

**No. M2020-01510-SC-R11-CV**

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**ERNEST FALLS,  
Plaintiff-Appellant,**

**v.**

**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 for  
the State of Tennessee; and HERBERT H. SLATERY III,  
in his official capacity as the Attorney General for the  
State of Tennessee,  
Defendants-Appellees.**

**ON APPEAL BY PERMISSION FROM THE JUDGMENT  
OF THE COURT OF APPEALS**

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**BRIEF OF DEFENDANTS-APPELLEES**

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## **ISSUE PRESENTED FOR REVIEW**

Plaintiff had been deprived of the right of suffrage by a Virginia felony conviction. His right of suffrage was restored by the Governor of Virginia in 2020, and Plaintiff claims he is therefore entitled to vote in Tennessee even though he has not provided evidence that all restitution and court costs associated with the felony conviction have been paid.

The issue presented for review is:

Whether summary judgment was properly granted to Defendants on Plaintiff's voting-rights claims, when the plain language of Tenn. Code Ann. § 40-29-202 requires a person deprived of the right of suffrage by an out-of-state conviction to pay all restitution and all court costs before being eligible to vote in Tennessee.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

The Tennessee Constitution provides that “. . . 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. And article IV, section 2 of the Tennessee Constitution authorizes the legislature to pass laws “excluding from the right of suffrage persons who may be convicted of infamous crimes.”

In the exercise of that constitutional authority, the General Assembly has provided that “[u]pon conviction for any felony, it shall be the judgment of the court that the defendant be infamous and be

immediately disqualified from exercising the right of suffrage.” Tenn. Code Ann. § 40-20-112; *see* 1981 Tenn. Pub. Acts, ch. 342, § 1.

As pertinent here, a person convicted in another State of a crime that would constitute “an infamous crime” in Tennessee may not register to vote or to vote in any election in Tennessee unless that person has been pardoned by the governor of the other State or that person’s “full rights of citizenship” have “been restored in accordance with the laws of such other state, or the law of [Tennessee].” Tenn. Code Ann. § 2-19-143(3); *see* 1981 Tenn. Pub. Acts, ch. 345, § 2.

Also applicable here are Tennessee’s laws “relative to restoration of citizenship,” enacted in 2006 and codified at Tenn. Code Ann. §§ 40-29-201 to -205. Those laws “apply to and govern restoration of the right of suffrage in [Tennessee] to any person who has been disqualified from exercising that right by reason of a conviction in any state or federal court of any infamous crime.” Tenn. Code Ann. § 40-29-201(a). And those laws “supplement the provisions of Tenn. Code Ann. § 2-19-143 by providing additional requirements for the reinstatement of voting rights for convicted felons.” Opinion, 7, 8; *see also* IV, 540-41 (chancery court concluding that § 2-19-143(3) “simply establishes a requirement for enfranchisement without precluding statutory requirements elsewhere”).

As specifically applicable here, a “person rendered infamous and deprived of the right of suffrage by the judgment of any state or federal court is eligible to apply for a voter registration card and have the right of suffrage restored upon . . . [r]eceiving a pardon.” Tenn. Code Ann. § 40-29-202(a)(1). But



[n]otwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person:

- (1) Has paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence; and
- (2) Beginning September 1, 2010, notwithstanding section (a) a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person has paid 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.

Tenn. Code Ann. § 40-29-202(b). Likewise

[n]otwithstanding subsection (a), a person shall not be eligible to apply for a voter registration card and have the right to suffrage restored, unless the person is current in all child support obligations.

Tenn. Code Ann. § 40-29-202(c). Thus, a person in Plaintiff's position is ineligible to vote in Tennessee unless and until he has paid all restitution and court costs associated with the conviction that resulted in the loss of the right of suffrage and is current in his child support obligations.

## **STATEMENT OF THE CASE AND THE FACTS**

Plaintiff Ernest Falls was convicted in 1986 of involuntary manslaughter in Virginia. (II, 267; IV, 488-89.)<sup>1</sup> He completed his

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<sup>1</sup> This action was originally brought by two plaintiffs, but Plaintiff Arthur Bledsoe has not joined the appeal from the judgment of the chancery

sentence in 1987, and he moved to Tennessee in 2018. (II, 267; IV, 488-89.) In February 2020, Virginia's Governor restored his rights of citizenship in Virginia. (II, 267; IV, 489.) On June 4, 2020, Plaintiff attempted to register to vote in Tennessee and disclosed his Virginia felony conviction. (II, 267; IV, 489.) The Granger County Administrator of Elections denied Plaintiff's registration because Plaintiff failed to provide evidence that he had paid court costs or restitution for his Virginia conviction. (II, 267-68; IV, 489.)

Plaintiff filed a Verified Complaint in Davidson County Chancery Court against Tennessee's Coordinator of Elections, Secretary of State, and Attorney General. Plaintiff sought a declaration that he was entitled to vote in Tennessee under Tenn. Code Ann. § 2-19-143(3), as well as temporary and permanent injunctions against Defendants for allegedly violating his right to vote. (I, 1-19.) Specifically, Plaintiff alleged that his citizenship rights in Tennessee were automatically restored by Tenn. Code Ann. § 2-19-143 upon receiving restoration of his civil rights from Virginia's Governor, and that the additional requirements of Tenn. Code Ann. §§ 40-29-201 to -205 did not apply to bar the restoration of his voting rights. (I, 5-7.)

Plaintiff moved for summary judgment. (II, 243-46.)<sup>2</sup> In an order entered on October 6, 2020, the chancery court denied Plaintiff's motion

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court. Accordingly, this brief will not address his role in the proceedings below.

<sup>2</sup> Before moving for summary judgment, Plaintiff had moved for a temporary injunction, but that motion was denied by the chancery court. (II, 167-70.)

and instead granted summary judgment to Defendants, “because that denial [was] based upon construction of Tennessee statutes and a determination as a matter of law, . . . necessarily result[ing] in the Defendants prevailing.” (IV, 525-45.) The chancery court ruled that the text of Tenn. Code Ann. §§ 40-29-201 and -202 “bar[red] Plaintiff[ ] from the right of suffrage until [he pays] the court costs and restitution associated with [his] disenfranchising criminal convictions.” (IV, 540.) The chancery court also determined “that the requirements of [Tenn. Code Ann. §§ 40-29-201 to -205] supplement the provisions of [Tenn. Code Ann. § 2-19-143] by providing additional requirements for reinstatement of voting rights.” (IV, 541.)

Plaintiff appealed (IV, 546-47), and the Court of Appeals affirmed. *Falls v. Goins*, No. M2020-01510-COA-R3-CV (Tenn. Ct. App. Dec. 21, 2021) (“Opinion”). The court reasoned that the two pertinent statutes, §§ 2-19-143(3) and 40-29-202, must be read “*in pari materia* rather than in isolation” and therefore held that the requirements of § 40-29-202 “supplement the provisions of Tenn. Code Ann. § 2-19-143 by providing additional requirements for the reinstatement of voting rights for convicted felons.” (Opinion, 7, 8.) Applying the provisions of § 40-29-202 to Plaintiff, the court held that he “cannot be re-enfranchised until he provides evidence that he has paid court-ordered restitution and costs related to his crimes (if applicable) and has satisfied his child support obligation (if any exists).” (*Id.*)

This Court granted Plaintiff’s application for permission to appeal. (Order entered on June 9, 2022.)

## STANDARD OF REVIEW

The sole issue on appeal concerns the interpretation and interplay of Tenn. Code Ann. § 2-19-143 and Tenn. Code Ann. §§ 40-29-201 to -205. Issues of statutory interpretation are questions of law. *See Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000); *Gallaher v. Elam*, 104 S.W.3d 455, 460 (Tenn. 2003). A chancery court’s decision to grant a motion for summary judgment is also a matter of law. *Jones v. Allman*, 588 S.W.3d 649, 654 (Tenn. Ct. App. 2019). Questions of law are reviewed “de novo upon the record . . . with no presumption of correctness.” *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

## ARGUMENT

Plaintiff was disenfranchised in Tennessee the instant he was convicted of involuntary manslaughter in Virginia. *See* Tenn. Code Ann. § 2-19-143(3). So when Plaintiff moved to Tennessee in 2018, he was disenfranchised. (I, 9-10.) Even though Plaintiff’s Virginia civil rights were restored by Virginia’s Governor in 2020, he was still subject to the voting-rights-restoration requirements in Tenn. Code Ann. § 40-29-202(b), which the legislature expressly applied to “*any* person” seeking re-enfranchisement in Tennessee. Tenn. Code Ann. § 40-29-201 (emphasis added).

The Court of Appeals therefore properly determined that Plaintiff’s restoration of the right to suffrage in Virginia did not itself restore his right to vote in Tennessee under Tenn. Code Ann. § 2-19-143. (Opinion, 7-8.) The court’s analysis of the interplay between the two statutes fully effectuated both the statutory text and legislative intent. And Plaintiff’s

obligation to comply with the requirements in Tenn. Code Ann. § 40-29-202(b) meant that he had to show he had paid “all restitution” and “all court costs.” Since there is no dispute that Plaintiff failed to make this showing, Defendants were properly awarded summary judgment.

**I. Plaintiff Does Not Have a Right to Vote in Tennessee until He Demonstrates Payment of Court Costs and Restitution.**

Plaintiff contends that because his rights of citizenship were restored by Virginia, he is “not deprived of the right to vote by Section 2-19-143(3),” and therefore “[h]e need not restore his right to vote using Tennessee’s administrative procedures.” (Supp. Br. Plaintiff-Appellant, 2.)

But Plaintiff’s argument fails as a matter of statutory construction. As the lower courts here properly concluded, the requirements of Tenn. Code Ann. § 40-29-202 *do* apply to Plaintiff, irrespective of the actions of Virginia’s Governor.

“The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995) (citing *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993)). Of primary importance is the text of the statute. *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015) (citing *Mills v. Fulmarque*, 360 S.W.3d 362, 368 (Tenn. 2012)). “A statute should be read naturally and reasonably, with the presumption that the legislature says what it means and means what it says.” *Id.* (citing *Bellsouth Telecomms., Inc. v. Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997)).

Courts must presume that “the Legislature used each word in the statute purposely and that the use of these words conveys some intent and had a meaning and purpose.” *State v. Johnson*, 79 S.W.3d 522, 526 (Tenn. 2002) (citations omitted).

Application of these bedrock principles here leads to the conclusion that Plaintiff may not register to vote until he demonstrates that he has paid all court costs and restitution. That conclusion is dictated by the legislature’s statement of intent in Tenn. Code Ann. § 40-29-201, the plain language of Tenn. Code Ann. § 40-29-202, and the relevant legislative history.

**A. The statement of legislative intent in Tenn. Code Ann. § 40-29-201 makes clear that Title 40, Part 2, applies to Plaintiff.**

When it enacted Tenn. Code Ann. §§ 40-29-201 to -205, the legislature expressly contemplated broad application:

The provisions and procedures of this part shall apply to and govern restoration of the right of suffrage in this state *to any person* who has been disqualified from exercising that right by reason of a *conviction in any state or federal court of any infamous crime*.

Tenn. Code Ann. § 40-29-201(a) (emphasis added). This provision’s sweeping language—“*any person*,” and “conviction in *any state or federal court of any infamous crime*”—makes clear that the requirements in Title 40, Part 2, were meant to apply to someone in Plaintiff’s position.

Thus, the provisions and procedures of Title 40, Part 2 apply to Plaintiff. Plaintiff is indisputably a “person” within the meaning of the statute. And Plaintiff was convicted in a state court of an infamous crime. (II, 267; IV, 488-89.) *See* Tenn. Code Ann. § 40-20-112 (providing

that all felonies are infamous crimes). Therefore, Plaintiff was disqualified from voting in Tennessee by his felony conviction in Virginia. *See* Tenn. Code Ann. § 2-19-143(3).<sup>3</sup>

**B. The plain language of Tenn. Code Ann. § 40-29-202 makes clear that its requirements apply to Plaintiff.**

That the requirements of Title 40, Part 2, apply to Plaintiff is also made clear by the plain text of Tenn. Code Ann. § 40-29-202. Under specified circumstances “*a person* rendered infamous and deprived of the right of suffrage *by the judgment of any state or federal court* is eligible to apply for a voter registration card and have the right of suffrage restored.” Tenn. Code Ann. § 40-29-202(a) (emphasis added). Plaintiff is indisputably “a person” who was rendered infamous and deprived of the right of suffrage by the judgment of a state court. (II, 267; IV, 488-89.) So “the plain statutory text controls,” as the chancery court determined. (IV, 538.)

And a person thus deprived of the right of suffrage under subsection (a) “shall *not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person*”:

- (1) Has paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence; and
- (2) . . . has paid 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.

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<sup>3</sup> Plaintiff asserts that this ignores the exceptions to Section 2-19-143’s deprivation of the right to vote.” (Supp. Br. Plaintiff-Appellant, 7.) It does not. As discussed in Subsection D below, the exceptions in § 2-19-143(3) must be read and construed together with the provisions of § 40-29-202.

*Id.* § 40-29-202(b). Subsection (c) of that statute also denies restoration of the right of suffrage to persons who are not current in their child support obligations. *Id.* § 40-29-202(c).

This “plain statutory text” means that Plaintiff is not eligible to register to vote unless he has paid the restitution and court costs associated with his criminal conviction. Plaintiff is, therefore, not eligible to vote in Tennessee because to this date, Plaintiff has offered no proof that he has done so. (IV, 489-90.)

**C. The legislative history confirms that the requirements of Title 40 apply to Plaintiff.**

As the chancery court determined (IV, 537 n.2), Tenn. Code Ann. § 40-29-202(b) unambiguously applies to Plaintiff. Because there is no ambiguity, there is no need to refer to legislative history to determine the intent of the legislature. But even if the text were ambiguous, and consideration of legislative history was proper, that history would support the application of the statute to Plaintiff.

Statements made at the legislative committee hearings leading to enactment of the legislation coincide with the declaration of intent that appears in § 40-29-201(a)—i.e., that the requirements in § 40-29-202 apply *universally*, and disenfranchised voters must satisfy their unpaid court costs, restitution, and child support before regaining their right to suffrage. For example, at the Senate Judiciary Committee hearing on April 26, 2005, Senator Cohen described the purpose of the statute:

They will get that opportunity [to vote], once they get out and serve their entire probation and/or their entire parole, they're off parole, they're off probation, they've served their time, and



they're current with their restitution and/or their court costs and fines. Then, they'll be eligible.

(III, 4-5.)<sup>4</sup> Evidence of this understanding of the statute's operation also appears in the history of proceedings in the House:

[T]he bill also calls for, when a person has done all of his time, he has been given a certificate of completion from the incarcerating institution or the pardoning authority and he—a copy of that certificate is sent to the register of elections, and that person will be able to be restored to the voters rolls as a result of that.

Any person applying to be restored to the voters rolls shall have—will have to have paid all of any restitutions that have been ordered by the Court in order for him to be eligible.

(III, 94-95.)

And these statements are not outliers; similar statements supporting universal application of the statutory requirements are present throughout the legislative history. (*See, e.g.*, III, 101 (“We’re standardizing it so everybody’s treated the same.”); III, 116-17 (the requirements “make[] standard the manner in which convicted felons who have done their time, paid their restitution can get their voting rights back . . . We are trying to fix it so that everybody’s on the same page, everybody has to do the same thing, and the law in Tennessee for this won’t be as confusing.”); III, 128 (“And so this is to create a consistent system for all individuals would have been convicted of these type[s] of offenses and create a consistent process for everyone.”).)

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<sup>4</sup> The pagination of Volume III of the record does not consistently contain the bates-stamped page number. For ease of reference, as Volume III entirely consists of one transcript of legislative history, citations to this volume will be by original page number of the transcript.

Finally, several statements made by legislators during debate on the legislation confirm that convicted persons “would have to pay back restitution for their crimes first. . . . [T]hey would also have to have their child support payments caught up before they could be eligible for reinstatement of their voting rights.” (III, 119-20.)

It would require anyone to be in compliance with whatever sentence was imposed by them, which would include incarceration, court costs, fines, restitution. . . . It would require a person to have received a pardon, to have been discharged from custody by reason of service or expiration of the maximum sentence imposed by the Court for any such infamous crimes or to have been discharged from probation.

So in order to have a discharge under those circumstances, an individual would have to be in compliance with whatever sentence was—be imposed on them, which would include court costs, fines, restitution, and/or incarceration.

(*Id.* at 127-128.)

Plaintiff’s position—that § 40-29-202 does not apply to him because his rights had already been restored by Virginia—is thus directly and repeatedly contradicted by the legislative history.

Plaintiff argues that the 2006 legislation was meant only to create a new process for restoration of the right to suffrage, not to expand the scope of disenfranchisement. (Supp. Br. Plaintiff-Appellant, 13-14.) But this argument misapprehends Defendants’ position. The General Assembly’s decision to create an additional requirement for re-enfranchisement did nothing to expand the scope of Plaintiff’s disenfranchisement. Plaintiff was disenfranchised by virtue of his conviction for an infamous crime. *See* Tenn. Code Ann. § 2-19-143(3). Plaintiff does not dispute this fact. To identify the requirements for re-

enfranchisement, though, one must look to *both* § 2-19-143(3) *and* § 40-29-202. As discussed in Subsection D below, and contrary to Plaintiff's assertions, the requirements of § 2-19-143(3) and § 40-29-202 *can* be read harmoniously. Plaintiff's arguments against repeal by implication are therefore unhelpful, as they wrongly assume dissonance between these provisions rather than harmony.

**D. Tennessee Code Annotated § 2-19-143(3) does not provide for automatic re-enfranchisement.**

Plaintiff insists that Tenn. Code Ann. § 2-19-143(3) is the only statute that “governs loss of the right to vote for individuals convicted of felonies in other states” and that he falls under one of the statute's exceptions by virtue of his restoration of civil rights by Virginia's governor. (Supp. Br. Plaintiff-Appellant, 1-2.) Contrary to Plaintiff's suggestion, though, Tenn. Code Ann. § 2-19-143(3) does not provide an independent pathway for the restoration of his voting rights. As the Court of Appeals observed, § 40-29-202 also “govern[s] restoration of the right of suffrage in this state,” and the provisions of that statute “supplement the provisions of Tenn. Code Ann. § 2-19-143 by providing additional requirements for the reinstatement of voting rights for convicted felons.” Opinion, 7, 8; *see also* IV, 540-41 (chancery court concluding that § 2-19-143(3) “simply establishes a requirement for re-enfranchisement without precluding statutory requirements elsewhere”).

Section 2-19-143(3) operates in the negative, not the positive. It provides that “[n]o person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the

laws of this state” shall be allowed to register to vote unless such person has been pardoned or restored to full rights of citizenship. This negative operation does not exclude (impliedly or expressly) any other re-enfranchisement requirements the legislature might impose, as it has done in § 40-29-202(b). By contrast, if, for instance, the statute instead read: “Any person who has been pardoned or restored to the rights of citizenship shall be allowed to vote,” *then* the statute would confer a positive entitlement without regard to any other requirements.

A similar response defeats Plaintiff’s argument that Defendants’ construction of the statutes reads the disjunctive ‘or’ out of Section 2-19-143(3). (Supp. Br. Plaintiff-Appellant, 13.) Section § 2-19-143(3) merely sets forth one requirement for disenfranchised voters. And that requirement can be satisfied in alternative ways. But nothing in § 2-19-143(3) forecloses application of the additional statutory preconditions set forth in Tenn. Code Ann. § 40-29-202(b).

Plaintiff also argues that Defendants’ construction creates an unnecessary conflict between the statutes. (Supp. Br. Plaintiff-Appellant, 2.) But it is actually Plaintiff’s interpretation of § 2-19-143(3)—that it provides an independent pathway to rights restoration, regardless of any other statutory requirements—which does so. Plaintiff’s reading directly conflicts with the plain text of Tenn. Code Ann. § 40-29-201(a). As discussed, that provision applies broadly and “govern[s] restoration of the right of suffrage in this state to *any person* who has been disqualified from exercising that right by reason of a conviction in *any* state or federal court of an infamous crime.” Tenn. Code Ann. § 40-29-201(a) (emphasis added). Defendants’ construction, though,

allows both statutory provisions to exist harmoniously. *See Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995) (courts should “resolve any possible conflict between statutes in favor of each other, so as to provide a harmonious operation of the laws.”)

Consideration of the full text of Tenn. Code Ann. § 2-19-143 makes plain that Plaintiff’s construction of § 2-19-143(3) cannot be right. While § 2-19-143(3) applies to out-of-state convictions like Plaintiff’s, § 2-19-143(1) applies to Tennessee convictions, and § 2-19-143(2) applies to federal convictions. Section 2-19-143(1) provides:

No person who has been convicted of an infamous crime . . . in this state shall be permitted to register to vote or vote at any election unless such person has been *pardoned* by the governor, or the person's full rights of citizenship have otherwise been restored as prescribed by law.

(emphasis added). Section 2-19-143(2) similarly provides:

No person who has been convicted in federal court of a crime or offense which would constitute an infamous crime under the laws of this state . . . shall be allowed to register to vote or vote at any election unless such person has been *pardoned* or restored to the full rights of citizenship by the president of the United States, or the person's full rights of citizenship have otherwise been restored in accordance with federal law, or the law of this state.

(emphasis added). Adopting Plaintiff’s position and applying it to these subsections would mean that a person granted a *pardon* “is not prohibited from voting” and “does not need to avail himself of the right restoration processes available under Section 40-29-202.” (Br. Appellant, 29.)

But Section 40-29-202 expressly and necessarily contemplates that a pardon does *not*—by itself—work to restore a convicted felon's right to

vote. Section 40-29-202(a)(1) states that receiving a pardon is an eligibility *criterion* for recapturing the right to vote. And Section 40-29-202(b) and (c) both state that “[n]otwithstanding subsection a,” paying restitution, court costs, and child support are necessary prerequisites as well. In other words, a pardoned offender must still apply for a voter registration card and must still satisfy the restitution and court-cost conditions in Tenn. Code Ann. § 40-29-202(b) and the child-support condition in (c).

Applying Plaintiff’s argument to Subsections (1) and (2) of § 2-19-143 would therefore render Tenn. Code Ann. § 40-29-202(a)(1) superfluous. Yet statutes must be construed “so that no part will be inoperative, superfluous, void or insignificant.” *Tidwell v. Collins*, 522 S.W.2d 674, 677 (Tenn. 1975). Plaintiff relies, of course, on § 2-19-143(3)—not § 2-19-143(1) or (2). But receiving a pardon is also an alternative requirement under § 2-19-143(3), so accepting Plaintiff’s construction of § 2-19-143(3) would likewise render § 40-29-202(a)(1) superfluous.

“[C]ourts may presume that the General Assembly is aware of its own prior enactments and knows the state of the law when it enacts a subsequent statute.” *Lovelace v. Copley*, 418 S.W.3d 1, 20 (Tenn. 2013). Therefore, as the Court of Appeals stated, a more recent enactment will generally take precedence over a prior one to the extent of any inconsistency between the two. Opinion, 4, 8. Here, the Court may presume that the legislature was aware of § 2-19-143(3) when it enacted §§ 40-29-201 to -205 in 2006. Applying these principles, the Court of Appeals correctly concluded that the broadly applicable requirements of

Tenn. Code Ann. § 40-29-202(b) must be construed to supplement the provisions of Tenn. Code Ann. § 2-19-143—by providing additional requirements for reinstatement of voting rights for all convicted felons regardless of the State or court of conviction. See Opinion at 8.

## **II. Because Plaintiff Does Not Have a Right to Vote, It Is Not Unconstitutional to Require Him to Pay Court Costs and Restitution as a Condition of Re-Enfranchisement.**

Plaintiff invokes his right to vote and asserts that there is a “default presumption of the right to vote under the Tennessee Constitution.” (Supp. Br. Plaintiff-Appellant, 1.) But Plaintiff lost the right to vote when he was convicted of an infamous crime. Indeed, Plaintiff himself acknowledges that “[t]he legislature is constitutionally allowed to pass laws that abridge that right [to vote] upon conviction of a felony.” (*Id.*) And “[h]aving lost [his] voting rights, Plaintiff[] lack[s] *any* fundamental interest to assert.” *Johnson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010) (emphasis added). Insofar as Plaintiff’s claim is constitutionally based, therefore, the claim evaporates.<sup>5</sup>

The fundamental right to vote is not implicated here because the Tennessee Constitution expressly provides that persons “convict[ed] by a jury of some infamous crime, previously ascertained and declared by law” may lose their right to vote and can be excluded from the franchise. Tenn. Const. art. I, § 5. The Tennessee Constitution further provides that “[l]aws may be passed excluding from the right of suffrage persons who

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<sup>5</sup> Plaintiff alleged “two independent claims for relief: first, a declaration of [his] voting rights under [Tenn. Code Ann. §] 2-19-143(3), and second, a violation of Plaintiff[‘s] fundamental right to vote secured by the Tennessee Constitution.” (IV, 531.)

may be convicted of infamous crimes.” Tenn. Const. art. VI, § 2. (IV, 541-42.) The Tennessee General Assembly has passed just such a law; it has determined that “infamous” crimes include all felonies. *See* Tenn. Code Ann. § 40-20-112. And it has further determined that persons, like Plaintiff, who have been deprived of the right to vote on the basis of a conviction for an infamous crime cannot regain that right unless they pay all restitution and court costs. Tenn. Code Ann. § 40-29-202(b).

Tennessee is constitutionally permitted to legislate different voting-rights-restoration standards than other states. *Ridley v. Sherbrook*, 43 Tenn. 569, 576 (1866); *see also Wesley v. Collins*, 791 F.2d 1255, 1261 (6th Cir. 1986) (“It is undisputed that a state may constitutionally disenfranchise convicted felons, and that the right of felons to vote is not fundamental.”). Plaintiff cannot show that he meets Tennessee’s standards. His argument that Defendants have “put the cart before the horse by taking for granted that [he] is disenfranchised because he has a felony conviction” necessarily depends on the correctness of Plaintiff’s statutory-construction argument. But for all the reasons discussed in Section I above, that argument is *incorrect*.

Indeed, the incorrectness of Plaintiff’s argument is manifest. When Plaintiff moved to Tennessee, he was uncontrovertibly disenfranchised by Tennessee law. *See* Tenn. Code Ann. § 2-19-143; I, 9-10. Acceptance of Plaintiff’s argument would effectively permit the governor of another State to unilaterally render him eligible to vote in Tennessee without subjecting him to the additional requirements that Tennessee law expressly applies to *all* persons seeking restoration of their Tennessee voting rights. Such a result would impermissibly intrude on Tennessee’s



sovereignty and negate its legislature's authority to enact preconditions to re-enfranchisement in Tennessee.

## CONCLUSION

For the reasons stated, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief consists of 5,578 words in compliance with Tenn. Sup. Ct. R. 46.

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