IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

PAMELA MOSES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. CT-1579-19**
	)	**Judge Felicia Corbin-Johnson**
MARK GOINS, TRE HARGETT, and	)	**Judge Suzanne Cook**
JONATHAN SKRMETTI, in their official capacities,	)	**Judge Barry Tidwell**
	)	
Defendants.	)	

ORDER

Before the Court[1] is the Motion of Defendants Mark Goins, Tre Hargett, and Jonathan Skrmetti, in their official capacities, to Revise and to Permit Interlocutory Appeal. Defendants move the Court for relief from its July 19, 2023 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss the Second Amended Complaint of Plaintiff Pamela Moses. Defendants assert the Court's ruling with respect to Plaintiffs' claims brought under Article I, Section 5 of the Tennessee Constitution is in error as a matter of law pursuant to *Falls v. Goins*, 673 S.W.3d 173 (Tenn. 2023), and ought to be revised. Defendants also seek an interlocutory appeal with respect to the Court's denial of the Motion to Dismiss as to Plaintiff's race-based equal protection claims and substantive due process claims, as well as—in the alternative—the Article I, Section 5 claims. Defendants argue the factors for consideration of an interlocutory review by the Court of Appeals are all present in this case. Counsel for the parties appeared before the Court via Zoom on November 16, 2023, to argue their respective positions.

As we explain below, the Motion is not well taken and therefore **DENIED**.

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[1] Presiding over this matter is a three-judge panel appointed by the Tennessee Supreme Court pursuant to Tenn. Code Ann. §§ 20-18-101 *et seq.* and Supreme Court Rule 54.

I. Motion to Revise

A motion to revise is made under Rule 54.02 of the Tennessee Rules of Civil Procedure[2] and "allows litigants 'a limited opportunity to readdress previously determined issues and afford[s] trial courts an opportunity to revisit and reverse their own decisions.'" *Waddell v. Waddell*, No. W2020-00220-COA-R3-CV, 2023 WL 2485667, at *7 (Tenn. Ct. App. Mar. 14, 2023) (quoting *Harris v. Chern*, 33 S.W.3d 741, 744 (Tenn. 2000)) (alteration in original). Whether to grant a motion to revise rests within the sound discretion of the trial court. *See Harris*, 33 S.W.3d at 746 (citing *Donnelly v. Walter*, 959 S.W.2d 166, 168 (Tenn. Ct. App. 1997)) ("A trial court's ruling on a motion to revise pursuant to Rule 54.02 will be overturned only when the trial court has abused its discretion."). An effort by the trial court "to 'get [the issue] right'" is an appropriate basis for granting a motion to revise.[3] *Waddell*, 2023 WL 2485667, at *9 (quoting trial court) (alteration in original).

Here, Defendants argue the Supreme Court's decision in *Falls v. Goins*, 673 S.W.3d 173 (Tenn. 2023), requires this Court to revise its order on Defendants' motion to dismiss with respect to Plaintiffs's claims relying upon the Free and Fair Elections Clause, Tenn. Const. art. I, § 5—of Plaintiff's Second Amended Complaint. We disagree. The *Falls* Court explained that this constitutional provision "does not mandate that the legislature provide convicted infamous criminals with a pathway or pathways to regain the right to vote." *Id.* at 182. The *Falls* Court did not address, however, the basis for this Court's specific ruling with respect to Plaintiff's Article I,

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[2] "[A]ny order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and *the order or other form of decision is subject to revision at any time before the entry of the judgment* adjudicating all the claims and the rights and liabilities of all the parties." Tenn. R. Civ. P. 54.02(1) (emphasis added).

[3] Plaintiff contends that a motion to revise is inappropriate here because "controlling law has not changed, there is no new evidence, and there is no clear error of law or injustice to the Defendants." These standards, however, were specifically rejected by the Court of Appeals in *Waddell*, 2023 WL 2485667, at *8–9, as the sole bases for a motion to revise.

Section 5 claims—the separate history and meaning of "[t]he elections shall be free and equal" portion of Article I, Section 5 and Defendants' failure to address that specific argument. *See* 2d Am. Compl., ¶¶ 24–27, 88–94; Order Grant'g in Part and Deny'g in Part Defs.' Mot. to Dismiss, at 31–32, July 19, 2023. No part of the Court's analysis relied upon a reading of Article I, Section 5 that requires the State to "provide convicted infamous criminals with a pathway or pathways to regain the right to vote."

Accordingly, Defendants' Motion to Revise is **DENIED**.

II. Motion to Permit Interlocutory Appeal

Defendants further move the Court for permission to seek interlocutory review from the Court of Appeals. Specifically, Defendants seek review of the Court's denial of Defendants' motion to dismiss with respect to Plaintiff's free and fair election claims, equal protection claims, and substantive due process claims. "Interlocutory appeals to review pretrial orders or rulings are generally 'disfavored' . . . ." *Reid v. State*, 197 S.W.3d 694, 699 (Tenn. 2006) (quoting *State v. Gilley*, 173 S.W.3d 1, 5 (Tenn. 2005)).

> In determining whether to grant permission to appeal, the following, while neither controlling nor fully measuring the courts' discretion, indicate the character of the reasons that will be considered: (1) the need to prevent irreparable injury, giving consideration to the severity of the potential injury, the probability of its occurrence, and the probability that review upon entry of final judgment will be ineffective; (2) the need to prevent needless, expensive, and protracted litigation, giving consideration to whether the challenged order would be a basis for reversal upon entry of a final judgment, the probability of reversal, and whether an interlocutory appeal will result in a net reduction in the duration and expense of the litigation if the challenged order is reversed; and (3) the need to develop a uniform body of law, giving consideration to the existence of inconsistent orders of other courts and whether the question presented by the challenged order will not otherwise be reviewable upon entry of final judgment.

Tenn. R. App. P. 9(a). Defendants argue all of these factors are met, and thus they, as well as the importance of the issues at stake, should lead the Court to conclude that an interlocutory appeal is

warranted. We again disagree. The Court does not see in this case the circumstances described by Rule 9(a) unless we are to take that rule as enveloping nearly every case. It would indeed be some hardship upon Defendants that they are forced to endure litigation that they might have avoided but for an error of this Court, but this does not constitute an irreparable injury; rather it amounts to argument that the Court was wrong, which while inherent to seeking interlocutory review is not the purpose of it. *See, e.g.*, *State v. Gilley*, 173 S.W.3d 1, 6 (Tenn. 2005) ("[I]nterlocutory review was not necessary to prevent irreparable injury to the defendant because the trial court's rulings . . . can be challenged in an appeal as of right . . . ."). Similarly, enduring this litigation undoubtedly comes with delays and expense, but Defendants have not explained how this case would be unduly protracted. *See, e.g.*, *Kasemeyer v. Chase Home Finance, LLC*, No. L-15142, 2008 WL 6016244, at *1–2 (Tenn. Cir. Ct., Blount Cnty., July 21, 2008) ("The Defendant has failed to meet its burden and show that allowing an interlocutory appeal at this time would prevent protracted litigation and expense."). Further, we do not see any indication that this case has presented a split or deepened any existing split in authority that the appellate courts ought to resolve. *See Comm. to Oppose the Annexation of Topside & Louisville Rd. v. City of Alcoa*, 881 S.W.2d 269, 270 (Tenn. 1994) ("He further found there was a need to develop a uniform body of law because the ruling of the Court was contrary to an opinion of the Attorney General."). And finally, we agree with Defendants that Plaintiff's efforts to restore her voting rights and the State's authority to enforce its laws are issues of great importance. But the issues at stake in all cases are important, and here we aware of no facts that demand an immediate appellate examination.

Accordingly, Defendants' Motion to Permit Interlocutory Appeal is **DENIED**.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Revise and to Permit Interlocutory Appeal is **DENIED**.

It is so ORDERED.

JUDGE FELICIA CORBIN-JOHNSON, CHIEF JUDGE

/s/ JUDGE SUZANNE COOK

/s/JUDGE BARRY TIDWELL

CERTIFICATE
I CERTIFY THAT I HAVE MAILED
A COPY OF THIS ORDER TO All
Parties (via email)
AT
THIS 28 DAY OF December 2023