

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' RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

In September 2025, this Court granted Plaintiff, Pamela Moses, leave to further amend her Second Amended Complaint to add two as-applied challenges to Tennessee's permanent-disenfranchisement statute based on the "conviction by a jury" language in Article I, Section 5, of the Tennessee Constitution. *See 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)). Ms. Moses now moves for summary judgment on one of those claims—that application of the permanent-disenfranchisement statute to Ms. Mose's

qualifying conviction violates the Free and Equal Elections Clause. For the reasons discussed below, Ms. Moses’s motion should be denied.¹

Ms. Moses asserts that Article I, Section 5, means that she cannot be permanently denied the right to vote on the basis of her conviction because she was not convicted by a jury. But Ms. Moses waived her right to a jury when she pled guilty and forfeited her right to vote. She has therefore not been “denied” the right to vote under Article I, Section 5, because she is not a person “entitled” to vote. Ms. Moses argues to the contrary, relying in part on the Unconstitutional Conditions Doctrine. But her arguments fail. Among other reasons, the forfeiture of her right to vote flowed as a direct collateral consequence of her guilty plea—it was not an “unconstitutional condition” because it did not involve leveraging an unrelated discretionary benefit to extract a constitutional waiver.

Nor, in any event, does Article I, Section 5, require a conviction by a jury as a prerequisite to disenfranchisement. Article I, Section 5, does not limit the General Assembly’s broad power under Article IV, Section 2, to exclude from the right to vote those persons convicted of a felony. Ms. Moses’s contrary position relies on a misreading of both constitutional provisions and a flawed application of the canons of construction.

¹ Defendants recently moved for summary judgment on both of these new claims. In addition, previously filed cross-motions for summary judgment, as well as Defendants motion to dismiss, are currently pending before the Court.

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, M PLLC*, 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).

ARGUMENT

I. Ms. Moses, By Waiving Her Right to a Jury Trial and Pleading Guilty, Forfeited Her Right to Vote.

Ms. Moses contends that the permanent-disenfranchisement statute violates Article I, Section 5, as applied to her because it authorizes the permanent deprivation of her right to vote “*without* a conviction by a jury.” Mem. in Supp. Pl.’s Mot. Summ. J (“Moses Memo. in Supp.”), 1 (emphasis in original).² But Ms. Moses *waived* her right to a jury trial when she pled guilty, and by pleading guilty she *forfeited* her right to vote. Ms. Moses is therefore not “entitled” to the right to vote, and is not being *denied* the right to vote, in violation of Article I, Section 5—prior to the guilty plea in 2015, she had the

² Ms. Moses also asserts that “the actions of the Defendants in interpreting, enforcing, and defending this statute[] are unconstitutional.” (*Id.*) But as Defendants have previously argued in support of their motion to dismiss this case, Ms. Moses lacks standing to sue the Defendants because they no longer have a role in enforcing Tennessee’s disenfranchisement statutes.

right to vote and had exercised it. *See* Plaintiff’s Statement of Facts, nos. 4-6. Ms. Moses’s contentions for why “[t]his waiver argument fails” (Moses Memo. in Supp., 2) are unavailing.

A. Ms. Moses forfeited her right to vote.

Ms. Moses argues that she cannot have waived Article I, Section 5’s, constitutional protection because she did not know she was forfeiting her right to vote. Moses Memo. in Supp., 23.³ As an initial matter, that assertion is implausible in light of her *pre*-2015 conviction and prior forfeiture of the right to vote, as well as her affirmative petition to restore the right to vote after her prior conviction. *See Defs.’ Memo. in Supp. of Their Mot. for Partial Summ. Judgmnt., filed December 12, 2025* at p. 7, fn. 1. Even if it is plausible, it is irrelevant.

First, this argument merely repackages Moses’s procedural-due-process allegations that she was not informed of her disenfranchisement when she pleaded guilty—and this Court previously dismissed them. *July 19, 2023 Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss*, at 26. As this Court held, “disenfranchisement upon felony conviction is considered a regulatory, nonpenal measure” that is “a collateral consequence of a guilty plea.” *Id.* And merely because a

³ Insofar as Ms. Moses is arguing that Article I, Section 5 provides—and that she cannot waive--“protection against permanent disenfranchisement absent a jury conviction” (Moses Memo. in Supp., 23), no such protection exists, for the reasons discussed in Section II below.

court does not inform a criminal defendant “of the collateral consequences of her plea does not render the plea invalid.” *Id.* In short, Moses “need not have known the full ramifications of [her] conviction and sentence, *i.e.*, that [she] would be rendered infamous, would be unable to vote, and would be prohibited from carrying a weapon, in order to enter knowing, voluntary, and intelligent guilty pleas.” *English v. State*, E2003-00935-CCA-R3-PC, 2004 WL 57089, at *11 (Tenn. Crim. App. Jan. 13, 2004), *perm. app. denied* (Tenn. May 17, 2004).

Second, Ms. Moses also incorrectly argues that Article I, Section 5, is a structural limit on Tennessee government that cannot be waived. Moses Memo. in Supp., p. 25. She cites no apposite Tennessee case in support of this proposition.⁴ Article I, Section 5, contained in the Declaration of Rights, preserves an individual liberty and can be waived and/or forfeited just like the other individual liberties contained in the Declaration of Rights (which, as denoted by its name, is a declaration of the rights of the people).

Tennessee courts have discussed structural limitations of Tennessee’s government. Such discussions generally center on the separation of powers, ensuring that no one branch encroaches upon or usurps the powers of another. In *Moore v. Love*, the

⁴ She does cite Tennessee cases that stand for the proposition that individuals cannot confer constitutional authority upon the State. Moses Memo. in Supp., p. 26. Any such cases are irrelevant here, as no one is arguing that Ms. Moses conferred upon the State the right to take her vote. Rather, Ms. Moses forfeited that right as a collateral consequence of guilty plea.

Tennessee Supreme Court held that the General Assembly could not exercise powers reserved for the judiciary, unless constitutionally authorized. 171 Tenn. 682, 685-86 (Tenn. 1936). In *Richardson v. Board of Dentistry*, the Tennessee Supreme Court held that administrative agencies could not encroach upon the judiciary by assessing fines based upon the determination of constitutional questions. 913 S.W.2d 446, 453 (Tenn. 1995). Those cases are not relevant here.

As to cases discussing the Declaration of Rights, Tennessee courts have uniformly held that individuals can forfeit such rights. *Defs.' Memo. in Supp. of Their Mot. for Partial Summ. Judgmt.*, filed December 12, 2025 ("Defs.' Memo. in Supp."), pp. 7-10.⁵ Those rights include the rights to a jury trial, to face witnesses against him or her, to compel witnesses to appear, to a speedy trial, and more. *Id.* at p. 9. Courts have held those rights can be waived and/or forfeited. *Id.*

B. Ms. Moses's forfeiture of her right to vote does not run afoul of the Unconstitutional Conditions Doctrine.

Ms. Moses also argues that the forfeiture of her right to vote violates the Unconstitutional Conditions Doctrine. *Moses Memo. in Supp.*, 26-29. But that doctrine prevents the State from coercing a waiver by offering a discretionary benefit. *See Columbia*

⁵ To avoid repetition and for the sake of brevity, Defendants incorporate their filings in support of their motion for summary judgment into this response. Rather than repeat all the arguments contained therein, they will be summarized with reference here.

Hous. & Redevelopment Corp. v. Braden, 663 S.W.3d 561, 567 (Tenn.Ct.App. 2022); *State v. Henry*, 539 S.W.3d 223, 251 (Tenn.Ct.Crim.App. 2017). Here, disenfranchisement is not a discretionary chip the State plays; it is a statutory mandate that applies to *all* felons. There is no condition being imposed on the plea; there is a *consequence* imposed on the conviction.

As discussed above, the collateral consequence of conviction of a felony for all felons is the loss of the right to vote. It is not a punishment. And it is not optional or capable of bargaining, with some felons retaining the right and others losing it. Juries cannot find an individual guilty of a felony but also find that they retain their voting rights. Prosecutors cannot offer plea bargains that entail pleading guilty to felonies but allowing retention of the right to vote. In short, it is not subject to leverage, bargain, or any disparate treatment. It is universally true for all felons in Tennessee.

It is actually Ms. Moses's interpretation that would create an unconstitutional condition. If Ms. Moses were correct—that only jury convictions result in disenfranchisement—then the State would be offering a massive benefit (retention of voting rights) to any defendant who waived their right to a jury trial. This would unconstitutionally coerce jury waivers. Defendants' position—that disenfranchisement follows the felony, regardless of the process—avoids this perverse incentive.

Furthermore, Ms. Moses's unconstitutional-conditions framing also misstates what happened here. The State did not offer Moses a voting-rights benefit in exchange

for a waiver; the loss of voting rights attaches by law to the fact of conviction for an infamous crime, and a guilty plea is itself a conviction. Under Ms. Moses’s own theory, the only benefit would be avoiding the collateral consequences of conviction by choosing a plea over trial—but that is not an unconstitutional condition; it is simply a consequence of how a criminal judgment is entered.

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

Even if Ms. Moses’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 she is incorrect in asserting that the “plain language” of Article I, Section 5, provides that a jury conviction is a mandatory prerequisite to disenfranchisement. Moses Memo. in Supp., p. 9. Instead, *Article IV, Section 2*, of the Tennessee Constitution plainly states that the General Assembly has authority to “exclud[e] from the right of suffrage persons who may be convicted of infamous crimes”—without any limitation as to method of conviction. Ms. Moses attempts to create a conflict between Article IV, Section 2 and Article I, Section 5, when none exists. Article I, Section 5 addresses a different mischief—retroactive legislative disqualification of otherwise qualified voters without judicial process—and it therefore does not limit Article IV, Section 2’s affirmative authorization to exclude persons convicted of infamous crimes. See *Gaskin v. Collins*, 661 S.W.2d 865, 867-68 (Tenn. 1983); Defs. Memo. in Supp., pp. 7-22.

A. The original public meaning of Article I, Section 5, is to prohibit the retroactive disqualification of otherwise qualified voters.

While Ms. Moses advocates for a strained interpretation of the original public meaning of Article I, Section 5, this Court need look no further than the Tennessee Supreme Court's prior finding as to its original public meaning in *Gaskin v. Collins*. In *Gaskin*, the Supreme Court analyzed Article I, Section 5, engaging in a thorough, multipage analysis of its historical context and reasons for enactment. 661 S.W.2d at 867-68; *see also* Defs.' Memo in Supp., pp. 16-18. It found that Article I, Section 5, was enacted to prevent the retroactive disqualification without judicial process of otherwise qualified voters. *Id.*

The Court began with a simple canon of construction, "[w]hen construing a constitutional provision we must give 'to its terms their ordinary and inherent meaning,'" and "[w]e must also 'give effect to the intent of the people' who adopt a constitutional provision, and their intent should be derived from the language as it is found in the instrument." *Gaskin*, 661 S.W.2d at 867. The Court then observed, "[n]otwithstanding this fact, we find that the history of this provision and the events and circumstances that precipitated the 1870 convention...are important in our understanding the spirit, if not the letter of the provision. *Id.*

The Court then set forth the historical background of the enactment of Article I, Section 5. *Id.* at pp. 867-68; Defs.' Memo in Supp., pp. 14-19. In summary, prior to the 1870

convention, laws had been passed that denied the right of Confederate supporters to vote, often without a judicial finding of as much. *Id.* (stating that some of those laws barred people who had served in or voted for Confederate government or served in the Confederate army from voting). With that background, the Court stated, “[t]he phrase ‘previously ascertained and declared by law’ modifies the words ‘infamous crimes.’ It qualifies the words ‘infamous crimes’ in the sense that it places a time limitation on when an act shall be declared infamous; that is, before conviction of the crime by a jury.” *Id.* at p. 867.

The Court then concluded, “[i]t 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...We cannot ignore the reasons for...this amendment[.]” *Id.* at 868. The Supreme Court was clear—the original public meaning of Article I, Section 5, was to prevent the retroactive deprivation of the right to vote of otherwise qualified voters. It had nothing to do with constraining the General Assembly’s Article IV, Section 2, power to prospectively exclude those convicted of felonies from the right to vote.⁶ Defs.’ Memo in Supp., pp. 14-19.

⁶ Ms. Moses’s quotes *Gaskin* and focuses on the Court’s statement that Article I, Section 5, constrains Article IV, Section 2. As explained in this paragraph, that constraint has nothing to do with the General Assembly’s power to prospectively strip away the rights of felons to vote.

B. Article I, Section 5 and Article IV, Section 2 must be construed together and in harmony.

Ms. Moses's position rests on the assertion that Article I, Section 5, and Article IV, Section 2, conflict, and that the former should be read to limit the latter. Moses Memo. in Supp., pp. 16-19. Ms. Moses's position, however, violates the first canon of constitutional construction: Construction which places one provision in conflict with another must be avoided. *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995). Courts must adopt a reasonable construction which avoids conflict and provides for harmonious operation of both. *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000). Constitutional provisions that relate to the same subject matter must be construed together to advance their common purpose. See *Carver v. Citizen Utilities Co.*, 954 S.W.2d 34, 35 (Tenn. 1997).

Here, with that canon of construction in mind and in view of the differing language of each section and the historical context of their passage, the correct reading is that they do not conflict; while otherwise entitled voters may not be denied the right to

Rather, it is a constraint on the General Assembly's ability to retroactively disenfranchise individuals without judicial process. An analogous situation today would be if "infamy" was redefined to include a subset of misdemeanors. Pursuant to Article I, Section 5, and *Gaskin*, those individuals convicted of those misdemeanors prior to the redefinition could not be disenfranchised. A similar example would be the reclassification of a current misdemeanor to a felony. Again, pursuant to Article I, Section 5, and *Gaskin*, the disenfranchisement of individuals who committed that crime could only be prospective and would not apply to those who had been convicted prior to its reclassification.

vote without judicial process, the General Assembly may exclude persons convicted of an infamous crime from the right to vote without regard to their method of conviction.

1. The Constitutional Convention of 1870 considered and enacted both Article I, Section 5 and Article IV, Section 2 and affirmatively chose not to limit the latter.

The historical context of the Constitutional Convention of 1870, in fact, the primary reason it was called, was to address the passage of laws that disqualified individuals who had voted for or served in the Confederate government and/or served in the Confederate army. *See also* Defs.' Memo. in Supp., pp. 12-14. That said, the convention was not limited solely to that issue; it was a general convention at which the entire constitution was considered, and a new one was proposed and adopted. *Id.* at 12.

At the convention, the language of Article I, Section 5 that is the subject of this litigation was proposed and enacted, making its first appearance in the Tennessee Constitution. *Compare* Tenn. Const. of 1834 and Tenn. Const. of 1870. The language of Article IV, Section 2, which had been initially added to the 1834 Constitution, was also explicitly considered and discussed. *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, pp. 16, 54, 426. Some delegates sought to further limit the General Assembly's ability to restrict the right to vote. *Id.* at pp. 54, 179. One such proposal sought to deprive the General Assembly of any power to restrict voting rights. *Id.* at 54. Another sought to limit the General

Assembly's power restrict the right to vote other than legislating the age at which an individual could exercise that right and the time and place for its exercise. *Id.* at p. 179. Both failed. *Id.* at pp. 411-40. Instead, the delegates recommended the reenactment of the then current version of Article IV, Section 2, giving the General Assembly the right to exclude felons from the elective franchise. *Id.*

It would be absurd and improper to assume that the delegates enacted two provisions that should be read to conflict on the very same day. When discussing possible conflicts between statutes, the Tennessee Supreme Court has held, "[w]e must presume that the legislature did not intend an absurdity." *Kite v. Kite*, 22 S.W.3d 803, 805 (Tenn. 1997). To avoid such an absurdity, Article I, Section 5, and Article IV, Section 2, contrary to Ms. Moses's assertion, should be read not to conflict at all.

2. The different language used in each constitutional provision, as understood in 1870, avoids the absurdity of conflicting provisions passed on the same day and harmonizes the two provisions.

Article I, Section 5, uses the term "deny," while Article IV, Section 2, uses the word "exclude." Those words are not synonyms; in 1870, they had very different definitions. During the 1800's, the word "deny" meant "to refuse to grant" or "to withhold." (*An American Dictionary of the English Language*, 1848 and 1888 editions, attached hereto). The word "exclude," on the other hand, meant "to thrust out," or "shut out." (*Id.*)

This supports the harmonious interpretation described above. Article I, Section 5, speaks to retroactively refusing to grant or withholding the right to vote, without judicial

process, of otherwise entitled individuals. *See* Defs.' Memo in Supp., p. 11. Article IV, Section 2, speaks to the General Assembly's power to prospectively thrust out a convicted felon from the right to vote. *See id.* Again, Ms. Moses has not been *denied* the right to vote; she has been *excluded* from the franchise as a result of her guilty plea.

3. In 1870, the jury was an inextricable component of every felony conviction.

In 1870, Tennessee statutes required a jury to be empaneled to fix the term of confinement for any felony, even when a defendant pleaded guilty. Defs.' Memo. in Supp., pp. 19-21. Moses is therefore mistaken to treat the words "by a jury" as a modern procedural carveout that exempts guilty pleas from disenfranchisement. In 1870 Tennessee practice, felony "conviction by a jury" was not a special subset of convictions; it described the ordinary and legally required process by which felony guilt and penitentiary punishment were adjudicated and imposed. *Id.*

As a result, a proper reading of the two simultaneously enacted provisions (i.e., in harmony and in a non-absurd way) treats the "by a jury" phrase as merely describing the then-standard felony-adjudication process (jury involvement in felony guilt/punishment)—not as creating a modern carveout exempting plea-based convictions from disenfranchisement.

CONCLUSION

For the foregoing reasons, Ms. Moses's motion for summary judgment should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 19th 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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