



**Access to Voting
November 2022**

Tennessee Advisory Committee to the U.S. Commission on Civil Rights

In January 2022, the Tennessee State Advisory Committee to the United States Commission on Civil Rights (“Committee”) voted to examine whether certain voting laws, policies, or practices in Tennessee inappropriately restrict the exercise of voting or create unjustifiable barriers to voting, causing a disparate impact on people within one or more protected classes. To do this, the Committee voted to focus on (1) the impact of Senate Bill 8005, signed into law in August 2022, and (2) the impact of voting restrictions (both recent and long established) on citizens during the COVID-19 pandemic. The Committee held briefings to hear about these issues on April 13 and 27, May 11 and 25, and June 15 and 22, 2022.

In light of the recent elections held on November 8, 2022, and the importance of ensuring access to voting, the Committee has deemed it important to issue this interim memorandum regarding access to voting in Tennessee. The COVID-19 pandemic has highlighted challenges and barriers to the vote in Tennessee. Tentatively informed by the initial testimony, the Committee is concerned that the pandemic may continue to challenge access to the vote and equal participation in the political process.

The Committee called upon a variety of stakeholders and prioritizes diverse perspectives. Several stakeholders were unavailable or declined.¹ The Committee did not hear testimony on the constitutional requirements of state or federal voting practices. The presentations made by panelists in testimony to the Committee warrant further investigation by the Committee in its deliberative process and will be analyzed and discussed as this Interim Memorandum is turned into a final report. The Committee offers these preliminary observations and recommendations to provide context for assessing the impact of voting procedures and to better ensure access to the ballot for all Tennesseans.

¹ “FINAL Outreach Tracker_11_2022,” Appendix D – Outreach for Public Briefings, Tennessee, SAC Transcripts, U.S. Commission on Civil Rights, accessed November 10, 2022, https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1ROL1ZvdGluZyBSaWdodHMvQXBwZW5kaXggRCAtdE91dHJlYWNoIGZvcjBQdWJsaWMgOnJpZWZpbmdz.

Background

Before highlighting information on the impact of COVID on voter access in Tennessee, it is important to note that, in some ways, Tennessee may be a more restrictive voting state than some other states.

The Committee heard that the state ranks among the lowest in the areas of civic engagement: voter registration and voter turnout.²

As to voter registration, Tennessee residents, in general, must be registered to vote at least 30 days prior to the voting period.³ Some other states have a shorter window, or none, allowing same-day voter registration and voting.⁴

Additionally, Tennessee has a strict voter identification requirement;⁵ the impact of strict voter identification has been much debated. The Committee notes that voter access advocates oppose these voter identification requirements, others support them on grounds of voter security and lack of evidence concerning adverse impact. According to the testimony of a panelist, only three other states are considered more restrictive.⁶ Tennessee requires that voters present a photo identification at the polls while other states only require signature or affirmation that the named registered voter is the person present for voting.⁷ Anyone not able to present ID at the time of voting in Tennessee must present identification to election offices within 2 days for the vote to be counted.⁸

Hedy Weinberg, Director of the ACLU in Tennessee at the time of the briefing,⁹ stated that the use of voter identification in Tennessee has a disproportionate impact on Tennessee's Black residents. According to Ms. Weinberg, "up to 25% of Black Americans lack

² Dawn Schluckebier, testimony, *Briefing Before the Tennessee Advisory Committee to the U.S. Commission on Civil Rights*, May 25, 2022, Web Hearing, transcript, p. 3 (hereinafter May 25, 2022, Web Hearing); Steven Mulroy, testimony, *Briefing Before the Tennessee Advisory Committee to the U.S. Commission on Civil Rights*, April 13, 2022, Web Hearing, transcript, p. 9 (hereinafter April 13, 2022, Web Hearing). At the time of publication, Mr. Mulroy is no longer at the University of Memphis.

³ Tennessee Code Title 2, Elections § 2-2-109; *See also* "Voter Registration Deadlines," National Conference of State Legislatures, accessed October 6, 2022, <https://www.ncsl.org/research/elections-and-campaigns/voter-registration-deadlines.aspx>.

⁴ "Voter Registration Deadlines," National Conference of State Legislatures, accessed November 8, 2022, <https://www.ncsl.org/research/elections-and-campaigns/voter-registration-deadlines.aspx>.

⁵ Mulroy Testimony, *April 13, 2022, Web Hearing*, p. 11; Hedy Weinberg, testimony, *Briefing Before the Tennessee Advisory Committee to the U.S. Commission on Civil Rights*, May 11, 2022, Web Hearing, transcript, p. 5 (hereinafter May 11, 2022, Web Hearing); Nathan Kelly Testimony, *May 25, 2022, Web Hearing*, p. 12; Joseph Coll Testimony, *May 25, 2022, Web Hearing*, p. 7. At the time of publication, Mr. Coll is no longer at the University of Iowa.; Schluckebier Testimony, *May 25, 2022, Web Hearing*, p. 4; Debby Gould, testimony, *Briefing Before the Tennessee Advisory Committee to the U.S. Commission on Civil Rights*, June 22, 2022, Web Hearing, transcript, p. 9 (hereinafter June 22, 2022, Web Hearing).

⁶ Joseph Coll Testimony, *May 25, 2022, Web Hearing*, p. 7.

⁷ Tennessee Code Title 2, Elections § 2-7-112; Weinberg Testimony, *May 11, 2022, Web Hearing*, p. 5.

⁸ "Guide on ID Requirements when voting," Tennessee Secretary of State Tre Hargett, accessed November 8, 2022, <https://sos.tn.gov/elections/voter-id-requirements>.

⁹ At the time of publication, Hedy Weinberg is no longer at the ACLU of Tennessee.

government issued identification compared to only 8% of white Americans.”¹⁰ Panelist Debby Gould, President of League of Women Voters of Tennessee asserted that, in Tennessee, photo IDs are available to non-drivers only at DMV centers.¹¹ However, not every county has a DMV center.¹² Nearly 1 out of 3 counties in Tennessee (31 of Tennessee’s 95 counties) lack the facilities to process a photo ID.¹³

The Committee heard testimony that the barriers to voting for Black residents are even more burdensome in under-resourced areas like Shelby County, where voters have significant transportation access issues.¹⁴

Tennessee places additional obstacles on other voting-aged residents that impact registration and turnout, especially individuals convicted of felonies.

While some states restore voting rights to formerly incarcerated people immediately upon their release from prison, Tennessee does not automatically restore voting rights after a sentence is served.¹⁵

To restore the right of former felons to vote, Tennessee is among only a handful of states that requires them to repay all legal financial obligations before voting, despite the likelihood of facing financial hardship as a result of being previously incarcerated.¹⁶ It is the only state that requires convicted felons to pay any outstanding child support

¹⁰ Weinberg Testimony, *May 11, 2022, Web Hearing*, pg. 5.

¹¹ “Identification License,” TN Department of Safety & Homeland Security, accessed November 8, 2022, <https://www.tn.gov/safety/driver-services/identonly.html>; Gould Testimony, *June 22, 2022, Web Hearing*, p. 9.

¹² “Locations by County,” TN Department of Safety & Homeland Security, accessed November 8, 2022, <https://www.tn.gov/safety/driver-services/locations/dllocationcnty.html>; Gould Testimony, *June 22, 2022, Web Hearing*, p. 9.

¹³ Gould Testimony, *June 22, 2022, Web Hearing*, p. 9.

¹⁴ Tami Sawyer, testimony, *Briefing Before the Tennessee Advisory Committee to the U.S. Commission on Civil Rights, June 15, 2022, Web Hearing*, transcript, p. 4 (hereinafter June 15, 2022, Web Hearing). At the time of publication, Ms. Sawyer is no longer at the Shelby County Board of Commissioners.; Panelist Debby Gould echoed this concern for all of Tennessee in her June 22nd testimony, stating, “non-drivers are making up a larger and larger percentage of the American public as we move forward into this decade. And the most recent information I had was from 2018 from the Federal Highway Administration, which estimated at that point that only 80% of 18-year olds had a driver’s license.” *June 22, 2022, Web Hearing*, p. 9.

¹⁵ “Restoration of Voting Rights,” Tennessee Secretary of State Tre Hargett, accessed November 8, 2022, <https://sos.tn.gov/elections/guides/restoration-of-voting-rights>; Weinberg Testimony, *May 11, 2022, Web Hearing*, pg. 5; See also “Felon Voting Rights,” National Conference of State Legislatures, accessed October 13, 2022, <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

¹⁶ Tennessee Code Title 40. Criminal Procedure § 40-29-202 (b)(2); Schluckebier Testimony, *May 25, 2022, Web Hearing*, p. 4; Weinberg Testimony, *May 11, 2022, Web Hearing*, p. 4; Mulroy Testimony, *April 13, 2022, Web Hearing*, p. 9; See also Tennessee Advisory Committee to the U.S. Commission on Civil Rights, *Legal Financial Obligations in the Tennessee Criminal Justice System*, 2019, p. 25 (hereinafter Tennessee Advisory Committee, *Legal Financial Obligations*), accessed October 13, 2022, <https://www.usccr.gov/files/pubs/2020/01-15-TN-LFO-Report.pdf>.

payments.¹⁷ The Committee heard testimony that the process for seeking restoration of voting rights is complicated and confusing.¹⁸

According to testimony presented to the Committee, this has a disproportionate impact on Tennessee’s Black residents. “Black Tennesseans make up about 17% of the state’s population but are 40% of the state’s prisoners.”¹⁹ Moreover, after deliberation, the Committee notes that individuals convicted of felonies are an already marginalized population with limited opportunities to participate in the political process.

Other Tennessee practices have had disparate negative impact on minority voters as well.

For example, according to testimony presented to the Committee, Tennessee polling hours are more limited compared to some other states, likely placing more strain on working and low-income voters in casting a ballot.²⁰ There were fewer voting places in 2020 than in 2016, and there were “greater closures in counties with more Black Tennesseans than there were in counties more white Tennesseans.”²¹ And, although Tennessee overall had more poll workers in 2020 than in 2016, there is evidence that areas of more Latino Tennesseans in Tennessee were more likely to have fewer poll workers than areas of more white individuals.”²²

Polling place closures and/or fewer poll workers can make it more difficult for individuals to vote.²³ Such adjustments can result in longer voting wait times and more incidents at the voting booth—both of which can impact whether an individual’s vote is ultimately counted.²⁴ There was also testimony to the effect that there is “low disability access when it comes to Tennessee elections, as well as long wait times that voters have to endure.”²⁵

Finally, Tennessee is an “excuse” state with a restrictive approach to absentee voting that has persisted during the COVID-19 pandemic.

The Committee heard testimony to the effect that Tennessee has a restrictive approach on absentee voting, requiring that potential absentee voters provide an “excuse” as to why they must cast their ballot by absentee vote.²⁶ Tennessee is one of 16 states requiring an

¹⁷ Tennessee Code Title 40. Criminal Procedure § 40-29-202 (c); Weinberg Testimony, *May 11, 2022, Web Hearing*, p. 7; Tennessee Advisory Committee, *Legal Financial Obligations*, p. 16.

¹⁸ Mulroy Testimony, *April 13, 2022, Web Hearing*, p. 9; Weinberg Testimony, *May 11, 2022, Web Hearing*, p. 4; Schluckebier Testimony, *May 25, 2022, Web Hearing*, p. 4.

¹⁹ Weinberg Testimony, *May 11, 2022, Web Hearing*, p. 5.

²⁰ Coll Testimony, *May 25, 2022, Web Hearing*, p. 7.

²¹ *Ibid*, p. 9.

²² *Ibid*, p. 9.

²³ *Ibid*, p. 9.

²⁴ *Ibid*, p. 9.

²⁵ *Ibid*, p. 7.

²⁶ Mulroy Testimony, *April 13, 2022, Web Hearing*, p. 10; Weinberg Testimony, *May 11, 2022, Web Hearing*, p. 5; Schluckebier Testimony, *May 25, 2022, Web Hearing*, p. 4; Coll Testimony, *May 25, 2022, Web Hearing*, p. 7; Kelly Testimony, *May 25, 2022, Web Hearing*, p. 12.

affirmative excuse to vote absentee.²⁷ Most states allow a more permissive absentee voting process, not requiring voters provide a state-approved reason for the absentee ballot.²⁸

One excuse under Tennessee law for absentee voting is “illness.”²⁹ In 2020, there was uncertainty surrounding how this medical or health exception was interpreted—whether fear of COVID-19 was a valid excuse for an absentee vote under the illness exception.³⁰ In the Tennessee Chancery Court, a temporary injunction was approved in which it was acknowledged that fear of COVID-19 was a valid excuse for an absentee vote.³¹ This injunction was later vacated by the Tennessee Supreme Court and there were no additional exceptions or concessions to the requirement that “reasons” be given by those seeking to vote by absentee ballot.³² More broadly, an excuse is still required to vote absentee, and some voters may continue to be confused as to whether COVID-19 was a valid absentee ballot excuse.³³

Tennessee also continues to require that absentee ballots be returned by mail and received by the close of polls on Election Day.³⁴ In some other states, voters may hand-deliver ballots to election offices and polling places that provide secure ballot boxes.³⁵ The Committee heard testimony that during the 2020 election, there was a nationwide concern about the United States Postal Service’s capacity.³⁶ The United States Postal Service admitted problems with postal delivery at the time, announcing that it “considered seven days to be an on-time delivery.”³⁷ Despite these concerns, Tennessee did not adjust its absentee ballot policy for the 2020 election, with only one exception. Just before Election Day, Tennessee announced that voters could return an absentee ballot to a designated post office in each county if they were still in possession of them.³⁸

²⁷ Tennessee Code Title 2. Elections § 2-6-201(5); Mulroy Testimony, *April 13, 2022, Web Hearing*, p. 10; See also “Table 2: Excuses to Vote Absentee,” National Conference of State Legislatures, accessed October 13, 2022, <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-2-excuses-to-vote-absentee.aspx>.

²⁸ “Table 1: States with No-Excuse Absentee Voting,” National Conference of State Legislatures, accessed October 13, 2022, <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>; Weinberg Testimony, *May 11, 2022, Web Hearing*, p. 5.

²⁹ Tennessee Code Annotated. Title 2. Elections § 2-6-201(5).

³⁰ *Fisher v. Hargett*, 604 S.W.3d 381, 385 (Tenn. 2020).

³¹ *Lay v. Goins*, Tenn. Ch. Ct., No. 20-454-IV(III), (Tenn. 2020); Michael Morley Testimony, *June 22, 2022, Web Hearing*, p. 24.

³² *Fisher v. Hargett*, 604 S.W.3d 381, 385-86 (Tenn. 2020); Morley Testimony, *June 22, 2022, Web Hearing*, p. 24.

³³ Tennessee Code Annotated. Title 2. Elections. § 2-6-201(5); Schluckebier Testimony, *May 25, 2022, Web Hearing*, p. 5.

³⁴ Tennessee Code Title 2. Elections § 2-6-202(E); See also “Guide to Absentee Voting,” Tennessee Secretary of State Tre Hargett, accessed October 13, 2022, <https://sos.tn.gov/elections/guides/guide-to-absentee-voting>; Schluckebier Testimony, *May 25, 2022, Web Hearing*, p. 4.

³⁵ “Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options,” National Conference of State Legislatures, accessed October 13, 2022, <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#return-voting-location>; Schluckebier Testimony, *May 25, 2022, Web Hearing*, p. 4.

³⁶ Schluckebier Testimony, *May 25, 2022, Web Hearing*, p. 5.

³⁷ Gould Testimony, *June 22, 2022, Web Hearing*, pgs. 7-8.

³⁸ Gould Testimony, *June 22, 2022, Web Hearing*, p. 8.

Relative to other states that adjusted voting to accommodate voters during the coronavirus pandemic, the burdens of voting in Tennessee were high.³⁹ According to panelists, this type of burden has potential consequences broadly for the functioning of elections.⁴⁰ The Committee notes that Tennessee has not made any adjustments to the voting process despite the ongoing risks from COVID-19 and other potential health-related threats-

Recent legal actions at the state level negatively impact voting rights and participation in the democratic process by minorities, the elderly, and low-income citizens.

Tennessee law makes it a criminal offense for someone other than an employee of an election commission to distribute absentee ballot applications to another person.⁴¹ Despite legal challenges that were brought forth during the pandemic against this specification, no changes were made to the law.⁴² According to panelists, this measure likely places additional disparate burdens on minorities, the elderly, and low-income individuals who are most likely to benefit from support by organizations seeking to ease the absentee ballot request process.⁴³ The Committee heard testimony that penalizing such organizational support will produce additional disparate burdens to an already underserved population.⁴⁴

In 2020, following the murder of George Floyd by police officers in Minneapolis, many Tennessee citizens, including young people, protested at the Tennessee state capitol.⁴⁵ Their demands concerned the Nathan Bedford Forrest statue and policing issues.⁴⁶ During the protests, the Tennessee legislature met in an extraordinary session and, largely in response to the protests, passed S.B. 8005, which, inter alia, enhances penalties for certain forms of conduct that were engaged in as forms of protest by the protestors.⁴⁷ For example, it makes camping overnight on state property (which some protestors engaged in) a Class E felony punishable by up to six years in prison and loss of voting rights.⁴⁸ The law also mandates the detention without the possibility of bail for 12 hours of those arrested for crimes such as camping on certain public property or obstructing a street, a penalty that does not apply to those accused of more serious crimes.⁴⁹ The Committee heard testimony about the effect of the law and is concerned that it might chill the willingness of some

³⁹ Kelly Testimony, *May 25, 2022, Web Hearing*, p. 12.

⁴⁰ *Ibid*, p. 12.

⁴¹ Tennessee Code Title 2. Elections § 2-6-202(C)(3); Tennessee Code Title 2. Elections § 2-6-202(C)(4)

⁴² *Lichtenstein v. Hargett*, 489 F. Supp. 3d 742 (Tenn. 2020).

⁴³ Mulroy Testimony, *April 13, 2022, Web Hearing*, p. 10; Weinberg Testimony, *May 11, 2022, Web Hearing*, p. 5; Kelly Testimony, *May 25, 2022, Web Hearing*, p. 12; Gould Testimony, *June 22, 2022, Web Hearing*, p. 7.

⁴⁴ Kelly Testimony, *May 25, 2022, Web Hearing*, p. 12; Gould Testimony, *June 22, 2022, Web Hearing*, p. 7.

⁴⁵ Sekou Franklin Testimony, *April 13, 2022, Web Hearing*, p. 4.

⁴⁶ Franklin Testimony, *April 13, 2022, Web Hearing*, p. 3.

⁴⁷ Tennessee Code Annotated. Title 8; Title 38; Title 39 and Title 40 (as amended); Franklin Testimony, *April 13, 2022, Web Hearing*, p. 3; Mulroy Testimony, *April 13, 2022, Web Hearing*, p. 9.

⁴⁸ Tennessee Code Annotated, Section 39-14-414(d) (as amended); Franklin Testimony, *April 13, 2022, Web Hearing*, p. 3.

⁴⁹ Tennessee Code Annotated. Title 40, Chapter 11, Part 1, Section 40-11-153 (as amended); Mulroy Testimony, *April 13, 2022, Web Hearing*, p. 9; Weinberg Testimony, *May 11, 2022, Web Hearing*, p. 4.

citizens, including Black citizens, to participate in the political process through protest.⁵⁰

Preliminary Observations and Recommendations

It is important to note that these observations and recommendations are preliminary in nature and may not be inclusive of all testimony received to date or in the future. Upon further development of the record, the Committee will submit a more comprehensive report to the Commission, including formal findings and recommendations.

The Committee observes that the COVID-19 pandemic has highlighted what seem to be deficiencies in access to the vote in Tennessee and is concerned about ensuring access to the vote in future elections. Given these issues, as well as ongoing concerns regarding the COVID-19 virus and its potential impact on voting, it will be important for the state to consider how to enhance opportunities for the full participation of its citizens in the voting process and avoid actions that may impede access to the vote.

To this end, the Committee recommends that the United States Commission on Civil Rights should send this interim memorandum and issue a formal request to the Tennessee State Legislature and Tennessee Governor to consider taking the following steps:

1. Provide adequate and equitable staffing for polling locations, particularly in counties or areas with higher percentages of Latino and Black voters,
2. Keep polling locations open as long as possible on Election Day to equalize access to the polls for all citizens regardless of location,
3. Keep all existing polling locations open and, in addition, reopen locations that were closed during the 2020 election to assure equitable access to the polls,
4. Expand access to absentee voting in elections beyond the 2022 cycle in a reasoned and responsible manner with the enactment of suitable authorizing legislation and/or other methods,
5. Make adjustments to the voting process to accommodate the needs of those with or vulnerable to COVID-19 and to ensure the safe access to the polls under the circumstances, and
6. Evaluate existing or proposed voting procedures to identify and eliminate any disparate impact on protected groups, including minorities, to assure that all Tennesseans enjoy equal access and opportunity to exercise their right to vote and participate in the political process.

The Committee also recommends that the United States Commission on Civil Rights consider these areas of concern and corresponding recommendations as part of its attention

⁵⁰ Devin Majors Public Comment, *May 11, 2022, Web Hearing*, p. 17; Amber Sherman Public Comment, *May 11, 2022, Web Hearing*, p. 18.

to voting rights nationally.

Conclusion

This memo was adopted by a vote of 7 to 0 at a Committee meeting held October 6, 2022. The dissenting member(s) was (were) provided an opportunity to prepare a dissenting statement. Any such statement(s) is (are) hereby appended or otherwise incorporated into the memo.

Appendix

Documents related to the Committee’s study of this topic may be accessed at the following link:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvOond0011ef58&id=L1RO

Appendices A through D may be found at the provided hyperlinks.

A. [Briefing Agendas, Minutes, and Presentation Slides](#)

B. [Written Testimony](#)

C. [Transcripts](#)

D. [Outreach for Public Briefings](#)

E. Dissent – Ammon Smartt

Appendix E.

I dissent. In my view this committee is not yet in a position to draw any conclusions or make any recommendations based on the testimony received to date. Much of the testimony so far has come from advocates on one side of the political spectrum. While some of the issues raised merit further inquiry, I don't see how a deliberative body such as this one can make any definitive conclusions based on such one-sided testimony. I hope we are able to hear more balanced testimony as we move forward so the committee can consider the totality of the evidence on these important issues.

Ammon Smartt

Committee Member

Tennessee Advisory Committee to the U.S. Commission on Civil Rights

**Tennessee Advisory Committee to the
U.S. Commission on Civil Rights**

Term: June 17, 2020 to June 16, 2024

Shaka Mitchell, Chair, Tennessee Advisory Committee, Nashville

Yesha Yadav, Vice Chair, Nashville

Camela Echols, Memphis

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