

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

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

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

The Tennessee Constitution strictly protects the fundamental right to vote. The Constitution allows for an exception to deprive a resident of that general, default right in the case of a conviction for an infamous crime. But that allowance is not a blank check. The Tennessee Supreme Court has made clear that felony disenfranchisement is only constitutional where the parameters are clearly and deliberately defined; the exception to the right to vote is not self-executing. If a person is not excluded from the franchise by a clear and deliberate statement of the legislature, they are fully protected under Art. 1 § 5 and Art. IV § 1 of the Tennessee Constitution regardless of criminal history.

Elections Code § 2-19-143 is the only statement of law that excludes a Tennessee resident from the franchise for a felony conviction in another state. But the section *only* excludes those individuals with out-of-state convictions who have not had their rights restored either by (1) receiving a pardon or otherwise having their rights of citizenship restored by the governor or other

appropriate authority of their state of conviction, (2) having their full rights of citizenship restored under the laws of their state of conviction, or (3) having their full rights of citizenship restored in accordance with the laws of Tennessee. *See* Tenn. Code § 2-19-143(3). Because it is undisputed that both Plaintiffs Falls and Bledsoe have had their full rights of citizenship restored by their states of conviction, it follows that they are fully enfranchised under the Tennessee Constitution. Defendants' refusal to accept Mr. Falls and Mr. Bledsoe's voter registration applications therefore violates their fundamental right to vote under the Tennessee Constitution.

As Plaintiffs outlined in their Complaint and reply brief—filed on July 21, 2020, and July 29, 2020, respectively—and as further explained during oral argument on July 30, 2020, Defendants' refusal to register Plaintiffs Falls and Bledsoe is based on an incorrect application of in-state voting restoration procedures found in the Criminal Procedure Code, Title 40, to Plaintiffs. For purposes of efficiency, these arguments are each explicitly incorporated herein in their entirety and not repeated in full here. Because there is no genuine dispute of material for the Court to resolve, it should grant summary judgment in Plaintiffs' favor, and order the State to register Plaintiffs—and others similarly-situated—to vote in advance of the November 2020 election.

FACTUAL BACKGROUND

Plaintiffs incorporate and restate the undisputed factual allegations articulated in their Complaint and in their statement of undisputed material facts. In pertinent part, as to Plaintiff Falls, it is undisputed that in February 2020, Plaintiff Falls received a grant of individual clemency from Governor Northam of Virginia, meaning that his full rights of citizenship have been restored under Virginia law, the state of his only conviction. It is also undisputed that in June 2020, Mr. Falls submitted his voter registration application to Grainger County, Tennessee, which was subsequently denied.

As to Plaintiff Bledsoe, it is undisputed that in 1999, he had his full rights of citizenship restored by operation of North Carolina law. Further, while it was disputed at the time of the hearing on Plaintiffs’ Motion for Temporary Injunction whether Mr. Bledsoe had submitted his voter registration application, that dispute has now been resolved: he has. On August 11, 2020, Plaintiff Bledsoe, whose prior voter registration form was apparently not received by Blount County, *see* Def. Opp. at 21—re-submitted his application to register to vote. *See* Ex. A-D. That application is now pending determination with the Blount County Election Commission and is expected to be denied in light of the State’s position before this Court.

LEGAL STANDARD

Summary judgment shall be granted if the pleadings and record “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. To survive summary judgment, the nonmoving party “may not rest upon the mere allegations or denials of [its] pleadings, but must . . . set forth specific facts at the summary judgment stage showing that there is a genuine issue for trial.” *Rye v. Women’s Care Center of Memphis, M PLLC*, 477 S.W.3d 235, 265 (Tenn. 2015) (citing Tenn. R. Civ. P. 56.06; internal citations omitted). The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the materials facts.” *Id.* (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). Rather, “[t]he nonmoving party must 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.*

Plaintiffs have stipulated in their statement of material facts that there is no genuine issue of material fact for trial. Plaintiffs are entitled to judgment as a matter of law because Defendants

violate their constitutional right to vote and do so based on an erroneous interpretation of Tennessee law.

ARGUMENT

In their complaint, Plaintiffs allege two independent claims for relief: first, a declaration of their voting rights under Tennessee Code § 2-19-143(3), and second, a violation of Plaintiffs' fundamental right to vote secured by the Tennessee Constitution. *See* Comp. ¶¶ 49–57. Each claim requires the Court to undertake the same legal analysis: whether Plaintiffs, in light of the Tennessee Constitution's requirement that citizens are enfranchised unless they have been specifically and explicitly disenfranchised by the Legislature, have been disenfranchised (and not subsequently re-enfranchised) by any legislative enactment. The answer is simple: they have not. Plaintiffs were both disenfranchised and subsequently re-enfranchised by the plain text of Tennessee Code § 2-19-143(3) and are therefore entitled to vote. The unrelated provisions of Tennessee Code § 40-29-202(b) are inapplicable to Plaintiffs and therefore, do not affect their right to vote. Plaintiffs are therefore entitled to summary judgment on each of their counts.

I. Because Plaintiffs Had Their Rights to Vote Restored Pursuant to Tennessee Code § 2-19-143(3), Denial of Their Voter Registration Applications Violates the Tennessee Constitution.

Tennessee Constitution Article I, Section 5 provides that “the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.” Article IV, Sections 1 and 2 likewise provide that every voter that meets the constitutional qualifications “*shall* be entitled to vote in all federal, state, and local elections held in the county or district in which such person resides” except that “[l]aws *may* be passed excluding from the right of suffrage persons who may be convicted of

infamous crimes.” The Tennessee Supreme Court has held that “the 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 (1983) (quoting *Crutchfield v. Collins*, 607 S.W.2d 478, 481 (Tenn. App. 1980)). By contrast, “the *exception* to universal suffrage”—that is, laws passed to exclude from suffrage individuals who are convicted of infamous crimes—“is expressly dependent on legislative action.” *Id.* Thus, unless the Tennessee Legislature has clearly and unambiguously excluded an individual from the right of suffrage, that individual—even if previously convicted of an infamous crime—is constitutionally entitled to vote. *Id.* Put differently, the constitutional default for all Tennesseans—including individuals convicted of infamous crimes—is enfranchisement, not disenfranchisement.

Because there is no Tennessee statute that continues to disenfranchise Plaintiffs Falls and Bledsoe after they had their rights restored by their original state of conviction, both Plaintiffs are—like any other Tennessee citizen—entitled to vote. Defendants may not circumvent this self-executing constitutional mandate by applying to Plaintiffs wholly inapplicable statutory requirements for re-enfranchisement.

A. The Statutory Text Confirms that Plaintiffs Are Entitled to Vote.

The parties agree, or at least, Defendants cannot dispute, that the *only* statutory provision that denies the right of suffrage to individuals convicted of infamous crimes out-of-state appears in the Election Code at Tennessee Code § 2-19-143(3). As explained in Plaintiffs’ prior filings and argument, that provision excludes from suffrage all individuals convicted of infamous crimes out-of-state, “*unless*” they (1) “have been pardoned or restored to the rights of citizenship by the governor or other appropriate authority” of their state of conviction (like Plaintiff Falls, *see* UF ¶ 3), “*or*” (2) have had their “full rights of citizenship . . . restored in accordance with the laws” of

their state of conviction (like Plaintiff Bledsoe, *see* UF ¶ 9-11), “*or*” (3) have had their full rights of citizenship restored in accordance with “the law of this state.” *See* Tenn. Code § 2-19-143(3) (emphasis added). Thus, if an out-of-state convicted individual has fulfilled the requirements of any one of these three pathways to rights restoration, they are explicitly *not* excluded from the franchise by the law, and therefore, entitled to the same right of universal suffrage as is enjoyed by all other Tennessee citizens. *See id.*

As the statutory text makes unambiguously clear, only *one* of the three pathways for rights restoration in Tennessee requires an out-of-state individual to comply with the rights restoration procedures under the laws of “this state” (i.e. Tennessee)—which are outlined in the Criminal Procedure Code at Title 40—in order to be entitled to vote. Because the statutory text is clear, that should end the inquiry. *See Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 506 (Tenn. 2004) (“When the statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute’s application.”). The State may not transform the “ORs” deliberately included in the statute by the Legislature into “ANDs,” in order to give life to its tortured interpretation of the statute. *See State v. Arriola*, 2008 WL 1991098, at *5 (Tenn. Crim. App. May 8, 2008) (explaining that under its ordinary definition, “or” is “a disjunctive particle used to express an alternative or to give a choice of one among two or more things,” whereas “and” is “a conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first” (quoting BLACK’S LAW DICTIONARY 1095 (6th Ed. 1990))). Thus, applying the ordinary meaning of the terms actually included in Tennessee Code § 2-19-143(3), the State may not require Plaintiffs—or any other out-of-state convicted individual—to have their rights restored in accordance with Tennessee law if they otherwise are able to have their rights restored by their original state of conviction.

Despite the clarity of Tennessee Code § 2-19-143(3), Defendants nevertheless ask this Court to ignore the plain understanding of the statute and superimpose the requirements of the Tennessee Criminal Procedure Code, and specifically, Tennessee Code § 40-29-202(b), onto all three of the rights restoration pathways available to individuals with out-of-state convictions. *See* Defs.’ Opp. at 15. But in addition to ignoring the text of Tennessee Code § 2-19-143(3), Defendants’ argument also reads too much into the text of Tennessee Code § 40-29-202(b). Indeed, rather than include *any* language indicating that Tennessee Code § 40-29-202(b) is the super-statute that Defendants argue it to be, quite to the contrary, the statutory text cabins the provision’s reach by specific reference to subsection (a). *See* Tenn. Code § 40-29-202(b) (“Notwithstanding subsection (a) . . .”). In so doing, the statute itself clarifies that only to the extent an individual relies on Tennessee Code § 40-29-202(a) as their source of rights restoration, do the requirements of Tennessee Code § 40-29-202(b) apply.¹ Because neither Plaintiff Falls nor Bledsoe rely on Tennessee Code § 40-29-202(a) as their source of rights restoration, the requirements of Tennessee Code § 40-29-202(b) do not apply.

Defendants also read too much into § 40-29-202’s references to “any state or federal court.” *See* Defs.’ Opp. at 15. This argument is not logically sound – because this pathway to rights restoration is available to individuals with convictions in other jurisdictions, it does not mean that it is the exclusive pathway. In other words, just because a person “deprived of the right of suffrage by the judgment of any state or federal court *is eligible to apply*” for rights restoration under § 40-

¹ That Tennessee Code § 40-29-202(b) refers to “persons” after its cabining introductory language is of no avail to Defendants’ argument. *See Eastman*, 151 S.W. 3d at 506 (“The background, purpose, and general circumstances under which words are used in a statute must be considered, and it is improper to take a word or a few words from its context and, with them isolated, attempt to determine their meaning.”). That word must be understood in the context of the complete language of the statute, which includes the cabining introduction.

29-202(a) does not mean that person *must* rely on that provision for rights restoration. Rather, those words must be understood in their context. The code of Criminal Procedure would not naturally be understood to be referencing court proceedings in other jurisdictions, so direct reference is necessary to show that the door is open to those convicted in other courts. Ignoring the context of where a provision is located in the code is not a proper plain text reading. *See Lee Medical v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010) (“[C]ourts must also construe these words in the context in which they appear in the statute and in light of the statute’s general purpose[.]”).

Moreover, Defendants interpretation of Tennessee Code § 40-29-202(b) as a super statute would effectively mean that in enacting the law, the Legislature *silently* repealed the first two rights restoration pathways available under Tennessee Code § 2-19-143(3). But legislatures do not “hide elephants in mouseholes.” *Cf. Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). That is, if the Tennessee Legislature had wanted to eliminate long-existing rights restoration pathways available under the Elections Code, it would not have done so through an ancillary provision of law codified in the Criminal Procedure Code. *See Owens v. State*, 908 S.W. 2d 923, 926 (“[I]n construing statutes courts must presume that the Legislature has knowledge of its prior enactments and knows the state of the law at the time it passes legislation.”). Its failure to do so further demonstrates that rather than limit the first two rights restoration pathways available under Tennessee Code § 2-19-143(3), in enacting Tennessee Code § 40-29-202(b), the Legislature only amended the rights restoration procedures available under Tennessee law.

B. The Legislative History of Tennessee’s Modern Rights Restoration Regime Confirms Plaintiffs’ Interpretation of the Law.

To the extent there is any ambiguity in the statutory text, the legislative history confirms that the Legislature did not intend to *require* individuals with out-of-state convictions to comply with Tennessee rules in order to have their rights restored. *See Plaintiffs’ Reply* at 4-8. Instead, the

Legislature intended to open the door of rights restoration under Tennessee law to those with out-of-state convictions that were not able to restore their rights under the law of the state of their conviction. Prior to the 1983 amendment of Title 2, individuals with out-of-state convictions could not have their rights restored by complying with Tennessee law. Their *only* option was to restore their rights through the state of their conviction. The *option* to obtain rights restoration through Tennessee law for those with out-of-state convictions was only added in 1983. *See id.* Since then, the Legislature has never revisited the language of Title 2, nor taken any clear and unambiguous action to cabin the ability of individuals with out-of-state convictions to have their rights restored under either of the first two rights restoration pathways, neither of which depends on compliance with Tennessee procedures.

Importantly—and further undercutting Defendants’ argument that the rights restoration provisions of the Criminal Procedure Code override those of the Election Code—when the Legislature did update Tennessee Code § 2-19-143(3) to permit individuals with out-of-state convictions to have the option rely on *Tennessee’s* rights restoration procedures, the Legislature also concurrently updated Title 40, the Criminal Procedure Code, to reflect the change. *See Reply* at 5 (noting that in 1983, the Tennessee Legislature also updated Tennessee Code § 40-29-101 to provide individuals with out-of-state convictions with a Tennessee pathway to rights restoration). About a quarter century later, when the Legislature created an additional rights restoration pathway *under Tennessee law*, they imported the language from Tennessee Code § 40-29-101(a), and added it to the new pathway codified at Tennessee Code § 40-29-202(a). *See Reply* at 6. In so doing, the Legislature exhibited a clear intent to only modify the rights restoration pathways available under Tennessee law, not to override the original pathways outlined in the Election Code.

* * *

The statutory text and legislative history each confirm that under Tennessee Code § 2-19-143(3), Plaintiffs Falls and Bledsoe are entitled to vote in Tennessee. Denial of such right therefore violates their fundamental right to do so, and should be enjoined by this Court.

CONCLUSION

For the foregoing reason, Plaintiffs' Motion for Summary Judgment should be granted. Absent court action, Plaintiffs will continue to be denied their fundamental right to vote in violation of the Tennessee Constitution. Moreover, after reversing its earlier position, the Elections Division has posted no information online about its process for out-of-state convictions and presumably has given no instruction to local elections divisions. The Elections Division must create materials explaining the three pathways to rights restoration for individuals with out-of-state convictions, train local election divisions on how to process registrations forms, and provide information to individuals with out-of-state convictions, and post that information online.

Plaintiffs and those similarly situated should be able to register to vote, like other fully enfranchised citizens, by filling out a paper registration form or using the online portal. The 1981 statutes regarding felony disenfranchisement required that the voter registration form include three questions about past felony convictions in order to gather enough information for the Election Division to determine eligibility without requiring an individual to fill out an additional form or denying them by default. Pub. Acts 1981, Ch. 345, § 5. Today, however, the paper form and online form only ask one question about criminal convictions: "Have you ever been convicted of a crime which is a felony in this state, by a court in this state, or a court in another state, or a federal court?" *See* Plaintiffs Complaint Ex. B and C. Plaintiffs are unable to use the standard voter registration form without being denied and are entirely unable to proceed using the online registration form

once they have checked the box indicates that they have been convicted of a felony. That is an unnecessary and confusing barrier.

Without a clear statement of the law and process, individuals with felonies in their past who are unsure of their eligibility will err on the side of caution and not register to vote. In Tennessee, that means that a large, disproportionately black, population may sit out elections simply out of fear, despite being legally eligible to vote. As a result, the integrity of our democracy suffers. With this case, Plaintiffs ask the Court to remedy that for a discrete subset of those individuals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Plaintiffs' Memorandum of Law in Support of their Motion for Summary Judgment has been served on the parties via the Court's electronic filing system and by email to counsel of record on the 21st day of August 2020

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