

**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.)	

**DEFENDANTS' MEMORANDUM IN SUPPORT OF
THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff, Pamela Moses, brought this action in 2019 against Defendants, Mark Goins, Tre Hargett, and Jonathan Skrmetti, challenging the constitutionality of Tennessee's permanent-disenfranchisement statute. The parties have previously filed cross-motions for summary judgment, and Defendants have filed a motion to dismiss, and those motions are currently pending before the Court. In June 2025, Moses moved to further amend her previously filed Second Amended Complaint. And the Court granted her motion in part, ruling, *inter alia*, that Ms. Moses could amend her Second Amended Complaint to include two as-applied challenges to the permanent disenfranchisement statute based specifically on the "conviction by a jury" language in Tenn. Const. art. I, §

5. *Sept. 16, 2025 Order*, 2, 3-4, 6 (allowing amendment of the claims in Count 6 (Free and Equal Elections Clause) and Count 7 (Due Process).) Defendants now move for summary judgment on those new claims.

Ms. Moses's claims fail as a matter of law—application of the permanent disenfranchisement statute to Ms. Moses's qualifying conviction comports with both the Free and Equal Elections Clause and with due process.

Article I, Section 5, of the Tennessee Constitution prevents the State from *denying* to a person, who is otherwise *entitled*, the right of suffrage “except upon conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.” This constitutional provision has no application to Ms. Moses because she *waived* her right to a jury, and *forfeited* her right to vote, upon pleading guilty to an infamous crime. Thus, the permanent disenfranchisement statute does not *deny* Ms. Moses the right to vote but rather recognizes her forfeiture of that right as a result of her bargained-for guilty plea. Further, and in any event, Article I, Section 5 does not require a conviction by a jury. To read the provision otherwise—the way Ms. Moses wants it read—would create an inconsistency between that clause and Article IV, Section 2, of the Tennessee Constitution, which authorizes the passage of laws “excluding from the right of suffrage persons who may be convicted of infamous crimes.” Indeed, Article I, Section 5 was originally enacted in 1870

to prohibit the retroactive disenfranchisement of Tennesseans—not to require conviction by a jury as a prerequisite for disenfranchisement.

FACTS

Ms. Moses's 2015 Felony Plea

On April 29, 2015, Ms. Moses pled guilty to, among other offenses, tampering with or fabricating evidence, a Class C felony and forgery, a Class E felony. (SOF, at ¶ 11); *State v. Moses*, W2015-01240-CCA-R3-CD, 2016 WL 4706707, at *2-4 (Tenn. Crim. App. Sept. 6, 2016), *perm. app. denied* (Tenn. Jan. 23, 2017). That plea was part of the resolution of a multicount indictment partially stemming from Ms. Moses's stalking and harassment of a Tennessee judge. *Moses*, 2016 WL 4706707, at *2. Tampering with or fabricating evidence in violation of Tenn. Code Ann. § 39-16-503 is a qualifying offense under the permanent disenfranchisement statute. *See* Tenn. Code Ann. § 40-29-102(b)(3)(B); Tenn. Code Ann. § 40-29-204 (2015).

At her plea hearing, the court explained each charge in the indictment to Ms. Moses, explained to which charges she was pleading guilty, and explained the possible sentence for each. (Defs.' Dec. 12, 2025, *Statement of Undisputed Material Facts in Support of their Partial Motion for Summ. J.* ("SOF"), at ¶ 12); *Moses*, 2016 WL 4706707, at *2-4. The court and Ms. Moses engaged in a back and forth specifically regarding her plea to tampering with or fabricating evidence. (SOF, at ¶ 13.) The court asked Ms. Moses if she understood that she was waiving her right to a jury trial. (SOF, at ¶ 14); *Moses*, 2016 WL

4706707, at *3. The court asked her the same about her right to an appeal, to call and confront witnesses, and to avoid incriminating herself or testifying. (SOF, at ¶ 16); *Moses*, 2016 WL 4706707, at *3. She responded in the affirmative. (SOF, at ¶¶ 15, 17); *Moses*, 2016 WL 4706707, at *3. The court referred to these rights as “valuable Constitutional Rights” and asked again if she wished to waive them. (SOF, at ¶ 18.) She responded in the affirmative. (SOF, at ¶ 19.) Ms. Moses also told the court that she was represented by counsel, and she was satisfied with that representation and had no complaints. (SOF, at ¶ 20); *Moses*, 2016 WL 4706707, at *3.

“Pleas” to Infamous Crimes between 1870 and the 1960s.

After this Court’s partial grant of Ms. Moses’s motion to amend, Defendants engaged an expert to review the history of plea bargains in Tennessee and whether there was an accompanying finding of infamy; Ms. Moses also sought an expert to determine whether plea bargaining existed before 1870. In short, there is evidence that some trial courts allowed criminal defendants to plead guilty to infamous crimes without a jury as early as 1882, and those pleas led to those defendants being rendered infamous and being excluded from the elective franchise. (SOF, at ¶ 28.) But in the majority of cases involving guilty pleas before the 1960s, the procedure for a criminal defendant pleading guilty involved a jury: a trial court would empanel the jury, the defendant would plead guilty, and the jury would set the defendant’s sentence. (SOF, at ¶ 29.) In that time period, infamous crimes were, by law, felonies and punishable by imprisonment in the

penitentiary, and all such offenses required juries to fix the term of imprisonment. (SOF, at ¶ 30.) Further, Moses's expert, Dr. Pippa Holloway, testified that she was not aware of any criminal defendant arguing that they were not disenfranchised after pleading guilty, nor was she aware of any court holding that Article I, Section 5 of the Tennessee Constitution prevented a defendant from losing their voting rights when they pled guilty to an infamous crime. (SOF, at ¶ 31.)

LEGAL STANDARD

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. Such a motion "goes directly to the merits of the litigation" and is "an important vehicle for concluding cases that can and should be resolved on legal issues alone." *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). When a defending party moves for summary judgment, he may satisfy his burden of production by either: (1) "affirmatively negating an essential element of the nonmoving party's claim"; or (2) "demonstrating that the nonmoving party's evidence at the summary judgment stage is insufficient to establish the nonmoving party's claim or defense." *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 264 (Tenn. 2015) (emphasis removed).

Statutory interpretation and constitutional interpretation are issues of law which may be properly addressed and resolved on summary judgment. *Estate of Bell v. Shelby County Health Care Corp.*, 318 S.W.3d 823, 828 (Tenn. 2010). When evaluating the constitutionality of a statute, a court “begin[s] with the presumption that an act of the General Assembly is constitutional.” *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003). The court “must be controlled by the fact that” the General Assembly “may enact any law” that the Tennessee Constitution “does not prohibit.” *Willeford v. Klepper*, 597 S.W.3d 454, 465 (Tenn. 2020) (internal quotation marks omitted). In its review, a court must “indulge every presumption and resolve every doubt in favor of the constitutionality of the statute.” *In re Burson*, 909 S.W.2d 768, 775 (Tenn. 1995). Only when a statute “clearly appears” to “contravene some provision of the [Tennessee] Constitution” may a court strike it down as unconstitutional. *Willeford*, 597 S.W.3d at 465 (internal quotation marks omitted). In other words, a “[c]ourt must uphold the constitutionality of a statute wherever possible.” *State v. McCoy*, 459 S.W.3d 1, 8 (Tenn. 2014).

MS. MOSES'S CLAIMS

This motion is concerned with only two of Ms. Moses's claims: (1) that her inability to vote violates Article I, Section 5, of the Tennessee Constitution because she was convicted by a guilty plea and not by a jury; and (2) that her inability to vote violates due process because she was not informed before she pleaded guilty “that Tennessee’s constitution requires that she be convicted by a jury before can be deprived of her right

to vote." *Sept. 16, 2025 Order Granting in Part and Denying in Part Pl.'s Mot. for Leave to Amend*, at 3-4, 6; *Pl.'s Aug. 1, 2025 Mot. for Leave to Make Amends.*, at Ex. 1, pp. 2, 35, ¶¶ 5, 123, 127.

ARGUMENT

I. Ms. Moses Has Not Been "Denied" the Right of Suffrage under Article I, Section 5.

Article I, Section 5, of the Tennessee Constitution provides that the right to vote "shall never be denied to any person entitled thereto, except upon conviction by a jury of some infamous crime." The provision operates in the negative. At the time of the provision's enactment, the word "deny" meant "to refuse to grant" or "to withhold." (SOF, at ¶ 23.) Article I, Section 5, thus prevents the State from refusing to grant or withholding the right of suffrage to someone otherwise "entitled" to it.

Here, though, Ms. Moses is not entitled to the right to vote—she forfeited that right in 2015 when she pled guilty to a qualifying felony and *waived* her right to a jury.¹

¹ Under Tennessee law, Ms. Moses is presumed to know that her conviction by plea would result in disenfranchisement under Section 40-20-112. "[E]very citizen is presumed to know the law." *Burks v. Elevation Outdoor Advert.*, LLC, 220 S.W.3d 478, 492 (Tenn. Ct. App. 2006). Thus, when Ms. Moses knowingly and voluntarily pled guilty to a felony, she knew that her actions would result in her disenfranchisement. That means the Article I, Section 5, never came into play in relation to Ms. Moses. She was a Tennessean who waived her right to a conviction by a jury, voluntarily pled guilty to infamous crimes, and as a result, forfeited her right to vote by statutory operation.

Even if there were no such presumption, Ms. Moses's personal history proves that she knew pleading guilty would forfeit her right to vote. In addition, any claim of lack of notice is

Criminal defendants who plead guilty waive certain rights granted them by the Constitution, as well as constitutional limitations placed upon the State. *See State v. Martin*, 940 S.W.2d 567, 570 (Tenn. 1997). Application of the permanent disenfranchisement statute to Ms. Moses's conviction therefore does not run afoul of

undermined by Ms. Moses's personal history. In May of 2000, Ms. Moses pled guilty to the Class C felony of aggravated assault and the Class A misdemeanor of unlawful possession of a weapon. (SOF, at ¶ 1.) As part of that plea, Ms. Moses signed and submitted to the criminal court her *Waiver of Trial by Jury and Request for Acceptance of Plea of Guilty*. (SOF, at ¶ 2.) In that waiver, Ms. Moses expressly stated that her attorney "has discussed with me the possible punishments if I am found guilty, and I understand them to be as follows[.]" (SOF, at ¶ 3.)

The signed waiver states, "I understand that if the Court accepts my plea of guilty and I am convicted of the offenses to which I am pleading guilty, these convictions will be public record, may render me infamous, denying me access to the elective process[.]" (SOF, at ¶ 4.) Also included were the following statements: "I understand that I may, if I so choose, plead 'not guilty' to any offense charged against me, and that if I choose to plead 'not guilty' the constitution guarantees and this Court will provide me the right to a speedy and public trial by jury[;]" (SOF, at ¶ 5), and "I understand that if I plead guilty to the offense(s) listed in paragraph nine (9), I am waiving my right to a trial to determine my guilt or innocence and there will not be a further trial of any kind except as to the appropriate sentence," (SOF, at ¶ 6). Finally, in concluding and just prior to her signature, Ms. Moses states "being aware of my constitutional and statutory rights, I hereby waive my right to a jury trial and those others listed above and plead guilty to the offenses listed below." (SOF, at ¶ 7(capitalization changed).) In light of that, it is clear that Ms. Moses, as far back as 2000, knew and agreed to the fact that pleading guilty to a felony would result in forfeiture of her right to vote. (SOF, at ¶ 8.)

In addition, in 2014, Ms. Moses successfully restored her right to vote, which she lost as a result of her guilty plea in 2000, as evidenced by her *Certificate of Restoration of Voting Rights*. (SOF, at ¶ 9.) Ms. Moses's previous engagement in the restoration process reinforces that she knew pleading guilty would result in the forfeiture of her right to vote. (SOF, at ¶ 10.)

There can be no question that in 2015, when she pled to tampering or fabricating evidence, Ms. Moses knew that pleading guilty to a felony resulted in forfeiting her right to vote.

Article I, Section 5. Having voluntarily waived her right to be convicted by a jury, *Moses*, 2016 WL 4706707, at *3, 13, Ms. Moses cannot now complain that she was not convicted by a jury.

Article I, Section 6, of the Tennessee Constitution states, “[t]hat the right of trial by jury shall be inviolate[.]” Article I, Section 8, states, “[t]hat no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges ...or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.” Article I, Section 9, states, “[t]hat in all criminal prosecutions, the accused hath the right to be heard by himself...to demand the nature and cause of the accusation against him...to meet the witnesses face to face...to have compulsory process for obtaining witnesses in his favor, and... a speedy public trial, by an impartial jury[.]” Each of these is part of the Declaration of Rights, just like the Article I, Section 5.² Nothing in these provisions “expressly provides for or prohibits a waiver of the rights conferred.” *Jones v. State*, 332 S.W.2d 662, 665-66 (Tenn. 1960). Tennessee Courts have interpreted each to allow for waiver. *See State v. Johnson*, 574 S.W.2d 739, 741 (Tenn. 1978) (“It is settled law that an adult criminal defendant facing a felony charge may waive a jury trial.”). And as with its sister

² Compare this to the establishment and structural limitations on each branch of government, which are contained in Articles II (Distribution of Powers), III (Executive Department), VI (Judicial Departments), VIII (State and County Officers). Counsel for Defendants could not locate a single case stating that a provision contained in the Declaration of Rights is not waivable.

provisions, Article I, Section 5 does not “expressly provide[] for or prohibit[] a waiver of” a defendant’s right to be convicted by a jury. *See Jones*, 332 S.W.2d at 665-66

The Supreme Court discussed waiver of such constitutional rights in *State of Tennessee v. Durso*. 645 S.W.2d 753 (Tenn. 1983). In *Durso*, the Court explored whether the jury requirement contained in Article VI, Section 14, of the Tennessee Constitution could be waived. *Id.* at 759. It held, “they [the provisions of Article VI, Section 14] are part of the rights guaranteed to an accused and are for his benefit and protection. If he sees fit to waive them, we are of the opinion that such waiver is permissible[.]” *Id.* “It is very well settled that a party may waive a statutory and even a constitutional provision made for his benefit, and that having once done so he cannot afterward ask for its protection.” *See Wallace v. State*, 245 S.W.2d 192, 193-94 (Tenn. 1952) (cleaned up). Ms. Moses cannot revive her right to a jury trial after she made a “voluntary, knowing, and intelligent” waiver of it. *Moses*, 2016 WL 4706707, at *3, 13.

II. Article I, Section 5 Does Not Require a Conviction by a Jury as a Prerequisite to Disenfranchisement.

Even if Ms. Mose’s guilty plea and waiver of her right to a jury did not render Article I, Section 5, inapplicable, her claim would still fail because Article I, Section 5 does not require a conviction by a jury as a prerequisite to disenfranchisement. The disenfranchisement provision in Article IV, Section 2, of the Tennessee Constitution; the

original public meaning of Article I, Section 5; and the historical practice at the time of Section 5's enactment all support this conclusion.

A. Article IV, Section 2, authorizes laws that disenfranchise persons “who may be convicted of infamous crimes.”

Article IV, Section 2, provides that “[l]aws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes.” It thus operates in the positive and expressly allows the General Assembly to enact laws “excluding” infamous criminals from the right of suffrage. At the time of this provision’s enactment, the word “exclude” meant “to thrust out,” or “shut out.” (SOF, at ¶ 24.) Unlike Article I, Section 5, Article IV, Section 2, says nothing about a conviction by a jury. This difference in language is significant, and the historical background of the Tennessee Constitution informs the differences in the operation of the two provisions.

Article I, Section 5, must be construed in conjunction with Article IV, Section 2. *See Falls v. Goins*, 673 S.W.3d 173, 180 (Tenn. 2023). Both provisions address disenfranchisement based on a conviction for an infamous crime, and as discussed below, they were enacted at the same time. And, as noted, they each use different words to indicate the effect of the provisions. Article I, Section 5, uses the term “deny”, whereas Article IV, section 2, uses the word “exclude.” The difference in the language was not accidental. And here, Ms. Moses was not “denied” (refused to grant; withhold); instead, she was excluded (thrust out) when she entered her guilty plea.

Prior to the enactment of Article XI, Section 3, in its current form in 1953, the Tennessee Constitution could only be changed by a called convention of delegates.³ *See Cummings v. Beeler*, 189 Tenn. 151, 167 (1949). Such conventions could be limited only by the public vote calling the convention. *Id.* at 167-68. The convention of 1870 that led to the 1870 Constitution had no limitations. L. Laska, *A Legal and Constitutional History of Tennessee*, 6 Mem. St. U.L. Rev. 563, 632 & n.534 (1976). In fact, the journal that recorded the proceedings was called *Journal of the Proceedings of the Convention of Delegates Elected by the People of Tennessee to Amend, Revise, or to Reform or Make a New Constitution for the State*. Nashville: Jones, Purvis & Co., Printers to the State, 1870.

On the second day of the convention, it was resolved that the Declaration of Rights be referred to a committee to report to the convention on what, if any, amendments would be proper and necessary. *Id.* at 15. In addition, it was resolved that “so much of the present Constitution as relates to elections and right of suffrage, be referred to a

³ Article XI, Section 3, of the Constitution of 1870 stated, in relevant part, “[t]he legislature shall have the right, at any time by law, to submit to the people the question of calling a convention to alter, reform or abolish this Constitution, and when upon such submission, a majority of all the votes cast shall be in favor of said proposition, then delegates shall be chosen, and the convention shall assemble in such mode and manner as shall be prescribed.” The Constitution of 1953 added the ability for specific amendments to be proposed and voted upon without such a convention of delegates.

Committee to inquire and report whether any, and if any, what amendments are necessary." *Id.* at 16.⁴

The right of suffrage was subject to multiple resolutions by multiple delegates. Delegate Shepard submitted a resolution to the committee on suffrage that proposed, "[t]hat the right of suffrage is a fundamental right, and it is the opinion of the delegates of this Convention that they cannot delegate to the General Assembly any power to legislate on the subject." *Id.* at 54. His resolution was not adopted by the committee on suffrage or approved by the convention. *Id.* at 411-40. Delegate Gibson, after failing to pass a resolution expanding suffrage, asked that the following "be spread on the Journal[:]" "the undersigned are firm believers in the doctrine that suffrage is a right and not a privilege—as much a right as life, liberty or property—a right not to be limited and not to be restricted except as to age, time and place[.]" *Id.* at 179.

Instead of heeding Delegates Shepard's and Gibson's concerns, the delegates to the convention approved the current version of Article IV, Sections 1 and 2, which state, in relevant part, respectively, "[t]he General Assembly shall have the power to enact laws...to secure...the purity of the ballot box" and "[l]aws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes." *Id.* at 426. The

⁴ At the convention, it was resolved that various committees determine what, if any, amendments to the entire Constitution were appropriate. *Id.* at 15-16. In other words, the convention considered the entire Constitution at the convention.

delegates also approved the now current version of Article I, Section 5, including the language, “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 judgement thereon by a court of competent jurisdiction.” *Id.* at 413.

Given that these provisions were enacted on the same day, with full view of each other, after rejecting contrary resolutions expressly limiting the power of the General Assembly, combined with the Supreme Court’s directive that Courts should read provisions of the Constitution in harmony as opposed to in conflict, see *State ex rel. Hooker v. Thompson*, 249 S.W.2d 331, 338 (Tenn. 1996); *Shelby County v. Hale*, 292 S.W.2d 745, 748-49 (Tenn. 1956); Article I, Section 5 can only be read in a way that comports with the Article IV, Section 2—i.e., to mean that persons who have been convicted of infamous crimes—whether by a jury or by a guilty plea—may be denied the right of suffrage. To conclude instead that Ms. Moses could not lose her right to vote except upon conviction by a jury would create conflict with, and effectively nullify (or at least severely limit)

Article IV, Section 2.

B. The “original public meaning” of Article I, Section 5 was to prohibit retroactive disenfranchisement.

To analyze the confines of the Tennessee Constitution with regard to the right of suffrage, we must look to the “original public meaning” of Article I, Section 5. *See McNabb*

v. Harrison, 710 S.W.3d 653, 658 (Tenn. 2025). In other words, this Court must determine “[w]hat the people who voted for [a] constitutional provision would think that the language meant.” *Id.* The focus is on “the objective meaning of the text itself” and courts “will not speculate on the subjective intentions or motive of the drafters.” *Id.*

Further, Tennessee law at the time required a court to empanel a jury when a criminal defendant pleaded guilty to an infamous crime. (SOF, at ¶¶ 29-30.) Since then, Tennessee law has changed: the Tennessee Supreme Court has interpreted the Tennessee Constitution to permit a criminal defendant to waive his right to be convicted by a jury, and the General Assembly has enacted proper safeguards for a defendant to do so knowingly, voluntarily, and intelligently. *See* Tenn. R. Crim. P. 11(b); *Johnson*, 574 S.W.2d at 741.

The original public meaning of the current form of the Free and Equal Elections Clause in Article I, Section 5, of the Tennessee Constitution was to prohibit retroactive disenfranchisement—not to require a conviction by a jury as a prerequisite to disenfranchisement. *See Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983). Because of that original public meaning, the application of the permanent disenfranchisement statute to Ms. Moses’s 2015 conviction comports with Article I, Section 5.

Prior to its 1870 amendment, the Tennessee Constitution gave the General Assembly authority to set “the qualifications of voters, and the limitation of the elective franchise.” *Ridley v. Sherbrook*, 43 Tenn. 569, 575 (Tenn. 1866). In exercising that right, the

General Assembly enacted legislation limiting the franchise to persons “publicly known to have entertained unconditional Union sentiments, from the outbreak of the rebellion until the present time.” *State v. Staten*, 46 Tenn 233, 274 (Tenn. 1869). According to Plaintiff’s expert, at that time, Tennessee government officials and the United States government required Tennesseans to sign loyalty oaths before they could regain their citizenship to the United States, and thus their right to vote. (SOF, at ¶ 25.) In fact, according to Plaintiff’s expert, “[s]o the loyalty oaths required you to swear that you had not done certain things in order to vote[.]” (SOF, at ¶ 26.) In other words, signing a loyalty oath was a prerequisite to gaining the right to vote. See also *Staten*, 46 Tenn. at 277 (describing legislation “imposing an oath retroactive in its character, requiring past as well as future loyalty” for voting eligibility). And if someone did not sign the loyalty oath, then they would be “denied” the right to vote. Because of the requirement that a person must sign a loyalty oath before he could vote, people during that time frame believed that was the same as being labeled a criminal, an insurrectionist, guilty of treason, without the benefit of a jury trial. (SOF, at ¶ 27.)

In 1870, Tennesseans voted to amend the Tennessee Constitution, including Article I, Section 5. The Tennessee Supreme Court, discussing the history of the Article I, Section 5, in *Gaskin v. Collins*, described the historical background against which the amendment was added to the Tennessee Constitution. *Gaskin*, 661 S.W.2d at 867.

The Supreme Court recounted that after the fall of Fort Donelson in 1862, “President Abraham Lincoln appointed Andrew Johnson to be military governor. For more than two years, Johnson exercised complete and dictatorial control over state government.” *Id.* In 1864, Johnson was nominated to run with President Lincoln as his Vice President. *Id.* In an effort to secure the vote of his home state of Tennessee, Johnson permitted his party, the Union Party, to call a political convention. *Id.* At that convention, the Union Party passed a resolution it called a constitutional amendment. *Id.* That amendment retroactively disenfranchised anyone who had voted for or served in the secessionist government or in the Confederate army. *Id.*; *see also State v. Staten*, 46 Tenn. 233, 237-38, 275-76 (1869) (describing legislation “forever disqualif[ying] from the right of suffrage” persons who were implicated “in the rebellion”).

In the presidential election of 1860, prior to the “1864 amendment’s” passage, 145,000 votes were cast in Tennessee. *Gaskin*, 661 S.W.2d at 867. In the general election in 1865, after the “1864 amendment’s” passage, only 25,000 votes were cast, which happened to be the number of Union army troops occupying Tennessee. *Id.*

Following the war and in light of the passage of the “1864 amendment,” the only hope for the majority of Tennesseans to regain the right to vote was to sow division in the Union Party. *Id.* That division materialized in the gubernatorial election between DeWitt Senter and W.B. Stokes. *Id.* Stokes ran on the platform of gradual re-

enfranchisement. *Id.* Senter ran on immediate re-enfranchisement. *Id.* Senter won by a large margin. *Id.*

Newly elected Governor Senter and the newly elected legislature then went about fulfilling their campaign pledge to immediately restore the vote to ex-Confederates. *Id.* There was debate as to whether it could be done via simple act of the General Assembly or whether a constitutional amendment was required. *Id.* “[S]ome felt that the questions to be settled were of a constitutional character, and that only a constitutional convention could adequately ensure that future abuses of this kind would be prevented.” *Id.*

A constitutional convention was called, and the current form of Article I, Section 5, was added to the Tennessee Constitution. *Id.* “It is obvious that the 1870 constitutional convention was comprised of men who had known the injustice of retroactive disenfranchisement and were determined to safeguard themselves and future generations from similar acts of repression.” *Id.*

Article I, Section 5, was thus the result of a single-issue gubernatorial election and had a distinct purpose—to re-enfranchise ex-Confederates and prevent the retroactive disenfranchisement of future Tennesseans for any reason. There is no evidence of any intention to affect the General Assembly’s power in Article IV, Section 2, to pass legislation excluding persons who may be convicted of infamous crimes from exercising the right of suffrage. There is also no evidence of any intention to require a conviction by a jury prior to disenfranchisement. Article I, Section 5’s “conviction by a jury” language

simply echoes the right to a jury encompassed by other provisions of the Tennessee Constitution, as discussed above, and it reflects the historical practice at the time of its enactment, which, as discussed below, did not allow a criminal defendant to waive a jury trial.

C. At the time of Article I, Section 5's enactment, criminal defendants could not waive a jury trial in a felony case.

Guilty pleas in 1870 looked different than guilty pleas in 2015. The waiver of a jury trial for a guilty plea has become so common in modern criminal procedure that lawyers expect a guilty plea to mean that there was no jury involvement.⁵ But that has not always been the case. In 1913, the Tennessee Supreme Court observed, "In all jurisdictions, practically, it is held that a defendant cannot waive a jury trial in a felony case." *Metzner v. State*, 157 S.W. 69, 70 (Tenn. 1913). And that was the law in Tennessee until 1965. *See Jones v. State*, 332 S.W.2d 662, 666 (Tenn. 1960); *Seale v. Luttrell*, 428 S.W.2d 312, 313 (Tenn. 1968). Only after the passage of Tennessee Public Acts of 1965, Chapter 49, did Tennessee courts recognize a criminal defendant's right to waive the right to a jury trial when charged with a felony. *Durso*, 645 S.W.2d at 757. Until 1965, the law of Tennessee was

⁵ In past briefing, the parties have used the term "guilty plea" to mean that there was a waiver of a trial by a jury, as is common in modern criminal procedure. For instance, Defendants stated in their Response to Plaintiffs' motion for summary judgment, "[t]here was no such thing as a guilty plea to a felony in 1870. . . . In fact, until 1965, Tennessee Courts did not allow criminal defendants to plead guilty to felonies." *Defs.' July 27, 2025 Resp. to Pl.'s Mot. for Summ. J.*, at 23. However, additional expert analysis revealed that it is more accurate to say, "[t]here was no such thing as a waiver of a jury trial for a felony in 1870," and "[u]ntil 1965, Tennessee Courts did not allow criminal defendants to waive a jury trial for felonies."

clear—the only way to become “infamous” was conviction by a jury. *See supra* pp. 24-25; (SOF, at ¶¶ 29-30).⁶ *See Jones*, 332 S.W.2d at 666 (noting that before 1960 Tennessee’s “bench and bar” assumed that “there could be no waiver” of the right to a jury trial).

When the delegates voted in 1870 for passage of the current version of Article I, Section 5, then, they understood there to be only one way to be convicted of a felony—by a jury. And under the applicable statutes in 1870, all infamous crimes were felonies.⁷ (SOF, at ¶ 30.) All felonies were punished by imprisonment in the penitentiary,⁸ and all sentences to the penitentiary were imposed by a jury.⁹ The public would therefore have also understood Article I, Section 5 to require conviction of an infamous crime in the only manner in which Tennessee law would then allow—by a jury.

The “by a jury” language in Article I, Section 5, can therefore not be given any operative weight; it merely reflects and describes the only lawful method of felony conviction at the time of its enactment—it does not prescribe a structural limitation on

⁶ Even those courts who did allow defendants to plead guilty without a jury at that time would still declare the defendant infamous and lose voting rights upon conviction. (SOF, at ¶ 28.)

⁷ Compare Title IV, Chap. 15, § 5226, Seymour D. Thompson and Thomas M. Steger, *A Compilation of the Statute Laws of the State of Tennessee of a General and Permanent Nature Compiled on the Basis of the Code of Tennessee, with Notes and References, Including Acts of Session of 1870-'71*, vol. III, page 220, with Act of 1829, Ch. 23, R.L. Caruthers and A.O.P. Nicholson, *A Compilation of the Statutes of Tennessee of a General and Permanent Nature from the Commencement of the Government to the Present Time from 1836*, pages 316-29.

⁸ Act of 1829, Ch. 23 § 1, Caruthers and Nicholson, at 316.

⁹ Title IV, Chap. 15, § 5229, Thompson and Steger, at 220.

disenfranchisement. In 1870, the concept of waiving a jury for a felony did not legally exist. And Article I, Section 5, cannot be construed to have accounted for, and drawn a distinction on the basis of, a procedure that did not exist at the time of its enactment.

III. Ms. Moses's Disenfranchisement Does Not Violate Due Process.

In its order on Defendants' motion to dismiss, this Court ruled that Ms. Moses's procedural due process claims have no merit, as the General Assembly's passage of the regulatory, nonpenal measure of the loss of the right to vote, which is a collateral consequence of her plea, does not render that plea invalid. July 19, 2023, *Order Granting in Part and Denying in Part Defendants' Motion to Dismiss*, p. 26. In addition, the Court ruled that the General Assembly's purpose in codifying criminal offenses and corresponding consequences provides notice that satisfies procedural due process requirements. *Id.* at p. 25. Moreover, Ms. Moses, like all Tennesseans, is presumed to know the law. *Id.* In light of the discussions in the argument sections above and this Court's prior ruling, nothing about Ms. Moses's amendment yields a different conclusion as to procedural due process. As such, Defendants are entitled to judgment on any such claims.¹⁰

As to substantive due process, Defendants adopt and incorporate their arguments in *Defendants' Memorandum in Support of Their Motion for Summary Judgment* of June 27,

¹⁰ Furthermore, as explained in footnote 1, above, it is clear, when she pled guilty in 2015, Ms. Moses knew that such a plea would forfeit her right to vote.

2025. In summary, this Court has already held that the statute in question has a rational basis – the protection of Tennessee’s elections from criminals that committed offenses against the administration of government and the conclusion that those convictions render a person unfit to take part in elections. *Defendants’ Memorandum in Support of Their Motion for Summary Judgment*, June 27, 2025, p. 18. Tennessee Courts have held that whenever there is such a rational basis for a statute, that statute withstands a substantive due process challenge. *Id.* In addition, it cannot possibly be said that something explicitly allowed by the constitution (permanent felon disenfranchisement without reference to jury conviction, as stated in Article IV, Section 2) somehow shocks the conscience. *Id.* at p. 19. Finally, only the most egregious official conduct intended to injure in some way unjustifiable way can shock the conscience. *Id.* at pp. 19-21. The rational basis already found by this Court is a valid justification, and there is no evidence that intent of the General Assembly was to injure anyone, but rather to protect the integrity of elections.

CONCLUSION

For the foregoing reasons, Defendants’ motion for partial summary judgment should be granted; Ms. Moses’s claims in Counts 6 and 7 of the Second Amended Complaint based on the “conviction by a jury” language in Tenn. Const. art. I, § 5, should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of December, 2025, 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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