

No. 24-5546

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

TENNESSEE CONFERENCE OF THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED PEOPLE,

Plaintiff-Appellee,

v.

TRE HARGETT, in his official capacity as Secretary of State of Tennessee, and
MARK GOINS, in his official capacity as Coordinator of Elections for the State
of Tennessee,

Defendants-Petitioners.

On Appeal from the
United States District Court for the Middle District of Tennessee

**PLAINTIFF'S RESPONSE TO DEFENDANTS' EMERGENCY MOTION
FOR A STAY PENDING APPEAL AND AN ADMINISTRATIVE STAY**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to the Federal Rules of Appellate Procedure and Sixth Circuit Rule 26.1, counsel for Plaintiff-Respondent certifies that no party to this appeal is a subsidiary or affiliate of a publicly owned corporation and no publicly owned corporation that is not a party to this appeal has a financial interest in its outcome.

/s/ Charles K. Grant

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Defendants moved in this Court for a stay pending appeal of the district court's injunctive order (Order) while their motion for stay was also pending in the district court, in violation of Rule 8. Defendants also failed to inform the district court, this Court, and Plaintiff that Defendants had already begun to implement their interpretation of the Order—concealing that they have *already* updated the state voter registration form and that they *already* promulgated it online, before taking it down on this Court's administrative stay order. Defendants' assertions of administrative burden are—as this illustrates—flatly wrong.

Defendants have unlawfully disenfranchised eligible Tennessee voters for years. The district court's Order requires Defendants cease their unlawful procedures in compliance with federal law. It does *not* impose new affirmative obligations on Defendants, as the district court recently reaffirmed as to voter registration forms. Defendants' efforts to continue to sidestep federal law and confuse voters should not be countenanced. This Court should deny Defendants' stay motion.

BACKGROUND

Though many Tennesseans convicted of felonies either have never lost the right to vote or have had their rights restored, Defendants' voter registration procedures require these applicants to further prove their eligibility by providing additional documentation, imposing significant and sometimes insurmountable barriers to registration in violation of the National Voter Registration Act

(“NVRA”).

In December 2020, one month after the *last* presidential election, Plaintiff-Appellee Tennessee NAACP (TN NAACP) and others brought suit challenging Tennessee officials’ procedures and practices preventing individuals who are eligible to vote and have felony convictions from successfully registering to vote.¹

In April 2024, after over three years of litigation, the district court granted summary judgment for Plaintiff on Count 6, holding that Defendants’ policy of rejecting all valid voter registration applications from individuals with felony convictions, regardless of eligibility, violates the NVRA. *See* Doc. 221.² The district court ordered the parties to meet and confer as to a proposed order and requested proposals and objections when the parties could not reach an agreement. Docs. 224-25. On June 5, the district court issued the Order, barring Defendants’ unlawful policy and requiring Defendants to (1) process valid, timely voter registration forms from facially eligible individuals and (2) register facially eligible individuals with

¹ Many Tennesseans convicted of felonies maintain the right to vote. If a person was convicted before January 15, 1973, they are only disenfranchised if that conviction is one of 21 enumerated crimes and the judgment of conviction included a statement that rendered their crime “infamous.” *Crutchfield v. Collins*, 607 S.W.2d 478, 480 (Tenn. Ct. App. 1980). No felony convictions between January 15, 1973 and May 17, 1981 are disenfranchising: individuals with convictions during that “grace period” have never lost the right to vote. *Id.* at 482; *Gaskin v. Collins*, 661 S.W.2d 865, 868 (Tenn. 1983).

² All record citations are to the district court, *Tenn. NAACP v. Lee*, 3:20-cv-01039 (M.D. Tenn.), and pinpoint citations are to PageID#.

prior felony convictions “absent credible information establishing that they are ineligible to vote.” *See* Doc. 237 at 3826 (“Order”). It also required that Defendants issue guidance and provide training to election officials on how to comply with the injunction. Notably, the district court’s injunction did *not* require Defendants to create new voter registration forms or hire additional staff.

On Wednesday, June 5, the date the Order issued, Defendant Goins sent a memorandum to county election officials announcing the Order, instructing that they “not reject an application from an individual who has marked ‘Yes’ to the felon question,” and directing that they send such applications to the Election Division staffer already tasked with researching felony convictions. Ex. B at DEF017413. On Friday, June 7, Defendants filed a motion for stay of the Order pending appeal at the district court. Doc. 243. On Monday, June 10, Defendant Goins hosted a training for county election officials on the Order and, in that training, stated that the Election Division had uploaded a new voter registration form to the Secretary of State’s website. Ex. A, Training Call, at 14:35. On Wednesday, June 12, Defendants filed their Motion here and also released the new registration form and an accompanying memo to AOE’s. Mot., Ex. C at DEF017419; Ex. E at DEF017414. On Friday, June 14, this Court issued an administrative stay of the Order. Doc. 11-1. On that day, Defendant Goins sent a new memo to county election officials with the subject “Administrative Stay of Court Order,” stating that “[b]ecause of the stay, you do not

need to send forms to the Division of Elections from individuals who have marked ‘yes’ to the felony question.” Ex. D at DEF017417. The new voter registration form is no longer on the Secretary of State’s website. *See* Ex. J, Henry-Robertson Dep. at 45:25-46:07. Defendants did not disclose that they had already updated and promulgated a new voter registration form by June 10, five days after issuance of the Order, to the district court or this Court in seeking a stay of the Order in part on the grounds of administrative burden. This information came to light through ongoing discovery in the district court, specifically depositions with Defendant Goins and the Election Division on Tuesday, June 18 and the document production shortly after 10 PM CT that same day.

Defendants now seek a stay of the Order pending appeal.

ARGUMENT

I. Defendants’ Premature Motion Should Be Denied.

Defendants’ motion is premature, in violation of Federal Rule of Appellate Procedure 8(a), and should be denied on that basis. For stay applications, “a party must ordinarily move first in the district court.” *Baker v. Adams Cnty.*, 310 F.3d 927, 930 (6th Cir. 2002) (quoting FRAP 8(a)(1)). A party may only seek an appellate stay where “moving first in the district court would be impracticable” or “the district court denied the motion or failed to afford the relief requested.” FRAP 8(a)(2)(A).

Neither exception applies here.

Defendants do not allege impossibility of moving first in the district court—nor could they, having so moved. Their district court motion remained pending when Defendants moved here, in violation of Rule 8.

Defendants advance a novel, erroneous argument that because they dictated a five-day decision window to the district court but did not receive a ruling in that time, they are allowed to appeal. This is wrong. Defendants told the district court they sought a “quick” denial anticipating that, “having just granted an injunction, [the district court] disagrees that Defendants are likely to succeed on appeal.” Doc. 243 at 3868. But this Court recently rejected the “argu[ment] that a party should be able to avoid moving first for a stay in the district court for no other reason than that the party harbors a subjective belief that the motion is likely to be denied.” *Total Quality Logistics v. Traffic Tech*, No. 22-3148, Doc. 28-2 at 3 (6th Cir. Sept. 9, 2022). Defendants did not seek expedited briefing before the district court, as they did here. Instead, they asked the district court to rule “without waiting for a response from Plaintiffs.” Doc. 243 at 3868.

But this approach obviates Rule 8. Defendants have cited no authority for the proposition that a district court’s rejection of a timeline dictated by a litigant is “failure to afford requested relief,” and Plaintiff has found none. And this Court routinely evaluates time constraints with respect to impracticability—*not* under Rule

8's denial prong, as Defendants do. *E.g.*, *Commonwealth v. Beshear*, 981 F.3d 505, 508 (6th Cir. 2020). Rule 8's requirements exist for good reason: the district court's greater familiarity with the case. *Total Quality Logistics*, No. 22-3148 at 3. This Court should deny Defendants' motion based on Rule 8 alone.

II. Defendants Have Not Established a Stay Is Warranted.

"[A] stay is not a matter of right, but is rather an exercise of judicial discretion." *Ohio State Conf. of NAACP v. Husted*, 769 F.3d 385, 387 (6th Cir. 2014) (cleaned up). Defendants' motion entirely fails to meet their "heavy burden." *Kentucky v. Biden*, 23 F.4th 585, 593 (6th Cir. 2022) (cleaned up).

A. Defendants Suffer No Injury.

Defendants fail to show *any irreparable* injury to them absent a stay. Defendants claim they will need to revise and print the voter registration form, research "felony status[es] and restoration status[es]" of applicants, and therefore require staff to "re-allocate their time away from [their] regular duties and responsibilities." Mot. at 13. This is simply false: the injunction does not impose these requirements.

First, as the district court recently confirmed, the injunction does not require updated voter registration forms. Doc. 245. Instead, state officials must process existing forms (and register facially eligible individuals after they have filled out those forms). *Id.* at 3.

But even were a revised registration form required, Defendants have *already created it*. Defendants already published a revised voter registration form to the Secretary of State's website and provided guidance to AOE's. *See* Ex. C, at DEF017416; Ex. G, at DEF017425-26 (revised registration form); Ex. F, at DEF017424 (new appeal form); *see also* Ex. A, Training Call. And contrary to their representations to the district court and this Court, the Election Division recently testified that identifying changes to the form took less than "an hour," *see* Ex. J, Henry-Robertson Dep. at 48:19-48:24, and the revised form was publicly published within days of the district court's order. *See* Ex. C at DEF017416; Ex. A, Training Call at 14:35 (revised form online). Defendants failed to reveal this information before taking down the form when this Court granted an administrative stay. *See* Ex. H, at DEF07443; Ex. I at DEF07444.

Defendants' claim that "election officials must now research "the felony status and restoration status of all voter registration applicants who disclose that they have a felony conviction" is similarly disingenuous. *See* Mot. at 13. The Order only applies to applicants who indicate a grace period conviction, a non-infamous pre-1973 conviction, or that their rights have been restored. Doc. 237 at 3825. It does not, for example, require officials to research the conviction status of applicants indicating a non-grace period felony conviction for which they have not had their rights restored. *See* Mot. at 13. Even if it had, county and state elections officials

already often do so, and the Election Division testified that confirming restoration statuses is “not a burdensome task.” *See* Ex. J, Henry-Roberston Dep. at 55:20-56:18, 63:23 (felony searches are a “routine thing” and a “daily task” at Election Division); Doc. 243-1 ¶ 21 (confirming staff member at Election Division is “primarily assigned to assist counties in researching whether a person has a previous felony.”). Defendants have stated the number of applicants with relevant convictions is such that changes to the registration process for such individuals would add minimal labor to their workload. *See* Doc. 157-7 at 2731.

Defendants now fail to identify *any* evidence of irreparable harm contrary to these prior assertions. In fact, within days of the Order, Defendants had updated the form and promulgated the new version to the Tennessee public. *See* Ex. A at 14:35. And Defendant Goins’ declaration provides no description of any irreparable harm that would result from the devotion of staff time to the project, or any other alleged administrative burden. *See* Doc 243-1 at 3876-3880. Money does not form a basis for irreparable injury. *D.T. v. Sumner Cnty. Schools*, 942 F.3d 324, 327 (6th Cir. 2019). Ultimately, the Court should take Defendants at their previous word: complying with the Order is not untenably burdensome. *See* Doc. 180 at 2869-70 (Defendants previously claiming they were *already doing* the bulk of what is

required of them).³

Lastly, Defendants make the unsupported claim that an injunction would “erode[] the integrity of Tennessee’s state and federal elections” due to ineligible voters voting. *See* Mot. at 14. Applications indicating a felony already undergo review by county-level officials, who check against the “felon files” and the Election Division to ensure that individuals have not had more convictions since their restoration. *See* Doc. 154 at 2302-03 (felony check processes); Ex. J, Henry-Robertson Dep. at 65:16-65:21 (Elections Division felony search regardless of what documentation is submitted). Nothing indicates these processes are insufficient.

By contrast, absent injunctive relief, eligible Tennesseans will continue to be improperly delayed or denied registration. Doc. 221. And while “the public certainly has an interest in a state being able to maintain a list of electors that does not contain any false or erroneous entries, a state cannot remove those entries in a way which risks invalidation of properly registered voters.” *See U.S. Student Ass’n Found. v. Land*, 546 F.3d 373, 388 (6th Cir. 2008). Importantly, “[t]he NVRA strikes a balance between removing fraudulent registrations while ensuring that legitimate voters are able to vote,” and states cannot conduct registration “in a manner that fails to respect this balance that Congress has drawn.” *See id.* This Court has denied the grant of a

³ Defendants’ July 2023 actions did not remedy Defendants’ NVRA violations as to individuals whose rights had already been restored and a subset of applicants whose felony convictions never disqualified them from voting. *See* Doc. 154 at 2306-2310.

stay where “[t]he preliminary injunction eliminates a risk of individual disenfranchisement” and there is no evidence of “any new substantial threats to the integrity of the elect[oral] process,” with a system already in place to verify voter eligibility. *Id.* at 388-89. The Court should do the same here.

B. Defendants Are Unlikely to Succeed on the Merits of their Appeal.

“[E]ven if a movant demonstrates irreparable harm that decidedly outweighs any potential harm to the [non-movant] if a stay is granted”—which is *not* the case here—the movant “is still required to show, at a minimum, serious questions going to the merits.” *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153-54 (6th Cir. 1991) (cleaned up). The inquiry is a sliding scale, and Defendants therefore carry an especially high burden in establishing likelihood of success on the merits here because they have not asserted meaningful irreparable injury. *Id.*

1. TN NAACP Has Direct Organizational Standing.

The district court did not err in finding Plaintiff TN NAACP has organizational standing. Doc. 221 at 3667-3668. To establish direct organizational standing, an organization must show either a perceptible impairment to “the organization’s activities” or a “drain on [its] resources.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp.*, 725 F.3d 571, 576 (6th Cir. 2013). Plaintiff “advocate[s] for the rights of

individuals who have been discriminated against” by helping people register and turnout to vote, including people with felony convictions. Doc. 221 at 3668. The district court concluded, based on specific evidence, that Plaintiff suffers cognizable injury because Defendants’ procedures increase the time and monetary burden on the organization’s ongoing provision of registration assistance to individuals with felony convictions and cause a diversion of resources from other mission-furthering activities. *Id.*

Defendants’ objections to Plaintiff’s standing are unavailing. *First*, they contend Plaintiff lacks standing because the increased resources are part of its mission. Mot. at 16. But the Sixth Circuit has squarely rejected such “sweeping” arguments, holding “that within-mission organizational expenditures are enough to establish direct organizational standing.” *Online Merchants Guild v. Cameron*, 995 F.3d 540, 548 (6th Cir. 2021). This rule is not inconsistent with the recent decision in *FDA v. Alliance for Hippocratic Medicine*, No. 23-235, 2024 WL 2964140, at *13 (U.S. June 13, 2024) (“*AHM*”), where the Supreme Court distinguished manufactured resource diversions arising from mere disagreement with government policy from the type of direct, concrete injury found cognizable in *Havens*, where a

defendant's action "directly affected and interfered with [the organization's] core business activities." *Id.* at *13.⁴

Plaintiff's injury falls squarely in the *Havens* bucket: Defendants' procedures increase the cost of voter registration assistance, one of Plaintiff's core activities, and force a diversion of resources from other activities, like promoting voter turnout. *See* Doc. 156-2 ¶¶ 13-17. As a result, Defendants' procedures "perceptibly impair [Plaintiff's] ability to provide" voter registration assistance to voters with felony convictions. *Havens*, 455 U.S. at 379. And there is nothing "business as usual" about what Plaintiff must do to help voters with felony convictions register to vote under Defendants' unlawful procedures, such as "accompan[ying] persons and taxi[ing] them to and from various governmental offices to troubleshoot ... and correct an erroneous rejection" or "to the court to pick up ... documents" to prove their eligibility. Doc. 156-2 ¶¶ 14, 16. The fact that Plaintiff would otherwise register voters unimpeded in this way does not negate the cognizable drain on resources it must endure so long as Defendants' procedures remain in place.

Second, Defendants' complaints as to the sufficiency of Plaintiff's standing evidence wholly ignores its contents. Mot. 16-17. Plaintiff provided testimony from

⁴ In *AHM*, the Court simply applied *Havens*, and found AHM's resource diversions (self-imposed expenditures to oppose a challenged law with which AHM disagreed) distinguishable from those in *Havens*. At most, *AHM* reaffirms that not all resource diversions are sufficiently concrete or direct to meet the demands of Article III. *Online Merchants Guild* says nothing to the contrary. *See* 995 F.3d at 547.

its senior officers detailing the affected voter registration activities and how Defendants' procedures force Plaintiff to spend scarce volunteer time and resources assisting voters with felony convictions register to vote. *See* Docs. 156-2 (1st Sweet-Love Decl.), 192-1 (2d Sweet-Love Decl.), 151-4 (Morris Dep.). When Plaintiff assists an eligible voter with a felony conviction, they cannot use the more efficient online form but must instead help the voter fill out a paper form.⁵ Doc. 156-2 ¶¶ 11-12. Upon the voter's rejection for lack of documentation, Plaintiff must do further follow-up to help the person track down the necessary paperwork. Doc. 156-2 ¶ 13. This includes helping voters locate and print necessary documents online, driving voters to various government offices to pick up documents, and paying to obtain court records. *Id.* ¶¶ 14-16. These efforts drain resources that Plaintiff would put toward registering additional voters and voter turnout activities. *Id.* ¶ 17. An organizational president's uncontroverted declaration describing the real, nonspeculative, and ongoing diversion of resources is sufficient for standing. *Online Merchants Guild*, 995 F.3d at 547 (also citing *Miami Valley*, 725 F.3d at 576).⁶

⁵ As confirmed by declaration, Plaintiff uses the Federal Form regularly at large-scale events that draw people from out of state. Doc. 192-1 ¶ 9. At these events, Plaintiff frequently encounters and assists individuals who have past felony convictions. *Id.*

⁶ Courts have regularly found similar evidence sufficient to prove standing of voter advocacy organizations to challenge policies that make it harder to register or vote. *See, e.g., Common Cause Indiana v. Lawson*, 937 F.3d 944, 952 (7th Cir. 2019) (standing where affidavit showed new voter purge law would require greater

Third, Defendants claim Plaintiff lacks standing to seek forward-looking injunctive relief. Mot. at 18. This argument makes no sense because Plaintiff “presents evidence of *ongoing* harm,” Doc. 221 at 3668-3669, which can only be remedied by injunctive relief. *See* Doc. 192-1 ¶¶ 3-5 (Plaintiff’s intent to continue helping people register to vote, including people with felony convictions). Plaintiff therefore has standing.

2. Defendants’ Documentation Procedures Violate the NVRA.

The district court’s holding is correct: Defendants’ documentation procedures violate the NVRA. Doc. 221 at 50-51. Sections 20507(b)(1) and 20508(b)(1) of the NVRA impose requirements on state and federal registration forms. Section 20507(b)(1) requires that state voter registration programs and activities “be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” Section 20507(a)(1) requires states “ensure that any eligible applicant is registered to vote in an election” upon receipt of a timely and valid voter registration application. Tennessee cannot evade these federal legal requirements, which exist

resources to assist voters dropped from rolls) (citing more cases); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff’d*, 553 U.S. 181, 189 n.7 (2008) (standing where voter ID law would compel political party to turn out supporters discouraged from voting); *OCA-Greater Houston v. Texas*, 867 F.3d 604, 612 (5th Cir. 2017) (standing for injury from spending additional time to inform voters about new law instead of usual GOTV activities).

notwithstanding any differences between a state and federal voter registration form.⁷

Defendants' reliance on *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) ("*ITCA*"), is misplaced. *See* Mot. at 20. In *ICTA*, the Court found that the NVRA authorizes states to develop and use a voter registration form that does not require information beyond what is required by the Federal Form and requires "only" information "necessary" for the state to determine the applicant's eligibility. Doc. 221 at 3690 (citing §§ 20505(a)(2), 20508(b)); *ITCA*, 570 U.S. at 15, 18 ("[§ 20508] acts as both a ceiling and a floor with respect to the contents of the Federal Form."). The state's authority to design a mail-in voter registration form is not, as the district court explained, "*carte blanche*" for the state to require any information. *Id.*; *Fish v. Kobach*, 840 F.3d 710, 737 (10th Cir. 2016).

In finding (1) no evidence that "Tennessee . . . needs documentation to assess the eligibility of applicants with felony convictions" and (2) that "it is undisputed that county and state election officials have the information the State says it needs to assess an applicant's eligibility," the district court determined that Defendants' practice requires unnecessary information in violation of the NVRA. Doc. 221 at

⁷ Defendants claim the documentation requirement helps the state determine who is and is not eligible to vote and thus complies with the NVRA. Mot. at 19. But that misses the point that the documentation requirement in its particularities violates the NVRA. An asserted goal of determining voter eligibility alone is not enough for NVRA compliance. Doc. 221 at 3688-91.

3691.⁸ The court’s refusal to make Defendants’ preferred contrary inference is in line with summary judgment principles: “In order for the non-movant to defeat a summary-judgment motion, there must be evidence on which the jury could reasonably find for the [non-movant].” *Bard v. Brown Cnty., Ohio*, 970 F.3d 738, 748 (6th Cir. 2020) (cleaned up). Defendants point to no evidence nor argument contradicting the district court’s finding upon which the court should have relied.⁹

Moreover, despite Defendants’ assertions to the contrary, the district court was correct to find that it is “undisputed that county and state election officials have the information” needed to assess the eligibility of an individual covered by Count 6. Doc. 221 at 3691; *id.* at 3656-57; *see also* Doc. 154 at 2304. Moreover, county election officials can ask the Election Division to confirm an applicant’s restoration status, which, as discussed above, is not “a burdensome task.” *See* Ex. J, Henry-Robertson Dep. at 55:20-56:18.

The district court was also correct that the Documentation Policy is non-uniform in violation of Section 20507(b)(1). Doc. 221 at 3691. Defendants do not

⁸ In so determining, the district court did not improperly “refuse[] to consider” the state’s argument. Mot. at 22-23. If such additional documentation is necessary to determine eligibility, then the state should request the Election Assistance Commission amend the Federal Form. *See ITCA*, 570 U.S. at 17.

⁹ Because the district court correctly determined that Defendants’ practice requires unnecessary information, Defendants’ claim that the Order creates “serious constitutional problem[s]” is plainly incorrect. Mot. at 22. The authority on which Defendants rely is about *necessary* information. *Id.* at 21-22.

dispute that the additional documentation requirement “imposes a barrier to registration . . . on a class of applicants—those with felony convictions—that does not apply to other classes of applicants.” Doc. 221 at 3688. Requiring documentation from facially eligible applicants who never lost the right to vote or whose rights were restored, when the state has access to the information needed to verify their eligibility and when it does not require documentation from other facially eligible applicants without felony convictions, is non-uniform and contributes to the inequities that the NVRA was partially designed to address. *See* Doc. 154 at 2305; *see Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *41 (D. Ariz. Feb. 29, 2024) (Arizona program requiring county officials “consult” database for registered voters who they have “reason to believe” are noncitizens violated federal law because “[o]nly naturalized citizens would be subject to scrutiny”).

C. A Stay Would Cause Substantial Harm to Others and Would Not Serve the Public Interest.

In contrast to Defendants’ lack of irreparable injury, the public interest in ensuring access to the ballot for all eligible voters, including Plaintiff TN NAACP’s members—an interest Defendants’ analysis entirely ignores—significantly weighs against a stay of the injunction. The denial of the right to vote in a single election is irreparable harm. *Obama for America v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012). As this Court has explained, quoting *Purcell*, “the public has a ‘strong interest in

exercising the fundamental political right to vote,” *id.* at 436, and “[t]he public interest therefore favors permitting as many qualified voters to vote as possible.” *Id.* at 437.

The injunction furthers that weighty interest. Defendants’ actions result in barriers to eligible applicants’ successful registration. *See* Doc. 155 ¶¶ 43-50; *see also* Doc. 156-30. And they divert resources away from Plaintiff’s voter registration because Plaintiff must assist those voters in providing documentation. *See, e.g.*, Doc. 154 at 2285-88; Doc. 156-2 ¶¶ 12-18. This harm is irreparable in an election year, where Plaintiff is working to register as many voters as possible but is hamstrung by the need to assist Tennesseans with past convictions navigate Defendants’ unlawful procedures. *See* Doc. 156-2 ¶¶ 12-18.

Defendants’ public interest arguments cannot justify Defendants’ unlawful registration procedures that disenfranchise eligible voters. As Defendants’ practices ultimately preclude eligible Tennesseans from voting, they are *not* furthering “[c]onfidence in the integrity of our electoral processes.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Defendant provides no evidence that changing the registration forms would undermine confidence in Tennessee’s elections here. Mot. at 14. Defendants have similarly failed to provide evidence that noneligible registration would occur beyond Defendant Goins’ assertion as to “[his] opinion.” Doc. 243-1 ¶ 25. Finally, as described above, Defendants’ asserted administrative burden is a

fiction and certainly does not outweigh access to the ballot.

In light of the severe and concrete harms to eligible voters, the balance of equities and public interest lie with requiring Defendants to comply with federal law.

D. *Purcell v. Gonzalez* Supports Denial of a Stay and Does Not Alter the Basic Analytical Framework as to a Stay.

Defendants are wrong that “the *Purcell* principle standing alone justifies” a stay. *See* Mot. at 9. First, as this Court has explained, *Purcell* “is only one of many [considerations] and is neither dispositive nor establishes a presumption against enjoining election rules close to election day.” *Priorities USA v. Nessel*, 978 F.3d 976, 985 n.3 (6th Cir. 2020). The *Purcell* analysis is a part of, not independent from, ordinary four-factor stay analysis. *A. Philip Randolph Inst. v. Husted*, 907 F.3d 913, 918 (6th Cir. 2018) (explaining that *Purcell* considerations “do not change the Plaintiffs’ burden in any categorical way in this case” but instead “may . . . be relevant under our four-factor test”); *Memphis A. Philip Randolph Inst. v. Hargett*, 977 F.3d 566, 568-69 (6th Cir. 2020) (considering *Purcell* under public interest factor); *SEIU v. Husted*, 698 F.3d 341, 345 (6th Cir. 2012) (describing application of *Purcell* as “particularly appropriate” where a party has failed to act

quickly).¹⁰

In fact, *Purcell* countenances *against* a stay here. *Purcell* found that “[c]ourt orders affecting elections, *especially conflicting orders*, can themselves result in voter confusion,” and thus counsel against further judicial interference absent a compelling reason. 549 U.S. at 5-6 (emphasis added). Here, the district court granted summary judgment two months ago.¹¹ As explained above, Defendants provided updated voter registration forms on the Secretary of State’s website, then yanked them after this Court’s administrative stay. If anything creates the risk of voter

¹⁰ Justice Kavanaugh recently explained, “the *Purcell* principle is probably best understood as a *sensible refinement* of ordinary stay principles for the election context,” and further outlined a stay test in the *Purcell* context. *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (emphasis added). Neither the Supreme Court nor this Court has adopted Justice Kavanaugh’s proposed test. *See Fouts v. Warren City Council*, No. 23-1826, 2023 WL 6467366 (6th Cir. Oct. 4, 2023) (post-*Milligan* case, analyzing under *Purcell* and not doing so); *Burrell v. Tipton Cty. Election Comm’n*, No. 22-5867, 2022 WL 10225146 (6th Cir. Oct. 18, 2022) (same). Were this Court, *en banc*, to adopt Justice Kavanaugh’s *Milligan* analysis, the same result would obtain. As described *supra*, the district court’s well-reasoned decision is clearly correct; Plaintiff would suffer irreparable harm without the injunction; Plaintiff did not “unduly delay[] bringing the complaint to court,” just one month after the last presidential election; and implementation of the injunction—ceasing Defendant’s unlawful procedure and following the NVRA—is “feasible before the election without significant cost, confusion, or hardship.” *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

¹¹ Defendants cite to *Petteway v. Galveston County*, 87 F.4th 721, 723 (5th Cir. 2023) (Oldham, J., concurring) to suggest that the election is too close, but in that case the relevant deadlines were *days* away. Here, the voter registration deadline for the presidential elections is several months away.

confusion it is Defendants' behavior, not compliance with the district court's decision and order as contemplated by federal rules of procedure. *See League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016) ("Confusion will create a disincentive for citizens who would otherwise attempt to register to vote.").

This Court previously denied a motion for stay in very similar circumstances, in light of *Purcell*, and should follow that precedent here. In *Memphis A. Philip Randolph Inst. v. Hargett*, 977 F.3d 566 (6th Cir. 2020), this Court declined to stay an injunction pending appeal where information about the injunction had been available to Tennessee voters, on the basis that "[c]onsistency ahead of an election is important to avoid voter confusion." *Id.* at 569. As here, voters had been aware of the legal change for over a month and the state's official website had promulgated information about it. *Id.* The Court relied on *Purcell*'s concern with pre-election consistency in reaching this determination. *Id.*¹²

Defendants have run out the clock in this lawsuit filed one month after the 2020 election and now seek to weaponize that delay against disenfranchised Tennessee voters. They have also hidden their actions implementing their reading of the Order while claiming administrative burden. Defendants' requested stay, not the

¹² Defendants' citations to out-of-circuit cases for the general principle that *Purcell* applies here, Mot. at 11-12, are largely irrelevant, as adding *Purcell* to the analysis only benefits Plaintiffs. As described above, Sixth Circuit precedent is clear: *Purcell* is not a per se mandate for stays of injunctive relief near an election.

Order, threatens disruption and confusion.

CONCLUSION

The stay motion should be denied.

June 20, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 5(c)(1) because it contains 5159 words, as determined by the word-count function of Microsoft Word, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Charles K. Grant

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Counsel for Plaintiff-Appellee

CERTIFICATE OF SERVICE

I certify that on June 21, 2024, an electronic copy of the foregoing Answer was filed with the Clerk of Court for the U.S. Court of Appeals for the Sixth Circuit, using the appellate CM/ECF system. On June 20, 2024, a courtesy copy was served via email on Philip Hammersley, counsel for Petitioners. I further certify that all parties in this case are represented by lead counsel who are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

/s/ Charles K. Grant

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DESIGNATION OF RELEVANT DOCUMENTS

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	Declaration of Blair Bowie in Support of Appellees Response to Emergency Stay Motion, and exhibits:	
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	Exhibit B, DEF017413	
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Original Complaint

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**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, and LAMAR PERRY, CURTIS GRAY Jr., JOHN WEARE, BENJAMIN TOURNIER, and AMANDA LEE MARTIN, for themselves and those similarly situated,

Plaintiffs,

v.

WILLIAM LEE, in his official capacity as Governor of the State of Tennessee, TONY C. PARKER, in his official capacity as Commissioner of the Department of Correction of the State of Tennessee, 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 Tennessee, and MELISSA HARRELL in her official capacity as Rutherford County Clerk of Circuit Court,

Defendants.

Civil No. _____

[Class Action]

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs the Tennessee Conference of the National Association for the Advancement of Colored People, Lamar Perry, Curtis Gray Jr., John Weare, Benjamin Tournier, and Amanda Lee Martin ("Plaintiffs") bring this class action against Defendants William Lee, in his official capacity as Governor of the State of Tennessee, Tony C. Parker, in his official capacity as Commissioner of the Department of Correction of the State of Tennessee, 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 Melissa Harrell, in her official capacity as Rutherford County Clerk of Circuit Court; (“Defendants”), and allege the following:

INTRODUCTION

1. This case challenges the state of Tennessee’s unequal, inaccessible, opaque, and error-ridden implementation of the statutes granting restoration of voting rights to citizens who lost the right to vote because of a felony conviction. Plaintiffs’ claims arise under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and the Twenty-Fourth Amendment of the United States Constitution. Plaintiffs also challenge aspects of the voter registration process for individuals with felony convictions under the National Voter Registration Act (“NVRA”).

2. The primary pathway to voting rights restoration in Tennessee is a Certificate of Restoration of Voting Rights (“COR”). Tennessee law makes clear that an individual who meets certain criteria—including completion of sentence and certain legal financial obligations—has a statutory right to a COR. The legislature intended the COR system to streamline and make uniform and objective the voting rights restoration process, which had previously primarily depended on judicial discretion. The legislature assigned Defendants responsibility for managing the COR process. But due to Defendants’ failure to administer the law properly, the process is far from streamlined, uniform, or objective. It is opaque, decentralized, inaccurate, and inaccessible.

3. By statute, if a COR is requested by an eligible Tennessean, it must be completed by an official of the “pardoning authority or incarcerating authority”—meaning the Governor or the Tennessee Department of Corrections (“TDOC”). But neither the Governor nor TDOC has implemented adequate policies, guidance, or directives to comply with that statutory mandate.

4. Many eligible and potentially eligible Tennesseans have nowhere to go to begin the COR process, except to embark on what is often a wild-goose chase to find a local official willing to complete their COR. If they are actually able to find an official who will consider completing the COR, there are no uniform procedures for determining if that person meets the eligibility criteria. A person with the same facts surrounding their conviction and service of the terms of their sentence may get a different result depending on their county of conviction and which official in that county is making the determination of their eligibility. A refusal to fill out the COR comes with no statement of reasons; the person is simply turned away. There are no means to appeal.

5. This lack of guardrails and uniform policies creates a high risk of erroneous deprivation of the statutory right to COR. Indeed, erroneous deprivation of CORs occurs regularly.

6. Tennessee has created a statutory right to a COR for individuals who meet certain criteria and who request a COR from a designated official, but Defendants collectively erroneously deprive individual plaintiffs and those similarly situated of those CORs, and the right to vote a COR restores, without due process.

7. At least one county, Rutherford County, charges a fee for production of the COR to eligible individuals, denying the COR—and thus the right to vote—to those who cannot pay. That fee constitutes a poll tax in violation of the 24th Amendment to the U.S. Constitution.

8. The implementation failures of the rights restoration process create an unequal, scattershot system across Tennessee's ninety-five counties, causing disparate results for similarly situated individuals, in violation of the Equal Protection Clause.

9. Furthermore, elements of Tennessee's voter registration process violate the NVRA and create additional, unnecessary barriers to the franchise for individuals with felony convictions even when they never lost the right to vote or have already had their voting rights restored.

10. These constitutional and federal law violations injure Plaintiffs and members of organizational Plaintiff, the Tennessee Conference of the National Association for the Advancement of Colored People, some of whom have been disenfranchised and seek to restore their rights, others of whom never lost the right to vote but are unable to register to vote because of their non-disqualifying felony convictions. These constitutional and NVRA violations also injure the organization itself by requiring it to divert resources from its other core priorities to provide supplementary assistance to individuals seeking rights restoration and voter registration, often without success.

11. Defendants must implement constitutionally sufficient procedures so that Tennesseans who meet the statutory requirements may receive their CORs and exercise their right to vote.

JURISDICTION AND VENUE

12. This action is brought under 42 U.S.C. § 1983, 52 U.S.C. § 20507 (the National Voter Registration Act), and the United States Constitution. This Court therefore has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

13. This Court has personal jurisdiction over each Defendant because each is a citizen of Tennessee or has his or her principal place of business in the State.

14. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) because some Defendants reside in this District and all Defendants reside in Tennessee, and because a substantial portion of the events giving rise to these claims occurred in the Middle District of Tennessee.

LEGAL FRAMEWORK

15. The Tennessee Constitution permits the state legislature to disenfranchise citizens upon “conviction by a jury of some infamous crime, previously ascertained and declared by law,

and judgment thereon by court of competent jurisdiction.” Tenn. Const. art. I, § 5. This provision is not self-executing, and disenfranchisement cannot be applied retroactively. *Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983). Thus, persons convicted of crimes are not disenfranchised unless prior to their conviction the legislature has by law “ascertained” that those crimes are infamous and “declared” that conviction of those crimes results in loss of the right to vote.

16. Before January 15, 1973, the legislature defined a specific class of infamous crimes that resulted in disenfranchisement. A conviction before January 15, 1973 only disqualifies a person from voting if the conviction is for one of approximately twenty specific crimes listed in state law at the time *and* the judgment of conviction included a statement rendering the crime “infamous.”

17. Between January 15, 1973 and May 17, 1981, Tennessee had no law on the books stating that convictions for infamous crimes result in disenfranchisement. *See Crutchfield v. Collins*, 607 S.W.2d 478, 482 (Tenn. Ct. App. 1980). Thus, felony convictions during this “grace period” *never* disqualify a Tennessean from voting. A person with convictions only from this period is eligible to register and vote.

18. For convictions on or after May 17, 1981, the legislature defined “infamous crimes” to mean *all* felonies. Tenn. Code Ann. § 40-20-112. All felony convictions from May 17, 1981 on—whether by a Tennessee court, a court in another state, or a federal court—result in loss of the right to vote, until that right has been restored. *Id.* at § 2-19-143.

19. A select few felony convictions *permanently* strip a person of their right to vote with no possibility of restoration, including convictions:

- a. after July 1, 1986 for first-degree murder, aggravated rape, treason, or voter fraud;

b. between July 1, 1996 and July 1, 2006 for any degree of murder or rape, treason, or voter fraud; and

c. after July 1, 2006 for any degree of murder or rape, treason, voter fraud, bribery under Tenn. Code Ann. § 39-16-1, misconduct involving a public official or employee under *id.* § 39-16-4, interference with government operations under *id.* § 39-16-5, or any felony sexual offense under *id.* § 40-39-202 where the victim was a minor. *Id.* § 40-29-204.

20. Like its felony disenfranchisement rules, Tennessee's rights restoration process has also changed over the years. From 1981 to 2006, for most disqualifying convictions, the only avenue to restore the right to vote was to seek a court order upon completion of the maximum sentence, or upon receiving a pardon, or, in the case of out-of-state convictions, upon civil rights restoration under the laws of the jurisdiction of conviction. *See* Tenn. Code Ann. §§ 40-29-101, 2-19-143.

21. In 2006, the Tennessee legislature revised the eligibility requirements to restore voting rights for those convicted of felonies after May 18, 1981 and created a new administrative pathway for those eligible citizens to restore their right to vote by seeking a COR. 2006 Tenn. Pub. Acts c. 860 (codified at Tenn. Code Ann. § 40-29-201 *et seq.*).

22. A person disenfranchised due to felony convictions after May 18, 1981 is *entitled* to voting rights restoration by COR if they meet four requirements:

a. First, the person must have completed their sentence, including prison, probation, parole, or other community supervision, or received a pardon. Tenn. Code Ann. § 40-29-202(a).

b. Second, the person must have “paid all restitution . . . ordered by the court as part of the sentence” and “all court costs assessed against the person at the conclusion of the person’s trial, except where the court has made a finding at an evidentiary hearing that the applicant is

indigent at the time of application.” *Id.* § 40-29-202(b). While the statute requires payment of restitution and court costs related to felony convictions (absent a declaration of indigency), it does *not* require payment of any criminal fines. Nor does it require payment of any legal financial obligations (“LFOs”) related to misdemeanor convictions, civil violations, or fees associated with supervision.

c. Third, the person must be “current in all child support obligations.” *Id.* § 40-29-202(c).

d. Fourth, the person may not have been convicted of certain serious crimes, which vary based on the date of the conviction. *Id.* § 40-29-204; *see supra* paragraph 19.

23. A person who meets these eligibility requirements has a right to “request, and then *shall* be issued,” a COR. *Id.* § 40-29-203(a) (emphasis added).

24. Tenn. Code Ann. § 40-29-203(a) names the categories of officials who must issue CORs upon request by eligible persons: “(1) [t]he pardoning authority; (2) [t]he warden or an agent or officer of the incarcerating authority; or (3) [a] parole officer or another agent or officer of the supervising authority.” This list encompasses the Governor (the pardoning authority) and officials within TDOC (the incarcerating and supervising authority).

25. The Coordinator of Elections is required to create the COR form along with a statement adequately explaining the form and procedure for voting rights restoration. *Id.* § 40-29-205. The Coordinator of Elections is also responsible for printing and distributing the form to TDOC and the other supervising and pardoning authorities. *Id.* The COR form currently distributed

by the Coordinator of Elections on the Secretary of State's website¹ is attached hereto as Exhibit A.

26. A COR serves as "sufficient proof that the person . . . is no longer disqualified from voting by reason of having been convicted of an infamous crime." *Id.* § 40-29-203(c). In other words, a validly issued COR indicates that a person has regained their right to vote.

27. After requesting and being issued a completed COR, a person seeking to exercise their right to vote must submit the COR to the election administrator in the county where the person intends to register to vote. *Id.* § 40-29-203(d). The county election administrator must send the COR to the state Coordinator of Elections, who determines whether the COR was lawfully issued and notifies the county election administrator of that decision. *Id.* If the COR is approved, the person may submit a voter registration application and, once registered, exercise their right to vote. *Id.*

28. Under this statutory framework, tens of thousands of Tennesseans are eligible for a COR and, as a matter of law, have a statutory right to restore their right to vote upon request. And state law places a mandatory duty to issue CORs to eligible citizens squarely on Defendants. But Defendants have failed to administer the straightforward process set forth in Tennessee law, leaving eligible citizens to chase down various local and county-based officials to request CORs and endure a system that is unequal, inaccessible, opaque, and inaccurate. The problems with Defendants' COR system are avoidable and easily fixed. Until those remedies are implemented, fully eligible Tennesseans will continue to be erroneously denied restoration of their voting rights.

¹ Secretary of State of Tennessee, "SS-3041 - Certificate of Restoration of Voting Rights" at 2 (last accessed Dec. 2, 2020) <https://sos-tn-gov-files.tnsosfiles.com/SS-3041.pdf?VwD85iTeo47D8jMFbugVtkTLkgRgrUHX>.

This suit seeks to compel Defendants to administer the COR system in a manner that passes constitutional muster.

PARTIES

I. Plaintiffs

A. Organizational Plaintiff

29. Plaintiff the Tennessee State Conference of the National Association for the Advancement of Colored People (“TN NAACP”) is a nonpartisan, multi-racial, non-profit membership organization headquartered in Jackson, Tennessee and is the state’s chapter of the largest and most pre-eminent civil rights organization in the country. The TN NAACP was founded in 1946 to serve as the Tennessee arm of the National Association for the Advancement of Colored People. Its mission is to eliminate race-based discrimination through securing political, educational, social, and economic equality rights and ensuring the health and well-being of all persons.

30. The TN NAACP has three regional divisions—Eastern, Middle, and Western Tennessee—as well as the 33 local branch units and 22 college chapters and youth councils. The TN NAACP and most of its local branch units are primarily volunteer-run, and all officers are volunteers. In total, the TN NAACP has more than 10,000 members across the state.

31. More than 90% of the TN NAACP’s membership is Black.

32. Black voters in particular have long been silenced by Tennessee’s felony disenfranchisement regime. During Reconstruction “[d]enying African Americans citizenship due to criminal convictions, thereby rendering them legally infamous, was part of the larger effort to save the status quo of white supremacy in the South.”² The 1870 Tennessee Constitution, enacted

² See Pippa Holloway, *Living in Infamy: Felon Disenfranchisement and the History of American Citizenship* 12 (2014).

shortly after the passage of the Reconstruction Amendments, denied the right to vote to anyone convicted of “infamous crimes,” a phrase which is still the basis for disenfranchisement in the state today.

33. Tennessee’s felony disenfranchisement law continues to have a disparate impact on Black Tennesseans. Black people make up 16% of the state’s total voting-age population, but account for 39% of its disenfranchised population.³ Of the state’s 451,000 disenfranchised citizens, nearly 175,000 are Black, accounting for more than 21% of the Black voting-age population—one of the highest rates of Black disenfranchisement in the United States.⁴ Tennessee’s felony disenfranchisement laws also disenfranchise nearly 11% of the state’s Latino voting-age citizens, the highest rate of Latino disenfranchisement in the country by a significant margin.⁵

34. More than 81% of Black Tennesseans who have lost the right to vote are post-sentence, meaning they may be eligible for CORs.⁶ Because of the demographic its membership represents, there is a high statistical probability that numerous TN NAACP members are disenfranchised and have a statutory right to a COR, but are unable to vindicate that right because of Defendants’ failure to institute due process. The TN NAACP has an active chapter in Murfreesboro, Rutherford County. There is also a high statistical probability that many TN NAACP members had felony convictions only during the “grace period,” between January 15, 1973 and May 17, 1981, meaning they never lost the right to vote but are still unable to register using the Tennessee state voter registration form or the online registration form.

³ Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, at 17 (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

⁴ *Id.* at 18.

⁵ *Id.*

⁶ *Id.*

35. Through its rights restoration work, TN NAACP is aware of members who are eligible for CORs and have requested them but have not received them. It is also aware of members who were convicted of felonies only during the grace period, and therefore have never lost the right to vote, but have been denied voter registration.

36. TN NAACP members who are disenfranchised but have a statutory right to a COR (or may have a statutory right to a COR) are harmed by their inability to request and be issued a COR pursuant to Tennessee law. Defendants' failure to administer the COR process deprives TN NAACP members of their right to vote and inflicts harm on these members each time an election passes in which they are not allowed to cast a ballot.

37. The TN NAACP diverts significant resources from its other activities related to its core mission in order to assist its constituents and other community members with the voting rights restoration process. The lack of procedural due process in Defendants' administration of CORs forces the TN NAACP to expend additional money and time helping individuals navigate a process that is designed to fail. Staff and volunteers spend significant time and money holding public education workshops trying to explain the COR process. They must tailor these events to what they understand the "process" to be in each county. Assisting individuals seeking a COR may take dozens of hours and be spread across many months. It requires spending time and money making phone calls and taxiing those members between county offices, often to no avail. The time and money spent navigating the COR process detracts from the core work of the TN NAACP.

38. The TN NAACP also expends significant resources helping its members register to vote, almost exclusively using the Tennessee state voter registration form or directing them to the online registration portal. But the Tennessee state voter registration form and online portal are designed to exclude individuals with felony convictions, even if they have the right to vote. The

TN NAACP is injured when a person they identify and help register to vote is rejected despite being eligible. When this occurs, the TN NAACP must conduct extensive follow up, including spending additional time and resources troubleshooting the problem which may include seeking very old court records that are not easily accessible. Often these efforts will not be enough to correct erroneous denials of CORs, voter registration, and the right to vote.

39. The TN NAACP's political power is diminished by the inability of its members and its constituency to vindicate their statutory right to a COR and their right to vote. The TN NAACP's core mission is to empower the African American community in Tennessee and pass policy reforms that improve the lives of its constituents.

B. Individual Plaintiffs

40. Plaintiff Lamar Perry is a resident of Shelby County, Tennessee. In 2006, Plaintiff Perry was convicted of a felony, Forgery of \$1,000 or less. He served two years on probation. In 2013, he went through a second-chance program. At the conclusion of that program, he learned of the availability of the COR to restore voting rights in Tennessee. Eager to do so, Plaintiff Perry sought a COR but was told he did not qualify because he had been assessed \$3,288.10 in LFOs, which was more than three times the amount of his forgery offense. Plaintiff Perry was surprised to learn that he owed these LFOs, as he had already paid his restitution in full and believed that to be his only debt. Still, he worked to pay down this debt. In 2020, Plaintiff Perry, believing his debt to be fully paid, again sought a COR. Because probation officers in Shelby County routinely refuse to fill out CORs, Plaintiff Perry sought his COR from the Shelby County Clerks of Criminal Court, which will sometimes complete CORs upon request. In August 2020, the Shelby County Clerk of Court's office refused to fill out his COR, stating by email that he still owed "\$1,160.10 in court costs" on his case. At the time of this filing, however, his records show that his only outstanding LFO is a criminal fine of \$952.10. Under Tennessee law, fines are *not* required to be paid to qualify

for a COR, only court costs and restitution. *See supra* paragraph 22.b. Plaintiff Perry was wrongly denied a COR in time to register to vote for the 2020 Presidential Election. Defendants have provided no specific statement of reasons for the denial of Plaintiff Perry's COR on the basis of an outstanding fine and no means for Plaintiff Perry to appeal the Shelby County Clerk's refusal to complete his COR despite his eligibility.

41. Plaintiff Curtis Gray Jr. is a resident of Shelby County, Tennessee. In 1988, Mr. Gray was convicted of drug possession in Shelby County. He wishes to vote but Shelby County officials refuse to issue him a COR because of alleged outstanding LFOs. His court records show that he owes only \$279.00 in court costs and no restitution. However, officials in the Shelby County clerk of court's office have stated by email that he must pay more than twice that amount, which appears to include \$500 clearly labeled as a "fine." Tennessee law does not require payment of fines to be eligible for a COR. *See supra* paragraph 22.b. Defendants have provided no statement of reasons explaining the reasons for the denial of Plaintiff Gray's COR on the basis of an outstanding fine and no means for Plaintiff Gray to appeal the Shelby County Clerk's assessment of what he must pay to receive his COR.

42. Plaintiff John Weare is a resident of Lewis County, Tennessee. He wishes to restore his right to vote in Tennessee but has been unable to acquire a COR, or, in the alternative, a denial of a COR and a statement of reasons that would allow him to understand or appeal such a denial. Instead, he has been passed from agency to agency, spending countless time waiting on hold or being hung up on, only to be told that no one is willing to fill out his COR. In 1997, Mr. Weare was convicted of aggravated assault in Maricopa County, Arizona, and of aggravated assault on a minor in Yuma County, Arizona in 2003. He has completed all terms of his sentence and does not believe that he owes any court costs or restitution. Plaintiff Weare has asked multiple officials,

including clerks and probation officers in Maricopa and Yuma Counties, to fill out his COR but none has agreed or given him written denial. He has no means to appeal these non-decisions. The officials he has spoken with have directed him instead to Arizona's rights restoration process which involves a court petition in Arizona state court that would not achieve recognition of his right to vote in Tennessee. The Governor of Tennessee has the power to grant clemency to Plaintiff Weare for purposes of restoring his right to vote, and is therefore "a pardoning authority" for purposes of Tenn. Code Ann. § 40-29-202; however, there is no mechanism for Plaintiff Weare to request a COR from the Governor.

43. Plaintiff Benjamin Virgil Tournier is a resident of Jackson, Madison County, Tennessee. For many years, Plaintiff Tournier believed that he was permanently barred from the franchise because he was convicted of theft of property in Yavapai County, Arizona in 1997 and forgery in Maricopa County, Arizona in 2001. But in 2020, he learned that he may be eligible for rights restoration and, if so, could register to vote by seeking CORs for his convictions and submitting them to his county election commission. It is his understanding that he would need one COR completed for each of his felony convictions, although this is an outstanding question that Defendants have failed to clarify. Three days after being released from prison in Arizona for his forgery conviction, Plaintiff Tournier moved to Tennessee through an interstate compact to be with his mother. He completed parole in Tennessee in 2003 under the authority of the Tennessee Department of Corrections. He does not believe he owes (and his records do not show) any outstanding court costs or restitution on his Maricopa County felony conviction. However, he and his advocates' attempts to find an official in Maricopa County willing to complete the COR have failed. Officials in probation and the county clerk's office have repeatedly referred him to Arizona's rights restoration process by petition to a court. Completing that process would be

burdensome and pointless because, according to the Tennessee Secretary of State's Elections Division, it would not restore his right to vote in Tennessee. He has received no official denial from Maricopa County, has no more officials to ask, and has no means to appeal his inability to receive a COR from Maricopa County. Since he served out his sentence on his conviction from Maricopa County under the supervision of TDOC, under law, he should be able to request a COR from a Tennessee probation officer. However, he has been unable to obtain a COR from the probation office in Madison County. Upon going in person to request a COR, Plaintiff Tournier was told to fill out the top portion of the form (despite the instructions on the form that it is not to be filled out by the applicant) and to leave it there to be filled out by an officer. He was told they will only fill out the half of the form then he must retrieve it to bring it to the Madison County Clerk of Court to complete the rest. The Clerk of Court in Madison County will not have a record of Plaintiff Tournier's conviction, however, because it originated in Maricopa County, Arizona. Therefore, once he receives the partially filled out form, he will still need to an official in Maricopa County to complete the rest, which they have already refused to do. Additionally, Plaintiff Tournier's attempts to find an official willing to complete a COR in Yavapai County led to the discovery that he has outstanding LFOs in that county. The Yavapai County Clerk has reported that Plaintiff Tournier still owes \$1,855 in "probation fees and attorneys' fees." He does not owe any child support obligations. It is not clear based on Yavapai's categorization of these obligations whether they would be considered "court costs" for purposes of the Tennessee COR requirements. He has no means by which to seek a determination on that matter. The Governor of Tennessee has the power to grant clemency to Plaintiff Tournier for his convictions for purposes of restoring his right to vote, and is therefore "a pardoning authority," for purposes of Tenn. Code § 40-29-202, however, there is no mechanism for Plaintiff Tournier to request a COR from the Governor.

44. Plaintiff Amanda Lee Martin is a resident of Chuckey, Tennessee in Greene County. In 2005, she was convicted of a federal drug-related felony in the Eastern District of Tennessee. She completed her sentence, including probation, in 2010. Upon release from probation, her probation officer gave her a partially completed COR confirming that she had finished all carceral and supervisory terms of her sentence. Since her probation officer would not complete the remaining portion of the COR with respect to her LFOs, Plaintiff Martin then went to the clerk's office at the U.S. District Court for the Eastern District of Tennessee in Greeneville to ask them to complete the remaining portions of the COR, which would confirm that she owed no outstanding court costs or restitution. The federal court clerk office refused and directed her to the Greene County Circuit Court Clerk office. When she arrived at the Greene County Circuit Court Clerk office, they also refused and sent her back to the federal court. Plaintiff Martin went back to the federal court clerk office, and they finally completed the COR. Plaintiff Martin brought the completed COR to the Greene County Election Commission. But weeks later, she received a letter informing her that she had submitted the wrong form and would have to get a new enclosed form filled out by the appropriate officials all over again. The new enclosed form requested exactly the same information as the COR Plaintiff Martin had already submitted but in a different order. She wished to restore her right to vote in the November 2020 election. But after facing arbitrary and unjustifiable administrative roadblocks once before, she feared that her COR would not be accepted a second time. Plaintiff Martin did not receive a written denial of her request for a COR, she has not received a statement of reasons, and she had no way to appeal this non-decision which prevented her from receiving her COR.

45. Plaintiffs Perry, Gray, Weare, Tournier, and Martin ("Individual Plaintiffs") seek to represent the class of similarly situated Tennessee residents as defined below.

II. Defendants

46. Defendant William Lee is the Governor of Tennessee (“the Governor”) and is sued in his official capacity. The Governor is Tennessee’s chief executive, must “take care that the laws be faithfully executed,” and has the “power to grant . . . pardons” to any individual convicted of a crime. Tenn. Const. art. III, §§ 1, 6, 10. The Governor also appoints the Commissioner of the Department of Correction who holds the office at his pleasure. Tenn. Code Ann. § 4-3-112.

47. Defendant Tony Parker is the Commissioner of the Department of Correction (“the Commissioner”) and is sued in his official capacity. The Commissioner is the executive officer of TDOC and is charged with the department’s general management. *Id.* §§ 4-3-111, 4-3-603. As Commissioner, Parker supervises the wardens, parole officers, agents, and other officers who are responsible for issuing CORs to eligible persons. *Id.* §§ 40-29-203(a), 4-6-107, 4-3-602.

48. Defendant Mark Goins is the Coordinator of Elections for Tennessee (“the Coordinator”) and is sued in his official capacity. The Coordinator is the head of the Tennessee Secretary of State’s Election Division (the “Election Division”), “the chief administrative election officer of the state,” and charged with “obtain[ing] and maintain[ing] uniformity in the application, operation, and interpretation of the election code.” *Id.* § 2-11-201(b); *see also id.* §§ 2-11-202, 2-11-215. As Coordinator, Goins is responsible for “prepar[ing] a certificate of voting rights restoration form and the written statement explaining the form and the procedure by which a person can . . . become eligible to vote.” *Id.* § 40-29-205. As the chief election officer, Goins is thereby the official responsible for coordinating implementation of the requirements of the National Voter Registration Act. *See* 52 U.S.C. § 20509.

49. Defendant Tre Hargett, is the Secretary of State of Tennessee (“the Secretary”) and is sued in his official capacity. The Secretary appoints the Coordinator of Elections who serves “at

the pleasure of the secretary of state” and may make regulations only as necessary to carry out the election code with “the concurrence of the secretary of state.” Tenn. Code Ann. § 2-11-201(a), (c).

50. Melissa Harrell is the Rutherford County Clerk of Circuit Court and is sued in her official capacity.

FACTS

I. Defendants’ Failure to Properly Administer the Rights Restoration Process Arbitrarily and Erroneously Deprives Thousands of Eligible Voters Access to the Franchise.

51. Tennessee’s rights restoration statute delegates the responsibility of issuing CORs to Defendants, who together comprise the pardoning, incarcerating, and supervising authorities in the state. Tenn. Code Ann. § 40-29-203(a). Yet Defendants have failed in their duty to administer a standardized, accurate, and navigable process for eligible citizens to “request” and “be issued” CORs under Tennessee law. *Id.* In the absence of any meaningful action by Defendants, various local and county-level officials have been left to field COR requests, resulting in a decentralized, inaccurate, and inaccessible COR system that fails to meet the basic demands of due process.

52. This scattershot COR system violates due process. It lacks basic constitutionally-mandated safeguards that Defendants could readily implement to minimize erroneous deprivation of the right to a COR. These safeguards include: access to an impartial decision-maker, a decision based on the legal rules, an explanation of the reasons for the decision, guidance to ensure uniform interpretation of the law, and an opportunity to be heard on appeal. *See Mathews v. Eldridge*, 424 U.S. 319, 325 n.4 (1976) (citing *Goldberg v. Kelly*, 397 U.S. 254 (1970)).

53. The current COR system creates a high risk that an eligible person will be erroneously deprived of a COR in at least five ways: (i) There is no uniform procedure for potentially eligible Tennesseans to initiate a COR request with an impartial decisionmaker; (ii) There is no procedure requiring officials who are statutorily required to issue CORs to provide an

affirmative or negative determination of a person's eligibility; (iii) There is no procedure requiring the statutorily designated officials to explain a decision not to issue a COR; (iv) There is no state-level guidance or regulation to help county officials uniformly interpret and apply the statutory eligibility requirements; and (v) There is no appeals process for individuals who believe they have been erroneously deprived of a COR.

i. Initiating a COR Request

54. First, a lack of uniform procedures about where to initiate the COR process and abdication of responsibility from officials who are statutorily required to issue CORs leaves tens of thousands of potentially eligible citizens with nowhere to start the COR process.

55. There is no formal mechanism to request and be issued a COR from any statewide official or central office. Instead, the responsibility of fielding requests and issuing CORs has been implicitly delegated to an indeterminate set of TDOC and county-level officials.

56. In its only public guidance on the COR process, the Secretary of State's website simply provides a link to a blank COR, see Ex. A, and instructs citizens to seek out "an agent, such as a probation/parole officer or a criminal court clerk, who has the authority to provide the required information regarding the individual's conviction, final release date and information regarding restitution or court cost."⁷ Notably, these instructions even direct individuals to request a COR from "a criminal court clerk" even though criminal court clerks are not part of any pardoning, incarcerating, or supervising authority and are not responsible for issuing CORs under Tenn. Code Ann. § 40-29-203(a).

⁷ Restoration of Voting Rights, Tennessee Secretary of State, <https://sos.tn.gov/products/elections/restoration-voting-rights> (last accessed Dec. 2, 2020).

57. The COR itself offers no further clarity. It states only that the four sections on the form regarding the individual's conviction, release date, court costs, and restitution must "be completed by an agent of the pardoning authority, an agent or officer of the incarcerating authority, or a probation/parole officer or agent of the supervising authority." *See* Ex. A. Thus, the only apparent way for a citizen to "request" and "be issued" a COR is to print out blank copies of the COR from the Secretary's website, and then hunt for one or more officials—including criminal court clerks, who are not statutorily responsible for issuing CORs but are often the only officials willing to address the LFO portions of a COR—to fill out the required information.

58. On August 15, 2016, TDOC issued a three-page administrative policy (the "TDOC Policy") requiring community supervision officers to issue CORs to eligible citizens upon final discharge from supervision. That policy expired August 15, 2019 and, upon information and belief, has not been renewed or replaced. In determining eligibility, officers are instructed to "review an offender's case record to determine if he/she has met all financial obligations to the court and/or the victim." But the TDOC Policy then contradicts its own mandate to "issue" a COR to every newly released eligible citizen because it forbids an officer from completing sections of the COR for which the officer does not have information. As a practical matter, TDOC officers rarely have access to information regarding a person's outstanding LFOs, and the TDOC Policy does not instruct officers to seek it out. And TDOC has not created any mechanism to facilitate the sharing of LFO information between the Tennessee court system and TDOC to enable this process. Thus, CORs are rarely, if ever, "issued" upon final discharge from supervision or prison. The TDOC Policy also says nothing about the process for issuing CORs to those citizens who were never issued a COR upon discharge or who completed their sentence in the distant past.

59. In at least a handful of counties, the probation and parole offices do not issue CORs at all, sometimes citing limited capacity or a lack of records with which to determine eligibility. In Knox County, there was only *one* probation officer available for two days per week who was willing to fill out CORs in 2019.⁸ As a result, some eligible individuals in Knox County did not receive CORs or even a response after waiting for months.

60. In some counties, probation and parole offices will only complete the sections of the COR relating to the individual's conviction and release date, leaving eligible citizens to figure out which, if any, official will fill out the sections relating to restitution and court costs. On information and belief, probation officials in Cooke, Crockett, Cumberland, Greene, Hamilton, Lewis, Madison, Marshall, Maury, Monroe, and Shelby Counties have policies against filling out or have refused to fill out some or all of the CORs.

61. In addition, during the COVID-19 pandemic, officials in Maury, Marshall, Madison, and Crockett Counties have insisted that individuals initiate the COR process in person, even when the relevant offices have been closed to the public.

62. Tennesseans with disenfranchising felony convictions from other states face an even greater challenge: finding and convincing an out-of-state authority to complete and sign a foreign document. These out-of-state offices also often refuse to fill out CORs—which are foreign to them—even when the requestor clearly meets the eligibility criteria for rights restoration. The Governor of Tennessee has the power to grant clemency to all of its residents and is therefore a pardoning authority for purposes of issuing CORs. Despite that, Defendants have delegated COR

⁸ Isabel Lohman, *In Knox County, it can be tough for felons to vote again. Volunteers want to change that*, Knox News (Aug. 9, 2019), <https://www.knoxnews.com/story/news/local/2019/08/09/right-to-vote-felons-tennessee-knoxville/1753895001/>.

responsibility for Tennessee residents with out-of-state convictions to out-of-state officials. They have provided nowhere for Tennessee residents to go if an appropriate out-of-state official cannot be reached or refuses to cooperate. There is no mechanism for Tennesseans with out-of-state convictions to request CORs from the Governor.

63. When officials charged with issuing CORs abdicate their duty under law, would-be voters have nowhere to turn. These voters are erroneously denied the right to a COR and/or a determination of their eligibility to have their voting rights restored.

ii. Refusals to Issue CORs

64. Second, even if a Tennessean is able to find an official that accepts COR requests, that official may simply refuse to issue a COR.

65. Plaintiffs Weare and Tournier had their requests for a COR turned down without final decisions or explanations.

66. A refusal to fill out a COR is not the same as a determination of ineligibility. Absent a formal request mechanism and a formal denial, a refusal to fill out a COR leaves a Tennessean in limbo, unable to restore their right to vote, unable to determine what they would need to do to restore it, and unable to take any further action for lack of a final decision.

iii. No Written Decisions

67. Third, if an official does not issue or fill out some portion of a COR because they have determined the requestor to be ineligible, there is no requirement that the official explain in writing how they came to that conclusion. A written determination of ineligibility is necessary to inform Tennesseans of what they must do to become eligible for voting rights restoration.

68. Moreover, without a statement of reasons, an individual who has been denied a COR cannot determine whether the issuing authority followed or properly interpreted the

eligibility rules prescribed by the rights restoration statute. Nor can the individual assess whether the determination of ineligibility was based on accurate information about their sentence or outstanding LFOs.

69. The risk of error in determining an individual's outstanding restitution and court costs for purpose of rights restoration is significant because there is no statewide criminal record database that tracks LFO obligations. The only publicly available databases are haphazardly managed by county-level court clerk offices, and Tennessee's 95 counties do not use a consistent system for tracking LFOs assessed against individuals for criminal convictions.

70. An individual who has been convicted of a crime in Tennessee may be assigned several different kinds of LFOs by the court clerk—for example, restitution, fines, court costs, litigation taxes, and expenses related to supervision and rehabilitation—all of which are authorized by and/or separately defined in the Tennessee criminal code. *See, e.g.*, Tenn. Code Ann. § 40-24-105; *see also City of Chattanooga v. Davis*, 54 S.W.3d 248, 270 n.23 (Tenn. 2001). However, the only criminal LFOs that a person needs to pay to become eligible for a COR are “restitution” and “all court costs assessed against a person at the conclusion of the person's trial” for a felony offense. Tenn. Code Ann. § 40-29-202.

71. But county LFO records often fail to clearly distinguish between court costs and restitution on one hand and the non-disqualifying LFOs on the other. Naming conventions for different types of LFOs also vary across counties. For older convictions, many county officials lack ready access to the judgments, sentencing documents, and cost bills, which may have been recorded by hand, have not been digitized, and/or are locked away in paper archives. Even when judgments, sentencing documents, and cost bills for older convictions are available and legible, the total “court costs” obligation may comprise fees that are no longer collectable under state or

county law. In addition, some counties permit or require that restitution payments be made directly to the victim. In these counties, records of restitution payment never come into possession of the county government.

72. County officials who field COR requests have refused to fill out CORs or have otherwise deemed individuals ineligible because of sloppy, incomplete, or missing LFO records through no fault of the requestor. They have also erroneously deemed COR requestors ineligible based on nonpayment of debts that do not implicate COR eligibility under Tennessee law, including fines, litigation taxes, probation fees, drug education and rehabilitation program costs, and even legal obligations related to misdemeanors. The instructions on the COR itself add to the confusion by referring to “court fines” when explaining how to fill out the portion of the application that is about court costs. *See* Ex. A.

73. Tennesseans who are denied CORs solely because of outstanding LFOs therefore face a high risk of erroneous deprivation and have no way to contest or verify whether they do, in fact, owe debts that must be paid to restore their right to vote.

iv. No Interpretation Guidelines

74. Fourth, upon information and belief, Defendants have failed to release any meaningful guidance or regulation to ensure officials uniformly interpret and apply the statutory eligibility requirements for rights restoration.

75. No statewide authority has issued clear guidance to local officials as to which legal debts should or should not be counted when assessing COR eligibility. The TDOC Policy fails to explain that LFOs other than restitution and court costs imposed at the time of trial need not be paid before a COR is issued. The Secretary of State’s website and the COR itself similarly offer no guidance delineating LFOs that need and need not be paid to vote.

76. Upon information and belief, this lack of guidance causes officials who field COR requests to improperly deny individuals their CORs based on legal debt which as a matter of law does not impact their right to a COR. Upon information and belief, clerks of court in Shelby County and Davidson County require payment of LFOs clearly labeled “fines” before issuing CORs. Individuals seeking CORs have even been told by clerks in Shelby County that they must pay legal debt associated with non-felonies in order to be issued their CORs.

77. Additionally, the lack of guidance causes those officials to incorrectly report the amount of legal debt to the individual seeking the COR, causing them to opt out of the process on the belief that the debt amount is insurmountable.

78. Shelby County clerks have stated that in order to be issued CORs, Plaintiff Perry will need to pay a \$952.10 debt that is labeled as a fine. They have also said that Plaintiff Gray will need to pay a \$500 debt which is also labeled as a fine. Under Tennessee law, “fines” are distinct from “court costs.” *City of Chattanooga v. Davis*, 54 S.W.3d 248, 270 n.23 (Tenn. 2001) (distinguishing court costs from fines). And the statute governing CORs states that applicants must pay “court costs” and “restitution,” not “fines.” Tenn. Code Ann. § 40-29-202(b).

79. Nor is there a uniform policy or guidance as to how officials who issue CORs must evaluate COR eligibility when a requestor’s records are unclear or unavailable. Upon information and belief, individuals have been denied CORs solely because the county has failed to keep copies of their records. Additionally, restitution debts are often turned over to private debt collections companies, at which point the counties no longer keep records of payments. Upon information and belief, individuals have been denied CORs solely due to alleged debts that have gone to collections and been paid, but for which the county no longer has records.

80. Nor is there a uniform policy or guidance about how to administer COR requests. In Davidson County, for example, the local TDOC office that issues CORs prefers that individuals (or advocates on their behalf) email COR requests to a single parole and probation manager who then mails a completed COR to the requestor. However, that system failed in July 2020 when that one individual went on leave, causing at least some emailed COR requests to go unprocessed. In other counties, however, the requestor herself must appear in person at several different offices to get different portions of their COR filled out. Some counties continue to require in-person requests for CORs even during the COVID-19 pandemic and even during periods when the relevant office was physically closed. As there is no formal mechanism for requesting a COR, there is also no system for tracking COR requests.

81. Many, but not all, county election offices require citizens with felony convictions to submit a separate completed COR for each disenfranchising felony conviction. Defendants have not issued guidance on whether such duplicative COR processes are necessary or appropriate.

82. Additionally, there is a lack of uniformity around what is considered sufficient documentation to make use of the indigency exception as to court costs. Court clerks who field COR requests routinely do not accept declarations of indigency for various reasons. Counties differ as to whether the indigency declaration is a waiver of court costs or a statement that the existing debt is not a barrier to the restoration of voting rights. For example, in Shelby County, courts regularly order payment plans when granting applications for declarations of indigency. However, upon information and belief, the Shelby County criminal court clerks do not view such indigency declarations as sufficient for purposes of a COR if they do not completely waive the costs.

83. Defendants have provided no guidance as to what indigency declarations are sufficient, what is meant by the requirement that the declaration be issued “at the time of

application,” whether declarations need to be issued by a certain court, how declarations can be issued for court costs for out-of-state convictions, and whether one declaration is sufficient for the issuance of multiple CORs. Tenn. Code Ann. § 40-29-202(b)(2).

v. *No Appeals*

84. Fifth, despite the obvious risk of erroneous deprivation in Tennessee’s decentralized, dysfunctional COR system, there is no appeals process for individuals who believe they have been wrongly denied a COR. With local officials in 95 counties using their own system of recordkeeping and interpreting the COR statute without any guidance, there is ample room for mistakes. No process exists to correct them.

85. Taken together, these deficiencies demonstrate Defendants’ creation of a woefully inadequate rights restoration system, devoid of adequate process, that erroneously deprives tens of thousands of eligible voters of their statutory right to a COR. More than 80% of the disenfranchised population in Tennessee—at least 365,356 people—has completed their sentence including probation and parole.⁹ At minimum, tens of thousands of these individuals are eligible for a COR. They live in their communities, pay taxes, and work to be productive members of society. But as a result of Tennessee’s dysfunctional COR system, fewer than 5% of potentially eligible Tennesseans have been able to obtain a completed COR and submit it to the Election Commission for approval.¹⁰ The Election Division has reported that only 3,415 individuals have been granted CORs since 2016 — less than 1% of the post-sentence population.¹¹

⁹ Sentencing Project, *Locked Out*, at 16.

¹⁰ Marc Meredith & Michael Morse, *Discretionary Disenfranchisement: The Case of Legal Financial Obligations*, at appendix 6 (January 18, 2017) (“We are 95% confident that the population [COR submission] rate is between 2.5% and 4.9%. This [COR submission] rates provide an upper bound on the legal limit of ex-felons eligible to vote: the vast majority of ex-felons do not [submit a COR to the Elections Division] and thus remain ineligible.”).

¹¹ Sentencing Project, *Locked Out*, at 16.

II. Defendants' Voter Registration Form Does Not Inform Applicants with Felony Convictions of Relevant Voter Eligibility Requirements.

86. The NVRA requires each state to “inform applicants . . . of voter eligibility requirements” no matter whether applicants seek to register with a state or federal voter registration form or through the department of motor vehicles or any other voter registration agency. 52 U.S.C. § 20507(a)(5).

87. The NVRA also requires that both the federal voter registration form (the “federal form”) and any state-issued mail-in voter registration form used to register voters for federal elections must “specif[y] each eligibility requirement” for applicants. 52 U.S.C. § 20508(b)(2)(A); *see also* § 20505(a)(2) (stating that a state mail-in form should meet “all of the criteria stated in section 20508(b)”).

88. Tennessee’s state voter registration form and the Tennessee-specific instructions on the federal form fail to accurately inform applicants of the voter eligibility requirements in Tennessee.

89. Under Tennessee law, not all individuals convicted of felonies lose their eligibility to vote. Individuals with felony convictions only between January 15, 1973 and May 17, 1981—the so-called “grace period”—fully retain their right to vote, as do individuals who were convicted before January 15, 1973 of felonies that were not considered infamous. *See Gaskin*, 661 S.W.2d at 868; *Crutchfield*, 607 S.W.2d at 482.

90. But the state and federal forms fail to accurately notify voters about how specific felony convictions impact eligibility to vote.

91. The state form, attached hereto as Exhibit B, inaccurately states that to register, “you must not have been convicted of a felony, or if you have, your voting rights must have been

restored.”¹² The form also requires applicants to swear as to whether they have “ever been convicted of a crime which is a felony in this state, by a court in this state, a court in another state, or a federal court.”¹³

92. The state-specific instructions for Tennessee on the federal form, attached hereto as Exhibit C, more accurately states that to be eligible to vote applicants must “not have been convicted of a felony, but if convicted, your eligibility to register and vote depends upon the crime you were convicted of and the date of your conviction.”¹⁴ While unlike the state form, these instructions are technically accurate, they still fail to “specif[y] each eligibility requirement” in a way that would fully “inform applicants . . . of voter eligibility requirements.” 52 U.S.C. § 20508(b)(2)(A); 52 U.S.C. § 20507(a)(5).

93. These instructions are flatly inconsistent with state law governing voter eligibility: voters with felony convictions only during the grace period *never* lost their right to vote and need not seek rights restoration to be eligible to register to vote. These instructions therefore fail to inform voters about whether they are eligible to vote in Tennessee due to a prior felony conviction in violation of the NVRA.

III. Defendants’ Processing of Voter Registration Applications Denies Eligible Tennesseans with Felony Convictions their Right to Vote.

94. Moreover, the state registration form is designed to exclude eligible voters with felony convictions.

95. The form asks all voters to check a box—“YES” or “NO”—affirming whether they have ever been convicted of a felony. Checking “YES” (as those with felony convictions legally

¹² Tenn. Sec’y of State, Tennessee Mail-In Application for Voter Registration, <https://sos-tn-gov-files.tnsosfiles.com/forms/ss-3010.pdf>.

¹³ *Id.*

¹⁴ Election Assistance Comm’n, National Mail Voter Registration Form, <http://www.eac.gov/voters/national-mail-voter-registration-form/>.

must) has severe and unlawful consequences. Upon information and belief, the Tennessee Division of Elections instructs county Election Commissions to reject *all* paper registration forms on which the box is checked disclosing that the applicant has been convicted of a felony, regardless of whether the applicant ever lost their right to vote, and regardless of whether the voter has had their voting rights restored by operation of law, by order of a court, or through a COR.

96. The state's online voter registration system also prevents eligible voters with felony convictions from registering to vote. Despite the fact that Tennessee residents who were convicted of felony convictions only during that "grace period" did not lose the right to vote as result of those convictions, the online voter registration system does not distinguish convictions during that period from felony convictions after it, unlawfully denying fully enfranchised Tennesseans their right to vote. Similarly, the online registration system provides no means of registration for the thousands of Tennesseans who have had their right to vote restored through the COR process or otherwise. The online voter registration system also does not allow applicants to proceed once they have checked a box disclosing that they have a felony conviction.

97. The Division of Elections' practice of flatly rejecting all voter registration applications that affirm the existence of a felony conviction denies eligible citizens their fundamental right to vote.

98. These procedures and features of the state registration system also violate the NVRA.

99. Under the NVRA, each state "shall . . . ensure that any eligible applicant is registered to vote" in Federal elections if the eligible applicant timely submits a "valid voter registration form." 52 U.S.C.A. § 20507(a)(1). Applicants with felony convictions who never lost the right to vote or who have had their rights restored are "eligible" to vote. An affirmation that

they have a felony conviction does not render their voter registration application invalid. Thus, the Division of Elections must “ensure” that these eligible applicants are registered to vote if their applications are timely submitted—not reject them wholesale.

100. The NVRA also requires that voter registration forms include “an attestation that the applicant meets each [eligibility] requirement,” 52 U.S.C. § 20508(b)(3), and prohibits states from creating additional documentation requirements to register to vote beyond the registration form itself. *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013). Yet, Defendants’ voter registration form requires eligible Tennesseans with past convictions to check a box that ensures that their registrations will be rejected. Then, in order to fight the erroneous denial, the state forces those Tennesseans to provide additional paperwork proving their eligibility. These procedures violate the NVRA.

IV. Defendant Harrell Charges Eligible Citizens a Poll Tax to Complete Each COR.

101. At least one county charges a fee to fill out each COR. The Rutherford County criminal court clerk’s office, for example, has a policy of charging citizens \$25 per COR, effectively enacting a poll tax.

102. This fee is also charged without a clear and uniform application and process for the indigent to request a waiver of this fee, despite Tennessee’s stated interest in ensuring the indigent can also access the franchise.

CLASS ALLEGATIONS

103. Pursuant to Federal Rule of Civil Procedure 23(b)(2), Individual Plaintiffs bring this action on behalf of themselves and all other similarly situated persons.

104. Plaintiffs Perry, Gray, Weare, Tournier, and Martin seek to represent the class of COR applicants. This class consists of Tennessee residents who have been convicted of felonies other than those felonies that result in permanent disenfranchisement under Tenn. Code Ann. § 40-

29-204; have completed their sentence, including parole and probation; and believe that they satisfy all other requirements to restore their voting rights under Tenn. Code Ann. § 40-29-202 in that they are current on all child support obligations and have paid all felony court costs (or have received an indigency declaration from a court) and restitution; and have requested or will request a COR from the pardoning or supervising authority.

105. Individual Plaintiffs do not seek claims for compensatory relief. They seek only declaratory and injunctive relief that is broadly applicable to all class members. The requirements of Federal Rule of Civil Procedure 23, and in particular Rule 23(b)(2), are met with respect the class as defined above.

106. Class members are so numerous that joinder of all such members is impracticable. According to the latest estimates, more than 451,000 Tennesseans lost the right to vote due to a felony conviction. Upon information and belief, a vast majority of these individuals were convicted of felonies that do not permanently strip them of their right to vote. And it has been estimated that at least 365,000 of these disenfranchised individuals have completed their sentences, including parole and probation. Upon information and belief, at minimum, tens of thousands of such individuals are current on child support obligations and have paid all felony court costs and restitution.

107. Common questions of law and fact predominate over questions affecting only individual class members with respect to allegations in this complaint. Plaintiffs have individual circumstances with regards to their felony convictions and efforts they have undertaken to restore their voting rights. However, questions of what minimum procedures and protections are constitutionally due to them, and to those similarly situated, as candidates for CORs is a matter of law and requires a uniform answer. Those questions include, but are not limited to, whether

Defendants' failure to administer the statutory rights restoration process creates a substantial risk of erroneous deprivation of a statutory and constitutionally protected right, and whether Defendants must provide constitutionally mandated procedures to those who are eligible to request and be issued a COR, including but not limited to, a mechanism to formally request a COR, a final decision on that request, a written statement of reasons for denial that uses uniform standards for interpreting the eligibility requirements, and an appeals process.

108. Individual Plaintiffs' claims are typical of the class. Plaintiffs Perry, Gray, Weare, Tournier, and Martin are not aware of any conflict between their interests and those of the class they seek to represent.

109. Individual Plaintiffs can fairly and adequately represent the interests of the class because they are similarly situated with class members. Plaintiffs have retained counsel experienced in class-action and voting rights litigation to represent them and the class for the purposes of this litigation.

110. Defendants have acted, or refused to act, on grounds generally applicable to the class as a whole. Any injunctive and declaratory relief awarded to remedy Defendants' failure to administer the COR process will be appropriate respecting the class as a whole. Plaintiffs do not seek to compel issuance of their individual CORs; rather they seek the implementation of a process that will allow them to receive their CORs or, if they are deemed ineligible, will provide them with a fair and accurate assessment of what they must do to become eligible, and a means of appealing an eligibility determination they believe is erroneous.

CAUSES OF ACTION

COUNT ONE

**Denial of Procedural Due Process in Violation of
the Fourteenth Amendment regarding the Statutory Right to a COR, 42 U.S.C. § 1983
(All Plaintiffs against Defendants Lee, Parker, Goins, & Hargett)**

111. Plaintiffs re-allege, as though fully set forth in this paragraph, all the allegations of this Complaint.

112. Defendants' failure to administer a functional rights restoration system denies Plaintiffs, and those similarly situated, their statutory right to a COR without procedural due process in violation of the Fourteenth Amendment.

113. Under *Mathews v. Eldridge*, the determination of what process is due rests on the balance between (1) the interest affected; (2) the risk of erroneous deprivation under the current procedures and the "probable value, if any, of additional or substitute procedural safeguards;" and (3) the state's interest, including the "fiscal and administrative burdens" additional procedures would entail. 424 U.S. 319, 335 (1976).

114. The Sixth Circuit has described the *Mathews* test "less as a three-way see-saw, and more as a two-step template." *Hicks v. Comm'r of Soc. Sec.*, 909 F.3d 786, 800 (6th Cir. 2018). First, the court must determine whether there is a legitimate risk of erroneous deprivation; if there is, then at least some amount of due process is required, and the court must proceed to determine what procedures are required by weighing the value of the interest affected and additional procedures against the cost of those procedures. The Sixth Circuit has made clear that "where the liberty or property interest is significant and the cost to the government of providing additional, valuable process is low, then greater procedures must be implemented." *Id.*

115. The Tennessee legislature has created a liberty interest, protected by procedural due process, in a COR for individuals who meet certain eligibility criteria. Tenn. Code Ann. § 40-29-203. See *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) ("A liberty interest may arise from the Constitution itself . . . or it may arise from an expectation or interest created by state laws or policies."); *Atherton v. D.C. Office of Mayor*, 567 F.3d 672, 689 (D.C. Cir. 2009) (holding that

due process applies to interests “created by state laws or policies” where such laws or policies “contain substantive limitations on official discretion, embodied in mandatory statutory or regulatory language”).

116. The interest in a COR is significant because it is the key to exercising the fundamental right to vote. *See Ga. Muslim Voter Project v. Kemp*, 918 F.3d 1262, 1270–71 (11th Cir. 2019) (holding that where an interest “implicates the fundamental right to vote, it [is lent] more than modest weight”).

117. The Tennessee legislature assigned Defendants the responsibility for issuing CORs and administering the COR system. But they have abdicated their duty to provide Tennesseans a uniform, accurate, and functional system for issuing CORs upon request of eligible citizens. The patchwork system that has emerged in this administrative void fails to provide adequate procedural safeguards against a high risk of erroneous deprivation.

118. Specifically, the current COR process lacks uniform access to an impartial decisionmaker, clear decisions based on the rules, a statement of reasons for the decision, uniform procedures for assessing eligibility, and an opportunity to be heard (on appeal). *See Mathews*, 424 U.S. at 319 n.4 (citing *Goldberg v. Kelley*, 397 U.S. 254, 267-71 (1970)).

119. The risk of erroneous deprivation of the statutory right to a COR is high because the current COR process is opaque, decentralized, inaccurate, and inaccessible.

120. The errors experienced by Plaintiffs are not atypical but rather emblematic of risks inherent in the COR system due to Defendants’ failure to provide uniform guidance, policies, procedures, and training. *See Mathews*, 424 U.S. at 344; *Jones v. Commissioner of Soc. Sec.*, 2011 WL 1527159 at *7 (E.D. Tenn. 2011).

121. Tennesseans who meet certain eligibility requirements are entitled to a COR. Tennesseans who do not or are unsure whether they meet the eligibility requirements are entitled to a written determination that clearly explains what they must do to become eligible for a COR and restore their right to vote.

122. Implementing procedures to ensure due process would not impose an undue burden on the state. Indeed, there is a simple, low-cost solution to remedy the state's current unconstitutional COR system: the administration of a central, state-level application process. This would give each potentially eligible Tennessean a place to formally request a COR, as contemplated by state law, and initiate the rights restoration process. A neutral decision-maker would render a decision based on uniform rules and either issue a COR or a written denial explaining why the person does not meet the requisite criteria. A centralized process would also facilitate appeals.

123. Creating a central COR process would further the state's interest in streamlining inefficient systems, conserving state resources, coming into compliance with the law, and not discriminating against the indigent, among others. The state would spend fewer net resources and government staff time on each COR. In addition, Tennessee law makes clear that the responsibility for issuing CORs sits squarely with the Governor and TDOC, as the pardoning, incarcerating, and supervising authorities. But in many counties, TDOC agencies have abdicated that responsibility, often implicitly delegating their authority, without guidance or agreement, to clerks without any statutory directive. State law also requires the Division of Elections to create the COR form and verify that CORs are lawfully issued. Inherent in these responsibilities is the duty to ensure that COR-issuing authorities properly interpret and apply the statutory requirements.

COUNT TWO
Denial of Procedural Due Process in Violation of

**the Fourteenth Amendment regarding the Fundamental Right to Vote, 42 U.S.C. § 1983
(All Plaintiffs against Defendants Lee, Parker, Goins, & Hargett)**

124. Plaintiffs re-allege, as though fully set forth in this paragraph, all the allegations of this Complaint.

125. Defendants' failure to administer a functional rights restoration system also denies Individual Plaintiffs, and those similarly situated, the fundamental right to vote without procedural due process in violation of the Fourteenth Amendment.

126. A validly issued COR indicates that a person who was previously disenfranchised can exercise their fundamental right to vote. *See* Tenn. Code Ann. § 40-29-203(c).

127. There is a liberty interest in the fundamental right to vote that is protected by the doctrine of procedural due process. *See, e.g., Cook v. Randolph Cty.*, 573 F.3d 1143, 1152 (11th Cir. 2009) (noting that "[t]he Constitution guarantees procedural and substantive due process when a liberty interest is at stake," including "the right to vote"); *Barefoot v. City of Wilmington*, 306 F.3d 113, 124 n.5 (4th Cir. 2002) ("The right to vote . . . is certainly a protected liberty interest.").

128. Thus, Defendants' failure to administer procedures to protect against erroneous deprivation of CORs, and the attendant right to vote, also violates the Due Process Clause.

COUNT THREE
Violation of the Equal Protection Clause
Arbitrary and Unequal Disenfranchisement, 42 U.S.C. § 1983
(All Plaintiffs against Defendants Lee, Parker, Goins, & Hargett)

129. Plaintiffs re-allege, as though fully set forth in this paragraph, all the allegations of this Complaint.

130. Defendants' application of the COR statutes has created a system where similarly situated Tennesseans —convicted of the same crime and who have served the same sentence and met their relevant LFOs—may be granted or denied access to the right to vote based solely on the

county of their felony conviction. Such an unequal system cannot withstand even rational basis review.

131. Whether or not an eligible individual is able to request and be issued a COR and thereby regain their right to vote depends entirely on the willingness of local and county-level officials to entertain COR requests, their varying interpretations of state law (especially regarding LFO requirements), and their processes for keeping and maintaining records.

132. It is well established that “a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). Thus, “the State may not by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104–5 (2000). The same logic applies to rights restoration. If the state restores the right to vote to certain individuals, it may not deny it to others similarly situated simply because they must seek rights restoration in a different county.

133. Because the COR implicates an individual’s fundamental right to vote, Defendants’ existing system for restoring the right to vote is subject at least to intermediate scrutiny. But Defendants cannot present even a rational basis for maintaining such a discriminatory system.

134. No criminal justice interest is served by treating individuals differently who have met the COR requirements but were convicted in different counties and therefore must seek CORs from officials who adhere to differing procedures. No election protection or ballot integrity purpose is served by maintaining a system where qualified individuals, even those who may now reside in the same county, are either allowed to participate in an election or not, based solely on *where* they were convicted of a felony. In fact, election integrity is *threatened* where county-level officials can make inconsistent decisions to grant or not grant a COR, and the attendant right to

vote, to similarly situated individuals. No state interest in economic efficiency is served by a system that requires a person to chase down multiple state- and county-level officials for information that a single individual could verify to determine a person's eligibility for rights restoration.

135. Absent a uniform process and standards for requesting and issuing CORs, including an appeal mechanism, there is no way to ensure equal application of the COR process and the attached right to vote to similarly situated individuals.

COUNT FOUR

Violation of the National Voter Registration Act, 52 U.S.C. § 20501, *et seq.* (Plaintiff TN NAACP against Defendants Goins and Hargett)

136. Plaintiffs re-allege, as though fully set forth in this paragraph, all the allegations of this Complaint.

137. Tennessee's paper and online voter registration forms violate the NVRA's requirement that they "inform applicants . . . of voter eligibility requirements," 52 U.S.C. § 20507(a)(5), and that they "specif[y] each eligibility requirement" for applicants, 52 U.S.C. § 20508(b)(2)(A); *see also* § 20505(a)(2) (stating that a state mail-in form should meet "all of the criteria stated in section 20508(b)").

138. The State Form fails to fully inform applicants with felony convictions of their eligibility under Tennessee law. To the contrary, it plainly misinforms voters of the eligibility requirements by stating that no individual with a felony conviction may register to vote unless she has undergone the restoration of rights process. Nowhere on Tennessee's mail-in registration form is the blanket exception for felony convictions between January 15, 1973 and May 17, 1981 explained to voters, nor the limited list of offenses punishable by disenfranchisement prior to

January 15, 1973. These omissions are a clear violation of Defendants Goins' and Hargett's duty under the NVRA to accurately inform applicants of the relevant qualifications to vote.

139. The state-specific instructions for Tennessee on the Federal Form are do not fully inform registrants of state law. To ensure the Federal Form's accuracy, a state's chief election official must notify the EAC of any changes in the state's voter eligibility requirements within 30 days. 11 C.F.R. § 9428.6. Given the deficiencies in the State Form, it appears that Defendants have not specified the exceptions to its blanket felony disenfranchisement provision. Regardless of the source of the errors, Defendants should immediately provide the EAC with accurate substitute instructions.

140. On August 22, 2018, on behalf of Plaintiff TN NAACP, Plaintiff's Counsel sent Defendants Hargett and Goins a letter notifying them that Tennessee's registration forms and procedures are out of compliance with the NVRA. The Elections Division subsequently acknowledged receipt of that letter but has not corrected the violations.

COUNT FIVE
Violation of the National Voter Registration Act, 52 U.S.C. § 20501, et seq.
(Plaintiff TN NAACP against Defendants Goins and Hargett)

141. Plaintiffs re-allege, as though fully set forth in this paragraph, all the allegations of this Complaint.

142. Tennessee's practice of rejecting *all* registration forms on which the applicant affirmed that they have a felony conviction—even those of applicants who never lost their right to vote or had the right restored—violates the NVRA's requirement that the state “ensure that any eligible applicant is registered to vote” in Federal elections if the eligible applicant timely submits a “valid voter registration form.” 52 U.S.C.A. § 20507(a)(1). Rather than create a form that allows Tennesseans who have been convicted of felonies but are eligible to vote to attest to their

eligibility, Defendants have created a blanket policy of rejection that places the burden of proving eligibility onto the prospective voter and requires them to fight the erroneous rejection with additional paperwork. This process violates the NVRA, which prohibits states from creating additional documentation requirements to register to vote beyond the registration form itself. *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013); 52 U.S.C. § 20508(b)(3).

143. On August 22, 2018, on behalf of Plaintiff TN NAACP, Plaintiff's Counsel sent Defendants Hargett and Goins a letter notifying them that Tennessee's registration forms and procedures are out of compliance with the NVRA. The Elections Division subsequently acknowledged receipt of that letter but has taken no action.

COUNT SIX
Deprivation of the Fundamental Right to Vote
in Violation of the First and Fourteenth Amendments, 42 U.S.C. § 1983
(Plaintiff TN NAACP against Defendants Goins and Hargett)

144. Plaintiffs re-allege, as though fully set forth in this paragraph, all the allegations of this Complaint.

145. Tennessee's eligible citizens have a fundamental right to vote under the First and Fourteenth Amendments to the Constitution of the United States. When analyzing the constitutionality of a voting procedure, the Court "must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Burdick*, 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

146. Tennessee's practice of rejecting *all* voter registration forms on which the applicant affirmed that they have a felony conviction—even those of applicants who never lost their right to

vote or had the right restored—violates eligible voters’ fundamental right to vote in violation of the First and Fourteenth Amendments. This practice imposes a severe burden on the right to vote of citizens with felony convictions who are nonetheless eligible to exercise the franchise.

147. There is no state interest in favor of rejecting all voter registration forms on which the applicant affirmed that they have a felony conviction that justifies the severe burden placed on such applicants who are eligible to vote and have timely submitted a valid voter registration form. No state interest justifies depriving these eligible citizens their fundamental right to vote.

COUNT SEVEN
Imposition of a Poll Tax in Violation of
the Twenty-Fourth Amendment, 42 U.S.C. § 1983
(Plaintiff TN NAACP against Defendants Harrell and Goins)

148. Plaintiffs re-allege, as though fully set forth in this paragraph, all the allegations of this Complaint.

149. The Twenty-Fourth Amendment provides that “[t]he right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.” U.S. Const. amend. XXIV, § 1 (emphasis added).

150. Court clerks in at least one county, Rutherford County, refuse to fill out or issue CORs unless the requestor pays a fee (“COR fee”).

151. Defendant Goins has failed to meet his statutory mandate to issue instructions for completion of the COR by failing to specify that fees for completion are not authorized by the legislature. Tenn. Code Ann § 40-29-205.

152. A COR serves as proof that a person is no longer disqualified from voting because of a prior disenfranchising felony conviction. Tenn. Code Ann. § 40-29-203(c). Individuals with

prior disenfranchising felony convictions who have become eligible to vote must submit a COR in addition to their voter registration application to their county Election Commission in order to register and exercise the franchise.

153. A COR fee denies the right to vote to all individuals who fail to pay the fee but are nonetheless eligible to receive a COR and register to vote.

154. A COR fee is therefore a prohibited “poll tax or other tax” within the meaning of the Twenty-Fourth Amendment. *See Bynum v. Conn. Comm’n on Forfeited Rights*, 410 F.2d 173 (2nd Cir. 1969) (holding that a challenge to a \$5 application fee for voting rights restoration after a felony conviction had substantial merit).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Certify the putative plaintiff class pursuant to Federal Rule of Civil Procedure 23(b)(2).
- B. Enter a preliminary and permanent injunction requiring Defendants Lee, Parker, Hargett, and Goins to implement constitutionally required safeguards to ensure that the COR system meets the minimum requirements of the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment. Such a system must include the following procedural elements:
 - i. a uniform, formal mechanism to request a COR before an impartial decisionmaker,
 - ii. a requirement to issue formal decisions on COR requests,
 - iii. a requirement to provide a written statement of reasons for any denials of COR requests,

- iv. uniform procedures for interpreting the COR requirements, particularly with regard to the LFO requirements and indigency declarations, and
- v. a uniform appeals process.

C. Enter a preliminary and permanent injunction enjoining Defendants Hargett and Goins from rejecting valid voter registration applications from eligible voters and requiring Defendants Hargett and Goins to create registration forms and policies that comply with the NVRA and do not impose an undue burden on the right of eligible citizens to register and vote, including:

- i. specifying the registration requirements on all registration forms,
- ii. modifying the state voter registration form such that it can be used by all eligible citizens even if they have been convicted of a felony, and
- iii. modifying the online voter registration portal such that it can be used by all eligible citizens even if they have been convicted of a felony.

D. Enter a preliminary and permanent injunction prohibiting Defendant Harrell from charging a fee to complete CORs and requiring Defendant Goins to issue instructions prohibiting the charging of administrative fees for the issuance of CORs.

E. Award Plaintiffs their reasonable attorneys' fees and costs.

F. Grant such other relief the Court may deem just and proper.

Date: December 3, 2020

/s/ Charles K. Grant

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* Application for admission *pro hac vice*
forthcoming

[†] Application for admission to the United States
District Court for the Middle District of Tennessee
submitted

Excerpts from Deposition of Loretta Morris (May 17, 2023)

N CONF OF THE NATL ASSOC FOR THE ADVANCEMENT OF COLORED PEOPLE

vs

LEE, et al.

LORETTA MORRIS

May 17, 2023

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 TENNESSEE CONFERENCE OF
5 THE NATIONAL ASSOCIATION
6 FOR THE ADVANCEMENT OF
7 COLORED PEOPLE, et al.,

8 Plaintiffs,

9 vs.

Case No. 3:20-cv-01039

10 WILLIAM LEE, et al.,

11 Defendants.

12 Deposition of:

13 LORETTA MORRIS

14 Taken on behalf of the Defendants

15 May 17, 2023

16 Commencing at 9:28 a.m. CST

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18
19
20
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S T I P U L A T I O N S

The deposition of LORETTA MORRIS was taken by counsel for the Defendants, at the offices of 1600 West End Avenue, Nashville, Tennessee, on May 17, 2023, for all purposes under the Tennessee Rules of Civil Procedure.

All formalities as to caption, notice, statement of appearance, et cetera, are waived. All objections, except as to the form of the questions, are reserved to the hearing, and that said deposition may be read and used in evidence in said cause of action in any trial thereon or any proceeding herein.

It is agreed that MICHELLE CHECUGA, LCR, RPR, and Court Reporter for the State of Tennessee, may swear the witness, and that the reading and signing of the completed deposition by the witness are not waived.

* * *

LORETTA MORRIS,

was called as a witness, and having first been
duly sworn, testified as follows:

EXAMINATION

QUESTIONS BY MR. BARKER:

Q. Good morning.

A. Good morning.

Q. My name is Zach Barker, I'm with the
Tennessee Attorney General's Office. And I
represent the State Defendants in today's case,
which are Governor Lee; Secretary of State, Tre
Hargett; the Coordinate of Elections, Mark
Goins; and the TDOC Official, Frank Strada.

I'm accompanied with my cocounsel also
from the Tennessee Attorney General's Office,
Mr. Alex Rieger.

MR. BARKER: And would Plaintiffs'
counsel like to introduce themselves at this
time?

MR. GRANT: Charles K. Grant on
behalf of the Plaintiffs.

MS. RICHARDSON: Valencia Richardson
on behalf of the Plaintiffs.

1 MS. BOWIE: Blair Bowie on behalf of
2 the Plaintiffs.

3 BY MR. BARKER:

4 Q. Would you introduce yourself to us?

5 A. Oh, my name is Loretta Morris, and I am a
6 representative from Tennessee State Conference
7 NAACP.

8 Q. And how do you spell Morris?

9 A. M-O-R-R-I-S.

10 Q. Perfect, just wanted to make sure that it
11 was spelled the way I expected.

12 Have you been deposed before?

13 A. No.

14 Q. Have you ever testified at a trial
15 before?

16 A. No.

17 Q. Okay. So to begin with, I'm going to go
18 over just a few guidelines and things about how
19 today's going to go. If you have any
20 questions, feel free to ask as we go through
21 them. And then I'll once we get through those
22 ask you if you have any more questions.

23 So if through this process today you
24 don't understand a question that I ask, please
25 just ask me to repeat it or rephrase the

1 question, and I'll do my best to make sure that
2 everything's understandable and we're on the
3 same page about my question.

4 If your attorney objects to a question
5 that I ask, don't answer until your attorney
6 and I have discussed the objection and
7 everything's noted that's necessary. And once
8 that is finished, I'll then ask you to answer
9 the question or try to rephrase the question in
10 a way that is not subject to the objection.

11 Don't guess at any answer. If you don't
12 know, that's fine. If you can't specifically
13 recall any sort of information that I'm asking
14 you about, that's fine, just state that you
15 don't recall or provide a reasonable estimate,
16 if you can.

17 During the deposition, if you recall
18 information that may have been responsive to a
19 question that I asked earlier, just kind of as
20 we're going along things come to mind or if you
21 recognize that you need to add to a response
22 that you gave earlier, just please say that you
23 need to do that and we can kind of go back to
24 that question and make sure that you give a
25 full answer and that you have everything that

1 you want to say on that topic on the record.

2 And I will give you an opportunity as we
3 go along to take some breaks. We want you to
4 be comfortable. So if at any point you need a
5 break, just let me know. I'll ask you to
6 finish answering the question that has been
7 posed and then we'll take a break. We're happy
8 to take as many as you may need.

9 From time to time during the deposition,
10 I may use the word "you." If I use the word
11 "you," I'm referring both to you in your
12 capacity as the NAACP and the NAACP as a whole
13 or at least at the Tennessee Conference of
14 NAACP as a whole since you are its
15 representative and designee for today.

16 Do you have any questions about any of
17 those guidelines so far?

18 A. No.

19 Q. Before we get into the questions about
20 the case, I have to ask you a few questions
21 about you. It's just standard procedure. We
22 have to make sure that nothing's going to
23 affect your testimony today.

24 So is there anything that would prevent
25 you from testifying truthfully today at the

1 deposition?

2 A. No.

3 Q. Is there any reason that you feel that
4 you cannot truthfully and accurately testify to
5 things today?

6 A. No.

7 Q. Are you under the influence of any
8 alcohol or drugs at this time?

9 A. No.

10 Q. And have you taken any medications that
11 might affect your ability to answer questions
12 today?

13 A. No.

14 Q. Let's go over a little bit of your
15 background. Where do you work?

16 A. I don't.

17 Q. Okay. Do you have a position at the
18 NAACP?

19 A. I am first vice of our branch.

20 Q. And what do you do in that position?

21 A. Well, I wear a lot of hats.

22 Q. Okay. What are those hats?

23 A. Get out to vote, legal redress, help the
24 president whenever he's -- he needs help or
25 stand in his head whenever he's gone.

1 Q. Do you have any other responsibilities
2 beyond those that you've listed there?

3 A. Whatever comes up.

4 Q. Whatever comes up, okay. Sounds like
5 you're a very versatile person at the NAACP.

6 Have you held any other positions with
7 the NAACP prior to this one?

8 A. Secretary.

9 Q. And what did you do there?

10 A. Everything that an admin in any other
11 company would do.

12 Q. Okay. Did those positions -- I know you
13 mentioned voting with your current position.
14 Did the secretary position have any
15 responsibilities when it came to voting rights
16 in Tennessee?

17 A. No.

18 Q. Okay. With your current position, what
19 are your responsibilities when it comes to
20 voting rights in Tennessee for NAACP members?

21 A. Well, we assist individuals that come and
22 need assistance for voter restorations or
23 voting registrations.

24 Q. Do those individuals have to be NAACP
25 members?

1 A. No.

2 Q. So you will help anyone who comes in the
3 door?

4 A. Anyone.

5 Q. All right. I'd like to get a little bit
6 of background on your preparation for today's
7 deposition. So you're the designee from the
8 Tennessee Conference of the NAACP. Have you
9 seen the notice of deposition for today?

10 A. Yes.

11 Q. Okay.

12 MR. BARKER: I'd like to take a copy
13 of that notice of deposition and enter it as
14 Exhibit 1.

15 (WHEREUPON a document was marked as
16 Exhibit No. 1.)

17 BY MR. BARKER:

18 Q. All right. Have you seen that document
19 before, Ms. Morris?

20 A. Yes, it looks like it's the same one.

21 Q. Did you review the topics in that
22 document for preparation today?

23 A. Yes.

24 Q. What, if any, other documents did you
25 review in preparation for today?

1 A. The documents that were given to me by my
2 attorney.

3 Q. Okay. Do you -- can you identify what
4 those documents are for us?

5 A. Okay, the first amendment complaint. I
6 can't recall all of them.

7 MR. GRANT: This is dated May 12th.

8 MR. BARKER: Yes, that's the most
9 recent one that we sent you guys.

10 Can we go off the record for a
11 second?

12 (WHEREUPON, an off-the-record
13 discussion was held.)

14 MR. GRANT: We can proceed.

15 MR. BARKER: Go back on the record
16 then.

17 BY MR. BARKER:

18 Q. Who, if anyone, did you speak with in
19 preparation for the deposition today?

20 A. I have a non-exhaustive list here of
21 people that I've talked to.

22 Q. Okay, can you share that with us? Who
23 are those individuals? You can just say them
24 out loud.

25 A. Oh, just say --

1 Q. Yeah.

2 A. Okay.

3 Q. That will be fine.

4 A. You want me to read them all or just some
5 of them?

6 Q. Read them all, that will be fine.

7 A. Latitia Gray out of Robertson County;
8 Cheryl Guinn, former president of Nashville
9 branch; Tamika White, Nashville branch; Daphne
10 Nelson, State Conference; Dawn Harrington,
11 Executive Director of Free Hearts; DarKenya
12 Waller, Executive Director of Legal Aid Society
13 of Middle Tennessee; Gicola Lane, Free Hearts
14 and Campaign Legal Center; Keeda Haynes, Free
15 Hearts; Tiffany Tipton-Boyd, President,
16 Dyersburg branch; Jimmie Garland, President,
17 Clarksville branch; Thomas Staten, President
18 Sumner County branch; Leola Scott, Get Out to
19 Vote Chair, Dyersburg branch; Katie Wilson,
20 former President Murfreesboro branch; the
21 Honorable Robin Kimbrough, General Sessions
22 judge and NAACP member; Honorable Rachel Bell,
23 General Sessions judge; and Maryland Brown,
24 Nashville branch.

25 Q. Was your conversation with each of those

1 individuals kind of the same or was it
2 different with each one?

3 A. Different.

4 Q. And can you describe the different types
5 of conversations that you had with them?

6 A. The topic was the same, but the answers
7 were different.

8 Q. What was the topic?

9 A. The topic was the voter restoration.

10 Q. And specifically what about voter
11 registration were you asking them about?

12 A. What their involvement was in helping
13 others with the voter registration.

14 Q. And how are each of those individuals
15 involved in helping others with voting
16 registration?

17 A. It was their response from other people
18 that they needed to go talk to were different.

19 Q. Okay. And were they talking to other
20 people that were officials in the NAACP?

21 A. No.

22 Q. Were they talking to individuals that
23 were members of the NAACP that were seeking the
24 right to vote?

25 A. Wait, let's back that train up.

1 Q. Yes, ma'am.

2 A. Okay.

3 Q. We can back up. Go ahead. Go ahead,
4 take your time.

5 A. Okay. Now, the question before that when
6 you asked me about the individuals that they
7 was talking to, it -- can you explain who are
8 you looking for? What are you looking for?

9 Q. When you mentioned those -- that list of
10 individuals --

11 A. Okay.

12 Q. -- and you said that you talked to them
13 --

14 A. Uh-huh.

15 Q. -- about who they were talking to. Who
16 were they -- they going out and talking to and
17 what was that -- those individuals' role?

18 A. Oh, okay, I gotcha. No, we was talking
19 about who they had to -- what government
20 entities that they were talking to about how
21 they help their clients in getting the voter
22 registration.

23 Q. And those --

24 A. I believe.

25 Q. And those clients, do you understand them

1 to be members of the NAACP?

2 A. Not all of them, no.

3 Q. Okay. But some of them?

4 A. Some.

5 Q. Okay. And do you know which government
6 entities that they were speaking to?

7 A. Parole offices. Court clerks.

8 Q. Anyone else?

9 A. Not that I recall.

10 Q. Other than the individuals on that list,
11 did you talk to anyone else in preparation for
12 today's deposition?

13 A. My attorneys.

14 Q. Okay. And were the attorneys that you
15 spoke to the individuals in this room?

16 A. Yes.

17 Q. Without going into the content of that
18 conversation -- I don't want to get into what
19 they told you or you told them. When did the
20 conversation occur with them?

21 A. What do you mean "when"?

22 Q. Like, was it a few days ago, months ago?

23 A. Oh. Well, it may have been started at
24 the end of April, I think.

25 Q. Okay. How many times did you meet with

1 them?

2 A. About -- I don't know, probably about
3 four or five times, maybe.

4 Q. Okay.

5 A. Maybe more.

6 Q. Okay. Other than the people that you
7 listed and your attorneys here, did you meet
8 with anyone else in preparation?

9 A. No.

10 Q. So other than documents that you reviewed
11 and speaking to those individuals, was there
12 anything else that you did in preparation for
13 today's deposition?

14 A. Yes, I may have looked up some -- some
15 laws.

16 Q. Okay. Can you recall which laws you
17 looked up?

18 A. The one about the voter restoration.

19 Q. And would that be one that contains to
20 criteria for eligibility?

21 A. Exactly.

22 Q. Okay, perfect. Perfect.

23 Anything else beyond that?

24 A. Nope.

25 Q. I want to move on and just ask you some

1 questions about the NAACP. And this -- some of
2 these questions may sound a little bit basic,
3 but just kind of bear with me, if we can, and
4 we'll get through this.

5 What is the NAACP?

6 A. It's an advocacy group, okay, that
7 advocate for the rights of individuals who have
8 been discriminated against. May be political,
9 education, health, social, okay. We just try
10 to get quality for everyone.

11 Q. Okay. And you may have answered this
12 question in what you just said, and if you did,
13 that's fine, but what -- what is the
14 organizational goal or the advocacy that the
15 NAACP does?

16 A. Yep, I did answer that, didn't I?

17 Q. Yes, you did. So you caught my next
18 question.

19 So what are some of the activities that
20 the NAACP does in furtherance of that goal?

21 A. Are we talking the whole -- what are
22 we -- we talking?

23 Q. Just kind of generally on the whole, the
24 Tennessee Conference of the NAACP, what are
25 some of the activities that you guys engage in

1 in furtherance of your goal of getting rid of
2 discrimination and things like that?

3 A. Okay. Well, we do education to
4 individuals about eco -- any economic goals or
5 education. There's a plethora of things that
6 we do there.

7 Q. Do some of those things involve voting
8 rights?

9 A. Oh, yes. That's our main goal.

10 Q. That's your main goal, okay.

11 And what sort of things do you guys do in
12 furtherance of voting rights in your
13 organization?

14 A. We ensure that people are registered to
15 vote.

16 Q. Okay. Help me understand a little bit
17 how the NAACP is organized in Tennessee. Is
18 there just one central group? Is it divided
19 into divisions? How is it organized?

20 A. I'm trying to think of something that
21 you -- you ever been in the military?

22 Q. I haven't, no, ma'am, but I can
23 understand that if --

24 A. Okay.

25 Q. -- that analogy works for you, that works

1 for me.

2 A. Okay, okay, okay. You do have
3 corporations. You know, with corporations --

4 Q. Sure.

5 A. -- you have the head, that is the
6 Tennessee State.

7 Q. Okay.

8 A. And then we have branches in every county
9 or we try to have branches in every county.

10 Q. Okay.

11 A. And we have youth council and collegiate
12 chapters.

13 Q. Does it -- what sort of benefits then
14 does the NAACP provide to its members in each
15 one of those divisions, if we'll call it that?

16 A. Benefits? What type of benefit? What is
17 do you mean benefits?

18 Q. You were talking about education and
19 advocacy, so what sort of activities like that
20 are provided to NAACP members?

21 A. Well, we don't just provide to NAACP
22 members. We divide -- we provide to everyone.
23 Okay? And any benefit is whatever the
24 individual would need at that particular time.

25 Q. When it'd comes to voting rights, what

1 are some of the benefits or things that your
2 organization offers to its members or the
3 public?

4 A. We -- we help them to -- to register.
5 Okay? Not quite sure what all you looking for.

6 Q. Well, so you help them to register. Do
7 you help people with the certificate of
8 restoration process?

9 A. Well, we guide them in that.

10 Q. Okay. Is there anything beyond helping
11 them to register and helping them -- and
12 guiding them in the certificate restoration
13 process, is there anything beyond that that the
14 NAACP offers?

15 A. Is there something you particular looking
16 for?

17 Q. No, I'm just asking you if you are aware
18 of anything else?

19 A. Well, guiding them into where they --
20 where they should go.

21 Q. Okay.

22 A. Making sure they know about the -- the
23 certificate.

24 Q. Okay.

25 A. Okay.

1 Q. Backing up to just kind of a birds's eye
2 view of the NAACP and getting back to some of
3 the basics, how does someone become a member of
4 the NAACP?

5 A. They fill out a form and pay their dues.

6 Q. Where can they find the form?

7 A. They can -- they can either go on the
8 NAACP.org or they can go to their -- the branch
9 in that county.

10 Q. Is there anything beyond filling out the
11 form and paying their dues that an individual
12 has to do to join the NAACP?

13 A. Nope.

14 Q. Is there any membership criteria or
15 anything like that, like age or something like
16 that, that you have to have -- that you have to
17 meet, rather, to join the NAACP?

18 A. Not to join the NAACP.

19 Q. Okay. How much are the dues?

20 A. That depends on what you want.

21 Q. Okay. How so?

22 A. Well, there's levels of membership.

23 Q. What are the different levels of
24 membership?

25 A. There are adult membership, okay, that

1 you pay yearly.

2 Q. Okay.

3 A. And there are lifetime memberships that
4 you pay either one time or a certain amount for
5 up to ten years.

6 Q. Are there any other levels?

7 A. Youth level.

8 Q. So what are the dues for an adult level
9 membership on a yearly basis?

10 A. \$30.

11 Q. And the life time membership, how much
12 does that one cost?

13 A. 750.

14 Q. And a youth membership, how much does
15 that one cost?

16 A. \$10.

17 Q. Okay. Who can become a member of the
18 NAACP?

19 A. Anybody.

20 Q. Does an NAACP keep a record of its
21 membership?

22 A. Yes.

23 Q. Is that kept on a state level or a local
24 level?

25 A. A national level.

1 Q. Okay. What sort of information is kept
2 in those records?

3 A. Not sure if I can give that information
4 out.

5 Q. Okay. Can you speak generally of -- is
6 it just like a name and an address and a phone
7 number? You don't have to give me, like,
8 specific individuals' information, just kind of
9 the type of information, can you give that?

10 A. Not sure if I can give anything out that
11 has anything to do with membership.

12 MR. GRANT: You can answer the
13 question as to the type of information that
14 would be on the membership application.

15 THE WITNESS: Okay. Name, address,
16 telephone numbers.

17 BY MR. BARKER:

18 Q. Okay. Does the NAACP keep track of
19 whether any of its members have a felony?

20 A. No.

21 Q. Does the NAACP document the voting status
22 of any of its members?

23 A. No.

24 Q. Does the NAACP document whether an
25 individual has received a certificate of

1 restoration for their voting rights?

2 A. No.

3 Q. Does the NAACP track or document a
4 member's prison sentence?

5 A. No.

6 Q. Do you document or track a member's
7 parole?

8 A. No.

9 Q. Probation?

10 A. No.

11 Q. All right, I've got a couple more.

12 MR. GRANT: Let him get it out.

13 THE WITNESS: Okay.

14 BY MR. BARKER:

15 Q. Restitution? Do you track restitution,
16 any member's restitution?

17 A. No.

18 Q. Court costs?

19 A. No.

20 Q. Do you track or document child support?

21 A. No.

22 Q. Okay. Let's talk about a little bit --
23 you talked about guidance on voting rights and
24 things like that that the NAACP offers. So
25 what, if any, information does the NAACP share

1 about voting rights restoration in Tennessee?

2 A. Okay, just whatever we find on the -- on
3 your website on how -- how to navigate the
4 system.

5 Q. How does that -- how does the NAACP share
6 that information?

7 A. Well, to any individual that comes.

8 Q. Okay.

9 A. That needs their rights restored.

10 Q. Is that in a document that you provide
11 those people that come to the NAACP?

12 A. Yes.

13 Q. Okay. Do you have an e-mail? Is there
14 an e-mail that the NAACP sends out about voting
15 rights restoration?

16 A. No.

17 Q. Does the NAACP's website contain any
18 information about voting rights restoration?

19 A. Not our website, no.

20 Q. Okay. So beyond sharing a document and,
21 obviously, talking with an individual that
22 comes into the office, is there any sort of
23 publication or information put out about voting
24 rights by the NAACP?

25 A. No.

1 Q. Okay. Now, you said that once again you
2 offer guidance and assistance. Does the NAACP
3 advertise that they offer this assistance to
4 their members?

5 A. No, we don't advertise that.

6 Q. Okay. So this is something that an
7 individual would have to come and ask for at
8 the NAACP?

9 A. Well, when we try to do voter
10 registrations, then they -- that's how we learn
11 that someone might need that information.

12 Q. So let's talk about that then for a
13 second. This -- your voter registrations that
14 you do, what's that process? What does that
15 look like?

16 A. We hold events at wherever, whoever
17 having an event, we set up a table so that we
18 can do voter registrations at whatever event.

19 Q. And who is at that table that someone can
20 approach?

21 A. Any NAACP member that is manning that
22 table at that time.

23 Q. Are those people that work for the NAACP
24 or volunteers?

25 A. Well, we all are volunteers.

1 Q. Okay. Is there any sort of position that
2 someone has to hold at the NAACP to work at one
3 of those tables?

4 A. No.

5 Q. What sort of information do the people at
6 those tables give out or tell to individuals
7 who come by?

8 A. To tell about?

9 Q. Voting rights?

10 A. Oh, about voting rights or the voting
11 registration?

12 Q. Both. Both, if you can speak on both.
13 We'll take it one at a time, though, just for
14 clarity.

15 So what sort of information did they
16 provide about voter registration, let's start
17 there?

18 A. Well, we have a -- we have a tablet that
19 we just allow them to go on to the online
20 website of the State and register.

21 Q. Okay. If an individual is unable to
22 register on that tablet, what is done then?

23 A. Well, I guess that depends upon what it
24 is that their issue is at that time.

25 Q. Okay. Is there information about voting

1 rights at that point that is given to that
2 individual?

3 A. If they disclose that they need that.

4 Q. Okay. And what is the information that
5 would be given to them?

6 A. It's a -- a worksheet or the COR, okay,
7 we might give to them.

8 Q. When you give them the COR, what sort of
9 instruction then is given to the individual?

10 A. The only thing we can tell them is they
11 need to take it to their parole officer.

12 Q. Okay. Does the NAACP offer any sort of
13 guidance about the COR process and how to get
14 that document filled out?

15 A. Yes. We let them know that they -- they
16 have to go to their probation officer to get it
17 started. And after that, their probation
18 officer is supposed to take it to the county
19 clerks and then take it to the election office.

20 Q. Does the NAACP guide them through each
21 step of that process, the individual that's
22 applying?

23 A. We do follow up.

24 Q. Okay. How does that follow-up occur?

25 A. Well, we call them and see if they

1 have -- if they had any issues.

2 Q. Are those follow-ups documented in any
3 way?

4 A. No.

5 Q. Okay. So you mentioned the tables and
6 setting up at voting registration events. Is
7 there any other assistance that the NAACP
8 offers to its members or the public regarding
9 voting rights restoration?

10 A. Well, if there's -- if they have issues,
11 we do call in Free Heart, okay, to see if
12 there's anything that we can -- what else we
13 can do to help.

14 Q. And you mentioned Free Hearts when you
15 were talking about some of the individuals that
16 you spoke to about this deposition. So what is
17 the relationship between NAACP and Free Hearts?

18 A. We collaborate with them.

19 Q. And what do you collaborate on?

20 A. Voter restoration.

21 Q. Okay. And what -- what do they do for
22 the NAACP?

23 A. They help us whenever we have issues,
24 okay? They have the -- the enroll to the
25 campaign legal center if there's any questions,

1 any attorneys that the individual might need.

2 Q. Do you offer at the NAACP any sort of
3 educational programs about the COR process to
4 your members or the public?

5 A. Yes, we may.

6 Q. Okay. And what are those?

7 A. Just how -- how the process is.

8 Q. Okay. And who generally presents the
9 information at those educational events?

10 A. Sometimes we bring in Free Hearts --

11 Q. Okay.

12 A. -- okay, so they can educate the public.

13 Or any senators that may -- any Tennessee
14 senators or house representatives that may have
15 worked on some of them.

16 Q. Anyone beyond Free Hearts or Tennessee --
17 elected officials that presents at those
18 educational events?

19 A. Unless it's an NAACP member, that's it.

20 Q. Okay. So if you could, could you walk me
21 through the NAACP's understanding of the
22 criteria for voting rights restoration in
23 Tennessee?

24 MR. GRANT: Objection to the form of
25 the question.

1 BY MR. BARKER:

2 Q. You can answer.

3 A. Repeat the question.

4 Q. What is the NAACP's understanding of the
5 criteria for voting rights restoration in
6 Tennessee?

7 A. Okay, so --

8 MR. GRANT: Same objection.

9 You may answer, ma'am. You can
10 answer.

11 THE WITNESS: I can answer?

12 MR. GRANT: If you know, sure.

13 THE WITNESS: We have a worksheet
14 that we go through.

15 BY MR. BARKER:

16 Q. Okay.

17 A. So that if there's any -- that way if
18 there's anything that -- different for each
19 individual, we know which step to go to.

20 Q. What information is on that worksheet?

21 A. I think we have one in this packet here.

22 Q. I may have a copy of it.

23 A. Okay.

24 Q. Let me see if I've got a copy of it here.

25 Let's go ahead and talk about this then.

1 MR. BARKER: Let's go ahead and mark
2 this as Exhibit 2.

3 (WHEREUPON, a document was marked as
4 Exhibit No. 2.)

5 BY MR. BARKER:

6 Q. This is a document that was produced in
7 discovery by the NAACP. It was labeled
8 PL000083 rights restorations sheet.

9 Do you recognize that document?

10 A. I do.

11 Q. Is that the restoration -- the worksheet
12 that you're talking about?

13 A. Yes.

14 Q. All right, perfect. So we're on the same
15 page then.

16 So how does the NAACP use this worksheet?

17 A. So we use this so that we can gather
18 information as to where we need to lead the
19 individual.

20 Q. Did the NAACP create this worksheet?

21 A. No.

22 Q. Who created this worksheet?

23 A. Free Heart.

24 Q. Free Hearts, okay.

25 What sort of information is gathered on

1 this worksheet?

2 A. The name and -- the name -- oh, the
3 person that helps them, the name of the
4 citizen, their address, their phone number,
5 their date of birth. If they know their
6 convictions and the date of and the county.

7 Then we check to see if by the date of
8 their conviction is it with -- does it lie
9 within any of the parameters of the different
10 dates that people have lost their rights or
11 have not lost their rights.

12 Q. Okay.

13 A. Okay? If there's any ineligible
14 convictions, okay, that the State says that
15 they're -- they can't. And if they have
16 completed their sentence or any probation and
17 parole. If their fees or restitution has been
18 paid. And are they up to date on their child
19 support.

20 Q. And I noticed that one of these -- C1
21 there, any ineligible convictions, referenced a
22 table on the back of the document. Does --
23 does the NAACP have a copy of the back of the
24 document?

25 A. It's normally on the document.

1 Q. Okay. I don't have a copy of the back of
2 the document. So what information is on the
3 back of the document, if you can share that
4 with us?

5 A. It is -- it states the dates and what
6 offenses has been committed and that says
7 whether or not they can or cannot get their
8 rights restored.

9 Q. Okay. And this document also references
10 the Campaign Legal Center. So what is the
11 NAACP's relationship with the Campaign Legal?

12 A. We ask them any questions that -- any
13 legal questions that we might have.

14 Q. So do they serve as legal counsel for the
15 NAACP on voting rights issues?

16 A. I guess we can say that.

17 Q. Okay. And if an individual needs
18 representation on voting rights, would you
19 refer them to Campaign Legal?

20 A. We would.

21 Q. Okay. I think I'm done with that
22 document.

23 So beyond this worksheet, is there
24 anything else that the NAACP does with its
25 members or members of the public when it comes

1 to voting rights restoration in Tennessee?

2 A. I'm not understanding, what are you
3 trying to ask me? Besides this document?

4 Q. Yes, so -- let me strike that. Let me
5 rephrase and start over, that was not the best
6 worded question. I'm sorry about that.

7 So we talked about the educational
8 process that you guys do and we talked about
9 this worksheet. If an individual comes to the
10 NAACP seeking help with voting rights, is there
11 anything beyond this document that you guys
12 would provide them with?

13 A. No. Because -- well, the COR.

14 Q. Okay. Okay. And you mentioned that
15 earlier, I apologize. I'm going back over some
16 of the same -- some of the same stuff.

17 So when an individual fills out this
18 form, does the NAACP do anything to verify the
19 information?

20 A. No, that's not for us to -- to verify.

21 Q. Okay. Does -- if an individual fills out
22 the form and answers everything correctly, does
23 the NAACP tell them whether or not they might
24 be able to go on with the COR process?

25 A. Yes.

1 Q. If an individual fills out the form and
2 it is apparent that they can't go on with the
3 COR process, what does the NAACP do?

4 A. Now, that is different for each
5 individual.

6 Q. Okay. How is it different for each
7 individual?

8 A. It will depend on whether or not they
9 have finished their probation. Depends on
10 whether or not they have any fees or
11 restitutions they need to pay. And it will
12 also depend upon their child support. Those
13 are the only three criterias.

14 Q. Does the NAACP provide them with any
15 instruction or information on how to become
16 eligible?

17 A. The fact that they have to pay their
18 court costs.

19 Q. Okay, so let's use that example then. If
20 someone owes court costs, what does the NAACP
21 tell them to do?

22 A. Well, it all -- it all depends upon the
23 individual.

24 Q. Okay, okay. Would you refer them to
25 someone outside of the NAACP, like a county

1 clerk's office?

2 A. Yes.

3 Q. Okay. You mentioned providing
4 individuals with the COR form. What version of
5 the form is -- strike that.

6 When the NAACP provides an individual
7 with the COR form, do they check to make sure
8 it's the most up-to-date version?

9 A. We get the form from Free Heart.

10 Q. Get the form from Free Hearts, okay.

11 Do you get the form from anywhere else
12 other than Free Hearts?

13 A. Off the website. Off the State website.

14 Q. And is that the Tennessee Secretary of
15 State?

16 A. Tennessee Secretary, uh-huh.

17 Q. Yes, ma'am. Trying not to re-ask you the
18 same questions, I'm sorry.

19 Are NAACP members informed that someone
20 else has to fill out the COR forms?

21 A. What do you mean by that?

22 Q. What is the NAACP's understanding of who
23 can fill out the blanks on the COR form?

24 A. That -- the TDOC, the governor or the
25 probation officer -- or correction -- I guess

1 it's called corrections, yeah, can fill it out.

2 Q. Okay. Does the NAACP provide them any
3 instruction about not filling out the form
4 themselves?

5 A. Yes.

6 Q. Okay. What entity does the NAACP send an
7 individual to to have the COR form filled out?

8 A. Their parole officer.

9 Q. Their parole officer, okay.

10 And that would vary by county and
11 individual?

12 A. Yeah, exactly, because -- yes.

13 Q. Does the NAACP contact any government
14 entities on behalf of an individual seeking a
15 COR?

16 A. I guess that would depend upon the
17 individual.

18 Q. Are you aware of any instance in the past
19 where the NAACP has contacted a government
20 entity on behalf of an individual?

21 A. Yes.

22 Q. What government entity was contacted?

23 A. The parole, the parole board and -- or
24 the -- depends upon the county because
25 different conflict counties do it differently.

1 Q. Okay. Beyond the parole board, is there
2 any other entity that you're aware of the NAACP
3 contacting on behalf of an individual seeking a
4 COR? And by "COR" I mean certificate of
5 restoration, I don't know if I made that clear
6 for the record. But who else might the NAACP
7 reach out to on behalf of the individual?

8 MR. GRANT: Object to the form of the
9 question. Witness just answered the question.

10 BY MR. BARKER:

11 Q. Is there any other entity beyond the
12 probation parole office that --

13 A. The county clerk.

14 Q. The county clerk's office.

15 Anybody beyond the county clerk's office?

16 A. No.

17 Q. Okay. Do any employees or volunteers of
18 the NAACP accompany individuals when they go to
19 the parole office to have their -- their COR
20 form filled out?

21 A. Some counties have.

22 Q. Some counties have.

23 Are you aware just of a ballpark of how
24 often that happens?

25 A. No, I'm not.

1 Q. Okay. Are you aware of multiple
2 instances of that happening?

3 A. Yes.

4 Q. About how many can you recall? Just --
5 it doesn't have to be exact, an estimate?

6 A. Well, is there a time frame you trying to
7 give me or?

8 Q. Since 2006. I know that's a pretty big
9 time frame, but just --

10 A. You know, I don't know that.

11 Q. -- off the top of your head?

12 MR. GRANT: Objection to the form of
13 the question.

14 BY MR. BARKER:

15 Q. Let me rephrase and ask this a different
16 way then.

17 Is it the normal procedure of the NAACP
18 to accompany individuals when they visit the
19 probation parole office to get a COR form
20 filled out?

21 A. In some counties, yes.

22 Q. Okay. Do you know which counties those
23 are?

24 A. Off the top of my head it would be
25 Dyersburg.

1 Q. Dyersburg, okay.

2 I'm trying to remember which county
3 Dyersburg might be in. But the city of
4 Dyersburg, right?

5 A. Yeah, uh-huh.

6 Q. Okay. Does the NAACP monitor the outcome
7 of individual members' certificate of
8 restoration?

9 MR. GRANT: Objection to the form of
10 the question. You restated the question you
11 asked earlier.

12 BY MR. BARKER:

13 Q. Can you go ahead and answer that for me?

14 MR. GRANT: You can answer.

15 THE WITNESS: No, I don't think we
16 do.

17 BY MR. BARKER:

18 Q. Do you specifically track when
19 certificates are granted?

20 A. No.

21 Q. What about certificates that are denied?

22 A. No, we don't track that information.

23 Q. If the NAACP becomes aware that an
24 individual's certificate of restoration has
25 been denied, what, if any, assistance does the

1 NAACP offer them at that point?

2 A. Well, there -- we can't offer any
3 assistance, because of the fact that there
4 isn't any appeals process for that.

5 Q. So to the NAACP's knowledge, what, if
6 any, appeal process or way to challenge a COR
7 denial exists?

8 MR. GRANT: Objection to the form of
9 the question.

10 BY MR. BARKER:

11 Q. You can answer.

12 A. There isn't a process.

13 Q. Okay. I want to move on to some
14 documents, if we --

15 A. Okay.

16 Q. -- if that's okay. And we'll just kind
17 of work through some different documents --

18 A. Okay.

19 Q. -- in the case.

20 As a part of the NAACP's production in
21 this case, an Excel spreadsheet was provided.
22 And the file has a number and the file name
23 PL00092. And I've printed that document and
24 I'd like for us to take a look at it. And it's
25 on a big sheet of paper rather than a normal

1 sheet of paper.

2 MR. BARKER: If we can make this the
3 next exhibit.

4 (WHEREUPON, a document was marked as
5 Exhibit No. 3.)

6 BY MR. BARKER:

7 Q. Do you recognize this document or
8 spreadsheet at all?

9 A. No, I can't say I do.

10 Q. Have you ever seen a spreadsheet like
11 this on a computer like in a Microsoft Excel
12 file?

13 A. I'm looking at the -- the head -- the
14 headers here, and I don't recognize those.

15 Q. Okay. Let's look at another document
16 then. In response to discovery, the NAACP
17 provided three lists of members in its response
18 to Defendant's first set of interrogatories.

19 Specific -- and in the third response --
20 -- or excuse me, in the response to Defendant's
21 third set of interrogatories, NAACP provided
22 some descriptions for these lists. So I'd like
23 for us to take a look at the list and the
24 descriptions, and I'm going to pull those out
25 of my box.

1 MR. BARKER: Here are the responses,
2 if we could make those the next numbered
3 exhibit.

4 (WHEREUPON, a document was marked as
5 Exhibit No. 4.)

6 MR. BARKER: And while we're at it
7 to save some time, I'm going to go ahead and
8 hand out copies of the lists. If we could make
9 that the next exhibit, as well.

10 (WHEREUPON, a document was marked as
11 Exhibit No. 5.)

12 BY MR. BARKER:

13 Q. All right, let's look at this first
14 document here, the one with the caption on the
15 top that says "Plaintiff Tennessee Conference
16 of the National Association for the Advancement
17 of Colored People Responses and Objections to
18 Defendant's Third Set of Interrogatories and
19 Third Request for Production of Documents."

20 And let's go back here to page -- let's
21 start first on Page 16. Do you recognize there
22 kind of at the bottom of the page the
23 individual's name listed?

24 A. Yes.

25 Q. And that's Gloria J. Sweet-Love. Who is

1 that?

2 A. President of the Tennessee State
3 Conference.

4 Q. Do you recognize that signature beside
5 their name?

6 A. Yes.

7 Q. Okay. Let's look back then. I'm going
8 to have you flip back in this document again to
9 Page 13. There in the second paragraph under
10 the heading "Response" it references Exhibit A.
11 And then starting at the very bottom of the
12 page, the next to last line and spilling over
13 to the next page, it says, "The persons listed
14 in Exhibit A, to the best of theirs and
15 Plaintiff TN NAACP's knowledge are all
16 Tennessee residents, have at least one felony
17 conviction after 1981 and have not, or had not
18 at the time of their response been restored
19 their voting rights."

20 Looking at the second document that I
21 handed you, which is Exhibit 5, the list of
22 names. Is that referring to this attachment,
23 Exhibit A?

24 A. Yes.

25 Q. How did the NAACP compile this list

1 that's Exhibit A?

2 A. I don't know, this is the attorneys' list
3 that the attorneys compiled this.

4 Q. Have you seen this list before?

5 A. Yes, the attorneys have shown this to me.

6 Q. Does the NAACP use this list in its
7 ordinary operations for any purpose?

8 A. I cannot answer that.

9 Q. Okay. Are you aware of whether these
10 individuals are NAACP members?

11 A. Well, since the attorneys compiled it, I
12 think they are the ones that can tell you that.

13 Q. Do you have any documentation of these
14 individuals' NAACP memberships?

15 A. I don't know that answer to that.

16 Q. Has the NAACP reviewed these individuals
17 felony convictions?

18 A. No, we don't view felony convictions.

19 Q. Okay. Let's look at -- going back --
20 flip-flopping back to our other document that
21 we were just on, which was Exhibit 4, the
22 NAACP's responses to Defendant's third set of
23 interrogatories. Moving on to Page 14 in the
24 middle of the page there, it says Interrogatory
25 1 -- Interrogatory Number 10, rather, response.

1 It references Exhibit B, and that last full
2 sentence of that response says, "The persons
3 listed in Exhibit B to the best of theirs and
4 Plaintiff TN NAACP's knowledge are Tennessee
5 residents otherwise qualified to vote, (2) have
6 at least one felony conviction after 1981, (3)
7 have requests a COR or at the request an
8 advocate requested one on their behalf from the
9 appropriate officials and (4) were refused
10 issuance of a COR by at least one appropriate
11 official."

12 Is it your understanding that that is
13 turning over to Exhibit 5 what's labeled as
14 attachment B?

15 A. Now what's the question?

16 Q. Is it your understanding that this
17 response that I just read refers to that list?

18 A. That's my understanding.

19 Q. Did the NAACP create this list?

20 A. I believe their attorneys created that
21 list.

22 Q. And I'm going -- I'm going to be asking
23 some of the same questions about this list as I
24 did the previous one.

25 How did the NAACP become aware of the

1 individuals listed on this list?

2 A. Now, I never got that information.

3 Q. Are these individuals NAACP members, can
4 you verify that?

5 A. I cannot.

6 Q. Do you have any documentation of these
7 individuals' membership in the NAACP?

8 A. I don't know.

9 Q. Have you reviewed their felony
10 convictions?

11 A. No.

12 Q. And then let's talk about another one,
13 going back to our other document, Exhibit 4.
14 And it's going to be on Page 15. In response
15 to Interrogatory Number 11, which is referenced
16 on 14, we're at the last full sentence of that
17 response on Page 15. The last full sentence of
18 that first paragraph, it says, "The persons
19 listed in Exhibit C to the best after theirs
20 and Plaintiff Tennessee NAACP's knowledge all
21 (1) are Tennessee residents otherwise qualified
22 to vote, (2) have at least one felony
23 conviction after 1981, (3) meet the eligibility
24 criteria for voting rights restoration listed
25 under T.C.A. 40-29-202, (4) have requested a

1 COR or at their request an advocate requested
2 one on their behalf from the appropriate
3 officials and (5) have not been restored the
4 right to vote or if they have since received
5 restoration, missed at least one election after
6 they requested restoration while eligible for
7 such."

8 Do you understand that to be a
9 description of attachment C, which is the last
10 page of Exhibit 5, our list of exhibits here?

11 A. Right.

12 Q. Did the NAACP compile this list?

13 A. The attorneys compiled it.

14 Q. How did the NAACP become aware of these
15 individuals?

16 A. That's a good question. I don't know.

17 Q. Are each of these individuals NAACP
18 members?

19 A. That we don't know. We don't track that.

20 Q. Do you have any documentation of these
21 individuals' membership?

22 A. I don't, no.

23 Q. Has the NAACP reviewed these individuals'
24 convictions?

25 A. We don't review their convictions.

1 Q. Has the NAACP reviewed whether they meet
2 the criteria for a certificate of restoration?

3 A. I am not sure about that. I cannot
4 answer that.

5 Q. Okay.

6 MR. BARKER: We've been on the record
7 for about an hour, and I think this would be a
8 good time to take a little break, if that's
9 okay with everyone, and go off the record.

10 (Short break.)

11 BY MR. BARKER:

12 Ms. Morris, did you talk to anybody about
13 this case while you were on the break or this
14 deposition?

15 A. No.

16 Q. Okay. I want to move on to another
17 document. You understand you're still under
18 oath at this point, too?

19 A. Yes.

20 Q. All right. Just a --

21 A. I was going to make a joke.

22 Q. Just a couple procedural questions and
23 then we'll move on to another document I want
24 to ask you about.

25 A. Okay.

1 Q. So in response to Defendant's second set
2 of interrogatories served on November 18th,
3 2022, NAACP provided this response and an
4 attachment.

5 MR. BARKER: And we'll attach that as
6 Exhibit 6 to the deposition.

7 (WHEREUPON, a document was marked as
8 Exhibit No. 6.)

9 BY MR. BARKER:

10 Q. And if you'll -- the pages aren't
11 numbered, so I apologize, but if you'll flip
12 through to right before the attachments. And
13 let me properly identify this document, this is
14 the -- "Plaintiff Tennessee Conference of
15 National Association of Advancement of Colored
16 People Responses and Objections to Defendant's
17 First Set of Interrogatories."

18 If you'll flip to that last page there
19 with the signature on it, right before
20 attachment A. What's that date there?

21 A. November 17th, '22.

22 Q. And whose name is listed?

23 A. Gloria J. Sweet-Love.

24 Q. Is she the individual that you previously
25 reference as the president of the Tennessee

1 NAACP?

2 A. Yes.

3 Q. And that's her signature?

4 A. Yes.

5 Q. All right. In this document there's a
6 description, and I've got to find it, so give
7 me just a second because I don't have page
8 numbers. So if you go to Interrogatory Number
9 3 and then flip to the next page there, there's
10 a big paragraph at the bottom that says, "In
11 addition to the lists already produced," do you
12 see? The next page, that last paragraph there.
13 In addition -- begins with, "In addition to the
14 lists already produced," do you see that? Yes,
15 okay.

16 So it says, "In addition to lists already
17 produced by the Tennessee NAACP in response to
18 Defendant's first set of interrogatories,
19 Plaintiff Tennessee NAACP attached a list of
20 individuals it has since identified as
21 potential members of the punitive class,
22 individuals who have lost the right to vote
23 because of a felony conviction and who have
24 requested or attempted to request certificates
25 of restoration but to date have not received a

1 COR sufficient to restore their voting rights."

2 And then it has in parentheses, attachment A.

3 So if you flip over two pages there,
4 there's attachment A and a long list of names
5 here. Do you recognize this list?

6 A. I recognize it.

7 Q. Did the NAACP compile this list?

8 A. It said it did.

9 Q. Okay. Are you aware of how the NAACP
10 found out about these individuals?

11 A. No, no one said how they came about these
12 individuals.

13 Q. Are you aware of whether each of these
14 individuals are members of the NAACP?

15 A. No, I am not.

16 Q. Do you have any documentation of any of
17 these individuals' membership in the NAACP?

18 A. No.

19 Q. Have you reviewed the felony convictions
20 of these individuals?

21 A. No.

22 Q. All right. Have you, meaning the NAACP
23 -- has the NAACP determined whether or not they
24 were eligible for a COR based on the NAACP's
25 understanding of the criteria?

1 A. Okay, so let's see. Does that say that?

2 Let's see. Well, it says that right here.

3 Q. What does it say? Can you read that

4 aloud for me?

5 A. That the individuals who have lost their
6 right to vote because of a felony conviction
7 who have requested or attempted to request CORs
8 but to date have not received COR.

9 Q. Okay. So that says that they attempted,
10 but did the NAACP review them for whether they
11 meet the criteria?

12 A. What criteria are you talking about?

13 Q. Has the NAACP reviewed those individuals
14 for whether they owe court costs?

15 A. Well, if they have already sent up the
16 COR, that's already been taken care of.

17 Q. So does that mean that the NAACP has
18 determined whether or not they owe court costs?

19 A. Well, the NAACP doesn't, the court -- the
20 clerk of courts does that.

21 Q. Okay. Does the NAACP have any
22 documentation of whether those individuals owe
23 court costs or not?

24 A. No.

25 Q. Does the NAACP have any documentation of

1 whether those individuals owe restitution?

2 A. No.

3 Q. Does the NAACP have any documentation of
4 those individuals' child support obligations?

5 A. No.

6 Q. Has the NAACP reviewed those individuals'
7 felonies to see if they are permanently
8 disqualified based on the type of felony
9 committed?

10 A. I don't think the NAACP did that.

11 Q. Okay. That's all for that document.
12 We're going to move on to another one.

13 In response to the discovery request in
14 this case, there was a document produced, which
15 is labeled PL000084D Jemison Voter Registration
16 Clinic.

17 MR. BARKER: We'll make a copy of
18 this document Exhibit 7.

19 (WHEREUPON, a document was marked as
20 Exhibit No. 7.)

21 BY MR. BARKER:

22 Q. What is this document?

23 A. This is a document -- this is a document
24 of an expungement clinic that was conducted in
25 Montgomery County.

1 Q. Okay. What -- what happens at an
2 expungement clinic?

3 A. Now -- well, the -- what they do is
4 expunge records of the individuals.

5 Q. So we have this list of names and phone
6 numbers. Who are these people? Why would they
7 be signing up or why would this information be
8 documented?

9 A. Because they had -- they needed their
10 records expunged, and it just so happened that
11 the person that was doing this was a candidate
12 for judgeship. And I just wanted to make sure
13 that -- because he's the one -- he was an
14 attorney at the time and he was going to
15 expunge their records for them. Okay? And I
16 just wanted to make sure that they had -- it
17 actually got done, okay? Because, I mean, he
18 was a candidate.

19 Q. Okay. Who wrote this document then?

20 A. I did.

21 Q. You wrote this document, okay.

22 What is the relationship between this
23 document and voting rights restoration then?
24 Are these individuals -- let me ask that
25 question.

1 What's the relationship between this
2 document and voting rights restoration?

3 A. None.

4 Q. Okay. Are these all members of the
5 NAACP?

6 A. No.

7 Q. Okay. Do you know if -- okay. That's
8 fine.

9 Well, let me ask another question. Are
10 you aware if any of these individuals are
11 members of the NAACP?

12 A. None of them are.

13 Q. Okay.

14 MR. GRANT: Note my objection to the
15 question.

16 BY MR. BARKER:

17 Q. Let's look at another document. I've got
18 a copy of it here.

19 MR. BARKER: We can mark it as
20 Exhibit Number 8.

21 (WHEREUPON, a document was marked as
22 Exhibit No. 8.)

23 BY MR. BARKER:

24 Q. This is a document produced in discovery,
25 which was -- I don't know that -- yes, labeled

1 PL000086L Morris, and then it has the number
2 7262021. What is this document?

3 A. This is a document of individuals that
4 wanted to get their voting rights restored.

5 Q. Okay. Who wrote this document?

6 A. I did.

7 Q. Are these individuals NAACP members?

8 A. No.

9 Q. So what was the purpose then of writing
10 down these names?

11 A. They had called and wanted their rights
12 restored. And this was information that I was
13 going to be passing onto someone else.

14 Q. Who would you be passed this information
15 --

16 A. Free Heart.

17 Q. Free Heart?

18 A. Uh-huh.

19 Q. Okay. Did you follow-up with any of
20 these individuals about the COR process?

21 A. Right, but they never responded.

22 Q. The individuals never responded?

23 A. Never responded.

24 Q. Do other documents like this exist?

25 A. I don't know.

1 Q. Okay. Have you searched to try to find
2 other documents like this?

3 A. I have asked and no response.

4 Q. All right. So let's move on from
5 documents, and I'd like to just ask you if the
6 NAACP keeps track of a couple other things.

7 Does the NAACP track what is known as --
8 let me back up. Strike that.

9 Are you aware of the effect of a felony
10 conviction between January 15th, 1973, and
11 May 17th, 1981, on a person's voting rights?

12 A. Yes.

13 Q. Is that what they call the grace period?

14 A. Yes.

15 Q. Okay. Is it okay if we call it the grace
16 period as we go forward with these questions?

17 A. Yes.

18 Q. Okay. Does the NAACP keep track of
19 members that were convicted of a felony during
20 the grace period?

21 A. No.

22 Q. Okay. Let's talk about something that's
23 mentioned in the amended complaint, which you
24 mentioned reviewing, which was a public
25 education workshop on the COR process. I'd

1 like to explore that a little bit.

2 So what is a public education workshop?

3 MR. GRANT: Objection to the form of
4 the question. You all struck reference to
5 topics related to the amended complaint.

6 MR. BARKER: Sure, but we -- can we
7 go off the record?

8 (WHEREUPON, an off-the-record
9 discussion was held.)

10 MR. BARKER: Let's go back on the
11 record then.

12 BY MR. BARKER:

13 What is a public education workshop?

14 A. Went down the wrong pipe.

15 Q. No worries. Are you okay?

16 A. Yeah, fine.

17 A public workshop is just giving the
18 public information that they should already
19 know but they don't.

20 Q. Okay. Does the NAACP specifically put
21 these on?

22 A. Yes.

23 Q. And are they about -- strike that.

24 Has the NAACP presented public education
25 workshops on the voting rights restoration

1 process?

2 A. Yes.

3 Q. How many have they done?

4 A. Let's say about two.

5 Q. Two?

6 A. Uh-huh.

7 Q. Do you recall when those were?

8 A. They have done one during the state
9 convention in September. I can't remember what
10 year it was, but I know we had done one during
11 the state convention.

12 Q. Was that within the last ten years?

13 A. Couple -- yes. Oh yes.

14 Q. Okay. And what was the other one?

15 A. And the other one is one that we have put
16 -- Montgomery County has put on, and all we did
17 was just reiterated what's on your website.

18 Q. When was that offered?

19 A. That was done last summer.

20 Q. So summer of 2022?

21 A. Yes.

22 Q. Are these workshops available to the
23 public at large?

24 A. Yes.

25 Q. So they're not just limited to NAACP

1 members?

2 A. Correct.

3 Q. Is the attendance at these workshops
4 documented in any way?

5 A. No.

6 Q. Does the NAACP have the materials like a
7 slideshow or a handout or anything that is
8 offered at these workshops?

9 A. Yes.

10 Q. And what -- what would those be?

11 A. Those would be information we get from
12 Free Heart.

13 Q. Okay. What sort of information?

14 A. What sort of information as to?

15 Q. Yes, is it a handout, a PowerPoint
16 slideshow --

17 A. Okay, okay.

18 Q. -- what would that be?

19 A. They may be handouts, they -- well, with
20 the -- with our it's handouts and also a
21 PowerPoint slide.

22 Q. Okay. Can you recall any of the specific
23 content from those handouts or slideshow?

24 A. The one specific that we make sure that
25 we hand out is the -- the one from your web --

1 the Tennessee website that states what charges
2 are eligible and what are not eligible and the
3 grace periods and that kind of thing.

4 Q. Do you recall any other specific
5 information that was given out at the public
6 education workshops beyond what you just
7 mentioned?

8 A. Just how to navigate -- how to -- the
9 instructions to the city hall.

10 Q. I want to move on to a slightly different
11 topic and kind of address NAACP --

12 MR. BARKER: Sorry, Charles, I think
13 I may have kicked you.

14 MR. GRANT: You did.

15 BY MR. BARKER:

16 Q. Address kind of some of the things that
17 are -- let me back up. Sorry, I lost my
18 concentration there.

19 So you've mentioned these public
20 education workshops, assistance with the COR
21 process, individuals that accompany members
22 when they go to receive CORs and then just
23 general voting rights, setting up tables and
24 stuff at events and things like that. Let's
25 break that down and talk a little bit about the

1 cost of those events.

2 A. Okay.

3 Q. How much does it cost to put on a public
4 education workshop on certificate of
5 restoration?

6 A. Well, that all depends upon the county
7 and depends upon who wants to collaborate with
8 us and who can -- who would just give us a -- a
9 venue.

10 Q. So you've mentioned two specific public
11 education workshops.

12 A. Uh-huh.

13 Q. Can you give an estimate of the costs for
14 putting on the public education workshop at --
15 in Montgomery County?

16 A. In Montgomery County, okay. Now,
17 recognize we are a volunteer organization,
18 okay? And our resources is our time. And --
19 or our gas, okay?

20 Q. Okay.

21 A. As far as a roundabout figure, we
22 never -- we never did that -- added it up,
23 okay? And if there is any cost that is actual
24 that will come out of pocket besides our gas,
25 then any printing that has to be done would be

1 tables that we have to buy at any of these
2 events, okay?

3 Q. Let's talk about then the public
4 education workshop at the state convention
5 then.

6 A. Okay.

7 Q. Specifically the one on voting rights
8 registration, that portion of the convention,
9 do you have an estimate for how much that
10 costs?

11 A. No, I don't.

12 Q. Okay. When you participate in voter
13 registrations events and set up a table and
14 things like that, do you have an estimate of
15 how much that costs?

16 A. Only our time and gas getting there.

17 Q. How much time would it generally take to
18 do one of those events?

19 A. Now that depends upon the event. How
20 many hours that it has -- is holding, whether
21 it's an 8-hour event, 2-hour, 4-hour event.

22 Q. Have you participated in events that hit
23 all of those time marks, 2 to 8 hours?

24 A. Yes.

25 Q. Okay. When an individual assists an

1 NAACP member with the COR process, do you have
2 an estimate of just kind of the average
3 interaction and how much that costs?

4 A. Well, that cost would be whatever time
5 that labor cost would be for an individual that
6 would be talking to -- a member that would be
7 talking to an individual, okay? So that's
8 actually taking away from other -- the voting
9 registration portion of it, because that's what
10 we're actually doing is the voter
11 restoration -- I mean voter registration.

12 Q. Do you have an estimate of a dollar
13 figure that you could put on that?

14 A. Oh, I don't know.

15 Q. What about when an individual accompanies
16 a member when they go to seek a COR?

17 A. Uh-huh.

18 Q. Can you estimate the cost to the NAACP of
19 doing that?

20 A. Well, I can tell you that it's taken away
21 from other things that they could be doing,
22 okay? Their gas going back and forth or -- and
23 their -- their time.

24 Q. Are you able to estimate a dollar figure
25 for that?

1 A. No.

2 Q. Okay. Does the NAACP reimburse members
3 who volunteer for their gas and time at any of
4 these events that you just described?

5 A. No.

6 MR. BARKER: Can we take another
7 short five-minute break off the record?

8 MR. GRANT: Sure.

9 (Short break.)

10 MR. BARKER: At this time we have no
11 further questions. And --

12 MR. GRANT: Okay.

13 MR. BARKER: -- if you guys have
14 some, we may have some to follow-up on, but for
15 now that's it.

16 MR. GRANT: We do have a couple of
17 questions or more.

18

19 EXAMINATION

20 QUESTIONS BY MR. GRANT:

21 Q. Let me take a look at your exhibits.

22 Ms. Morris, for the record, I'm looking
23 at Exhibit Number 7, a document titled
24 Jemison's Expungement. And counselor asked you
25 questions about that document earlier, and the

1 question was whether that document was related
2 solely to expungement.

3 Did any of the people on that list also
4 seek voting rights restoration?

5 A. Yes. Yes. The attorney was supposed to
6 do -- expunge the records and -- for the
7 misdemeanors and whatever felonies that he
8 could expunge and also start the process for
9 the voter restoration.

10 Q. Okay. So that list is composed of
11 persons who not only sought expungement but
12 also voting rights restoration?

13 A. Yes.

14 Q. Earlier you testified that there were --
15 that there were two conferences or workshops
16 that the conference was involved in as it
17 relates to voting rights restoration. Did you
18 make an effort to contact various branches
19 around the states -- around the state -- strike
20 that.

21 Let me ask it this way: Is the
22 conference composed of the various branches
23 around the state?

24 A. Yes. Yes, it is.

25 Q. Okay. Did you make an effort to notify

1 various branches of the NAACP around the state
2 to determine what sort of outreach and
3 workshops that they were involved in?

4 A. Yes.

5 Q. And did they all -- and did some of them
6 respond to you?

7 A. Yes.

8 Q. Did some of the branches also collaborate
9 with third parties to do workshops and voting
10 rights restoration --

11 A. Yes.

12 Q. -- workshops?

13 And I noticed that you had a list of
14 chapters actively restored voting rights. This
15 was something from Dawn Harrington, and Free
16 Hearts --

17 A. Free Heart, uh-huh.

18 Q. -- provided you with that list?

19 A. Yes, it's a non-exhaustive list where the
20 counties that work with her on voter
21 restorations and also education on voter
22 restorations.

23 Q. So she identified five chapters, Dyer,
24 Franklin, Montgomery, Shelby, Tipton, and looks
25 events with NAACP from August of 2020 through

1 March of 2023?

2 A. Yes.

3 Q. And you also reached out to the Legal Aid
4 Society of Middle Tennessee and the executive
5 director DarKenya Waller?

6 A. Right.

7 Q. And she provided some information of some
8 of the activities that they engaged in with the
9 NAACP along the lines of voting rights
10 restoration?

11 A. Right.

12 Q. And some of the branches themselves
13 actually responded to you and said that they
14 were involved in some workshops and activities
15 centered around voting rights restoration; is
16 that right?

17 A. It's -- yes.

18 Q. You received an e-mail from a Tiffany
19 Tipton-Boyd?

20 A. Uh-huh.

21 Q. Who is she?

22 A. She's the president of Dyersburg.

23 Q. Was she someone who needed a COR?

24 A. Yes, matter of fact, she is.

25 Q. All right. And did they -- and did they

1 report that -- that they engaged in voting --
2 voting registration and restoration work
3 beginning in January of 2021?

4 A. Yes.

5 Q. Okay.

6 A. Yes.

7 Q. So again, what -- you all don't
8 necessarily track the -- the individual
9 outreach of each of the -- the outreach of each
10 of the branches; is that right?

11 A. Correct.

12 Q. You all don't necessarily track it, but
13 it's an important part of the mission of each
14 --

15 A. Exactly.

16 Q. All right. Of each branch to do some
17 outreach on voting registration and voting
18 rights restoration?

19 A. Right.

20 Q. Okay. And because you all don't track
21 are you able to put a cost or a monetary sum on
22 the volunteer hours associated with all of the
23 various branches' efforts at voting rights
24 restoration?

25 A. I can't put a -- no.

1 Q. Okay.

2 MR. GRANT: That's all we have.

3 MR. BARKER: That's it for us too.

4 THE REPORTER: Mr. Barker, do you
5 want to order this?

6 MR. BARKER: Yes.

7 THE REPORTER: Would you like to
8 order a copy?

9 MR. GRANT: We would like to order a
10 copy and the witness would like to read and
11 sign.

12 FURTHER DEPONENT SAITH NOT

13 (Proceeding concluded at 11:37 a.m. CST)

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**Plaintiffs’
Memorandum of Law
in Support of their
Motion for Summary
Judgement**

**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,

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]

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT THEIR MOTION FOR
SUMMARY JUDGMENT ON COUNTS FOUR AND SIX**

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INTRODUCTION

Despite the fact that many Tennesseans convicted of felonies have never lost the right to vote, Defendants Mark Goins' and Tre Hargett's ("Defendants")¹ voter registration forms and policies make it almost impossible for those people to actually register and vote, in violation of the National Voter Registration Act ("NVRA").

Tennessee's registration forms are deficient because they fail to "inform" applicants of voter eligibility requirements as required by the NVRA. Despite the NVRA's mandate that each registration form "specif[y] . . . each eligibility requirement," neither Tennessee's state voter registration form ("State Form") nor the Tennessee-specific instructions on the National Mail Voter Registration Form ("Federal Form") describe in detail when applicants with felony convictions are or are not disqualified from voting in Tennessee. In fact, election officials in the state continue to use an old version of the State Form that misinforms applicants by providing patently *incorrect* information regarding eligibility to register after a felony conviction.

Moreover, even if a person with a non-disqualifying felony conviction is able to understand that they *do* have the right to vote and timely submits a valid voter registration form, Tennessee's voter registration policies make it all but certain that their registration will still be denied. The State's policies instruct elections officials to reject *all* applications on which the applicant indicates they have a prior felony conviction, even those applicants whose prior felony convictions do not disqualify them. And, instead of accepting valid forms timely submitted by eligible applicants with felony convictions, Defendants force these fully eligible applicants to provide documentary proof

¹ Because Plaintiff TN NAACP seeks summary judgment only on Counts Four and Six, which allege violations only against Defendants Goins and Hargett, this Memorandum and the accompanying Statement of Undisputed Material Facts will use "Defendants" to refer only to Defendants Goins and Hargett.

of their eligibility. Both the blanket rejection policy and the additional paperwork requirement violate the NVRA.

While Defendants recently issued new policies regarding voter registration, these new directives do not strip the court of its jurisdiction as they do not fully resolve Claims Four and Six and even if they did, Defendants cannot show that their violations are not reasonably likely to recur.

The undisputed material facts show that Plaintiff is entitled to summary judgment on Claims Four and Six because Defendants' registration forms and policies create nearly insurmountable registration and voting burdens for eligible voters in Tennessee.

BACKGROUND

Many Tennesseans convicted of felonies maintain the right to vote. If a person was convicted before January 15, 1973, they are only disenfranchised if that conviction is one of 21 specifically enumerated crimes *and* the judgment of conviction included a statement that rendered their crime "infamous." *Crutchfield v. Collins*, 607 S.W.2d 478, 480 (Tenn. Ct. App. 1980). No felony convictions that occurred between January 15, 1973 and May 17, 1981 are disenfranchising, meaning that individuals whose convictions occurred during that "grace period" have never lost the right to vote. *Crutchfield*, 607 S.W.2d at 482; *Gaskin v. Collins*, 661 S.W.2d 865, 868 (Tenn. 1983); *see also Restoration of Voting Rights*, Tenn. Sec'y of State, <https://sos.tn.gov/elections/guides/restoration-of-voting-rights>. Lastly, individuals who have lost their right to vote because of a felony conviction can restore their voting rights pursuant to Tennessee law. *See* T.C.A. §§ 40-29-101 *et seq.*, 40-29-201, *et seq.* Counts Four and Six of this case challenge the sufficiency of Tennessee's voter registration policies for individuals who fall into the above categories.

The State Forms do not specify these eligibility criteria. *See infra*, Arg., Section II. The latest iteration of the State form merely states that “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.” Ex. 1 (Current State Form). The Federal Form includes substantially similar instructions. Ex. 2 (Federal Form, Lim. Dep. Ex. 11). Moreover, older forms which are still in use, *falsely* state that the registrant “must not have been convicted of a felony, or if you have, your voting rights must have been restored.” Ex. 3 (Previous State Form, Lim Dep. Ex. 7). That form also requires applicants to swear as to whether they have “ever been convicted of a crime which is a felony in this state, by a court in this state, a court in another state, or a federal court.” *Id.*

Moreover, even if a person with a non-disqualifying felony conviction is able to understand that they *do* have the right to vote and submits a voter registration form, they will be subject to Defendants’ policy instructing election officials to reject all applications on which the applicant indicates they have a prior felony conviction, even those applicants whose prior felony convictions do not disqualify them. *See infra*, Arg., Section III. Moreover, instead of accepting valid forms timely submitted by eligible applicants with felony convictions, Defendants force these fully eligible applicants to provide documentary proof of their eligibility. *Id.*

Plaintiff Tennessee National Association for the Advancement of Colored People (“TN NAACP”) first alerted Defendants Hargett and Goins to the state’s failure to inform applicants of voter eligibility requirements in violation of the NVRA through its First NVRA Notice Letter on August 22, 2018. Ex. 6 (First Notice Letter). This was followed by 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. Ex. 7 (Second Notice Letter). Plaintiff TN NAACP and

Defendants continued to correspond in an attempt to resolve these and other related issues, but in spring 2020, Defendants ceased engaging in those talks. Ex. 8 (Correspondence on Follow-Up - Redacted).

On December 3, 2020, Plaintiffs TN NAACP, Lamar Perry, Curtis Gray Jr., John Weare, Benjamin Tournier, and Amanda Lee Martin filed suit, challenging, in part, the State's failure to properly inform voter registration applicants of eligibility and its policies automatically rejecting all applicants who indicate they have a felony conviction and requiring additional documentation in violation of NVRA. ECF No. 1. Plaintiff TN NAACP then sent a second NVRA notice letter further outlining these violations, including the rejection and documentary proof policies. Ex. 7 (Second Notice Letter). Throughout this period, Plaintiff TN NAACP attempted to work with Defendants to resolve these violations. On May 24, 2021, Plaintiff sent Defendants a Third Notice letter with feedback regarding proposals from Defendants for new policies and form. Ex. 9 (Third Notice Letter). Despite these negotiation efforts, shortly thereafter, Defendants, again, stopped engaging in negotiations and the proposals were never implemented. Ex. 10 (Aug 2021 Response Email, Lim Dep. Ex. 29)

On March 30, 2022, this Court denied all parts of Defendants' Motion to Dismiss with the exception of Count Five, which it dismissed without prejudice, holding that Plaintiff TN NAACP's First Notice Letter did not satisfy the NVRA's pre-suit notice requirement. ECF No. 083 at 16. On October 20, 2022, Plaintiffs filed a First Amended Complaint, asserting that the Second and Third Notice Letters cured this technical defect. ECF No. 102, at ¶ 117-18.

After the close of discovery in summer 2023, Plaintiff again attempted to negotiate a resolution with Defendants Hargett and Goins on these matters. On June 12, 2023, shortly after the close of discovery, the parties filed and were granted a joint motion to amend the scheduling

order, having “made significant progress towards a resolution” on Claims 1-3 regarding the due process and equal protection disputes and remaining open to settling on Claims 4-6 regarding the NVRA disputes. ECF No. 140. The parties continued progress toward a possible resolution until mid-July, when it became clear that a settlement would not be reached. Parties again filed a joint motion to amend the scheduling order to allow for additional time to file dispositive motions, *see* ECF No. 144, at 2, which was granted on July 21, 2023. That same day, Defendant Goins issued a memorandum outlining a new policy for processing voter registrations from individuals with pre-1981 felony convictions. Ex. 11 (Processing Older Felonies Memo).

The new directives, if properly implemented, would make progress towards resolving violations in the processing of voter registrations from eligible applicants (Claim 6), but do not provide a complete remedy, nor do they do anything to resolve the deficiency in the instructions on the registration forms (Claim 4). Plaintiff TN NAACP now moves for summary judgment on Claims 4 and 6.

LEGAL STANDARD

Summary judgment is appropriate when the pleadings and evidence “show[] that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Cox v. Kentucky Dep't of Transp.*, 53 F.3d 146, 149 (6th Cir. 1995) (quoting Fed. R. Civ. P. 56(a)). The party seeking summary judgment must show the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 317. A genuine issue of material fact is one that “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir.1989). Once the moving party has met its burden, the nonmoving party “may not rest upon the mere allegations or denials of his pleading,

but . . . must set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 248 (quoting Fed. R. Civ. P. 56(e)). Facts are only material when their resolution will affect the outcome of the lawsuit. *Id.* at 248. As explained herein, there are no genuine disputes of material fact with respect to Plaintiff’s NVRA claims. Plaintiff is entitled to summary judgment as a matter of law.

ARGUMENT

I. Plaintiff TN NAACP Has Standing.

As an initial matter, Plaintiff TN NAACP has Article III standing to bring its NVRA claims. An organizational plaintiff, like any individual, has standing when it can show an injury in fact, causation, and redressability. *Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp.*, 725 F.3d 571, 576 (6th Cir. 2013) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). An organizational plaintiff can establish standing either based on injury to the organization itself or by asserting standing on behalf of its members. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975). In this case, the TN NAACP suffers organizational injuries sufficient to establish standing on its own behalf.

The evidence shows that the TN NAACP has endured both a “drain on the organization’s resources” and a “concrete and demonstrable injury to [its] activities,” each of which is independently sufficient to prove injury in fact. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *see Miami Valley*, 725 F.3d at 576. The TN NAACP is a nonpartisan, multi-racial, all-volunteer non-profit organization whose mission is to “advocate for the rights of individuals who have been discriminated against.” Deposition of Loretta Morris at 17:5-10, 27:23-25; *see also* Decl. of Gloria Jean Sweet-Love, President of TN NAACP at ¶¶ 3-6. The organization’s focus is voting rights, and its primary activity in furtherance of that goal is helping individuals register and

turnout to vote. Sweet-Love Decl. at ¶¶ 7-8; Morris Dep. at 17:19-18:15, 20:25-21:9. The TN NAACP marshals limited volunteer and monetary resources to assist individuals with voter registration alongside other outreach tactics to register and turn out as many people as possible. Sweet-Love Decl. at ¶ 9; Morris Dep. at 27:12-22. As part of its registration work, the TN NAACP has assisted individuals with felony convictions who are eligible to vote. Sweet-Love Decl. at ¶¶ 11-12.

Defendants' failure to issue informative registration forms useable by voters with felonies convictions and their policy of rejecting and demanding documentation from all applicants who attest to having a felony conviction puts a drain on the TN NAACP's scarce volunteer resources. Sweet-Love Decl. at ¶ 13 Their unlawful forms and erroneous rejections require TN NAACP volunteers to help applicants correct the error by, for example, locating and printing records found online, taxiing individuals to government offices, and even paying out of pocket to get documents from court clerks. *Id.* ¶¶ at 13-16. The volunteer time spent on these corrective activities diverts resources, which are limited overall, from other mission-furthering activities, like registering more voters through door-to-door canvassing, tabling, texting, and canvassing, and phone banking, or transporting people to the polls on Election Day. *Id.* at ¶¶ 8-9, 17-18.

The TN NAACP's injury is also akin to the cognizable injury found in *Florida State Conf. of the NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008). In that case, plaintiffs suffered concrete and demonstrable injury where they anticipated "divert[ing] personnel and time" to counteract the effects of a Florida statute imposing certain verification procedures for first-time voters, which would raise the average amount the organization had to spend to register each voter, draining limited resources. *Id.* at 1165-66. The testimony of TN NAACP establishes a similarly concrete injury to its activities here.

Defendants' failure to lawfully administer voter registration thus "perceptibly impair[s]" the TN NAACP's activities because it increases the cost of voter registration assistance overall and requires the organization to spend "time and resources in a way that they would not have been spent absent [Defendants' unlawful policies]." *OCA-Greater Houston v. Texas*, 867 F.3d 604, 612 (5th Cir. 2017). While an injury-in-fact need not be quantitatively large or even readily quantifiable to confer Article III standing, *see id.*, the harm to TN NAACP's activities is significant because its all-volunteer capacity is limited compared to the substantial needs of the predominantly Black and brown members and constituents it aims to engage in the political process. *See Sweet-Love Decl.* at ¶ 5; Uggen, et al., "Locked Out: Estimates of People Denied Voting Rights Due to a Felony Conviction," The Sentencing Project (Oct. 30, 2020) available at <https://www.sentencingproject.org/reports/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/> (finding that one in five Black voting-age citizens are disenfranchised due to a felony conviction in Tennessee). The TN NAACP has established injury in fact.

The TN NAACP has also established causation and redressability. Defendants Goins, under the supervision of Defendant Hargett, is the head of the Election Division and the "chief administrative election officer of the state." T.C.A. § 2-11-201(b). Defendant Goins creates and issues the state voter registration form as part his duties to, *inter alia*, "prepare instructions for the conduct of registration" and "authoritatively interpret the election laws for all persons administering them." T.C.A. § 2-11-202; *see also* § 2- 2-115. Were Defendants to conform the State's voter registration forms and policies to the requirements of the NVRA and fully abandon their unlawful policies, the TN NAACP would not have to spend time or money helping individuals track down decades old paperwork to prove their eligibility. *See Sweet-Love Decl.* at

¶¶ 12-16. The TN NAACP's injuries are directly traceable to Defendants and can be remedied by them. The TN NAACP has therefore established Article III standing to challenge Defendants' voter registration forms and policies under the NVRA.

II. Plaintiff is Entitled to Summary Judgment on Count Four Because Tennessee's Voter Registration Form Fails to Inform Applicants of Voter Eligibility Requirements in Violation of the NVRA.

The NVRA requires each state to “inform applicants . . . of voter eligibility requirements” no matter whether applicants seek to register with a state or federal voter registration form or through the department of motor vehicles or any other voter registration agency. 52 U.S.C. § 20507(a)(5). The NVRA also requires that both the federal voter registration form (the “Federal Form”) and any state-issued mail-in voter registration form used to register voters for federal elections “specif[y] each eligibility requirement” for applicants. 52 U.S.C § 20508(b)(2)(A); *see also* § 20505(a)(2) (providing that a state voter registration form should meet “all of the criteria stated in section 20508(b)”).

Tennessee's state voter registration form and the Tennessee-specific instructions on the Federal Form do not “specify” the state's eligibility requirements for voters with past convictions and therefore fail to accurately “inform” applicants about what impact a past conviction does and does not have on their eligibility to vote. In particular, neither form provides enough information to convey to eligible applicants with non-disenfranchising pre-1973 or grace-period felony convictions that their felonies do not impact their right to vote.

A. The NVRA Requires that States Specify Each and Every Eligibility Requirement on the Voter Registration Form to Enable Registrants to Determine Their Eligibility Easily and Privately.

The mandate that states provide accurate and specific information to prospective voters about voter eligibility requirements runs throughout the NVRA. This fundamental prerequisite to

a functional voter registration system is included in every provision related to the various avenues of registration established by the Act as well as in the general provision governing the responsibilities of states under the Act. Like mail registration forms, which must “specif[y] each eligibility requirement,” *see* 52 U.S.C. § 20508(b)(2)(A), applications completed through motor vehicle agencies must also “include a statement that . . . states each eligibility requirement.” 52 U.S.C. § 20504(c)(2)(C). Similarly, applications completed through other designated agencies must “specif[y] each eligibility requirement (including citizenship).” *Id.* § 20506(a)(6)(A)(i)(I); *see also id.* § 20506(a)(6)(A)(ii) (allowing use of an agency-created form so long as it meets the requirements of § 20508(b)). Finally, the Act’s provisions outlining the general duties of states in administering registration for federal elections include a duty to “inform” applicants that apply through any means of registration of the “voter eligibility requirements.” *Id.* § 20507(a)(5)(A).

The reason for these exhaustive provisions is obvious on its face. In order to create a functional voter registration system that “promote[s] the exercise of [the fundamental] right [to vote],” *id.* § 20501(a)(2), potential voters need to be able to easily assess their eligibility when using the various avenues for registration required by the NVRA. The NVRA’s express purpose of “increasing the number of eligible citizens who register to vote” in federal elections would be dead letter if states could withhold from prospective voters the information they need to determine whether they are eligible to register to vote. *Id.* § 20501(b)(1).

The legislative history of the Act confirms the importance of meaningful notice to the overall statutory scheme. Both the House and Senate reports for the NVRA noted the importance that every applicant “be advised of the voting requirements and the need to decline to register if he or she does not meet the requirements” and explained that “[t]he bill provides that *all* registration requirements should be set forth in the application to register to vote so that they will

be readily available for each applicant to review during the application process.” S. Rep. 103-6 at 24 (emphasis added); H.R. Rep. 103-9 at 7-8 (same). The reports also emphasized the importance of the voter eligibility specifications for maintaining accurate lists of only eligible voters and preventing fraud. S. Rep. 103-6 at 11 (“Under the provisions of this bill, every application for voter registration must include a statement that sets forth *all* the requirements for eligibility, including citizenship, and requires that the applicant sign an attestation clause, under penalty of perjury, that the applicant meets those requirements.” (emphasis added)).

Finally, both the House and Senate reports note that the requirement to specify eligibility requirements on all registration forms is crucial for enabling potential voters to determine privately their eligibility to vote, without needing to discuss sensitive personal information, such as past criminal convictions, with state officials. H.R. Rep. 103-9 at 8 (“Since some of the reasons for declining to register to vote may involve matters of personal privacy, such as ineligibility under State law due to mental incompetence or a criminal conviction, an individual who declines to register to vote shall not be questioned as to the reasons for such action.”); S. Rep. 103-6 at 24 (same).

B. Tennessee’s Voter Registration Forms Violate the NVRA by Failing to Specify Eligibility Criteria and Provide Sufficient Information on Registration Forms to Enable Individuals with Felony Convictions to Determine Whether They Are Eligible to Vote.

In light of the NVRA’s statutory structure, the Act’s general requirement that Tennessee “inform applicants . . . of voter eligibility requirements” plainly means to supply potential voters with enough accurate information to understand their own eligibility to register and vote. 52 U.S.C. § 20507(a)(5). The Act’s requirement that Tennessee’s mail-in registration form and the state instructions on the Federal Form “include a statement that . . . *specifies* each eligibility requirement” is also plain and unambiguous. 52 U.S.C. § 20508(b)(2)(A) (emphasis added); *see*

also *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (“It is well established that, when the statutory language is plain, [federal courts] must enforce it according to its terms.”). When Congress uses the word “specify,” it means “to name or state explicitly or in detail.” *Kucana v. Holder*, 558 U.S. 233, 243 n.10 (2010) (quoting Webster’s New Collegiate Dictionary 1116 (1974)). Thus, the NVRA requires the State to not only reference the existence of eligibility requirements concerning voters with past convictions but to state *in detail* each and every one on the registration forms. And it must do so in a manner that enables applicants with past convictions to determine their eligibility.

Neither the State Form nor the Tennessee-specific instructions on the Federal Form fulfill these mandates. As explained above, a prior felony conviction does not always render an individual ineligible to vote. Citizens with felony convictions only in the “grace period” (January 15, 1973 to May 17, 1981) fully retain their right to vote, as do citizens with only pre-1973 convictions for crimes that could not be deemed “infamous” or were not actually deemed infamous by a court on the judgment document. Citizens who lost the right to vote because of a felony conviction are also eligible to vote if they have had their rights restored.

The latest iteration of the State Form specifies *none* of these eligibility criteria regarding past convictions and instead states generally: “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.” Ex. 1 (Current State Form). This language does not, by any definition, “specify” the eligibility criteria related to felony convictions. The Federal Form includes

substantially similar instructions. Ex. 2 (Federal Form, Lim. Dep. Ex. 11).² As the Supreme Court has explained, this sort of “marginally ambiguous” language *alluding* to specific information (i.e., the eligibility requirements concerning past convictions) does not suffice to “specify” that information. *Kucana*, 558 U.S. at 243 n.10 (internal quotation omitted). Furthermore, these instructions do not provide any of the information necessary for a prospective voter with a grace-period or non-infamous pre-1973 conviction to understand their eligibility to vote. Providing a phone number and website link, while potentially helpful to voters with ready online access, does not satisfy the NVRA’s clear statutory requirement that the registration form itself be sufficiently detailed to enable prospective registrants to determine their eligibility to vote at the point of registration—which is, in the case of mail-in registration, the form itself.

Moreover, the latest iteration of the State Form is not the only version currently in use in Tennessee. The Election Division posted the latest iteration of the State Form on some pages of its website after (and likely in response to) the filing of this lawsuit in December 2020. *See* ECF No. 29-2, § V. However, county administrators of elections continued to be authorized to accept and process older versions of the registration form even after the new form was released. Deposition of Jessica Lim at 93:6-21. Some still have the old form posted on their websites. *See e.g.*, Knox County Elections Commission, *Copy of Tennessee Mail-In Application for Voter Registration*, <https://perma.cc/J66L-CS5J> (last visited Aug. 2, 2023); Hamilton County Elections Commission,

² The Tennessee-specific instructions on the federal form states that to be eligible to vote applicants must “not have been convicted of a felony, but if convicted, your eligibility to register and vote depends upon the crime you were convicted of and the date of your conviction.” Ex. 2 (Federal Form). These instructions are even more confusingly worded than the State Form in that they both state that eligibility requires an individual “not [to] have been convicted of a felony” and that “eligibility . . . depends” on unspecified circumstances. At best, this language is confusing, and at worst, it leaves voters with past convictions who never lost the right to vote or are eligible to vote with the inaccurate impression that they may not be eligible.

Copy of Tennessee Mail-In Application for Voter Registration, <https://perma.cc/7YDX-45MD> (last visited July 31, 2023); DeKalb County Elections Commission, *Requirements For Voter Registration*, <https://perma.cc/DH7Q-NL2V> (last visited July 31, 2023) (linking to an older version of the voter registration form at bottom of page).

This old registration form in use at the time Plaintiffs filed their complaint (and still in use now) not only fails to specify eligibility criteria related to past convictions but feeds voters patently *inaccurate* eligibility information. That form instructed voters that to register, “you must not have been convicted of a felony, or if you have, your voting rights must have been restored.” ECF No. 1-2, Comp., “TN Mail-In App for Voter Registration.” The form also requires applicants to swear as to whether they have “ever been convicted of a crime which is a felony in this state, by a court in this state, a court in another state, or a federal court.” *Id.* These same instructions were found on versions of the form as of October 2015 and October 2011. Ex. 4 (State Form Rev. 2015); Ex. 5 (State Form Rev. 2011). These longstanding instructions as to eligibility to vote with past convictions are false and risk leaving eligible individuals with past convictions with an incorrect belief that they are ineligible to register and vote. The old form does not meet the NVRA’s mandate that states accurately specify eligibility criteria and the Secretary’s failure to rescind the old form results in its continued usage in violation of the NVRA.

Under the NVRA, the State’s registration forms, and its instructions on the Federal Form, must on their face provide registrants with a statement that is sufficiently specific as to all qualifications for voting such that an individual may assess their eligibility. The undisputed materials facts show the State’s registration forms fail to do so.³

³ The violation of the NVRA’s mandate to specify eligibility criteria is compounded by the fact that people with grace period and pre-1973 convictions are likely to be senior citizens with lower

III. Plaintiff is Entitled to Summary Judgment on Count Six Because Defendants' Blanket Rejection of Valid State Forms and Demand for Documentary Proof of Eligibility Violates the NVRA.

Even though the state and federal forms fail to inform citizens with felony convictions of relevant voter eligibility criteria, Defendants Goins and Hargett still see fit to ask applicants on the State Form (under penalty of perjury) whether they have ever been convicted of a felony conviction. Ex. 1 (Current State Form). Defendants then instruct administrators of elections to use responses to this question to reject *all* forms where an applicant indicated that they have a felony conviction—even those applicants who never lost the right to vote or have had their right restored. Instead of accepting valid federal and state forms timely submitted by eligible applicants with felony convictions, Defendants' policies force these applicants to provide additional paperwork as further proof of their eligibility. This longstanding blanket rejection policy and documentation requirement imposes a discriminatory barrier to registration in Federal elections and violates multiple provisions of the NVRA.

A. Defendants' Blanket Rejection Policy Violates the NVRA's Requirement that States "Ensure" the Registration of "Eligible" Voters Upon Timely Receipt of Valid Registration Forms.

The NVRA requires each state to "ensure that any eligible applicant is registered to vote" in Federal elections if their "valid voter registration form" is received "not later than the lesser of

levels of technological literacy. Except in the rare instance that they were convicted of a felony as a juvenile, individuals with grace period and earlier convictions are now at least sixty years old. Providing a long link to a webpage, which has sporadically been down during the pendency of this case, *see, e.g.*, Ex. 12 (Archive of TN SOS Webpage), is not sufficient to inform potential registrants of the eligibility requirements and certainly wouldn't qualify as "specifying" those requirements on the form itself. Additionally, some eligible individuals may be in prison serving decades-long or life sentences for felony convictions during the grace period. *See* Tennessee Dep't of Correction, "Statistics and Information" <https://www.tn.gov/correction/statistics-and-information/frequently-asked-questions.html> (reporting that as of May 6, 2023, there were 1,789 offenders serving life sentences). Those individuals would have extremely limited, if any, ability to utilize the Secretary of State's website or phone number.

30 days, or the period provided by State law, before the date of the election.” 52 U.S.C. § 20507(a)(1). The Supreme Court has interpreted “valid” in this context to mean “a completed copy of the form.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 12 (2013) (“*ITCA*”). In Tennessee, applicants with felony convictions who never lost the right to vote or who have had their rights restored are “eligible” to vote. *See supra*, Background. Thus, the required procedure in Tennessee is not ambiguous: if an applicant with felony conviction timely submits a completed voter registration application indicating they are eligible to vote, Tennessee election officials must “ensure” the eligible applicant is registered.

There is no genuine dispute that election officials in Tennessee reject every voter registration application where the felony question is answered in the affirmative absent additional documentation. Lim Dep. at 101:5-11; Deposition of Donald Hall at 98:14-100:14, 121:3-16; Deposition of Sherri Sivley (Hamilton AOE) at 76:1-15; Deposition of Linda Phillips (Shelby AOE) at 28:03-12; Deposition of Judy McAllister (Meigs AOE) at 83:10-19. This is done pursuant to Election Division policy, training, and guidance. *See* Hall Dep. at 98:14-99:13; Ex. 13 (Elections Div. Int. Pol., Hall Dep. Ex. 3) at 2, 7 (“If a person marks ‘yes’ to the felony question on their voter registration application (and there is no restoration documentation), the county election commission rejects the application.”); Ex. 14 (Rest. of Voting Rights Tr. Doc., Hall Dep. Ex. 4) at DEF000036 (“If a person marks that they have been convicted of a felony . . . the application is rejected.”); Ex. 15 (Felons Process Training) at DEF000402-409; Ex. 16 (Felony Q & A) at DEF000387. Upon rejecting an application because of a felony conviction, county election officials are directed to send the applicant a notice of the rejection accompanied by a Voter Registration Appeal Request Form, a Certificate of Restoration form, and a blank voter registration

form. Lim Dep. at 151:23-152:6; Deposition of Vicki Collins at 28:7-29:19. This policy was in effect as far back as 2014. *See* Ex. 17 (2014 Training) at DEF000080-81.⁴

The State's blanket rejection policy violates the NVRA's mandate to "ensure" registration of eligible voters because it necessarily sweeps multiple categories of facially eligible voters with past convictions into the rejection pool. For instance, when a county election official receives an application indicating only a pre-1973 felony conviction for a non-infamous crime, the application must be rejected unless it is accompanied by a copy of the judgment. Ex. 16 (Felony Q & A) at DEF000389; Lim Dep. at 179:23-180:22, 131:25-132:8; Hall Dep. at 82:22-83:1, 120:3-6. That is the case even though the State agrees that those individuals with pre-1973 non-infamous convictions *never* lost their right to vote. Ex. 11 (Processing Older Felonies Memo) at 1-2. Similarly, when a county election official receives an application indicating only a grace-period conviction on the face of the registration form, the application must be rejected unless it is accompanied by "a copy of their conviction papers showing the date of the conviction and the type of crime." Ex. 16 (Felony Q & A) at DEF000389; *see also* Lim Dep. at 107:15-108:22, 131:25-132:8; Hall Dep. at 117:18-118:12; Sivley Dep. at 40:20-25; Ex. 18 (Felony Conviction Search-Redacted) at DEF0000513. Once again, such individuals indisputably never lost their right to vote. Ex. 11 (Processing Older Felonies Memo) at 1-2.

Nothing on the state voter registration forms instructs eligible voters with grace-period or pre-1973 non-infamous convictions that their applications will be rejected absent supporting

⁴ As discussed below, *infra* Section IV, the Election Division very recently issued revised guidance on processing voter registration applications that indicate only grace-period or pre-1973 non-infamous felony convictions. The guidance improves the State's processing of applications that facially indicate only grace-period or pre-1973 non-infamous convictions. The revisions do not, however, resolve all of Plaintiff's claims, and nothing prevents Defendants from resurrecting its longstanding blanket rejection and documentation policy.

documentation. Ex. 1 (Current State Form); Ex. 2 (Federal Form, Lim. Dep. Ex. 11). Nothing on the forms specify what kind of documentation such applicants must provide. *Id.* And, until very recently,⁵ nothing on the Voter Registration Appeal Request Form enabled rejected applicants to appeal a rejection for reason of a grace-period or non-infamous pre-1973 conviction. Lim Dep. at 154:5-20; Ex. 19 (Voter Reg. Appeal Form, Lim Dep. Ex. 21).

The Election Division acknowledges that individuals with grace-period convictions have faced difficulties obtaining the requisite documents. Hall. Dep. at 118:13-16, 194:18-25. Indeed, obtaining the conviction records for both grace-period and non-infamous pre-1973 convictions can be difficult because “many times the conviction will be so old that [they will] be in archives.” Lim Dep. at 157:16-158:2; *see also* Collins Dep. at 57:10-58:6. Retrieving documents from archives can take up to a week. Collins Dep. at 100:4-11. The necessary documentation can also involve a financial burden when criminal court clerks charge for copies of grace-period or pre-1973 judgment sheets. *See* Hall Dep. at 195:12-197:15; Ex. 20 (Sept. Shelby Cty. Email, Hall Dep. Ex. 21). Sometimes the required paperwork does not exist or cannot be found. Lim Dep. at 158:6-11; Ex. 21 (Sept. 2020 email, Lim Dep. Ex. 24) at DEF000569-70. When pressed about these challenges, the Election Division 30(b)(6) representative suggested that voters facing difficulties finding the required documentation for grace-period convictions could register by committing perjury by marking “no” to the felony question. Hall Dep. at 201:21-202:4.

In addition to guaranteeing the denial of eligible voters with grace-period and pre-1973 convictions, the Election Division’s blanket rejection policy also results in the erroneous rejection of eligible applicants who have had their voting rights restored after a disenfranchising felony

⁵ As part of its recent revision to voter registration procedures, the Election Division also issued a new Voter Registration Appeal Request Form that enables a rejected applicant with a grace period or non-disqualifying pre-1973 felony conviction to appeal their rejection.

conviction. Ex. 22 (Agency Tr. Doc, Lim Dep. Ex. 3) at 2. The State Form asks applicants to mark under oath whether they have “received a pardon or had [their] voting rights restored” and are therefore eligible to vote. Ex. 1 (Current State Form). The form then vaguely instructs such applicants—who are eligible to vote—to “provide copy of document [sic].” *Id.* Under Defendants’ policy, an application attesting to a felony conviction and voting rights restoration will be rejected without further documentation. Ex. 22 (Agency Tr. Doc, Lim Dep. Ex. 3) at 2. When processing such an application, county election offices are under no obligation to check whether their office or the Election Division already has a record of the applicant’s restoration of voting rights. Hall Dep. at 101:19-102:10.⁶

In short, applicants with felony convictions who never lost the right to vote or who have had their rights restored are “eligible” to vote, and the NVRA requires the Division of Elections to “ensure” these voters are registered if they timely submit a valid registration form. But Defendants’ wholesale rejection of valid timely submitted forms by all voters with felony convictions ensures that eligible applicants will be rejected. Defendants’ policy and practice therefore violates the NVRA’s requirement to ensure the registration of eligible voters upon timely receipt of their valid registration forms.

⁶ the Election Division’s blanket rejection policy also results in erroneous rejection of applicants with expunged convictions or judicial diversions who mistakenly mark “yes” to the felony question. A Tennessean with an expunged conviction or a judicial diversion has not lost the right to vote and can mark “no” in response to the felony question. Ex. 15 (Felons Process Training) at DEF000404, 409; Lim Dep. at 56-1-4; Hall Dep. at 232:2-25. While the State Form instructs voters with expunged convictions as much, it offers no instruction to voters with judicial diversions. Ex. 1 (Current State Form). If an applicant with an expungement or judicial diversion marks “yes” to the felony question, the Election Division’s blanket rejection policy guarantees that the eligible voter is rejected, Ex. 15 (Felon Process Training) at DEF000409, and at least for those with expungements, the applicants must provide documentation proving that their conviction was expunged. Hall Dep. at 232:14; Ex. 23 (Expungement Tr. Doc, Hall Dep. Ex. 35) at DEF000101-103.

B. The Documentation Requirement Violates the NVRA's Limit on States Requiring Documentation to Register to Vote in Federal Elections Beyond a Facially Valid Registration Form.

Defendants' documentation policy also runs afoul of the NVRA because it requires additional documentation to register to vote in federal elections from applicants who submit valid registration forms that provide attested information sufficient to establish eligibility to vote.

The NVRA requires states to "accept and use" the Federal Form for voter registration. 52 U.S.C. § 20505(a)(1). As such, the Federal Form "is to be accepted as sufficient" for voter registration. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 2 (2013) ("*ITCA*"). The Federal Form requires applicants to attest under penalty of perjury that they meet their state's requirements for registration, does not require additional documents, and thus establishes an applicant's facial eligibility. Ex. 2 (Federal Form, Lim Dep. Ex. 11). In *ITCA*, the Supreme Court held that the NVRA preempted an Arizona law requiring documentary proof of citizenship because "the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form" without reliable evidence that the applicant is ineligible. 570 U.S. at 15 (noting the NVRA "acts as both a ceiling and floor" for registering to vote in federal elections).

States may develop and use their own mail-in voter registration forms for federal elections. 52 U.S.C. § 20505(a)(2). But those forms must meet the requirements of § 20508(b), which sharply restricts the additional information states can require from those seeking to vote in federal elections. A state mail-in voter registration form "may require only such identifying information .

. . . and other information . . . as is necessary to enable the appropriate State election to assess the eligibility of the applicant and to administer voter registration.” 52 U.S.C. § 20508(b)(1).

In other words, the NVRA “limits [a state’s] discretion to request information . . . to the minimum amount of information necessary” to establish eligibility. *Fish v. Kobach*, 840 F.3d 710, 737 (10th Cir. 2016); *see also ITCA*, 570 U.S. at 14. “[I]n order for a state advocating for a [documentary proof] regime to rebut the presumption that the attestation requirement is the minimum information necessary for it to carry out its eligibility assessment and registration duties, it must make a factual showing that the attestation requirement is insufficient for these purposes.” *Fish*, 840 F.3d at 738. In *Fish*, the Tenth Circuit held that Kansas failed to establish that documentary proof of citizenship was required to verify the citizenship of individuals who registered at the department of motor vehicles office. *See id.*

Here, the undisputed material facts prove that the Election Division’s policy of requiring facially eligible voters to provide additional documentation beyond an attested federal or state registration form exceeds the amount of information Tennessee may require for registration in federal elections under the NVRA.

First, Defendants’ longstanding documentation requirement violates the NVRA’s requirement that Tennessee “accept and use” the Federal Form to register voters in federal elections. 52 U.S.C. § 20505(a)(1). Though the Federal Form does not allow an individual to attest to whether or not they have been convicted of a felony, only to their eligibility generally, there is no genuine dispute that election officials require documentation when they learn about an applicant’s felony conviction from a source beyond the registration form itself, *Lim Dep.* at 59:13-60:2, including verbally from the applicant, or by way of Tennessee statute requiring the clerks of court in every county to send notices of felony convictions to election officials, or when counties

share this information with one another, *id.* at 56:6-57:8. Applicants who submit a Federal Form are also flagged as having a felony conviction (and required to submit documentation) based on check of their name and social security number against the county's "felony files." Hall Dep. at 123:5-15; Lim. Dep. at 110:7-14. In these circumstances, the only trigger for requiring an applicant with a felony conviction to provide paperwork beyond a valid Federal Form is the fact that the applicant has a felony conviction. But the mere fact that a person has a felony conviction is not reliable evidence of ineligibility because felony convictions do not always result in a loss of voting rights in Tennessee, and voters who have had their rights restored are eligible to vote despite a prior felony conviction. Thus, under the NVRA, the mere indication that an applicant in Tennessee has a felony conviction cannot justify a demand for documentation beyond an attested Federal Form indicating facial eligibility.

Second, for similar reasons, Defendants' documentation policy also violates the NVRA's prohibition on requiring needless documentation beyond the State Form. For applicants who submit a State Form, election officials require documentation based on the voter's mere affirmation on the form that they have a felony conviction. Lim Dep. at 55:16-56:4; 101:5-11. This is the case whether applicants submit an earlier version of the form, which asks only whether the applicant has a felony conviction, or the latest iteration of the State Form. *Id.*; *see also* 93:19-21. The latest iteration of the State Form now asks applicants to state, if known, their crime(s) and date and place of conviction, and whether they have received a pardon or had their voting rights restored. Ex. 1 (Current State Form). This attested information can supply all the state needs (and more) to verify whether the applicant has a grace-period conviction or a pre-1973 conviction of a crime that could not have rendered them ineligible to vote. As noted above, the current State Form also asks applicants to state under oath whether their voting rights have been restored from a

pardon or otherwise, which is also sufficient to verify whether a person previously disqualified from voting is now eligible. Tennessee's voter registration form thus provides more specific attested information than the general attestation found sufficient in *Fish* "for state officials to carry out their eligibility assessment and registration duties—more specifically, their duties to register qualified applicants to vote." *See Fish*, 840 F.3d at 710. Defendants' demand for documentation in these circumstances is unjustified and therefore prohibited by the NVRA.

Even if it were necessary to look beyond the registration form to verify whether an applicant with a felony conviction is eligible to vote (it is not), Tennessee election officials already have access to information sufficient to confirm eligibility, obviating the burden placed on applicants to provide documentation. The Election Division already instructs county election officials to "check every application against their felon files" when an applicant has marked "yes" to the felony question, and some counties check every application regardless of whether the applicant indicates they have a felony conviction. Lim Dep. at 112:12-114:2. "Felon files" refer to the information counties receive or find from various county, state, and federal agencies regarding individuals who have been convicted of felonies. Lim Dep. at 110:7-14. Felon files include information regarding individuals' felony conviction history, including court orders and emails, from U.S. Attorneys, the Tennessee Department of Corrections (TDOC), the Election Division, the state felon list, other county election officials, and their own clerks of court and jury coordinators. Lim Dep. at 110:15-112:2, 124:1-7, 28:5-10.

The Election Division also disseminates "felon reports" to counties every 1-3 months that include the data on registrants' state felony convictions from TDOC, federal convictions from the U.S. attorneys, and out-of-state convictions from the Interstate Compact. Lim Dep. at 117:21-24, 120:6-12, 121:7-9. For each applicant, felon reports would include all convictions for a person

going back in time and include the date of judgment, conviction, or sentence. Lim Dep. at 119:11-120:5, 120:20-21. The information in felon reports can be sufficient to verify whether an applicant has only non-disqualifying convictions. *See* Lim Dep. at 103:6-15.

County election officials, as part of their regular voter-roll maintenance duties, routinely use information in felon files and felon reports to purge voters with felony convictions from the voter rolls. Sivley Dep. at 22:25-24:20; *see also* Tenn. Code § 2-2-106(a)(4).⁷ The list maintenance programs in some counties automatically flag new applicants (whether or not they marked yes or no to the felony question) who may match a record in databases listing individuals with felony convictions and individuals previously purged due to a felony conviction. Sivley Dep. at 118:5-121:2. County election officials must manually review these potential matches to determine whether the new registrant does indeed have a felony conviction. *Id.* at 121:4-122:1.

The Election Division also keeps a “restoration database” of individuals who have had the right to vote restored. Deposition of Steven Griffey at 59:8-12. Yet, when processing voter registration applications indicating restoration of voting rights, county election offices are not required by any policy to confirm whether the Election Division already has a record of the applicant’s restoration of voting rights. Hall Dep. at 101:19-102:10. County election offices *can* ask the Election Division to search for confirmation of an applicant’s restoration of voting rights, and the Election Division can look through its “restored and denied databases” to see “if there [is]

⁷ The Help America Vote Act (“HAVA”) requires states to maintain a centralized statewide list of every legally registered voter in the state. 52 U.S.C. § 21083(a)(1)(A). HAVA further requires states to “coordinate the[ir] computerized list[s] with State agency records on felony status.” *Id.* § 21083(a)(2)(A)(ii).

a restoration there.” *Id.* This is a feasible alternative to rejecting every application that indicates voting rights restoration and requiring unnecessary documentation.

Elections officials have also demonstrated that they are capable of obtaining additional information or documentation to verify the eligibility of voters with grace-period and non-infamous pre-1973 felony convictions if ever necessary. County election officials can reach out to other county election officials or the Election Division to confirm the applicant’s eligibility, although Election Division policy does not currently instruct or require them to do so. *See* Hall Dep. at 101:19-102:10; McAllister Dep. at 85:5-12. County election officials can search or request public records or contact courts and other relevant agencies to verify eligibility of voters, though there is “no definitive set-on practice” of doing so under Election Division policy. *See* Hall Dep. at 199:4-23; Phillips Dep. at 46:10-22, 47:23-48:1. And the Election Division itself is capable of verifying convictions without requiring documentation from the applicant by searching or requesting public records or contacting courts and other relevant agencies. *See* Ex. 24 (Grace Period Email, Lim Dep. Ex. 26) at 2

Tennessee’s existing practices and procedures for sharing conviction data among agencies and for verifying non-disenfranchising felony convictions and rights restoration indicate that the information the State seeks is already within its reach. Yet Defendants insist on burdening facially eligible voters with navigating a complex, confusing, time-consuming process of requesting government records to deliver the state information which it already has or could as easily obtain. The State only imposes such requirements on facially eligible voters with felony convictions. For these reasons, Defendants’ blanket rejections and demands for documentation from voters who

attest to having a felony conviction require information beyond what is “necessary to enable the appropriate State official to assess the eligibility of the applicant.” 52 U.S.C. § 20508(b).

C. Defendants’ Blanket Rejection Policy and Documentation Requirement Violates the NVRA’s Requirement that a State Maintain Voter Rolls in a “Uniform” and “Nondiscriminatory” Manner.

Congress enacted the NVRA because, among other reasons, it determined that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.” 52 U.S.C. § 20501(a)(3). Accordingly, the NVRA also requires that “any State program or activity” for maintaining the voter rolls “shall be uniform” and “nondiscriminatory.” 52 U.S.C. § 20507(b)(1).

Defendants’ blanket rejection and documentation policy is plainly non-uniform and discriminatory because it imposes unjustified burdens and barriers to registration on a class of applicants (i.e., those with prior felony convictions) that do not apply to other classes of applicants. *See* Ex. 19 (Voter Reg. Appeal Form, Lim Dep. Ex. 21) (requiring documentation only for registration rejection due to felony conviction). Defendants do not, for example, require documentation of proof of residency, age, or citizenship to vote. For those criteria, Defendants take applicants at the word of their attestations. But Defendants do not do the same for the felony conviction criteria. Defendants’ voter registration form also targets eligible voters with past convictions by requiring them to check a box that is not targeted to identify specific eligibility criteria and, in practice, ensures their registration will be rejected. And, in order to fight the erroneous denial, the state forces eligible Tennesseans to provide additional information proving their eligibility—information which the state already has or can readily obtain. The blanket rejection and documentation policy impedes registration even when an applicant with a past

conviction has attested to sufficient information on the face of the registration form to establish eligibility.

The discriminatory burden is all the more invidious given that the class of eligible voters subject to these policies is disproportionately Black and elderly. *See* Uggen, et al., *supra* p. 8; Phillips Dep. at 39:11-21. Defendants' policy and practice targeting these voters contributes to inequities the NVRA was designed in part to address. As a congressional House Report noted, the Voting Rights Act of 1965 "left a complicated maze of local laws and procedures . . . through which eligible citizens had to navigate in order to exercise their right to vote." H.R. No. 103-9, 103rd Cong., 1st Sess., 1993 WL 27395 (Feb. 2, 1993), at *2. The NVRA addressed this "unfinished business of registration reform" by "reduc[ing] these obstacles to voting to the absolute minimum while maintaining the integrity of the electoral process." *Id.* Because Defendants' registration policies erect unjustifiable obstacles to registration for a single class of disadvantaged voters, they are non-uniform and discriminatory in violation of the NVRA. Plaintiff is thus entitled to summary judgment on its NVRA claims.

IV. Defendants' Recent Actions Do Not Moot Plaintiff's NVRA Claims

After being on notice of the alleged NVRA violations for nearly five years, with less than two weeks before the filing of dispositive motions, Defendants Hargett and Goins updated their policies to move closer to compliance with the NVRA. Ex. 11 (Processing Older Felonies Memo). However, they still have not fully corrected the violations for individuals with pre-1973 convictions, or for individuals who have already had their voting rights restored. However, even if they had issued guidance that voluntarily corrected their violations in full, these claims would

not be moot because Defendants cannot show that the violations, which have persisted for several years, cannot be reasonably expected to recur.

A. Defendants' New Policies Still Violate the NVRA.

While Defendants' memorandum announces a step toward alleviating the NVRA violations, they still violate the NVRA. "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). Pursuant to the Defendant Goins' memo, certain eligible applicants who submit a voter registration form will still be rejected and required to provide documentary proof of eligibility. Individuals who indicate they were convicted of one of the pre-1973 potentially infamous convictions will be denied registration regardless of whether they were *actually* rendered infamous. Ex. 11 (Processing Older Felonies Memo). The registration form does not allow registrants to indicate that they were not rendered infamous, and the memo does not require administrators of elections to seek that information before rejecting the applicant. *Id.* Additionally, the new memo does not address processing voter registrations for individuals who indicate they have already had their voting rights restored, meaning that there is still no policy requiring administrators of elections to check the restoration database before rejecting those applications. *Supra* Section III.B.

B. Defendants Cannot Show That Their Violations Cannot Reasonably Be Expected to Recur.

"It is well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.'" *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (citing *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)). "[I]f it did, the courts would be compelled to leave [t]he defendant . . . free to return to his old ways." *Id.* (internal citations and quotations

omitted). Thus, the standard for mootness based on voluntary conduct is stringent: “[a] case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Id.* (quoting *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968)). That “heavy burden” of proof lies with the party asserting mootness. *Id.* (internal citations omitted).

Defendants cannot meet that heavy burden. Even giving Defendants the benefit of the doubt—assuming they have recognized that their previous policies violated the NVRA and moved to correct them, albeit, without wholly hitting the mark—there is nothing binding or lasting about the Election Division’s guidance. A new administrator could easily reverse course, requiring another multi-year, expensive court battle, disenfranchising fully eligible people along the way. *See Friends of the Earth*, 528 U.S. at 191–92 (“To abandon the case at an advanced stage may prove more wasteful than frugal.”). Moreover, *this* Elections Coordinator could reverse, as he has done in the past on other related policies. For example, in 2019, the Elections Coordinator sent a letter establishing a position on the voting rights of people with out-of-state felony convictions, Ex. 25 (Letter to B. Bowie) at DEF 000421-423; Ex. 26 (119_Follow-up) at DEF 000611-2—and then, less than four months later, reversed that position, Ex. 14 (Rest. of Voting Rights Tr. Doc, Hall Dep. Exhibit 4) at DEF 000048.

This is not the first time that these Defendants have reversed their position at the last minute before a major milestone in a lawsuit. For example, in 2020, after arguing at the state chancery and appellate court level that certain vulnerable individuals did not have the right to cast absentee ballots during the COVID-19 epidemic, Defendants made an “eleventh-hour concession” at oral argument before the Supreme Court, adopting plaintiffs’ position in a “complete reversal of what they had previously told voters.” *Demster v. Hargett*, No. 20-435-I(III), Mem. & Order

(Tenn. Ch. Ct. Aug. 25, 2020). With that concession, the Tennessee Supreme Court took Defendants at their word, finding “no reason to doubt that the State will faithfully discharge its duty to implement the absentee voting statutes,” and lifted an injunction requiring Defendants to comply with their newfound position. *Fisher v. Hargett*, No. M2020-00831-SC-RDM-CV at 15 (Tenn. Aug. 5, 2020). But less than a month later, Defendants had to be hauled back into chancery court because they had indeed *not* complied with and *not* implemented their ostensible legal position. *Demster*, Mem & Order, at 3-5. It took another court order, including a requirement that Defendant Goins file a declaration attesting to compliance, for Defendants to implement the promises they had made to the Tennessee Supreme Court in their efforts to have the injunction lifted. *Id.* at 5-6.

Here, Defendants Goins and Hargett have been on notice about these specific violations since 2018 and have engaged in, and subsequently backed out of, negotiations with Plaintiff NAACP to correct the problem. *See* Ex. 6 (First Notice Letter); Ex. 26 (119_Follow-up) at DEF 000610-12 (stating that a new voter registration form would be tested prior to the 2020 presidential primary election then implemented and confirming that Defendants had agreed to end the paperwork requirement for people with felonies who are not disenfranchised); Ex. 27 (Apr. 2021 NVRA Response Letter, Lim Dep. Ex. 28) (2021 letter promising to make revisions to the voter registration form and online voter registration system that were never implemented). Yet they are only now, on the precipice of dispositive motions, adopting new policies. No relevant facts or law have changed in that time. In the past, Defendants have shown a willingness to drag their feet on

implementation or to reverse their policies and procedures on a dime, so it is reasonable to believe that they would do so again if this claim were dismissed as moot.

While the new policies do not fully or finally correct the violations of law, they do demonstrate that the Election Division *can* comply with the NVRA (or very nearly comply, as is now the case). Because these violations are reasonably likely to recur, an order of summary judgment is necessary to ensure that this Elections Coordinator and all future Elections Coordinators will fully come into and stay in compliance with the NVRA. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (“[A] defendant cannot automatically moot a case simply by ending its unlawful conduct once sued. Otherwise, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends.”) (internal citations omitted).

V. Plaintiff TN NAACP Provided Adequate Notice Under the NVRA.

Plaintiff TN NAACP provided adequate notice under the NVRA. Someone aggrieved by an NVRA violation can bring a civil action for declaratory or injunctive relief if (1) they provide written notice of the violation to a state’s chief election official and (2) the violation is not corrected within 90 days of receipt of the notice. 52 U.S.C. § 20510 (b)(1)-(2). The purpose of the NVRA’s notice requirement is to “provide states in violation of the Act an opportunity to attempt compliance before facing litigation.” *Ass’n of Cmty. Organizations for Reform Now v. Miller*, 129 F.3d 833, 838 (6th Cir. 1997).

Various “[d]istrict courts have found notice sufficient ‘when it (1) sets forth the reasons that a defendant purportedly failed to comply with the NVRA, and (2) clearly communicates that a person is asserting a violation of the NVRA and intends to commence litigation if the violation

is not timely addressed.” ECF No. 83 (quoting *Pub. Int. Legal Found. v. Boockvar*, 370 F. Supp. 3d 449, 457 (M.D. Pa. 2019) (collecting cases)).

Plaintiff has given Defendants ample opportunity to comply with the NVRA before it brought litigation, sending three separate litigation notices with the first provided over *two years* before it filed suit. Throughout its correspondence with Defendants, Plaintiff has also set forth the specific reasons that Defendants are not in compliance with provisions of the NVRA and clearly communicated its intent to commence litigation if the NVRA violations were not remedied.

On August 22, 2018, Plaintiff TN NAACP sent Defendants Hargett and Goins a letter (“First Notice Letter”), notifying them that Tennessee’s registration forms and procedures were out of compliance with various provisions of the NVRA. *See* Ex. 6 (First Notice Letter) (citing violations of 52 U.S.C. §§ 20507(a)(5), 20508(b)(2)(A)). After giving Defendants two years to resolve the violations, Plaintiff filed its original Complaint on December 3, 2020. ECF No. 1. On March 30, 2022, this Court granted in part and denied in part Defendants’ Motion to Dismiss alleging, among other things, deficient notice under the NVRA. ECF No. 83; ECF No. 84. The Court dismissed Count Five of the original complaint without prejudice and denied Defendants’ Motion to Dismiss on all other counts. ECF No. 83 at 15-16, 18. The Court held that Plaintiff’s First Notice Letter did not provide sufficient notice for Count Five, which challenged Tennessee’s blanket rejection policy and documentation requirement under the NVRA. ECF No. 1 at 40-41.

Plaintiff cured this technical defect in two additional notice letters. On January 27, 2021, Plaintiff sent a second notice letter to Defendants Goins and Hargett explaining that the state’s registration policies and procedures for applicants with prior felony convictions remained non-compliant with the NVRA. *See* Ex. 7 (Second Notice Letter); *see also* 52 U.S.C. §§ 20507(a)(1), 20507(a)(5), 20508(b)(2)(A). It further notified Defendants that placing the burden of proving

eligibility onto the eligible prospective voter with a prior felony conviction—and requiring them to fight the erroneous rejection with additional paperwork not required of other eligible applicants without a prior felony conviction—created a non-uniform registration process in violation of the NVRA. *See* Ex. 7 (Second Notice Letter); *see also* 52 U.S.C. § 20508(b)(3); *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013) (“*ITCA*”).

On May 24, 2021, Plaintiff’s counsel sent a final notice letter (“Third Notice Letter”) to Defendant Goins on behalf of Plaintiff TN NAACP responding to the steps detailed in Defendant Goins’ letter and reiterating that the continued requirement of additional paperwork for certain eligible applicants was improper under the NVRA. *See* Ex. 9 (Third Notice Letter); *see also* 52 U.S.C. § 20508(b)(3); *ITCA*, 570 U.S. at 9. Additionally, Plaintiff put Defendant Goins on notice that his proposed policies in his April 27, 2021 letter regarding registrants with pre-1973 convictions failed to comply with Tennessee law and the NVRA. *See* Ex. 9 (Third Notice Letter); *see also* 52 U.S.C.A. § 20507(a)(1).

Well over 90 days after sending the third and final notice letter, Plaintiff filed its First Amended Complaint on October 3, 2022. ECF No. 99-1. The First Amended Complaint re-alleged the allegations in Count Four of the initial complaint (again, as Count Four) and Count Five of the initial complaint (this time, as Count Six). *See* ECF Nos. 1, 99-1. Therefore, Plaintiff TN NAACP provided Defendants with adequate notice under the NVRA. *See* 52 U.S.C. § 20510 (b)(1)-(2).

CONCLUSION

Plaintiff respectfully requests that this Court grant summary judgment to Plaintiff TN NAACP on Counts Four and Six and grant all such permanent relief that this Court deems just and proper.

Dated: August 2, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2023, a copy of the foregoing Notice of Filing in Support of Plaintiff's Motion for Summary Judgment 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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Plaintiff's Statement of Undisputed Material Facts

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**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]

PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS

I. Statutory Disenfranchisement and Voting Rights Restoration in Tennessee

1. The provision of the Tennessee Constitution permitting the state legislature to disenfranchise citizens upon “conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction” is not self-executing, and disenfranchisement cannot apply retroactively. Tenn. Const. art. I, § 5; *Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983). Thus, persons convicted of crimes are not disenfranchised unless prior to their conviction the legislature has by law “ascertained” that those crimes are “infamous” and “declared” that conviction of those crimes results in loss of the right to vote. *Crutchfield v. Collins*, 607 S.W.2d 478 (Tenn. Ct. App. 1980). Because of this constitutional structure, a felony conviction does not always result in the loss of voting rights in Tennessee.

Response:

2. A felony conviction before January 15, 1973 (a “pre-1973 conviction”) does not disqualify a person from voting unless the conviction is for one of 21 specific potentially infamous crimes listed in state law *and* the judgment of conviction included a statement rendering the crime “infamous.” *Crutchfield*, 607 S.W.2d at 482 (“Although one of the plaintiffs was convicted prior to 1972 the record of his convictions contains no adjudication of infamy and disenfranchisement as required by Section 40-2712 prior to 1972.”); *see also* Restoration of Voting Rights, Tenn. Sec’y of State, <https://sos.tn.gov/elections/guides/restoration-of-voting-rights>.

Response:

3. A felony conviction between January 15, 1973 and May 17, 1981 (the “grace period”) *never* disqualifies a Tennessean from voting. *Crutchfield*, 607 S.W.2d at 482); *Gaskin*, 661 S.W.2d at 868 (finding unconstitutional a law attempting to retroactively disenfranchise people with grace period convictions); *see also* Restoration of Voting Rights, Tenn. Sec’y of State, <https://sos.tn.gov/elections/guides/restoration-of-voting-rights>. An otherwise qualified person with convictions only from this period has never lost the right to vote and is eligible to register and vote. *Id.*

Response:

4. Felony convictions after May 18, 1981—whether by a Tennessee court, a court in another state, or a federal court—result in loss of the right to vote, until that right has been restored pursuant to state law. *See* T.C.A. §§ 40-29-101, *et seq.*; §§ 40-29-201, *et seq.*

Response:

II. Parties Relevant to NVRA Claims

5. Plaintiff the Tennessee State Conference of the National Association for the Advancement of Colored People (“TN NAACP”) is a nonpartisan, multi-racial, non-profit membership organization headquartered in Jackson, Tennessee. Declaration of Gloria Jean Sweet-Love at ¶ 3 (“Sweet-Love Decl.”).

Response:

6. TN NAACP was founded in 1946 to serve as the Tennessee arm of the NAACP. Its mission is to eliminate race-based discrimination through securing political, educational, social, and economic equality rights and ensuring the health and well-being of all persons. Sweet-Love Decl. at ¶ 3, 6; Deposition of Loretta Morris at 18:5-19:15 (“Morris Dep.”).

Response:

7. TN NAACP has three regional divisions—Eastern, Middle, and Western Tennessee—as well as the 33 local branch units and 22 college chapters and youth councils. TN

NAACP and most of its local branch units are primarily volunteer-run, and all officers are volunteers. Sweet-Love Decl. at ¶ 4, 5; Morris Dep. at 19:16-20:12.

Response:

8. TN NAACP has more than 10,000 members across the state, more than 90% of whom are Black or brown. Sweet-Love Decl. at ¶ 5. Black people make up 16% of the state's total voting-age population, but account for more than 21% of individuals who are disenfranchised by a felony conviction in Tennessee. Christopher Uggen, Ryan Larson, Sarah Shannon, and Robert Stewart, The Sentencing Project, *Locked Out 2022: Estimates of People Denied Voting Rights* (Oct. 25, 2022), <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>.

Response:

9. Promoting voter registration and turnout are the primary activities through which the TN NAACP furthers its mission. The organization expends significant resources helping individuals, including those with past felony convictions, register to vote. Its staff and volunteers conduct public education workshops to help its constituents and other members of the community navigate the voter registration process. Sweet-Love Decl. at ¶ 4; Morris Dep. at 18:5-19:15.

Response:

10. The primary resource that the TN NAACP has available to expend in support of its mission is volunteer time. The state conference and local branches also have limited monetary resources to put toward mission-furthering activities. Sweet-Love Decl. at ¶ 7; Morris Dep. at 65:10-67:23.

Response:

11. The TN NAACP prefers to use the online voter registration form when assisting individuals with voter registration at events or otherwise because it is a more efficient means of registration, but individuals who have been convicted of felonies cannot use the online form, regardless of their eligibility to vote. Sweet-Love Decl. at ¶ 11; Morris Dep. at 28:15-29:3.

Response:

12. The TN NAACP's typical assistance is rendered ineffective when the online registration portal excludes individuals with felony convictions from submitting a registration application and when election officials reject individuals with felony convictions who submit valid voter registration forms. The TN NAACP is aware, for example, of individuals who were convicted of felonies during the "grace period" between January 15, 1973, and May 17, 1981, but are nonetheless unable to register using the state voter registration form or the online registration form, despite never having lost the right to vote. Sweet-Love Decl. at ¶ 12; Morris Dep. at 28:15-29:3.

Response:

13. When an eligible voter is incorrectly denied the ability to register to vote, the TN NAACP must divert significant resources from the other activities related to its mission by following up with the eligible voter and communicating with various governmental authorities (including, but not limited to, clerks of the court and probation officers) to rectify the situation. In conjunction with these efforts, the TN NAACP has accompanied persons and taxied them to and from various governmental offices to troubleshoot the issue and correct the erroneous rejection. This correction process may involve seeking old court records that are not easily accessible to the TN NAACP. These efforts are sometimes insufficient to remedy the erroneous rejection. Sweet-Love Decl. at ¶ 13-16; Morris Dep. at 28:15-30:1, 39:18-42:5.

Response:

14. The TN NAACP would like to be able to dedicate greater resources to its voter turnout activities, rather than just voter registration. This would include providing stipends to volunteers to canvass or phonebank to encourage members and constituents to turn out on Election Day. The TN NAACP also provides transportation to the polls. Sweet-Love Decl. at ¶ 17.

Response:

15. The TN NAACP is injured when a person they help register to vote is rejected despite being eligible to register. The extra time and money spent assisting voters that the state has erroneously rejected depletes resources that could be spent on other mission-furthering activities.

The TN NAACP's political power and its ability to carry out its mission are directly diminished by the inability of its members and constituents to register to vote. Sweet-Love Decl. at ¶ 18.

Response:

16. Defendant Mark Goins, under the supervision of Defendant Hargett, is the Coordinator of Elections for Tennessee. Mr. Goins is the head of the Tennessee Secretary of State's Election Division ("Election Division"), the "chief election officer of the state," and is charged with "obtain[ing] and maintain[ing] uniformity in the application, operation, and interpretation of the election code." T.C.A. § 2-11-201(b).

Response:

17. The Coordinator of Elections must, *inter alia*, "prepare instructions for the conduct of registration" and "authoritatively interpret the election laws for all persons administering them." T.C.A. § 2-11-202; *see also* § 2- 2-115. Defendants Goins and Hargett are therefore responsible for the state's compliance with the National Voter Registration Act (NVRA).

Response:

III. State Voter Registration Form

18. Tennessee has made and tested changes to its mail-in voter registration form (the “State Form”) resulting in various versions of the form having been used over the years. Deposition of Jessica Lim at 77:19-24.

Response:

19. The latest version of the State Form available on the Secretary of State’s website provides the following instruction about eligibility based on 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.” Ex. 1 (Current State Form).

Response:

20. The latest version of the State Form does not state that grace period felony convictions are non-disqualifying. *Id.*

Response:

21. The latest version of the State Form does not state that convictions before January 15, 1973 are only disqualifying in certain circumstances, does not list the pre-January 15, 1973

infamous crimes that are disqualifying (or those that are not), and does not include a way for an applicant to mark under penalty of perjury that they were not convicted of an infamous crime or not declared infamous in their judgment. *Id.*; Lim Dep. at 178:10-23.

Response:

22. The latest version of the State Form directs applicants with any prior felony conviction to visit sos.tn.gov/restoration. Ex. 1 (Current State Form). Presently, that link routes to the Secretary of State's website to information on loss of voting rights. However, as of early July 2023, that link resulted in a Secretary of State website page with an error message reading "Page Not Found." See Ex. 12 (Archive of TN SOS Webpage).

Response:

23. The latest version of the State Form instructs applicants to fill out the required information in Box 4 of the form and to provide "any responsive documents you have," without defining what "responsive documents" are and without informing applicants that their applications will be denied if they disclose a felony conviction and do not provide documentation. Ex. 1 (Current State Form).

Response:

24. Box 4 in the latest version of the State Form asks applicants to check a box “yes” or “no” in response to the question: “Have you ever been convicted of a felony? (If expunged, answer ‘no’).” It then directs applicants to provide certain information “if known”, including “Crime(s)” and “Date (mo./yr.)”. *Id.*

Response:

25. Box 4 also asks for “Place (city/state),” presumably of conviction, though that is not relevant to an eligibility determination. Ex. 1 (Current State Form); Lim Dep. at 157:2-13.

Response:

26. Box 4 also asks, “Have you received a pardon or had your voting rights restored?” and has boxes to indicate “yes” or “no.” It instructs “If yes, provide copy of document,” but does not specify what “copy of document” means or that an application may be rejected if such documentation is not provided. Ex. 1 (Current State Form).

Response:

27. The latest iteration of the State Form was “put into use” sometime between December 2020 and March 2021. Lim Dep. at 92:16-93:5; *see also* Ex. 7 (Second Notice Letter) at 4.

Response:

28. The Election Division did not issue any specific new processing instructions to county election commissions when it rolled out the latest iteration of the State Form, beyond the instructions on the form itself and answering “calls and e-mails when [the counties] have questions” about processing the new form. Lim Dep. at 95:10-25.

Response:

29. The counties continued to be authorized to accept and process prior versions of the registration form even after the latest iteration of the State Form was released. Lim Dep. at 93:6-21.

Response:

30. Prior versions of the State Form, including the version used in the November 2020 general election, provide only the following instruction regarding eligibility to vote for individuals with felony convictions: “To register to vote: . . . you must not have been convicted of a felony, or if you have, your voting rights must have been restored.” Ex. 3 (Previous State Form, Lim Dep. Ex. 7); Lim Dep. at 77:6-24; *see also* Ex. 4 (State Form Rev. 2015) (older form providing the same instruction); Ex. 5 (State Form Rev. 2011) (same).

Response:

31. Prior versions of the State Form ask applicants a single question concerning prior felony convictions, “Have you ever been convicted of a crime which is a felony in this state, by a court in this state, a court in another state, or a federal court?” and provide a checkbox to mark “Yes” and a checkbox to mark “No.” Ex. 3 (Previous State Form); Lim Dep. at 78:22-79:3; *see also* Ex. 4 (State Form Rev. 2015); Ex. 5 (State Form Rev. 2011) (same).

Response:

32. Some counties continue to use prior versions of the State Form and provide the older versions of the form on their county websites. *See e.g.*, Knox County Elections Commission, *Copy of Tennessee Mail-In Application for Voter Registration*, <https://perma.cc/J66L-CS5J> (last visited Aug. 2, 2023); Hamilton County Elections Commission, *Copy of Tennessee Mail-In Application for Voter Registration*, <https://perma.cc/7YDX-45MD> (last visited July 31, 2023); DeKalb County Elections Commission, *Requirements For Voter Registration* (<https://perma.cc/DH7Q-NL2V>) (last visited July 31, 2023) (linking to older version of the voter registration form at bottom of page).

Response:

IV. Federal Voter Registration Form

33. United States citizens living in Tennessee may register to vote using the Federal Voter Registration Application (“Federal Form”). *See* Ex. 2 (Federal Form, Lim. Dep. Ex. 11).

Response:

34. The Federal Form does not include any space for an applicant to list any information regarding a prior felony conviction. *See id.*

Response:

35. The Tennessee-specific instructions on the Federal Form indicate that to be eligible to register to vote in Tennessee, the applicant must “not have been convicted of a felony” and further state that if convicted, the applicant’s “eligibility to register and vote depends upon the crime [] convicted of and the date or [] conviction,” directing applicants “[f]or more information about this process, call 877-850-4959 or visit <https://sos.tn.gov/gov/restoration>.” *See id.*

Response:

36. If a voter submits a Federal Form, the county processing the form would not know whether the individual has a conviction, nor the date or type of conviction, from the face of the form itself. *See* Ex. 2 (Federal Form, Lim. Dep. Ex. 11); Lim Dep. at 103:6-15.

Response:

V. Voter Registration Application Blanket Rejection and Documentation Policy

37. Election officials in Tennessee reject voter registration applications submitted with the felony conviction question answered in the affirmative absent additional documentation. Lim Dep. at 101:5-11 (former Election Division attorney and 30(b)(6) representative testifying in October 2021 that a registration form with the felony question marked yes “is rejected, if they don’t have anything else, or any other documentation”); Deposition of Donald Hall at 98:14-100:14, 121:3-16 (current Election Division 30(b)(6) representative testifying confirming the policy remained the same as of March 2023); Deposition of Sherri Sivley (Hamilton AOE) at 76:1-15 (“When your office receives a voter registration application from someone who's marked they have a prior felony conviction, what happens? . . . A rejection letter is sent to the individual . . . And is all that sent regardless of the year of an individual's conviction? . . . Yes.”); Deposition of Linda Phillips (Shelby County) at 28:03-12 (“If an application comes in where a felony conviction -- where an individual marks that they have a felony conviction, what would your colleagues do with that? . . . They would automatically reject them. . . .”); Deposition of Judy McAllister (Meigs County) at 83:10-19.

Response:

38. Election officials do so pursuant to Election Division policy, training, and guidance. *See* Hall Dep. at 98:14-99:13; Ex. 21 (Elections Div. Int. Pol., Hall Dep. Ex. 3) at 2, 7 (“If a person marks ‘yes’ to the felony question on their voter registration application (and there is no restoration documentation), the county election commission rejects the application.”); Ex. 14 (Rest. of Voting Rights Tr. Doc, Hall Dep. Ex. 4) at DEF000036 (“If a person marks that they have been convicted

of a felony . . . the application is rejected.”); Ex. 15 (Felon Process Training) at DEF000402-409; Ex. 16 (Felony Q & A) at DEF000387 (“What creates a rejection is when the felony question is answered and the applicant marks yes to the felony question. If the applicant comes into the office and completes the blank felony question and responds they have a felony conviction –then the registration application is rejected because a felony conviction makes them ineligible to register to vote (assuming it not in the appropriate time period as detailed in question #18 in this document).”).

Response:

39. This policy was in effect as far back as 2014. *See* Ex. 17 (2014 Training) at DEF000080-81 (training last updated in 2014 produced by Defendants with the document name “015_Deficient_Rejection_Process_Updated_2014_ID215__4_”).

Response:

40. According to that policy, in order for a State Form with the felony conviction question answered in the affirmative to be accepted, the elections office must have additional documentation of the applicant’s eligibility. Lim Dep. at 101:5-11.

Response:

41. Although the Federal Form has no space for voters to attest to having or not having a felony conviction, election officials in Tennessee require documentation from applicants when

they learn about an applicant's felony conviction(s) from a source beyond the registration form itself, Lim Dep. at 59:13-60:2, including verbally from an applicant, or by way of Tennessee statute requiring clerks of court in every county to send notices of felony convictions to election officials, or when counties share this information with one another, *id.* at 56:6-57:8.

Response:

42. Election officials also learn about a Federal Form applicants' felony conviction when checking to see if they appear in a county's "felony files." Hall Dep. at 123:5-15; Lim Dep. at 110:7-14.

Response:

A. Applications Indicating a Pre-January 15, 1973 Conviction

43. Under the State's blanket rejection policy, when a county election official receives a voter registration application indicating a pre-January 15, 1973 non-infamous conviction, they are directed to reject the application, "file documents with the state election office showing the date of conviction and crime committed" and "[w]ait for [the] state to send [back an] eligibility letter," despite the applicant never having lost their right to vote. Ex. 16 (Felony Q & A) at DEF000389; *see also* Hall Dep. at 82:22-83:1, 120:3-6; Lim Dep. at 179:23-180:22, 184:7-25.

Response:

44. Sufficient documentation requires “a copy of basically the judgment or convicting document that shows, A, what the person was convicted of; and then B, if they were convicted, if they were, I guess, judged infamous.” Lim Dep. at 109; 131:25-132:8; *see also* Hall Dep. at 82:22-83:1, 120:3-6.

Response:

B. Applications Indicating a Grace Period Conviction

45. Under the State’s blanket rejection policy, when a county official receives a voter registration application indicating a grace period conviction, they are directed to reject the application unless they have documentation confirming the individual’s conviction was during the grace period, such as “a copy of their conviction papers showing the date of the conviction and the type of crime.” Ex. 16 (Felony Q & A) at DEF000389; *see also* Lim Dep. at 107:15-108:22, 131:25-132:8 (“So for the grace period, as we’ve trained the counties, it’s any official documentation confirming their conviction date was in the grace period.”); Hall Dep. at 117:18-118:12 (“My understanding is that it is the [duty of the] individual with the [grace period] felony conviction or that has indicated that they have a felony conviction to supply that documentation.”); Sivley Dep. at 40:20-25 (discussing how an individual with a grace period conviction must “present a copy of the judgment or any kind of documentation from the Court that the conviction occurred during that period”); Ex. 18 (Felony Conviction Search-Redacted) at DEF000513 (Jan. 2020 email from Ms. Lim to Andy Farrar) (“[W]e also always require people to submit their paperwork for grace period convictions.”).

Response:

46. While some election officials may at times try to work with the voter to find and obtain the required documentation, there is no official policy requiring election officials to do so, and the burden is ultimately on the applicant. Lim Dep. at 156:11-25, 176:3-10, 187:5-21; Ex. 24 (Grace Period Email, Lim Dep. Ex. 26) at 2; Hall Dep. at 199:4-23.

Response:

47. The Election Division has acknowledged that individuals with grace-period convictions have faced difficulties obtaining the necessary documentation. Hall Dep. at 118:13-16, 194:18-25.

Response:

48. Obtaining the necessary documentation for grace-period or non-infamous pre-1973 convictions can be difficult because “many times the conviction will be so old that [the documentation will] be in archives.” Lim Dep. at 157:16-158:2; *see also* Deposition of Vicki Collins at 57:10-58:6 (testifying that the older the conviction, the “more likely . . . it has to be pulled out of archives”), 100:4-11 (testifying that pulling records from criminal archives in Shelby County can take up to one week).

Response:

49. Obtaining the necessary documentation for grace-period or non-infamous pre-1973 convictions can also cost money. The Shelby County Criminal Court Clerk's office charged a prospective voter \$10 for a copy of his grace-period judgment that he was required to submit in order to register to vote, even though he never lost the right to vote. Hall Dep. at 195:12-197:15; Ex. 20 (Sept. Shelby Cty. Email, Hall Dep. Ex. 21).

Response:

50. The required paperwork for grace-period or non-infamous pre-1973 convictions sometimes does not exist or cannot be found. *See* Lim Dep. at 158:6-11; Ex. 21 (Sept. 2020 Email, Lim Dep. Ex. 24) at DEF000569-70 (Sept. 2020 email from Ms. Lim refusing to issue an eligibility letter for an individual with a grace-period conviction where neither the applicant nor Ms. Lim herself could find the required documentation).

Response:

C. Applications Indicating a Post-May 17, 1981 Conviction

51. Under the State's blanket rejection policy, when a county official receives a voter registration application indicating that the voter has a disenfranchising felony conviction but had their voting rights restored, they are directed to reject the application unless the applicant also provides documentation proving their restoration of voting rights. Ex. 22 (Agency Tr. Doc, Lim Dep. Ex. 3) at 2.

Response:

52. The State Form instructs voters who mark “yes” to the question asking if they have “received a pardon or had [their] voting rights restored” to “provide copy of document.” Ex. 1 (Current State Form). The form provides no further information about what kind of document(s) must be provided. *Id.*

Response:

53. When processing voter registration applications indicating restoration of voting rights, county election offices are not required by any policy to confirm whether the Election Division already has a record of the applicant’s restoration of voting rights. Hall Dep. at 101:19-102:10. However, county election offices *can* ask the Election Division to search for confirmation of an applicant’s restoration of voting rights, and the Election Division can look through its “restored and denied databases” to see “if there [is] a restoration there.” *Id.*

Response:**D. Applications from Voters with Expungements and Judicial Diversions**

54. The State Form instructs an individual with only expunged felony convictions to mark “no” in response to the felony question. Ex. 1 (Current State Form); Lim Dep. at 56:1-4; Hall Dep. at 232:2-6.

Response:

55. If a person with an expunged felony conviction marks “yes” to the felony question, the Election Division policy is to reject the application and require the applicant to present documentation proving their felony was expunged. Hall Dep. 232:14-233:21; Ex. 23 (Expungement Tr. Doc, Hall Dep. Ex. 35) at DEF000101-103.

Response:

56. A conviction subject to judicial diversion “acts the same as expungement” for the purposes of voting rights in that it does not result in the loss of the right to vote. Hall Dep. at 232:15-20; *see also* Ex. 15 (Felons Process Training) at DEF000404. Voters with only convictions subject to judicial diversion can mark “no” to the felony question on the State Form. Hall Dep. at 232:21-25.

Response:

57. The State Form does not include an instruction to individuals with convictions subject to judicial diversion to mark “no” in response to the felony question. Ex. 1 (Current State Form).

Response:

58. If an applicant with a conviction subject to judicial diversion marks “yes” to the felony question, Election Division policy is to reject the application and require documentation. Ex. 15 (Felons Process Training) at DEF000409.

Response:

E. Existing Practices and Procedures for Verifying Non-Disenfranchising Felonies and Voting Rights Restoration

59. The Election Division’s current policy is for county election commissions to “check every application against their felon files” when the person marked they had a felony conviction, and some counties check every application, regardless of whether the applicant indicates they have a felony conviction. Lim Dep. at 112:12-114:2.

Response:

60. “Felon files” include “any information from the various sources, as required by statute or anywhere else, that the counties receive for people notifying them of a felony conviction or a previous voter registration application that the own person marked ‘Yes’ under penalty of perjury to the felony question. So any information from the person, the Court, any – anywhere” including court orders and emails from U.S. Attorneys, the Tennessee Department of Corrections (TDOC), the Election Division, the state felon list, other county election officials, and their own clerks of court and jury coordinators. Lim Dep. at 110:7-14; 110:15-112:2, 124:1-7, 28:5-10.

Response:

61. The Election Division also disseminates “felon reports” to counties every 1-3 months that include the data on registrants’ state felony convictions from TDOC, federal convictions from the U.S. attorneys, and out-of-state convictions from the Interstate Compact. Lim Dep. at 117:21-24, 120:6-12, 121:7-9.

Response:

62. For each applicant, felon reports would include all convictions for a person going back in time and include the date of judgment, conviction or sentence. Lim Dep. at 119:11-120:5, 120:20-21.

Response:

63. The information in felon reports can be sufficient to verify whether an applicant has only grace-period convictions. *See* Lim Dep. at 103:6-15 (testifying that if a voter in the grace period fills out the Federal Form, the county processing the form would not know that the person has a grace-period conviction from the form itself, but “but they could have information from other sources”).

Response:

64. County election officials, as part of their regular voter-roll maintenance duties, routinely use information in felon files and felon reports to purge voters with felony convictions from the voter rolls. Sivley Dep. at 22:25-24:20; *see also* T.C.A. § 2-2-106(a)(4).

Response:

65. In Hamilton County, the list maintenance program automatically flags new applicants who may match a record in databases listing individuals with felony convictions and individuals previously purged due to a felony conviction. Sivley Dep. at 118:5-121:2. Hamilton County election officials must manually review these potential matches to determine whether the new registrant does indeed have a felony conviction. *Id.* at 121:4-122:1.

Response:

66. Upon receipt of a facially valid application indicating a felony conviction, county election officials are capable of reaching out to other county election officials or the Election Division to confirm the applicant's eligibility, although Election Division policy does not currently instruct or require them to do so. *See* Hall Dep. at 101:19-102:10; McAllister Dep. at 85:5-12.

Response:

67. County election officials are capable of searching or requesting public records or contacting courts and other relevant agencies to verify eligibility of voters with grace-period or

non-infamous pre-1973 convictions, though there is “no definitive set-on practice” of doing so under Election Division policy. *See* Hall Dep. at 199:4-23; Phillips Dep. at 46:10-22, 47:23-48:1; Collins Dep. at 58:14-17.

Response:

68. The Election Division itself is likewise capable of verifying grace-period convictions without requiring documentation from the applicant by searching or requesting public records or contacting courts and other relevant agencies. *See* Ex. 24 (Grace Period Email, Lim Dep. Ex. 26) at 2.

Response:

F. Rejected Applications

69. Upon rejecting an application due to a felony conviction, county election officials are directed to send the applicant a notice of the rejection accompanied by a Voter Registration Appeal Request Form, a Certificate of Restoration form, and a blank voter registration form. Lim Dep. at 151:23-152:6; Collins Dep. at 28:7-29:19; Ex. 19 (Voter Reg. Appeal Form, Lim Dep. Ex. 21).

Response:

70. The Voter Registration Appeal Request Form allows an applicant to affirm that they “have not been convicted of a felony or if convicted [they] have had [their] rights properly

restored” and include a place for the applicant to check whether they “have not been convicted of a felony” or the “have been convicted of a felony but have had [their] rights properly restored or [their] record expunged.” Ex. 19 (Voter Reg. Appeal Form, Lim Dep. Ex. 21); Lim Dep. at 153:7-154:4.

Response:

71. A person with a grace period conviction cannot use the Voter Registration Appeal Request Form to appeal their rejection. Lim Dep. at 154:5-12.

Response:

72. Nor can a person with a pre-January 15, 1973 conviction that did not render them infamous use the Voter Registration Appeal Request Form to appeal their rejection. Lim Dep. at 154:13-20.

Response:

VI. New Policy

73. On July 21, 2023, Defendant Goins issued a memorandum outlining a new policy for processing voter registrations from individuals with pre-1981 felony convictions. Ex. 11 (Processing Older Felonies Memo).

Response:

74. The memo states that the purpose of the new process is “to avoid rejecting individuals for a felony conviction who did not lose their voting rights as a result of that conviction.” *Id.*

Response:

75. The memo instructs that when processing voter registrations of people who indicate that their felony convictions were prior to January 15, 1973, if the applicant indicates they were convicted of a felony that is not on the list of potentially infamous crimes, their registration form is to be processed. *Id.*

Response:

76. The memo states that if “an individual indicates on the face of their registration that they were convicted of one of the above felonies . . . and declared infamous, the form must be rejected unless the applicant has had their rights restored.” *Id.* at 2. The memo does not explain how an individual convicted of one of the *potentially* infamous crimes would indicate on their registration whether they were actually declared infamous. *Id.*

Response:

77. The memo also instructs the county administrators of elections to process voter registration forms from individuals with grace period convictions. *Id.*

Response:

VII. Notice Under the NVRA

78. On August 22, 2018, Plaintiff TN NAACP sent Defendants Hargett and Goins a letter (“First Notice Letter”), notifying them that Tennessee’s registration forms and procedures were out of compliance with the NVRA, including 52 U.S.C. § 20507(a)(5) and § 20508(b)(2)(A). Ex. 6 (First Notice Letter).

Response:

79. On December 3, 2020, Plaintiff filed its original Complaint. ECF No. 1.

Response:

80. On March 30, 2022, this Court granted in part and denied in part Defendants’ Motion to Dismiss alleging, among other things, deficient notice under the NVRA. ECF No. 83; ECF No. 84. The Court dismissed Count 5 of the original complaint without prejudice and denied Defendants’ Motion to Dismiss on all other counts. ECF No. 83 at 15-16, 18. The Court held that Plaintiff’s First Notice Letter did not provide sufficient notice for Count 5, which challenged

Tennessee's blanket rejection policy and documentation requirement under the NVRA. ECF No. 1 at 40-41.

Response:

81. On January 27, 2021, Plaintiff sent a second notice letter to Defendants Goins and Hargett explaining that the state's registration policies and procedures for applicants with prior felony convictions remained non-compliant with the NVRA. *See* Ex. 7 (Second Notice Letter) (citing, *inter alia*, 52 U.S.C. §§ 20507(a)(1), 20507(a)(5), 20508(b)(2)(A)). It further notified Defendants that placing the burden of proving eligibility onto the eligible prospective voter with a prior felony conviction—and requiring them to fight erroneous rejections with additional paperwork not required of other eligible applicants without a prior felony conviction—created a non-uniform registration process in violation of the NVRA. *See* Ex. 7 (Second Notice Letter) (citing 52 U.S.C. § 20508(b)(3); *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013)).

Response:

82. On May 24, 2021, Plaintiffs' counsel sent a final notice letter ("Third Notice Letter") to Defendant Goins on behalf of Plaintiff TN NAACP responding to the steps detailed in Defendant Goins' letter and reiterating that the continued requirement of additional paperwork for certain eligible applicants was improper under the NVRA. *See* Ex. 9 (Third Notice Letter) (citing 52 U.S.C. § 20508(b)(3) and *ITCA*, 570 U.S. at 9). Additionally, the Third Notice Letter put Defendant Goins on notice that his proposed policies in his April 27, 2021 letter regarding

registrants with pre-1973 convictions failed to comply with Tennessee law and the NVRA. *See* Ex. 9 (Third Notice Letter) (citing, *inter alia*, 52 U.S.C.A. § 20507(a)(1)).

Response:

83. Plaintiff filed its First Amended Complaint on October 3, 2022. ECF No. 99-1.

Response:

RETRIEVED FROM DEMOCRACYDOCKET.COM

Dated: August 2, 2023

Keeda Haynes, BPR No. 031518
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* Admitted pro hac vice

Respectfully submitted,

Blair Bowie*
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/s/ Charles K. Grant
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Counsel for the Petitioners-Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2023, a copy of the foregoing Notice of Filing in Support of Plaintiffs' Motion for Summary Judgment 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:

DAWN JORDAN (BPR #020383)

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Office of the Tennessee Attorney General

Public Interest Division

P.O. Box 20207

Nashville, TN 37202

Attorneys for State Defendants

/s/ Charles K. Grant

Charles Grant

Declaration of Gloria Jean Sweet-Love

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6. TN NAACP's mission is to eliminate race-based discrimination through securing political, educational, social, and economic equality rights and ensuring the health and well-being of all persons.

7. The primary resource that the TN NAACP has available to expend in support of its mission is volunteer time. The state conference and local branches also have limited monetary resources to put toward mission-furthering activities.

8. Promoting voter registration and turnout are the primary activities through which the TN NAACP furthers its mission. The organization expends significant resources helping individuals, including those with past felony convictions, register to vote. Its staff and volunteers conduct public education workshops to help its constituents and other members of the community navigate the voter registration process. As part of these efforts, the TN NAACP assists individuals registering with paper registration forms and the state's online registration portal.

9. Many state units of the TN NAACP conduct voter registration as part of larger community outreach events, in partnership with other organizations. Tactics used at the TN NAACP's outreach events include door-to-door canvassing, tabling, texting, and word of mouth outreach with the goal of registering and turning out as many people as possible to the polls. The TN NAACP's local branches often use voter lists and VAN data to reach out to individuals about registering to vote and turning out to the polls.

10. The TN NAACP trains and encourages volunteers to continue to work with individuals they are assisting with their voter registrations, helping them navigate any obstacles they may encounter until the prospective voter becomes registered. TN NAACP volunteers also take classes about voter registration from county election commissions.

11. The TN NAACP prefers to use the online voter registration form when assisting individuals with voter registration at events or otherwise because it is a more efficient means of registration, but individuals who have been convicted of felonies cannot use the online form, regardless of their eligibility to vote.

12. The TN NAACP's typical assistance is rendered ineffective when the online registration portal excludes individuals with felony convictions from submitting a registration application and when election officials reject individuals with felony convictions who submit valid voter registration forms. The TN NAACP is aware, for example, of individuals who were convicted of felonies during the "grace period" between January 15, 1973, and May 17, 1981, but are nonetheless unable to register using the state voter registration form or the online registration form, despite never having lost the right to vote.

13. When an eligible voter that the TN NAACP is assisting is incorrectly denied the ability to register to vote or is required to present additional paperwork to prove their eligibility beyond the voter registration form, the TN NAACP must divert significant resources from other mission-furthering activities to follow up with the eligible voter and communicate with various governmental authorities to rectify the situation.

14. In conjunction with these efforts, the TN NAACP has accompanied persons and taxied them to and from various governmental offices to troubleshoot the issue and correct an erroneous rejection. This correction process may involve seeking old court records that are not easily accessible. These efforts are sometimes insufficient to remedy the erroneous rejection.

15. TN NAACP volunteers will help eligible individuals whose voter registrations were rejected to track down their court records. Even if those records are online, many of the

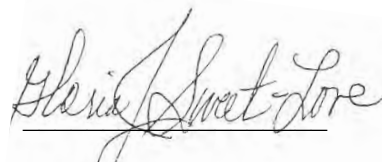
NAACP's constituents do not have access to a computer or the ability to look up records, so the volunteers will help locate and print those online forms.

16. Other times, the records only exist in paper form and the individual seeking the records will need to go in person to obtain the documents. TN NAACP volunteers will accompany or taxi the individual to the court to pick up those documents. Some clerks of court will charge for production of those records and time spent procuring the records. TN NAACP volunteers will occasionally help pay for those documents.

17. The TN NAACP would like to be able to dedicate greater resources to its voter turnout activities, rather than just voter registration. This would include providing stipends to volunteers to canvass or phonebank to encourage members and constituents to turn out on Election Day. The TN NAACP also provides transportation to the polls.

18. The TN NAACP is injured when a person they help register to vote is rejected despite being eligible to register. The extra time and money spent assisting voters that the state has erroneously rejected depletes resources that could be spent on other mission-furthering activities. The TN NAACP's political power and its ability to carry out its mission are directly diminished by the inability of its members and constituents to register to vote.

I declare under penalty of perjury that the foregoing is true and correct. This Declaration was executed in Boston, MA, on Tuesday, August 1, 2023.



Gloria Jean Sweet-Love

Exhibit 21- September 2020 Email

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: [Jessica Lim](#)
To: [Aletta M. West](#)
Subject: RE: Felony Conviction Check [Secure Email]
Date: Wednesday, September 30, 2020 12:59:00 PM
Attachments: [image002.jpg](#)

Lainny,

I cannot issue a restoration/eligibility letter for a Grace Period conviction unless I have documentation from the Court verifying the conviction fell within 1973 to 1981. Here, [REDACTED] has submitted the opposite – the Rutherford County Court Clerk is stating they do *not* have any documentation verifying a felony conviction in 1977.

The only thing I can do with this documentation is say that, after a reasonably diligent search, I did not find any record of a felony conviction for [REDACTED], DOB [REDACTED], with the SSN you provided.

If she is sure she has a felony conviction in 1977, she will need to get some type of documentation from the court where she was convicted to verify her conviction date. Maybe she was convicted in a different county? Maybe it was federal? But if after checking with the court she does not believe it was a felony, she can fill out a new voter registration and mark “no” to the felony question. You can then save that new registration with my email.

Thanks,

Jessica

Jessica Cunningham Lim
Elections Attorney
Division of Elections
Office of Tennessee Secretary of State Tre Hargett
312 Rosa L. Parks Ave., 7th Floor
William R. Snodgrass Tower
Nashville, TN 37243
Jessica.Lim@tn.gov
Phone: (615) 253-4581
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This electronic mail may be subject to the Tennessee Public Records Act, Tenn. Code Ann. §10-7-503 *et seq.* Any reply to this email may also be subject to this act.

The mission of the Office of the Secretary of State is to exceed the expectations of our customers, the taxpayers, by operating at the highest levels of accuracy, cost-effectiveness, and accountability in a customer-centered environment.

Secretary of State Social Media Links:

www.facebook.com/TennesseeSecretaryofState
www.facebook.com/TNStateLibraryArchives/timeline

From: Aletta M. West <amwest@mcgtn.net>
Sent: Monday, September 28, 2020 3:46 PM
To: Jessica Lim <Jessica.Lim@tn.gov>
Subject: [EXTERNAL] Felony Conviction Check [Secure Email]



Jessica,

Attached is a statement from our circuit count office on the listed applicant. She answered YES to the felony question, but when she went to probation and the circuit court they cannot have any records of charges dating back to 1977.

Thanks, Lainny



Aletta M. West, Asst. AOE

350 Pageant Ln, Ste. 404 ☒ Clarksville, TN 37043

PO Box 422 ☒ Clarksville, TN 37041-0422

931.648.5707 Office

931.553.5155 Fax

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Goins Memorandum to County Election Officials

Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-1102Mark Goins
Coordinator of Elections615-741-7956
Mark.Goins@tn.gov**MEMORANDUM**

To: County Election Commissions

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: July 21, 2023

Subject: Restoration of Voting Rights

In a recent case, *Falls v. Goins*, No. M2020-01510-SC-R11-CV (Tenn. Jun. 29, 2023), the Tennessee Supreme Court held that to restore one's voting rights in Tennessee, a person convicted of an infamous crime in another state who had not regained the right to vote in the other state must comply with the provisions set forth in Tenn. Code Ann. § 2-19-143(3) and the additional requirements of Tenn. Code Ann. §§ 40-29-201 through 40-29-205 requiring a two-step process. Although the Court indicated that the holding in *Falls v. Goins* was limited to the facts before them, the application of the holding to other governing statutes requires the same interpretation to those convicted of a felony in both federal and Tennessee state courts because the statutory language that applies to in-state and federal felonies closely aligns with the statutory language at issue in *Falls v. Goins*.

Therefore, 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 ordered 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.

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Page 1 of 2

In light of this interpretation of the voter restoration statutes, we will stop using the existing Certificate of Restoration of Voting Rights (COR) – SS-3041 (Rev. 3/20) and begin using the COR included with this memo. With the use of the revised COR, you will note the following changes:

1. The first box of the form must be completed by the individual wanting to have voting rights restored. This section of the form collects the applicant's name, identifying information, contact information, and whether the individual received a pardon or has had full rights of citizenship restored.
2. The second box requires an agent of your organization to provide information about the felony conviction, restitution, if any, and court costs, if any.

Specifically, in BOX #2, the proper authority/agent must provide the following information:

a) Felony Conviction Information:

- ☐ List the crime(s) for which the applicant was convicted. If the applicant has more than one felony, a separate COR must be used for each felony conviction.
- ☐ The statute for the felony offense for which the applicant was convicted.
- ☐ The month, date, and year the applicant was convicted of the felony.
- ☐ The applicant's TOMIS ID No., County of Conviction, and the Case Number of the felony conviction.

b) Restitution:

- ☐ Check the appropriate box as it relates to any restitution that was or was not assessed to the applicant.
- ☐ Sign and print the agent's name and provide the agent's contact information.

c) Court Costs:

- ☐ Check the appropriate box as it relates to any court costs that were or were not assessed to the applicant.
- ☐ Sign and print the agent's name and provide the agent's contact information.

For the person to have voting rights restored, the person must submit evidence of either a Pardon by the appropriate authority, or evidence of the person's full rights of citizenship having been restored, such as by a court. A copy of the applicable document must be submitted with the COR. If the person has had full citizenship rights restored by a court, then a certified copy of the court order is required.

A person who submits a COR without evidence of either a Pardon by the appropriate authority, or evidence of the person's full rights of citizenship having been restored must be instructed to provide evidence of either one of these requirements.

If you have any questions about this revised process, do not hesitate to contact my office.

Thank you for your diligence and assistance in restoring the voting rights of eligible individuals previously convicted of a felony.

**Goins Memorandum
to Governor's Office,
Department of
Correction, Board of
Parole**

Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor

Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM

To: Erin Merrick, Chief Legal Counsel
Governor's Office

Commissioner Frank Strada
Department of Correction

Jim Purviance, Executive Director
Board of Parole

Jen Brenner, General Counsel
Department of Correction

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: July 21, 2023

Subject: Restoration of Voting Rights

In a recent case, *Falls v. Goins*, No. M2020-01510-SC-R11-CV (Tenn. Jun. 29, 2023), the Tennessee Supreme Court held that to restore one's voting rights in Tennessee, a person convicted of an infamous crime in another state must comply with the provisions set forth in Tenn. Code Ann. § 2-19-143(3) and the additional requirements of Tenn. Code Ann. §§ 40-29-201 through 40-29-205 requiring a two-step process. Although the Court indicated that the holding in *Falls v. Goins* was limited to the facts before them, the statutory interpretation in the holding is applicable to other governing statutes and requires the same interpretation for those convicted of a felony in both federal and Tennessee state courts because the statutory language that applies to in-state and federal felonies closely aligns with the statutory language at issue in *Falls v. Goins*.

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

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Page 1 of 3

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 required by law, **and**
2. Have paid all restitution to the victim or victims of the offense ordered 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 at the time of application; **and**
4. Is current in all child support obligations, if any.

In light of this interpretation of the voter restoration statutes, your organization must stop using the existing Certificate of Restoration of Voting Rights (COR) – SS-3041 (Rev. 3/20) and begin using the COR included with this memo. Although there are detailed instructions on the back of the COR, when completing this form, the key directions for your team members are as follows:

1. The first box of the form must be completed by the individual wanting to have voting rights restored. This section of the form collects the applicant's name, identifying information, contact information, and whether the individual received a pardon or has had full rights of citizenship restored.
2. The second box requires an agent of your organization to provide information about the felony conviction, restitution, if any, and court costs, if any.

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- ☐ The applicant's TOMIS ID No., County of Conviction, and the Case Number of the felony conviction.

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- ☐ Check the appropriate box as it relates to any restitution that was or was not assessed to the applicant.
- ☐ Sign and print the agent's name and provide the agent's contact information.

c) Court Costs:

- ☐ Check the appropriate box as it relates to any court costs that were or were not assessed to the applicant.
- ☐ Sign and print the agent's name and provide the agent's contact information.

In order to complete the COR, an applicant must have had the person's full rights of citizenship restored or have received a pardon. Also, it is imperative that they have the applicant complete the applicant's name, identifying information, and contact information if the applicant has a pardon or

court order. However, a blank COR form with instructions on how to regain voting rights must be distributed when a person is discharged from custody or supervision.

This information is provided to you under my statutory duty in Tenn. Code Ann. § 40-29-205. According to Tenn. Code Ann. § 40-29-205, I must “prepare a certificate of voting rights restoration form and the written statement explaining the form and the procedure by which a person can apply for a voter registration card and become eligible to vote....”

If you have any questions about this revised process, do not hesitate to contact my office.

Thank you for your diligence and assistance in restoring the voting rights of eligible individuals previously convicted of a felony.

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Goins Memorandum to Probation and Parole Officers

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Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor

Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM

To: John Lynn, Assistant Deputy Chief, U. S. Probation and Parole Officer
Eastern Division

LaShonda Dancy, U. S. Probation and Parole Officer
Middle Division

Rosalyn Jackson, U. S. Probation and Parole Officer
Western Division

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: July 21, 2023

Subject: Restoration of Voting Rights

In a recent case, *Falls v. Goins*, No. M2020-01510-SC-R11-CV (Tenn. Jun. 29, 2023), the Tennessee Supreme Court held that to restore one's voting rights in Tennessee, a person convicted of an infamous crime in another state must comply with the provisions set forth in Tenn. Code Ann. § 2-19-143(3) and the additional requirements of Tenn. Code Ann. §§ 40-29-201 through 40-29-205 requiring a two-step process. Although the Court indicated that the holding in *Falls v. Goins* was limited to the facts before them, the statutory interpretation in the holding is applicable to other governing statutes and requires the same interpretation for those convicted of a felony in both federal and Tennessee state courts because the statutory language that applies to in-state and federal felonies closely aligns with the statutory language at issue in *Falls v. Goins*.

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Page 1 of 3

2. Have paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence, if any; **and**
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In light of this interpretation of the voter restoration statutes, your organization must stop using the existing Certificate of Restoration of Voting Rights (COR) – SS-3041 (Rev. 3/20) and begin using the COR included with this memo. Although there are detailed instructions on the back of the COR, when completing this form, the key directions for your team members are as follows:

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c) Court Costs:

- ☐ Check the appropriate box as it relates to any court costs that were or were not assessed to the applicant.
- ☐ Sign and print the agent's name and provide the agent's contact information.

In order to complete the COR, an applicant must have had the person's full rights of citizenship restored or have received a pardon. Please have the members of your organization distribute a blank COR form with instructions on how to regain voting rights to each person discharged from your custody or supervision. Also, it is imperative that they have the applicant complete the applicant's name, identifying information, and contact information if the applicant has a pardon or court order.

This information is provided to you under my statutory duty in Tenn. Code Ann. § 40-29-205. According to Tenn. Code Ann. § 40-29-205, I must “prepare a certificate of voting rights restoration form and the written statement explaining the form and the procedure by which a person can apply for a voter registration card and become eligible to vote....”

If you have any questions about this revised process, do not hesitate to contact my office.

Thank you for your diligence and assistance in restoring the voting rights of eligible individuals previously convicted of a felony.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Goins Memorandum to Tenn. Clerks of Circuit/Criminal Court

Tennessee Secretary of State

Tre Hargett



Elections Division
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM

To: Tennessee Clerks of Circuit/Criminal Court

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: July 21, 2023

Subject: Restoration of Voting Rights

In a recent case, *Falls v. Goins*, No. M2020-01510-SC-R11-CV (Tenn. Jun. 29, 2023), the Tennessee Supreme Court held that to restore one's voting rights in Tennessee, a person convicted of an infamous crime in another state must comply with the provisions set forth in Tenn. Code Ann. § 2-19-143(3) and the additional requirements of Tenn. Code Ann. §§ 40-29-201 through 40-29-205 requiring a two-step process. Although the Court indicated that the holding in *Falls v. Goins* was limited to the facts before them, the statutory interpretation in the holding is applicable to other governing statutes and requires the same interpretation for those convicted of a felony in both federal and Tennessee state courts because the statutory language that applies to in-state and federal felonies closely aligns with the statutory language at issue in *Falls v. Goins*.

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

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2. Have paid all restitution to the victim or victims of the offense ordered 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 at the time of application; **and**
4. Is current in all child support obligations, if any.

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Page 1 of 2

In light of this interpretation of the voter restoration statutes, the existing Certificate of Restoration of Voting Rights (COR) – SS-3041 (Rev. 3/20) you complete when assisting individuals in restoring their voting rights is no longer useful. Included with this memo is the current COR that must be used. Although there are detailed instructions on the back of the COR, when completing this form, the key directions for your team members are as follows:

1. The first box of the form must be completed by the individual wanting to have voting rights restored. This section of the form collects the applicant's name, identifying information, contact information, and whether the individual received a pardon or has had full rights of citizenship restored.
2. The second box requires an agent of your organization to provide information about the felony conviction, restitution, if any, and court costs, if any.

Specifically, in **BOX #2**, the proper authority/agent must provide the following information:

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- ☐ List the crime(s) for which the applicant was convicted. If the applicant has more than one felony, a separate COR must be used for each felony conviction.
- ☐ The statute for the felony offense for which the applicant was convicted.
- ☐ The month, date, and year of the applicant was convicted of the felony.
- ☐ The applicant's TOMIS ID No., County of Conviction, and the Case Number of the felony conviction.

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- ☐ Check the appropriate box as it relates to any restitution that was or was not assessed to the applicant.
- ☐ Sign and print the agent's name and provide the agent's contact information.

c) Court Costs:

- ☐ Check the appropriate box as it relates to any court costs that were or were not assessed to the applicant.
- ☐ Sign and print the agent's name and provide the agent's contact information.

In order to complete the COR, an applicant must have had the person's full rights of citizenship restored or have received a pardon. Also, it is imperative that the applicant complete the applicant's name, identifying information, and contact information if the applicant has a pardon or court order.

This information is provided to you under my statutory duty in Tenn. Code Ann. § 40-29-205. According to Tenn. Code Ann. § 40-29-205, I must "prepare a certificate of voting rights restoration form and the written statement explaining the form and the procedure by which a person can apply for a voter registration card and become eligible to vote..."

If you have any questions about this revised process, do not hesitate to contact my office.

Thank you for your diligence and assistance in restoring the voting rights of eligible individuals previously convicted of a felony.

Goins Memorandum to County Election Commissions

Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor

Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM

To: County Election Commissions

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: July 21, 2023

Subject: Restoration of Voting Rights

In order to avoid rejecting individuals for a felony conviction who did not lose their voting rights as a result of that conviction, the following process shall apply.

1. Felony convictions prior to January 15, 1973

Due to this law applying to felonies committed 50 plus years ago, coupled with the age of the person at the time of conviction, it is extremely rare that you will have a person who falls in this category. Additionally, most of the individuals who committed a felony prior to January 15, 1973, will have already had their rights restored over the years since 1973. However, if you do have a pre-January 15, 1973, felony conviction, the process below should be followed.

For an applicant who indicates on the voter registration application that he/she was convicted prior to January 15, 1973, the following process applies:

Assuming all other information on the form is acceptable and eligibility requirements met, individuals who identify on the face of their voter registration form that they were convicted of a felony prior to January 15, 1973, for any offense **NOT** listed on the next page is eligible to register to vote because that person did not lose the right to vote. Accordingly, their voter registration form is to be processed.

- Abusing a female child
- Arson and felonious burning
- Bigamy
- Bribery
- Burglary
- Felonious breaking into a business house, outhouse other than a dwelling house
- Felonious breaking and entering a dwelling house
- Larceny
- Horse stealing
- Robbery
- Stealing bills of exchange or other valuable papers
- Receiving stolen property
- Counterfeiting
- Forgery
- Destroying a will
- Incest
- Rape
- Sodomy
- Buggery
- Perjury
- Subornation of perjury

If an individual indicates on the face of their registration that they were convicted of one of the above felonies prior to January 15, 1973, and declared infamous, the form must be rejected unless the applicant has had their rights restored.

In order to provide an additional safeguard for these individuals, the Voter Registration Notice of Appeal and Voter Registration Rejection Appeal Form have been updated in case a voter has not been convicted of an infamous felony.

2. Felony convictions between January 15, 1973, and May 17, 1981:

We have another category of voters that will be rare since it applies to felonies committed 40 plus years ago. However, for this category of applicants, assuming all other information on the form is acceptable and eligibility requirements met, individuals who identify on the face of their voter registration form that they were convicted of a felony between January 15, 1973, and May 17, 1981, are eligible to register to vote because those individuals never lost the right to vote. This voter registration form should be processed.

In order to provide an additional safeguard for these individuals, the Voter Registration Notice of Appeal and Voter Registration Rejection Appeal Form have been updated to account for voters who may be in this category.

In short, when processing a voter registration application where the applicant has indicated that he/she has a felony conviction, attention must be paid to the crime listed and the year of the conviction listed, if the applicant provides this information.

If you have any questions about this revised process, do not hesitate to contact my office. Thank you for your attention to details in processing voter registration applications for individuals previously convicted of a felony.

Voter Registration Appeal Request Form

RETRIEVED FROM DEMOCRACYDOCKET.COM



VOTER REGISTRATION APPEAL REQUEST FORM

State of Tennessee

Your voter registration application has been rejected because you indicated that you were not eligible to vote in Tennessee. If you would like to appeal the rejection of your voter registration application, you may submit this appeal form to the county election commission office.

This appeal form will be presented to the election commission and the election commission's decision will be a final administrative decision. This form must be filed with the county election commission office **within ten (10) days of the enclosed notice.**

I, _____, understand that in order to be eligible to vote that I have not been convicted of a felony or if convicted have had my rights properly restored; that I will be eighteen (18) on or before the next election; that I am a United States citizen; and that I am a resident of the State of Tennessee.

By checking all the applicable options below and signing my name, I am swearing (or affirming) that the information I have provided is true, subject to the **WARNING** below as stated.

- ☐ I have not been convicted of a felony;
- ☐ I have been convicted of a felony but:
 - ☐ I have had my voting rights properly restored or my record expunged.
 - ☐ My felony conviction was between January 15, 1973, and May 18, 1981. (I did not lose my voting rights.)
 - ☐ My felony conviction was before January 15, 1973, and the judgment did not declare me infamous. (I did not lose my voting rights.)
- ☐ I am a citizen of the United States;
- ☐ I will be eighteen (18) years of age on or before the next election;
- ☐ I am a resident of the State of Tennessee.

A copy of the supporting documentation may be included with this appeal to be considered by the election commission.

WARNING: Giving false information to register to vote or attempting to register when not qualified is a felony punishable by not less than two (2) years nor more than twelve (12) years imprisonment or a fine of \$5,000 or both.

- ☐ Your appearance is not required; however, if you would like to appear before the election commission check the box provided.

Signature of Applicant

Date

If applicant is unable to sign, provide signature of person who signed for applicant.

Signature of Person Assisting

Address of Person Assisting

BELOW INFORMATION FOR ELECTION COMMISSION USE ONLY

Application ID: _____

- ☐ The members of the County Election Commission met in an open meeting on _____, 20____, and by a majority vote have found this appeal to be sufficient to allow the applicant to become a registered voter of this county.
- ☐ The members of the County Election Commission met in an open meeting on _____, 20____, and by a majority vote have NOT found this appeal to be sufficient to allow the applicant to become a registered voter of this county. A written statement of our reasons for doing so is attached and will be forwarded to the applicant.

Defendants' Response to Plaintiff's Motion for Partial Summary Judgment

detailed and extensive instructions should be added to the voter-registration form to comply with the National Voter Registration Act of 1993 (“NVRA”), even if those additions would result in a lengthy and monstrous form. But having identified no instances of unlawful deprivation of voting rights due to the voting-registration form, and presenting no credible evidence of future harm, the NAACP can only hypothesize theoretical injury and consequently lack standing to assert their NVRA claims. Further, Tennessee’s voter registration forms comply with the NVRA; the creation of an unwieldy voter-registration application that lists every precondition for eligibility is not required by the NVRA, as recognized by the Eleventh Circuit Court of Appeals.

Next, NAACP argues against a non-existent policy that allegedly allows a blanket rejection of voter registration forms indicating a felony conviction. But there is no such policy of blanket rejection in Tennessee. This argument lacks any merit and thus the NAACP is not entitled to partial summary judgment.

NAACP then challenges the requirement for documentation of eligibility for individuals who indicate that they have an infamous-felony conviction on the state voter-registration form. But this challenge fails because the documentation is necessary for officials to make a proper eligibility determination. Finally, the NAACP asserts a conclusory claim of discrimination. The lack of proof to support this claim cannot support judgment as a matter of law.

For all those reasons, this Court should deny the NAACP’s motion for partial summary judgment on Counts Four and Six.

BACKGROUND

A. Tennessee’s voter-registration application

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 October 9, 2023). Box 4 of the voter-registration application is labeled “Felony Conviction” and asks, “Have you ever been convicted of a felony?” *Id.* It provides a parenthetical explaining, “If expunged, answer ‘no.’” *Id.* Then, the form provides check boxes for “Yes” and “No.” *Id.* It further states, “If yes, provide the following information (if known).” *Id.* The form provides space for the applicant to list the crimes, dates, and places relating to the felony conviction. *Id.* 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.* Adjacent to the check boxes is an instruction stating, “If yes, provide copy of document.” *Id.* The form requires an oath or affirmation and a signature of the applicant. *Id.* 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. 3, Lim Dep., at 163.) However, the individual will be automatically directed to use the paper voter-registration application. *Id.*

B. NAACP and its post-discovery factual additions that existed before the close of discovery but were not disclosed to Defendants

The NAACP assists individuals with voter restoration or voting registrations, regardless of whether the individual is a member of the NAACP. (Morris Dep., R. 151-4 at PageID# 1317-18, 1368-70.) The NAACP attends events and sets up a table for voter registration. (*Id.* at PageID# 1334.) The table is staffed with an NAACP member volunteer. (*Id.*) The NAACP has a tablet at their table where an individual can use the Tennessee voter-registration online portal to register to

vote. (*Id.* at PageID# 1335.) However, if an individual is unable to use the tablet to register to vote and discloses that they need information about voting rights, the NAACP provides them with a worksheet created by the Free Hearts organization and a certificate-of-restoration form. (*Id.* at PageID# 1336, 1340.) The NAACP noted that the only costs associated with a voter-registration event are the volunteers' time and the gas getting to the location. (*Id.* at PageID# 1369, 1376.) The NAACP also holds public education workshops on the certificate of restoration process, where they disseminate publicly available information. (*Id.* at PageID# 1368-70.) The NAACP has held only two workshops, and the noted expenses were time and gas money. (*Id.* at PageID#1369.)

However, the NAACP does not keep track of whether any of its members have a felony conviction or document the voting status of its members. (*Id.* at PageID# 1331.) More specifically, the NAACP does not track whether members were convicted of a felony during the grace period. (*Id.* at PageID# 1367.)

The parties engaged in extensive fact discovery, which initially closed on May 28, 2023. (Joint Mot. to Amend Sched. Order, R. 125, PageID# 837–38; Order Granting Mot. in Part, R. 128, PageID# 847–48.) In support of its motion for summary judgment, the NAACP submitted new evidence, namely the declaration of the President of the Tennessee Conference of the NAACP, alleging that they are “aware” of individuals convicted of felonies during the “grace period” between January 15, 1973, and May 17, 1981, who are unable to register to vote. (Sweet-Love Decl., R. 156-2, PageID# 2357.) Additionally, in an attempt to establish standing, the NAACP alleges that they have taxed individuals to government offices, assisted with obtaining court records, and even helped with payment to retrieve court records, but cite to no specific proof in the record to support these allegations. (*Id.* at 2357-58.)

C. Events leading up to and during the filing of the motions for summary judgment

From May through July 2023, Defendants engaged in extensive settlement discussions with Plaintiffs and made numerous offers of settlement, all of which Plaintiffs rejected.

At the end of June 2023, the Tennessee Supreme Court issued its decision in *Falls v. Goins*, 673 S.W.3d 173, 2023 WL 4243961 (Tenn. June 29, 2023), which interpreted and clarified Tennessee's voting statutes.

Frustrated with Plaintiffs' multiple rejections during settlement and determining that *Falls* would dictate some changes to the implementation of the voting statutes, Defendants eventually paused the settlement efforts, began making policy changes, and turned their attention to the upcoming dispositive-motion deadlines. (See Joint Mot. to Amend Sched. Order, R. 145, PageID# 1004.) On July 18, 2023, Defendants' counsel informed Plaintiffs' counsel of the pause and of Defendants' intent to file a summary-judgment motion on all of Plaintiffs' claims in light of the intervening *Falls* decision.

On July 21, 2023, as part of the post-*Falls* policy changes, 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 before January 15, 1973, and for individuals with felony convictions between January 15, 1973, and May 17, 1981. (Goins Decl., R. 151-1, at PageID# 1091-94). The Division of Elections issued a memorandum to the county election commission in Tennessee to provide clarity and prevent rejection of voter-registration applications for individuals who did not lose their voting rights. (Memo on Older Felonies, R. 151-2, at PageID# 1095-96.) 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. (*Id.* at 1-2.) 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. (*Id.* at 2.) The memorandum further describes an updated Voter Registration Rejection Appeal Form that allows an appealing individual to indicate that he did not lose his right to vote because he falls in one of the aforementioned categories. (*Id.* at 2.)

The NAACP sought additional time to file its motion for partial summary judgment, and Defendants agreed to join the extension motion so that the extension applied to all parties. (Joint Mot. to Amend Sched. Order, R. 144, PageID# 999—1002.) The Court granted the motion. (Order, R. 145, PageID# 1003.) Plaintiffs later requested additional time to respond to Defendants' motion for summary judgment, and Defendants were amenable, but only so long as the same dispositive-motion deadlines applied to all parties. (Pl.'s Mot. for Extension, R. 158, PageID# 2734—37.) The Court granted the motion, as well as Defendants' corresponding motion. (Order, R. 164, PageID# 2773—74; Order, R. 168, PageID# 2788.) Next, Plaintiffs filed a Motion for Relief Under Rule 56(d) requesting that discovery be reopened and that Defendants' motion for summary judgment on Counts One, Two, and Three be denied without prejudice. (Pl.'s R. 56(d) Mot., R. 171, PageID# 2796-98.) Defendants opposed this motion. (Def.'s R. 56(d) Resp., R. 175, PageID# 2829-40.) The Court granted Plaintiffs' motion, denied Defendants' motion for summary judgment without prejudice to refile after the close of discovery, and reopened discovery until December 18, 2023. (Order, R. 179, PageID# 2856.) In the same order, the Court set a briefing schedule for the remainder of the briefing on the dispositive motions on Counts Four, Five, and Six. (*Id.*)

STANDARD OF REVIEW

Summary judgment is appropriate only if the answers to interrogatories, depositions, admissions, and pleadings combined with the affidavits in support, show that no genuine issue as to any material fact remains and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a)-(c); *Chao v. Hall Holding Co.*, 285 F.3d 415, 424 (6th Cir. 2002). When reviewing a summary-judgment motion, the court must view all materials supplied, including all pleadings, in the light most favorable to the nonmoving party. *Chao*, 285 F.3d at 424. The moving party has the burden of informing the court of the basis for its motion and identifying the portions of the record that establish the absence of a genuine issue of material fact. *Id.* A fact is “material” if it might affect the outcome. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If a reasonable juror might not return a verdict for the movant, the court should deny summary judgment. *See id.* at 257.

ARGUMENT

I. The NAACP Lacks Standing for the Claims in Counts Four and Six of the Amended Complaint.

In Counts Four and Six, the NAACP seeks to enjoin allegedly unlawful voter-registration practices. At the pleadings stage, this Court found that the NAACP had standing to bring these claims based on a diversion-of-resources theory of injury. This Court accepted as true the NAACP’s allegation that it was “injured when a person it helps register to vote is rejected despite being eligible because such denials cause it to divert significant time and resources to correct the error.” (Mem. Op., R. 83, PageID# 460.) But mere allegations do not establish injury at summary judgment.

Standing is a “threshold question in every federal case.” *Barry v. Lyon*, 834 F.3d 706, 714 (6th Cir. 2016). The elements of standing “must be supported in the same way as any other matter

on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at successive stages of litigation.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). At the motion for summary judgment stage, Plaintiffs can no longer rely solely on the allegations in their complaint to establish standing. *Id.* Instead, they must come forward with admissible evidence to support each element required to establish an actual case or controversy under Article III of the United States Constitution. *See id.*

For standing, an organizational plaintiff must follow “th[e] same black-letter rules” that apply to individual plaintiffs. *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 900 F.3d 250, 255 (6th Cir. 2018). The Supreme Court has established three elements that plaintiffs must satisfy to meet the constitutional requirements for standing. First, plaintiffs must demonstrate an “injury in fact,” which is “concrete,” “distinct and palpable,” and “actual or imminent.” *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (quotation and internal quotation marks omitted). Second, they must establish “a causal connection between the injury and the conduct complained of—the injury has to be ‘fairly trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] some third party not before the court.’” *Lujan*, 504 U.S. at 560–61 (quotation omitted). Third, they must show a “‘substantial likelihood’ that the requested relief will remedy the alleged injury in fact.” *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000) (quotation omitted).

Plaintiffs seeking “the forward-looking remedy of an injunction,” *Reform Am. v. City of Detroit*, 37 F.4th 1138, 1148 (6th Cir. 2022), “must show a present ongoing harm or imminent future harm” to satisfy the injury-in-fact requirement, *Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 981 (6th Cir. 2020) (per curiam). “The ‘threat’ of a prospective injury

must be real and immediate and not premised upon the existence of past injuries alone.” *Gaylor v. Hamilton Crossing CMBS*, 582 F. App’x 576, 579 (6th Cir. 2014) (quotation omitted).

A. The NAACP fails to show sufficient injury to establish standing.

The NAACP’s speculative assertion of injury is not enough to establish standing on either Count Four or Count Six. (See Def.’s Mem. in Support, R. 151, PageID# 1064-68.) The NAACP claims that Tennessee’s “unlawful forms and erroneous rejections” require the NAACP to divert its resources to “help applicants correct the error by for example, locating and printing records found online, taxiing individuals to government offices, and even paying out of pocket to get documents from court clerks.” (Pl.’s Mem. in Support, R. 154, PageID# 2286.) Yet the NAACP has not established evidence of a single instance when an erroneous rejection occurred for an applicant they assisted. (See Morris Dep., R. 151-4, PageID# 1331-67; NAACP First Interrog. Resp., R. 151-14, PageID# 1857-78; Attachs. to NAACP Third Interrog. Resp., R. 151-15, PageID# 1879-86; NAACP Third Interrog. Resp., R. 151-16, PageID# 1887- 1901.) Without identifying a person who has been erroneously rejected, the NAACP has not identified a specific instance when they searched for records, provided a taxi service, or paid for documents. (*Id.*) Rather, the NAACP merely claims that it is “aware” of individuals that were unable to register to vote who were otherwise eligible and that the NAACP has assisted individuals in attempting to correct an erroneous rejection. (Sweet-Love Decl., R. 156-2, PageID# 2357.)

These broad and vague statements do not establish standing because they do not establish a real and imminent threat of future injury. See, e.g., *Ass’n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 362 (5th Cir. 1999) (“To infer that ACORN has spent resources combating Louisiana’s alleged failure to provide voter registration forms with mail-in driver’s license

applications and to properly maintain its voter rolls simply from evidence that ACORN conducts at least one voter registration drive a year in Louisiana is, in our view, speculative.”).

Moreover, the NAACP fails to explain—much less put on proof of—how the allegedly improper instructions on the voter-registration form leads to the NAACP searching for records, providing a taxi service, or paying for documents. Those allegations of injury could be caused only by the elusive and unidentified erroneous rejections. Indeed, the NAACP cannot prove that it expended resources because of alleged informational deficiencies due to conduct that is “fairly traceable” to any Defendant. *Fowler*, 178 F.3d at 359. Instead, the undisputed facts show that the NAACP furthers its mission by “[p]romoting voter registration and turnout,” (Sweet-Love Decl. R. 156-2, PageID# 2356), and it routinely spends time and resources explaining voter registration requirements to would-be applicants, regardless of whether they are convicted felons or not. Accordingly, the NAACP has “fail[ed] to show that it would not have undertaken the same efforts in the absence of the alleged illegal act by the defendants”—that is, it did not establish that the costs “were in any way caused by any action” from Tennessee, “as opposed to part of the normal, day-to-day operations of the group.” *Fowler*, 178 F.3d at 359. Thus, the NAACP lacks standing for their claim about the voter registration form instructions in Count Four.

B. The NAACP lacks standing to challenge how the State processes applications submitted on the Federal Form.

The NAACP admitted in the Amended Complaint that it “almost exclusively” uses Tennessee’s state voter registration forms—not the Federal Form. (Am. Compl., R. 102, PageID# 620-21). In the context of Federal Form applicants, the NAACP’s alleged injury occurs when “a person they identify and help register to vote is rejected despite being eligible.” (*Id.* at PageID# 620–21; *see* Sweet-Love Decl., R. 156-2 ¶ 13.) But the NAACP presents no evidence that it diverted resources in the past towards someone whose federal voter-registration application was

wrongly denied. (*See Sweet-Love Decl.*, R. 156-2, PageID# 2357.) Nor does the NAACP offer any evidence that it will do so imminently in the future, an outcome made even more unlikely given the NAACP's "almost exclusiv[e]" use of the State Form. As Defendants discussed previously, (*Def.'s Mem. in Support*, R. 151, PageID# 1064-68), the NAACP has not established any imminent injury in fact because whether any wrongful denials of Federal Form applications will occur is purely conjectural. *See Memphis A. Philip Randolph Inst. v. Hargett*, 978 F.3d 378, 387-88 (6th Cir. 2020) (holding that the plaintiffs lacked standing because they did not cite data showing that ballots will be incorrectly rejected or that ballots were erroneously rejected in the past). And even assuming that there are *some* erroneous denials of Federal Form applications, there is no evidence that the NAACP helped those applicants or diverted their resources to correct those allegedly wrongful denials.

Even if the NAACP has standing, the alleged deficiencies in how Tennessee processes federal forms were not properly presented. The NAACP asserts in its partial motion for summary judgment that Tennessee fails to "accept and use" the federal voter-registration form. (*Pl.'s Mem. in Support*, R. 154 at PageID# 2300.) But this is inconsistent with the claim presented in the Amended Complaint that Tennessee had a policy of rejecting all registration forms "on which the applicant affirmed that they have a felony conviction[.]" (*Am. Compl.*, R. 102, PageID# 656.) The NAACP admits in their motion for summary judgment that "the Federal Form does not allow an individual to attest to whether or not they have been convicted of a felony, only to their eligibility generally" and asserts that election officials require documentation "when they *learn* about" a felony conviction (not that there is a blanket rejection). (*Pl.'s Mem. in Support*, R. 154 at PageID# 2300.) Thus, to the extent that the NAACP moves for summary judgment on Tennessee's acceptance of the federal form, the NAACP moves on a claim not presented in their

Amended Complaint, which is prohibited. *See Howard v. Tennessee*, 740 F. Appx. 837, 842-43 (6th Cir. 2018) (“[P]laintiffs cannot raise new claims in their summary judgment briefing and should instead request to amend their complaint.”).

II. Portions of the NAACP’S NVRA Claims Are Based on Obsolete Facts and Are Moot.

“[F]ederal courts are without power to decide questions that cannot affect the rights of litigants in the case before them.” *Resurrection Sch. V. Hertel*, 35 F.4th 524, 528 (6th Cir. 2022) (quoting *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974)). “Thus, when a case at first presents a question concretely affecting the rights of the parties, but—as a result of events during the pendency of the litigation—the court’s decision would lack any practical effect, the case is moot.” *Id.* Because of a change in policy, a portion of Count Six is now moot.

In Count Six, the NAACP seeks an injunction preventing Defendants from rejecting voter applications from: (1) individuals with pre-1973 convictions who did not commit infamous crimes; and (2) individuals with convictions between January 15, 1973, and May 17, 1981. Specifically, the NAACP seeks an injunction that prevents Defendants from rejecting voter-registration applications from individuals in these groups. (Am. Compl., R. 102, PageID# 658.) Additionally, the NAACP requests an injunction requiring Defendants to modify the voter-registration form so that it can be used by these groups and requiring issuance of guidance that prohibits the requirement of documentary proof of eligibility. (*Id.* at PageID# 658-59.)

The facts upon which these claims are based no longer exist. the Division of Elections announced that the applications of individuals whose only felony convictions occurred between January 15, 1973, and May 17, 1981, would be processed, not rejected. (Goins Decl., R. 151-1, PageID# 1093; Goins Memo., R. 151-2, PageID# 1096.) Similarly, the applications of individuals whose only felony convictions occurred before January 15, 1973, and which could not have

rendered the felon infamous would be processed. (Goins Decl., R. 151-1, PageID# 1093; Goins Memo., R. 151-2, PageID# 1095-96). The Division of Elections seeks further documentation only from applicants when the pre-January 15, 1973, conviction could have rendered him infamous, but the convicting court may or may not have declared him so. (*Id.*) That is, the Division of Elections cannot tell from the face of the application that the applicant is eligible to vote. There is no “blanket rejection” policy upon which their claim in Count Six relies. (Am. Compl., R. 102, PageID# 655—57; Pl.’s Mem. in Support, R. 154, PageID# 2294-98.) Thus, for a portion of Count Six, there is no controversy between the parties and such claims are moot.

In an attempt to avoid this mootness problem, the NAACP contends that the pre-July 21, 2023, policies might theoretically be resurrected at some unknown point in the future. (Pl.’s Mem. in Support, R. 154, PageID# 2307–10.) But when a *government* entity voluntarily ceases allegedly illegal conduct,¹ the Sixth Circuit presumes that the “allegedly wrongful conduct by the government is unlikely to recur.” *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 767 (6th Cir. 2019). Voluntary cessation of allegedly illegal activities is treated differently when the parties are government officials rather than private parties. *Id.* Courts have treated cessation by governmental officials with more solicitude than similar actions by private parties, and so long as it appears genuine, self-correction provides a secure foundation for a dismissal based on mootness. *Id.* (citing *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 981 (6th Cir. 2012)). Government action receives this solicitude because courts assume that the government acts in good faith. *Id.* (citing *Fikre v. FBI*, 904 F.3d 1033, 1037 (9th Cir. 2018)).

¹ To be clear, Defendants in no way are conceding that the policies in place before July 21, 2023, were illegal.

The NAACP has failed to rebut the presumption that the Defendants will not resume their allegedly illegal activities. Defendants' implementation of the current policy for applicants with non-infamous felonies from before January 15, 1973, and for applicants with felony convictions between January 15, 1973, and May 17, 1981, is not "spur-of-the-moment," but genuine, and the result of a long-term process by the Coordinator of Elections. (*See* Goins Supp. Decl., Exhibit 1.) The genuine nature of this policy change was formalized in a memorandum sent out by the Coordinator of Elections to all county elections officials, (*id.*), and by Coordinator Goins's declaration, (Goins Decl., R. 151-1, at PageID# 1091-94). This policy is in place, and the NAACP presents no competent evidence demonstrating that the Coordinator will reverse it.

Moreover, what evidence the NAACP does submit in support of its contention is either inaccurate or mischaracterized. For example, the NAACP alleges that Coordinator Goins sent a letter in November 2019 "establishing a position" and then reversed that position less than four months later. (Pl.'s Mem. in Support, R. 154, at PageID# 2308.) But Coordinator Goin's letter simply responded to counsel's inquiries as to the restoration of voting rights for three individuals. (Goins Letter, DEF000421, Exhibit 2.) More importantly, the NAACP fails to acknowledge that any alleged change in the Coordinator's position was due to an opinion issued by the Tennessee Attorney General in March 2020—an opinion that was subsequently affirmed by the Tennessee Supreme Court in *Falls*, 2023 WL 4243961, at *7-8. (*See* Goins Supp. Decl., Exhibit 1); Tenn. Att'y Gen. Op. 20-06 (Mar. 26, 2020).

Next, the NAACP alleges that, in an unrelated case, Defendants made a "last-minute" reversal of their position before the Tennessee Supreme Court and then failed to comply with that Court's order. (Pl.'s Mem. in Support, R. 154, at PageID# 2308-09.) Contrary to the NAACP's allegations, the Tennessee Supreme Court made no finding of a reversal of position by the State.

See Fisher v. Hargett, 604 S.W.3d 381, 405 (Tenn. 2020). Instead, the Tennessee Supreme Court noted a concession by the State and found that the plaintiffs were unlikely to succeed on the merits of their claims and vacated the injunction. *Id.* No further action was required by the Defendants to comply with the Tennessee Supreme Court's ruling. *Id.* Thereafter, the State changed its policy to align with its concession, albeit after a lower court order. At any rate, the NAACP's argument is inapposite here. Defendants have already implemented the change in policy relevant to this issue. (Goins Decl., R. 151-1, at PageID# 1091-94).

Finally, the NAACP asserts that the Coordinator and Secretary have engaged in, and subsequently backed out of, negotiations with it for several years, but only now, on the precipice of dispositive motions, adopted new policies. (Pl.'s Mem. in Support, R. 154, at PageID# 2309.) But again, the NAACP fails to acknowledge that during those negotiations, Coordinator Goins made changes to the state and federal voter registration forms—changes that were requested and approved by counsel for the NAACP. That revised form has been in use since 2020. (*See* Goins Supp. Decl., Exhibit 1.) The NAACP also fails to acknowledge that Coordinator Goins only ceased further negotiations after the NAACP filed this lawsuit. (Goins Supp. Decl., ¶ 9.)

And Defendants paused the most recent round of negotiations only after Plaintiffs rejected multiple settlement offers made by Defendants, after the issuance of *Falls*, and a short time before dispositive motions were to be filed. There is no bad faith here, much less any indication that Defendants will suddenly reverse course and return to the pre-July 21, 2023, policies.

In short, the policy change memorialized in the July 21, 2023 memorandum was not simply at the whim of the Coordinator of Elections. Rather, the Coordinator and Secretary of State engaged in a lengthy process of internal discussions and deliberations with staff and legal counsel that culminated in the policy change. (*See* Goins Supp. Decl., Exhibit 1.) Consistent with his

statutory duty to “authoritatively interpret the election laws for all persons administering them” and to advise election officials “as to the proper methods of performing their duties,” Tenn. Code Ann. § 2-11-202(a)(3)-(4), the Coordinator, with the approval of the Secretary of State, formalized this policy change in a memorandum that was distributed to all the county election officials. (Memo on Older Felonies, R. 151-2, at PageID# 1095-96.) Absent a change in the law or a court order, Coordinator Goins has no intention of changing course, as evidenced by the sworn declaration provided in support of this opposition. (*See* Goins Supp. Decl., Exhibit 1.)

III. The NAACP’s Motion for Partial Summary Judgment on Count Four Fails Because Tennessee’s Voter Registration Form Adequately Informs Applicants of Voter Eligibility Requirements in Accordance with the NVRA.

Tennessee’s instructions on the state and federal voter registration forms comply with the NVRA by adequately specifying the eligibility requirements for voting. The NVRA requires States to “inform applicants” of “voter eligibility requirements.” 52 U.S.C. § 20507(a)(5). In furtherance of that mandate, the NVRA also requires that state mail-in forms “include a statement” that “specifies each eligibility requirement.” *Id.* § 20508(b)(2)(A). Tennessee prohibits individuals convicted of infamous felonies from registering to vote. Tenn. Code. Ann. § 2-19-143. In turn, the absence of a conviction for an infamous felony is a voter eligibility requirement. *See* 52 U.S.C. § 20507(a)(5). While the conviction crime and date may affect whether an individual was convicted of an infamous felony, those are underlying preconditions for eligibility that are not subject to the requirements of the NVRA.

A. Tennessee’s voter-registration form provides adequate information to enable applicants to determine eligibility.

Tennessee’s mail-in form specifies the eligibility requirement about felony convictions and directs applicants to additional resources:

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 August 1, 2023). Functionally similar language is provided as a state-specific instruction on the Federal Form. *Federal Mail-In Application for Voter Registration*, United States Election Assistance Commission, https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf (last visited August 16, 2023). The website link provided on the forms provides thorough guidance about the disqualifying-felonies requirement—including details about which felonies are permanently disqualifying, the dates between which felons were never disenfranchised (and are thus eligible to vote), and the process for disqualified felons to restore their eligibility to vote. And in case those instructions were not sufficiently clear, the forms include a toll-free number for applicants to call and request help.

These instructions specify the eligibility requirement related to felony convictions and inform applicants that certain felons are ineligible to vote. This is in compliance with the NVRA. *See* 52 U.S.C. §§ 20507(a)(5), 20508(b)(2)(A). Individuals filling out a state or federal voter registration form in Tennessee are sufficiently notified that the absence of an infamous felony conviction is an eligibility requirement for voting. The additional resources also provide prospective voters with information and guidance for navigating Tennessee's straightforward voter registration process.

The NAACP also complains of Tennessee elections officials accepting older versions of the voter registration form and notes that some counties have not updated their websites with the current voter-registration form. (Pl.'s Mem. in Support, R. 154, PageID# 2292.) 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). Indeed, the NAACP admits that the current version of the form has been in use since 2020. (Pl.'s Mem. in Support, R. 154, PageID# 2292.)

That three out of ninety-five counties in Tennessee at one point had not updated their website with the current version of the form is not proof of an NVRA violation, (*see id.*), and it is not attributable to Defendants. Moreover, 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.) The NAACP has put forth zero proof that the acceptance of an older version of the voter registration form has led to an erroneous rejection of voter registration.

B. The NVRA does not require notice of every precondition to eligibility.

In support of their motion for summary judgment, the NAACP argues that Tennessee's registration form violates the NVRA because it does not describe the various scenarios in which an individual with a felony conviction can vote. (Pl.'s Mem. in Support, R. 154, at PageID# 2291.) While the instructions on the forms specify that the absence of a conviction for an infamous felony is an eligibility requirement, the NAACP believes the NVRA requires that forms "must on their face provide registrants with a statement that is sufficiently specific as to all qualifications for voting such that an individual may assess their eligibility," (*see id.* at PageID# 2293). Notably

absent from the NAACP's argument is any case law supporting that position. (*See id.* at PageID# 2290-93.) Yet at least two federal courts have held that the NVRA does *not* require an exhaustive list of preconditions for voting eligibility.

Earlier this year, the Eleventh Circuit heard a challenge to Alabama's voting-registration form as a violation of the NVRA involving materially similar instructions to those found in Tennessee's voter-registration form. *Thompson v. Alabama*, 65 F.4th 1288, 1309 (11th Cir. 2023). As here, the plaintiffs asserted that Alabama violated 52 U.S.C. § 20508(b)(2)(A) by failing to provide sufficiently specific instructions. *Id.* at 1308-09; (Am. Compl., R. 102, at PageID# 654.) Alabama's voter registration form included language notifying applicants that "[t]o register in Alabama you must: . . . not have been convicted for a felony involving moral turpitude (or have had [y]our civil and political rights restored). The list of moral turpitude felonies is available on the Secretary of State web site at: sos.alabama.gov/mtfelonies." *Thompson*, 65 F.4th at 1296.

The appellants in *Thompson* essentially argued that "a state that disqualifies voters for some felonies but not others can only sufficiently specify its eligibility requirements on its mail voting form by listing each disqualifying felony." *Id.* at 1308. But the Eleventh Circuit rejected this argument and held that such a position is an "absurd" and "unworkable" interpretation of § 20508(b)(2)(A). *Id.* Listing every state, federal, and foreign felony involving moral turpitude to sufficiently specify disqualifying felonies under Alabama law would result in a form of "monstrous" size. *Id.* The court noted that "[a]ppellants may as well ask Alabama to attach a copy of each state, federal, and foreign criminal code to its voting form. And any time any state, federal, or foreign government amended their criminal code, Alabama would have to update its list[.]" *Id.* The court held that Alabama's mail-in voting form complied with the NVRA by providing sufficient notice through informing registrants that persons convicted of disqualifying felonies are

not eligible to vote and providing an easily accessible link whereby voters convicted of felonies can determine their voter eligibility. *Id.* at 1308-09.

In a similar case also decided this year, the United States District Court for the Northern District of Florida heard a challenge alleging that the instructions on Florida's mail-in voting form failed to provide sufficient notice to applicants. *See Order Granting Motion to Dismiss, League of Women Voters of Florida, Inc. v. Cord Byrd*, No. 4:23-cv-165 (N.D. Fla. July 10, 2023), ECF No. 36. Florida's mail-in voting form stated, "If you have been convicted of a felony, or if a court has found you to be mentally incapacitated as to your right to vote, you cannot register until your right to vote is restored." *Id.* at 4. However, the plaintiffs claimed that the NVRA required more detail, namely that the form specify each method of voting-rights restoration. *Id.*

The court explained that the different methods for restoring one's right to vote were not an eligibility requirement, but rather only restoration of the right to vote was an eligibility requirement. *Id.* at 5–6. And while there are certain "preconditions" to eligibility, like some applicants needing to pay off all legal financial obligations, these preconditions are not independent eligibility requirements for NVRA purposes. *Id.* at 6. The court noted, "[o]bviously, if the NVRA required applications to catalog every potential 'precondition for eligibility,' Florida's one-page, front-and-back application form would explode into something hopelessly cumbersome, counter to the NVRA's goal of promoting convenient registration. The federal application, too, would become unrecognizable." *Id.* at 7.

Tennessee's instructions contain information like the instructions on the forms in Alabama and Florida. The instructions provide notice of the disqualifying-felony eligibility requirement. Tennessee's language notifying applicants that their eligibility depends on the crime and date of conviction is analytically similar to Alabama's language that an applicant must not be convicted

of a crime of moral turpitude. *See Thompson*, 65 F.4th at 1296. Both applications provide the reader with direction to the resources needed to make an eligibility determination without specifying each and every detail of which felony convictions render someone ineligible. *See id.* Alabama's form refers the applicant to the Alabama Secretary of State's website. *Id.* Tennessee's form and the Tennessee specific instructions on the Federal Form provide both a phone number to call for assistance and the Tennessee Secretary of State's website where the reader can find information necessary to evaluate one's eligibility. *See Tennessee Secretary of State*, <https://sos.tn.gov/restoration>, (last visited August 23, 2023).

Indeed, Tennessee's website contains a list of crimes that permanently disqualify an individual from voting. *Id.* It contains an explanation of the procedure for restoring an individual's voting rights when lost due to a felony conviction after May 18, 1981. *Id.* It explains that individuals with felony convictions between January 15, 1973, and May 17, 1981, are eligible to vote but that the Division of Elections must verify that the individual's conviction occurred during that period. *Id.* It also provides a list of crimes that prior to January 15, 1973, resulted in the loss of the right to vote but includes a disclaimer stating, "Even if you were convicted of a crime listed above, you still have the right to vote if you can show that at the time of your conviction the judge did not render you 'infamous,' if your conviction was reversed on appeal or expunged, if you received a full pardon, or if you have your voting rights restored." *Id.*

The NAACP believes, however, that Tennessee's state mail-in voter registration form should contain all of this information, i.e., an extensive explanation that felony convictions between January 15, 1973, and May 17, 1981, and felony convictions for non-infamous crimes prior to January 15, 1973, do not remove the right to vote; an explanation for the highly improbable scenario where an individual with a conviction for an infamous crime was not deemed infamous

by the convicting court; and an explanation that an individual with a felony conviction may get their voting rights restored. (Pl.'s Mem. in Support, R. 154, at PageID# 2291.) But including all the information listed on the Secretary of State's website would result in an application of unwieldy length and unusable format.

This is precisely the "absurd" and "unworkable" interpretation of § 20508(b)(2)(A) that the Eleventh Circuit rejected. *Thompson*, 65 F.4th at 1308. As the court in *Thompson* explained, § 20508(b)(2)(A) is a notice statute. *Id.* at 1309. The NVRA does not prescribe a voter-registration application composed of a comprehensive list of every felony conviction that results in the loss of the right to vote, nor does it require that the application contain a primer on voting rights restoration. Tennessee's voter registration application complies with the NVRA because it sufficiently notifies applicants that the absence of a conviction for an infamous felony is a voter eligibility requirement. Therefore, the NAACP's motion for partial summary judgment on Count Four should be denied.

IV. The NAACP's Motion for Partial Summary Judgment on Count Six Fails Because Tennessee's Process for Applicants with Felony Convictions Complies with the NVRA.

Defendants' policies for processing voter registration applications for individuals with felony convictions complies with the NVRA. Applicants who indicate on their voter-registration application that they were not convicted of an infamous felony go through the same process as every other applicant. (Memo on Older Felonies, R. 151-2, at PageID# 1095-96.) Defendants' policy of requiring documentation for a small subset of applications is compliant with the NVRA. These policies are not discriminatory.

A. Tennessee's process and policies ensure that eligible voters are registered to vote.

The State does not have a blanket policy rejecting all voter-registration applications that show a felony conviction. As noted, under the recent policy changes, applications from individuals with non-infamous felonies predating January 15, 1973, are processed just like someone without a felony conviction. (Goins Decl., R. 151-1, PageID# 1093; Older Felonies Memo, R. 151-2, PageID# 1095-96.) Those applicants need not submit any documentary proof of eligibility—all they must do is submit the application and attest under penalty of perjury that they are eligible to vote. (*Id.*) Likewise, applications from individuals with felony convictions from between January 15, 1973, and May 17, 1981, are also processed just like applicants without felonies “because those individuals never lost the right to vote.” (*Id.*) And for all other applicants with felonies, election officials will not reject their application to vote if they submit proof that their voting rights have been restored. (Goins Decl., R. 151-1, PageID# 1093.)

In its motion for summary judgment, the NAACP changed the position it took in the Amended Complaint regarding Count Six. The Amended Complaint alleged that Tennessee has a “policy and practice of rejecting *all* registration forms”—every single one—“on which the applicant affirmed that they have a felony conviction.” (Am. Compl., R. 102, PageID# 655 (emphasis in original).) Because discovery has proven that allegation patently false, (*see* Burch Dep., R. 151-19, PageID# 2182-84 (pointing out that thousands of Tennesseans have had their voting rights restored), the NAACP now says that Tennessee rejects “every voter registration application where the felony question is answered in the affirmative *absent additional documentation*,” (Pl.’s Mem. in Support, R. 154, at PageID# 2295 (emphasis added).) But there is no documentation requirement for applicants with grace period or pre-1973 non-infamous convictions. (Goins Decl., R. 151-1, PageID# 1093; Older Felonies Memo, R. 151-2, PageID#

1095-96.) And by now taking the position that the State rejects those applicants who fail to provide mandatory documentation, the NAACP implicitly concedes that the State *does* grant voter applications from felons who properly submit proof of eligibility. Even if the NAACP does not concede that point, there is no genuine dispute that individuals with felony convictions who secure voting-rights restoration are allowed to register and to vote. (*See* Lim Dep., R. 151-3, PageID# 1291 (“[I]f the person turned in a voter registration application marking ‘Yes’ to the felony conviction, and then also turned in a Certificate of Restoration at the same time, . . . they would not have been rejected.”).)

Plus, the NAACP has not established that Tennessee has a policy of denying applications from eligible voters with grace period and pre-1973 convictions. And the evidence cited by the NAACP about the documentation requirement for those applicants is irrelevant because no such requirement exists. (*See* Goins Decl., R. 151-1, PageID# 1093; Older Felonies Memo, R. 151-2, PageID# 1095-96.) The NAACP seeks forward-looking equitable relief, but “the Court cannot enjoin what no longer exists.” *Exxon Mobil Corp. v. Healey*, 28 F.4th 383, 393 (2d Cir. 2022). There is no evidence that eligible individuals are being denied their right to vote under the current system.

As for the remaining applicants with felonies, Tennessee’s practice complies with federal law. The NVRA requires states to “ensure that any eligible applicant is registered to vote” in federal elections so long as they timely submit a “valid voter registration form.” 52 U.S.C. § 20507(a)(1). “Eligible” means “fit and proper to be selected or to receive a benefit; legally qualified for an office, privilege, or status.” Eligible, BLACK’S LAW DICTIONARY (11th ed. 2019). By describing the applicant as “eligible,” the text of the NVRA clearly allows election officials to determine if applicants are qualified to vote before registering the applicant. The State seeks

documentation only when an individual was convicted of an infamous felony or when an individual has asserted that their voting rights were restored. This ensures that only eligible applicants are registered to vote. An individual asserting that he has been convicted of an infamous felony indicates *ineligibility*, absent restoration.

One needs to look no further than *Falls*, 2023 WL 4243961, at *1, 8, to see that not all applicants are correct when they assert that their voting rights have been restored. Because the NVRA's "ensure" language applies only to *eligible* applicants, Tennessee does not run afoul of the NVRA by requesting additional documentation from applicants that have indicated ineligibility to determine whether the applicant is ineligible. This protects the integrity of Tennessee elections while complying with the NVRA's mandate to ensure that *eligible* applicants are registered to vote.

B. Tennessee does not violate the NVRA by requiring applicants using the state registration form to submit proof of eligibility.

The documentation requirement is consistent with the NVRA's plain text and authoritative interpretations of the NVRA's provisions from the Supreme Court and the Sixth Circuit. The NAACP's argument to the contrary relies on out-of-circuit precedent analyzing statutory provisions that are irrelevant to this case.

To begin, the NVRA "authorizes States, '[i]n addition to accept[ing] and us[ing] the' Federal Form, to create their own, state-specific voter registration forms." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013) (quoting 52 U.S.C. § 20505(a)(2)). "States retain the flexibility to design and use their own registration forms" that create "procedural hurdles" not included on the Federal Form—indeed, the Supreme Court has expressly stated that state registration forms "may require information the Federal Form does not." *Id.* Put differently, the NVRA "still leaves room for policy choice" by States about how to design and administer state

voter-registration forms, including the choice about what information that form may require applicants to submit. *See Young v. Fordice*, 520 U.S. 273, 286 (1997) (explaining that the NVRA does not list “all the other information the State may—or may not—provide or request”).

Acting within the confines of that discretion, Tennessee determined that it needs documentation from applicants whose voting rights have been restored so that the State may “assess the eligibility of the applicant” and “administer voter registration and other parts of the election process.” 52 U.S.C. § 20508(b)(1). That documentation provides proof of voter eligibility and empowers the State to approve the registration application. Tennessee’s documentation requirement is consistent with the Supreme Court’s instruction that States “may require information the Federal Form does not.” *Inter Tribal*, 570 U.S. at 12. And it is supported by Sixth Circuit precedent upholding a requirement that voter registration applicants provide their social security number. *See McKay v. Thompson*, 226 F.3d 752, 755–56 (6th Cir. 2000) (holding that requiring applicants to provide their social security number did not violate the NVRA’s provision that states “only ‘require the minimum amount of information necessary’” to determine voter eligibility). That requirement was challenged on the basis that social security information was not “necessary” to assess eligibility, but the court dismissed the challenge because “[t]he NVRA does not specifically forbid use of social security numbers.” *Id.* Here, too, nothing in the NVRA forbids States from requiring evidence to prove that applicants satisfy the eligibility requirements.

The NAACP’s reliance on *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016), is misplaced and misleading. The NVRA “requires each State to permit prospective voters to ‘register to vote in elections for Federal office’ by any of three methods: [1] simultaneously with a driver’s license application, [2] in person, [3] or by mail.” *Inter Tribal*, 570 U.S. at 5. The NAACP cites *Fish* for the proposition that the NVRA limits Tennessee to requesting “the minimum amount of

information necessary” to determine voter eligibility for its mail-in form. (Pl.’s Mem. in Support, R. 154, PageID# 2300.) But *Fish* interpreted § 20504(c)(2), which provides that “[t]he voter registration application portion of an application for a *State motor vehicle driver’s license* . . . may require only the minimum amount of information necessary to . . . enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” (emphasis added). That provision is not at issue here because the NAACP has not challenged the registration form that applicants use when they are simultaneously applying for a driver’s license. And when *Fish* discussed the provision that *does* apply to this litigation, § 20508(b)(1), the court explicitly stated that it imposes *less* strict limitations upon the discretion of states to administer voter registration forms. 840 F.3d at 733–34; *see* 52 U.S.C. § 20505(a)(2) (state forms must comply with “the criteria stated in section 20508(b)”). The reasoning in *Fish*, consistent with *Inter Tribal*, thus supports the State’s position by establishing that Tennessee has more leeway when determining what applicants must provide when seeking voter registration via the state form.

The NAACP argues that demanding anything more than “an attested . . . state registration form exceeds the amount of information Tennessee may require for registration in federal elections.” (Pl.’s Mem. in Support, R. 154, PageID# 2300.) That is wrong for at least three reasons.

First, the Court has explained time and again that States may require state-form applicants to submit information beyond that required by the Federal Form. *See Inter Tribal*, 570 U.S. at 12; *Young*, 520 U.S. at 286. The NAACP cannot reconcile its position with that guidance.

Second, the state registration form would “ceas[e] to perform any meaningful function” if States are forbidden from requiring anything beyond an attestation. *Inter Tribal*, 570 U.S. at 13.

In *Inter Tribal*, Arizona argued that the accept-and-use requirement for the Federal Form gave the State authority to request proof of citizenship. The Court rejected that argument, reasoning that “Arizona’s reading would permit a State to demand of Federal Form applicants every additional piece of information the State requires on its state-specific form,” an outcome which would render the Federal Form entirely duplicative and thus meaningless. *Id.* The NAACP’s argument creates the inverse problem—it would render *state forms* meaningless because they could not seek any information beyond that required by the Federal Form.

Third, even if *Fish* applies here, the additional information sought is necessary to determine the eligibility of the applicant. The NAACP argues that an attestation from a felon whose rights have been restored is the only information necessary to determine eligibility. (Pl.’s Mem. in Support, R. 154, at PageID# 2300, 2302.) This defies commonly accepted principles about the testimony of felons. *See Martin v. Page*, 417 F.2d 309, 310 (10th Cir. 1969) (stating “the self-serving testimony of a felon is certainly suspect and should be viewed by the fact-finder with caution[.]”). Even the Federal Rules of Evidence allow for impeachment by evidence of a felony conviction. Fed. R. Evid. 609. Moreover, a well-intentioned felon may be incorrect about their restoration or eligibility. *See Falls*, 2023 WL 4243961, at *1. These considerations justify a request for the necessary documentation to confirm eligibility.

C. Tennessee’s voter-registration policies are uniform and nondiscriminatory.

The NAACP failed to put forth evidence showing that Tennessee’s voter-registration policies violate the NVRA’s uniformity and non-discrimination requirements. They also do not support their argument with citation to any case where another court has found any voter-registration policy to be non-uniform or discriminatory under the NVRA. (*See* Pl.’s Mem. in Support, R. 154, at PageID# 2305-06.) Nor is it clear what legal theory of discrimination that they

pursue. (*Id.*) The court should deny the NAACP's motion for partial summary judgment on this basis.

Tennessee's voter-registration policies for individuals with felony convictions comply with the NVRA because the policies do not single out any class of applicants based on an irrelevant characteristic. Nor does Tennessee impose a blanket rejection policy. The NAACP argues that the voter-registration form "targets eligible voters with past convictions by requiring them to check a box that is not targeted to identify specific eligibility criteria." (*See* Pl.'s Mem. in Support, R. 154, at PageID# 2305-06.) Yet, they cannot identify a single affected eligible voter. (*See* Morris Dep., R. 151-4, at PageID# 1331-67; NAACP First Interrog. Resp., R. 151-14, PageID# at 1857-78; Attachs. to NAACP Third Interrog. Resp., R. 151-15, PageID# 1879-86; NAACP Third Interrog. Resp., R. 151-16, at PageID# 1887- 1901.)

A felony conviction is a strong indicator that an individual is ineligible to vote. Indeed, the NVRA expressly provides for removing individuals with criminal convictions from the list of eligible voters. 52 U.S.C. § 20507(a)(3)(B). The felony question on the voter registration form precisely targets relevant information for determining eligibility.

Documentation of eligibility in the form of a judgment that shows a felon was not rendered infamous or documentation of voting-rights restoration is necessary to ensure that only eligible voters are added to the voter rolls. Any minimal burden of providing documentation of eligibility is justified by the State's legitimate and important interest in preventing voter fraud, which the Supreme Court has recognized. "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process." *Crawford v. Marion County Election*

Bd., 553 U.S. 181, 196 (2008). When an individual indicates that he has a felony conviction on the voter-registration application, it is important that the State ensure that he is an eligible voter. A minimal burden on individuals who have felony convictions is more than justified.

For its brief argument about racial and age discrimination, the NAACP does not argue that these policies were created with discriminatory intent, nor have they come forward with evidence of a discriminatory motive. (*See* Pl.'s Mem. in Support, R. 154, at PageID# 2305-06.) Rather, it argues in conclusory fashion that the class of eligible voters subject to these policies are disproportionately black and elderly. (*Id.*) This allegation alone does not demonstrate that the NAACP is entitled to judgment as a matter of law.

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CONCLUSION

For the reasons stated above, the NAACP's motion for partial summary judgment should be denied on both Counts Four and Six of the Amended Complaint.

Respectfully submitted,

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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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Second Declaration of Gloria Jean Sweet- Love

EXHIBIT 1

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5. TN NAACP volunteers in local branch units and chapters throughout the state will continue to help people register to vote. This has included and will continue to include assistance to individuals with felony convictions. I am aware that that local branch units prioritize voter assistance for individuals with felony convictions because I am in regular contact with leaders of these units. During my time at TN NAACP, I have also personally assisted individuals with felony convictions register to vote.

6. TN NAACP offices and volunteers get regular calls from citizens with felony convictions seeking to understand their eligibility to register to vote and information about how to restore their voting rights. Many of the people who contact TN NAACP for such assistance have felony convictions because the community we serve is largely Black and brown, which we know is disproportionately impacted by prosecution and incarceration. For this reason, many of the voter events we organize, even if they are not initially intended to focus on people with prior convictions, end up involving advice about eligibility to vote after a conviction.

7. As I stated in my previous declaration, individuals with prior felony convictions are not able to use the state's online voter registration portal, even if they are eligible to vote. Instead, individuals with prior felony convictions must use one of Tennessee's mail-in voter registration forms or the Federal Voter Registration Form ("Federal Form").

8. Although we primarily use Tennessee's voter registration forms in our registration work, there are regular events where we use the Federal Form. In particular, we use the Federal Form when we go to large-scale events that draw people from out of state, like the annual Southern Heritage Classic Cultural Celebration in Memphis. During our voter registration drives at these events, we frequently encounter and assist people who have past felony convictions.

9. Individuals we assist who have felony convictions often believe that a felony conviction is always disenfranchising in Tennessee and requires restoration of voting rights. This is not true. Felony convictions between January 15, 1973 and May 17, 1981 never result in loss of the right to vote. Felony convictions before January 15, 1973 do not result in the loss of the right to vote, unless the judge specifically stated the crime was “infamous” at the time of conviction. And individuals who were convicted of disenfranchising felonies but who have restored their voting rights are eligible to register to vote.

10. Individuals we assist who have felony convictions also sometimes feel hesitant to disclose the fact of a felony because of the shame and stigma surrounding conviction status in our communities.

11. These individuals with felony convictions who are eligible to register to vote should be able to determine their eligibility on their own based on information provided on the state’s voter registration forms and the Tennessee-related instructions on the Federal Voter Registration Form (“Federal Form”). But none of these forms spell out when a person with a felony conviction is eligible to register to vote. The previous version of the state form had very sparse and inaccurate language about felony convictions.

12. We have observed that this lack of information and misinformation causes substantial confusion among people we assist that our volunteers are left to correct. When we help someone with felony convictions register to vote, we have to spend more time with that voter to ask them when and where they were convicted, inform them of the eligibility requirements, and help these voters figure out whether they are eligible.

13. We cannot expect a person with a felony conviction to be able to determine whether they are eligible by looking at a registration form itself. When we inform people we

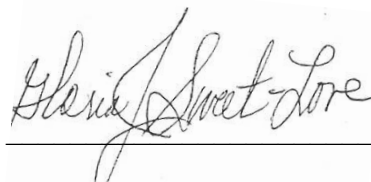
assist that their felony conviction never resulted a loss of the right to vote, they are of course happy but also very surprised to learn that they are eligible to vote. They will often also say something like: “You mean to tell me I could have been voting all these years.”

14. Tennessee’s refusal to specify eligibility criteria for voters with past convictions on its voter registration forms makes our effort to register and turnout voters harder and more time-consuming.

15. TN NAACP also regularly holds workshops and events, often in partnership with fraternal organizations and churches, specifically geared toward educating voters with prior felony convictions about Tennessee’s felony disenfranchisement rules and rights restoration process. These events are held in part to correct prevalent misunderstanding about when felony convictions do and do not impact voter eligibility, which is only aggravated by Tennessee’s failure to specify eligibility requirements relating to felony convictions on the state’s voter registration form and the Tennessee-specific instructions on the Federal Form.

16. These uninformative and inaccurate voter registration forms require TN NAACP to dedicate more time and resources to voter registration that we would and could dedicate to other mission-furthering activities outlined in my prior declaration, including turning out registered voters on Election Day.

I declare under penalty of perjury that the foregoing is true and correct. This Declaration was executed October 25, 2023.

A handwritten signature in cursive script, reading "Gloria Jean Sweet-Love", written over a horizontal line.

Gloria Jean Sweet-Love

Memorandum Opinion on Cross- Motions for Summary Judgment

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**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,

v.

WILLIAM LEE, et al.,

Defendants.

NO. 3:20-cv-01039

JUDGE CAMPBELL

MAGISTRATE JUDGE FRENSLEY

MEMORANDUM

Pending before the Court is a motion for summary judgment on Counts Four, Five, and Six filed by Defendants Trey Hargett and Mark Goins (Doc. No. 150), and a cross motion for summary judgment on Counts Four and Six filed by Plaintiff Tennessee National Association for the Advancement of Colored People (“TN NAACP”) (Doc. No. 153). The motions are fully briefed as to Counts Four, Five, and Six, and ripe for consideration. (Doc. Nos. 182, 190, 180, 192). For the reasons set forth more fully below, the motion filed by Hargett and Goins will be denied and TN NAACP’s motion will be granted in part and denied in part.

I. INTRODUCTION

A felony conviction does not always result in the loss of voting rights in Tennessee because of the structure of Tennessee’s constitution and discrepancies in Tennessee’s disenfranchisement statute. Counts Four, Five, and Six of the present case arise from Tennessee’s voter registration form for elections for Federal office and policies for processing those forms from applicants who have been convicted of a felony.

In Count Four, TN NAACP claims that Tennessee's form to register to vote in elections for Federal office (hereinafter referred to as the "State Form") fails to inform applicants of Tennessee's voter eligibility requirements, in violation of the National Voter Registration Act of 1993 ("NVRA"). (*See* First Amended Complaint, Doc. No. 102 ¶¶ 153-57). In Count Six, TN NAACP claims that, since 2014, Tennessee has implemented a policy of rejecting forms to register to vote in elections for Federal office on which applicants indicate they have a prior felony conviction and requiring those applicants with a prior felony conviction to provide documentary proof of their eligibility to vote, in violation of multiple sections of the NVRA. (*See id.* ¶¶ 162-68). Count Five is brought under 42 U.S.C. 1983. In that Count, TN NAACP claims that Tennessee's policy of rejecting all voter registration forms on which the applicant affirmed they have a felony conviction violates eligible voters' fundamental right to vote in violation of the First and Fourteenth Amendments. (*See id.* ¶¶ 158-61).

In Counts Four through Six, TN NAACP seeks a preliminary and permanent injunction enjoining Hargett and Goins, in their official capacities, from rejecting valid voter registration applications from eligible voters and requiring Hargett and Goins, in their official capacities, to create registration forms and policies that comply with the NVRA and do not impose an undue burden on the right of eligible citizens to register to vote, including:

- i. specifying the eligibility requirements on all registration forms,
- ii. modifying the state voter registration form such that it can be used by all eligible citizens even if they have been convicted of a felony,
- iii. modifying the online voter registration portal such that it can be used by all eligible citizens even if they have been convicted of a felony, and

- iv. issuing statewide guidance prohibiting the requirement that people with convictions provide documentary proof of their eligibility and proscribing the rejection of valid voter registration applications from eligible voters because the applicant has a felony conviction.

(See First Amended Complaint, Doc. No. 102 at PageID # 658-59).

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY¹

Article 1, Section 5 of the Tennessee Constitution provides that “[t]he elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.” Tenn. Const. art. I, § 5. This provision is not self-executing, and disenfranchisement cannot be applied retroactively. *Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983). Thus, persons convicted of crimes are not disenfranchised unless prior to their conviction the legislature has by law “ascertained” that those crimes are “infamous” and “declared” that conviction of those crimes results in loss of the right to vote. *Crutchfield v. Collins*, 607 S.W.2d 478 (Tenn. Ct. App. 1980).²

Because of this constitutional structure, a felony conviction does not always result in the loss of voting rights in Tennessee. (Doc. No. 181 ¶ 1). A felony conviction before January 15, 1973 (a “pre-1973 conviction”) does not disqualify a person from voting unless the conviction is for one

¹ This Memorandum is limited to facts and procedural history concerning Counts Four through Six of the First Amended Complaint, Doc. No. 102.

² Such laws, which “designate a particular civil disability that occurs upon the conviction and remains in effect throughout the defendant's life unless restored by a specific statutory procedure,” are known as “specific disability statutes.” *Cole v. Campbell*, 968 S.W.2d 274, 276 (Tenn. 1998) (citing *Special Project, The Collateral Consequences of a Criminal Conviction*, 23 Vand. L.Rev. 929, 951 (1970)).

of 21 specific potentially infamous crimes listed in state law and the judgment of conviction included a statement rendering the crime “infamous.” (*Id.* ¶ 2; Defendants’ answer to First Amended Complaint, Doc. No. 199 ¶ 110). A felony conviction between January 15, 1973, and May 17, 1981, (the “grace period”) never disqualifies a Tennessean from voting. (Doc. No. 181 ¶ 3; *see also* Doc. No. 199 ¶¶ 107, 109).³ An otherwise qualified person with convictions only from this period did not lose the right to vote as a result of those convictions. (*Id.*).

³ Prior to 1972, Tennessee Code Annotated Section 40-2712 provided:

Upon conviction of the crimes of abusing a female child, arson and felonious burning, bigamy, burglary, felonious breaking and entering a dwelling house, felonious breaking into a business house, outhouse other than a dwelling house, bribery, buggery, counterfeiting, violating any of the laws to suppress the same, forgery, incest, larceny, horse-stealing, perjury, robbery, receiving stolen property, rape, sodomy, stealing bills of exchange or other valuable papers, subornation of perjury, and destroying a will, *it shall be part of the judgment of the court that the defendant be infamous, and be disqualified to exercise the elective franchise ...*

Crutchfield, 607 S.W.2d at 480 (emphasis added). In 1972, Section 40-2712 was amended to provide:

Upon conviction of the crimes of abusing a female child, arson and felonious burning, bigamy, burglary, felonious breaking and entering a dwelling house, felonious breaking into a business house, outhouse other than a dwelling house, bribery, buggery, counterfeiting, violating any of the laws to suppress the same, forgery, incest, larceny, horse-stealing, perjury, robbery, receiving stolen property, rape, sodomy, stealing bills of exchange or other valuable papers, subornation of perjury, and destroying a will, *it shall be part of the judgment of the court that the defendant be infamous...*

Id. at 480–81 (emphasis added). As explained by the Tennessee Court of Criminal Appeals:

Notice that the words “and be disqualified to exercise the elective franchise” are left out of the act as amended in 1972. This change does not change the crimes listed in any way. It simply does not require that persons convicted of the listed crimes lose the right to exercise the elective franchise. In 1981 the legislature again amended this code section and included the words “and be immediately disqualified from exercising the right of suffrage.”

Wilson v. State, No. 03C01-9604-CC-00142, 1997 WL 459728, at *3 (Tenn. Crim. App. Aug. 12, 1997).

“In 1981, the Tennessee legislature expanded the relevant statutory section to provide that *any* felony conviction would result in a declaration of infamy.” *May v. Carlton*, 245 S.W.3d 340, 345 (Tenn. 2008) (emphasis in original). Accordingly, felony convictions after May 18, 1981—whether by a Tennessee court, a court in another state, or a federal court—result in loss of the right to vote in Tennessee, until that right has been restored pursuant to state law. (Doc. No. 181 ¶ 4).

A. The National Voting Rights Act of 1993

The NVRA, Pub. L. No. 103–31, 107 Stat. 77 (codified as amended at 52 U.S.C. §§ 20501–20511), “requires States to provide simplified systems for registering to vote in *federal* elections, *i.e.*, elections for federal officials, such as the President, congressional Representatives, and United States Senators.” *Young v. Fordice*, 520 U.S. 273, 275 (1997) (emphasis in original). It was enacted under Article I, Section 4 of the Constitution, more commonly known as the Elections Clause, in response to congressional findings that discriminatory and unfair voter registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionality harm voter participation by various groups, including racial minorities. 52 U.S.C. § 20501(a)(3).

In crafting the NVRA, the 103rd Congress had four overriding purposes:

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.

Id. at § 20501(b). To achieve these purposes, the NVRA “requires each State to permit prospective voters to ‘register to vote in elections for Federal office’ by any of three methods: simultaneously with a driver's license application, in person, or by mail.” *Arizona v. Inter Tribal Council of Arizona, Inc.* (“*ITCA*”), 570 U.S. 1, 5 (2013); 52 U.S.C. § 20503(a). The NVRA further requires each State to “inform applicants under sections 20504, 20505, and 20506 of this title of voter eligibility requirements.” 52 U.S.C. § 20507(a)(5)(A). The NVRA also requires “[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office” to “be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” *Id.* § 20507(b)(1).

The NVRA requires states to “accept and use” a uniform Federal form (“the Federal Form”) for registering to vote in federal elections. *Id.* § 20505(a)(1). The contents of the Federal Form are prescribed by a federal agency, the Election Assistance Committee. *Id.*⁴ The Federal Form contains state-specific instructions, which must be approved by the Election Assistance Committee before being included on the Federal Form. *ITCA*, 570 U.S. at 6. The Federal Form does not require documentary evidence of eligibility to register to vote; rather, it requires only that an applicant aver, under penalty of perjury, that he is eligible to register to vote. And the NVRA precludes states “from requiring a Federal Form applicant to submit information beyond that required by the form itself.” *ITCA*, 570 U.S. at 20; 52 U.S.C. § 20505(a)(1).

The NVRA also permits each state to develop and use its own mail voter registration form to vote in federal elections (“State Form”) so long as the State Form meets the criteria stated in

⁴ “The Help America Vote Act of 2002 [“HAVA”] transferred this function from the Federal Election Commission to the EAC.” *ITCA*, 570 U.S. 1, 6 n.1 (2013); *see* 52 U.S.C. § 21131. Under HAVA, the EAC directs funding to states for improving the administration of federal elections and access to voters with disabilities, research grants for new technologies, and pilot programs for testing new equipment and technologies. 52 U.S.C.A. § 21001.

Section 20508(b). 52 U.S.C. § 20505(a)(2), 20508(b).⁵ The NVRA establishes a private cause of action for those aggrieved by a violation to seek declaratory or injunctive relief. 52 U.S.C. § 20510(b); *Harkless v. Brunner*, 545 F.3d 445, 450 (6th Cir. 2008) (“NVRA authorizes judicial intervention if a state fails to comply with its terms.”).

B. Arizona v. Inter Tribal Council of Arizona, Inc.

In 2013, the Supreme Court took up the question of whether an Arizona state law which required state officials to “reject” a Federal Form unaccompanied by documentary evidence of citizenship conflicted with the NVRA’s mandate that Arizona “accept and use” the Federal Form. *ITCA*, 570 U.S. at 9 (“If so, the state law, so far as the conflict extends, ceases to be operative.”) (internal quotations omitted). With Justice Scalia writing for the majority, the Court began its analysis with consideration of the Elections Clause, which “empowers Congress to pre-empt state regulations governing the ‘Times, Places and Manner’ of holding congressional elections.” *ITCA*, 570 at 8. The Court explained that these “comprehensive words” in the Elections Clause “‘embrace authority to provide a complete code for congressional elections,’ including, as relevant here..., regulations relating to ‘registration.’” *Id.* at 8-9 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)); *Moore v. Harper*, 600 U.S. 1, 10 (2023) (The Elections Clause guards against the possibility that a State would refuse to provide for the election of representatives in federal elections, by authorizing Congress to prescribe its own rules). It expressly rejected the argument that the presumption against preemption applies in Election Clause cases, holding that the plain

⁵ Throughout their briefing, the parties refer to Tennessee’s mail voter registration form to vote in elections for Federal office developed pursuant to Section 20505(a)(2) in a variety of ways, including as “voter registration forms,” “Tennessee’s voter registration form,” “state-issued mail-in voter registration form,” “the State’s registration form(s),” “voter registration application(s),” and “application(s).” As a general matter, any unspecified reference to forms or applications in this Memorandum means Tennessee’s mail voter registration form to vote in elections for Federal office developed pursuant to Section 20505(a)(2), *i.e.* the “State Form.” The Federal Form is exclusively referred to the Federal Form.

text of the NVRA “accurately communicates the scope of Congress’s preemptive intent.” *Id.* at 13-14. Thus, “the States’ role in regulating congressional elections—while weighty and worthy of respect—has always existed subject to the express qualification that it ‘terminates according to federal law.’” *Id.* at 15 (quoting *Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 347 (2001)).

The Supreme Court was not persuaded by Arizona’s argument that Section 20505(a)(1) “require[d] merely that a State receive the Federal Form willingly and use that form as one element in its (perhaps lengthy) transaction with a prospective voter;” rejecting Arizona’s reading of the statute as “out of place in the context of an official mandate to accept and use something for a given purpose” because “[t]he implication of such a mandate is that its object is to be accepted *as sufficient* for the requirement it is meant to satisfy.” *ITCA*, 570 at 9. (emphasis in original). The Supreme Court determined that “a state-imposed requirement of evidence of citizenship not required by the Federal Form is ‘inconsistent with’ the NVRA’s mandate that States ‘accept and use’ the Federal Form.” *Id.* at 15.

Nor was the Supreme Court persuaded by Arizona’s contention “that its construction of the phrase “accept and use” was necessary to avoid a conflict between the NVRA and Arizona’s constitutional authority to establish qualifications (such as citizenship) for voting.” *Id.* at 15-16.

The Court explained:

...Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications. If, but for Arizona’s interpretation of the “accept and use” provision, the State would be precluded from obtaining information necessary for enforcement, we would have to determine whether Arizona’s interpretation, though plainly not the best reading, is at least a possible one. Happily, we are spared that necessity, since the statute provides

another means by which Arizona may obtain information needed for enforcement.

Section [20508](b)(1) of the Act provides that the Federal Form “may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” ... That is to say, § [20508] (b)(1) acts as both a ceiling and a floor with respect to the contents of the Federal Form....

Since...a State may request that the EAC alter the Federal Form to include information the State deems necessary to determine eligibility and may challenge the EAC's rejection of that request in a suit under the Administrative Procedure Act, no constitutional doubt is raised by giving the “accept and use” provision of the NVRA its fairest reading.

ITCA, 570 U.S. at 17-20. Accordingly, the Supreme Court held that Section 20505(a)(1)’s mandate that States “accept and use” the Federal Form to register voters for federal elections pre-empted Arizona law's requirement that voters present proof of citizenship when they registered to vote, as applied to federal form applicants. *See id.*

C. Tennessee Election Officials Defendants

Defendant Trey Hargett is the Secretary of State of Tennessee (“the Secretary”), and Defendant Mark Goins, under the supervision of Secretary Hargett, is the Coordinator of Elections for Tennessee (“the Coordinator”) (collectively “Tennessee Election Officials”). (Doc. No. 181 ¶ 16). Coordinator Goins is the head of the Tennessee Secretary of State’s Election Division (“Election Division”), the “chief election officer of the state,” and is charged with obtaining and maintaining uniformity in the application, operation, and interpretation of the election code. (Doc. No. 181 ¶ 16). Secretary Hargett first appointed Mark Goins as Coordinator of Elections for Tennessee in 2009. (Doc. No. 180-1 ¶ 1). As the Coordinator of Elections, Coordinator Goins is responsible for preparing instructions for voter registration and interpreting the election laws.

(Doc. No. 181 ¶ 17). Secretary Hargett and Coordinator Goins are responsible for the State of Tennessee's compliance with the National Voting Rights Act. (*Id.*).

D. Tennessee's State Voter Registration Form for Elections for Federal Office

Tennessee has made and tested changes to its State Form resulting in numerous versions of the form having been used over the years. (Doc. No. 181 ¶ 18). There are two specific versions of the State Form at issue in Count Four. The first version was used in the November 2020 general election and provides the following instruction regarding eligibility to vote for individuals with felony convictions: "To register to vote: ... you must not have been convicted of a felony, or if you have, your voting rights must have been restored." (*Id.* ¶ 30; Doc. No. 156-12; *see also* Coordinator Goins April 2021 letter, Doc. No. 156-36 at PageID # ("several employees of [Election Division] worked to revise and replace the Tennessee mail-in voter registration application, Form SS-3010, prior to the November 2020 election").⁶ The second version is the latest iteration of the State Form, which was "put into use" sometime between December 2020 and March 2021, provides the following instruction about eligibility based on 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.

(Doc. No. 181 ¶¶ 19, 27; Doc. No. 156-10).

⁶ Coordinator Goins' office staff and the Tennessee Secretary of State's Election Division appear to be one and the same. *See e.g., Green Party of Tennessee v. Hargett*, 953 F. Supp. 2d 816, 825 (M.D. Tenn. 2013), vacated and remanded, 767 F.3d 533 (6th Cir. 2014) ("[t]he State Coordinator's office has eight (8) full-time employees, whose duties include ... implement[ing] various federal and state election regulations, including [HAVA] and the [NVRA].").

The latest version of the State Form does not state that grace period felony convictions are non-disqualifying or that convictions before January 15, 1973 are only disqualifying in certain circumstances. (Doc. No. 181 ¶¶ 20-21; Doc. No. 156-10). The latest version of the State Form does not list the pre-January 15, 1973 infamous crimes that are disqualifying (or those that are not), and does not include a way for an applicant to mark under penalty of perjury that they were not convicted of an infamous crime or not declared infamous in their judgment. (Doc. No. 181 ¶ 21). The latest version of the State Form directs applicants with any prior felony conviction to visit sos.tn.gov/restoration. (*Id.* ¶ 22). Presently, that link routes to the Secretary of State's website to information on loss of voting rights. (*Id.*).⁷ The latest version of the State Form instructs applicants to fill out the required information in Box 4 of the form and to provide "any responsive documents you have," without defining what "responsive documents" are and without informing applicants that their applications will be denied if they disclose a felony conviction and do not provide documentation. (*Id.* ¶ 23).

Box 4 in the latest version of the State Form asks applicants to check a box "yes" or "no" in response to the question: "Have you ever been convicted of a felony? (If expunged, answer 'no')." (*Id.* ¶ 24). It then directs applicants to provide certain information "if known", including "Crime(s)" and "Date (mo./yr.)". (*Id.*). Box 4 also asks for "Place (city/state)," presumably of conviction, and "Have you received a pardon or had your voting rights restored?" and has boxes to indicate "yes" or "no." (*Id.* ¶¶ 25, 26). It instructs "If yes, provide copy of document," but does not state what "copy of document" means or that an application may be rejected if such documentation is not provided. (*Id.*).

⁷ In early July 2023, that link resulted in a Secretary of State website page with an error message reading "Page Not Found." (*Id.*).

When the Election Division implemented the latest iteration of the State Form, Tennessee Election Officials did not issue any specific new processing instructions to county election commissions, beyond the instructions on the form itself and answering “calls and e-mails when [the counties] have questions” about processing the new form. (*Id.* ¶ 28). The counties continued to be authorized to accept and process prior versions of the registration form even after the latest iteration of the State Form was released. (*Id.* ¶ 29). Prior versions of the State Form ask applicants a single question concerning prior felony convictions, “Have you ever been convicted of a crime which is a felony in this state, by a court in this state, a court in another state, or a federal court?” and provide a checkbox to mark “Yes” and a checkbox to mark “No.” (*Id.* ¶ 31). Some counties continue to use prior versions of the State Form and provided the older versions of the form on their county websites well into July 2023. (*Id.* ¶ 32).

E. Federal Voter Registration Form and Tennessee-specific instructions

United States citizens living in Tennessee may register to vote using the Federal Form, which does not include any space for an applicant to list any information regarding a prior felony conviction. (Doc. No. 181 ¶¶ 33-34). However, the Tennessee-specific instructions on the Federal Form indicate that to be eligible to register to vote in Tennessee, the applicant must “not have been convicted of a felony” and further state that if convicted, the applicant’s “eligibility to register and vote depends upon the crime [] convicted of and the date of [] conviction,” directing applicants to call 877-850-4959 or visit <https://sos.tn.gov/gov/restoration> “[f]or more information about this process. (*Id.* ¶ 35; Doc. No. 156-11). If a voter submits a Federal Form, the county processing the form would not know whether the individual has a conviction, nor the date or type of conviction, from the face of the form itself. (Doc. No. 181 ¶ 36).

F. Tennessee's Registration Application Blanket Rejection and Documentation Policy

From at least 2014 until July 21, 2023, election officials in Tennessee have rejected voter registration forms submitted with the felony conviction question answered in the affirmative absent additional documentation, pursuant to Election Division policy, training, and guidance. (Doc. No. 181 ¶¶ 37-39). According to that policy, in order for a State Form with the felony conviction question answered in the affirmative to be accepted, the elections office must have additional documentation of the applicant's eligibility. (*Id.* ¶ 40).

Although the Federal Form has no space for voters to attest to having or not having a felony conviction, election officials in Tennessee require documentation from applicants when they learn about an applicant's felony conviction(s) from a source beyond the registration form itself, including verbally from an applicant, or by way of Tennessee statute requiring clerks of court in every county to send notices of felony convictions to election officials, or when counties share this information with one another. (*Id.* ¶ 41). Election officials also learn about a Federal Form applicants' felony conviction when checking a county's "felony files." (*Id.* ¶ 42).

Applications Indicating a Pre-January 15, 1973 Conviction

Under the State's blanket rejection policy, when a county election official received a voter registration application indicating a pre-January 15, 1973 non-infamous conviction, they were directed to reject the application, file documents with the state election office showing the date of conviction and crime committed and wait for the state to send back an eligibility letter, despite the applicant never having lost their right to vote. (*Id.* ¶ 43). Sufficient documentation required a copy of the judgment or convicting document that showed what the person was convicted of and if they were judged infamous. (*Id.* ¶ 44).

Applications Indicating a Grace Period Conviction

Under the State's blanket rejection policy, when a county official received a voter registration application indicating a grace period conviction, they were directed to reject the application unless they had documentation confirming the individual's conviction was during the grace period, such as a copy of their conviction papers showing the date of the conviction and the type of crime. (*Id.* ¶ 45). While some election officials may have at times tried to work with the voter to find and obtain the required documentation, there is no official policy requiring election officials to do so, and the burden was ultimately on the applicant. (*Id.* ¶ 46).

The Election Division has acknowledged that individuals with grace-period convictions have faced difficulties obtaining the necessary documentation. (*Id.* ¶ 47). Obtaining the necessary documentation for grace-period or non-infamous pre-1973 convictions can be difficult because many times the conviction will be so old that the documentation will be in archives. (*Id.* ¶ 48). Sometimes, the required paperwork for grace-period or non-infamous pre-1973 convictions does not exist or cannot be found. (*Id.* ¶ 50). Obtaining the necessary documentation for grace-period or non-infamous pre-1973 convictions can also cost money. (*Id.* ¶ 49). For example, the Shelby County Criminal Court Clerk's office charged a prospective voter \$10 for a copy of his grace-period judgment that he was required to submit in order to register to vote, even though he never lost the right to vote. (*Id.*).

Applications Indicating a Post-May 17, 1981 Conviction

Under Tennessee's blanket rejection policy, when a county official received a voter registration application indicating that the voter has a disenfranchising felony conviction but had their voting rights restored, they were directed to reject the application unless the applicant also provided documentation proving their restoration of voting rights. (*Id.* ¶ 51). The State Form

instructs voters who mark “yes” to the question asking if they have “received a pardon or had [their] voting rights restored” to “provide copy of document.” (*Id.* ¶ 52). The form provides no information about what kind of document(s) must be provided. (*Id.*).

When processing voter registration applications indicating restoration of voting rights, county election offices are not required to confirm whether the Election Division already has a record of the applicant’s restoration of voting rights. (*Id.* ¶ 53). However, county election offices can ask the Election Division to search for confirmation of an applicant’s restoration of voting rights, and the Election Division can look through its “restored and denied databases” to see “if there [is] a restoration there.” (*Id.*).

Rejected Applications

Upon rejecting a State or Federal Form due to a felony conviction, county election officials are directed to send the applicant a notice of the rejection accompanied by a Voter Registration Appeal Request Form, a Certificate of Restoration form, and a blank voter registration form. (*Id.* ¶ 69). The Voter Registration Appeal Request Form allows an applicant to affirm that they “have not been convicted of a felony or if convicted [they] have had [their] rights properly restored” and include a place for the applicant to check whether they “have not been convicted of a felony” or they “have been convicted of a felony but have had [their] rights properly restored or [their] record expunged.” (*Id.* ¶ 70). As of December 2020, persons with a grace period conviction or a pre-January 15, 1973 conviction that did not render them infamous could not use the Voter Registration Appeal Request Form to appeal their rejection. (*Id.* ¶¶ 71-72; Doc. No. 156-28; Doc. No. 157-8).

Applications from Voters with Expungements and Judicial Diversions

The State Form instructs an individual with only expunged felony convictions to mark “no” in response to the felony question. (Doc. No. 181 ¶ 54). If a person with an expunged felony

conviction marks “yes” to the felony question, the Election Division policy is to reject the application and require the applicant to present documentation proving their felony was expunged. (*Id.* ¶ 55). A conviction subject to judicial diversion “acts the same as expungement” for the purposes of voting rights in that it does not result in the loss of the right to vote. (*Id.* ¶ 56). Voters with only convictions subject to judicial diversion can mark “no” to the felony question on the State Form, but the State Form does not provide this instruction. (*Id.* ¶¶ 56-57). If an applicant with a conviction subject to judicial diversion marks “yes” to the felony question, Election Division policy is to reject the application and require documentation. (*Id.* ¶ 58).

*Tennessee’s Practices and Procedures
for Verifying Non-Disenfranchising Felonies and Voting Rights Restoration*

Since at least 2014, the Election Division’s policy has been for county election commissions to “check every application against their felon files” when the person marked they had a felony conviction, and some counties check every application, regardless of whether the applicant indicates they have a felony conviction. (*Id.* ¶ 59). “Felon files” include information from various sources – the person, the courts, emails from U.S. Attorneys, the Tennessee Department of Corrections (TDOC), the Election Division, the state felon list, other county election officials, and their own clerks of court and jury coordinators – that the counties receive for people notifying them of a felony conviction or a previous voter registration application that the own person marked “Yes” under penalty of perjury to the felony question. (*Id.* ¶ 60).

The Election Division also disseminates “felon reports” to counties every 1-3 months that include the data on registrants’ state felony convictions from TDOC, federal convictions from the U.S. attorneys, and out-of-state convictions from the Interstate Compact. (*Id.* ¶ 61). For each applicant, felon reports would include all convictions for a person going back in time and include

the date of judgment, conviction or sentence. (*Id.* ¶ 62). The information in felon reports can be sufficient to verify whether an applicant has only grace-period convictions. (*Id.* ¶ 63).⁸

County election officials, as part of their regular voter-roll maintenance duties, routinely use information in felon files and felon reports to purge voters with felony convictions from the voter rolls. (*Id.* ¶ 64). In Hamilton County, the list maintenance program automatically flags new applicants who may match a record in databases listing individuals with felony convictions and individuals previously purged due to a felony conviction. (*Id.* ¶ 65). Hamilton County election officials must manually review these potential matches to determine whether the new registrant does indeed have a felony conviction. (*Id.*).

Upon receipt of a facially valid application indicating a felony conviction, county election officials are capable of reaching out to other county election officials or the Election Division to confirm the applicant's eligibility, although Election Division policy does not currently instruct or require them to do so. (*Id.* ¶ 66). County election officials are capable of searching or requesting public records or contacting courts and other relevant agencies to verify eligibility of voters with grace-period or non-infamous pre-1973 convictions, though there is "no definitive set-on practice" of doing so under Election Division policy. (*Id.* ¶ 67). The Election Division itself is also capable of verifying grace-period convictions without requiring documentation from the applicant by searching or requesting public records or contacting courts and other relevant agencies. (*Id.* ¶ 68).

⁸ Secretary Hargett and Coordinator Goins dispute this fact based on testimony noting that the felon reports are created from data from the TDOC. (*See* Doc. No. 181 at PageID# 2920). As it is already undisputed that the felon reports include data on registrants' state felony convictions from TDOC, (Doc. No. 181 ¶ 61), this does not create a genuine dispute of fact. Secretary Hargett and Coordinator Goins also appear to dispute this fact based on their contention that "because a county 'could' have information from other sources does not mean that the information will always be sufficient for verification." (Doc. No. 181 at PageID# 2920). As the statement of fact at issue does not suggest that the information will always be sufficient for verification, Secretary Hargett and Coordinator Goins have failed to create a genuine dispute of fact as to whether the information in the felon reports can be sufficient to verify whether an applicant has only grace-period convictions.

G. Plaintiff TN NAACP

Plaintiff TN NAACP is a nonpartisan, multi-racial, non-profit membership organization headquartered in Jackson, Tennessee. (Doc. No. 181 ¶ 5). TN NAACP was founded in 1946 to serve as the Tennessee arm of the NAACP. (*Id.* ¶ 6). Its mission is to eliminate race-based discrimination through securing political, educational, social, and economic equality rights and ensuring the health and well-being of all persons. (*Id.*). TN NAACP has three regional divisions—Eastern, Middle, and Western Tennessee—as well as 33 local branch units and 22 college chapters and youth councils. (*Id.* ¶ 7). TN NAACP and most of its local branch units are primarily volunteer-run, and all officers are volunteers. (*Id.*).

TN NAACP has more than 10,000 members across the state, more than 90% of whom are Black or brown. (*Id.* ¶ 8). Black people make up 16% of the state's total voting-age population, but account for more than 21% of individuals who are disenfranchised by a felony conviction in Tennessee. (*Id.*). Promoting voter registration and turnout are the primary activities through which the TN NAACP furthers its mission. (*Id.* ¶ 9). The organization expends resources helping individuals, including those with past felony convictions, register to vote. (*Id.*).⁹ Its staff and volunteers conduct public education workshops to help its constituents and other members of the community navigate the voter registration process. (*Id.*).

Volunteer time is the primary resource the TN NAACP uses in support of its mission. (*Id.* ¶ 10). The state conference and local branches also have limited monetary resources to put toward mission-furthering activities. (*Id.*). The TN NAACP prefers to use the online voter registration form when assisting individuals with voter registration at events or otherwise because it is a more

⁹ Secretary Hargett and Coordinator Goins do not dispute, for summary judgment purposes, that TN NAACP expends resources helping individuals register to vote. (Doc. No. 181 ¶ 9, PageID# 2897; Doc. No. 183 ¶¶ 5-6).

efficient means of registration, but individuals who have been convicted of felonies cannot use the online form, regardless of their eligibility to vote. (*Id.* ¶ 11).

The TN NAACP's typical assistance is rendered ineffective when the online registration portal excludes individuals with felony convictions from submitting a registration application and when election officials reject individuals with felony convictions who submit valid voter registration forms. (*Id.* ¶¶ 12, 13).¹⁰ The TN NAACP is aware, for example, of individuals who were convicted of felonies during the "grace period" between January 15, 1973, and May 17, 1981, but are nonetheless unable to register using the state voter registration form or the online registration form, despite never having lost the right to vote. (*Id.* ¶ 12).

When an eligible voter is incorrectly denied the ability to register to vote, the TN NAACP must divert resources from the other activities related to its mission by following up with the eligible voter and communicating with various governmental authorities (including, but not limited to, clerks of the court and probation officers) to rectify the situation. (*Id.* ¶ 13). In conjunction with these efforts, the TN NAACP has accompanied persons and taxied them to and from various governmental offices to troubleshoot the issue and correct the erroneous rejection. (*Id.*). This correction process may involve seeking old court records that are not easily accessible to the TN NAACP. These efforts are sometimes insufficient to remedy the erroneous rejection. (*Id.*). The TN NAACP would like to be able to dedicate greater resources to its voter turnout activities, rather

¹⁰ Secretary Hargett and Coordinator Goins provided a non-responsive answer to these statement of undisputed material facts. (Doc. No. 181 at PageID# 2899). Specifically, Secretary Hargett and Coordinator Goins dispute whether any citizen was erroneously denied the right to vote in response to TN NAACP's statement concerning eligible voters being incorrectly denied the *ability to register to vote*. (*See id.*). Accordingly, the Court considers these facts undisputed for purposes of summary judgment. Fed. R. Civ. P. 56(e)(2). Although, the Tennessee Election Officials attempt to dispute the fact that TN NAACP's assistance to eligible persons registering to vote is rendered ineffective when the State rejects those persons' registration forms, they fail to cite to any evidence in support of their dispute, as required under the applicable rules.

than just voter registration. (*Id.* ¶ 14). This would include providing stipends to volunteers to canvass or phonebank to encourage members and constituents to turn out on Election Day. The TN NAACP also provides transportation to the polls. (*Id.*).

When a person TN NAACP helps register to vote is rejected despite being eligible to register, the extra time and money spent assisting voters that the state has erroneously rejected depletes resources that could be spent on other mission-furthering activities. (*Id.* ¶ 15).¹¹ TN NAACP's political power and ability to carry out its mission are directly diminished by the inability of its members and constituents to register to vote. (*Id.*).

H. First Notice to Tennessee Election Officials of Noncompliance with NVRA

On August 22, 2018, TN NAACP sent Secretary Hargett and Coordinator Goins a letter ("First Notice Letter"), informing them that Tennessee's State Form and state specific instructions on the Federal Form, failed to accurately advise people with felony convictions of the eligibility requirements for voting in Tennessee, in violation of Sections 20507(a)(5) and 20508(b)(2)(A). (Doc. No. 181 ¶ 78; Doc. No. 156-15). TN NAACP further notified the Tennessee Election Officials that the State Form "plainly misinforms voters of the eligibility requirements by stating

¹¹ Secretary Hargett and Coordinator Goins provided a non-responsive answer to paragraph fifteen of TN NAACP's statement of undisputed material facts, including their citation to over 75 pages across four sets of documents without pin cites, which is not particularly helpful to the Court. (Doc. No. 181 at PageID# 2900). Even viewing the facts in the light most favorable to the Tennessee Election Officials and drawing all reasonable inferences in their favor, none of the cited documents appear to contradict the fact specifically averred by TN NAACP in this statement of fact. Accordingly, the Court considers this fact undisputed for purposes of summary judgment. Fed. R. Civ. P. 56(e)(2); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (Rule 56(e) provides that, when a properly supported motion for summary judgment is made, the adverse party "must set forth specific facts showing that there is a genuine issue for trial."); *see e.g., Lujan*, 497 U.S. at 888 ("In ruling upon a Rule 56 motion, a District Court must resolve any factual issues of controversy in favor of the non-moving party only in the sense that, where the facts specifically averred by that party contradict facts specifically averred by the movant, the motion must be denied.") (internal quotations omitted).

that *no* individual with a felony conviction may register to vote unless she has undergone the restoration of rights process.” (Doc. No. 156-15 at PageID # 2517).

That year, 2018, Coordinator Goins, his staff, and legal counsel, “began discussions” with TN NAACP’s counsel about the State Form. (Doc. No. 180-1 ¶ 7 at PageID # 2891). The Election Division placed those discussions on hold during the 2019 legislative session, summer, and early fall. (Doc. No. 193 ¶¶ 7). In December 2019, Coordinator Goins agreed to make unspecified changes to the State Form and requested that the Election Assistance Commission make unspecified changes to the Tennessee instructions the Federal Form. (Doc. No. 180-1 ¶ 7 at PageID # 2891). In March 2020, Coordinator Goins discontinued discussions about the State Form. (Doc. No. 180-1 ¶¶ 8-9).

I. TN NAACP files present suit

On December 3, 2020, TN NAACP filed its original Complaint. (Doc. No. 181 ¶ 79). On December 30, 2020, Secretary Hargett, Coordinator Goins, and their co-defendants, moved to dismiss this case in its entirety for lack of standing and failure to state a claim. (Doc. No. 24).

J. Second Notice to Tennessee Election Officials of Noncompliance with NVRA

On January 27, 2021, TN NAACP sent a second notice letter to Secretary Hargett and Coordinator Goins explaining that the state’s registration policies and procedures for applicants with prior felony convictions remained non-compliant with the NVRA, specifically Sections 20507(a)(1), (5), (b)(1), 20508(b)(2)(A),(3), 20510(b)(2). (Doc. No. 181 ¶ 81; Doc. No. 156-16). It further notified Secretary Hargett and Coordinator Goins that placing the burden of proving eligibility onto the eligible prospective voter with a prior felony conviction—and requiring them to fight erroneous rejections with additional paperwork not required of other eligible applicants without a prior felony conviction—created a non-uniform registration process in violation of the

NVRA. (*Id.*). In addition to placing an unlawful burden on potential voters, TN NAACP explained to Coordinator Goins that the additional paperwork requirement is unnecessary in light of the Help America Vote Act's requirement that every state maintain databases and information flow sufficient to allow registrars to verify eligibility without it. (Doc. No. 156-16 at PageID # 2554).

Three months later, on April 27, 2021, Coordinator Goins responded by letter outlining the Election Division's planned revisions to the State Form and "its policy and guidance to the counties for processing voter registration applications from individuals with felony convictions." (Doc. No. 156-36 at PageID # 2699).

K. Third Notice to Tennessee Election Officials of Noncompliance with NVRA

On May 24, 2021, TN NAACP's counsel sent a final notice letter ("Third Notice Letter") to Coordinator Goins reiterating that the continued requirement of additional paperwork for certain eligible applicants was improper under the NVRA. (*Id.* ¶ 82; Doc. No. 156-18). Additionally, the Third Notice Letter put Coordinator Goins on notice that his proposed policies in his April 27, 2021 letter regarding registrants with pre-1973 convictions failed to comply with Tennessee law and the NVRA. (*Id.*).

L. Litigation Continues

On March 30, 2022, this Court granted in part and denied in part Defendants' Motion to Dismiss alleging, among other things, deficient notice under the NVRA. *See Tennessee Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Lee*, No. 3:20-CV-01039, 2022 WL 982667 (M.D. Tenn. Mar. 30, 2022). The Court dismissed Count 5 of the original complaint without prejudice and denied Defendants' Motion to Dismiss on all other counts. (Doc. No. 83 at

15-16, 18). On October 3, 2022, TN NAACP filed its First Amended Complaint. (Doc. No. 181 ¶ 83). On May 28, 2023, fact discovery closed. (Doc. No. 128).

On July 21, 2023, less than two months *after* the conclusion of fact discovery in this matter and less than two weeks *before* the extended deadline for filing dispositive motions, Coordinator Goins “established new policies and procedures for [county election] officials with respect to the registration of individuals convicted of a felony prior to January 15, 1973, and ... convicted of a felony between January 15, 1973, and May 17, 1981.” (Supplemental Declaration of Coordinator Goins, Doc. No. 180-1 ¶¶ 3, 4; Doc. No. 181 ¶¶ 73, 74; Doc. No. 151-2 (stating the new policies were “to avoid rejecting” voter registration applications from individuals “who did not lose their voting rights[.]”).

On September 19, 2023, Coordinator Goins declared under penalty of perjury that he established these new policies for processing voter registration forms “in response to ongoing discussions and deliberation with [his] staff and with legal counsel” and “pursuant to [his] statutory duties” set forth in Tennessee Code Annotated Section 2-11-202. (Supplemental Declaration of Coordinator Goins, Doc. No. 180-1 ¶¶ 4, 2). Coordinator Goins’ new policy instructs county administrators of elections to process voter registration forms from individuals with grace period convictions and from individuals who indicate that their felony convictions were prior to January 15, 1973, if the applicant indicates they were convicted of a felony that is not on the list of potentially infamous crimes. (Doc. No. 181 ¶¶ 77, 75; Doc. No. 151-2 at PageID # 1095-96). For State Forms on which an individual indicates they were convicted of one of the above felonies and declared infamous, Coordinator Goins’ new policy instructs county administrators of elections to

reject those voter registration forms unless the applicant has had their rights restored. (Doc. No. 181 ¶ 76; Doc. No. 151-2 at PageID # 1096).¹²

On August 2, 2023, the Tennessee Election Officials and TN NAACP filed cross motions for summary judgment as to Counts Four and Six. Secretary Hargett and Coordinator Goins also seek summary judgment as to Count Five.

III. STANDARD OF REVIEW

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The party bringing the summary judgment motion has the initial burden of informing the Court of the basis for its motion and identifying portions of the record that demonstrate the absence of a genuine dispute over material facts. *Rodgers v. Banks*, 344 F.3d 587, 595 (6th Cir. 2003). The moving party may satisfy this burden by presenting affirmative evidence that negates an element of the non-moving party's claim or by demonstrating an absence of evidence to support the nonmoving party's case. *Id.*

In evaluating a motion for summary judgment, the court views the facts in the light most favorable for the nonmoving party, and draws all reasonable inferences in favor of the nonmoving party. *Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 242 (6th Cir. 2015); *Wexler v. White's Fine Furniture, Inc.*, 317 F.3d 564, 570 (6th Cir. 2003). The Court does not weigh the evidence, judge the credibility of witnesses, or determine the truth of the matter. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Rather, the Court determines whether sufficient evidence has been presented to make the issue of material fact a proper jury question. *Id.* The mere scintilla of

¹² Coordinator Goins' new policy does not address how an individual convicted of one of the potentially infamous crimes would indicate on their registration whether they were declared infamous. (Doc. No. 181 ¶ 76; Doc. No. 151-2).

evidence in support of the nonmoving party's position is insufficient to survive summary judgment; instead, there must be evidence of which the jury could reasonably find for the nonmoving party. *Rodgers v. Banks*, 344 F.3d 587, 595 (6th Cir. 2003). The standards for summary judgment do not change when, as here, the parties file cross-motions for summary judgment. *See Reform Am. v. City of Detroit, Michigan*, 37 F.4th 1138, 1147 (6th Cir. 2022).

IV. LAW AND ANALYSIS

Before turning to the merits, the Court must “determine as a threshold matter that [it] ha[s] jurisdiction.” *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178 (1988).

A. Subject Matter Jurisdiction

Federal courts only have jurisdiction to consider live cases and controversies. “Although the case-or-controversy requirement of Article III, § 2 of the Constitution ‘underpins both our standing and our mootness jurisprudence,’ *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000), standing and mootness inquiries diverge in several important respects, one of which is timing.” *Sullivan v. Benningfield*, 920 F.3d 401, 407 (6th Cir. 2019).¹³ Whether a plaintiff has standing to sue is determined as of the time the complaint is filed. *See Barber v. Charter Twp. of Springfield, Michigan*, 31 F.4th 382, 390 (6th Cir. 2022) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (“When assessing standing, courts look only to ‘the facts existing when the complaint is filed.’”)). “If a plaintiff overcomes the standing hurdle at the time of filing, the doctrine of mootness then ‘requires that there be a live case or controversy at the time that a federal court decides the case.’” *Sullivan*, 920 F.3d at 407

¹³ Standing and mootness also diverge with respect to who shoulders the burden; the burden to establish jurisdiction rests on party invoking jurisdiction, while burden to defeat jurisdiction with mootness objection rests on party asserting mootness. *See Kentucky v. Yellen*, 54 F.4th 325, 340 (6th Cir. 2022).

(quoting *Burke v. Barnes*, 479 U.S. 361, 363 (1987)); see, e.g., *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 719 (2022) (“It is the doctrine of mootness, not standing, that addresses whether ‘an intervening circumstance [has] deprive[d] the plaintiff of a personal stake in the outcome of the lawsuit.’”) (quoting *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013)); *Fox v. Saginaw Cnty., Michigan*, 67 F.4th 284, 294–95 (6th Cir. 2023) (“... if a plaintiff possesses standing from the start, later factual changes cannot deprive the plaintiff of standing. Those changes instead will create “mootness” issues[.]”) (internal citations omitted).¹⁴ The Court addresses the standing and mootness doctrines in turn.

1. Article III Standing

The Court begins with standing, which “is a threshold issue for bringing a claim in federal court and must be present at the time the complaint is filed.” *Inner City Contracting, LLC v. Charter Twp. of Northville, Michigan*, 87 F.4th 743, 750 (6th Cir. 2023). To have Article III standing, a plaintiff must have suffered “(1) an injury in fact (2) that's traceable to the defendant's conduct and (3) that the courts can redress.” *Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992)). “To obtain declaratory or injunctive relief, a [plaintiff] must show a present ongoing harm or imminent future harm.” *Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 981 (6th Cir. 2020). As the party invoking federal jurisdiction, TN NAACP bears the burden of demonstrating that it has standing. See *Lujan*, 504 U.S. at 561. And it “must demonstrate standing separately for each form of relief sought.” *Friends of the Earth*, 528 U.S. at 185; *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). “While the proof required to establish standing increases as the suit proceeds, the standing

¹⁴ The foregoing authority dispenses with Secretary Hargett and Coordinator Goins’ argument that the policy changes in July 2023 deprive TN NAACP of standing. (Doc. No. 190 at PageID # 3195-97).

inquiry remains focused on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed.” *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 734 (2008) (internal citations omitted). “This means that, ‘in response to a summary judgment motion,’ a plaintiff cannot rely on ‘mere allegations’ with respect to each standing element, ‘but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.’” *McKay v. Federspiel*, 823 F.3d 862, 867 (6th Cir. 2016) (quoting *Lujan*, 504 U.S. at 561).

TN NAACP readily satisfies the second and third prong of the standing inquiry. “As to traceability, a defendant's actions must have a ‘causal connection’ to the plaintiff's injury.” *Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021) (quoting *Lujan*, 504 U.S. at 560). Here, it is undisputed that Secretary Hargett and Coordinator Goins are responsible for coordinating implementation of the NVRA and for the Election Division’s policies and procedures for processing voter registration applications. (Doc. No. 181 ¶¶ 16-17). This shows the requisite causal link. “As to redressability, it must be ‘likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.’” *Gerber*, 14 F.4th at 505 (quoting *Lujan*, 504 U.S. at 561). Here, TN NAACP’s injury will redressed if the Court grants TN NAACP’s requested injunctive relief. Indeed, the NVRA establishes a private cause of action and authorizes judicial intervention for the purpose of providing redress for those aggrieved by a violation of the Act. 52 U.S.C. § 20510(b).

TN NAACP also satisfies its burden as to the first prong of the standing inquiry: injury in fact. In the present case, TN NAACP claims organizational injuries to sue on its own behalf. Perceptible impairment to “the organization’s activities” or a “drain on the organization’s resources” qualify as concrete and demonstrable injuries for Article III standing purposes. *See*

Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). TN NAACP’s mission is “advocate for the rights of individuals who have been discriminated against.” (Doc. No. 151-4 at PageID #1324, 1334; Doc. No. 156-2 ¶¶ 3-6).¹⁵ Its focus is voting rights, and its primary activity in furtherance of that goal is helping individuals register and turnout to vote. (Doc. No. 156-2 ¶¶ 7-8; Doc. No. 151-4 at PageID #1324-25, 1327-28). As part of its mission-furthering registration work, the TN NAACP provides voter registration assistance to individuals with felony convictions, all of whom must apply to register to vote using the challenged forms and are subject to the challenged policies. (Doc. No. 156-2 ¶¶ 8, 11; Doc. No. 181 ¶¶ 37-42).¹⁶ In a declaration, the TN NAACP states that the challenged forms and policies make it more time-consuming and costly for TN NAACP’s volunteers to provide registration assistance to individuals with felony convictions, which causes the organization’s scarce volunteer time and money to be diverted away from its other mission furthering activities. (Doc. No. 156-2 ¶¶ 8-10, 13-18).

This drain on its resources is sufficient to prove injury in fact to the organization itself at summary judgment. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *see, e.g., Online Merchants Guild v. Cameron*, 995 F.3d 540, 548 (6th Cir. 2021) (affirming “that within-mission organizational expenditures are enough to establish direct organizational standing.”). Secretary Hargett and Coordinator Goins’ argument that TN NAACP cannot establish standing

¹⁵ Secretary Hargett and Coordinator Goins argue Sweet-Love’s declaration is deficient under Federal Rule of Civil Procedure 56(c)(4) because she does not explain how she has personal knowledge of the information she provides concerning her statement that “the TN NAACP has accompanied persons and taxied them to and from government offices to troubleshoot the issue and correct the rejection.” (Doc. No. 190 at PageID # 3197 (quoting Sweet-Love Decl, Doc. No. 156-2 ¶ 14)). This argument fails because, as President of TN NAACP, Sweet-Love is charged with knowledge of its activities. *See Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp.*, 805 F. Supp. 2d 396, 406 (S.D. Ohio 2011) (citing *AGI Realty Serv. Grp., Inc. v. Red Robin Intern., Inc.*, No. 94-3911, 81 F.3d 160, 1996 WL 143465, at *4 (6th Cir. Mar. 28, 1996) (“Corporate officers are considered to have personal knowledge of the acts of their corporations and an affidavit setting forth those facts is sufficient for summary judgment.”)); *see also Fambrough v. Wal-Mart*, 611 Fed. Appx. 322, 330 (6th Cir. 2015) (citing *AGI Realty Serv.*, 1996 WL 143465, at *4).

¹⁶ The Court has already overruled the Tennessee Election Officials’ objections to these facts. *See supra*.

because it cannot show immediate threat of harm fails to recognize that TN NAACP presents evidence of *ongoing* harm. Because TN NAACP has shown a present ongoing harm, it does not need to also show imminent future harm to obtain declaratory or injunctive relief. *See Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 981 (6th Cir. 2020).

2. Mootness

Secretary Hargett and Coordinator Goins argue the part of Count Six challenging the State's blanket policy rejecting all voter-registration applications that indicated the applicant has a felony conviction is partially moot because on July 21, 2023, Coordinator Goins issued a memorandum outlining a new policy for processing voter registration applications from individuals with grace period convictions and non-infamous felonies predating January 15, 1973. (Doc. No. 180 at PageID 2869-73; Doc. No. 181 ¶¶ 73, 77; Doc. No. 157-7; Doc. No. 151-2; Doc. No. 151 at PageID # 1083-84).

Mootness addresses whether an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit, so that the case-or-controversy requirement, in Article III, for federal jurisdiction is not satisfied. *Moore v. Harper*, 600 U.S. 1, 14 (2023); *Kentucky v. Yellen*, 54 F.4th 325, 340 (6th Cir. 2022) (“Whether an ‘intervening circumstance’ arising after a suit has been filed causes a plaintiff’s asserted injury to dissipate is really a question of mootness.”). The standard “for determining whether a case has been mooted by the defendant’s voluntary conduct is stringent: ‘A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (citation omitted); *Fed. Bureau of Investigation v. Fikre*, 144 S. Ct. 771 (2024) (same). The “heavy burden” of persuading the court that the challenged conduct cannot reasonably be expected to resume lies with the party

asserting mootness. *See id.* However, because it is the government that has voluntarily ceased its allegedly illegal conduct, the burden of showing of mootness is lower. *See Doe v. Univ. of Michigan*, 78 F.4th 929, 946 (6th Cir. 2023) (citing *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 767 (6th Cir. 2019)).

When considering whether challenged conduct can reasonably be expected to reoccur in evaluating defendant's assertion that case is moot, court takes into account totality of circumstances surrounding voluntary cessation. *Univ. of Michigan*, 78 F.4th at 946 (6th Cir. 2023) (citing *Speech First*, 939 F.3d at 767–68). Although courts treat cessation of the allegedly illegal conduct by government officials with more solicitude than similar action by private parties, not all government action “enjoys the same degree of solicitude[.]” *Id.* Accordingly, courts consider “the manner in which the cessation was executed” as part of the totality-of-the-circumstances analysis. *Id.*

Government action in the form of the passage of new legislation or the repeal of challenged legislation enjoys the most solicitude; this type of government action “presumptively moot[s] the case unless there are clear contraindications that the change is not genuine.” *Id.* When regulatory changes are implemented with “legislative-like procedures” or “formal processes,” the government “need not do much more than simply represent that it would not return to the challenged policies.” *Id.* On the other hand, when government action brings about change that is “ad hoc, discretionary, and easily reversible” or requires little in the way of formal process, “significantly more than the bare solicitude itself is necessary to show that the voluntary cessation moots the claim.” *Id.*

Additionally, courts should give the government “the same amount of solicitude when it makes a change to comply with binding precedent (even if it has done so in an ad hoc manner) as the courts give the government when it makes a change with legislative-like procedures[.]” *Univ. of Michigan*, 78 F.4th at 947–48 (citing *Thompson v. Whitmer*, No. 21-2602, 2022 WL 168395, at

*4 (6th Cir. Jan. 19, 2022) (litigation was moot when state supreme court declared challenged actions illegal and therefore, for the behavior to recur, the government would have to disregard the Michigan Supreme Court's interpretation of state law, which a court would not reasonably expect); *Midwest Inst. of Health, PLLC v. Whitmer*, Nos. 20-1611/1650, 2022 WL 304954, at *2 (6th Cir. Feb. 2, 2022) (same); *League of Indep. Fitness Facilities & Trainers, Inc. v. Whitmer*, 843 F. App'x 707, 709–10 (6th Cir. 2021) (same)). Accordingly, “[w]hen the government has made a regulatory change in order to comply with binding precedent, the government need only represent that it does not intend to return to the previous policy.” *Univ. of Michigan*, 78 F.4th at 948).

Here, Secretary Hargett and Coordinator Goins approved the new policy. (See Doc. No. 180-1 ¶ 4). Secretary Hargett and Coordinator Goins do not direct the court to any evidence suggesting that the Election Division would have to go through some formal process to change the policy again. See *Speech First*, 939 F.3d at 769. Nor have Secretary Hargett and Coordinator Goins produced evidence showing that the change in the Election Division’s policy for processing voter registration applications from individuals with pre-1981 felony convictions was legislative, involved a legislative-like process, or that it was made in order to comply with binding precedent. Instead, Coordinator Goins declared under penalty of perjury that this policy change was “in response to ongoing discussions and deliberation with [his] staff and with legal counsel.” (Doc. No. 180-1 ¶ 4). Therefore, “solicitude toward the government's cessation alone is insufficient to establish that the case is moot.” *Univ. of Michigan*, 78 F.4th at 947.

The timing of Election Division’s policy change also raises suspicions that its cessation is not genuine. Here, Secretary Hargett and Coordinator Goins changed the Election Division’s relevant policy well after the complaint and first amended complaint were filed. “If anything, this increases the [government]’s burden to prove that its change is genuine.” *Speech First*, 939 F.3d at

769. Moreover, Coordinator Goins “has not affirmatively stated” that he does not intend to revert back to the challenged policies. *See id.* Instead, Coordinator Goins points to his declaration that “absent a change in the applicable law or a court order, I have no intention of changing course.” (Doc. No. 180-1 ¶ 10). However, “[courts] do not assume that words mean more than what they say.” *See Speech First*, 939 F.3d at 769 (rejecting statement about what policy the government intended to use “presently” as “not a meaningful guarantee” that a new policy will remain the same). Finally, Secretary Hargett and Coordinator Goins’ continued defense of the constitutionality of the challenged conduct informs the inquiry regarding whether the government’s voluntary cessation of the conduct moots Count Six. *See id.* at 770 (citing *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007)). Here, Secretary Hargett and Coordinator Goins maintain that the challenged policies were lawful. (*See* Doc. No. 180 at 13 n.1 (“To be clear, Defendants in no way are conceding that the policies in place before July 21, 2023, were illegal.”)).

In sum, considering the totality of the circumstances, Secretary Hargett and Coordinator Goins have not met their burden of showing that the Election Division’s voluntary cessation make it “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth*, 528 U.S. at 189. Therefore, TN NAACP’s claims in Count Six will not be dismissed as moot. Nor will the Tennessee Election Officials’ motion for summary judgment be granted as to Counts Five and Six on the basis that the State’s challenged policy no longer exists. (*See* Tennessee Election Officials’ memorandum supporting their motion for judgment, Doc. No. 151 at PageID # 1085, 1083). Because this was the sole basis for the Tennessee Election Officials’ motion for summary judgment as to Count Five, (*see id.* at PageID # 1085), their motion will be denied as to that Count.

B. Merits

As noted above, in Counts Four and Six of the First Amended Complaint, TN NAACP seeks injunctive relieve under the NVRA from Tennessee's challenged voter application registration forms and policies for processing the same. Counts Four and Six counts concern the following sections of the NVRA:

Section 20505 provides:

(a) Form

- (1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 20508(a)(2) of this title for the registration of voters in elections for Federal office.
- (2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 20508(b) of this title for the registration of voters in elections for Federal office.
- (3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

52 U.S.C.A. § 20505(a).

Section 20507(a)(1), (5) provides:

(a) In general

In the administration of voter registration for elections for Federal office, each State shall—

- (1) ensure that any eligible applicant is registered to vote in an election —
 - (A) in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

- (B) in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;
- (C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and
- (D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(5) inform applicants under sections 20504, 20505, and 20506 of this title of –

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration applications

52 U.S.C.A. § 20507(a)(1), (5).

Section 20507(b)(1) provides:

(b) Confirmation of voter registration

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

- (1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965

52 U.S.C.A. § 20507(b)(1).

Section 20508(a) specifies the role of the Election Assistance Commission:

(a) In general

The Election Assistance Commission –

- (1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);
- (2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;
- (3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this chapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures, forms, and other matters affected by this chapter; and
- (4) shall provide information to the States with respect to the responsibilities of the States under this chapter.

52 U.S.C.A. § 20508(a)

Section 20508(b) specifies the content of mail voter registration forms:

(b) Contents of mail voter registration form

The mail voter registration form developed under subsection (a)(2) –

- (1) May require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;
- (2) Shall include a statement that –
 - a. Specifies each eligibility requirement (including citizenship);
 - b. Contains an attestation that the applicant meets each such requirement; and
 - c. Requires the signature of the applicant, under penalty of perjury;
- (3) May not include any requirement for notarization or other formal authentication; and
- (4) Shall include, in print that is identical to that used in the attestation portion of the application –

- i. The information required in section 20507(a)(5)(A) and (B) of this title;
- ii. A statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and
- iii. A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

52 U.S.C. § 20508(b).

1. Count Four

At issue in Count Four is whether Tennessee's State Forms comply with the NVRA's requirements to "inform ... applicants of voter eligibility requirements" and to "specif[y] each eligibility requirement" on the form. 52 U.S.C. §§ 20505(a)(2), 20508(b)(2). TN NAACP argues the State Forms, (Doc. Nos. 156-12, 156-10), do not meet these requirements because they do not provide enough information to convey to eligible applicants with non-disenfranchising pre-1973 or grace-period felony convictions that their felonies do not impact their right to vote. The Tennessee Election Officials contend the State Forms "adequately notify applications about state voting eligibility requirements." The parties agree that Tennessee's State Forms do not inform all eligible applicants of whether they are in fact eligible to register to vote. They disagree as to whether the NVRA requires State Forms to include information such that all eligible applicants – even eligible applicants with felony convictions – can discern from the State Form itself whether they are eligible to register to vote.

TN NAACP, Secretary Hargett, and Coordinator Goins agree that there are no genuine disputes as to any material fact with regard to Count Four. As such, the parties agree that the following felony convictions have never disqualified a person from being eligible to vote in

Tennessee: (1) a felony conviction before January 15, 1973, that does not include a statement in the judgment rendering the crime “infamous;” (2) a felony conviction between January 15, 1973, and May 17, 1981; (3) a felony conviction that has been expunged; and (4) a felony conviction that is subject to judicial diversion. (Doc. No. 181 ¶¶ 2-3, 56). The parties further agree that an otherwise qualified person with a disenfranchising felony conviction who has received a pardon or has their voting rights restored, is eligible to vote in Tennessee. (*Id.* ¶ 4). Accordingly, the Tennessee Election Officials and TN NAACP agree that applicants with felony convictions who never lost the right to vote and/or who have had their rights restored are “eligible” to vote.¹⁷

The Court must determine, as a matter of law, whether Tennessee’s State Forms and state-specific instructions on the Federal Form comply with the requirements of the NVRA. Under well-established rules of statutory interpretation, the Court begins with the language of the statute itself. *Consumer Prod. Safety Comm’n*, 447 U.S. 102, 108 (1980). Departure from the plain language of a statute is disfavored and “appropriate only in rare cases [in which] the literal application of the statute will produce a result demonstrably at odds with the intentions of its drafter ... or when the statutory language is ambiguous.” *Hoge v. Honda of Am. Mfg., Inc.* 384 F.3d 238, 246 (6th Cir. 2004) (quoting *Kelley v. E.I. Dupont de Nemours & Co.*, 17 F.3d 836, 842 (6th Cir. 1994)). Secretary Hargett and Coordinator Goins do not address statutory construction whatsoever and make no arguments that the statutory text at issue has a plain meaning or is ambiguous. (*See* Doc. Nos. 151, 180, 190 (making no reference to either plain meaning or ambiguity)). TN NAACP

¹⁷ This reveals the factual inaccuracies in the Tennessee Election Officials’ contentions that “the absence of a conviction for an infamous felony is a voter eligibility requirement” and that “the conviction crime and date ... are underlying preconditions for eligibility[.]” (Doc. No. 180 at PageID # 2873).

contends the language of the statute is not ambiguous and the Court must therefore give the statute its plain meaning.¹⁸

The NVRA does not define the terms “inform” or “specifies,” so the Court must look to the ordinary meaning of these terms at the time Congress enacted the statute. *Perrin v. United States*, 444 U.S. 37, 42 (1979); *see, e.g., Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021) (“When called on to resolve a dispute over a statute’s meaning, [courts] normally seek[] to afford the law’s terms their ordinary meaning at the time Congress adopted them.”). In 1993, the term “inform” was defined as “to make known: give instruction in” and “to give information: impart knowledge.” Webster’s Third New International Dictionary 1160 (1993). “Specify” was defined as “to mention or name in a specific or explicit manner: to tell or state precisely or in detail.” *Id.* at 2187.

As noted above, the Tennessee Election Officials do not identify a plain meaning of the of terms “inform” or “specifies,” argue these terms are ambiguous, or otherwise engage in the requisite legal analysis to determine the meaning of statutory language. (See Doc. No. 151 at PageID #1080-82; Doc. No. 180 at PageID # 2873-79). Instead, Secretary Hargett and Coordinator Goins rely on an Eleventh Circuit case for the proposition that the NVRA is a “notice statute” and submit that “[b]y specifying the eligibility requirement – namely, the absence of a disqualifying felony – and by linking to a website describing what constitutes a disqualifying felony,¹⁹

¹⁸ See Doc. No. 154 at 11 (Arguing that the NVRA “plainly means to supply potential voters with enough accurate information to understand their own eligibility to register and vote”); Doc. No. 192 at 5 (arguing the Court should not follow *Thompson v. Sec. of State for the State of Alabama*, 65 F.4th 1288 (11 Cir. 2023), because of its “unpersuasive” approach to statutory interpretation and because “when the terms of a statute are plain and unambiguous, as here, the ‘inquiry begins with the statutory text, and ends there as well.’”).

¹⁹ The website contains a list of crimes that permanently disqualify an individual from voting. See Tennessee Secretary of State, <https://sos.tn.gov/restoration>. It contains an explanation of the procedure for restoring an individual’s voting rights when lost due to a felony conviction after May 18, 1981. *Id.* It states that individuals with felony convictions between January 15, 1973, and May 17, 1981, are eligible to vote, but that the Election Division must verify that the individual’s conviction occurred during that period. *Id.*

Tennessee’s current State Form puts applicants on notice about who qualifies to successfully register to vote,” and nothing more is required. (Doc. No. 151 at PageID# 1082 (citing *Thompson v. Sec. of State for the State of Ala.* 65 F.4th 1288, 1309 (11th Cir. 2023); *see also* Doc. No. 180 at PageID # 2879 (“Tennessee’s voter registration application complies with the NVRA because it sufficiently notifies applicants that the absence of a conviction for an infamous felony is a voter eligibility.”).²⁰ Thus, the Tennessee Election Officials appear to assert that the current State Form satisfies the NVRA because it includes a link to the Tennessee Secretary of State’s website “where the reader can find information necessary to evaluate one’s eligibility.” (Doc. No. 180 at PageID # 2874-78; Doc. No. 151 at PageID # 1081). Stated another way, the Tennessee Election Officials argue the information and instructions provided on the Tennessee Secretary of State’s website “specify the eligibility requirement related to felony convictions and inform applicants that certain felons are ineligible to vote ...in compliance with the NVRA.” (Doc. No. 180 at PageID # 2874; *see e.g., id.* at PageID # 2879 (“But including all the information listed on the Secretary of State’s website [on the State Form] would result in an application of unwieldly length and unusable format.”)).

And while Secretary Hargett and Coordinator Goins fail to argue a plain meaning of the statutory terms at issue in Count Four – “inform” or “specifies” – they rely on out of circuit authority to argue what these terms do *not* mean. First, the Tennessee Election Officials argue that “Section 20508(b)’s ‘specif[ication]’ requirement does not mandate that states list *every*

It also provides a list of crimes that resulted in the loss of the right to vote prior to January 15, 1973, but includes a disclaimer stating, “Even if you were convicted of a crime listed above, you still have the right to vote if you can show that at the time of your conviction the judge did not render you ‘infamous,’ if your conviction was reversed on appeal or expunged, if you received a full pardon, or if you have your voting rights restored.” *Id.*

²⁰ The Tennessee Election Officials state that “functionally similar language is provided as a state-specific instruction on the Federal Form.” (Doc. No. 180 at PageID# 2874).

disqualifying felony or exhaustively describe the rules underlying each eligibility of Tennessee's four eligibility requirements." (Doc. No. 151 at PageID # 1082 (citing *Thompson*, 65 F.4th at 1308-09)). Second, Secretary Hargett and Coordinator Goins assert that "every disqualifying felony" and "describing the rules underlying each of Tennessee's four eligibility requirements" would make the forms "unworkable," "unwieldy and unnecessarily complicated." (*Id.* (citing *League of Women Voters of Florida, Inc. v. Byrd*, No. 23-cv-165 (N.D. Fla. Jul. 10, 2023); see also Doc. No. 180 at PageID# 2879 ("The NVRA does not prescribe a voter-registration application composed of a comprehensive list of every felony conviction that results in the loss of the right to vote, nor does it require that the application contain a primer on voting rights restoration.")).²¹

TN NAACP submits that the plain meaning of "inform applicants ... of voter eligibility requirements" in Section 20507(a)(5)(A) is "to supply potential voters with enough accurate information to understand their own eligibility to register and vote." (Doc. No. 154 at PageID # 2290). It argues that the requirement that the forms "specif[y] each eligibility requirement" means that the eligibility requirements must be named or stated "explicitly or in detail." (Doc. No. 154 at PageID # 2291 (quoting *Kucana v. Holder*, 558 U.S. 233, 243 n.10 (2010) (quoting Webster's New Collegiate Dictionary 1116 (1974))). In sum, TN NAACP submits that the plain meaning of "specifies" as used in Section 20508(b)(2)(A) is to state each eligibility requirement on the registration forms in a manner that enables applicants with past convictions to determine their eligibility. (Doc. No. 154 at PageID # 2291).

TN NAACP argues that Tennessee's voter registration forms do not comply with the NVRA requirement to "inform applicants ... of voter eligibility requirements" and to "specif[y] each eligibility requirement" because the forms do not state that citizens with felony convictions

²¹ This is an argument against a straw man because TN NAACP does not argue the State Form should list any disqualifying felonies or explain the process for restoration of voting rights.

in the grace period fully retain their right to vote or that citizens with non-infamous pre-1973 convictions are likewise eligible.²² (Doc. No. 182 at PageID # 2951 (citing Doc. Nos. 156-10, 156-11, 156-12, 156-13, 156-14)). TN NAACP also notes that the current version of the State Form does not specify that felony convictions are no longer disqualifying upon the restoration of the right to vote and that earlier iterations of the state form that are still in use provide only an incorrect instruction that to be eligible “you must not have been convicted of a felony, or if you have, your voting rights must have been restored.” (*Id.* at PageID # 2951-52 (citing Doc. Nos. 1-2, 156-10, 156-13, 156-14)). TN NAACP contends “[t]his failure by Tennessee to specify, in detail, on its voter registration forms when voters with felony convictions are eligible to vote, and its provision of inaccurate information, contravene the NVRA’s requirement to ‘inform applicants ... of voter eligibility requirements.’” (Doc. No. 182 at PageID # 2952).

As it must, the Court begins its consideration of this issue with statutory construction, which, as the Court noted above, was not thoroughly briefed by TN NAACP and was not briefed whatsoever by the Tennessee Election Officials. The Court is not persuaded that the statute’s use of the term “specify” is unambiguous. TN NAACP asserted the dictionary definition, which is to “name or state explicitly or in detail.” *See Kucana v. Holder*, 558 U.S. 233, 243 n.10 (2010) (quoting Webster’s New Collegiate Dictionary 1116 (1974)). But this definition, which contains more than one “or,” does not resolve the question presented here. Secretary Hargett and Coordinator Goins appear to argue that the state complies with the NVRA if it names the voter eligibility requirements, while TN NAACP focuses on the part of the definition that requires detail.

²² TN NAACP asserts these deficiencies apply to the current version of the State Form and the Tennessee-specific instructions on the Federal Form, and except for the omission regarding restoration of voting rights, to prior versions of the State Form that are still in circulation and use. (Doc. No. 182 at PageID # 2951). TN NAACP agrees that certain prior versions of the State Form specified that citizens with felony convictions are not ineligible to vote if their voting rights had been restored. (*Id.*).

In this sense the statute is ambiguous concerning what is means to “specif[y] each eligibility requirement.” Is it sufficient, as Secretary Hargett and Coordinator Goins appear to contend, to merely list or provide notice of the voter eligibility requirements, or, as TN NAACP argues, is a greater level of detail required? The parties have not provided adequate briefing for the Court to resolve the plain meaning of the word “specify.”

As stated above, Secretary Hargett and Coordinator Goins provide no briefing on the issue of statutory construction, and the two cases cited by the Tennessee Election Officials do not aid the Court on this issue. In *Thompson v. Sec. of State for the State of Ala.*, the court merely notes that the verb “specifies” is not defined by the NVRA, and then finds that the plaintiff’s argument that the NVRA requires the state to list every disqualifying state, federal, and foreign felony on its voter registration forms is an “absurd, unworkable, and internally inconsistent interpretation of §20508(b)(2)(A).” 65 F.4th 1288, 1308 (11th Cir. 2023). That court’s brief consideration of the claim does not engage in any analysis of statutory construction, let alone consider whether the statute has a plain meaning or is ambiguous. *Id.* at 1308-09. Moreover, the relief requested by the *Thompson* plaintiff, which apparently would have included a lengthy list of every federal, state, and foreign felony deemed to involve moral turpitude, is not comparable to the limited information TN NAACP seeks to have included on the State Form.

The second case cited by the Tennessee election officials, *League of Women Voters of Florida, Inc. v. Byrd*, Case No. 4:23-cv-165-AW-MAF (N.D. Fla. Jul. 10, 2023) (Westlaw cite not available), is also not helpful on the issue of statutory construction. In that case, the court considered whether the NVRA required the voter registration form, which provided that convicted felons could not register to vote until their right to vote is restored, was required to specify the various means by which a felon may have his or her voting rights restored. The court concluded

that NVRA did not require such specificity because the eligibility requirement was simply that voting rights had been restored. The level of specificity on this requirement is not at issue in this case.²³ The Florida District Court did not consider the level of specificity required for the eligibility requirement regarding felony convictions or engage in meaningful statutory construction on that issue.

TN NAACP has largely assumed the terms of the statute are plain and unambiguous, with the caveat that “to the extent th[e] Court perceives any ambiguity in the NVRA’s mandate to specify and inform or seeks guidance about what level of specificity is required, it must look to the statutory context. The NVRA’s express purposes, surrounding provisions, and legislative history all indicate that ‘to specify’ means to include information on the face of the form sufficient to enable applicants (including those with past convictions) to easily and privately determine their eligibility.” (Pl. Reply to Def. Motion for Summary Judgment, Doc. No. 192 (citing Pl. Mem. in Support of Pl. Motion for Summary Judgment, Doc. No. 154 at 10-11)). TN NAACP points to House and Senate reports noting the importance that applicants “be advised of the voting requirements,” that “*all* registration requirements should be set forth in the application,” and “the importance of the voter eligibility specifications for maintaining accurate lists of only eligible voters and preventing fraud.” (Doc. No. 154 at 10-11 (emphasis provided by TN NAACP) (citing S. Rep. 103-6 at 24; H.R. Rep. 103-9 at 7-8)). But the cited legislative history, while perhaps instructive of individual legislators’ intentions, does not allow the Court to determine that TN NAACP’s requested level of specificity is required by the terms of the NVRA.

²³ The Court notes, however, that *League of Women Voters of Florida* appears to support TN NAACP’s argument that the form must state that felons whose voting rights have been restored are eligible to register to vote.

Nevertheless, the Court is not deciding between two competing proposals for the language on Tennessee's State Forms. Rather, the Court must determine whether Tennessee's State Forms, (Doc. Nos. 156-12, 156-10), comply with the NVRA's requirements to "inform ... applicants of voter eligibility requirements" and to "specif[y] each eligibility requirement." Whatever level of specificity the NVRA requires, there is no question in the Court's mind that voter applicants are not "informed" of the voter eligibility requirements unless the information presented on the form is accurate and not misleading. TN NAACP has identified two statements / omissions in this regard. First, the prior version of the form states, "you must not have been convicted of a felony, of if you have, your voting rights must have been restored." (See Doc. No. 156-12). As TN NAACP points out, this statement is overly inclusive, as not all felons who have not had their voting rights restored are ineligible to vote. As a result, prospective voters who have been convicted of a non-disqualifying felony would be deterred from registering to vote.

The revised State Form attempts to correct this over-inclusiveness by stating that an applicant's eligibility to register and vote "depends upon the crime you were convicted of and the date of your conviction." (Doc. No. 156-10). The form then provides a website that has additional information, including information about voting rights restoration. (*Id.* (referring applicants to Tennessee Secretary of State, <https://sos.tn.gov/restoration>)). But the form itself does not inform applicants that felons who have had their voting rights restored, irrespective of the crime and date of conviction, are not disqualified. Like the misleading statement in the first form, this omission could deter eligible voters.

For the foregoing reasons, the Court finds that Tennessee's State Forms, (Doc. Nos. 156-12, 156-10), do not comply with the NVRA's requirement under Section 20507(a)(5)(A) to "inform ... applicants of voter eligibility requirements." Accordingly, TN NAACP's motion for

summary judgment will be GRANTED as to this part of Count Four. The Court further finds that the parties have not provided sufficient briefing for the Court to determine what level of specificity is required under Section 20508(b)(2)(A). Accordingly, both sides' motions for summary judgment will be DENIED without prejudice as to this part of Count Four.

2. Count Six

At issue in Count Six is Tennessee's policy of rejecting valid Federal Forms and State Forms timely submitted by eligible applicants with felony convictions and requiring these eligible applicants to provide additional documents as further proof of their eligibility. TN NAACP, Secretary Hargett, and Coordinator Goins agree that there are no genuine disputes as to any material fact with regard to Count Six. (*See* Doc. No. 181 ¶¶ 2-4, 37-68). As such, the parties agree to the foregoing facts:

An otherwise qualified person with a grace period felony conviction and/or pre-1973 non-infamous felony conviction never lost their right to vote as a result of such a conviction. (*Id.* ¶¶ 2-3). Expunged felony convictions and felony convictions subject to judicial diversion also do not result in the loss of the right to vote in Tennessee. (*Id.* ¶ 56). Additionally, an otherwise qualified person with a disenfranchising felony who has received a pardon or has their voting rights restored, is eligible to vote in Tennessee. (*Id.* ¶ 4).

Counties in Tennessee receive and retain "Felon files" from various sources, including court orders, U.S. Attorneys, the Tennessee Department of Corrections, the Election Division, the state felon list, other county election officials, clerks of court, and jury coordinators, notifying them of new state, out-of-state, and federal felony convictions as well as all convictions for a person going back in time, including the date of judgment, conviction, or sentence. (*Id.* ¶¶ 60-62). Under the Election Division's policy, county election commissions check every registration

applicant indicating a felony conviction against their Felon files. (*Id.* ¶ 59). County election officials routinely rely on information in Felon files to purge voters with felony convictions from the voter roles as part of their regular voter-roll maintenance. (*Id.* ¶ 64). Additionally, county election officials can confirm an applicant's eligibility to vote by contacting the Election Division and/or other county election officials. (*Id.* ¶ 66).

Tennessee's policy from 2014 to at least July 21, 2023, directed county election officials to reject registration applications indicating an otherwise qualified person has: (1) a grace period felony conviction, (2) a pre-1973 non-infamous felony conviction, (3) only expunged felony convictions, (4) only convictions subject to judicial diversion, (5) received a pardon for any disenfranchising conviction, and/or (6) has had their voting rights restored, and to require such applicants to file a copy of their respective judgement, conviction papers, court documentation of expungement, judicial diversion, receipt of a pardon, and/or restoration of voting rights. (*Id.* ¶¶ 43-45, 51-52, 54-58).²⁴

In Count Six, TN NAACP claims Tennessee's challenged policy violates the NVRA because it imposes an unnecessary requirement in a non-uniform and discriminatory manner and does not ensure that any eligible applicant is registered if their valid registration form is timely received or "accept and use" the Federal Form. (Doc. No. 154 at PageID # 2294-98 (citing 52 U.S.C. §§ 20507(a)(1), (b)(1), 20505(a)(1), 20508(b)(1)). Secretary Hargett and Coordinator

²⁴ As previously noted, on July 21, 2023, Tennessee changed its policy to direct county election officials to process registration applications indicating an otherwise qualified person has a grace period felony conviction or a pre-1973 non-infamous felony conviction. (Doc. No. 181 ¶¶ 75,77).

Goins deny that Tennessee's challenged policy, with respect to State Forms, violates the NVRA. (Doc. No. 151 at PageID # 1084).²⁵

TN NAACP points to the Supreme Court's interpretation of "valid" in this context to mean "a completed copy of the form." See *ITCA*, 570 U.S. 1, 12 (2013). It argues that Tennessee's challenged policy does not "ensure" registration of eligible voters because it necessarily sweeps multiple categories of facially eligible voters with past felony convictions into the rejection pool. TN NAACP argues the additional documentation required of some applicants under Tennessee's challenged policy is unnecessary because the attested information on the State Form – crime(s) and date and place of conviction and whether they have received pardon or had voting rights restored – is plainly sufficient for the State to assess whether the applicant has a grace-period conviction or a pre-1973 conviction of a crime that could not have rendered them ineligible to vote and/or whether the applicant's voting rights have been restored from a pardon or otherwise. (Doc. No. 154 at PageID # 2301-02).²⁶

TN NAACP further argues that, even if it were necessary for state election officials to look beyond the attested information in the voter registration form, the undisputed material facts establish that county and state election officials already have access to information sufficient to assess eligibility, which therefore obviates the claimed need for applicants to provide

²⁵ Tennessee Election Officials do not respond to TN NAACP's argument for summary judgment that Tennessee's policy of requiring applicants using the Federal Form to submit documentation proof of voting rights restoration violates Section 20505(a)(1) of the NVRA. (Doc. No. 154 at PageID # 2300-01; Doc. No. 180 at PageID # 2882)). Accordingly, this part of TN NAACP's motion will be granted as unopposed.

²⁶ TN NAACP also cites to *Fish v. Kobach* where the Tenth Circuit interpreted the necessity provision under Section 20504(c)(2) "as establishing the attestation requirement in every case as the presumptive minimum amount of information necessary for a state to carry out its eligibility-assessment and registration duties." 840 F.3d 710, 738 (10th Cir. 2016). The Tennessee Election Officials respond that *Fish* is distinguishable because it addressed Section 20504(c)(2), which is not at issue in this case. (See Doc. No. 180 at PageID # 2883-84).

documentation. (Doc. No. 154 at PageID # 2302-05 (citing Doc. No. 181 ¶¶ 59-68)). Finally, TN NAACP argues Tennessee’s challenged policy imposes unjustified burdens and barriers to registration on a class of applicants – those with prior felony convictions – that do not apply to other classes of applicants. (Doc. No. 154 at PageID # 2305-06).

Secretary Hargett and Coordinator Goins do not dispute that applicants with felony convictions who never lost the right to vote or who have had their rights restored are “eligible” to vote. The Tennessee Election Officials do not respond to TN NAACP’s argument that “valid” in this context means “a completed copy of the form.” Secretary Hargett and Coordinator Goins do not dispute that Tennessee’s challenged policy ensures that eligible applicants will be rejected. Nor do the Tennessee Election Officials rebut TN NAACP’s contentions that: (1) the information attested to on the State Form is sufficient for the State to verify whether the applicant has a grace-period conviction or a pre-1973 conviction of a crime that could not have rendered them ineligible to vote and/or whether the applicant’s voting rights have been restored from a pardon or otherwise, and (2) that, even if it were necessary for county and state election officials to look beyond the attested information, they already have access to information sufficient to confirm an applicant’s eligibility. Additionally, Secretary Hargett and Coordinator Goins do not dispute that Tennessee’s challenged documentation policy imposes a barrier to registration to vote in elections for Federal office on a class of applicants – those with felony convictions – that does not apply to other classes of applicants.

Instead, Tennessee Election Officials submit that Tennessee’s policy of rejecting State Forms from certain applicants until they submit certain documentation does not violate the NVRA because (1) in *ITCA*, 570 U.S. at 12, the Supreme Court said that State Forms “may require information the Federal Form does not,” and (2) Tennessee “determined that it needs

documentation from [certain] applicants ... so that the State may assess the eligibility of the applicant and administer voter registration and other parts of the election process.” (Doc. No. 151 at PageID # 1084; Doc. No. 180 at PageID # 2881-82; Doc. No. 190 at PageID # 3200-01).

While Secretary Hargett and Coordinator Goins are correct that in *ITCA* the Supreme Court stated that State Forms “may require information the Federal Form does not,” this statement does not stand for the proposition that states may require information on their State Forms *carte blanche*, as the Tennessee Election Officials appear to suggest.²⁷ Section 20505(a)(2) authorizes states to develop and use a mail in voter registration form so long as it “meets all the criteria stated in section 20508(b) of this title for the registration of voters in elections for federal office.” The Federal Form must also meet all the criteria stated in Section 20508(b). *See* §§ 20505(a)(1), 20508(a)(2), 20508(b). The criteria stated in Section 20508(b) are as follows:

- (1) May require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;
- (2) Shall include a statement that –
 - a. Specifies each eligibility requirement (including citizenship);
 - b. Contains an attestation that the applicant meets each such requirement; and
 - c. Requires the signature of the applicant, under penalty of perjury;

²⁷ In *ITCA*, the Supreme Court answered the sole question of whether Arizona’s law requiring Federal Form applicants to produce documentation proving their citizenship conflicted with Section 20505(a)(1)’s mandate that States “accept and use” the Federal Form. *ITCA*, 570 U.S. at 15. Neither Arizona’s State Form nor its policies for processing its State Form were at issue in *ITCA*. As a result, *ITCA* did not involve any rulings as to whether Arizona’s State Form or policy for processing the same were in conflict with any provision of the NVRA.

- (3) May not include any requirement for notarization or other formal authentication; and
- (4) Shall include, in print that is identical to that used in the attestation portion of the application –
 - i. The information required in section 20507(a)(5)(A) and (B) of this title;
 - ii. A statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and
 - iii. A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

Because State Forms must meet all of the criteria stated in Section 20508(b), *see* Section 20505(a)(2), and one of the criteria stated in Section 20508(b) is that the form “may require only” information “as is necessary to enable the appropriate State election official to assess the eligibility of the applicant,” *see* Section 20508(b)(1), it follows that a State Form “may require only” information “as is necessary to enable the appropriate State election official to assess the eligibility of the applicant.” As states do not have uniform requirements for persons to register to vote, this necessarily means that State Forms “may require information the Federal Form does not.”

Thus, Secretary Hargett and Coordinator Goins are correct that State Forms may require information the Federal Form does not. *see ITCA*, 570 U.S. at 12; *see also McKay v. Thompson*, 226 F.3d 752, 755-56 (6th Cir. 2000) (Tennessee could require applicants to provide social security number on registration form); *Young v. Fordice*, 520 U.S. 273, 286 (1997) (State has discretion to decide whether State Form tells applicants that registration counts only for federal elections).²⁸

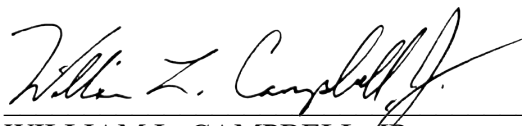
²⁸ Neither *Young* nor *McKay* concerned or contemplated a requirement for applicants to provide documentation beyond a voter registration form itself.

However, the Tennessee Election Officials are incorrect in suggesting that this concept – of being able to require information the Federal Form does not – means Tennessee’s challenged policy is compliant with compliant with Sections 20507(a)(1), (b)(1), 20508(b)(1) of the NVRA.

The Tennessee Election Officials’ argument that Tennessee determined it needs documentation to assess the eligibility of applicants with felony convictions appears to advance Justice Alito’s position in his dissent in *ITCA* – that the NVRA “lets the States decide for themselves what information ‘is necessary.’” 570 U.S. at 46-47 (Alito, J., dissenting) (quoting statutory text currently found at 52 U.S.C. § 20508). The majority in *ITCA* rejected such an understanding of federal election regulation. 570 U.S. at 12-15. The Court need not reach the legal merits of this argument in the present case because Secretary Hargett and Coordinator Goins fail to direct the Court to any evidence in the record of Tennessee making such a determination.

As it is undisputed that county and state election officials have the information the State says it needs to assess an applicant’s eligibility, Tennessee’s challenged documentation policy does not comply with the NVRA’s prohibition against requiring unnecessary information. 52 U.S.C. § 20508(b)(1). Tennessee’s challenged policy also fails to comply with Sections 20507(a)(1) and (b)(1) given that it is undisputed Tennessee’s challenged documentation policy imposes an unnecessary requirement in a non-uniform manner that does not ensure eligible applicants are registered if their valid registration form is timely received. Accordingly, for the foregoing reasons, TN NAACP’s motion for summary judgment will be granted as to Count Six and the Tennessee Election Officials’ motion for summary judgment will be denied as to Count Six.

An appropriate Order shall enter.


WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Joint Status Report

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Order

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**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,

v.

WILLIAM LEE, et al.,

Defendants.

NO. 3:20-cv-01039

JUDGE CAMPBELL

MAGISTRATE JUDGE FRENSELY

ORDER

On April 18, 2024, the Court granted summary judgment on Count Six in favor of Plaintiff Tennessee National Association for the Advancement of Colored People (“TN NAACP”), and ordered TN NAACP and Defendants Trey Hargett (“Secretary Hargett”) and Mark Goins (“Coordinator Goins”) to file, by May 3, 2024, an agreed proposed injunction as to Count Six or notify the Court that they could not agree on the injunction language. (Doc. No. 222).

On May 3, 2024, TN NAACP, Secretary Hargett, and Coordinator Goins filed a joint status report stating that they could not agree on the language for the injunction that will be entered as to Count Six and will file separate proposed orders. (Doc. No. 224).

In light of the foregoing, the parties **SHALL** each file a proposed injunction as to Count Six on or before **Wednesday, May 8, 2024**.

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Order Re Permanent Injunction (“Order”)

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**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,

v.

WILLIAM LEE, et al.,

Defendants.

NO. 3:20-cv-01039

JUDGE CAMPBELL

MAGISTRATE JUDGE FRENSELY

ORDER

On April 18, 2024, the Court granted summary judgment in favor of Plaintiff Tennessee National Association for the Advancement of Colored People (“TN NAACP”) on Count Six of its First Amended Complaint against Defendants Trey Hargett and Mark Goins in their respective official capacities as Secretary of State and Coordinator of Elections for the State of Tennessee (collectively “Tennessee Election Officials”). (Doc. Nos. 221, 222). The Court notes that its ruling on Count Six does not concern “constitutional wrongs,” Tennessee’s framework for state elections, or any state election laws. Rather, the Court’s ruling on Count Six solely concerns Tennessee’s compliance with a federal statute concerning elections for Federal office, the National Voter Registration Act of 1993 (“NVRA”). As addressed in the Court’s prior memorandum, (Doc. No. 221), the NVRA “requires States to provide simplified systems for registering to vote in *federal* elections, *i.e.*, elections for federal officials, such as the President, congressional Representatives, and United States Senators.” *Young v. Fordice*, 520 U.S. 273, 275 (1997) (emphasis in original).

In accordance with the Court’s prior Orders, (Doc. Nos. 225, 229), TN NAACP and the Tennessee Election Officials filed competing proposals for an injunction, (Doc. Nos. 226-1, 227-

1), and corresponding objections (Doc. Nos. 232, 234). The Court has reviewed the parties' filings, and in accordance with the Court's ruling on Count Six, the Court hereby **ORDERS AND DECLARES** as follows:

1. **IT IS ORDERED AND DECLARED** that Tennessee Election Officials' policy and practice of rejecting valid, timely submitted mail in voter registration forms developed pursuant to Sections 20505(a)(2) or 20508(a)(2) of the National Voter Registration Act based solely on an indication that the applicant has a past felony conviction and requiring the applicant to provide additional documentary proof of eligibility before being placed on the voter rolls (the "Challenged Policy") violates the National Voter Registration Act, 52 U.S.C. §§ 20505(a)(1), 20507(a)(1), and 20508(b)(1). In Tennessee, the mere fact that an applicant has a prior felony conviction does not establish ineligibility to vote in every circumstance. (*See* Doc. No. 221 at 3-5). In Tennessee, individuals with felony convictions who never lost the right to vote or who have had their rights restored are "eligible" to vote. (*See id.* at 48). Under the NVRA, applicants who timely submit a completed voter registration application developed pursuant to Sections 20505(a)(2) or 20508(a)(2) of the National Voter Registration Act facially indicating they are eligible to vote cannot be required to present documentary proof of eligibility beyond the voter registration form and must be registered absent credible information establishing that they are ineligible to vote.


2. It is therefore **FURTHER ORDERED** that Tennessee Election Officials, their officers, agents, servants, employees, and attorneys, and anyone else in active concert or participation with them, including all state election staff and county administrators of election, are **PERMANENTLY ENJOINED** from enforcing, applying, or implementing the Challenged Policy, (*Horne v. Flores*, 557 U.S. 433, 450 (2009)) ("It goes without saying that federal courts

must vigilantly enforce federal law and must not hesitate in awarding necessary relief.”); *Harkless v. Brunner*, 545 F.3d 445, 450 (6th Cir. 2008) (“NVRA authorizes judicial intervention if a state fails to comply with its terms.”)), and:

- a. Shall process valid, timely mail in voter registration forms developed pursuant to Sections 20505(a)(2) or 20508(a)(2) of the NVRA submitted by individuals with prior felony convictions who are otherwise eligible to vote; and
 - b. Shall register individuals with prior felony convictions who submit valid, timely mail in voter registration forms developed pursuant to Sections 20505(a)(2) or 20508(a)(2) of the NVRA absent credible information establishing that they are ineligible to vote.
3. **IT IS FURTHER ORDERED** that Tennessee Election Officials shall, as soon as possible:
- a. Issue written guidance to all state election staff and county administrators of election (AOEs) explaining:
 - i. how to process voter registration applications consistent with the terms of this Order and the Court’s memorandum entered on April 18, 2024; and
 - ii. how to establish that an individual with prior felony convictions is ineligible to vote consistent with the terms of this Order and the Court’s memorandum entered on April 18, 2024; and
 - b. Deliver at least one live training to all state election staff and county AOE’s regarding the topics in subparagraph a., and ensure the training is recorded and made available to Tennessee Election Officials’ website for state and county AOE staff who are unable to attend.

4. **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction to enforce the terms of this Order and to award such other relief as may be appropriate.

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES DISTRICT JUDGE

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Emergency Motion for a Stay of Permanent Injunction Pending Appeal

Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991). But when the challenged court order interferes with state election law, the legal framework differs because courts must consider the unique burdens that accompany last-minute changes to election procedures. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (explaining how the stay-pending-appeal analysis differs in the context of election cases). Based on all relevant considerations, the Court should stay the permanent injunction until the 2024 election cycle concludes. Because of the time-sensitive nature of this request, Defendants request a ruling as soon as possible.

I. The well-settled *Purcell* doctrine, by itself, supports granting a stay pending appeal. Tennessee has “a strong public interest” in “permitting legitimate statutory processes to operate to preclude voting by those who are not entitled to vote” and “in [the] smooth and effective administration of the voting laws.” *SEIU Local 1 v. Husted*, 698 F.3d 341, 346 (6th Cir. 2012). Given those robust interests, and the “extraordinarily complicated and difficult” nature of administering elections, *Merrill*, 142 S. Ct. at 880 (2022) (Kavanaugh, J., concurring), the Supreme Court has a “general rule” that “last-minute injunctions changing election procedures are strongly disfavored,” *SEIU Local 1*, 698 F.3d at 34 (citing *Purcell*, 549 U.S. at 4–5). That general rule prevents the Court from applying its permanent injunction to the 2024 election cycle.

Tennessee’s July 2, 2024 voter-registration deadline for the state and federal primary elections is just weeks away, *see* Mark Goins Decl. ¶ 14 (attached as Exhibit A), and early voting begins ten days later, *see* Tenn. Sec’y of State, Key Dates for the 2024 Election Cycle, <https://bit.ly/45dJNO2> (last visited June 7, 2024). The permanent injunction will require the State to revise, print, and distribute updated state voter-registration forms, *see* Goins Decl. ¶ 16—a task that will “take time, cost money, and require staff members in the Division of Elections to re-

allocate their time away from the regular duties and responsibilities in preparing for the August State and Federal primary elections” during a presidential-election year. *Id.* ¶¶ 17-20. There simply is not enough time for the Division of Elections to make the court-ordered changes while faithfully discharging their various other election-related duties. That strongly favors granting a stay pending appeal. *See Purcell*, 549 U.S. at 4 (requiring courts to weigh the burdens to the State when crafting relief that will interfere with elections).

Moreover, requiring the Division of Elections to implement these changes during an ongoing election also undermines the State’s interest in fostering “[c]onfidence in the integrity of our electoral processes”—an “essential” aspect “of our participatory democracy.” *Purcell*, 549 U.S. at 4. By forbidding the Division of Elections from requiring state-form voter-registration applicants to submit documentation of eligibility, the injunction saddles an already overburdened state agency with an untold amount of work to verify that new applicants are not disqualified from voting because of past felonies. *See Goins Decl.* ¶¶ 19-23. Based on his 15-years of experience, Tennessee’s Coordinator of Elections believes that forcing these changes to be implemented during the 2024 election cycle “will result in the registration of persons who are ineligible to register under Tennessee law and the voting by such persons, thereby compromising the integrity of the election process in Tennessee.” *Id.* ¶ 25. That result would “driv[e] honest citizens out of the democratic process and bree[d] distrust of our government.” *Purcell*, 549 U.S. at 4.

II. In any event, the traditional stay factors also favor granting a stay pending appeal. The State at minimum presents ““serious questions going to the merits,”” *Antonio v. Garland*, 38 F.4th 524, 526 (6th Cir. 2022), and the remaining factors likewise favor the State because an injunction that takes effect during the ongoing election cycle will irreparably harm the State, while granting a stay conversely would impose only minimal harm on the NAACP.

A. To begin, even assuming this Court thinks Defendants are unlikely to succeed on appeal, it can and should enter a stay because the State raises “serious questions going to the merits” of the permanent injunction. *Antonio*, 38 F.4th at 526. District courts regularly stay their own injunctions. *See, e.g., George v. Hargett*, 879 F.3d 711, 715 (6th Cir. 2018); *Texas v. United States*, No. 4:18-cv-167, Doc. 221 (N.D. Tex. Dec. 31, 2018). And the Court should do so here because the State’s position raises serious questions that the appellate court could see differently from this Court’s decision.

First, the Court erred by holding that the NAACP has standing because it suffers an “ongoing” “drain on its resources” in response to the challenged forms and policies. (Memorandum Opinion, R. 221, PageID# 3617-18.) As the court acknowledged, those resources are diverted when “a person TN NAACP helps register to vote is rejected despite being eligible to register.” *Id.* at 20; *see id.* at 19 (“When an eligible voter is incorrectly denied the ability to register to vote, the TN NAACP must divert resources from the other activities related to its mission by following up with the eligible voter and communicating with various governmental authorities (including, but not limited to, clerks of the court and probation officers) to rectify the situation.”). NAACP provided no evidence—none—that it *currently* diverts resources in that way to correct erroneous denials.¹ And even if it had, NAACP’s “efforts and expense to advise others how to comport with the law” by submitting proper voter-registration forms does not amount to a cognizable injury. *Fair Elections Ohio v. Husted*, 770 F.3d 456, 460 (6th Cir. 2014). That deficiency is especially pronounced for NAACP’s challenge to the federal form, because it

¹ The Supreme Court has instructed that the plaintiff “bears the burden of establishing standing as of the time [it] brought [the] lawsuit and maintaining it thereafter.” *Carney v. Adams*, 592 U.S. 53, 59 (2020). So while it may be true that NAACP diverted resources *in the past* to the earlier policies that existed from “at least 2014 until July 21, 2023,” Op. 13, that does not prove they have standing *to seek prospective relief*.

admitted that it “almost exclusively” uses the *state form* during its voter-registration efforts, (First Am. Complaint, R. 102, PageID# 620-21), and the NAACP’s prelitigation notices only address Tennessee’s documentation requirement for the *state form*, (see NVRA Notice Letters, R. 156-18, PageID# 2564-65; R. 156-16, PageID# 2552-54; R. 156-15, PageID# 2515-18.)

Second, the Court erroneously concluded that the challenges to the pre-July 2023 policies were not moot by ignoring the presumption of good faith and drawing negative inferences against the non-moving party that were inappropriate at the summary-judgment stage. *See Speech First, Inc. v. Schlissel*, 939 F.3d 756, 767 (6th Cir. 2019).

Third, the Court erred by granting summary judgment and holding that Tennessee’s documentation policy violates the NVRA. States may require state-form applicants to submit information beyond that required by the Federal Form. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013); *Young v. Fordice*, 520 U.S. 273, 286 (1997). And here, as evidenced by the documentation policy itself, Tennessee has determined that it needs voter-registration applicants to submit certain proof so that the State may “assess the eligibility of the applicant” and “administer voter registration and other parts of the election process.” 52 U.S.C. § 20508(b)(1). Nothing in the NVRA forbids States from requiring applicants to submit evidence that they satisfy the eligibility requirements. *See id.*

B. The State will suffer irreparable harm by being enjoined from enforcing its voter-registration policies during the 2024 election while its appeal is pending. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). The injunction also prejudices the State’s interest in preventing electoral chaos and confusion, as well as its interest in preserving the integrity of its elections. *Supra* I.

C. The balance of the remaining equitable factors also favors the State. *See SawariMedia, LLC v. Whitmer*, 963 F.3d 595, 596 (6th Cir. 2020) (explaining why the last two

factors merge here). Plaintiff NAACP does not suffer any constitutional harm or any injury to its own statutory rights; instead, the NAACP's injury derives from some (unquantified) amount of time and resources that the organization must spend in response to the challenged voter-registration forms and policies. (*See* Memorandum Opinion, R. 221, PageID# 3617-18.) Whatever those costs are, they do not overcome the State's "strong public interest" in preserving the integrity of its ballot box preventing last-minute changes to election procedures weeks before upcoming deadlines. *See SEIU Local 1*, 698 F.3d at 346.

CONCLUSION

The Court should grant the motion to stay the injunction pending appeal. At minimum, the Court should stay its injunction to prevent it from applying to the 2024 election cycle.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

/s/ Zachary L. Barker

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Date: June 7, 2024

/s/ Zachary L. Barker
Assistant Attorney General

Goins' Third Supplemental Declaration

5. On July 21, 2023, I issued two memoranda to county election officials. These memoranda established new policies and procedures for these officials with respect to the registration of individuals with felony convictions. 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* Restoration Mem. D.E. 151-5.) This memorandum was issued in response to the Tennessee Supreme Court’s decision in *Falls v. Goins*, No. M2020-01510-SC-R11-CV (Tenn. June 29, 2023).

6. The second memoranda outlined the process for the restoration of voting rights for individuals convicted of a felony 40 or more years ago. (*See* Older Felonies Mem., D.E. 151-2.) Specifically, the memoranda 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. This memorandum was issued in response to ongoing discussions and deliberation with my staff and with legal counsel. Both memoranda were issued pursuant to my statutory duties outlined above and were approved by Secretary Hargett.

7. The United States District Court for the Middle District of Tennessee has enjoined Tennessee election officials from requesting additional documentation when an otherwise eligible applicant indicates that he or she has a felony conviction on Tennessee’s paper voter registration application or the Federal voter registration application absent credible information establishing the person is ineligible to vote.

8. Removing any mention of the additional documentation requirement from the paper version of the Tennessee State Form will require editing, printing, and distributing a new paper form.

9. During a work intensive Presidential election cycle, such changes, along with distribution of the Tennessee State Form as discussed further herein, will take time, cost money, and require staff members in the Division of Elections to re-allocate their time away from the regular duties and responsibilities in preparing for the August State and Federal primary elections. Similar re-allocation of personnel and resources will be required by the Tennessee Department of Safety and Homeland Security (“DOS”), as well as other state agencies that either serve as mandatory voter registration agencies under the NVRA or assist state agencies that serve as voter registration agencies.

10. Specifically, DOS and other state agencies that serve as voter registration agencies will have to modify the paper version of the State Form as used in their processes.

11. For DOS, any modifications to the paper version of the State Form must be integrated into an electronic system that prints the voter registration application for their customers. Such integration is necessary, however, in order for DOS to remain in compliance with the NVRA by

ensuring that applicants for driver's license are simultaneously provided the opportunity to register to vote.

12. The Tennessee Department of General Services prints and ships the paper version of the Tennessee State Form for many of the state agencies in Tennessee that serve as voter registration agencies. The estimated cost for printing the modified paper version of the Tennessee State Form is approximately \$4,000 and it costs about \$32 per packet of forms to ship to the various state agencies throughout the state. In the last year, the Department of General Services shipped the paper version of the Tennessee State Form to about or around 60 different offices that serve as voter registration agencies. This shipping cost is estimated to be about and around \$1,900.

13. Based on the last invoice for printing the paper version of the State Form, the Tennessee Division of Elections will pay about and around \$8,528 to print the modified paper version of the State Form.

14. There are approximately twenty-five (25) days between the date of this declaration and July 2, 2024—the deadline to register to vote for the August 1, 2024, election. This simply is not enough time for these changes to be thoroughly vetted and implemented.

15. Changes to the voting process, particularly to the voter registration process, in an election year, are extremely problematic and something that election officials try to avoid, as such changes can lead to unintended problems that can call into question the validity of an election and otherwise compromise the integrity of the entire election process.

16. Twenty-five (25) days is not sufficient time for us to make the necessary revisions to the State's paper voter registration form, print and distribute sufficient copies to the mandatory and passive voter registration agencies, as well as the 95 county election commissions—much less monitor that the revised form is available on the website for each of the separate county election commissions.

17. The Division of Elections employs eleven full-time staff and two college interns who are currently working around the clock to prepare for the upcoming August primary election and November general election. Part of that preparation is developing a new ballot for visually impaired voters. The injunction prohibiting election officials from requesting additional documentation from individuals with felony convictions will require more resources from the Division of Elections and require more extended time from our employees.

18. Additional claims in this lawsuit relate to the content of Tennessee's voter registration forms. If Tennessee election officials are ordered to make further changes to the Tennessee's paper voter registration application the costs and strain on the Division of Election's resources associated with making any such changes will be incurred for a second time.

19. Furthermore, for applicants who committed a disqualifying felony conviction, placing the responsibility of identifying an applicant's felony conviction on the Division of Elections will create an arduous, and sometimes impossible, burden.

20. To establish a process of checking the felony status and restoration status of all voter registration applicants who disclose that they have a felony conviction, the Division of Elections would have to hire additional staff members. I anticipate at least two additional staff members will be required, with each being paid at least \$50,004 in salary and \$15,635 in benefits. This would involve a recurring expense of \$131,278 to the State of Tennessee.

21. Currently, the Division of Elections has one attorney primarily assigned to assist counties in researching whether a person has a previous felony. The database used for this function does not include comprehensive criminal records from other states.

22. Establishing a statewide database of persons with felony convictions that is searchable by the 95 county election commissions will require time, research, and cost. This effort will require additional allocation of employee time at the Division of Elections. I expect that it would also require many of the counties to incur time and expense as they may have to make modifications to their computer systems in order to access any such statewide database.

23. Shifting the responsibility of identifying an applicant's rights restoration from the person who committed a felony to the Division of Elections will result in ineligible voters casting votes in an upcoming election because the resources, including database information, necessary to verify eligibility of applicants between the registration deadline and early voting which begins 10 days after the voter registration deadline will exceed Division of Elections capacity. Thus, unverified voters, who are ineligible, will be casting votes in upcoming elections. This will harm the integrity of Tennessee elections.

24. Tennessee elections have proven that every eligible vote counts and every eligible voter matters. In 2010, an election for Judge in a county in East Tennessee ended in a tie vote with both candidates receiving 6,442 votes. In 2012, a Republican Primary for the office of Tennessee House of Representatives, District 71, was decided by 4 votes. In a 2010 Democratic Primary for the office of Tennessee Senate, District 21, was decided by 17 votes. The ultimate winner of a congressional seat won the primary by 38 votes out of 77,504 votes cast in an election in 2014. This past 2022 election cycle, there were five local races that had tie votes for the offices involved. If in any of these races, it had been determined that ineligible voters, such as a person with a disqualifying felony conviction who had not gotten his voting rights restored, had participated in the elections, there would have likely been a contest to these elections and a strong possibility that a new election would have been required.

25. Based on my 15 years of experience as Coordinator of Elections, it is my opinion that requiring the State to make the changes to the voter registration process to comply with the District Court's June 5, 2024 Injunction Order during this election year will result in the registration of persons who are ineligible to register under Tennessee law and the voting by such persons, thereby compromising the integrity of the election process in Tennessee.

Pursuant to 28 U.S.C. § 1746, 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

MARK GOINS

7 June 2024

Date

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Order Setting Deadline for Response to Emergency Motion

**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,

v.

WILLIAM LEE, et al.,

Defendants.

NO. 3:20-cv-01039

JUDGE CAMPBELL


MAGISTRATE JUDGE FRENSEY

ORDER

The Court is in receipt of the Emergency Motion for a Stay of Permanent Injunction Pending Appeal (Doc. No. 243) filed by Defendants Trey Hargett and Mark Goins (collectively “Tennessee Election Officials”) on the afternoon of Friday, June 7, 2024, pursuant to Federal Rule of Appellate Procedure 8(a)(1). The Court has reviewed the motion and finds that a response from Plaintiff Tennessee National Association for the Advancement of Colored People (“TN NAACP”) would be helpful. Accordingly, TN NAACP shall file a response to the present motion on or before Monday, June 17, 2024.

To assuage the Tennessee Election Officials’ concerns about time to comply with the permanent injunction, the Court notes that the injunction does not require the State to make any changes to its voter registration forms. (Doc. No. 237).

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES DISTRICT JUDGE

**Declaration of Blair
Bowie in Support of
Appellees Response to
Emergency Stay
Motion**

No. 24-5546

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TENNESSEE CONFERENCE OF THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED PEOPLE,

Plaintiff-Appellee,

v.

TRE HARGETT, in his official capacity as Secretary of State of Tennessee, and
MARK GOINS, in his official capacity as Coordinator of Elections for the State
of Tennessee,

Defendants-Petitioners.

On Appeal from the
United States District Court for the Middle District of Tennessee

**DECLARATION OF BLAIR BOWIE IN SUPPORT OF PLAINTIFF'S
RESPONSE TO DEFENDANTS' EMERGENCY MOTION FOR A STAY
PENDING APPEAL AND AN ADMINISTRATIVE STAY**

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Denmark J. Grant
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Ellen M. Boettcher
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CAMPAIGN LEGAL CENTER
1101 14th St. NW, Suite 400
Washington, DC 20005
(202) 736-2200

Counsel for Plaintiff-Appellee

Pursuant to 28 U.S.C. § 1746, I, Blair S. Bowie, declare as follows:

1. I am an attorney representing Plaintiffs Tennessee Conference of the National Association for the Advancement of Colored People, Lamar Perry, Curtis Gray Jr., John Weare, Benjamin Tournier, Leola Scott, and Reginald Hendrix. I have been employed by Campaign Legal Center since 2017. I currently serve as Director, Restore Your Vote on the voting rights team. I am over the age of 18 and competent to testify as to the matters set forth in this affidavit based upon my own personal knowledge. This declaration is submitted in support of Plaintiffs' Response to Defendants' Emergency Motion for a Stay Pending Appeal and an Administrative Stay.

2. The following information regarding the changes that Defendants made to the voter registration processes and subsequent reversal upon the Sixth Circuit's stay order came to light through ongoing discovery in the district court, specifically in depositions with Defendant Goins and the Elections Division's 30(6)(b) representative, Elizabeth Henry-Robertson, on Tuesday, June 18, 2024 and the document production shortly after 10:00 PM CST that same day.

3. On June 18, 2024, counsel for Defendants served on counsel for Plaintiffs a video of a training held by Defendant Goins regarding the implementation of the district court's June 5 order. A true and correct copy of this Training Call is attached as Exhibit A. Defendants produced this training video by providing this link: <https://tn.webex.com/recordingservice/sites/tn/recording/99dde5de04454276b107f>

1d7c8934c19/playback. In the event the video becomes unavailable at this link, Plaintiffs have downloaded the underlying file and are prepared to submit it to the Court.

4. On June 18, 2024, counsel for Defendants served on counsel for Plaintiffs DEF017413. A true and correct copy of DEF017413 is attached as Exhibit B.

5. On June 18, 2024, counsel for Defendants served on counsel for Plaintiffs DEF017414-16. A true and correct copy of DEF017414-16 is attached as Exhibit C.

6. On June 18, 2024, counsel for Defendants served on counsel for Plaintiffs DEF017417. A true and correct copy of DEF017417 is attached as Exhibit D.

7. On June 18, 2024, counsel for Defendants served on counsel for Plaintiffs DEF017419. A true and correct copy of DEF017419 is attached as Exhibit E.

8. On June 18, 2024, counsel for Defendants served on counsel for Plaintiffs DEF017424. A true and correct copy of DEF017424 is attached as Exhibit F.

9. On June 18, 2024, counsel for Defendants served on counsel for Plaintiffs DEF017425-26. A true and correct copy of DEF017425-26 is attached as Exhibit G.

10. On June 18, 2024, counsel for Defendants served on counsel for Plaintiffs DEF017443. A true and correct copy of DEF017443 is attached as Exhibit H.

11. On June 18, 2024, counsel for Defendants served on counsel for Plaintiffs DEF017444. A true and correct copy of DEF017444 is attached as Exhibit I.

12. On June 18, 2024, counsel for Plaintiffs took a Rule 30(b)(6) Deposition of a representative of the Tennessee Division of Elections, Elizabeth Henry-Robertson,

Assistant Coordinator of Elections. A true and correct copy of an excerpted transcript of her deposition is attached as Exhibit J.

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

Executed this 20th day of June, 2024, in Nashville, TN.

/s/ Blair S. Bowie

Blair S. Bowie

Exhibit A, Training Call Link

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The link to the recording of the Training Call produced by Defendants is available at this link:

<https://tn.webex.com/recordingservice/sites/tn/recording/99dde5de04454276b107f1d7c8934c19/playback>

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Exhibit B, DEF017413

Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor

Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM

To: All County Election Commissions

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: June 5, 2024

Subject: Court Order on Voter Registration for Individuals with Prior Felony Convictions

This afternoon, U.S. District Judge William L. Campbell, Jr. issued an order in the ongoing litigation regarding voter registration for individuals with prior felony convictions. The order is attached to this memo.

In summary, Judge Campbell ordered the state to register an individual even if the person has answered "Yes" to the felony question and provided no proof of eligibility, unless there is "credible information establishing" that the person is ineligible to vote.

We are still in the process of reviewing the order and all its implications but wanted to get this information to you as soon as possible.

The court has also ordered that we schedule a training session, and more details will be provided at that training. In the meantime, do not reject an application from an individual who has marked "Yes" to the felon question. All forms with a "Yes" should be sent to Lou Alsobrooks for review using secure email protocols.

Thank you for your dedicated service to Tennessee voters.

Exhibit C, DEF017414-16

Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor

Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections615-741-7956
Mark.Goins@tn.gov

MEMORANDUM

To: All County Election Commissions

From: Mark Goins *Mark Goins*
Coordinator of Elections

Date: June 12, 2024

Subject: Processing Voter Registration Applications with Felony Question Marked "Yes"

On June 5, 2024, U.S. District Judge William L. Campbell, Jr. issued an order in the ongoing case *Tennessee Conf. of the NAACP v. William Lee* regarding voter registration for individuals with prior felony convictions. The order issued by Judge Campbell requires the state to register an individual even if the person has answered "Yes" to the felony question and provided no proof of eligibility, unless there is "credible information establishing" that the person is ineligible to vote. As the initial receiver of applications, it is incumbent upon county election commissions to follow the instructions outlined below to ensure that the state remains in compliance with the court order.

Processing Applicants Using the State Mail-In Voter Registration Form

A county election commission that receives an application using a state mail-in voter registration form that meets the criteria below **must** be sent to the Division of Elections to confirm whether the Division of Elections has a record that the applicant's voting rights have been restored:

- a. The applicant marked "Yes" to the felony question; **or**
- b. County election commission has evidence of a prior felony conviction for the applicant.

If the Division of Elections informs the county election commission that there is a record showing that the applicant's voting rights **have been** restored for all known felonies, the county election commission will not reject the application, but **must process** the applicant's voter registration.

If the Division of Elections informs the county election commission that no record of the applicant's restoration of voting rights has been found for all known felonies, the county election commission will **reject** the applicant's voter registration and **provide** the applicant with the voter registration appeal form, and the Certificate of Restoration of Voting Rights, which contains a summary of the two-step process the applicant must complete to have their voting rights restored to become eligible to vote.

Processing Applicants Using the Federal Voter Registration Form

Since the federal form does not contain a "yes" or "no" felon question, a county election commission that receives an application using the federal voter registration form will continue to process the application, unless the county election commission's records indicate that the applicant has a prior felony conviction.

If a county election commission has evidence that the applicant using the federal voter registration form has a felony conviction, the county election commission will not reject the application, but **must** send the application to the Division of Elections to confirm whether the Division of Elections has a record that the applicant's voting rights have been restored.

If the Division of Elections informs the county election commission that there is a record showing that the applicant's voting rights **has been restored** for all known felonies the county election commission must process the applicant's voter registration.

If the Division of Elections informs the county election commission that no record of the applicant's restoration of voting rights has been found, the county election commission will **reject** the applicant's voter registration and **provide** the applicant with the voter registration appeal form, and the Certificate of Restoration of Voting Rights, which contains a summary of the two-step process the applicant must complete to have their voting rights restored to become eligible to vote.

Processing Applicants with Felony Convictions Prior to January 15, 1973

A county election commission that receives a voter registration application from an applicant who indicates that he/she was convicted of a felony prior to January 15, 1973, should be processed using the criteria below:

Assuming all other information on the form is acceptable and eligibility requirements are met, an applicant that identifies on the face of their voter registration form that prior to January 15, 1973, they were not convicted of one of the possible disqualifying crimes for which the court did not find them **infamous**, is eligible to register to vote because the applicant did not lose their right to vote. Accordingly, the applicant's voter registration **must be processed**.

If a county election commission receives a voter registration application from an applicant who indicates on the face of their registration that they were convicted of one of the disqualifying crimes and declared infamous, the applicant's voter registration application **must** be sent to the Division of Elections for review.

Processing Applicant's with Felony Convictions between January 15, 1973, and May 17, 1981

If a county election commission receives a voter registration application from an applicant that identifies on the face of their voter registration form that they were convicted of a felony between January 15, 1973, and May 17, 1981, and assuming all other information on the form is acceptable and eligibility requirements are met, the applicant's voter registration **must be processed** as the applicant never lost the right to vote.

Processing Deficient Registration Forms

For voters who do not answer "yes" or "no" to the felony question on the state form, continue to treat these forms as deficient registrations.

If an applicant comes in to correct the deficiency and they mark "yes" to the felony question, you will send the form to Lou.

Instructions for Submitting to Division of Elections

- For applications sent by secure email, send to vcheck@tn.gov and place the following information in the subject line: Applicant's **last name** and the word **registration** (Ex- Doe registration)
- For county election commissions using the state email system (tn.gov) a secure email must include [secure email] at the beginning of the subject line.
- For applications sent by fax, use **(615) 741-1278** and put the following on the fax cover sheet:
To: Lou Alsobrooks
Subject: Applicant's **last name** and the word **registration** (Ex- Doe registration)
- Lou Alsobrooks can be reached by calling **(615) 253-5778**

Updated Forms

The voter registration form posted on our website and the voter registration appeal form have been updated in light of the order. Both forms are included with this memo with a revision date of 06/24. The voter registration form is available online at <https://sos.tn.gov/elections/services/register-to-vote-paper-form-mail-in-or-hand-deliver>. ***Please be sure your websites are updated to point to the updated form. The appeal form is available on the training website.***

Exhibit D, DEF017417

Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor

Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM**To:** All County Election Commissions**From:** Mark Goins *Mark Goins*
Coordinator of Elections**Date:** June 14, 2024**Subject:** Administrative Stay of Court Order

This afternoon, the United States Court of Appeals for the Sixth Circuit issued an administrative stay of the order we discussed with you earlier this week. This means that the lower court decision is on hold until further notice.

Because of the stay, you do not need to send forms to the Division of Elections from individuals who have marked "yes" to the felony question. You should continue to follow the prior process outlined in the July 21, 2023 memo.

If you have already sent forms to this office, you do not have to wait for a response from us. You should continue to follow the prior process for these forms.

You should also use the prior versions of the voter registration form and appeal form. The training site is being updated accordingly, and we have put a request into our IT to ensure our website is updated.

Thank you for your patience as we work through the appellate process.

Exhibit E, DEF017419

From: [Andrew Dodd](#)
Bcc: [Alan Farley \(afarley@rutherfordcountyttn.gov\)](#); [Amanda Joslin](#); [Andrew Robertson \(andrew.robertson@marshallcountyttn.com\)](#); [Andy Farrar \(afarrar@coffeecountyttn.org\)](#); [Annette Pulley - Houston County Election Commission \(Houston.commission@tn.gov\)](#); [Barry Doss \(macon.commission@tn.gov\)](#); [Chad Gray \(Chad.Gray@williamsoncounty-tn.gov\)](#); [cmackinlay@maurycounty-tn.gov](#); [Craig Story \(Overton.Commission@tn.gov\)](#); [Daniel Perigo \(Stewart.Commission@tn.gov\)](#); [Dennis Stanley - DeKalb County Election Commission \(dekalb.commission@tn.gov\)](#); [Drew McMillan \(jacksoncobw@twakes.net\)](#); [Garry Miller \(grundy.commission@tn.gov\)](#); [Jeff Roberts \(jeff.roberts@nashville.gov\)](#); [Jerrie Holland \(segelection@bledsoe.net\)](#); [Jim Sanders \(Moore.Commission@tn.gov\)](#); [JoAnn Bullion \(Waverly.vote@gmail.com\)](#); [Joey Williams \(Fentress.Commission@tn.gov\)](#); [Korinne Hill \(vote@smithcountyelection.com\)](#); [Lillie Ruth Brewer - Wayne County Election Commission \(wayne.commission@tn.gov\)](#); [Lori Atchley \(latchley@sumnercountyttn.gov\)](#); [Margaret Ottley - Franklin County Election Commission \(franklin.commission@tn.gov\)](#); [Martie Davis \(mdavis@hickmanco.com\)](#); [Matt Teply \(election@cannoncountyttn.gov\)](#); [Michele Honeycutt \(michele.honeycutt@putnamcountyttn.gov\)](#); [Monica Davis \(mdavis@claycountytnelections.com\)](#); [Pam Frejosky; Paxton, Steven; Perry Commission \(Perry.Commission@tn.gov\)](#); [Robertson Commission \(Robertson.Commission@tn.gov\)](#); [Roxanne Hagewood \(rhagewood@dicksoncountyttn.gov\)](#); [Rusty Isbell \(lcelection@outlook.com\)](#); [Shelia Allen \(election@lincolncountyttn.gov\)](#); [Sherry Anderson \(sherry.anderson@whitecountyttn.gov\)](#); [Summer Leverette \(summer.leverette@bedfordcountyttn.gov\)](#); [Susie Davenport \(sdavenport@warrencountyttn.gov\)](#); [Tammy Smith - Wilson County Election Commission \(tsmith@wilsonvotes.gov\)](#); [Tanya White \(twhite@lawcotn.org\)](#); [Tim Clark \(Pickett.Commission@tn.gov\)](#); [VanBuren Commission \(VanBuren.Commission@tn.gov\)](#); [Zena Dickey \(gcelection@gilescountyttn.gov\)](#)
Subject: Memo - Processing Voter Registration Applications with Felony Question Marked "Yes"
Date: Wednesday, June 12, 2024 4:07:00 PM
Attachments: [20240612 Memo - Processing Voter Registration Applications with Felony Question Marked "Yes".pdf](#)
[Voter Registration Appeal Request Form SS-3079 \(Rev. 06-24\).pdf](#)
[Voter Registration Application SS-3010 \(Rev. 06-24\).pdf](#)

All,

As a follow up to the training you and your staff attended on Monday. Please see the attached memo from Mark which provides written guidance for all county election commissions to follow when processing voter registration applications with the felony question marked "Yes".

One key change from what was discussed during Monday's training is that you will no longer be sending your registrations by secure email to Lou.Alsobrooks@tn.gov. All registrations will still be checked by Lou, but must be sent by secure email to vcheck@tn.gov.

For individuals not able to attend Monday's training, a recording of the training is now available for you to use on the training website.

Finally, you will also find attached the updated voter registration appeal form and the updated voter registration application. Thank you, and please let us know if you have any questions.

Andrew

Andrew Dodd | Assistant Coordinator of Elections

Division of Elections

Office of Tennessee Secretary of State Tre Hargett

Office: (615) 253-4587

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Social Media Links:

www.facebook.com/TennesseeSecretaryofState

www.facebook.com/TNStateLibraryArchives/timeline

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Exhibit F, DEF017424

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**VOTER REGISTRATION APPEAL REQUEST FORM****State of Tennessee**

Your voter registration application has been rejected. If you would like to appeal the rejection of your voter registration application, you may submit this appeal form to the county election commission office.

This appeal form will be presented to the election commission and the election commission's decision will be a final administrative decision. This form must be filed with the county election commission office **within ten (10) days of the enclosed notice.**

I, _____, understand that in order to be eligible to vote that I have not been convicted of a felony or if convicted have had my rights properly restored; that I will be eighteen (18) on or before the next election; that I am a United States citizen; and that I am a resident of the State of Tennessee.

By checking all the applicable options below and signing my name, I am swearing (or affirming) that the information I have provided is true, subject to the **WARNING** below as stated.

- ☐ I have not been convicted of a felony;
- ☐ I have been convicted of a felony but:
 - ☐ I have had my voting rights properly restored or my record expunged.
 - ☐ My felony conviction was between January 15, 1973, and May 18, 1981. (I did not lose my voting rights.)
 - ☐ My felony conviction was before January 15, 1973, and the judgment did not declare me infamous. (I did not lose my voting rights.)
- ☐ I am a citizen of the United States;
- ☐ I will be eighteen (18) years of age on or before the next election;
- ☐ I am a resident of the State of Tennessee.

A copy of the supporting documentation may be included with this appeal to be considered by the election commission.

WARNING: Giving false information to register to vote or attempting to register when not qualified is a felony punishable by not less than two (2) years nor more than twelve (12) years imprisonment or a fine of \$5,000 or both.

- ☐ Your appearance is not required; however, if you would like to appear before the election commission check the box provided.

Signature of Applicant

Date

If applicant is unable to sign, provide signature of person who signed for applicant.

Signature of Person Assisting

Address of Person Assisting

BELOW INFORMATION FOR ELECTION COMMISSION USE ONLY

Application ID: _____

- ☐ The members of the County Election Commission met in an open meeting on _____, 20____, and by a majority vote have found this appeal to be sufficient to allow the applicant to become a registered voter of this county.
- ☐ The members of the County Election Commission met in an open meeting on _____, 20____, and by a majority vote have NOT found this appeal to be sufficient to allow the applicant to become a registered voter of this county. A written statement of our reasons for doing so is attached and will be forwarded to the applicant.

Exhibit G, DEF017425

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Tennessee Mail-In Application For Voter Registration

You can use this form to:

- register to vote in Tennessee or change your name and/or address.

To register to vote:

- you must be a U.S. citizen, AND
- you must be a resident of Tennessee, AND
- you must be at least 18 years old on or before the next election, AND
- 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. For more information about this process, call **1-877-850-4959** or visit **sos.tn.gov/restoration**.

Are you interested in working on Election Day? ☐ YES ☐ NO

Instructions/Checklist:

- ☐ Please PRINT with a blue or black **INK** pen (not felt tip).
- ☐ Provide the information in boxes 1–4 below, read the VOTER DECLARATION in box 5, and sign by the “X” in box 5.
- ☐ You must mail or hand deliver this form to your county election commission at least 30 days before an election. Go to **sos.tn.gov/election-commission** to find your county election commission address.
- ☐ To ensure a more confidential mailing process for this form, you can place this application in an envelope addressed to the county election commission.

If you register by mail, you must vote IN PERSON the first time you vote after registering.

If you are qualified and the information on your form is complete, we will add your name to the county's voter rolls. We will then mail you a voter registration card. This card will tell you where to vote.

Names of persons selected for jury service in state court are not chosen from permanent voter registration records.

Voter registration records are public records, open to inspection by any citizen of Tennessee, excluding social security numbers.

Federal or Tennessee state government-issued photo ID is required to vote unless exception applies.

Warning: Knowingly giving false information to register to vote or attempting to register when not qualified is a felony punishable by not less than two (2) years nor more than twelve (12) years imprisonment or a fine of \$5,000 or both.

FOR COUNTY ELECTION COMMISSION USE ONLY

Mail _____ Reg # _____ Approved _____
Effective Date _____ P/A _____
District _____ Precinct _____ Ward _____

1 VOTER ELIGIBILITY

Are you a citizen of the United States?
☐ YES ☐ NO

Are you a resident of the State of Tennessee?
☐ YES ☐ NO

Will you be 18 or older on or before Election Day?
☐ YES ☐ NO

If you answered “No” in response to any of the above, do not complete this form.

2 PERSONAL DETAILS

Last Name: _____ First Name: _____ Middle Name: _____ Suffix: _____

SSN: _____ / _____ / _____ Date of Birth: _____ / _____ / _____ Sex: ☐ M ☐ F Race (optional): _____

Place of Birth (city/state): _____ Phone: (_____) _____ - _____

Residential Address: _____ (no PO box) Apt #: _____ City: _____

State: _____ Zip Code: _____ County: _____ Email (optional): _____

Mailing Address (if different): _____

3 LAST ADDRESS OF VOTER REGISTRATION (if any)

Name: _____ Address: _____ Apt #: _____

City: _____ State: _____ Zip Code: _____ County: _____

4 FELONY CONVICTION Have you ever been convicted of a felony? (If expunged, answer “no”) ☐ YES ☐ NO *If yes, provide the following information (if known).*

Crime(s): _____ Date (mo./yr.): _____

Place (city/state): _____ Have you received a pardon or had your voting rights restored? ☐ YES ☐ NO

5 VOTER DECLARATION: I, being duly sworn on oath (or affirmation), declare that the above address is my legal residence and that I plan to remain at such residence for an undetermined period of time and say that to the best of my knowledge and belief all of the statements made by me are true.

X
Signature of Applicant

/ /
Date

Signature of Person Assisting Applicant

Address of Person Assisting Applicant



ss-3010 (Rev. 06/24)

FROM:

PLACE
STAMP
HERE
The Post Office
will not deliver
without postage.



Voter Registration Document - Please Do Not Delay

TO:

COUNTY ELECTION COMMISSION

TRANSFERRED TO NEW ADDRESS

New Address (and mailing address if different)	District/Ward/ Precinct	Clerk	Date	Additional Information

Exhibit H, DEF017443

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From: Andrew Dodd
Bcc: Mark Goins; Beth Henry-Robertson; Steve Griffy; Zachery Pratt; Kathy Summers; Lena Russomanno; Spenser Jones; Lou Alsobrooks; Allen Hall; Maelyn Reyes; Carsten Warrick; Bob D. Brown; Alex Britt (elections@weakleycountytn.gov); Amber Moore - Hardeman County Election Commission (hardeman.commission@tn.gov); Andrea Smothers - Haywood County Election Commission (haywood.commission@tn.gov); Anita Fowlkes (dyer.commission@tn.gov); Cinda Tillman - Lauderdale County Election Commission (lauderdale.commission@tn.gov); Cindy Pinner (election@tiptonco.com); DeLaina Green - Henry County Election Commission (henry.commission@tn.gov); Emily Brown (votegibson@co.gibson.tn.us); Jeff Beasley (benton.commission@tn.gov); Joanie Collins - McNairy County Election Commission (mcnairy.commission@tn.gov); Josh Tapp - Fayette County Election Commission (elections@fayettecountytn.gov); Kathy Vest (chester.commission@tn.gov); Kim Melson (Hardin.Commission@tn.gov); Laney Tucker (crockett.commission@tn.gov); Leigh Schlager (lschlager@obionvotes.com); Linda Phillips (linda.phillips@shelbycountytn.gov); Lori Lott (llott@madisoncountytn.gov); Michelle Morgan (lake.commission@tn.gov); Peg Hamlett - Carroll County Election Commission (carroll.commission@tn.gov); Robin Powers (henderson.commission@tn.gov); Teresa Bedingfield (Decatur.Commission@tn.gov)
Subject: Memo - Stay of Court Order
Date: Friday, June 14, 2024 4:42:00 PM
Attachments: 20240614 All Counties - Administrative Stay of Court Order.pdf
ss-3010.pdf
Voter Registration Appeal Request Form SS-3079 (Rev. 7-23).pdf
Importance: High

All,

Please see attached memo regarding an update on the court order discussed earlier in the week.

Thanks,

Andrew

Andrew Dodd | Assistant Coordinator of Elections

Division of Elections

Office of Tennessee Secretary of State Tre Hargett

Office: (615) 253-4587

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Exhibit I, DEF017444

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Tennessee Secretary of State

Tre Hargett



Elections Division

312 Rosa L. Parks Avenue, 7th Floor

Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

MEMORANDUM**To:** All County Election Commissions**From:** Mark Goins *Mark Goins*
Coordinator of Elections**Date:** June 14, 2024**Subject:** Administrative Stay of Court Order

This afternoon, the United States Court of Appeals for the Sixth Circuit issued an administrative stay of the order we discussed with you earlier this week. This means that the lower court decision is on hold until further notice.

Because of the stay, you do not need to send forms to the Division of Elections from individuals who have marked "yes" to the felony question. You should continue to follow the prior process outlined in the July 21, 2023 memo.

If you have already sent forms to this office, you do not have to wait for a response from us. You should continue to follow the prior process for these forms.

You should also use the prior versions of the voter registration form and appeal form. The training site is being updated accordingly, and we have put a request into our IT to ensure our website is updated.

Thank you for your patience as we work through the appellate process.

**Exhibit J, Excerpts of
Deposition Transcript
of Elizabeth Henry-
Robertson, Assistant
Coordinator of
Elections**

In the Matter of:

NAACP, et al.

VS

LEE, et al.

ELIZABETH HENRY-ROBERTSON

June 18, 2024



BERES & ASSOCIATES
COURT REPORTERS

www.beresandassociates.com
615.742.2550 | info@beresandassociates.com

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT 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

Civil Action No. 3:20-cv-01039

JUDGE CAMPBELL

vs.

MAGISTRATE JUDGE FRENSLEY

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

Defendant

DEPOSITION OF:

ELIZABETH HENRY-ROBERTSON

Taken on behalf of the Plaintiffs

Tuesday, June 18, 2024

3:59 p.m.

BERES & ASSOCIATES COURT REPORTERS
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I N D E X

EXAMINATION OF ELIZABETH HENRY-ROBERTSON

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By Attorney Bowie6

E X H I B I T S

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Fed. R. Civ. P. 30(b)(6)

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Voter Registration (Rev. 06/24)Exhibit 5, Email dated Tue, 12 Dec 202350
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(Original exhibits returned to Attorney Bowie.)

1 The deposition of ELIZABETH HENRY-ROBERTSON was
2 taken by counsel for the Plaintiffs pursuant to notice,
3 at the offices of Baker, Donelson, Bearman, Caldwell &
4 Berkowitz, PC, 1600 West End Avenue, Suite 2000,
5 Nashville, Tennessee, commencing at 3:59 p.m. on
6 Tuesday, June 18, 2024, for all purposes under the
7 Federal Rules of Civil Procedure.

8 The formalities as to notice, caption,
9 certificate, et cetera, are waived. It is agreed that
10 Virginia Dodge, being a licensed court reporter and
11 notary public for the State of Tennessee, may swear the
12 witness, and the reading and signing of the completed
13 deposition was not discussed.

14 * * * * *

15 ELIZABETH HENRY-ROBERTSON
16 was called as a witness, and after having been first
17 duly sworn or affirmed, testified as follows:

18 EXAMINATION

19 BY ATTORNEY BOWIE:

20 Q. Good afternoon, Ms. Henry-Robertson.

21 A. Hello.

22 Q. Thank you for coming back.

23 A. Yes.

24 Q. As you may remember, my name is Blair Bowie.
25 I am counsel for plaintiffs in the Tennessee NAACP vs.

1 Q. And on the form itself, you're trying to ask
2 questions that will help you understand whether or not
3 they're eligible, right?

4 A. Correct.

5 Q. So why have a check box that groups those two
6 together?

7 A. So the pardon or having your rights restored.
8 Is that what you're saying?

9 The pardon or --

10 Q. Why don't we look at it?

11 ATTORNEY BOWIE: This will be Exhibit 3.

12 (Tennessee Mail-In Application for Voter
13 Registration (Rev. 09/20) marked
14 Exhibit 3.)

15 Q. (By Attorney Bowie) Is this the current
16 voter registration form?

17 A. Yes. This is the one after we -- yes. This
18 is it.

19 Q. Sorry. The one after what?

20 A. So we had -- we had made -- after The Court
21 ruled and filed an injunction, we had taken off some
22 language, but then the stay was granted, and so it's
23 back on it. Yeah.

24 Q. So you're saying you revised the form since
25 The Court's order?

1 A. Only the one on the online. But no. It's
2 been -- not anymore. The stay was lifted.

3 Q. It was taken down?

4 A. The stay's been lifted. I mean the stay
5 lifted the injunction.

6 Q. So you took it off because of the stay?

7 A. No. We put it back on because --

8 Q. You put this form back on?

9 A. We put the language that said "provide
10 following information" -- or "provide copy of
11 document." That's what it was. It was about require
12 providing the document.

13 Q. So you revised the form to comply with the
14 stay, and then you undid the revision?

15 A. No, no. It was an injunction.

16 Q. Sorry. You revised the form to comply with
17 the injunction --

18 A. Yes.

19 Q. -- and then when the stay was put down, you
20 took it away?

21 A. Correct.

22 Well, again, when I say revised the form, we
23 used the online -- we have a paper form that you can
24 print online. And we just removed that.

25 But no. We did not go through the full

1 process. We had not been able to go through the full
2 process of changing the form for everyone.

3 Q. But you made it public?

4 A. It was online.

5 Q. And then you took it down?

6 A. We added the words back "provide a copy of
7 document."

8 We never took it down. I don't want you to
9 think that we removed the form from our website.

10 Is that what you're thinking?

11 Q. That's what I'm asking you.

12 A. No. We did not ever remove the form from our
13 website. We changed the words on the form.

14 Q. You changed the words on the form?

15 A. On the website.

16 Q. Does that not make it a new revision?

17 A. For the online form, it was a revision. Yes.

18 Q. Okay. And then you took the revised form
19 down?

20 A. No. The form stayed up there. We just added
21 the words back on.

22 Q. Okay. So I pulled this form from your
23 website a few days ago.

24 A. Mm-hmm.

25 Q. And this one says it was revised on

1 September 20.

2 A. Yes, because that's the --

3 Q. So that's the old form?

4 A. Yeah.

5 Q. Okay. This form went back up, and the other
6 form came down. This one replaced the other form?

7 A. I think it reverted back.

8 Q. Okay. So you reverted back?

9 A. Yes.

10 Q. You undid the changes you had done to comply
11 with the injunction?

12 A. Yes.

13 Q. Changes you had already made?

14 A. On the online form.

15 Q. On the online form.

16 A. And when I say online, I mean the printed
17 form. Not the online registration.

18 Q. Why did you take them down?

19 A. Well, after the stay was granted -- how
20 should I say this?

21 For us, it is easier if the applicant can
22 provide the information. It makes the process smoother
23 if a person can provide their document showing that
24 they've had a pardon or they've had a court order
25 restoring their citizenship rights.

1 So putting that request back on there helps
2 our division in the process of restoring someone's
3 voting rights.

4 Q. So you had a form that you made because you
5 thought it complied with the injunction --

6 A. Correct.

7 Q. -- is that right?

8 A. Correct.

9 Q. Okay.

10 A. That removed those words, "If yes, provide a
11 copy of the document."

12 Q. Is this that form?

13 (Tennessee Mail-In Application for Voter
14 Registration (Rev. 06/24) marked
15 Exhibit 4.)

16 A. Yes. And it has the 6/24.

17 Q. (By Attorney Bowie) So you made this form to
18 comply with the court's order. Is that correct? You
19 edited the old form?

20 A. Yes.

21 Q. And just to clarify for the record, this is a
22 form that says at the bottom that it was revised in
23 June 2024; is that right?

24 A. Correct.

25 Q. Okay. And then this form was replaced with

1 the old form on the website?

2 A. Reverted back. Yes.

3 Q. How long was this form on the website?

4 A. Not long. Maybe a couple day -- not long.

5 It wasn't very long because once -- once the stay was
6 issued, we went back to the -- asking people to provide
7 the documents.

8 Q. Who made the decision to take this form down?

9 A. Take it -- you mean to add --

10 Q. To revert.

11 A. Well, the coordinator would make ultimately
12 do that.

13 What do you mean?

14 Q. So he knows that this form exists?

15 A. Yes.

16 Q. He knows that you revised the form in June?

17 A. Yes.

18 Q. Okay. And he made the decision to revert
19 back to the old form?

20 A. Yes.

21 Q. Okay.

22 A. And again, when you say the form, it's this
23 paper version online.

24 ATTORNEY BOWIE: So we're almost at an hour
25 so why don't we take a quick break.

1 (A recess was taken from 4:52 p.m. to
2 5:01 p.m.)

3 ATTORNEY BOWIE: Back on the record.

4 Q. (By Attorney Bowie) So we have these two
5 forms, the one that says revised on September 2020 is
6 Exhibit 3. The one that says revised on June '24 is
7 Exhibit 4; is that right?

8 A. Yes.

9 Q. So when the order on summary judgment came
10 down, it was Exhibit 3. That was the current
11 registration form; is that correct?

12 A. The 9/20.

13 Q. Then what went into creating Exhibit 4 after
14 the order?

15 A. Well, first we reviewed the language in its
16 entirety to see where was there any reference to an
17 applicant having to provide documents. And then when
18 it was concluded that it was in two areas on the form --

19 And I'm not -- I don't know who got contacted
20 in order to take the language off on the online paper
21 form. I don't know if it was our publications or --

22 So it was probably publications who does
23 that.

24 Q. Okay. How long did it take to read the form
25 and identify where it needed to be changed in your

1 opinion?

2 A. Not long. I mean not long. I mean it was in
3 the instructions. Not very long.

4 Q. How long did the whole process take to revise
5 the form?

6 A. Now, that, I can't tell you because, like I
7 said, I don't know when whomever got contacted to
8 change -- to take that language off the online paper
9 form and when it got done.

10 Q. Internal to your office, how long did it take
11 for you -- for your staff to determine that something
12 had to change, decide what the changes were and then
13 send off to the correct person at the forms office or
14 whatever what needed to change?

15 A. I don't think it was very long, but I don't
16 know because again, once we figured out it's in two
17 places, I really wasn't a part of actually
18 communicating who to take what off.

19 Q. Right. But within your office, that whole
20 process of identifying this was in two places took an
21 hour?

22 A. No. Not that long. I mean just -- yeah.

23 Q. It's right there.

24 A. Yeah. It wasn't long at all.

25 Q. So not much time put in on that.

1 And how long did the whole process take to --
2 once you began the project of changing the form, how
3 long did it take until the new form was posted online?

4 A. That's the part I don't know.

5 Q. Do you know when the new form went up? And
6 we're talking about Exhibit 4. When did Exhibit 4 go
7 live on your website?

8 A. I don't know. I don't know if it was the
9 next day or if -- because again, I don't remember --
10 I'm trying to remember when the injunction came. I
11 don't know if that was in the evening, or was it a --

12 I can't testify. I don't know.

13 Q. Okay. But to change it, it sounds like it
14 took a matter of days?

15 A. I don't know.

16 Q. And do you know, how long was the form up,
17 Exhibit 4?

18 A. I do think it was -- I don't think it was
19 more than a couple days or maybe at the most, three
20 days, before the stay came, before we got word that
21 there was a stay of the injunction.

22 Q. So it was put up a few days after that?

23 A. I did not look into that issue. I don't know
24 about this, the time frame of this form.

25 I do know we made the change. How long it

1 they -- I know that some of the older letters have been
2 scanned.

3 Q. How long do you think it took Lou to check to
4 see if this person was in the database?

5 A. To see if he was in the restoration database?
6 It doesn't take long.

7 Q. Right. Quick search?

8 A. As long as we have the Social Security
9 number, that makes it quicker.

10 Q. Right. And if somebody's registering to
11 vote, they would have provided that?

12 A. Correct.

13 Q. Right?

14 A. Correct.

15 Q. So somebody registers to vote. They check on
16 the form that they have had their rights restored
17 before. The AOE's can just email Lou and say, "Hey, can
18 you look this up?"

19 A. For the restoration.

20 Q. The whole thing shouldn't take very long,
21 right?

22 A. Not too long.

23 Q. Have you heard of the office getting a lot of
24 these requests?

25 A. Not a lot.

1 Of individuals who said that they'd been
2 previously restored?

3 Q. Mm-hmm.

4 A. Not a lot. I know we have had that issue
5 come up. Yes.

6 Q. How many would you say?

7 A. I know one in particular. But since it's not
8 a -- I mean it's something he can just look up.
9 There's not a reason for him to tell us that he's
10 searching to see if someone's restored.

11 Q. Okay. But he hasn't complained that this is
12 taking up a lot of his time?

13 A. No.

14 Q. You haven't had to hire additional staff to
15 deal with this?

16 A. No.

17 Q. So this is not a burdensome task?

18 A. I wouldn't say so.

19 Q. So would you anticipate that if the Elections
20 Division said to all registrars, "When somebody submits
21 a registration form and they check that they've already
22 had their rights restored, that it would be -- that you
23 should reach out to us and we will verify that," do you
24 think that that would add a lot of work?

25 A. So that would be a little -- almost have to

1 you had any felonies since?"

2 A. Some would. Yes.

3 Q. And so they may still ask Lou to run that
4 search?

5 A. Yes.

6 Q. Okay. So the document doesn't actually
7 really make much of a difference there?

8 A. Well, again, it does because if, as here, he
9 had no other felonies, and so he didn't have to do
10 anything further.

11 Q. Right. So it takes away an additional step?
12 Or it takes away the first step of verifying that the
13 conviction was during the grace period but not Lou
14 having to run the full felony search?

15 A. For any, yes, subsequent felonies.

16 Q. So they may still ask for the full felony
17 search regardless of the document?

18 A. They may.

19 Q. And there's nothing requiring that they ask
20 for a full felony search; is that right?

21 A. That is correct.

22 ATTORNEY BOWIE: One more here.

23 (Letter dated 6/3/24 (Dawn Harrington)
24 marked Exhibit 8.)

25 Q. (By Attorney Bowie) I know this document

Elizabeth Henry-Robertson - June 18, 2024

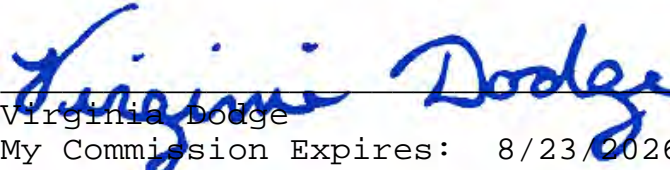
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C E R T I F I C A T E

I, Virginia Dodge, Registered Diplomat
Reporter and Tennessee Licensed Court Reporter and
Notary Public, do hereby certify that I recorded to the
best of my skill and ability by machine shorthand the
deposition contained herein, that same was reduced to
computer transcription by myself, without the use of
automatic speech recognition, and that the foregoing is
a true, accurate and complete transcript of the
deposition testimony heard in this cause.

I further certify that the witness was first
duly sworn by me and that I am not an attorney or
counsel of any of the parties, nor a relative or
employee of any attorney or counsel connected with the
action, nor financially interested in the action.

This 20th day of June, 2024.



Virginia Dodge
My Commission Expires: 8/23/2026
Tennessee LCR No. 734, Exp: 6/30/26
Tennessee CCR No. 0499, Exp: 6/30/26
RDR/CRR #835835

