

IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT

TELISE TURNER,
GARY WYGANT, and
FRANCIE HUNT,

Plaintiffs,

v.

BILL LEE, Governor,
TRE HARGETT, Secretary of State,
MARK GOINS, Tennessee Coordinator
of Elections; all in their official
capacity only,

Defendants.

CASE NO. 22-0287-IV

THREE-JUDGE PANEL
CHANCELLOR PERKINS, CHIEF
CHANCELLOR MARONEY
CIRCUIT JUDGE SHARP

PLAINTIFFS' STATEMENT OF MATERIAL FACTS

Pursuant to Tennessee Rule of Civil Procedure 56.03, Plaintiffs submit this Statement of Material Facts in support of their Motion for Summary Judgment.

I. The Plaintiffs

1. Plaintiff Telise Turner is a resident of Shelby County, Tennessee. Plaintiff Turner is registered to vote in Shelby County, Tennessee. Plaintiff Turner voted in Shelby County in 2022.

CITATION: Deposition of Telise Turner at 6:1-6; 10:23-25; 11:1-17. A copy of the transcript of Ms. Turner's deposition is attached as **Exhibit B** to Plaintiffs' Appendix of Documents Submitted for the Record (hereinafter, "Plaintiffs' Appendix").

2. Shelby County had 14 House districts in the prior decade's district map, and the Enacted House Map reduces Shelby County to 13 House districts.

CITATION: Tennessee Code Annotated § 3-1-103, including prior version.

3. Plaintiff Gary Wygant is a resident of Gibson County, Tennessee. Plaintiff Wygant is registered to vote in Gibson County, Tennessee. Plaintiff Wygant voted in Gibson County in 2022.

CITATION: Deposition of Gary Wygant at 5:20-23; 10:12-14; 16:8-19. A copy of the transcript of Mr. Wygant’s deposition is attached as **Exhibit C** to Plaintiffs’ Appendix.

4. Gibson County was kept whole in the prior decade’s district map, and the Enacted House Map splits Gibson County between two House districts.

CITATION: Tennessee Code Annotated § 3-1-103, including prior version.

5. Plaintiff Francie Hunt is a resident of Davidson County, Tennessee. Plaintiff Hunt lives in the Davidson County portion of District 17. Plaintiff Hunt is registered to vote in District 17, and Plaintiff Hunt did vote in District 17 in the 2022 elections.

CITATION: Deposition of Francie Hunt at 22:11-15; 25:7-29:4. A copy of the transcript of Ms. Hunt’s deposition is attached as **Exhibit A** to Plaintiffs’ Appendix.

II. The Enacted Senate Map

6. The Tennessee General Assembly enacted its decennial reapportionment of the Tennessee Senate via Public Chapter 596, which amended Tennessee Code Annotated § 3-1-102 to codify the State’s new senatorial districts. This enacting legislation will be referred to herein as “Public Chapter 596.”

CITATION: TENN. CODE ANN. § 3-1-102; TN LEGIS 596 (2022), 2022 Tennessee Laws Pub. Ch. 596 (S.B. 780).

7. Governor Lee signed Public Chapter 596 into law on February 6, 2022. The reapportioned Senate district map enacted by Public Chapter 596 will be referred to herein as the “Enacted Senate Map.”

CITATION: TENN. CODE ANN. § 3-1-102; TN LEGIS 596 (2022), 2022 Tennessee Laws Pub. Ch. 596 (S.B. 780).

8. Public Chapter 596 created four senatorial districts within Davidson County. Three of these districts are wholly within Davidson County. These three districts are numbered 19, 20, and 21. The fourth district includes a portion of Davidson County as well as all of Wilson County. This district is numbered 17. Thus, Tennessee Code Annotated § 3-1-102 now numbers Davidson County's four senatorial districts 17, 19, 20, and 21.

CITATION: TENN. CODE ANN. § 3-1-102; TN LEGIS 596 (2022), 2022 Tennessee Laws Pub. Ch. 596 (S.B. 780).

9. Plaintiffs' Interrogatory Number 7 sought the identity of "all individuals on whom Defendants intend to rely, or may rely, to proffer evidence in defense of Plaintiffs' claims in this Action." Concerning the Senate claim, notwithstanding objections, Defendants responded as follows: "Defendants have not yet made any decision concerning who may testify regarding the map enacted by SB 0780."

CITATION: Defendants' Response to Interrogatory Number 7. Defendants' Responses to Plaintiffs' Interrogatories are attached as **Exhibit N** to Plaintiffs' Appendix.

10. Plaintiffs' expert witness, Dr. Jonathan Cervas, produced an expert report stating his opinion that the General Assembly could have enacted a Senate map with all four Davidson County senatorial districts numbered consecutively. In his report, Dr. Cervas created three illustrative maps, each of which reflect Dr. Cervas's opinion that the General Assembly could have created consecutively numbered districts in Davidson County by creating a District 18 that pairs the portion of Davidson County currently included in District 17 with a portion of Rutherford County.

CITATION: Report of Plaintiffs’ Expert Regarding Tennessee State Senate Reapportionment, attached as Exhibit 3 to Dr. Cervas’s expert deposition dated December 13, 2022. Dr. Cervas’s deposition transcript, with exhibits, is attached as **Exhibit G** to Plaintiffs’ Appendix.

11. Defendants did not disclose an expert witness to respond to Dr. Cervas’s opinion concerning the Senate claim, and Defendants’ expert witnesses on the House claim testified in their depositions that have not been retained to proffer expert opinions on the Senate claim.

CITATION: Expert Deposition of Doug Himes, dated December 16, 2022, at 7:18-8:4; Expert Deposition of Sean Trende, dated January 4, 2022, at 7:24-8:5. Mr. Himes’s December 16, 2022, expert deposition transcript, with exhibits, is attached as **Exhibit E** to Plaintiffs’ Appendix. Mr. Trende’s deposition transcript, with exhibits, is attached as **Exhibit F** to Plaintiffs’ Appendix.

III. The Enacted House Map

12. The Tennessee General Assembly enacted its decennial reapportionment of the Tennessee House of Representatives via Public Chapter 598, which amended Tennessee Code Annotated § 3-1-103 to codify the State’s new House districts. This enacting legislation will be referred to herein as “Public Chapter 598.”

CITATION: TENN. CODE ANN. § 3-1-103; TN LEGIS 598 (2022), 2022 Tennessee Laws Pub. Ch. 598 (S.B. 779).

13. Governor Lee signed Public Chapter 598 into law on February 6, 2022. The reapportioned House of Representatives district map enacted by Public Chapter 598 will be referred to herein as the “Enacted House Map.”

CITATION: TENN. CODE ANN. § 3-1-103; TN LEGIS 598 (2022), 2022 Tennessee Laws Pub. Ch. 598 (S.B. 779).

14. The 2020 United States Census identified 6,910,840 people as the total population of Tennessee. Based on this total state population, each of Tennessee's 99 House districts would have ideally contained 69,806 people following the 2022 decennial reapportionment.

CITATION: Third Amended Complaint ¶¶ 47-48; Answer to Third Amended Complaint ¶¶ 47-48.

15. The Enacted House Map includes districts whose populations deviate from the ideal district population in a range from +5.09% (+3,552 people) to -4.82% (-3,361 people), with a total variance of 9.90%.

CITATION: January 18, 2022, hearing transcript at 8:20-25. *See* Paragraph 41, below, for full citation for the January 18, 2022, hearing. This transcript is attached as **Exhibit K** to Plaintiffs' Appendix.

16. The House map applicable to the prior decade included districts deviating from that decade's ideal district population with a total variance of 9.74%.

CITATION: Doug Himes Expert Report, at page 7. The transcript of Mr. Himes's expert witness deposition, dated December 16, 2022, is attached as **Exhibit E** to Plaintiffs' Appendix. Mr. Himes's expert report is included as Exhibit 3 to his deposition transcript.

17. The Enacted House Map contains 13 majority-minority House districts.

CITATION: Transcript of Doug Himes's fact witness deposition, dated September 9, 2022 at 69:15-23. The transcript of Mr. Himes's fact witness deposition, dated September 9, 2022, is attached as **Exhibit D** to Plaintiffs' Appendix.

18. The House Map applicable to the prior decade also contained 13 majority-minority House districts.

CITATION: January 18, 2022, hearing transcript at 9:13-16. *See* Paragraph 41, below, for full citation for the January 18, 2022, hearing. *See, also, Exhibit K* to Plaintiffs’ Appendix.

19. The Enacted House Map split 30 counties, such that portions of these 30 counties share a House district with another county or counties.

CITATION: January 18, 2022, hearing transcript at 8:25-9:1. *See* Paragraph 41, below, for full citation for the January 18, 2022, hearing. *See, also, Exhibit K* to Plaintiffs’ Appendix.

20. The House Map applicable to the prior decade split 28 counties.

CITATION: Transcript of Doug Himes’s expert witness deposition, dated December 16, 2022, at 32:20-22. The transcript of Mr. Himes’s expert witness deposition, dated December 16, 2022, is attached as Exhibit E to Plaintiffs’ Appendix.

IV. Legislative History

21. Doug Himes served as the House of Representatives’ mapmaker for the 2021-2022 redistricting process.

CITATION: Defendants’ Response to Plaintiffs’ Interrogatory Number 1. *See Exhibit N* to Plaintiffs’ Appendix.

22. Mr. Himes is Ethics Counsel to the House of Representatives, and he served as counsel to the House Select Committee on Redistricting during the 2021-2022 redistricting process.

CITATION: Transcript of Doug Himes’s fact witness deposition, Dated September 9, 2022, at 100:2-8; 103:10-13. *See Exhibit D* to Plaintiffs’ Appendix.

23. On September 8, 2021, the House Select Committee on Redistricting held its first public hearing of the 2021/2022 redistricting cycle (referred to herein as the “September 8, 2021, hearing”).

CITATION: The original video of the September 8, 2021, hearing is accessible on the General Assembly’s website at the following URL. Plaintiffs retained a court reporter to transcribe this hearing. A copy of the transcript of this hearing is attached as **Exhibit H** to Plaintiffs’ Appendix.

https://tnga.granicus.com/player/clip/25419?view_id=688&redirect=true&h=d4706d4ca6fd2758b073a41853bb209d (last accessed on January 13, 2023).

24. At the September 8, 2021, hearing, Doug Himes gave a presentation on the redistricting process.

CITATION: *Id.* at 6:4-36:25.

25. During his presentation at the September 8, 2021, hearing, Doug Himes stated as follows:

Text No more than 30 counties may be split to attach to other counties or parts of counties to form multi-county districts. So Article II, Section 5, of the Tennessee constitution tells us, Hey, House of Representatives, don’t split any counties. The one person, one vote standard says, Well, you’ve got to have your districts substantially equal in population. And those two things -- they conflict. One’s federal. One’s our state constitution.

In 1983, this issue came up in front of the state supreme court in the case *Lockert v. Crowell*, and the Supreme Court in its wisdom said, All right, House. In order for you to comply with one person, one vote, we know you’re going to have to split counties. But we’re going to put that limit at 30. You’re not going to split more than 30, and you’re not going to split, at the time, the four urban counties but for two reasons. So you’re limited to 30, the four urbans would count if you had to split them for these reasons.

CITATION: *Id.* at 15:2-22.

26. No person at the September 8, 2021, hearing cites or paraphrases the standard set forth by the Tennessee Supreme Court that “any apportionment plan adopted must cross as few county lines as is necessary to comply with federal constitutional requirements.”

CITATION: *Id.* at 2:1-57:5.

27. On December 17, 2021, the House Select Committee on Redistricting convened its second and final public hearing of the 2021/2022 redistricting cycle (referred to herein as the “December 17, 2021, hearing”).

CITATION: The original video of the House Select Committee on Redistricting’s December 17, 2021, public hearing is accessible on the General Assembly’s website at the following URL. Plaintiffs retained a court reporter to transcribe this hearing. A copy of the transcript of this hearing is attached as **Exhibit I** to Plaintiffs’ Appendix.

https://tnga.granicus.com/player/clip/25677?view_id=610&redirect=true&h=0fcb22657dcae d5c9b7db84db28f3dbe (last accessed on January 13, 2023).

28. During the December 17, 2021, hearing, Mr. Himes presented several redistricting plans, including plans submitted by the public, a plan created by Democratic House members, and a plan Mr. Himes created as the House Select Committee on Redistricting’s principal mapmaker in consultation with unspecified members of the House of Representatives.

CITATIONS: December 17, 2021, hearing transcript at 5:6-13:14, 22:15-24:9, 27:1-38:12-52:15 (**Exhibit I** to Plaintiffs’ Appendix); Defendants’ Response to Interrogatory Number 1 (notwithstanding objections, “Doug Himes, legal counsel to the Tennessee House of Representatives, created and drew the map enacted by SB 0779.”) (**Exhibit N** to Plaintiffs’ Appendix); Transcript of Doug Himes’s fact witness deposition, dated September 9, 2022, at 44:8-46:21 (concerning communications with members of the General Assembly during the mapmaking process) (**Exhibit D** to Plaintiffs’ Appendix).

29. During the December 17, 2021, hearing, the House Select Committee on Redistricting voted to recommend the plan Mr. Himes created in consultation with unspecified House members to the House Public Service Subcommittee.

CITATION: December 17, 2021, hearing transcript at 52:24-53:5 (**Exhibit I** to Plaintiffs' Appendix).

30. The House redistricting plan recommended by the House Select Committee on Redistricting at the December 17, 2021, hearing included 30 county splits.

CITATION: *Id.* at 26:16.

31. During the December 17, 2021, hearing, Representative Bob Freeman presented a proposed redistricting plan that proposed splitting just 23 counties.

CITATION: *Id.* at 13:18-25:12.

32. Responding to Representative Freeman's proposed plan at the December 17, 2021, hearing, Mr. Himes objected to the plan's creation of a county split in Shelby county and then quoted a portion of the Tennessee Supreme Court's *Lockert II* decision as follows:

I'll read you the holding -- the relevant part, "Turning to the limitation on dividing counties and creating house districts, we think an upper limit of dividing 30 counties in the multi-county category is appropriate, with a caveat that none of the 30 can be divided more than once.

CITATION: *Id.* at 23:10-15.

33. Subsequently at the December 17, 2021, hearing, Minority Leader Karen Camper questioned Mr. Himes on the redistricting plan he created as follows:

This map creates a situation where we have a 30-county split. Is that what you said in your presentation? And you also mentioned earlier, if I'm not mistaken, that the Supreme Court decision felt it best to not split if possible. If at all possible, the least amount, making sure that there's equal representation, that we would not go to that 30-number limit. But in this case, we actually did. And so could you talk about the rationale for, you know, 30-county split versus like in our plan is 23, and we still gave equal representation, we met within *Lockert*'s decision, and all of the things that the constitution requires. Why would we go to this 30-county split, if we could have did less than that?

CITATION: *Id.* at 46:22-47:11.

34. In response to this question from Leader Camper, Mr. Himes stated as follows:

Leader Camper, I -- you know, *Lockert* gives you an upper limit of 30, and it's something that -- since we had the *Lockert* decision, it's something that we placed in Tennessee code as one of our criteria. And it's consistently adopted as one of our criteria that our limit is 30. While it is true that you can sometimes draft plans with fewer county splits, you have the discretion to get to that -- to that limit, and that becomes a policy decision that you all -- that you make. I -- to say, I mean, I would suggest that if you -- if you kept in the plan that was presented earlier, if you kept Shelby whole, you wouldn't have 23 splits. You would have 2 more splits. And I think what *Lockert* says, Keep the urban counties whole. So 23, I think, is -- is a great number. And I don't know if that is a number that you get to but for splitting Shelby County.

CITATION: *Id.* at 47:14-48:6.

35. At no point during the December 17, 2021, hearing does Mr. Himes, or any individual recommending the plan Mr. Himes created, cite or paraphrase the standard set forth by the Tennessee Supreme Court that “any apportionment plan adopted must cross as few county lines as is necessary to comply with federal constitutional requirements.”

CITATION: *Id.* at 2:1-57:17.

36. On January 12, 2022, the House Public Service Subcommittee convened a public hearing (referred to herein as the “January 12, 2022, hearing”).

CITATION: The original video of the January 12, 2022, hearing is accessible on the General Assembly's website at the following URL. Plaintiffs retained a court reporter to transcribe this hearing. A copy of the transcript of this hearing is attached as **Exhibit J** to Plaintiffs' Appendix.

https://tnga.granicus.com/player/clip/25702?view_id=610&redirect=true&h=b882efc1d6e18145be43c72c6dc165f6 (last accessed on January 13, 2023).

37. At the January 12, 2022, hearing, Speaker Pro Tempore Pat Marsh presented House Bill 1035, which represented the redistricting plan drafted by Mr. Himes and recommended by the House Select Committee on Redistricting.

CITATION: January 12, 2022, hearing transcript at 3:6-4:20.

38. In presenting HB 1035 at the January 12, 2022, hearing, Speaker Marsh summarily stated the “plan complies with judiciary-interpreted state constitutional requirements concerning county splitting.”

CITATION: *Id.* at 3:20-22.

39. At the January 12, 2022, hearing, Mr. Himes noted concerning HB 1035, “There are 30 splits in this plan.”

CITATION: *Id.* at 6:12-13.

40. At the January 12, 2022, hearing, Mr. Himes did not address the *Lockert* cases, and neither Mr. Himes, nor any individual recommending HB 1035, cited or paraphrased the standard set forth by the Tennessee Supreme Court that “any apportionment plan adopted must cross as few county lines as is necessary to comply with federal constitutional requirements.”

CITATION: *Id.* at 2:1-25:1.

41. On January 18, 2022, the House State Government Committee convened a public hearing (referred to herein as the “January 18, 2022, hearing”).

CITATION: The original video of the January 18, 2022, hearing is accessible on the General Assembly’s website at the following URL. Plaintiffs retained a court reporter to transcribe this hearing. A copy of the transcript of this hearing is attached as **Exhibit K** to Plaintiffs’ Appendix.

https://tnga.granicus.com/player/clip/25720?view_id=610&redirect=true&h=f130411943ede0340024f9f4bc0ec1b4 (last accessed on January 13, 2023).

42. During the January 18, 2022, hearing, Representative Bill Beck asked Mr. Himes, “Is there -- is there a reason we didn’t strive, in this plan, to split less counties?”

CITATION: January 18, 2022, hearing transcript at 25:25-26:2.

43. At the January 18, 2022, hearing, Mr. Himes responded to Representative Beck's above-stated question as follows:

Representative Beck. I think, you know, under the *Lockert* decision, the maximum that that court -- Tennessee Supreme Court suggested that we split is 30. And this plan does split 30. And when you go east to -- we started, in some ways, going east. We had some -- there was population issues coming out of the northeast corner. And you start splitting counties that you don't have any choice but to split. Could you split -- well, yeah -- fewer? Possibly. And I think that becomes a policy decision about those. But you're always going to split more counties, probably closer to 26, 25, 27, 28, and then you have the discretion to split counties. Although we try not to. This one splits 30.

CITATION: *Id.* at 26:6-20.

44. At the January 18, 2022, hearing, neither Mr. Himes, nor any individual recommending HB 1035, cited or paraphrased the standard set forth by the Tennessee Supreme Court that "any apportionment plan adopted must cross as few county lines as is necessary to comply with federal constitutional requirements."

CITATION: *Id.* at 2:1-44:11.

45. On January 20, 2022, the House Calendar and Rules Committee considered and approved House Bill 1035 without discussion.

CITATION: The original video of the House Calendar and Rules Committee's January 20, 2022, public hearing is accessible on the General Assembly's website at the following URL.

https://tnga.granicus.com/player/clip/25735?view_id=610&redirect=true&h=8715793393e3db0c8cbb28fa3c2784d4 (last accessed on January 13, 2023).

46. On January 24, 2022, the House of Representatives convened in a House Floor Session at which it considered and approved the House Enacted Map.

CITATION: The original video of the Full House Session from January 24, 2022, is accessible on the General Assembly's website at the following URL. Plaintiffs retained a court

reporter to transcribe this session. A copy of the transcript of this hearing is attached as **Exhibit L** to Plaintiffs' Appendix. Refer to this transcript at 19:2-48:10 in support of the fact stated immediately above.

https://tnga.granicus.com/player/clip/25790?view_id=610&redirect=true&h=56d3c985139dd3ad5a5fc0dabd6b88f5 (last accessed on January 13, 2023).

47. At the January 20, 2022, hearing of the House Calendar and Rules Committee, and at the January 24, 2022, House Floor Session, neither Mr. Himes, nor any individual recommending HB 1035, cited or paraphrased the standard set forth by the Tennessee Supreme Court that "any apportionment plan adopted must cross as few county lines as is necessary to comply with federal constitutional requirements."

CITATIONS: See URL cited in Material Fact Number 45, above; Transcript of January 24, 2022, Full House Session at 2:1-94:17 (**Exhibit L** to Plaintiffs' Appendix).

48. On January 26, 2022, the Senate convened in a Senate Session at which it considered and approved the House Enacted Map.

CITATION: The original video of the Senate Session from January 26, 2022, is accessible on the General Assembly's website at the following URL. Plaintiffs retained a court reporter to transcribe this session. A copy of the transcript of this hearing is attached as **Exhibit M** to Plaintiffs' Appendix. Refer to this transcript at 13:4-19:22 in support of the fact stated immediately above.

https://tnga.granicus.com/player/clip/25829?view_id=610&redirect=true&h=41eb4a920506333727a9fd3a22c9b38c (last accessed on January 13, 2023).

49. During the January 26, 2022, Senate session, Senator Jeff Yarbrow stated as follows:

When we considered maps last week, the -- both the Senate and the House are subject to a constitutional prohibition on splitting counties. Which we only violate

that rule to the extent that it's absolutely necessary to meet one person, one vote standards. So when we were considering Senate plans, I think both the plans -- there was an eight-county split plan and a nine-county split plan. Like both -- we all held ourselves to that standard. On the House map side here, they split 30 counties when you only have to split, you know, 20-- 20/23 in order to meet the population standards. And my question, Mr. Speaker, is why we're not going to hold the House to the same standards that we have applied to ourselves.

CITATION: Transcript of January 24, 2022, Senate session at 15:24-16:13.

50. At the January 26, 2022, Senate session, the Senate approved the Enacted House Map, with no other individual other than Senator Yarbrow citing or paraphrasing the standard set forth by the Tennessee Supreme Court that "any apportionment plan adopted must cross as few county lines as is necessary to comply with federal constitutional requirements."

CITATION: *Id.* at 2:1-30:20.

V. Additional Facts

51. During his fact witness deposition, Doug Himes acknowledged he created multiple draft maps and received feedback from multiple members of the General Assembly during his mapmaking process.

CITATION: Transcript of Doug Himes's fact witness deposition, dated September 9, 2022, at 37:23-44:7 (concerning draft maps), 44:8-46:21 (concerning communications with members of the General Assembly). The transcript of Mr. Himes's fact witness deposition, dated September 9, 2022, with exhibits is attached as **Exhibit D** to Plaintiffs' Appendix.

52. Defendants objected to producing all draft maps and all communications between Mr. Himes and members of the General Assembly based on the attorney-client privilege.

CITATION: Transcript of Doug Himes's fact witness deposition, dated September 9, 2022, *passim*. See **Exhibit D** to Plaintiffs' Appendix.

53. Neither of Defendants' expert witnesses, Doug Himes and Sean Trende, offer opinions concerning whether the Enacted House Map split as few counties as necessary to comply with federal constitutional requirements.

CITATION: Transcript of Doug Himes's expert witness deposition, dated December 16, 2022, at 10:2-14:7. The transcript of Mr. Himes's expert witness deposition, dated December 16, 2022, is attached as **Exhibit E** to Plaintiffs' Appendix. Transcript of Sean Trende's expert witness deposition, dated January 4, 2023, at 8:12-9:14. The transcript of Mr. Trende's expert witness deposition, dated January 4, 2023, is attached as **Exhibit F** to Plaintiffs' Appendix.

54. At their expert witness depositions, Mr. Himes and Mr. Trende, testified they had not analyzed the Enacted House Map to determine whether it splits as few counties as necessary to comply with federal constitutional requirements.

CITATION: *Id.*

55. At their expert witness depositions, Mr. Himes and Mr. Trende also testified they do not have an opinion on that point.

CITATION: Transcript of Doug Himes's expert witness deposition, dated December 16, 2022, at 15:20-19:20. See **Exhibit E** to Plaintiffs' Appendix. Transcript of Sean Trende's expert witness deposition, dated January 4, 2023, at 9:15-11:24. See **Exhibit F** to Plaintiffs' Appendix.

56. Mr. Himes testified it is "theoretically possible" to create a House redistricting plan that would have split fewer counties.

CITATION: Transcript of Doug Himes's expert witness deposition, dated December 16, 2022, at 26:2-9; 36:25-37:25. See **Exhibit E** to Plaintiffs' Appendix.

57. Page 38 of Mr. Himes' expert report includes Footnote 12, in which Mr. Himes states his expert opinion on which factor or factors required each of the 30 county splits in the Enacted House Map. Footnote 12 states as follows:

Chapter 598's split counties and justifications: Anderson – population; Bradley – population/core preservation; *Carroll* – *core preservation*; Carter – population shift/core preservation/county splitting; Claiborne – population shift/district contraction/county splitting; *Dickson* – *core preservation/incumbents*; *Fentress* – *core preservation*; Gibson – population shift/core preservation; Hamblen – population shift/district contraction; Hardeman – VRA/core preservation; *Hardin* – *core preservation*; Hawkins – population shift/county splitting; Haywood – VRA/population shift/core preservation; Henderson – population shift; Henry – population shift/district contraction; Jefferson – population shift/core preservation; Lawrence – population shift/core preservation; Lincoln – population shift/core preservation; *Loudon* – *core preservation*; Madison – population/VRA/core preservation; Maury – population; *Monroe* – *core preservation*; Obion – population shift; Putnam – population/core preservation; *Roane* – *core preservation*; Sevier – population/core preservation; Sullivan – population/county splitting; Sumner – population; Wilson – population; Williamson – population.

CITATION: Himes Expert Report, attached as Exhibit 3 to Mr. Himes' expert witness deposition, dated December 16, 2022. See **Exhibit E** to Plaintiffs' Appendix.

58. Mr. Himes identifies "core preservation" as a Tennessee redistricting practice. Per Mr. Himes, "core preservation" refers to the extent to which a reapportioned legislative district preserves the core of the previous redistricting plan's district.

CITATION: Transcript of Doug Himes's fact witness deposition, dated September 9, 2022, at 21:24-22:6. See **Exhibit D** to Plaintiffs' Appendix.

59. Mr. Himes and Mr. Trende agree core preservation and incumbency protection are not federal constitutional requirements.

CITATION: Transcript of Doug Himes's expert witness deposition, dated December 16, 2022, at 47:8-13. See **Exhibit E** to Plaintiffs' Appendix. Transcript of Sean Trende's expert witness deposition, dated January 4, 2023, at 24:2-7. See **Exhibit F** to Plaintiffs' Appendix.

60. In his rebuttal expert report, Plaintiffs' expert witness, Jonathan Cervas, created an illustrative map he labeled "Cervas House Map 13c."

CITATION: Dr. Cervas's rebuttal expert report is attached as Exhibit 4 to Mr. Himes' expert witness deposition, dated December 16, 2022. See **Exhibit E** to Plaintiffs' Appendix.

61. Cervas House Map 13c includes 24 county splits and the same 13 majority-minority districts included in the Enacted House Map.

CITATION: *Id.*

62. At his expert witness deposition, Doug Himes stated Cervas House Map 13c was not constitutionally deficient.

CITATION: Transcript of Doug Himes expert witness deposition, dated December 16, 2022, at 79:2-9. See **Exhibit E** to Plaintiffs' Appendix.

63. At his expert witness deposition, Mr. Himes criticized Cervas House Map 13c only because it paired more incumbents than the Enacted House Map, preserved the cores of prior districts less than the Enacted House Map, and had a slightly larger population deviation than the Enacted House Map (9.96% in Enacted House Map versus 9.90% in Cervas House 13c).

CITATION: Transcript of Doug Himes expert witness deposition, dated December 16, 2022, at 79:17-80:2. See **Exhibit E** to Plaintiffs' Appendix.

64. Mr. Trende also identified the lack of core preservation and incumbent protection as the two concerning aspects of Cervas House 13c.

CITATION: Transcript of Sean Trende expert witness deposition, dated January 4, 2023, at 41:9-12. See **Exhibit F** to Plaintiffs' Appendix.

65. Dr. Cervas also created an illustrative map he labeled "Cervas House Map 13d," which met or improved upon the Enacted House Map's county splits (24 versus 30), population

deviation by district (9.89% versus 9.90%), majority-minority districts (both maps have the same exact 13 majority-minority districts), core preservation, and incumbency protection.

CITATION: Dr. Cervas’s rebuttal expert report is attached as Exhibit 4 to Mr. Himes’ expert witness deposition, dated December 16, 2022. See **Exhibit E** to Plaintiffs’ Appendix.

66. In his expert witness deposition, Mr. Himes identified only two concerns with Cervas House Map 13d. First, Mr. Himes identified a single non-contiguous census block, which he agreed could be “pretty easily” fixed.

CITATION: Transcript of Doug Himes expert witness deposition, dated December 16, 2022, at 100:11-15. See **Exhibit E** to Plaintiffs’ Appendix.

67. Second, Mr. Himes identified a “double split” in Sullivan County, Tennessee.

CITATION: *Id.* at 99:10-100:2.

68. In response, Dr. Cervas revised Cervas House 13d to correct the non-contiguity and to remove the double split. This revised plan is titled “Cervas House Map 13d_e.” This revised plan contains 24 county splits.

CITATION: Dr. Cervas’s Response to Defendants’ Expert Witness Depositions, dated January 9, 2023, is attached to Dr. Cervas’s Affidavit, dated January 18, 2023, included as **Exhibit Q** to Plaintiffs’ Appendix.

Dated: January 20, 2023

Respectfully submitted,

/s/ Scott P Tift
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing *Plaintiffs' Statement of Material Facts* will be served on the following counsel for the defendants via electronic and U.S. mail on January 20, 2023.

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I hereby certify that a true and exact copy of the foregoing *Plaintiffs' Statement of Material Facts* will be served on the following counsel for the defendants via electronic mail on January 20, 2023.

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