

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' REPLY IN SUPPORT OF
THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants submit this reply to address Ms. Moses's principal contentions in opposition: (1) that Article I, Section 5 operates as a non-waivable "structural" limitation on disenfranchisement; (2) that Defendants' waiver/forfeiture argument fails absent a bespoke "implementing framework" for waiving Article I, Section 5; and (3) that Defendants' position reduces the "denied"/"excluded" distinction to semantics. None defeats Defendants' Motion.¹

¹ The remainder of the arguments made in Ms. Moses's response are fully addressed in Defendants' memorandum in support of their motion for partial summary judgment and their corresponding response to Ms. Moses's recent motion for summary judgment. As a result, in the

As Defendants have explained, Ms. Moses’s recently added Article I, Section 5 as-applied claim fails for two independent reasons: (1) Ms. Moses waived her jury-trial right by pleading guilty and thereby forfeited any claim to be “entitled” to vote within the meaning of Article I, Section 5; and (2) in any event, Article I, Section 5, does not impose a jury-conviction prerequisite to disenfranchisement—construing it otherwise would create a conflict with Article IV, Section 2, which affirmatively authorizes laws excluding persons convicted of infamous crimes from suffrage. Tennessee constitutional construction requires harmonizing these provisions, not pitting them against one another. *Falls v. Goins*, 673 S.W.3d 173, 180 (Tenn. 2023).

I. Ms. Moses’s “Structural Limitation” Characterization Is Inconsistent with Tennessee Law Governing Waiver and Forfeiture of Declaration-of-Rights Provisions.

Ms. Moses attempts to reclassify Article I, Section 5, (a Declaration of Rights provision) as an unwaivable structural limit on governmental power. Tennessee courts have long held that provisions in the Declaration of Rights are personal liberty protections. *See Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1, 12 (Tenn. 2000); *State v. Durso*, 645 S.W.2d 753, 759 (Tenn. 1983). Because these rights belong to the individual, they can be waived or forfeited. *Durso*, 645 S.W.2d at 759. Article I, Section 5,

interest of brevity, they will not be repeated here. Those arguments are, however, incorporated into this reply.

is no exception. Like the right to a trial by jury (Art. I, § 6) or the right to face witnesses (Art. I, § 9), the right protected by Article I, Section 5 is a personal right. And just as Ms. Moses did here, a criminal defendant may waive the “inviolable” right to a jury trial under Section 6 as part of her guilty plea, and thereby forfeit the right to vote as a result of that conviction.²

Ms. Moses’s reliance on *Gaskin v. Collins* to paint Section 5 as a “prohibition” on the General Assembly is misplaced. As Defendants have explained, *Gaskin* held that Article I, Section 5, constrains only the legislature’s ability to enact *retroactive* disenfranchisement laws. It does not strip the legislature of its Article IV, Section 2, power to prospectively exclude felons from the franchise. Nor does anything in *Gaskin* suggest that an individual defendant is powerless to waive procedural protections in her own criminal case.

Ms. Moses’s opposition does not identify Tennessee authority holding that a Declaration-of-Rights provision like Article I, Section 5, is unwaivable. Nor could it, given Tennessee’s established treatment of waiver/forfeiture in the criminal context and beyond.

To the extent Ms. Moses invokes “structural limitation” concepts developed in separation-of-powers cases, those doctrines do not control here. *Def.’s Resp. to Moses MSJ.*,

² Despite Ms. Moses’s assertions to the contrary, Defendants’ argument is not that she waived her right to vote. It is that she waived her right to a jury trial when she pled guilty, and that as a collateral consequence of that waiver and resulting conviction, she forfeited her right to vote.

p. 6. This case does not involve one branch usurping another’s constitutional authority; it involves whether Ms. Moses can invoke Article I, Section 5, to invalidate a statute and her voluntary waiver of her jury trial rights that the Constitution affirmatively permits. Courts begin from the presumption the General Assembly’s acts are constitutional and must uphold statutes “wherever possible.” *Willeford v. Klepper*, 597 S.W.3d 454, 465 (Tenn. 2020) (quotation omitted).

II. Ms. Moses’s “No Implementing Framework” Argument Misstates What is Being Waived and Ignores Tennessee’s Established Plea and Jury-Waiver Safeguards.

Relying in part on *State v. Durso*, Ms. Moses argues that Defendants’ waiver/forfeiture theory fails because Tennessee has not adopted a special “implementing framework” for “waiving” a jury under Article I, Section 5. That argument fails for two reasons³.

A. Defendants’ theory does not require a separate “waiver of Article I, Section 5” as a standalone civil-rights instrument.

Defendants’ position is Ms. Moses waived her right to a jury trial in her criminal case by pleading guilty, and as a collateral consequence of that infamous-crime conviction she is not “entitled” to vote within the meaning of Article I, Section 5. Article

³ Insofar as Ms. Moses is asserting that she could not have waived, and that Tennessee has no framework for waiving, “the Free and Equal Election Clause’s jury-conviction requirement” (Pl.’s Response in Opp., 11), Article I, Section 5 imposes no such requirement—as Defendants have previously explained and discuss further below.

I, Section 5's "entitled thereto" language must be read to matter. A person who has forfeited the franchise by operation of a constitutionally authorized disenfranchisement statute is not being "denied" a right she remains "entitled" to exercise.

B. Rule 11 of the Tennessee Rules of Criminal Procedure Provides the Implementing Framework Required by *Durso*.

Tennessee law has long held that adult felony defendants may waive a jury trial. *State v. Johnson*, 574 S.W.2d 739, 741 (Tenn. 1978). Tennessee's guilty-plea procedures, specifically Tenn. R. Crim. P. 11, provide the exact safeguards *Durso* contemplates. And Ms. Moses's own guilty plea has already been adjudicated as a valid waiver – the Court of Criminal Appeals' opinion in *State v. Moses* recounts the plea colloquy and affirms that Ms. Moses knowingly and voluntarily waived the right to a jury trial. *State v. Moses*, W2015-01240-CCA-R3-CD, 2016 WL 4706707 (Tenn. Crim. App. Sept. 6, 2016), perm. app. denied (Tenn. Jan. 23, 2017).

Ms. Moses asserts a "silent record" problem by insisting she was not specifically advised of disenfranchisement consequences or Article I, Section 5's, language. But Tennessee law does not require a guilty-plea court to advise a defendant of collateral consequences for the plea to be knowing and voluntary. *English v. State*, No. E2003-00935-CCA-R3-PC, 2004 Tenn. Crim. App. LEXIS 20, at *32 (Tenn. Crim. App. Jan. 13, 2004) (lack of advice regarding collateral consequences does not invalidate plea; defendant "need not have known of the full ramifications" including that she "would be unable to vote"

to enter a knowing, voluntary, intelligent guilty plea). Ms. Moses's attempt to impose a heightened advisement requirement for voting consequences is therefore contrary to the Tennessee authorities already cited and applied in this case.

III. Ms. Moses's "Denied" / "Excluded" Critique is Not a Semantic Objection; It is a Required Harmonization with Article IV, Section 2.

Ms. Moses argues it is "wordplay" to say she was "excluded" rather than "denied" the right to vote. She is wrong.

Article I, Section 5 provides that the right of suffrage "shall never be denied to any person entitled thereto, except upon conviction by a jury of some infamous crime." Article IV, Section 2 separately provides, "[l]aws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes." These provisions address the same subject and must be construed together and harmonized. *Falls*, 673 S.W.3d at 180. Ms. Moses's reading – treating Article I, Section 5's, jury language as a categorical prerequisite to disenfranchisement – creates a direct conflict with Article IV, Section 2's, express authorization, and it would do so in a way that would constitutionalize a distinction between jury verdicts and guilty pleas that Tennessee law does not recognize for waiver of trial rights. Tennessee canons require the opposite approach, adopting a reasonable construction that avoids conflict and allows both provisions to operate.

Under that harmonized reading, Article I, Section 5, does not provide Ms. Moses a vehicle to invalidate statutes enacted pursuant to Article IV, Section 2. Once she

sustained an infamous-crime conviction (by guilty plea, with a valid jury-trial waiver), she ceased to be “entitled” to vote in the sense relevant to Article I, Section 5, and any resulting exclusion from the franchise is authorized by Article IV, Section 2 and presumed constitutional. *Willeford*, 597 S.W.3d at 465.

Finally, Ms. Moses’s reliance on modern bifurcated definitions of ‘conviction’ to argue she was never ‘convicted by a jury’ is anachronistic. In 1870, the “conviction” was a composite process where the jury was an inextricable component of sentencing, even in plea cases. Indeed, under Tennessee law until the 1960s, a criminal defendant charged with a felony could not have waived his right to a jury trial even if he pleaded guilty. *Durso*, 645 S.W.2d at 757; *Jones v. State*, 332 S.W.2d 662, 665-66 (Tenn. 1960). Ms. Moses cannot retroactively apply modern distinctions between “guilt” and “judgment” to strip the 1870 Constitution of its historical context.

IV. Ms. Moses’s Opposition Does Not Create a Genuine Issue of Material Fact.

Ms. Moses’s opposition is predominantly legal. To the extent she recasts her position as fact-bound (what she subjectively knew about disenfranchisement), those disputes are not material to Defendants’ entitlement to judgment as a matter of law under the controlling authorities cited above. The Constitution does not require proof that a criminal defendant received advisements about collateral voting consequences to validate a guilty plea or the waiver of jury trial. *English*, 2004 Tenn. Crim. App. LEXIS 20,

at *32. And the constitutional-construction issues Ms. Moses presses are issues of law suitable for summary disposition.

CONCLUSION

For these reasons stated here, and in Defendants' opening memorandum, Defendants respectfully request that the Court grant Defendants' Motion for Partial Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd 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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