

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 4, 2025

ROBIN M. McNABB v. GREGORY H. HARRISON

No. E2025-01097-COA-R3-CV

This election contest action is before this Court for the second time on appeal. The plaintiff, Robin M. McNabb, initially sought a judgment declaring the August 2022 election for Lenoir City Municipal Court Judge void because the defendant, Gregory H. Harrison, who had received the greatest number of votes, did not meet the one-year “district” residency requirement set forth in Article VI, Section 4 of the Tennessee Constitution. After the trial court dismissed Ms. McNabb’s complaint and this Court affirmed the dismissal, our Supreme Court reversed those decisions upon holding that Article VI, Section 4 required a candidate to have been a resident of the municipality for at least one year prior to the election. *McNabb v. Harrison*, 710 S.W.3d 653 (Tenn. 2025) (“*McNabb I*”). On remand, the trial court declared the election void. Mr. Harrison subsequently filed a motion to set aside that order predicated on a newly enacted statute, Tennessee Code Annotated § 16-18-206, which provides that the *McNabb I* decision “shall apply prospectively and shall be enforced beginning with the next regularly scheduled election for any affected municipal judgeship after May 21, 2025.” See Tenn. Code Ann. § 16-18-206(c). Ms. McNabb filed a response opposing Mr. Harrison’s motion, and she filed a motion to amend her complaint wherein she requested that she be declared the “winner” of the August 2022 election. The trial court granted Mr. Harrison’s motion to set aside the order and denied Ms. McNabb’s motion to amend her complaint. The trial court found, *inter alia*, that Ms. McNabb had failed to properly raise a constitutional challenge to § 16-18-206. Ms. McNabb has appealed. Upon thorough review, we determine that Ms. McNabb sufficiently raised a constitutional challenge to § 16-18-206. We therefore reverse the trial court’s finding that Ms. McNabb did not raise a constitutional challenge, vacate the trial court’s grant of Mr. Harrison’s motion to set aside, and remand for the trial court to consider the constitutionality of § 16-18-206 and to reconsider Mr. Harrison’s motion to set aside. However, we affirm the trial court’s finding that under the precepts of § 16-18-206, Mr. Harrison was the *de facto* Lenoir City Municipal Court Judge.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed in Part, Reversed in Part, Vacated in Part; Case Remanded**

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Appellate Courts

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which JEFFREY USMAN and VALERIE L. SMITH, JJ., joined.

Robin M. McNabb, Knoxville, Tennessee, Pro Se.

Gregory H. Harrison, Knoxville, Tennessee, Pro Se.

OPINION

I. Factual and Procedural Background

The undisputed facts and the procedural history leading to the first appeal were set forth as follows in *McNabb I*:

Robin M. McNabb was appointed as Municipal Court Judge for Lenoir City in 2016. In 2022, the Lenoir City Municipal Court judgeship was subject to election by the Lenoir City voters. Gregory H. Harrison, Ms. McNabb, and a third individual sought election. Mr. Harrison won the election on August 4, 2022. The Loudon County Election Commission certified the election results on August 18, 2022.

On August 23, 2022, Ms. McNabb filed a complaint in Loudon County Chancery Court challenging the election results pursuant to Tennessee Code Annotated section 2-17-101. Ms. McNabb argued that Mr. Harrison was constitutionally ineligible to serve because he had not resided within Lenoir City corporate limits for the year prior to the election. Ms. McNabb prayed that the trial court declare Mr. Harrison ineligible to serve as Lenoir City Municipal Judge; enter a temporary restraining order or injunction prohibiting him from taking office pending her lawsuit; and declare the August 4, 2022 election void pursuant to Tennessee Code Annotated section 2-17-113. The trial court denied Ms. McNabb's request for a temporary restraining order.

On August 26, 2022, Mr. Harrison filed a motion to dismiss Ms. McNabb's complaint for failure to state a claim under Tennessee Rules of Civil Procedure 12.02(6). On September 12, 2022, the trial court conducted a hearing on the motion to dismiss. At that time, the trial court denied Mr. Harrison's motion to dismiss and, with agreement of the parties, heard the case on the merits.

Neither Ms. McNabb nor anyone else challenged Mr. Harrison's eligibility prior to the election. The parties stipulated that Ms. McNabb lived

within city limits and Mr. Harrison did not. The parties agreed that the Lenoir City Municipal Judge must satisfy the residency requirements of Tennessee Constitution Article VI, Section 4 because the judge is popularly elected and has concurrent general sessions jurisdiction. The parties disagreed on what Article VI, Section 4 requires.

Ms. McNabb argued that the Tennessee Constitution requires an elected municipal court judge to live within corporate limits of the municipality the judge serves. She asserted that the term “district,” as used in Article VI, Section 4, cannot mean the modern-day judicial district because such districts did not exist at the time the section was first written. Ms. McNabb argued that in 1870, a “district” divided a county into smaller areas. Thus, “district” means an area smaller than a county, and this definition must apply consistently across all of Article VI, Section 4.

Mr. Harrison argued that Article VI, Section 4 does not require a municipal court judge, exercising concurrent jurisdiction with a general sessions court, to reside in the municipality in which the judge serves. Relying on a 2020 Tennessee Attorney General Advisory Opinion, Mr. Harrison asserted that “[a] ‘district’ or a ‘circuit’ connotes the geographic territory in which a court has jurisdiction Thus, a district is greater—in terms of both geographic territory and pool of voters—than any municipality within that district.” Tenn. Op. Atty. Gen., No. 20-16, 2020 WL 6112990, at *2 (Oct. 2, 2020). Per Mr. Harrison, the applicable district is the Ninth Judicial District.

The trial court found that Mr. Harrison prevailed over the challenge asserted by Ms. McNabb. In its order entered on November 2, 2022, the trial court found that “district” as used in the Tennessee Constitution applied to the Ninth Judicial District. Therefore, the trial court found that Mr. Harrison “complied with Article VI, Section 4” by being a resident of the Ninth Judicial District.

On November 9, 2022, Ms. McNabb filed a Notice of Appeal. The Court of Appeals held that when a municipal judge exercises concurrent jurisdiction with the county general sessions court, the Article VI, Section 4 residency requirement is met as long as the judge resides within the county. *McNabb [v. Harrison]*, [No. E2022-01577-COA-R3-CV], 2023 WL 7019872, at *7-8 [(Tenn. Ct. App. Oct. 25, 2023)]. In making this holding, the Court of Appeals found the terms “district” and “circuit” ambiguous. *Id.* at *3. The Court of Appeals disagreed with Ms. McNabb’s assertion that “district,” as used in Article VI, Section 4, referred to a subdivision of the county. *Id.* at *4. Instead, the Court of Appeals held that Article VI, Section

4 required residency in “the district or circuit to which they are assigned.” *Id.* at *6. Because the Lenoir City Municipal Judge exercised concurrent jurisdiction with the Loudon County General Sessions Court, the Court of Appeals reasoned that Loudon County is the “district” to which the Lenoir City Municipal Judge was assigned. *Id.* at *7-8. Accordingly, the Court of Appeals affirmed the trial court’s decision, but modified the judgment to clarify that Mr. Harrison complied with the residency requirements because he resided in Loudon County for at least one year, rather than the Ninth Judicial District. *Id.* at *8.

Ms. McNabb successfully sought permission to appeal to this Court pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure.

McNabb I, 710 S.W.3d at 656-57 (footnote omitted).

Article VI, Section 4 of the Tennessee Constitution, the constitutional provision at issue in *McNabb I*, provides:

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. His term of service shall be eight years.

The Supreme Court in *McNabb I* reversed this Court’s decision upon determining that “the Lenoir City Municipal Court’s jurisdiction is limited to the ‘district’ to which it is assigned” and that this district is Lenoir City because “the Lenoir City Municipal Court has no authority to exercise concurrent jurisdiction outside of the municipal city limits.” *McNabb I*, 710 S.W.3d at 662-63. The *McNabb I* Court further held that “the plain language of Article VI, Section 4 of the Tennessee Constitution requires the Lenoir City Municipal Court Judge to reside in Lenoir City at the time of the election and for one year prior.” *Id.* at 663. The Court remanded the case to the trial court “for further proceedings consistent with [its] opinion.” *Id.* at 664.

On remand, Ms. McNabb filed a motion to amend her complaint on March 12, 2025. She requested leave to name the third candidate in the August 2022 election, Amanda Smith, as a defendant. Ms. McNabb averred that Ms. Smith had not been a resident of Lenoir City at the time of the election and had consented to be added as a defendant. Ms. McNabb expressed her intent that the trial court “have all of the contestants before it in order to determine . . . that [Ms. McNabb] was the only qualified candidate on the August 2022 ballot and should be named the winner of the election for Lenoir City Municipal Judge, rather than simply declaring the election void”

Mr. Harrison filed an answer seeking dismissal of the amended complaint. He argued that because naming Ms. McNabb the “winner” of the election would likely result in back pay, her amended complaint violated Tennessee Rule of Civil Procedure 15.02 by requesting an increase in the amount sought. Mr. Harrison subsequently filed a memorandum in response to the motion to amend. He asserted that the proposed amendment could not “lead to any meaningful result” and that the “only option,” given the Supreme Court’s ruling that Mr. Harrison was “constitutionally unqualified,” was that “the election be declared void.”

Following a hearing, the trial court entered a “Final Judgment” on April 29, 2025 (“the April 2025 Order”). The court declared the August 2022 election void, pursuant to Tennessee Code Annotated §§ 2-17-112 and -113, and denied Ms. McNabb’s motion to amend the complaint upon finding that “the relief requested cannot be granted by this Court.” *See* Tenn. Code Ann. § 2-17-113 (West 1972 to current) (“If the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of constitutional disqualifications on that person’s part or for other causes, the election shall be declared void.”). The trial court awarded to Ms. McNabb her nondiscretionary costs, and she submitted a motion with documentation of court reporter fees incurred during the prior proceedings.

On May 23, 2025, Mr. Harrison filed a “Motion to Set Aside Order and for Declaration of De Facto Officer/Judge.” He requested that the trial court set aside its order declaring the election void and appoint Mr. Harrison as the *de facto* officer/judge for Lenoir City. In support, Mr. Harrison relied on the General Assembly’s enactment of 2025 Tennessee Public Acts, Chapter 487, effective May 21, 2025. This legislation, which is codified at Tennessee Code Annotated § 16-18-206, provides:

- (a) Notwithstanding another provision of law, constitutional provision, or judicial interpretation thereof, a municipal judge who was duly elected or appointed to office prior to March 7, 2025, and who is qualified for such office under the laws and interpretations in effect at the time of such election or appointment, shall not be disqualified or removed from office due to a residency requirement during the term of office to which the municipal judge was elected or appointed.
- (b) Any municipal judge described in subsection (a) shall be deemed a *de facto* officer whose acts, judgments, and decisions are valid and binding during the completion of the municipal judge’s term.
- (c) The residency requirements established by the Tennessee supreme court in *McNabb v. Harrison*, decided March 7, 2025, shall apply prospectively and shall be enforced beginning with the next regularly

scheduled election for any affected municipal judgeship after May 21, 2025.

- (d) This section does not exempt municipal judges from any qualification or eligibility requirement other than the residency requirement addressed in the *McNabb v. Harrison* decision.

Mr. Harrison asserted that pursuant to this statute, he was “eligible to complete his judicial term” and should be “deemed a de facto officer/judge with all the rights and authority attaching at the time of his election and when he began serving as Municipal Judge.”

Mr. Harrison filed a memorandum of law in support of his motion to set aside the April 2025 Order. In his memorandum, Mr. Harrison responded to a brief filed by Ms. McNabb, apparently in answer to questions from the trial court regarding standing. Ms. McNabb’s brief is not in the appellate record. Mr. Harrison stated that in her brief, Ms. McNabb had “assert[ed] that she [had] standing to object and that the constitutionality of the statute should be challenged.” Mr. Harrison posited that Ms. McNabb had not filed a pleading challenging the constitutionality of Tennessee Code Annotated § 16-18-206, and he argued that she did not have standing to do so because the statute did not adversely affect her rights or impose a burden not common to the public. Mr. Harrison also responded to an apparent postulate set forth by Ms. McNabb that he had resigned his position following the *McNabb I* decision. He stated that he had not “take[n] the bench” after the Supreme Court’s decision because he did not want to place his law license in jeopardy. However, he averred that he had not resigned and that no resignation had been accepted by the Lenoir City Council (“City Council”).

On June 16, 2025, Ms. McNabb filed a “Renewed Motion to Amend Complaint.” In her motion, Ms. McNabb stated:

[Ms. McNabb] no longer sees the need to add Ms. Smith as a defendant to the lawsuit in order to challenge the statute propounded by Defendant Harrison, Public Chapter [4]87,¹¹ as well as Tenn. Code Ann. § 2-17-112 and 113 for a finding that the statute is unconstitutional in situations where there is only one constitutionally qualified candidate, that candidate should not be forced to run for election a second time instead of being declared the winner in the original election.

If successful, the court will conclude that [Ms. McNabb] was the only qualified candidate on the August 2022 ballot and should be named the

¹¹ As Ms. McNabb acknowledges in her appellate brief, she inadvertently referred to 2025 Tennessee Public Acts, Chapter 487 as “Public Chapter 387” in her renewed motion to amend her complaint.

winner of the election for Lenoir City Municipal Judge, rather than either Defendant Harrison being restored to the judgeship or another judicial election occurring in August of 2026.

(Paragraph numbering omitted.) In the body of her proposed amended complaint, Ms. McNabb averred that § 16-18-206 (Public Chapter 487) was either facially unconstitutional or unconstitutional as applied in this case. However, in her prayer for relief, Ms. McNabb did not include a request that the court declare § 16-18-206 unconstitutional.

On June 25, 2025, Ms. McNabb filed a response to Mr. Harrison’s memorandum of law, contending that she did have standing to oppose Mr. Harrison’s motion and that Mr. Harrison could not serve as a *de facto* judge in light of the decision in *McNabb I*. Additionally, Ms. McNabb argued that the General Assembly’s enactment of § 16-18-206 had been unconstitutional. On June 27, 2025, Attorney General and Reporter Jonathan Skrmetti filed a notice of the State of Tennessee’s intention not to intervene in this case.

Following a hearing, the trial court entered a final order on July 18, 2025. The court granted Mr. Harrison’s motion to set aside the April 2025 Order and declared Mr. Harrison to be the *de facto* Lenoir City Municipal Court Judge. The court denied Ms. McNabb’s renewed motion to amend her complaint upon finding that the amendment would be “futile” and that the proposed amended complaint “contained no prayer for relief regarding constitutional issues.” The court further found that the “original issues raised in the complaint [were] now moot.” The court awarded discretionary fees to Ms. McNabb in the amount of \$798.75.

Ms. McNabb timely appealed. Prior to entry of the trial court’s final order, Ms. McNabb filed a motion for stay of the judgment pending appeal, requesting that the court’s ruling that Mr. Harrison was the *de facto* Municipal Court Judge be “postpon[ed]” pending appeal to avoid further disruption in the municipal court where attorney Walter Johnson, a Lenoir City resident, had been serving as the judge appointed by the City Council.² In an order entered on August 21, 2025, the trial court denied Ms. McNabb’s motion for a stay as moot because Mr. Harrison had resumed the position of Lenoir City Municipal Court Judge.

II. Issues Presented

Ms. McNabb presents three issues on appeal, which we have reordered and restated slightly as follows:

² On August 1, 2025, Ms. McNabb filed a motion with this Court for an emergency stay. On August 4, 2025, this Court denied the motion because it had not yet been heard by the trial court.

1. Whether the trial court erred by declining to find that Tennessee Code Annotated § 16-18-206 is unconstitutional.
2. Whether the trial court erred by setting aside the April 2025 Order declaring the 2022 Lenoir City Municipal Court Judge election void.
3. Whether the trial court erred by determining that Mr. Harrison was the *de facto* Lenoir City Municipal Court Judge.

III. Standard of Review

An issue of constitutional interpretation is a question of law. *See McNabb I*, 710 S.W.3d at 658; *State v. Burns*, 205 S.W.3d 412, 414 (Tenn. 2006). Likewise, “[t]he construction of statutes and procedural rules are questions of law that are reviewed de novo without any presumption of correctness.” *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011). Therefore, “the standard of review is de novo without any presumption of correctness given to the legal conclusions of the courts below.” *Burns*, 205 S.W.3d at 414 (citing *S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001)). To the extent that we need to review the trial court’s findings of fact, we do so with a presumption of correctness unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). “In order for the evidence to preponderate against the trial court’s findings of fact, the evidence must support another finding of fact with greater convincing effect.” *Wood v. Starko*, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006).

IV. Constitutionality of Tennessee Code Annotated § 16-18-206

Ms. McNabb contends that the trial court erred by declining to find that Tennessee Code Annotated § 16-18-206 is unconstitutional. The trial court did not consider the constitutionality of § 16-18-206 because it found that Ms. McNabb had failed to file a pleading “to properly place a constitutional issue before the court.” Ms. McNabb asserts that she initially challenged the constitutionality of § 16-18-206 in her brief that she had filed with the trial court in May 2025 and then raised the issue again in “almost every document McNabb filed in the case after Harrison filed his motion” to set aside the April 2025 Order. Mr. Harrison responds that the trial court correctly found that Ms. McNabb had failed to raise constitutionality as an issue in a pleading. Mr. Harrison also asserts that Ms. McNabb failed to comply with Tennessee Rule of Appellate Procedure 32 because she did not serve a copy of her appellate brief on the Attorney General. Furthermore, Mr. Harrison insists that Ms. McNabb does not have standing to challenge the constitutionality of § 16-18-206. Accordingly, we must first determine whether Ms. McNabb’s constitutional challenge to § 16-18-206 is properly before this Court on appeal.

A. Standing

Standing is “one of the justiciability doctrines that guide courts in determining whether to hear and decide a particular case.” *See Case v. Wilmington Trust, N.A.*, 703 S.W.3d 274, 281 (Tenn. 2024) (footnote omitted). Mr. Harrison posits that Ms. McNabb does not have standing to challenge Tennessee Code Annotated § 16-18-206 because the election contest she filed was concluded with our Supreme Court’s decision in *McNabb I* and because she cannot show that “any of her rights have been deprived by the subject law” or that she “has been adversely affected by it.” Ms. McNabb asserts that this is still the same election contest action she initially filed and that Mr. Harrison can show no reason why she should lose standing in the middle of the case. Upon careful review, we agree with Ms. McNabb on this point.

Mr. Harrison does not dispute that Ms. McNabb had standing to file the initial election contest action. Ms. McNabb’s status as an incumbent municipal court judge and candidate in the August 2022 election established her standing by statute. *See Tenn. Code Ann. § 2-17-101(b)* (West 1972 to current) (“The incumbent office holder and any candidate for the office may contest the outcome of an election for the office.”); *Mayhew v. Wilder*, 46 S.W.3d 760, 768-69 (Tenn. Ct. App. 2001) (“When a person is expressly authorized by statute or rule to bring a particular action, his or her right of action arises directly out of the statute, and he or she needs no title under the substantive law to authorize suit.” (quoting 59 Am. Jur. 2d *Parties* § 22 (1987))).

Upon finding in Ms. McNabb’s favor and holding that a candidate for Lenoir City Municipal Court Judge must have been a resident of the municipality of Lenoir City for at least one year prior to the election, our Supreme Court remanded the case to the trial court “for further proceedings consistent with [its] opinion.” *McNabb I*, 710 S.W.3d at 664. When the case was remanded to the trial court, Ms. McNabb remained in the position of a plaintiff in an election contest action. In the April 2025 Order entered on remand, the trial court granted to Ms. McNabb the relief that she had sought in her initial complaint with the exception of a restraining order. Ms. McNabb had initially “prayed that the trial court declare Mr. Harrison ineligible to serve as Lenoir City Municipal Judge; enter a temporary restraining order or injunction prohibiting him from taking office pending her lawsuit; and declare the August 4, 2022 election void pursuant to Tennessee Code Annotated section 2-17-113.” *McNabb I*, 710 S.W.3d at 656. If the matter had ended with the trial court’s entry of the April 2025 Order, Ms. McNabb’s election contest would have been resolved.

However, when Mr. Harrison filed his motion requesting that the trial court set aside the April 2025 Order and declare him the *de facto* Lenoir City Municipal Court Judge, he reopened the case. Ms. McNabb was still the plaintiff and still maintained standing under § 2-17-101(b) to seek the relief she initially requested. *See Hatcher v. Bell*, 521 S.W.2d 799, 803 (Tenn. 1974) (holding that “an election contest is a proper proceeding to test the validity of an election on the charge that the candidate receiving the highest number of

votes cast in the election has not complied with the residence requirement” and that a “candidate in the election” was “a proper party to institute the proceeding”). Invoking the standard for a public right, *see Case*, 703 S.W.3d at 291, Mr. Harrison argues that Ms. McNabb did not suffer any injury not suffered by the general public when the trial court set aside the April 2025 Order.³ We disagree. With the trial court’s grant of Mr. Harrison’s motion to set aside, Ms. McNabb lost her election contest action, which she had a right to pursue by statute, both as the incumbent and as a candidate, positions not common to the general public. Because the trial court’s decision to set aside the April 2025 Order was predicated on the General Assembly’s enactment of § 16-18-206, we determine that Ms. McNabb has standing to challenge the constitutionality of § 16-18-206.

B. Timing of Constitutional Challenge

The trial court found that Ms. McNabb had failed to file a pleading in which she raised a constitutional challenge to Tennessee Code Annotated § 16-18-206. Specifically, the court found that because the prayer for relief in Ms. McNabb’s amended complaint did not include a request that the court declare the statute unconstitutional, Ms. McNabb had failed to raise the issue. The trial court did not cite any authority in support of its conclusion that such a challenge must be included in a prayer for relief. Although Mr. Harrison argues in favor of the trial court’s conclusion, he also has not provided any authority stating that the issue must be included in a prayer for relief. Ms. McNabb acknowledges that the trial court may have expected her to request a three-judge panel to determine the constitutionality of § 16-18-206 or to file a new action requesting declaratory judgment that the statute is unconstitutional. However, she contends that because § 16-18-206 was placed before the trial court by Mr. Harrison’s motion to set aside, she properly challenged the constitutionality of the statute when she argued in her response to Mr. Harrison’s motion that the statute violated the Tennessee Constitution.

Mr. Harrison’s motion to set aside the April 2025 Order was timely filed under Tennessee Rule of Civil Procedure 60.02(5), which provides for an order to be set aside

³ As our Supreme Court has explained:

In summary, (1) the open courts provision requires litigants to allege injury to a recognized legal right, and (2) the separation of powers provision requires litigants in public rights cases to allege an injury in fact not common to the public. *See Tenn. Const. art. I, § 17; id. art. II, §§ 1-2; Barnes [v. Kyle], 306 S.W.2d [1,] 4 [(Tenn. 1957)]; [Am. Civil Liberties Union of Tenn. v.] Darnell, 195 S.W.3d [612,] 620 [(Tenn. 2006)].* A simpler way to say this is that all claims must allege an “injury.” In private rights claims, injury in law is sufficient. In public rights claims, there must also be an injury in fact, in addition to the causation and redressability elements required by *Darnell* and *City of Memphis. Darnell*, 195 S.W.3d at 620; *City of Memphis [v. Hargett]*, 414 S.W.3d [88,] 98 [(Tenn. 2013)].

upon “any other reason justifying relief from the operation of the judgment.” Although we do not have Ms. McNabb’s May 2025 brief in the record, we do have Mr. Harrison’s memorandum of law wherein he stated that Ms. McNabb had asserted in her brief that “the constitutionality of the statute should be challenged.” In her response to Mr. Harrison’s motion to set aside, Ms. McNabb summarized her constitutionality argument as follows:

[Ms. McNabb] asks this Court to end the madness and bring this case to a final judgment by respecting the Supreme Court’s interpretation of Article VI, Section 4 of the Constitution, which forbids Defendant Gregory Harrison from serving as Lenoir City Municipal Judge without meeting the residency requirements of Article VI, Section 4. [Ms. McNabb] further requests that the Court find that Public Chapter [4]87 is invalid and does not supersede the Constitutional requirements for the Lenoir City municipal judge. By either of these findings, the Court should conclude that Defendant Harrison is not legally permitted to serve as Lenoir City municipal judge.

(Emphasis added.)

In Ms. McNabb’s renewed motion to amend her complaint, filed nine days before her response to the motion to set aside, she stated that she intended to challenge § 16-18-206, “as well as Tenn. Code Ann. § 2-17-112 and 113 for a finding that the statute is unconstitutional in situations where there is only one constitutionally qualified candidate” Ms. McNabb averred that § 16-18-206 “is either facially unconstitutional because the entire statute cannot be reconciled with the language of Article VI, section 4 of the Tennessee Constitution” or “is unconstitutional as applied in this case.” She also stated that she was requesting permission to “amend her Complaint for the express purpose of extending, modifying, or reversing existing precedent or laws (specifically Tenn. Code Ann. §§ 2-17-112 and 2-17-113)”

Ms. McNabb further stated:

In the event that the court does not find in favor of [Ms. McNabb] under the relevant statutes, [Ms. McNabb] secondarily seeks the opportunity to push for a change to the . . . statutes to permit the sole qualified candidate in a nonpartisan general election for a judgeship governed by Article VI, Section IV of the Constitution to be declared the winner of the election instead of a vacancy in the judgeship being declared, requiring a new election at the next biennial state election.

[Ms. McNabb] also seeks to challenge the unconstitutionality of these statutes under the fact scenario presented by this case, a nonpartisan municipal election where the successful candidate must meet constitutional qualifications that cannot be overridden by a statute[.]

(Paragraph numbering omitted.) In her proposed amended complaint, Ms. McNabb explained:

[Ms. McNabb] requests permission to amend her Complaint for the express purpose of extending, modifying, or reversing existing precedent or laws (specifically Tenn. Code Ann. §§ 2-17-112 and 2-17-113), and to establish the meaning of a “legal” vote in the context of votes for Constitutionally ineligible candidates.

Although these paragraphs indicate a constitutional challenge to the newly enacted § 16-18-206, and perhaps to §§ 2-17-112 and -113 as well, the specific relief requested by Ms. McNabb in her proposed amended complaint did not include a direct request that the trial court declare § 16-18-206 unconstitutional. Ms. McNabb specifically prayed for the following relief:

1. Process issue and that Defendant Harrison be required to answer this Complaint within the time prescribed by the Tennessee Rules of Civil Procedure; and
2. This Court find that Defendant Harrison was not qualified to hold the office of Lenoir City municipal judge as of the August 4, 2022, election date, in accordance with the Supreme Court’s March 7, 2025, opinion in this case; and
3. This Court also find that candidate Amanda Smith was constitutionally ineligible to serve as Lenoir City Judge as of the August 4, 2022, election date, pursuant to her qualification petition of record with the Loudon County Election Commission and Ms. Smith’s affidavit filed in this matter;
4. This Court declare [Ms. McNabb] the winner of the August 4, 2022, election for Lenoir City Municipal Judge by virtue of being the only qualified candidate on the ballot.
5. In the alternative, if the Court declines to award [Ms. McNabb] the relief she seeks under the preceding Paragraph, [Ms. McNabb] respectfully requests that this Court declare the August 4, 2022, election void and certify a copy of the final judgment to the Loudon County Election Commission and the Lenoir City Council;
6. That court costs, including discretionary court costs, be awarded to [Ms. McNabb] and taxed against Defendant Harrison; and

7. Such other and further relief to which [Ms. McNabb] may be entitled.

(Emphasis added.)

Upon considering the entirety of Ms. McNabb's proposed amended complaint, including the second point of her prayer for relief that the *McNabb I* holding be applied to find Mr. Harrison ineligible for Lenoir City Municipal Court Judge (without application of § 16-18-206), we determine that Ms. McNabb sufficiently raised the constitutionality of § 16-18-206 in her renewed motion to amend the complaint. This determination is further supported by Ms. McNabb's arguments challenging the constitutionality of § 16-18-206 in her other pleadings filed after Mr. Harrison filed his motion to set aside the April 2025 Order, including Ms. McNabb's response to the motion to set aside. Additionally, although Ms. McNabb's May 2025 brief is not in the record, it is clear from the Attorney General's notice of intent not to intervene that Ms. McNabb served her May 2025 brief on the Attorney General and that the brief included an indication of her intent to challenge the constitutionality of § 16-18-206 through the instant action. Accordingly, we reverse the trial court's finding that Ms. McNabb failed to properly raise the issue of the constitutionality of § 16-18-206 in the trial court, and we vacate the trial court's grant of Mr. Harrison's motion to set aside the April 2025 Order.

C. Scope of Constitutional Challenge

On appeal, Ms. McNabb presents the issue of whether the trial court erred by declining to find that Tennessee Code Annotated § 16-18-206 is unconstitutional. She does not raise an issue regarding the constitutionality of Tennessee Code Annotated §§ 2-17-112 and -113. Concerning possible judgments to be rendered in an election contest, § 2-17-112(a) (West 1972 to current) provides:

After hearing the case, the court shall give judgment either:

- (1) Confirming the election;
- (2) Declaring the election void;
- (3) Declaring a tie between persons who have the same number of votes if it appears that two (2) or more persons who have the same number of votes have, or would have had if the ballots intended for them and illegally rejected had been received, the highest number of votes for the office; or

(4) Declaring a person duly elected if it appears that such person received or would have received the highest number of votes had the ballots intended for such person and illegally rejected been received.

Given that Ms. McNabb's initial election contest did not involve allegations of ballots illegally rejected, under § 2-17-112(a), the trial court could either confirm the election or declare it void. More specifically to the situation at issue here, § 2-17-113 provides:

If the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of constitutional disqualifications on that person's part or for other causes, the election shall be declared void.

(Emphasis added.)

In her amended complaint and renewed amended complaint, Ms. McNabb requested that the trial court declare her the "winner" of the August 2022 election because she was the only candidate who had been a resident of Lenoir City for at least one year prior to the election. However, the statutory scheme above does not provide for a situation wherein upon a determination that the person with the highest number of legal votes is constitutionally disqualified, another candidate would be declared the winner. Pursuant to § 2-17-113, the election must be "declared void" instead. For this reason, the trial court, in the April 2025 Order, denied Ms. McNabb's first motion to amend the complaint because the court found that it could not grant the relief Ms. McNabb requested of declaring her the winner. Here, we clarify that although Ms. McNabb mentioned potentially challenging the constitutionality of §§ 2-17-112 and -113 in her pleadings, she did not properly raise this challenge before the trial court.⁴

D. Notice to Attorney General

We turn now to the notice given by Ms. McNabb to the Attorney General. Tennessee Code Annotated § 29-14-107(b) (West 1923 to current) 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.

Furthermore, Tennessee Rule of Civil Procedure 24.04 provides:

⁴ Ms. McNabb has not raised an issue on appeal regarding the trial court's denial of her request to be declared the winner of the August 2022 election.

When the validity of a statute of this state or an administrative rule or regulation of this state is drawn in question in any action to which the state or an officer or agency is not a party, the court shall require that notice be given the attorney general, specifying the pertinent statute, rule or regulation.

Although § 29-14-107 is part of Tennessee’s Declaratory Judgment Act, the Advisory Commission Comments to Rule 24.04 clarify: “Rule 24.04 extends this protection to actions of any type. If the Attorney General feels that the State’s interest so requires, he or she will be in a position to intervene or take other appropriate action.”

The Attorney General’s “Notice of Intent not to Intervene,” filed on June 27, 2025, stated:

The State of Tennessee respectfully provides notice of its intent not to intervene in this matter. On May 27, 2025, Plaintiff Robin M. McNabb gave notice to the State, pursuant to Tenn. R. Civ. P. 24.04, of her intent to challenge the constitutionality of Public Chapter 487. On May 28, 2025, McNabb served the State with her “Legal Brief on Issues Specified by the Court,” wherein she asserts that “Public Chapter 487 . . . is unconstitutional on its face and as Defendant seeks to have it applied against Plaintiff in this case.” (McNabb Br. at 6.) After reviewing all relevant filings, the State will not intervene.

It is clear from this response that Ms. McNabb served the Attorney General with a copy of her May 2025 brief and that in the brief she gave notice of her constitutional challenge to Tennessee Code Annotated § 16-18-206. In its final order, the trial court interpreted the Attorney General’s notice as having “declined to participate for the same reason” that the trial court declined to consider the constitutionality of § 16-18-206, which was the court’s finding that Ms. McNabb had failed to properly raise the issue in a pleading. However, the Attorney General did not elucidate his rationale for not intervening, stating only that he had “reviewed all relevant filings.”

Concerning notice to the Attorney General on appeal, Tennessee Rule of Appellate Procedure 32 provides:

- (a) Service; When Required. When the validity of a statute of this state or an administrative rule or regulation of this state is drawn in question in any appeal to which the state or an officer or agency is not a party, the party raising such question shall serve a copy of the party’s brief on the Attorney General.

- (b) Proof of Service. Proof that service has been made on the Attorney General shall be filed with the brief of the party raising such question.
- (c) Right to Respond. The Attorney General is entitled, within the time allowed for the filing of a responsive brief by a party, to file a brief. The Attorney General is also entitled to be heard orally, regardless of whether he or she files a brief.
- (d) Consequence of Failure to Comply. Except by order of the court, in the absence of notice, the appellate court will not dispose of an appeal until notice has been given and the Attorney General has been given such opportunity to respond as shall be set by the court.

The Advisory Commission Comments to Rule 32 explain that “[t]he provisions of this rule are supplementary to, and do not affect the provisions of Tenn. Code Ann. § 29-14-107 and Rule 24.04 of the Tennessee Rules of Civil Procedure, with respect to notice to the Attorney General in trial court proceedings.”

As Mr. Harrison avers, Ms. McNabb has not complied with Rule 32 because her appellate brief does not contain a certificate of service to the Attorney General. Ms. McNabb has not filed a reply brief and so has not responded to Mr. Harrison’s averment regarding Rule 32. However, she does state in her principal brief that she “provided notice of her challenge to the constitutionality of the Act [§ 16-18-206] to the Tennessee Attorney General as required by statute” and that the Attorney General’s office “acknowledged receipt of this notice and filed a notice that it would not intervene in the case.” The consequence for omitting the notice required by Rule 32 is, “[e]xcept by order of the court,” for this Court to withhold disposing of the appeal until “notice has been given and the Attorney General has been given such opportunity to respond as shall be set by the court.” Tenn. R. App. P. 32(d).

Arguably, the Attorney General’s notice of intent not to intervene “in this matter” may have included an intent not to intervene on appeal. However, because the provisions of Rule 32 are supplementary to § 29-14-107 and Tennessee Rule of Civil Procedure 24.04, we conclude that Ms. McNabb was still required to serve the Attorney General with her appellate brief and thus provide notice to the Attorney General that she had filed an appeal. *See* Tenn. R. App. P. 32 advisory comm’n cmt.; *In re Adoption of E.N.R.*, 42 S.W.3d 26, 33 (Tenn. 2001) (noting the separate requirements of notice to the Attorney General at the trial court level and on appeal). Because of the unique procedural posture of this case, as explained below, we conclude that the Attorney General should be afforded notice of the status of Ms. McNabb’s constitutional challenge through service of a certified copy of this Opinion and accompanying judgment.

E. Remand

Upon thorough review of the record and applicable authorities, we determine that this case should be remanded to the trial court for consideration of Ms. McNabb's constitutional challenge to Tennessee Code Annotated § 16-18-206 and reconsideration of Mr. Harrison's motion to set aside the April 2025 Order. In reviewing a statute for "possible constitutional infirmity," a court is "required to indulge every presumption and resolve every doubt in favor of the constitutionality of the statute." *In re Petition of Burson*, 909 S.W.2d 768, 775 (Tenn. 1995). Generally, a trial court should be afforded the first opportunity to determine the constitutionality of a statute. *See In re Adoption of E.N.R.*, 42 S.W.3d at 31 ("Numerous Tennessee Cases hold that the trial court must be afforded the first opportunity to judge whether a challenger has met those burdens" [of overcoming the presumption that a statute is constitutional]). Moreover, "[t]his is a court of appeals and errors, and we are limited in authority to the adjudication of issues that are presented and decided in the trial courts." *Dorrier v. Dark*, 537 S.W.2d 888, 890 (Tenn. 1976) (emphasis added); *see Nunn v. Tenn. Dep't of Corr.*, 547 S.W.3d 163, 190 (Tenn. Ct. App. 2017) ("Tennessee appellate courts generally do not address issues that were not adjudicated by the trial court.").

Ms. McNabb posits that this Court should consider the constitutionality of § 16-18-206 even if it had not been raised as an issue in the trial court. In support, Ms. McNabb relies on *State v. Woodard*, No. E2016-00676-CCA-R3-CD, 2017 WL 2590216 (Tenn. Crim. App. June 15, 2017), which involved a court's lack of jurisdiction to impose a criminal conviction due to an unconstitutional statute. *See Woodard*, 2017 WL 2590216, at *10 (holding that because a lack of jurisdiction may be raised at any time and "[a] claim that the proscriptive statute is facially unconstitutional amounts to a claim that the trial court lacks jurisdiction to impose a conviction under the statute," the appellant had not waived constitutionality of the statute by failing to raise it in the trial court). We find *Woodard* to be highly distinguishable from the instant action because no issue of subject matter jurisdiction is before us.

It is true that if a statute "is so obviously unconstitutional on its face as to obviate the necessity for any discussion," this Court will consider the validity of the statute for the first time on appeal. *See Lawrence v. Stanford*, 655 S.W.2d 927, 929 (Tenn. 1983). As the *Lawrence* Court explained:

It has long been the general rule that questions not raised in the trial court will not be entertained on appeal and this rule applies to an attempt to make a constitutional attack upon the validity of a statute for the first time on appeal unless the statute involved is so obviously unconstitutional on its face as to obviate the necessity for any discussion.

Id. (reversing the intermediate appellate court’s holding that the statute at issue was unconstitutional because the issue had not been raised in the trial court). We do not find that § 16-18-206 meets the criteria of being “so obviously unconstitutional on its face as to obviate the necessity for any discussion,” and therefore we will render no decision regarding the statute’s constitutionality at this time. *See id.* at 929-30.

We therefore remand this matter to the trial court for consideration of Ms. McNabb’s constitutional challenge to § 16-18-206. Furthermore, because the trial court granted Mr. Harrison’s motion to set aside the April 2025 Order in accordance with § 16-18-206, the court should implement its constitutionality ruling to reconsider the grant of Mr. Harrison’s motion and the issue of whether the August 2022 election should be declared void. We direct the appellate clerk to forward to the Attorney General a certified copy of this Opinion and accompanying judgment. On remand, the trial court shall afford the Attorney General thirty days following entry of this Opinion to respond to Ms. McNabb’s challenge to the constitutionality of § 16-18-206. *See* Tenn. R. App. P. 32(d).

V. Mr. Harrison as *de facto* Municipal Court Judge

As an alternative argument, Ms. McNabb asserts that the trial court erred by determining that Mr. Harrison was the *de facto* Lenoir City Municipal Court Judge under Tennessee Code Annotated § 16-18-206 because Mr. Harrison “had already ceased to serve as Lenoir City municipal judge by the time [§ 16-18-206] was enacted.” Mr. Harrison insists that he did not resign from the position of Lenoir City Municipal Court Judge and that, in any case, the City Council did not accept a resignation from him.

In support of his motion to set aside the April 2025 Order, Mr. Harrison had filed minutes from a City Council meeting that occurred over the course of two days on March 10 and 12, 2025. Considering these minutes, the trial court found in its final order:

[Ms. McNabb] has not offered any evidence in her pleadings to contradict the meeting minutes filed by [Mr. Harrison] that appear to indicate that [Mr. Harrison] did not voluntarily resign his position as Lenoir City municipal judge and a resignation was not accepted by the Lenoir City Council.

Our review of the March 2025 City Council minutes reflects that the City Council did not consider any resignation submitted by Mr. Harrison during the meeting. However, it is clear from the minutes that City Council members were attempting to determine how to fill the judgeship in the wake of the *McNabb I* decision. Near the end of the discussion, a motion was made and seconded to allow the mayor to appoint the city attorney, Walter Johnson, as the Municipal Court Judge.

The timeline of events is important here. Mr. Harrison acknowledges that he had “not take[n] the bench” after the *McNabb I* decision was entered by the Tennessee Supreme

Court on March 7, 2025, until he considered himself authorized to do so by the trial court's entry of the final order on July 18, 2025. Mr. Harrison states that he did not want to endanger his law license by disregarding the *McNabb I* decision. Significantly, Mr. Harrison never abandoned his defense in the instant litigation, and he filed his motion to set aside the April 2025 Order a mere two days after § 16-18-206 became effective.

Although Ms. McNabb complains that the trial court did not conduct an evidentiary hearing regarding this issue, she has offered no proof that Mr. Harrison did other than attempt to comply with the *McNabb I* ruling. Given that Mr. Harrison also pursued his status as *de facto* judge as soon as § 16-18-206 became effective, we discern no reason to disturb the trial court's ruling that Mr. Harrison, as the candidate who received the greatest number of votes in the August 2022 election, was the *de facto* Lenoir City Municipal Court Judge by operation of § 16-18-206. Due to the presumption of constitutionality afforded a statute, *see In re Adoption of E.N.R.*, 42 S.W.3d at 31, Mr. Harrison may remain the *de facto* Lenoir City Municipal Court Judge pending resolution of this action. We emphasize, however, that we are not holding that § 16-18-206 is free of constitutional defect and that the statute's constitutionality is to be considered by the trial court on remand.

VI. Conclusion

For the reasons stated above, the trial court's finding that Ms. McNabb had failed to properly raise the issue of the constitutionality of Tennessee Code Annotated § 16-18-206 is reversed, and the trial court's grant of Mr. Harrison's motion to set aside the April 2025 Order is vacated. The trial court's finding that according to the precepts of § 16-18-206, Mr. Harrison was the *de facto* Lenoir City Municipal Court Judge is affirmed. This case is remanded to the trial court for consideration of Ms. McNabb's constitutional challenge to § 16-18-206, reconsideration of Mr. Harrison's motion to set aside the April 2025 Order, and collection of costs below. While this case is pending, Mr. Harrison may remain the *de facto* Lenoir City Municipal Court Judge under § 16-18-206. Costs on appeal are taxed one-half to Ms. McNabb and one-half to Mr. Harrison. The appellate court clerk is directed to forward to the Attorney General a certified copy of this Opinion and accompanying judgment. On remand, the trial court is directed to afford the Attorney General thirty days following entry of this Opinion to respond to Ms. McNabb's challenge to the constitutionality of § 16-18-206.

s/ Thomas R. Frierson, II
THOMAS R. FRIERSON, II, JUDGE