filed their motion for summary judgment, asserting that Plaintiffs did not have standing to challenge either plan and asserting that the House plan was constitutional, relying, in measured part, on assertions that Plaintiffs had not made a sufficient showing of intent. Similarly, Plaintiffs filed a competing motion for summary judgment urging that they had standing to challenge both plans and that both plans were unconstitutional.

IV. Summary Judgment Standard

Tennessee Rule of Civil Procedure 56, which was adopted in 1970, allows parties to obtain a partial or full judgment before trial if the moving party is able to “show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Tenn. R. Civ. P. 56.04. The summary judgment mechanism was designed to fill a then-existing procedural gap “for disposition of a case in the trial courts without an actual trial on the merits if the case could not be disposed of on demurrer or plea in abatement.” Tenn. R. Civ. P. 56 advisory commission comment. The Commission, therefore, described the rule as “a substantial step forward to the end that litigation may be accelerated, insubstantial issues removed, and trial confined only to genuine issues.” *Id.* Rule 56, consistent with corresponding rules adopted for the federal system and by other states, contemplates that litigants would have an adequate opportunity to develop the evidentiary record (through discovery and other means) before the case, or issues in a case, may properly be decided by summary judgment. *See* Tenn. R. Civ. P. 56.03, 56.04, 56.06, 56.07; *Craven v. Lawson*, 534 S.W.2d 653, 655 (Tenn. 1976).

It is now well-settled that a court may grant summary judgment if it determines that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *See Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). In the summary judgment context, the court’s consideration of the facts is record driven. *See McClung v. Delta Square Ltd. P’ship*, 937 S.W.2d 891, 894 (Tenn. 1996). The parties, therefore, should not attempt to establish or refute liability under Tenn. R. Civ. P. 56 by merely resting on general allegations in the pleadings. *See* Tenn. R. Civ. P. 56.06; *Byrd*, 847 S.W.2d at 215; *McCarley v. West Quality Food Serv.*, 948 S.W.2d 477 (Tenn. 1997).

In determining whether there are genuine issues of material fact, the court is required to construe the facts in the light most favorable to the nonmoving party. *See Blair v. West Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004); *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000). Simply put, “summary judgment should be granted if the nonmoving party’s evidence at the summary judgment stage is insufficient to establish the existence of a genuine issue of material fact for trial.” *Rye v. Women’s Care Ctr. Of Memphis*, 477 S.W.3d 235, 265 (Tenn. 2015).² In ruling on a summary judgment motion, Rule 56 does not require the court to make findings of fact and conclusions of law, but, rather Rule 56 requires the court to “state the legal grounds upon which the court denies or grants the motion.” Tenn. R. Civ. P. 56.04.

V. Discussion

The Tennessee Constitution prohibits the division of individual counties when creating multi-county legislative districts, and the Fourteenth Amendment to the U.S. Constitution requires the creation of legislative districts with roughly equal populations. The Tennessee Supreme Court has reconciled these two constitutional provisions by holding that the General Assembly must

² As far as the Court can determine, the *Rye* standard is consistent with the statutory standard (Tenn. Code Ann. § 20-16-101) adopted by the Tennessee General Assembly in 2011.

create as few county-dividing districts as is necessary to ensure that all legislative districts contain roughly equal populations. *See Rural West Tenn. African-Am. Affairs Council, Inc. v. McWherter*, 836 F. Supp. 447, 450 (W.D. Tenn. 1993)(“*Rural West Tenn.*”); *Lockert II*, 656 S.W.2d at 838. Plaintiffs allege the General Assembly’s reapportionment of the House of Representatives violates this constitutional mandate by creating significantly more county-dividing House districts than necessary to maintain districts with roughly equal populations. The newly enacted House reapportionment plan crosses 30 county lines.

When a single county contains more than one senatorial district, the Tennessee Constitution requires the districts in that county to be numbered consecutively. *See* Tenn. Const. art. II, § 3. This requirement ensures that half of a large county’s senatorial districts will be on the ballot in presidential election years (even-numbered districts) and the other half will be on the ballot in gubernatorial election years (odd-numbered districts). The General Assembly’s new Senate map creates four senatorial districts within Davidson County, including three districts that are entirely within Davidson County and a fourth district that includes a portion of Davidson County with all of Wilson County. The General Assembly numbered these districts 17, 19, 20, and 21. Thus, three districts will be on the ballot during gubernatorial elections and one district will be on the ballot during presidential elections. Plaintiffs allege the Senate apportionment map violates the Tennessee Constitution’s requirement that senatorial districts shall be numbered consecutively. *See* Tenn. Const. art. II, § 3. Defendants are not contesting this claim on the merits.

Plaintiffs request that these purported constitutional violations be corrected before the 2024 legislative elections. Plaintiffs ask this Panel to give the General Assembly a minimum of 15 days to enact new House and Senate apportionment plans that correct the alleged constitutional violations. *See* Tenn. Code Ann. § 20-18-105(a). If the General Assembly does not enact new

maps by the Panel's deadline, then Plaintiffs request the Panel impose an interim districting plan to be applied only to the 2024 legislative election cycle. *See* Tenn. Code Ann. § 20-18-105(b).

A. Standing

As a threshold issue, Defendants assert that Plaintiffs cannot demonstrate an injury in fact sufficient to convey standing to challenge the Senate map and cannot demonstrate that the General Assembly acted in bad faith or with an improper motive when enacting the House map. Questions of justiciability must be considered before proceeding to the merits of any remaining claims.³ *See UT Med. Grp., Inc. v. Vogt*, 235 S.W.3d 110, 119 (Tenn. 2007). To qualify as justiciable, an issue must place a real interest in dispute and not be merely theoretical or abstract. *See Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cty.*, 301 S.W.3d 196, 203 (Tenn. 2009); *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 838 (Tenn. 2008). A justiciable issue is one that gives rise to “a genuine, existing controversy requiring the adjudication of presently existing rights.” *Vogt*, 235 S.W.3d at 119. Justiciability encompasses several distinct doctrines, including standing.

Standing determines whether a litigant is entitled to pursue judicial relief for a particular issue or cause of action. *See ACLU of Tenn.*, 195 S.W.3d at 619. “The primary focus of a standing inquiry is on the party, not on the merits of the claim.” *Metropolitan Air Research Testing Auth. v. Metropolitan Gov't of Nashville & Davidson Cty.*, 842 S.W.2d. 611, 615 (Tenn. Ct. App. 1992). Standing requires a “careful judicial examination of a complaint’s allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted.” *Allen v. Wright*, 468 U.S. 737, 752 (1984).

Our jurisprudence recognizes two categories of standing that govern who may bring a civil cause of action: non-constitutional standing⁴ and constitutional standing.

³ As stated above, Defendants are not defending the merits of the Senate map.

⁴ To establish prudential standing:

Non-constitutional standing focuses on considerations of judicial restraint, such as whether a complaint raises generalized questions more properly addressed by another branch of the government, and questions of statutory interpretation, such as whether a statute designates who may bring a cause of action or creates a limited zone of interests. Constitutional standing . . . is one of the “irreducible . . . minimum” requirements that a party must meet in order to present a justiciable controversy.

City of Memphis, 414 S.W.3d at 98 (internal citations omitted).

Here, Defendants challenge Plaintiffs’ constitutional standing. To establish constitutional standing, a plaintiff must satisfy three criteria:

First, a party must show an injury that is “distinct and palpable”; injuries that are conjectural, hypothetical, or predicated upon an interest that a litigant shares in common with the general citizenry are insufficient in this regard. Second, a party must demonstrate a causal connection between the alleged injury and the challenged conduct. While the causation element is not onerous, it does require a showing that the injury to a plaintiff is “fairly traceable” to the conduct of the adverse party. The third and final element is that the injury must be capable of being redressed by a favorable decision of the court.

Id. (internal citations omitted).

A generalized grievance against allegedly illegal governmental conduct is insufficient to show standing. *See United States v. Hays*, 515 U.S. 737, 743 (1995).

“The Supreme Court has long held that a plaintiff does not have standing ‘to challenge laws of general application where their own injury is not distinct from that suffered in general by other . . . citizens.’” *Johnson v. Bredesen*, 356 Fed. Appx. 781, 784 (6th Cir. 2009)(quoting *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 598, 127 S. Ct. 2553, 168 L. Ed. 2d 424 (2007)). “This is because the judicial power of the United States defined by Art. III is not an unconditional authority to determine the constitutionality of legislative or executive acts.” *Id.* (alteration, internal quotation marks, and citation omitted). Thus, when a plaintiff asserts that the law has not been followed, the plaintiff’s “injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that [the Supreme Court] ha[s] refused to countenance in the past.” *Lance v. Coffman*, 549 U.S. 437, 442, 127 S. Ct. 1194, 167 L. Ed. 2d 29 (2007) (per

(1) a plaintiff must assert his own legal rights and interests, without resting the claim on the rights or interests of third parties; (2) the claim must not be a ‘generalized grievance’ shared by a large class of citizens; and (3) in statutory cases, the plaintiff’s claim must fall within the ‘zone of interests’ regulated by the statute in question.

Wuliger v. Manufacturers Life Ins. Co., 567 F.3d 787, 793 (6th Cir. 2009 (quoting *Coyne v. American Tobacco Co.*, 183 F.3d 488, 494 (6th Cir. 1999)).

curiam). *Cf. Baker v. Carr*, 369 U.S. 186, 207-08, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962) (finding voters had standing to challenge state apportionment statute under Equal Protection clause).

Moncier v. Haslam, 1 F. Supp. 3d 854, 859 (E.D. Tenn. 2014).

“The party who seeks the exercise of jurisdiction has the burden “to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute.” *Hays*, 515 U.S. at 743. A person’s right to vote is individual and personal in nature, and “voters who allege facts showing disadvantage to themselves as individuals have standing to sue.” *Baker v. Carr*, 369 U.S. 186, 204 (1962).

House Map

Defendants assert Plaintiffs lack standing to challenge the enacted House map on the basis of county splits because none of the plaintiffs live in an unconstitutionally split county. Ms. Turner resides in Shelby County, and Ms. Hunt resides in Davidson County. Neither of these counties is split under the House map. Accordingly, Ms. Turner and Ms. Hunt raise a generalized grievance insufficient to show standing. *See Hays*, 515 U.S. at 743. Mr. Wygant, however, resides in Gibson County, which is split. While Defendants contend that Gibson County was split due to population shift and for core preservation, whether the General Assembly “made an honest and good faith effort” to “comply with both federal and state constitutions is an issue of fact which . . . requires a full evidentiary hearing as does the question of justification.” *See State ex rel. Lockert v. Crowell*, 631 S.W.2d 702, 709-10, 714 (Tenn. 1982)(“*Lockert I*”). Because it is undisputed that the enacted House map divides Gibson County in violation of Article II, Section 5 of the Tennessee Constitution, Mr. Wygant has standing to contest the House map as a voter residing in Gibson County.

Senate Map

As to the Senate map, Defendants argue that Plaintiffs have alleged only a generalized grievance shared by a large class of Tennessee voters and, thus, cannot show an injury in fact. More specifically, Defendants assert that Plaintiffs have not articulated how the non-consecutive number of Senate districts in Davidson County harms them in any distinct or palpable way.

Neither Ms. Turner nor Mr. Wygant resides in Davidson County or a non-consecutively numbered senatorial district.

[W]here a plaintiff does not live in such a district, he or she does not suffer [specialized] harms, and any inference that the plaintiff has personally been subjected to a [specialized harm] would not be justified absent specific evidence tending to support that inference. Unless such evidence is present, that plaintiff would be asserting only a generalized grievance against governmental conduct of which he or she does not approve.

Hays, 515 U.S. at 745. Accordingly, Ms. Turner and Mr. Wygant do not have standing to challenge the Senate map.

Ms. Hunt, however, resides in Davidson County within a non-consecutively numbered senatorial district. The consecutive numbering requirement is grounded in specific constitutional concern about avoiding turnover in Senate representation in populous counties and in preserving institutional knowledge and experience. As a Davidson County voter in Senate District 17, Ms. Hunt is potentially being deprived of the benefit of a stable senatorial delegation as prescribed by Article II, Section 3 of the Tennessee Constitution. The Panel, after conferring, has decided to reserve ruling on the question of whether Ms. Hunt has standing to challenge the Senate map.

B. Constitutional Challenges

As the House map is a legislative enactment, the standard of review for constitutional challenges is applicable. Where there is a challenge to the constitutionality of a state statute,

legislative acts are presumed to be constitutional and every doubt is to be resolved in favor of the statute's constitutionality. *See State v. Pickett*, 211 S.W.3d 696, 700, 780 (Tenn. 2007). To be invalid, a statute must be plainly at odds with a constitutional provision. *See Perry v. Lawrence Cty. Election Comm'n*, 411 S.W.3d 538, 539 (Tenn. 1967).

The party challenging the constitutionality of a redistricting plan bears the burden of establishing its invalidity. *See Lockert I*, 631 S.W.2d at 709-10, 714-15. If the challenging party successfully establishes that the plan is in violation of a constitutional requirement, then the burden shifts to the defendants to show that their actions were necessary to comply with federal constitutional requirements. *See id.* at 714; *see also Moore v. State*, 436 S.W.3d 775, 786 (Tenn. Ct. App. 2014)(quoting *Tennant v. Jefferson Cty. Comm'n*, 133 S. Ct. 3, 5 (2012))(If the party challenging the redistricting establishes that the population differences “would practicably be avoided,” then the burden is on the State to demonstrate that those differences “were necessary to achieve some legitimate state objective.”).

Tennessee Constitution Article II, Section 5 provides in pertinent part:

The number of Representatives shall be ninety-nine and shall be apportioned by the General Assembly among the several counties or districts as shall be provided by law. Counties having two or more Representatives shall be divided into separate districts. In a district composed of two or more counties, each county shall adjoin at least one other county of such district; and no county shall be divided in forming such a district.

Tenn. Const. art. II, § 5.

There is no dispute about this constitutional language or what the framers of the Constitution of Tennessee meant by this language. In sum, this provision provides that the Tennessee General Assembly cannot draw House districts that cross county lines. It is undisputed that the House plan has 30 districts that cross county lines and that the House plan does not comply with the language of the Tennessee Constitution as written. However, the requisite inquiry is far

from over, given there is overlapping federal law and Tennessee Supreme Court precedent that excuses, on a principled basis, a particular General Assembly's failure to follow the strict letter of the Tennessee Constitution in reapportionment cases.

The Fourteenth Amendment to the United States Constitution and Tennessee's equal protection provisions require "equality of population among districts, insofar as is practicable." *Lockert I*, 631 S.W.2d at 706-07; U.S. Const. amend. XIV; Tenn. Const. art. II, §§ 4, 6. This principle, known as the "one person, one vote" principle, is the overriding objective of any redistricting plan. *See Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

An additional federal requirement is established by Section 2 of the Voting Rights Act, formerly codified as 42 U.S.C. § 1973 but now as 52 U.S.C. § 10301:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Id. "The essence of a [Section] 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Thornburg v. Gingles*, 478 U.S. 30, 46 (1986).

The Tennessee Supreme Court has previously provided guidance on conflicts between these various provisions, explaining that Sections 3 and 5 of Article II of the Tennessee Constitution remain binding unless federal standards would render it impossible for the General Assembly to comply with the requirement at issue. *See Lockert I*, 631 S.W.2d at 711, 714-15. “Equality of population” is the “principal consideration[,]” but “[p]rimary consideration must also be given to preserving minority strength.” *Id.* at 714. Though “of secondary import to equal protection requirements,” the requirements of the Tennessee Constitution are nonetheless valid and must be enforced insofar as possible.” *Id.* at 714-15. Thus, “equal protection, preserving minority voting strength, . . . not crossing county lines, . . . contiguity of territory[,] and consecutive numbering of districts” are all part of any redistricting plan. *Id.* at 715. With respect to the division of counties to create House districts, the Tennessee Supreme Court reconciled these district mandates by instructing the General Assembly that its plan “must cross as few county lines as is necessary to comply with the federal constitutional requirements” *Id.* at 715; *see also Lockert II*, 656 S.W.2d 836, 838 (Tenn. 1983).

No safe harbor⁵ based upon prior decisions exists when resolving the tensions of competing constitutional mandates. *See Moore*, 436 S.W.3d at 786 (citing *Cox v. Larios*, 542 U.S. 947, 949 (2004)) (“There is no safe harbor.”); *Rural West Tenn.*, 836 F. Supp. at 450 (rejecting Defendants’ argument that past decisions created a safe harbor for future redistricting plans); *Lockert I*, 631 S.W.2d at 714 (“The variance certainly should not be greater than any figure which has been approved by the United States Supreme Court; nor would such maximum figure automatically be approved, because the variance for any state will be judged solely by the circumstances present in that state.”). The Tennessee Supreme Court has specifically rejected the argument that a deviation

⁵ Plaintiffs vigorously assert that the legislature used a safe harbor approach in favor of allowing 30 counties to be split in formulating the House plan. Defendants dispute this assertion.

of 10% is *de minimis*. See *Moore*, 436 S.W.3d at 786. While in some instances a deviation of less than 10% may not be justified, in others a deviation of more than 10% may be justified. See *id.*

Plaintiffs have sufficiently demonstrated that the House map violates the constitutional prohibition against crossing county lines. As such, the burden has shifted to Defendants to show that the General Assembly was justified in passing a reapportionment map that crossed county lines and to show that as few county lines as necessary were crossed to comply with the federal constitutional requirements. See *Lockert I*, 631 S.W.2d at 715; see also *Lockert II*, 656 S.W.2d at 838. After a careful review of the record, the Court cannot conclude that Defendants have made this showing on the existing summary judgment evidentiary record. Additionally, whether the General Assembly “made an honest and good faith effort” to “comply with both federal and state constitutions is an issue of fact which . . . requires a full evidentiary hearing as does the question of justification.” *Lockert I*, 631 S.W.2d at 714. The Panel further concludes that the issue of whether Shelby County can be split if doing so allows for fewer county splits across the entire state militates in favor of thorough consideration after a full evidentiary hearing. The motions for summary judgment with respect to the House map are, respectfully, denied.

VI. Conclusion

For the foregoing reasons, the Panel GRANTS in part and DENIES in part the parties’ motions for summary judgment in the following particulars:

1. Defendants’ motion for summary judgment is GRANTED as to standing of Ms. Turner and Ms. Hunt to contest the House map and as to standing of Ms. Turner and Mr. Wygant to contest the Senate map. Defendants’ motion for summary judgment is DENIED as to standing of Mr. Wygant to contest the House map.

2. The Panel respectfully RESERVES ruling on the question of whether Ms. Hunt has standing to contest the Senate map. The Panel determines that reserving ruling on this standing issue will not affect the length of the trial appreciably and does not amount to asserting subject matter jurisdiction over the merits of the Senate claim by default, given that the State has decided not to defend the Senate plan on the merits. Additionally, the Panel's decision to reserve ruling on the question of whether Ms. Hunt has standing to challenge the Senate map will allow the parties to address this issue more fully in their pretrial briefs.

3. Plaintiffs' motion for summary judgment is DENIED, without prejudice, as to the Senate map, given that the Panel has RESERVED ruling on whether Ms. Hunt has standing to challenge the Senate map.

4. Plaintiffs' and Defendants' motions for summary judgment as to the House map are DENIED.

As the Panel has determined that Ms. Turner lacks standing to contest both the House and Senate reapportionment maps, Ms. Turner is hereby dismissed as a party plaintiff.

The Panel will conduct a telephonic pretrial conference with counsel for the parties on March 30, 2023 at 1:00 p.m. Central Time. In order to join the call, a party should dial (415)-655-0001, Access Code: 95454191 followed by #. During the pretrial conference, the Panel will discuss relevant deadlines and logistical issues related to the trial set for April 17, 2023 at 9:00 a.m. If a party has a scheduling conflict, then that party should contact Deputy Clerk and Master Sharifa Lewis-Allen at (615) 862-8613.

IT IS SO ORDERED.

s/Russell T. Perkins
RUSSELL T. PERKINS,

Chief Judge

s/J. Michael Sharp
J. MICHAEL SHARP
Judge

s/Steven W. Maroney
STEVEN W. MARONEY
Chancellor

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