

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

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

**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT BY PLAINTIFF PAMELA MOSES**

Plaintiff's opening memorandum established that, as a matter of law, permanently disenfranchising her based solely on a conviction secured by a guilty plea violates the express jury-conviction requirement of Article I, Section 5 of the Tennessee Constitution (the "Free and Equal Elections Clause"). Defendants do not dispute the constitutional text, which provides that suffrage "shall never be denied . . . except upon a conviction by a jury of some infamous crime." Nor do they dispute that Plaintiff has never been convicted of an infamous crime by a jury. Instead, Defendants advance a series of arguments—principally concerning waiver, forfeiture, and the relationship between Article I, Section 5 and Article IV, Section 2—to avoid the straightforward application of the Clause's plain language.

Plaintiff has already addressed Defendants' main arguments at length in her opposition to Defendants' motion for summary judgment, which raised the same theories Defendants now press again in opposition to Plaintiff's motion. While Plaintiff wishes to avoid unnecessary repetition, a few points in Defendants' response ("Opp.") warrant brief reply.

First, Defendants are wrong to characterize Plaintiff’s as-applied Free and Equal Elections Clause claim as a “repackaged” procedural due process claim. (Opp. at 5-6). Plaintiff is not challenging the validity of her guilty plea or alleging that the plea colloquy was constitutionally deficient as a procedural matter. Rather, she challenges the State’s authority to permanently disenfranchise her *at all* in the absence of what Article I, Section 5 expressly requires: “a conviction by a jury of some infamous crime.” That question is antecedent to—and independent of—any inquiry into plea procedures, advisements, or collateral consequences.

Defendants’ argument puts the cart before the horse. Whether Plaintiff knowingly and voluntarily pled guilty under Tenn. R. Crim. P. 11 does not answer the threshold constitutional question presented here: whether the State may permanently deny suffrage when no jury conviction exists. If Article I, Section 5 prohibits permanent disenfranchisement absent a jury conviction, the inquiry ends there. The Court need not examine what was said or not said during the 2015 plea colloquy (or any prior plea colloquy), whether disenfranchisement is a direct or collateral consequence of conviction, or whether Plaintiff subjectively understood those consequences. While those issues may have been relevant to Plaintiff’s procedural due process claims, they do not govern an as-applied challenge based on a structural constitutional limit on State power.

In reality, it is Defendants who are repackaging arguments—invoking waiver and plea-procedure doctrines to avoid the constitutional constraint imposed by the Free and Equal Elections Clause. Plaintiff’s claim is straightforward: the Constitution permits permanent disenfranchisement only upon a conviction by a jury and Plaintiff has never been convicted by a jury. This Court need not, and should not, relitigate Plaintiff’s jury-trial waiver under other constitutional provisions. It need only enforce the unambiguous limitation the framers placed on

the State's disenfranchisement authority. If the State wishes to permanently disenfranchise a Tennessean on the basis of a criminal conviction, it must secure a conviction by a jury. For that reason, Defendants' attempt to collapse Plaintiff's claim into a dismissed due process theory fails as a matter of law and cannot defeat summary judgment.

Second, Defendants do not—and cannot—dispute the two facts that control this case: Plaintiff was eligible to vote before her 2015 conviction, and she has been permanently barred from registering and voting ever since by operation of State law. That is a denial of suffrage in every ordinary sense of the term. Defendants nevertheless insist that Plaintiff has not been “denied” the right to vote within the meaning of Article I, Section 5 because, in their view, she “forfeited” that right or was merely “excluded” from the electorate under Article IV, Section 2. (Opp. at 4-7). As Plaintiff has already explained, that semantic reframing is foreclosed by settled Tennessee law. Article I, Section 5 constrains the State's disenfranchisement authority, including authority exercised pursuant to Article IV, Section 2, and the Constitution does not permit the State to avoid that limitation by relabeling a permanent deprivation of voting rights as something other than a denial. *See Gaskin v. Collins*, 661 S.W.2d 865, 868 (Tenn. 1983); *Crutchfield v. Collins*, 607 S.W.2d 478, 481 (Tenn. Ct. App. 1980). Because Defendants concede that Plaintiff was permanently stripped of the right to vote by State action—and that this occurred without a jury conviction—the Free and Equal Elections Clause applies, and Defendants' contrary characterization cannot defeat summary judgment.

Third, Defendants' interpretation of the Free and Equal Elections Clause renders the phrase “by a jury” meaningless, contrary to Supreme Court precedent. It is well settled that Tennessee courts “should presume that every word the drafters [of the constitution] used has a specific meaning and purpose.” *McNabb v. Harrison*, 710 S.W.3d 653, 661 (Tenn. 2025); *see also*

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.”). Yet Defendants’ position would do just that and turn “by a jury” into mere idle words without any meaning or purpose. Under their view, the State may permanently disenfranchise a citizen whether the conviction was by a jury or by guilty plea—either because Article I, Section 5 supposedly does not apply, or because the jury-conviction requirement is deemed waived whenever a plea is entered. In practice, that construction ensures that the phrase “except upon a conviction **by a jury**” would never constrain State action. The Court should reject that result. *See Shelby Cnty. v. Hale*, 292 S.W.2d 745, 748-49 (Tenn. 1956) (courts must “favor the construction which will render every word operative rather than one which will make some words idle and meaningless”). The framers’ deliberate inclusion of the words “by a jury” must be given effect, and it forecloses Defendants’ attempt to treat all convictions as constitutionally equivalent for purposes of permanent disenfranchisement.

Fourth, Defendants misread *Gaskin* in an effort to avoid the jury-conviction requirement. (Opp. at 10-11). *Gaskin* did not purport to examine the meaning of Article I, Section 5 in its entirety, nor did it hold that the Clause is limited to barring only retroactive disenfranchisement. Just like this case, the Court in *Gaskin* interpreted and enforced a key phrase (“previously ascertained and declared by law”) in Article I, Section 5. 661 S.W.2d at 866. The issue before the Court concerned whether the legislature could retroactively redefine crimes as “infamous” and thereby disenfranchise citizens who had already been convicted. The Court did not construe—much less nullify—the separate requirement that disenfranchisement may occur only “upon a conviction by a jury.” To the contrary, *Gaskin* expressly acknowledged that requirement, explaining that the relevant constitutional language places a temporal limitation on when an act may be declared infamous—“that is, before conviction of the crime by a jury.” *Id.* at 867. Far from

supporting Defendants' position, *Gaskin* thus confirms that the jury-conviction language is operative and meaningful. Defendants' attempt to cabin Article I, Section 5 to a narrow retroactivity rule cannot be squared with *Gaskin*'s text or reasoning and provides no basis to disregard the Constitution's express jury-conviction requirement.

Fifth, Defendants' assertion that Plaintiff's claim fails because no prior court has expressly held that Article I, Section 5's jury-conviction requirement is a non-waivable structural limit on State power is off base. (Opp. at 6). This case presents an issue of first impression because Defendants have adopted a disenfranchisement regime that squarely conflicts with the Constitution's text. The absence of a prior decision already squarely deciding the question presented in this case does not undermine Plaintiff's claim; it underscores why judicial review is required.

More importantly, Defendants are wrong to suggest that Article I, Section 5 operates merely as a personal, waivable right. (Opp. at 6-7). The Tennessee Supreme Court has already recognized the Free and Equal Elections Clause as a limitation on governmental authority, not a discretionary benefit conferred on individual defendants. In *Gaskin*, the Court explained that "Article I, Section 5 of the Tennessee Constitution *prohibits the General Assembly*" from engaging in certain forms of disenfranchisement. 661 S.W.2d at 868 (emphasis added). That formulation is dispositive. A constitutional rule that restrains legislative power cannot be eliminated by individual consent, nor expanded through plea bargaining. Defendants cannot avoid this conclusion by pointing to other provisions of the Declaration of Rights that confer waivable, trial-related protections. The fact that some constitutional rights are personal and waivable does not mean that all constitutional provisions (such as limits on State power) are waivable. Article I, Section 5 is such a limit, and Defendants' attempt to treat it otherwise provides no basis to deny summary judgment.

Sixth, Defendants’ effort to distinguish the unconstitutional conditions doctrine fails because it misunderstands both the doctrine and Plaintiff’s claim. (Opp. at 7-9). Plaintiff does not argue that every consequence of a guilty plea is constitutionally suspect. She argues that the State may not use the plea-bargaining process to evade an express constitutional limitation on its own power. Article I, Section 5 restricts when the State may permanently deny suffrage; conditioning a guilty plea on surrender of that limitation would allow the State to accomplish indirectly—through plea bargaining—what the Constitution forbids it to do directly. Defendants’ response, which recasts permanent disenfranchisement as an automatic “consequence” of conviction and insists that no discretionary benefit is involved, simply repackages the same forfeiture theory addressed above. The unconstitutional conditions doctrine does not turn on labels such as “collateral” or “automatic.” It turns on whether the State is leveraging a discretionary governmental process to extract the relinquishment of a constitutional protection unrelated to guilt or adjudication. Defendants’ reframing does not alter that analysis or cure the constitutional violation.

Finally, Defendants’ historical arguments do not undermine Plaintiff’s entitlement to summary judgment. (Opp. at 15). The Court need not resort to history where, as here, the constitutional text is unambiguous. But even if historical context were considered, it does not support Defendants’ position. Guilty pleas existed in Tennessee well before 1870; a “conviction” was understood as the determination of guilt, distinct from judgment or sentence; and jury involvement in sentencing is not equivalent to a *conviction* “by a jury.” *See 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’”). Defendants’ historical argument based on

the jury's role in sentencing after a person pled guilty, therefore, merely confirms that the framers were aware of convictions obtained without jury determinations of guilt and nevertheless chose to require a "conviction by a jury" as a prerequisite to disenfranchisement. At most, Defendants' historical account reinforces that the framers deliberately tied permanent disenfranchisement to a determination of guilt by a jury of one's peers. Because Plaintiff was never convicted by a jury, the State lacked constitutional authority to permanently deny her the right to vote, and summary judgment is warranted.

CONCLUSION

Ms. Moses respectfully requests the Court grant her motion and enter summary judgment in her favor. The Court should declare that Tennessee Code Annotated § 40-29-102 is unconstitutional as applied to Plaintiff. Further, the Court should declare Plaintiff immediately eligible to vote and order Defendants to cease all activity impeding her ability to register and vote.

Date: December 22, 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 22, 2025, as follows:

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