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TO: Chancellor Telford Forgety and Members of the Judicial Redistricting Advisory Task Force

FROM: Tony Childress, Presiding Judge of the 29th Judicial District

RE: Response To Task Force Focus Questions

DATE: July 25, 2019

I believe it is known by all that the members of this task force have spent a lot of time and expended a lot of effort traveling the State patiently listening to speaker after speaker at five public hearings and reading scores of public comments. Going forward countless more time will be spent and effort expended as you complete your work. I thank each of you for taking on the responsibility of the work of this task force and serving our State in this capacity. Accompanying this letter are my responses to each of the task force's focus questions. These responses focus on the 29th Judicial District. I thank you in advance for taking the time to read these responses. Please do not hesitate to contact me if there are any questions or if additional information is needed. Again, I thank each of you for all your work.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tony A. Childress", is written over a horizontal line.

Tony A. Childress

RESPONSES TO TASK FORCE FOCUS QUESTIONS
REGARDING THE 29TH JUDICIAL DISTRICT

Question 1. Do the weighted caseload studies indicate a need for a change in district lines? If so, what changes should or might be made?

Answer: No

Explanation of answer: First, two (2) trial judges have been allocated to serve the 29th Judicial District, and the most current weighted caseload study update indicates the 29th Judicial District needs 1.90 judges to meet the current workload in the district.

Second, the last ten (10) weighted case studies indicated the need for judges in the 29th Judicial District has increased 14% over the last five years and the need for judges increased eight (8) out of the last ten (10) years.

Third, the weighted caseload studies indicate over the last decade 21,464 cases have been filed in the 29th Judicial District. Both the Annual Reports of the Tennessee Judiciary and annual Trial Judge Case Statistics for FY2008/09 through 2017/18 indicate the judges of the 29th Judicial District disposed of at least 21,346 cases over this same ten year period of time for “a case clearance rate” of ninety-nine and a half percent (99.5%).

Finally, under the current weighted caseload formula, each judge in the state is initially available 402 minutes per day to handle case related work. Daily per judge district travel time is subtracted from that 402 minutes to determine how much time per day each judge is actually available to work on cases. There are twenty-two (22) multi-county judicial districts in this state, and the 29th is one of those districts. The weighted caseload studies indicate each judge in six (6) of those 22 districts spend an average of an 1 hour and 15 fifteen minutes per day traveling from county to county while the judges in the other sixteen (16) spend on average 36 minutes per day traveling from county to county. At 39.8 minutes per day, the 29th Judicial District’s daily per judge district travel time is at average, is less than thirteen (13) other multi-county judicial districts, and is nearly half the travel time of six other districts. This low daily travel time means the judges in the 29th Judicial District only spend roughly 10% of their time traveling which leaves them 90% of their available time to work on and decide cases. This time to work on cases is important because neither law clerks nor child support or divorce referees have been allocated to the 29th Judicial District, so the judges in this district do not have these additional resources to aid them with their workloads. Less time spent traveling means the judges in the 29th have more time to work on and decide cases, which is what judges are paid to do and the public wants them to do.

In summary, the most current weighted caseload study update shows that the 29th Judicial District currently needs 1.9 judges, and it currently has 2 judges. This is a judge need to judge allocation ratio (JN/JA) of 1.9/2 which is ideal. Over the last decade the trend line for judge need in the 29th has been on a rapid upward trajectory and the case clearance rate has been 99.5%. Finally, low travel time in the 29th allows the judges to spend 90% of their available time working on and deciding cases. By all objective standards, the 29th Judicial District uses the

judicial resources allocated to it efficiently and resolves the cases filed therein in a timely and prompted manner. The weighted caseload studies indicate the 29th Judicial District functions efficiently and that no changes are warranted.

Question 2. Are there any geographical or contiguity concerns that exists with the current judicial districts? If so, what changes should or might be made to address these?

Answer: No

Explanation of answer: There are judicial districts in this state where the distance of travel from courthouse to courthouse can be from 80 to over 100 miles. There are districts in this state where it takes over 1 ½ hours to nearly 3 hours to travel from courthouse to courthouse. A round trip in these districts could take from 3 to 6 hours per day. In the 29th Judicial District, it is 26 miles between courthouses, and a judge can travel from one courthouse to the next in roughly 35 minutes. A round trip is roughly 1 hour. This compact geographical size allows the judges to travel from county to county in a speedy fashion to handle any emergency that may arise. It also means participants in this district's recovery courts do not have to drive many miles or spend hours traveling to attend recovery court sessions. Finally, the size of the district means the people who live there have the opportunity to actually know who their judicial officers are and what those officers do and don't do which makes those officers more accountable for their actions or inactions. Geographically speaking, the 29th Judicial District is perfect in size.

However, I have been to several meetings of this task force and have heard the "Ramsey Plan," "Trial Judges Plan," and combining "small districts" mentioned several times. So, as far as West Tennessee goes, I'd like to briefly address the geographical aspects of those two plans and the idea of combining smaller districts.

It currently takes roughly 35 minutes to travel from courthouse to courthouse in both the 27th and 29th Judicial Districts. What the "Ramsey Plan" did in West Tennessee was combine the 27th and 29th Judicial Districts into a four county judicial district where the time of travel would have been nearly 2 hours between courthouses. It left untouched all other areas of West Tennessee. That plan did not solve any problems in West Tennessee. Instead, what this plan would have done if implemented was create problems where none existed by creating a judicial district where travel time would be on the extremely high end (2 hours), and the availability of judges to timely serve the courts and decide cases would now be an issue due to the time spent traveling about the district. Judges would simply have to spend more time traveling which means less time to work on and decide cases. It would have also created travel issues for the people who are in recovery courts, people who often times have difficulties with transportation.

The original report of the trial judge's committee suggested moving a county from each of West Tennessee's two 5 county districts, the 24th and 25th Judicial Districts. The county moved from the 24th Judicial District, Henry, would have been added to the 27th Judicial District. The county move from the 25th Judicial District, Lauderdale, would have been added to 29th

Judicial District. The trial judge's committee's original report would have resulted in two new 3 county districts in West Tennessee: the 27th as Henry, Weakley and Obion, and the 29th as Lauderdale, Dyer and Lake, and two 4 county districts, the 24th as Carrol, Benton, Decatur and Hardin, and the 25th as McNairy, Hardeman, Fayette and Tipton. The time of travel in the two 3 county districts would be roughly 1 hour from courthouse to courthouse. (In one of those 3 county districts, 88% of the workload of that district would be in counties where the distance between courthouses is only 30 minutes. In the other, the workload was more evenly divided among the counties.) When the two 5 county districts were reduced in size to 4 county districts, the time of travel in those districts between courthouses was reduced by 21% and 25%.

While combining smaller districts into bigger districts may at first sound like a good idea, before that is recommended, the questions "What do you hope to accomplish and what problems do you hope to solve by combining small districts into larger districts?" need to be asked and answered. One thing combining smaller districts into bigger districts will do is it will increase travel time and that means judges, DAs and DPDs who serve these areas will spend more time driving instead of working on and deciding cases, which is neither efficient or desirable. Also, combining smaller districts into larger districts will not decrease the workloads of the judges', DAs', or DPDs' who will serve those areas, so the same number of resources allocated to the bigger district will need to be the same. In fact, more resources may be needed to account for additional travel time. I for one do not see how combining small districts into larger areas will result in a better judiciary or more efficient use of resources. However, if combining smaller districts into larger districts is a recommendation of the task force, it needs to be explained how combining those districts will result in better and timelier services and a more efficient trial level judiciary.

Question 3: Do population changes or trends indicate a need to change district lines? If so, what changes should or might be made to address these?

Answer: No

Explanation of answer: A document on the task force's website cites a September 2017 report issued by the Boyd Center for Business and Economic Research at the University of Tennessee, Knoxville for population projections for each grand division. As this document indicates, each grand division of the state will experience population growth from 2010-2020 with growth projected for the Middle and Eastern grand divisions being greater than the growth projected for the Western grand division. The report from the Boyd Center predicts that from 2010-2020 the projected population of the counties that make up the 29th Judicial District will decrease by 692 people. Just a few short years ago, however, this same Boyd Center released another population projection report predicting the population of the counties that make up the 29th Judicial District would actually **increase** by 2,288 from 2010-2020. *See, Population Projections - University of Tennessee, Knoxville. Boyd Center for Business and Economics. Haslam College of Business. "Annual Projections: Total Population for Tennessee Counties: 2011 to 2064."* Population projections are at best an inexact science which would be a likely explanation for this same center releasing drastically different projections over such a short period of time. Nevertheless, regardless of if the Boyd Center was right when it projected a population increase of 2,288 from 2010-20 or wrong when it projected a population decrease of

692 for that same period of time or vice versa, a population loss of only 692 people out of a state projected to have a population of 6.7 million is statistically insignificant. In any event, the 2017 report indicates that from 2020 and beyond the counties that make up the 29th Judicial District will have a steady population with little growth but also with little to no loss. Thus, while the Boyd Center's 2017 report does indicate a 692 person decline in population from 2010-20, this same report does not indicate a further population decline beyond 2020 in these counties. Instead, the report indicates a population that is steady. Finally, a decennial census will be conducted over the next few months, so any decisions where population is a factor should not be based on a projection but should await the release of that census's data.

Question 4: What communities of interest will be affected by a change in the districts as you suggest?

Answer: By all objective standards, the 29th Judicial District functions well and uses the resources allocated to it in an efficient manner. So, no changes are suggested for this district.

Explanation of answer: However, if change occurs to the 29th Judicial District, the following communities of interest and collateral resources will be affected:

1. Supportive services dedicated to the collection of child and spousal support and enforcement of support orders. Through April of 2019, nearly \$3,845,905.63 in support had been collected by these services in the 29th Judicial District which ranked this district as 5th overall in support collection rates among the state's 31 Judicial Districts behind only the 21st, 28th, 23rd, and 22nd Judicial Districts. Overall, from the beginning of the fiscal year through April of 2019, \$346,092,855.07 of support had been collected statewide which equates to an average collection of support of roughly \$53.79 per Tennessee resident. In the counties that make up the 29th Judicial District, the collection rate of support per county resident is \$84.58 which is **64%** above the State's average. This rate of collection in one of the most economically challenged areas of the state occurs because the courts currently have time to focus on these type cases, but that time may not be available if change occurs.

2. Currently, local governments in the 29th Judicial District annually expend over \$100,000.00 of their tax dollars to fund Assistant District Attorney and Assistant District Public Defender positions. This funding could be in jeopardy if change is made to the 29th Judicial District.

3. The Recovery Court of the 29th Judicial District is a joint district program made of law enforcement from all counties in the district plus the General Sessions Judges from all counties. This program is grant funded with local treatment providers operating in all counties. Participants in recovery courts often have difficulties with transportation and the current size of the district limits the number of miles participants have to travel for court sessions. A change that increases the time and distance these participants must travel could render the recovery court treatment option unavailable to some.

4. Vulnerable Adult Protective Investigative Team (VAPIT), and Child Protective Investigative Team (CPIT).

5. Court Appointed Special Advocates (CASA).

6. To maximize efforts and resources, the Drug Task Force for 29th Judicial District operates in conjunction with the Drug Task Forces for the 28, and 30th Judicial Districts.

7. A \$360,000.00 grant that funds a pre-trial pilot program from the State of Tennessee Office of Criminal Justice Programs.

8. Department of Children's Services.

9. Local law enforcement cooperation and assistance agreements.

10. The counties of the 29th Judicial District are bonded together geographically, culturally, economically and are in the same house and senatorial districts. These counties are not wealthy in the financial meaning of the word, but they come to one another's mutual aid in many ways including current and ongoing joint-county economic development and revitalization efforts. These counties are not just a "judicial district" but are indeed a community of people with relationships so intertwined change at this junction of their economic recovery could come at an unmeasurable cost.

Question 5: What effect(s) would changing the current judicial districts have on existing collateral resources, e.g, Drug Task Forces, Recovery Courts, local grant funding, etc.?

Answer: Parts of this question were answered above, but all things including the collateral resources mentioned in this question operate better, function more effectively, and provide better services in stable and certain environments. Changes to district lines or even combining districts will inevitably cause instability and uncertainty which in turn will cause negative impacts on the operation, function and effectiveness of the services provide by all collateral resources in all judicial districts. This negative impact and disruption caused by change will simply be unavoidable. Disruptions caused by changes, however, will not be limited to just collateral resources. Instead, for a period of time, change will disrupt court operations as well. For example, courts often set their dockets and schedules many months in advance, so there will be a period of disruption as the courts in the areas affected by change struggle to absorb the workloads being added into those established dockets and schedules.

With proper planning, however, any effects caused by change can be lessened and shortened if the collateral resources and courts have a period to transition to the change. Thus, if change is going to be made, "a transition period" will be needed so court cases in counties moving from one group of counties to another can be timely integrated into established court dockets and schedules. A transition period will not only aid the courts, district attorney generals, and district public defenders, but it will also be of great benefit to collateral resources as drug task forces establish new relationships with DAs, DPDs, and law enforcement agencies, as

participants in recovery courts finish the programs they have started, and local operations funded by grants run their course. The Tennessee Attorney General has opined on more than one occasion that changes to judicial district lines can be made at any time, so a transition period is constitutional. *See, e.g. Op.Tenn.Atty.Gen. U81-136(September 22, 1981); Op.Tenn.Atty.Gen. 83-401(December 1, 1983); and Op.Tenn.Atty.Gen. 87-163(October 23, 1987).* (These opinions were based on the Tennessee Supreme Court's opinion in *McCully v. State, 102 Tenn. 509, 53 S.W. 134 (1899).*) In fact, the changes to the judicial districts that occurred in 1984 took effect after the 1982 statewide elections, and to lessen the impact of the change, a transition period mechanism was included in that legislation. *See, e.g., Tenn.Code.Ann. 16-2-506.*

To lessen the impact any recommended change will have on both collateral resources and court operations and to ensure all goes smoothly, the task force should consider recommending a period of transition for those areas affected by change that begins after 2022 and is similar to what occurred between 1984 and 1990.

Question 6: Are there any compelling reasons to preserve the existing judicial districts?¹

Answer: Yes. Objective data indicates the 29th Judicial District is efficient and no change is needed; no one in the area served by the 29th Judicial District has expressed a desire for change; and economic recovery will be hindered by the instability caused by a change; and.

Explanation of answer: First, by all objective standards, weighted caseload, travel time, population trends, case clearance rates, etc., the 29th Judicial District is one of the most highly efficient districts in the state; it functions as a judicial district should and uses the resources allocated to it in an efficient manner.

Also, the judicial districts are set up to serve the people, and at the public hearings, not one person served by the 29th Judicial District expressed a desire that the district be changed. In fact, not one person at any of West Tennessee public hearings expressed a desire that any district be changed. Instead, all who spoke expressed grave concerns of how change would have negative consequences. Also, thus far, not one public comment submitted by the people served by the 29th Judicial District or other parts of West Tennessee have expressed a desire that change occur nor have any pointed out any problem occurring in any of West Tennessee's judicial districts. Instead, all comments express a desire that all is working well and no change should occur. The members of this task force reside in 8 different districts, and it goes without saying the members know better than anyone else if the 8 districts they reside in are working well and are providing timely and efficient service to the people who live in that district. Likewise, the people who reside in, work in, and are served by the other 23 judicial districts know better than anyone else if those 23 districts are working well and are providing timely and

¹ 1. The wording of Question 6 on the task force's website is as follows: **Are there any compelling reasons to preserve the existing judicial districts?** At the public hearings, however, the wording of question 6 was: **Are there any compelling reasons to change the existing judicial districts?** I will answer both versions starting with the version on the task force's website.

efficient service. At the public hearings and in the public comments submitted thus far, the people in West Tennessee and most other areas of Tennessee have spoken, and what they have said is, "All is working well and no change is needed!" The task force should give special consideration to the public's feelings and wishes on this subject.

Finally, over the last several years, parts of Tennessee, mostly in Middle and East, have experienced an economic recovery that is the envy of most parts of the country. All areas of Tennessee, however, have not been so blessed. Northwest Tennessee is one of those areas. The 29th Judicial District is located in extreme Northwest Tennessee, and one county in this district, Lake, is, by most economic data, the poorest county in the state with a poverty index of 29.20% and has been classified by Governor Lee as a "distressed" county. The county that borders the 29th Judicial District to the south is also a "distressed" county with a poverty index of 24.70%. The lone economic bright spot in Northwest Tennessee sports a poverty index of 18.60%, and this county, Dyer, is also part of the 29th Judicial District. While the state's current per capita income is \$47,134.00, the per capita incomes in the counties that make up Northwest Tennessee range from a low of \$23,175 to a high of \$39,328.00, which is 17 to 51% below the state's average. As bleak as the current economic picture may appear, however, the picture is actually better than it was just a few short years ago. Northwest Tennessee has by no means turned the proverbial corner to desirable economic growth, but it is in an economic rebound and that corner is now in sight. However, as everyone knows, economic growth occurs only where stability exists, and what Northwest Tennessee needs during this phase of its economic recovery is stability of all kinds including stability in the trial level judiciary that serves this area. The stymieing effect changing the judicial district lines in Northwest Tennessee or reallocating resources from Northwest Tennessee will have on the current economic recovery is unknown and is another compelling reason to preserve the 29th Judicial District and all judicial districts in Northwest Tennessee.

Question 6: Are there any compelling reasons to change the existing judicial districts?

Answer: No. There are no compelling reasons to change to the 29th Judicial District.

Explanation of answer: The negative I have heard regarding some judicial districts in this state is they are small and need to be combined with other small districts. The 29th is not as large geographically or in population as some other districts, so in some aspects the 29th is small. However, in the areas that matters most, workload per judge, case clearance rates and time spent working on and deciding cases, it is as big year in and year out as most other judicial districts that are larger both geographically and in population. This is borne out by the weighted caseload studies, so in the area of workload the 29th is not a small district at all. The 29th is a 2 county district, but it is by no means the smallest district in geographical area. This smaller geographical area actually allows the judges who serve the 29th to spend 90% of their time working on and deciding cases while the judges who serve in districts that are geographically larger often have very higher rates of travel time and can spend as little as 78% of their time working on and deciding cases. So, being a smaller geographical district has its advantages. Combining the smaller districts into bigger districts will increase travel time and that means judges who serve these areas will spend more time driving instead of working on and

deciding cases which is neither efficient or desirable. Also, combining smaller districts into larger districts will not decrease the workloads of the judges, DA's, or DPD's, so the same number of resources allocated to the bigger district will need to be the same. While combining smaller districts into bigger districts may at first sound like a good idea, before that is done, the questions "What do you hope to accomplish? and What problems do you hope to solve by combining small districts into larger districts?" need to be asked and answered. Also, if this is done, it needs to be explained how combining small districts into larger districts will provide better and timelier services and will result in a more efficient trial level judiciary.

Finally, as the task force goes about its difficult work of considering if changes to the lines of the 31 judicial districts need to be made or if resources need to be added to or reallocated from one area to another, I am certain it will ask itself many question including: "Are there any compelling reasons to change this judicial district? What are the problems with this judicial district, and if there are any, how will changing this district solve those problems? and How will change to this district's lines result in timelier services and more efficient use of resources?" As it asks itself these questions the task force may conclude no changes are needed, there are no problems, or change will not result in timelier services or more efficient use of resources. However, if the task force concludes changes need to be made to some districts yet not to others it is important for the task force to detail in its report what reasons compelled the necessity to change a district and what reasons compelled the task force to preserve the districts it recommends be left unchanged. It is important the task force detail in its report the problems with the district that are changed, how the changes will solve those problems, and finally how the change will improve services and result in more efficient use of resources. Everyone deserves to know the reasons why the task force recommends whatever it ultimately recommends, and it is imperative the task force explain this in detail in its report. Otherwise, it could appear to some the task force is not being objective, and it will be very disruptive to the judiciary if the objectivity of the task force, its report, and recommendations are called into question.

Question 7: How should judges be allocated/reallocated within the judicial districts of Tennessee?

Answer: How state judges positions should allocate or reallocate within the judicial districts of Tennessee should be based on nothing other than the Tennessee Judicial Weighted Caseload Update.

Explanation of answer: First, it's the law and statutorily mandated. Tennessee law currently provides "[t]he comptroller of the treasury shall devise and maintain a weighted caseload formula for the purpose of determining the need for **creation or reallocation of judicial positions using case weights derived from the most recent weighted caseload study.** The comptroller of the treasury shall update the formula at least annually." Tenn. Code Anno. § 16-2-513(a) (emphasis added.) In response to that statutory mandate, the comptroller devised the first weighted caseload formula in 1999. In the following two decades, the weighted caseload formula was revised in 2007 and again in 2013, and the application of the 2013 formula to the annual studies was updated in 2017 and again in 2018. Even if it were not the law, the annual Tennessee Judicial Weighted Caseload Updates are the only objective tool available designed solely for the purpose of gauging judicial need, and it has been gauging the judicial need of the

trial level judiciary of this State for nearly two decades. The comptroller of the treasury annually issues an updated judicial weighted caseload study based on cases filed during the State's Fiscal Year spanning from July 1 to June 30, and to date, the comptroller has issued nineteen (19) annual Tennessee Judicial Weighted Caseload Updates. These annual updates provide a nearly two decade data driven record of the need for the judicial resources in each judicial district and are a treasure trove of objective data designed solely for the purpose of gauging judicial need. The last weighted caseload study does not indicate reallocation of resources from any judicial districts currently needs to occur. This study, however, does indicate additional resources may need to be allocated to 3 judicial districts in Middle Tennessee.

Question 8: How should district attorney generals' staffs and district public defenders' staff, including attorney, support staff, and any ancillary staff, be allocated/reallocated within the judicial districts of this state?

Answer: Both the district attorney generals and the district public defenders need to be provided with all the resources they need to effectively perform their jobs, including the ones mentioned in this question. As far as I know, however, a time tested objective mechanism or standard that gauges the district attorney generals' or the district public defenders' need for the resources mentioned in this question has not been developed. Therefore, I would have no idea how to go about the task of allocating or reallocating those resources and would defer to the district attorney generals and district public defenders on this issue. However, if such a mechanism or standard does exist, it should be used. If such a standard or mechanism does not exist, one should be developed, and until one is developed I would hesitate against reallocating any of these resources from a district if the district attorney general or the district public defender who serves that district objects to the reallocation.