IN THE TENNESSEE SUPREME COURT

ERNEST FALLS,	)	
	)	
Applicant-Appellant-Plaintiff,	)	
	)	
	)	
v.	)	**Court of Appeals No. M2020-01510-COA-R3-CV**
	)	
MARK GOINS, in his official capacity as Coordinator of Elections for the State of Tennessee, TRE HARGETT, in his official capacity as Secretary of State of the State of Tennessee, and HERBERT SLATERY, III, in his official capacity as the Attorney General for the State of Tennessee,	)	**On Application to Appeal from the Judgment of the Court of Appeals**
	)	
Respondents-Appellees-Defendants.	)	

APPLICANT-APPELLANT ERNEST FALLS' BRIEF ON THE MERITS

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STATEMENT OF ISSUES

Whether Applicant-Appellant Ernest Falls has been unlawfully denied the right to vote because of his 1986 Virginia felony conviction, when he has had his full rights of citizenship restored by the Governor of Virginia and given that the Tennessee Code states that Tennesseans convicted of felonies in other states are prohibited from voting unless they have had their full rights of citizenship restored by the governor of the state of conviction.

STATEMENT OF THE CASE

The Tennessee 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, previously ascertained and declared by law, and judgment thereon by a court of competent jurisdiction." Tenn. Const. Art. I, § 5. Therefore, only where the legislature enacts both (1) a law defining the crimes considered "infamous," *and* (2) a law stating that a person convicted of an "infamous" crime will be denied the right to vote may an otherwise qualified citizen may be disenfranchised. Without an explicit statement of law depriving a person of the right to vote, however, even a person who has been convicted of a felony is not disenfranchised and must be treated like any other voter according to the Tennessee Constitution.

The Tennessee Code prohibits a person with an out-of-state felony conviction from registering or voting unless and until "(1) such person has been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or (2) the person's full rights of citizenship have otherwise been restored in accordance with the

laws of such other state, or (3) the law of this state." Tenn. Code Ann. § 2-19-143(3) (numeration added). *If* a person with an out-of-state conviction does not meet one of the first two exceptions, they *may* utilize Tennessee's administrative procedure for restoration of their right to vote, which is explicitly open for their use. Tenn. Code Ann. § 40-29-202 ("A person rendered infamous and deprived of the right of suffrage by the judgment of any state or federal court is eligible to apply for a voter registration card and have the right of suffrage restored upon [meeting the following criteria].")

In Fall 2019, Respondent Goins, the Director of Elections, authored a letter stating that individuals with out-of-state convictions who have had their rights of citizenship restored in the state of conviction are not deprived of the right to vote and may simply register and vote. This was a direct application of the plain language of Tenn. Code Ann. Section 2-19-143(3).

Relying on that letter, in Spring 2020, Ernest Falls of Bean Station, Tennessee registered to vote, disclosing in writing that he had a prior felony conviction in Virginia and presenting proof that the Governor of Virginia had restored his full rights of citizenship. Unbeknownst to Mr. Falls, between writing that letter and Mr. Falls' registration, the Director of Elections had changed his position.

The Elections Division now maintains that any person with a felony conviction must meet the eligibility criteria for the administrative voting rights restoration process, even if they meet one of the statutory exceptions to the deprivation of the right to vote under Section 2-19-143(3). The office applied this rule to Mr. Falls despite his falling into one

of those exceptions and denied his registration for failure to provide proof that he meets the criteria for the administrative voting rights restoration process in Section 40-29-202. Respondents-Appellees rely on the language in the rights restoration statute stating that it "shall apply to and govern restoration of the right of suffrage in this state to any person who has been disqualified from exercising that right . . ." Tenn. Code Ann. 40-29-201(a). But in doing so, respondents put the cart before the horse because without a law that strips Mr. Falls of his right to vote, he is not, in fact, a person "who has been disqualified from exercising that right." Under the Tennessee Constitution Article I, Section 5, a person convicted of a felony who is not prohibited from voting by any law need not restore his right to vote. *Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983) ("It is true that the declaration of the right of universal suffrage is self-executing in that any citizen may rely upon it independently of any legislative enactment. However, the exception to universal suffrage is expressly dependent upon legislative action.") (quoting *Crutchfield v. Collins*, 607 S.W.2d 478, 481 (Tenn. 1980)).

In summer 2020, Applicant-Appellant Falls filed a Verified Complaint for Declaratory and Injunctive Relief seeking a declaration that he was entitled to vote in Tennessee and further seeking temporary and permanent injunctions against Respondents-Appellees for violating his right to vote. T.R. 1-19. Because an important primary election was fast approaching, Applicant-Appellant Falls sought a temporary injunction allowing him to cast a ballot. T.R. 15-16. The Chancery Court denied the temporary injunction on the grounds that it was too close to

the primary for relief to be granted. T.R. 171-17. Applicant-Appellant Falls then moved for summary judgment. T.R. 243-46.

In an order entered on October 6, 2020, the Chancery Court denied Applicant-Appellant Falls' Motion for Summary Judgment and granted summary judgment to Respondents-Appellees.

Applicant-Appellant Falls appealed the Chancery Court's ruling to the Court of Appeals of Tennessee at Nashville on November 4, 2020. T.R. 546-47. In an order entered on October 5, 2021, the Court of Appeals affirmed the Chancery Court's order denying Applicant-Appellant Falls' motion for summary judgment.

Applicant-Appellant Falls now seeks to appeal by permission of this Court under Rule 11 of the Tennessee Rules of Appellate Procedure from the opinion of the Court of Appeals at Nashville affirming the Chancery Court's final order granting summary judgment in favor of Respondents-Appellees.

STATEMENT OF FACTS

A. Statutory Background

The Tennessee 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, previously ascertained and declared by law, and judgment thereon by a court of competent jurisdiction." Tenn. Const. Art. I, § 5. The Tennessee Supreme Court has held that the right to vote is self-executing, but disenfranchisement for felony convictions is "expressly dependent upon legislative action." *Gaskin*, 661 S.W.2d at 867 ("It is true that the declaration of the right of universal suffrage is self-executing in that any citizen may rely upon it

independently of any legislative enactment. However, the exception to universal suffrage is expressly dependent upon legislative action.") (quoting *Crutchfield*, 607 S.W.2d at 481.) Where the legislature enacts both (1) a law defining the crimes considered "infamous," *and* (2) a law stating that a person convicted of an "infamous" crime will be denied the right to vote, only then can the state deny the right to vote to an otherwise qualified citizen. *Crutchfield*, 607 S.W.2d at 482 ("The clear meaning of Article I, Section 5 and Article IV, Section 1 and 2 is: The State shall have no power to deny any citizen the right to vote except that the legislature may provide in advance that loss of voting rights shall be part of the punishment for crimes declared in advance to be infamous.") Without an explicit statement depriving a person of the right to vote, however, even a person who has been convicted of a felony is not disenfranchised and must be treated like any other voter according to the Tennessee Constitution. *Id.*

The legislature currently defines "infamous" crimes in the code of criminal procedure to encompass all felony convictions in Tennessee state courts. Tenn. Code Ann. § 40-20-112 ("Upon conviction for any felony, it shall be the judgment of the court that the defendant be infamous and be immediately disqualified from exercising the right of suffrage."). The Tennessee Supreme Court has twice held that this clause only applies to people with felony convictions from Tennessee state courts. *Burdine v. Kennon*, 209 S.W.2d 9, 10 (Tenn. 1948) ("This legislative direction that upon conviction the court shall make as a part of its judgment an adjudication of infamy necessarily refers to the judgment of a criminal

court of Tennessee. Our legislature, of course, has no authority to direct the courts of another jurisdiction what to include in its judgments, and would not presume to do so."); *Vines v. State*, 231 S.W.2d 332, 334 (Tenn. 1950) ("The fact that this witness had been convicted of robbery in New Jersey would not render him infamous under the laws of Tennessee."). Thus, § 40-20-112 has no application to Mr. Falls, who only has an out-of-state conviction.

Accordingly, the legislature has also defined the contours of disenfranchisement for the equivalents of infamous convictions in out-of-state courts. In doing so, the Legislature has taken the right to vote away from people with out-of-state convictions under the following circumstances:

> (3) No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election in this state *unless such person has been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or the person's full rights of citizenship have otherwise been restored in accordance with the laws of such other state*, or the law of this state.

Tenn. Code Ann. § 2-19-143(3) (emphasis added). Since Applicant-Appellant Falls does not have a Tennessee state felony conviction, therefore, only Section 2-19-143(3) applies in this case.

As referenced in the final clause of Section 2-19-143(3), Tennessee law provides certain mechanisms for the restoration of civil rights. That process is codified in the code of criminal procedure. *See* Tenn. Code Ann. § 40-29-101 et seq.

When the Tennessee Legislature initially created a civil rights restoration process in 1981, the avenue was a court petition available only to individuals with Tennessee convictions. 1981 Pub. Act 345, § 7. It was not open to individuals with convictions from other states. Thus, a potential voter with an out-of-state conviction could *only* vote again if they were no longer disenfranchised under Section 2-19-143(3) because the state of their conviction restored their voting rights (either via clemency or that state's law). In 1983, the Legislature amended both the elections code and criminal procedure code to allow people with convictions from out-of-state to take advantage of the rights restoration process available under the Tennessee code of criminal procedure. *See* 1983 Pub. Act 207, § 2 (codified at Tenn. Code Ann. § 2-19-143(3)) (adding "under the law of this state" as a third exception to disenfranchisement for people with out-of-state convictions); *id.* at § 3 (codified as amended at § 40-29-101 et seq.) (adding language about out-of-state convictions to the rights restoration process outlined in the code of criminal procedure).

In 2006, the Legislature amended the code of criminal procedure to create a new, easier, administrative process for voting rights restoration under Tennessee law besides petitioning a court. 2006 Pub. Act 860, § 1 (codified as amended at Tenn. Code Ann. § 40-29-201 et seq.). Like the court petition procedure as of 1983, the Certification of Restoration ("COR") procedure is open to those with in-state, federal, or out-of-state

convictions. The 2006 law allows anyone with a felony conviction after May 18, 1981, to apply to have their voting rights restored if they meet certain criteria. *Id.* (codified as amended at Tenn. Code Ann. § 40-29-202). Thus, a person with an out-of-state conviction who is ineligible to vote due to that conviction can take advantage of this process. This process, among other things, requires a person to have paid all court costs and restitution related to their disqualifying conviction. Tenn. Code Ann. § 40-29-202(b).

But while the legislature made this new rights restoration pathway available to "any person who has been disqualified from exercising [the right to vote] by reason of a conviction in any state or federal court," nothing in the 2006 enactment repeals, abrogates, or amends § 2-19-143(3), which prohibits registration and voting for out-of-state convictions *only* to those who have not been restored to citizenship by the pardoning authority, the law of the state of conviction, or Tennessee law. *Id.* (codified at Tenn. Code Ann. § 40-29-202(a)). Thus, people who have had their rights of citizenship restored in the state of conviction are not "person[s] who ha[ve] been disqualified from exercising [the right to vote] by reason of a conviction in any state or federal court." *Id.* A person who is not prohibited from voting need not go through the administrative procedure to restore his or her right to vote. Any other reading would render the first two exceptions in § 2-19-143(3)—for restoration based on clemency or state law in the state of conviction—meaningless.

B. Respondents-Appellees' Shifting Interpretation of the Rights Restoration Criteria for Individuals with Out-of-State Convictions

Until recently, the Secretary of State's office agreed with Applicant-Appellant Falls that Tennessee Code Ann. § 2-19-143(3) identifies three *independent* exceptions to disenfranchisement for a person with an out-of-state felony conviction: (1) a pardon or similar restoration of rights by the Governor or appropriate authority of the state of conviction, (2) restoration of rights by operation of the law of the state of conviction, or (3) restoration of rights by operation of Tennessee law. T.R. 20. In a letter sent on November 22, 2019, Respondent Goins stated that Tennessee Code Section 2-19-143(3) was "the controlling Tennessee law" governing the eligibility of people with out-of-state convictions. T.R. 21. He further explained that "a person with an out-of-state conviction may have his voting rights restored, if *one* of the following can be shown: 1. The person has been pardoned or has had their rights of citizenship restored by the governor or other appropriate authority of the convicting state; or 2. The person's full rights of citizenship have been restored in accordance with the laws of such other state." *Id.* In that letter, Respondent Goins applied these principles to three individuals with out-of-state convictions. He concluded that two of these individuals had their full rights of citizenship restored by operation of the laws of the states of conviction and thus were "eligible to register to vote in Tennessee." T.R. 21-23. He concluded that third person was not eligible because they had not had their full rights of citizenship restored under the laws of the relevant state. *Id.* The letter, which focused on the first two exceptions to disenfranchisement under 2-

19-143(3), nowhere suggested that the eligibility requirements for a Certificate of Restoration under § 40-29-202 would apply to those individuals. *Id.* Indeed, that statute was not even mentioned.

This letter was part and parcel of substantial correspondence, beginning August 8, 2019, between Applicant-Appellants' counsel and counsel within the Secretary of State's office on the issue of rights restoration for people with out-of-state convictions. T.R. 8. After the issuance of the November 22, 2019 letter, Applicant-Appellant's counsel held a telephone conference in December 2019 with the Secretary of State's office, in which they reiterated the position of the November 22, 2019 letter and agreed to work with Applicant-Appellants' counsel to implement a standard form for people with out-of-state convictions to use when registering to vote. *Id.* After December 2019, the Secretary of State's office failed to respond to follow-up correspondence from Applicant-Appellants' counsel about implementing a standard form. *Id.*

On March 26, 2020, the Attorney General issued an opinion, upon request from Secretary Hargett, contrary to the prior position taken by the Secretary of State. The opinion concludes that people with out-of-state convictions cannot rely on the restoration of their civil rights by the state of their conviction to establish eligibility to vote in Tennessee, but instead must meet the criteria dictated by the administrative Certificate of Restoration process. T.R. 9; Tenn. Atty. Gen. Op. No. 20-06 (Mar. 26, 2020), *available at*

https://www.tn.gov/content/dam/tn/attorneygeneral/documents/ops/2020/op20-06.pdf. The Opinion does not address the three exceptions to

disenfranchisement built into Tennessee Code Ann. § 2-19-143(3). *Id.* Instead, it takes for granted that any person with a felony conviction is disqualified from voting in Tennessee and must avail himself of the administrative procedure for restoration. This assumption runs afoul of the Tennessee Supreme Court's holding that the Tennessee Constitution's allowance for felony disenfranchisement is never self-executing. *Gaskin*, 661 S.W.2d at 867. Based on this Attorney General opinion, Respondents-Appellees' denied Applicant-Appellant Falls' voter registration application because he did not provide evidence that he meets all the criteria for restoration under § 40-29-202 (namely, payment of costs and restitution). T.R. 33.

C. Applicant-Appellant Falls

Applicant-Appellant Ernest Falls is a United States citizen who has lived in Bean Station, Grainger County, Tennessee for nearly four years. T.R. 9. In or around 1986, Mr. Falls was convicted of involuntary manslaughter in Virginia. *Id.* He completed his sentence in 1987 and has had no subsequent criminal convictions in the intervening 35 years. *Id.* In February 2020, Mr. Falls was provided an individualized grant of clemency by Governor Ralph Northam. T.R. 30. The clemency order restored Mr. Falls' full rights of citizenship, including the right to run for office, the right to serve on a jury, and the right to vote. *Id.* Relying on Tennessee Code § 2-19-143(3) and the Election Division's November 2019 letter regarding its application, on June 4, 2020, Mr. Falls applied to register to vote in Grainger County, Tennessee by submitting to the

Grainger County Election Commission his voter registration application, a form disclosing his out-of-state conviction, and his letter of clemency from the Governor of Virginia. T.R. 9-10.

On June 22, 2020, Mr. Falls received notice from the Grainger County Registrar that the Elections Division had denied his voter registration because he did not provide evidence that he owes no costs or restitution for his Virginia conviction. T.R. 30-34. Payment of costs or restitution was not a condition of Governor Northam's unequivocal restoration of Mr. Falls' full rights of citizenship. T.R. 41. As a result, Mr. Falls was unable to vote in the 2020 primary and general elections and all elections since.

STANDARD OF REVIEW

The Supreme Court reviews a trial court's ruling on a motion for summary judgment de novo, without a presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). In doing so, the Supreme Court makes a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied. *Id.* The Supreme Court also reviews the interpretation of statutes by the lower courts de novo, with no presumption of correctness. *Am. Heritage Apartments, Inc. v. Hamilton Cty. Water and Wastewater Treatment Auth.*, 494 S.W.3d 31, 40 (Tenn. 2016) (citing *Hayes v. Gibson Cty.*, 288 S.W.3d 334, 337 (Tenn. 2009)). *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015) (citing *Mills v. Fulmarque*, 360 S.W.3d 362, 368 (Tenn. 2012); *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011)).

ARGUMENT

A. Introduction

Applicant-Appellant Ernest Falls is not deprived of the right to vote under Tennessee law. Tennessee law prohibits individuals like Applicant-Appellant Falls from voting *unless* and until they have had their rights of citizenship restored by the governor in the state of conviction, *or* under the law in the state of conviction, *or* by Tennessee's law. Tenn. Code Ann. § 2-19-143(3). A person with an out-of-state conviction who is deprived of the right to vote may restore that right by meeting the criteria of the administrative rights restoration process under Tennessee law found in Section 40-29-202. But the procedure in Section 40-29-202 is unnecessary in this case because it is uncontested that Applicant-Appellant Falls has had his full rights of citizenship restored by the governor in the state of his only felony conviction. T.R. 489. As a result, he falls into Section 2-19-143(3)'s first exception to deprivation of the right to vote and there is no other statement of Tennessee law depriving him of that right.

Under the Tennessee Constitution, all otherwise eligible Tennesseans possess a default right to vote which is not lost upon a felony conviction unless the legislature has specifically enacted legislation denying that right as a result of conviction. Because no legislative act deprives Applicant-Appellant Falls of his right to vote, he has the right to vote.

Yet Respondents-Appellees insist that Applicant-Appellant Falls must still meet the criteria to restore his right to vote through the administrative certificate process. Their arguments violate the plain

language of both the disenfranchisement and rights restoration statutes and needlessly set them in conflict.

Respondents-Appellees and the opinions below advance three arguments in support of the proposition that Applicant-Appellant Falls remains deprived of the right to vote, despite no longer being disenfranchised under Section 2-19-143(3). First, they contend that some other statute deprives Applicant-Appellant Falls of the right to vote – namely, Section 40-20-112. That argument fails because this Court has ruled that Section 40-20-112 does not impact individuals convicted of felonies outside of Tennessee state courts. Next, Respondents-Appellees and the opinions below suggest that the deprivation of Applicant-Appellant Falls' right to vote survives the limited scope of Section 2-19-143(3). Logically, this could only be true in one of two ways. Either the rights restoration legislation in 2006 implicitly repealed the exceptions to disenfranchisement or the rights restoration statutes apply to anyone who has ever lost the right to vote, regardless of whether they are still deprived of that right by any current statement of law.

Applicant-Appellant Falls respectfully asks this Court to recognize that because he is not deprived of the right to vote under any Tennessee law, he does not need to restore that right, and to reverse the Court of Appeals' decision affirming the Chancery Court's grant of summary judgment to Respondents-Appellees.

B. Applicable Legal Standards

When engaging in statutory interpretation, Tennessee courts follow well-established precepts.

First, the inquiry always begins with a plain meaning analysis of

the statutes in question. *Mills*, *Inc.*, 360 S.W.3d at 368 ("The text of the statute is of primary importance."). In so doing, courts must "construe a statute so that no part will be inoperative, superfluous, void, or insignificant, giving full effect to legislative intent." *Coffman v. Armstrong Int'l, Inc.,* 615 S.W.3d 888, 903 (Tenn. 2021) (internal quotation marks and citations omitted). The goal is to give full effect to the intent of the legislature, without going beyond the scope of the words. *Larsen–Ball v. Ball*, 301 S.W.3d 228, 232 (Tenn. 2010); *In re Estate of Tanner*, 295 S.W.3d 610, 613 (Tenn. 2009).

Additionally, courts construe relevant statutes *in pari materia.* "[S]tatutes 'in pari materia'—those relating to the same subject or having a common purpose—are to be construed together, and the construction of one such statute, if doubtful, may be aided by considering the words and legislative intent indicated by the language of another statute." *Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010). Statutes on the same subject, although in apparent conflict, are construed to be in harmony if reasonably possible. *In re Akins*, 87 S.W.3d 488, 493 (Tenn. 2002). *Shorts v. Bartholomew*, 278 S.W.3d 268, 277 (Tenn. 2009).

To aid their analysis, courts often look to the context of legislative enactments and what they changed or did not change about prior law. *See In re Kaliyah S.*, 455 S.W.3d at 541 (analyzing the "evolution of Tennessee statutes" on the issue in the case); *see also State v. Mixon*, 983 S.W.2d 661, 669 (Tenn. 1999) (reviewing the history of enactments and court cases to discern the meaning of the legislature's choice to replace the phrase "from rendition of judgment," with "after the judgment

becomes final"). Tennessee courts recognize that the legislature does not write its laws on a blank slate. As a result, understanding the language prior to enactment of a bill is part of the inquiry into the plain meaning of that law. *See Murfreesboro Med. Clinic, P.A. v. Udom*, 166 S.W.3d 674, 682-683 (Tenn. 2005) (contextualizing the narrow scope of non-compete legislation by pointing to a prior Supreme Court case establishing a general presumption against non-competes). When analyzing laws enacted by the legislature, courts have recognized that "[u]nless the newer statute expressly repeals or amends the old one, the new provision is presumed to be in accord with the same policy embodied in the prior statutes . . . ." *Shorts*, 278 S.W.3d at 277. This Court has recognized that "repeals by implication are not favored." *Johnson v. Hopkins*, 432 S.W.3d 840, 848 (Tenn. 2013).

Finally, Tennessee courts will avoid constructions that create absurd or unconstitutional results. As the chief law development court, the Supreme Court must "not apply a particular interpretation to a statute if that interpretation would yield an absurd result." *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000). Additionally, to preserve the integrity of the legislature's acts it is the Court's "duty to adopt a construction which will sustain a statute and avoid a constitutional conflict if any reasonable construction exists that satisfies the requirements of the Constitution." *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 529–30 (Tenn. 1993) ("When faced with a choice between two constructions, one of which will sustain the validity of the statute and avoid a conflict with the Constitution, and another

which renders the statute unconstitutional, we must choose the former.") (citing *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993)).

Applying these well-established precepts, Applicant-Appellant Falls' common-sense reading of Tennessee's felony disenfranchisement and restoration laws should prevail and Respondents-Appellees' interpretation—which violates the plain language and purpose of the statutes, renders code sections superfluous, requires this Court to find that the introduction of a new rights restoration statute implicitly expanded the scope of disenfranchisement, and creates both absurd and unconstitutional results—should be rejected.

C. The plain language of the statutes and existing case law support Applicant-Appellant Falls' view that because he is not deprived of the right to vote and he does not need to restore that right.

Only a person who is deprived of the right to vote needs to restore that right. Section 2-19-143(3) governs the circumstances under which a person with a felony conviction from another state is prohibited from voting. Section 40-29-201, et seq., creates an administrative mechanism by which a person who is prohibited from voting may restore the right to vote. The plain language of Section 2-19-143(3) limits the scope of deprivation of the right to vote for people with out-of-state convictions, carving out people who have had their rights of citizenship restored either in the state of conviction or through the procedures available in Tennessee. Symmetrically, the language of Section 40-29-201, et seq., recognizes that it is a mechanism available to individuals who have lost the right to vote by some other statement of Tennessee law. It does not

describe the circumstances under which a person is prevented from voting, it merely describes the terms and procedures for restoring that right under Tennessee law.

Applicant-Appellant Falls' interpretation accounts for precedent and the Tennessee Constitution, which establish that there is a default right to vote for all Tennesseans regardless of felony conviction status. The legislature is constitutionally allowed to pass laws that abridge that right upon conviction of a felony (an "infamous" crime), but that disenfranchisement does not outlive scope of the application of those laws. *Crutchfield*, 607 S.W.2d at 481 (holding that the Tennessee Constitution's grant of universal suffrage is self-executing and can be relied upon "independently of any legislative enactment," including by people who have been convicted of felonies, but the exception to suffrage is dependent on express legislative action). In *Crutchfield*, the Court of Appeals held that unless a person is statutorily deprived of the right to vote by their felony conviction, they maintain that fundamental right. *Id.* The existence of a rights restoration process when the *Crutchfield* plaintiffs were convicted of felonies did not by itself mean that they were deprived of the right to vote because they had not used it. *Id.*; *see also*, Tenn. Code 1932, § 7183 ("Persons rendered infamous, or deprived of the rights of citizenship, by the judgment of a court, may be restored by the circuit court . . ."). This Court upheld *Crutchfield*'s interpretation of the Tennessee Constitution in *Gaskin*, 661 S.W.2d at 867 (holding that a person with a felony has a default right to vote and explaining that this

right may only be abridged by legislation in place at the time of the conviction).

Contrary to that case law, Respondents-Appellees insist that even though Applicant-Appellant Falls is exempted from Section 2-19-143(3)'s prohibition on voting, he remains disenfranchised because he has not met the "additional criteria for rights restoration" prescribed by Section 40-29-202(b) and (c). Respondents-Appellees' interpretation violates the plain language of Section 2-19-143(3) and needlessly creates conflict between the statutes. Their interpretation vitiates the exceptions to disenfranchisement selected by the legislature in Section 2-19-143(3) and ignores the language in Section 40-29-201 et seq. that presupposes that a person is already disenfranchised by virtue of another law. It also fails to consider that Section 40-29-201 et seq. is already accounted for in Section 2-19-143(3): it falls under the third exception for restoration "under the law of this state." Respondent interpretation creates a needless conflict between the disenfranchisement and re-enfranchisement statutes regarding people in Applicant-Appellant Falls' shoes—individuals with convictions from other states that may restore citizenship without regard to outstanding financial obligations. Since Applicant-Appellant Falls' interpretation avoids that conflict while also giving full meaning to the relevant statutes, it should be adopted by this Court.

1. The statutes at issue independently govern the deprivation of the right to vote and the restoration of that right.

The two statutes at issue govern the deprivation of the right to vote for a felony conviction and the restoration of that right, respectively.

Section 2-19-143 governs "the exercise of the right of suffrage" while Section 40-29-201 governs "restoration of the right of suffrage." Tenn. Code Ann. 2-19-143 ("The following provisions shall govern the exercise of the right of suffrage for those persons convicted of an infamous crime . . . ."); Tenn. Code Ann. 40-29-201(a) ("The provisions and procedures of this part shall apply to and govern restoration of the right of suffrage . . . .").

Section 2-19-143(3) speaks to when a person with a felony conviction from another state is prohibited from registering and voting. It states that a person with a conviction that would be infamous if it had been entered in a Tennessee court (meaning all felonies pursuant to Section 40-20-112) cannot vote unless and until he or she meets one of three exceptions. Tenn. Code § 2-19-143(3). Those exceptions are restoration of the right of citizenship by the governor in the state of conviction, the restoration of citizenship by operation of law in the state of conviction, or the restoration of citizenship rights under the law of Tennessee. *Id.* If a person falls into one of those three exceptions, they fall outside of the scope of Section 2-19-143(3)'s prohibition on registering and voting. *Id.* In other words, a person who meets any of the three exceptions, is no longer prohibited from voting by this Section.

Chapter 40-29 ("restoration of citizenship") is the chapter of laws referred to by Section 2-19-143(3)'s third exception to disenfranchisement for individuals whose "full rights of citizenship have otherwise been restored in accordance with . . . the law of this state." That chapter provides the mechanisms to restore the rights of citizenship in Tennessee, which, if followed by a person with a conviction from another

state, is one pathway to ending Section 2-19-143(3)'s prohibition on registering and voting. Section 40-29-101 et seq. provides a pathway in the courts to restore to all citizenship rights, including the right to vote, right to serve on a jury, and right to run for office. Section 40-29-201 et seq. provides an alternative, administrative pathway to restore just the right to vote by meeting certain benchmarks and securing a Certificate of Restoration (COR) of the right to vote. Tenn. Code Ann. § 40-29-203. One of the benchmarks required to obtain the COR is payment of any court costs or restitution ordered on the felony case, if applicable. Tenn. Code Ann. § 40-29-202(b), (c).

As it is the chapter on "Restoration of Citizenship," chapter 29 presupposes that there is a need for rights restoration because some other part of the code deprives individuals of those rights. Thus, it states over and over that it applies to individuals who have lost the right to vote. Part 201 states that it "shall apply to and govern restoration of the right of suffrage in this state to any person *who has been disqualified from exercising that right* by reason of a conviction in any state or federal court of an infamous crime." Tenn. Code Ann. § 40-29-201(a) (emphasis added). Because the rights restoration procedures are available for use by any eligible Tennessean, the statutes specify that they are open to use by individuals with felony convictions from Tennessee, Federal, and out-of-state courts. Tenn. Code Ann. § 40-29-201(a) ("The provisions and procedures of this part shall apply to and govern restoration of the right of suffrage in this state to *any person who has been disqualified from exercising that right by reason of a conviction in any state or federal court* of an infamous crime.") (emphasis added); *see also* Tenn. Code Ann. § 40-

29-202 ("A person rendered infamous and *deprived of the right of suffrage* by the judgment of any state or federal court is eligible to apply for a voter registration card and have the right of suffrage restored. . . .") (emphasis added). The circumstances under which a "person shall not be eligible to . . . have the right of suffrage restored" do not apply to a person who is not deprived of that right at the time of registration because, by definition, they do not need to "have the right of suffrage restored". Tenn. Code Ann. § 40-29-202(b). Operating alone, chapter 40-29 would not deprive anyone of the right to vote. Its usage is dependent on a person already being deprived of the right to vote by some other statute. It does not reach beyond people who are already deprived of that right to extend the scope of disenfranchisement – it simply, as it states, allows for restoration of that right under certain circumstances and through certain procedures.

Applicant-Appellant Falls asserts that because he is not prohibited from voting under Section 2-19-143(3) (or any other statute, see *infra* § D(1)) he does not need to avail himself of the rights restoration processes available under Section 40-29-202.

2. The Tennessee Constitution provides a default right to vote for all, regardless of felony conviction.

In opposition, Respondents-Appellees contend that because Applicant-Appellant Falls' has been convicted of a felony, he cannot vote *unless and until* he restores his right to vote and specifically assert that he must do so by meeting the criteria for the COR process in Section 40-29-202. In order to reach this result, Respondents-Appellees urge this Court to accept the premise that all people with past felony convictions

are disenfranchised unless and until they undergo the voting rights restoration process outlined in the code of criminal procedure at Section 40-29-201, et seq. This Court has already rejected such a rule.

The correct starting place turns on whether there is a default right to vote in Tennessee for people with felony convictions. The Tennessee Supreme Court has already answered that question: under the Tennessee Constitution, all otherwise qualified citizens have the right to vote, regardless of criminal history.

Tennessee Constitution Article I, Section 5 makes clear that an inquiry into an individual's voting rights always begins with the premise of universal suffrage. *Crutchfield*, 607 S.W.2d at 481 (holding that the Tennessee Constitution's grant of universal suffrage is self-executing and can be relied upon "independently of any legislative enactment," including by people who have been convicted of felonies). That right to vote may only be revoked following an individual's conviction for an infamous crime by explicitly disenfranchising legislation. Tenn. Const. Art. I, § 5, Art. IV, § 2; *Gaskin*, 661 S.W.2d at 867 ("[T]the exception to universal suffrage [for infamous crimes] is expressly dependent upon legislative action."). In *Crutchfield*, the Court of Appeals held that in the absence of legislation revoking the right to vote, a Tennessean who has been convicted of an infamous felony has the right to vote protected by the full weight of the Tennessee Constitution. 607 S.W.2d at 481. In *Gaskin*, the Tennessee Supreme Court affirmed that holding and went further to say that even if it plainly intends to, the legislature cannot retroactively abridge the right to vote of people who were convicted of

felonies if those qualifications did not exist at the time of their convictions. 661 S.W.2d at 868.

Thus, Respondents-Appellees put the cart before the horse by taking for granted that Applicant-Appellant Falls is disenfranchised because he has a felony conviction. Respondents-Appellees' Br. at 18 ("Plaintiff invokes his 'fundamental right to vote' under the Tennessee Constitution, which he insists he maintains. But as discussed above, Plaintiff has no right to vote until he satisfies the requirements of Tenn. Code Ann. § 40-29-202. Consequently, Plaintiff's constitutional claim evaporates.") Respondents-Appellees conclude that because Applicant-Appellant Falls has not proven that his right to vote has been restored via the rights restoration mechanism in § 40-29-202, he has no fundamental right to vote. That argument is backwards. The existence of a rights restoration process does not by itself deny people the right to vote. At the time of *Crutchfield* plaintiffs' convictions, now Section § 40-29-101, et seq., provided a court-based mechanism for restoration of citizenship rights, of which the right to vote is indisputably one. Tenn. Code 1932 § 7183. But the plaintiffs there did not need to use that mechanism because they were not deprived of the right to vote by any statement of law. *Crutchfield*, 607 S.W.2d at 481. Just because there was a way to restore their voting rights if they had lost them, it did not follow that their voting rights had been lost.

After concluding that because Applicant-Appellant Falls has been convicted of a felony he has no right to vote, Respondents-Appellees and the opinions below jump ahead to analyzing § 40-29-202's rights restoration criteria and find that Applicant-Appellant Falls has not met

them and therefore cannot vote. But Respondents cannot point to any statement of Tennessee law that disenfranchises Applicant-Appellant Falls. Because Section 2-19-143(3)'s prohibition on voting no longer applies to Applicant-Appellant Falls and because no other statement of law deprives him of that right, *infra* § D(1), he already has the right to vote regardless of any requirements and procedures that exist to restore it.

3. Respondents-Appellees' interpretation violates the plain language and needlessly creates conflict between the statutes.

Applicant-Appellant Falls' interpretation is also supported by the standard canons of statutory interpretation that require courts to harmonize and give full meaning to legislative enactments wherever possible. *Shorts*, 278 S.W.3d at 277 ("Statutes on the same subject, although in apparent conflict, are construed to be in harmony if reasonably possible.") (quoting *In re Akins*, 87 S.W.3d at 493); *Lawrence Cty. Educ. Ass'n v. Lawrence Cty. Bd. of Educ.*, 244 S.W.3d 302, 309 (Tenn. 2007) ("In construing legislative enactments, we presume that every word in a statute has meaning and purpose; each word should be given full effect if the obvious intention of the General Assembly is not violated by so doing."). If there is a reasonable construction that avoids statutory conflict, the courts should choose it. *LensCrafters Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000).

Here, only Applicant-Appellant Falls' construction harmonizes the statutes and gives them their full meaning. Under Applicant-Appellant Falls' reading, a person who is not prohibited from voting need not restore

their right to vote. Section 2-19-143(3) governs whether people with out-of-state convictions are deprived of the right to vote. Because Applicant-Appellant Falls meets its exception for people who have been restored to citizenship in the state of conviction, he need not take advantage of Section 40-29-202's pathway to restoration. This is consistent with Section 2-19-143(3)'s plain language, including the disjunctive nature of the three exceptions to the prohibition on registering and voting. It is also consistent with Section 40-29-202's statement that it applies to "restoration of the right of suffrage in this state to any person *who has been disqualified from exercising that right*" (emphasis added) which presumes that there are Tennesseans who already "have been disqualified from exercising that right" and thus have need of the procedures therein for restoration of such right. This interpretation harmonizes the statutes without rendering any portions superfluous.

To illustrate this point, consider if Section 2-19-143(3) stated the following:

> No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election in this state unless five years have passed since that person's release from supervision or the person's full rights of citizenship have otherwise been restored in accordance with the law of this state.

It would be very clear here that once five years have passed since the end of a person's supervision, they are no longer disallowed from registering and voting. A person who is no longer disenfranchised because of the passage of time need not go through the rights restoration process. The rights restoration process "in accordance with the law of this state," however, would be open and available to anyone still within five years of their release. Any tweaks that the legislature added to the process for restoration under the law of this state would not affect disenfranchisement past five years after release. If the legislature decided to extend deprivation of the right to vote beyond five years from release, it would need to amend or strike that phrase from Section 2-19-143(3). In this analogy, Respondents-Appellees advance the argument that all people convicted of felonies must restore their right to vote regardless of the passage of time since the conviction. That creates a needless conflict for individuals who were convicted of felonies more than five years ago. The preferable and seamless way to read these statutes would be that a person is not eligible to vote unless they have restored that right *or* five years have passed—whichever comes first.

So too here, a person with an out-of-state conviction may vote if they are restored to the rights of citizenship by the governor or laws of the state of conviction or they have restored their right to vote under Tennessee's process—whichever comes first. This reading is supported by an analysis of the enactments that created the disenfranchisement and rights restoration statutes, *infra* § D(2)(b), and by understanding the purpose of the 2006 law which created Section 40-29-201, et seq., *infra* § D(2)(c).

On the other hand, Respondents-Appellees' interpretation of the statutes needlessly sets the statutes in conflict and violates the plain language of both sections.

Respondents-Appellees' reading turns the disjunctive "or" in Section 2-19-143(3) into a conjunctive "and". Section 2-19-143(3) states that a person with a conviction from another state is disenfranchised unless and until their civil rights have been restored by the law of the state of conviction, **or** by the governor of the state of conviction, **or** under Tennessee's rights restoration procedures. The exceptions are disjunctive. Yet, Respondents-Appellees' interpretation turns disjunctive "or"s in § 2-19-143(3) into conjunctive "and"s, requiring that all people with out-of-state convictions meet the requirements of § 40-29-202 in order to vote. This violates the plain language of § 2-19-143(3) and renders the first two out of three exceptions meaningless. *See State v. Arriola*, No. M2007-00428-CCA-R3-CD, 2008 WL 1991098, at *5 (Tenn. Crim. App. May 8, 2008) (explaining that under its ordinary definition, "or" is "a disjunctive particle used to express an alternative or to give a choice of one among two or more things," whereas "and" is "a conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first" (quoting Black's Law Dictionary 1095, 86 (6th ed. 1990)).

Respondents-Appellees make the conclusory argument that their interpretation does not do this because "Section 2-19-143(3) merely sets forth one requirement for disenfranchised voters. To satisfy the statute, they must meet at least one of the criteria—thus not vitiating the 'or.'" Respondents-Appellees' Br. 16. They go on to argue that Section 2-19-

143(3) does not preclude the existence of other possible requirements placed on Applicant-Appellant Falls' right to vote. This could be theoretically true, if Section 2-19-143(3) were merely describing a rights restoration mechanism and Applicant-Appellant Falls were prohibited from voting by some other statement of law. However, as discussed *infra* § D(1), Section 2-19-143(3) is the only disenfranchisement clause that could apply to Applicant-Appellant Falls. Because he is excepted from its application, no other qualifications may be placed on his right to vote.

Moreover, Respondents-Appellees ignore that the other applicable criteria they believe should qualify Applicant-Appellant Falls' right to vote are already accounted for in Section 2-19-143(3) itself. Section 40-29-202 what Section 2-19-143(3) is referring as restoration "according to . . . the laws of this state." Tenn. Code Ann. § 2-19-143(3). That phrase has always referred to the mechanisms described in Title 40, Chapter 29. 1983 Pub. Act 207, § 2; *see infra* § D(2)(b). Thus, requiring a person to meet the criteria of Section 40-29-202 simply means that all individuals must restore their rights "under the law of this state." This reading effectively nullifies the first two exceptions under Section 2-19-143(3). Under Respondents-Appellees' interpretation there is no possible scenario where a person with an out-of-state conviction could vote without having their rights restored according to "the law of this state." This renders superfluous the exceptions to disenfranchisement for people who have "been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state" or whose "full rights of citizenship have otherwise been restored in accordance with the laws of such other state." Tenn. Code Ann. § 2-19-143(3). *Womack v. Corr.*

Corp. of Am., 448 S.W.3d 362, 373 (Tenn. 2014) (holding that courts have a duty avoid construing a statute in such a way that would render any part of it superfluous or insignificant). As described *infra* § D(2)(b), when the 1983 legislature added the phrase "or under the law of this state" to Section 2-19-143(3), it deliberately kept the three exceptions to disenfranchisement for individuals with out-of-state convictions independent from each other, making a policy choice to honor restorations by the governor or laws in the state of conviction. Had the 2006 legislature intended to rewrite those disjunctive "or"s into conjunctive "and"s it could have and would have simply done exactly that. *See infra* § D(2).

D. Respondents-Appellees and the opinions below advanced three explanations for why Applicant-Appellant Falls cannot vote, despite his interpretation being preferable based on the plain language, constitutional precedent, and goals of harmonizing the statutes, but all three arguments fail.

To elide the straightforward application of Section 2-19-143(3)'s exceptions, Respondents-Appellees and the courts below have all suggested that some other statutory authority deprives Applicant-Appellant Falls of the right to vote or keeps him disenfranchised beyond its initial scope. There are effectively three possibilities that the state and the courts below have relied upon. All three fail because they conflict with precedent, ignore the statutory structure and legislative enactments that created it, and produce absurd, possibly unconstitutional, results.

First, Respondents-Appellees' argue that Section 40-20-112 disenfranchises Applicant-Appellant Falls beyond the reach of Section 2-19-143(3). That argument, however, is foreclosed by binding precedent from this court.

Next, the Court of Appeals suggests that the deprivation of Applicant-Appellant Falls' right to vote survives the end of the application of Section 2-19-143(3), notwithstanding the clauses that set conditions and limits on its application. *See Falls v. Goins*, No. M2020-01510-COA-R3-CV, 2021 WL 6052583, *5 (Tenn. Ct. App. 2020) ("When Mr. Falls moved to Tennessee in 2018, he was disqualified from voting in Tennessee because of his Virginia conviction: 'No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election in this state.' Tenn. Code Ann. § 2-19-143(3)."") Notably, to sustain that argument, the Court of Appeals failed to quote the exceptions to Section 2-19-143's deprivation of the right to vote. *Id.*

The justification for divorcing that section from its exceptions essentially takes two forms: either the 2006 enactments creating a new rights restoration process silently repealed the exceptions to disenfranchisement in Section 2-19-143(3), or the rights restoration statute applies to everyone who has ever lost the right to vote, regardless of whether there is a statutory disenfranchising provision that currently applies. The former argument fails because courts assume that the legislature does not silently repeal its previous enactments, the evolution of the statutes shows that the legislature deliberately chose to honor

restorations in the state of conviction, and the Court should follow the purpose of the 2006 statute, which was to streamline restoration, not to expand the scope of disenfranchisement. The latter argument also fails because it undermines the plain language of the statutes, creates absurd results, and raises constitutional concerns.

1. Section 40-20-112 does not disenfranchise people with out-of-state convictions.

Respondents-Appellees' arguments hinge on their allegation that Section 40-20-112 applies to and disenfranchises Applicant-Appellant Falls. *See*, e.g., Tenn. Atty. Gen. Op. 20-06 (Mar. 26, 2020) ("An individual convicted of a felony is 'immediately disqualified from exercising the right of suffrage' in Tennessee. Tenn. Code Ann. § 40-20-112."); *see also* Respondents-Appellees' Br. 12 ("Plaintiff was convicted in a state court of an infamous crime. *See* Tenn. Code Ann. § 40-20-112 (providing that all felonies are infamous crimes.))" (internal citations omitted); *Id*. at 18 ("As discussed, the General Assembly has determined that 'infamous' crimes include all felonies. *See* Tenn. Code Ann. § 40-20-112."). Likewise, in reaching its conclusion, the Chancery Court incorrectly relied on the State's contention that Section 40-20-112 applies to Applicant-Appellant T.R. 542, and the Court of Appeals also erroneously relied on Section 40-20-112 as an additional prohibition on Applicant-Appellant Falls right to vote. *See Falls v. Goins*, 2021 WL 6052583 at *3 ("Accordingly, pursuant to Tenn. Code Ann. § 40-20-112 and Tenn. Code Ann. § 2-19-143, any person convicted of a felony is disenfranchised in Tennessee until the franchise is restored.").

But Section 40-20-112 unambiguously does not apply to Applicant-Appellant Falls. Indeed, this Court has already ruled that Section 40-20-112's deprivation of the right to vote does not reach people with convictions from other states. *Vines*, 231 S.W.2d at 334 ("The fact that this witness had been convicted of robbery in New Jersey would not render him infamous under the laws of Tennessee."). Section 40-20-112 only applies to felony convictions in Tennessee state courts because it is a directive to include a judgment of infamy and disenfranchise individuals convicted in Tennessee state court. Tenn. Code Ann. § 40-20-112 ("Upon conviction for any felony, it shall be the judgment of the court that the defendant be infamous and be immediately disqualified from exercising the right of suffrage."). As this Court has explained, "[t]his legislative direction that upon conviction the court shall make as a part of its judgment an adjudication of infamy necessarily refers to the judgment of a criminal court of Tennessee. Our legislature, of course, has no authority to direct the courts of another jurisdiction what to include in its judgments, and would not presume to do so." *Burdine*, 209 S.W.2d at 10. (emphasis added). The *Burdine* Court held that then Section 11762 (now Section 40-20-112[1]), which at the time directed courts to enter a judgment of infamy for counterfeiting and rendered those convicted of the crime disqualified to give evidence, could only apply to Tennessee state court convictions and not to the individual in that case who had been convicted of counterfeiting in Kentucky. *Id.* at 11. This Court held that although counterfeiting in Kentucky was clearly an offense covered by

[1] See 1981 Pub. Act 459, § 1 (re-codifying § 11762, § 40-2712 as § 40-20-112).

"the spirit of [the enactment creating now § 40-20-112]," a judgment of infamy, "cannot be pronounced without direct authority of law, and it is beyond all question that it is not authorized by the Act." *Id.* at 10. It concluded that "section 11762 cannot apply to a conviction and sentence for a felony of which a defendant was convicted in the courts of another state or jurisdiction. Hence, such conviction in such other jurisdiction does not render the defendant incompetent under this code section as a witness in the courts of Tennessee." *Id.* at 11. Thus, Section 40-20-112 does not apply to Applicant-Appellant Falls, despite Respondent-Appellee's erroneous reliance on that section for the premise that Applicant-Appellant Falls has no fundamental right to vote.

While Section 40-20-112 defines "a crime or offense which would constitute an infamous crime under the laws of this state," it does not expand the scope of disenfranchisement beyond the application and exceptions of Section 2-19-143(3). Absent another law disqualifying him from the franchise, Applicant-Appellant Falls has the right to vote, fully protected by the Tennessee Constitution.

2. The creation of a new rights restoration process in 2006 did not silently repeal the exceptions built into Section 2-19-143(3), expanding the scope of disenfranchisement.

Respondents-Appellees also argue that if the statutes conflict (and Respondents-Appellees' interpretation certainly does set them in conflict), then the more recent, 2006 enactment should be read as repealing the conflicting provisions of Section 2-19-143(3). Of course, as explained *supra* § C(3), if there is a reasonable interpretation that avoids a conflict, the courts must choose it. *Shorts*, 278 S.W.3d at 277. But rather

than adopt that harmonious reading, Respondents-Appellees argue that the new voting rights process is not optional, but mandatory because it implicitly overwrote or repealed the first two other exceptions to Section 2-19-143(3)'s prohibition on voting.

However, the legislature is presumed to be aware of its prior enactments and does not silently repeal those statutes. Moreover, the evolution of these statutes shows that the 1981 legislature deliberately chose to recognize the restorations in other states. Two years later, when the legislature opened the door for Tennesseans with out-of-state convictions to use the rights restoration mechanisms available to those with in-state convictions, it still chose to leave restorations in the state of conviction as separate exceptions to deprivation of the right to vote. The disjunctive nature of those exceptions has been left untouched for nearly forty years. Finally, Respondents-Appellees' argument runs contrary to the purpose of the 2006 legislation, which was to make it easier for people to restore their right to vote, not to expand the scope of disenfranchisement.

a. The 2006 legislation did not explicitly repeal the existing exceptions to deprivation of the right to vote.

When analyzing legislative enactments, this Court has recognized that "unless the newer statute expressly repeals or amends the old one, the new provision is presumed to be in accord with the same policy embodied in the prior statutes . . . ." *Shorts*, 278 S.W.3d at 277. Had the 2006 legislature intended to expand the scope of disenfranchisement for people with out-of-state convictions, the place to do so would have been directly in Section 2-19-143(3). *Johnson*, 432 S.W.3d at 848 (recognizing

that "repeals by implication are not favored."); *see also*, *In re Estate of Tanner*, 295 S.W.3d at 614 ("We also must presume that the General Assembly was aware of any prior enactments at the time the legislation passed") (quoting *Owens*, 908 S.W.2d at 926).

Since 1983, when the legislature amended the statutory scheme to allow people with out-of-state convictions to access in-state rights restoration mechanisms, *infra* § D(2)(b), the legislature has altered or amended the disenfranchisement and re-enfranchisement statutes seven times. But it has not once touched the scope of disenfranchisement or the three disjunctive exceptions to disenfranchisement in Section 2-19-143(3). If the legislature wanted to prohibit all people with out-of-state felony convictions from voting unless they restore their rights under the law of this state, it simply would have struck the additional out-of-state carve outs from the Elections Code. *See In re Kaliyah S.*, 455 S.W.3d at 555 (holding that if the legislature had wanted to impose the "reasonable efforts" standard found in the juvenile proceedings section of the code to all proceedings regarding termination of parental rights, it would have placed that requirement in the section of the code governing termination proceedings in all courts).

> b. The evolution of the statutes shows that the 2006 enactments did not overwrite the first two exceptions to disenfranchisement, but merely added a new, independent rights restoration pathway "according to . . . the law of this state."

A key precept of statutory interpretation is the assumption that the legislature is aware of its own prior enactments. *In re Estate of Tanner*,

295 S.W.3d 610, 614 (Tenn. 2009) ("We also must presume that the General Assembly was aware of any prior enactments at the time the legislation passed.") (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995). Tennessee courts recognize that the legislature does not write its laws on a blank slate. Examining prior enactments elucidates what the legislature added to or subtracted from existing law and is therefore a part of the textual analysis itself. *See In re Kaliyah S.*, 455 S.W.3d at 541 (analyzing the "evolution of Tennessee statutes" to interpret the provision at issue); *see also Mixon*, 983 S.W.2d at 669 (reviewing the history of enactments and court cases to discern the meaning of the legislature's choice to replace the phrase "from rendition of judgment," with "after the judgment becomes final"). As a result, understanding the law prior to the enactment of a bill is part of the inquiry into the plain meaning of that law. *See Murfreesboro Med. Clinic, P.A.*, 166 S.W.3d at 682-683 (contextualizing the narrow scope of non-compete legislation by pointing to a prior Supreme Court case establishing a general presumption against non-competes). In other words, this Court, presuming that the legislature was aware of its own prior enactments, should look to the language the legislature chose to change or leave in place over time to understand its intent. In *re Estate of Tanner,* 295 S.W.3d at 614. In fact, prior enactments were a key consideration in *Crutchfield*, in which this Court reached the conclusion that there was no law disqualifying the plaintiffs from the right to vote, despite their convictions for infamous crimes in 1980 and 1978, because the phrase "and shall be disqualified to exercise the elective franchise" had been removed from Section 40-20-112 ("Judgment of Infamy") in 1972.

Crutchfield, 607 S.W.2d at 482. This Court should give weight to the enactments that created the laws in question and the way in which they structured the code.

The 1981 and 1983 acts present a roadmap for understanding Section 40-29-101 et seq. and Section 2-19-143 together. When Section 40-29-101, the rights restoration mechanism under Tennessee law, was created it included no mention of out-of-state or federal courts. *See* 1981 Pub. Act 345 (codified as amended at Tenn. Code Ann. § 40-29-101 et seq.). Symmetrically, Section 2-19-143(3) only provided exceptions to blanket disenfranchisement for individuals with out-of-state felonies to those who had their civil rights restored in the states of their convictions. *See id.* (codified as amended at Tenn. Code Ann. § 2-19-143(3)). There was no rights restoration pathway available to Tennesseans with out-of-state convictions except full civil rights restoration in the other state. *Id.* That meant that rights restoration for individuals with out-of-state convictions would have been very rare.[2]

In 1983, the legislature remedied this by opening up the possibility for individuals with out-of-state convictions whose rights of citizenship had not already been restored to also seek restoration using the same pathway available to those with in-state convictions. 1983 Pub. Act 207. To do this, the legislature created the third pathway for restoration now found in Section 2-19-143(3) by adding the phrase "or the law of this state." *Id.* at § 2 (codified as amended at Tenn. Code Ann. § 2-19-143(3)).

[2] Even today, only twelve states automatically restore all citizenship rights upon completion of sentence.

This addition was deliberately disjunctive. It did not abrogate or strike the other exceptions to disenfranchisement for restoration of citizenship under the laws of the state of conviction. At the same time, to further clarify that the opportunity to petition Tennessee circuit courts was available to those with out-of-state convictions, the legislature added language about federal and out-of-state convictions to the restoration provision in the Criminal Procedure Code: "Persons rendered infamous or deprived of the rights of citizenship *by the judgment of any state or federal court,* may have their full rights of citizenship restored by the circuit court." *Id.* at § 3 (codified as amended at Tenn. Code Ann. § 40-29-101 et seq.) (emphasis added). This is the same language found in Section 40-29-202.

The basic structure of Section 2-19-143 (and its interplay with the in-state rights restoration process) has not been changed or abrogated by the legislature in the nearly forty years since. Modifications to the voting rights restoration process of "the law of this state," do not automatically or silently carry over to civil rights restorations under the laws of other states. Respondents-Appellees do not offer any alternative understanding of the 1983 Act. Instead, Respondents-Appellees' interpretation illogically assumes that a later modification to the rights restoration mechanism, which the 1983 legislature opened up to but did not make mandatory for people with out-of-state convictions, silently expands the scope of disenfranchisement, effectively ending the original exceptions, and working against the very people that the 1983 Act intended to help.

c. The legislature never intended the rights restoration statutes to expand the scope of disenfranchisement.

As this Court has explained, in interpreting statutes the courts should attempt to "ascertain and give effect to the legislative intent without unduly restricting or expanding [the] statute's coverage beyond its intended scope." *Memphis Publ'g Co. v. Cherokee Child. & Family Servs., Inc.,* 87 S.W.3d 67, 74 (Tenn. 2002) (quoting *Owens*, 908 S.W.2d at 926). Respondents-Appellees' interpretation leads to the perverse result of turning the 2006 enactment, which was intended to expand opportunities for rights restoration and make it easier for people with convictions to vote, into an expansion of the deprivation of that right. The 2006 legislative enactment, creating the COR process, was intended to make the voting rights restoration process easier and more accessible. T.R. 513-14. Restorations through the courts, as outlined in the Code of Criminal Procedure § 40-29-101, were rare and the legislature recognized that many disenfranchised people lacked access to the legal resources necessary to pursue that method. *Id.*; T.R. 440-41. The 2006 enactment created an administrative procedure whereby individuals who met certain post-sentence criteria could request and would be issued a Certificate of Restoration of Voting Rights without having to go to court. 2006 Pub. Act 860 (codified as amended at Tenn. Code Ann. § 40-29-201 et seq.).

Yet, Respondents-Appellees' interpretation—adopted by the Court of Appeals—would result in the 2006 enactment expanding the scope of disenfranchisement for people with out-of-state convictions despite its stated purpose to ease restrictions on voting access. As discussed *supra* §

C(1), the text does not support this interpretation and the Chancery Court's adoption of the State's argument undermines the legislative intent of the 2006 enactments. *Coffman*, 615 S.W.3d at 903 (directing courts engaging in statutory interpretation to give "full effect to legislative intent.")

3. Section 40-29-202 only applies to those who are currently deprived of the right to vote, not to anyone who has ever lost that right.

Finally, the Chancery Court and Court of Appeals advanced one final explanation for why Applicant-Appellant Falls cannot vote: that Section 40-29-202 applies to anyone who has ever lost the right to vote, regardless of whether they are currently deprived of it under the disenfranchising statutes. The argument relies on Section 40-29-201(a)'s statement that it applies to and governs restoration of the right to vote for anyone who "*has been* deprived of that right." But, for the reasons discussed below, this myopic textual interpretation ignores all other text, context, and its absurd, possibly unconstitutional, results.[3]

Taken out of context, on Section 40-29-201(a)'s statement that it applies to anyone who "*has been* deprived of that right" is ambiguous and could mean either (a) someone who is currently prohibited from voting or (b) someone who has at any point in the past been deprived of the right to vote. However, the context makes clear that the reference to people

[3] Notably, Respondents-Appellees never directly raised this argument. In fact, when asked about this interpretation in oral argument at the Court of Appeals, Respondents-Appellees' counsel deliberately and openly dodged the question.

who "have been deprived of the right of suffrage" means people who are presently disenfranchised, not anyone who has ever lost the right to vote. As described at length, *supra* § C(1), Section 40-29-202 is a rights restoration statute and as such it is only relevant to those who need to restore their rights. Moreover, this reading renders much of Section 2-19-143(3) null and void.

If the requirements of Section 40-29-202 apply to Applicant-Appellant Falls even after the expiration of Section 2-19-143(3)'s revocation of his right to vote, then they also apply to everyone else who has at any point been deprived of the right of suffrage. That creates absurd results, a fact which was noted by the Court of Appeals in oral arguments in this case. Respondents-Appellees have not advocated for this interpretation, nor have they implemented the additional complications to the rights restoration process that it would require. As the top law development court in the state, the Supreme Court should consider and avoid these results.

For example, the question raised at oral arguments was whether Applicant-Appellant Falls could be denied the right to vote if his rights of citizenship had been restored in Virginia prior to moving Tennessee. The Assistant Attorney General refused to answer this question, saying it was not relevant to the case at hand. The Court of Appeals' Opinion also dodged the question by cabining its decision based on the timing of Applicant-Appellant Falls' move. *Falls*, 2021 WL 6052583 at *5 ("When Mr. Falls moved to Tennessee in 2018, he was disqualified from voting in Tennessee because of his Virginia conviction.") But if this opinion stands,

the hypothetical will inevitably need an answer. A person who is not a Tennessee resident does not have the right to vote in Tennessee at all and thus cannot lose it as a result of a felony. If that person moves to Tennessee after restoration of their rights of citizenship in the state of conviction, there is no moment when they have actually lost the right under Tennessee law according to Section 2-19-143(3). Thus, if Section 40-29-202 only applies to Applicant-Appellant Falls because at some point he lost the right to vote in Tennessee, it would not apply if he had moved to Tennessee in 2020 after his restoration. The timing of when a person moves to Tennessee should not be determinative of whether they can vote but under the Court of Appeals' interpretation, it is. Thus, Respondents-Appellees will somehow need to take that additional fact into account when processing a person's voter registration.

Similarly, consider if Applicant-Appellant Falls had moved to Tennessee and been restored to full citizenship in Virginia all before the passage of Section 40-29-202(b) in 2006. If Section 40-29-202 does, in fact, apply to anyone who has ever lost the right to vote, then he would still need to show that he meets the rights restoration criteria, even if had already been allowed to vote in Tennessee pursuant to Section 2-19-143(3). The same would be true of any individual who had restored his right to vote through the Tennessee court process prior to 2006. In either case, this interpretation would create retroactive disenfranchisement, prohibited by Tenn. Const. Art. I, § 5 and *Gaskin v. Collins*. 661 S.W.2d 865.

Furthermore, this interpretation turns Section 40-29-202 into a disenfranchisement law, contradicting the holding of the Sixth Circuit Court of Appeals in *Johnson v. Bredesen* that it is exclusively a rights restoration law and thus resurrecting a series of constitutional concerns. *Johnson v. Bredesen*, 624 F.3d 742, 751 (6th Cir. 2010) ("[M]ost fundamentally, the re-enfranchisement law at issue does not deny or abridge any rights; it only restores them . . . . [Section 40-29-202 does] not disenfranchise [plaintiffs] or anyone else, . . . Tennessee's indisputably constitutional disenfranchisement statute accomplished that.") In fact, the Sixth Circuit's characterization of Section 40-29-202 as a *restoration statute only* was explicitly advocated by the Tennessee Attorney Generals' office. *See* Resp'ts' Br. in Opp'n to Pet. to Grant Cert., *Johnson v. Bredesen*, No. 10-1149, 2011 WL 1540425 (U.S. April 20, 2010) (repeatedly and exclusively referring to Section 40-29-202 as "the reenfranchisement statute"). The finding that Section 40-29-202 is only a rights restoration statute and not a disenfranchisement was essential to the overall decision by the Sixth Circuit that the law passes muster under the 14th and 24th Amendments to the U.S. Constitution. The Court of Appeals' reliance on Section 40-29-202 to disenfranchise Applicant-Appellant Falls undermines the Sixth Circuit's opinion and thus the constitutionality of Section 40-29-202. *Davis-Kidd Booksellers, Inc.*, 866 S.W.2d at 529–30 ("When faced with a choice between two constructions, one of which will sustain the validity of the statute and avoid a conflict with the Constitution, and another which renders the statute

unconstitutional, we must choose the former.") (citing *Sliger*, 846 S.W.2d at 263).

CONCLUSION

This Court's holding should rest on one simple premise: a person who is not deprived of the right to vote does not need to restore that right in order to exercise it. This follows the language of the Tennessee Constitution, which has been definitively interpreted by this Court. The Tennessee legislature has outlined the circumstances under which a person is deprived of the right to vote, as well as a process for individuals thus deprived to restore that right. While the legislature has updated the rights restoration procedures in the last two decades, it has not amended the circumstances of deprivation of the right to vote in nearly forty years. Had the legislature intended to expand the scope of disenfranchisement in 2006, it would have done so directly and in the relevant section of the code. Because there is no statement of law presently prohibiting Applicant-Appellant Falls from voting, he possesses that right, the rights restoration statute notwithstanding.

Applicant-Appellant Falls respectfully asks the court to recognize this straightforward application of the statutes and allow him to finally exercise his constitutional right to vote. A ruling in Applicant-Appellant Falls' favor would be a vindication of the importance of the right to vote to the citizens of Tennessee. In so holding, the Tennessee Supreme Court would revive the intent of the framers of Tennessee's Constitution to ensure that the terms of the loss of the right to vote shall be "previously ascertained and declared by law" and that the appointed administrators

of elections may not simply choose to move the goal posts. Tenn. Const. Art. I, § 5.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the forgoing Brief on the Merits has been served on counsel for the parties by hard copy, via U.S. mail, and electronic mail on the 23rd day of February, 2022 to:

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CERTIFICATE OF COMPLIANCE

I certify that this Brief on the Merits complies with the text, font, and other formatting requirements set forth in Supreme Court Rule 46, § 3.02. Based upon the word count of a word processing system and excluding the sections set forth in § 3.02(a)(1), this Brief on the Merits contains 12,059 words.

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