Case No. M2025-01915-COA-R9-CV

IN THE COURT OF APPEALS OF TENNESSEE AT NASHVILLE

MAYOR LEE HARRIS, ET AL.,
Plaintiffs/Appellees,

v.

GOVERNOR BILL LEE, ET AL.,
Defendants/Appellants.

On Appeal from the Davidson County Chancery Court
Case No. 25-1461 (Hon. Patricia Moskal)

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

This litigation challenges the deployment of armed Tennessee National Guard troops to patrol the streets of Memphis. The Chancery Court granted a temporary injunction, concluding that: (1) Defendants' threshold defenses lack merit; (2) this deployment exceeded the Governor's statutory authority; and (3) the equitable factors support injunctive relief. The Chancery Court nonetheless stayed its own order pending appeal and this Court authorized interlocutory review pursuant to Tennessee Rule of Appellate Procedure 9 to consider the following questions:

I. Whether Plaintiffs—who sue in their official capacity as government officials—are "affected person[s]" that benefit from Tenn. Code Ann. § 1-3-121's waiver of sovereign immunity.

II. Whether Plaintiffs have standing to challenge the Governor's deployment of the National Guard to support the Memphis Safe Task Force.

III. Whether the Governor's deployment of the National Guard to support the Memphis Safe Task Force violates Tenn. Code Ann. § 58-1-106.

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IV. Whether Plaintiffs are likely to succeed on Count I of their Complaint, which asserts that the challenged National Guard deployment violates Article III, Section 5 of the Tennessee Constitution.

V. Whether Tenn. Code Ann. § 20-18-101(a) requires this action to be heard and determined by a three-judge panel.

INTRODUCTION AND STATEMENT OF THE CASE

The people of Tennessee have always recognized that "standing Armies in time[s] of peace are dangerous to freedom." Tenn. Const. of 1796, art. XI, § 24;[1] *see also* Tenn. Const. art. I, § 24. After a particularly unhappy experience in the post-Civil War period in which then-Governor William Brownlow deployed a volunteer militia against his political opponents, Tennessee adopted a new constitutional provision sharply curtailing the Governor's control over the state militia. Thus, to this day, "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. Courts have not hesitated to confirm that the Tennessee Constitution means what it says and that the Governor's discretion to deploy troops unilaterally is

[1] https://perma.cc/GH79-RHQ7.

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sharply limited. *See Green v. State*, 83 Tenn. 708, 711 (1885); *Joyner v. Browning*, 30 F. Supp. 512, 515 (W.D. Tenn. 1939).

Against that backdrop, the General Assembly adopted Tenn. Code Ann. § 58-1-106, a provision of which authorizes the Governor to deploy the Tennessee National Guard unilaterally only under certain limited enumerated circumstances, including "invasion, disaster, insurrection, riot, attack, or combination to oppose the enforcement of the law by force and violence" or other comparable "grave emergency." *Id.* § 58-1-106(a). The General Assembly also contemplated that the National Guard might be deployed in response to a "breakdown of law and order," but only at the request of the governing body of the affected city or county. *Id.* § 58-1-106(c). The Governor therefore lacks authority to address such a circumstance unilaterally.

In October 2025, Governor Lee nonetheless unilaterally deployed the National Guard to "conduct[] patrols" on the streets of Memphis to "support and assist with law enforcement activities" being conducted by a task force composed of more than 30 federal, state, and local agencies. R.X, 1326, 1349. The mayor of Shelby County and six local and state legislators, whose authorities were usurped by the Governor's

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unauthorized deployment, brought suit to challenge this military occupation on the grounds that it is statutorily unauthorized and, alternatively, violates the Tennessee Constitution.

The Chancery Court recognized that the deployment exceeded the Governor's limited statutory authority. And in a holding not encompassed by any of the questions certified for this Court's review (and thus undisputed for purposes of this appeal), the Chancellor found that the National Guard's "role does not appear to be critical to the Memphis State Task Force mission of fighting violent crime." R.X, 1349. By contrast, the "residents of Memphis . . . have a strong public interest in not being subjected to domestic military occupation for law enforcement purposes." R.X, 1350. Accordingly, the Chancellor determined that a temporary injunction was warranted.

On appeal, Defendants try to avoid substantive review of the legality of the deployment, arguing that they are shielded by sovereign immunity and that Plaintiffs lack standing. But the General Assembly has unambiguously authorized suits to block unlawful government action, *see* Tenn. Code Ann. § 1-3-121, and Plaintiffs each have suffered cognizable harm from the illegality: (1) the unlawful deployment is

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impeding Shelby County Mayor Lee Harris's ability to perform his executive duties and is causing financial and reputational harm to the County; and (2) the legislators have been denied their rights to debate and vote on whether the conditions warrant National Guard deployment.

On the merits, the Court can and should affirm on the ground that the Governor exceeded his statutory authority—if the National Guard can be deployed for law enforcement, there is no meaningful constraint on the Governor's deployment authority. Should the Court find it necessary to reach the issue, the deployment is also unconstitutional. As both federal law and a recent opinion by then-Attorney General Herbert Slatery confirm, the Tennessee National Guard is part of Tennessee's "militia." R.I, 62-63; 10 U.S.C. § 246(b)(1). *See also* Amic. Br. of United States at 6 (acknowledging "[t]he National Guard . . . functions as a state militia"). Because the General Assembly has not determined that there has been a "rebellion or invasion" warranting use of the National Guard, the deployment is unlawful under Section 5 of Article III.

STATEMENT

A. Federal constitutional and statutory backdrop

1. During the colonial period, states maintained and trained militia for purposes of defense. *See United States v. Miller*, 307 U.S. 174,

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178-80 (1939). The "militia" was distinguished from an "army" by the fact that it was composed of the body of fighting-age men, who were "civilians primarily" and "soldiers [only] on occasion" when called into service. *Id.* at 179.

Upon adoption of the U.S. Constitution, federal and state governments were given "concurrent" control over the militia. *See Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 8 (1820). States would maintain their separate militias and would be free to appoint their own militias' officers, but the federal government would have the authority to organize and direct training of the militia and to call forth the militia into federal service when needed for the common defense. U.S. Const. art. I, § 8, cls. 15-16. Although states were allowed to maintain their militias, they were generally forbidden to maintain armies in peacetime. *See* U.S. Const. art. I, § 10, cl. 3; *Luther v. Borden*, 48 U.S. (7 How.) 1, 71-72 (1849).

2. The Dick Act of 1903, 32 Stat. 775 (U.S.), modernized state militias and codified the circumstances in which those militias would be called into federal service. Since that time, the state militias subject to being called out for federal service as contemplated by the U.S. Constitution's Militia Clauses have been called the "National Guard." *See*

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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 of the Constitution."); *see also Perpich v. Department of Defense*, 496 U.S. 334, 342-43 (1990) (describing the Dick Act's reformation of the militia into the modern National Guard system). While the National Guard system represents an evolution in how a subset of the militia is trained and organized, it retains the defining characteristic of a militia: National Guard members are civilians primarily and soldiers only during episodic periods of training and service. *See, e.g.*, 32 U.S.C. § 502. Accordingly, current federal law designates each state's National Guard as a component of the "militia." *See* 10 U.S.C. § 246.

3. Although the federal government has the authority to activate National Guard units to full federal status and to bring them under direct federal control, an alternative provision of federal law allows for National Guard units to perform missions at federal expense while remaining under state control. *See* 32 U.S.C. § 502(f). Because National Guard units in this so-called "Title 32 status" remain subject to state control, their deployment in that status remains subject to any constraints imposed by state law.

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B. Tennessee constitutional and statutory background

1. When Tennessee adopted its first Constitution in 1796, it recognized the Governor as the Commander-in-Chief of the state's "Army," "Navy," and "Militia," with the militia as the only entity subject to being "called into the service of the United States." 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). Every iteration of the Tennessee Constitution has also proclaimed that "standing Armies in time[s] of peace are dangerous to freedom" and "ought to be avoided, as far as the circumstances and safety of the Community will admit." *E.g.,* Tenn. Const. art. I, § 24.

When Tennessee adopted its current Constitution in 1870, it curtailed the Governor's authority to deploy the Tennessee militia via a new provision specifying 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." Tenn. Const. art. III, § 5. This innovation in the 1870 Constitution was a direct response to the experience of post-Civil War Reconstruction, which in

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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,* TRACE (Aug. 2013) (Ph.D. dissertation, University of Tennessee), https://perma.cc/LE65-USJH.

2. Against that backdrop, the General Assembly later adopted a provision regulating the deployment of the National Guard. The Governor received authority to deploy all or part of the Tennessee 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." Tenn. Code Ann. § 58-1-106(a). 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" finding "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).

Another Tennessee statute denominates the Tennessee National Guard as part of the "army" of Tennessee and says that the "militia" for

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purposes of state law shall generally "consist of all able-bodied male citizens who are residents of this state and between eighteen (18) and forty-five (45) years of age and who are not members of the army or navy." Tenn. Code Ann. § 58-1-104(b), (d).

C. Facts

On September 15, 2025, Governor Lee met with President Trump, who issued a memorandum creating "the Memphis Safe Task Force," an interagency task force directed to combatting street and violent crime in Memphis. R.X, 1323. The task force would ultimately be drawn from 31 federal, state, and local agencies. R.X, 1326.

A provision of the President's memorandum directs "the Secretary of War" to request that Governor Lee provide Tennessee National Guard support for the new task force, with the guardsmen operating in Title 32 status. R.X, 1323. A press release issued by Governor Lee's office states that he requested that President Trump grant activation of the Tennessee National Guard under Title 32 in order "to fight crime in Memphis." R.X, 1324. And consistent with the President's memorandum, the "Secretary of War" issued a September 23 letter to Governor Lee noting the Secretary was prepared to authorize and fund the use of 1,000

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Tennessee National Guard personnel in Title 32 status. R.X, 1324-25. However, the Governor never issued any written order, command, memorandum, or other writing activating the Tennessee National Guard. R.X, 1325.

Nonetheless, in October 2025, Tennessee National Guard personnel deployed in Memphis. R.X, 1327. It is undisputed that this deployment was made without any request for assistance by the City of Memphis or Shelby County and without the General Assembly declaring by law that public safety warrants the deployment. R.X, 1327.

The National Guard members patrolling the streets of Memphis "are not permitted to conduct arrests, searches, seizures, or engage in other direct law enforcement." R.X, 1326. These duties are reserved for the law enforcement agencies participating in the Memphis task force. The National Guard plays a supporting role and is "most commonly asked to conduct foot patrols in heavily traveled pedestrian areas in Memphis." R.VIII, 1091; *see also* R.VIII, 1066 (describing the Guard's mission as including have a "high-visibility . . . presence" and performing "traffic-control duties in support of law enforcement operations"). Accordingly, the Chancery Court determined that the Guard's "role does not appear to

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be critical to the Memphis State Task Force mission of fighting violent crime." R.X, 1349.

Governor Lee has stated that there is "no end date in mind for his deployment of National Guard to address crime in Memphis." Banner Staff, *Oct. 15: Gov. Bill Lee Talks National Guard; Department of Education Audit*, Nashville Banner, (Oct. 15, 2025), https://perma.cc/AX57-JVZL.

D. Prior proceedings

1. Promptly after the National Guard deployed to Memphis, seven elected officials brought suit in Davidson County Chancery Court to challenge the legality of the deployment. Plaintiffs include Shelby County Mayor Lee Harris, two Shelby County Commissioners (Henri Brooks and Erika Sugarmon), a Memphis City Councilmember (JB Smiley, Jr.), two State Representative (Gabby Salinas and G.A. Hardaway, Sr.), and one State Senator (Jeff Yarbro). The suit named Governor Lee, Attorney General Skrmetti, and Adjutant General Ross as defendants, each in his official capacity. As relevant here, the Complaint asserted that: (1) Governor Lee lacked statutory authority under Section 58-1-106 to deploy the National Guard to Memphis; and (2) alternatively,

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the deployment was unconstitutional under Article III, § 5 of the Tennessee Constitution because the National Guard is part of the "militia" and there is no rebellion or invasion in Memphis. R.I, 18-21.

Plaintiffs objected to being denied their legal right to participate in the Governor's decision to deploy the National Guard. *E.g.* R.I, 87 ("I have also been deprived of any opportunity to cast a vote in deploying our state's national guard members. My power to do so has been nullified by the Governor's unilateral actions."). They also worried about the consequences—both financial and civic—of the deployment on their communities. R.I, 77 ("[T]his unlawful deployment of Tennessee National Guard members will divert resources away from the priorities of the County"); R.I, 89 ("The National Guard in Memphis and Shelby County has intensified strain on an already overburdened criminal justice system" and "risks diverting critical funding and staff from essential" programs.); R.I, 87 (explaining that "troops on the streets creates an atmosphere of fear and paranoia among residents"); R.I, 93 (noting that National Guard lack important law enforcement training and that because of inadequate mechanisms to "enforce . . . accountability," the deployment "creates more risk to public safety"); R.I, 100 ("I have

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received information from residents in Memphis that the community is so frightened by this unnecessary militarization that people are not even going out to restaurants."); R.I, 101 ("These new expenses require the diversion of resources from projects that I, as Mayor, sought to prioritize.").

2. Plaintiffs moved for a temporary injunction, which the Chancellor granted. R.X, 1317-52. The Chancellor first rejected Defendants' threshold defenses. She explained that "each Plaintiff has alleged a distinct and palpable injury that is not hypothetical or predicated upon an interest in common with the general public arising from their positions as publicly elected and currently serving officials," and thus, had established standing. R.X, 1335-36. She likewise rejected Defendants' sovereign immunity defense, explaining that Plaintiffs' claims and the remedies they "seek fit squarely within [Tenn. Code Ann.] § 1-3-121," which waives sovereign immunity for suits seeking declaratory and injunctive relief. R.X, 1338. She likewise found the political question doctrine inapplicable because neither the Tennessee Constitution nor Section 58-1-106 gives the Governor "unfettered" authority and there are "judicially discoverable and manageable

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standards for resolving when the Governor may call up the National Guard." R.X, 1340.

On the merits, the Chancellor determined that the Governor had exceeded his statutory authority. Under Section 58-1-106(a), the Governor can only unilaterally deploy the National Guard in response to certain enumerated circumstances and none of the statutory triggers can "fairly be construed to include 'ongoing criminal activity'—which plainly is a law enforcement concern—and is not the type of emergency that would warrant the activation and deployment of National Guard members who are not trained law enforcement personnel." R.X, 1346. Having ruled for the Plaintiffs on their statutory claim, the Chancellor found it unnecessary to resolve their alternative constitutional argument. R.X, 1343.

Turning to the equitable factors, the Chancellor found that they all favored relief. Plaintiffs established irreparable harm through their claim that "the activation of the National Guard to Memphis and Shelby County [is] interfering with their official duties (in the case of Mayor Harris), or . . . deprived them of the ability to exercise their authority, rights, and duties as current elected public officials under Tennessee

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law." R.X, 1348. The balance of harms and public interest likewise favored Plaintiffs because the Guard's "role does not appear to be critical to the Memphis State Task Force mission of fighting violent crime" R.X, 1349, whereas the "residents of Memphis . . . have a strong public interest in not being subjected to domestic military occupation for law enforcement purposes," R.X, 1350.

In light of these determinations, the Chancellor enjoined Governor Lee and Adjutant General Ross "from implementing and continuing the activation and deployment of Tennessee National Guard personnel in accordance with Section 3 of the President's September 15, 2025 Memorandum and the Secretary of War's September 23, 2025 Letter to Governor Lee to provide law enforcement support and assistance to the Memphis Safe Task Force." R.X, 1351.

Although the Chancellor determined that Plaintiffs were entitled to immediate relief, she stayed her Order to allow Defendants an opportunity to pursue an interlocutory appeal. R.X, 1352. And although Defendants had represented that no State funds were being used in connection with the deployment (R.X, 1336 n.9), the Chancellor made the

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temporary injunction contingent upon Plaintiffs' posting a $50,000 bond (R.X, 1351), which has been posted.

3. Defendants sought certification of the standing, sovereign immunity, and statutory merits questions for interlocutory appeal. R.XI, 1417. Plaintiffs did not oppose, but asked that their constitutional challenge also be certified as an alternative ground for affirmance. *Id.* The Chancery Court certified all four questions. R.XI, 1420-21. This Court then granted review while *sua sponte* adding the additional question of whether this case should be heard by a three-judge panel pursuant to Tenn. Code Ann. § 20-18-101.

SUMMARY OF ARGUMENT

I. Sovereign immunity does not preclude review of Defendants' unlawful deployment of National Guard troops to Memphis. In Section 1-3-121 of the Tennessee Code, the General Assembly broadly waived the State's sovereign immunity in cases, like this one, that seek declaratory or injunctive relief against unlawful government action. Defendants' insistence that this provision should be read so narrowly as to exclude this suit by seven elected officials seeking to vindicate the prerogatives

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of their offices is contrary to the text of the provision, its legislative history, and the interpretation of Section 1-3-121's federal analogue.

II. Plaintiffs also have standing to seek redress for their injuries. Defendants wrongly claim that Plaintiffs assert nothing more than generalized grievances common to all citizens. In fact, Plaintiffs—Shelby County's chief executive and six legislators—seek to vindicate the specific prerogatives of their respective offices. Precedent teaches that under circumstances such as these, elected officials like Plaintiffs are entitled to challenge unlawful government action that undermines their powers and damages their communities.

III. The Chancellor correctly concluded that the Governor lacks statutory authority to deploy the National Guard to Memphis. Under Section 58-1-106(a), the Governor may only unilaterally deploy the National Guard for certain enumerated purposes, none of which includes law enforcement. A different provision, Section 58-1-106(c) contemplates a National Guard deployment to respond to a "breakdown of law and order," but that provision is only applicable when the local community has requested such assistance, which has not occurred here. Defendants' attempt to shoehorn law enforcement into the purposes authorized under

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Section 58-1-106(a) betrays a reading so unbounded that it would strip the provision of all practical meaning and allow the Governor to unilaterally occupy any Tennessee city at will for any indefinite length of time.

IV. While the Court may find it unnecessary to reach the issue, the Memphis deployment also violates the Tennessee Constitution, which prohibits the Governor from deploying the militia except in cases of rebellion or invasion. Tenn. Const. art. III, § 5. Federal statutes and Supreme Court caselaw unequivocally recognize that each state's National Guard is part of the militia. The text and history of the Tennessee Constitution confirm that the term "militia" under Tennessee law is no different from the federal definition. Accordingly, as then-Attorney General Herbert Slatery recently concluded, the Governor's authority over the Tennessee National Guard is limited by Tenn. Const. art. III, § 5. R.I, 58-68. Defendants acknowledge that the deployment is unlawful if the National Guard is part of the militia and their attempts to portray the Guard as an "army" rather than a "militia" are atextual and ahistorical.

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V. Plaintiffs do not challenge the constitutionality of any statute or executive order. Accordingly, this case does not need to be heard by a three-judge panel pursuant to Tenn. Code Ann. § 20-18-101(a).

STANDARD OF REVIEW

This Court has agreed to hear five specific questions on this interlocutory appeal. Each is a pure question of law and, thus, the standard of review for each is *de novo*. *See, e.g.*, *Richards v. Vanderbilt Univ. Med. Ctr.*, 706 S.W.3d 319, 323 (Tenn. 2025).

Defendants' statement of the standard of review includes inapposite discussion of the principles governing appellate review of temporary injunctions. Defs.' Br. at 30-31. Because this Court has not granted review of the ultimate question of whether a temporary injunction should have issued, this Court will not be reviewing, even under a deferential abuse of discretion standard, the Chancery Court's ultimate conclusion that a temporary injunction is warranted. *See, e.g.*, *In re Bridgestone/Firestone & Ford Motor Co. Litig.*, 286 S.W.3d 898, 902 (Tenn. Ct. App. 2008). Put differently, the sufficiency of Plaintiffs' showings regarding irreparable harm, the balance of harms, and the public interest are uncontested for purposes of this appeal.

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ARGUMENT

I. Sovereign Immunity Does Not Shield Defendants' Unlawful Acts

As the Chancery Court correctly recognized, sovereign immunity does not preclude review of Defendants' unlawful deployment of troops to Memphis. R.X, 1336-38. The Tennessee Legislature has expressly authorized "any affected person" to obtain judicial review in cases, like this one, where the plaintiff seeks "declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action." Tenn. Code Ann. § 1-3-121. The Tennessee Supreme Court has recognized that this "broad[]" declaration "is an unmistakably clear" waiver of sovereign immunity. *Recipient of Final Expunction Ord. in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch*, 645 S.W.3d 160, 168 (Tenn. 2022).

Section 1-3-121 was intended to remove all obstacles to suits seeking to compel government officials to comply with the law. When the legislation's sponsor was asked whether the legislation was intended to apply "across the board" to "any action against the government" for declaratory or injunctive relief, he confirmed that this was the intent of provision, explaining that "we have a constitutional right to take our

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complaints to court" when the "government does not comply with state law." Tenn. Gen. Assemb., House Floor Sess., 110th Gen. Assemb. (Mar. 15, 2018), at 1:07:41-1:08:12.[2] He further explained that everyone in the impacted jurisdiction would have standing to bring challenges under this provision. *Id.* at 1:08:52-1:09:11. The sponsor then reiterated that the intent was to "open up the entire code" to make it enforceable against the state. *Id.* at 1:10:26-1:10:51.

Defendants acknowledge that the word "person" has a range of meanings that can include legal (and not just natural) persons as well as government entities and officials. *See* Defs.' Br. at 33 & n.4 (collecting examples). Defendants nonetheless argue that Section 1-3-121 should be construed narrowly to deny some parties adversely affected by unlawful government action the opportunity to obtain relief. On their telling, the seemingly capacious phrase "any affected person" encompasses only natural persons. Defs.' Br. at 32. That interpretation excludes various types of regular litigants, including at least estates, trusts, and, as particularly relevant here, governmental bodies and officials, leaving

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2 https://tnga.granicus.com/player/clip/14836?view_id=354&meta_id=334566&redirect=true.

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them without recourse when they are victims of unlawful government action. It may also omit corporations and associations.[3]

Although there is no obvious rationale for arbitrarily denying recourse to a subset of injured parties, Defendants assert that this result is compelled by the rule that waivers of sovereign immunity are to be construed narrowly. Defs.' Br. at 33-34. But Defendants overstate the strength of that presumption. As the U.S. Supreme Court has explained, "[t]he sovereign immunity canon is just . . . . a tool for interpreting the law." *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 589 (2008). It does not "displace[] the other traditional tools of statutory construction." *Id.* And like all canons, it does not specify a "mandatory rule[]," and is instead merely a "guide[]" designed to help judges determine the Legislature's intent" such that "other circumstances evidencing [legislative] intent can overcome [its] force." *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001).

[3] It is not entirely clear whether Defendants contend that corporations and associations qualify as "person[s]" for purposes of Section 1-3-121. *Compare* Defs.' Br. at 32 (asserting without qualification that the term encompasses only natural persons), *with id.* at 33 (noting that a statute specifies that corporations are generally considered persons for purposes of Tennessee law, but without expressing a position on whether that background rule applies to Section 1-3-121).

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Accordingly, when the government waives immunity "in sweeping language," courts should not infer constraints that would "risk . . . defeating the central purpose of the statute." *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 492 (2006) (internal quotation marks omitted). Here, the General Assembly expressed an intent that "any" affected person be able to bring suit. *See United States v. Gonzales*, 520 U.S. 1, 5 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" (quoting *Webster's Third New International Dictionary* 97 (1976)).[4] And the floor debates confirm the breadth of the intended waiver. *See supra* p. 21-22. Given "the remedial nature of the statute," the Court should thus "interpret the term '[any person]' broadly in order to give" the statute "the fullest possible effect consistent with the General Assembly's intent." *Metro. Air Rsch. Testing Auth., Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 842 S.W.2d 611, 616 (Tenn. Ct. App. 1992) (broadly construing the term "any citizen" in

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[4] To be sure, the word "any" cannot alter the meaning of the noun it modifies. *See City & Cnty. of San Francisco v. EPA,* 604 U.S. 334, 348 (2025) (offering the example that the phrase "any mammal," despite its breadth, does not encompass "fish"). But where the referenced noun (here "person") has a range of meanings, the word "any" is indicative of an intent to employ the broadest available meaning.

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the Sunshine Law to allow a wider array of potential plaintiffs) (internal quotations omitted); *see also Mayhew v. Wilder*, 46 S.W.3d 760, 769 (Tenn. Ct. App. 2001) ("We believe that where the statute says 'any citizen' may bring suit to enforce the Sunshine Law, the General Assembly must be taken at its word.").

Defendants argue that there is a particularly strong presumption against construing the term "person" to include "the sovereign" and insist that proceedings brought by officeholders in their official capacities are no different from suits brought by the state itself. In fact, there "is no hard and fast rule" that the term "person" excludes the sovereign and that presumption may be overcome when the "purpose, the subject matter, the context, the legislative history, [or] the executive interpretation of the statute" establish a contrary legislative intent. *Int'l Primate Prot. League v. Adm'rs of Tulane Educ. Fund*, 500 U.S. 72, 83 (1991) (alteration in original). But, more fundamentally, this argument is misconceived because officeholders who sue state officials to vindicate the prerogatives of their offices cannot sensibly be described as proceeding on behalf of the state itself.

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Defendants rely on inapposite cases holding that official capacity suits *against* government officials are typically understood to be suits against the state. *See, e.g.*, *Hafer v. Melo*, 502 U.S. 21, 27 (1991) ("State officers sued for damages in their official capacity are not 'persons' for purposes of the suit because they assume the identity of the government that employs them."). But that circumstance differs markedly from the one here, where a county mayor and a group of city, county, and state legislators—each of whom is a "person" under any common understanding of that term—have sued the Governor and other senior state officials for having encroached on their functions. In such suits, "the real part[ies] in interest" are the plaintiff officeholders themselves, not the state. *Hooker v. Haslam*, 393 S.W.3d 156, 165 n.6 (Tenn. 2012). Accordingly, legislators can, in certain circumstances, bring official capacity suits against government bodies and officials to vindicate their cognizable "interest in maintaining the effectiveness of their votes." *Fannon v. City of LaFollette*, 329 S.W.3d 418, 426 (Tenn. 2010) (internal quotation marks omitted).

Defendants' construction is further undermined by caselaw concerning the federal analogue to Section 1-3-121. *Cf. Colonial Pipeline*

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Co. v. Morgan, 263 S.W.3d 827, 852 (Tenn. 2008) (construing Tennessee sovereign immunity law to be "compliant" with the principles applicable in federal courts). In Section 702 of the Administrative Procedure Act (APA), which closely resembles Section 1-3-121, Congress created a federal cause of action for a "person" adversely affected by agency action and waived sovereign immunity over suits for relief other than money damages. *See* 5 U.S.C. § 702. Notably, although the applicable federal definition of "person" does not expressly include states, *see* 5 U.S.C. § 551(2), federal courts have declined to adopt a constrained interpretation of the provision and have found APA suits by states to be authorized "by implication only." *Gov't of Manitoba v. Bernhardt*, 923 F.3d 173, 181 (D.C. Cir. 2019); *see also Maryland Dep't of Hum. Res. v. Dep't of Health & Hum. Servs.*, 763 F.2d 1441, 1445 n.1 (D.C. Cir. 1985) (finding "no warrant" for imposing "a limitation on the term 'person' that Congress neither put there nor demonstrated any intention to put there") (quotation marks omitted). There is no reason to believe that the Tennessee Legislature intended for Section 1-3-121 to be construed any more strictly than the APA, which authorizes suits by governmental entities (and officials), including sovereign states.

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Defendants also worry that construing Section 1-3-121 consistent with the General Assembly's intent would force courts to "become referees for political disagreements." Defs.' Br. at 36. These concerns, which do not provide a basis for overriding the contrary policy adopted by the General Assembly, are in any case overblown. A "political slight" (Defs.' Br. at 36) can only give rise to suit if the plaintiff can colorably allege both cognizable injury and that the offending conduct was contrary to law. Nor would government-on-government lawsuits be novel. Suits by government officials or local government bodies are a crucial mechanism for testing the legality of actions and policies that violate the rights of particular jurisdictions or officials. Without them, there would, for example, be no mechanism for seeking redress for the recognized "distinct and palpable injury" that results from intrusion on "local control of local affairs." *Metro. Gov't of Nashville & Davidson Cnty. v. Tennessee Dep't of Educ.*, 645 S.W.3d 141, 150 (Tenn. 2022). In appropriate cases, Tennessee courts can and will adjudicate the merits of a "power struggle between State government and local government." *Metro. Gov't of Nashville & Davidson Cnty. v. Lee*, No. M2024-01182-COA-R3-CV, 2025

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WL 1565481, at *4 (Tenn. Ct. App. June 3, 2025), appeal granted, No. M2024-01182-SC-R11-CV, 2025 WL 2692148 (Tenn. Sept. 18, 2025).[5]

II. Plaintiffs Have Standing To Challenge Defendants' Unlawful Deployment Of Troops To Memphis

The Chancellor also correctly determined that Plaintiffs have established standing. Defendants challenge that ruling exclusively on the theory that none of the plaintiffs has asserted a cognizable injury.[6] But as the Chancellor explained, "each Plaintiff has alleged a distinct and palpable injury that is not hypothetical or predicated upon an interest in common with the general public." R.X, 1335.

Each of the Plaintiffs—the Mayor of Shelby County, two Shelby County Commissioners, a City of Memphis councilmember, and three

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[5] As explained in Part V, *infra*, this case does not involve a challenge to the constitutionality of any Tennessee statute. But if this Court disagrees, Defendants' sovereign immunity argument would fail for the additional reason that sovereign immunity does not bar suits seeking equitable relief against state officers whose "actions are grounded in an unconstitutional statute." *Colonial Pipeline*, 263 S.W.3d at 853.

[6] Defendants argue that this is a public rights case and that Plaintiffs were therefore required to establish that their injuries are traceable to the challenged conduct and would be redressed by a favorable decision. Defs.' Br. at 37-38; *City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013). But Defendants take no issue with the Chancellor's determinations on causation and redressability. They argue only that Plaintiffs have suffered no injury. Defs.' Br. at 38-41.

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members of the General Assembly—is injured not merely by a generalized disagreement with the deployment, but by the violation of specific prerogatives of their respective offices. As discussed further below, any deployment of the National Guard to address a breakdown of law and order is permissible only "upon the request of the governing body of a city or county, and its representation." Tenn. Code Ann. § 58-1-106(c). The Memphis and Shelby County officials accordingly demonstrated that the "Tennessee Code empowers" them "with the authority to request that the Governor activate the National Guard to restore law and order by resolution duly and regularly adopted" and that by "acting unilaterally to deploy Tennessee National Guard members, the Governor has deprived" them "of this authority." R.I, 77, 80, 83-84; *see also* R.I, 100 (Shelby County Mayor's declaration stating that the deployment "deprived me of my statutory right to request (or not to request) National Guard personnel for the purpose of restoring or maintaining 'law and order' within Shelby County").

Alternatively, under the Tennessee Constitution, any deployment of the National Guard to Memphis requires approval of the General Assembly. *See* Tenn. Const. art. III, § 5. The General Assembly Plaintiffs

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accordingly are injured because "the Governor has preempted the General Assembly and, contrary to our Constitution, operated unilaterally in deploying the Tennessee National Guard," thereby depriving those Plaintiffs of the opportunity to "participate[] in any legislative debate about whether the actual status on the ground in Memphis requires assistance of national guard members" and "any opportunity to cast a vote in deploying our state's national guard members." R.I, 87, 91-92; *see also* R.I, 96.

Mayor Harris—the chief executive of Shelby County—also highlighted several adverse impacts from the deployment, explaining that a "perception of Memphis as an occupied city could depress local economic activity and key industries including those related to dining, travel, tourism, and entertainment." R.I, 101. He also explained that as the county's chief fiscal officer he is responsible for managing the "financial strain" of the surge, which has required "[r]esources" to be "diverted to prepare for" the "unanticipated and unpredictable amount of criminal justice services required." R.I, 101. Mayor Harris also identified interference with his executive duties, explaining that "the National Guard deployment has also created numerous legal and community

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relations issues that I have been required to address as Mayor" and which have "prevented me from focusing on other issues of importance, including facilitating the opening of a new high school and a new hospital." R.I, 102.

As these descriptions make plain, Defendants go awry in suggesting that these claimed injuries are "share[d] in common with the general citizenry." Defs.' Br. at 38 (quoting *City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013)) (alteration in original). On the contrary, Plaintiffs each allege "a special injury not common to the body of citizens." *See Case v. Wilmington Tr., N.A.*, 703 S.W.3d 274, 289 (Tenn. 2024). Generic Memphians could not claim comparable injuries to the prerogatives of an office. *Cf. Wygant v. Lee*, ___ S.W.3d ___, No. M2023-01686-SC-R3-CV, 2025 WL 3537313, at *17 (Tenn. Dec. 10, 2025) (finding plaintiff lacked standing to assert a right "common to all Tennessee citizens") (quotation marks omitted). The Plaintiffs, and not their constituents, had their legislative and executive authority impeded.

Defendants assert that the standing inquiry is more searching because this is a "public rights" case. Defs.' Br. at 38. But that principle lacks its usual force when, as here, the plaintiffs are elected officials,

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rather than undifferentiated citizens. *See Case,* 703 S.W.3d at 289 (explaining that in cases involving "those public rights which are common to all, and incident to citizenship itself—the law confers upon the duly-elected representatives of the people the sole right to appeal to the courts for redress") (quoting *Patten v. City of Chattanooga*, 65 S.W. 414, 420 (Tenn. 1901)). It is precisely the Mayor and other elected officials who have the authority (and duty) to stand up in these circumstances.

Defendants emphasize the holding in *American Civil Liberties Union of Tennessee v. Darnell*, 195 S.W.3d 612 (Tenn. 2006), that "[l]egislators have no special right to standing simply by virtue of their status: like other plaintiffs [in public-rights cases], legislators must establish a distinct, concrete injury in fact." *Id.* at 625. However, *Darnell* confirmed that legislators can satisfy this requirement by showing "that the effectiveness of their vote or any of their other legislative powers was impeded." *Id.* at 626. Thus, while *Darnell* found that legislators who "were outvoted" lacked standing, it emphasized that "the record reveal[ed] that [the legislator plaintiffs] had ample opportunity to discuss [the challenged Resolution] prior to the vote and to vote on the measure."

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Id. This case presents the very element missing from *Darnell*: Plaintiffs here were not outvoted; they were bypassed.

Mayor Harris, who would have authority to veto a resolution requesting a National Guard deployment, shares these injuries. *See* Tenn. Code Ann. § 58-1-106(c) (authorizing a deployment only upon a duly promulgated resolution); *id.* § 5-6-107 (conferring veto authority on county mayors). But, as noted, he also has distinct injuries based on his status as Shelby County's chief executive and chief fiscal officer.

Defendants mistakenly analogize the Mayor to a member of multimember council who, as an individual, impermissibly attempts to assert prerogatives reserved to the council to which he belongs. *See* Defs.' Br. at 39 (discussing *Fannon v. City of LaFollette*, 329 S.W.3d 418 (Tenn. 2010)). But per the Shelby County Charter: "The executive and administrative powers of the Shelby County government shall be vested in and exercised by the county mayor, also called the executive branch, and, under the mayor's control and direction." R.IX, 1127. Mayor Harris accordingly is not purporting to proceed on behalf of Shelby County, but rather, is vindicating executive prerogatives that are vested exclusively in his office.

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Defendants dismiss as speculative the impacts of their deployment on the Mayor's ability to perform his executive functions. Defs.' Br. at 40. But as Mayor Harris explained, Shelby County "is responsible for the intake costs associated with the arrest and detention of individuals, including pre-trial and probation services, operations of the courts and their clerks, judiciary operations funded by the County, and the operation of detention facilities (including the considerable expense associated with the youth detention facility)." R.I, 101. It is incoherent for Defendants to trumpet their purported successes in arresting violent criminals while suggesting that there is no reason to believe that there has been an impact on the county responsible for processing those arrests. Indeed, Defendants themselves submitted evidence that the "federal law enforcement surge in Memphis" has created "overcrowding" in the facility for pre-trial detainment, requiring the transfer of "overflow inmates" to a facility that is supposed to be reserved for individuals convicted of crimes. R.X, 1294.

Finally, it bears emphasis that the implications of Defendants' arguments are deeply troubling. On their telling, *no one* has the capacity to challenge the Governor's authority to militarily occupy an American

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city. If the Governor sends tanks down Beale Street, no one could object. Closing the courthouse doors in this manner would not, as Defendants suggest, demonstrate due respect for a coordinate branch of government. Rather, it would constitute an abdication of the judiciary's own vital role under the separation of powers.[7]

III. Defendants Exceeded Their Statutory Authority

On the merits, the deployment of National Guard troops to patrol the streets of Memphis is statutorily unauthorized and, therefore, unlawful. The General Assembly has authorized the Governor to deploy troops only under limited circumstances. And, as the Chancery Court correctly found, "[f]ighting crime and supporting law enforcement agencies are not among" the narrow categories of purposes for which the Governor is authorized to deploy the National Guard. R.X, 1346.

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[7] Two of the Plaintiffs (Senator Yarbro and Representative Salinas) also asserted standing in their individual capacities as taxpayers. The Chancellor found that standing has not been established on that basis because "at this stage of the proceeding," the record was insufficient to "establish that state [rather than exclusively federal] taxpayer dollars are being expended for the National Guard deployment." R.X, 1336 n.9. Even if the Court concludes that Plaintiffs have not shown standing on their other theories, discovery will allow Plaintiffs an opportunity to establish the predicate for this taxpayer standing theory.

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Defendants maintain that the Memphis deployment constitutes a valid exercise of the Governor's authority under Tenn. Code Ann. § 58-1-106(a). That provision provides the Governor with the power to order into active service the National Guard in cases 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." *Id.* Such deployments may not "exceed the duration of the emergency for which they may be called." *Id.* § 58-1-106(b). Defendants maintain that the Memphis deployment can be justified as a response to either a "combination to oppose enforcement of the law" or a "grave emergency." Neither assertion withstands scrutiny.

A. Statutory structure and the historical backdrop indicate that Section 58-1-106(a) does not authorize deployments for mere law enforcement purposes

Defendants start on the wrong foot by analyzing Section 58-1-106(a) only in isolation, without consideration of its place in the broader statutory structure. *See Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010) (recognizing that "courts should avoid basing their interpretation on a single sentence, phrase, or word . . . but should instead endeavor to give effect to every clause, phrase, or word in the

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statute"). Here, the meaning and scope of Section 58-1-106(a) is informed by a separate subsection of the provision, Section 58-1-106(c), which authorizes National Guard deployments under certain circumstances at the behest of local authorities. Because local authorities have not adopted any resolution requesting the Memphis deployment, Defendants do not and cannot invoke subsection (c) as authority for the deployment.

There are telling differences between the authorized bases for deployments under subsection (a) and subsection (c). Specifically, subsection (c) deployments are authorized when local authorities determine 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." Tenn. Code Ann. § 58-1-106(c). Notably, this list overlaps in part with the bases for deployment under subsection (a)—both lists include "riot" and "disaster"—but also includes some important differences. Most relevantly, subsection (c) authorizes deployments based on a "breakdown of law and order," a condition absent from subsection (a). This difference strongly suggests that whatever else subsection (a) encompasses, it does not reach breakdowns in law and order. *See Lee Med.*, 312 S.W.3d at 527 (instructing courts to "presume that the General

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Assembly used every word deliberately"); *Russello v. United States*, 464 U.S. 16, 23 (1983) (when the legislature "includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that [the legislature] acts intentionally and purposely in the disparate inclusion or exclusion"). This distinction also has an obvious policy rationale—if the extreme step of deploying troops for law enforcement purposes is ever to be taken, it should come at the behest of the local officials best situated to determine whether conditions have deteriorated to such an extent that a response of that magnitude is truly warranted.

It is no answer to say (as Defendants did below), that Section 58-1-106(c) is irrelevant because the statute describes its mechanism for authorizing the deployment of the National Guard as "an alternative and cumulative procedure." *See* R.IV, 424. These modifiers confirm that subsection (c) is additive rather than redundant. *See, e.g.*, Cumulative, *Black's Law Dictionary* (12th ed. 2024) ("Formed by adding new material or parts of the same kind."). These provisions were enacted together, *see* Acts of Tenn., 86th Gen. Assemb., ch. 596, § 5 (1970), and if the General Assembly had meant to authorize the Governor to respond unilaterally

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to a breakdown of law and order, it would have specified as much in subsection (a).

A second flaw in Defendants' approach is their failure to show due regard for the constitutional backdrop to Section 58-1-106. Defendants advocate for the most capacious possible readings of a provision that vests a single government official with the unilateral authority to deploy troops into communities without their consent. But, as is discussed at greater length below, *see infra* Part IV, Tennessee's constitutional history is grounded in skepticism for such unfettered power over the military. Indeed, Tennessee's Constitution is antagonistic to "arbitrary power." Tenn. Const. art. I, § 2. It recognizes the dangers that standing armies pose to freedom in times of peace. *Id.*, art. I, § 24. And it sharply cabins the Governor's control over the militia. *Id.*, art. III, § 5. A proper analysis of section 58-1-106(a) must take account of that backdrop, which weighs heavily against Defendants' presumption that the General Assembly intended to vest the Governor with expansive unilateral powers over the National Guard. *Cf. Brooks v. Bd. of Pro. Resp.*, 578 S.W.3d 421, 426 (Tenn. 2019) (recognizing that statutes should be construed to avoid constitutional conflicts).

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B. The deployment cannot be justified as a response to a "combination to oppose the enforcement of the law by force and violence"

With those presumptions in mind, Defendants' arguments that the Memphis deployment is an authorized response to a "combination" cannot withstand scrutiny. Defendants maintain that gang activity in Memphis is a sufficient predicate for a deployment on this basis. But this argument hinges on a shockingly broad definition of the "combination" provision that would effectively encompass any criminal conspiracy in which two or more individuals agree to engage in violent activity. Defs.' Br. at 41-42. If the National Guard can be deployed in response to all forms of "resistance to the normal operation of law and order by forces working in concert" (Defs.' Br. at 42), Section 58-1-106(a) would not impose any meaningful constraint on the Governor's ability to deploy the National Guard. This would invite arbitrary and abusive uses of military force, including against the Governor's political opponents or other disfavored groups.

Construing the relevant provision as a whole avoids that unlikely result. Section 58-1-106(a) does not authorize deployments in response to just any "combination," but only a "combination *to* oppose the

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enforcement of the law by force and violence." Tenn. Code Ann. § 58-1-106(a) (emphasis added). The word "to" indicates that opposing the enforcement of the law through force and violence cannot be merely incidental to the combination, but must be its object or purpose. A politically motivated group of anarchist separatists who seek to violently resist lawful authority would qualify. But a group of individuals who join a conspiracy to distribute illegal drugs have not joined a combination "to oppose the enforcement of the law," even though they surely wish to avoid the enforcement of the law against them and may be prepared to use violence if necessary. Avoiding law enforcement is merely incidental to their objective of drug dealing.

This more tailored construction of the "combination" clause also better aligns with the other circumstances identified in Section 58-1-106(a), such as "invasion," "insurrection," "riot," and "attack," each of which involves an assault on the polity itself. Private crime and violence, while of unquestionable seriousness, is a matter for law enforcement, not the military. *Cf.* 18 U.S.C. § 1385 (generally prohibiting the use of federal armed forces as a posse comitatus engaged in civilian law enforcement).

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Under this proper construction of the "combination" clause, gang activity in Memphis is not a valid predicate for the deployment. While Defendants show that various gang members in Memphis have committed an array of horrible acts of violence, they fail to show that any of the disparate groups operating in Memphis constitutes a "combination to oppose enforcement of the law" in a sense that would merit a response beyond civilian law enforcement.

Defendants' suggestion that the Memphis deployment is a reaction to gang activity also has at best a tenuous connection to the facts. Per the Defendants' own source, "MPD says a lot of the crime in Memphis is domestic-related and not gang-related." Imani Williams, *At least 48 gangs are active in Memphis, according to MPD's Multi-Agency Gang Unit*, Action News 5 (Nov. 26, 2024), https://perma.cc/LWK9-KTEE. The National Guard's role in the Memphis task force also does not appear to have any particular focus on combatting gang activity. Guard members are "most commonly asked to conduct foot patrols in heavily traveled pedestrian areas is Memphis." R.VIII, 1091; *see also* R.VIII, 1066 (describing the Guard's mission as including "enhanc[ing] public confidence" through their "high-visibility . . . presence" and performing

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"traffic-control duties in support of law enforcement operations"). This mismatch further undermines Defendants' reliance on a gang-activity rationale for the deployment.

C. The deployment cannot be justified as a response to a "grave emergency"

Defendants' attempt to justify the deployment as a response to a "grave emergency" is even more untethered from the limitations imposed by Section 58-1-106(a). On their telling, that authorization is effectively limitless, allowing the Governor to deploy troops based on any asserted "pressing need." Defs.' Br. at 44.

The word "emergency" is properly understood more narrowly. It involves a "sudden and serious event or an unforeseen change in circumstances." Emergency, *Black's Law Dictionary* (12th ed. 2024). Street crime, while deplorable, lacks the emergent quality that distinguishes an emergency from other types of social problems.

This interpretation is supported by the remainder of Section 58-1-106(a). Defendants properly concede that the meaning of "grave emergency" should be informed by the other enumerated triggers for deployment (Defs.' Br. at 47) but argue that the only commonality between the listed circumstances is that they all involve some form of

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"insufficiency of services or of facilities resulting in social disturbance or distress." Defs.' Br. at 48 (quotation marks omitted). But the listed triggers share more than that—invasions, disasters, insurrections, riots, attacks, and combinations against law and order all involve sudden, unforeseen exigencies that deviate from typical baseline conditions. The same is true of hurricanes and pandemics.

Crime prevention, by contrast, is a continual need. And because the need for crime prevention lacks a finite duration, if it is a proper basis for deployment, it would allow the Governor to deploy the National Guard indefinitely, notwithstanding the General Assembly's directive that deployments are "not to exceed the duration of the emergency for which they may be called." Tenn. Code Ann. § 58-1-106(b). Indeed, despite Section 58-1-106(b), Governor Lee has suggested that the Memphis deployment is indefinite. Banner Staff, *Oct. 15: Gov. Bill Lee Talks National Guard; Department of Education Audit*, Nashville Banner, (Oct. 15, 2025), https://perma.cc/AX57-JVZL.

In any case, this Court need not determine precisely which circumstances qualify as a "grave emergency" because, as noted, Section 58-1-106(c) makes clear that a "breakdown of law and order" is a distinct

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type of situation that is not covered by Section 58-1-106(a). That is sufficient to resolve this appeal.

Defendants appeal to policy, arguing that the Guard is "well-equipped to assist law enforcement" and must be making a positive contribution because the Memphis deployment "coincides with a dramatic drop in crime." Defs.' Br. at 49. But as the Chancery Court observed, National Guard members "have no authority to engage in typical law enforcement activities such as arrests or seizures." R.X, 1408. The National Guard is just one of thirty-one federal, state, and local agencies that comprise the Memphis Safe Task Force. R.X, 1326. And it is established for purposes of this appeal that the Guard's "limited role" as part of the Memphis Safe Task Force does "not appear to be critical to the Memphis State Task Force's mission of fighting violent crime." *Id.* at 1349. This factual finding followed from Defendants representation that "[a]ll law enforcement is done by *other* federal, state, and local actors." R.IV, 400 (emphasis in original). Defendants even went so far in Chancery Court as to argue that any increase in arrests in Memphis could not be shown to be traceable to the National Guard deployment. R.IV, 400-01. Thus, even if Defendants' policy-based arguments were

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relevant to the proper construction of the term "emergency," the Court should not conflate the accomplishments of the Task Force with those of the National Guard.[8]

D. The judiciary can and should review unlawful deployments of troops

Defendants also argue that the Chancery Court lacked authority to "second-guess[]" the Governor's determination that a grave emergency exists. Defs.' Br. at 50. On their telling, the statutory limitations on the Governor's deployment authority are judicially unenforceable. This argument suffers from several defects:

First, this argument merely repackages one that Defendants made in Chancery Court that judicial review is barred by the political question doctrine. *Compare* R.IV, 407-12 (Defendants' Chancery Court Brief); *with* Defs.' Br. at 50-52 (citing the same cases). The Chancery Court rejected that argument (R.X, 1338-41), and Defendants did not even seek

[8] As amicus, the United States argues that this Court should reject the Chancery Court's factual finding that the National Guard's contribution is "limited." U.S. Am. Br. 11. But that finding was made in the context of a balance-of-equities analysis that is not within the scope of any of the five questions certified for consideration in this appeal. The United States also represents that the National Guard now constitutes half of the task force. But the figures used by the United States are not part of the record. *Cf.* Tenn. R. App. P. 14.

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certification of that ruling for this Court's interlocutory review (R.X, 1359). The issue is therefore not properly before the Court. *See In re Bridgestone/Firestone*, 286 S.W.3d 898, 902 (Tenn. Ct. App. 2008) ("Under Rule 9 of the Tennessee Rules of Appellate Procedure, we are limited on appeal to the questions certified by the trial court in its order granting permission to seek an interlocutory appeal and in this Court's order granting the appeal.").

*Second***,** as the Chancery Court correctly recognized, there are judicially-manageable standards for reviewing the deployment here. R.X, 1340-41; *see also Wygant*, 2025 WL 3537313, at *16 (noting that only rare cases are nonjusticiable). Courts are well suited to construe statutes that define the outer perimeters of a chief executive's authority to deploy the National Guard. The Supreme Court recently addressed whether the President had acted within the scope of his own statutory authority when deploying National Guard troops. *See Trump v. Illinois*, No. 25A443, 2025 WL 3715211 (U.S. Dec. 23, 2025). Similarly, Tennessee courts have not shirked from addressing the limits of the Governor's authority in this sphere. *See Green v. State*, 83 Tenn. 708, 711 (1885); *Joyner v. Browning*, 30 F. Supp. 512, 515 (W.D. Tenn. 1939).

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Third, Defendants' appeal for deference is particularly unwarranted here because the Governor has not even issued a formal determination finding that conditions sufficient for a deployment under Section 58-1-106(a) have been satisfied. The only documentation even suggesting that the Governor made the necessary determination is a press release. R.X, 1324; *see also* Defs.' Br. at 67 (acknowledging the "the Governor never memorialized the deployment in writing"). It would be a particular abdication of this Court's duty if it were to defer to nothing more substantial than an inference that the necessary determination was made. This Court can and should affirm the limits of the Governor's statutory authority.

IV. The Deployment Violates The Tennessee Constitution

While this Court, like the Chancery Court, may find it unnecessary to reach the question, the Memphis deployment also violates the Tennessee Constitution's directive barring the Governor from deploying the State's "militia" except in cases of rebellion and invasion, and even then, only with the authorization of the General Assembly. Tenn. Const. art. III, § 5. Defendants do not dispute that, because of this constraint, the Memphis deployment is unlawful if the National Guard is part of the

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Tennessee "militia." Their sole argument is that the National Guard is Tennessee's "army," and therefore not a component of the "militia."

As explained below, the crucial attribute distinguishing an army from a militia is that an army is composed of fulltime professional soldiers, whereas a militia is a body of citizens who have civilian jobs but perform episodic military service. The Tennessee National Guard is part of the militia because it meets the latter description.

A. The federal constitutional and statutory backdrop to the term "militia"

Tennessee's adoption of a restriction on the deployment of the state's militia arose against a backdrop of federal law addressing state powers over armies and the militia respectively. The U.S. Constitution sets a default generally prohibiting states from maintaining armies in peacetime, specifying that "No State shall, without the Consent of Congress . . . keep Troops, or Ships of War in time of Peace." U.S. Const. art. I, § 10, cl. 3. As the Supreme Court has explained, "Congress alone, and not the States, is invested with power . . . to raise and support armies" and "[n]o concurrent or subordinate power is, therefore, left to the States on this subject, except by occasional and special consent of Congress" or when a state has actually been invaded or is in such

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imminent danger from a foreign enemy that it will not admit of delay. *Luther v. Borden*, 48 U.S. (7 How.) 1, 71-72 (1849).

This restriction comports with a Founding-era suspicion of standing armies. *See United States v. Miller*, 307 U.S. 174, 179 (1939) ("The sentiment of the time strongly disfavored standing armies; the common view was that adequate defense of country and laws could be secured through the Militia—civilians primarily, soldiers on occasion."). That suspicion has been shared in each iteration of Tennessee's Constitution. *See, e.g.*, Tenn. Const. of 1796, art. XI, § 24 (specifying that "as standing Armies in time of peace are dangerous to freedom, they ought to be avoided, as far as the circumstances and safety of the Community will admit").[9]

Instead of armies, the U.S. Constitution assumes that there will be a militia of armed citizenry that operate under shared federal and state control. *See generally* U.S. Const. art. I, § 8, cls. 15-16. The members of a militia, unlike an army, are predominately engaged in civilian vocations, and assume the character of the soldier only when actually called into service for training or duty. *See Perpich v. Dep't of Def.*, 496 U.S. 334, 348

9 https://perma.cc/GH79-RHQ7.

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(1990) (explaining that the militia was traditionally understood as "a part-time, nonprofessional fighting force" that, unlike a standing army is not "kept on service . . . in time of peace") (quotation marks omitted).

In the early years of the Republic, it was hoped that "every able-bodied male citizen between the ages of 18 and 45" would equip himself with appropriate weaponry for militia service, but this approach led to a "decidedly unreliable fighting force." *Perpich*, 496 U.S. at 341. At the turn of the twentieth century, Congress addressed this problem by dividing able bodied males "into an 'organized militia' to be known as the National Guard of the several States" and a "reserve" or "unorganized" militia containing the balance of the theoretical fighting-age population, which would not receive regular training. *Id.* To this day, federal law specifies that there are two classes of militia: (1) "the organized militia, which consists of the National Guard and the Naval Militia"; and (2) "the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia." 10 U.S.C. § 246(b).

While the federal law governing the militia has evolved over time, the National Guard of each state continues to be composed predominately

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of part-time soldiers—in contradistinction to the full-time, professional soldiers, sailors, airmen, and marines who make up the United States' regular armed forces. Thus, for example, the Tennessee National Guard is "a part-time state-based military component." Tennessee National Guard, https://perma.cc/8P29-23GT. It "serves under the command of [Tennessee's] governor" and may be "activated to defend the nation when needed." *Id.* Members of the Tennessee National Guard are required to perform only periodic training each year, *see* 32 U.S.C. § 502, and are paid by the State of Tennessee only when ordered to active duty, *see* Tenn. Code Ann. § 58-1-109. Unlike members of the regular armed forces, they are subject to military law only when actually on duty for the National Guard. *See State v. Morrow*, 72 S.W.3d 337, 343 (Tenn. Crim. App. 2001). The rest of the time, they wear "a civilian hat." *Perpich*, 496 U.S. at 348.

Unsurprisingly, then, the U.S. Supreme Court and other federal courts have repeatedly reiterated that each State's National Guard is the modern equivalent of the "militia" as described in the U.S. Constitution.[10]

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[10] There is a limited exception, not relevant here, when members or units of the National Guard are called into federal service under Title 10 of the U.S. Code.

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E.g., *Perpich*, 496 U.S. at 348 ("[M]embers of the State Guard unit continue to satisfy this description of a militia."); *Abbott v. Biden*, 70 F.4th 817, 843 (5th Cir. 2023) ("The National Guard *is* the modern Militia reserved to the States by Art. I, § 8, cl. 15, 16 of the Constitution.") (quotation marks omitted); *Hanson v. Wyatt*, 552 F.3d 1148, 1151 (10th Cir. 2008); *see also Bredesen v. Rumsfeld*, 2005 WL 2175175, at *2 (M.D. Tenn. Sep. 7, 2005) (making this point in the context of the Tennessee National Guard).

Tellingly, in its amicus brief in this very case, the United States describe the Tennessee "National Guard" as "function[ing] as a state militia." U.S. Amic. Br. at 6.

B. Tennessee's Constitution does not adopt an anomalous definition of the term "militia"

Defendants' position thus hinges on the unlikely assertion that when the Tennessee Constitution restricts the Governor's authority to deploy the "militia," it uses that term in an anomalously narrow way that deviates from the accepted federal definition. When interpreting the Tennessee Constitution, this Court must assess "what the people who voted for this constitutional provision would think that the language meant," an approach "more commonly known today as determining the

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original public meaning." *McNabb v. Harrison*, 710 S.W.3d 653, 658 (Tenn. 2025) (cleaned up). The limitation on the Governor's authority to deploy the National Guard was introduced in the Constitution of 1870, so the inquiry must focus on the understanding of the term "militia" at that time. Here, text and history confirm that the Tennessee Constitution uses the term "militia" in its generally accepted sense.

1. As noted, the Tennessee Constitution was adopted against a backdrop of the federal constitution, which generally denies states the authorities to maintain armies and under which "militia" is used as a term of art for civilian soldiers who do not belong to a standing army. This is significant because there is a presumption that the Tennessee Constitution is to be construed in conformity with the federal Constitution. *See State v. Pruitt*, 510 S.W.3d 398, 415 (Tenn. 2016) (concluding that "this Court will not interpret a state constitutional provision differently than a similar federal constitutional provision unless there are sufficient textual or historical differences, or other grounds for doing so").

Relevant contemporary dictionaries further confirm that part-time soldiering was the defining characteristic of the term "militia." For

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example, the definition of "militia' in Noah Webster's 1828 American Dictionary of the English Language explicitly distinguished that force from "regular troops, whose sole occupation is war or military service," and noted that militia were "required by law to attend military exercises on certain days only, but at other times left to pursue their usual occupations." Militia, *An American Dictionary of the English Language* (1st ed. 1828). Webster's 1864 edition, published just six years before Tennessee adopted its 1870 Constitution, likewise distinguishes the militia from regular troops "whose sole occupation" is military service. Militia, *Webster's Complete Dictionary of the English Language* (1864).

2. The historical context surrounding the adoption of the 1870 Constitution confirms that the term "militia" would have been understood in its usual sense, not using some anomalously restrictive definition. The 1870 Constitution's restriction on the Governor's authority over the militia was a reaction to the perceived abuses by Reconstruction-era Governor William Brownlow and reflected an effort to insulate the state against similar future actions. After Governor Brownlow took office in 1865, he relied heavily on a volunteer militia to accomplish many of his post-war goals: enforcing Black voting rights and

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battling the Ku Klux Klan, but also using troops to threaten political opponents. *See generally* Steve Humphrey, *That D- - - - -d Brownlow: Being a Saucy and Malicious Description of Fighting Parson William Gannaway Brownlow*, Chapter 17 at 307-42 (Appalachian State University 1978), available at https://www.jstor.org/stable/j.ctt1xp3mm4.

The 1870 Tennessee Constitution's limitation on the Governor's authority to summon the militia was specifically enacted to repudiate an 1867 statute that had enabled these perceived abuses by "authorizing the Governor to organize and call into service a volunteer force to be known as the 'Tennessee State Guards,'" a force that was "subject to the orders of the Governor when 'in his opinion the safety of life, property or liberty, or the faithful execution of law' required it." Joshua W. Caldwell, *Studies in the Constitutional History of Tennessee,* 288-89 (Robert Clarke Co., 2d ed. 1907) (quoting Acts of Tennessee 1866-7, ch. 24), R.IX, 1217-18; *see also* Lewis A. Laska, *A Legal and Constitutional History of Tennessee, 1772-1972*, 6 Mem. St. U. L. Rev. 563, 638 (1976) (explaining that the militia restriction was adopted "because Brownlow had established his own militia, called the State Guard, and had used this force to monitor

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elections and intimidate his opponents”). This historical backdrop is probative of the public understanding of what constituted a “militia” for purposes of the Tennessee Constitution’s new restriction, which was adopted in reaction to abuses committed by a body of enlisted volunteers, not the unorganized mass of the able-bodied male citizenry. *See Wygant*, 2025 WL 3537313, at *13 (“Because constitutional interpretation should not occur in a vacuum, we also consider the historical context in which the provision was adopted.”).

Delegates to the Constitutional Convention of 1870 were well aware that they were sharply constraining the Governor’s authority. For example, Delegate Humphrey R. Bate “did not want the Governor restricted as the committee proposed” and thought he should be able to “act independent of the Legislature.” *The Constitutional Convention: Sixteenth Day*, Republican Banner (1837-1875) (Jan. 28, 1870), R.IX, 1239. But Delegate John W. Burton, whose position prevailed, favored the committee recommendation: “He thought the Legislature could be convened promptly, and he could conceive of no circumstances where it would be necessary for the Governor to call out the militia without acting in conjunction with them.” *Id.*

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Practice in the immediate wake of the adoption of the Tennessee Constitution confirms that the National Guard was considered part of the militia. In 1887, the General Assembly adopted a Militia Act that broadly defined the Tennessee "militia" as "all able-bodied male citizens between the ages of eighteen and forty-five," and denominated the "active militia" (*i.e.*, the subset of the militia that had volunteered for military enlistment) as the "National Guard, State of Tennessee." *See An Act to Organize the Militia of the State of Tennessee, and for the Government of the Same*, Act of March 25, 1887, Acts of Tenn., 45th Gen. Assemb., ch. 159, 270 (1887), R.IX, 1241. The fact that the statute closest in time to the 1870 Constitution referred to the National Guard as a component of the "militia" should resolve any doubts about the scope of the contemporaneous understanding of the term.

3. Legal decisions and opinions discussing the scope of the militia restriction are also in accord. In *Green v. State*, 83 Tenn. 708 (1885), the Tennessee Supreme Court considered a statute that authorized male citizens to "organize themselves into companies" which could form "squadrons, battalions and regiments," but which could "not embrace more than fifteen per cent of the voting population of the

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counties where organized." *Id.* at 709. Although the size of these companies was capped (and thus necessarily did not embrace the full able-bodied male citizenry), the statute referred to them as "independent militia." *Id.* at 708. Applying Section 5 of Article III, the Supreme Court concluded that a provision authorizing the Governor to unilaterally call out such independent militia for purposes other than responding to rebellion or invasion was "unconstitutional and void." *Id.* at 711.

Joyner v. Browning, 30 F. Supp. 512 (W.D. Tenn. 1939), is even more on point. That case concerned a statute that gave the Governor wide latitude to deploy the Tennessee National Guard. *See* Acts of Tenn, 70th Gen. Assemb., ch. 249 (1937). The court described the provision as "obviously violative of several provisions of the Constitution of Tennessee," including Section 5 of Article III. *Joyner*, 30 F. Supp. at 517. Given Defendants' argument that changes made in 1933 transformed the National Guard into a professional army (Defs.' Br. at 57-59), it is notable that *Joyner* issued six years after those changes were implemented.

Similarly, in 2021, then-Attorney General Slatery published a formal opinion that surveyed applicable historical sources and concluded that "Tennessee constitutional provisions addressing militias apply to . . .

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the Tennessee National Guard" because they "meet the description of militia as that term was used in founding-era sources." R.I, 63; *see also* R.I, 58 ("[T]he Tennessee National Guard[] is a militia under the Constitution of Tennessee."). Accordingly, he described Section 58-1-106 as "suspect" to the extent that it does not "comport" with the "constitutional command of article III, section 5" by allowing the Governor impermissible latitude to call forth the Tennessee National Guard. R.I, 67.[11]

C. Defendants' counter-arguments are unpersuasive

1. Defendants emphasize that the Tennessee Constitution has always provided for the existence of an "army" as well a "militia," *see* Tenn. Const. art. III, § 5, and they argue that the Governor's authority over the army is unconstrained. Defs.' Br. at 52-53. On their telling, the Tennessee Constitution has thus always "reserve[d] to the Governor broad discretion to unilaterally deploy a state-sponsored armed force, so

[11] The opinion by Attorney General Slatery was subsequently withdrawn without explanation by Attorney General Skrmetti. But this recent, fully-reasoned analysis by an official serving as the State's own senior legal officer belies the State's narrative that it has been accepted for nearly a century that the National Guard is an "army" rather than a component of the "militia."

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long as that force isn't the Militia." Defs.' Br. at 62 (alteration in original; citations and quotation marks omitted).

This argument ignores the fact that the Tennessee Constitution was adopted against the backdrop of the federal Constitution, which generally denies states authority to maintain armies in peacetime. *See supra* pp. 50-51. Thus, while the Governor has substantial authority over the army during those intervals when it is permitted to exist, the Constitution limits the circumstances when armies can be maintained. The drafters of the militia restriction in the 1870 Constitution did not overlook the Governor's authority over the "army." Nor did they leave a glaring loophole that would allow the Governor to evade the new restriction and deploy a volunteer force that could be used like Brownlow's Tennessee Guard through the expedient of denominating the body as an "army" instead of a "militia." Rather, the framers understood that the Governor's authority over the "army" was *already restricted* by the federal Constitution and, thus, did not pose an analogous threat to liberty.[12]

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[12] Defendants argue (at 22 n.3) that decades after the Tennessee National Guard assumed its present form, Congress enacted a statute

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2. Defendants argue that the modern National Guard is better organized and better trained than the historical militia, which constituted the full body of fighting-aged men. But it does not follow that when a subset of the militia commits to regular training, the resulting force is transformed into an "army," even though its members retain their primary civilian vocations. Rather, consistent with federal law and the original Tennessee Militia Act, such a group is an "organized" or "active" militia, which is still a subcomponent of the "militia." *See* 10 U.S.C. § 246; R.IX, 1241. Indeed, the suggestion of a "select corps" of "well-trained" militia members dates back at least as far as the Federalist Papers. *See* Alexander Hamilton, Federalist No. 29.[13] Defendants thus miss the point in collecting authorities (Defs.' Br. at 57) demonstrating that the term "militia" is broader than the National Guard (and, thus, that the federal Constitution's Second Amendment confers rights on non-Guard

authorizing states to maintain their National Guards as armies in peacetime. *See* 32 U.S.C. § 109. Even were such later legislative developments relevant, that provision is directed to authorizing states to maintain other bodies of troops (known as "defense force[s]") that are distinct from each state's National Guard. As noted, federal law expressly classifies National Guard members as part of the "militia." *See* 10 U.S.C. § 246.

[13] https://perma.cc/5YGM-BX9A.

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members). While "the militia consists of all able-bodied men," that body includes the "subset of them" enlisted in the National Guard. *See D.C. v. Heller,* 554 U.S. 570, 596 (2008).

The organization of the National Guard also does not undermine its "militia" status. Webster's 1828 edition definition of "militia" explicitly describes it as "organized into companies, regiments, and brigades." Militia, *An American Dictionary of the English Language*. That dictionary also includes explicit references to "militia" in its definitions of "brigade," and "division." Brigade, *id.* ("A party or division of troops, or soldiers, whether cavalry or infantry, regular or militia, commanded by a brigadier.") (emphasis added); Division, *id.* ("A part of an army or militia; a body consisting of a certain number of brigades, usually two, and commanded by a major general.") (emphasis added). The Tennessee Constitution also expressly contemplates that the militia will have "battalions, regiments, brigades and divisions." Tenn. Const. art. VIII, § 1. Defendants thus err in suggesting that only armies are organized in such a manner. Defs.' Br. at 54.

Defendants also emphasize that since 1933, National Guard members are organized, equipped, and trained according to federal

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standards. Defs.' Br. at 58. But that arrangement flows from Congress's power to provide for "organizing, arming, and disciplining, *the Militia*, and for governing such Part of them as may be employed in the Service of the United States." U.S. Const. art. I, § 8. cl. 16 (emphasis added). If anything, the developments Defendants highlight merely underscore that the National Guard is federally regulated as a "Militia."

In any case, while significant changes were made to the National Guard in the first few decades of the twentieth century, it never stopped being a body drawn from members who are primarily civilians and who perform military service only episodically. *See supra* pp. 52-53. The National Guard thus never lost the essential, defining characteristic of a militia. Accordingly, the Supreme Court and numerous other courts have continued to refer to the National Guard as a "militia" up to the current day. *See supra* p. 53-54 (collecting cases).

3. Defendants emphasize that statutes defining the Tennessee National Guard as the state's "army" are longstanding. Defs.' Br. at 59. But as Defendants properly acknowledge (Defs.' Br. at 62-63), later enacted statutes cannot alter the meaning of the Tennessee Constitution, nor can its strictures be evaded through manipulation of statutory

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definitions. They argue that this long history nonetheless deserves a measure of deference. This argument would be more persuasive, however, if the validity of efforts to reclassify the National Guard as the "army" had never previously been questioned. But, as noted, by 1939, a court had disapproved of this evasion. *See Joyner*, 30 F. Supp. at 517.

Indeed, the impermissibility of this maneuver was identified even earlier. In 1893, Tennessee adopted a statute that purported to transform the National Guard into the "army of Tennessee," which the Governor would have unilateral authority to summon for a wide variety of purposes in his capacity as commander-in-chief of the army. Acts of Tenn., 48th Gen. Assemb., ch. 149, §§ 1-2 (1893), R.IX, 1251. Yet, even contemporaneous commentators who were sympathetic to enhancing the Governor's authority to deploy military force recognized the dubious legality of the 1893 statute. One criticized the 1870 Constitution's limitation on the Governor's militia authority but acknowledged that the attempt to "evade" that prohibition by "creating the Army of Tennessee" was "of the most doubtful constitutionality." *State's Organic Law: Distinguished Men Who Think It Should Be Changed,* The Nashville American (Apr. 3, 1895), R.IX, 1253-54. Another urged a new

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constitutional convention, observing—in the presence and with the apparent approval of then-Tennessee Attorney General George Pickle—that the legislature's creation of "a National Guard, as distinguished from the militia" was merely "the same thing under another name" and was "in direct contravention of the laws of the State." *Strong and Plain Reasons: Why the People Should Vote for a Constitutional Convention*, The Nashville Am. (June 11, 1897), R.IX, 1256; *see also* Caldwell, *supra*, at 307, R.IX, 1236 (describing the 1893 statute as "a palpable evasion of the Constitution of the State" and noting that it "would be difficult to suggest any legal justification of it").

4. Finally, Defendants make an appeal to policy, arguing that "[i]f Plaintiffs prevail, the Governor could not deploy the National Guard to assist Tennesseans during the next pandemic, natural disaster, or other public crisis." Defs.' Br. at 60. That is both wrong and irrelevant.

The narrow question before this Court asks only whether Plaintiffs are likely to prevail on their argument that the challenged Memphis deployment violates the Tennessee Constitution. No facial challenge to Section 58-1-106 has been brought and a ruling in the Plaintiffs' favor on

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this issue would, by its terms, require nothing more than that Defendants obey the terms of the Chancery Court's temporary injunction.

Nor does a ruling in Plaintiffs' favor necessarily imply that the Governor lacks authority to deploy the Guard for disaster relief. Such a future case, if any plaintiff actually cared to bring it, would require inquiry into questions not presented here about whether the Guard is truly acting in its capacity as a militia when, for example, it is performing tasks wholly unrelated to the militia's historic function as a body of the citizenry under arms. (Here, no such questions are presented because the National Guard is performing a classic militia function by patrolling neighborhoods while carrying weapons.)

In any case, this Court cannot decline to enforce the Tennessee Constitution on policy grounds. If the people of Tennessee believe that Article III, § 5 is too restrictive, they have recourse in the amendment procedure in Article XI of the Tennessee Constitution.

V. This Suit Does Not Need To Be Heard By A Three Judge Panel

This Court has asked whether this case should have been assigned to a three-judge panel. *See* Tenn. Code Ann. § 20-18-101(a). As Defendants correctly explain, Plaintiffs' Complaint does not challenge

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the constitutionality of a statute or executive order. Defs.' Br. at 64-67. While constitutional considerations should inform the proper construction of § 58-1-106, and the deployment is inconsistent with Article III, § 5, Plaintiffs have challenged a specific action (namely, the deployment), not the constitutionality of a statute or executive order.

CONCLUSION

The Court should affirm the Chancery Court's rulings on questions I-III. If it chooses to reach question IV, it should conclude that the deployment violates the Tennessee Constitution. And it should answer question V in the negative.

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Dated: February 4, 2026 Respectfully Submitted,

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RULE 27(e) COMPENDIUM

U.S. Const. art. I, § 8, cls. 15-16:

[The Congress shall have Power ….]

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

U.S. Const. art. I, § 10, cl. 3:

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Tenn. Const. art. II, § 5 (1796):

He shall be Commander in Chief of the Army and Navy of this State and of the Militia, except when they shall be called into the Service of the United States.

Tenn. Const. art. XI, § 24 (1796):

That the sure and certain defence of a free people is a well regulated Militia and as standing Armies in time of peace are dangerous to freedom, they ought to be avoided, as far as the circumstances and safety of the Community will admit: and that in all cases the military shall be in strict Subordination to the civil authority.

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Tenn. Const. art. I, § 2 (1870):

That government being instituted for the common benefit, the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

Tenn. Const. art. I, § 24 (1870):

That the sure and certain defense of a free people, is a well regulated militia; and, as standing armies in time of peace are dangerous to freedom, they ought to be avoided as far as the circumstances and safety of the community will admit; and that in all cases the military shall be kept in strict subordination to the civil authority.

Tenn. Const. art. III, § 5 (1870):

He shall be commander-in-chief of the Army and Navy of this state, and of the Militia, except when they shall be called into the service of the United States; But 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. VIII, § 1 (1870):

All militia officers shall be elected by persons subject to military duty, within the bounds of their several companies, battalions, regiments, brigades and divisions, under such rules and regulations as the Legislature may from time to time direct and establish.

Tenn. Code Ann. § 1-3-121:

Legality or constitutionality of government action; cause of action for declaratory or injunctive relief; damages

Notwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or

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constitutionality of a governmental action. A cause of action shall not exist under this chapter to seek damages.

Tenn. Code Ann. § 20-18-101:

Three-judge panel to be convened in certain civil actions; procedure

(a) (1) A civil action in which the complaint meets each of the following criteria must be heard and determined by a three-judge panel pursuant to this chapter:

(A) Challenges the constitutionality of:

(i) A state statute, including a statute that apportions or redistricts state legislative or congressional districts;

(ii) An executive order; or

(iii) An administrative rule or regulation;

(B) Includes a claim for declaratory judgment or injunctive relief; and

(C) Is brought against the state, a state department or agency, or a state official acting in their official capacity.

(2) A civil action in which it is alleged that a proposed charter amendment ordinance that is to be submitted to qualified voters at an election is in violation of the Constitution or state law must be heard and determined by a three-judge panel pursuant to this chapter.

(b) (1) When an action described in subsection (a) is filed, the person or entity filing the action shall provide notice of the complaint to the presiding judge of the judicial district, who shall notify the supreme court. The supreme court shall select

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two (2) trial court judges of courts of record to sit with the judge to whom the civil action was originally assigned as a three-judge panel to hear and decide the civil action.

(2) To ensure that members of the three-judge panel are drawn from different regions of the state, the supreme court shall select one (1) judge from each grand division of the state other than the grand division in which the civil action was originally filed.

(3) The supreme court shall designate one (1) member of the panel to serve as the chief judge.

(4) Should any member of the three-judge panel be disqualified or otherwise unable to serve on the panel, the supreme court shall appoint as a replacement another trial court judge from the same grand division as the judge being replaced, who shall serve by interchange, as provided in Rules 10B and 11 of the Tennessee Supreme Court Rules.

(5) In the event of a disagreement among the three (3) judges comprising the panel, the majority prevails.

(6) The rules promulgated by the supreme court shall govern the practice and procedure of the three-judge panel including what procedural matters may be decided solely by the chief judge.

(c) The three-judge panel shall sit in the supreme court building in the grand division in which the civil action was filed, unless a location is otherwise designated by the supreme court.

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Tenn. Code Ann. § 58-1-104:

Divisions

(a) The military forces of the state, in conformity with the Constitution of Tennessee, shall be divided into three (3) parts, as follows: the army, the navy and the militia.

(b) The army shall be composed of an army national guard and an air national guard, which forces, together with an inactive national guard, when such is authorized by the laws of the United States and regulations issued pursuant thereto, shall comprise the Tennessee national guard; and the Tennessee state guard, whenever such a state force shall be duly organized, and its reserve.

(c) The navy shall consist of such naval or sea forces as may be duly organized.

(d) The militia shall consist of all able-bodied male citizens who are residents of this state and between eighteen (18) and forty-five (45) years of age and who are not members of the army or navy as hereinabove defined, and who may not otherwise be exempted by the laws of this state or the United States.

Tenn. Code Ann. § 58-1-106:

Active duty

(a) The governor shall have the power, 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, or other grave emergency, to order into the active service of the state, for such period, to such extent and in such manner as the governor may deem necessary, all or any part of the national guard or the Tennessee state guard, but, in accordance with the constitution, may not call the militia 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.

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(b) Whenever members of the military forces are called into active service of the state, they shall serve for such period as the governor may direct, not to exceed the duration of the emergency for which they may be called. The compensation of all members while on duty or assembled pursuant to subsection (a) shall be paid in the manner and in the amounts prescribed by § 58-1-109 for the national guard and § 58-1-411 for the Tennessee state guard.

(c) As an alternative and cumulative procedure, upon the request of the governing body of a city or county, and its representation, by resolution duly and regularly adopted, 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, the governor may order into the active service of the state, for such period, to such extent and in such manner as the governor may deem necessary, all, or any part of, the national guard, or the Tennessee state guard. When the national guard or state guard is called pursuant to resolutions so adopted, the compensation of all members while on duty, shall be paid in the manner and in the amounts set forth in § 58-1-109 for the national guard and § 58-1-411 for the Tennessee state guard, and the county and/or city shall reimburse the military department for all such compensation and for all expenses incurred in connection with such duty. Compensation and expenses shall be paid forthwith upon demand of the adjutant general and upon default of payment, all state funds payable to such defaulting city or county shall be withheld until such time as the full amount has been collected and applied to the satisfaction of the indebtedness. Assistance authorized by, and requested from, competent authority provided only by the Tennessee state guard at the request of a city, county, or other local authority pursuant to this section by volunteers without compensation, shall not require the county or city to reimburse the military department; provided, however, that any travel expenses resulting from the authorized assistance of Tennessee state guard members from outside the requesting city or county shall require reimbursement from the city, county or local authority to the military department, when the department incurs an expense as a

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result of the travel for costs directly paid by the department or for travel claims filed by Tennessee state guard members.

(d) Duty performed pursuant to this section shall not count against the leaves provided for in § 8-33-109 and title 8, chapter 50, part 8, nor against any other leave provided by law, regulation, policy or practice of the state or any county, municipality, or other arm, agency or political subdivision of the state. Compensation as provided in § 58-1-109, for such duty shall be in addition to the salary or compensation otherwise payable to any member who is an officer or employee of the state or any political subdivision thereof.

Tenn. Code Ann. § 58-1-109:

Active duty; compensation and salaries

(a) Members of the national guard when assigned to state military duty by the commander in chief, or when ordered to active state service pursuant to § 58-1-106, shall be paid from the funds appropriated, or otherwise legally made available to the military department, at the same rate of pay and allowances as are at the time provided for the same grade and ratings in active federal service, except that lesser rates of pay may be prescribed by the adjutant general for personnel on full-time active duty; provided, however, that no member shall receive less than fifty dollars ($50.00) per day. No member shall receive less than fifty-five dollars ($55.00) per day when called to active duty in case of grave emergency under § 58-1-106.

(b) The compensation for members of the national guard under this section must accrue upon being ordered to active state service. The payment of compensation to the members must use this state's established weekly pay cycle as needed to effectuate compensation.

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5 U.S.C. § 551(2):

Definitions

"[P]erson includes an individual, partnership, corporation, association, or public or private organization other than an agency[.]

5 U.S.C. § 702:

Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

10 U.S.C. § 246:

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

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(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

18 U.S.C. § 1385:

Use of Army, Navy, Marine Corps, Air Force, and Space Force as posse comitatus

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army, the Navy, the Marine Corps, the Air Force, or the Space Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

32 U.S.C. 109:

Maintenance of other troops

(a) In time of peace, a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may maintain no troops other than those of its National Guard and defense forces authorized by subsection (c).

(b) Nothing in this title limits the right of a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands to use its National Guard or its defense forces authorized by subsection (c) within its borders in time of peace, or prevents it from organizing and maintaining police or constabulary.

(c) In addition to its National Guard, if any, a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may, as provided by its laws, organize and

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maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces.

(d) A member of a defense force established under subsection (c) is not, because of that membership, exempt from service in the armed forces, nor is he entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States.

(e) A person may not become a member of a defense force established under subsection (c) if he is a member of a reserve component of the armed forces.

32 U.S.C. § 502:

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

However, no member of such unit who has served on active duty for one year or longer shall be required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered

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formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 90 consecutive days.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

(1) the number of members present equals or exceeds the minimum number prescribed by the President;

(2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and

(3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill.

(f) (1) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

(A) without his consent, but with the pay and allowances provided by law; or

(B) with his consent, either with or without pay and allowances;

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be ordered to perform training or other duty in addition to that prescribed under subsection (a).

(2) The training or duty ordered to be performed under paragraph (1) may include the following:

(A) Support of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense.

(B) Support of training operations and training missions assigned in whole or in part to the National Guard by the Secretary concerned, but only to the extent that such training missions and training operations—

(i) are performed in the United States or the Commonwealth of Puerto Rico or possessions of the United States; and

(ii) are only to instruct active duty military, foreign military (under the same authorities and restrictions applicable to active duty troops), Department of Defense contractor personnel, or Department of Defense civilian employees.

(3) Duty without pay shall be considered for all purposes as if it were duty with pay.

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CERTIFICATE OF COMPLIANCE

This Brief complies with the requirements of Tennessee Supreme Court Rule 46 § 3.02 because it is typed in fourteen-point Century Schoolbook font and consists, according to the word-count utility on the software on which it was produced, and exclusive of the elements exempted by Section 3.02(a)(1), 13,522 words.

I further certify that at least one attorney for each Party is a registered user of the e-filing system and will automatically receive electronic service of this Brief under Section 4.01 of Rule 46, which suffices to effect service under Tenn. R. App. P. 20(d).

/s/ *William J. Harbison II*
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2026, a copy of the foregoing was filed via the Court's electronic filing system, which is anticipated to deliver a copy via electronic means to the following:

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