

**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
FRENSLEY

[Class Action]

**PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF
ADDITIONAL UNDISPUTED FACTS**

In support of their Response to the NAACP's Motion for Summary Judgment, and pursuant to Local Rule 56.1, Defendants submit this statement of additional, undisputed, material facts:

1. On July 21, 2023, Coordinator of Elections Mark Goins issued two memoranda to county election officials. (Goins Supp. Decl. at 1.) These memoranda established new policies and procedures for these officials with respect to the registration of individuals with felony convictions. (*Id.*)

Response:

Disputed in part. Plaintiffs do not dispute that two memoranda were sent to county election officials on July 21, 2023. To the extent that Defendants suggest these memoranda reflect an accurate interpretation of state or federal law, disputed. To the extent that Defendants assert the

memoranda provide guidance to state and county officials that sufficiently avoids the risk of erroneous and unlawful deprivations of the right to vote and the right to due process, disputed.

2. The first memorandum outlined the process for the restoration of voting rights for individuals convicted of a felony—whether in an in-state court, out-of-state court, or federal court—including the use of a revised Certificate of Restoration form. (*See* COR Policy Change Mem., R. 151-5, PageID# 1393-94.) This memorandum was issued in response to the Tennessee Supreme Court’s decision in *Falls v. Goins*, --S.W.3d---, 2023 WL 4243961 (Tenn. June 29, 2023). (Goins Supp. Decl. at 1-2.)

Response:

Disputed in part. Plaintiffs do not dispute that the first memorandum, “COR Policy Change,” announced changes to the process for restoration of voting rights and was accompanied by a revised Certificate of Restoration form. To the extent that this assertion suggests that these documents reflect an accurate interpretation of state or federal law or the *Falls v. Goins* decision, disputed. To the extent that Defendants assert that these documents provide guidance to state and county officials that sufficiently avoids the risk of erroneous and unlawful deprivations of the right to vote and the right to due process, disputed.

3. The second memorandum outlined the process for the restoration of voting rights for individuals convicted of a felony 40 or more years ago. (Goins Supp. Decl. at 2.) Specifically, the memorandum outlined the process for persons convicted of a felony prior to January 15, 1973, and a separate process for individuals convicted of a felony between January 15, 1973, and May 17, 1981. (Goins Memo, R. 157-4, PageID# 2731-32.). Coordinator Goins issued this

memorandum in response to ongoing discussions and deliberation with Division of Elections staff and with legal counsel. (Goins Supp. Decl. at 2.) This memorandum was issued pursuant to Coordinator Goins's statutory duties, and it was approved by Secretary Hargett. (*Id.*)

Response:

Disputed. The cited document at ECF No. 157-4 is a version of the same memorandum cited above in Paragraph 2 but directed to Department of Correction staff. The second memorandum issued on July 21, 2023, "Memo on Older Felonies," is found at ECF No. 151-2. *See also* ECF No. 183 (Pls. Resp. to Defs. Stmt. of Material Facts) ¶ 22. Neither the second memorandum (ECF No. 151-2) nor the cited document (ECF No. 157-4) purport to outline a "process for restoration of voting rights for individuals convicted of a felony 40 or more years ago." It is unclear which memorandum Coordinator Goins "issued in response to ongoing discussions and deliberation with Division of Elections staff and legal counsel" and "pursuant to [his] statutory duties" or which memorandum "was approved by Secretary Hargett."

4. In 2020, Coordinator Goins sought legal guidance from the Attorney General as to whether individuals with out-of-state felony convictions were required to comply with the requirements of Tenn. Code Ann. § 40-29-202 to get their voting rights restored. (Goins Supp. Decl. at 2.)

Response:

Disputed in part. Plaintiff does not dispute that Coordinator Goins requested a legal opinion from the Attorney General. However, the cited source does not support the assertion that the request was made in 2020, only that the responsive Attorney General opinion was issued in 2020. To the extent that Defendants assert this opinion was an accurate interpretation of state or federal law, disputed.

5. On March 26, 2020, the Attorney General issued an opinion advising that such individuals were required to comply with the provisions of Tenn. Code Ann. § 40-29-202. Tenn. Att’y Gen. Op. 20-06 (Mar. 26, 2020). Pursuant to that legal opinion, the Division of Elections resumed requiring individuals with out-of-state convictions to comply with the requirements of Tenn. Code Ann. § 40-29-202 in obtaining restoration of their voting rights. (Goins Supp. Decl. at 2.)

Response:

Disputed in part. Plaintiff does not dispute the date or conclusion of the Attorney General’s opinion, nor that Defendants at some point resumed requiring individuals with out-of-state convictions to comply with Tenn. Code Ann § 40-29-202 for restoration of their voting rights. To the extent that Defendants assert the Division of Elections was obligated to do so by the Attorney General opinion, disputed. To the extent that Defendants assert the Attorney General opinion was an accurate interpretation of state or federal law, disputed.

6. The Campaign Legal Center (“CLC”) contacted Secretary Hargett and Coordinator Goins in late 2018 with their concerns regarding the voter-registration form and individuals with pre-January 15, 1973, felony convictions and individuals with felony convictions between January 15, 1973, and May 17, 1981. (Goins Supp. Decl. at 2.) The Division of Elections, along with legal counsel, began discussions with the CLC, but those discussions were placed on hold during the legislative session because of legislation that had been introduced that would have substantially changed the felon-voting-rights-restoration process. (Goins Supp. Decl. at 2-3.)

Response:

Disputed in part. CLC sent its first notice letter regarding these issues to Defendants on August 22, 2018, not “late 2018.” ECF No. 156-15. To the extent that Defendants assert that the pending legislation justified Election Division’s unwillingness to discuss these issues, disputed.

7. When that legislation was unsuccessful, the Division of Elections resumed discussions with the CLC, but again, the discussions had to be put on hold while Coordinator Goins was out on paternity leave during the summer and early fall. (Goins Supp. Decl. at 3.)

Response:

Disputed in part. Plaintiffs do not dispute that the discussions resumed after the legislative session. Plaintiffs dispute that discussion ceased in Coordinator Goins’ absence. Elections Division staff indicated during this time that they had been working on a revised voter registration application.

8. After Coordinator Goins returned from paternity leave, discussions with CLC were resumed, and the Division of Elections agreed to make changes to the voter-registration application form—changes that were reviewed and approved by the CLC. (Goins Supp. Decl. at 3.) The revised voter-registration application was made available in 2020. (*Id.*)

Response:

Disputed in part. Discussion with Election Division staff were ongoing in Defendant Goins’ absence. Plaintiffs do not dispute that the Division of Election agreed to make changes to the voter registration application. The Election Division shared draft revised form in July 2019. CLC counsel reviewed the form but did not “approve” the changes. CLC notified the Election Division that it did not believe the instructions on the form complied with the NVRA’s requirement to state the eligibility requirements could recommend its clients agree to the new form as an incremental

improvement on the old form, provided more modifications were made. The Elections Division shared a second draft form with CLC in December 2019 that included some requested modifications. Plaintiff notified Defendants that while the new form is an improvement on the old form, it continued to violate the NVRA because it failed to inform applicants of all eligibility requirements. ECF Nos. 156-16 at 3, 156-18. The Elections Division did not make a new form available until early 2021. *See* ECF No. 29 (Pls. Opp’n to Defs. Mot. to Dismiss) at 34 n.15.

9. The Division of Elections agreed to the request that the Election Assistance Commission make changes to the Tennessee instructions on eligibility to register to vote with respect to the federal voter-registration form. (Goins Supp. Decl. at 3.) These changes were also reviewed and approved by the CLC. (*Id.*) The Election Assistance Commission agreed to make the changes to the Tennessee instructions and those changes were made and have been in effect since early 2020. (Goins Supp. Decl. at 3.)

Response:

Disputed in part. CLC did not “approve” the Election Division’s requested changes to the federal voter-registration form.

10. Thereafter, discussions with the CLC focused on changes that the CLC wanted Division of Elections to make to the online voter registration system, the increased costs with changing the online system as well as other concerns associated with changing the online system, and the procedures for processing voter registration applications from individuals with out-of-state convictions. (Goins Supp. Decl. at 3.)

Response:

Disputed. It is unclear what Defendants mean by “thereafter.” Plaintiff disputes the characterization that focus shifted to these topics at any point. Discussion regarding these topics began as early as January 2019 alongside discussions about the paper voter registration application, and Plaintiff continued to engage Defendants on the fact that their voter registration application was in violation of the NVRA. *See* ECF Nos. 156-16 at 3, 156-18.

11. On Election Day, March 1, 2020, a massive tornado hit multiple counties in middle Tennessee. (Goins Supp. Decl. at 3.) This tornado not only impacted voters, but several election officials were impacted as well, including Coordinator Goins. (Goins Supp. Decl. at 3.)

Response:

Not disputed.

12. Later in the month of March, discussions and negotiations stopped when both the President and Governor Lee declared states of emergency due to the Covid-19 pandemic in March 2020. (Goins Supp. Decl. at 3.) Initially, the Division of Elections did not resume discussions with the CLC because the small staff had to focus time and energy on conducting state and federal elections, including the Presidential election, during a world-wide pandemic. (Goins Supp. Decl. at 3.) During this time, Division of Elections developed and implemented an 82-page *Tennessee Election Covid-19 Contingency Plan*. (Goins Supp. Decl. at 3.)

Response:

Disputed only to the extent that Defendants assert that discussions could not have continued during this period.

13. Beginning in May 2020, Division of Elections also had to deal with several lawsuits filed in a state and federal court, including a lawsuit in federal court brought by the CLC on behalf of Plaintiff NAACP and several other organizations, challenging the constitutionality of several Tennessee's voter-integrity laws. (Goins Supp. Decl. at 3.) As a result, the Division of Elections had to focus its energy on responding to these lawsuits and conducting the elections. (Goins Supp. Decl. at 3.)

Response:

Disputed in part. Plaintiff does not dispute that the discussions did not continue during this time. To the extent that Defendants assert that these discussions could not have continued during this time, disputed.

14. While dealing with multiple lawsuits and certifying the results of the November 2020 election, the Division of Elections did not pursue any further discussions with the CLC. (Goins Supp. Decl. at 3.)

Response:

Disputed in part. Plaintiff does not dispute that the discussions did not continue during this time. To the extent that Defendants assert that these discussions could not have continued during this time, disputed.

15. Internal discussions with Division of Elections, the Secretary of State, and legal counsel in conjunction with the Tennessee Supreme Court's decision in *Falls* ultimately resulted in the new policies and procedures that were formalized in the July 21, 2023 policy memoranda. (Goins Supp. Decl. at 3.)

Response:

Not disputed for purpose of ruling on these summary judgment motions.

16. The Coordinator of Elections has stated under oath that absent a change in the applicable law or a court order, the policies and procedures outlined in these memoranda will not be changed. (Goins Supp. Decl. at 4.)

Response:

Disputed. The cited source does not state that the policies and procedures outlined in these memoranda “will not be changed.” It states: “Furthermore, absent a change in the applicable law or a court order, I *have no intention* of changing course.” ECF No. 180-1 at 4 (emphasis added).

Dated: October 25, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2023, a copy of the foregoing document was filed electronically. Notice of this filing will be served by operation of the Court's electronic filing system to counsel for parties below. Counsel for the parties may access these filings through the Court's electronic filing system:

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