

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

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

**RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

The Tennessee Constitution's Free and Equal Elections Clause explicitly states 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 . . ." Tenn. Const. art. I, § 5 (emphases added). Plaintiff Pamela Moses has never been convicted by a jury. On that undisputed fact alone, Defendants are not entitled to summary judgment.

Defendants nevertheless contend that Plaintiff's permanent disenfranchisement is constitutional because the Free and Equal Elections Clause does not apply or was waived when Plaintiff pled guilty in 2015. Those arguments fail as a matter of law at every step. Article I, Section 5 imposes a structural limitation on the State's authority to disenfranchise—one the Tennessee Supreme Court has repeatedly recognized and that cannot be eliminated by individual consent. And even if such a constitutional limitation of State power were theoretically waivable, Defendants' motion would still fail. Tennessee law provides no statutory or procedural framework authorizing waiver of Article I, Section 5's jury-conviction requirement, and the undisputed record does not show a knowing and voluntary relinquishment of any such protection.

Defendants also attempt to avoid the Clause by asserting that Plaintiff was not “denied” the right to vote but merely “excluded” from the electorate under Article IV, Section 2. That semantic distinction is foreclosed by precedent and contradicted by the record. Plaintiff was eligible to vote before her 2015 conviction and has been permanently barred from registering or voting ever since by ongoing State action. That is a denial of suffrage within the plain meaning of Article I, Section 5.

At bottom, Defendants ask this Court to disregard the Constitution’s text, settled Tennessee constitutional law, and the evidentiary limits of summary judgment. Because Defendants have failed to eliminate genuine issues of law or fact—and because the Constitution means what it says—their motion should be denied.

### **RELEVANT BACKGROUND**

On April 29, 2015, Ms. Moses pled guilty—without any jury trial or jury conviction—to tampering with evidence and forgery as defined by Tenn. Code Ann. § 39-16-503. (Defs.’ SUMF ¶ 11). Based on Defendants’ interpretation and enforcement of Tennessee’s election statutes, that guilty plea triggered the automatic, immediate, and permanent loss of Plaintiff’s right to vote.

On September 3, 2019, Plaintiff presented to the Shelby County Election Commission (“SCEC”) a voter registration application and a Certification of Restoration of Voter Rights. *See* Voter Registration and Restoration Application (Defs. BN\_076277) (attached as **Exhibit 1**). That same day, Defendant Mark Goins, the State Coordinator of Elections, advised the SCEC that Plaintiff was permanently ineligible to vote because of her 2015 felony conviction. *See* Letter from Coordinator Goins to SCEC (Defs. BN\_284520) (attached as **Exhibit 2**); *see* Tenn. Code Ann. § 2-2-139(b)-(c) (requiring the Coordinator to “verify” that someone convicted of an infamous crime is eligible to register to vote before the county election coordinator can allow that person to

register to vote). The Division of Elections sent that letter to the SCEC. *See* Deposition of the Tennessee Department of State (“Department Dep.”), March 28, 2025, at 47 (attached as **Exhibit 3**).

In a letter dated September 4, 2019, the SCEC informed Plaintiff that it “ha[d] been notified by the State Coordinator of Elections that due to the April 29, 2015, felony conviction,” she is “permanently ineligible to register to vote.” Letter from SCEC to P. Moses (Defs. BN\_284521) (attached as **Exhibit 4**). On that basis, the SCEC denied Plaintiff’s voter registration application and further advised her that “future attempts to register to vote anywhere in Tennessee may be considered a class D felony.” **Ex. 4** (Letter from SCEC to Pamela Moses).

Defendants continue to take the position that Plaintiff is “permanently ineligible to vote” based on her “evidence tampering” felony conviction. Email from Coordinator Goins to D. Kufner (Defs. BN\_016622) (attached as **Exhibit 5**).

### **STANDARD OF REVIEW**

Summary judgment is appropriate “only if the moving party is entitled to a judgment as a matter of law based on the undisputed facts.” *Eden W. ex rel. Evans v. Tarr*, 517 S.W.3d 691, 695 (Tenn. Ct. App. 2015). “Genuine disputes involving material facts or genuine disputes regarding the inferences reasonably drawn from the facts prevent disposing of a case as a matter of law.” *Est. of Brown*, 402 S.W.3d 193, 197 (Tenn. 2013). “The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.” *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). In evaluating a motion for summary judgment, “the nonmoving party’s evidence must be accepted as true, and any doubts concerning the existence of a genuine issue of material fact shall be resolved in favor of the nonmoving party.” *Martin*, 271 S.W.3d at 84. In doing so, the court

“must take the strongest legitimate view of the evidence in favor of the non-moving party and discard all countervailing evidence.” *Webster v. Isaacs*, 2019 WL 3946093, at \*5 (Tenn. Ct. App. Aug. 21, 2019) (quoting *Davis v. McGuigan*, 325 S.W.3d 149, 157 (Tenn. 2010)) (internal quotation marks omitted). And the court cannot weigh the evidence. *Shipley v. Williams*, 350 S.W.3d 527, 551 (Tenn. 2011). “The trial court may grant summary judgment only if ‘both the facts and the conclusions to be drawn from the facts permit a reasonable person to reach only one conclusion.’” *Arnold v. Malchow*, 2023 WL 5097179, at \*8 (Tenn. Ct. App. Aug. 9, 2023) (quoting *Helderman v. Smolin*, 179 S.W.3d 493, 500 (Tenn. Ct. App. 2005)). “[I]f there is a dispute as to any material fact or any doubt as to the conclusions to be drawn from that fact, the motion must be denied.” *Byrd v. Hall*, 847 S.W.2d 208, 211 (Tenn. 1993).

## **ARGUMENT**

Defendants’ motion for summary judgment should be denied. They argue that Plaintiff’s permanent disenfranchisement is constitutional because the Free and Equal Elections Clause does not apply or was waived, but that is wrong because the Clause imposes a non-waivable limit on the State’s disenfranchisement authority. And even if that were not so, summary judgment would still be improper because Defendants cannot establish, on an undisputed record, that Plaintiff knowingly and voluntarily waived the Clause’s protections. Defendants also argue that Plaintiff was not “denied” the right to vote within the meaning of the Free and Equal Elections Clause, but the undisputed record shows that the State permanently barred her from registering and voting.<sup>1</sup>

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<sup>1</sup> Defendants also include Plaintiff’s substantive due process claims in their motion for summary judgment, but they raise no new arguments and simply adopt and incorporate their arguments from their prior summary judgment motion. *See* Defs’ Mem. in Supp. of Mtn. Partial Summ. J. (“MSJ”) at 22. In response, Plaintiff similarly adopts and incorporates her arguments in opposition to those arguments from her prior brief in opposition to Defendants’ prior summary judgment motion. *See* Plf.’s Response in Opp. to Defs.’ Mot. for Summary Judgment, July 25, 2025.

## **I. DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT BECAUSE ARTICLE I, SECTION 5 LIMITS THE STATE'S DISENFRANCHISEMENT AUTHORITY**

Defendants argue that Article I, Section 5 does not constrain the State's authority to disenfranchise citizens convicted of infamous crimes, or alternatively that Plaintiff was not "denied" suffrage within the meaning of that provision. Both arguments are wrong.

### **A. Article I, Section 5 Applies to Criminal Disenfranchisement and Constrains the State's Authority Exercised Under Article IV, Section 2**

Defendants' motion rests on a threshold legal error: their contention that Article I, Section 5 of the Tennessee Constitution does not constrain the State's criminal disenfranchisement authority when that authority is exercised pursuant to Article IV, Section 2. *See* MSJ at 11. The Tennessee Supreme Court has already rejected that premise.

Article IV, Section 2 authorizes the General Assembly to enact laws "excluding from the right of suffrage persons who may be convicted of infamous crimes." But that grant of authority does not exist in isolation; it must be exercised subject to constitutional limits of State power. *See State v. Memphis City Bank*, 19 S.W. 1045, 1048 (Tenn. 1892) ("Legislative powers enumerated in one clause must be defined and exercised with reference to limitations and requirements made in other clauses."). As the Supreme Court has explained, legislative powers enumerated in one provision of the Constitution must be exercised subject to limitations imposed elsewhere—particularly limitations set forth in the Declaration of Rights. *State v. Mallard*, 40 S.W.3d 473, 483 (Tenn. 2001) ("General Assembly has no constitutional power to enact rules that infringe upon the protection of the Declaration of Rights."). Article I, Section 5 is such a limitation.

In *Gaskin v. Collins*, the Supreme Court squarely held that Article I, Section 5 constrains the State's disenfranchisement authority. The Court explained that "Article I, Section 5 of the Tennessee Constitution prohibits the General Assembly from retroactively disenfranchising

convicted felons who have never been adjudged infamous[.]” *Gaskin v. Collins*, 661 S.W.2d 865, 868 (Tenn. 1983) (emphasis added). That holding necessarily rests on the conclusion that Article I, Section 5 limits the General Assembly’s authority to disenfranchise at all. If Article I, Section 5 did not constrain the power granted in Article IV, Section 2, the retroactive disenfranchisement at issue in *Gaskin* would have been permissible.

The Court of Appeals articulated the same principle in *Crutchfield v. Collins*, explaining that “the legislature is empowered to deprive convicted criminals of the right to vote under the limitations set out in Article I, Section 5 and Article IV, Section 2.” 607 S.W.2d 478, 481 (Tenn. Ct. App. 1980) (emphasis added). The Supreme Court cited this sentence in *Crutchfield* with approval in *Gaskin*, confirming that this framework reflects settled Tennessee constitutional law. *Gaskin*, 661 S.W.2d at 867.

Defendants attempt to avoid this settled framework by trying to draw a distinction between “denial” of suffrage under Article I, Section 5 and “exclusion” from suffrage under Article IV, Section 2. MSJ at 11. That semantic reframing cannot defeat the controlling principle established in *Gaskin* and *Crutchfield*: Article I, Section 5 constrains the State’s criminal disenfranchisement authority as a matter of constitutional law, regardless of the label the State assigns to its action.

Accordingly, as a matter of law, Article I, Section 5 applies to criminal disenfranchisement and constrains the authority exercised under Article IV, Section 2. Because Defendants’ motion proceeds from the opposite premise, it cannot support summary judgment.

**B. Permanently Barring Plaintiff from Registering and Voting Is a “Denial” of Suffrage Within the Meaning of Article I, Section 5**

Defendants next contend that Article I, Section 5 does not apply because Plaintiff has not been “denied” the right of suffrage, but instead has merely been “excluded” from the electorate

under Article IV, § 2. MSJ at 11. That argument fails both as a matter of law and on the undisputed record.

Prior to her April 29, 2015 conviction, Plaintiff was eligible to vote in Tennessee. (Defs.' SUMF at ¶ 9). Under Defendants' interpretation and enforcement of Tennessee law, that eligibility ended automatically and permanently upon her conviction for tampering with evidence. Tenn. Code Ann. § 40-20-112; Tenn. Code Ann. § 40-29-204 (now § 40-29-102). Since that time, Plaintiff has been barred from registering to vote and from voting in any Tennessee election. The State's position is not temporary, conditional, or contingent: Defendants maintain that Plaintiff is "permanently ineligible to vote" based solely on that conviction. (Defendants' Mem. at 7; **Ex. 2**; **Ex. 3**; **Ex. 4**, **Ex. 5**). That is a denial of suffrage in every ordinary sense of the term.

The denial here is not abstract or theoretical. It is the product of concrete, ongoing State action. When Plaintiff applied to register to vote in September 2019, the State Coordinator of Elections advised the Shelby County Election Commission that Plaintiff was "permanently ineligible to vote" because of her 2015 conviction. (**Ex. 2**). Acting on that determination, the Commission informed Plaintiff that she was "permanently ineligible to register to vote," denied her voter registration application, and warned that "future attempts to register to vote anywhere in Tennessee may be considered a class D felony." (**Ex. 4**). Plaintiff remains subject to that determination today. (**Ex. 5**).

Defendants' effort to characterize this permanent prohibition as something other than a "denial" of suffrage elevates semantics over substance.<sup>2</sup> The Free and Equal Elections Clause does

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<sup>2</sup> Defendants cherry pick from two editions of a single dictionary the definition of "to deny" as if to suggest that the State's permanent deprivation of Plaintiff's voting rights does not meet those definitions. Defs' Mem. at 7. Not so. Each of those dictionaries includes the definitions "not to afford" or "to withhold" and offers the example of denying bread to the hungry. (Defs.' Ex. 8). Here, there is no question that Plaintiff is not being afforded the right to vote on the basis of her

not turn on labels; it addresses whether the State has deprived a person entitled to vote of the right to do so. Plaintiff was entitled to vote. She is now permanently barred from registering and voting by the State. That is a denial of suffrage within the meaning of Article I, Section 5.

Defendants' own actions confirm as much. When Plaintiff sought to register, her application was expressly "denied," and that denial was recorded and enforced by State election officials. (**Ex. 2; Ex. 4**) The Constitution does not permit the State to avoid Article I, Section 5's constraints by recharacterizing a permanent deprivation of voting rights as "exclusion" rather than "denial." To accept Defendants' framing would allow the State to nullify Article I, Section 5 through wordplay—a result foreclosed by settled principles of Tennessee constitutional law. Under Defendants' view, the State could permanently bar any citizen from voting without regard to Article I, Section 5 so long as it characterized the deprivation as "exclusion" rather than "denial"—a result the Constitution does not permit.

Because Plaintiff has been permanently barred from registering and voting by State action, Article I, Section 5 applies. Defendants' contrary argument provides no basis for summary judgment.

## **II. DEFENDANTS' WAIVER THEORY FAILS AS A MATTER OF LAW**

Defendants argue that Plaintiff waived any constitutional protection under the Free and Equal Elections Clause by pleading guilty in 2015. That argument fails as a matter of law because the jury-conviction requirement is a structural limit on State power that is not waivable and because Tennessee law provides no statutory or procedural framework authorizing such a waiver in any event.

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criminal record. Plaintiff hungers to vote, but the State is permanently "denying" or "withholding" her suffrage on the basis of her 2015 conviction under Tenn. Code Ann. § 39-16-503.

#### **A. The Jury-Conviction Requirement in Article I, Section 5 is a Structural Limit on State Power and is Not Waivable**

Defendants' waiver theory fails at the threshold because it rests on a fundamental mischaracterization of Article I, Section 5. The Free and Equal Elections Clause's jury-conviction requirement is not a personal right conferred on a criminal defendant; it is a structural limitation on the State's power to disenfranchise. As such, it is not subject to waiver by an individual. *See, e.g., Brown v. Brown*, 281 S.W.2d 492, 501 (Tenn. 1955) (Considering the State "derive[s] [its] powers ... from the law," not a particular person, "[i]t necessarily follows therefore that [constitutional authority] cannot be conferred or enlarged by waiver, consent, or estoppel."); *c.f. Barthell v. Zachman*, 36 S.W.2d 886, 888 (Tenn. 1931) ("jurisdiction of the subject-matter, which refers to the power of the court to adjudicate the question presented, cannot be waived").

The text of Article I, Section 5 makes this plain. The 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." Tenn. Const. art. I, Section 5 (emphases added). That language does not describe a right the defendant may choose to exercise or relinquish. It describes a prohibition on government action. The Clause speaks in mandatory terms directed at the State, not in permissive terms addressed to the accused. Waiver doctrine presupposes a choice vested in the individual; Article I, Section 5 instead withdraws a category of action from the State altogether.

As discussed above, the Tennessee Supreme Court has already recognized Article I, Section 5 as a limit on state power. In *Gaskin*, the Court held that "Article I, Section 5 of the Tennessee Constitution **prohibits the General Assembly** from retroactively disenfranchising convicted felons who have never been adjudged infamous[.]" 661 S.W.2d at 868 (emphasis added). That formulation is critical in the present context. *Gaskin* did not describe Article I, Section 5 as a personal entitlement that could be relinquished by an individual defendant; it described the Clause

as a constitutional prohibition that restrains legislative authority. A constitutional rule that “prohibits the General Assembly” from acting cannot be eliminated by individual consent.

Defendants attempt to collapse this structural limitation into the category of waivable criminal procedure rights by analogizing Article I, Section 5 to provisions governing criminal jury trials, appeals, or sentencing. Defs’ Mem. at 9. That analogy fails. Tennessee law has long distinguished between constitutional provisions enacted for the personal “benefit and protection” of the accused and provisions that limit the authority of government itself. Only the former are subject to waiver.

That distinction is dispositive here. In *State v. Durso*, the Supreme Court held that the requirement that a jury assess certain fines could be waived because it was “part of the rights guaranteed to an accused and [was] **for his benefit and protection.**” 645 S.W.2d 753, 759 (Tenn. 1983) (emphasis added). *Durso* thus confirms the boundary of waiver doctrine—it applies to individual trial rights that exist to protect the defendant in the criminal proceeding. Article I, Section 5 is not such a provision. It does not regulate the manner in which guilt is adjudicated; it regulates when the State may impose the civil disability of disenfranchisement at all. It imposes these limitations for the public purpose of ensuring “free and equal elections,” which transcends the rights of any single person.

Nothing in *Durso* suggests that a criminal defendant may waive a constitutional restriction on the State’s authority to disenfranchise citizens or enlarge legislative power beyond constitutional limits. To the contrary, *Durso* underscores that waiver doctrine operates only where the Constitution confers a personal right on the accused, not where it withholds power from the State.

The unconstitutional conditions doctrine independently confirms that Defendants' waiver theory cannot succeed. Even where the government may lawfully condition a benefit on the waiver of certain personal rights, it may not condition that benefit on the surrender of a constitutional restriction on government power. *See Agency for Int'l Dev. v. Alliance for Open Society Int'l, Inc.*, 570 U.S. 205, 214-15 (2013); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Article I, Section 5 does not merely protect an individual interest; it limits when and how the State may deprive citizens of the right to vote in order to safeguard free and equal elections for all. Conditioning the availability of a plea agreement on relinquishment of that limitation would permit the State to accomplish indirectly—through plea bargaining—what it is constitutionally forbidden to do directly: deny suffrage absent a conviction by a jury. The Tennessee Constitution does not permit such an end-run around its express constraints on state authority. *See State v. Henry*, 539 S.W.3d 223, 251 (Tenn. Crim. App. 2017). Because the jury-conviction requirement is a structural limitation on State power, it is not waivable as a matter of law, and Defendants' waiver theory fails on that basis alone.

**B. No Statutory or Procedural Framework Authorizes Waiver of Article I, Section 5's Jury-Conviction Requirement**

Even if the Free and Equal Election Clause's jury-conviction requirement were a waivable provision (it is not), Defendants' waiver theory would still fail as a matter of law because Tennessee has never created a statutory or procedural framework authorizing such a waiver. Under binding Supreme Court precedent, constitutional waiver is permissible only where the legislature or the courts have affirmatively provided both authorization and safeguards. Neither exists here.

The Tennessee Supreme Court in *Durso* made clear that waiver of a constitutional provision is permissible only where it is “done in accordance with safeguards provided by both the constitution and implementing statutes or rules of criminal procedure.” 645 S.W.2d at 759

(emphasis added). The Court permitted waiver there precisely because the provision at issue was “part of the rights guaranteed to an accused and [was] for his benefit and protection,” and because Tennessee law had expressly established procedures governing that waiver. *Id.*

That framework is entirely absent here. No statute authorizes waiver of Article I, Section 5’s jury-conviction requirement. No rule of criminal procedure addresses it. And no plea colloquy, form, or judicial practice purports to implement safeguards for relinquishing a constitutional restriction on the State’s disenfranchisement authority. Unlike the procedural jury-trial right, the right to appeal, or other procedural protections governed by Tenn. R. Crim. P. 11, Article I, Section 5’s jury-conviction predicate to disenfranchisement is nowhere identified as waivable and nowhere integrated into Tennessee’s plea-bargaining regime.

This absence is dispositive. *Durso* and *Blackmon* do not stand for the proposition that any constitutional provision mentioning a jury may be waived by implication. Rather they stand for the opposite rule: waiver is permissible only where the Constitution confers a personal right on the accused and the State has affirmatively created a legal mechanism authorizing waiver and ensuring it is knowing and voluntary. Where no such mechanism exists, waiver is not merely unproven—it is legally impossible, because courts lack authority to recognize a waiver the law does not permit.

Accepting Defendants’ theory would dispense with *Durso*’s and *Blackmon*’s requirements entirely. It would allow courts to infer waiver of a constitutional limitation on state power from a plea colloquy that does not mention voting, disenfranchisement, or Article I, Section 5 at all, and in the absence of any statutory authorization. Tennessee law does not permit such an approach. *See Blackmon*, 984 S.W.2d at 591. Because no statute, rule, or procedural safeguard authorizes waiver of Article I, Section 5’s jury-conviction requirement, Defendants’ waiver theory fails as a matter of law, even assuming waiver were theoretically possible.

### **III. EVEN IF ARTICLE I, SECTION 5'S LIMITS ON STATE POWER WERE WAIVABLE, DEFENDANTS CANNOT ESTABLISH WAIVER ON AN UNDISPUTED RECORD**

Defendants argue that Plaintiff knowingly and voluntarily waived any constitutional protection under Article I, Section 5 when she pled guilty in 2015. That argument fails on the undisputed record. Plaintiff was never advised of permanent disenfranchisement or any Article I, Section 5 limitation during the plea process, and Defendants' reliance on Plaintiff's prior conviction and temporary disenfranchisement cannot establish knowing waiver as a matter of law or eliminate genuine disputes of material fact.

#### **A. The Undisputed Record Shows Plaintiff Was Never Advised of Permanent Disenfranchisement or Any Article I, Section 5 Limitation**

Even if Article I, Section 5's jury-conviction requirement could be waived (it cannot), Defendants' motion would still fail because the undisputed record does not establish a knowing and voluntary waiver. Under Tennessee law, waiver of a constitutional protection requires awareness of both the right being relinquished and the consequences of relinquishing it. Defendants cannot satisfy that standard here.

The scope of Plaintiff's 2015 plea colloquy is undisputed and narrow. Consistent with Tennessee Rule of Criminal Procedure 11, the trial court advised Plaintiff that by pleading guilty she was waiving certain personal trial rights, including the right to a jury trial in the criminal case, the right to confront witnesses, and the right to appeal. Ex. 1 to Second Am. Compl. Nothing in the plea colloquy or plea documents addressed voting rights, criminal disenfranchisement, or permanent disenfranchisement. Nor was Plaintiff advised that the Tennessee Constitution limits the State's authority to deny suffrage "except upon a conviction by a jury," or that pleading guilty would purportedly effect a waiver of that constitutional limitation.

That absence is dispositive. As Defendants concede, the plea colloquy tracked Criminal Rule of Procedure 11. Defs. Mem. at 3-4. Rule 11 governs waiver of trial-related rights in criminal proceedings; it does not address permanent disenfranchisement or constitutional limits on state power. *See* Tenn. R. Crim. P. 11. Advisement that a defendant is waiving the right to a jury trial is not advisement that the defendant is relinquishing a constitutional protection against jury-less disenfranchisement. Those are distinct constitutional provisions serving different purposes.

Tennessee law requires more. For waiver of a constitutional provision to be effective, the defendant must be aware of the specific right at issue and the consequences of relinquishing it. *See State v. Blackmon*, 984 S.W.2d 589, 591 (Tenn. 1998) (“In order for a waiver of a constitutionally granted right to be valid, it must be voluntarily, knowingly, and intelligently given.” (citation and internal quotation marks omitted)); *see also id.* (“The record of a waiver of a defendant’s right must affirmatively demonstrate that his decision was both voluntary and knowledgeable, i.e., that he has been made aware of the significant consequences of such a waiver; otherwise it will not amount to an intentional abandonment of a known right.” (cleaned up)). Awareness of one is not a substitute for awareness of the other. Here, the undisputed record shows that Plaintiff was not informed of any right under Article I, Section 5; was not informed that permanent disenfranchisement would result from her plea; and was not informed that the State would treat her guilty plea as eliminating a constitutional jury-conviction predicate to criminal disenfranchisement. Ex. 1 to Second Am. Compl. On this record, no reasonable factfinder could conclude that Plaintiff knowingly and voluntarily waived a constitutional protection she was never told existed.

Defendants’ contrary position collapses the waiver inquiry into a fiction. It would permit courts to infer waiver of a constitutional limitation on state power from silence—silence in a plea

colloquy that never mentioned voting, disenfranchisement, permanence, or Article I, Section 5 at all. Tennessee law does not permit such an inference. *See Blackmon*, 984 S.W.2d at 591 (“The Court will not presume a waiver of important constitutional rights from a silent record.”) *see also State v. Mackey*, 553 S.W.2d 337, 340 (Tenn. 1977) (holding that there must be “an intentional relinquishment or abandonment of a known right” because “[o]ur system of justice cannot tolerate the presumption that a defendant voluntarily relinquished such fundamental rights”). At minimum, the absence of any advisement regarding the Free and Equal Elections Clause and the potential loss of voting rights creates a genuine dispute that precludes summary judgment. And on this record, Defendants cannot establish waiver as a matter of law.

**B. Plaintiff’s Prior Conviction and Temporary Disenfranchisement Do Not Establish Knowing Waiver as a Matter of Law**

Unable to identify any advisement in the 2015 plea process concerning voting rights, permanent disenfranchisement, or Article I, Section 5, Defendants attempt to manufacture waiver from Plaintiff’s prior experience with the criminal-justice system—principally, a conviction from 2000 and the temporary disenfranchisement that followed it. That effort fails as a matter of law and, at a minimum, cannot satisfy Defendants’ Rule 56 burden.

As explained above, waiver must be assessed at the time of the alleged relinquishment and must concern *both* the specific right at issue *and* the consequences of relinquishing it. *Blackmon*, 984 S.W.2d at 591 (there must be an “intentional abandonment of a known right” and an “aware[ness] of the significant consequences of such a waiver”). Whatever Plaintiff may have understood in 2000 about the collateral effects of that earlier case does not establish that she knowingly waived a constitutional limitation on the State’s disenfranchisement authority in 2015—particularly where the 2015 plea colloquy and plea documents contain no advisement about voting rights, disenfranchisement, or the supposed waiver Defendants now posit.

The temporal mismatch is especially stark because the permanently disqualifying regime Defendants invoke here was not even in place at the time of Plaintiff’s 2000 conviction. Defendants’ theory depends on treating Plaintiff’s prior experience as proof that she knowingly accepted permanent disenfranchisement in 2015. But the record does not support that inference. The legal landscape—and the consequences Defendants now insist attach automatically—changed in the intervening years.<sup>3</sup> A prior conviction in a materially different statutory environment cannot, as a matter of law, substitute for a contemporaneous waiver of a specific constitutional protection in a later case. Moreover, the 2000 plea colloquy cannot establish waiver of the Free and Equal Election Clause’s jury conviction requirement because it does not mention the “right at issue” (i.e., the jury conviction limit on the State’s disenfranchisement authority): the discussion of the consequence of potentially losing the right to vote is insufficient to find a knowing waiver under Tennessee law. *Blackmon*, 984 S.W.2d at 591.

Nor can Defendants avoid this problem by recasting waiver as a kind of generalized “familiarity” with the system. Tennessee waiver doctrine does not permit courts to infer waiver of a constitutional provision from prior encounters with the criminal process. It requires a knowing relinquishment of the right at issue, in the proceeding at issue, with awareness of the consequences. *Blackmon*, 984 S.W.2d at 591. Defendants’ position would effectively eliminate that requirement, allowing waiver to be established by conjecture about what a defendant “must have known” based on past experience. That is incompatible with Tennessee law and with summary-judgment standards.

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<sup>3</sup> Of particular relevance, in 2006 Tennessee expanded the list of permanently disenfranchising felonies via the enactment of T.C.A. § 40-29-204. The conviction at issue in this matter, tampering with evidence in violation of T.C.A. § 39-16-503, is one of the offenses automatically resulting in permanent disenfranchisement under T.C.A. § 40-29-204 (now § 40-29-102).

Finally, even if Defendants' reliance on Plaintiff's prior experience were legally relevant (it is not), it would not be undisputed. Whether Plaintiff understood the constitutional limitation Defendants claim she waived, whether she understood permanent disenfranchisement would follow, and whether anything in her prior experience conveyed those specific points are all questions that cannot be resolved in Defendants' favor on summary judgment. *See Plaintiff's Responses to Defendants' Statements of Undisputed Material Fact at ¶¶ 1-20.* At minimum, Defendants' theory raises disputed issues of material fact and competing inferences that must be resolved against the moving party. For that reason as well, Defendants have not—and cannot—carry their burden to establish waiver on an undisputed record.

#### **IV. DEFENDANTS' HISTORICAL AND ORIGINAL PUBLIC MEANING ARGUMENTS DO NOT SUPPORT SUMMARY JUDGMENT**

Defendants argue that historical practice and original public meaning permit the State to deny suffrage absent a jury conviction. That argument fails. The text of Article I, Section 5 is unambiguous and controls, and Defendants' selective historical account neither alters that text nor eliminates the jury-conviction requirement on an undisputed record.

##### **A. The Text of Article I, Section 5 Is Unambiguous and Controls**

Defendants' remaining arguments rest on an effort to move the Court away from the constitutional text and into speculation about historical practice and subjective intent of the framers. That effort is foreclosed by settled Tennessee law. *See McNabb v. Harrison*, 710 S.W.3d 653, 658 (Tenn. 2025) (courts must "not speculative on the subjective intentions or motives on the drafters"). When constitutional language is unambiguous, courts apply it as written and do not resort to extratextual evidence.

The Tennessee Supreme Court has made clear that constitutional interpretation begins—and often ends—with the text. Under the methodology reaffirmed in *McNabb*, courts seek to

enforce what “the people who voted for this constitutional [provision] would think that the language meant,” focusing on the ordinary public meaning of the words used at the time of adoption. *Id.* at 658 (quoting *State ex rel. Doyle v. Torrence*, 310 S.W.2d 425, 427-28 (Tenn. 1958)) (alteration in original). Where that meaning is clear, courts may not manufacture ambiguity to justify reliance on legislative history or convention debates. *See Hooker v. Haslam*, 437 S.W.3d 409, 426 (Tenn. 2014) (“When the words are free from ambiguity and doubt and express plainly and clearly the sense of the framers of the Constitution there is no need to resort to other means of interpretation.”).

Article I, Section 5 presents no ambiguity. It 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.” The operative phrase—“conviction by a jury”—is neither technical nor obscure. It describes a specific mode of conviction and draws a clear line: suffrage may be denied only when guilt has been determined by a jury. The provision does not say “conviction,” full stop; it specifies the manner of conviction required. Giving effect to that language does not require inference or reconstruction—it requires reading the words as written.

Because the text is clear, Defendants’ attempts to reframe the inquiry around what the framers may have subjectively intended, how criminal procedure functioned in particular eras, or how often certain practices occurred are beside the point. Tennessee courts do not consult historical materials to contradict unambiguous constitutional language. Nor may they adopt an interpretation that renders express words—here, “by a jury”—without operative effect. *See Shelby County v. Hale*, 292 S.W.2d 745, 748-49 (Tenn. 1956) (holding it is a court’s “duty to … favor the construction which will render every word operative rather than one which will make some words idle and meaningless”); *Jenkins v. Ewin*, 55 Tenn. 456, 464 (1872) (“It is not to be presumed that

idle words are used in so solemn an instrument as a Constitution.”); *McNabb*, 710 S.W.3d at 661 (“Courts should presume that every word the drafters used has a specific meaning and purpose.”).

Accordingly, the Court need not—and should not—look beyond the text of Article I, Section 5. Its plain language controls, and under that language, suffrage may be denied only upon a conviction by a jury. Defendants’ contrary arguments cannot support summary judgment.

#### **B. Defendants’ Historical Account Does Not Eliminate the Jury-Conviction Requirement**

Defendants’ reliance on historical practice does not advance their motion. Even if historical context were relevant—which it is not where the constitutional text is unambiguous—Defendants’ account fails to establish that Article I, Section 5’s jury-conviction requirement lacked independent meaning at the time of its adoption.

As an initial matter, Defendants’ premise that guilty pleas were unknown or legally insignificant before 1870 is incorrect. As the historical materials in the record show, convictions by guilty pleas existed in Tennessee well before the adoption of the 1870 Constitution. Defendants’ own expert acknowledges that criminal defendants could and did plead guilty prior to 1870. *See* Deposition of David T. Beito, Dec. 4, 2025, at 18-19 (excerpts attached as **Exhibit 6**). That fact alone undermines Defendants’ claim that the framers could not have intended to distinguish between convictions obtained by jury and convictions obtained without one.

Defendants’ argument further rests on a critical conflation of distinct concepts. Article I, Section 5 speaks in terms of a “conviction by a jury,” not a sentence imposed by a jury. Tennessee law has long recognized that a conviction—the determination of guilt—is distinct from judgment or sentence. *State v. Garrett*, 188 S.W. 58, 60 (Tenn. 1916) (concluding, based on the text of the Free and Equal Elections Clause, that “the word ‘conviction’ does not imply judgment or sentence”); *id.* (holding that “[a] pardon granted after a verdict of guilty is ‘after conviction’”); *see*

*also State v. Vasser*, 870 S.W.2d 543, 546 (Tenn. Crim. App. 1993) (relying on *Garret* and the Free and Equal Elections Clause to determine the meaning of “conviction”). Accordingly, under the plain text of the Free and Equal Election Clause that the jury must render the *conviction* (*i.e.*, make a finding of guilt) in order for a Tennessean to be disenfranchised. The historical practice Defendants emphasize, in which juries sometimes participated in fixing punishment after a plea (*see* Defs’ Mem. at 4-5), does not transform a guilty plea into a jury conviction. Jury involvement at the sentencing stage does not satisfy a constitutional requirement that guilt itself be determined “by a jury.”

That distinction is dispositive. Even if, in some periods, juries were routinely involved in sentencing following guilty pleas, that practice does not erase the textual choice the framers made in Article I, Section 5. By requiring a “conviction by a jury,” the Constitution specifies the actor who must determine guilt, not merely the actor who may participate in punishment. Defendants’ historical narrative does nothing to collapse that distinction.

Finally, Defendants’ historical showing falls far short of what would be required at summary judgment. At most, Defendants point to mixed historical practices and competing interpretations of nineteenth-century criminal procedure. Such disputes—about how often guilty pleas occurred, how sentencing operated, or what inferences might be drawn from those practices—cannot resolve the clear constitutional text in Defendants’ favor. And they certainly cannot eliminate the jury-conviction requirement as a matter of law on an undisputed record.

In short, Defendants’ historical account does not negate Article I, Section 5’s plain command. It does not show that “conviction by a jury” was surplusage, and it does not justify denying effect to the words the Constitution deliberately includes. At most, Defendants’ historical

arguments underscore that factual and interpretive disputes remain—disputes that preclude summary judgment in their favor.

## **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests the Court deny Defendants' Motion for Partial Summary Judgment.

Date: December 19, 2025

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document has been served via email and the Court's electronic filing system on December 19, 2025, as follows:

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