

# *HUMAN RIGHTS DEFENSE CENTER*

Dedicated to Protecting Human Rights

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5331 Mt. View Rd. #130

Antioch, TN 37013

January 28, 2013

**SENT VIA EMAIL ONLY**

Gregory Grisham  
Jackson Lewis LLP  
999 Shady Grove Road, Suite 110  
Memphis, TN 38120

Peter Minarik, Ph.D.  
Director, Southern Region  
U.S. Commission on Civil Rights  
61 Forsyth Street, SW Suite 1840 T  
Atlanta, GA 30303

**RE: Comment to Tennessee Advisory Committee re Disenfranchisement**

Dear Messrs. Grisham and Minarik:

I serve as associate director of the Human Rights Defense Center (HRDC), a non-profit organization dedicated to the protection of human rights of people incarcerated in U.S. detention facilities. I write in reference to Tennessee's disenfranchisement law, T.C.A. § 40-29-201, *et seq.*, to provide a formal comment concerning this topic based on my empirical experience and knowledge.

While I will not describe in detail the history of disenfranchisement in Tennessee, prior to July 1, 2006 the Volunteer State had one of the most convoluted disenfranchisement statutes in the nation, with different requirements for restoration of voting rights based upon the date of an ex-offender's conviction (for those eligible to regain their right to vote under existing law at the time).

Following statutory amendments in 2006 (SB 1678, 2006 Tenn. Pub. Act No. 860), all offenders convicted of a felony after May 18, 1981 fall under one re-enfranchisement protocol, which includes the completion and filing of a Certificate of Restoration of Voting Rights. [See Exhibit A]. The 2006 statutory amendments also expanded the number of crimes for which offenders could never regain their voting rights, to include – in addition to previously-designated offenses such as voter fraud and treason – any degree of murder or rape or any felony under T.C.A. Title 39, Chapter 16, parts 1, 4 or 5; or any sexual offense under T.C.A. § 40-39-202 or any violent sexual offense under T.C.A. § 40-39-202 designated as a felony, or any violation containing the same elements and designated as a felony in any other state or federal court where the victim was a minor. T.C.A. § 40-29-204.

The 2006 statutory amendments further require former offenders to have “paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence,” T.C.A. § 40-29-202(b)(1) and to be “current in all child support obligations,” T.C.A. § 40-29-202(c), before voting rights will be restored.

Subsequently, another statutory amendment effective September 1, 2010 (HB 969) requires ex-offenders to have “paid all court costs assessed against the person at the conclusion of the person’s trial,” except if the applicant for re-enfranchisement petitions the court and “the court has made a finding at an evidentiary hearing that the applicant is indigent at the time of application.” T.C.A. § 40-29-202(b)(2).

This is where Tennessee’s disenfranchisement statute and protocol for restoration of voting rights currently stands.

### **Personal Experience with Disenfranchisement**

I was involved in the 2006 statutory amendment to T.C.A. § 40-29-202; I chaired a committee for SOCM (then Save Our Cumberland Mountains), which had a bill introduced to reform Tennessee’s disenfranchisement statute. The bill was folded into a compromise bill with similar legislation, and the compromise bill passed as SB 1678 and was enacted into law. SOCM had opposed provisions in the compromise bill that increased the number of offenses for which ex-offenders could never regain their voting rights, and opposed provisions related to payment of restitution and child support before former offenders could regain their right to vote.

Following the 2006 statutory amendment I attempted to have my own voting rights restored, as I had prior felony convictions and had completed my sentence and term of parole in 2005. Although I attempted to follow the protocol set forth in the amended disenfranchisement law, including the completion and filing of a Certificate of Restoration of Voting Rights with the election commission, I was unsuccessful. In my case, the issue was related to restitution.

While restitution had been ordered in my case, it was ordered pursuant to a term of probation that was subsequently revoked. Thus, there was a question as to whether the restitution, ordered pursuant to a term of probation, survived the probation revocation. Further, my former parole officer would not sign the Certificate of Restoration of Voting Rights to verify whether restitution was ordered in my case due to a lack of documentation in my parole file. Even though I was willing to pay the full restitution amount whether or not it was still owed following the probation revocation, I could not find a state agency willing to accept the restitution payment. I was no longer under the jurisdiction of the Department of Correction or the parole board, and my efforts to contact the Attorney General’s office to arrange payment were unsuccessful. Absent a signature from the paroling authority on the Certificate of Restoration of Voting Rights regarding the status of restitution ordered in my criminal case, I was unable to regain my voting rights.

Thus, I was one of four plaintiffs in a lawsuit filed by the Tennessee ACLU in 2008 that challenged Tennessee's amended disenfranchisement statute: *Johnson v. Bredesen*, U.S.D.C. (M.D. Tennessee), No. 3:08-cv-00187. Mine was the only claim that alleged a due process violation. I settled my claims and regained my voting rights in 2008, with the payment of \$900 in restitution that was accepted by the Attorney General's office. The other plaintiffs' claims were dismissed by the district court, with the dismissal upheld on appeal. *Johnson v. Bredesen*, 624 F.3d 742 (6<sup>th</sup> Cir. 2010), *cert. denied*.

Based on my own experience with Tennessee's disenfranchisement statute and the state's protocol for restoration of voting rights for ex-offenders, I offer the following observations.

### **Certificate of Restoration of Voting Rights**

As illustrated by my experience described above, the completion of a Certificate of Restoration of Voting Rights prior to ex-offenders regaining their right to vote is an imperfect process. The fact that the Certificate must be signed 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" makes those persons the gatekeepers of an ex-offender's voting rights. As such, they must certify that an applicant for re-enfranchisement has 1) paid all restitution if restitution was ordered, and 2) paid all court costs if court costs were imposed, unless a court has made a finding of indigency.

One problem, as in my case, is that sometimes the gatekeepers do not have sufficient documentation to certify the required information on the Certificate, and absent that certification an ex-offender can not regain his or her voting rights. For example, restitution and court costs are ordered by the courts. However, because no system is perfect, sometimes the court orders regarding restitution and court costs are not relayed to the Department of Correction or the parole office. In general, the Department of Correction (DOC) does not require prisoners to pay restitution or court costs while incarcerated – nor does the parole office require the same of parolees in all cases. E.g., while I was on parole for five years I was never required to pay outstanding restitution nor was my parole officer aware that restitution had been ordered in my case, as my parole file did not contain my sentencing documents. Because restitution and court costs are ordered by the courts but are not always tracked by the DOC or parole officials, a lack of intra-governmental communication can result.

Further, I submit that the officials who serve as gatekeepers in terms of certifying information on the Certificate of Restoration of Voting Rights, if uncertain about the status of an applicant's restitution and court costs – and unwilling to make the effort to contact the court to determine the status of same – are likely to refuse to sign the Certificate as a form of self-protection. It would be difficult to determine how often this happens, as applicants who are unable to have their Certificate signed would likely not submit it to the election commission – thus there would be no record of the extent to which the gatekeepers refuse to certify Certificates of Restoration of Voting Rights.

My concern about the gatekeepers refusing to certify applicants' Certificates due to insufficient information about the status of their restitution and court costs is not simply conjecture. In my case, my former parole officer, Mr. Denman, certified and signed the first part of the Certificate relative to the completion of my sentence, but did not certify the part regarding restitution as he could not

verify that any restitution had been ordered or paid. [See Exhibit B]. Instead, Mr. Denman provided a letter stating, “An extensive check of the records at the Tennessee Board of Probation and Parole failed to produce any proof that any restitution was ordered as part of subject’s sentence, or that the subject paid any restitution.” [See: Exhibit C]. Consequently, because the restitution portion of the Certificate of Restoration of Voting Rights had not been signed, the Division of Elections rejected the Certificate, thereby denying restoration of my voting rights. [See: Exhibit D].

For a more detailed recitation of my efforts to comply with T.C.A. § 40-29-202, as amended in 2006, and my observations concerning same, see the attached memo I wrote memorializing those efforts prior to regaining my voting rights. [See: Exhibit E]. My inability to have the gatekeepers – in my case the parole office – certify the Certificate with respect to restitution eventually led to my participation as a plaintiff in *Johnson v. Bredesen*.

I would also note that many prisoners “flatten” their sentences and are not released under parole supervision; thus, the gatekeeper for those former offenders would be DOC officials (“an agent or officer of the incarcerating authority”). I expect that the same problems noted above exist with respect to DOC officials, in terms of a reluctance or inability to certify whether ex-offenders had restitution or court costs ordered in their cases, or have paid same, when such information is not maintained in the DOC’s own records. Notably, Tennessee’s amended disenfranchisement statute provides no due process provisions for appealing or challenging cases in which the gatekeepers decline to certify a Certificate of Restoration of Voting Rights, or when the election commission consequently rejects a Certificate.

### **Payment of Restitution and Court Costs**

Conditioning ex-offenders’ ability to regain their voting rights or whether they have paid their court costs and restitution in effect conditions their ability to vote on their ability to pay. Wealthy former offenders who can afford to pay their restitution and court costs can vote; those who are too poor to do so cannot. This means that voting rights are contingent on wealth – e.g., having the funds to pay outstanding restitution and court costs. Basing the franchise on a person’s financial means is a poor measure of the representative democracy we purport to cherish in the United States.

Additionally, ex-offenders who have a very large amount of court-ordered restitution – such as in cases involving financial fraud – may effectively be disenfranchised for life, despite the fact that pursuant to T.C.A. § 40-29-204 only certain enumerated offenses result in permanent loss of voting rights. As one recent extreme example, on August 16, 2012 a federal court ordered three defendants to pay \$54.9 million in restitution to the government of South Africa for illegally harvesting lobsters from that nation’s territorial waters. See: *United States v. Bengis, et al.*, U.S.D.C. (S.D. NY), Case No. 1:03-cr-00308-LAK. Had that case originated in Tennessee, the defendants would have been disenfranchised for life due to their inability to pay their court-ordered restitution. More practically, in less extreme cases, it may take former offenders many years to regain their financial footing and complete their restitution payments, during which time they would remain disenfranchised.

In short, the right to vote should not be premised on a person’s ability to pay.

### **Court Costs – Finding of Indigency**

As noted above, ex-offenders must pay all court costs prior to regaining their voting rights unless “the court has made a finding at an evidentiary hearing that the applicant is indigent at the time of application,” pursuant to T.C.A. § 40-29-202(b)(2).

This necessarily requires ex-offenders to file a petition in court for a finding of indigency and attend an evidentiary hearing, which some may be unable to do due to a dearth of knowledge regarding the proper procedure for requesting such a hearing, lack of funds to hire an attorney to file the petition, or unwillingness to go to court based on a lack of trust and faith in our judicial system. Further, the statute is unclear as to whether ex-offenders must obtain the finding of indigency from the court in which they were originally convicted. In March 2010, I contacted officials in the Davidson County and Shelby County criminal court clerk’s offices. Both stated that former offenders who request an evidentiary hearing to establish indigency would have to appear in person before the court in which they were originally convicted.

I am unaware if this is still the case, or if so whether it is handled differently in other Tennessee counties. But if ex-offenders must attend an evidentiary hearing for a finding of indigency in their court of conviction, that would impose a significant hardship on people who have been released from prison or discharged from parole and then moved to other areas of the state.

For example, if an indigent former offender has moved from, say, Memphis to Elizabethton in the northeast corner of Tennessee, they would have to travel more than 1,000 miles roundtrip to attend an evidentiary hearing to establish their indigency so they may regain their voting rights. As only indigent ex-offenders would be seeking such evidentiary hearings, the burden of traveling to the court where they were convicted would be particularly onerous, as they would be the least able to financially afford to make such trips. Under such circumstances, the ability of such ex-offenders to obtain a court finding of indigency so as to avoid the court cost payment provision of T.C.A. § 40-29-202(b)(2) is at best difficult and impractical, and at worst a fiction.

### **Payment of Child Support**

As with payment of restitution and court costs, conditioning ex-offenders’ ability to regain their voting rights or whether they are current on their child support payments likewise conditions their ability to vote on their ability to pay.

Prisoners who had child support obligations prior to their incarceration tend to have a large amount of child support arrears once they are released, because many offenders do not have the knowledge or ability to file a motion to modify their child support payments while they are imprisoned, and there is no tolling provision for child support while a parent is behind bars. As indicated above with respect to large amounts of restitution, substantial child support arrears can result in ex-offenders remaining disenfranchised for many years, or possibly even for life, due to an inability to become current on their child support obligations after they are released from prison.

Notably, the child support payment provision in Tennessee's disenfranchisement law has no relation to an offender's criminal offense; i.e., the "punishment" of disenfranchisement due to non-payment of child support does not fit the underlying crime that the offender committed that resulted in their felony conviction. This provision is especially illogical considering that some ex-offenders may not have owed child support – or even had children – at the time they were convicted, but cannot regain their voting rights if they owe child support at the time they apply for re-enfranchisement.

Additionally, the requirement to be current on child support payments only applies to ex-offenders; it does not apply to other people who also owe child support but lack felony convictions. Former offenders are singled out for disenfranchisement even if they are one dollar behind on their child support obligations, while persons without felony records who owe tens of thousands of dollars in delinquent child support are still eligible to vote. This is unfair, arbitrary and unjustifiable.

## **Conclusion**

In a representative democracy all citizens are supposed to be represented. Yet without the ability to vote, ex-offenders have no such representation – and an estimated 5.85 million Americans have been disenfranchised due to felony convictions, according to The Sentencing Project. Everyone in society suffers when such a large part of the population – a portion that is disproportionately composed of minorities, it is worth noting – is removed from the national electorate.

It is my belief that a democratic government should endeavor to expand – not restrict – political participation by all of its citizens, including those who have past criminal records. When we limit who is represented in our democracy it ceases to become a democracy.

Consider that ex-felons who apply for restoration of their voting rights are just that: Ex. They are not currently in prison or on parole or probation. They pay taxes but have no say in electing legislators who impose those taxes. They are subject to the same laws and rules that affect everyone, but have no political voice when those laws or rules are enacted. Regardless of the type of crime or how long ago it was committed, disenfranchised former offenders have no part in the election of government officials ranging from local school board members, which may directly impact their children, to the President of the United States. Instead of "one man, one vote," in many cases it's "one ex-felon, no vote" under Tennessee's current disenfranchisement law due to statutory requirements for payment of restitution, court costs and child support. Indeed, it seems that Tennessee's disenfranchisement law deliberately includes economic barriers to ensure that as many impoverished ex-offenders as possible remain disenfranchised.

Also note that ex-offenders, despite having completed their prison terms, are largely shunned by society. We restrict where they can live; they have difficulty finding jobs; they have to start their lives over again with few resources. Voting can serve a rehabilitative purpose by re-connecting ex-offenders with their communities, reinforcing the idea that they have a stake in the laws and rules that govern society, and that they have a fundamental right – and responsibility – to vote.

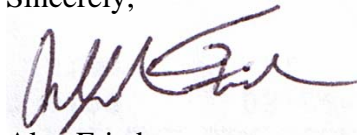
Messrs. Grisham and Minarik  
January 28, 2013  
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I previously sent you an article about two recent Florida studies regarding recidivism rates for ex-offenders who had their voting rights restored vs. those who had not, which found a recidivism rate of slightly over 11% for ex-felons who regained their voting rights – around 1/3 the recidivism rate of 33.1% for all released Florida prisoners. The bottom line is that if society doesn't care enough about ex-offenders to treat them like citizens, with the voting rights of citizens, then why should ex-offenders care enough about society to act like law-abiding citizens?

To the extent that Tennessee's amended disenfranchisement law purposefully hampers the ability of former offenders to regain their voting rights through the inclusion of wealth-based requirements that make voting contingent upon a person's ability to pay, including child support provisions that have no relationship to criminal convictions or voting rights, then the law needs to be changed.

Please feel free to contact me should you require any additional information, and please share this formal comment with the other members of the Tennessee Advisory Committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Friedmann', is written over a light blue horizontal line.

Alex Friedmann  
Associate Director, HRDC

Attachments



State of Tennessee  
312 Rosa L. Parks Avenue, 9th Floor  
Nashville, Tennessee 37243  
615-741-7956

**CERTIFICATE OF RESTORATION  
OF VOTING RIGHTS  
for Persons Convicted of a Felony After May 18, 1981**

TO 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.

1. I hereby certify that the following information is true and correct:

- a. Applicant's Name: \_\_\_\_\_  
(First) (Middle) (Last)
- b. Applicant's County of Residence: \_\_\_\_\_
- c. Felony Conviction: \_\_\_\_\_
- d. Month/Day/Year of Conviction: \_\_\_\_\_ TOMIS ID: (if applicable) \_\_\_\_\_
- e. Date of Birth: \_\_\_\_\_ f. Soc. Sec. No.: \_\_\_\_\_

2. On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ **(check one)**

- The above individual received a pardon which contained no special conditions pertaining to the right of suffrage. A copy of said pardon is attached hereto; *or*
- The maximum sentence imposed for such infamous crime has been served by the above individual; *or*
- The maximum sentence imposed for such infamous crime has expired; *or*
- The above individual has been granted final release from incarceration or supervision by the Board of Probation/Parole, the Department of Correction, or county correction authorities.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

3. I hereby certify that the following is true and correct: **(check one)**

- The court did not order the above individual to pay any restitution as part of his or her sentence; *or*
- All of the restitution ordered by the court as a part of the sentence for the above individual has been paid.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

4. I hereby certify that the following is true and correct: **(check one)**

- The court did not order the above individual to pay any court cost as part of his or her sentence; *or*
- All court cost assessed against the above individual has been paid; *or*
- The court has made a finding at an evidentiary hearing that the above individual is indigent at the time of application.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_



## INSTRUCTIONS

Instructions to the Agent Completing the Certificate of Restoration:

*In order to complete any section of this form, the agent must have access to the information being attested to on this form.*

1. In **BOX #1**, the proper authority/agent must provide the requested applicant information.

NOTE: For 1c, list the crime(s) for which the person was convicted.

For 1d, list the date the person was convicted for the crime listed in 1c.

2. In **BOX #2**, the proper authority/agent must provide the following information:

- a) Provide the date that corresponds to the box that is checked
- b) Check the appropriate box indicating how the applicant completed their sentence
- c) Provide your signature (print name below signature) and contact information

3. In **BOX #3**, the proper authority/agent must provide the following information:

- a) Check the appropriate box as it relates to any restitution that was or was not assessed to the applicant.
- b) Provide your signature (print name below signature) and contact information.

4. In **BOX #4**, the proper authority/agent must provide the following information:

- a) Check the appropriate box as it relates to any court fines that were assessed to the applicant.
- b) Provide your signature (print name below signature) and contact information.

### **Persons convicted of any of the following, cannot have his or her voting rights restored:**

- Between July 1, 1986, and June 30, 1996 - first degree murder, aggravated rape, treason, or voter fraud
- Between July 1, 1996, and June 30, 2006 - murder, rape, treason, or voter fraud
- On or after July 1, 2006 – Any of the above, or any degree of murder or rape or any felony offense under TCA Title 39, Chapter 16, parts 1, 4, or 5; or any sexual offense under TCA §40-39-202(17) or any violent sexual offense under TCA § 40-39-202(25) designated as a felony and where the victim of such offense was a minor

### **Instructions to the Applicant Seeking to have His or Her Voting Rights Restored:**

- After completion, the original form must be filed with the local county election commission office in the county the applicant desires to register to vote.

#### NOTICE

A person is not eligible to apply for a voter registration card and have their voting rights restored unless the person is current in all child support obligations. Before restoring the voting rights of an applicant, the Coordinator of Elections will verify with the Department of Human Services that the applicant does not have any outstanding child support payments or arrearages.

**CERTIFICATE OF RESTORATION**  
**For Persons Convicted of a Felony After May 18, 1981**  
**STATE OF TENNESSEE**

(To be eligible for voter registration, the person must be current in all child support obligations, if any.)

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:

1. I, hereby certify that the following information is true and correct:

- a. Applicant's Name: ALEXANDER FRIEDMANN
- b. Applicant's County of Residence: DAVIDSON
- c. Felony Conviction: ATTEMPTED AGGRAVATED ROBBERY  
ROBBERY ARMED WITH DEADLY WEAPON / ASSAULT WITH INTENT TO MURDER
- d. Mo/Day/Yr. of Conviction: OCTOBER 8, 1992 / JUNE 21, 1990
- e. Date of Birth: redacted f. Soc. Sec. No.: redacted

2. On the 25<sup>TH</sup> day of JULY, 2005

**3. CHECK ONE**

- The above individual received a pardon which contained no special conditions pertaining to the right of suffrage. A copy of said pardon is attached hereto; or
- The maximum sentence imposed for such infamous crime has been served by the above individual; or
- The maximum sentence imposed for such infamous crime has expired; or
- The above individual has been granted final release from incarceration or supervision by the Board of Probation and Parole, the Department of Correction, or county correction authorities.

4.   
 SIGNATURE

AUGUST 29, 2006  
 DATE OF SIGNATURE

ROBERT W DENMAN JR  
 PRINTED NAME

PROBATION/PAROLE OFFICER II  
 TITLE

2816 DICKEASON ROAD NASHVILLE, TN 37207  
 ADDRESS

(615) 262-6161 EXT 160  
 DAYTIME PHONE NUMBER

COMPLETED BY THE CIRCUIT/CRIMINAL COURT CLERK, OR AGENT THEREOF:

5. I, hereby certify that the following information is true and correct: **(CHECK ONE)**

- The court did not order the above individual to pay any restitution as a part of his or her sentence; or
- All of the restitution ordered by the court as a part of the sentence for the above individual has been paid.

6. \_\_\_\_\_  
 SIGNATURE

\_\_\_\_\_  
 DATE OF SIGNATURE

\_\_\_\_\_  
 PRINTED NAME

\_\_\_\_\_  
 TITLE

\_\_\_\_\_  
 ADDRESS

( ) \_\_\_\_\_  
 DAYTIME PHONE NUMBER



STATE OF TENNESSEE  
**BOARD OF PROBATION AND PAROLE**

East Nashville Office  
2816 Dickerson Rd.  
Nashville, TN 37207  
615) 262-6161

**MEMORANDUM**

**TO:** Department of State, Division of Elections

**FROM:** Robert W. Denman Sr., Probation/Parole Officer II

**DATE:** 9/19/2006

**SUBJECT:** Restoration of Voting Rights – Alex Friedmann

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An extensive check of the records at the Tennessee Board of Probation and Parole failed to produce any proof that any restitution was ordered as part of subject's sentence, or that the subject paid any restitution.

If I can be of further assistance, please call at (615) 262-6161 Ext. 160.

**METROPOLITAN GOVERNMENT  
OF GREATER NASHVILLE AND  
DAVIDSON COUNTY**



EXHIBIT D

DAVIDSON COUNTY ELECTION COMMISSION  
PERMANENT REGISTRATION OFFICE  
POST OFFICE BOX 650  
NASHVILLE, TN 37202  
(615) 862-8800 - Office  
(615) 862-8811 - TTY (Teletype Device)   
WWW.NASHVILLE.GOV/VOTE

October 3, 2006

Dear Mr. Friedman,

After receiving your paperwork today on getting your rights restored, we faxed to the State Division of Elections for approval. The lady at the state office called and said they would have to deny approval due to bottom portion being left incomplete.

She stated that if you could not get this filled out, that your other option would be to get a Court Order. You can obtain a judgement from Circuit Court, in either the county where you reside, or in the county where convicted, that restores full rights. You can write your own petition, or have an attorney write one.

Thank you for your concern on getting this accomplished. We did get you registration card entered today, so you now have up to five (5) days before election to get this handled and approved. The deadline is 11-2-2006.

Sincerely,

Betty Gilbert  
Absentee/Early Voting Coordinator



Alex Friedmann  
5341 Mt. View Rd. #130  
Antioch, TN 37013  
(615) 495-6568

**Description of Efforts to Comply with Election Commission Requirements  
for Restoration of Voting Rights Under TCA § 40-29-201, et seq.**

Background:

I was convicted of felony charges (armed robbery, assault with attempt to commit murder, and attempted aggravated robbery) in 1990 and 1991 in Davidson County Criminal Court. I was initially placed on 20 years probation and told by my probation officer that I had to pay \$1,000 in restitution, although the amount of restitution was not stated on my judgment order. The restitution was partly paid before I violated probation and began serving a prison term in 1992. I was paroled in Nov. 1999 and discharged from parole in July 2005. Payment of restitution was not one of the conditions of my parole, and was not raised by my parole officer.

Under the law in effect at the time I was convicted and sentenced, there was no requirement that restitution be paid prior to voting rights being restored. Following the revised disenfranchisement law that went into effect in June 2006, payment in full of court-ordered restitution is required prior to restoration of voting rights.

Attempts at Restoration of Voting Rights:

I downloaded the Certificate of Restoration form from the Election Commission website, which looked fairly straightforward, on August 28, 2006. In order to learn whether I could have the first part of the form signed at the Board of Paroles' central office (more convenient than having to travel to a satellite office), I gave them a call, asking for someone who could inform me about restoration of voting rights.

I was transferred to Betty Alsup, who treated me in a rude and condescending manner; when I told her I could not remember the name of my former parole officer (having been off parole for over a year), she said I had major problems and doubted I would be able to stay out of prison. Ms. Alsup informed me that I must have my original parole officer or his supervisor sign the first part of the form. When I questioned her (noting that was not what the form said, and realizing that some former parolees may have moved far away from where they had been on parole supervision), Ms. Alsup stated she was the supervising authority and was telling me where to go, and asked in a confrontational tone whether I had a problem with that.

After stating I was working with the ACLU on voting rights issues, and asking her to confirm her statement, she admitted that I could have the form filled out at the main office, but it would create a burden on them. Rather than deal with Ms. Alsup again, I

took time off to see my former parole officer, Robert Denman. Mr. Denman was familiar with the Certificate of Restoration form and he completed and signed the top section.

On Aug. 29, 2006, I called the criminal court clerk for Davidson County. I was not able to reach anyone who was familiar with the Election Commission's form, and was told to come down to the office, which I did. The first clerk referred me to another, who referred me to a third, who called in a fourth. Eventually a supervisor, Tommy Bradley, stated that the court clerk's office could not sign the second part of the Certificate (related to restitution), because restitution does not go through the criminal court clerk's office. He suggested I contact the Election Commission or the Board of Paroles.

I then spoke with Shelly Adams at the Election Commission, who put me in touch with Beth Henry Robinson. Ms. Robinson was familiar with the problem with the court clerk and stated she was aware of similar problems in Shelby County. She informed me that I must have someone at the court clerk's office or the Board of Paroles sign the second part of the form. If I was unable to have both parts of the form completed and signed, she told me I would have to get a court order to have my voting rights restored (which isn't mentioned in the new voting rights law; also, ironically, under the prior law I would not have had to go to court to get my voting rights restored). Ms. Robinson suggested I contact Gary Tullock at the Board of Paroles.

I spoke with Mr. Tullock on Sept. 5, 2006. He said probation or parole officials would have to verify whether restitution was ever ordered, and if so, whether it was paid. If they could not verify that information, they could not sign off on the form.

I again called Mr. Denman, my former parole officer, and we scheduled a time for me to come in to try to track down the restitution information from my file. I met Mr. Denman on Sept. 11 and we went through the file. However, my parole file contained no mention of restitution, or the necessary court documents (such as the judgment order) which would indicate if restitution had in fact been ordered. My probation records from 1990-91 could not be located.

Several days later, Mr. Denman, upon my request, provided a letter stating the Board of Paroles could not locate proof that restitution had been ordered or paid; thus, he was unable to complete the second part of the Certificate of Restoration.

I again took time off to visit the Davidson County court clerk's office on Sept. 22, and had them pull my original case file from the archives. The file contained the judgment order which indicated that restitution had in fact been ordered as part of my sentence, but the amount was not specified. As the court clerk's office does not collect restitution, they could not verify whether restitution had been paid. I later obtained a copy of a letter from Kathryn S. Evans, with Metro's Law Department, dated Sept. 18, confirming that the court clerk's office was not able to complete the second part of the Certificate of Restoration.

I then sent the incomplete Certificate of Restoration form with the supporting letters to the election commission, which rejected it in Oct. 2006. I could not have my voting rights

restored because neither the parole office nor court clerk could sign off on the restitution portion of the form, as they had no knowledge as to whether restitution was paid.

I then contacted the DA's office and the parole office to determine whether I could pay the remainder of my restitution now, despite the fact that my sentence has completely expired and I was no longer under any type of correctional supervision. Despite several conversations with both of these agencies I never received a definite answer, and eventually my follow-up calls were not returned. There does not appear to be any specific mechanism for collecting restitution after full expiration of sentence. As the court clerk indicated, restitution payments are not paid into the clerk's office. While I could pay restitution to the victim directly, the parole and court clerk's office would still be unable to verify whether such restitution had been paid for the purpose of filling out the second part of the Certificate of Restoration.

I remain unable to have my voting rights restored. Note that under the previous law, which did not require certification that restitution had been paid, my voting rights would have been restored. Under the revised law passed in 2006, they apparently cannot.

### Conclusions:

The present system for restoration of voting rights is unwieldy at best and unworkable at worst, at least for ex-prisoners who have expired sentences and restitution orders. The new law also poses a significant burden on ex-offenders – since the court clerk's office and probation/parole offices are only open during working hours and not on the weekend, time must be taken off of work to have the Certificate of Restoration signed. Several other areas of concern that I identified:

1. Unless both parts of the Certificate of Restoration are signed, according to the Election Commission, voting rights cannot be restored. Thus, the gatekeepers for restoration of voting rights are officials with the Board of Paroles and (when applicable) the court clerk's office. This will lead to disparate and arbitrary results depending on the knowledge level and inclination of the individual officials who are asked to sign the form. Some, such as Ms. Alsup, are less than helpful.
2. The new law's restitution provision has been applied retroactively -- under the previous law, I did not have to prove whether restitution had been ordered or paid before regaining my voting rights.
3. The very requirement of proof of restitution being paid is problematic – for old cases such as mine, it is almost impossible to determine the status of restitution. It was only after going through the original court records on my own initiative that I obtained proof that restitution had been ordered in my case (I could have kept my mouth shut and had the form signed anyway). Yet restoration of voting rights will be denied unless government officials are willing to certify facts that they may not be able to verify because they lack the necessary documents or because the documents can no longer be found.

4. Requiring restitution to be paid prior to restoration of voting rights is questionable both constitutionally and under the Voting Rights Act, as it bases one's ability to vote on one's ability to pay – similar to a poll tax.
5. Under the new law, even if restitution had not been ordered in my case, it would be difficult for government officials to certify that fact (proving a negative), as the court clerk's office doesn't collect restitution, my parole file did not contain any documents proving or disproving that restitution was ordered, and my probation records from 16 years ago could not be located. Thus I would have been barred from restoring my right to vote through no fault of my own, which I doubt was the legislative intent of the new law. Further, the new law provides no due process or means of redress/appeal for such a situation.
6. Since restitution was ordered in my case, I could presumably pay it and then go through the process of having my voting rights restored. But to whom should it be paid? I am no longer on parole; my sentence has long since expired. I could pay the victim directly, but then who would sign the Certificate of Restoration? (this assumes the victim in my case is still alive, and if so, then he would then become the gatekeeper to restoration of my voting rights). Even if I wanted to comply with the new law, I am unable to do so because there is no way to pay the restitution that was ordered as part of my sentence 16 years ago. In short, I have fallen through a gaping crack created by the new disenfranchisement law.