

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

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

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**SUPPLEMENTAL RESPONSE IN OPPOSITION TO PLAINTIFF'S  
NOTICE OF RENEWAL OF MOTION TO COMPEL**

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Plaintiff seeks an order compelling sweeping discovery into the Coordinator of Election's and Secretary of State's process in implementing Tennessee's voter-restoration statutes. But Plaintiff is entitled to none of it. In her 40-page complaint, Plaintiff claims that the General Assembly "willful[ly] discriminat[ed] on the basis of race, manipulat[ed] . . . the electorate," and exercised "an arbitrary, conscience-shocking abuse of state power" in enacting Tenn. Code Ann. § 40-29-204, a statute barring infamous criminals convicted of listed offenses from voting. (June 24, 2024 Order Granting Mot. to Quash ("Order"), at 5.) Nowhere does Plaintiff allege that *Defendants* have engaged in any unconstitutional conduct.

Courts must remain "mindful that public officials in Tennessee are presumed to discharge their duties in good faith and in accordance with the law." *West v. Schofield*, 460 S.W.3d 113, 131 (Tenn. 2015). Despite having no claims asserted against them or their actions, the Coordinator of Elections and Secretary of State have in good faith responded to Plaintiff's largely irrelevant

discovery requests. They furnished the transcript of the publicly available legislative debates surrounding Section 40-29-204 (Attach. A (“Legis. Transcript”); *see also* Pl.’s Mot. to Compel Ex. E, at 4); provided multiple databases and tables listing offender and voter information (Attach. B (“Defs.’ Suppl. Discovery”), at Objections and Responses to First Set of Requests, at 2-3; Pl.’s Mot. to Compel Exs. E, K, N); informed Plaintiff of the proper entities that maintain the requested conviction data (Defs.’ Suppl. Discovery, at Objections and Responses to Plaintiff’s First Set of Interrogs., at 3-4; Pl.’s Mot. to Compel Ex. D, at 4); and produced over 3,500 pages of documents (Defs.’ Suppl. Discovery, at Objections and Responses to First Set of Requests, 2-3). To the extent Plaintiff seeks discovery from Defendants<sup>1</sup> to fish out alleged secret motives of the General Assembly, “[t]his, the caselaw makes clear, she cannot do.” (Order, at 6.) And of course, the General Assembly passed Section 40-29-204 in 2006, *see* 2006 Tenn. Pub. Acts 860, before any Defendant even came into his current office. The Court should deny Plaintiff’s motion to compel.

## **ARGUMENT**

### **I. Plaintiff Seeks Discovery Irrelevant to Her Claims.**

Plaintiff’s Notice of Renewal asserts that the Court should compel Defendants to provide even more documents to her requests for production.<sup>2</sup> (Pl.’s Not. of Renewal, at 4-5.) But none of her requests are relevant to her claims challenging the General Assembly’s authority.

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<sup>1</sup> References to “Defendants” in this response include the Coordinator of Elections and Secretary of State only.

<sup>2</sup> In accordance with the Court’s August 16, 2024 Order, Defendants submit this supplemental response as Plaintiff’s assertions raised in her Notice of Renewal. Defendants do not waive their previous arguments in their original response to Plaintiff’s motion to compel.

A party seeking discovery “has the burden of establishing that [she] is entitled to discover the documents.” *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 221 (Tenn. Ct. App. 2002). A party may only obtain discovery “which is relevant to the subject matter involved in the pending action.” Tenn. R. Civ. P. 26.02(1). A court must make this “threshold determination” before compelling production. *West*, 460 S.W.3d at 121.

To start, a trial court “first must determine what is included in the ‘subject matter involved in the pending action.’” *Id.* at 125 (quoting Tenn. R. Civ. P. 26.02(1)). Here, Plaintiff alleges that *the General Assembly* engaged in “willful discrimination, manipulation of the electorate, and an arbitrary, conscience-shocking abuse of state power” to pass Section 40-29-204. (Order, at 5.) In her Second Amended Complaint (SAC), Plaintiff claims:

- Count One: The challenged “Statutes” and “statutory scheme” facially violate the Tennessee Constitution’s “Free Elections Clause” because the statutes “restrict[] Tennessee’s electorate” (SAC, at 29-30, ¶¶ 90-94);
- Count Three: The “General Assembly has [facially] violated [the] Equal Protection Clause of the Tennessee Constitution” because “the statutes have the intent and effect of discriminating against Black Tennesseans” (*id.* at 31-32, ¶¶ 101-04);
- Count Five: The “General Assembly has [facially] violated the Due Process Guarantee of the Tennessee Constitution” by “disenfranchising citizens when they plead guilty to felonies subject to [Tenn. Code Ann. § 40-29-204] without notice” (*id.* at 34-35, ¶¶ 115-19);
- Count Six: as-applied Free Elections Clause violation because of the “specific facts and circumstances of her guilty plea, the uncertain factual support for her conviction, the failure to warn her that by pleading guilty she would be permanently disenfranchised, and the fact that the . . . Statutes and their predecessors were enacted with the intent, and effect of, discrimination against Black persons—a class to which Plaintiff belongs” (*id.* at 35-36, ¶¶ 120-23);
- Count Seven: as-applied due process violation because “[u]pon conviction, Plaintiff’s right to vote was automatically and permanently revoked” without “notice that she would be permanently disenfranchised by pleading guilty to tampering with evidence” (*id.* at 36-37, ¶¶ 124-30); and

- Count Ten: as-applied equal protection violation because “the statutes have the intent and effect of discrimination against Black Tennesseans, of which class Plaintiff is a member” and “[b]y permanently disenfranchising Plaintiff, the General Assembly has violated [the] Equal Protection Clause” (*id.* at 39, ¶¶ 140-43).

Plaintiff’s discovery requests must be analyzed within this “specific context.” *West*, 460 S.W.3d at 126. And to determine whether her requests are relevant, “the crucial issue . . . is whether [the requested information] has (or will lead to information which has) some probative value as *to the subject matter involved in the pending action.*” *Id.* at 125 (emphasis in original).

Here, Plaintiff’s requests have no relevance to her constitutional attack. In Request 7, Plaintiff seeks documents “related to the ineligibility of persons to register and/or vote by virtue of being convicted of a felony.” (Pl.’s Not. of Renewal, at 4.) But those documents lack any “probative value” as to whether the Tennessee Constitution permits the General Assembly to enact Section 40-29-204. *West*, 460 S.W.3d at 125. They would not affect Plaintiff’s as-applied claims, either, because she focuses solely on her race and plea, not other offenders. (SAC, at 35-37, 39.)

Request 8 is similarly irrelevant to Plaintiff’s claims. Any document Defendants possess “related to [Sections] 40-29-105(c)(2)(B) or . . . 40-29-204” (Pl.’s Not. of Renewal, at 4), has no “bearing on” the General Assembly’s power to enact them. *West*, 460 S.W.3d at 125 (quotation omitted).

The same is true for Plaintiff’s Request 13, which seeks “any and all communications discussing people’s . . . ineligibility to register and/or vote.” (Pl.’s Not. of Renewal, at 5.) Not one of those communications would clarify the General Assembly’s legislative authority to bar infamous criminals from restoring their voting rights. By law, a person convicted of a felony is rendered “infamous” and “immediately disqualified from exercising the right of suffrage,” Tenn.

Code Ann. § 40-20-112, and those convicted of listed felonies are “never eligible to register and vote in this state,” Tenn. Code Ann. § 40-29-204. Or take Plaintiff’s own words: she was “automatically and permanently ineligible to vote . . . on penalty of felony conviction.” (SAC, at 36, ¶ 126.) Any harm to Plaintiff stemming from her ineligibility to vote would occur at the time of her conviction, not in communications with Defendants. And Plaintiff does not allege that Defendants have acted in a discriminatory or unconstitutional manner, so the Court must presume that these State officials have “discharge[d] their duties in good faith and in accordance with the law.” *West*, 460 S.W.3d at 131.

For the same reasons, Plaintiff’s Request 17 seeking “all communications regarding or related to the allegations in the [SAC]” or any “defenses raised” (Pl.’s Not. of Renewal, at 5), is irrelevant here. That includes Plaintiff’s requests intruding into “the subjective motivations behind the challenged legislation” because the General Assembly’s legislative immunity bars its disclosure. (Order, at 5-6.) And other communications, including Defendants’ privileged discussions with their counsel, have no relevance to the General Assembly’s power to pass Section 40-29-204. *Boyd*, 88 S.W.3d at 212-14; *see* Tenn. R. Civ. P. 26.02(1).

Finally, as to Request 9, Plaintiff lacks standing to compel “documents related to” the 1986 enactment of Section 40-29-105(c)(2)(B). (Pl.’s Notice of Renewal, at 4, Request 9.) Plaintiff does not allege that she was convicted of “murder, rape, treason and voter fraud,” Tenn. Code Ann. § 40-29-105(c)(2)(B), so she cannot claim any injury from it.

Nor can Plaintiff show that the debates surrounding Section 40-29-105(c)(2)(B) have any connection to her challenge to Section 40-29-204. The 2005-06 debates demonstrate that the General Assembly added infamous criminals convicted of “tampering with or fabricating evidence” (and other felony offenders convicted of offenses in Title 39, Chapter 16, Parts 1, 4, and

5) to those who were already permanently barred from voting. (Legis. Transcript, at Defs. BN 002911-12, 003052.) And despite having the transcript for over a year, Plaintiff has not pointed to any statement by a legislator suggesting even a colorable claim that the General Assembly acted with an improper motive. The only mention of race in the debates (“poor whites and poor blacks”) is found in the General Assembly’s discussion of whether an eligible offender should first pay child support before having his rights restored under a sister provision, Tenn. Code Ann. § 40-29-202. (Legis. Transcript, at Defs. BN 003048-49.)<sup>3</sup> Further, the legislation’s primary sponsor, now U.S. Representative Steve Cohen, described it as providing offenders “an opportunity to participate in democracy again.” (*Id.* at 003071.) Two years into this matter, Plaintiff’s search for any hint of an improper purpose in Section 40-29-204’s enactment remains wanting. And no amount of discovery from the Coordinator of Elections or Secretary of State can provide her with relevant evidence to determine whether the Tennessee Constitution permits the General Assembly to bar infamous criminals from restoring their rights.

## **II. Plaintiff Cannot Compel Responses to Requests Not Previously Raised.**

Plaintiff’s “renewal” of her motion asks the Court to compel Defendants to provide additional responses to Requests 11 and 25. (Pl.’s Not. of Renewal, at 4-5.) But Plaintiff never raised an issue with those Requests before filing her motion or in her motion.

The Local Rules of Practice provide that the Court “will not hear any motion related to discovery unless counsel for the movant files with the motion, a statement which certifies that

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<sup>3</sup> Over a decade ago, the Sixth Circuit Court of Appeals affirmed the district court’s dismissal of various constitutional challenges, including an equal protection challenge, to Section 40-29-202’s provisions requiring an eligible offender to pay child support, court costs, and restitution before restoring his voting rights. *See Johnson v. Bredesen*, 624 F.3d 742, 744-45 (6th Cir. 2010).

movant’s counsel has conferred with opposing counsel in a good faith effort to resolve the discovery dispute and that the effort has not been successful.” Local Rule 12(E). Here, Plaintiff raised no deficiency regarding Defendants’ responses to Requests 11 or 25. Her November 1, 2023 discovery letter mentioned neither request. (Pl.’s Mot. to Compel, Ex. G, at 4-8.) Nor did her February 2, 2024 letter. (*Id.* at Ex. M, at 12-13.) And Plaintiff did not raise the issue in her motion to compel, so Plaintiff cannot “renew” a request she never made. (Pl.’s Mot. to Compel Mem., at 1-26.) Since Plaintiff failed to confer to “resolve [any] discovery dispute” as to those two Requests, the Court should not “hear [her] motion related to” them. Local Rule 12(E).

### **III. Plaintiff Cannot Compel Discovery Requests Sent Through Email between Counsel.**

Finally, Plaintiff asks the Court to require Defendants to testify as to what searches they conducted and what litigation hold they put in place because Defendants’ counsel “delayed responding” to her counsel’s inquiries. (Pl.’s Notice at 2-6.) But as Plaintiff acknowledges, these “requests” came from emails between counsel—not discovery issued under Tenn. R. Civ. P. 33 or 34. (*Id.*) Nothing in Tenn. R. Civ. P. 26.01’s list of discovery methods includes “emailed requests by the plaintiff’s counsel to the defendant’s counsel.” Nor does Tenn. R. Civ. P. 37.01(2) allow for such a motion to compel. The Court should dismiss these “requests” outright.<sup>4</sup>

And even if emails between counsel could be considered a request for production of documents under Tenn. R. Civ. P. 34, Plaintiff still fails to show any delay or misconduct by Defendants. Rule 34 provides that a party shall serve a response “within 30 days.” Tenn. R. Civ. P. 34.02. Defendants responded in 20. (Pl.’s Notice of Renewal, at 3-4.)

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<sup>4</sup> On August 12, 2024, Defendants responded to Plaintiff’s request as to when a litigation hold was placed on the Coordinator of Elections’ and Secretary of State’s offices.

Regardless, Plaintiff's complaints here are a red herring. The Coordinator of Elections, Secretary of State, and any relevant employee of the Secretary of State's Office were placed on litigation holds since Plaintiff attempted to name them as defendants in September 2022. Since then, as mentioned above, Defendants have provided substantial discovery beyond what Plaintiffs is even entitled to here.

And Plaintiff cannot assert that her late proposals were reasonable. Only after Defendants timely served their supplemental discovery responses on July 9, 2024, did Plaintiff, for the first time in this suit, send back 67 proposed search terms<sup>5</sup>—and while Defendants are in the midst of preparing for an upcoming Presidential election. (Pl.'s Not. of Renewal, Ex. 3.) None of those search terms would shed any light on whether the General Assembly properly enacted Section 40-

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<sup>5</sup> • "Pam" AND "Moses" • "Pamela" AND "Moses" • "Ms. Moses" • "Mrs. Moses" • "constitution" AND "Section 5" • "constitution" AND "§ 5" • "art. I" AND "§ 5" • "art. I" AND "section 5" • "art. 1" AND "§ 5" • "art. 1" AND "section 5" • "Article I" AND "§ 5" • "Article I" AND "section 5" • "Article 1" AND "§ 5" • "Article 1" AND "section 5" • "free and equal" • "except upon conviction by a jury of some infamous crime" • "jury" AND "voting" • "jury" AND "vote" • "jury" AND "registration" • "jury" AND "suffrage" • "jury" AND "disenfranchise" • "2-19-143" • "39-16-503" • "40-20-112" • "40-20-113" • "40-29-202" • "40-29-204" • "legislative intent" • "infamous" • "permanently disqualifying" • "permanently disqualified" • "permanently disenfranchised" • "permanently lost" AND "vote" • "permanently lost" AND "voting" • "permanent" AND "franchise" • "permanent" AND "voting" • "permanent" AND "election" • "no longer eligible" • "permanently ineligible" • "never eligible" • "cannot be restored" • "interference with government operations" • "list maintenance" • "felon report" • "felon file" • "purge report" • "purged voter registration records" • "CRMHX" • "TOMIS" • "ISC" • "interstate compact" • "rejected application" • "felony notification" • "felony conviction search" • "TDOC New" • "Inmate Purge" • "ISC Sentence" • "InmateRest" • "DenialRestore" • "Felons\_Shared Access Database" • "felony" AND "registration" • "felony" AND "voted" • "felony" AND "voting" • "convicted" AND "registration" • "convicted" AND "voted" • "convicted" AND "voting." (Pl.'s Not. of Renewal, Ex. 3.)

29-204, nor whether the statute is properly applied to Plaintiff because of her race and circumstances of her plea. Even if the searches produced documents regarding the General Assembly's motivations, the legislature's immunity bars its discovery. (Order, at 5-6.)

\* \* \*

Plaintiff's amended complaint fails to allege any unconstitutional conduct at all, much less any unconstitutional conduct by Defendants. Despite this glaring deficiency, Defendants in good faith responded to Plaintiff's discovery requests. Yet Plaintiff continues to demand overly onerous discovery from Defendants at a late stage and while Defendants prepare for a Presidential election—even though the subject matter of her claims relate only to the General Assembly's authority to enact Section 40-29-204. (Order, at 5-6.) The Court should deny Plaintiff's motion to compel.

## CONCLUSION

For the reasons stated here and in Defendants' initial response, the Court should deny Plaintiff's motion to compel.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this the 23rd day of August, 2024, a true and exact copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing report. Parties may access this filing through the Court's electronic filing system. Additionally, a copy of the foregoing has been electronically mailed to the following:

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