

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE CONFERENCE OF THE)	
NATIONAL ASSOCIATION FOR THE)	
ADVANCEMENT OF COLORED)	
PEOPLE, et al.,)	
)	
Plaintiffs,)	No. 3:20-cv-01039
)	
v.)	Judge Campbell
)	Magistrate Judge Frensley
)	
WILLIAM LEE, et al.)	
)	
Defendants.)	

DEFENDANTS’ STATEMENT OF UNDISPUTED MATERIAL FACTS

In support of their Motion for Summary Judgment, and pursuant to Local Rule 56.1(b), Defendants submit this statement of the undisputed, material facts:

1. Plaintiff, the Tennessee State Conference of the National Association for the Advancement of Colored People (“NAACP”), is a membership organization in Tennessee. (Ex. 4, Morris Dep., R. 151-4, at PageID # 1325.)

Response:

2. The NAACP advocates for political, education, health, and social rights. (Ex. 4, Morris Dep., R. 151-4, at PageID # 1325.)

Response:

3. The NAACP does not keep track of whether any of its members have a felony conviction. (Ex. 4, Morris Dep., R. 151-4, at PageID# 1331.)

Response:

4. More specifically, the NAACP does not keep track of members that were convicted of a felony during the grace period. (Ex. 4, Morris Dep., R. 151-4, at PageID# 1367.)

Response:

5. The NAACP sets up tables at voter registration events and holds public education workshops on the COR process. (Ex. 4, Morris Dep., R. 151-4 at PageID# 1317-18, 1368-70.)

Response:

6. The only expenses for these events are volunteers' time and gas money. (Ex. 4, Morris Dep., R. 151-4 at PageID# 1369, 1376.)

Response:

7. There is no evidence that the NAACP has identified a member or a third party that was convicted between January 15, 1973, and May 17, 1981 (the "grace period") or prior to January 15, 1973. (See Ex. 4, Morris Dep., R. 151-4, at PageID# 1331-67; Ex. 14, NAACP First Interrogatory Response, R. 151-14, PageID# at 1857-73; Ex. 15, Attachments to NAACP Third Interrogatory Response, R. 151-15, PageID# 1879-86; Ex. 16, NAACP Third Interrogatory Response, R. 151-16, at PageID# 1887- 1901.)

Response:

8. Tennessee’s voter registration application provides the following information about applying to vote with a felony conviction:

If you have had a felony conviction, your eligibility to register and vote depends upon the crime you were convicted of and the date of your conviction. To assist in processing your application, provide the required information in box 4 and any responsive documents you have. For more information about this process, call 1-877-850-4959 or visit sos.tn.gov/restoration.

Tennessee Mail-In Application for Voter Registration, Tennessee Secretary of State, <https://sos-tn-gov-files.tnsosfiles.com/forms/ss-3010.pdf> (last visited July 23, 2021).

Response:

9. Box 4 of the voter registration application is labeled “Felony Conviction,” and it asks, “Have you ever been convicted of a felony?” *Id.*

Response:

10. It provides a parenthetical explaining, “If expunged, answer ‘no.’” *Id.*

Response:

11. Then, the form provides check boxes for “Yes” and “No.” *Id.* It further states, “If yes, provide the following information (if known).” *Id.*

Response:

12. Then, the form provides space for the applicant to list the crimes, dates, and place relating to the felony conviction. *Id.*

Response:

13. Additionally, the form asks, “Have you received a pardon or had your voting rights restored?” *Id.* Immediately following, the form provides check boxes for “Yes” and “No.” *Id.*

Response:

14. Adjacent to the check boxes is an instruction stating, “If yes, provide copy of document.” *Id.*

Response:

15. The form requires an oath or affirmation and a signature of the applicant. *Id.*

Response:

16. On the “Go Vote TN” online registration portal, an applicant cannot continue to fill out the voter registration application after checking “Yes” in response to the felony question. (Ex. 4, Lim Dep., R. 151-3, at PageID# 1259.)

Response:

18. However, the individual will be automatically directed to use the paper voter registration application. *Online Voter Registration Portal*, Tennessee Secretary of State, <https://ovr.govote.tn.gov/Registration/RegistrationDetails/BM> (last visited July 24, 2023).

Response:

19. Individuals convicted of a felony between January 15, 1973, and May 17, 1981, did not lose their right to vote. (Ex. 1, Goins Dec., R. 151-1, at PageID# 1091.)

Response:

20. Additionally, prior to January 15, 1973, individuals only lost their right to vote if the convicting court rendered the individual infamous. (Ex. 1, Goins Dec., R. 151-1, at PageID# 1093.)

Response:

21. On July 21, 2023, the Tennessee Secretary of State and the Division of Elections announced policy revisions for the processing of voter registration applications for individuals with felony convictions prior to January 15, 1973, and for individuals with felony convictions between January 15, 1973, and May 17, 1981. (Ex. 1, Goins Dec., R. 151-1, at PageID# 1091-94.)

Response:

22. The Division of Elections issued a memorandum to the county election commission in Tennessee to provide clarity and avoid rejection of voter registration applications for individuals who did not lose their voting rights. (Ex. 2., Memo on Older Felonies, R. 151-2, at PageID# 1095.)

Response:

23. This memorandum instructs county election commissions to process voter registration applications for individuals in two categories: (1) individuals with pre-January 15, 1973, convictions that did not commit an infamous crime and (2) individuals with convictions between January 15, 1973, and May 17, 1981. (Ex. 2., Memo on Older Felonies, R. 151-2, at PageID# 1095-96.)

Response:

24. The memorandum also provides a list of infamous crimes for the county election commissions to reference when reviewing a voter registration application listing a pre-January 15, 1973 felony conviction. (Ex. 2., Memo on Older Felonies, R. 151-2, at PageID# 1096.)

Response:

25. The memorandum also mentions an updated Voter Registration Rejection Appeal Form that provides allows an appealing individual to indicate that they did not lose their right to vote because they fall in one of the aforementioned categories. (Ex. 2., Memo on Older Felonies, R. 151-2, at PageID# 1095.)

Response:

26. On June 29, 2023, the Tennessee Supreme Court issued its opinion in *Falls v. Goins*, -- S.W.3d---, No. M2020-01510-SC-R11-CV, 2023 WL 4243961 (Tenn. 2023).

Response:

27. On July 21, 2023, the Tennessee Secretary of State and the Division of Elections also announced policy revisions regarding the COR process. (Ex. 1, Goins Dec., R. 151-1, at PageID# 1091.)

Response:

28. The guidance on the COR process was revised to require:

A person convicted of a felony in a Tennessee court, an out-of-state court, or a federal court must:

1. Have been pardoned by a Governor, U.S. President, or other appropriate authority of a state *or* have had full rights of citizenship restored as prescribed by law, **and**
2. Have paid all restitution to the victim or victims of the offense order by the court as part of the sentence, if any; **and**
3. Have paid all court costs assessed, if any, unless the court made a finding of indigency; **and**
4. Is current in all child support obligations, if any.

(Ex. 5, COR Memo, R. 151-5 at PageID# 1393.)

Response:

29. The COR form has been updated to reflect this policy change. (Ex. 7, COR Form, R. 151-7, at PageID# 1396-97).

Response:

30. The Division of Elections also issued a frequently asked questions document. (Ex. 6, FAQs, R. 151-6, at PageID# 1395.)

Response:

31. No evidence has been produced that the individual Plaintiffs have been pardoned by a governor or had their full rights of citizenship restored with regard to all of their convictions. (Amended Complaint, R. 102, PageID 621-26; Ex. 8, Weare Dep., R. 151-8, at PageID# 1398-1455; Ex. 9, Tournier Dep., R. 151-9, at PageID# 1467-1541; Ex. 13, Scott Dep., R. 151-10 at PageID# 1555-1652; Ex. 11, Perry Dep., R. 151-11, at PageID# 1668-1718; Ex. 12, Hendrix Dep., Vol. I and II, R. 151-12, at PageID# 1728-1811; Exhibit 13, Gray Dep., R. 151-13, at PageID# 1815-50).

Response:

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32. No evidence has been produced that the NAACP has identified a member or a third party that has been pardoned or had their full citizenship rights restored regarding all of their convictions. (See Ex. 4, Morris Dep., R. 151-4, at PageID# 1331-67; Ex. 14, NAACP First Interrogatory Response, R. 151-14, PageID# at 1857-78; Ex. 15, Attachments to NAACP Third Interrogatory Response, R. 151-15, PageID# 1879-86; Ex. 16, NAACP Third Interrogatory Response, R. 151-16, at PageID# 1887- 1901.)

Response:

33. Parole and probation officers (“PPOs”) fill out and issue certificate of restoration forms to eligible offenders. (Ex. 18, Exhibit 4 to Ricci Dep., R. 151-18, at PageID# 2044-46.)

Response:

34. PPOs have detailed instructions about how to fulfill their responsibility to “assis[t] eligible offenders in the restoration of their voting rights” provided by Tennessee Department of Correction policy 705.06. (Ex. 18, Exhibit 4 to Ricci Dep., R. 151-18, at PageID# 2044-46.)

Response:

35. TDOC guidance instructs that “[a]ll offenders” must be provided with a blank certificate-of-restoration form “upon discharge.” (Ex. 17, Ricci Dep., R. 151-17, at PageID# 1944, 1950.)

Response:

36. Applicants who are not immediately eligible upon discharge may later obtain a form once they become eligible. (*See* Ex. 17, Ricci Dep., R. 151-17, at PageID# 1944.)

Response:

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Respectfully submitted,

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Attorney General and Reporter

Sincerely,

/s/ Zachary L. Barker

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been forwarded electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to the parties named below. Parties may access this filing through the Court's electronic filing system.

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