

**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,  
on behalf of itself and its members, et al.,

Plaintiffs,

v.

WILLIAM LEE, in his official capacity as  
Governor of the State of Tennessee, et al.,

Defendants.

**Civil No. 3:20-cv-01039**

**JUDGE CAMPBELL  
MAGISTRATE JUDGE FRENSELY**

[Class Action]

**DEFENDANTS' REPLY TO PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL  
FACTS FOR WHICH THERE IS NO GENUINE DISPUTE<sup>1</sup>**

**I. Additional Facts Related to the July 2023 Memo**

1. Under the new guidance promulgated by Defendants on July 21, 2023 (“July 2023 Memo”), applications from certain groups of eligible voters with felony convictions are still to be rejected absent additional documentation proving the individual’s eligibility. Pl. MSJ Ex. 11, ECF No. 156-20.

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this fact.

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<sup>1</sup> Plaintiffs incorporate by reference their Statement of Undisputed Material Facts in support of their Motion for Summary Judgment, ECF No. 155, as if stated herein.

2. For example, the July 2023 Memo only allows applications with pre-1973 convictions to be processed if the applicant indicates on the face of a voter registration form that their pre-1973 convictions were for crimes that could not render them infamous. Pl. MSJ Ex. 11, ECF No. 156-20 at 1.

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this fact.

3. Accordingly, an application from an individual with a pre-1973 conviction for a potentially infamous felony, but who was not actually rendered infamous—and who therefore was never rendered ineligible—will nevertheless be rejected absent documentary proof pursuant to the July 2023 Memo. See Pl. MSJ Ex. 11, ECF No. 156-20 at 1.

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this hypothetical scenario. However, Defendants dispute whether any such individual exists, and Defendants aver that Plaintiffs have not identified any such individual. (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.)

4. The July 2023 Memo also retains a blanket rejection policy for applicants with felony convictions who submit a version of the state registration form that does not provide a space for them to disclose their date and crime of conviction. See Pl. MSJ Ex. 11, ECF No. 156-20 at 1-2.

**Response:**

Defendants dispute the characterization that they maintain a “blanket” rejection policy. (*See* Goins Dec., R. 151-1, PageID# 1093.) However, for the purpose of ruling on this motion for summary judgment, Defendants do not dispute that if an applicant submits a voter-registration form with nothing more than an indication that they have a felony conviction, the application will be rejected.

5. The July 2023 Memo includes no explicit guidance about whether eligible voters with grace-period convictions or non-disqualifying pre-January 15, 1973 convictions are still required to produce documentary proof of eligibility before their registration forms will be accepted. Indeed, the Memo makes no reference whatsoever to the State’s longstanding policy requiring such voters to produce documentation. Pl. MSJ Ex. 11, ECF No. 156-20 at 2 (July 2023 Memo).

**Response:**

Defendants dispute that the July 2023 Memo includes no explicit guidance. Explicit guidance is offered to county elections officials in the memorandum. (Older Felonies Memo., R. 151-2, PageID# 1095.) County elections officials are instructed to process a registration form for an otherwise eligible individual who indicates on his registration form that he was convicted for a felony prior to January 15, 1973, and the felony is not on the list of infamous felonies included in the July 2023 Memo. (*Id.* at PageID# 1095-96.) Additionally, County elections officials are instructed to process a registration form for an otherwise eligible individual who indicates on his registration form that he was convicted between January 15, 1973, and May 17, 1981. (*Id.* at PageID# 1096.) This Memo explicitly tells elections officials what they must do upon receipt of

a registration form indicating a felony prior to January 15, 1973 or a grace period conviction. (*Id.* at PageID# 1095-96.)

6. Defendants' new guidance includes an update to the Voter Registration Appeal Request. Ex. 13 at DEF001097 (2023 Voter Registration Appeal Request); Pl. MSJ Ex. 11, ECF No. 156-20 at 2 (July 2023 Memo).

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this fact.

7. The updated Voter Registration Appeal Request does not include the list of potentially disqualifying, pre-January 15, 1973 convictions. Ex. 13 at DEF001097 (2023 Voter Registration Appeal Request).

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this fact.

8. Likewise, the revised Voter Registration Appeal Form only states that an individual is eligible if the "felony conviction was before January 15, 1973, and the judgement did not declare [the applicant] infamous. ([The applicant] did not lose [their] voting rights.)," without mentioning that only some felony convictions may be deemed infamous. Ex. 13 at DEF001097 (2023 Voter Registration Appeal Request).

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this fact.

9. There is no evidence that Defendants have trained counties to no longer implement the blanket-rejection policy of pre-January 15, 1973 or grace period convictions in light of the July 2023 Memo. *Cf., e.g.,* ECF No. 151-1 ¶ 3 (Goins Decl.) (stating that the guidance was sent to all county election officials, circuit courts, and federal and state probation and parole officials, but not stating that any further training or education has been undertaken).

**Response:**

Defendants dispute this fact. On July 21, 2023, simultaneous to the release of the policy changes, Division of Elections hosted a webinar training for Administrators of Elections on the policy changes to both the certificate of restoration program and voter registration for individuals with grace-period convictions and non-disqualifying convictions before January 15, 1973. (Goins Second Supp. Dec., Ex. 1.)

10. Some election officials have expressed misunderstanding about when and how to apply the new guidance in the July 2023 Memo. *See e.g.,* Ex. 11 at DEF002428-31 (July 27 and 21, 2023 Warren Cty. Emails); Ex. 12 at DEF002327-28 (July 28, 2023 Sumner Cty. Email).

**Response:**

Defendants dispute that the cited emails display a misunderstanding about the July 2023 Memo. However, Defendants aver that these emails display that some county elections officials may have questions about the July 2023 Memo and that Division of Elections fields these questions. *See* Ex. 11, R. 185-11, PageID# 3113-14 (July 27, 2023 Election Div. Email)); Ex. 12, R. 185-12, PageID# 3118 (July 28, 2023 Sumner Cty. Email).

11. Some eligible individuals with grace-period convictions and non-disqualifying convictions before January 15, 1973 have faced difficulties registering to vote, even after the

release of the July 2023 Memo. *See* Ex. 4 at DEF001927-28 (July 27, 2023 Election Div. Email); Ex. 12 at DEF002327-28 (July 28, 2023 Sumner Cty. Email).

**Response:**

Defendants dispute that eligible individuals with grace-period convictions and non-disqualifying convictions before January 15, 1973, face difficulties attributable to the Defendants. Moreover, the NAACP's characterization of these individuals as "eligible" is not supported by the cited document. *See* Ex. 4, R. 185-4, PageID# 3011-13 (July 27, 2023 Election Div. Email); Ex. 12, R. 185-12, PageID# 3118 (July 28, 2023 Sumner Cty. Email).

**II. Additional Facts Related to TN NAACP<sup>2</sup>**

12. The new guidance will require additional education to navigate how voters with past felony convictions may now register to vote. *See* ECF No. 156-02, Sweet-Love Decl. ¶ 8.

**Response:**

Defendants dispute that the July 2023 Memo *requires* any additional education. Defendants aver that individuals with grace-period convictions and non-disqualifying convictions before January 15, 1973 simply are no longer required to provide additional documentation of eligibility. (Older Felonies Memo., R. 151-2, PageID# 1095.)

13. Tennessee NAACP assists voters in counties that are still using prior versions of the state voter registration form even after the issuance of the July 2023 Memo. *Compare Branches*, NAACP Tenn. State Conf., <http://www.tnnaacp.org/services> (last visited Sept. 29, 2023) (listing TN NAACP branches in Knoxville and Hamilton County) *with* ECF No. 155 ¶ 32 (noting

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<sup>2</sup> The facts relevant to TN NAACP stated in Part II of Plaintiff's Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Summary Judgement, ECF No. 155 ¶¶ 5-15, are relevant not only to the NVRA claims (Counts 4 and 6) but also the right to vote claim (Count 5).

continued use of old registration form in at least Knox, Hamilton, and DeKalb Counties) *and* Ex. 10 at DEF002344 (June 29, 2023 Submission of Old Form in Humphreys County).

**Response:**

Defendants dispute that counties are still using prior versions of the state voter registration form. The Knox County website has been updated with the current version of the form, and the Hamilton and Dekalb County website provide a link to the current form on the Secretary of State's website. *See* Voter Registration Form, Knox County, <https://www.knoxcounty.org/election/pdfs/VRF.pdf> (last visited Sept. 8, 2023); Voter Registration Link Page, <https://elect.hamiltontn.gov/VoterInfo/AllForms.aspx> (last visited Sept. 8, 2023); Voter Registration Link Page, Dekalb County, <https://www.dekalbelections.com/voter-registration-information/> (last visited Sept. 8, 2023). However, Defendants aver that accepting older versions of the form, rather than demanding that an applicant fill out the current version of the form before acceptance, is done for the convenience of the applicant. (*See* Lim Dep., R. 151-3, PageID#1189.)

**III. Additional Facts Related to the State Voter Registration Form.**

14. The July 21, 2023 guidance does not instruct officials not to use older versions of the state voter registration form. *See* Pl. MSJ Ex. 11, ECF No. 156-20.

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this fact. However, Defendants aver that accepting older versions of the form, rather than demanding that an applicant fill out the current version of the form before acceptance, is done for the convenience of the applicant. (*See* Lim Dep., R. 151-3, PageID#1189.)

15. The content of the latest version of the state voter registration form was not changed as a result of the July 2023 Memo. *See* Pl. MSJ Ex. 11, ECF No. 156-20.

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this fact.

**IV. Additional Facts Related to the Burdens Imposed by Additional Documentation.**

16. The Elections Division has encountered instances where voters have faced difficulties obtaining the necessary documentation to prove their eligibility to register to vote upon rejection of a voter registration application. *See* ECF No. 156-5, Hal Dep. at 118:13-16, 194:18-25; Ex. 4 at DEF001927-28 (July 27, 2023 Election Div. Email).

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute these instances occurred in the past. But Defendants aver that individuals with grace-period convictions and non-disqualifying convictions before January 15, 1973 are no longer required to provide additional documentation of eligibility. (Older Felonies Memo., R. 151-2, PageID# 1095.)

17. Some voters face difficulties obtaining the correct documentation because the records no longer exist. Ex. 6 (Report of Dr. Traci Burch) at 35-36; ECF No. 156-4, Lim Dep. at 158:6-11; Pl. MSJ Ex. 21, ECF No. 156-30 (Sept. 2020 email); Ex. 5 at DEF002687 (June 5, 2023 Montgomery Cty. Email) (“She called probation and was told that they no longer have those records because of it being 50+ years ago.”).

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute these difficulties may have occurred in the past. But Defendants aver that individuals with grace-



period convictions and non-disqualifying convictions before January 15, 1973 simply are no longer required to provide additional documentation of eligibility. (Older Felonies Memo., R. 151-2, PageID# 1095.)

18. Some records only exist in paper form. *See* ECF No. 156-2, Sweet-Love Decl. ¶  
16.

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this fact.

19. Sometimes it costs money for a voter to obtain the records necessary to prove their non-disqualifying felony conviction. *See* ECF No. 156-5, Hall Dep. at 195:12-197:15, 197:21-25; Pl. MSJ Ex. 20, ECF No. 156-29 (Sept. Shelby Cty. Email, Hall Dep. Ex. 21); Ex. 6 (Report of Dr. Traci Burch) at 35-36.

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute these costs may have been encountered in the past. But Defendants aver that individuals with grace-period convictions and non-disqualifying convictions before January 15, 1973 are no longer required to provide additional documentation of eligibility. (Older Felonies Memo., R. 151-2, PageID# 1095.)

20. A voter's quest to obtain documentary proof to the satisfaction of the election officials can hold up registration for weeks, months, and even years. *See* Ex. 6 (Report of Dr. Traci Burch) at 35-36; Ex. 7 ("I have been working with [applicant] for about a month and know they have tried unsuccessfully to get the documentation."); Ex. 8 at 1, 4 (eligibility of applicant with grace-period conviction not recognized for at least three months after rejection); Ex. 9 at 1, 12

(applicant with grace-period conviction rejected on December 2015 and not recognized as eligible until April 2018).

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute this fact but aver that any difficulty in obtaining the necessary documentation is not attributable to Defendants. Moreover, Plaintiff's citation to Exhibit 9 does not support this statement of fact. Defendants aver that Exhibit 9 displays that the applicant unsuccessfully attempted to register to vote in 2015 and did not attempt to register to vote again until 2018, when he supplied adequate documentation of eligibility. (Ex. 9, R. 185-9, PageID# 3095, 3102.)

21. Eligible Tennesseans often submit legally unnecessary Certificates of Voting Rights Restoration (CORs), despite never having lost their right to vote, in order to register to vote. *See, e.g.,* Ex. 1 (confirming eligibility in response to COR submitted for a grace period conviction); Ex. 2 (same); Ex. 3 (same).

**Response:**

For the purpose of ruling on this motion for summary judgment only, Defendants do not dispute that certificates of voting rights restoration have been submitted, but Defendants dispute the NAACP's assertion that unnecessary submissions occur often as it only cites to three such occurrences.

**V. Additional Facts Regarding Notice of Violation Under the NVRA.**

22. After Plaintiffs TN NAACP sent their First Notice Letter on August 22, 2018, Plaintiffs had a phone conversation with Defendants in December 2019 discussing these deficiencies, during which the Election Division confirmed its policy of rejecting all voter

registration applicants who indicate on the application that they have been convicted of a felony. See ECF No. 156-16 (Second Notice Letter).

**Response:**

Defendants dispute this fact. However, Defendants aver that Division of Elections officials had multiple meetings with Plaintiffs' counsel. (Goins Second Sup. Dec., Ex. 1.) Defendants further aver that Coordinator of Elections Mark Goins cannot remember any specific statements a December 2019 meeting, but at that time, it was the policy of the Division of Elections that if an individual submitted a voter registration application and indicated that he or she had been convicted of a felony—and did not provide any supporting documentation (e.g., a completed COR, court order) – then the application would be rejected. (*Id.*)

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Respectfully submitted,

JONATHAN SKRMETTI  
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 above document has been forwarded electronically. Notice of this filing will be sent by 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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/s/ Zachary L. Barker  
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**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

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

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**SECOND SUPPLEMENTAL DECLARATION OF MARK GOINS, COORDINATOR OF  
ELECTIONS, TENNESSEE SECRETARY OF STATE, DIVISION OF ELECTIONS**

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I, Mark Goins, declare the following:

1. I am the Coordinator of Elections for the State of Tennessee. I am over the age of eighteen years, and I am competent to testify on the matters set forth herein.
2. On July 21, 2023, the Division of Elections conducted a webinar training for the county-level Administrators of Elections. This webinar provided training to the Administrators on both the policy changes regarding the certificate of restoration process and the policy changes that allow individuals with grace-period convictions or non-infamous felony convictions before January 15, 1973 to register to vote without the submission of additional documentation of eligibility.
3. The Division of Elections had multiple meetings with Plaintiffs' counsel prior to the filing of this lawsuit. I cannot remember a particular meeting in December 2019 or any specific statements made at the meeting. However, at that time, it was the policy of the Division of

Elections that if an individual submitted a voter registration application and indicated that he or she had been convicted of a felony—and did not provide any supporting documentation (e.g., a completed COR, court order) – then the application would be rejected.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
\_\_\_\_\_  
MARK GOINS

  
\_\_\_\_\_  
Date

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