

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

TERRENCE JOHNSON, JIM HARRIS,)
ALEXANDER FRIEDMANN,)
and JOSHUA ROBERTS)

Plaintiffs,)

vs.)

PHIL BREDESEN, Governor of the State)
Tennessee, BROOK THOMPSON,)
Coordinator of Elections,)
RILEY DARNELL, Secretary of State of)
Tennessee, JAMES JOHNSON,)
Administrator of Elections for Shelby)
County, KIM BUCKLEY, Administrator of)
Elections for Madison County, and)
RAY BARRETT, Administrator of Elections)
for Davidson County, in their official)
capacities,)

Defendants.)

Case No. 03-08-0187

Hon. Thomas A. Wiseman, Jr.
U.S. District Court Judge

Hon. Juliet Griffin
U.S. Magistrate Judge

**AMENDED COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND NOMINAL MONETARY DAMAGES**

INTRODUCTION

1. This lawsuit seeks declaratory and injunctive relief to invalidate Sections 40-29-202(b) and (c) of the Tennessee Code which condition restoration of voting rights for people convicted of infamous crimes on the payment of legal financial obligations (LFOs), namely restitution and child support payments. By denying the vote to those who have not paid these LFOs, the State violates the fundamental right to vote and discriminates among citizens on the basis of wealth. This lawsuit does not challenge the

state statutes disfranchising convicted felons while they are in prison, on probation or on parole, the State's ability to impose LFOs at the time of sentencing, or its ability to collect those debts by methods other than the refusal to restore voting rights upon completion of the non-financial terms of the sentence.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 42 U.S.C. § 1973j(f). This suit is authorized by 42 U.S.C. § 1983. This Court may exercise supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear claims under the Constitution and laws of Tennessee. This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

3. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) because Defendants Bredesen, Darnell, Thompson, and Barrett are situated within this judicial district.

PLAINTIFFS

4. Terrence Johnson is a citizen of the United States and a resident of Shelby County, Tennessee. He was convicted of federal wire fraud in or about 1999 and ordered to pay over \$40,000 in restitution for his offense. He has completed his term of imprisonment, parole, and probation for that offense. Johnson also has a daughter for whom he owes about \$1,200 in overdue child support payments, but he currently has custody of his child. He wishes to vote in upcoming elections, but remains ineligible because of his outstanding LFOs and child support payments.

5. Jim Harris is a citizen of the United States and a resident of Madison County, Tennessee. He was convicted of drug offenses in or about 1995, attempted burglary and a felony drug offense in or about 1996, and a felony drug offense in or about 2001. He has completed his terms of imprisonment, parole, and probation for all of those offenses. Harris also has a daughter for whom he owes about \$2,500 in overdue child support payments, but he currently has custody of his child. He wishes to vote in upcoming elections, but remains ineligible because of his outstanding child support payments.

6. Alexander Friedman is a citizen of the United States and a resident of Davidson County, Tennessee. He was convicted of assault and aggravated armed robbery in 1989, and has completed his term of imprisonment, parole, and probation for this offense. Friedman applied for restoration of his voting rights in 2006, but the State denied his application on the ground that he owes over \$1,000 in restitution. He wishes to vote in upcoming elections, but the State refuses to restore his voting rights.

7. Joshua Roberts is a citizen of the United States and a resident of Davidson County, Tennessee. Upon information and belief, he was convicted of forgery, evading arrest and tampering with evidence in the State of Missouri between 1999 and 2001, and he has completed his term of imprisonment, parole, and probation for these offenses. Roberts applied for restoration of his voting rights in April 2008, but the State denied his application on the ground that he owes over \$7,000 in outstanding child support payments. He wishes to vote in upcoming elections, but the State refuses to restore his voting rights.

DEFENDANTS

8. Phil Bredesen is the Governor of the State of Tennessee. As the State's chief executive officer, he is ultimately responsible for implementing Tennessee law, including violations of election and other criminal laws, rules, and regulations. He is sued in his official capacity for actions that he took under color of state law.

9. Brook Thompson is the Coordinator of Elections for the State of Tennessee. He is the State's chief administrative election officer and is responsible for implementing voting rules and regulations as necessary to carry out the provisions of the election code, including the promulgation of procedures for, and the receipt and administration of applications for, voter registration. Tenn. Code Ann. § 2-11-201. He is sued in his official capacity for actions that he took under color of state law.

10. Riley Darnell is the Secretary of State for the State of Tennessee and is ultimately responsible for developing and implementing rules and regulations as necessary to carry out the provisions of the election code. Tenn. Code Ann. § 2-11-201. He is sued in his official capacity for actions that he took under color of state law.

11. James Johnson is the administrator of elections for Shelby County, Tennessee, and is responsible for the execution of all elections in the county. Tenn. Code Ann. § 2-12-116. He is sued in his official capacity for actions that he took under color of state law.

12. Kim Buckley is the administrator of elections for Madison County, Tennessee, and is responsible for the execution of all elections in the county. Tenn. Code Ann. § 2-12-116. She is sued in her official capacity for actions that she took under color of state law.

13. Ray Barrett is the administrator of elections for Davidson County, Tennessee, and is responsible for the execution of all elections in the county. Tenn. Code Ann. § 2-12-116. He is sued in his official capacity for actions that he took under color of state law.

FACTUAL ALLEGATIONS

14. On or about May 17, 2006, the Tennessee Legislature amended Title 40, Chapter 29 of the Tennessee Code to streamline the process by which individuals with criminal convictions may seek restoration of their voting rights, and the Governor signed the bill into law on or about June 5, 2006.

15. The amended law provides that:

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:

- (1) Receiving a pardon, except where such pardon contains special conditions pertaining to the right of suffrage;
- (2) The discharge from custody by reason of service or expiration of the maximum sentence imposed by the court for any such infamous crime; or
- (3) Being granted a certificate of final discharge from supervision by the board of probation and parole pursuant to § 40-28-105, or any equivalent discharge by another state, the federal government, or county correction authority. Tenn. Code Ann. § 40-29-202(a).

16. The law further states that:

Notwithstanding the provisions of subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored unless such person has **paid all restitution** to the victim or victims of the offense ordered by the court as part of the sentence . . . [and] unless such person **is current in all child support obligations**. Tenn. Code Ann. §§ 40-29-202(b) and (c) (emphasis added).

17. An individual who seeks restoration of his or her voting rights must complete a voter registration form and obtain a “Certificate of Restoration” form from the

local county election office. The Certificate of Restoration form must be filled out by an agent or officer of the pardoning authority (probation or parole officer), the supervising or incarcerating authority (prison or jail), or the circuit or criminal court (clerk).

18. Prior to the 2006 amendment, Tennessee did not require individuals with criminal convictions who had otherwise completed all the terms of their sentence to pay all restitution or to be current in all child support obligations before being eligible to seek restoration of their voting rights.

19. Plaintiff Terrence Johnson wishes to vote in upcoming elections, but remains ineligible pursuant to Tenn. Code Ann. §§ 40-29-202(b) and (c) because he owes restitution and outstanding child support payments.

20. Plaintiff Jim Harris wishes to vote in upcoming elections, but remains ineligible pursuant to Tenn. Code Ann. §§ 40-29-202(c) because of his outstanding child support payments.

21. Plaintiff Joshua Roberts wishes to vote in upcoming elections, but remains ineligible pursuant to Tenn. Code Ann. §§ 40-29-202(c) because of his outstanding child support payments.

22. The presentence report regarding Mr. Friedman's 1989 criminal conviction states that his offense resulted in a loss of \$1,000 to the victim, but his criminal history record does not show that the court ordered him to pay restitution as part of his sentence.

23. In or about September 2006, Mr. Friedman's former parole officer, Robert Denman, searched Plaintiff Friedman's criminal file and did not find any order from the sentencing court instructing Plaintiff Friedman to pay restitution.

24. Plaintiff Friedman applied for restoration of his voting rights in 2006, but the State denied his application pursuant to Tenn. Code Ann. §§ 40-29-202(b) on the ground that he owes over \$1,000 in restitution despite the lack of any court order to that effect.

25. Plaintiff Friedman wishes to vote in upcoming elections, but the State refuses to restore his voting rights.

26. The State of Tennessee has not implemented a set of procedures that all counties have to follow when determining whether a person convicted of an infamous crime owes LFOs and, if so, whether that person has satisfied his or her LFOs.

COUNT ONE

SECTION 40-29-202(b) of the TENNESSEE CODE VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

27. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

28. Section 1 of the Fourteenth Amendment provides: “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

29. Section 40-29-202(b) of the Tennessee Code requires people convicted of an infamous crime to pay all restitution associated with their conviction before being eligible for restoration of their voting rights.

30. Tennessee’s requirement that people convicted of an infamous crime pay all restitution associated with their conviction before being eligible for restoration of their voting rights unlawfully denies Plaintiffs equal protection under the law.

31. The requirement set forth in Section 40-29-202(b) also negatively and disproportionately impacts indigent people in violation of the equal protection clause.

COUNT TWO

**SECTION 40-29-202(c) of the TENNESSEE CODE VIOLATES
THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH
AMENDMENT OF THE UNITED STATES CONSTITUTION**

32. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

33. Section 40-29-202(c) of the Tennessee Code requires people convicted of an infamous crime to be current on child support payments.

34. Tennessee law does not deny the right to vote to an individual who owes outstanding child support payments, but who has not been convicted of an infamous crime.

35. Tennessee's requirement that people convicted of an infamous crime be current on their child support payments before restoring their voting rights unlawfully denies Plaintiffs Johnson, Harris, and Roberts equal protection under the law.

36. The requirement set forth in Section 40-29-202(b) also negatively and disproportionately impacts indigent people in violation of the equal protection clause.

COUNT THREE

**VIOLATION OF THE TWENTY-FOURTH AMENDMENT
OF THE UNITED STATES CONSTITUTION**

37. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

38. The Twenty-Fourth Amendment of the Constitution of the United States provides:

The 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 abridged by the United States or any State for reason or failure to pay any poll tax or other tax.

39. Sections 40-29-202(b) and (c) of the Tennessee Code require people convicted of an infamous crime to be current on child support payments and pay all restitution associated with their conviction before being eligible for restoration of their voting rights.

40. Tennessee's requirement that people convicted of an infamous crime pay all of their LFOs as a precondition to being eligible for restoration of their voting rights violates the Twenty-fourth Amendment of the Constitution of the United States.

COUNT FOUR

VIOLATION OF EX POST FACTO CLAUSES OF THE UNITED STATES AND TENNESSEE CONSTITUTIONS

41. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

42. Article 1, Section 11 of the Tennessee Constitution states that "laws made for the punishment of acts committed previous to the existence of such laws, and by them only declared criminal, are contrary to the principles of a free Government; wherefore no Ex post facto law shall be made."

43. Article 1, Section 9 of the Constitution of the United States provides that: "No . . . ex post facto law shall be passed."

44. Because Plaintiff Johnson was convicted of a crime prior to the passage of Tenn. Code Ann. § 40-29-202(b) and has completed the terms of his sentence, Defendants' denial of his right to vote based on his failure or inability to pay the restitution associated with his sentence violates the state and federal ex post facto clauses.

45. Because Plaintiffs Johnson, Harris, and Roberts accrued outstanding child support payments prior to the passage of Tenn. Code Ann. § 40-29-202(c), Defendants' denial of their right to vote based on their failure or inability to pay their outstanding child support violates the state and federal ex post facto clauses.

46. Because Plaintiff Friedman was convicted of a crime prior to the passage of Tenn. Code Ann. § 40-29-202(b), Defendants' denial of his right to vote based on his failure or inability to pay any restitution that he might owe violates the state and federal ex post facto clauses.

COUNT FIVE

VIOLATION OF PRIVILEGES AND IMMUNITIES CLAUSES OF THE UNITED STATES AND TENNESSEE CONSTITUTIONS

47. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

48. Section 1 of the Fourteenth Amendment of the Constitution of the United States provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States....”

49. Article XI, Section 8 of the Tennessee Constitution states that the Tennessee Legislature “shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or

individuals, rights, privileges, immunities, or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.”

50. State restrictions that deny the fundamental right to vote based upon the failure to pay child support and/or restitution deny rights, privileges, immunities and the protections of equality afforded by the United States and Tennessee Constitutions.

COUNT SIX

VIOLATION OF DUE PROCESS CLAUSES OF THE UNITED STATES AND TENNESSEE CONSTITUTIONS

51. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

52. Section 1 of the Fourteenth Amendment of the Constitution of the United States prohibits any state from depriving “any person of life, liberty, or property without due process of law.”

53. Article I, Section 8 of the Tennessee Constitution provides that no person shall be “deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.”

54. The State of Tennessee has refused to restore Plaintiff Friedman’s voting rights despite the State’s failure to produce any documentation showing that Mr. Friedman owes any outstanding restitution.

55. The State’s refusal to restore Plaintiff Friedman’s voting rights violates his right to due process under the Fourteenth Amendment of the Constitution of the United States and Article I, Section 8 of the Tennessee Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to:

(1) Exercise supplemental jurisdiction over Plaintiffs' claims brought under the Constitution and laws of Tennessee;

(2) Declare that the denial of Plaintiff Friedman's right to vote based on his alleged failure to pay outstanding restitution despite the lack of any court order showing that such restitution is owed violates his right to due process under Section 1 of the Fourteenth Amendment of the Constitution of the United States and Article I, Section 8 of the Tennessee Constitution;

(3) Declare that the denial of Plaintiffs' right to vote based on their failure or inability to pay LFOs, including Plaintiff Friedman's right to vote if the Defendants present evidence showing that he does owe restitution, violates the Fourteenth and Twenty-fourth Amendments of the Constitution of the United States, the Ex Post Facto Clauses of the United States and Tennessee Constitutions, and the Privileges and Immunities Clauses of the United States and Tennessee Constitutions;

(4) Enjoin Defendants and their agents, employees, and representatives from denying Plaintiffs their right to register and vote, and direct Defendants to prepare and circulate a state registration form in accordance with this Court's declarations;

(5) Award Plaintiffs nominal damages for the denials of their right to vote;

(6) Award Plaintiffs their expenses, costs, fees, and other disbursements associated with the filing and maintenance of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. §§ 1988 and 1973l(e);

(7) Exercise continuing jurisdiction over this action during the enforcement of its judgment; and

(8) Award any other and further relief this Court deems proper and just.

DATED this 17th day of July, 2008.

Respectfully submitted,

By: /s/ Nancy Abudu

Nancy G. Abudu*

Laughlin McDonald*

Neil Bradley*

AMERICAN CIVIL LIBERTIES UNION

VOTING RIGHTS PROJECT

230 Peachtree Street NW

Suite 1440

Atlanta, Georgia 30303

Tel: (404) 523-2721

Fax: (404) 653-0331

lmcdonald@aclu.org

nbradely@aclu.org

nabudu@aclu.org

*Admitted pro hac vice

Tricia Herzfeld (Bar No. 026014)

AMERICAN CIVIL LIBERTIES UNION

OF TENNESSEE

P.O. Box 120160

Nashville, Tennessee 37212

Tel: (615) 320-7142

Fax: (615) 320-7260

tricia@aclu-tn.org

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2008, a copy of the foregoing was served on counsel of record for defendants, addressed as follows, via the court's electronic filing system:

ROBERT E. COOPER, JR.
JANET M. KLEINFELTER
WILLIAM N. HELOU
Special Litigation Division
425 5th Avenue North
Nashville, Tennessee 37243

SUE B.CAIN
ALLISON BUSSELL
108 Metropolitan Courthouse
P.O. Box 196300
Nashville, Tennessee 37219

JOHN L. RYDER
One Commerce Square, Suite 2700
Memphis, Tennessee 38103

DANIEL PRESLEY
160 North Main Street, Suite 2700
Memphis, Tennessee 38103

JAMES I. PENTECOST
JON A. YORK
106 Stonebridge Blvd.
Jackson, TN 38305

/s/ Nancy Abudu
Nancy Abudu