

**IN THE TENNESSEE SUPREME COURT
AT NASHVILLE**

ERNEST FALLS,

Petitioner,

v.

MARK GOINS, in his official capacity as Coordinator of Elections for the State of Tennessee, TRE HARGETT, in his official capacity as Secretary of State of the State of Tennessee, HERBERT SLATERY, III, in his official capacity as Attorney General for the State of Tennessee,

Respondents.

No. M2020-01510-SC-R11-CV

Ct. App. No. M2020-01510-COA-R3-CV

Ch. Ct. for Davidson Cty. No. 20-0704-III

AMICUS CURIAE BRIEF OF THE LEAGUE OF WOMEN VOTERS OF TENNESSEE IN SUPPORT OF PETITIONER ERNEST FALLS'S RULE 11 APPLICATION FOR PERMISSION TO APPEAL

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INTEREST OF THE *AMICUS CURIAE*

The League of Women Voters of Tennessee (the “League”) is a nonpartisan, nonprofit organization with 1,079 members, which seeks to promote civic engagement in Tennessee by means of informed and active participation in government. The League’s efforts are motivated by the belief that democracy functions best when all citizens have access to the franchise. The League seeks to build citizen participation in the democratic process and studies key community issues in an unbiased manner. As part of this mission, the League actively helps eligible Tennessee citizens to participate fully in public life by becoming registered voters. Eleven local leagues regularly conduct in-person voter registration drives throughout Tennessee. In addition to its active participation in efforts to register all eligible Tennessee voters, the League regularly engages in community outreach, education, and direct advocacy on local and statewide ballot initiatives.

Beginning in 2018, the League intensified its focus on helping eligible Tennessee citizens with past felony convictions to pursue restoration of their voting rights. An estimated one in twelve Tennessee citizens are presumptively barred from voting because of past felony convictions. Because the processes for restoration of voting rights in Tennessee are complicated and inconsistent across counties, the League began an extensive process in 2021 to survey criminal court clerks and election commission offices in Tennessee’s ninety-five counties to identify the appropriate procedures that individuals should follow in each county and the necessary contacts within each county.

In light of the League's and its members' interests in ensuring that all eligible Tennessee citizens are permitted to register to vote and the League's particular focus on the voting rights restoration process in Tennessee, the League and its members will be adversely impacted by the lower courts' erroneous decisions if they are allowed to stand.

STATEMENT OF THE CASE

The salient facts of this case appear in the chancery court opinion, *see Falls v. Goins*, No. 20-704-III (Davidson County Chancery Court October 6, 2020), and are well-addressed in the application for permission to appeal (the “Petition”) filed by Mr. Ernest Falls (the “Petitioner”) in the above-captioned matter. Fundamentally, the case turns on the correct interpretation of the two provisions of the Tennessee Code at issue. One provision, Tenn. Code Ann. § 2-19-143, “govern[s] the exercise of the right of suffrage for those persons convicted of an infamous crime,” while the second, Tenn. Code Ann. § 40-29-202, governs the restoration of the right of suffrage.

On one hand, Tenn. Code Ann. § 2-19-143(3) provides:

No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election in this state unless such person has been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or the person’s full rights of citizenship have otherwise been restored in accordance with the laws of such other state, or the laws of this state.

On the other hand, Tenn. Code Ann. § 40-29-202 provides:

(a) A person rendered infamous and deprived of the right of suffrage by the judgment of any state or federal court is eligible to apply for a voter registration card and have the right of suffrage restored upon:

- (1) Receiving a pardon, except where the pardon contains special conditions pertaining to the right of suffrage;
 - (2) The discharge from custody by reason of service or expiration of the maximum sentence imposed by the court for the infamous crime; or
 - (3) Being granted a certificate of final discharge from supervision by the board of parole pursuant to § 40-28-105, or any equivalent discharge by another state, the federal government, or county correction authority.
- (b) Notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person:
- (1) Has paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence; and
 - (2) Beginning September 1, 2010, notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person has paid all court costs assessed against the person at the conclusion of the person's trial, except where the court has made a finding at an evidentiary hearing that the applicant is indigent at the time of application.
- (c) Notwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person is current in all child support obligations.

As set forth in detail by the Petition, the Court of Appeals held that Petitioner was ineligible to vote under Tennessee law because he failed to provide affirmative proof that he had satisfied the requirements of Tenn. Code Ann. § 40-29-202(b) and (c)—that is, that he had paid the

“court-ordered restitution and costs related to his crimes (if applicable) and has satisfied his child support obligation (if any exists).” *Falls v. Goins*, 2021 WL 6052583, at *5 (Tenn. Ct. App. Dec. 21, 2021). In so holding, the Court of Appeals reasoned that Petitioner was required to comply with Tennessee’s specific voting rights restoration process—despite the fact that the Commonwealth of Virginia has already fully restored Petitioner’s rights of citizenship, including his right to vote—by virtue of the fact that he qualified as a “person who has been disqualified from exercising [the right to vote] by reason of a conviction in any state or federal court of an infamous crime.” *Id.*

In his Petition, Mr. Falls seeks this Court’s review of the Court of Appeals’ decision. The League agrees with the arguments set forth in the Petition and seeks to file this amicus curiae brief in order to call the Court’s attention to the issues of public importance presented by this case and certain legal errors that will adversely impact many other voters across Tennessee if the decision of the Court of Appeals is allowed to stand.

SUMMARY OF ARGUMENT

The League respectfully requests that the Court grant the Petition to address the significant public interests at stake and to exercise its supervisory authority to correct an erroneous interpretation of the Tennessee Code. The decision below will have a detrimental and damaging effect on democratic principles that are fundamental to Tennessee's system of government. A strong democracy depends upon participation by all eligible citizens, which can only be achieved by ensuring those citizens have consistent and predictable access to the franchise. The decision below does just the opposite—it creates inconsistent and unpredictable access for a subset of Tennessee citizens with past, out-of-state felony convictions, by requiring them to overcome additional hurdles before they may vote in Tennessee. In doing so, the decision below risks creating a undue chilling effect on all eligible Tennessee voters' pursuit of their right to vote, not just those with out-of-state convictions, by creating the belief that registering to vote is complicated and likely to be unsuccessful.

This chilling effect on eligible citizens' exercise of the franchise arises from a statutory interpretation that is contrary to the plain meaning of the statutes at issue and contrary to the Tennessee Legislature's legislative decision to extend full faith and credit to its co-equal sister states' restoration of rights. The interpretation of the relevant statutes ignores the principle that equal respect and credence should be given to the judgments and orders of other co-equal states. More fundamentally, however, the lower court's interpretation does not

comport logically with a plain reading of the relevant statutory provisions.

Given the public's significant interest in ensuring Tennessee law provides for consistent and predictable access to the right to vote and the lower courts' legal errors—as elaborated in detail in the Petition—the Court should grant review in this case.

ARGUMENT

The League is dedicated to ensuring that all eligible Tennessee citizens can actively participate in government by exercising the right to vote. The League agrees with and supports the arguments made by Petitioner that the decision of the Court of Appeals misinterprets and misapplies Tennessee's statutes regarding disenfranchisement and restoration of voting rights. The League writes separately to explain how that decision, if allowed to stand, would unduly chill voter participation in Tennessee and damage democracy.

The issues presented in the Petition implicate far more than Petitioner's own access to the polling place. They affect the suffrage of more than 450,000 Tennessee citizens with past felony convictions (more than the populations of Knoxville and Chattanooga combined), as well as those without past felony convictions. The Court of Appeals' interpretation is not only an incorrect interpretation of the relevant statutes, it also creates an inconsistent and unpredictable path for access to the right to vote by (1) invading the Tennessee Legislature's authority by overturning its policy decision to extend full faith and credit to other states' restorations of voting rights, (2) unduly complicating a reasonable

voter's logical reading of the relevant statutes, and (3) creating additional, unintended hurdles for those citizens with out-of-state convictions. The inconsistency, undue complications, and unintended hurdles created by the lower courts' decisions will have a chilling effect that extends far beyond the class of Tennessee citizens with out-of-state felony convictions.

The Court of Appeals' interpretation of the relevant statutes creates a byzantine labyrinth for certain eligible voters to complete before they may exercise their right to vote. In the League's experience, this heightened complexity harms the public's interest in open access to the ballot box by chilling and dissuading a significant number of Tennessee voters, even those beyond the class of voters with out-of-state convictions, from participating in the franchise. The Court of Appeals' interpretation of the underlying statutes must also be corrected because, if allowed to stand, it would unduly interfere with the Tennessee Legislature's decision to extend full faith and credit to restorations of rights in co-equal sister states. Finally, the erroneous statutory interpretation employed by the Court of Appeals must be corrected because it is contrary to the plain language and the logical ordering of the relevant provisions. For those reasons, the League would urge the Court to grant the Petition to ensure that eligible Tennessee voters have consistent and predictable access to the ballot box.

I. THE DECISION BELOW DENIES TENNESSEANS CONSISTENT AND PREDICTABLE ACCESS TO THE POLLING PLACE.

The Court should grant the Petition because the decision below will detrimentally impact Tennessee citizens' access to a fundamental right—

their right to vote. The statutory interpretation adopted by the Court of Appeals invades the province of the Tennessee Legislature, unnecessarily complicates the underlying statutory scheme, and simply ignores the unintended and unduly burdensome hurdles it creates for citizens with past, out-of-state felony convictions. Together, these consequences combine to cause a chilling effect for the entire Tennessee voting population by creating the impression that the process of registering to vote is cumbersome and complicated, which risks depressing voter participation across the state and damaging the democratic processes that are fundamental to Tennessee's system of government.

A. The statutes, as interpreted by the Court of Appeals, result in unintended legislative overreach that violates Tennessee's policy decision to extend full faith and credit to the rights restorations of other states.

The Attorney General's preferred interpretation of the legislative scheme, as adopted by the Court of Appeals, creates unintended legislative overreach into the affairs of Tennessee's co-equal sister states. This overreach not only causes absurd results, it fails to give appropriate credence to the determinations of other states, in violation of the Tennessee Legislature's explicit policy decision to extend full faith and credit to other state's restorations of rights.

First, the Court of Appeals' interpretation of Tenn. Code Ann. § 40-29-202, if allowed to stand, will regularly lead to the invalidation of orders from other states restoring individuals' voting rights, including those who have exercised their restored rights for years. Consider the

following hypothetical: Carl Smith moved to Tennessee recently. Two decades ago, Mr. Smith pleaded guilty to and was convicted of a low-level felony offense in another state. As a consequence of his conviction, he was disenfranchised. After serving his sentence, Mr. Smith successfully restored his right to vote pursuant to the process established by the state of conviction. He then exercised his right to vote in several successive national and local elections in the state of conviction. After accepting a promotion earlier this year, Mr. Smith moved to Tennessee. Shortly after moving, Mr. Smith filled out a voter registration form so that he could vote in the upcoming midterm elections in Tennessee. His registration was rejected based on his prior felony conviction. He therefore cannot vote without going through the laborious and complicated process of identifying the relevant agencies in the convicting state and securing additional documentation from such agencies, many of which may not maintain records needed to complete the documentation required under Tennessee's process. Although he eventually secured the required documentation, the process takes several months. The delay caused Mr. Smith to miss Tennessee's registration deadline in order to vote in the midterm elections, despite the fact that he was technically eligible to vote in that election. By moving to Tennessee, Mr. Smith became subject to an undue burden on his right to vote—a right he had previously been exercising for years.

This counterintuitive and absurd result flows naturally from the Attorney General's desired interpretation of the relevant provisions of Tennessee law. As even the Court of Appeals recognized, Section 40-29-202 was implemented in order to streamline the restoration process and

make it easier for those Tennessee citizens whose right to vote had not been restored to do so. *See* 2006 Pub. Acts 860; *see also Falls*, 2021 WL 6052583, at *4 n.5. But the Court of Appeals’ application of the statutes, as demonstrated above, leads to a result where individuals who have already had their right to vote restored must face additional hurdles to continue exercising that right when they seek to vote in Tennessee. Such a result is at cross-purposes with the legislature’s stated goals when it passed the relevant statutes. Instead of streamlining the process of rights restoration in Tennessee, Section 40-29-202, as interpreted by the Court of Appeals, would create additional confusion and hurdles for those individuals who have out-of-state felony convictions but have already had their voting rights restored before moving to Tennessee.

Moreover, the undue burden the Attorney General’s preferred interpretation would work on Tennessee citizens with out-of-state convictions violates Tennessee’s legislative commitment to honor the Full Faith and Credit Clause of the United States Constitution with respect to other states’ restorations of voting rights. The Full Faith and Credit Clause reads: “Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.” U.S. Const. art. IV, § 1. Tennessee courts recognize it is

well established that the full faith and credit clause of the federal constitution requires that the judgment of a state court, which had jurisdiction of the parties and the subject matter in suit, be given the *same credit, validity and effect* in the courts of every other state and that such judgment be equally conclusive upon the merits in the courts of the enforcing states.

Mirage Casino Hotel v. J. Roger Pearsall, 1997 WL 275589, at *3 (Tenn. Ct. App. May 27, 1997) (emphasis added). “Full faith and credit embodies an important federal policy. It is designed to give the United States certain of the benefits of a unified nation.” Restatement (Second) of Conflict of Laws § 103 cmt. b (2012). Tennessee courts have held the Full Faith and Credit Clause specifically applies to pardons and restoration of rights. *See Blackwell v. Haslam*, 2013 WL 3379364, at *8 (Tenn. Ct. App. June 28, 2013).

“[T]he principle of giving full faith and credit to the judgments of sister states will ‘almost invariably’ outweigh the interest of an individual state.” *Id.* at *6. There may be “*extremely rare* occasions . . . when recognition of a sister state judgment would require too large a sacrifice by a State of its interests,” Restatement (Second) of Conflict of Laws § 103 cmt. b (2012) (emphasis added), but “the judgment of the court of another state does not necessarily violate the public policy of [Tennessee] merely because the law upon which it is based is different from our law.” *Four Seasons Gardening & Landscaping, Inc. v. Crouch*, 688 S.W.2d 439, 445 (Tenn. Ct. App. 1984).

This is simply not one of those “extremely rare occasions.” This Court has recognized that “[i]t is beyond question that the right to vote is a ‘precious’ and ‘fundamental’ right. Even the most basic of other rights are ‘illusory if the right to vote is undermined.’” *Fisher v. Hargett*, 604 S.W.3d 381, 500 (Tenn. 2020). Moreover, the Tennessee Constitution’s adoption of the right to universal suffrage is instructive here. Article I, Section V’s “declaration of the right of universal suffrage is self-executing in that any citizen may rely upon it independently of any

legislative enactment.” *Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983) (quoting *Crutchfield v. Collins*, 607 S.W.2d 478, 481 (Tenn. Ct. App. 1980)). In contrast, the “*exception* to universal suffrage is expressly dependent on legislative action,” and therefore not self-executing. *Id.* (emphasis added). Thus, Tennessee’s constitutional policy confirms that, if anything, it would be *more* consistent with Tennessee’s public policy to allow out-of-state restoration of rights proclamations and orders to be self-executing. This is confirmed by the Legislature’s decision to extend full faith and credit to other state’s restorations of rights in Section 2-19-143(3). Having already earned the restoration of his right to vote in Virginia, Mr. Falls (and other Tennessee citizens like him) should be entitled to register to vote without clearing the additional administrative hurdles set forth in Section 40-29-202. Therefore, the Court should grant the Petition in order to effectuate the Tennessee Legislature’s decision to afford full faith and credit to Virginia’s order of restoration of rights for Mr. Falls and other similarly situated individuals.

B. The Court of Appeals’ interpretation of the relevant statutes improperly conscripts other states to execute Tennessee-specific requirements to the detriment of Tennessee citizens.

The State’s insistence on improperly applying the overly complicated requirements housed in Section 40-29-202 to Petitioner and other similarly situated individuals compounds the resulting harm from the improper legislative overreach described above. Although the requirements may seem innocuous on their face, they create additional, unintended and difficult hurdles for those Tennessee citizens with out-of-state convictions. These difficulties place a real and significant burden

on Mr. Falls's and other similarly situated individuals' right to vote. The statutes, as interpreted by the Court of Appeals, create a system that assumes out-of-state agencies will understand and comply with Tennessee-specific requirements, and relies upon them doing so before otherwise-eligible Tennessee citizens will be permitted to exercise their fundamental and self-executing right to vote. This assumes too much.

The League's experience in helping individuals with past felony convictions navigate these complicated processes provides critical insights that prove that assumption to be false. League volunteers have found it especially difficult to help individuals with out-of-state convictions to secure the documentation necessary to satisfy the criteria of Section 40-29-202, due to other states' unfamiliarity with Tennessee's requirements among other factors. Individuals with out-of-state convictions face significant delays and financial expense to secure this documentation, if they are able to secure it at all. Out-of-state agencies' personnel and offices are often uncooperative, either as a result of their states' their own policies or their lack of motivation to provide help to citizens of other states. Crucially, neither the Tennessee government nor the individual seeking restoration of his or her rights have any control over the out-of-state agency. Thus, when the out-of-state agency refuses to provide the necessary documentation, the Tennessee citizen can do nothing else to restore his or her right to suffrage.

Take, for example, the following experience shared by a League volunteer from Chattanooga helping John Doe¹ to restore his voting

¹ The individual's name has been changed for the sake of privacy.

rights. In 2002, Mr. Doe was convicted in Amarillo, Texas for felony possession of marijuana. He received a six-year sentence. In the course of attempting to secure the documentation specified under Section 40-29-202 to restore Mr. Doe's voting rights, the League volunteer was informed that Texas agencies do not complete paperwork for the restoration of voting rights in other states. Although Mr. Doe was able to pay a fee to obtain non-certified copies of his conviction records, which show that he does not owe any remaining court costs or restitution, he still remains unable to satisfy the documentation requirements of Section 40-29-202 because the State of Texas refuses to provide him with his Certificate of Discharge.

The League volunteer also contacted the Hamilton County Election Office. That office does not have experience with situations involving Texas convictions. However, the staff member recounted a situation where she had to call a Georgia county clerk's office to convince its staff to complete the Certificate of Restoration form after they had previously refused to do so. That Hamilton County Election Office staffer indicated that while the Tennessee Secretary of State generally requires a completed Certificate of Restoration form, an exception may be made if there is evidence that the restoration criteria had been met. However, the staff member could not assure the League volunteer that Mr. Doe would have his voting rights restored without a completed Certificate of Restoration form, even if he provided supporting documentation with his voting application. Mr. Doe has not yet been able to restore his right to vote.

Similarly, Ms. Jane Jones², a current resident of Knoxville, has not yet been able to have her voting rights restored. Ms. Jones, like Petitioner, has prior felony convictions that occurred in Virginia. Ms. Jones's voting rights were restored by former Virginia Governor McAuliffe prior to the end of his term in 2018. Despite her Virginia order of rights restoration, her application to vote in Tennessee was denied because she had unpaid Virginia court costs. Notably, these unpaid court costs *payable to the Commonwealth of Virginia* did not prevent Governor McAuliffe from granting an order of restoration of rights. The Tennessee Secretary of State's office has informed Ms. Jones's lawyer that any Tennessee citizen with an order of restoration from a Virginia governor will be denied restoration in Tennessee due to outstanding *Virginia* court costs. This is illogical. If Virginia does not view its outstanding court costs as a barrier to restoration, there is no reason for Tennessee to bar an individual like Ms. Jones from voting due to court costs owed to *another* state.

The experiences of Mr. Doe and Ms. Jones demonstrate the harm in construing Section 40-29-202 as imposing additional requirements for the restoration of voting rights, rather than simply creating another path in addition to processes available in the state of conviction to achieve that same end. Rather than expanding disenfranchised individuals' access to the restoration of their voting rights, as the 2006 amendment was intended, the Court of Appeals's interpretation creates additional hurdles for these citizens. The Court of Appeals's interpretation also

² The individual's name has been changed for the sake of privacy.

assumes without basis that it is possible for otherwise-eligible citizens to have their voting rights restored with proof that meets the statutory criteria, even if the state of conviction will not provide the materials contemplated by Section 40-29-202. Moreover, the League's experience demonstrates that Tennessee does not offer a set, consistent, and predictable procedure or set of rules for individuals like Petitioner to follow. Thus, the interpretation adopted by the Court of Appeals inexorably leads to a lack of certainty regarding whether individuals can practically have their voting rights restored even if they technically meet the necessary criteria set forth in Section 40-29-202. This uncertainty will discourage disenfranchised individuals from even beginning the process to restore their rights.

C. The legislative overreach and overly complicated requirements that flow from the Court of Appeals's interpretation of the relevant statutes combine to create a chilling effect on eligible Tennessee voters.

The legislative overreach sanctioned by the Court of Appeals's interpretation, combined with the inconsistently implemented procedures of Tennessee's rights restoration process, will in all likelihood lead to a significant chilling effect on eligible voters' willingness to undertake the process of registering to vote. In the League's experience, that chilling effect would likely not be limited to eligible voters, like Petitioner, with prior out-of-state convictions. Rather, it would extend to eligible voters without any convictions across the state. Impediments to voter restoration have a far broader effect beyond just the directly affected individual. Such impediments create the impression that the

process to register to vote is complicated, cumbersome, and likely to be unsuccessful, which in turn typically discourages individuals from participating in the most fundamental form of civic discourse.

Petitioner has gone above and beyond what could be expected of most reasonable voters in Tennessee in his quest to exercise his right to vote. He has brought an action in chancery, taken an appeal, and now brings his Petition to this Court. The League's experience is that most potential voters become discouraged much more quickly by the often insurmountable hurdles the State's preferred interpretation of the relevant statutes would place in the way of eligible voters who simply seek to exercise their right to vote under Tennessee law.

The reach of the Court of Appeals' opinion below extends far beyond Petitioner. It will discourage many eligible Tennessee citizens who have prior out-of-state felony convictions from pursuing the right to vote, even when they meet the statutory requirements to register to vote. Each and every hurdle the State places in front of an eligible voter makes it more likely that the eligible voter will "drop out" and stop pursuing his right to vote. This case demonstrates that very reality—Petitioner is not joined by his co-plaintiff in his Petition. Under the Court of Appeals's interpretation, the requirements of Section 40-29-202 are not just requirements that individuals must satisfy if they have not otherwise had their voting rights restored. Instead, that interpretation burdens otherwise-eligible citizens to affirmatively prove their eligibility to vote. *See Falls v. Goins*, No. 20-704-III (Davidson County Chancery Court October 6, 2020) ("Plaintiff Falls received notice . . . that his voter registration was denied because he did not provide evidence that he owes

no court costs or restitution for his Virginia conviction.”). The requirement that the voter provide such evidence creates significantly higher hurdles that require significant additional time—for identifying the relevant agency, the right person in that agency, explaining what documentation is needed, gathering the additional paperwork required by the out-of-state agency—and cost—additional fees for the production of records or potential legal fees. Moreover, it flies in the face of longstanding Tennessee law providing that the right to vote is self-executing. *Gaskin*, 661 S.W.2d at 867 (quoting *Crutchfield*, 607 S.W.2d at 481).

Any one of these hurdles may cause an eligible voter to conclude that it is simply too difficult to continue with pursuing their right to vote. And those citizens around them, including friends and family members, regardless of their own conviction status, will likely also be discouraged from registering to vote (and perhaps even voting) themselves. This risk is underscored by the League’s experience in encouraging the youngest voting demographic (18-24 year olds) to exercise their own voting rights:³ It is distinctly harder to convince citizens in that demographic category that it is worth the effort to become an educated and participating voter when the adults in their lives are not registered to vote. The lower courts’ unnecessary complication of the rules around voting registration poses a grave risk creating a generational and social ripple effect, whereby the State’s refusal to recognize the voting rights of individuals like Petitioner

³ The League conducts annual in-school registration activities in the high schools of Memphis, Hendersonville, Nashville, Chattanooga, Oak Ridge, and Knoxville.

erodes the confidence others in his community and throughout Tennessee have in our representational system of government.

* * *

The Petition should be granted because of the weighty public concerns at issue in his case. Any reduction in citizens' access to the right of suffrage has a long-term damaging effect on the fundamental tenets of democracy underlying Tennessee's system of government. The Court should intercede.

II. THE COURT SHOULD EXERCISE ITS SUPERVISORY AUTHORITY TO CORRECT AN ERRONEOUS STATUTORY INTERPRETATION THAT IS INCONSISTENT WITH THE TENNESSEE CONSTITUTION.

The Court should also grant the Petition to correct the Court of Appeals' erroneous interpretation of the relevant statutes. Both the Chancery Court and the Court of Appeals improperly applied the relevant statutes, effectively following an incorrect order of operations between the various statutory provisions. By doing so, the courts further muddled an already unintuitive and confusing statutory scheme. Instead of first analyzing whether Petitioner was in fact disenfranchised under Tennessee law before assessing whether he had complied with Tennessee's rights restoration process, the courts below short-circuited the analysis by asking first whether Petitioner had jumped through the procedural hoops of Tennessee's voting rights restoration process. In doing so, the courts effectively assumed that Petitioner was ineligible to vote. That assumption violates the principle embodied in the Tennessee Constitution that a Tennessee citizen's right to vote is self-executing absent affirmative legislative enactment limiting such right. Further,

even if the Court determines the statutory scheme is ambiguous, the proper reconciliation of the ambiguities demonstrates that Petitioner’s interpretation of the statutory scheme is correct.

A. The statutory interpretation creates an order of operations problem that is contrary to a logical reading of the statutes.

The Chancery Court and the Court of Appeals approached the statutory interpretation problem in a manner contrary to a natural and logical reading of the Code. As a matter of logic, a reasonable person would first seek to determine whether they were eligible to vote under Tennessee law. If not, they would then assess whether there were any additional hurdles they were required to clear in order to exercise their right to vote. Instead, the Court of Appeals first asked if Mr. Falls had complied with the procedural requirements Tennessee’s voting rights restoration process and only cited Tennessee’s disenfranchisement statute as proof that Mr. Falls had been disenfranchised *at some point in the past*. That analysis erroneously ignores the current status of Mr. Falls’s right to vote under Tennessee law and should be reversed.

When seeking to determine their eligibility to vote, a reasonable voter would look first to Tenn. Code Ann. § 2-19-143, in the Tennessee Election Code, which “govern[s] the exercise of the right of suffrage for those persons convicted of an infamous crime.” A person looking to understand the impact of past felony convictions from other states would look to subsection three, which provides:

No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed,

shall be allowed to register to vote or vote at any election in this state unless such person has been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or the person's full rights of citizenship have otherwise been restored in accordance with the laws of such other state, or the law of this state.

Tenn. Code Ann. § 2-19-143(3). By its own terms, the subsection provides three different paths where disenfranchisement due to past, out-of-state felony convictions does not apply: (1) where the individual has been “pardoned or restored to the rights of citizenship by the governor or other such appropriate authority” of the other state; (2) the individual’s “full rights of citizenship have otherwise been restored in accordance with the laws of such other state;” or (3) the individual’s “full rights of citizenship have otherwise been restored in accordance with . . . the law of this state.” *Id.*

A prospective voter like Petitioner, having read this section, would reasonably believe he or she was entitled to vote without any further action. There would be no reason for the voter to continue to read through the Code to determine the steps necessary to reinstate his or her voting rights since, under the plain text of Section 2-19-143(3), those rights remained undisturbed. For voters with out-of-state convictions, there would be even less reason to do so, or to suspect that additional relevant provisions lurk in Tennessee’s “Criminal Procedure” title. Generally, “criminal procedure” refers to the set of rules governing the series of proceedings through which a state enforces its *own* substantive criminal law. An individual who has completed a sentence for an out-of-

state conviction, completed a term of parole and/or supervised release, and moved to an entirely new state would have no reason to reasonably suspect that the new state's criminal procedure would have some bearing on his right to vote.

Yet that is precisely the unintuitive leap in logic the lower courts' interpretation requires. By starting the analysis with the restoration procedures and then returning to the disenfranchisement provision, the Court of Appeals and the Chancery Court have improperly redlined Tenn. Code Ann. § 2-19-143(3) as follows:

No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election in this state unless ~~such person has been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state,~~ or the person's full rights of citizenship have otherwise been restored in accordance with ~~the laws of such other state,~~ or the law of this state.

It is “[t]he most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding [the] statute’s coverage beyond its intended scope.” *Memphis Publ’g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74 (Tenn. 2002); *see also Coleman v. Olson*, 551 S.W.3d 686, 694 (Tenn. 2018) (The Court “do[es] not alter or amend statutes or substitute our policy judgment for that of the legislature.”). The interpretation of the Court of Appeals violates that principle of statutory construction. Moreover, it is a well-settled principle that the courts “construe a statute

so that no part will be inoperative, superfluous, void, or insignificant.” *Coffman v. Armstrong Int’l, Inc.*, 615 S.W.3d 888, 903 (Tenn. 2021). By reading the statutes in a manner that redlines Section 2-19-143(3), the Court of Appeals has done just the opposite—its interpretation would render Section 2-19-143(3) legally inoperative.

The interpretative error of the Court of Appeals is further complicated by its failure to grapple with the fact that the triggering language for Section 40-29-202(a) does not “match” Section 2-19-143(3). By its terms, Section 40-29-202(a) applies to individuals who have (1) received a pardon, (2) been discharged from custody due to serving the maximum sentence, (3) granted a certificate of final discharge from a Tennessee board of parole, or an equivalent discharge by another state, the federal government, or county correction authority. In contrast, Section 2-19-143 provides re-enfranchisement to individuals who have (1) received a pardon or other restoration of rights from the other state’s governor or appropriate authority, (2) had their full rights of citizenship restored in accordance with the laws of such other state, or (3) had their full rights of citizenship restored in accordance with the laws of Tennessee. The Court of Appeals determination that Section 40-29-202 provides “additional requirements for the reinstatement of voting rights for convicted felons regardless of their state of conviction” ignores this discrepancy. *Falls*, 2021 WL 6052583, at *5. If Section 40-29-202 provides the route to restoration for persons with past felony convictions, it does not provide a path for persons who have received a restoration or rights from the other state’s governor or appropriate authority, or who have had their full rights of citizenship restored under the other state’s

laws. It therefore presumes that the procedures in other states map onto the Tennessee procedures. But that is not the case. As noted above, personnel in out-of-state agencies and offices are often uncooperative, hampered by their own policies or simply unmotivated to provide help to non-citizens. In at least one instance, a League volunteer has been told that the out-of-state agency will not fill out the Tennessee certificate of restoration form. This mismatch creates additional risk that Tennessee citizens with out-of-state convictions will not have a meaningful opportunity to vote in Tennessee, even when they are otherwise eligible and when the states of conviction have fully reinstated their voting rights.

The discrepancy between the two provisions also demonstrates the implications of another error. The Court of Appeals ignored that it is unclear whether or not Petitioner’s restoration of rights came through a “pardon” or another vehicle, and presumed that Section 40-29-202 applies to him. Notably, the Chancery Court’s recitation of the undisputed facts stated that “Plaintiff Falls received an order from the Governor of Virginia restoring his rights of citizenship.” *Falls v. Goins*, No. 20-704-III (Davidson County Chancery Court October 6, 2020). In contrast, Petitioner’s brief to the Court of Appeals indicates that he “was provided an individualized grant of clemency by the Governor of Virginia . . . [that] restored [his] full rights of citizenship.” Appellant’s Br. At 15. Yet, the Court of Appeals, without explanation, assumes that Petitioner received a “Virginia pardon in 2020.” *See Falls*, 2021 WL 6052583, at *5. This assumption is unsupported, and the uncertainty regarding the proper characterization of Governor Northam’s order counsels against

the Court of Appeals' interpretation of the statutes as they pertain to Petitioner's case.

B. Even if the statutory scheme is ambiguous, the legislative history demonstrates that Petitioner's interpretation is correct.

Even if the Court finds the statutory scheme is ambiguous, the history of Tennessee's legislative enactments surrounding disenfranchisement and restoration of voting rights along with Tennessee's constitutional principles confirms that the interpretation urged by Petitioner is correct. The history of the Secretary of State's own interpretation of Section 2-19-143 supports at least a finding of ambiguity in the statute. In early 2019, the Secretary of State's office agreed with Petitioner's position that Section 2-19-143(3) identified three independent means of voting rights restoration for those individuals with out-of-state felony convictions. Yet, roughly one year later, the Tennessee Attorney General's office issued an opinion setting reasoning in line with the interpretation of the Court of Appeals below. Without addressing the Secretary of State's contrary position, the Attorney General's opinion stated that Section 40-29-202 overrode the provisions of Section 2-19-143(3). Even if the Court is not convinced that the statutory scheme unambiguously favors Petitioner's position, the conflicting positions taken by the State demonstrate that, at minimum, the statutory scheme is ambiguous.

Even assuming that, read together, the statutes are ambiguous, the interpretation of the Court of Appeals is incorrect. This is because the Court of Appeals ignored both the legislative history of the relevant

statutory provisions and the constitutional principles governing the right of suffrage in Tennessee. Both demonstrate that the 2006 legislative enactment was, like prior amendments before it, intended to *expand* the paths for rights restoration, make the restoration process simpler, and increase accessibility to rights restoration.

The opinion of the Court of Appeals also fails to interpret the statutes in light of Tennessee's constitutional history. This Court has recognized that Tennessee's "declaration of the right of universal suffrage is self-executing in that any citizen may rely upon it independently of any legislative enactment." *Gaskin*, 661 S.W.2d at 867 (quoting *Crutchfield v. Collins*, 607 S.W.2d at 481). The Court in *Gaskin* went on to recognize that the Tennessee Constitution's "*exception* to universal suffrage is expressly dependent on legislative action," and therefore not self-executing. *Id.* In the context of this policy decision, it is only reasonable to interpret the "unless" provisions of Section 2-19-143(3) to operate in a self-executing fashion to return to Petitioner his right of universal suffrage.

Petitioner's interpretation is further supported by the legislative history. Prior to 1983, the Tennessee Code did not provide an exception to disenfranchisement by way of restoration of citizenship under Tennessee law. 1981 Pub. Acts 345 (codified, as amended, as Tenn. Code Ann. § 2-19-143(3)). Citizens with out-of-state convictions could only have their rights restored in the state of their conviction. To remedy this difficulty for individuals with out-of-state convictions, the legislature created the third exception to disenfranchisement in Section 2-19-143(3) by adding the phrase "or the law of this state." 1983 Pub. Acts 207 § 2

(codified at Tenn. Code Ann. § 2-19-143(3)). The legislature also added language about out-of-state courts and out-of-state convictions to Section 40-29-101, which governed whether the circuit courts could grant rights restoration to disenfranchised individuals. 1983 Pub. Acts 207 § 3 (codified as amended at Tenn. Code Ann. § 40-29-101 et seq.). Neither amendment abrogated or struck other exceptions to disenfranchisement under the laws of the state of conviction.

Likewise, in 2006, the Tennessee legislature recognized that the pathways for the restoration of voting rights needed to be expanded again. Tennessee's Legislature recognized that many disenfranchised citizens lacked access to the legal resources necessary to pursue restoration of their rights through the circuit courts. The legislature therefore enacted the administrative procedures in Section 40-29-202 as *yet another* path to restoration of voting rights. 2006 Pub. Acts 860. It allowed individuals who met certain post-sentence criteria to request, and be issued, a Certificate of Restoration of Voting Rights. However, like prior enactments, the 2006 enactment did not abrogate the prior provisions against which it was enacted. Given the presumption that the legislature is aware of the legal backdrop against which it legislates, *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995), the Court must presume that the legislature did not intend to abrogate Section 2-19-143(3). Instead of affirming Court of Appeals's redlining of the applicable and longstanding statutory text of Section 2-19-143(3), the Court should grant the Petition to correct the Court of Appeals' erroneous interpretation of the 2006 enactment and to clarify that the enactment serves to provide an additional and alternate path for the disenfranchised

to seek restoration of their right to vote. That interpretation satisfies the principle of *in para materia* espoused by the Court of Appeals below, without striking significant language from the statutory scheme *sub silentio*.

* * *

For the reasons set forth above, the Court should grant the Petition in order to correct the lower courts' errors interpreting and applying the applicable statutes.

CONCLUSION

For the foregoing reasons, the League respectfully requests that the Court grant the Petition.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on counsel for the parties by hard copy, via U.S. Mail, and electronic mail on this 23rd day of February, 2022 to:

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CERTIFICATE OF COMPLIANCE

I certify that this Amicus Brief complies with the text, font, and other formatting requirements set forth in Section 3.02 of Supreme Court Rule 46. Based on the word count of the word processing software used to prepare this brief and excluding the sections set forth in Section 3.02(a)(1), this Amicus Brief contains 7,215 words.

/s/ Angela Bergman

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