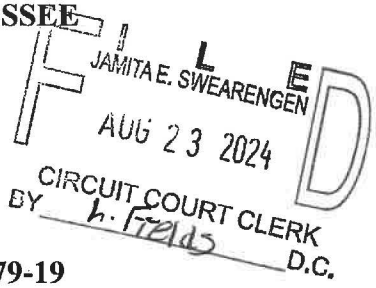
IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS



PAMELA MOSES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. CT-1579-19**
	)	**Judge Felicia Corbin-Johnson**
MARK GOINS, TRE HARGETT, and JONATHAN SKRMETTI, in their official capacities,	)	**Judge Suzanne Cook**
	)	**Judge Barry Tidwell**
	)	
Defendants.	)	

ORDER DENYING DEFENDANT ATTORNEY GENERAL SKRMETTI'S MOTION FOR JUDGMENT ON THE PLEADINGS

Before the Court[1] is the Motion of Defendant Jonathan Skrmetti, in his official capacity as the Attorney General and Reporter for the State of Tennessee, for Judgment on the Pleadings. The Attorney General seeks to be dismissed from this case, arguing that (1) he is protected from suit by the sovereign immunity of the State of Tennessee, and (2) Plaintiff Pamela Moses lacks standing to pursue her claims against him because she has failed to adequately allege that the Attorney General enforces the challenged statutes. Ms. Moses responds that (1) the State of Tennessee has waived its sovereign immunity for specific constitutional challenges, the criteria for which this case has met, and (2) she has standing to pursue her claims against the Attorney General because she has alleged he enforces the challenged statutes. We agree with Ms. Moses, holding that (1) sovereign immunity does not insulate the Attorney General from this action, and (2) Ms. Moses has established standing against the Attorney General at this early stage of the proceedings. Accordingly, the Attorney General's Motion is **DENIED**.

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[1] Presiding over this matter is a three-judge panel appointed by the Tennessee Supreme Court pursuant to Tenn. Code Ann. §§ 20-18-101 *et seq.* and Supreme Court Rule 54. *See* Order, No. ADM2021-00775, at *1 (Tenn. Aug. 12, 2022); Order, No. ADM2021-00775, at *1 (Tenn. Sep. 18, 2023).

BACKGROUND

The procedural posture of this case was set forth more than a year ago in this Court's Order on Defendants' Motion to Dismiss. *See* Order Grant'g in Part & Deny'g in Part Defs.' Mot. to Dismiss, at 2–3, July 19, 2023. [hereinafter "MTD Order"]. Aside from a Motion to Revise and to Permit Interlocutory Appeal and a number of discovery-related disputes, *see* Order, at 1, Dec. 28, 2023; Order on Defendants' Mot. to Quash, at 1, June 24, 2024; Order on OLS' Mot. to Quash, at 1, June 24, 2024; Order, at 1, June 27, 2024, little has changed since the entry of that Order. We recited Ms. Moses's allegations at great length. MTD Order, at 3–14. We will not repeat them here, but we highlight two allegations from the Second Amended Complaint of particular relevance:

> Plaintiff Pamela Moses is a United States citizen and resident of Shelby County, Tennessee. She seeks to exercise her right to vote in Tennessee pursuant to Tennessee Constitution Art. I, § 5, *but has been denied registration by Defendants*.

Second Am. Compl., ¶ 16, at 5, Oct. 13, 2022 (emphasis added).

> Defendant Jonathan Skrmetti is sued in his official capacity as the Attorney General and Reporter for the State of Tennessee. Attorney General Skrmetti has authority to issue opinions interpreting, but not changing the meaning of, Tennessee law.

Second Am. Compl., ¶ 19, at 5. The Attorney General filed the instant motion on June 6, 2024, seeking dismissal of the claims against him. Ms. Moses filed her response on July 5, 2024. The Attorney General filed his reply on July 10, 2024. Taking into consideration, the pleadings, the briefs of the parties, and the applicable caselaw, the Court is now ready to issue its decision.[2]

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[2] On July 23, 2024, Ms. Moses filed a Supplemental Response and transcript from a deposition of Defendant Coordinator of Elections Mark Goins, purportedly explaining the role of the Attorney General in enforcing the challenged statutes. The Attorney General filed a Response to the Supplemental Response on July 30, 2024. While under Rule 12.03, a motion for judgment on pleadings may convert to a motion for summary judgment and consider matters outside the pleadings, we find it inappropriate to do so at this time. *See* Tenn. R. Civ. P. 12.03 ("If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall

LEGAL STANDARD

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Tenn. R. Civ. P. 12.03. Like a motion to dismiss made under Rule 12.02(6), a motion for judgment on the pleadings made under Rule 12.03 tests the legal sufficiency of the complaint. *Harman v. Univ. of Tenn.*, 353 S.W.3d 734, 736 (Tenn. 2011). Indeed, "[t]he motions, being essentially the same, are reviewed under the same standards." *Id.* (citing *Timmins v. Lindsey*, 310 S.W.3d 834, 838 (Tenn. Ct. App. 2009); *Waldron v. Delffs*, 988 S.W.2d 182, 184 (Tenn. Ct. App. 1998)). Our aim is ultimately to determine "whether the facts, as set forth in the complaint, constitute a cause of action." *See id.* Thus, a plaintiff's allegations[3] are taken as true, *id.* (citing *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002)), and all reasonable inferences that a court may draw from those allegations are drawn in the plaintiff's favor, *Webb*, 346 S.W.3d at 426 (quoting *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31–32 (Tenn. 2007)). As such, the Court should grant a motion for judgment on the pleadings "only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Elvis Presley Enterprises, Inc. v. City of Memphis*, 620 S.W.3d 318, 323 (Tenn. 2021) (quoting *Crews*, 78 S.W.3d at 857); *Harman*, 353 S.W.3d at 736 (quoting *Webb*, 346 S.W.3d at 426).

ANALYSIS

The Attorney General asserts the allegations of the Second Amended Complaint do not entitle Ms. Moses to relief from him, as a defendant in his official capacity, because he is protected

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be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."). As such, we consider neither Ms. Moses's Supplemental Response nor the Attorney General's Response thereto in ruling upon the instant motion.

[3] "Legal arguments or legal conclusions couched as facts" are not factual allegations and therefore are not taken as true. *Estate of Haire v. Webster*, 570 S.W.3d 683, 690 (Tenn. 2019) (quoting *Moore-Pennoyer v. State*, 515 S.W.3d 271, 276 (Tenn. 2017)) (alterations and internal quotation marks omitted).

by the sovereign immunity of the State of Tennessee and because he plays no role in the enforcement of voter-restoration statutes. Therefore, goes the Attorney General's argument, we lack jurisdiction to hear Ms. Moses's claims, and she lacks standing to bring them. The Attorney General's arguments raise important issues implicating the limits on the judiciary's power. *See Estate of Brown*, 402 S.W.3d 193, 198 (Tenn. 2013) (citing *Word v. Metro Air Servs., Inc.*, 377 S.W.3d 671, 674 (Tenn. 2012); *Standard Sur. & Cas. Co. of N.Y. v. Sloan*, 173 S.W.2d 436, 440 (Tenn. 1943)) ("Subject matter jurisdiction involves the power of a court to adjudicate cases of the general class to which the proceedings in question belong."); *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 202–03 (Tenn. 2009) ("Despite the absence of express constitutional limitations on the exercise of their judicial power, Tennessee's courts have, since the earliest days of statehood, recognized and followed self-imposed rules to promote judicial restraint and to provide criteria for determining whether the courts should hear and decide a particular case."). We address each in turn.

I. Sovereign Immunity

"Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct." Tenn. Const. art. 1, § 17. The Tennessee Supreme Court has interpreted this clause as prohibiting suits "against the State unless explicitly authorized by statute" and thereby "upholding the doctrine of sovereign immunity." *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 849 (Tenn. 2008) (citing *N. British & Mercantile Co. v. Craig*, 62 S.W. 155, 157 (Tenn. 1900); *State v. Bank of Tenn.*, 62 Tenn. (3 Baxt.) 395, 403 (1874)). In other words, "[t]he sovereign State of Tennessee is immune from lawsuits 'except as it consents to be sued.'" *Smith v. Tenn. Nat'l Guard*, 551 S.W.3d 702, 708 (Tenn. 2018) (quoting *Stewart v. State*, 33 S.W.3d 785, 790

(Tenn. 2000)). The Court of Appeals has explained the relation between this doctrine and that of subject matter jurisdiction:

> Subject matter jurisdiction and sovereign immunity are two different legal concepts. However, courts may lack subject matter jurisdiction because of the doctrine of sovereign immunity. Sovereign immunity is jurisdictional immunity from suit, which acts as a jurisdictional bar to an action against the state by precluding a court from exercising subject-matter jurisdiction. The doctrine of sovereign immunity divests the courts of subject matter jurisdiction.

Mobley v. State, No. W2017-02356-COA-R3-CV, 2019 WL 117585, at *3 (Tenn. Ct. App. Jan. 7, 2019) (quoting *Colonial Pipeline Co.*, 263 S.W.3d at 851; *White v. State ex rel. Armstrong*, No. M1999-00713-COA-R3-CV, 2001 WL 134601, at *3 (Tenn. Ct. App. Feb. 16, 2001)) (alterations and internal quotation marks omitted). Sovereign immunity has two exceptions: (1) waiver by the General Assembly, and (2) prevention of the enforcement of an allegedly unconstitutional statute by a state officer. *See Smith v. Tenn. Nat'l Guard*, 551 S.W.3d 702, 708–09 (Tenn. 2018); *Colonial Pipeline Co.*, 263 S.W.3d at 852 (quoting *Ex Parte Young*, 209 U.S. 123, 159 (1908)).

Here, Ms. Moses is suing the Attorney General in his official capacity. A lawsuit against an officer of the State of Tennessee in his official capacity is a suit against the State. *Cox v. State*, 399 S.W.2d 776, 778 (Tenn. 1965) (quoting *Kornman Co. v. Moulton*, 360 S.W.3d 30 (Tenn. 1962); *Brooksbank v. Leech*, 332 S.W.2d 210 (Tenn. 1959)); *see Williams v. Nicely*, 230 S.W.3d 385, 389 (Tenn. Ct. App. 2007) (relying on *Cox* for the same proposition). Thus, as a general matter, the State's sovereign immunity applies to this action as against the Attorney General unless such immunity is waived by the General Assembly or if the Attorney General enforces the allegedly unconstitutional statutes at issue. *See Smith*, 551 S.W.3d at 708; *Colonial Pipeline Co.*, 263 S.W.3d at 849.

The Attorney General first argues that the General Assembly has not waived sovereign immunity in this case. He points out, correctly, that the Tennessee Supreme Court has already

held that the Declaratory Judgment Act "does not contain an explicit waiver of sovereign immunity." *Colonial Pipeline Co.*, 263 S.W.3d at 853. But Ms. Moses refers the Court to Tenn. Code Ann. § 1-3-121, which provides, "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 constitutionality of a governmental action." The Tennessee Supreme Court has construed this provision as waiving sovereign immunity. *Recipient of Final Expunction Order in McNairy County Circuit Court Case No. 3279 v. Rausch*, 645 S.W.3d 160, 168 (Tenn. 2022) ("The General Assembly clearly and unmistakably waived sovereign immunity by enacting Tennessee Code Annotated section 1-3-121."). The Attorney General responds that Ms. Moses did not raise this provision in her complaint, but she points out in turn that plaintiffs are not required to plead the existence of a particular statute waiving sovereign immunity before a defendant has even invoked sovereign immunity as a defense.

The Attorney General also argues he has not taken any "action" against Ms. Moses nor has she alleged as such, and therefore Tenn. Code Ann. § 1-3-121 does not apply in this instance. Ms. Moses responds that this argument gets into the second sovereign immunity exception, as well as arguments about standing, and does not account for the express waiver of sovereign immunity recognized in these types of cases by the Tennessee Supreme Court. In any event, Ms. Moses has alleged that she "has been denied registration by" the Attorney General. Second Am. Compl., ¶ 16.

Thus, because Ms. Moses seeks declaratory and injunctive relief on a constitutional basis regarding the enforcement of the felon disenfranchisement statutes, we hold sovereign immunity is no bar to her claims as against the Attorney General.

II. Standing

In Tennessee, "the province of a court is to decide, not advise, and to settle rights, not to give abstract opinions." *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203 (Tenn. 2009) (quoting *State v. Wilson*, 70 Tenn. (2 Lea) 204, 210 (1879)). One doctrine utilized by our courts to ensure the appropriate exercise of judicial power is standing. *See id.* "Courts use the doctrine of standing to determine whether a litigant is entitled to pursue judicial relief as to a particular issue or cause of action." *City of Memphis v. Hargett*, 414 S.W.3d 88, 97 (Tenn. 2013) (citing *ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 619 (Tenn. 2006); *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976)). It is "rooted in the traditional understanding of a case or controversy." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). "Grounded upon 'concern about the proper—and properly limited—role of the courts in a democratic society,' the doctrine of standing precludes courts from adjudicating 'an action at the instance of one whose rights have not been invaded or infringed.'" *Darnell*, 195 S.W.3d at 619–20 (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975); *Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001)). Standing thus presents a threshold issue. *Fisher v. Hargett*, 604 S.W.3d 381, 396 (Tenn. 2020) (citing *City of Memphis*, 414 S.W.3d at 96) ("The question of standing is one that ordinarily precedes a consideration of the merits of a claim.").

The doctrine also directs the court to focus on the party bringing the lawsuit rather than the merits of the claim. *Fisher*, 604 S.W.3d at 396 ("The proper focus of a determination of standing is a party's right to bring a cause of action, and the likelihood of success on the merits does not factor into such an inquiry."); *see also Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d 141, 149 (Tenn. 2022) (quoting *Warth*, 422 U.S. at 500) ("While standing

'often turns on the nature and source of the claim asserted,' it 'in no way depends on the merits' of the claim.).

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

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

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

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

Here, the Attorney General asserts Ms. Moses lacks standing because the Attorney General does not enforce the statutes challenged by her. The burden falls thus upon Ms. Moses to demonstrate the second and third elements of standing—(2) that there exists no causal connection between the Attorney General's conduct and Ms. Moses's alleged injuries, and (3) that enjoining the Attorney General from enforcing the challenged statutes would have no effect on whether those statutes injure Ms. Moses as alleged. We address each element separately, but Ms. Moses satisfies both for the same reason: the Second Amended Complaint alleges the Attorney General denied her registration to vote.

A. *Causal Connection,*

"While the causation element is not onerous, it does require a showing that the injury to a plaintiff is 'fairly traceable' to the conduct of the adverse party." *Fisher*, 604 S.W.3d at 396 (quoting *City of Memphis*, 414 S.W.3d at 97). The actions of the defendant must not be too remote from the alleged injury. *See Little v. City of Chattanooga*, 650 S.W.3d 326, 345–46 (Tenn. Ct. App. 2022) ("Here, Plaintiffs' alleged injury—the deprivation of city funds—is not 'fairly traceable' to the allegedly ultra vires annexations. It is speculative at best to conclude that, but for the other annexations, the City would have provided the services that Plaintiffs allege they are entitled to."); *Bowers v. Estate of Mounger*, 542 S.W.3d 470, 480 (Tenn. Ct. App. 2017) (quoting *ACLU v. Darnell*, 195 S.W.3d 612, 619–21 (Tenn. 2006)) ("Is the line of causation between the illegal conduct and injury too attenuated?").

The Attorney General argues he plays no role in the enforcement of Tenn. Code Ann. § 40-29-204, and that Ms. Moses has alleged no facts indicating as much. Therefore, his argument continues, the Attorney General's conduct has no connection to the alleged constitutional injuries inflicted upon Ms. Moses by that statute. Ms. Moses responds by pointing to the Tennessee Supreme Court's analysis in *City of Memphis v. Hargett*, 414 S.W.3d 88, 92 (Tenn. 2013), which involved a constitutional challenge against the Attorney General, the Secretary of State, and the Coordinator of Elections. The Court reasoned:

> As to the second element, [Plaintiffs] have alleged facts that demonstrate a fairly traceable causal connection between their claimed injuries and the challenged conduct. Specifically, they maintain that the Defendants' enforcement of the Act precluded them from voting without presenting one of the forms of photo ID recognized as valid under the Act, which in turn caused the various asserted infringements of their constitutional right to vote.

Id. at 99. But that analysis refers to the defendants in that case collectively and does not analyze what actions the Attorney General took, so this Court does not find it particularly helpful in this

instance. Ms. Moses also points, however, to her allegation in Paragraph 16 of the Second Amended Complaint that she has "been denied [voting] registration by Defendants[,]" including the Attorney General.[4] This allegation appears to be fairly thin and will necessarily require supporting proof in subsequent stages of this litigation, including dispositive motions. But at this stage of the litigation, we hold it is enough.

B. *Redress of Grievances*

The next element of standing challenged by the Attorney General is that the alleged injury must be capable of redress should Ms. Moses prevail. *See Petty v. Daimler/Chrysler Corp.*, 91 S.W.3d 765, 767 (Tenn. Ct. App. 2002); *Metro. Air Research Testing Auth., Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992). In other words, would a declaration or injunction from this Court prevent, at least within the realm of the Attorney General's conduct, the allegedly unconstitutional enforcement of Tenn. Code Ann. § 40-29-204 if Ms. Moses prevails? The Attorney General argues it would not because he does not enforce that provision in any capacity, and therefore an injunction preventing him from doing so would not change anything. Ms. Moses again points to the language in *City of Memphis*: "[Plaintiffs] have likewise met the third element of standing because a declaratory judgment in their favor on any of their constitutional claims would render the photo ID requirement unenforceable, thereby allowing them to exercise their right to vote free of its constraints." 414 S.W.3d at 99. But, again, that language refers back to the conduct of all defendants in *City of Memphis* and does not demonstrate any conduct by the Attorney General that would alleviate the constitutional injuries alleged if precluded. Ms. Moses, however,

[4] Ms. Moses further alleges in Paragraph 19 that the Attorney General issues opinions interpreting Tennessee law. The Attorney General responds that logic of that allegation establishing a causal connection would justify standing against any sitting judge in Tennessee. We find the Attorney General's argument here persuasive.

additionally raises once again her allegation in Paragraph 16 of the Second Amended Complaint. As before, if the Attorney General denied her voter registration as alleged, then preventing him from doing so would alleviate her alleged injuries. We reiterate that this allegation is rather thin and will require supporting proof going forward, but, as before, it is enough.

The Court would additionally comment upon the applicability of Tenn. Code Ann. § 29-14-107(b), which provides:

> In any proceeding which involves the validity of a municipal ordinance or franchise, *such municipality shall be made a party*, and shall be entitled to be heard, and if the statute, ordinance, or franchise is of statewide effect and is alleged to be unconstitutional, *the attorney general and reporter shall also be served with a copy of the proceeding and be entitled to be heard.*

(emphasis added.) Ms. Moses argues this provision requires the inclusion of the Attorney General as a party in this action. We disagree. *See In re M.L.P.*, 281 S.W.3d 387, 393–94 (Tenn. 2009) ("Father failed to notify the Tennessee Attorney General of his challenge in accordance with Tennessee Code Annotated section 29–14–107(b) (2000) and Tennessee Rule of Civil Procedure 24.04, which require that the attorney general be notified when a party alleges that a statute is unconstitutional."); *State v. Superior Oil, Inc.*, 875 S.W.2d 659, 659–60 (Tenn. 1994) ("As a threshold matter, we note that contrary to the insistence of the defendants, the record clearly reflects that the district attorney general complied with Tenn. Code Ann. § 29–14–107 by giving notice to the Office of the State Attorney General that the constitutionality of a state law was being questioned.").[5] Should Ms. Moses not be able to demonstrate standing

[5] The Tennessee Supreme Court has not always held as such. *See Shelby Cnty. Bd. of Comm'rs v. Shelby Cnty. Quarterly Court*, 392 S.W.2d 935, 940 (Tenn. 1965) (noting that the previous codification of this same statute "requires the Attorney General of the State to be joined as a party to a suit for a declaratory judgment 'if the statute, ordinance, or franchise is of statewide effect and is alleged to be unconstitutional'"); *Cummings v. Beeler*, 223 S.W.2d 913 (Tenn. 1949) (citing Buena Vista Spec, School Dist. v. Bd. of Election Comm'rs of Carroll Cnty., 116 S.W.2d 1008 (Tenn. 1938)) ("In this Code section the Attorney General of the State is required to be 'served with a copy of the proceeding' when the constitutionality of an act is attacked. We have construed this section to require the Attorney General to be a party defendant in any proceeding where the constitutionality of the Act of the legislature is before the Court on declaratory judgments proceeding."). The cases cited in the body of this order, however, demonstrate

against the Attorney General in subsequent proceedings, Tenn. Code Ann. § 29-14-107(b) will not operate to keep the Attorney General in this case against his will.

For the foregoing reasons, we hold Ms. Moses has demonstrated standing against the Attorney General. Accordingly, the Attorney General's Motion for Judgment on Pleadings is hereby **DENIED**.

It is so ORDERED.

/S/JUDGE FELICIA CORBIN-JOHNSON, CHIEF JUDGE

/S/JUDGE SUZANNE COOK

/S/JUDGE BARRY TIDWELL

CERTIFICATE
I CERTIFY THAT I HAVE MAILED
A COPY OF THIS ORDER TO
All Parties
AT Via email
THIS 23 DAY OF August 2024
Heather Siel

that the Tennessee Supreme Court has moved away from this reading of Tenn. Code Ann. § 29-14-107(b). The Tennessee Court of Appeals appears to share this view. *See Tennison Bros. v. Thomas*, 556 S.W.3d 697, 731 (Tenn. Ct. App. 2017) (emphasis added) ("[H]e did not *notify* the Attorney General of his intention to challenge the constitutionality of the Act in this appeal. As a result, to the extent that Thomas attempts to raise a constitutional challenge in the context of this appeal, his argument is waived."). As such, we respectfully disagree with the holding of our sister panel in *Hughes v. Lee*, No. 24475, at *8–11 (Tenn. Ch. Ct., Gibson Cnty. Oct. 17, 2023), that the *Beeler* Court's reading of Tenn. Code Ann. § 29-14-107(b) remains "good law."