IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TENNESSEE STATE CONFERENCE OF THE NAACP, et al., Plaintiffs, v. WILLIAM B. LEE, in his official capacity as Governor of the State of Tennessee, et al., Defendants.	Case No. 3:23-cv-00832 Judge Eric Murphy Judge Eli Richardson Judge Benita Pearson

MEMORANDUM IN SUPPORT OF THE
JOINT MOTION TO DISMISS THE COMPLAINT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutions

Statutes

Rules and Regulations

INTRODUCTION

In the wake of an unprecedented pandemic that caused lengthy delays to census returns, the Tennessee General Assembly convened to reapportion legislative districts. The General Assembly lawfully carried out its redistricting responsibilities. It created a racially and politically diverse redistricting committee for the first time in State history. It held regular public hearings—featuring comments from several plaintiffs here—to gather redistricting input. And it offered extraordinary transparency into the various map proposals. After all of this, the Republican-controlled General Assembly did what virtually all political bodies do when apportioning district lines. It drew maps that maximized the electoral prospects of the majority party while protecting its own incumbents. The changes turned a 7-2 Republican advantage among congressional seats to an 8-1 Republican advantage by splitting Davidson County and created more politically favorable lines in Senate District 31. Commentators and candidates alike recognized the new map's pro-Republican purpose.

Plaintiffs tell an entirely implausible story. They allege that Congressional Districts 5, 6, and 7, along with Senate District 31, are all in fact racial gerrymanders drawn with the purpose to discriminate against minority voters. They assert that racial animus motivated the mapmakers when drawing those districts. Plaintiffs conspicuously ignore partisanship as a factor altogether.

Leveraging the current political reality that Black voters vote overwhelmingly for Democrats, Plaintiffs observe non-actionable partisan redistricting and see instead racial discrimination. But this case presents none of the hallmarks of a racial gerrymander. None of the challenged maps created (by packing) or destroyed (by cracking) majority-minority districts. The district lines are not bizarrely shaped. Legislators did not shut out minority voters from the redistricting process. And Plaintiffs present no alternative maps showing how the legislature could have accomplished their political goals through more race-neutral means. What they *do* allege, however, is that the new maps pushed out a longtime (white) Democrat congressman in an election cycle where control of the U.S. House of

Representatives turned on razor thin margins. The new maps harmed Democrats by flipping CD-5 to the Republican party.

The timing of this lawsuit confirms that it was sparked by partisan rather than racial concerns. Despite being actively involved in the 2020 redistricting process, Plaintiffs did not bring their racial gerrymandering and purposeful discrimination claims in February 2022 when the maps were enacted. Nor did they bring them any time before the 2022 congressional elections. Seeing the results of those elections, Plaintiffs were still dilatory and in fact waited so long to file this suit they have now agreed to see 40% of this decade's elections occur under maps they say violate the United States Constitution.

This action should be dismissed for several reasons.

First, the Panel should dismiss the Complaint based on the equitable doctrine of laches. That doctrine can be applied in the redistricting context. And it should be applied here because Plaintiffs inexplicably delayed bringing their claims for over eighteen months—an unreasonable delay in the context of decennial redistricting. That delay caused the State to suffer prejudice, including the death of a trusted attorney that had been involved in redistricting. The relief Plaintiffs seek will redraw district lines for hundreds of thousands and potentially millions of Tennesseans, affecting the ability of, for example, voters in CD-5 to re-elect their (at that point potentially two-Term) Republican Congressman. Redistricting suits like this one should be brought when the legislation is passed.

Second, the Panel should dismiss the Complaint because it fails to state a claim. None of the racial gerrymandering claims are plausibly alleged because Plaintiffs do not even try to show how race predominated over the obvious partisan motivations for the district lines. Similarly, the purposeful discrimination claims are not plausible because Plaintiffs' allegations lack sufficient facts to overcome the presumption of good faith and establish racial animus and discriminatory effect.

Finally, at minimum, Governor Lee should be dismissed from this action. He is immune from suit under the Eleventh Amendment. Plaintiffs also lack standing to seek relief against him because he neither caused nor has the power to redress their injuries.

How the Panel adjudicates this motion to dismiss will set an important precedent. The Supreme Court has instructed that plaintiffs must show that race predominated over partisanship and other traditional districting criteria to pursue a racial gerrymandering claim. Here, Plaintiffs ignored that requirement completely with allegations that never mention partisanship or party considerations. If the allegations are enough to move past the pleadings stage and subject state officials to what Plaintiffs admit is the "extreme burden" of discovery, Dkt. 34, Hr'g Tr. 46:24–25, then the floodgates open even further. Plaintiffs' Complaint should be dismissed.

BACKGROUND

A. Tennessee Provides Unprecedented Transparency and Public Participation During the 2020 Redistricting Process.

Every ten years, Tennessee reapportions its legislative districts based on the most recent federal census. The U.S. Census Bureau planned to deliver demographic data starting in February 2021.[1] But the COVID-19 pandemic "delayed census operations significantly."[2] As a result, Tennessee did not receive census data until August 2021—a six-month delay. Dkt. 1 ¶ 63 ("Complaint").

So after receiving the updated demographic information, Tennessee promptly started the redistricting process. On August 25, 2023, the Tennessee House of Representatives appointed

[1] James Whitehorne, Timeline for Releasing Redistricting Data, U.S. Census Bureau (Feb. 12, 2021), https://bit.ly/46bOffX. This memorandum contains citation to judicially noticeable materials. *New England Health Care Emp.'s Pension Fund v. Ernst & Young, LLP*, 336 F.3d 495, 501 (6th Cir. 2003) ("A court that is ruling on a Rule 12(b)(6) motion may consider materials in addition to the complaint if such materials are public records or are otherwise appropriate for the taking of judicial notice."); *Energy Automation Sys., Inc. v. Saxton*, 618 F. Supp. 2d 807, 810 n.1 (M.D. Tenn. 2009) ("A court may take judicial notice of the contents of an Internet website.").

[2] Whitehorne, *supra* n.1.

members to the House Select Committee on Redistricting, Dkt. 1 ¶ 63.[3] For the first time in Tennessee history, the State House appointed a bi-partisan coalition to serve on the House Select Committee.[4] That bipartisan group included four members from the Democratic party, including two Black state representatives.[5] The Committee's politically and racially diverse composition represented "the distinctive voices of Tennesseans from across all three grand divisions of [the] state."[6] The Senate Ad Hoc Committee on Redistricting, also a bi-partisan group, was vice-chaired by a Black senator.[7]

Throughout the apportionment process, the General Assembly kept the public informed about the status of redistricting and solicited public feedback. On September 8, 2021, the House Select Committee held a public hearing to discuss and adopt redistricting guidelines. Dkt. 1 ¶ 65. The bipartisan and racially diverse Committee unanimously adopted the redistricting guidelines.[8] The Committee opened the floor for public comment. Dkt. 1 ¶ 67. Many members of the public provided feedback, including representatives from plaintiff League of Women Voters of Tennessee, the Equity Alliance, and the Tennessee Chapter of the NAACP. *Id.* And on October 27, 2021, the House Select Committee provided the public with an update and invited further commentary. Dkt. 1 ¶ 68. Nearly two dozen individuals were invited to testify at that hearing, *id.*, including representatives from plaintiffs Tennessee Conference of the NAACP and the League of Women Voters of Tennessee.[9]

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[3] Tennessee General Assembly, Presentation to the Select Committee on Redistricting 3, capitol.tn.gov (Sept. 8, 2021), https://bit.ly/3ZBQkiI ("Redistricting Presentation").

[4] Cooper Moran, House Speaker Cameron Sexton Establishes First Bipartisan House Select Committee on Redistricting, The Tennessee Star (Aug. 27, 2021), https://bit.ly/3PxbNVm.

[5] *See* Redistricting Presentation at 4, *supra* n.3.

[6] Tennessee House Speaker Unveils Redistricting Panel Members, Associated Press (Aug. 27, 2021), https://bit.ly/3rD05R9.

[7] *See* Tennessee General Assembly, Senate Ad Hoc Committee on Redistricting Agenda for Thursday, January 13, 2022, capitol.tn.gov, https://bit.ly/3ZFoMcf.

[8] Tennessee House of Representatives, House Select Committee on Redistricting, at 44:40–45:01, YouTube (Sept. 8, 2021), https://bit.ly/46zPYLC.

[9] Tennessee House of Representatives, House Select Committee on Redistricting, at 9:30–12:58, 16:39–18:05, YouTube (Oct. 27, 2021), https://bit.ly/3LSqAc4.

Similarly, the Senate Ad Hoc Committee held a hearing to set guidelines for process, including rules for the public to submit proposed maps. Dkt. 1 ¶ 70. Once again, various members of the public testified—including some plaintiffs. Dkt. 1 ¶ 71.

The latest redistricting cycle provided unprecedented transparency. Unlike in the 2010 redistricting, the House Select Committee publicly shared, discussed, and allowed public comment on submitted redistricting plans; the Senate Committee also shared submitted plans publicly.[10] Unlike previous cycles, both chambers held public meetings and provided opportunities for feedback.[11] Most of the plaintiff organizations testified to both chambers, provided reports to the legislative bodies, submitted draft maps, and provided public feedback on the map proposals. *See* Dkt. 1 ¶¶ 15–33.

B. The General Assembly Votes Along Party Lines to Adopt Electoral Maps That Solidified Republican Advantage in State and Federal Elections.

The idea to split Davidson County in the congressional map was no secret. Even before the House and Senate Committees released their proposed maps, reports surfaced that the Republican-controlled legislature might split the Democrat stronghold of Davidson County into three pieces.[12] One legislative opponent responded that dividing Nashville into multiple districts would be "an obvious political gerrymander" designed to "water down the Democratic delegation."[13] Indeed.

During public hearings and after providing opportunities for public comment, the House and Senate Committees released and approved their proposed Senate and congressional maps on a

[10] *See* Mary Darby, 2021-2022 Redistricting Update, Think Tennessee (Oct. 22, 2021), https://bit.ly/46g2mAM; Tennessee House of Representatives, House Select Committee on Redistricting, YouTube (Jan. 12, 2022), https://bit.ly/46g2wrS ("Jan. 12, 2022 Hearing"); Tennessee General Assembly, House Select Committee Redistricting, capitol.tn.gov, https://bit.ly/46FygXd.

[11] Darby, *supra* n.10.

[12] Kimberlee Kruesi & Jonathan Mattise, Speaker: Nashville US House seat to split in redistricting, Associated Press (Jan. 10, 2022), https://bit.ly/3LJHSIk.

[13] *See* Jan. 12, 2022 Hearing at 17:20–17:33, 18:00–18:54, *supra* n.10.

materially slower timeline than the 2010 process.[14] The Congressional Map split Davidson County into three districts. The partisan ramifications were widely reported. News outlets recounted that "the Republican-dominated state legislature redrew the [Davidson County] seat during this year's redistricting cycle, in hopes of flipping it from a Democratic-held seat to the GOP."[15] The new map "converted the 5th, previously a reliably Democratic stronghold, into a Republican-friendly district."[16] And the Senate Map likewise protected an "embattled Republican incumbent" in SD-31.[17]

Following the committee vote, the redistricting process likewise continued at a normal pace.[18] Although legislative opponents complained that the proposals diluted Democrats' power, the General Assembly ultimately enacted the maps along party lines. On February 6, 2022, Governor William Lee signed the proposals into law. Dkt. 1 ¶¶ 90, 100.

C. Plaintiffs Delay Bringing Suit For Eighteen Months and Disclaim Any Request for Immediate Relief.

Plaintiffs Tennessee Chapter of the NAACP, the League of Women Voters, the Equity Alliance, and every single other organizational plaintiff was intimately involved in the redistricting process. Despite monitoring redistricting, those organizations did not file suit once the Governor

[14] In 2012, legislators introduced the congressional and Senate maps on January 10 and secured General Assembly approval by January 13—leaving only three days for public consideration. *See* Redistricting in Tennessee: A Once-in-a-Decade Opportunity to Increase Public Engagement, Part II at 1, Think Tennessee (May 2021), https://bit.ly/3F1C89a ("Redistricting in Tennessee"). Here, by contrast, nearly two weeks passed between the congressional plan's public release (on January 12) and final approval (on January 24). Dkt. 1 ¶¶ 77, 80, 94–95. Likewise, the senate plan was released on January 13 and approved by January 24. Dkt. 1 ¶¶ 74, 87–89.

[15] Adam Friedman, Republican Andy Ogles wins race for Tennessee's 5th Congressional District, The Tennessean (Nov. 8, 2022), https://bit.ly/48vx3Ud.

[16] Melissa Brown, Sen. Heidi Campbell announces Democratic bid for new-look 5th Congressional District, The Tennessean (Apr. 4, 2022), https://bit.ly/46xo6b7.

[17] Adam Friedman, Tennessee senators approve new congressional, Senate districts; House to vote Monday, The Tennessean (Jan. 20, 2022), https://bit.ly/46sx6yN.

[18] *See* Redistricting Presentation at 22, *supra* n.3.

signed the maps into law. Though the Complaint now portrays the maps as racially gerrymandered from their passage, the 2022 election came and went without legal challenge from Plaintiffs.

Finally, on August 9, 2023, eighteen months after the enactment of the maps, and nearly a year after Republicans secured an 8-1 congressional advantage,[19] Plaintiffs brought this action. They claim that the legislature racially gerrymandered Congressional Districts 5, 6, and 7, along with Senate District 31. Dkt. 1 ¶¶ 156–67. They also claim those same districts were drawn to discriminate against racial minorities. *Id.* ¶¶ 168–83. Plaintiffs seek a permanent injunction remedying the alleged constitutional deficiencies, which would apply to the 2026 election at the earliest—as Plaintiffs have disclaimed seeking preliminary injunctive relief. Dkt. 34, Hr'g Tr. 48:1–5, 52:1–5.

LEGAL STANDARD

A Rule 12 motion tests the legal sufficiency of the complaint. To survive dismissal, a complaint must contain enough "[f]actual allegations" to "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must demonstrate "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Where a complaint points to conduct "merely consistent with" a defendant's liability rather than pleading "facts adequate to show illegality," it "stops short of the line between possibility and plausibility." *Twombly*, 550 U.S. at 557. The court "need not accept as true legal conclusions or unwarranted factual inferences," nor "conclusory allegations or legal conclusions masquerading as factual allegations." *In re Travel Agent Comm'n Antitrust Litig.*, 583 F.3d 896, 903 (6th Cir. 2009) (citations omitted).

[19] Melissa Brown, Tennessee Republicans plan to split Nashville congressional seat, The Tennessean (Jan. 10, 2022), https://bit.ly/46ieoth (explaining Republicans held a 7-2 advantage in congressional seats); Friedman, *supra* n.15 (explaining Republicans flipped CD-5).

ARGUMENT

I. The Lawsuit Is Barred By Laches.

"Relief in redistricting cases is fashioned in the light of well-known principles of equity." *North Carolina v. Covington*, 581 U.S. 486, 488 (2017) (per curiam) (cleaned up) (citation omitted). That includes the equitable doctrine of laches, which potentially "applies to redistricting cases as it does to any other." *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 366 F. Supp. 2d 887, 908 (D. Ariz. 2005) (three-judge panel). Laches bars the requested relief here because Plaintiffs "unreasonably delayed" by waiting over eighteen months to file suit in an electoral context where prompt and predictable rules are paramount. *Env't Def. Fund v. Tenn. Valley Auth.*, 468 F.2d 1164, 1182 (6th Cir. 1972). Defendants are further "prejudiced by this delay" because a trusted attorney-advisor to the State, and possible fact witness, is no longer available. *Id.* Untimely litigation over the maps frustrates the State's interest in the orderly administration of elections.

A. Laches potentially applies to redistricting lawsuits at the motion-to-dismiss stage.

Before considering the elements of laches, courts must confront the "threshold legal question" about "whether laches is even potentially applicable in the particular context at issue." *Memphis A. Phillip Randolph Inst. v. Hargett*, 473 F. Supp. 3d 789, 793 (M.D. Tenn. 2020).

In this context, "the court is not prohibited *ab initio* from applying laches by threshold considerations." *Id.* at 793 n.4. Time and again, federal courts have used laches to bar the claims of racial gerrymandering plaintiffs seeking injunctive relief. *See*, *e.g.*, *Sanders v. Dooly County*, 245 F.3d 1289, 1290–91 (11th Cir. 2001) (per curiam); *White v. Daniel*, 909 F.2d 99, 102 (4th Cir. 1990); *Fouts v. Harris*, 88 F. Supp. 2d 1351, 1353–55 (S.D. Fla. 1999) (three-judge panel), *aff'd sub nom. Chandler v. Harris*, 529 U.S. 1084 (2000); *see also Knox v. Milwaukee Cnty. Bd. of Elections Comm'rs*, 581 F. Supp. 399, 402–04 (E.D. Wisc. 1984) (applying laches to Voting Rights Act claim). This Court, too, has applied laches to lawsuits seeking injunctive relief against allegedly unconstitutional electoral procedures. *Hargett*, 473

F. Supp. 3d at 802. That makes sense given the "flexibl[e]" nature of equity, *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946), the "decennial" nature of redistricting, Tenn. Const. art. II, § 4; Tenn. Code Ann. § 2-16-102, and the strong public interest in prompt decisions about the legality of duly enacted electoral maps.

Laches can be—and in this case, *should be*—decided at the pleadings stage. Although "the defense of laches usually requires factual development beyond the content of the complaint," *Am. Addiction Ctrs., Inc. v. Nat'l Ass'n of Addiction Treatment Providers*, 515 F. Supp. 3d 820, 839 (M.D. Tenn. 2021), that is not true here. Plaintiffs' allegations and judicially noticeable sources "themselves demonstrate" that laches applies, *Tulis v. Orange*, No. 3:22-cv-00911, 2023 WL 5012106, *10 (M.D. Tenn. Aug. 7, 2023) (applying the rule in the statute-of-limitations context), appeal filed No. 23-5804 (6th Cir. Sept. 8, 2023), thus making it "an appropriate issue for a motion to dismiss," *Marshall v. Meadows*, 921 F. Supp. 1490, 1494 (E.D. Va. 1996); *see*, *e.g.*, *Logan Farms v. HBH, Inc. DE*, 282 F. Supp. 2d 776, 790 (S.D. Ohio 2003) (granting motion to dismiss based on laches); *Potter Instrument Co. v. Storage Tech. Corp.*, 641 F.2d 190, 191–92 (4th Cir. 1981) (affirming a laches dismissal); *cf. Evans v. Vanderbilt Univ. Sch. of Med.*, 589 F. Supp. 3d 870, 883 (M.D. Tenn. 2022) ("[If] the allegations in the complaint affirmatively show that the claim is time-barred, dismissing the claim under Rule 12(b)(6) is appropriate." (quoting *Cheatom v. Quicken Loans*, 587 F. App'x 276, 279 (6th Cir. 2014))).

B. Laches applies here because Plaintiffs' filing delay was unreasonable and prejudicial.

Laches rests on the principle that "equity aids the vigilant, not those who slumber on their rights." *Lucking v. Schram*, 117 F.2d 160, 162 (6th Cir. 1941). "As parties allegedly facing severe violations of their constitutional rights as a result of the implicated election laws," Plaintiffs "should have been on the proverbial red alert by the time" the maps took effect. *Hargett*, 473 F. Supp. 3d at 801. Yet Plaintiffs sat on their race-discrimination claims for over eighteen months, content to let the State use allegedly unconstitutional maps two out of this decade's five election cycles.

Plaintiffs' delay satisfies each of the laches elements.

1. Unreasonable Delay. Plaintiffs' delay reflects an unreasonable "lack of diligence" in the "case-specific circumstances" here. *Id.* at 793 (citation omitted). Plaintiffs knew the factual and legal bases for their claims from the moment the maps were enacted. *Id.* at 792 (citation omitted). After all, most of the organizational plaintiffs—including the TN NAACP, the League of Women Voters, and the Equity Alliance (among others)—testified before the Senate and House committees and actively participated in the redistricting process. Dkt. 1 ¶¶ 19, 23, 27, 30, 33. At odds with the views of every neutral commentator in the press and political world that this was partisan redistricting, a plaintiff organization voiced "concerns about Black vote dilution," "specifically in Davidson and Shelby Counties." Dkt. 1 ¶ 33. These organizations presented their concerns with the map proposals to the Tennessee Legislature, and even issued public statements condemning the maps that the General Assembly adopted as "gerrymandered" by "partisan or racial motivations."[20] The Complaint, too, alleges that the maps have reflected illegal racial animus since their passage. *See* Dkt. 1 ¶ 4. Plainly, Plaintiffs could have "acted sooner." *Hargett*, 473 F. Supp. 3d at 792 (citation omitted).

Though an eighteen-month wait may not trigger laches in the mine-run case, such a delay is unreasonable in the extraordinary context of redistricting where States' constitutional prerogative to create electoral maps is at stake and the process is renewed every ten years. *See* U.S. Const. art. I, § 4, cl. 1; Tenn. Const. art. II, § 4. Permitting a "belated challenge" to State electoral maps interferes with core sovereign functions and comity, injects uncertainty into the political process, and "prejudices the State's interest in holding orderly elections." *Crookston v. Johnson*, 841 F.3d 396, 399 (6th Cir. 2016). This Court has thus previously warned that "would-be challengers to election protocols" should bring "challenges sooner rather than later" to avoid laches. *Hargett*, 473 F. Supp. 3d at 802 (citation omitted).

[20] League of Women Voters of Tennessee, Tennesseans deserve fair and consistent districts (Jan. 18, 2022), https://bit.ly/3rIaPO2.

Other courts have likewise rejected redistricting suits on laches grounds in scenarios like this one. In *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission*, for example, the court held that the "two[-]year delay" in bringing a Voting Rights Act (VRA) claim was "inexcusable and unreasonable" because the plaintiffs had "ample opportunity" to raise the claim earlier. 366 F. Supp. 2d at 908–09. And in *Knox v. Milwaukee County Board of Elections Commissioners*, the court found a twenty-two-month delay between the adoption of the map and the initiation of the lawsuit unreasonable, particularly given "the efforts made" by the mapmakers to "solicit the contribution of county residents at nearly all stages of the plan's development." 581 F. Supp. at 404. As in those cases, Plaintiffs cannot justify waiting eighteen months to bring this action after participating "at nearly all stages" of the redistricting plan's development. *Id.* And given Plaintiffs' characterization of the maps as egregious racial gerrymanders, more vigilance should be required. *See Hargett*, 473 F. Supp. 3d at 801 (applying laches because, if the law were as "unconstitutional and injurious" "as alleged," the plaintiffs should have sued "long before they did").

2. Prejudice to Defendants. Permitting Plaintiffs' claims to move forward would severely prejudice the State's defense and interest in the orderly administration of elections. To begin, the delay impaired the State's defense because of the intervening death of an important attorney advisor and potential fact witness—John Ryder, who passed away in May 2022.[21] Mr. Ryder could have proven instrumental in assisting in the defense against Plaintiffs' allegations of racial predominance and animus, yet Plaintiffs' delay in filing suit left Defendants with no opportunity to avail themselves of the information and first-hand knowledge he could offer. This deprivation is alone sufficient prejudice for laches purposes. *See, e.g.*, *Baptist Physician Hosp. Org., Inc. v. Humana Mil. Healthcare Servs., Inc.*, 481 F.3d 337, 353 (6th Cir. 2007); *Stone v. U.S. Postal Serv.*, 383 F. App'x 873 (11th Cir. 2010) (per curiam).

[21] Yue Stella Tu, Senate redistricting panel hears public proposals without releasing committee draft, The Tennessean (Dec. 14, 2021), https://bit.ly/3Q1j4Ov.

On top of that, Plaintiffs' lone requested remedy would apply only after 40% of the decade's state and federal elections (in 2022 and 2024) have taken place. Dkt. 28, Joint Status Rep. at 2 (Sept. 8, 2023) (requesting a trial in 2025). That middle-of-the-decade relief doubly prejudices Tennessee. For starters, the delayed lawsuit "impos[es] great financial and logistical burdens." *White*, 909 F.2d at 104. Tennessee invested considerable time and resources preparing and administering the current maps over the past two years—and will continue to do so as the 2024 and 2026 elections approach. "As time passes, the state's interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made," *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) (applying laches to election-related claim), thus magnifying the State's prejudice. Hundreds of thousands of non-parties to this suit (of all races) will, if Plaintiffs get their way, have their electoral choices altered in a way that frustrates their political interests after four years of using the current maps. A court of equity need not blind itself to these countervailing interests.

Likewise, the "instability and dislocation in the electoral system" caused by untimely litigation over the electoral maps will "greatly prejudice" Tennessee. *White*, 909 F.2d at 104. Candidates and prospective candidates make decisions based on expectations in the continued use of the current maps. *See*, *e.g.*, Tenn. Code Ann. § 2-13-209 (residency requirement for Congress). Tardy lawsuits obliterate those reliance interests. *See Arizona Minority Coal.*, 366 F. Supp. 2d at 908 (using "expectations-based prejudice" to justify laches). The public would also suffer from this belated challenge because late-in-the-decade redistricting "would confuse voters" whose districts might abruptly change mid-decade after multiple elections. *Sanders*, 245 F.3d at 1290. This "chaotic impact" on state elections supports application of laches. *Hargett*, 473 F. Supp. 3d at 801. So does discouraging "sluggish election-procedure challenges," *Crookston*, 841 F.3d at 399, that risk disrupting Tennessee's elections for years.

In short, Plaintiffs delayed bringing this lawsuit eighteen months and the judicially noticeable record proves there is no excuse. The Court should dismiss this action with prejudice based on laches.

II. The Complaint Does Not State Racial Gerrymandering Claims.

Counts I and II allege that the General Assembly racially gerrymandered Congressional Districts 5, 6, 7 and Senate District 31. "[A] plaintiff alleging racial gerrymandering bears the burden 'to show . . . that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.'" *Bethune-Hill v. Va. State Bd. Of Elections*, 580 U.S. 178, 187 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). As Plaintiffs put it, the facts must show that race was "the main reason that the legislature acted the way that they did." Dkt 34, Hr'g Tr. 28:24–25. "[A] jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact." *Hunt v. Cromartie*, 526 U.S. 541, 551 (1999) (alteration in original). The plausibility standard is not met by a complaint that does not even address the self-evident (to every commentator under the Sun) partisan motive behind the districts that are the subject of the complaint.

The Complaint does not overcome the legislative presumption of good faith and satisfy the "demanding" standard required to plead actionable racial gerrymandering claims. *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) (quoting *Miller*, 515 U.S. at 928 (O'Connor, J., concurring)). The challenged districts lawfully maximize Republican seats in Congress and the State Senate. In the face of this "obvious alternative explanation," *Iqbal*, 556 U.S. at 682 (quoting *Twombly*, 550 U.S. at 567), Plaintiffs did not plausibly allege that race predominated over partisanship; instead, they ignore partisanship altogether. Nor have they plausibly alleged that the General Assembly could have achieved their political objectives via maps that were more race neutral. Counts I and II fail to state a claim.

A. Plaintiffs did not plausibly allege that race predominated over partisanship during the mapmaking process.

In Tennessee, race "is highly correlated with political affiliation." *Cromartie II*, 532 U.S. at 242.[22] So a racial gerrymandering plaintiff must show that "race *rather than* politics *predominantly* explains" the challenged districts. *Id.* at 243 (alteration in original).

The Complaint is fatally deficient because it implausibly fails to address an obvious alternative explanation for the challenged districts—namely, partisanship. Plaintiffs acknowledge that the pivotal House Select Committee "was dominated and chaired by Republicans." Dkt. 1 ¶ 64. No surprise, then, that the General Assembly passed both maps along party lines.[23] Compared to the congressional map from the 2010's, which "heavily favored the Democrats," the new map "flips that dynamic and heavily favors the GOP."[24] CD-5 was "undoubtedly drawn to give the advantage to a Republican candidate."[25] The Republican-controlled legislature divided Nashville "into multiple districts to dilute the Democratic base and shift more power to the Republicans."[26] Even opponents described the split of Davidson County as "an obvious political gerrymander."[27] The same goes for Shelby County, "where the new Senate map appears to protect [the] embattled Republican incumbent."[28]

Despite this obvious explanation for the challenged maps, Plaintiffs made no effort "to disentangle race from politics." *Cooper v. Harris*, 581 U.S. 285, 308 (2017). Of course, "partisan motives

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[22] *See, e.g.*, Tennessee Election Results 2018, Politico (Oct. 2, 2018), politi.co/3ZDWu1P (reporting that "counties with higher minority populations tended to favor the Democrats").

[23] Tennessee General Assembly, SB 0780 Votes, capitol.tn.gov, https://bit.ly/46miUad, *with* Tennessee General Assembly, SB 0781 Votes, capitol.tn.gov, https://bit.ly/46L2yrs.

[24] Friedman, *supra* n.15.

[25] J. Holly McCall, Editor's Column: Dearth of Democratic candidates in CD 5 leaves voters underrepresented, Tennessee Lookout (Feb. 28, 2022), https://bit.ly/3F2R3zT.

[26] David Plazas, Redistricting is as unsexy as it sounds, but the outcome matters for citizens, The Tennessean (Dec. 3, 2021), https://bit.ly/3RL9lgv.

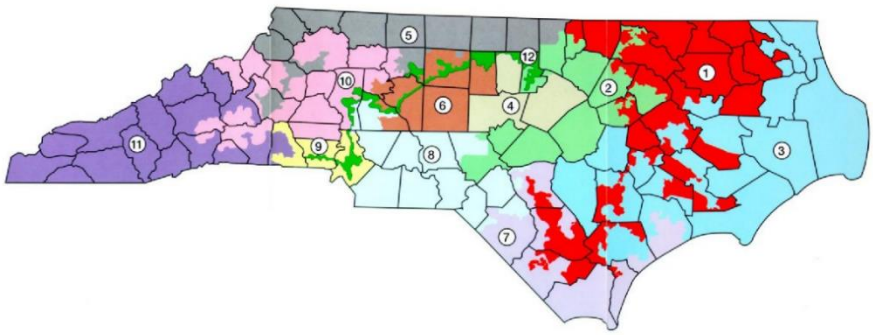
[27] Jan. 12, 2022 Hearing, *supra* n.10.

[28] Friedman, *supra* n.17.

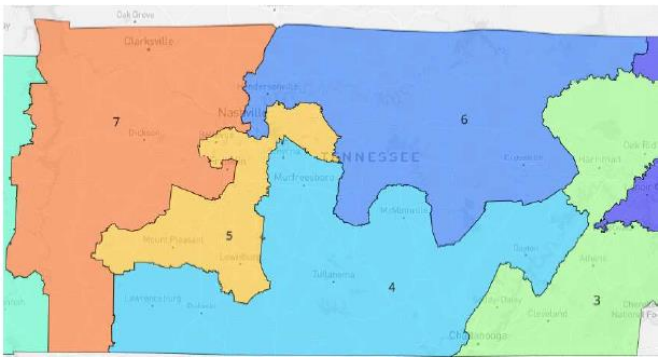
are not the same as racial motives." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2349 (2021). And although Plaintiffs generally allege the mapmakers "split communities of interest," made districts less compact, and disproportionately affected voters of color, Dkt. 1 ¶¶ 80, 113, 130, 150, those actions likewise "support an inference of partisan intent," *see Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1096 (S.D. Ohio 2019) (three-judge panel), *vacated on other grounds by Chabot v. Ohio A. Philip Randolph Inst.*, 140 S. Ct. 102 (2019). By ignoring partisanship as an explanation for the challenged districts, Plaintiffs failed to "nudge [their] claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570; *see Bush v. Vera*, 517 U.S. 952, 968 (1996) ("If district lines merely correlate with race because they are drawn on the basis of political affiliation, which correlates with race, there is no racial classification to justify.").

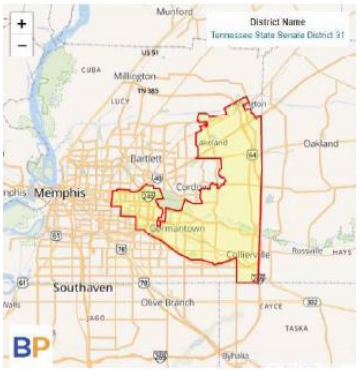
The appearance of the challenged districts reaffirms the implausibility of the racial gerrymandering claims. "[R]eapportionment is one area in which appearances do matter." *Shaw v. Reno*, 509 U.S. 630, 647 (1993). Bizarrely shaped districts may support an inference of racial animus. *Id.* Consider the racially gerrymandered Congressional Districts 12 and 1 in *Shaw v. Reno* (below, in bright green with the appearance that someone drew a disjointed line with a marker; and in red), which Plaintiffs have sought to compare to their challenge, *see* Dkt 34, Hr'g Tr. 22:22:

APPENDIX
NORTH CAROLINA CONGRESSIONAL PLAN
Chapter 7 of the 1991 Session Laws (1991 Extra Session)



Shaw, 509 U.S. at 659 (color added). Those sprawling lines look nothing like the relatively compact districts here (Congressional Map on the left; Senate District 31 on the right):





New SD-31 (2022 plan)

Dkt. 1 ¶¶ 113, 151. The challenged maps simply lack "lines of a dramatically irregular shape," *Shaw*, 509 U.S. at 633—the hallmark of gerrymandered districts.

Because these maps are not unusually shaped, Plaintiffs fall back on their allegation that the General Assembly "was well aware" that the proposed maps would "adversely impact Black voters" yet still "forg[ed] ahead" by enacting those plans anyway. Dkt. 1 ¶¶ 3–4. That is a statement of a winning case for the defendants, not a plausible one for the Plaintiffs. The required intent is not mere "volition" or "awareness of consequences." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Plaintiffs instead must show that a legislature passed a law "'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Id.* After all, "when members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes." *Miller*, 515 U.S. at 920 (quotation omitted). In the redistricting context, a partisan motive to improve Republican prospects is the same as one that adversely impacts those for Democrats. Given the current political reality regarding the correlation between Black voters and Democratic voters, awareness of this impact plausibly suggests absolutely nothing about any improper racial motive.

The Complaint's allegations on their face are plausibly consistent with partisan gerrymandering. That is not enough to survive a motion to dismiss, *see Twombly*, 550 U.S. at 554, especially in this context where courts must exercise "extraordinary caution," *Miller*, 515 U.S. at 916.

B. Plaintiffs never attempted to make the required showing that the mapmakers could have achieved their partisan objectives in more race-neutral ways.

Plaintiffs had to show "at the least" that the General Assembly "could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional redistricting principles" yet promote "significantly greater racial balance." *Cromartie II*, 532 U.S. at 258. Only then can a court be sufficiently sure that "race, rather than politics, predominantly accounts for the result" challenged. *Id.* at 257.

The Complaint alleges no facts to make that showing. Although a racial gerrymandering claim does not always require an alternative map to prove the presence of a more race-neutral alternative, *see Cooper*, 581 U.S. at 319–22, one is necessary here where there is no "direct evidence of a racial gerrymander," *id.* at 322. Plaintiffs presented no alternative map here. Nor did they plausibly allege that the General Assembly could have achieved their political objectives in an alternative manner while also bringing about "greater racial balance." *Cromartie II*, 532 U.S. at 258. The court should reject the racial gerrymandering claim because "Plaintiffs have not offered any alternative way that [the defendants] could have drawn the district[s] 'without sacrificing' their legitimate" partisan goals. *McConchie v. Scholz*, 577 F. Supp. 3d 842, 882 (N.D. Ill. 2021) (per curiam) (three-judge panel).

III. The Complaint Does Not State Intentional Discrimination Claims.

Counts III and IV allege that the General Assembly purposefully discriminated against voters of color when drawing Congressional Districts 5, 6, 7 and Senate District 31. Dkt. 1 ¶¶ 168–83. To state an intentional discrimination claim under the Fourteenth Amendment, the Complaint must plausibly allege that "[1] the districting scheme has a discriminatory effect and [2] the legislature acted

with a discriminatory purpose." *Backus v. South Carolina*, 857 F. Supp. 2d 553, 567 (D.S.C. 2012) (three-judge panel); *see Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–67 (1977).

Plaintiffs have not plausibly alleged either element. After setting aside the Complaint's "legal conclusions," "[t]hreadbare recitals of the elements of a cause of action, and "mere conclusory statements," *Iqbal*, 556 U.S. at 678, the intentional-discrimination claims do not cross "the line from conceivable to plausible," *Twombly*, 550 U.S. at 570. The explanation for the challenged districts is partisanship not racial animus. Nothing in the Complaint supports a contrary conclusion.

A. Plaintiffs did not plausibly allege any discriminatory effect.

Plaintiffs claim the enacted maps have "a specific dilutive effect on Black voters and other voters of color in [the challenged] districts." Dkt. 1 ¶ 171. But that allegation lacks plausibility because voters of color are not "effectively denied" their opportunity to secure electoral representation. *Wesley v. Collins*, 791 F.2d 1255, 1259 (6th Cir. 1986). Democrats—of all races—are the only group harmed by the maps. This lack of racially discriminatory effect alone forecloses Counts III and IV.

To be clear, Plaintiffs have not brought a VRA claim and do not assert vote dilution under Section 2 of the VRA. Dkt. 34, Hr'g Tr. 25. Nor do Plaintiffs allege that minority voters are denied "the equal opportunity to participate in the political process." *Wesley*, 791 F.2d at 1262. As was true under the old maps, in which minority voters comprised less than *one third* of the voting age population in CD-5, Dkt. 1 ¶ 118, those voters may still form coalitions to support their candidate of choice. Plaintiffs do not claim otherwise. Plaintiffs have only alleged dilution "at a nose-bleed level of generality," *Ohio ex rel. Skaggs v. Brunner*, 629 F.3d 527, 532 (6th Cir. 2010), which is not enough to show a discriminatory effect. The lack of discriminatory effect is especially pronounced with respect to CD-6 and CD-7. Over the past decade, those districts "have consistently elected" Republican candidates "by margins averaging nearly 40 percentage points." Dkt. 1 ¶ 122. It is thus implausible that the new maps meaningfully affect minority voters' ability to elect their candidates.

B. Plaintiffs did not plausibly allege any discriminatory purpose.

Plaintiffs' allegations of discriminatory purpose do not adequately support their claims. "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent." *Vill. of Arlington Heights*, 429 U.S. at 266. To conduct that inquiry, courts generally examine (1) "[t]he historical background of the [challenged] decision," (2) "[t]he specific sequence of events leading up to the challenged decision," (3) "[d]epartures from normal procedural sequence," and (4) "the legislative history of the decision." *Id.* at 267–68. Intentional-discrimination claims are not plausible unless the Complaint alleges facts that, if proven, would make it more likely than not that a discriminatory purpose motivated the mapmakers. *See Hunter v. Underwood*, 471 U.S. 222, 225 (1985) (applying preponderance standard to discrimination claims).

Here, none of the *Arlington Heights* factors supports an inference of discriminatory intent. Although Plaintiffs' animus allegations point to procedural irregularities, a recent history of allegedly discriminatory conduct, and the legislative history, the facts pled fall far short of overcoming the presumption of good faith and plausibly establishing discriminatory purpose.

1. Procedural & Substantive Irregularities. Plaintiffs allege multiple "procedural and substantive departures from the norms" that ostensibly support an inference of racial animus. Dkt. 1 ¶¶ 172, 180. These abnormalities include an unusually "rushed" legislative process and efforts to suppress public comment. *Id.* ¶¶ 173, 181. Plaintiffs are wrong—the 2020 redistricting process unfolded at a historically average pace with ample opportunity for public comment.

Start with the accusation that the legislature "minimize[d] public comment" and "stifle[d] any meaningful debate or dissent" about redistricting. Dkt. 1 ¶¶ 7, 173. Those assertions are baseless, as Plaintiffs' own allegations betray. The Complaint confirms that the public had many opportunities to engage with the mapmakers over the course of months:

- "Numerous civil rights groups" "testified before the Tennessee Legislature" during the redistricting process. *Id.* ¶ 4.

- Plaintiff Tennessee NAACP "gave public testimony before both the Senate and House redistricting committees, submitted a Congressional concept map," and "presented a report to the House and Senate redistricting subcommittees." *Id.* ¶ 19.

- Plaintiff League of Women Voters of Tennessee "was active" in the redistricting process, with the President of the organization "testifying before both the House and Senate redistricting committees on the impact that the proposed House, Senate, and Congressional plans would have on Tennessee voters." *Id.* ¶ 23. The League "also submitted a Congressional concept map" and then "compiled and distributed" community feedback on the proposals "to both the House and Senate redistricting committees." *Id.*

- Plaintiff Equity Alliance testified about redistricting, submitted maps on behalf of itself and Plaintiff Memphis A. Philip Randolph Institute, and "spoke with Legislators about the proposed maps." *Id.* ¶¶ 27, 30.

- Plaintiff African American Clergy Collective raised "concerns about the redistricting process" with the House committee and "met with a number of elected [legislators]." *Id.* ¶ 33.

This small sampling of public input disproves Plaintiffs' public-participation position. And as for the allegation that the House Select Committee approved the Congressional Map the same day it was announced to the public, Plaintiffs did not allege that timeline was irregular—and indeed, that process was consistent with historical practice.[29]

In fact, the 2020 redistricting was the most transparent and collaborative in state history. The House of Representatives appointed a politically and racially diverse redistricting committee for the first time ever.[30] And unlike previous redistricting cycles, both chambers held public meetings and provided opportunities for public comment before and after legislators released the proposed maps. Nonpartisan institutions commended the House Select Committee for making "the critical decision"

[29] Redistricting in Tennessee at Part II, 1, *supra* n.14 (stating that the committee introduced and passed congressional and Senate maps on the same day during the 2010 redistricting cycle).

[30] Moran, *supra* n.4.

to share "publicly submitted redistricting plans"[31]—something that did not happen in 2010 redistricting cycle.[32] Even some *Plaintiffs* praised the legislature for providing opportunities "for [people's] voices to be heard" during the various hearings.[33]

Nor was the redistricting process unusually rushed, and the credibility-killing lack of acknowledgment of the pandemic and its effect on the Census impairs the plausibility of Plaintiffs' entire exercise. *Cf. League of United Latin Am. Citizens v. Abbott*, 601 F. Supp. 3d 147, 173 (W.D. Tex. 2022) (no procedural irregularity under *Arlington Heights* because "the pandemic" "adequately explains Texas Republicans' decision to rush the redistricting process"). The Census Bureau released demographic data in mid-August 2021. Dkt. 1 ¶ 63. Two weeks later, the Tennessee House created the House Select Committee on Redistricting. *Id.* In September and October 2021, the House Select Committee held public meetings to discuss redistricting guidelines and solicit public feedback. *Id.* ¶¶ 65, 68. Once the General Assembly began session in January 2022, the House Select Committee welcomed public discussion on proposed maps and then presented the proposed congressional plan. *Id.* ¶¶ 77–79. On January 18, 2022, after giving legislators and the public almost a week to review the proposal, the Senate Judiciary Committee deliberated and opened the committee floor for public comment. *Id.* ¶¶ 8, 91–92. On January 20, 2022, the Senate approved the Congressional Plan. The House approved it four days later. *Id.* ¶ 95. The Senate Map was adopted along a similar timeframe. *See id.* ¶¶ 72–76, 85–90. Plaintiffs have alleged no facts showing that this timeline is abnormal for redistricting in Tennessee, because it is not.[34] If anything, legislators and the public had an unusually

[31] Mary Darby, Statement Ahead of This Week's Redistricting Hearings In the Tennessee General Assembly, Think Tennessee (Dec. 13, 2021), https://bit.ly/46hXsmH.

[32] Think Tennessee, *supra* n.10.

[33] Jan. 12, 2022 Hearing at 1:00:10–1:00:35, *supra* n.10.

[34] *See* Redistricting Presentation at 22 *supra* n.3; *supra* n.14.

large amount of time to consider the proposals. In the previous cycle, the General Assembly introduced and approved the maps in three days; this time, it took twelve.[35]

Even if that (historically average) pace seems expedited, that *still* does not raise an inference of "invidious discrimination" given the "obvious alternative explanation" for any perceived urgency. *Iqbal*, 556 U.S. at 682 (quoting *Twombly*, 550 U.S. at 567). Start with the COVID-19 pandemic, which caused the Census Bureau to deliver demographic data nearly *six months* later than originally planned.[36] Those delays required legislators to move efficiently, yet the General Assembly still provided unprecedented opportunities for public comment. Plaintiffs nowhere plausibly explained why the procedural flaws they allege stem from racism, rather than being "consistent with a time-pressed legislature seeking partisan advantage." *Abbott,* 601 F. Supp. 3d at 176. Given that context, the alleged "brevity of the legislative process" hardly "can give rise to an inference of bad faith," racially discriminatory action. *Abbott v. Perez*, 138 S. Ct. 2305, 2328–29 (2018).

2. History of Allegedly Discriminatory Official Actions. Plaintiffs cite various events that allegedly reveal the General Assembly's "discriminatory agenda" and "racial animus." Dkt. 1 ¶ 101. None of those events even plausibly supports an inference that race discrimination drove redistricting.

As their primary evidence of racial animus, Plaintiffs point to now-repealed legislation regulating voter registration. Without any factual or legal support, Plaintiffs claim the General Assembly enacted that regulation in response to voter applications submitted by Black voters. Then Plaintiffs explain the law was enjoined based on "First and Fourteenth Amendment concerns." Dkt. 1 ¶ 102 (citing *Tennessee State Conf. of NAACP v. Hargett*, 420 F. Supp. 3d 683 (M.D. Tenn. 2019)). But that injunction stemmed from a First Amendment holding, not any concerns about race discrimination or equal protection. *Hargett*, 420 F. Supp. 3d at 698–711. Neither the enactment of the voter

[35] *Supra* n.14.

[36] Whitehorne, *supra* n.1.

registration law nor *Hargett* supports the remarkable allegation that the General Assembly acted out of racial animus and a discriminatory agenda.

Plaintiffs' additional allegations fare no better. They incorrectly allege that the General Assembly has banned public-school teachers from "engaging their students in academic discussions regarding structural racism and unconscious bias." Dkt. 1 ¶ 104. The cited law does no such thing. It instead prohibits instruction on discretely defined "[d]ivisive concept[s]," such as the odious idea that one "race or sex is inherently superior or inferior to another," that "[a]n individual should be discriminated against or receive adverse treatment because of the individual's race or sex," or that "[g]overnments should deny" to anyone "the equal protection of the law." Tenn. Code Ann. § 49-7-1902(1)(A), (C), (N); *id.* § 49-6-1019(a). Teachers may still discuss "[t]he history of an ethnic group" and provide "impartial instruction on the historical oppression of a particular group." *Id.* § 49-6-1019(b), (1), (3). Promoting equal treatment of all people is the opposite of exhibiting racial animus.

Next, Plaintiffs point to a law reducing the size of the Davidson County Metro Council. They speculate this reduction was "intended to disproportionately impact" "Black voters and other voters of color." Dkt. 1 ¶ 105. Yet nothing in the legislative record or subsequent litigation suggests improper racial motivations. Indeed, the plaintiffs challenging that action did not allege racial animus or bring any discrimination claims. *See generally* Compl., *Metro. Gov't of Nashville & Davidson Cnty. v. Lee*, Nos. 23-0336-I & 23-0395-III(I) (Davidson Co. Chan. Ct. Mar. 13, 2023), https://bit.ly/3rwbaUa. A court later enjoined the law on the ground it likely violated Tennessee's Home Rule Amendment. Mem. & Order on Plfs.' Mots. for Temp. Injunction 21–22, *Metro. Gov't of Nashville*, Nos. 23-0336-I & 23-0395-III(I) (Davidson Co. Chan. Ct. Apr. 10, 2023) (Exhibit A). That unrelated decision cannot plausibly aid Plaintiffs' racial-animus showing. The Court can also take judicial notice that Democrats run the Davidson County Metro Council, that they voted against allowing the Republican National Committee

to have its 2024 convention in Nashville, and that commentators have observed that the issue between the General Assembly and the Metro Council has something to do with politics.[37]

Nor do the expulsion votes that Plaintiffs highlight support an inference of racial animus. In April 2023, more than a year *after* the maps were enacted, three state representatives breached decorum by leading members in the public gallery of the House of Representatives in disruptive protests. In response to that violation of House Rules, there were 72 votes to expel Representative Jones, 69 votes to expel Representative Pearson, and 65 votes to expel Representative Johnson.[38] That Representative Johnson (who is white) garnered a handful fewer expulsion votes than Representatives Pearson and Jones (who are Black) does not show racial animus. "[T]he good faith of a state legislature must be presumed," *Miller*, 515 U.S. at 915, and the reason for the voting disparity can be explained by the varying degrees of culpability exhibited by the three representatives. Even *if* the court retroactively imputed improper motives to the legislators who voted to expel only the Black representatives, only four legislators qualify. Of those, only two voted for the challenged maps—and none held leadership roles.[39] Regardless, if even the animus of a bill's sponsor cannot support Plaintiffs' "cat's paw" theory of discrimination against "legislative bodies," *Brnovich*, 141 S. Ct. at 2350, it follows *a fortiori* that the subsequent motives of two legislators cannot. *See Jones v. City of Lubbock*, 727 F.2d 364, 371 n.3 (5th Cir. 1984) (refusing to "judge intent from the statements [made by] . . . a single member").

The same principle forecloses Plaintiffs' reliance on isolated incidents from a "handful" of legislators. Dkt. 1 ¶ 103. For example, Plaintiffs allege that some legislators voted against a proposed

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[37] *See* Cassandra Stephenson, Nashville unlikely to host Republican National Convention after council quashes bill, The Tennessean (Aug. 2, 2022), https://bit.ly/3LUFRt1; Kimberlee Kruesi, Judges block Tennessee Republican move to cut Nashville council in half, PBS News Hour (Apr. 10, 2023), https://to.pbs.org/3F50Gy5.

[38] Nashville Tennessean, How Tennessee lawmakers voted in Thursday's House expulsion debate, The Tennessean (Apr. 7, 2023), https://bit.ly/46g7V2d.

[39] *Compare supra*, n.38, *with supra* n.23.

constitutional amendment forbidding "the use of enslavement and involuntary servitude as criminal punishments." *Id.* But the relevant Resolution garnered overwhelming support—passing the House 81-2 and the Senate 26-4—including from over six dozen legislators who voted for the challenged maps.[40] And those few in opposition generally supported the Resolution but identified concerns with language (omitted from the Complaint) providing that "[n]othing in" the amendment "shall prohibit an inmate from working when the inmate has been duly convicted of a crime."[41] Plaintiffs' after-the-fact "isolated and ambiguous statements" made by legislators during unrelated committee meetings are likewise paltry evidence of discriminatory purpose. *See* Dkt. 1 ¶¶ 107–08; *Veasey v. Abbott*, 830 F.3d 216, 234 (5th Cir. 2016). Such statements by a "handful" of lawmakers do little to establish the maps' discriminatory intent as a general matter, *Brnovich*, 141 S. Ct. at 2350, let alone here, where Plaintiffs do not allege that the relevant legislators led the mapmaking process.

3. Legislative History of Challenged Maps. Plaintiffs last allege that "the legislative and administrative history" of the 2022 redistricting "strongly supports an inference" of discriminatory purpose. Dkt. 1 ¶ 172. In support, Plaintiffs mostly repackage already debunked accusations. They complain about the "rushed" legislative process that resulted in "inadequate notice" during redistricting. Dkt. 1 ¶ 173. But the process was not rushed, and the public—including plaintiffs—robustly participated in the latest redistricting. *Supra* Argument III.B.1. Plaintiffs next cite the fact that the legislature "fail[ed] to adopt" "plans submitted by groups representing the interests of voters of color" as proof of racial animus. Dkt. 1 ¶ 173. The idea that failing to adopt Plaintiffs' preferred plans must mean racism turns the presumption of good faith on its head and would allow most every claim

[40] Tennessee General Assembly, Actions on Senate Joint Resolution 80, capitol.tn.gov, https://bit.ly/3rLAgyk.

[41] Tennessee General Assembly, Senate Joint Resolution 80, capitol.tn.gov https://bit.ly/3F9Yfu3; Tennessee Senate, Floor Session at 1:02:40–1:11:07, capitol.tn.gov (March 15, 2021), https://bit.ly/3PQP6LX; Tennessee House of Representatives, Floor Session at 3:01:50–3:07:50, capitol.tn.gov (May 4, 2021), https://bit.ly/45obXUT.

to advance past the pleading stage. Regardless, there are many permissible reasons for rejecting map proposals—most notably, the plans' risk of harming the political interests of the majority party.

Taken at face value, Plaintiffs' allegations regarding "[t]he specific sequence of events," the "departures from ordinary procedure," and the "legislative history" of the challenged redistricting are just as "consistent with a time-pressed legislature seeking partisan advantage" as with racial motivations. *Abbott*, 601 F. Supp. 3d at 176. Plaintiffs have not stated a plausible discrimination claim.

IV. Governor Lee Should Be Dismissed From This Action.

As in other redistricting cases, Plaintiffs sued the Governor even though he has no ongoing connection to the challenged maps and cannot remedy the alleged injuries. Plaintiffs in a similar lawsuit against South Carolina likewise named the Governor as a defendant—only to later drop him from the suit rather than defend that choice. Br. for Governor McMaster as Amicus Curiae 9–23, *Alexander v. S.C. State Conf. of the NAACP*, No. 22-807 (U.S. July 14, 2023), 2023 WL 4625529. Whatever Plaintiffs' reason for initially naming Governor Lee as a defendant, he is not subject to suit in this action.

A. Sovereign immunity bars Plaintiffs from seeking relief against Governor Lee.

Sovereign immunity generally protects state officials like the Governor from being sued without their consent. Nor does the *Ex Parte Young* exception to that rule apply here, because Governor Lee does not administer elections or enforce the challenged maps. He should be dismissed.

"[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office," *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989)—*i.e.*, "the State itself," *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1046 (6th Cir. 2015). And under the principles of sovereign immunity enshrined in the Eleventh Amendment, a State is not "amenable to the suit of an individual without its consent." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996) (quoting *Hans v. Louisiana*, 134 U.S. 1, 13 (1890)). The Supreme Court created a "narrow exception" to that rule in *Ex parte Young*, 209 U.S. 123 (1908), allowing suit to enjoin a state official "from

enforcing state laws that are contrary to federal law," *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021). But "*Young* does not reach state officials who lack a 'special relation to the particular statute' and '[are] not expressly directed to see to its enforcement.'" *Russell*, 784 F.3d at 1047 (quotation omitted).

Governor Lee is not a proper defendant because he does not administer or enforce the allegedly unconstitutional maps. Plaintiffs allege that the Secretary of State (not the Governor) is "Tennessee's Chief Election Officer." Dkt. 1 ¶ 47. And the Secretary of State (not the Governor) appoints the coordinator of elections. *Id.*; *see* Tenn. Code Ann. § 2-11-201(a). "The coordinator of elections" in turn serves as "the chief administrative election officer of the state." *Id.* § 2-11-201(b). As Plaintiffs agree, the coordinator of elections "generally supervis[es] all elections" and "[a]uthoritatively interpret[s] the election laws for all persons administering them." Dkt. 1 ¶ 48 (quoting Tenn. Code Ann. § 2-11-202(a)(1), (4)). The Complaint can thus allege nothing about the Governor's involvement in this case and his connection to the Act's enforcement—much less that the Governor has been "expressly directed" to enforce the maps against Plaintiffs. *Russell*, 784 F.3d at 1047.

Plaintiffs cite Governor Lee's general responsibility "for the enforcement of all enacted laws." Dkt. 1 ¶ 46 (citing Tenn. Const. Art. III, §§ 1, 11). But the "[g]eneral authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law." *Children's Healthcare Is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1416 (6th Cir. 1996).[42] As courts

[42] True, the Sixth Circuit has sometimes allowed suits against governors. *See*, *e.g.*, *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 475 n.16 (6th Cir. 2008); *Lawson v. Shelby County*, 211 F.3d 331, 335 (6th Cir. 2000). But those cases did not—and *cannot*, consistent with earlier Sixth Circuit precedent—create the rule that generalized executive power is always enough to render the Governor a proper defendant under *Ex Parte Young*. *See Children's Healthcare*, 92 F.3d at 1416. Though such a "general" theory "would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law," the Supreme Court has rejected this approach as an affront to sovereign immunity. *Ex Parte Young*, 209 U.S. at 157 (quoting *Fitts v. McGhee*, 172 U.S. 516, 530 (1899)).

recognize, that "a governor is under a general duty to enforce state laws does not make him a proper defendant in every action attacking the constitutionality of a state statute." *Id.* (quotation omitted). The Panel should join the consensus that governors are immune from redistricting suits because they lack sufficient enforcement authority. *See*, *e.g.*, *Simpson v. Hutchinson*, 636 F. Supp. 3d 951, 961–62 (E.D. Ark. 2022) (three-judge panel); *Common Cause Florida v. DeSantis*, 2022 WL 19978293, at *2–4 (N.D. Fla. Nov. 8, 2022) (three-judge panel) (per curiam); *see also Tex. Democratic Party v. Abbott*, 978 F.3d 168, 180 (5th Cir. 2020) ("connection between the Governor and enforcement of the challenged [voting] provision [was] insufficient" for *Ex parte Young* to apply).

The Sixth Circuit's holding in *Allied Artists Picture Corp. v. Rhodes*, 679 F.2d 656 (6th Cir. 1982), is not to the contrary. Plaintiffs often cite that case to argue the Governor is a proper defendant when the litigation involves a substantial public interest. *Id.* at 665 n.5. But unlike in *Allied Artists*, granting Governor Lee immunity would not bar Plaintiffs from seeking relief against remaining defendants. *See LensCrafters, Inc. v. Sundquist*, 184 F. Supp. 2d 753, 758–59 (M.D. Tenn. 2002) (distinguishing *Allied Artists* on this basis). In any event, the Supreme Court's decision in *Whole Woman's Health* confirms that an *Ex parte Young* defendant must possess clear enforcement authority. *See* 595 U.S. at 43–44. To the extent *Allied Artists* conflicts with this instruction, it is no longer good law. *See Farhoud v. Brown*, 2022 WL 326092, at *4 (D. Or. Feb. 3, 2022) (*Whole Woman's Health* "undermines" *Allied Artists*).

B. Plaintiffs lack standing to sue Governor Lee.

Plaintiffs likewise lack standing to sue Governor Lee because he neither caused nor can redress their injuries. Article III grants federal courts power to render judgment on "'Cases' and 'Controversies'" only. *Safety Specialty Ins. v. Genesee Cnty. Bd. of Comm'rs*, 53 F.4th 1014, 1020 (6th Cir. 2022) (quoting U.S. Const. art. III, § 2). Standing is a necessary component of that case-or-controversy requirement. It requires an injury in fact that is caused by the defendant and redressable by the requested relief. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). And because "standing is

not dispensed in gross," *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996), Plaintiffs must allege facts showing they have standing to proceed against each named defendant, *see Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021, 1031 (6th Cir. 2022).

The generalized allegations against the Governor do not establish standing.

1. Causation. Plaintiffs cannot show that Governor Lee caused their injuries because he is not responsible for the allegedly unconstitutional districts. For lawsuits brought against the Governor, the Complaint must include "specific, plausible allegations about what the Governor has done, is doing, or might do to injure plaintiffs" to establish standing. *Universal Life Church*, 35 F.4th at 1031. "[G]eneral allegation[s]" about Governor Lee's executive power are not enough. *Id.* Without those "specific" allegations, Plaintiffs cannot "explain[] how the *Governor* caused the[ir] injury." *Id.* at 1031–32. No such allegations exist here. The General Assembly—not the Governor—apportions legislative districts. *See generally* Tenn. Const. art. II, § 4.

Nor can Plaintiffs rely on Governor Lee's role in "sign[ing] the redistricting plan into law" to establish causation. Dkt. 1 ¶ 46. Governor Lee enjoys absolute legislative immunity for signing the redistricting proposal. *See Women's Emergency Network v. Bush*, 323 F.3d 937, 950 (11th Cir. 2003) ("Under the doctrine of absolute legislative immunity, a governor cannot be sued for signing a bill into law."); *cf. Smiley v. Holm*, 285 U.S. 355, 372–73 (1932) (a governor's signing of a bill is a part of the legislative process). So that cannot form the basis for causation.

2. Redressability. Plaintiffs also cannot prove redressability because Governor Lee does not enforce the challenged maps and cannot provide Plaintiffs with the relief they seek. "The redressability prong is not met when a plaintiff seeks relief against a defendant with no power to enforce a challenged statute." *Bronson v. Swensen*, 500 F.3d 1099, 1111 (10th Cir. 2007). An injury is redressable if "a judicial decree can provide 'prospective relief' that will 'remove the harm.'" *Doe v. DeWine*, 910 F.3d 842, 850 (6th Cir. 2018) (quoting *Warth v. Seldin*, 422 U.S. 490, 505 (1975)). The "real value of the judicial

pronouncement—what makes it a proper judicial resolution of a 'case or controversy'"—"is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff*." *Hewitt v. Helms*, 482 U.S. 755, 761 (1987) (alteration in original).

Plaintiffs cannot establish redressability. For starters, the Governor has "no power to enforce" the maps. *Bronson*, 500 F.3d at 1111. That authority resides in other executive officials, including the Secretary of State and the Coordinator of Elections. *See supra* Argument IV.A. Moreover, Plaintiffs have not shown "what a federal court could order the Governor to do or refrain from doing to give them relief." *Universal Life Church*, 35 F.4th at 1031; *see also R.K. by and through J.K. v. Lee*, 53 F.4th 995, 1000–01 (6th Cir. 2022) (no standing to pursue claims against governor). Plaintiffs request an injunction forbidding defendants from "enforcing or giving effect to" the challenged districts and requiring the development of "valid plans." Dkt. 1, at 48. Governor Lee does not "giv[e] effect to" the challenged maps nor can he develop new ones. Because Governor Lee "has no power to provide any of the relief requested," *Lowery v. Governor of Georgia*, 506 F. App'x 885, 886 (11th Cir. 2013) (per curiam) (dismissing the governor from a redistricting lawsuit), Plaintiffs lack standing.

CONCLUSION

For these reasons, the motion to dismiss should be granted. The Complaint is barred by the laches doctrine, fails to state a claim, and cannot proceed against Governor Lee as a defendant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2023, the undersigned filed the foregoing document via this Court's electronic filing system, which sent notice of such filing to the following counsel of record:

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EXHIBIT A

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

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, Plaintiff, *And* DAVIE TUCKER, DELISHIA PORTERFIELD, JUDY CUMMINGS, DAVE GOETZ, ALMA SANFORD, QUIN EVANS SEGALL, SANDRA SEPULVADA, and ZULFAT SUARA, Plaintiffs, v. BILL LEE, in his official capacity as Governor for State of Tennessee, TRE HARGETT, in his official capacity as Secretary of State for the State of Tennessee, and MARK GOINS, in his official capacity as Coordinator of Elections for the State of Tennessee, Defendants.	)	No. 23-0336-I *Consolidated with* No. 23-0395-III(I)

MEMORANDUM AND ORDER ON PLAINTIFFS' MOTIONS FOR TEMPORARY INJUNCTION

These consolidated cases came before the three-judge panel for hearing, via *ZoomGov*, on April 4, 2023, on Plaintiffs' separate *Motions for Temporary Injunction.* Defendants filed responses in opposition, and Plaintiff Metropolitan Government of Nashville and Davidson County ("Metro") filed a reply. Participating in the hearing were Metropolitan Attorney Allison L. Bussell and Metropolitan Director of Law Wallace W. Dietz, representing Metro; Attorney Scott P. Tift, representing Plaintiffs Davie Tucker, Delishia Porterfield, Judy Cummings, Dave Goetz, Alma Sanford, Quin Segall, Sandra Sepulveda, and Zulfat Suara (collectively, "Individual

Plaintiffs," and together with Metro, "Plaintiffs"); and Senior Assistant Attorney General Timothy R. Simonds and Assistant Attorney General Jonathan M. Shirley, representing Defendants Governor Bill Lee, Secretary of State Tre Hargett, and Coordinator of Elections Mark Goins (collectively, Defendants or the "State").

Based on the complaints, motions for temporary injunction, memoranda in support and in opposition, exhibits, the entire record, and arguments of counsel, the Court GRANTS, in part, and DENIES, in part, Metro's *Motion for Temporary Injunction* for the reasons addressed below. The Court also DENIES Individual Plaintiffs' *Motion for Temporary Injunction* for the reasons addressed below.

I. BACKGROUND AND STATEMENT OF CASE

This case involves facial constitutional challenges brought by Metro and the Individual Plaintiffs regarding recent legislation passed by the Tennessee General Assembly on March 9, 2023, and signed into law by Governor Bill Lee, also on March 9, 2023, which became effective immediately. 2023 Tenn. Pub. Acts, ch. 21 (House Bill 48/Senate Bill 87) (the "Act"); *see* Pl.'s Motion, Ex. C. Section 1(a) of the Act amends Tennessee Code Annotated, Title 7, Chapter 1, the "Metropolitan Government Charter Act," by adding a new provision that establishes a cap on the number of metropolitan council members under a metropolitan government charter to twenty voting members.[1] Section 1(b) of the Act further requires any existing metropolitan government that exceeds twenty council members to reduce its council membership to twenty under the process specified by the Act and requires compliance with specified deadlines by the next general metropolitan election after the effective date of the Act. The Act does not contain a provision

[1] Other provisions of the Act address metropolitan governments to be formed in the future (Section 1(c)) and municipalities (Section 2), which are not the subject of this action.

requiring approval of the Act by an affected metropolitan council or the voters of the metropolitan government. Section 3 of the Act provides for the severability of any portion of the Act found to be invalid.

Metro is a consolidated metropolitan city and county government authorized under the Tennessee Constitution and the Metropolitan Government Charter Act. Tenn. Code Ann. §§ 7-1-101, *et seq.* The voters of the City of Nashville and of Davidson County ratified the consolidation of those two entities into the Metropolitan Government of Nashville and Davidson County and approved Metro's first charter by a referendum vote on June 28, 1962. Pl.'s Motion, Ex. A. This process was undertaken through enabling legislation, the Metropolitan Government Charter Act, which the General Assembly had passed pursuant to Article XI, Section 9, of the Tennessee Constitution. *See* Tenn. Const., art. XI, § 9, ¶ 9; Tenn. Code Ann. §§ 7-1-101, *et seq.* (then Tenn. Code Ann. §§ 6-3701, *et seq.*). The enabling legislation contained a number of requirements, but did not address the size or term of office of a metropolitan government's legislative body among other requirements, reserving those decisions to be included in the charter proposed by the metropolitan charter commission and ratified by the voters. Tenn. Code Ann. § 7-2-108(a)(12) and § 7-2-106. Metro's proposed charter established the size of its Metropolitan Council and, since the adoption of Metro's first charter 60 years ago by the voters, it has been comprised of forty members, consisting of thirty-five district members and five at-large members. Pl.'s Motion, Exs. A, E. Because Metro's Council exceeds the newly-enacted twenty-member cap in Section 1(a) of the Act, it is subject to the reduction process specified in Section 1(b) of the Act.

Metro filed its complaint on March 13, 2023, alleging claims for declaratory judgment challenging the constitutionality of the Act and seeking injunctive relief.[2] Specifically, Metro

[2] Metro also filed a notice, pursuant to Tenn. Code Ann. § 20-18-101, that this civil action is required

claims the Act violates the following provisions of the Tennessee Constitution: (1) Article XI, § 9, para. 9 (the "Consolidation Clause"), by requiring the reduction of the Metropolitan Council from forty members to twenty members; (2) Article XI, § 9, para. 2 (the "Local Legislation Clause"), by imposing requirements that are local in effect and application on Metro without providing for local approval; (3) Article VII, § 1, which mandates four-year terms for members of county legislative bodies, by requiring alternative terms for metropolitan council members under Section 1(b) that are either greater than four years in one provision or less than four years in another provision; and (4) Article VII, § 1, para. 2, by ignoring the exemption of consolidated metropolitan governments from the twenty-five member limit that otherwise applies to county legislative bodies.

Defendant Bill Lee is the Governor of the State of Tennessee. Defendant Tre Hargett is the Secretary of the Tennessee Department of State. Defendant Mark Goins is the Coordinator of Elections for the State of Tennessee. All Defendants are sued in their official capacities.

Contemporaneously with the filing of its complaint, Metro filed a *Motion for Temporary Injunction*,[3] supported by several exhibits and declarations. Metro requests that implementation of Sections 1(a) and 1(b) of the Act be temporarily enjoined during the pendency of the case under

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to be heard and decided by a three-judge panel. The presiding judge of the 20th Judicial District entered an order on March 14, 2023, finding the statutory requirements for a three-judge panel case were satisfied and forwarded the order to the Tennessee Supreme Court. The Supreme Court entered an order on March 14, 2023, affirming the criteria for a three-judge panel case were satisfied, and appointed the undersigned panel to hear and decide this case.

[3] Metro initially moved for a temporary injunction as to all four counts of its complaint. Prior to the hearing, Metro withdrew its argument for injunctive relief as to Count I of the complaint based on the alleged violation of the Consolidation Clause of Article XI, §9, para. 9. *See* Metro's April 3, 2023 Notice of Filing. Also prior to the hearing, the Individual Plaintiffs incorporated Metro's Notice by reference and withdrew their argument for injunctive relief as to the Consolidation Clause in Count I of their complaint. *See* Individual Plaintiff's April 4, 2023 Notice.

Rule 65.04 of the Tennessee Rules of Civil Procedure. The Court granted Metro's motion for expedited briefing and hearing, and set a temporary injunction hearing for April 4, 2023.

The Individual Plaintiffs subsequently filed their complaint on March 28, 2023, alleging nearly identical claims as Metro, also with a notice of their request for a three-judge panel. The Individual Plaintiffs consist of Davidson County residents, all of whom are registered voters, and are comprised of business leaders, community leaders, existing Metro Councilmembers, and current Metro Councilmember candidates who are actively campaigning and soliciting campaign contributions for the August 3, 2023 general election. On March 31, 2023, the Individual Plaintiffs moved to consolidate their case with Metro's case, and filed a separate *Motion for Temporary Injunction*, seeking the same injunctive relief as Metro. The Individual Plaintiffs filed declarations verifying the allegations of their complaint and adopted and incorporated by reference Metro's memorandum in support of their motion. Also on March 31, 2023, the Supreme Court designated the same three-judge panel in the Metro case to decide and hear the Individual Plaintiffs' case. On April 3, 2023, the Court entered an order consolidating the two cases and setting a joint hearing on both temporary injunction motions for April 4, 2023.

Defendants oppose both requests for injunctive relief. Defendants submit that the Act is a valid exercise of the General Assembly's broad legislative authority and the twenty-member cap imposed on metropolitan councils is an act of general application and not subject to the Home Rule Amendment. Defendants contend Metro has no likelihood of success on the merits of its constitutional challenges to the Act, and will not suffer irreparable harm if the injunction is denied, but the State's interest and the public interest will be harmed if the injunction is issued. Defendants further argue that with respect to Metro's challenge to the four-year term provision in Article VII, § 1 of the Tennessee Constitution, Metro and the Individual Plaintiffs lack standing, and the

alternative provision of the Act in the event Metro is unable to meet the implementation deadlines for the August 3, 2023 election, Section 1(b), is not yet ripe for adjudication.

II. TEMPORARY INJUNCTION STANDARD

Under Rule 65.04 of the Tennessee Rules of Civil Procedure, "[a] temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual." Tenn. R. Civ. P. 65.04(2).

The standard for determining whether injunctive relief is appropriate requires a court to consider the well-known four-factor test: "(1) the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest." *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020) (internal quotation omitted); *Gentry v. McCain*, 329 S.W.3d 786, 792 (Tenn. Ct. App. 2010). All factors are to be considered, and no single factor is controlling. The grant or denial of a request for temporary injunction is discretionary with the trial court. *Fisher*, 604 S.W.3d at 395.

III. FINDINGS OF FACT

The Court makes the following findings of fact based on the record, as required under Tenn. R. Civ. P. 65.04(6).

Metro is a consolidated metropolitan government, established under the Tennessee Constitution, Article XI, § 9, para. 9 (the Consolidation Clause), its enabling legislation, the Metropolitan Government Charter Act, 1957 Pub. Acts, ch. 120, now codified at Tenn. Code Ann. §§ 7-1-101, *et seq.*, and 1961 Priv. Acts, ch. 408.

The Metropolitan Government Charter Acts sets forth numerous requirements for city and county governments to consolidate under the Consolidation Clause of the Tennessee Constitution, including the creation of a charter commission, which must submit a proposed metropolitan charter to the voters of the city and county for approval.

The Metropolitan Government Charter Act also requires a metropolitan charter to establish a metropolitan council as its legislative body, specifying its authority and functions, size, method of election, and term of office, among other requirements.

Metro's first charter was approved by referendum vote of the voters of the City of Nashville and Davidson County in June 1962 and became effective in April 1963 (the "Metropolitan Charter"). Pl.'s. Motion, Ex. A.

The Metropolitan Charter established the Metropolitan Council of Nashville and Davidson County (the "Metropolitan Council") as its constitutional legislative body.

The Metropolitan Charter established the number of Councilmembers at forty members, comprised of thirty-five district members and five at-large members with four-year terms of office.

From 1963 to the present, the Metropolitan Council continuously consisted of forty members, comprised of thirty-five district members and five at-large members.

The Metropolitan Council's current members were elected in Metro's general election in August 2019, with four-year terms ending August 31, 2023.

Metro's next general election is scheduled for August 3, 2023, and all forty Metropolitan Council seats are on the ballot.

The Davidson County Election Commission made available nominating petitions to qualify for the August 3, 2023 general election on March 20, 2023, sixty days before the qualifying deadline as required by state law.

The qualifying deadline for Metro's August 3, 2023 general election is noon on May 18, 2023.

Early voting for the August 3, 2023 general election begins July 14, 2023.

More than forty Metropolitan Council candidates have launched election campaigns, are requesting signatures on their nominating petitions, and are soliciting campaign contributions.

Based on year-end financial disclosure reports, Metropolitan Council candidates have reported over $522,000 in campaign receipts from July 1, 2022 to January 15, 2023.

In 2015, a Metropolitan Charter amendment was proposed to reduce the number of members from forty to twenty-seven, but it was rejected by a majority of Metro voters.

In 2022, Metropolitan Council districts were redrawn as required under the Tennessee Constitution, Article VII, § 1 and the federal ten-year census.

For the 2022 redistricting, the Metropolitan Planning Commission was responsible for studying, soliciting public input, and submitting proposed new district boundaries to the Metropolitan Council for approval. The Metropolitan Council approved the new districts by resolution, which was signed by the Metropolitan Mayor in January 2022.

Due to the COVID-19 pandemic, the census results were delayed and Metro's redistricting process was conducted under a compressed timeline. The 2022 redistricting process took place from July 2021 to January 2022, and became effective the following year for the 2022 election cycle.

After redistricting, the Davidson County Election Commission must match the new boundaries with geocoding, correct errors, assign voter polling locations, and print and mail new voter registration cards, a process that requires a minimum of four weeks.

After redistricting, the Davidson County Election Commission also undertakes voter education regarding the new district boundaries and polling locations.

Under the pressure of the compressed timeline for the 2022 redistricting process, mistakes were made and a number of Metro voters were issued new voter registration cards with inaccurate districts and inaccurate voting locations, which caused confusion during early voting and on election day. Some voters received incorrect ballots and voter confidence was lost.

On March 9, 2023, the Tennessee General Assembly passed House Bill 48/Senate Bill 87, as amended, and Governor Lee signed the Act into law. The Act is effective immediately.

The Act, in relevant part, amends Tennessee Code Annotated, Title 7, Chapter 1, known as the "Metropolitan Government Charter Act." Tenn. Code Ann. § 7-1-101, *et seq.*

Section 1(a) of the Act provides, "[n]otwithstanding a provision of a metropolitan government charter or § 7-2-108 to the contrary, the membership of a metropolitan council must not exceed twenty (20) voting members, as further provided in this section."

Section 1(b)(1) of the Act provides, "[i]f the membership of a metropolitan council is required to be reduced to comply with subsection (a), then (A) The metropolitan council reduction takes effect as of the next general metropolitan election after the effective date of this act."

Prior to the Act, there was no minimum or maximum number of metropolitan council members established under the Metropolitan Government Charter Act, and the size of a metropolitan council was left to the charter commission to propose and be approved by the voters when establishing the metropolitan government.

There currently are three metropolitan governments in Tennessee, but the only affected metropolitan government that is required under the Act to reduce the size of its council is Metro.

The sponsors of House Bill 48/Senate Bill 87 acknowledged in committee and on the floor of the General Assembly that the bill only affects Metro.

The Corrected Fiscal Note for the bill states that it affects no local governments other than Metro, and the "proposed legislation therefore only applies to Metro as its governing body exceeds the 20-member cap."

Section 1(b) of the Act sets forth the method by which a metropolitan government with more than twenty members must reduce the size of its metropolitan council to no more than twenty as of the next general metropolitan election after the effective date of the Act.

The Act establishes the following deadlines:

(i) the metropolitan planning commission must establish new district boundaries for the reduced size of a metropolitan council within 30 days of the effective date of the act; and

(ii) the metropolitan council must approve new council districts by resolution on or before May 1, 2023.

To comply with Section 1(b), the Metropolitan Council must first determine the number of new districts and allocate that number between district seats and at-large seats, if any, before Metro's Metropolitan Planning Commission can establish new district boundaries within the 30-day deadline, or by April 10, 2023.

If the Metropolitan Council fails to approve new council districts either by May 1, 2023, or by the qualifying deadline for the next general election of May 18, 2023,[4] Section 1(b) of the Act extends current council members terms by one year, for a five-year term, requires the county election commission to set a special general metropolitan election for August 2024 to elect council members, and reduces the new council members term from four years to three years.

[4] There appears to be an inconsistency between the May 1 deadline for approving new council districts and the compliance deadline by the May 18 candidate qualifying deadline.

If the provisions of Section 1(b) come into effect, there is no assurance that current Metropolitan Councilmembers will continue to serve for an additional year.

If Metro is required to reduce the number of districts and draw new district boundaries for the August 3, 2023 general election, the Davidson County Election Commission will be required to complete all of its duties under a compressed timeline and there is a risk of similar mistakes and voter confusion as occurred in 2022.

If Metro is required to reduce the number of districts and draw new district boundaries for the August 3, 2023 general election, members of the community are concerned the potential adverse impact on minority representation on the Metropolitan Council. Pl.'s Notice of Filing, Exs. E, F, and G.

In addition, almost all Metro voters will have been issued three separate voter registration cards within a twelve-month period: a pre-2020 Census voter card, a post-2020 Census redistricting card, and a new card following redistricting under the requirements of the Act for the August 3, 2023 election. Pl.'s Notice of Filing, Ex. B.

Last minute changes in district boundaries and voting locations create confusion for voters and candidates. Pl.'s Notice of Filing, Ex. B; Pl.'s Reply, Ex. H.

IV. ANALYSIS AND CONCLUSIONS OF LAW

The Court makes the following conclusions of law, as required by Rule 65.04(6) of the Tennessee Rules of Civil Procedure.

A. Likelihood of Success on the Merits

Plaintiffs move for a temporary injunction based on three of their four facial constitutional challenges to the Act under the Tennessee Constitution. In evaluating the constitutionality of a statute, courts are to begin with the presumption that an act of the General Assembly is constitutional and should uphold it where possible. *State v. Pickett*, 211 S.W.3d 696, 700 (Tenn.

2007) (quoting *Gallaher v. Elam*, 104 S.W.3d 455, 569 (Tenn. 2003)); *Waters v. Farr*, 291 S.W.3d 873, 882 (Tenn. 2009); *see also Waters*, 291 S.W.3d at 917 (Koch, J., concurring in part and dissenting in part) (citing *Gallaher*, 104 S.W.3d at 459–60; *In re Adoption of E.N.R.*, 42 S.W.3d 26, 31 (Tenn. 2001); *State ex rel. Maner v. Leech*, 588 S.W.2d 534, 540 (Tenn. 1979)) ("This presumption places a heavy burden on the person challenging the statute."); *Perry v. Lawrence Cnty. Election Comm'n*, 411 S.W.2d 538, 539 (Tenn. 1967) (quoting *Frazer v. Carr*, 360 S.W.2d 449 (Tenn. 1962)); *Bell v. Bank of Nashville*, 7 Tenn. 269 (1823) ("'[T]he Legislature of Tennessee, like the legislature of all other sovereign states, can do all things not prohibited by the Constitution of this State or of the United States.' . . . 'To be invalid a statute must be plainly obnoxious to some constitutional provision.'").

> Courts are to construe constitutional provisions as written without reading any ambiguities into them. . . . [T]he words and terms in the Constitution should be given their plain, ordinary and inherent meaning. When a provision clearly means one thing, courts should not give it another meaning. The intent of the people adopting the Constitution should be given effect as that meaning is found in the instrument itself, and courts must presume that the language in the Constitution has been used with sufficient precision to convey that intent. *State ex rel. Sonnenburg v. Gaia*, 717 S.W.2d 883, 885 (Tenn. 1986).
>
> Constitutional provisions will be taken literally unless the language is ambiguous. When the words are free from ambiguity and doubt and express plainly and clearly the sense of the framers of the Constitution there is no need to resort to other means of interpretation. *Shelby County v. Hale*, 200 Tenn. 503, 292 S.W.2d 745, 748 (1956). But if there is doubt about the meaning, the Court should look first to the proceedings of the Constitutional Convention which adopted the provision in question as an aid to determining the intent of the framers. *Id.*

Hooker v. Haslam, 437 S.W.3d 409, 426 (Tenn. 2014). The court also "must construe our Constitution as a whole to harmonize and give effect to each of its provisions." *Mayhew v. Wilder*, 46 S.W.3d 760, 772 (Tenn. Ct. App. 2001) (citing *Wolf v. Sundquist*, 955 S.W.2d 626, 630 (Tenn. Ct. App. 1997)).

The likelihood of success on the merits regarding the three constitutional challenges to the Act that are the subject of the motions for temporary injunction are separately addressed. First, however, the Court addresses the issue of standing, which Defendants have raised against Metro with respect to its Article VII, Section 1 four-year term challenge and against the Individual Plaintiffs as to all claims.

1. Standing

"Courts use the doctrine of standing to determine whether a litigant is entitled to pursue judicial relief as to a particular issue or cause of action." *City of Memphis v. Hargett*, 414 S.W.3d 88, 97 (Tenn. 2013) (citing *ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 619 (Tenn. 2006); *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976)). Standing is a threshold issue. *Fisher v. Hargett*, 604 S.W.3d 381, 396 (Tenn. 2020) (citing *City of Memphis*, 414 S.W.3d at 96) ("The question of standing is one that ordinarily precedes a consideration of the merits of a claim.").

> Our jurisprudence recognizes two categories of standing that govern who may bring a civil cause of action: non-constitutional standing and constitutional standing. Non-constitutional standing focuses on considerations of judicial restraint, such as whether a complaint raises generalized questions more properly addressed by another branch of the government, and questions of statutory interpretation, such as whether a statute designates who may bring a cause of action or creates a limited zone of interests. Constitutional standing, the issue in this case, is one of the "irreducible . . . minimum" requirements that a party must meet in order to present a justiciable controversy.

City of Memphis, 414 S.W.3d at 98 (citations & footnote omitted). Constitutional standing requires a plaintiff to establish three elements:

> 1) a distinct and palpable injury; that is, an injury that is not conjectural, hypothetical, or predicated upon an interest that a litigant shares in common with the general public; 2) a causal connection between the alleged injury and the challenged conduct; and 3) the injury must be capable of being redressed by a favorable decision of the court.

Fisher, 604 S.W.3d at 396 (citing *City of Memphis*, 414 S.W.3d at 97).

Courts have "repeatedly refused to recognize a generalized grievance against allegedly illegal governmental conduct as sufficient for standing to invoke the federal judicial power." *United States v. Hays*, 414 U.S. 737, 743 (1995) (citations omitted); *see also Hamilton v. Metro. Gov't of Nashville*, No. M2016-00446-COA-R3-CV, 2016 WL 6248026, at *4 (Tenn. Ct. App. Oct. 25, 2016) (quoting *Moncier v. Haslam*, 1 F. Supp. 3d 854, 859 (E.D. Tenn. 2014)) (citations omitted) (alterations in original) ("[W]hen a plaintiff asserts that the law has not been followed, the plaintiff's 'injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that [the Supreme Court] ha[s] refused to countenance in the past.'" In *Moncier*, the court held that any person seeking to apply for an appellate court position would suffer the same alleged injury as the plaintiff, affirming that a plaintiff's interest must be different from not only the general public, but also from any large class of citizens."). Standing directs the court to focus on the party bringing the lawsuit rather than the merits of the claim. *Fisher*, 604 S.W.3d at 396 ("The proper focus of a determination of standing is a party's right to bring a cause of action, and the likelihood of success on the merits does not factor into such an inquiry."); *see also Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d 141, 149 (Tenn. 2022) (quotation omitted).

Defendants argue Metro lacks standing because it would suffer no distinct and palpable injury under Article VII, Section 1 regarding the four-year term of the constitutional legislative body, because Metro was not elected to any position for which the constitution requires a term of four years. Defendants point to the Supreme Court's holding that the plaintiffs in *Tenn. Dep't of Educ.*, 645 S.W.3d at 149, had standing because they asserted "their constitutionally protected interest in local control of local affairs." Defendants argue Metro must assert its own rights not the rights of "voters, incumbent councilmembers, and councilmembers yet to be elected."

The Court finds Metro has standing to pursue this claim. Metro challenges Sections 1(a) and (b) of the Act, which would alter the provisions of Metro's current Charter and the terms of the current Metropolitan Council, the constitutional legislative body vested with exercising Metro's legislative power. *See* Pl.'s Motion, Ex. E, §§ 2.01, 2.02, 3.01 Additionally, Metro's compliance with the Act would require it to spend significant resources to pay current council members' salaries during the extended term, take the extraordinary step of conducting a special election not otherwise authorized by the Constitution or provided for under the Metropolitan Charter, in addition to proceeding with the process required under the Act of developing public input, drawing new council districts, approving new council districts, preparing geocoding of the new districts, correcting errors, determining new voter polling precincts, and printing, issuing and mailing new voter registration cards—on the heels of having undertaken these activities for the 2022 election cycle, and educating the voter as to the change. An additional consideration includes the impact of calling into question the legal validity of Metro's numerous governmental and corporate activities within a potentially unconstitutional "extended term" council, including questions about its contracting authority and development approvals. These considerations support a finding of Metro's standing.

Defendants contest the Individual Plaintiffs standing to challenge the Act's constitutionality on their three asserted bases, arguing their claims amount to the judicially-disfavored "generalized grievance." Defendants specifically assert the Act places no burden on the Individual Plaintiffs' as voters regarding their ability to exercise their right to vote because they will all be able to freely participate in the next election for Metropolitan Council member, whether it occurs in August of 2023 or 2024. With respect to candidates for office, Defendants argue there is no fundamental right to run for office, citing federal precedent. And finally, Defendants argue incumbent Council members have no special right to challenge the Act by virtue

of their office because it does not impede their legislative power—nor would have they any particular interest in a future term of office as anything other than another candidate for that office.

A majority of the Panel agrees with Defendants that the Individual Plaintiffs likely do not have standing to bring the three constitutional claims before the Court in the present motions because their alleged injuries appear indistinct from the sorts of generalized grievances of all citizens.[5] These types of claims have been routinely rejected by the courts. The Court does not address standing as to Individual Plaintiffs' claim brought under the Consolidation Clause, Tenn. Const., Article XI, § 9, ¶ 9.

2. Alleged Violation of Article. XI, § 9, para. 2, the Local Legislation Clause

Article XI, § 9, paragraph 2 of the Home Rule Amendment provides, in pertinent part, as follows:

> The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or the county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Tenn. Const., art. XI, § 9, para. 2.

Plaintiffs argue Defendants violated this provision of the Tennessee Constitution in two ways. First, they contend paragraph 2 prohibits legislation that targets particular local offices of

[5] One panel member respectfully disagrees with the Panel Majority on the issue of standing with respect to two groups of the Individual Plaintiffs, and would find both Davidson County voters and current Councilmembers have a distinct and palpable injury that is not shared in common by the general public under the implementation provision of Section 1(b), for the reasons set forth in her separate decision included at the end of this memorandum.

incumbents, or so-called "ripper bills." *See Frazer v. Carr*, 360 S.W.2d 449, 456 (Tenn. 1962). During the 1953 Constitutional Convention, Delegate Lewis Pope of Sumner County explained:

> Now, if you will take just one minute, that resolution simply means this, that the legislature cannot under any circumstances pass an act abolishing an office, changing the term of the office or altering the salary of the officer pending the term for which he was selected; that is prohibited, and that kind of act cannot be passed . . . .

Journal and Debates of the Constitutional Convention of 1953 1113 (July 14, 1953). Plaintiffs assert Section 1(b) of the Act constitutes such a ripper bill because it would extend the existing Metropolitan Councilmember's terms to five years in the event Metro is unable to complete the required redistricting process in time for the August 2023 election and reduce the number of Council members under the deadlines set forth in the Act. In light of the history of this amendment, the Court finds that the prohibitions against "abridging the term" or "altering the salary" are directed toward cutting or diminishing an incumbent's term of office or salary, and are not directed towards extending an incumbent's current term or potentially abridging a future term. Section 1(b) of the Act does not purport to do either. Accordingly, the Court finds that the Act does not constitute a "ripper bill."

Second, Plaintiffs assert Sections 1(a) and (b) of the Act violate the remaining provisions of paragraph 2 of the Local Legislation Clause of the Home Rule Amendment. Those provisions require that any act passed by the General Assembly that is "private or local in form or effect" and applies to a particular county or municipality either in its governmental or propriety capacity is void unless, by its terms, requires local approval. The Tennessee Supreme Court has held that this provision lends itself to three requirements: "1) the statute in question must be local in form or effect; 2) it must be applicable to a particular county or municipality; and 3) it must be applicable to the particular county or municipality in either its governmental or proprietary capacity." *Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d 141, 150 (Tenn. 2022).

In interpreting this provision, the Tennessee Supreme Court has held that the General Assembly's designation or description of an act as either "public" or "private" does not control whether the Home Rule Amendment applies. *Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975). The Court in *Farris* explained

> The test is not the outward, visible or facial indices, nor the designation, description or nomenclature employed by the Legislature. Such a criterion would emasculate the purpose of the amendment. The whole purpose of the Home Rule Amendment was to vest control of local affairs in local governments, or in the people, to the maximum permissible extent. The sole constitutional test must be whether the legislative enactment, irrespective of its form, is local in effect and application.

Id.

In *Farris*, members of the Shelby County Quarterly Court brought a declaratory judgment action challenging a public act which sought to require a run-off election in counties with a mayor as the head of the executive branch. *Id*. at 550. The Tennessee Supreme Court explained that "we must determine whether this legislation was designed to apply to any other county in Tennessee, for it is potentially applicable throughout the state it is not local in effect even though at the time of its passage it might have applied to Shelby County only." *Id*. at 552. The *Farris* Court found that under the law in existence at that time only Shelby County could possibly have a mayor as the head of the executive branch. *Id*. The act at issue could not apply to any other county without an affirmative act of the General Assembly to adopt or change the then-existing law. *Id*. at 553. Therefore, the Tennessee Supreme Court found that the public act violated the Local Legislation Clause. *Id*. 555.

Numerous other cases have discussed the standard set by *Farris*. As explained in *Board of Education of Shelby County, Tennessee v. Memphis City Board of Education*, a court considering a challenge under the Local Legislation Clause must consider whether the legislation "was designed" to apply to any other county. 911 F. Supp. 2d 631, 653 (W.D. Tenn. 2012). The

Local Legislation Clause does not require the legislation to apply to "every part of" or "everywhere" in Tennessee. *Id*. at 656. The word "throughout" as used in *Farris* refers to the class created by the General Assembly. *Id*. Under the Local Legislation Clause, the class cannot be so narrow as to apply to only one county, unless there is a provision for local approval. "Potential applicability turns on the substance of a statute, not its form." *Id*. at 652. To consider the legislative intent, there must be doubts about a statute's application or ambiguities in the text. *Bd. of Educ. of Shelby Cnty.*, 911 F. Supp. 2d at 653.

By its terms, none of the provisions of the Act require local approval. Plaintiffs challenge both Sections 1(a) and 1(b) of the Act under the Home Rule Amendment on the grounds that the Act is local in effect or application. This Court must determine whether Sections 1(a) and (b) of the Act are local in effect and application, being "designed to apply only to Metro and not potentially applicable throughout the State. *Farris*, 528 S.W.2d. at 552, 555.

Plaintiffs argue that Section 1(a), despite feigning general application, in reality imposes its twenty-member cap on Metro and Metro alone because it is the only metropolitan government affected by and subject to the reduction provisions of the Act. Plaintiffs highlight that the Act's current legislative history, evidences the General Assembly clear intent by repeatedly acknowledging Metro and only Metro was subject to the Act, much like the Court found persuasive in the legislative history in *Farris*, 528 S.W.2d at 555–58. Section 1(a) of the Act provides that "[n]otwithstanding a provision of a metropolitan government charter or § 7-2-108 to the contrary, the membership of a metropolitan council must not exceed twenty (20) voting members, as further provided in this section."

In *Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 725 (Tenn. 1991) the Court examined whether legislation "affecting municipal civil service boards in Tennessee's most populous counties violate[d] the Home Rule Amendment of Article XI, Section 9 of the Tennessee

Constitution." Such a civil service board for the City of Knoxville challenged the law, asserting it violated the Home Rule Amendment because it affected only Knoxville. *Id.* at 728. The Court explained that while "only the Knoxville board will be required to take affirmative steps to comply with the statute. . . . the other two counties are certainly *affected* by the statute, because they will have to maintain compliance with [it]." *Id.* at 730 (emphasis in original). The Court noted it previously had "upheld legislation that applied *only to counties with a metropolitan form of government*, even though, at the time, Davidson County was the only county in the state with a consolidated, metropolitan form of government" because the "*enabling provisions for the creation of a metropolitan government were extant and potentially available to all counties statewide*." *Id.* at 729 (citing *Doyle v. Metro. Gov't of Nashville & Davidson Cnty.*, 471 S.W.2d 371 (Tenn. 1971); *Metro. Gov't of Nashville & Davidson Cnty. v. Reynolds*, 512 S.W.2d 6, 9–10 (Tenn. 1974)) (emphasis added).

The situation before the Court is similar to that in *Burson*. The enabling provisions mentioned in *Burson* for the formation of a metropolitan government remain open and available. *See* Tenn. Code Ann. §§ 7-1-101, *et seq.* Section (1)(a) applies to any metropolitan government. Currently, there are three – Nashville-Davidson County, Lynchburg-Moore County, and Hartsville-Trousdale County. Metro, like Knoxville in *Burson*, is the only metropolitan government required to make any changes as the other two are already in compliance. The Act, however, applies to all three. Lynchburg-Moore County, and Hartsville-Trousdale County must maintain compliance under the provisions of the Act. Further, in viewing the Act as a whole, the clear intent of the Act is to limit all metropolitan governments, those in existence now and any formed in the future, to no more than twenty-member councils. As such, the Court concludes that the Section 1(a) of the Act is general in effect and therefore, Plaintiffs are not likely to succeed on

their claim that Section 1(a) of the Act violates Article XI, Section 9, Paragraph 2 of the Tennessee Constitution.

One panel member respectfully disagrees with the foregoing analysis and this conclusion, and would hold Section 1(a) also likely violates Article XI, Section 9, paragraph 2 of the Tennessee Constitution for the reasons set forth in her separate decision included at the end of this memorandum. Pursuant to Tenn. Code Ann. § 20-18-101(b)(5) "[i]n the event of a disagreement among the three (3) judges comprising the panel, the majority prevails."

Section 1(b) of the Act, however, presents another matter. Its provisions only apply to Metro and Metro alone because it is aimed only at metropolitan governments that currently exceed the Act's legislative seat cap, a class of one. As already noted, the other two counties having metropolitan governments have twenty or fewer members in their constitutional legislative bodies. As a result, they are not subject to the reduction provisions of Section 1(b). There is no other metropolitan government to which Section 1(b) could ever apply.

Defendants nevertheless argue that Section 1(b) does not violate the Home Rule Amendment because it is merely a transitional provision designed to bring Metro into compliance with the Act. They cite to *State ex rel. Maner v. Leech*, 588 S.W.2d 534 (Tenn. 1979) for support, arguing the Tennessee Supreme Court previously has upheld so-called transitional provisions that might otherwise offend the Home Rule requirement of local approval under Article XI, Section 9 of the Tennessee Constitution. The Court finds *State ex rel. Maner* is distinguishable from the present cases.

State ex rel. Maner concerned legislation enacted following the 1977 Limited Constitutional Convention, when the delegates "extensively rewrote" Article VII, Section 1 of the Tennessee Constitution and "provided a general framework for the government of Tennessee counties." *Id.* at 537. The Court explained that "These constitutional provisions were not self-

executing; legislative action was required to give them vitality." *Id.* at 537–38 (footnote omitted). Absent the challenged legislation in *State ex rel. Maner*, a chaotic situation would have persisted because "Knox County would have had three governments in less than one year," but the law prescribed an "orderly transition" that would "bring Knox County into synchronization with the general statutory scheme." *Id.* at 541–42.

This case does not involve a constitutional overhaul or even a single constitutional amendment, but the General Assembly's own statute necessitating a transition. Neither side points to any authority supporting or rejecting the constitutionality of a transitional provision to implement a statutory amendment, as contrasted with the implementation of a constitutional amendment that otherwise conflicts with provisions of the Tennessee Constitution. The Court declines to do so here. Instead, the Act's transitional provision of Section 1(b) appears designed to restructure the Metropolitan Council, and only the Metropolitan Council, to reduce its membership by half. *See Leech v. Wayne Cnty.*, 588 S.W.2d 270, 274 (Tenn. 1979) ("Insofar as Wayne County is concerned, this amounted to nothing more than a private act relating to the composition of its county legislative body, without any statement of reasons and without requirement of a local referendum. In our opinion, neither Article VII nor Article XI, s [sic] 9 authorizes this type of legislation, nor can it be justified as being a transitional part of a general restructuring scheme."). Thus, the Court finds Plaintiffs are likely to succeed on the merits of their facial constitutional challenge to Section 1(b) of the Act as violating Article XI § 9, para. 2 of the Tennessee Constitution.

3. Alleged Violation of Article VII, § 1, para. 1 – Four-Year Terms

Article VII, Section 1 of the Tennessee Constitution, as adopted by the Limited 1977 Constitutional Convention, provides for the structure of county governments and terms of

constitutional legislative bodies as well as other constitutional county officers. The relevant provision regarding the term of legislative bodies is set forth in paragraph 1 as follows:

> The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk, and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly. . . .

Tenn. Const., art. VII, § 1, para. 1. The Tennessee Supreme Court has applied this provision to metropolitan governments. *Metro. Gov't of Nashville & Davidson Cnty. v. Poe*, 383 S.W.2d 265, 268 (Tenn. 1964); *Glasgow v. Fox*, 383 S.W.2d 9, 10 (Tenn. 1964). *But see Leech*, 588 S.W.2d at 537 ("A consolidated form of government commonly known as Metropolitan or "Metro." Any county having such a government is exempt from Article VII government.").

Plaintiffs argue that Section 1(b) of the Act violates the first paragraph of Article VII, Section 1 because, if Metro fails to reduce its legislative seat cap by the August 2023 election, then incumbent Metropolitan Council members will have their terms extended by one year to a five-year term, and members of the subsequent newly elected council in a special election mandated for August 2024 will serve a reduced three-year term. Because the Court has already ruled that Plaintiffs are likely to succeed on their constitutional challenge to Section 1(b), we do not find it necessary to address another constitutional challenge to that same provision in this procedural posture.

4. Alleged Violation of Article VII, § 1, para. 2 – Exemption

Article VII, Section 1, paragraph 2 of the Tennessee Constitution establishes the size of county legislative bodies, as follows:

> The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned every ten years based upon the most recent federal census. The legislative body shall not exceed twenty-five members, and no more than three representatives shall be elected from a district. Any county organized under

> the consolidated government provision of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and a county legislative body as described in this paragraph.

Tenn. Const., art. VII, § 1, para. 2. Plaintiffs challenge Sections 1(a) and (b) of the Act under the last two sentences of this provision, which establishes a twenty-five member cap on county legislative bodies, but exempts any county organized under the consolidated government provisions of Article XI, Section 9 of the Tennessee Constitution from having a county executive and legislative body "as described in this paragraph." They argue this provision created a constitutional exemption for metropolitan governments from any legislative seat cap, or at least one lower than twenty-five seats.

The Court finds that based on a plain reading of this constitutional provision it does not apply to metropolitan governments. "Any county organized under the consolidated government provision of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and county legislative body as described in this paragraph." By its plain terms, paragraph 2 does not apply to metropolitan governments. Accordingly, the Court finds Plaintiffs are not likely to succeed on the merits of this constitutional challenge.

B. Irreparable Harm to Metro

Where constitutional rights are threatened or impaired, for even minimal periods of time, irreparable injury "unquestionably" occurs. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 669 (6th Cir. 2016); *Obama for America v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (citing *ACLU of Ky. v. McCreary Cnty.*, 354 F.3d 438, 445 (6th Cir. 2003)). Thus, constitutional injuries presume irreparable harm to Plaintiffs.

In support of their showing irreparable harm, Metro has submitted declarations of Jeff Roberts, Director of the Davidson County Election Commission; Tricia Herzfeld, Secretary of the Davidson County Election Commission; Jim Shulman, Vice Mayor of Metro; Lucy Kempf,

Executive Director of the Metro Planning Commission; Brenda Wynn, Davidson County Clerk, Sandra Sepulveda, Metro District 30 Councilmember; Rev. Davie Tuck, President of the Interdenominational Ministers Fellowship; and Bob Mendes, current Councilmember At-Large. These declarations describe in robust detail the respective and collective responsibilities of the Davidson County Election Commission, the Metropolitan Council, and the Metropolitan Planning Commission to comply with the twenty-member cap, to implement the redistricting required under the Act's reduction of Council Members from 40 to 20, the impossibility of meeting established deadlines within which those responsibilities must be completed under the existing 2023 candidate qualifying deadline and election cycle, the time and cost of preparing, printing, and mailing new Davidson County voter registration cards, and the detrimental impact on those official in performing their duties and difficulties faced in implementing the Act within the tight election timelines.

The Court finds the implementation of the Act and its reduction provisions at this late date results in upheaval of the election process, risks voter confusion, and potentially comprises the integrity of Davidson County's August 3, 2023 general election. Councilman Mendes states that it will take time, "likely years" to restructure and reorganize a government "fundamentally based 35 districts" to a significantly smaller number of districts. Notably, Councilman Mendes also states the Act will destabilize Metro not because of the legislative seat cap but because the implementation must be accomplished so rapidly on the eve of the election. He further notes the substantial confusions amongst his constituents as to who will represent them.

Defendants have not submitted any countervailing evidence.

The Tennessee Supreme Court recently recognized that there is a compelling public interest in preserving the integrity of a state's election process. *Moore v. Lee*, 644 S.W.3d 59, 65 (Tenn. 2022). This fundamental principle applies with equal force to counties responsible for conducting

county elections. Unquestionably, there is an equally compelling public interest in Metro preserving the integrity of its election process for all of the same reasons discussed in *Moore*. In *Moore*, relying on the United States Supreme Court's decision in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), the Supreme Court declined to alter election rules already underway on the eve of an upcoming election. *Id*. at 65–67. Referred to as the "*Purcell* principle," courts recognize that elections are a complex process and election calendars are finely calibrated. Last minute changes can result in significant upheaval of the election process and lead to voter confusion and a loss of confidence in the integrity of elections. In *Moore*, the statewide redistricting process already had been completed and implemented, in sharp contrast to the yet to be implemented redistricting in this case. That process was constitutionally challenged in *Moore* on the eve of the upcoming elections, and the plaintiffs sought to enjoin the process. The trial court found a likelihood of success on the merits as to the constitutional challenge and mandatorily enjoined election officials from enforcing the new district boundaries as the election deadlines approached. The Tennessee Supreme Court assumed emergency appellate jurisdiction and vacated the temporary injunction, applying the *Purcell* principle. The Court concluded the trial court had failed to properly consider the compelling public interest in the election process and the detrimental impact a late change in the election process would have on the election machinery that was already underway.

The case before this Court reflects a mirror image of those very same considerations on election eve. Here, the Davidson County election process is already underway. Implementation of the Act would result in an upheaval of Metro's election process, mandating last minute redistricting to reduce the Metropolitan Council by at least half, but without adequate time to do so responsibly and effectively within the current election timelines.

The Supreme Court in *Moore* found the trial court had failed to address the robust evidence of the harm that would result from enjoining the Senate redistricting map at issue so close to the

election. 644 S.W.3d at 67. Here, Metro completes a four-year election cycle in less than five months and much work has already been done to prepare for the August general election, which includes the election of a forty-member council. Redistricting of the Metropolitan Council was recently completed and implemented for purposes of the 2022 elections. *See* Pl.'s Notice of Filing Decls., Ex. D (Decl. of Lucy Kempf). Plaintiffs maintain the 2022 redistricting of Metropolitan Council districts was "a deliberative process that last months and involved multiple public hearings, numerous community meetings, an online survey, and virtual appointments for soliciting feedback, all to ensure that the resulting map kept communities intact while complying with federal constitutional and statutory voting requirements." *Id.*; *see also* Pl.'s Notice of Filing Decls., Ex. C (Decl. of Jim Shulman), (The Act "will result in confusion and . . . disputes" on the Metropolitan Council.).

But Section 1(b) of the Act imposes an unreasonable timetable, only allowing the Metropolitan Council and the Metropolitan Planning Commission roughly six weeks to both reduce the size of the Council, determine the number and allocation of Council districts, and draw the new, enlarged district boundary maps. Indeed, the Act imposes the first ever redistricting of Metro to reduce the number of its existing Metropolitan Council districts created under the Metropolitan Charter by at least half. This drastic change on such a timetable does not allow for meaningful public input and little time to consider the impact on federal and statutory voting requirements. Moreover, since the Act sets a ceiling rather than a number of seats, the Metropolitan Council must initially decide on the new number of Metropolitan Council seats and allocate that number between district and at-large seats, if any, before the Metropolitan Planning Commission can propose new district boundary maps. Plaintiffs also submitted several letters from community leaders addressing a number of local concerns, and including potential federal challenges under the Voting Rights Act if minority representation is adversely impacted. *See*

generally Pl's Notice of Filing Decls., Exs. E, F, G (Decl. of Brenda Wynn, Decl. of Sandra Sepulveda, Decl. of Davie Tucker). As the *Moore* Court noted, "a quick [election] plan is not necessarily a good plan." 644 S.W.3d. at 66 (quotation omitted).

In light of this unrebutted evidence, the Court concludes the risk of irreparable harm to Plaintiffs based on a likely constitutional injury, rushed compliance, and a chaotic election process is substantial, and this factor weighs heavily in favor of the issuance of a temporary injunction with respect to Section 1(b) of the Act.

C. Balance of Harm to the State

Defendants contend the harm to the State resulting from a grant of injunctive relief would be considerable. First, they note that "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (recognizing that enjoining a State from enforcing a statute, unless "that statute is unconstitutional, . . . would seriously and irreparably harm the State"). Thus, they argue an injunction of the Act would irreparably harm the State by preventing the enforcement of its legislative enactment.

Defendants further contend an injunction would remove any incentive for Metro to comply with the Act, leaving forty elected Metropolitan Councilmembers in place in direct contravention of the Act. In such event, the State would have to take steps to enforce the Act after the deadlines have passed. Defendants argue this potential harm outweighs the minimal harm Plaintiff might suffer by having to operate in a compressed timeline.

In contrast, Plaintiffs argue the State will suffer no harm from an injunction because no harm can result from enjoining the implementation of an unconstitutional act and, further, the Act

could be implemented following the conclusion of this litigation on a more reasonable timeline. The State's proffered justifications for the Act were efficiency and financial considerations, but neither of these considerations has been demonstrated or require immediate redress in light of the 60-year duration of Metro's existing councilmanic structure. Moreover, Metro and the Individual Plaintiffs assert such justifications ring hollow in light of Metro's strong financial position.

Having already concluded that Metro is likely to succeed on the merits of its constitutional challenge at least as to Section 1(b) of the Act, the Court finds Defendants' arguments without merit. The State has no interest in enforcing an unconstitutional provision of a statute, and it is at minimal risk of irreparable harm.

D. Public Interest

It is in the public interest to avoid the violation of the constitutional rights. *Jones v. Caruso*, 569 F.3d 258, 278 (6th Cir. 2009) (quoting *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998)). Further, the Tennessee Supreme Court recently vacated an injunction of a redistricting statute based on the trial court's failure to fully consider the public interest, particularly in connection with an election dispute. *Moore*, 644 S.W.3d at 66–67. The Court found that the public interest "ought to weigh heavily in light "'election machinery' that was already 'in gear.'" *Id.* The *Moore* Court emphasized the importance of maintaining public confidence in elections: "The Supreme Court further recognized that '[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy,' stating that court orders affecting elections 'can themselves result in voter confusion and consequent incentive to remain away from the polls.'" *Id.* (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006)).

Plaintiffs argue complying with Act undermines the confidence of Davidson County voters in the integrity of the election process, where voters were just issued new voter identification cards listing their new council, school board, state house, state senate, and congressional districts, as

well as many voters being assigned new voting precinct locations. *See* Pl.'s Notice of Filing Decls., Ex. B, ¶ 17 (Decl. of Tricia Herzfeld) [hereinafter "Herzfeld Decl."]. The current election process for the August 3, 2022 general election is well underway and the Davidson County Election Commission has relied on the current districts and election deadlines in preparing for the August election. If Metropolitan Council districts are reduced in number and the district maps redrawn at this late date, the redistricting process and responsibilities undertaken by the Davidson County Election Commission in 2022 will need to be repeated in a tightly compressed timeline. *See Moore*, 644 S.W.3d at 64 ("[M]any county election commissions have already relied on the Senate plan in adjusting voting precinct lines and have notified voters of these changes . . . ."); *see also* Herzfeld Decl., ¶ 24 ("[A]lmost all voters would have had three separate voter registration cards within the span of approximately 12 months . . . . Indeed, . . . [some voters] would have four separate voter registration cards . . . .").

Additionally, Plaintiffs contend the Act will create disruption and cause confusion among candidates for the August election, some of whom have been campaigning for over two years. *See* Herzfeld Decl., ¶¶ 14–15. Twenty-four candidates have reported a combined total of over $522,000 in campaign receipts from July 1, 2022 to January 15, 2023, and had campaign balances of approximately $512,000 as of January 15, 2023. Herzfeld Decl., ¶ 15. And nearly forty potential candidates have appointed treasurers with the Election Commission. Herzfeld Decl., ¶ 12. Plaintiffs argue current and prospective candidates will have little to no time to decide whether they can scale up their campaigns within the compressed schedule to reach a new, significantly larger group of voters in the districts. Likewise, each candidate, not yet knowing which new district they might be assigned to based on their residence, will have to assess whether they can compete against the new opponents in a significantly larger district, particularly where a currently

open Metropolitan Council is redrawn into one or more districts with incumbents seeking reelection.

Plaintiffs also argue the Act completely alters the factors on which existing candidates made their decisions and, if not enjoined, will discourage other potential candidates from running. Such reliance interests were relevant to the Court in the *Moore* decision: "[E]lection officials, candidates, and voters have already relied on the district boundaries in the Senate plan to determine whether voter signatures are valid on nominating petitions that already have been filed . . . ." 644 S.W.3d at 64–65. If the Act is not enjoined, Plaintiffs assert the signatures obtained on candidate's existing nominating petitions will be worthless, and candidates will only have from the May 1 deadline for approval of the new districts to the May 18 deadline for submitting new nominating petitions based on the new districts. Within that short timeframe, candidates must circulate their petitions in districts twice as a large as the old districts, obtain the required signatures from qualified voters within the new district, and file their petitions with the election commission.

The Court does not address this alleged harm due to its holding as to standing.

Applying the holding in *Moore* to the robust evidence of potential harm in this case that will result from disruption and upheaval in the complex election process already underway, the risk of voter confusion, and loss of confidence in the integrity of the election process, the Court concludes this factor weighs heavily in favor of granting the injunction in order to maintain the status quo during the pendency of this case and the current Metro general election process that is already well underway. *See Moore*, 644 S.W.3d at 65–66; *see also id.* at 71 (Lee, J., dissenting) ("[T]he . . . interest in preserving integrity of the election process is important. . . . State courts . . . have a vital role to play in protecting the right to vote and the structural guarantees of a constitutional democracy.").

Weighing all four factors under Rule 65.04, the Court finds a temporary injunction is warranted as to Section 1(b) of the Act during the pendency of this case.

E. Severability

Having concluded that (1) Metro is likely to succeed on the merits as to its constitutional challenge to Section 1(b) of the Act but not as to Section 1(a), and (2) the balancing of the harms weigh in favor of issuing an injunction as to Section 1(b) during the pendency of this case, the Court addresses the issue of severability of Section 1(b) from the Act. As the Tennessee Supreme Court has explained:

> "Under the doctrine of elision, a court may, under appropriate circumstances and in keeping with the expressed intent of a legislative body, elide an unconstitutional portion of a statute and find the remaining provisions to be constitutional and effective." Thus, once the court can appropriately elide the "objectionable features" of the statute, the remainder is "valid and enforceable."
>
> . . . the General Assembly has approved the practice of elision through the enactment of a general severability statute." "[T]he legislature's endorsement of elision does not automatically make it applicable to every situation; however, when a conclusion can be reached that the legislature would have enacted the act in question with the unconstitutional portion omitted, then elision of the unconstitutional portion is appropriate."

Willeford v. Klepper, 597 S.W.3d 454, 471 (Tenn. 2020) (citations omitted). Here, the General Assembly has manifested its intent that portions of the Act are severable because Section 3 of the Act is a severability clause. And the likely unconstitutional provisions of Section 1(b) are not so intertwined with a generally applicable seat cap on metropolitan legislative bodies that the Court sees any issue with effectuating the severability clause.[6] Thus, we conclude that Section 1(b) is severable from the Act and may be temporarily enjoined.

[6] As noted, one member of the panel disagrees with the Panel Majority's conclusion as to Section 1(a).

IV. CONCLUSION

The Court concludes that (1) Metro is likely to succeed on the merits as to its constitutional challenge to Section 1(b) of the Act under the Local Legislation Clause of the Home Rule Amendment, Article XI, § 9, para. 2 of the Tennessee Constitution, but not as to Section 1(a),[7] (2) Metro will suffer irreparable harm as a result of its constitutional injury as to Section 1(b); (3) the balancing of harm weighs in favor of issuing an injunction as to Section 1(b) during the pendency of this case to maintain the status quo, and (4) there is a compelling public interest in preserving the integrity of the Metro election process that is already underway. Accordingly, the Court concludes that a temporary injunction as to Section 1(b) of the Act is warranted and should be issued, but that an injunction as to Section 1(a) should be denied.

The Panel Majority, however, also concludes that Individual Plaintiffs likely lack standing to assert the constitutional challenges presently before the Court and therefore are not likely to succeed on the merits.[8] Therefore, the balance of the harms shifts in the State's favor under Individual Plaintiffs' motion, and that motion should be denied.

It is, accordingly, ORDERED that Metro's motion for temporary injunction is hereby GRANTED IN PART with respect to Section 1(b) of the Act, and DENIED IN PART, as to the remaining constitutional claims that are the subject of the motion.

It is further ORDERED that Defendants, and their respective officers, agents, and attorneys, are hereby enjoined from implementing and enforcing Sections 1(b) of 2023 Tenn. Pub. Acts, ch. 21 as to the Metropolitan Government of Nashville and Davidson County during the pendency of this litigation, unless modified or dissolved under Rule 65.04(5).

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[7] *See* n.6.

[8] As noted, one panel member disagrees with the Panel Majority's conclusion on the issue of standing of two groups of Individual Plaintiffs.

It is further ORDERED that Metro shall post an injunction bond in the amount of $1,000.00 as security for this temporary injunction under Rule 65.05.

It is further ORDERED that Individual Plaintiffs' motion for temporary injunction is hereby DENIED.

All other issues are reserved. A status conference will be conducted on **April 17, 2023, at 11:30 AM CT/12:30 PM ET.**

IT IS SO ORDERED.

s/Jerri S. Bryant
CHANCELLOR JERRI S. BRYANT

s/Mary L. Wagner
JUDGE MARY L. WAGNER

s/Patricia Head Moskal
CHANCELLOR PATRICIA HEAD MOSKAL,
CHIEF JUDGE

ISSUED this the 10th day of April, 2023 at 3:00 pm.

MARIA S. SALAS, Clerk and Master

By: s/Christy Smith
Deputy Clerk and Master

Moskal, Chancellor, Concurring in Part and Dissenting in Part.

I generally concur in the Panel's Memorandum and Order, but respectfully disagree with two conclusions of the Panel Majority that (i) Plaintiffs have not demonstrated a likelihood of success on the merits as to Section 1(a) of the Act and (ii) the Individual Plaintiffs lack standing with respect to current Councilmembers and Davidson County voters. First, in addition to finding

Section 1(b) of the Act likely violates the Local Legislation Clause of the Home Rule Amendment, I find Section 1(a) also likely violates that same constitutional provision, that both Sections 1(a) and (b) are severable from the remainder of the Act, and implementation of both Sections 1(a) and (b) should be temporarily enjoined during the pendency of this action. Second, I find current Councilmembers and Davidson County voters have standing based on distinct and palpable injuries not shared in common with the general public under Section 1(b).

Section 1(a) of the Act provides: "Notwithstanding a provision of a metropolitan government charter or § 7-2-108 to the contrary, the membership of a metropolitan council must not exceed twenty (20) voting members, as further provided in this section." Section 1(b) "further provides" the process or mechanism by which the cap established in 1(a) must be implemented to reduce the size of a metropolitan council that exceeds twenty members "in order to comply with subsection (a)." Read together, Sections 1(a) and (b) are designed to change an existing metropolitan charter with a metropolitan council of more than twenty members (of which there is only one within the State, Metro, as discussed below), but without providing for local approval, as otherwise required by the Local Legislation Clause of the Home Rule Amendment.

A plain reading of Sections 1(a) and (b) show these two sections are interrelated, with each subsection referencing the other. They are designed to be implemented together to establish both the twenty-member cap on a metropolitan council *and* provide the mechanism for any council that exceeds twenty members to come into compliance with the cap. Because the two subsections are intertwined, one provision is not properly severable from the other. *See Waters v. Farr*, 291 S.W.3d 873, 913 (Tenn. 2009). The Panel concludes there is a likelihood of success on the merits that Section 1(b) violates the Local Legislation Clause of the Home Rule Amendment, and I further find that because Sections 1(a) and (b) are interrelated and not severable, it necessarily follows

that Section 1(a) also likely violates the Local Legislation Clause of the Home Rule Amendment and its implementation should be temporarily enjoined.

Additionally, I do not construe Section 1(a) to be an act of "general application," but find it to be an act "local in effect and application" under the Tennessee Supreme Court's holding in *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975). For years, only three metropolitan governments have existed in Tennessee: Hartsville/Trousdale County Government, with 20 commissioners (Pl.'s Motion Ex. H); Lynchburg, Moore County Metropolitan Government, with 15 council members (Pl.'s Motion Ex. G); and Metropolitan Nashville and Davidson County, with 40 council members (Pl.'s Motion Ex. E). Of this limited class of three, only Metro exceeds the twenty-member cap under its Charter, placing Metro in a class of one. At the time each of these three metropolitan governments were formed, the Metropolitan Government Charter Act did not impose *any* requirement regarding the size of a metropolitan government's legislative body, leaving that important decision to each metropolitan charter commission charged with proposing a metropolitan charter to establish, among other requirements, the size of its council and submitting its proposed charter to the local voters for approval. In recognition of the fact that the size of existing metropolitan councils are established by metropolitan charters, the opening clause of Section 1(a) states: "Notwithstanding a provision of a metropolitan charter . . . to the contrary."

At the time of enacting Sections 1(a) and (b), the General Assembly knew the twenty-member cap applied only to Metro, as evidenced by the committee and floor comments made during the passage of House Bill 48/Senate Bill 87, which became the Act, and the Corrected Fiscal Note that accompanied the bill. The Corrected Fiscal Note expressly states: "There are three metropolitan governments in Tennessee," and "[t]he proposed legislation therefore *only applies to Metro* as its governing body exceeds the 20-member cap." Pl.'s Motion Ex. D (emphasis added). The Corrected Fiscal Note further recognizes that the twenty-member cap would be

effective as of Metro's next general election following passage of the Act, which is August 3, 2023, with the qualifying deadline for Metro council candidates being May 18, 2023. *Id*. These facts lead this panel member to conclude that the legislative intent and "sole purpose" of Sections 1(a) and (b) of the Act were to apply the twenty-member cap to Metro, and Metro alone, much like the legislation challenged in *Farris v. Blanton*.

In *Farris*, the Supreme Court found that the act at issue only applied to Shelby County under the current state of the law, although the act by its terms did not single out Shelby County. *Farris*, 528 S.W.2d at 555. The Supreme Court turned to the legislative history of the act to ascertain the legislature's intent, and it had little difficulty concluding that "the sole purpose" of the act was to apply to "Shelby County and Shelby County alone." *Id*. at 555-56. Just as Shelby County was found to stand alone in *Farris*, Metro stands alone in this case under Section 1(a). *Farris* held that "[t]he sole constitutional test must be whether the legislative enactment, irrespective of its form, is *local in effect and application*." *Id.* at 551 (emphasis added). Section 1(a), together with 1(b) of the Act meet that sole constitutional test, and both are local *in effect and application* as to Metro and Metro alone. Accordingly, both Sections 1(a) and (b) of the Act likely violate the Local Legislation Clause of the Home Rule Amendment because neither section provides for local approval as required by Article XI, § 9, paragraph 2 of the Tennessee Constitution.

The foregoing analysis is bolstered by the fact that the General Assembly went on to include a separate subsection 1(c) directed to metropolitan governments that may be formed in the future, *after* the effective date of the Act. Section 1(c) is a provision that is "potentially applicable" to all other counties throughout the State that have not consolidated their city and county governments into a metropolitan government, making it a provision of "general application," which would not run afoul of the Home Rule Amendment. Indeed, the legislature's inclusion of

Section 1(c) applying broadly to future metropolitan governments, necessarily limits the construction to be given to Section 1(a) to existing metropolitan governments in order to give meaning to both provisions; otherwise Section 1(c) would be mere surplusage. Such a reading is contrary to the principle of statutory construction that courts should construe component parts of a statute together, *in pari materia*, so the provisions are consistent and reasonable and no part rendered inoperative. *See Graham v. Caples*, 325 S.W.3d 578, 582-83 (Tenn. 2010); *Carver v. Citizen Util. Co.*, 954 S.W.2d 34, 35-36 (Tenn. 1997).

Based on the foregoing, Metro has shown a likelihood of success on the merits that both Sections 1(a) and (b) violate the Local Legislation Clause of the Home Rule Amendment for failure to provide for local approval. Both Sections 1(a) and (b) cross-reference each other, are interrelated, are intended to be implemented together, and are designed to apply only to Metro, making both sections local in effect and application, and both sections should be temporarily enjoined during the pendency of this action.

In addition, I find two groups of Individual Plaintiffs, current Councilmembers and Davidson County voters, have standing under Sections 1(a) and/or 1(b). Current Councilmembers have a distinct and palpable injury by having their terms of office potentially extended from four years to five years, which is a term of office for which they did not run and were not elected, but potentially will be required to serve. Davidson County voters also have a distinct injury from the general, statewide voting public by having their votes changed as to the length of the terms of office for which they elected their current Councilmembers, extending those terms for one year for which they did not vote. Accordingly, I respectfully would find standing with respect to the current Councilmembers and Davidson County voters and would grant their separate motion for temporary injunction as to Sections 1(a) and (b) of the Act, for failure to provide for the required local approval under the Local Legislation Clause of the Home Rule Amendment.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded via electronic service or U.S. Mail first-class, postage prepaid, to the following:

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s/Christy Smith
Deputy Clerk and Master

April 10, 2023
Date