ORIGINAL

No. M2023-01686-SC-R3-CV

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

GARY WYGANT & FRANCIE HUNT,

Plaintiffs-Appellants,

v.

BILL LEE, et al.,

Defendants-Appellees.

On Appeal from the Judgment of the
Davidson County Chancery Court
Case No. 22-0287-IV

BRIEF FOR DEFENDANTS-APPELLEES

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II. Whether the chancery court erred by finding that neither the Gibson County split in Wygant's house district nor the house map as a whole violates the county-splitting provision in Tennessee Constitution Article II, § 5.

III. Whether Wygant's county-splitting claim presents a nonjusticiable political question.

IV. Whether the chancery court erred by finding that Francie Hunt's generalized interest in constitutional governance gave her standing to challenge her senate district even though she suffered no individualized injury.

INTRODUCTION

Every ten years, the General Assembly faces the complicated task of drawing new state legislative maps according to conflicting commands. Federal law requires the legislature to draw districts that contain roughly equal populations under the one-person-one-vote doctrine *and* that maintain certain racial compositions under the Voting Rights Act. At the same time, the Tennessee Constitution requires the legislature to draw consecutively numbered districts that do not split county lines—all while vesting the General Assembly with "the right ... to apportion ... using ... other criteria." Tenn. Const. art. II, § 4. Everyone agrees that it is impossible to draft a map that complies with both federal and state-law requirements. The question is who can challenge the General Assembly's attempts to balance those conflicting commands, what standard applies to county-splitting challenges, and whether judicial review of this question is appropriate at all.

This appeal raises these questions in the context of a challenge to redistricting maps adopted by the General Assembly two years ago. Plaintiffs Gary Wygant and Francie Hunt allege that the state house and senate maps violate the Tennessee Constitution. Wygant believes that the house map violates the constitutional provision against splitting county lines during redistricting. Tenn. Const. art. II, § 5. Hunt in turn argues that the senate map violates the constitutional provision requiring consecutively numbered senate districts. Tenn. Const. art. II, § 3.

Under this Court's established standing jurisprudence, these claims falter out of the gate. Wygant's attack on the entirety of the house map fails because he lacks standing to challenge any house district besides his own. And Hunt's challenge to the senate map also fails for lack of standing because she asserts only an interest in constitutional governance—a textbook generalized grievance. By ignoring bedrock standing principles, the plaintiffs ask the Court to rush headlong into deciding "abstract questions of wide public significance" that are not properly before the Court. *ACLU v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006) (citation omitted). This Court should decline the invitation to ignore fundamental separation-of-powers constraints and to expand the "[t]he judicial power of this State." Tenn. Const. art. VI, § 1.

Even if Wygant had standing, his challenge lacks merit. The chancery court held a three-day bench trial during which the parties offered testimony and documentary evidence. After reviewing the evidence, the court held that the Gibson County split in Wygant's district—and the map as a whole—followed the Tennessee Constitution. That holding rests squarely on findings of fact that are presumed to be correct in this appeal. Nothing in Wygant's opening brief overcomes that presumption or casts doubt on the chancery court's thoughtful and thorough findings.

Fundamentally, Wygant wants this Court to hold the house map unconstitutional because his expert (after several months of trial and error) created a "better" alternative map—a map that was never presented

to the legislature for consideration. That type of Monday morning quarterbacking of the redistricting process lacks support in the law and first principles. Generally, "[a] redistricting plan will not be set aside on constitutional grounds merely because a slightly 'better' plan can be devised," *Moore v. State*, 436 S.W.3d 775, 788 (Tenn. Ct. App. 2014) (citation omitted)—particularly given that the Tennessee Constitution gives the General Assembly the right to consider a range of criteria when drawing maps, *see* Tenn. Const. art. II, § 4. Wygant's position reads that language right out of the Constitution and turns redistricting into a rote battle of computer map-drawing simulations to be refereed by the judiciary.

In any event, Wygant's claim suffers from the even more basic flaw that it seeks to have courts answer an unanswerable political question. The Tennessee Constitution textually commits the fraught task of apportioning legislative districts to the General Assembly. And decades of decisions from this Court have made one thing clear: "There are no legal standards discernible in the Constitution" for deciding county-splitting claims, "let alone limited and precise standards that are clear, manageable, and politically neutral." *Rucho v. Common Cause*, 588 U.S. 684, 707 (2019). Further attempts to regulate county splits will force courts to make inherently legislative policy decisions about how to balance litigation risks. Enforcement of the county-splitting provision thus belongs to the General Assembly and the voters of Tennessee—not the judiciary.

This case serves as a crossroads for state redistricting disputes. The plaintiffs transparently seek a rule that effectively allows "all Tennesseans" to challenge "a statewide redistricting statute" whenever they believe it violates the Tennessee Constitution. R. III, 412 n.5. That approach will mire this Court in "a profusion" of redistricting lawsuits, *ACLU*, 195 S.W.3d at 620 (citation omitted), and push litigants to bring another bout of "serial litigation" rivaling what this Court confronted when it first considered the county-splitting provision, *State ex rel. Lockert v. Crowell*, 729 S.W.2d 88, 91 (Tenn. 1987). Out of respect for the "limited" role of "courts in a democratic society," *ACLU*, 195 S.W.3d at 619 (citation omitted), this Court should reject the plaintiffs' efforts to second-guess the legislature's redistricting decisions.

The Court should affirm the chancery court's judgment against Wygant and reverse the chancery court's judgment for Hunt.

STATEMENT OF THE CASE AND FACTS

This appeal arises from the final judgment of the Davidson County Chancery Court upholding the constitutionality of the 2022 state house map and striking down as unconstitutional the 2022 state senate map.

A. Legal Background

As nearly everybody knows, redistricting "is a complicated process." *White v. Weiser*, 412 U.S. 783, 795 (1973). That is because legislatures drawing district lines must balance a "complex interplay of forces," *Abbott v. Perez*, 585 U.S. 579, 603 (2018) (citation omitted), ranging from

compliance with statutory and constitutional obligations to consideration of various redistricting principles. That "delicate balancing of competing considerations" makes "[e]lectoral districting ... a most difficult subject for legislatures." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 915 (1995)).

Redistricting in Tennessee raises unique difficulties because of state constitutional constraints. Article II, § 5 of the Tennessee Constitution provides that, "[i]n a [state house] district composed of two or more counties, ... no county shall be divided." That language—adopted in 1966—tracks Tennessee's longstanding prohibition on splitting counties when drawing senate districts. *See* Tenn. Const. art. I, § 4 (1796).

At the time of their adoption, these county-splitting provisions imposed an easy-to-administer rule against splitting counties when redistricting. No exceptions. But when the U.S. Supreme Court announced the one-person-one-vote standard in *Reynolds v. Sims*, 377 U.S. 533 (1964), adherence to the county-splitting provisions became much more difficult. The distribution of population among Tennessee made it impossible both to avoid splitting counties and to maintain the one-person-one-vote equality the Fourteenth Amendment demands. R. XXII, 3433-34.

That inherent conflict between population equality and Tennessee's county-splitting provisions prompted chronic litigation in the wake of *Reynolds*, with this Court having to step in four times in five years. The Court first confronted the conflict in *State ex rel. Lockert v. Crowell*, 631

S.W.2d 702 (Tenn. 1982) ("*Lockert I*"). There, a group of plaintiffs argued that the state senate map violated the senate county-splitting provision because it split sixteen counties. *Id.* at 704, 706; *see* Tenn. Const. art. II, § 6. The chancery court agreed and granted summary judgment for the plaintiffs. *Lockert I*, 631 S.W.2d at 703. On appeal, the Court recognized the tension between the competing state and federal obligations, and it held that "[t]he prohibition against crossing county lines should be complied with insofar as is possible under equal protection requirements." *Id.* at 709. Once a plaintiff shows that the map splits a county line, the burden "shift[s] to the defendants to show that the Legislature was justified in passing a reapportionment act which crossed county lines." *Id.* at 714. With that standard in mind, the Court remanded the case to the chancery court to consider the justification for the county splits. *See id.*

Just one year later, the Court again considered county-splitting claims in *State ex rel. Lockert v. Crowell*, 656 S.W.2d 836 (Tenn. 1983) ("*Lockert II*"). In response to *Lockert I*, the General Assembly passed new redistricting maps, and the *Lockert II* plaintiffs attacked both the state house and state senate maps under the relevant county-splitting provisions. *Id.* at 838. The chancery court held both maps unconstitutional, *id.*, and this Court affirmed, *id.* at 845. The problem with the new maps was that the legislature "over-emphasized achieving near perfection in responding to the one person, one vote federal mandate, where it collides with the State Constitutional mandate against" splitting counties. *Id.* at

840. The Court reviewed the record and created population-deviation targets for the legislature that it thought complied with federal law yet still respected state constitutional requirements. *See id.* at 843-44.

So the General Assembly once again went back to the drawing board and adopted new legislative districts in 1984. On the day the statute was passed, plaintiffs sued in state court alleging that two districts in the house map were unconstitutional because they unnecessarily split two counties. *Lincoln County v. Crowell*, 701 S.W.2d 602, 603 (1985) (per curiam). The chancellor struck down both districts rather than the statute as a whole. *Id.* This time, this Court reversed, holding that the districts withstood constitutional scrutiny. The Court found it significant that a federal court had reviewed the house map and held that it complied with federal law, and that the house map more generally complied with the population and county-split targets articulated in *Lockert II*. More importantly, because the plaintiffs brought a "piecemeal attack" on only a small portion of the house map, the Court held that it was improper to strike down the challenged districts "in the absence of evidence demonstrating its impropriety." *Id.* at 604. Because the plaintiffs offered no proof that the General Assembly drew the districts with "bad faith or improper motives," the Court upheld the districts and county splits. *Id.*

But the county-splitting litigation did not end there. In 1987, the Court once more reviewed a county-splitting challenge to a state senate district in *State ex rel. Lockert v. Crowell*, 729 S.W.2d 88 (Tenn. 1987)

("*Lockert III*"). The Court wearily recounted the "tortured history of the intractable reapportionment problem" posed by "the conflict between the federal constitutional requirement of equality of population among districts and the Tennessee constitutional prohibition against dividing a county." *Id.* at 89. The Court noted that the plaintiffs did not prove their assertion that the county was split for incumbent-protection purposes rather than population-equality needs. *See id.* at 90. The Court found that the legislature acted in good faith in drawing the district, so it dismissed the challenge and "terminate[d] this serial litigation." *Id.* at 91.

Over the following decades, plaintiffs continued to bring county-splitting claims, including most recently during the previous redistricting cycle. *See, e.g.*, *Moore v. State*, 436 S.W.3d 775 (Tenn. Ct. App. 2014).

B. The 2020's Redistricting Cycle

Against that backdrop, the General Assembly's redistricting process began again when the U.S. Census Bureau released its population data from the 2020 census in August 2021—a few months later than usual because of the pandemic. R. XXII, 3432. As soon as the Bureau released the population data, Speaker of the House Cameron Sexton appointed a redistricting committee. *Id.* at 3433.

The committee held multiple hearings to establish redistricting criteria and solicit public input. At the first meeting, House Committee Counsel Doug Himes discussed the redistricting process and informed the committee about the uneven population changes that had occurred

across Tennessee, with most of the growth happening in Middle Tennessee and population losses occurring in West Tennessee. Trial Ex. 94 at 10. The committee then discussed and adopted criteria to guide the map-drawing process, Trial Ex. 93—criteria that the General Assembly had used for decades, Trial Ex. 94 at 28-29.

Over the next few months, Himes drafted a house map that balanced the competing state and federal obligations. He met with every house member and, where appropriate, incorporated their feedback. R. XXII, 3435. The committee also permitted the public to propose their own redistricting maps. But only four citizen maps were submitted—and each had constitutional deficiencies. *See id.* at 3435-36.

In December 2021, Speaker Pro Tempore Pat Marsh presented the concept house map. That map contained 99 single member districts, had an overall population variance of 9.90%, split 30 counties, and maintained thirteen majority-minority districts. R. II, 247; Trial Ex. 95 at 25-26. The redistricting committee approved that plan and, eventually, so did the General Assembly. Trial Ex. 95 at 52-53; *see* R. XXII, 3436; Trial Ex. 29. The General Assembly also adopted an updated map for the State Senate. That map numbered the Davidson County districts as Districts 17, 19, 20, and 21. *See* R. XXII, 3485; Trial Ex. 84.

C. The Plaintiffs Challenge the House and Senate Maps

Shortly after the new maps were enacted, the plaintiffs filed suit in Davidson County Chancery Court against Governor Bill Lee, Secretary

of State Tre Hargett, and Coordinator of Elections Mark Goins. R. I, 1-16. Their complaint alleged that the house map violates the Tennessee Constitution by impermissibly splitting county lines in violation of Tennessee Constitution Article II, § 5. *See id.* at 13. It also alleged that the senate map violates Tennessee Constitution Article II, § 3 by failing to consecutively number Davidson County's senate districts. *Id.* at 14. The plaintiffs sought a declaration that the house and senate maps in their entirety are unconstitutional, along with an injunction forbidding the state defendants from using those maps in any elections. *Id.* at 15.

This Court then ordered the dispute to be heard before a three-judge panel, as required by state law, comprising Chancellor Russell T. Perkins, Chancellor Steven W. Maroney, and Judge J. Michael Sharp. R. I, 48. Afterward, the plaintiffs amended their complaint and moved for a temporary injunction preventing the defendants from using the challenged maps during the 2022 elections *Id.* at 72-94. The chancery court denied the motion with respect to the house map. R. IV, 487. But, over the dissent of Chancellor Maroney, it granted temporary relief on the senate map. *Id.* at 487-90. In response, the State filed an emergency appeal with this Court, arguing that the plaintiffs had failed to demonstrate their entitlement to emergency relief on the senate map given the imminent election deadlines. *See id.* at 531-38. This Court agreed, vacating the temporary injunction. *Id.* at 537-42.

On remand, the chancery court held a three-day bench trial, where it heard evidence from various witnesses, and accepted dozens of exhibits. Plaintiff Hunt, a resident of Davidson County, pressed her claim that the Davidson County senate districts were misnumbered, and plaintiff Wygant raised his county-splitting challenge to the house map.

D. The Chancery Court's Ruling

After considering the evidence, the chancery court published its findings of fact and conclusions of law. In a split decision, the court dismissed the challenge to the house map but held that the senate map violated the Constitution. R. XXII, 3425-26.

For the house map, Chancellor Steven Maroney wrote the majority opinion rejecting the county-splitting challenge. The court held that Wygant had standing to challenge only the constitutionality of the county split in his home district: Gibson County. R. XXII, 3447-48. The Gibson County split complied with the Constitution, the court explained, because the General Assembly drew it in a good-faith effort to balance its various competing constitutional obligations, including the requirement that each district contain substantially equal population. *See id.* at 3458. In the alternative, the court held the entire map was constitutional. *See id.* at 3459, 3464-65. Chancellor Perkins dissented. *Id.* at 3493-3500.

For the senate map, Chancellor Perkins wrote the majority opinion holding that Hunt had standing to raise her constitutional challenge. R. XXII, 3486. And because the State did not raise a merits defense, the

court entered judgment for Hunt and ordered the legislature to draw a new map. *Id.* at 3426, 3486. Chancellor Maroney dissented. *Id.* at 3465.

Wygant noticed an appeal from the judgment dismissing his challenge to the house map, and the State noticed an appeal from the judgment holding the senate map unlawful and ordering the General Assembly to adopt a remedial map. R. XXII, 3503-06, 3507. The State also moved this Court for a stay of the chancery court's decision on the senate map. *See id.* at 3508. The Court granted that stay. *Id.*

ARGUMENT

I. Wygant Lacks Standing to Challenge Any County Splits Besides the Gibson County Split in House District 79.

Wygant is the only plaintiff challenging the house map. He seeks an order declaring every state house district unconstitutional and requiring the General Assembly to redraw the map for the State House of Representatives in its entirety. R. V, 698; Appellant Br. 61. But he lacks standing to challenge the constitutionality of county splits in any district other than his own. So the Court should limit its review of the house map to the split of Gibson County in House District 79—Wygant's own district—just like the chancery court did below. R. XXII, 3436, 3448.

A. Wygant suffers no cognizable injury from the county splits outside House District 79.

Wygant's only injury derives from the Gibson County split in his home district, so the chancery court properly held that Wygant cannot challenge any splits other than the Gibson County split in his district.

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) (citation omitted). To establish standing, Wygant 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) (citation omitted). At trial, Wygant bore the burden of proving he had standing. *See ACLU*, 195 S.W.3d at 620.

Insofar as Wygant seeks to challenge the entire house map, he did not meet that burden. Wygant argued that the Gibson County split injures his ability to elect his preferred candidate—a candidate residing in Gibson County. The split does so because it divides Gibson County among two districts and allows someone living in a neighboring county to represent Wygant. *See* Trial Tr. 124:4-25; R. XXII, 3448. That injury is district specific because it "results from the boundaries of the particular district in which he resides." *Gill v. Whitford*, 585 U.S. 48, 66 (2018). The other county splits in the house map plainly do not affect Wygant's ability to elect a candidate from Gibson County. So to the extent Wygant complains about other county splits, he "assert[s] only a generalized grievance against governmental conduct of which he ... does not approve." *Id.* (quoting *United States v. Hays*, 515 U.S. 737, 745 (1995)).

That conclusion finds ironclad support from both the law and the facts of this case. As a matter of law, voters bringing redistricting claims generally have standing to challenge only their own district. *See, e.g., id.* And as a matter of fact, the record confirms that Wygant suffered no injury from splits outside his own district. Wygant never testified about "any individualized harm the enacted house map had caused to him by its split of counties in other parts of Tennessee." R. XXII, 3448. And when asked "whether he had sustained any individual and personal impact from the division of other counties," Wygant simply responded that he heard complaints from people in those counties. *Id.* Simply put, Wygant lacks a basis in law or fact to claim an injury from every district.

For that reason, limiting Wygant's challenge solely to the Gibson County split in House District 79 preserves the interest against deciding constitutional issues that are not squarely presented. *See Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 221 (1974).

B. Wygant's statewide standing arguments lack merit.

Despite the "threshold" nature of the standing inquiry, *Effler v. Purdue Pharma L.P.*, 614 S.W.3d 681, 688 (Tenn. 2020), Wygant relegates his argument that he has standing to challenge the entire house map to the last few pages of his brief, and thus buries a dispositive concession. He candidly admits that his "individualized injury" is "the division of his resident county," Appellant Br. 56—nothing more, nothing less. That concession should end his efforts to seek review of districts

that split counties besides his own. *See ACLU*, 195 S.W.3d at 620 (explaining that litigants lack standing to challenge government conduct that does not cause them to suffer an injury in fact).

Although Wygant offers several arguments to help save his challenge to the entire house map, none are persuasive. First, Wygant claims that he may challenge the entire map because the Gibson County split resulted from "statewide action." Appellant Br. 56. That argument proves too much. *All* legislative districts result from statewide action: Legislatures draw individual districts as part of a statewide map, consider and approve that map as a whole, and then send that entire map to the executive for approval. Yet the Supreme Court has repeatedly instructed that redistricting challenges are generally limited only to the specific districts in the map that causes their injury. *See Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 262-63 (2015); *see, e.g.*, *Gill*, 585 U.S. at 66; *Hays*, 515 U.S. at 744-45. That accords with the general rule that plaintiffs can challenge only the *specific* provisions of a law that cause their injury rather than the statute as a whole. *See Prime Media, Inc. v. City of Brentwood*, 485 F.3d 343, 350-51 (6th Cir. 2007). Adopting a contrary rule here would abrogate the requirement that a plaintiff suffer an injury in fact and make a hash of scores of prior decisions.

Next, Wygant argues that he may challenge the entire map because fixing the (allegedly unlawful) split of Gibson County requires a "statewide remedy" due to the "interrelated nature of redistricting."

Appellant Br. 56-58. That argument "rests on a failure to distinguish injury from remedy." *Gill*, 585 U.S. at 67; *see, e.g.*, Appellant Br. 59 (arguing why he has "standing to seek statewide *relief*" rather than showing how he suffered a statewide *injury* (emphasis added)). As Wygant concedes, his individualized injury flows from "the division of his resident county" and nothing more. *See* Appellant Br. 56. So even if that injury must be remedied by redrawing the entire house map, that does not give Wygant standing to attack the splits in other districts. He can only challenge the conduct causing the injury, *see City of Memphis*, 414 S.W.3d at 98, which is the Gibson County split in House District 79.

That injury-vs-remedy distinction explains why the malapportionment cases that Wygant cites do him no good. *See* Appellant Br. 58 (citing *Baker v. Carr*, 369 U.S. 186 (1962) and *Reynolds v. Sims*, 377 U.S. 533 (1964)). The voters in those cases lacked standing to challenge every district in the State. Instead, they proved that *their own* districts were unconstitutional, and that prompted the legislature restructure the whole map. *See Gill*, 585 U.S. at 66-67. Whether other districts must be redrawn to remedy an allegedly unconstitutional split does not confer standing to challenge districts which inflict no individualized harm on Wygant. Nothing in those opinions suggests that Wygant can challenge splits in districts that cause him no injury.

Nor do the other cases that Wygant cites. Appellant Br. 59-60 (collecting cases). This Court's *Lockert I* decision did not even address the

standing issue and thus fails to establish that Wygant suffers statewide injury. *See Lockert I*, 631 S.W.2d at 704 ("[t]he plaintiffs' standing to sue is not in issue"); *Webster v. Fall*, 266 U.S. 507, 511 (1925) ("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."). The Missouri case Wygant cites supports *the State's* position because it confirms that, "[t]o challenge a redistricting map, '[o]nly an eligible Missouri voter who sustains an individual injury by virtue of residing in a district that exhibits the alleged violation'" has standing. *Faatz v. Ashcroft*, 685 S.W.3d 388, 395 (Mo. 2024) (citation omitted). The plaintiffs there could challenge the county splits in two districts because they each lived in one of those districts. *Id.* at 396.

Finally, in the case from Kentucky, the Commonwealth only challenged standing in a footnote, and it did not present the argument at issue here. *See* Opening Br. for the Commonwealth of Kentucky at 74 n.19, *Graham v. Adams*, Nos. 2022-SC-0522 & 2023-SC-0139 (Ky. Aug. 25, 2023). Moreover, despite Wygant's representation that the court "expressly held that individual voters who live in divided counties have standing ... to challenge redistricting maps that divide counties," Appellant Br. 60, the standing analysis appears to have been limited to whether the plaintiffs could bring partisan gerrymandering claims, *see Graham v. Sec'y of State*, 684 S.W.3d 663, 677 (Ky. 2023) (stating that the injuries derived from the "intentional dilution of the power of

Democratic votes"). The court did not discuss the county-splitting claims in the context of analyzing standing.

To sum up, Wygant's only injury comes from the district-specific contours of House District 79 and its split of Gibson County. He lacks an injury from any other district, so the Court should reject his efforts to seek review of the entire house map and all thirty splits.

II. The Challenged House Districts Comply with the Tennessee Constitution's County-Splitting Provision.

The chancery court held that both the Gibson County split in House District 79 and the house map more generally comply with Tennessee Constitution Article II, § 5. R. XXII, 3458, 3464-65. Wygant did not (and cannot) challenge the court's alternative holding regarding House District 79 because he waived any district-specific claim. In any event, the chancery court was right on the merits. Wygant's arguments for reversal rest on misunderstandings about the law and a mistaken view of the record. The Court should affirm the judgment against Wygant.

A. Wygant has doubly waived any district-specific challenge to the Gibson County split in House District 79.

Wygant believes that he can challenge the entire house map. Perhaps for that reason, he devotes his entire brief to arguing why the map *as a whole* violates the Tennessee Constitution. He does not mention—much less challenge—the chancery court's holding that "the enacted House map reflects good faith on the part of the General Assembly with respect to Gibson County specifically." R. XXII, 3458. So to the extent

the Court finds that Wygant lacks standing to challenge county splits outside House District 79, it can affirm the judgment below by simply noting that Wygant offered no argument why the chancery court erred by finding the Gibson County split constitutional. *See, e.g., White Oak Prop. Dev., LLC v. Washington Twp.*, 606 F.3d 842, 854 (6th Cir. 2010).[1]

Wygant also confronts a much more fundamental problem than simply failing to challenge the chancery court's holding: At no point in this litigation—not now, not at trial, and not in his pleadings—did Wygant assert a district-specific constitutional challenge to House District 79 and its split of Gibson County. Wygant filed four separate complaints, none of which even hint at the possibility of a district-specific claim premised on the Gibson County split. R. I, 1-16; *id.* at 75-90; R. IV, 555-72; R. V, 682-99. All those pleadings instead allege that "SB 0779," the statute containing the entire house plan, "violates the Tennessee Constitution." R. I, 13; *id.* at 87; R. IV, 570; R. V, 697. And when it came time for trial, Wygant unmistakably disavowed the notion that he was challenging the Gibson County split alone rather than the house map as a whole. *See* Trial Tr. 29:11-31:24. No wonder, then, that Wygant briefed

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[1] Wygant stated in passing that he must have standing to mount a statewide challenge because Gibson County's split results from statewide action. Appellant Br. 57 & n.136. That does not preserve any challenge to the chancery court's alternative holding that the General Assembly acted in good faith when dividing Gibson County. *See Sneed v. Bd. of Pro. Resp. of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010).

this appeal as though he could challenge every split in every house district, even though the chancery court ruled otherwise.

The Court should hold Wygant to his strategic decision to press claims against the entire map rather than Gibson County. After all, "parties 'know what is best for them, and are responsible for advancing the facts and argument entitling them to relief.'" *State v. Bristol*, 654 S.W.3d 917, 923-24 (Tenn. 2022) (citation omitted). The bottom line is that the Court should affirm because Wygant only has standing to pursue a district-specific claim against Gibson County that he expressly waived.

B. The Gibson County split in House District 79 easily passes constitutional scrutiny.

If the Court overlooks Wygant's waiver and considers the constitutionality of House District 79, it should hold that *Lincoln County* supplies the relevant standard for deciding whether individual districts violate the county-splitting provision.[2] Applying that standard, which puts the burden on the plaintiff to prove that the legislature acted unlawfully, the Court should affirm because Wygant cannot show the General Assembly acted in bad faith when drawing the Gibson County split in his home

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[2] Because the chancery court correctly held that the State prevails regardless of which side bears the burden, the Court may decline to decide which standard controls. The State nevertheless briefed the issue because the public interest favors the Court providing clarity about the extent to which county splitting claims are justiciable, *see infra* Argument III, and if they are, how the burden must be allocated, and what evidence must be offered to satisfy that burden.

district. But even if the Court rejects the *Lincoln County* standard and holds that the State must prove the General Assembly acted in good faith, as Wygant argues, it met that burden because it split Gibson County in a good-faith effort to follow federal law.

1. *Lincoln County* governs Wygant's challenge.

The chancery court struggled to find the proper legal standard for deciding Wygant's county-splitting claim. That difficulty stemmed from what the chancery court perceived to be this Court's "differing holdings on which party bears the burden of proof" for that claim and "what must be shown to meet that burden." R. XXII, 3456. To be safe, the majority applied both standards offered by the parties and concluded that the State won either way. *Id.* at 3456, 3456-65.

The Court should now clarify that *Lincoln County* governs claims like Wygant's that target single districts rather than the entire map. That is consistent with *Lincoln County*'s reasoning, and it fits with the rule that the plaintiff—not the defendant—bears the burden of proof.

a. *Lincoln County* held that an individual district will not be set aside under the county-splitting provision unless the plaintiff proves that the General Assembly drew that district in bad faith or with improper motive. There, the plaintiffs claimed that two house districts unnecessarily split county lines. 701 S.W.2d at 603. The chancellor found those splits unconstitutional because he believed "the Legislature did not make a good faith effort to draw the lines" and "Lincoln County was divided to

a greater extent than was necessary to meet the federal constitutional requirements." *Id.* This Court reversed. It refused to review "the entire plan" because the plaintiffs attacked only two districts, and it held that the chancery court "erred in sustaining a piecemeal attack upon a small portion" of the redistricting map. *Id.* at 604. To prevent "courts and the General Assembly" from "needless and protracted litigation," the Court ruled it will not "set aside individual district lines on the ground that they theoretically might have been drawn more perfectly, in the absence of any proof whatever of bad faith or improper motives." *Id.* The plaintiffs never made that showing, so the districts were upheld. *Id.*

That reasoning extends to *all* county-splitting claims that attack individual districts rather than the entire map. To be sure, *Lincoln County* came to this Court with a federal court decision holding that the challenged map as a whole complied with federal law, *id.* at 602, and a stipulation that *Lockert*'s guidelines had been followed, *id.* at 604. But the Court still had before it a county-splitting challenge to individual districts, so it demanded proof of bad faith. *Id.* And it did so to avoid piecemeal and protracted litigation—a rationale that applies *whenever* plaintiffs challenge maps on a district-by-district basis. *Lincoln County* thus does not create a good-for-one-case-only rule.

Here, Wygant's challenge falls squarely in *Lincoln County*'s heartland. He can challenge only the Gibson County split in House District 79 because he lacks standing to seek review of splits in other districts. *See*

supra Argument I. So the proper standard for reviewing that "piecemeal" challenge is to assess whether the General Assembly acted in bad faith.

Wygant resists the *Lincoln County* standard by arguing that it does not create a separate standard; instead, it simply creates a third step in *Lockert*'s burden-shifting framework. In his view, *Lockert I* places the initial burden on the plaintiff to show that the challenged map includes a district that crosses a county line. *See* Appellant Br. 38-40. And once a plaintiff makes that showing, the burden shifts to the State to prove that federal law required whatever county splits the map includes. *Id.* Wygant interprets *Lincoln County* to create a "third and final step" in that burden-shifting framework. *Id.* at 39. Specifically, it shifts the burden *back* to the plaintiff to prove bad faith once the State shows that the county splits were justified by federal law. *Id.*

That interpretation makes no sense. If the State proves that federal law *requires* county splits, then those splits are constitutional and judicial inquiry ends. At that point bad faith or improper motives are irrelevant. No bad-faith showing could possibly make county splits which are required by federal law unconstitutional under Tennessee's county-splitting provision. Put otherwise, state law cannot *forbid* a county split under an improper-motive theory that federal law *requires*. Adopting Wygant's reading of *Lincoln County* as imposing a "third step" would turn the Supremacy Clause on its head. U.S. Const. art. VI, cl. 2.

b. The bedrock presumptions of good faith and constitutionality also support applying *Lincoln County* here. The State should not bear the burden of proving that a challenged district is *not* unconstitutional. *Lincoln County*'s standard properly places the burden on the plaintiff—rather than the State—to plead and prove its case.

House District 79 comes before the Court "clothed in a presumption of constitutionality." *Vogel v. Wells Fargo Guard Servs.*, 937 S.W.2d 856, 858 (Tenn. 1996) (citation omitted). That requires the Court to "resolve every doubt in favor of constitutionality." *Id.* And because Wygant raises a facial challenge to the house map, that "general rule applies with even greater force." *Petition of Burson*, 909 S.W.2d 768, 775 (Tenn. 1995). "[T]o avoid short-circuiting the democratic process by preventing laws embodying the will of the people ... from being implemented," courts must exercise "extraordinary caution" before striking down a law like the redistricting statute. *Moore*, 436 S.W.3d at 784 (citation omitted).

That is not the only presumption relevant to this appeal. The Court also follows the "long-standing rebuttable presumption that government officials will discharge their duties in good faith and in accordance with the law." *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam County*, 301 S.W.3d 196, 206 (Tenn. 2009). That presumption applies to the General Assembly just like other public officials. *In re Baby*, 447 S.W.3d 807, 843 n.12 (Tenn. 2014) (Koch, J., concurring). "Inquiries into [legislative] motives or purposes are a hazardous matter," *United States v. O'Brien*,

391 U.S. 367, 383 (1968), and judicial attempts to ascertain these "motivation[s]" necessarily "represent a substantial intrusion into the workings of other branches of government," *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 n.18 (1977). Recognizing as much, courts have placed significant weight on the presumption of legislative good faith in the redistricting context. *See Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1235-36 (2024) (collecting cases).

The *Lincoln County* standard honors both presumptions. It begins by presuming the challenged district complies with the Constitution and that the legislature redistricted in good faith until the plaintiff proves otherwise. The standard Wygant asks the Court to use, by contrast, violates those presumptions. Every state house map must split county lines to comply with one-person-one-vote. *See* R. XXII, 3433-34. So under Wygant's view, all that a plaintiff bringing a county-splitting claim must do is enter the map into evidence and then the burden shifts to the State to prove those splits are constitutional. If the State offers no proof, and thus the only evidence before the court is the map, Wygant believes the map must be held unlawful. But that turns the presumptions of good faith and constitutionality upside down. It would mean that redistricting laws enter court with a presumption of *un*constitutionality and *bad* faith. The Court need not—and should not—apply that standard here.

c. Despite Wygant's suggestions to the contrary, applying *Lincoln County*'s standard does not require the Court to overrule *Lockert*.

Wygant characterizes *Lockert* as placing the burden on the State to prove that it drew the map in good faith once the plaintiff proves that a map splits county lines. *See* Appellant Br. 37-38. Even accepting that characterization, *Lockert* applies only to claims challenging an entire map rather than individual districts; *Lincoln County* applies to claims raising piecemeal attacks. So the Court need not consider whether *Lockert* erred by requiring the State to prove that county-splitting claims lack merit.

Even so, if the Court believes that *Lockert* does put the burden on the State to prove that House District 79's split of Gibson County complies with the Tennessee Constitution, the Court should overrule that portion of *Lockert*. If construed that way, *Lockert* is "obvious[ly] erro[neous]" because it violates the presumptions of constitutionality and good faith, *In re Est. of McFarland*, 167 S.W.3d 299, 306 (Tenn. 2005), it disregards separation-of-powers principles, *see Norma Faye*, 301 S.W.3d at 206, and it has been undermined by subsequent precedent, as the chancery court acknowledged, *see* R. XXII, 3451 n.12, 3456.

2. Wygant did not prove House District 79 unlawful under *Lincoln County*.

A district passes constitutional muster under *Lincoln County* unless a plaintiff proves the legislature acted in bad faith or with improper motive when drawing the county split. Wygant did not do that.

The chancery court found that the General Assembly acted in good faith when drawing the Gibson County split in House District 79. *See*

R. XXII, 3458. That is a finding of fact, *Lockert I*, 631 S.W.3d at 714, which is entitled to "substantial deference," *State v. Honeycutt*, 54 S.W.3d 762, 766 (Tenn. 2001), along with a presumption of correctness on appeal, *see* Tenn. R. App. P. 13(d).

Wygant cannot overcome that presumption here. The record amply supports the chancery court's finding that the General Assembly drew House District 79 in a good-faith effort to honor its various constitutional obligations. It necessarily follows that Wygant cannot meet his burden of showing the General Assembly acted in bad faith. *See United States ex rel. Wall v. Circle C Constr., LLC*, 868 F.3d 466, 471 (6th Cir. 2017) (explaining that "bad faith" is a "term of art" that exists not "by an honest mistake as to one's rights or duties, but by some interested or sinister motive" (quoting Black's Law Dictionary 139 (6th ed. 1990))).

First, the General Assembly split Gibson County in an honest effort to comply with federal law. At the time of the latest census, Gibson County contained 50,429 people. Trial Tr. 656:16; Trial Ex. 103. That falls more than 20% below the ideal house district population of 69,806, Trial Tr. 526:21, so the one-person-one-vote standard required Gibson County to be paired with another county, *see* R. XIII, 2007 & n.12; *Evenwel v. Abbot*, 578 U.S. 54, 60 (2016) ("[m]aximum deviations above 10% are presumptively impermissible"). Based on population losses in West Tennessee, mapmaker Doug Himes testified that he could not maintain population equality in the region while leaving Gibson County and its

neighboring counties entirely intact. Trial Tr. 558-60. At least one county needed to be split. The General Assembly ultimately chose to split Gibson County to preserve the core of the prior district, *see id.* at 559, and Wygant offers no reason why that choice proves that the General Assembly acted in bad faith or based on an improper motive.

The trial record unmistakably supports the chancery court's finding that either Gibson County or one of its neighbors had to be split to avoid presumptively violating the Fourteenth Amendment. Gibson County is surrounded by six other counties—Obion, Weakley, Carroll, Madison, Crockett, and Dyer. *See* Trial Ex. 84. None of those could be combined with Gibson County to create a house district that split no county lines and complied with population-equality requirements. The closest the General Assembly could come to the ideal population involved joining Gibson County and Crockett County, which results in a total population of 64,340. Trial Ex. 103 (listing county populations); R. XXII, 3458. That falls 7.8% below the ideal house district population. And if combined with the enacted map's highest deviation *above* the ideal house population, a map with the Gibson-Crockett district would have created a total deviation of 12.89%. *See* R. XXII, 3434 (highest deviation above ideal population was 5.09%). That map would be presumptively unconstitutional. *See Evenwel*, 578 U.S. at 60. No other whole-county combination with Gibson County produces a lower population deviation.

Second, the General Assembly dutifully considered maps proposed by legislators and citizens alike, and adopted the only one that satisfied its various state and federal law obligations. The public submitted four house proposals, all of which either created population deviations that rendered the proposals presumptively unconstitutional or raised voting-rights concerns by destroying majority-minority districts. *See* R. XIII, 2046-47. Likewise, the Democratic Caucus House Concept map, which was not timely filed, split 35 counties and destroyed five majority-minority districts. *Id.* at 2047. Nearly a month after the filing deadline, the Democratic Caucus submitted another proposal that still suffered from constitutional deficiencies. *See id.* at 2048. The legislature rejected all those proposals because they raised "clear constitutional problems." Trial Tr. 513:4-9. By contrast, only the enacted map maintained a population deviation below 10%, split 30 or fewer counties, and did not destroy majority-minority districts. Both the legislature's "request for submissions" and its "adoption of the enacted House map ... only after consideration was given to every alternative map proposed" shows that the General Assembly acted in good faith. R. XXII, 3460.

Third, the General Assembly drew House District 79 (and the house map more generally) in compliance with longstanding statutory guidance. After *Lockert II*, the General Assembly codified guidelines for the redistricting process. Those guidelines have been used in every subsequent redistricting cycle, *see*, *e.g.*, 2012 Tenn. Pub. Acts ch. 511, § 1(b);

2002 Tenn. Pub. Acts ch. 468, § 1(b); 1992 Tenn. Pub. Acts ch. 836, § 1(b), and cited approvingly by the courts, *see* R. XXII, 3460. This cycle, the General Assembly once again adopted that guidance, which the chancery court agreed reflects its good-faith interpretation of its constitutional obligations. *See id.* at 3460-61. And the enacted house map, including House District 79, complies with that guidance.

Finally, any lingering doubt about whether the General Assembly acted with proper motives should be dispelled by the Tennessee Constitution itself. Article II of the Tennessee Constitution contains the county-splitting provision. It also includes another provision, which expressly says that "[n]othing ... in this Article II shall deny to the General Assembly the right at any time to apportion one House of the General Assembly using geography, political subdivisions, substantially equal population and other criteria as factors." Tenn. Const. art. II, § 4. As the chancery court explained, that arguably gives the legislature discretion to split counties as it deems appropriate. R. XXII, 3460-61. But at minimum, "the mere ambiguity raised by that [provision] must confer deference to the General Assembly as having acted in good faith." *Id.*

Should Wygant choose to launch a district-specific attack on House District 79 for the first time in his reply brief, he will likely make the same argument he raises with respect to his challenge to the map as a whole. Namely, he will argue that map 13d_e (which does not split Gibson County) proves that federal law did not require his county to be

divided. *See* Appellant Br. 43-46 (making that point in the context of his argument to the "House map" as a whole).

The problem with Wygant's position is that the precise location of county splits can always be manipulated; as experts from both sides agreed, there are "trillions" of possible plans. Trial Tr. 369:21. Anybody with time and resources can come up with a map that splits different counties. That does not mean the choices that the legislature made are not justified by federal law or made in bad faith—it simply shows the unworkability of Wygant's proposed standard.

In any event, even assuming Wygant could prove that the General Assembly split Gibson County for core-preservation reasons alone, *but see* Trial Tr. 558-60; R. XIII, 2007 & n.12, he still cannot prevail in showing that the legislature acted in bad faith or with improper motive because the Tennessee Constitution authorizes the General Assembly to subordinate county-line preservation to "other criteria" like core preservation, *see* Tenn. Const. art. II, § 4 ("[n]othing ... in this Article II shall deny to the General Assembly the right at any time to apportion one House of the General Assembly using ... other criteria as factors").

3. House District 79 satisfies constitutional scrutiny even if the State bears the burden of proof.

Wygant insists that the State must prove that the Gibson County split complies with the Constitution. Even if the burden rested with the State, the judgment below should be affirmed because there is ample

evidence the legislature acted in good faith and split Gibson County in an honest effort to comply with federal law. *See supra* Argument II.B.2.

C. If the court considers the remaining splits in the other house districts, those are also constitutional.

Wygant's arguments rest on the premise that he has standing to challenge the entire map, and that the county splits must be considered under the *Lockert* framework. That position fails because Wygant can challenge only the Gibson County split in House District 79. *See supra* Argument I. But if the Court concludes he *can* challenge the county splits in the entire map, the judgment below should still be affirmed because the record supports the chancery court's finding that the General Assembly acted in good faith to draw a constitutional map.

All thirty county splits pass constitutional muster because they were drawn to comply with federal law. On top of all the reasons showing how the General Assembly acted in good faith, the record also confirms that every split in the enacted map can be justified by population-equality concerns. *See* Trial Tr. 551:7-8 (testifying that "all 30 of these [county splits] are [justified by] population equality"); *see also id.* at 549-78 (explaining the basis for each county split). That evidence supports the chancery court's factual finding that the General Assembly exercised good faith in drawing the house map in its entirety. R. XXII, 3464-65.

Wygant disputes that finding, *see* Appellant Br. 46-56, but he fails to overcome the presumption of correctness. Wygant points to a footnote

in Himes' expert report that explained all thirty county splits. *Id.* at 51. That footnote lists "population" or "population shift" as an explanation for some counties and not others. R. XIII, 2007 n.12. Wygant suggests that the omission of references to population for some of the county splits means that those splits were not justified by federal law.

Not so. Himes testified that population equality justified every single split, and he explained why that was the case on a county-specific basis. Trial Tr. 549-78. In response to questions about the footnote, Himes clarified that when his expert report lists "population," it was because that county had "too much population to be one district." *Id.* at 551:13-15. "Obviously," he explained in reference to the footnote, every split was justified in part by "population equality." *See id.*; *id.* at 477:15-16 ("Equal population is again the top standard that every plan is trying to achieve"). That aligns with how federal law treats population equality in the redistricting context—"it is part of the redistricting background, taken as a given," that legislators must consider when deciding how to craft new districts. *Ala. Legis. Black Caucus*, 575 U.S. at 272.

Wygant also faults Himes and the General Assembly for treating the 30-split standard approved by *Lockert II* as a safe harbor. *See* Appellant Br. 47-50. But the best reading of *Lockert II* supports treating maps with 30 splits or less as presumptively constitutional. The record in *Lockert II* showed that the legislature could have drawn a map that divided only 25 counties. *See* 656 S.W.2d at 844. Yet the Court nonetheless held

that "an upper limit of dividing 30 counties in the multi-county category is appropriate." *Id.* By increasing the number of splits permitted, the Court implicitly recognized that the General Assembly must be given some deference during redistricting and set a 30-split limit to provide clear forward-looking guidance about how the legislature should draw its maps. *See Bain Peanut Co. v. Pinson*, 282 U.S. 499, 501 (1931) ("the machinery of government would not work if it were not allowed a little play in its joints"). Courts often create clear benchmarks for legislatures to use for redistricting, *see, e.g.*, *Evenwel*, 578 U.S. at 60 (recognizing the 10% benchmark for one person one vote), and that appears to exactly be what the Court did in *Lockert II*. The General Assembly did not act in bad faith by taking the Court at its word.

Anyway, even if the Court believes that a 30-split safe harbor approach lacks constitutional basis, that was the consensus reading of *Lockert II* among the legislature and courts. For the past three decades, the General Assembly has treated *Lockert II* as creating a 30-split benchmark. *Supra* Argument II.B.2. Every map that it approved followed that benchmark. During the last redistricting cycle, the Court of Appeals held in an opinion joined by then-Judge Kirby that the legislature acted in good faith when drawing a senate map by "demonstrate[ing] that crossing county lines was necessary to best achieve population equality while simultaneously crossing far fewer county lines than the upper limit of 30 suggested by the *Lockert* court." *Moore*, 436 S.W.3d at 788.

The General Assembly acted in good faith by following the accepted understanding of *Lockert II* that existed when it redistricted. Even assuming Wygant is correct that there is no 30-split safe harbor, the *Moore* decision and past practice gave the General Assembly a good-faith basis for *believing that there was a safe harbor*. That view, even if the Court now holds it to be mistaken, was eminently reasonable and thus provides no basis for striking the house map down now.

D. Wygant's assorted arguments for reversing the chancery court lack merit.

Wygant advances several reasons why he believes the Court should reverse. None persuade.

Wygant advances the remarkable position that the existence of an alternative map that complies with federal law and produces fewer county splits "preclude[s] finding that the General Assembly undertook an honest and good faith effort to enact a House map that crosses county lines only as necessary to comply with federal law." Appellant Br. 44. That proposed rule defies the good-faith standard, has no basis in the law, and would invite chaos into redistricting litigation.

For starters, a brightline rule that the existence of a superior alternative map precludes finding good faith makes no sense. As Wygant sees it, courts must decipher whether the legislature drew a split based on a good-faith belief that federal law required it to divide the county. That question, according to Wygant, must turn on the General Assembly's

motivations when drawing the maps. Yet Wygant never explains how a superior map drawn by someone *after* redistricting occurs can prove that the General Assembly acted in bad faith. What Wygant really seeks is not a regime that judges maps based on the legislature's good-faith efforts to comply with state and federal law, but a strict-liability regime that turns all the complexities of redistricting into an exercise in computer programming: whenever software can spit out a map that includes fewer splits and lower deviation, the map must be struck down as unlawful.

That novel approach to redistricting (and judging) has little to recommend it. It is settled law that "redistricting is a legislative function." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 808 (2015). Wygant's approach would upend redistricting entirely by substituting the exercise of political judgment by elected representatives with whatever technically superior plan users can concoct through map-drawing software. It would also invite constant county-splitting litigation because, as Wygant's own expert testified, there is no known method for calculating the best plan or the absolute minimum number of county splits. Trial Tr. 369:14-18; R. XXII, 3443. So that means that *any* map that the legislature adopts can be second guessed in court. That is a recipe for chaos that would prompt much more "serial litigation" over Tennessee's county-splitting provisions. *Lockert III*, 729 S.W.2d at 91; *see Gaffney v. Cummings*, 412 U.S. 735, 750-51 (1973) (rejecting the idea that "those who litigate" against redistricting maps "need only produce a

plan that is marginally 'better' when measured against a rigid and unyielding population-equality standard."). All that for a standard that lacks any constitutional basis, and which other courts have rejected. *See, e.g.*, *Moore*, 436 S.W.3d at 788 ("[a] redistricting plan will not be set aside ... merely because a slightly 'better' plan can be devised").

III. Wygant's County-Splitting Claim Presents a Nonjusticiable Political Question.

While this Court can affirm based on the arguments and evidence presented here, it should consider the propriety of reviewing county-splitting claims at all. Challenges to county splits are paradigmatic political questions. To the extent this Court's decision in *Lockert I* holds otherwise, that decision should be overruled because it was wrongly decided, it creates an unworkable standard, and its reasoning has been undermined over the past four decades. The Court can affirm on the alternative ground that county-splitting claims raise a political question.[3]

[3] The State did not raise this argument below. That does not prevent the Court from considering the issue because this Court has said that the political-question doctrine is an issue that courts "must consider" in the context of cases (like this one) raising separation-of-powers questions. *Bredesen v. Tenn. Jud. Selection Comm'n*, 214 S.W.3d 419, 434 (Tenn. 2007). Moreover, ordinary forfeiture principles do not apply to justiciability issues like the political-question doctrine. As Judge Usman explained in a recent decision from the Court of Appeals, "[w]aiver and concession in the context of issues related to justiciability function as a one-way ratchet." *Dominy v. Davidson Cnty. Election Comm'n*, 2023 WL 3729863, at *4 (Tenn. Ct. App. May 31, 2023). Although a party may forfeit an argument *against* justiciability, *id.* at *4-5, a party cannot forfeit the chance to have justiciability issues considered.

A. Whether a county split violates Article II, § 5 presents a political question unsuited for judicial review.

"Tennessee courts decide only 'legal controversies.'" *West v. Schofield*, 468 S.W.3d 482, 490 (Tenn. 2015) (citation omitted). To decide "whether a particular case involves a legal controversy, [courts] utilize justiciability doctrines that 'mirror the justiciability doctrines employed by the [U.S.] Supreme Court and the federal courts.'" *Id.* (citation omitted). That prevents courts from deciding "abstract questions of wide public significance [when] other governmental institutions may be more competent to address the questions." *Id.* (citation omitted).

This dispute implicates one of those justiciability doctrines—the political-question doctrine. Tennessee courts recognize that "if the issue presented is a purely 'political question,' the separation of powers provisions of our constitutions make it non-justiciable," *Bredesen v. Tenn. Jud. Selection Comm'n*, 214 S.W.3d 419, 435 (Tenn. 2007) (quoting *Powell v. McCormack*, 395 U.S. 486, 517 (1969)), and they follow the same approach as federal courts when deciding if an issue raises a political question. Courts consider (among other things) whether there is "[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; [2] a lack of judicially discoverable and manageable standards for resolving it; [3] or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion." *Id.* at 435 (quoting *Baker*, 369 U.S. at 217).

All three factors support holding that whether a county split violates Article II, § 5 is a political question entrusted to the General Assembly rather than courts. The Tennessee Constitution gives the General Assembly the responsibility to redistrict using factors it deems appropriate. And because of the conflict between the county-splitting provision and the one-person-one-vote standard, there are no judicially manageable standards for deciding whether a county split violates the Tennessee Constitution. The General Assembly instead must make an inherently legislative decision about how to balance the competing state and federal obligations, and the litigation risks that follow.

1. Tennessee's Constitution commits redistricting to the General Assembly.

The first factor favors applying the political-question doctrine because the Tennessee Constitution makes a "textually demonstrable constitutional commitment of the issue to a coordinate political department." *Bredesen*, 214 S.W.3d at 435 (citation omitted). That commitment derives from Article II, § 4 which entrusts redistricting to the legislature and empowers it to draw districts based on whatever criteria it deems appropriate, so long as those criteria adhere to the U.S. Constitution.

To begin, Article II assigns redistricting responsibilities to the General Assembly. That Article instructs that, "[a]fter each decennial census made by the Bureau of the Census of the United States is available," the "General Assembly shall establish senatorial and representative

districts." Tenn. Const. art. II, § 4. So it should come as no surprise that this Court has affirmed that the General Assembly "has principal responsibility" and "primary authority" over redistricting. *Lincoln County*, 701 S.W.2d at 604. That accords with the rule reiterated time and again by state and federal courts that "[r]edistricting constitutes a traditional domain of state legislative authority." *Alexander*, 144 S. Ct. at 1233.

The Tennessee Constitution also says that "[n]othing in ... Article II"—which includes the county-splitting provision—"shall deny to the General Assembly the right at any time to apportion one House of the General Assembly using geography, political subdivisions, substantially equal population *and other criteria* as factors; provided such apportionment when effective shall comply with the Constitution of the United States as then amended or authoritatively interpreted." Tenn. Const. art. II, § 4 (emphasis added). By specifying that "[n]othing in ... Article II" shall prevent the General Assembly from choosing what criteria to use when redistricting, the Constitution commits to the General Assembly the authority to choose whether and to what extent it will elevate county-line preservation over other redistricting criteria. *See* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 126-27 (2012) (explaining that the use of superordinating language "shows which provision prevails in the event of a clash").

Under this Court's reasoning in *Bredesen*, Article II's text strongly favors applying the political-question doctrine here. *Bredesen* involved

an equal-protection challenge to the Governor's authority to appoint Justices of the Tennessee Supreme Court. 214 S.W.3d at 435. The Court found the first political-question factor applicable because the Constitution included a "textually demonstrable" commitment of "the subject of filling vacancies in office" to the legislature. *Id.* (citation omitted). The Constitution states that "the filling of all vacancies not otherwise directed or provided by this Constitution, shall be made in such manner as the Legislature shall direct." Tenn. Const. art. VII, § 4. The legislature in turn had directed that "the Governor alone" could make the relevant appointment, so the first factor applied. *Bredesen*, 214 S.W.3d at 435. In this case, the textual commitment appears with greater clarity than in *Bredesen*—the Constitution itself, rather than a statute, gives the General Assembly responsibility to draw districts how it sees fit, so long as those maps comply with federal constitutional law.

2. There is no administrable standard for deciding when a county split violates Article II, § 5.

The second factor also favors applying the political-question doctrine because no judicially manageable standard exists for courts to decide whether a county split violates the Tennessee Constitution. The relevant constitutional text, precedent, and history shows that there is no standard for deciding the legality of county splits that is "principled,

rational, and based upon reasoned distinctions" found in the Constitution. *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2005) (plurality opinion).

a. *Constitutional Text*. For two reasons, the text of the Tennessee Constitution supports the State's position that this issue presents a nonjusticiable political question. *First*, Article II expressly authorizes the General Assembly in its discretion to subordinate the county-splitting provision to "other [redistricting] criteria." *See* Tenn. Const. art. II, § 4; *supra* Argument III.A.1. The Court lacks any constitutionally based standard for reviewing the legislature's exercise of that authority with respect to the county-splitting provision. *Second*, the county-splitting provision itself contains no standard for assessing whether a county split complies with state law. *See* Tenn. Const. art. II, § 5. That matters because population-equality principles *require* county splits, and "[t]here are no legal standards discernible in the Constitution" for making judgments about which splits withstand scrutiny. *Rucho*, 588 U.S. at 707.

b. *Precedent*. Because of U.S. Supreme Court precedent, it is impossible for the General Assembly to follow the county-splitting provision. Federal law requires state districts to contain substantially equal population. That forces the legislature to split counties. And it leaves no administrable standard for deciding when a county must be split.

The Fourteenth Amendment to the U.S. Constitution requires that state legislative districts contain "substantial equality of population" so that "the vote of any citizen is approximately equal in weight to that of

any other citizen in the State." *Reynolds*, 377 U.S. at 579. Although state districts need not maintain absolute population equality, state legislatures must "make an honest and good faith effort to construct districts ... as nearly of equal population as is practicable." *Id.* at 577.

That precedent forces the General Assembly to split counties whenever it draws a new map. Tennessee has 99 house districts spread among 95 counties. Those counties range in population from 5,001 (Pickett County) to 929,744 (Shelby County). Trial Ex. 103. Given the population distribution among Tennessee, the legislature cannot draw a house map that complies with population-equality requirements without splitting county lines. *See* R. XXII, 3433-34; *see also* Trial Tr. 242. Because of that irreconcilable conflict, "the state constitutional prohibitions against the division of counties" must "yield to federal constitutional requirements under the Equal Protection Clause." *Lincoln County*, 701 S.W.2d at 603.

There are "no legal standards" that are "clear, manageable, and politically neutral" that are "discernible in the Constitution" for deciding when federal population-equality principles require a county split. *Rucho*, 588 U.S. at 707. The legislature knows that state districts must contain "as nearly of equal population as is practicable." *Reynolds*, 377 U.S. at 577. And it is true that maps with total population deviation exceeding 10% "are presumptively impermissible," while maps with deviations below 10% are presumptively lawful. *Evenwel*, 578 U.S. at 60. But compliance with that under-ten-percent standard does not create a

"safe harbor." *Moore*, 436 S.W.3d at 785 (citing *Cox v. Larios*, 542 U.S. 947, 949 (2004) (Stevens, J., concurring)). That means maps with deviations below 10% can still violate the one-person-one-vote requirement. *See, e.g., Raleigh Wake Citizens Assoc. v. Wake Cnty. Bd. of Elections*, 827 F.3d 333 (4th Cir. 2016). Yet the legislature has no way of knowing when it draws the maps what population deviation the U.S. Constitution tolerates, especially when it comes to deviations near the 10% benchmark.

The indeterminacy of the one-person-one-vote standard is a feature of the constitutional design rather than a bug. "The whole thrust of the 'as nearly as practicable' approach is inconsistent with adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case." *Cf. Kirkpatrick v. Preisler*, 394 U.S. 526, 530 (1969) (citation omitted). After all, "[i]f state legislators knew that a certain *de minimis* level of population differences were acceptable, they would doubtless strive to achieve that level rather than equality." *Karcher v. Dagget*, 462 U.S. 725, 731 (1983) (interpreting population-equality requirements for congressional districts).

The administrability problem arises when the county-splitting provision collides with that indeterminate one-person-one-vote standard. Wygant argues that the *Lockert* cases instruct that a county split violates the Tennessee Constitution unless federal law requires that split. *See* Appellant Br. 38-39. But to know whether federal law commands a split, the General Assembly must distinguish between a population deviation

which the Constitution *permits* and a deviation that the Constitution *requires*. Only by determining how low deviation must be can the legislature decide if federal law necessitates a split. The county-splitting provision thus demands that the General Assembly discern the undiscernible—that is, the minimum population deviation required by federal law. *But cf. Kirkpatrick*, 394 U.S. at 530 (explaining that population equality is "inconsistent with adoption of fixed numerical standards").

The Voting Rights Act adds yet another complication to the constitutional analysis. Section 2 of the Act forbids States from passing laws which interfere with a minority group's ability to elect their candidate of choice. *See Allen v. Milligan*, 599 U.S. 1, 17-18 (2023). So when redistricting, the General Assembly must also ensure that the enacted maps comply with § 2's minority-voting protections. That sometimes requires the General Assembly to split counties. *See, e.g.*, Trial Tr. 562-63, 609.

The chancery court aptly summarized the situation. Because the General Assembly has "no clear objective standard of acceptable population variance," it "must play Russian roulette." R. XXII, 3451. "Does the Legislature select a map whose districts cross the fewest counties but has a higher population variance ... over maps with lower population variance which cross more counties"? *Id.* The law provides no clear answer. And given that the General Assembly, with all its resources, "struggles with this balance," the chancery court properly questioned whether the judiciary is "really in a superior position to accomplish [that] goal." *Id.*

It is not. There is no administrable and constitutionally based standard that courts can use to decide whether the General Assembly appropriately determined that federal law requires a county split.

c. *History*. The judiciary's decades-long efforts to police county splits proves how unworkable judicial review has become and how there is no administrable standard for deciding county-splitting claims.

The General Assembly spent decades trying in vain to balance the competing state and federal redistricting requirements. When giving the legislature guidance in *Lockert I* about how to balance the county-splitting provision with population-equality requirements, the Court instructed that population "variance should be *as low as possible*" among state legislative districts "because equality of population is still the principal consideration." 631 S.W.2d at 714 (emphasis added). But when the General Assembly took that advice to heart and drew a map with minimal population deviation, the Court struck it down in *Lockert II*. The Court did so because it believed that "the Legislature *over-emphasized* achieving near perfection in responding to the one person, one vote federal mandate, where it collides with the State Constitutional mandate" not to split counties. *Lockert II*, 656 S.W.2d at 840 (emphasis added).

Following *Lockert II*, the legislature kept revising its maps in a good-faith effort to navigate the conflicting guidance. But it kept getting sued. Over six years during the 1980s, the General Assembly adopted

four different redistricting maps, all of which were challenged under the county-splitting provision. *Supra* Statement of the Case and Facts A.

Enter *Lockert III*. There, as explained, the Court wrote "chapter three in the tortured history of [this] intractable reapportionment problem." 729 S.W.2d at 89; *see supra* Statement of the Case and Facts A. The plaintiff argued that the map unlawfully split a county when drawing a senate district, so the Court waded back into the "conflict between the federal constitutional requirement of equality of population among districts and the Tennessee constitutional prohibition against dividing a county to form a senatorial district." *Lockert III*, 729 S.W.2d at 89. The Court found that the legislature acted in good faith when drawing the district, so it "terminate[d] th[e] serial litigation." *Id.* at 91.

That marked the end of the *Lockert* trilogy—but only the beginning of the county-splitting woes. During the 1990's redistricting process, the legislature remembered the Court's advice in *Lockert II* not to take *Lockert I*'s instruction about minimizing population variance too literally. So it adopted a map with higher population variance and the same number of county splits allowed by *Lockert I*. That prompted another bout of litigation, this time in federal court. Over the State's defense that it relied on *Lockert*, a federal court found Tennessee's house maps unconstitutional because the population deviation was too high. *See Rural W. Tenn. African-Am. Affairs Council, Inc. v. McWherter*, 836 F. Supp. 447, 450-52 (W.D. Tenn. 1993). Around the same time, a federal court found the state

house map unlawful under the Voting Rights Act. *See Rural W. Tenn. African-Am. Affairs Council, Inc. v. McWherter*, 836 F. Supp. 453, 466 (W.D. Tenn. 1993), *vacated by* 512 U.S. 1249 (1994).

The legislature thus finds itself caught between three conflicting constitutional and statutory provisions with divergent guidance from the courts. Litigation over those competing obligations continues to this day. If that "tortured history" teaches anything, *Lockert III*, 729 S.W.2d at 89, it is that courts lack any administrable standard for determining when a county split violates the Tennessee Constitution and how the General Assembly should balance conflicting legal constraints.

3. Deciding county-splitting claims requires courts to make quintessentially legislative policy choices.

The final political-question factor also favors finding Wygant's county-splitting claim nonjusticiable because it would require courts to make "policy determination[s] of a kind clearly for nonjudicial discretion," *Bredesen*, 214 S.W.3d at 435 (citation omitted)—namely, courts would have to second-guess legislative determinations about what degree of litigation risk to tolerate when drawing legislative districts.

Every redistricting map reflects a compromise between competing litigation risks. If the General Assembly minimizes population deviation, that comes at the expense of increasing county splits. *See* Trial Tr. 242:6-8. That makes a map more vulnerable to challenge under the Tennessee Constitution. And if the General Assembly keeps counties intact, that

increases population deviation and thus makes the map more vulnerable to federal challenges. So whatever map the General Assembly chooses necessarily involves tradeoffs designed to balance those litigation risks, as the mapmaker here testified. *See id.* at 477:9-22.

Those risk-tradeoff decisions belong to the General Assembly. This Court already made that clear in *Lockert II* when it explained that "the suit-risk factor is a matter for Legislative discretion." 656 S.W.2d at 844. It is up to the members of the General Assembly, who have sworn an independent oath to uphold the state and federal constitutions, to engage in a good-faith effort to balance these obligations and litigation risks. The decisions about the tolerable level of population deviation and county splits are inherently legislative. Courts cannot adjudicate county-splitting claims without deciding those legislative questions about how much "suit-risk" to entertain from each map—and from which direction. If the General Assembly believes a lower deviation is necessary to minimize the risk of a one-person-one-vote challenge or to account for "other [redistricting] criteria," Tenn. Const. art. II, § 4, it is entitled to act on that judgment without second-guessing from the courts.

The Court should hold that Wygant raises a nonjusticiable issue.

B. Stare decisis presents no obstacle to finding county-splitting claims nonjusticiable.

This Court previously considered the extent to which redistricting challenges raise justiciable disputes. In *Lockert I*, the State argued that

"reapportionment is nonjusticiable because it is a political question and because it is a legislative function under the Separation of Powers Doctrine." 631 S.W.2d at 705. The Court rejected that argument, pointing to the "evolution ... of constitutional law" in redistricting, and citing cases outside the context of the county-splitting provision where courts reviewed challenges to electoral maps. *Id.* at 705-06. That decision did not address the issue now before the Court. Unlike the defendants in *Lockert I*, the State does not argue here that *all* challenges to redistricting maps present nonjusticiable political questions. Instead, it argues that the county-splitting provision raises unique considerations that make county-splitting claims raised against redistricting maps nonjusticiable. Thus, stare decisis poses no barrier to reaching that novel issue here.

But to the extent that the Court believes it already decided this issue in *Lockert I*, it should overrule that decision. Although this Court usually hesitates to overrule its precedents, "stare decisis is neither 'a universal inexorable command' nor an 'inflexible rule.'" *Hooker v. Haslam*, 437 S.W.3d 409, 422 (Tenn. 2014) (per curiam) (citation omitted). The presumption in favor of stare decisis does not justify perpetuating the constitutional error of *Lockert I* for several reasons.

First, stare-decisis considerations are at their lowest ebb here because the dispute involves a matter of constitutional (rather than statutory) interpretation. *See Patterson v. McLean Credit Union*, 491 U.S. 164, 172-73 (1989). Nor are there any meaningful reliance interests at stake

because *Lockert* created rules that apply only to the General Assembly. *See Citizens United v. FEC*, 558 U.S. 310, 363-65 (2010); *Alleyne v. United States*, 570 U.S. 99, 121 (2013) (Thomas, J., concurring) (stare decisis carries little weight when "the reliance interests are ... minimal, and the reliance interests of private parties are nonexistent").

Second, the State respectfully submits that the *Lockert* decision is "erroneous," "unworkable," and "badly reasoned." *Frazier v. State*, 495 S.W.3d 246, 253 (Tenn. 2016) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). That decision did not discuss any of the *Baker* factors (followed by this Court in *Bredesen*) or otherwise explain how the standard that it announced can be used in a workable manner to resolve the conflict between federal law and the county-splitting provision. The post-*Lockert I* history shows that no such standard exists.

Third, subsequent precedent has undermined *Lockert I*'s reasoning. The Court there found the challenge justiciable based on the new consensus among courts that redistricting challenges do not raise political questions. 631 S.W.2d at 705. Although that remains the general rule, not all redistricting claims are fit for judicial decisionmaking. Partisan gerrymandering claims, for example, are nonjusticiable because courts lack an administrable standard for deciding those challenges. *See Rucho*, 588 U.S. at 703-10. Here too, courts lack a principled basis for deciding county-splitting claims.

For those reasons, *Lockert I* does not prevent the Court from holding that Wygant's claim presents a nonjusticiable political question.

IV. Hunt Lacks Standing to Challenge the Senate Map.

The chancery court held that Hunt has standing to challenge the senate map and entered judgment in her favor. R. XXII, 3425-26, 3486-93. That was an error because Hunt did not suffer any cognizable injury from living in a misnumbered district. The record confirms that Hunt raises only a generalized grievance about the senate map and thus she lacks standing to bring her claim. Because neither the chancery court's reasoning nor the arguments offered by Hunt below support the judgment on the senate map, it should be reversed.

A. Hunt suffers no legally cognizable injury from the misnumbered senate districts.

The record proves that Hunt brought this suit to vindicate her interest in constitutional governance. She suffers no "distinct and palpable" cognizable injury. *City of Memphis*, 414 S.W.3d at 98 (citation omitted). This case thus presents a textbook generalized grievance.

At trial, 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. 81:8-9. For that reason, she sued not just for herself, but "also [her] neighborhood, [her] city of Nashville, and everybody who shares the same values." *Id.* at 81:13-14.

And when asked what remedy she sought, she explained her desire for the court to enforce "the Constitution as it is written." *Id.* at 85:18-19.

That 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). Hunt "may feel sincerely and strongly" that Tennessee's 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) (quoting *Allen v. Wright*, 468 U.S. 737, 754 (1984)). Merely asserting a constitutional violation, as Hunt did here, does not prove an injury in fact. *See, e.g.*, *ACLU*, 195 S.W.3d at 615, 619-27 (finding no standing despite the allegation that the defendants violated the Constitution).

Likewise, the fact that Hunt resides in a misnumbered district does not 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 Court explained that "[t]he only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed." *Lance*, 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 Hunt asserted is that Tennessee Constitution, Article II, § 3 has not been followed. Hunt failed to show an injury because she never proved how she suffers concretely and individually from living in a misnumbered district.

The logical implication of Hunt's contrary position is that everyone in Tennessee can bring suits challenging redistricting maps. If her generalized interest in the government following the Constitution "to the letter" suffices, Trial Tr. 81:8-9, that opens the door to anyone in Tennessee bringing suits whenever the government acts in a manner that they perceive violates the law. Indeed, that is precisely what Hunt argued in the chancery court. She insisted that "all Tennesseans have standing to bring a facial challenge concerning a statewide redistricting statute that violates the Tennessee Constitution." R. III, 412 n.5. Of course, that 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 'government by injunction.'" *Schlesinger*, 418 U.S. at 222 (citation omitted).

In that sense, this dispute reaffirms why courts should adhere to injury requirement. "[W]hen a court is asked to undertake constitutional adjudication, the most important and delicate of its responsibilities, the requirement of concrete injury further serves the function of insuring that such adjudication does not take place unnecessarily." *Id.* at 221. The injury-in-fact doctrine thereby 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, and prevents "a profusion of law-suits" from individuals with generalized grievances, *see id.*

Hunt suffers no cognizable injury from the misnumbered district, so she lacks standing, and the judgment below should be reversed.

B. The chancery court's holding that Hunt suffered an injury disregards bedrock standing principles.

The chancery court held 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." R. XXII, 3490 (emphasis added). The panel thus found that Hunt's injury was the constitutional violation itself. *See id.* The panel also observed that finding standing, and considering the merits of Hunt's claim, was particularly appropriate

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

The majority erred at each step of its standing analysis. *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." *Gill*, 585 U.S. at 65. Contrary to what the chancery court held, that requirement applies even when a plaintiff challenges a legislative redistricting plan. *See, e.g., id.* at 65-68; *Lance*, 549 U.S. at 441-42. That requirement is not satisfied unless the plaintiff proves that she 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 chancery court's conclusion that a "voter's injury does *not* have to be individualized" flies in the face of this precedent. R. XXII, 3490 (emphasis added).

Second, the panel erred by finding that a bare constitutional violation by itself qualified as a cognizable injury. *See* R. XXII, 3490 (finding standing because "the Senate map has infringed upon Ms. Hunt's constitutional right to vote in a senatorial district consecutively numbered" and concluding that was "an injury distinct to her").[4] Ample authority

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[4] The premise that Article II, § 3 of the Constitution confers an individual right also rests on shaky ground. 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. That creates no individual rights—instead, it simply regulates how the General

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); *supra* Argument IV.A. Hunt proved no such concrete harm; indeed, her testimony confirms that she suffers no individualized injury, and instead she seeks merely to enforce her general interest in constitutional governance. *Supra* Argument IV.A.

Third, the panel erred by considering the merits of the constitutional claim as part of the standing inquiry. *See* R. XXII, 3490. 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) (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)). 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). On the contrary, the standing doctrine rests "on the judiciary's understanding of the intrinsic role of judicial

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Assembly should draw its district lines. *Cf. Gonzaga Univ. v. Doe*, 536 U.S. 273, 287–88 (2002). To the extent it *does* create an individual right, it is one that Hunt shares with all Tennesseans in multi-district counties.

power, as well as its respect for the separation of powers doctrine" in the Tennessee Constitution. *Norma Faye*, 301 S.W.3d at 202-03.

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. The Court should do so here too by reversing the judgment below.

C. The arguments Hunt offered below provide no basis for finding standing here.

Hunt made a variety of arguments in the chancery court to support her claim to standing. Each fails.

In the court below, Hunt primarily relied on gerrymandering and one-person-one-vote cases to support her "injury" claim. *See* R. XXII, 3492-93. But those cases are easily distinguishable; while the litigants in those cases had standing even though their injuries were shared by others, all those litigants nevertheless established *individualized* and

concrete injury. 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*, 585 U.S. at 49 (citations omitted). In other words, the plaintiffs had standing because their individual votes had been diluted. The plaintiffs in partisan gerrymandering cases likewise suffer an injury in fact because their votes are diluted for partisan reasons. *See id.* at 65-68. Hunt has not shown any similar disadvantage to herself as an individual caused by the alleged constitutional defect.

Next, Hunt suggested that the misnumbered senate districts deprive her the benefit of a stable senatorial delegation. *See* R. XX, 3045-46. The chancery court discussed this interest, explaining 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." R. XXII, 3489. By requiring candidates in even-numbered districts to run for re-election in different years from candidates in odd-numbered districts, the theory goes that the provision helps 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.*

That theory of injury suffers from many problems. For starters, Hunt cited no authority establishing that voters can have a legally

enforceable interest over vague notions of stability in a legislative delegation. Nor does she explain how the deprivation of that perceived right causes an individualized and tangible personal injury. Hunt is not represented by a delegation in the Senate; like all Tennesseans, she is represented by one Senator elected from her district. More importantly, she offered no evidence that the allegedly harmful instability ever occurred or will ever occur. Hunt agreed that there was no instability during the 2022 election (even under the misnumbered map) because only one of the three seats up for re-election turned over. *See* Trial Tr. 118:15-18. And even though the Davidson County districts were non-consecutively numbered for two decades from 1992 to 2012, the instability that Hunt fears never occurred. *See* Trial Exs. 36-82. So whatever perceived harms flow from an unstable delegation, the record shows that those harms are merely imaginary—not imminent.

Moreover, if legislative instability is the injury that Hunt asserts, 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. Whether a senatorial delegation turns over (and thus qualifies as "unstable") depends on the will of the voters—not on the numbering of the district. Although the numbering of districts obviously affects *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, 562 (Tenn. 1946). So Hunt cannot show she "will be adversely affected" by having three districts up for

re-election in one cycle rather than two districts. *Id.* Nor would that injury be redressable by the requested relief because renumbering the districts would not ensure that there will be no turnover in the future.

Finally, Hunt argued below that standing must exist because "mis-numbering claims" have previously been adjudicated on the merits. *See* R. XXII, 3491. But as Chancellor Maroney explained in his dissent, Hunt identified no authority "analyzing standing within the context of the state constitutional requirement of non-consecutive numbering of Senate districts." *Id.* at 3473. The decisions on which Hunt relied simply do not support her standing argument here because standing was not addressed in those cases. *See Webster*, 266 U.S. at 511.

CONCLUSION

The judgment of the chancery court should be affirmed with respect to Wygant's claim and reversed with respect to Hunt's claim.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Tennessee Rule of Appellate Procedure 30(e), I certify that the number of words in this brief, excluding the portions of the brief exempted by the Rule, is 14,994. This word count is based on the Microsoft Word system used to prepare this brief.

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