

**IN THE TWENTIETH JUDICIAL DISTRICT CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE**

ERNEST FALLS & ARTHUR)	
BLEDSON,)	
)	
Plaintiffs,)	
)	No. 20-0704-III
v.)	
)	
MARK GOINS, TRE HARGETT,)	
& HERBERT SLATERY, III, in)	
their official capacities,)	
)	
Defendants.)	

**DEFENDANTS’ RESPONSE IN OPPOSITION TO PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT**

Defendants, Mark Goins, Tre Hargett, and Herbert H. Slatery III, in their official capacities, submit this Response in Opposition to Plaintiffs’ Motion for Summary Judgment.

STATUTORY BACKGROUND

There are two provisions in the Tennessee Constitution which expressly govern disenfranchisement as a result of a felony conviction. First, Article I, Section 5 provides that “[t]he elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.” And while the requirement that elections be “free and equal” appeared in the 1796 Constitution, the remainder of this language was added in 1870. Second, Article IV, Section 2 provides that “[l]aws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes.” This provision was added to the 1834 Constitution and has remained unchanged since that time.

In the 150 years following the creation of these provisions, the General Assembly has enacted statutes identifying various criminal offenses as “infamous.” In 1981, however, the General Assembly enacted Public Chapter 342 which provided that “[u]pon conviction for any felony, it shall be the judgment of the court that the defendant be infamous and be immediately disqualified from exercising the right of suffrage.” *See* Public Acts 1981, Ch. 342, § 1

That same year, the General Assembly also enacted Public Chapter 345 establishing a statutory scheme for the “consequences of conviction of an infamous crime including forfeiture of the right of suffrage for a certain period” and the “method for restoration of the right of suffrage. Section 2 of that chapter added the provisions that are now codified at Tenn. Code Ann. § 2-19-143¹ and, as to federal and out-of-state convictions, provides as follows:

The following provisions shall govern the exercise of the right of suffrage for those persons convicted of an infamous crime: . . .

- (2) No person who have been convicted in federal court 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 unless such person has been pardoned or restored to the full rights of citizenship by the president of the United States, or the person’s full rights of citizenship have otherwise been restored in accordance with federal law, or the laws of this state.
- (3) 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.

See Public Acts 1981, Ch. 345, § 2. And Section 3 of Public Chapter 345 added the provisions now codified at Tenn. Code Ann. § 2-2-139. Those provisions read:

¹ As Plaintiffs noted in their Complaint, Tenn. Code Ann. § 2-19-143 (2) and (3) were amended to add the language “or the laws of this state” in 1983. *See* Public Acts 1983, Ch. 207 § 1.

- (a) Any person who has forfeited the right of suffrage because of conviction of an infamous crime may register to vote and vote at any election for which the person is eligible by submitting sufficient proof to the administrator of elections in the county in which the person is seeking to register to vote, that:
 - (1) The person has been pardoned of all infamous crimes and the person’s full rights of citizenship, including the right of suffrage, have been restored;
 - (2) The person’s full rights of citizenship have been restored as prescribed by law; or
 - (3) An appellate court of competent jurisdiction has entered a final judgment reversing the person’s conviction, or convictions, of all infamous crimes.
- (b) For purposes of this section, a pardon or a certified copy of a judgment of a court of competent jurisdiction shall be sufficient proof to the administrator that the person fulfills the above requirements as to the offense or offenses specified on the pardon or judgment; however, before allowing a person convicted of an infamous crime to become a registered voter, it shall be the duty of the administrator in each county to verify with the state coordinator of elections that the person is eligible to register under the provisions of this section.
- (c) The state election coordinator is empowered to formulate a uniform procedure for verifying the registration eligibility of any person convicted of an infamous crime. Upon receiving sufficient verification of such person’s eligibility to register, the administrator shall allow such person to become a registered voter in the same manner and in accordance with the same laws, rules or regulations as any other citizen of this state.

In 2005, the Brennan Center for Justice and the ACLU drafted a bill to streamline and standardize the felon restoration process in Tennessee. And in 2006, the General Assembly adopted an amended version of that bill—Public Chapter 860—now codified at Tenn. Code Ann. §§ 40-29-201–205. See <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-tennessee>. This law “effectively” made “the rights restoration process more

objective and removed the requirement that the formerly incarcerated appear before a circuit court judge in an adversarial proceeding to re-gain the right to vote.” *Id.*

The first section of this new law—Tenn. Code Ann. § 40-29-201—declares the Legislature’s intent that “[t]he provisions and procedures of this part *shall apply to and govern restoration of the right of suffrage in this state to any person who has been disqualified from exercising that right by reason of a conviction in any state or federal court of any infamous crime.*” (emphasis added). Tenn. Code Ann. 40-29-201(a).

Next, Section 40-29-202 sets forth the requirements for restoring the right of suffrage and 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 section (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.

And finally, Section 40-20-204 lays out a list of felony offenses that lead to permanent disenfranchisement:

Notwithstanding this part, the following persons shall never be eligible to register and vote in this state:

- (1) Those convicted after July 1, 1986, of the offenses of voter fraud, treason, murder in the first degree, or aggravated rape.
- (2) Those convicted after July 1, 1996, but before July 1, 2006, of any of the offenses set out in subdivision (1) or any other degree of murder or rape; and
- (3) Those convicted on or after July 1, 2006, of:
 - (A) Any of the offenses set out in subdivision (1) or (2).
 - (B) Any other violation of title 39, chapter 16, parts 1, 4 or 5 designated as a felony or any violation containing the same elements and designated as a felony in any other state or federal court; or
 - (C) Any sexual offense set out in § 40-39-202 or violent sexual offense set out in § 40-39-202 that is designated as a felony or any violation containing the same elements and designated as a felony in any other state or federal court and where the victim of the offense was a minor.

FACTUAL BACKGROUND

Plaintiff Ernest Falls alleges that in 2018 he moved to Tennessee and has been a resident of Grainger County, Tennessee for the past two years. (Pls.' Statement of Undisputed Material Facts, Facts # 1 and 2.) In 1986, Mr. Falls was convicted of involuntary manslaughter in Virginia. (Pls.' Statement of Undisputed Material Facts, Fact #2.) On February 4, 2020, Plaintiff Falls

received an order from the Governor of Virginia restoring his rights of citizenship. (Pls.’ Statement of Undisputed Material Facts, Fact #3.) And on June 4, 2020, Plaintiff Falls submitted a voter registration application to the Grainger County Election Commission and indicated on that form that he previously had been convicted of a felony. (Pls.’ Statement of Undisputed Material Facts, Fact #4.) On June 22, Plaintiff Falls received notice from Grainger County’s Administrator of Elections that his voter registration was denied because he did not provide evidence that he owes no court costs or restitution for his Virginia conviction. (Pls.’ Statement of Undisputed Material Facts, Fact #5.)

Plaintiff Bledsoe alleges that in 1997 or 1998 he moved to Tennessee and has been a resident of Blount County for over twenty years. (Pls.’ Statement of Undisputed Material Facts, Fact #9.) Before moving to Tennessee, Plaintiff Bledsoe was convicted of several felonies involving possession of marijuana and paraphernalia in North Carolina and that completed his sentence in 1999 and his rights of citizenship in that state were restored pursuant to N.C. Gen. Stat. § 13-1. (Pls.’ Statement of Undisputed Material Facts, Facts #9, 11.) Plaintiff Bledsoe submitted a certificate of restoration and a voter registration application where he marked “no” in response to the question asking whether he had “even been convicted of a crime which is a felony in this state, by a court in this state, a court in another state, or a federal court.” (Defs.’ Resp. to Pls.’ Statement of Undisputed Material Facts, Additional Fact #1.) The Tennessee Division of Elections utilized the North Carolina Department of Public Safety’s Offender Public Information website to locate the county of his convictions. (Defs.’ Resp. to Pls.’ Statement of Undisputed Material Facts, Additional Fact #2.) Plaintiff Bledsoe has unpaid court costs for at least one of his convictions. (Defs.’ Resp. to Pls.’ Statement of Undisputed Material Facts, Additional Fact #3.)

STANDARD OF REVIEW FOR SUMMARY JUDGMENT

Summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04. When the moving party does not bear the burden of proof at trial, that party may show that it is entitled to judgment as a matter of law by either “affirmatively negating an essential element of the nonmoving party’s claim” or by “demonstrating that the nonmoving party’s evidence at the summary judgment stage is insufficient to establish the nonmoving party’s claim or defense.” *Rye v. Women’s Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 264 (Tenn. 2015). To survive summary judgment, the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts” and must instead “demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.” *Id.* at 265.

ARGUMENT

In their motion for summary judgment, Plaintiffs proceed narrowly, making only one legal argument: that Plaintiffs have automatically “had their rights to vote restored pursuant to Tennessee Code § 2-19-143(3)” and that “denial of their voter registration applications violates the Tennessee Constitution.” (Pls.’ Mem. in Supp. of Summ. J. at 4) (capitalization and bold format omitted). According to Plaintiffs, if they have already had their rights restored by operation of § 2-19-143, then it is unconstitutional to deny them the right to vote.

Defendants submit that Plaintiffs have not had their rights restored under Tennessee law. Defendants submit that until Plaintiffs comply with the re-enfranchisement provisions of Tenn. Code Ann. § 40-29-202 and pay any outstanding restitution, court costs, or child support, they are

not eligible to apply for a voter registration card and thus denial of the Plaintiffs' voter registration applications cannot violate the Tennessee Constitution.

I. PLAINTIFFS DO NOT HAVE A RIGHT TO VOTE IN TENNESSEE.

Plaintiffs cannot succeed unless the Court holds that they enjoyed the right to vote solely by operation of Tenn. Code Ann. § 2-19-143(3). If they did not have the right to suffrage, then under Tennessee law, it cannot be unconstitutional to deny their voter registration applications. Thus there is only one question of law that controls the outcome of this case: Did Tenn. Code Ann. § 2-19-143(3) automatically re-enfranchise Plaintiffs when the states of their convictions restored their citizenship rights, or do they also need to comply with the requirements of Tenn. Code Ann. § 40-29-202?

A. The Rules of Statutory Construction

To answer this question, the Court should begin with the rules of statutory construction. “The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope.” *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995) (citing *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993)). Of primary importance is the text of the statute. *In re Kaliyah S.*, 455 S.W.3d at 552 (citing *Mills v. Fulmarque*, 360 S.W.3d 362, 368 (Tenn. 2012)). “A statute should be read naturally and reasonably, with the presumption that the legislature says what it means and means what it says.” *Id.* (citing *Bellsouth Telecomms, Inc. v. Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997)). Courts must presume that “the Legislature used each word in the statute purposely and that the use of these words conveys some intent and had a meaning and purpose.” *Locust v. State*, 912 S.W.2d 716, 718 (Tenn. Ct. App. 1995) (citation omitted).

Courts have a duty to avoid construing a statute in such a way that would render any part of it superfluous or insignificant. *Womack v. Corr. Corp. of Am.*, 448 S.W.3d 362, 373 (Tenn. 2014). Courts may look to a statute’s preamble and policy statements for guidance when seeking to resolve an ambiguity or conflict. *Moorcraft v. Stuart*, No. M2013-00295-COA-R3-CV, 2015 WL 413094, at * 9 (Tenn. Ct. App. Jan. 30, 2015) (citing *Hyatt v. Taylor*, 788 S.W.2d 554, 556 (Tenn. 1990)).

Furthermore, “[s]tatutes that relate to the same subject matter or have a common purpose must be read *in pari materia* so as to give the intended effect to both.” *In re Kaliyah S.*, 455 S.W.3d at 552. “[T]he construction of one such statute, if doubtful, may be aided by considering the words and legislative intent indicated by the language of another statute.” *Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010) (quoting *Wilson v. Johnson Cnty.*, 879 S.W.2d 807, 809 (Tenn. 1994)). Courts should also seek to avoid a construction that places one statute in conflict with another and “resolve any possible conflict between statutes in favor of each other, so as to provide a harmonious operation of the laws.” *Graham*, 325 S.W.3d at 582 (quoting *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995)).

B. The Legislature Intended that Title 40’s Re-enfranchisement Provisions Apply to Plaintiffs Based Upon the Statutory Policy Statement.

Application of these statutory-construction principles leads to the conclusion that Title 40’s re-enfranchisement provisions apply to Plaintiffs:

The provisions and procedures of this part shall apply to and govern restoration of the right of suffrage in this state to any person who has been disqualified from exercising that right by reason of a conviction in any state or federal court of any infamous crime.

Tenn. Code Ann. 40-29-201(a). Broken down, Title 40's re-enfranchisement provisions pertain to "any person," "who has been disqualified from exercising that right [of suffrage] by reason of a conviction," "in any state or federal court of any infamous crime."

As applied here: Each plaintiff is indisputably a "person" within the meaning of the statute. Each Plaintiff was convicted in a state court of an infamous crime. (Pls.' Statement of Undisputed Material Facts, Fact #2, Fact #9.) *See* Tenn. Code Ann. § 40-22-112 (all felonies are infamous crimes). And each Plaintiff was disqualified from voting in Tennessee because of their felony convictions. *See* Tenn. Code Ann. § 2-19-143.

Because Plaintiffs individually meet the definition of "any person who has been disqualified from exercising that right by reason of a conviction in any state or federal court of any infamous crime," it is the intent of the Legislature that "the provisions and procedures of this part shall apply to and govern restoration of the right of suffrage in this state." *See Moorcraft*, 2015 WL 413094, at * 9 (citing *Hyatt v. Taylor*, 788 S.W.2d 554, 556 (Tenn. 1990)).

C. The Legislative History Supports that Title 40's Re-enfranchisement Provisions Apply to Plaintiffs.

The legislative committee hearings also support Tenn. Code Ann. § 40-29-201's policy statement that the requirements in Tenn. Code Ann. § 40-29-202 apply universally and that disenfranchised voters must satisfy their unpaid court costs, restitution, and child support before regaining their right to suffrage. For example, at the Senate Judiciary Committee hearing on April 26, 2005, Senator Cohen described the purpose of the statute:

They will get that opportunity [to vote], once they get out and serve their entire probation and/or their entire parole, they're off parole, they're off probation, they've served their time, and they're current with their restitution and/or their court costs and fines. Then they'll be eligible.

(Exh A, Legislative History, at 4.) This is mirrored in the House legislative history:

[T]he bill also calls for, when a person has done all of his time, he has been given a certificate of completion from the incarcerating institution or the pardoning authority and he—a copy of that certificate is sent to the register of elections, and that person will be able to be restored to the voters rolls as a result of that.

Any person applying to be restored to the voters rolls shall have—will have to have paid all of any restitutions that have been ordered by the Court in order for him to be eligible.

(Exh. A, Legislative History, at 94-95.)

And the universal applicability of these requirements is also evident: “We’re standardizing it so everybody’s treated the same.” (*Id.* at 101.) The requirements “make[] standard the manner in which convicted felons who have done their time, paid their restitution can get their voting rights back . . . We are trying to fix it so that everybody’s on the same page, everybody has to do the same thing, and the law in Tennessee for this won’t be as confusing.” (*Id.* at 116-117.) “And so this is to create a consistent system for all individuals would have been convicted of these type of offenses and create a consistent process for everyone.” (*Id.* at 128.)

The debate on the bill undermines Plaintiffs’ limited-applicability argument. Indeed, the general assembly explained that it “would not be giving the people back their rights immediately. They would have to pay back restitution for their crimes first. And this is just saying that they would also have to have their child support payments caught up before they could be eligible for reinstatement of their voting rights.” (*Id.* at 119-120.) And pardons and restorations are not excluded from the statutory requirements either:

It would require anyone to be in compliance with whatever sentence was imposed by them, which would include incarceration, court costs, fines, restitution. . . It would require a person to have received a pardon, to have been discharged from custody by reason of service or expiration of the maximum sentence imposed by the Court for any such infamous crimes or to have been discharged from probation.

So in order to have a discharge under those circumstances, an individual would have to be in compliance with whatever sentence was—be imposed on them, which would include court costs, fines, restitution, and/or incarceration.

(*Id.* at 127-128.)

The legislative history does not evidence an intent that the requirements of Tenn. Code Ann. § 40-29-202 could be skirted. Instead, it mirrors the policy language of Tenn. Code Ann. § 40-29-201, which reveals that these requirements are applied universally to all disenfranchised felons seeking to restore their right of suffrage. Accordingly, Plaintiffs' attempts to limit the applicability of Tenn. Code Ann. § 40-29-202 are not supported in the statute's legislative history.

D. Tenn. Code Ann. § 40-29-202's Requirements Apply to Plaintiffs Based Upon the Statute's Plain Language.

Having established that the Legislature intended that Title 40's re-enfranchisement provisions apply to Plaintiffs, the next question is whether Plaintiffs must meet the specific requirements of Tenn. Code Ann. § 40-29-202 before their right to suffrage can be restored. Again, the plain statutory text controls:

- (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 section (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.

Tenn. Code Ann. § 40-29-202. Under to this statute, Plaintiffs cannot be eligible to register to vote or be re-enfranchised unless they have paid the restitution or court costs associated with their criminal convictions. And according to both their Complaint and their Statement of Undisputed Material Facts, Plaintiffs do not deny that they each owe court costs and/or restitution.

Instead, Plaintiffs attempt to undercut Title 40’s re-enfranchisement policy statement and Tenn. Code Ann. § 40-29-202 by arguing that the words “[n]otwithstanding subsection (a)” imply that the remaining language is applicable only where a person would be eligible for restoration of the right to suffrage based upon the provisions of subsection (a), thus allowing the Court to disregard the straightforward statutory text that follows in subsection (b)—no matter how facially applicable it is to Plaintiffs.

Plaintiffs conspicuously fail to cite any authority that “notwithstanding” cabins all following statutory language to the specific circumstances preceding the use of the term. But Black’s Law Dictionary is quite clear: “notwithstanding” means “despite.” See *Black’s Law Dictionary* 1094 (8th ed. 2004). And the United States Supreme Court has spoken on the subject as well: “the ‘notwithstanding’ clause clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section.” *Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993) (citing *Shomberg v. United States*, 348 U.S. 540, 547-48 (1955)). Thus, “notwithstanding subsection (a)” doesn’t cabin the plain language of subsection (b) at all; it simply imparts that the requirements of subsection (b) supersede those of subsection (a)—“‘[a] clearer statement is difficult to imagine.’” *Id.* at 18 (quoting *Liberty Maritime Corp. v. United States*, 928 F.2d 413, 416 (D.C. Cir. 1991)). Thus, subsection (b) always applies when its plain language is implicated, and it does so even if subsection (a) applies too.

By focusing solely on construing “[n]otwithstanding subsection (a)” to render the remaining statutory requirement inapplicable to Plaintiffs, Plaintiffs have made the same legal error they accuse Defendants of—“take[ing] a word or a few words from its context and, with them isolated, attempt[ing] to determine their meaning.” See *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 506 (Tenn. 2004). And given that the Legislature clearly evidenced its intent that

Title 40's requirements apply to persons such as Plaintiffs, *see* Tenn. Code Ann. § 40-29-201, it is clear that Plaintiffs must pay the court costs and restitution associated with their criminal convictions before they are eligible to vote in Tennessee.²

E. Tenn. Code Ann. § 2-19-143 Does Not Provide For Automatic Re-enfranchisement; Nor Does It Preclude the Requirements of Tenn. Code Ann. § 40-29-202(b).

Having established that the statutory text of Tenn. Code Ann. §§ 40-29-201 and -202(b) bars Plaintiffs from the right of suffrage until they pay the court costs and restitution associated with their disenfranchising criminal convictions, the only issue remaining is whether any language in Tenn. Code Ann. § 2-19-143 prevents this outcome.

Tenn. Code Ann. § 2-19-143 provides that:

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).

Plaintiffs assert that this statute operates as a discrete “pathway[] for rights restoration in Tennessee.” (Pls.’ Mem. in Supp. of Summ. J. at 6.) But Plaintiffs’ analysis is incorrect because the statute operates in the negative, not the positive. For instance, if the statute read: “Any person who has been pardoned or restored to the rights of citizenship shall be allowed to vote,” then the statute would confer a positive entitlement without regard to any other requirements. Instead, the

² And imagine the collateral consequences if Plaintiffs were correct. Tenn. Code Ann. § 40-20-204 uses “[n]otwithstanding this part” to permanently exclude those convicted of voter fraud, treason, murder in the first degree, or aggravated rape from voting. Yet Plaintiffs do not suggest that, if convicted of one of these offenses in another state, Tenn. Code Ann. § 40-20-204 would not apply to permanently bar them from registering to vote in Tennessee.

statute provides that no person shall be allowed to vote unless they are pardoned or restored to full rights of citizenship. This negative operation does not exclude (impliedly or expressly) all other requirements as the first, positive statute might. Instead, it simply establishes a requirement for re-enfranchisement without precluding statutory requirements elsewhere.

Furthermore, for the Court to decide that the plain language of Tenn. Code Ann. § 2-19-143(3) creates a pathway to restoration that ignores any other statutory requirements, such a construction would directly conflict with the plain language of Tenn. Code Ann. § 40-29-201 that the provisions of that part “*govern restoration of the right of suffrage in this state*” for any person convicted of a felony “*in any state or federal court.*”

Courts are to “presume that the General Assembly is aware of its own prior enactments and knows the state of the law when it enacts a subsequent statute”; therefore, as a general rule, a more recent enactment will take precedence over a prior one to the extent of any inconsistency between the two. *Lovelace v. Copley*, 418 S.W.3d 1, 20 (Tenn. 2013) (citations omitted); *see also Hayes v. Gibson Co.*, 288 S.W.3d 334, 337 (Tenn. 2009). Here, then, the General Assembly should be presumed to have been aware of the provisions of Tenn. Code Ann. § 2-19-143 when it enacted Tenn. Code Ann. §§ 40-29-201, *et seq.* in 2006. Thus, to the extent that there is a conflict between the statutes, the reasonable construction is that the requirements of Tenn. Code Ann. §§ 40-29-201, *et seq.*, supplement the provisions of Tenn. Code Ann. § 2-19-143 by providing additional requirements for reinstatement of voting rights for all convicted felons regardless of the State or court of conviction.³

³ The language of Tenn. Code Ann. § 40-29-201 is unambiguous: “The provisions and procedures of this part *shall apply to and govern restoration of the right of suffrage in this state* to any person who has been disqualified from exercising that right by reason of a conviction *in any state or federal court* of any infamous crime.” If the italicized words are to be given any meaning at all and without creating an irreconcilable conflict, they must be construed as applying to all convicted

II. BECAUSE PLAINTIFFS DO NOT ENJOY THE RIGHT TO VOTE, IT IS NOT UNCONSTITUTIONAL TO REQUIRE THEM TO PAY COURT COSTS AND RESTITUTION AS A CONDITION FOR RE-ENFRANCHISEMENT.

Having established that Plaintiffs are not immune from the requirements of Tenn. Code Ann. § 40-29-202, Plaintiffs' constitutional claims evaporate.

The fundamental right to vote is not implicated here because the Tennessee Constitution expressly provides that persons “convict[ed] by a jury of some infamous crime, previously ascertained and declared by law” may lose their right to vote and can be excluded from the franchise. Tenn. Const art. I, § 5. The Tennessee Constitution further provides that “[l]aws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes.” Tenn. Const. art. VI, § 2.

As described above, the Tennessee General Assembly, pursuant to its constitutional authority under Article IV, § 2, considers “infamous” crimes to include all felonies. *See* Tenn. Code Ann. § 40-20-112. And no provision of the Tennessee Constitution requires or contemplates that the voting rights of disenfranchised felons will eventually be restored.

Plaintiffs claim that because they have had their right to vote restored by the states of their convictions, Tennessee cannot continue to deny them the right to vote. But simply because they have been re-enfranchised in Virginia and North Carolina does not mean that they are permitted to vote in Tennessee. It is well settled that “[t]he elective franchise is not an inalienable right or privilege, but a political right, conferred, limited or withheld, at the pleasure of the people, acting

felons regardless of the State or court of conviction. Otherwise, Tenn. Code Ann. §§ 40-29-201, et seq., as the later-enacted statutes, would operate to repeal or amend by implication Tenn. Code Ann. § 2-19-143. *See Hayes v. Gibson Co.*, 288 S.W.3d at 337–38 (noting that the general rule is when “two acts conflict and cannot be reconciled, the prior act will be repealed or amended by implication to the extent of the inconsistency between the two”).

in their sovereign capacity. Each State may define it in its own Constitution, or empower its legislature to do so.” *Ridley v. Sherbrook*, 43 Tenn. 569, 576 (1866).

Tennessee, Virginia, and North Carolina each individually disenfranchised Plaintiffs of their right to vote because of their felony convictions. Virginia and North Carolina have restored Plaintiffs’ state citizenship rights, including their right to vote. But Plaintiffs are not citizens of Virginia and North Carolina anymore. They are citizens of Tennessee by virtue of their place of residence. And until they meet the same requirements as Tennessee felons seeking reinstatement of their right to vote, Tennessee law does not require that Tennessee reach the same result as Virginia’s Governor or North Carolina’s Legislature—nor does the Tennessee Constitution.

Because Tennessee is constitutionally permitted to legislate different standards than other states for restoration of the right to vote and Plaintiffs do not allege that they meet these standards, their challenges necessarily fail. “Having lost their voting rights, Plaintiffs lack any fundamental interest to assert.” *Johnson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010) (citing *Wesley v. Collins*, 791 F.2d 1255, 1261 (6th Cir. 1986) (“It is undisputed that a state may constitutionally disenfranchise convicted felons, and that the right of felons to vote is not fundamental.”). And Tennessee’s interests in requiring greater standards for re-enfranchisement is certainly legitimate. “Promoting payment of child support, requiring criminals to fulfill their sentences, and encouraging compliance with court orders” are all legitimate interests. *Id.* at 747 (citing *Jones v. Helms*, 452 U.S. 412, 423 (1981); *Carter v. Lynch*, 429 F.2d 154, 157-58 (4th Cir. 1970); and *Blackhawk Mining Co. v. Andrus*, 711 F.2d 753, 757-58 (6th Cir. 1983)).

Plaintiffs are convicted felons who have not complied with Tenn. Code Ann. § 40-29-202, which is rationally designed to promote the interests set forth in *Johnson v. Bredesen*. Moreover, Tennessee has an interest in excluding from the franchise felons who have manifested an antipathy

to Tennessee's criminal laws and have raised questions about their ability to vote responsibly. Requiring these persons to comply with the laws of this state, including complying with child support obligations, restitution orders, and other court orders, is both rational and constitutional. While Virginia and North Carolina may choose to waive their interests and allow Plaintiffs the right to vote in their states, Tennessee is constitutionally permitted to do otherwise.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and exact copies of the foregoing Response have been forwarded
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