IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

ROBIN M. MCNABB,	)	
	)	No. E2022-01577-SC-R11-CV
Plaintiff/Appellant,	)	
	)	
v.	)	
	)	
GREGORY H. HARRISON,	)	
	)	
Defendant/Appellee.	)	

Appeal from Loudon County Chancery Court No. 12997

BRIEF OF APPELLANT, ROBIN M. MCNABB

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Citations to the Record and Transcripts shall be as labeled by the Court Clerk:

- Technical Record (R.), which consists of only one volume, shall be abbreviated with Volume I (I) and page number: (I R. 12)

- Transcripts (Tr.) shall be abbreviated with the volume number assigned to it as part of the technical record by the Court Clerk (II or III) and page number: (I Tr. 36). II Tr. is the transcript from the September 12, 2022 hearing/trial. III Tr. is the transcript from the trial court's subsequent hearing on November 2, 2022.

TABLE OF AUTHORITIES

Cases

Tennessee Constitution

Statutes

Secondary Authority

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QUESTIONS PRESENTED FOR REVIEW

The questions presented on appeal both deal with the qualifications for a municipal judge subject to the requirements of Article VI, § 4 of the Tennessee Constitution. Tenn. Const. Art. VI, § 4.

ISSUE ONE: Whether such a judge satisfies the requirement of being "elected by the qualified voters of the district or circuit to which they are to be assigned" if only the residents of the municipality (not the entire county or multi-county judicial district) are permitted to vote in the judicial election.

ISSUE TWO: Whether such a judge satisfies the requirement of living within the "circuit or district" by residing in:

(i) the current multi-county judicial district in which the city is located;

(ii) the county in which the municipality lies; or

(iii) the geographic limits of the municipality itself.

STATEMENT OF THE CASE

The Lenoir City Municipal Election for municipal judge occurred on August 4, 2022 (R. 4). On August 23, 2022, the Appellant, the incumbent municipal judge, filed this election contest action against Appellee Gregory H. Harrison, who was declared the election winner, and sought injunctive relief to prevent Appellee from taking office on September 1 (R. 5). Injunctive relief was denied by order entered September 1, 2022, by Loudon County Circuit Judge Mike Pemberton in place of outgoing Chancellor, Frank Williams (R. 20). Loudon County Chancellor Tom McFarland presided over the remainder of the case after taking office on September 1. The matter proceeded to trial on the record and legal arguments of counsel on September 12, with the trial court finding in favor of Mr. Harrison. The trial court held another hearing on November 2, 2022, to resolve differences between the parties' proposed orders. The Court entered an order regarding the September 12

trial during the November 2 hearing, finding in favor of defendant (R. 24). (Both transcripts are part of the appellate record.)

Appellant timely filed a Notice of Appeal on October 10, 2022. The Court of Appeals affirmed the ruling of the trial court, but on different grounds. No petition for rehearing was filed.

Appellant timely filed a Rule 11 application to the Tennessee Supreme Court, which was granted by Order entered April 11, 2024.

STATEMENT OF FACTS

In 2016, Plaintiff/Appellant, Robin M. McNabb, was elected Municipal Court judge for the City of Lenoir City, Tennessee, to fulfill an unexpired term (R. 3). At all times relevant to this action, Plaintiff has resided within the City limits of Lenoir City, Tennessee (a "City Resident") (R. 3). In all previous elections, the Lenoir City judge was a City Resident, and the City Council considered City residency as a requirement for the position. In 2020, an Attorney General opinion conjectured that a municipal judge need only reside in the judicial district of which the municipality is a part, rather than being a resident of the municipality itself. Tennessee Atty. Gen. Op. 20-16, 2020 Tenn. AG LEXIS 40 (R. 16). After that, the Lenoir City Council changed its ordinance to allow non-City residents in the judicial district to serve as City judge, thus laying the groundwork for Defendant's candidacy (R. 9).

For the 2022 municipal judge election, Defendant/Appellee, Gregory H. Harrison, Ms. McNabb, and Amanda Smith ran for the office.

Mr. Harrison resides at 3040 Calloway Circle, Lenoir City, Tennessee 37772, which is not located within the City limits of Lenoir City, Tennessee, despite it having a "Lenoir City" postal designation (R. 22).

No one challenged the qualifications of Mr. Harrison or any other candidate to run for judge prior to the August 4, 2022, election. (R. 10).

In the August 4, 2022, election, Mr. Harrison won the election for City Judge, defeating Ms. McNabb (second highest vote getter) and Ms. Smith (who had the fewest votes) (R. 23). The Loudon County Election Commission certified those election results on August 18, 2022. (R. 23).

Within five days after certification of the election results, Ms. McNabb timely filed this action to challenge Mr. Harrison's qualifications for office based on residency. (R. 5).

The facts are not in dispute and were stipulated to the trial court. (R. 20). The parties also agreed that the controlling law for this issue is Article VI, § 4 of the Tennessee Constitution (R. 21; II Tr. 14-15), which sets forth requirements that must be satisfied by Inferior Court judges.

> Section 4. The Judges of the Circuit and Chancery Courts, and of other inferior Courts, shall be elected by the qualified voters of the district or circuit to which they are to be assigned. Every Judge of such Courts shall be thirty years of age, and shall before his election, have been a resident of the State for five years, and of the circuit or district one year.

Tenn. Const. Art. VI, § 4. Judges of popularly elected city courts (i.e., elected by the people instead of being appointed by the city's governing authority) and city courts exercising concurrent criminal General Sessions Court jurisdiction are both required to comply with Article VI, § 4 in the election of municipal court judges. Tenn. Code Ann. § 16-18-202 (holding that popularly elected city judges must meet the qualifications in Article VI, § 4); *Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992), (holding that municipal court judges exercising concurrent jurisdiction with a state general sessions court must satisfy the requirements of Article VI, Section 4).

The trial court ruled in favor of Mr. Harrison, finding that "district or circuit"

as used in Article VI, § 4 should be interpreted to mean the current Ninth Judicial District, one of thirty-two Judicial Districts created by the General Assembly through Tenn. Code Ann. § 16-2-506. The original statute was enacted in 1984 and has been amended numerous times since then. *Id*. The Court of Appeals concluded that Mr. Harrison satisfied the requirements of Article VI, § 4 because he lived in the Ninth Judicial District – which includes Loudon, Roane, Meigs, and Morgan counties and Lenoir City is located within Loudon County. (R. 22)

The trial court did not address or attempt to reconcile the requirement in Article VI, § 4 that the judge "be elected by the qualified voters of the district or circuit to which they are to be assigned." Article VI, § 4. Applying the trial court's interpretation of "circuit or district" would require that the City judge position be elected by all of the residents of Loudon County, not just the residents of Lenoir City, as Ms. McNabb pointed out in oral argument to the trial court. (II Tr. 20, 24, 36) However, only Lenoir City residents vote in the Lenoir City election, as required by state law. Tenn. Code Ann. § 16-18-201.

The Court of Appeals affirmed the trial court's dismissal of the election contest, but on different grounds. *McNabb v. Harrison*, E-2022-01577-COA-R3-CV, 2023 Tenn. App. LEXIS 441 (Tenn. Ct. App. E.S., October 25, 2023). It held that because the Lenoir City Municipal Judge exercises concurrent jurisdiction with the Loudon County General Sessions Court, the city court is "assigned" to the entire county. Following this reasoning, the Court of Appeals concluded that Article VI, § 4 is satisfied if the city judge lives within the county where the city is located. *Id.* at *23-24. Because Mr. Harrison had resided in Loudon County for more than a year before the election, the Court of Appeals held that Mr. Harrison met the Constitutional requirements for the office of Lenoir City municipal judge. *Id*.

As with the trial court, the appellate court also failed to address the voting requirement in Article VI, § 4.

Ms. McNabb now asks the Tennessee Supreme Court to clarify the meaning and application of Article VI, § 4 of the Constitution to popularly elected municipal judges, including the Lenoir City Municipal Judge.

STANDARD OF REVIEW

Questions of constitutional interpretation are questions of law. As such, they are reviewed *de novo*, with no presumption of correctness. *State v. Feaster*, 466 S.W.3d 80, 83 (Tenn. 2015); see also *Shelby Cty. Health Care Corp. v. Baumgartner*, No. W2008-01771-COA-R3-CV, 2011 Tenn. App. LEXIS 24 (Tenn. Ct. App. W.S., Jan. 26, 2011).

In this case, there were no disputed facts, so the trial court was not required to make any findings of fact that would be subject to review on appeal.

ARGUMENT

Ms. McNabb assigns error to the interpretations of "district or circuit" by both the trial court (equating the term to the Ninth Judicial District) and the Court of Appeals (finding the phrase synonymous with Loudon County).

Although the Lenoir City Council changed its city ordinance to allow non-residents to become city judge, the actual qualifications for the Lenoir City judge are found in Article VI, § 4 of the Tennessee Constitution (hereinafter the "Judge Clause"). Admittedly, there are state statutes dealing with judicial qualifications, but these are void to the extent they conflict with the Constitution. The same is true of City Council's attempt to relax the judicial requirements by ordinance to allow a non-resident to become judge. The parties, trial court, and Court of Appeals all agree that this Constitutional provision controls the outcome of this election contest.

The Judge Clause states:

> Section 4. The Judges of the Circuit and Chancery Courts,

> and of other inferior Courts, shall be elected by the qualified voters of the district or circuit to which they are to be assigned. Every Judge of such Courts shall be thirty years of age, and shall before his election, have been a resident of the State for five years, and of the circuit or district one year.

Tennessee Constitution, Article VI, § 4. The questions facing this Court are whether a city judge position subject to the Judge Clause and elected by qualified voters in the city can be filled by a person who is not a resident of the city.

I. Context of The Judge Clause

a. Constitution of 1796

The Judge Clause was not part of the original Tennessee Constitution of 1796. At that time, disputes and petty offenses were primarily handled by local justices of the peace. These are provided for in the 1796 Constitution in Article V, § 12th: "There shall be Justices of the Peace appointed for each County, not exceeding two for each Captains [i.e. Captain's] Company, except for the Company which includes the County Town which shall not exceed three, who shall hold their offices during good behavior." Tenn. Const. of 1796, Art. V, § 12th. In that Constitution, Article V gave state lawmakers wide latitude in establishing courts for law and equity, referred to as Superior and Inferior Courts. By its inclusion in the judicial article, justices of the peace were clearly regarded as judicial officers. Counties were divided into "districts" of approximately equal populations. Each "district" or subset of a county was allocated two justices of the peace, except for districts that contained a "County Town," which were allowed one extra justice of the peace. *Id*. The 1796 Constitution did not refer to a "city" or "municipality" at all. Tenn. Const. of 1796.

b. Constitution of 1834

The revision of the Constitution in 1834 created three distinct divisions of

government: executive, judicial, and legislative. Tenn. Const. of 1834, Art. 2, § 1 The judicial provisions were moved from Article V to Article 6.

The Legislature was empowered to grant a "charters of incorporation" for towns under the 1834 Constitution. Tenn. Const. of 1834, Art. 11, § 7. Both counties and "incorporated towns" were also vested with the power to tax their respective residents. Tenn. Const. of 1834, Art. 2, § 29

The creation of the judicial branch provided for a more orderly and complex judicial system, including a state Supreme Court with appellate jurisdiction. Owing to the formation of new incorporated towns, the Legislature also could also choose to authorize "Corporation Courts" if they deemed it necessary to do so. Tenn. Const. of 1834, Art. 6, § 1.

Marking another significant change in judicial process, the Constitution of 1834 required *election* of the justices of the peace and constables. The justices and constables were assigned to "districts," which were geographical subdivisions of counties (to be designated by the General Assembly). Tenn. Const. of 1834, Art. 6, § 15. Though justices of the peace had county-wide jurisdiction, each justice of the peace had to be elected by the qualified voters of the district in which he resided. And if the justice of the peace moved out of the district in which he was elected, he forfeited his seat.

For the first time, residents selected their local judicial officers:

> "Sec. 15. The different counties in this State shall be laid off, as the general Assembly may direct, into districts of convenient size, so that the whole number in each county shall not be more than twenty five, or four for every one hundred square miles. There shall be two Justices of the peace and one Constable elected in each district, by the qualified voters therein, except districts including county towns which shall elect three Justices and two constables. The jurisdiction of said officers shall be co-extensive with the County. Justices of the peace shall be elected for the

> term of six, and constables for the term of two years. Upon the removal of either of said officers from the district in which he was elected, his office shall become vacant from the time of such removal. …

Tenn. Const. of 1834, Art. 6, § 15.

The Constitution of 1834 also refers to "district" as a division of a county in provisions relating to the qualifications for a resident to vote:

> Section 1. Every male person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein he may offer his vote for six months, next preceding the day of election, shall be entitled to vote for members of the General Assembly and other civil officers for the county or district in which he resides.

Tenn. Const. of 1834, Art. 4, § 1. Thus, at this time, the General Assembly contemplated elections for local offices, and only those who had lived in the area ("county or district") where the officer was to preside were allowed to vote for those offices. *Id*.

The importance of the division of counties into districts and the requirement that officers reside in the geographical subdivision whose voters elected him was maintained in the 1870 Constitution, even though all constables and justices of the peace had geographical jurisdiction over the entire county, not just their respective districts in the county. Tenn. Const. of 1870, Art. VI, § 15.

c. Constitution of 1870

The Judge Clause in its present form first appeared in the next revision of the Tennessee Constitution, which was adopted in 1870:

> Section 4. The Judges of the Circuit and Chancery Courts, and of other inferior Courts, shall be elected by the

> qualified voters of the district or circuit to which they are to be assigned. Every Judge of such Courts shall be thirty years of age, and shall before his election, have been a resident of the State for five years, and of the circuit or district one year.

Tenn. Const. of 1870, Article VI, § 4. This provision remains part of the Constitution today.

Article 6, § 15 of the 1834 Constitution also carried forward into the Constitution of 1870 (changing the numerical Article "6" to the Roman Numeral Article "VI").

d. Tennessee Constitutional Amendments of 1978

Section 15 of Article VI, which prescribed the method for dividing counties into districts to elect justices of the peace and constables, remained a part of the Tennessee Constitution until 1978. *Perry v. Carter Cty*. No. 2:17-CV-213-DCP, 2019 U.S. Dist. LEXIS 125499, at *18 n.5 (E.D. Tenn. July 29, 2019); Tenn. Atty. Gen. Op. 91-70, 1991 Tenn. AG LEXIS 80 (opining that a "constable" was a county officer instead of a constitutional officer after the deletion of Article 6, § 15 by the 1978 amendments to the Constitution).

Perhaps the omission of the former Article 6, Section 15 from the current version of the Tennessee Constitution might be to blame for the misinterpretation of "district or circuit" in the Judge Clause. Adding to that confusion is the General Assembly's choice to call the current multi-county court groupings "Judicial Districts" instead of an alternate term that would be devoid of a previous (and inconsistent) Constitutional meaning.

II. Rules of Constitutional Interpretation

The parties and the Court of Appeals agree that the qualifications of a city

judge who is popularly elected (regardless of whether the judge holds concurrent general sessions criminal jurisdiction) is determined by Article VI, § 4 of the Tennessee Constitution. Principles of Constitutional interpretation have been developed by not only the highest court of this state, but also by the highest court of this country.

In a 2022 Second Amendment case, the United States Supreme Court explained that interpreting a constitutional provision is dependent on the meaning of the text at the time it was enacted, not subsequent changes to the meaning of the terms that were in the original text:

> "[W]hen it comes to interpreting the Constitution, not all history is created equal. "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." … Historical evidence that long predates or postdates [that] time may not illuminate the scope of the right."

N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2119 (2022) (internal citations omitted).

In a 2008 case, the U.S. Supreme Court reminded readers to view the Constitution through the lens of the time period in which it was written:

> In interpreting this text, we are guided by the principle that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." Normal meaning … excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

District of Columbia v. Heller, 554 U.S. 570, 576-77 (2008) (internal citations omitted). The meaning of "district or circuit" that is being advocated for by Mr. Harrison was not even in existence at the time the Judge Clause was enacted in 1870; thus, it could not be the correct meaning now.

Consistent with the U.S. Supreme Court, Tennessee courts have emphasized the importance of interpreting Constitutional language in the light of the circumstances existing when it was enacted. *See, e.g., Grainger County v. State,* 80 S.W. 750 (Tenn. 1903) ("[I]n construing the constitution, the state of the community at the time it was created must be considered."). Compiling the holdings from several cases, the Court of Appeals summarized as follows:

> Constitutional adjudication should not be shaped by judicial ingenuity or by individual judges' personal preferences or agendas. In order to avoid arbitrariness, judges must approach constitutional questions in a principled way that takes into account the text of the constitution and the history, structure, and underlying values in the entire document. Judges should also provide a full explanation of their resolution of constitutional issues.
>
> The analysis of any constitutional issue should begin with the text of the constitution itself. It is, after all, the constitution that the courts are expounding, not just the earlier decisions interpreting the constitution. The meaning and significance of the text can be illuminated by considering the intentions of the drafters, the practices and usages in existence when the constitution was ratified, the common law, and the contemporary construction of the text by the legislature and the courts.

City of White House v. Whitley, No. 01A01-9612-CH-00571, 1997 Tenn. App. LEXIS 428, at *29-30 (Tenn. Ct. App., June 18, 1997) (internal citations omitted).

III. Judicial Interpretations of Article VI, § 4

In *Grainger County v. State,* 80 S.W. 750, 752 (Tenn. 1903), the Tennessee Supreme Court reviewed the progression of divisions and circuits as they existed historically at the times of the various versions of the Constitution, distinguishing

between districts within counties and the larger divisions or circuits that included one or multiple counties, both in the 1800s and later:

> Then, as now, the counties were already divided into civil districts, in which were to be elected justices of the peace and constables. The several counties were at that time also grouped into judicial circuits and chancery divisions; each circuit being presided over by a circuit judge, and served by a district attorney for the State, and each chancery division being presided over by a chancellor. These were also State officers, but assigned to limited areas--their respective circuits and divisions--and these areas were subject to change from time to time by the legislature.

In *Bailey v. Greer,* 468 S.W.2d 327 (Tenn. Ct. App. 1971), the Tennessee Court of Appeals was called upon to review a trial court's decision about whether two justices of the peace had vacated their seats by moving outside of the districts they were elected to represent. For each of them, the move was from one civil district in the county to another district in the same county. The Court found that under Tenn. Const. Article VI, Section 15, the justices had removed themselves from the districts that had elected them and, therefore, their votes could not be counted on a controversial vote of the county court. *Id*. at 335.

In 1973, the Court of Appeals struck down a redistricting plan in Washington County that provided for some of the county's justices of the peace to be elected by the voters in their civil districts (a political subdivision of the county) and others to be elected at large by the entire county (rather than per district). *State ex rel. Jones v. Washington County,* 514 S.W.2d 51 (Tenn. Ct. App. 1973). The Court made it clear that reapportionment of the civil districts to comply with the selection process for justices of the peace by voters within their respective districts was necessary to survive a due process challenge. *Id.*

As recently as 2014, the Tennessee Supreme Court revisited the meaning of the "circuit or district" language in Article VI, § 4 of the Constitution. *Hooker v.*

Haslam, 437 S.W.3d 409, 433-35 (Tenn. 2014). The issue in that case was whether requiring a certain number of Supreme Court justices to reside in each Grand Division of the state but be elected statewide violated the Judge Clause. In distinguishing the Supreme Court assignments to Grand Divisions from the circuit/district residency requirement in the Judge Clause, the Court stated:

> As used in the Constitution, a "district" is a political subdivision, usually a subdivision of a county, as determined by the legislature. See, e.g., Art. VI, § 15 (repealed in 1978, but previously providing that the legislature was to divide Tennessee's counties into "districts of convenient size" for the purpose of electing justices of the peace and constables); and Art. VII, § 1 (providing for the division of counties into districts from which legislators are to be elected and providing for the reapportionment of the districts from time to time). While a "district" usually connotes a subunit of a county and may be subject to reconfiguration (see, e.g., Art. VII, § 1, requiring that districts be reapportioned at least every ten years), a "grand division" refers to one of three permanently defined, large umbrella units, each composed of many counties — and, accordingly, of many districts. Tenn. Code Ann. § 4-1-201 through § 4-1-204. Thus, a grand division is not — and cannot be — a district within the meaning of article VI, section 4.

Hooker v. Haslam, 437 S.W.3d 409.

The General Assembly eventually codified the Article VI, § 4 Constitutional residency requirements for circuit court judges, criminal court judges, and chancellors of chancery courts:

> Each judge and chancellor of a circuit, criminal or chancery court is required to reside in the judicial district or division for which the judge and chancellor is elected, and a removal from the judicial district or division creates a vacancy in the office.

Tenn. Code Ann. § 17-1-102. This law also mirrors the former Article VI, § 15 that

decreed that any justice of the peace or constable who stopped residing in the county district (subdivision) from which he was elected vacated that office.

Unfortunately, because not all municipal court judges are subject to the Judge Clause (only popularly elected municipal judges), a similar statute for municipal judges does not exist.

IV. "District" as a Subdivision of a County

A representative government is fundamental to our democracy. Two of the requirements of such representation is that voters who are affected by an elected official's actions have the right to elect the person who will hold that office, and that the elected official must be a resident of the geographic area that he or she will serve.

County commissioners are elected by districts within the county under a statute that was derived from the Constitution of 1834, Art. 6, § 15): [1] "The different counties shall be laid off, as the general assembly may direct, into districts of convenient size, so that the whole number in each county shall not be more than twenty-five (25), or four (4) for every one hundred square miles (100 sq. mi.)." Tenn. Code Ann. § 5-1-108.

Members of city and county city boards and commissions must "be elected from districts as established by the appropriate county or municipality, which districts shall: **(A)** Assure representation of substantially equal populations and guarantee the principle of one man/one vote in compliance with the Constitution of the United States; …" Tenn. Code Ann. § 6-53-110.

This Court explained the importance of dividing a county into smaller districts to provide for greater representation of its residents:

> We may premise, that each county in the State is laid off into "districts of convenient size." ([1834] Con., Art. vi., § 15,) in which places are designated for holding all popular elections; 1835, ch. 1, § 4. These districts, into which the

> whole State is divided, are justly considered a very important feature in our system and policy. The people being thus divided into small communities, and having in each an organization of their own, are the better able to carry out their policy of self-government, as regards both its smallest and greatest interests. The civil district system is of special value in a popular point of view, as it enables every citizen, freely and conveniently, to exercise his elective franchise, as it were at home in his own little community.

Marshall v. Kerns, 32 Tenn. 68, 70 (Tenn. 1852).

In 1973, the Court of Appeals voided a redistricting plan for districts in Washington County because the plan did not abide by the Constitutional requirements for election of justices of the peace from districts in the county (rather than at large) and also failed to draw the districts so as to be approximately equal in population. *State ex rel. Jones v. Wash. Cty.*, 514 S.W.2d 51, 55 (Tenn. Ct. App. 1973). In holding the redistricting unconstitutional, the Court also invoked the Due Process Clause of the U.S. Constitution (U.S. Const. 14th Amendment), stating that the district maps and election of justices of the peace must be carried out "as if the one man, one vote principle were also written into our Constitution and/or Code sections because it is now the law of the land." *Id*.

Applying these concepts to the Lenoir City judge position, a judge elected by Lenoir City residents and deciding cases arising from offenses committed within the Lenoir City limits must be a Lenoir City resident to satisfy the requirements of Article VI, § 4 of the Tennessee Constitution.

V. Lenoir City Judge Not "Assigned" to Entire County

The Court of Appeals applied a confusing, illogical analysis to find that a city judge with concurrent General Sessions jurisdiction has jurisdiction over the entire

county and is "assigned" to the entire county. From there, the Court concluded that Article VI, § 4 would be satisfied if a city judge lived within the county but not in the city limits.

The Court of Appeals overruled the trial court's ruling that a Lenoir City judge could reside anywhere in the Ninth Judicial District. Instead, it reasoned that the Lenoir City judge could live anywhere in Loudon County but not elsewhere in the Ninth Judicial District:

> In the case at bar, the Loudon County General Sessions Court has jurisdiction over Loudon County. *See* Tenn. Code Ann. § 16-15-503 (2021) ("The jurisdiction of general sessions courts, when not otherwise provided, is geographically coextensive with the limits of their respective counties."). The Loudon County General Sessions Court does not have jurisdiction over the other three counties in the Ninth Judicial District. *Id.* Because the Lenoir City Municipal Judge exercises concurrent jurisdiction with the Loudon County General Sessions Court, his or her jurisdiction is coextensive with the geographic limits of Loudon County.
>
> We conclude that the "district or circuit to which [the Lenoir City Municipal Judge is] to be assigned" is Loudon County. *See* TENN. CONST. art. VI, § 4. Therefore, pursuant to article VI, § 4 of the Tennessee Constitution, the Lenoir City Municipal Judge must have been a resident of Loudon County for at least one year prior to election but is not required to have been a resident of the municipality of Lenoir City. Accordingly, we affirm the trial court's dismissal of Ms. McNabb's complaint contesting the election. However, we modify the trial court's order to state that Mr. Harrison complied with the residency requirement at issue because he had been a resident of Loudon County for at least one year prior to the election rather than because he had been a resident of the Ninth Judicial District for the prescribed time period.

McNabb v. Harrison, No. E2022-01577-COA-R3-CV, 2023 Tenn. App. LEXIS 441, at *22-23 (Tenn. Ct. App. Oct. 25, 2023).

This supposition is incorrect for a couple of reasons. First, when a city court holds concurrent jurisdiction with a county general sessions court, it does not mean that the city court can hear cases throughout the county. Rather, the city court can exercise the powers of the county court for offenses committed within the city limits. This is why some city courts, including Lenoir City, can hear misdemeanor criminal cases, while other city courts (that do not have concurrent general sessions jurisdiction) are limited to hearing violations of city ordinances and cannot send anyone to jail or assess fines of more than $50.00.

The General Assembly prescribed a city court's jurisdiction as follows:

> **(a)** … Notwithstanding any law to the contrary:
> **(1)** A municipal court possesses jurisdiction in and over cases:
> **(A)** For violation of the laws and ordinances of the municipality; or
> **(B)** Arising under the laws and ordinances of the municipality; and
>
> **(2)** A municipal court also possesses jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, if and only if the state criminal statute mirrored, duplicated or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars ($50.00).

Tenn. Code Ann. § 16-18-302. An exception exists for city courts who were exercising concurrent general sessions jurisdiction in their city limits prior to 2003 and have been doing so continuously since then. However, that exception does not authorize city courts to preside over offenses that did not occur within their city limits. *Id.*

Multiple statutes and cases support the proposition that judges do not possess the ability to act beyond the geographical boundaries of the geographical division to which they are assigned. As quoted by the Court of Appeals above, Tenn. Code Ann. § 16-15-503 limits the geographical jurisdiction of county sessions court to its county.

In *State v. Frazier,* 558 S.W.3d 145, 154-55 (Tenn. 2018) the Tennessee Supreme Court held that a Circuit judge was not authorized to issue search warrants for property outside of the court's geographic limits. Applying *Frazier*, the Court of Appeals held that the "geographical jurisdiction of a circuit court judge" is confined "to the judge's statutorily defined and assigned judicial district." The Court continued: "In the absence of interchange, appointment, designation, or other lawful ground, circuit court judges may neither 'exercise the duties of office in any other judicial district' nor exercise 'the jurisdiction of any trial court other than that to which the judge. . . was elected or appointed.' " *Alley ex rel. Estate of Alley v. Tenn.*, Nos. 85-05085, 85-05086, 85-05087, 2019 Tenn. Crim. LEXIS 1, *18-20 (Tenn. Crim. App. W.S., November 18, 2019 (with the Court paraphrasing *State v. Frazier*, 558 S.W.3d 145, 151 (Tenn. 2018)).

In addition, the statute defining magistrates states that a city judge can only perform the functions of a magistrate (to, for example, sign search warrants) within its own city limits, and a county executive can only perform magistrate duties within his or her county. Tenn. Code Ann. § 40-1-106;

Applying the constitutional provisions and case law above, it is clear that the "district or circuit" referred to in our state Constitution when applied to municipal judges is that of the municipality, not the current Judicial District regime codified by the General Assembly in the 1980s or the county in which the city is located.

It is illogical to think that a person could be cited to city court for a crime that allegedly occurred outside of the city limits, even if the city court has concurrent

general sessions jurisdiction. For example, if two people were caught fighting in Loudon County but outside the Lenoir City limits, they could not be charged for assault or any other criminal charge and have the case heard by the Lenoir City Court. The city's police department would be unable to arrest such individuals (except in limited circumstances) unless they were within one mile of the city limits. See Tenn. Code Ann. § 6-54-300 (describing the geographic limitations of municipal police officers).

In addition, the Lenoir City Charter provides that "[t]he City Court shall have concurrent jurisdiction with the General Sessions Court for disposition of state misdemeanors committed *within the corporate limits*, as provided by state law." Lenoir City Charter, Article VIII, § 3 (emphasis added) , appearing on the official Lenoir City government website at https://www.lenoircitytn.gov/wp-content/uploads/Lenoir-City-Charter.pdf, accessed May 13, 2024. Thus, the argument regarding the Lenoir City Judge being "assigned" to the entire county must fail for an additional reason, because the City Judge can only exercise criminal general sessions jurisdiction over offenses committed within the City limits.

The concurrent general sessions criminal jurisdiction of Lenoir City municipal court deals with the expanded subject matter of this city court (to be able to adjudicate criminal misdemeanor charges, which can also be heard by the Loudon County General Sessions Court) rather than geographic limitations (city court cannot hear cases where the alleged wrongdoing occurred outside the city limits). Because of this, the Court of Appeals' interpretation of Article VI, § 4 as allowing a city judge to live outside the city limits must fail. As a result, Mr. Harrison is not qualified to serve as Lenoir City judge.

VI. Lenoir City Court Subject to the Judge Clause Even Without Concurrent General Sessions Jurisdiction

The Judge Clause requires judges to be "elected by the qualified voters of the district or circuit to which they are to be assigned." Art. VI, § 4 of the Tennessee Constitution.

As discussed above, the Court of Appeals focused on the Lenoir City Municipal Court's concurrent criminal jurisdiction with the Loudon County General Sessions Court. *McNabb v. Harrison*, No. E2022-01577-COA-R3-CV, 2023 Tenn. App. LEXIS 441 at *23-24 (Tenn. Ct. App. Oct. 25, 2023).

However, the Court's analysis ignores Tenn. Code Ann. § 16-18-202 (enacted in 1993), which requires all popularly elected city judges to meet the requirements of Article VI, § 4, even if they do not exercise concurrent general sessions court criminal jurisdiction. Under Tenn. Code Ann. § 16-18-201, city judges may only be elected by the qualified voters of that city. If only qualified voters of the city can elect a city judge, then the city judge is "assigned" to that city, and the city judge must be a resident of the city to comply with Art. VI, § 4 of the Constitution.

VII. Attorney General Opinion 20-16 is Not Binding Precedent

Mr. Harrison relies on an attorney general opinion as the underpinning of his case. That Opinion states:

> The plain, ordinary, and inherent meaning of the words imposing a one-year residency requirement in article VI, section 4 is that a judge of an inferior court must be elected by the voters of the district or circuit over which that inferior court has territorial jurisdiction and that the judge must have been a resident of that same district or circuit for at least one year before being elected. Since municipal court judges exercising concurrent jurisdiction with an inferior court must meet all the requirements of article VI, section 4, a judge of a municipal court that exercises concurrent jurisdiction with a general sessions court must have been elected to office by the qualified voters of the "district or circuit" to which he or she is assigned and must

> have been a resident of that "district or circuit" for at least one year before being elected.
>
> The relevant district or circuit for such a municipal court judge would be the district or circuit in which the municipal court has jurisdiction.

Tenn. Atty. Gen. Op. 20-16 . The trial court adopted this reasoning in ruling for Mr. Harrison, finding that he met the requirements of Article VI, § 4 by residing in the Ninth Judicial District. (R. 22). The Court of Appeals concluded otherwise.

Regardless, Opinion 20-16 is not dispositive of this lawsuit:

> Although the opinions of the Attorney General are useful in advising parties as to a recommended course of action and to avoid litigation, they are not binding authority for legal conclusions, and courts are not required or obliged to follow them.

Wash. Cty. Bd. of Educ. v. MarketAmerica, Inc., 693 S.W.2d 344, 348 (Tenn. 1985). See also *State v. Frazier,* 558 S.W.3d 145, 154-55 (Tenn. 2018) (holding that as "the final arbiter of state law," the Supreme Court is not bound to follow opinions of the state attorney general or federal district courts); *State v. Blanchard,* 100 S.W.3d 226, 230 (Tenn. Crim. App. 2002) ("[O]pinions of the state attorney general are merely advisory and do not constitute legal authority binding on this Court.").

In *Hooker v. Thompson*, the Supreme Court addressed differing interpretations of portions of Article VI that applied to residency qualifications for Supreme Court justices and related state statutes. *State ex rel. Hooker v. Thompson*, 249 S.W.3d 331 (Tenn. 1996). In reaching its decision, the Court declared an Attorney General Opinion cited by one litigant as "clearly erroneous." *Id.* at 345.

In the case at bar, Mr. Harrison relied almost exclusively on Tennessee Attorney General Opinion 20-16 to support his assertion that a candidate for Lenoir City municipal judge was not required to be a City resident to satisfy the

requirements of Article VI, § 4. However, the Attorney General did not address the requirement in Article VI, § 4 that the judge be elected by the voters of the circuit or district to which the judge is assigned. *Id.* Tennessee law requires a popularly elected (such as the Lenoir City judge) to be elected by only the qualified voters of that city. Tenn. Code Ann. §16-18-201. So if "circuit or district" means "city" when applying Article VI, § 4 to popularly elected city judges, then the same meaning must apply when the phrase is used elsewhere in the Judge Clause -- that the judge live in the "district or circuit" – here, the "city" – for at least a year before the election. By holding otherwise, the Attorney General misinterpreted the Constitution, and the Court should decline to adopt Attorney General's erroneous analysis.

CONCLUSION

The apportionment of counties into smaller units -- "districts" -- rather than the current Judicial Districts, has been consistently applied over the past 100+ years and that system is still applied for the election of numerous offices at the state and local levels. The Judge Clause also provides for the election of certain judges by "circuit," which is consistent with a multi-county grouping such as the current Judicial Districts for chancellors, circuit court judges, and criminal court judges who serve all of the counties in a Judicial District and are elected by all of the qualified residents of that Judicial District. Courts have had no problem distinguishing between civil districts and the current system of Judicial Districts, even though public officials sometimes struggle with these independent concepts.

For the reasons set forth above, Plaintiff/Appellant, Robin M. McNabb, requests that the Supreme Court vacate the trial court's order in favor of Defendant/Appellee Gregory Harrison and hold that Mr. Harrison is not Constitutionally qualified to serve as Lenoir City Municipal Judge.

Respectfully submitted this 13th day of May, 2024.

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CERTIFICATION OF PAGE COUNT

In accordance with Rule 30(e) of the Tennessee Rules of Appellate Procedure, the word count of this pleading is 7,693 words, which is less than the 15,000-word limit for appellants' briefs.

/s/ Robin M. McNabb

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2024, a copy of the foregoing document was served via the Tennessee TrueFiling system and by e-mail, with a courtesy copy via U.S. mail the next day, to:

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