

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

MAYOR LEE HARRIS,)
in his official capacity,)
)
COMMISSIONER ERIKA SUGARMON,)
in her official capacity,)
)
COUNCILMEMBER HENRI E. BROOKS,)
in her official capacity,)
)
COUNCILMEMBER JB SMILEY, JR.,)
in his official capacity,)
)
REPRESENTATIVE GA HARDAWAY,)
in his official capacity,)
)
REPRESENTATIVE GABBY SALINAS,)
in her personal and official capacity,)
)
SENATOR JEFF YARBRO,)
in his personal and official capacity,)
)
Plaintiffs,)
v.)
)
GOVERNOR BILL LEE,)
in his official capacity,)
)
ATTORNEY GENERAL JONATHAN)
SKRMETTI, in his official capacity, and)
)
MAJOR GENERAL WARNER A. ROSS, III)
in his official capacity,)
)
Defendants.)

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No. 25-1461-I

MEMORANDUM IN SUPPORT OF
MOTION FOR RESTRAINING ORDER OR,
IN THE ALTERNATIVE, TEMPORARY INJUNCTION

I. INTRODUCTION

On Friday, October 10, 2025, Tennessee National Guard soldiers in military fatigues began patrolling the streets of Memphis. They were unlawfully deployed by Governor Bill Lee as a police force. Tennessee's National Guard and its predecessor militia have a long and storied history of defending this State. But for more than 150 years, Tennessee law has clearly forbidden the Governor from using them as temporary police officers.

This deployment is more than just unwise; it is illegal—an affront to the rule of law and to the liberties vested in every Tennessean. As then-Attorney General Herbert H. Slatery III recognized in 2021, the Tennessee Constitution and long-settled judicial precedents provide that “only circumstances amounting to a rebellion or invasion permit the governor to call out the militia, and even then, the legislature must declare, by law, that the public safety requires it.” Ex. A [Slatery Op.]. There is no rebellion or invasion in Memphis and the legislature has made no declaration that public safety requires a military deployment. Attorney General Skrmetti has vacated his predecessor's opinion, but he has pointedly refused to explain how a deployment of National Guard-as-police comports with apparently contrary Tennessee law. Governor Lee nevertheless has opted to follow Attorney General Skrmetti's lead, and Major General Ross, the Adjutant General of the Tennessee National Guard, has initiated this deployment.

Beyond the blatant violation of the Tennessee Constitution, the deployment of the National Guard in Memphis runs contrary to Tennessee statutory law. State law limits the governor's authority to unilaterally call out the National Guard to episodes of “invasion, disaster, insurrection, riot, attack, or combination to oppose the enforcement of the law by force and violence, or imminent danger thereof, or other grave emergency.” Tenn. Code Ann. § 58-1-106(a). State law otherwise makes local city and county officials responsible for determining whether there has been

a breakdown in law and order that would require the intercession of the National Guard, and requires them to request such intercession before any troops are deployed. Tenn. Code Ann. § 58-1-106(c). Any other source of statutory authority for the deployment that Defendants might conceivably invoke requires the consent of the General Assembly. *See* Tenn. Code Ann. § 58-1-301. Yet, despite the absence of any insurrection, riot, or similar grave emergency and without any request from local governing bodies or the approval of the General Assembly, Defendants have unilaterally deployed the National Guard to the City of Memphis and Shelby County.

Plaintiffs are elected officials who have been deprived of their constitutional and statutory functions by Defendants' unlawful and unilateral actions. They include Shelby County Mayor Lee Harris, Shelby County Commissioners Erika Sugarmon and Henri Brooks, Memphis City Councilman JB Smiley Jr., State Representatives GA Hardaway and Gabby Salinas, and State Senator Jeff Yarbrow. Under governing constitutional and statutory standards, Plaintiffs must play a role in authorizing any deployment of the National Guard to Memphis. But they were denied that opportunity when Governor Lee deployed the National Guard to Memphis unilaterally, usurping their authority, for a purpose not permitted by Tennessee law that exceeds his legal authority under both the Tennessee Constitution and the Tennessee Code.

Relief is needed urgently. The effects of the National Guard deployment have been so disruptive that Mayor Harris has been forced to declare a state of emergency to address the financial repercussions for Shelby County. Anita Wadhvani, *Shelby County Mayor Declares State of Emergency in Response to Memphis Safe Task Force Arrests*, Tennessee Lookout (Oct. 16, 2025), available at <https://perma.cc/3MDY-DMDL>. This Court should not stand by while the Governor asserts military power to run roughshod over Tennessee law. This Court should act swiftly to enter a temporary restraining order or, alternatively, a temporary injunction, precluding

further implementation of and any actions under the deployment, which should also temporarily be enjoined.

This is Plaintiffs' first application for extraordinary injunctive relief in this matter. *See* Tenn. Code Ann. § 29-1-107.

II. LEGAL BACKGROUND

A. State Constitutional Principles

The constitutional governance of the Tennessee National Guard has its origins in the 1796 statehood Constitution, which was adopted against the backdrop of the ratification of the U.S. Constitution. In drafting and adopting the U.S. Constitution, the allocation of responsibilities for the national defense was a topic of much debate, and the Militia Clauses reflect a compromise that was designed to avoid the need for a permanent, standing army: the States would maintain their separate militias and would be free to appoint their militias' officers, but the federal government would have the authority to call forth the militia into federal service, when needed for the common defense. U.S. Const. art. I, § 8, cls. 15-16. Because the U.S. Constitution preserves state authority over state militias, Tennessee's militia is subject to Tennessee law when it has not been called into federal service. *See Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 8-10 (1820); *FLRA v. Mich. Army Nat'l Guard*, 878 F.3d 171, 177 (6th Cir. 2017).¹

When the first Constitution of this State was adopted in 1796, it recognized the Governor as the Commander-in-Chief of the State's military forces and identified the "Militia" as the entity

¹ The Dick Act of 1903, 32 Stat. 775, modernized the organized state militias and codified the circumstances in which those militias would be called into federal service. Since that time, the state militias subject to federal conversion, as contemplated by the U.S. Constitution's Militia Clauses and the Tennessee Constitution's Commander-in-Chief Clause, have been called the "National Guard." *See Lipscomb v. FLRA*, 333 F.3d 611, 613 (5th Cir. 2003) ("[T]he national guard is the militia, in modern-day form, that is reserved to the states by Art. I, § 8, cls. 15, 16

subject to being “called into the service of the United States,” just as the federal Constitution imagined. Tenn. Const. art. II, § 5 (1796). That formulation has been consistent in the State’s two subsequent constitutions. *See* Tenn. Const. art. III § 5 (1834); Tenn. Const. art. III, § 5 (1870). Since statehood, the Constitution has also restricted the military’s role in Tennessee society: “in all cases the military shall be kept in strict subordination to the civil authority.” Tenn. Const. art. I, § 24 (1796); Tenn. Const. art. I, § 24 (1834); Tenn. Const. art. I, § 24 (1870).

Since the adoption of the 1870 Constitution, the Governor’s authority to deploy the State’s militia has been expressly curtailed: “the Militia shall not be called into service except in case of rebellion or invasion, and then only when the General Assembly shall declare, by law, that the public safety requires it.” Tenn. Const., art. III § 5. Like the federal Posse Comitatus Act, the innovation in this State’s 1870 Constitution was a direct response to the experience of post-Civil War Reconstruction, which in Tennessee featured a State government using “the militia to police elections, suppress paramilitary terrorism, and thwart . . . political opponents.” William E. Hardy, “*Fare Well to all Radicals*” (Aug. 2013) (Ph.D. dissertation, University of Tennessee), available at <https://perma.cc/LE65-USJH>; *see also* Tenn. Op. Att’y Gen. No. 24-013, 2024 WL 3913482, at *7 (Aug. 13, 2024) (explaining that the 1870 provision was incorporated “likely as a check on the governor’s power to call out the militia without the General Assembly’s consent and in reaction to the perceived abuse of that power by legendarily contentious Reconstruction-era Governor William Brownlow”).

of the Constitution.”); *see also Perpich v. Department of Defense*, 496 U.S. 334, 342-43 (describing the Dick Act’s reformation of the militia into the modern National Guard system).

By its very terms, then, the state Constitution permits the Governor to deploy the National Guard under only two forms of civil unrest: “rebellion or invasion;” and even then, “only when the General Assembly shall declare, by law, that the public safety requires it.”

B. State Statutory Principles

In addition to the constitutional requirements for deployment of the Tennessee National Guard, the General Assembly has, over time, adopted legislation to regulate the Governor’s authority to deploy troops within the State.

As relevant here, the principal source of the Governor’s statutory authority to deploy National Guard personnel is Section 58-1-106 of the Tennessee Code. Subsection (a) authorizes the Governor “to order” “all or part of the national guard” “into active service of the state,” “in case of invasion, disaster, insurrection, riot, attack, or combination to oppose the enforcement of the law by force and violence, or imminent danger thereof.” Tenn Code Ann. § 58-1-106(a). It does not allow for deploying the National Guard to do police work or to fight crime.

Alternatively, subsection (c) of Section 58-1-106 permits the Governor to order the National Guard into active service “*upon the request* of the governing body of a city or county . . . that there is a breakdown of law and order, a grievous breach of the peace, a riot, resistance to process of this state, or disaster, or imminent danger thereof.” *Id.* § 58-1-106(c) (emphasis added).

Separately, Section 58-1-301 provides that “[t]he governor, with the advice and consent of the general assembly, and pursuant to the laws of the United States, shall call the militia, or any portion thereof, into active service at any time that public safety requires it.” But in 2021, Attorney General Slatery opined that Section 58-1-301 “does not appear to comport with article III, section 5 of the Tennessee Constitution.” Ex. A [Slatery Op.]. Likewise, in January 2024, Attorney General Skrmetti endorsed Attorney General Slatery’s interpretation before revising that view

three months later to allow for “the federalization of troops for crime-fighting work.” Sam Stockard, *Tennessee Governor Takes AG’s Altered Advice on Guard Deployment*, Tennessee Lookout (Oct. 3, 2025), available at <https://perma.cc/UTW9-67G8>.

III. FACTS

On September 13, 2025, President Trump posted a message about Memphis for his social-media followers:

The only reason crime is somewhat down in Memphis is because the FBI, and others in the Federal Government, at my direction, have been working there for 5 months – on the absolutely terrible Crime numbers. Likewise, in Chicago and Los Angeles! But the real work by us has barely begun. That happens after we make the official announcement that WE’RE COMING, and when we do that, as we did in now VERY SAFE WASHINGTON, D.C., the no crime “miracle” begins. ONLY I CAN SAVE THEM!!! Thank you for your attention to this matter. President DJT

Donald J. Trump (@realDonaldTrump), Truth Social (Sept 13, 2025, at 6:57pm EST), <https://truthsocial.com/@realDonaldTrump/posts/115199460946450022> [<https://perma.cc/C4FN-LPXD>].

Two days later, on September 15, 2025, President Trump released a presidential memorandum styled “Restoring Law and Order in Memphis.” The White House, *Restoring Law and Order in Memphis* (Sept. 15, 2025), available at <https://perma.cc/6G7E-PK9X> (hereinafter “the Memphis Memo” or “the Memo”). It represented that “[t]he city of Memphis, Tennessee, is suffering from tremendous levels of violent crime that have overwhelmed its local government’s ability to respond effectively.” *Id.*

The Memphis Memo instructs the Secretary of Defense to request, pursuant to Title 32 of the U.S. Code, that Tennessee Governor Bill Lee “make available National Guard units of Tennessee to support public safety and law enforcement operations in Memphis.” *Id.* Title 10 of

the U.S. Code specifies when and how the federal government may order state National Guard troops to be called into federal service and incorporated into the federal army. *See* 10 U.S.C. §§ 12401-08. But Title 32 merely allows the President to *request* a Title 32 deployment; National Guard personnel in such a deployment “serve[] under the Governor and subordinate authority.” *Yount v. State*, 774 S.W.2d 919, 920 (Tenn. 1989); *see* 32 U.S.C. §§ 328, 502(f). In a press release on September 15, 2025, Governor Lee’s office confirmed his assent to the Memphis deployment and said that it would occur under Title 32. Office of the Governor, *ICYMI: Gov. Lee, President Trump Meet in Oval Office to Discuss Strategic Mission to Address Crime in Memphis* (Sept. 15, 2025), available at <https://perma.cc/NWL5-DDBZ>.

The Governor has not solicited or obtained “the advice and consent of the general assembly,” within the meaning of Tenn. Code Ann. § 58-1-301, nor the General Assembly’s “declar[ation], by law, that the public safety requires it,” within the meaning of Article III, Section 5, of the Tennessee Constitution, nor “the request of the governing body of a city or county,” within the meaning of Tenn. Code Ann. § 58-1-106(c). Moreover, there is no “rebellion or invasion” or actual or imminent danger of “invasion, disaster, insurrection, riot, attack, or combination to oppose the enforcement of the law by force and violence . . . or other grave emergency” in Memphis within the meaning of Tenn. Code Ann. § 58-1-106(a).

On October 15, 2025, Governor Lee said that there is “no end date in mind for his deployment of National Guard to address crime in Memphis.” *Oct. 15: Gov. Bill Lee Talks National Guard; Department of Education Audit*, Nashville Banner, available at <https://perma.cc/AX57-JVZL>.

IV. STANDARD FOR TEMPORARY INJUNCTIVE RELIEF

Requests for temporary restraining orders and for temporary injunctions are controlled by Rule 65.03 and 65.04 of the Tennessee Rules of Civil Procedure, the latter of which provides:

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.

When a plaintiff seeks a temporary injunction, Tennessee courts consider four familiar factors: “(1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on 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).

“When, as here, the temporary injunction is sought on the basis of an alleged constitutional violation, the third factor—likelihood of success on the merits—is often the determinative factor.” *Id.*; see also *Newsom v. Tennessee Republican Party*, 647 S.W.2d 382, 386 (Tenn. 2022) (same for statutory violation).

A restraining order can be issued on an *ex parte* basis “if it is clearly shown by verified complaint or affidavit that the applicant's rights are being or will be violated by the adverse party and the applicant will suffer immediate and irreparable injury, loss or damage before notice can be served and a hearing had thereon.” Tenn. R. Civ. P. 65.03(1).

V. LEGAL ANALYSIS

The Court should issue a restraining order because, at a minimum, the Plaintiffs have shown that their rights are being violated and that they will continue to suffer immediate and

irreparable injury before notice and a hearing. Alternatively, the Court should enter a temporary injunction because Plaintiffs meet all four requirements for such orders.

A. Plaintiffs Are Likely to Succeed on the Merits

Governor Lee's deployment of National Guard personnel violates Tennessee law in two ways. *First*, his deployment exceeds the authority provided to him by Article III, Section 5, of the Tennessee Constitution. *Second*, even if the constitutional minimum were satisfied, the deployment violates the Tennessee Code because it satisfies none of the limited circumstances in which National Guard deployments are allowed. Plaintiffs are appropriate parties to seek redress for these violations.

1. The Memphis Deployment Violates the Tennessee Constitution

The Memphis deployment exceeds the power granted to Governor Lee by the Tennessee Constitution, which provides that the militia that is subject to federalization (known today as the Tennessee National Guard) "shall not be called into service except in case of rebellion or invasion, and then only when the General Assembly shall declare, by law, that the public safety requires it." Tenn. Const. art. III, § 5; *see also* Tenn. Const. art. I, § 24 ("[I]n all cases the military shall be kept in strict subordination to the civil authority.").

Courts have repeatedly confirmed that the Constitution means what it says. In 1885, the Tennessee Supreme Court considered the validity of a statute "empower[ing] the governor to call out the militia when he deems it necessary, to suppress mobs, riots, etc." *Green v. State*, 83 Tenn. 708, 711 (1885). In light of "section five of article three of the Constitution, which provides that the militia shall not be called into service except in case of rebellion or invasion, and then only when the General Assembly shall declare, by law, that the public safety requires it," the Court found the statute to be "unconstitutional and void." *Id.*

Likewise, in 1939, the U.S. District Court for the Western District of Tennessee considered the validity of a Tennessee statute providing “that the Governor shall have power ‘within his discretion to assign the Tennessee National Guard, or any part thereof, to any duty in the execution of the laws of the State, or to employ said Guard in any locality not sufficiently protected by Civil authorities against invasion, rebellion, insurrection, riot, storm, flood, fire, or other emergency or disaster,’” *Joyner v. Browning*, 30 F. Supp. 512, 515 (W.D. Tenn. 1939) (quoting Chapter 249 of the Public Acts of the General Assembly of Tennessee for 1937). The court concluded that the statute was “obviously violative of several provisions of the Constitution of Tennessee.” *Id.* at 517 (citing Tenn. Const. art. I, §§ 24–25; art. III, § 5; art. XI, § 16).

The same reasoning governs here. Neither of the conditions identified by Article III, Section 5, exist in Memphis: there is no “rebellion or invasion” in Memphis, nor has the General Assembly declared that a rebellion or invasion “requires” the National Guard to preserve “public safety.”

A rebellion is a “deliberate, organized resistance, openly and avowedly opposing the laws and authority of the government as a whole by means of armed opposition and violence.” *Illinois v. Trump*, 2025 WL 2886645 (N.D. Ill. Oct. 10, 2025); *accord Newsom v. Trump*, 786 F. Supp. 3d 1235, 1251–53 (N.D. Cal. 2025) (collecting authorities); *see also* Merriam-Webster, *Rebellion*, <https://perma.cc/VC36-PFLK> (defining “rebellion” as “opposition to one in authority or dominance,” or an “open, armed, and usually unsuccessful defiance of or resistance to an established government”). It requires little historical imagination to infer what the word “rebellion” meant to the drafters of the 1870 Constitution. They were less than a decade past Tennessee’s secession from the Union, barely five years past the end of the Civil War, and just emerging from a period marked by armed, organized resistance to the Tennessee State government.

Similarly, the Tennessee Constitution’s framers knew from personal experience what an invasion was: “an act of invading *especially*: incursion of an army for conquest or plunder.” Merriam-Webster, Invasion, <https://perma.cc/MLJ9-8CF2> (emphasis in original). The 1870 framers were fresh off a war in which both Union and Confederate forces had spent four bloody years waging war across one another’s borders.

Rebellions and invasions are existential threats to a sovereign government, the suppression of which may necessitate the force of arms. Day-to-day crime—even high levels of crime, carried out by disparate individuals—is not and does not. Yet crime prevention is the unmistakable purpose of Governor Lee’s deployment. When President Trump directed the Secretary of Defense to request a Title 32 deployment from Governor Lee, the President declared that Memphis “is suffering from tremendous levels of violent crime that have overwhelmed its local government’s ability to respond effectively,” and that the task force created by the Memphis Memo would work with the “objective . . . to end street and violent crime in Memphis.” Memphis Memo, *supra*. Similarly, when Governor Lee announced the Memphis deployment, he said making crime “a story of the past” in Memphis is “what this effort is all about.” Sarai Bennett et al., *‘We Have to Do This’: TN Gov. Says National Guard Arrives Next Week in Memphis*, WREG News Channel 3 (Sept. 26, 2025), available at <https://perma.cc/83TW-6CRR>.

Crime reduction is an important governmental function, but its importance does not justify deploying military personnel, on the streets of this State, to carry out law enforcement operations without constitutional authority. The Constitution simply does not permit a state-law deployment absent a “rebellion or invasion;” even then, the Governor would need the General Assembly to “declare, by law, that the public safety requires it.” The Governor has thus violated the Constitution

twice over, by cutting out the role committed to the General Assembly by law, and by exceeding the factual circumstances in which deployment is available.

Courts are often called upon to hold the government to account for violating the Constitution in its pursuit of criminal justice. *See, e.g., Mapp v. Ohio*, 367 U.S. 643, 659 (1961) (“Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard for the charter of its own existence.”) This is one of those times.

2. *The Memphis Deployment Violates State Statutory Law*

In addition to its constitutional shortcomings, the Governor’s deployment of the National Guard to Memphis contravenes state statutory law. The Governor and Attorney General have pointedly refused to identify the statutory authority for this deployment. *See, e.g., Vivian Jones, Is Deploying National Guard Troops To Fight Crime in Memphis Legal? Gov, AG Won’t Say How, The Tennessean* (Oct. 9, 2025), <https://perma.cc/58P3-H87L>. The Governor has not complied with any of the alternative justifications for a National Guard deployment.

The deployment does not comport with Section 58-1-106. Subsection (a) of the statute allows the Governor to deploy the National Guard only “in case of invasion, disaster, insurrection, riot, attack, or combination to oppose the enforcement of the law by force and violence, or imminent danger thereof.” None of these conditions is satisfied in Memphis. Neither President Trump nor Governor Lee has suggested otherwise, and the facts belie any such suggestion. Instead, as recounted above, Governor Lee has conceded that the Memphis deployment’s purpose is to fight crime. But Section 58-1-106(a) does not allow that. It should come as no surprise that this statute does not authorize the Memphis deployment: police work is not the National Guard’s job.

Subsection (c) of the statute undermines the Memphis deployment’s legality even further. It provides that the Governor may order the National Guard into active service “upon the request

of the governing body of a city or county . . . [when] there is a breakdown of law and order, a grievous breach of the peace, a riot, resistance to process of this state, or disaster, or imminent danger thereof.”

For three reasons, this provision confirms that the Memphis deployment was taken without legal authorization.

First, Subsection (c) shows that none of Subsection (a)’s conditions allow deploying the National Guard merely to maintain “law and order.” Subsection (c) demonstrates that the statute’s drafters considered Subsection (a)’s conditions not to be equivalent to a need for simple law enforcement; otherwise, they would have included the “law and order” provision in Subsection (a). If a National Guard deployment “to maintain law and order” is to occur at all, it must occur under Subsection (c).

Second, even when a need arises to address “a breakdown of law and order,” a National Guard deployment may come only “upon the request of the governing body of a city or county, and its representation, by resolution duly and regularly adopted.” Tenn. Code Ann. § 58-1-106(c). The City of Memphis’ governing board is the Memphis City Council, of which Councilman Smiley is a member. *See* Tenn. Code Ann. § 6-53-104(d) (“As used in this section, ‘governing body of a municipality’ means that body, board, or council in which the general legislative powers of an incorporated city or town, including a home rule city, are vested.”); Tenn. Code Ann. § 6-54-512 (describing “governing body of a municipality” as the municipal entity responsible for enacting ordinances). Similarly, the Shelby County Board of Commissioners is Shelby County’s legislative body, of which Commissioner Sugarmon and Commissioner Brooks are members, *see* Tenn. Code Ann. § 5-5-102(f), and its law enforcement authority (via the Shelby County Sheriff’s Department) extends into Memphis. *See* Tenn. Code Ann. § 38-3-102. Therefore, any National Guard

deployment addressing “a breakdown of law and order” in Memphis must come only at the request of either the Memphis City Council or the Shelby County Board of Commissioners. Neither body has made such a request, and Governor Lee has unlawfully excluded both the City Council and the County Commission (and their Plaintiff-members) from the role assigned to them by statute.

Third, the real-world facts in Memphis belie the deployment’s justification. In Memphis, there are no facts to support the existence of a “breakdown of law and order” that requires the military to intervene. Tenn. Code Ann. § 58-1-106(c). By President Trump’s own acknowledgement, “crime is somewhat down in Memphis.” Donald J. Trump (@realDonaldTrump), Truth Social (Sept. 13, 2025, 12:57 AM), <https://perma.cc/CJX2-VD8V>. The local officials that are most familiar with the area confirm that there had been no such breakdown. *See, e.g.*, Ex. J [Harris Decl.] ¶ 7 (sworn declaration of Shelby County Mayor Lee Harris that “[a]s someone who lives and works in Memphis, I know from my own personal observations that Memphis is not experiencing a ‘breakdown’ of law and order, and certainly not one that calls for military personnel in our streets”); Ex. G [Salinas Decl.] ¶ 14 (“I currently live in Memphis. There is no breakdown of law and order, grievous breach of the peace, riot, resistance to process of this state, or disaster, or imminent danger thereof occurring in Memphis.”).

Nor does the deployment comport with Section 58-1-301. Even if that provision comported with the Tennessee Constitution (notwithstanding the recently withdrawn opinion of Attorney General Slatery), Section 58-1-301 authorizes the Governor to deploy “the militia, or any portion thereof” only “with the advice and consent of the general assembly.” Governor Lee has not requested the General Assembly’s advice and consent, and he has not received it. And at any rate, although the General Assembly cannot redefine “the militia” for constitutional purposes, which

refers to the body subject to federalization under the U.S. Constitution's Militia Clauses, Section 58-1-301's reference to the "militia" excludes the National Guard. *See* Tenn. Code. § 58-1-104(d).

At bottom, Governor Lee exceeded the bounds of his narrowly circumscribed statutory authority to deploy the National Guard. His actions were thus taken without lawful authority and are entirely ultra vires.

3. *Plaintiffs Have Standing to Seek Judicial Relief*

Plaintiffs are cognizably injured by the Governor's unlawful deployment and, thus, are appropriate parties to seek judicial redress. Alternatively, at least plaintiffs Sen. Yarbrow and Rep. Salinas, who sue in their individual as well as official capacities, have taxpayer standing.

1. Because "the province of a court is to decide, not advise, and to settle rights, not to give abstract opinions," *State v. Wilson*, 70 Tenn. 204, 210 (1879), the courts of this State must identify the existence of a "legal controversy" in cases raising questions of public law, *see Case v. Wilmington Trust, N.A.*, 703 S.W.3d 274, 289 (Tenn. 2024). A plaintiff must be "threatened with an injury not common to the body of the citizens." *Patten v. City of Chattanooga*, 65 S.W. 414, 421 (1901).

Here, each Plaintiff plays a role specifically assigned by the Constitution and Code of this State, which differentiates them from the "body of the citizens" and supplies a "legal controversy" that the courts of this State are competent to resolve. Mayor Harris is the Executive responsible for the administration of Shelby County; his ability to perform his statutory functions has been needlessly impeded by Defendants' unlawful actions. The remaining Plaintiffs are lawmakers at the state, county, and city levels, each of whom has authority specifically delegated to them, by the terms of the Constitution and statutes at issue, to weigh in before a deployment is initiated.

Mayor Harris is Shelby County's chief executive officer and is responsible for supervising the county government. Tenn. Code § 5-6-106(a). He is also Shelby County's chief fiscal officer. Ex. J [Harris Decl.] ¶ 12. In those capacities, the costs borne out of Governor Lee's unlawful deployment are Mayor Harris' responsibility to address. The illegal deployment has already inflicted, and will continue to inflict, financial costs on Shelby County. These include costs associated with managing an anticipated surge in the need to provide pre-trial services, court and clerk capacity, and detention services in response to the increased number of arrests being facilitated by the presence of the National Guard. *See* Ex. J [Harris Decl.] ¶ 14. The County's need to respond to these new financial obligations will divert scarce resources, preventing Mayor Harris from pursuing other priorities of his administration, including funding \$18 million in anti-poverty grants. *See* Ex. J [Harris Decl.] ¶ 15.

The effects of these new financial obligations are so acute that Mayor Harris was forced to Declare a Local State of Emergency. Anita Wadhwani, *Shelby County Mayor Declares State of Emergency in Response to Memphis Safe Task Force Arrests*, Tennessee Lookout (Oct. 16, 2025), available at <https://perma.cc/3MDY-DMDL>. The Declaration was necessitated by the fact that Memphis local governments have been told to expect increased arrests at nearly 200% of current daily rates and that the "military operations" will "impact the health, safety, and welfare of residents of Shelby County through increased demand on detention facilities that are already at or near capacity," creating a "concomitant strain on local financial resources." *Id.*; *see also* Ex. E [Sugarmon Decl.] ¶ 12 (describing strains on an already overburdened criminal justice system).

The illegal deployment has also created a host of new demands of the Mayor's time, interfering with his ability to perform other functions of his office, including facilitating the opening of a new high school and new hospital. Ex. J [Harris Decl.] ¶ 16. As Shelby County's

chief executive, he is responsible for protecting the interests of County taxpayers. He is further injured by the substantial and lasting reputational and financial harm that Memphis suffers as a result of being seen as militarily occupied (Ex. J [Harris Decl.] ¶ 11), and from a military deployment that “risks escalating tensions, endangering both civilians and service members, and eroding the very sense of security his administration has sought to promote.” Ex. J [Harris Decl.] ¶ 10.

Mayor Harris also holds limited legislative authority via his power to veto the Board of Commissioners’ resolutions. But by circumventing Section 58-1-106(c)’s requirements, Governor Lee has nullified that limited legislative authority.

The remaining Plaintiffs are also injured in their legislative capacities. Generally, “[a] legislator does not have a special standing to challenge a statute where the statute does not impede his legislative power.” *Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001). However, when a legislator’s legislative power is impeded, standing is appropriate. *Cf. ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 625 (Tenn. 2006) (citing *Coleman v. Miller*, 307 U.S. 433, 438 (1939), for the proposition that standing is available where a legislators’ “votes had been completely nullified”).

The Constitution obligates the Governor to assemble the militia under Article III, section 5, of the Constitution, only after the General Assembly has “declare[d], by law, that the public safety requires it.” By circumventing the General Assembly, Governor Lee deprived Representative Hardaway, Representative Salinas, and Senator Yarbrow of their legislative responsibilities and authority. Because the Governor has sought to operate unilaterally, Representative Hardaway, Representative Salinas, and Senator Yarbrow have not participated in legislative debate, where they would have highlighted the actual status on the ground in Memphis

and ways to address crime that do not involve deploying personnel in military fatigues who lack relevant training—a shortcoming that belies any suggestion that public safety “requires” military policing. *See, e.g.*, Ex. G [Salinas Decl.] ¶¶ 10-11; Ex. I [Yarbro Decl.] ¶¶ 8-9; Ex. H [Hardaway Decl.] ¶¶ 2, 8-12. They also could have offered amendments to any resolution. Likewise, they have been deprived of any ability to cast a vote, rendering that power “completely nullified.” Those same rights and privileges were deprived if Governor Lee purported to act under Tenn. Code § 58-1-301, which likewise conditions the Governor’s authority on the “advice and consent of the general assembly.”

Similarly, insofar as Governor Lee might purport to rely on Tenn. Code § 58-1-106(c) because of a supposed “breakdown of law and order,” the General Assembly conditioned the Governor’s authority on “the request of the governing body of a city or county.” Councilmember Smiley and Commissioners Sugarmon and Brooks are members of the governing bodies of the city and county targeted by the deployment. The Governor’s unilateral action has usurped, and thereby nullified, the role specifically assigned to Councilmember Smiley and Commissioners Sugarmon and Brooks. It is within the power of this Court to adjudicate the legality of that nullification. Ex. D [Brooks Decl.] ¶¶ 2, 9-13; Ex. E [Sugarmon Decl.] ¶¶ 2, 9-11; Ex. H [Smiley Decl.] ¶ 8.

2. In the alternative, at least Sen. Yarbro and Rep. Salinas have standing because they meet the qualifications for taxpayer standing. In this State, “courts typically confer standing when a taxpayer (1) alleges a ‘specific illegality in the expenditure of public funds’ and (2) has made a prior demand on the governmental entity asking it to correct the alleged illegality.” *Fannon v. City of LaFollette*, 329 S.W.3d 418, 427 (Tenn. 2010) (quotation omitted). Thus, to establish taxpayer standing, Plaintiffs must show “(1) taxpayer status, (2) specific illegality in the expenditure of public funds, and (3) prior demand.” *Cobb v. Shelby Cnty. Bd. of Comm'rs*, 771 S.W.2d 124, 126

(Tenn. 1989). However, “[a] demand is excused where the status and relation of the involved officials to the transaction in question is such that any demand would be a formality.” *Ragsdale v. City of Memphis*, 70 S.W.3d 56, 63 (Tenn. Ct. App. 2001) (quoting *Badgett v. Rogers*, 436 S.W.2d 292, 294 (Tenn. 1968)).

Tennessee Courts have regularly applied this three-part test. *See, e.g., Rutan-Ram v. Tenn. Dep't of Children's Servs.*, 698 S.W.3d 540 (Tenn. Ct. App. 2023) (finding taxpayer standing to challenge the constitutionality of a state law); *Lewis v. Cleveland Mun. Airport Auth.*, 289 S.W.3d 808, 817 (Tenn. Ct. App. 2008); *Ragsdale v. City of Memphis*, 70 S.W.3d 56, 62-63 (Tenn. Ct. App. 2001); *LaFollette Med. Ctr. v. City of LaFollette*, 115 S.W.3d 500, 504 (Tenn. Ct. App. 2003) (“[A] taxpayer may sue without averring or establishing any special injury where an illegal use of public funds is involved.” (quoting *Wamp v. Chattanooga Hous. Auth.*, 384 F. Supp. 251, 255 (E.D. Tenn. 1974))).

Senator Yarbro and Representative Salinas (like other plaintiffs) pay various state and local taxes, including sales tax, motor-vehicles tax, property tax, and gasoline tax. Yarbro Decl. ¶ 4, Salinas Decl. ¶ 20. This tax expenditure is sufficient to demonstrate taxpayer status. *See Rutan-Ram*, 698 S.W.3d at 561. Second, Plaintiffs have shown that Defendants violated the Tennessee Code and Constitution by undertaking an unauthorized deployment of National Guard troops, thereby using public funds for unlawful purposes and directly causing Shelby County to incur costs that it otherwise would not have incurred. *Cf. Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 2024 WL 107017, at *16 (Tenn. Ct. App. Jan. 10, 2024) (Plaintiffs establish taxpayer standing to challenge the unlawful use of state funds under the Education and Equal Protection Clauses of the Tennessee Constitution.). Third, Senator Yarbro apprised Attorney General Skrmetti of the lawlessness of the then-proposed deployment, which prompted the

Attorney General to disagree and for the Governor to announce that he was siding with his Attorney General. Ex. B [Yarbro Letter]; Ex. I [Yarbro Decl.] ¶ 11. Rep. Salinas similarly sent a letter to the Governor's Office opposing the deployment. Ex C [Salinas Letter]; Ex. G [Salinas Decl.] ¶ 18.

A further exchange of letters would surely be a futile formality. *See Badgett*, 436 S.W.2d at 295 (explaining that such demand is unnecessary if it is futile). Through his words and actions, Governor Lee has shown unmistakably that he plans to continue the deployment for as long as he wants. Any additional demand would be futile. Thus, plaintiffs have satisfied the elements of taxpayer standing.

4. *This Court Has Authority to Issue an Injunction*

This Court has jurisdiction to grant relief. Although Tennessee law directs that complaints asserting certain types of constitutional challenges must be heard by a three-judge panel, *see* Tenn. Code § 20-18-101(a), that provision is inapplicable here. That provision provides special procedures only in certain cases involving challenges to the constitutionality of a “state statute,” an “executive order,” or an “administrative rule or regulation.” *Id.* While Defendants’ conduct here suffers from constitutional (as well as statutory) defects, Plaintiffs do not challenge the constitutionality of any “statute,” “executive order,” or “administrative rule or regulation.” Rather, they challenge the unlawful deployment of National Guard troops to Memphis, which has been effected at the Governor’s direction but without an executive order. *See* <https://sos.tn.gov/publications/services/executive-orders-governor-bill-lee> (identifying Governor Lee’s most recent last executive order as being issued on June 10, 2025).

B. The Memphis Deployment Threatens Irreparable Harm

A threat of irreparable harm exists where “the acts or omissions of the adverse party will tend to render [a] final judgement ineffectual.” *Moody v. Hutchison*, 247 S.W.3d 187, 199 (Tenn. Ct. App. 2007). *See also Bunns v. Walkem Dev. Co., Inc.*, 385 S.W.2d 917, 923 (Tenn. Ct. App. 1964) (irreparable injury where “damages obviously would be inadequate to remedy the loss”).

As described above, Mayor Harris is suffering ongoing, and therefore, irreparable impairment his ability to perform his functions. Likewise, state law provides that if the Governor is to deploy National Guard personnel to address “a breakdown of law and order,” then the city’s or county’s governing body must first request it. If the deployment is allowed to go forward, then the Memphis City Council and Shelby County Board of Commissioners, including the members of those bodies who are Plaintiffs in this action, will unlawfully be denied their statutory role under Section 58-1-106(c); their legislative function will have been injured. Likewise, Representative Hardaway, Representative Salinas, and Senator Yarbrow would be unlawfully denied their constitutional role under Article III, Section 5, impeding their legislative authority on a functional level. Money damages would not undo their injuries.

Furthermore, the Memphis deployment has begun. On October 10, 2025, National Guard personnel were seen patrolling a public parking lot at the Tennessee State Welcome Center. N’dea Yancey-Bragg et al., *National Guard Troops Seen Patrolling in Memphis, as Judge Blocks Deployment in Chicago*, USA Today (Oct. 10, 2025), <https://perma.cc/C6HP-3PWC>. Continuing this circumvention of state law, at the expense of the unambiguous statutory roles assigned to the Plaintiffs, would be irreparable, and the depth of that injury increases with every day that passes.

C. The Balance of Harms Favors a Temporary Injunction

The government has no interest in violating the law. *See Tennessee v. U.S Dep't of Educ.*, 615 F. Supp. 3d 807, 841 (E.D. Tenn. 2022) (where plaintiffs showed likelihood of success, “[d]efendants do not have a legitimate interest in” violating the law). On the other hand, the Plaintiffs have crucial interests, vested in them unambiguously by Tennessee law, in effectuating their roles in not acceding to the Memphis deployment.

D. The Public Interest

At least two public interests favor a temporary injunction. First, Memphis voters have an interest in their elected officials (including the Plaintiffs) being allowed to make the decisions committed to them by state law. Second, the public has an interest in not facing a military deployment in their day to day lives – especially where, as Judge Immergut explained, “[m]embers of the National Guard do not receive training to perform local law enforcement tasks, such as learning de-escalation techniques, the use of non-lethal force, or how to properly conduct criminal investigations.” *Oregon v. Trump*, No. 3:25-CV-1756-IM, 2025 WL 2817646, at *2 (D. Or. Oct. 4, 2025); *see also* Ex. H [Hardaway Decl.] ¶ 16 (describing state mandated training, that National Guard members lack, to improve officer professionalism and behavior). Temporary injunctions are intended to “preserve the status quo” pending final determination of the action. *See Aladdin Industries, Inc. v. Associated Transport, Inc.*, 323 S.W.2d 222, 229 (Tenn. Ct. App. 1958). The status quo is for the National Guard to not be operating as a local police force.

VI. CONCLUSION

The Court should issue a restraining order or, alternatively, a temporary injunction, restoring the status quo by enjoining the Defendants from further action under Governor Lee’s agreement to the Title 32 deployment.

Dated:

October 17, 2025

Respectfully submitted,

SHERRARD, ROE, VOIGT & HARBISON, PLC

/s/ Micah Bradley

William J. Harbison II (BPR # 33330)

Robert D. Boon, II (BPR # 33217)

Micah N. Bradley (BPR # 38402)

1600 West End Avenue, Suite 1750

Nashville, TN 37203

(615) 742-4200

jharbison@srvhlaw.com

jboon@srvhlaw.com

mbradley@srvhlaw.com

/s/ Brian D. Netter

w/ permission
MNB

Brian D. Netter (D.C. Bar No. 979362) + ^

Yenisey Rodríguez (D.C. Bar No. 1600574) + ^

William B. Bardwell (MS Bar 102910) + ^

Joshua M. Salzman (D.C. Bar No. 982239) + ^

Democracy Forward Foundation

P.O. Box 34553

Washington, D.C. 20043

(202) 808-1846

bnetter@democracyforward.org

yenisey.rodriguez@democracyforward.org

wbardwell@democracyforward.org

jsalzman@democracyforward.org

^ Pro hac vice motion forthcoming

+ Not admitted in Tennessee.

Practice supervised by members of the
Tennessee
bar.

/s/ Benjamin R. Farley

w/ permission
MNB

Benjamin R. Farley* (NY Bar No. 5043419)

Marlene Berroa Rodriguez* (NY Bar No.
6208508)

Efrén C. Olivares* (TX Bar No. 24065844)

The National Immigration Law Center

P.O. Box 34573

Washington, D.C. 20043

(212) 639-3900
farley@nilc.org
berroa@nilc.org
olivares@nilc.org

*Pending admission *pro hac vice*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served on this 17th day of October, 2025, via certified mail and email, to the below. Plaintiffs are also attempting to effectuate hand delivery service on Defendants this 17th day of October.

c/o Office of the Attorney General and Reporter
500 Charlotte Ave.
Nashville, TN 37243

P.O. Box 20207
Nashville, TN 37202-0207

tnattygen@ag.tn.gov

/s/ *Michael Bradley*