**IN THE COURT OF APPEALS OF TENNESSEE**
**AT NASHVILLE**

| | | |
|---|---|---|
| **ERNEST FALLS,** | ) | |
| | ) | |
| **Plaintiff-Appellant,** | ) | |
| | ) | |
| | ) | |
| **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, and HERBERT SLATERY, III, in his official capacity as the Attorney General for the State of Tennessee,** | ) | **Case No. M2020-01510-COAR3-CV** |
| | ) | |
| **Defendants-Appellees.** | ) | |

Rule 3 Appeal from the Final Judgment of the
Chancery Court for Davidson County, Case No. 20-0704-III

---

# BRIEF OF APPELLANT ERNEST FALLS

---

WILLIAM L. HARBISON (No. 7012)
LISA K. HELTON (No. 23684)
CHRISTOPHER C. SABIS (No. 30032)
Sherrard, Roe, Voigt & Harbison, PLC
150 3rd Avenue South, Suite 1100
Nashville, TN 37201
(615) 742-4200

DANIELLE LANG (PHV No. 86523)
BLAIR BOWIE (PHV No. 86530)
CALEB JACKSON (PHV submitted to BPR)
Campaign Legal Center
1101 14th Street NW, Suite 400
Washington, DC 20005
(202) 736-2200

**[Oral Argument Requested]**

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Cases

**Constitutional Provisions and Statutes**

## STATEMENT OF ISSUES

Whether Appellant Ernest Falls has been unlawfully denied the right to vote under the Tennessee Constitution Art. I, § 5 and Tennessee Code § 2-19-143(3)—which states that Tennesseans convicted of felonies in other states are disenfranchised *unless* they have had their full rights of citizenship restored by the governor of the state of conviction, by the law of the state of conviction, *or* under the law of Tennessee—where Appellant Falls only has a felony conviction from Virginia and has had his full rights of citizenship restored by the Governor of Virginia.

## STATEMENT OF THE CASE

Appellant Falls, a Tennessee resident, was convicted of a single felony in Virginia in 1986 and completed his sentence in 1987. In 2020, the Governor of Virginia restored his full rights of citizenship. Relying on the Tennessee Code which states that such restoration of rights by the state of conviction would also enfranchise him in Tennessee (Tennessee Elections Code § 2-19-143(3)), Appellant Falls submitted a voter registration application to the Grainger County Registrar. The State denied Appellant Falls' voter registration application for failure to provide evidence that he had paid all court costs or restitution related to his 1986 Virginia felony conviction.

In a reversal of the State's prior position and notwithstanding elections code § 2-19-143(3), the State now maintains that Appellant Falls must also meet the criteria of the voting rights restoration process under the law of Tennessee outlined in the code of criminal procedure § 40-29-202, including payment of court costs or restitution. Appellant

Falls asserts that he is not disenfranchised by any statement of Tennessee law, that elections code § 2-19-143(3) provides a distinct pathway for the restoration of his voting rights, and that code of criminal procedure § 40-29-202 does not apply where a voter has his rights restored pursuant to another pathway outlined in elections code § 2-19-143. Therefore, he filed suit in the Davidson County Chancery Court challenging the denial of his voter registration application and alleging the violation of his constitutional right to vote provided by Article I, Section 5 of the Tennessee Constitution.

Because an important primary election was fast approaching, Appellant Falls sought a temporary injunction allowing him to cast a ballot. T.R. 15-16.[1] The Chancery Court denied the temporary injunction on the grounds that it was too close to the primary for relief to be granted. T.R. 171-17. Appellant Falls then moved for summary judgment and the State opposed. T.R. 243-271; 272-506. The State did not move for summary judgment. T.R. 289. In late October, the Chancery Court denied Appellant Falls' motion for summary judgment and granted summary judgment for the State, ruling that the law unambiguously favored the State's position. T.R. 526.

Appellant Falls now appeals as of right under Rule 3 of the Tennessee Rules of Appellate Procedure from the final order of Davidson

[1] Following the format of the Clerk and Master of the Chancery Court, this brief will refer to the four volumes of the technical trial court record as "T.R." and the single volume of the transcript of evidence/proceedings as "T.E."

County Chancery Court granting summary judgment in favor of the State.

## STATEMENT OF FACTS

### A. Statutory Background

The Tennessee Constitution provides that "the right of suffrage . . . 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 a court of competent jurisdiction." Tenn. Const. Art. I, § 5. Therefore, where the State enacts both (1) a law defining the crimes considered "infamous," *and* (2) a law stating that a person convicted of an "infamous" crime will be denied the right to vote, an otherwise qualified citizen may be denied the right to vote.

The legislature has defined "infamous" crimes in the code of criminal procedure to encompass all felony convictions in Tennessee state courts. Tenn. Code Ann. § 40-22-112 ("Upon 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."). The legislature has also defined the contours of disenfranchisement for infamous convictions and their equivalents in federal or out-of-state courts. In doing so, the Legislature has disenfranchised only the following categories of people:

(1) People with Tennessee infamous crime convictions "*unless* such person has been pardoned by the governor, *or* the

person's full rights of citizenship have otherwise been restored as prescribed by law";

(2) People with federal convictions "which would constitute an infamous crime under the laws" of Tennessee "*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 law of this state";

(3) People with out-of-state convictions "which would constitute an infamous crime under the laws" of Tennessee "*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 (emphasis added). Appellant Falls does not have an in-state or federal conviction. Therefore, only Section 2-19-143(3) applies in this case.

As referenced in all three parts of Section 2-19-143, Tennessee law provides a mechanism for the restoration of civil rights that does not depend on clemency, federal law, or the laws of other states. That process is codified in the code of criminal procedure. *See* Tenn. Code Ann. § 40-29-101 et seq.

When that process was initially created in 1981, it required a court petition and only applied to individuals with Tennessee convictions. It was not available to individuals with convictions from other states. Thus, a potential voter with an out-of-state conviction could only vote if the state of their conviction restored their voting rights (either via clemency or that state's law). In 1983, the legislature amended both the elections code and criminal procedure code to allow people with convictions from out-of-state to take advantage of the rights restoration process available under the Tennessee code of criminal procedure. *See* 1983 Pub. Act 207 § 2 (codified at Tenn. Code Ann. § 2-19-143(3)) (adding "under the law of this state" as a third pathway for rights restoration for people with out-of-state convictions); *id*. at § 3 (codified as amended at § 40-29-101 et seq.) (adding language about out-of-state convictions to the rights restoration process outlined in the code of criminal procedure).

In 2006, the Legislature amended the code of criminal procedure to create a new, ostensibly easier, administrative process for rights restoration under Tennessee law that does not require petitioning a court. 2006 Pub. Act 860 § 1 (codified as amended at Tenn. Code Ann. § 40-29-201 et seq.). Like the court petition procedure as of 1983, the Certification of Restoration ("COR") procedure is open to those with in-state, federal, or out-of-state convictions. The 2006 law allows anyone with a felony conviction after May 18, 1981 to apply to have their voting rights restored if they meet certain criteria. *Id.* (codified as amended at Tenn. Code Ann. § 40-29-202). Thus, a person with an out-of-state conviction who is ineligible to vote due to that conviction can take advantage of this process. This process, among other things, requires a

person to have paid all court costs and restitution related to their disqualifying conviction. Tenn. Code Ann. § 40-29-202(b).

But while the legislature made this new rights restoration pathway available to "any person who has been disqualified from exercising [the right to vote] by reason of a conviction in any state or federal court," nothing in the 2006 enactment repeals, abrogates, or amends § 2-19-143(3), which limits disenfranchisement for out-of-state convictions to those who have not been restored to citizenship by the pardoning authority or the law of the state of conviction. *Id.* (codified at Tenn. Code Ann. § 40-29-202(a)).

**B. The State's Shifting Interpretation of Section 2-19-143.**

Until recently, the Secretary of State's office agreed with Appellant Falls that Tennessee Code Section 2-19-143(3) identifies three *independent* means of voting rights restoration for a person with an out-of-state conviction: (1) a pardon or similar restoration of rights by the Governor or appropriate authority of the state of conviction, (2) restoration of rights by operation of the law of the state of conviction, or (3) restoration of rights by operation of Tennessee law. T.R. 20. In a letter sent on November 22, 2019, Appellee Goins stated that Tennessee Code Section 2-19-143(3) was "the controlling Tennessee law" governing the eligibility of people with out-of-state convictions. T.R. 21. He further explained that "a person with an out-of-state conviction may have his voting rights restored, if one of the following can be shown: 1. The person has been pardoned or has had their rights of citizenship restored by the governor or other appropriate authority of the convicting state; or 2. The person's full rights of citizenship have been restored in accordance with

the laws of such other state." *Id.* In that letter, Appellee Goins applied these principles to three individuals with out-of-state convictions. He concluded that two of these individuals had their full rights of citizenship restored by operation of the laws of the states of conviction and thus were "eligible to register to vote in Tennessee." T.R. 21-23. He concluded that third person was not eligible because they had not had their full rights of citizenship restored under the laws of the relevant state. *Id.* The letter, which focused on the first two pathways for restoration of voting rights under 2-19-143(3), nowhere suggested that the eligibility requirements for a Certificate of Restoration under § 40-29-202 would apply to those pathways. *Id.* Indeed, that statute is not even mentioned.

This letter was part and parcel of substantial correspondence, beginning August 8, 2019, between Plaintiffs' counsel and counsel within the Secretary of State's office on the issue of rights restoration for people with out-of-state convictions. T.R. 8. After the issuance of the November 22, 2019 letter, Plaintiffs' counsel held a telephone conference in December 2019 with the Secretary of State's office, in which they reiterated the position of the November 22, 2019 letter and agreed to work with Plaintiffs' counsel to implement a standard form for people with out-of-state convictions to use when registering to vote. *Id.* After December 2019, the Secretary of State's office failed to respond to follow-up correspondence from Plaintiffs' counsel about implementing a standard form. *Id.*

On March 26, 2020, the Attorney General issued an opinion contrary to the prior position taken by the Secretary of State.[2] The opinion concludes that people with out-of-state convictions cannot rely on the restoration of their civil rights by the state of their conviction to establish eligibility to vote in Tennessee, but instead must meet the criteria dictated for in-state convictions. T.R. 9; Op. Atty. Gen., Mar. 26, 2020 available at https://www.tn.gov/content/dam/tn/attorneygeneral/documents/ops/2020/op20-06.pdf. The Opinion does not address the three pathways for rights restoration established in Tennessee Code Ann. § 2-19-143. *Id.* Indeed, it only cites that statute once and not the provisions related to the restoration of rights. *Id.* This Attorney General opinion formed the basis of the State's denial of Appellant Falls' voter registration application. T.R. 33.

### C. Appellant Falls[3]

Appellant Ernest Falls is a United States citizen who has lived in Bean Station, Grainger County, Tennessee for nearly three years. T.R. 9.

---

[2] This opinion was apparently issued in response to a request from Appellee Goins. It is unclear what prompted this request for a legal opinion despite Appellees' unambiguous legal conclusion in the fall of 2019. Despite the 2019 correspondence, Appellee Goins did not alert Plaintiffs' counsel to the request for an opinion or the issuance of the opinion when it was released.

[3] Arthur Bledsoe of Blount County also filed this suit in the court below. Plaintiff Bledsoe's outstanding court costs on his felony conviction in North Carolina have since been paid and he is therefore eligible to register to vote even under Appellees' current interpretation of Tennessee law. As a result, he has chosen to not to be a party to this appeal.

In or around 1986, Mr. Falls was convicted of involuntary manslaughter in Virginia. *Id*. He completed his sentence in 1987 and has had no subsequent criminal convictions. *Id.*

In February 2020, Mr. Falls was provided an individualized grant of clemency by the Governor of Virginia. T.R. 30. The clemency order restored Mr. Falls' full rights of citizenship, including the right to run for office, the right to serve on a jury, and the right to vote. *Id*. Relying on Tennessee Code § 2-19-143(3) and the Election Division's November 2019 letter regarding its application, on June 4, 2020, Mr. Falls applied to register to vote in Grainger County, Tennessee by submitting to the Grainger County Election Commission his voter registration application, a form disclosing his out-of-state conviction, and his letter of clemency from the Governor of Virginia. T.R. 9-10.

On June 22, 2020, Mr. Falls received notice from the Grainger County Registrar that the Elections Division had denied his voter registration because he did not provide evidence that he owes no fees or restitution for his Virginia conviction. T.R. 30-34. Payment of fees or restitution was not a condition of Governor Northam's unequivocal restoration of Mr. Falls' full rights of citizenship. T.R. 41. As a result, Mr. Falls was unable to vote in the 2020 primary and general elections.

## STANDARD OF REVIEW

This case presents questions of statutory interpretation which the Court of Appeals reviews *de novo*, "giving no deference to the lower court

decision." *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015) (*citing Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011)).

## ARGUMENT

### A. Introduction

Appellant Falls has the right to vote under the Tennessee Constitution and the Tennessee Code Section 2-19-143(3) which states that individuals convicted of felonies in other states may not vote *unless* they have (1) had their rights of citizenship restored by the governor in the state of conviction, (2) had their full rights of citizenship restored by operation of law in the state of conviction, *or* (3) or had their voting rights restored under Tennessee law. It is uncontested that Appellant Falls—whose only felony conviction was in Virginia in 1986—has had his full rights of citizenship restored by the Governor of Virginia. T.R. 489. He therefore falls under the first exception to disenfranchisement for people with out-of-state convictions.

This Court of Appeals and the Tennessee Supreme Court have made clear that the Tennessee Constitution's protection of the right to vote is self-executing and granted to all, regardless of conviction status, unless there is a clear legislative statement suspending that right. *Crutchfield v. Collins*, 607 S.W.2d. 478, 481 (Tenn. App. 1980). In the case of Appellant Falls, there is no such legislative statement. The *only* law that suspends access to the franchise for out-of-state convictions also states that it does *not* apply to individuals whose civil rights have been restored by the governor of the state of their conviction. Tenn. Code Ann. § 2-19-143(3). Since Mr. Falls has had his rights restored by the Governor

of Virginia, nothing in Tennessee Code § 2-19-143(3) or any other provision of Tennessee law, disenfranchises him. He is eligible to vote.

Yet, the State now contends that Appellant Falls is ineligible to vote because he has not *also* had his rights restored under the rights restoration procedures provided by Tennessee law, as codified in the criminal procedure code. The State's current position, adopted by the Chancery Court, contradicts the plain language of the election code and Appellee Goins' prior interpretation of the law. This erroneous interpretation turns a disjunctive "or" into an "and." Worse, it essentially writes out the first two options for rights restoration listed in Section 2-19-143(3) of the election code by requiring all people with out-of-state convictions to meet the requirements of the third option, restoration under Tennessee law. To adopt this bizarre interpretation of the code, this Court would not only have to ignore the plain language of the statutes, but find that the Legislature silently abrogated the elections code while amending an entirely different section of Tennessee Code – the criminal procedure code.

The Chancery Court's opinion and the State's interpretation rest on a fundamental misreading of how the two relevant statutory sections—Section 2-19-143 of the election code and Sections 40-29-201 et seq. of the criminal procedure code—work together. The State argues that because Section 40-29-201 provides that it "appl[ies] to and govern[s] 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 an infamous crime," this criminal procedure code provision provides the sole means of rights restoration for people with

convictions. T.R. 280-1. But, upon inspection, that argument is tautological. Appellant Falls need not seek to restore his right of suffrage because he is not disqualified by any statement of law. The only statement of law that *could* disqualify him—Section 2-19-143(3)—excludes individuals who have had their rights restored via clemency in the state of their conviction. Similarly, the State also relies on other language in the statutes governing the in-state restoration process that refer to convictions in other state courts. T.R. 82 (*citing* Tenn. Code Ann. § 40-29-202(a)). But this provides no support to the State. Appellant Falls agrees that individuals with out-of-state convictions who are disqualified under Section 2-19-143(3)—*i.e.* those who have not received a pardon or restoration of rights in their state of conviction—*can* rely on the procedure within 40-29-201 et seq. to seek restoration of voting rights. In other words, that process is one option for individuals with out-of-state convictions—the third option listed in Section 2-19-143(3)—but that does not make it their exclusive recourse.

Appellant Falls' interpretation follows the plain language of the Tennessee Code. It is the only interpretation that can give meaning to every portion of the code, harmonize the relevant statutory provisions, rather than setting them in direct conflict, and give effect to the legislature's intent. As such, this Court should reverse the Chancery Court's decision granting the State summary judgment and grant summary judgment to Appellant Falls.

### B. Applicable Legal Standards

When engaging in statutory interpretation, Tennessee courts follow well-established precepts.

*First,* the inquiry always begins with a plain meaning analysis of the statutes in question. *Mills v. Fulmarque*, *Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012) ("The text of the statute is of primary importance."). In so doing, courts must "construe a statute so that no part will be inoperative, superfluous, void, or insignificant, giving full effect to legislative intent." *Coffman v. Armstrong Int'l, Inc.,* 615 S.W.3d 888, 903 (Tenn. 2021) (internal quotation marks and citations omitted). The goal is to give full effect to the intent of the legislature, without going beyond the scope of the words. *Larsen–Ball v. Ball*, 301 S.W.3d 228, 232 (Tenn. 2010); *In re Estate of Tanner*, 295 S.W.3d 610, 613 (Tenn. 2009).

*Second,* courts often look to the context of legislative enactments and what they changed or did not change about prior law. *See In re Kaliyah S.*, 455 S.W.3d at 541 (analyzing the "evolution of Tennessee statutes" on the issue in the case); *see also State v. Mixon*, 983 S.W.2d 661, 669 (Tenn. 1999) (reviewing the history of enactments and court cases to discern the meaning of the legislature's choice to replace the phrase "from rendition of judgment," with "after the judgment becomes final"). Tennessee courts recognize that the legislature does not write its laws on a blank slate. As a result, understanding the language prior to enactment of a bill is part of the inquiry into the plain meaning of that law. *See Murfreesboro Med. Clinic, P.A. v. Udom*, 166 S.W.3d 674, 682-683 (Tenn. 2005) (contextualizing the narrow scope of non-compete

legislation by pointing to a prior Supreme Court case establishing a general presumption against non-competes). In other words, this Court should presume that the legislature was aware of its own prior enactments and look to what the legislature chose to change or leave in place over time to understand its intent. *In re Estate of Tanner*, 295 S.W.3d at 614 (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn.1995) ("We also must presume that the General Assembly was aware of any prior enactments at the time the legislation passed.")

*Third,* courts construe relevant statutes *in pari materia. Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010) (quoting Wilson v. Johnson Cnty., 879 S.W.2d 807, 809 (Tenn. 1994)) ("[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."). Accordingly, it is relevant where the legislature chose to place laws in particular sections of the code and how those choices contextualize their mandates. *See Lee Medical, Inc. 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[.]"). Ultimately, courts must strive to interpret statutes in harmony so as to give meaning to every word and disfavor interpretations that set statutes in conflict with each other. *In re Kaliyah S.*, 455 S.W.3d at 552 (quoting *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997) ("We seek to adopt the most reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws.")).

Applying all of these well-established precepts, Appellant Falls' common-sense reading of Tennessee's felony disenfranchisement and restoration laws must prevail and the State's interpretation—which renders code sections superfluous and renders the code in conflict with itself—must fail.

### C. Appellant Falls is not disenfranchised under Tennessee law.

#### *1. Absent disenfranchising legislation, the Tennessee Constitution confers universal suffrage, including for those with criminal convictions.*

The Tennessee Constitution strictly protects the fundamental right to vote. Tenn. Const. Art. I § 5 ("[T]he right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto . . . ."); *see also* Art. IV § 1 ("Every person, being eighteen years of age, being a citizen of the United States, being a resident of the State . . . , and being duly registered in the county of residence . . . , *shall* be entitled to vote in all federal, state, and local elections . . . ."). That universal grant of the right to vote is self-executing and can be relied upon "independently of any legislative enactment." *Crutchfield v. Collins*, 607 S.W.2d 478, 481 (Tenn. App. 1980); *see also Gaskin v. Collins,* 661 S.W.2d 865, 867 (Tenn. 1983).

The Constitution allows the Tennessee Legislature to deprive a resident of the default right to vote in the case of a conviction for an infamous crime, but that allowance is not a blank check. Infringement of the right to vote because of a felony conviction is only constitutional

where the parameters are clearly and deliberately defined by statute. *Crutchfield*, 607 S.W.2d at 481; *see also* Tenn. Const. Art. I § 5 (" . . . 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"); Art. IV, § 2 ("Laws *may* be passed excluding from the right of suffrage persons who may be convicted of infamous crimes.") (emphasis added). Thus, while the declaration of the right of universal suffrage is self-executing, "the exception to universal suffrage [for infamous crimes] is expressly dependent upon legislative action." *Gaskin,* 661 S.W.2d at 867 (quoting *Crutchfield*, 607 S.W.2d at 481).

Put differently, the constitutional default for all Tennesseans—including individuals convicted of infamous crimes—is enfranchisement, not disenfranchisement. In *Crutchfield v. Collins*, this Court expounded on what kind of laws are necessary to strip a person of the right to vote due to criminal conviction. To remove a citizen's suffrage from the Constitution's protection, the legislature must pass a law or laws that both define "infamous crimes" and restrict the right to vote based on those infamous crimes. *Crutchfield*, 607 S.W.2d at 482. Without one or the other, people with criminal convictions have a protected right to vote under the Tennessee Constitution. *Id.*

*2. The only statement of the legislature that disenfranchises people with convictions from other states is § 2-19-143(3) in the elections code.*

Thus, in order to deny Appellant Falls the right to vote, the State must rely on a specific legislative enactment that deprives him of the

default right to vote granted to him by the Tennessee Constitution. The only possible such provision is Section 2-19-143(3).[4]

A review of Tennessee's prior disenfranchisement laws provides the necessary context. Prior to 1972, the legislature had both defined infamous crimes and stated that upon conviction a person would be disenfranchised. However, in 1972, the legislature amended the code and removed the phrase that a person convicted of an infamous crime "be disqualified to exercise the elective franchise." 1972 Pub. Act 740, § 4. Without that explicit statement, this court found, there was no authority to strip the right to vote from the plaintiffs who had been convicted of infamous crimes after 1972, and the Elections Division could not deny them that right. *Crutchfield*, 607 S.W.2d at 482. As a result, to this date, Tennesseans convicted of felonies between January 15, 1973 and May 17, 1981 (the date on which the Legislature amended the relevant laws, *see infra*) are not disenfranchised by those convictions and may vote in Tennessee. *Gaskin,* 661 S.W.2d at 867; T.R. 35.

Following the decision in *Crutchfield*, the Tennessee legislature enacted two new provisions related to criminal disenfranchisement following the guidelines this Court laid out in that case. First, the legislature amended the provision at issue in *Crutchfield*, stating "[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." 1981 Pub. Acts 342 § 1 (codified as amended at

[4] However, as discussed *supra* at 7 and *infra* at 18-19, the State cannot rely on that provision because it expressly excludes Appellant from its coverage.

Tenn. Code Ann. § 40-20-112). But this addition to the Code is phrased as a directive to Tennessee state court judges, under the judgment and sentencing provision of the Tennessee code of criminal procedure, and thus cannot reach people convicted of felonies in other states or in federal court. *Id.*

Second, recognizing the limitation of the criminal procedure provision, the Tennessee legislature also passed a separate law as part of the Elections Code, extending disenfranchisement to persons "convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state." 1981 Pub. Acts 345 § 2(c) (codified as amended at Tenn. Code Ann. § 2-19-143(3)). This statute also extended disenfranchisement to persons convicted of felonies in federal court. *Id.* (codified as amended at Tenn. Code Ann. § 2-19-143(2)).

Thus, as the Secretary of State has recognized, Tennessee Elections Code § 2-19-143(3) is "the controlling Tennessee law" governing the eligibility of people with out-of-state convictions. T.R. 21. If the infamous crimes provision in the code of criminal procedure, Section 40-20-112, already disenfranchised those with felonies in other states, the addition of Section 2-19-143(3) would have been superfluous. *See In re Estate of Tanner*, 295 S.W.3d at 613–14 ("In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect."). In fact, the same chapter of the code of criminal procedure explicitly recognizes that the infamous crimes provision does not reach out-of-state convictions. Tenn. Code Ann. § 40-20-114 ("[A] person who has been convicted in this state of an infamous crime, as defined by § 40-20-112 . . . or convicted under the laws of the

United States or another state *of an offense that would constitute an infamous crime if committed in this state*… [cannot run for public office].") (emphasis added); *see In re Kaliyah S.*, 455 S.W.3d at 554 (quoting *State v. Pope*, 427 S.W.3d 363, 368 (Tenn. 2013)) ("In discerning legislative intent, we may employ the principle of '*expressio unius est exclusio alterius*', [which] provides 'that where the legislature includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that the legislature acted purposefully in the subject included or excluded.'"). As such, the only section that disenfranchises Tennesseans with felony convictions from other states is election code § 2-19-143(3).

*3. Election code § 2-19-143(3) does not disenfranchise Appellant Falls.*

Since Appellant Falls only has an out-of-state conviction, the State could only rely on election code § 2-19-143(3) to justify his disenfranchisement. But Section 2-19-143(3) only revokes the right to vote in limited circumstances:

> 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 in 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 states,* 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) (emphasis added). Thus the only sentence in the Tennessee Code that excludes people with out-of-state convictions from the franchise also brings them back under the Tennessee Constitution's suffrage protections *if* they have had their full citizenship rights restored by the Governor of the state of conviction. This provision defines the contours of who is disenfranchised for an out-of-state conviction as anyone who was convicted of a felony *and* whose full rights of citizenship have not been restored by that state. Because the Governor of Virginia restored his full rights of citizenship, Appellant Falls simply falls outside the scope of Section § 2-19-143(3) and no provision of Tennessee law disenfranchises him.

*4. Since no legislative enactment disenfranchises him, Appellant Falls' right to vote is protected by the Tennessee Constitution.*

For the foregoing reasons, denial of the right to vote to individuals with out-of-state convictions whose rights of citizenship have been restored in the state of their conviction is prohibited by the Tennessee Constitution Article I, Section 5 because those individuals are not disenfranchised at all. They stand in the shoes of any other fully eligible and enfranchised voter. In *Crutchfield*, this Court found that, because the legislature had removed the express disenfranchisement clause from the code in 1973, the Elections Division could not deny plaintiffs the right to vote even though they had been convicted of "infamous crimes." 607

S.W.2d. at 481. Likewise, here, there is no legislative authorization for deprivation of Appellant Falls' right to vote. The legislature has not authorized the denial of the right to vote of a "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" if that person has "been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state." Tenn. Code Ann. § 2-19-143(3). The Elections Division and the Attorney General can no more erect additional barriers to the franchise for Appellant Falls than it could for a person never convicted of a crime at all.

Given that there is no prior statutory authorization to deny Appellant Falls his right to vote, the Tennessee Constitution Article I, Section 5 prohibits the Elections Division from denying Appellant Falls' voter registration application.[5] Because the statutory text is clear, this

[5] Below, both the State and the Chancery Court discussed the constitutionality of Tennessee depriving Appellant Falls of the right to vote even though the state of his conviction has granted him clemency. T.R. 542-43; T.E. 39-40. This argument is a red herring. Appellant Falls does not argue that the Tennessee legislature *could not* have disenfranchised him but that it *has not*. Appellant does not contend here that Tennessee is bound by any laws except its own, which clearly incorporate the standards of the state of conviction by reference. The legislature is, of course, free to redesign disenfranchisement to apply evenly regardless of the state of conviction, but as it stands, that is not the way the law is written. If the legislature wishes to add eligibility criteria for individuals whose rights of citizenship are restored in the state of their conviction, we have to assume under the canons of statutory interpretation that it knows how to do that: by amending Section 2-19-143(3). *In re Estate of Tanner*, 295 S.W.3d 610, 614 (Tenn. 2009) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn.1995)) ("We also must

should end the inquiry. *See Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (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.").

### D. The Chancery Court Erred by Interpreting the Certificate of Restoration Process as Limiting the Pathways for Rights Restoration for People with Out-of-State Convictions.

Notwithstanding the foregoing, the Chancery Court adopted the Defendants' flawed statutory argument that a distinct 2006 law intended to expand rights restoration avenues silently abrogated two of the three means of rights restoration articulated in Section 2-19-143(3). Because the Chancery Court's reasoning defies the statutory text—particularly given the legislative history and context—this Court should reverse.

The State's argument—which the Chancery Court adopted—relies almost exclusively on the language of Sections 40-29-201 and 40-29-202 in the code of criminal procedure, which address the process by which a disenfranchised individual with an infamous conviction can restore their voting rights under Tennessee law. Section 40-29-202 sets forth the requirements for a Certificate of Restoration of Voting Rights under Tennessee law, including payment of costs and restitution related to the

---

presume that the General Assembly was aware of any prior enactments at the time the legislation passed.").

disqualifying conviction. And Section 40-29-201 states that these sections "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 an infamous crime*." Both the Chancery Court and the State rely on this language in Section 40-29-201 to argue that the requirements of 40-29-202 must apply to *all* people with out-of-state felony convictions, including Appellant Falls. Because Appellant Falls has not proven he meets the requirements of Section 40-29-202, the Chancery Court held that he was properly disenfranchised.

This interpretation of Tennessee's felony disenfranchisement scheme fails for at least three reasons.

*1. The Chancery Court's interpretation defies the plain text of Elections Code § 2-19-143 and creates an unnecessary conflict within the code.*

The Chancery Court's interpretation unnecessarily creates a conflict between Section 2-19-143(3) and Sections 40-29-201 et seq. and makes obsolete two of the three exceptions to disenfranchisement in Section 2-19-143 for people with out-of-state convictions. These two provisions can be easily reconciled and read harmoniously. As discussed above, Section 2-19-143 is "the controlling law," for the disenfranchisement of people with out-of-state convictions. T.R. 21. It disenfranchises people with out-of-state felony convictions *unless* they have had their rights restored in one of three manners: (1) by pardon or clemency in the state of conviction; (2) by operation of law in the state of conviction; or (3) by operation of Tennessee law. Sections 40-29-201 et

seq. are relevant to people with out-of-state felony convictions who are seeking to rely on that third pathway for voting rights restoration. And the language of Section 40-29-201 makes sense because people with out-of-state convictions that qualify to vote under the first two pathways of Section 2-19-143 are simply not "person[s] who [have] been disqualified from exercising [the right to vote] by reason of a conviction in any state or federal court of an infamous crime." While they have a conviction of an infamous crime, they are not "disqualified from exercising" their right to vote by reason of that conviction.

Thus, the Chancery Court's presumption that Appellant Falls' interpretation "would directly conflict with the plain language of Tennessee Code Annotated section 40-29-201," was incorrect. T.R. 540. This error was likely caused by the Chancery Court's misapprehension that people with out-of-state convictions are disenfranchised not only by Section 2-19-143 but also by Section 40-20-112. T.R. 542. ("As described above, the Tennessee General Assembly, pursuant to its constitutional authority under Article IV, § 2, considers 'infamous' crimes to include all felonies. See Tennessee Code Annotated section 40-20-112. No provision of the Tennessee Constitution requires or contemplates that the voting rights of disenfranchised felons will eventually be restored."). For the reasons discussed *supra* 7, 18-19, Section 40-20-112 does not and cannot disenfranchise people with out-of-state convictions on its own. The Chancery Court did not address that issue whatsoever.

Meanwhile, the Chancery Court's interpretation directly conflicts with the plain language of Section 2-19-143. At the outset, the Chancery Court's opinion recognizes that "Tennessee law provides three distinct

pathways for rights restoration" and that "the undisputed facts are that the Plaintiffs have had their right to vote restored under the first and second pathways respectively." T.R. 530. Yet, the Chancery Court's ultimate ruling is that these first and second pathways are essentially defunct in light of the requirements of Section 40-29-201 et seq. and all people with out-of-state felony convictions must meet the requirements of the third pathway. This cannot be reconciled with the plain text of Section 2-19-143(3). *Mills*, 360 S.W.3d at 368 ("When the language of the statute is clear and unambiguous, courts look no farther to ascertain its meaning.") And given the Chancery Court's own description of Section 2-19-143(3) as setting up "three distinct pathways," it makes little sense to conclude, as the court did, that "[Section 2-19-143(3)] simply establishes a requirement for re-enfranchisement without precluding statutory requirements elsewhere" or permits the imposition of "additional requirements for reinstatement of voting rights for all convicted felons regardless of the state or court of conviction." T.R. 531, 541. The Chancery Court's interpretation reads the disjunctive "or" out of Section 2-19-143(3) completely, leaving just one option for rights restoration. *See State v. Arriola*, No. M2007-00428-CCA-R3-CD, 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, 86 (6th ed. 1990)).

The Chancery Court's interpretation also fails because it creates an unnecessary conflict within various provisions of the code. *See In re Kaliyah S.*, 455 S.W.3d at 552 (quoting *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn.1997)) ("We seek to adopt the most 'reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws'"). The conflict created by the Chancery Court's interpretation is particularly untenable here, where the only basis for disenfranchisement of Appellant Falls in the first place is Section 2-19-143. Under *Gaskin* and *Crutchfield* the State cannot, in a statute that only addresses voting rights *restoration,* silently expand its *disenfranchisement* provisions. Disenfranchisement requires a clear and deliberate statement of law. *Crutchfield*, 607 S.W.2d. at 481.

*2. The Chancery Court's interpretation fails to consider the legislative history and statutory scheme as a whole.*

The Chancery Court's interpretation also fails to properly consider the legislative history and, specifically, the "evolution of Tennessee statutes" on this issue. *In re Kaliyah S.*, 455 S.W.3d at 541. Once again, the context of legislative amendments in this area sheds further light on the legislative intent behind Section 40-29-201, which was to allow people with out-of-state convictions to access the COR process--not to limit them to that process.

When Tenn. Code Ann. § 2-19-143(3) was enacted in 1981, it did not include an exception to disenfranchisement via restoration of citizenship "under the law of this state." *See* 1981 Pub. Acts 345 (codified as amended at Tenn. Code Ann. § 2-19-143(3)). The only option for people with out-of-

state convictions was rights restoration in the state of their conviction. *Id.* Likewise, the section of the Criminal Procedure Code that provided for rights restoration (at that time, via court petition) to those convicted of Tennessee state convictions included no mention of out-of-state courts or convictions. *Id.* (codified as amended at Tenn. Code Ann. § 40-29-101 et seq.).

Since full citizenship rights restorations are rare in any state even now,[6] it would have been difficult for people with out-of-state convictions from other states to ever vote in Tennessee. In 1983, the legislature remedied this by opening up the possibility for individuals with out-of-state convictions whose rights of citizenship had not already been restored to also seek restoration using the same pathway available to those with in-state convictions. To do this, the legislature created the third pathway for restoration now found 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's addition was

[6] In Chancery Court, the State argued Appellant Falls' position would lead to absurd results because it would be easier for people with out-of-state convictions to restore their voting rights than those with in-state convictions. T.R. 95. As a practical matter, this will not be terribly common. Pardons and clemency are relatively unusual events and while many states restore *voting rights* post-conviction, Section 2-19-143 requires the restoration of the *full* rights of citizenship under state law. That is far less common. T.R. 134; T.E. 11-14. Moreover, it is not absurd for Tennessee to recognize the limits on punishment that a state of conviction wishes to impose. Indeed, it is common for states to treat out-of-state convictions differently than in-state convictions for purposes of rights restoration, often attaching restoration to the laws of the state of conviction. T.E. 11-12.

deliberately disjunctive. It did not abrogate or strike the other exceptions to disenfranchisement for restoration of citizenship under the laws of the state of conviction. At the same time, to further clarify that the opportunity to petition Tennessee circuit courts was available to those with out-of-state convictions, the legislature added language about out-of-state courts and out-of-state convictions to the restoration provision in the Criminal Procedure Code: "Persons rendered infamous or deprived of the rights of citizenship by the judgment *of any state or federal court*, may have their full rights of citizenship restored by the circuit court." *Id.* at § 3 (codified as amended at Tenn. Code Ann. § 40-29-101 et seq.) (emphasis added).

Finally, in 2006, the Tennessee legislature updated the pathway for rights restoration under Tennessee law to make it more accessible. Rather than requiring a court petition, the legislature set up an administrative process for rights restoration under Tennessee law through Tennessee Code Sections 40-29-201 et seq. Once again, the legislature used the same language to make clear that people with out-of-state convictions could utilize this process. Indeed, in Section 40-29-202, they adopted nearly identical language to the 1983 amendment. *See* 2006 Pub. Acts 860 ("A person rendered infamous *or deprived of the right of suffrage by the judgment of any state or federal court* is eligible to . . . .") (emphasis added). At the same time, the 2006 legislature left the language in Section 2-19-143(3) untouched.

Given this history—and the presumption that the legislature is aware of its previous enactments, *see In re Estate of Tanner*, 295 S.W.3d at 614—it is far more reasonable to interpret Tennessee Code Sections

40-29-201 et seq. as providing *access* to rights restoration under Tennessee law for people with out-of-state convictions rather than silently repealing the two alternative pathways to rights restoration outlined in 2-19-143(3).[7] *See also Owens*, 908 S.W.2d at 926 ("We also must presume that the General Assembly was aware of any prior enactments at the time the legislation passed.").

*3. The Chancery Court's interpretation transforms a rights-expanding enactment into a rights-restricting enactment.*

The Chancery Court's interpretation leads to the perverse result of turning the 2006 enactment, which was intended to *expand* rights restoration avenues, into a restriction of rights restoration opportunities for people with out-of-state convictions. The 2006 legislative enactment, creating the COR process, was intended to make the voting rights

[7] Indeed, since 1983 when the legislature amended the statutory scheme to allow people with out-of-state convictions to access in-state rights restoration mechanisms, the legislature has altered or amended the disenfranchisement and re-enfranchisement statutes seven times. But it has not once touched the scope of disenfranchisement or the three disjunctive exceptions to disenfranchisement in Section 2-19-143(3). If the legislature had wanted in-state convictions and out-of-state convictions to be treated identically for disenfranchisement purposes, it would have simply struck the additional out-of-state carve outs from the Elections Code. *See In re Kaliyah S.*, 455 S.W.3d at 555 (holding that if the legislature had wanted to impose the "reasonable efforts" standard found in the juvenile proceedings section of the code to all proceedings regarding termination of parental rights, it would have placed that requirement in the section of the code governing termination proceedings in all courts).

restoration process *easier* and *more* accessible. T.R. 513-14. Restorations through the courts, as outlined in the Code of Criminal Procedure § 40-29-101, were rare and the legislators recognized that many disenfranchised people lacked access to the legal resources necessary to pursue that method. *Id.*; T.R. 440-41. The 2006 enactment created an administrative procedure whereby individuals who met certain post-sentence criteria could request and would be issued a Certificate of Restoration of Voting Rights. 2006 Pub. Acts 860 (codified as amended at Tenn. Code Ann. § 40-29-201 et seq.).

Yet, the State's interpretation—adopted by the Chancery Court—relies on this Court making the fallacious inference that the legislature actually made it more difficult for people with out-of-state convictions to have their voting rights restored despite its attempt to ease restrictions on voting access. As discussed above, the text does not support this interpretation and the Chancery Court's adoption of the State's argument undermines the legislative intent of the 2006 enactments. *Coffman,* 615 S.W.3d at 903 (directing courts engaging in statutory interpretation to give "full effect to legislative intent.")

## CONCLUSION

The fundamental right to vote is expressly guaranteed under the Tennessee Constitution. *Fisher v. Hargett*, 604 S.W.3d 381, 400 (Tenn. 2020). The framers of Tennessee's Constitution had themselves experienced retroactive disenfranchisement and "were determined to safeguard themselves and future generations from similar acts of repression." *Gaskin*, 661 S.W.2d at 868. To achieve that end, the

Constitution allows for disenfranchisement only under well-defined circumstances: "upon conviction by a jury for some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction." Tenn. Const. Art. I § 5. Thus the allowance to "pass laws excluding from the right of suffrage persons who may be convicted of infamous crimes," Tenn. Const. Art. IV § 2, is not a blank check for the legislature - and certainly not for administrators. *Crutchfield*, 607 S.W.2d at 481. While the legislature has significant leeway to define the boundaries of disenfranchisement and the terms of rights restoration, it is abundantly clear that the administrators of those laws may not themselves move the goal posts.

Appellant Falls relied on the plain letter of Tennessee law and the written position of the Election Division when he registered to vote. State Appellees unlawfully denied his registration, expanding disenfranchisement beyond its legislatively defined boundaries.

The Constitution and the statutes are clear. All Tennesseans are guaranteed suffrage unless they have been convicted of a previously defined infamous crime and the legislature has expressly stated that such a conviction results in the loss their right to vote. *Crutchfield*, 607 S.W.2d at 481. The only legislative statement of disenfranchisement that applies to people with out-of-state convictions is Section 2-19-143(3) but that section *only* disenfranchises *unless and until* an individual's rights have been restored by the governor of the state of conviction, by operation of law in the state of conviction, or under Tennessee's rights restoration processes. The opinion below does not address this, instead mistakenly

relying on Section 40-20-112, which does not by itself reach out-of-state convictions, to support Appellant Falls' disenfranchisement.

The Chancery Court erred in adopting the State's recently espoused position that the rights restoration procedure created in 2006 overwrote and expanded the scope of disenfranchisement for out-of-state convictions. That conclusion defies the plain text of Section 2-19-143, turning disjunctive statements into conjunctives, and creates an unnecessary conflict between that section and § 40-29-202. Moreover, the Chancery Court's interpretation fails to consider the legislative history and statutory scheme as a whole, ignoring that legislature expressly opened up the rights restoration process designed for people with in-state convictions to people with out-of-state convictions in 1983 without removing the other pathways to restoration. Finally, the Chancery Court's opinion negates the intent of 2006 legislature to expand access to rights restoration, turning a rights-expanding statute into a rights-restricting one.

Appellant Falls' interpretation follows the plain language of the elections code. It is the only interpretation that can give meaning to every portion of the code, harmonize the relevant statutory provisions rather than setting them in direct conflict, and give effect to the legislature's intent. For these reasons, Appellant Falls respectfully asks the Court to reverse the Chancery Court's decision granting the State summary judgment and to instead grant summary judgment to Appellant Falls.

Respectfully submitted,

*/s/ William L. Harbison*
William L. Harbison (No. 7012)
Lisa K. Helton (No. 23684)
Christopher C. Sabis (No. 30032)
SHERRARD, ROE, VOIGT & HARBISON, PLC
150 3rd Avenue South, Suite 1100
Nashville, TN 37201
Phone: (615) 742-4200
Fax: (615) 742-4539
bharbison@srvhlaw.com
lhelton@srvhlaw.com
csabis@srvhlaw.com

Danielle Lang (PHV No. 86523)
Blair Bowie (PHV No. 86530)
Caleb Jackson (PHV submitted to BPR)
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, DC 20005
(202) 736-2200
dlang@campaignlegalcenter.org
bbowie@campaignlegalcenter.org
cjackson@campaignlegalcenter.org

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the forgoing has been served on counsel for the parties by hard copy, via U.S. mail, and electronic mail on the **26th day of April, 2021** to:

Alexander S. Reiger
Janet M. Kleinfelter
Matthew D. Cloutier
Jenna L. Pascale
Office of the Attorney General
Public Interest Division
P.O. Box 20207
Nashville, TN 37202

*/s/ William L. Harbison*
William L. Harbison

## CERTIFICATE OF COMPLIANCE

I certify that this Appellant Brief complies with the text, font, and other formatting requirements set forth in Supreme Court Rule 46, § 3.02. Based upon the word count of a word processing system and excluding the sections set forth in § 3.02(a)(1), this Appellant Brief contains 8,409 words.

*/s/ William L. Harbison*
William L. Harbison