

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

STATE OF NEBRASKA *ex rel.*,
JOHN THOMAS JEFFREY
KING, GREGORY SPUNG,
JEREMY JONAK, and CIVIC
NEBRASKA,

Relators,

v.

ROBERT EVNEN, in his official
capacity as Nebraska Secretary
of State, BRIAN W. KRUSE, in
his official capacity as Douglas
County Election Commissioner,
and TRACY OVERSTREET, in
her official capacity as Hall
County Election Commissioner,

Respondents.

Case No. 24-_____

**APPLICATION FOR LEAVE
TO COMMENCE AN
ORIGINAL ACTION**

COMES NOW Relators John Thomas Jeffrey King (“King”), Gregory Spung (“Spung”), Jeremy Jonak (“Jonak”), and Civic Nebraska, requesting leave of the Court to commence an original action, pursuant to Neb. Ct. R. App. P. § 2-115, as set forth in the Verified Petition for Writ of Mandamus attached hereto. This Application for Leave to Commence an Original Action sets forth the basis of the Court’s jurisdiction and the reasons it is necessary to commence the action in this Court. In support of this application, Relators state as follows:

INTRODUCTION

1. Relators bring this action, a Verified Petition for Writ of Mandamus attached as “Attachment A” and incorporated by reference

as if fully set forth herein, to compel the Respondents Secretary of State Robert Evnen (“Secretary Evnen”), Douglas County Election Commissioner Brian Kruse (“Commissioner Kruse”), and Hall County Election Commissioners Tracy Overstreet (“Commissioner Overstreet”) to comply with established Nebraska election law less than four months before a presidential election.

2. Earlier this year, a bipartisan coalition of lawmakers passed legislation re-enfranchising thousands of Nebraskans. Legis. B. 20, 108th Leg., 2d. Sess. (Neb. 2024). Leading up to the vote, legislators weighed committee hearing testimony, engaged in extensive debate, and fielded calls and emails from constituents. Under the new law—Legislative Bill 20 (L.B. 20) codified at Neb. Rev. Stat. §§ 29-112, 29-113, 32-313, 32-1530, 29-2264, 32-312, and 83-1,118 (hereinafter referred to as the “Re-enfranchisement Statutes”)—Nebraskans who have been convicted of a felony offense can register to vote without delay after completing the terms of their sentence, including incarceration and any parole or probation. *See* Neb. Rev. Stat. §§ 29-112, 29-113, 32-313, 32-1530, 29-2264, 32-312, 83-1,118.

3. The legislature’s authority to restore voting rights in this way was longstanding; in 2005, the legislature passed Legislative Bill 53 (L.B. 53), which automatically restored voting rights to all Nebraskans two years after the completion of their felony sentence. Legis. B. 53, 99th Leg., 1st Sess. (Neb. 2005). L.B. 20 follows this sound practice and simply removed the two-year waiting period in L.B. 53, aligning Nebraska’s voting procedures with the vast majority of other states around the country, where people with felony convictions who have completed all terms of their sentences may register to vote. *See* Alaska Stat. § 15.05.030(a); Ark. Const. amend. LI, § 11(d)(2)(A-D); Cal. Const. art. II, § 4; Colo. Const. art. VII, § 10; Conn. Gen. Stat. § 9-46a(b); Ga. Const. art. II, § 1, para. III(a); Haw. Rev. Stat. § 831-2(a)(1); Idaho Code § 18-310(2); Ill. Const. art. III, § 2; Ind. Code § 3-7-13-4; Kan. Stat. Ann. § 22-3722; Md. Code Ann., Elec. Law § 3-102(b)(1); Mass. Gen. Laws ch. 51, § 1; Mich. Comp. Laws § 168.758b; Minn. Stat. § 609.165, subdiv. 1; Mo. Rev. Stat. § 115.133.2; Mont.

Const. art. IV, § 2; Nev. Rev. Stat. § 213.157; N.H. Rev. Stat. Ann. § 607-A:2(I); N.J. Stat. Ann. § 19:4-1; N.M. Const. art. VII, § 1; N.Y. Elec. Law § 5-106(2); N.C. Gen. Stat. § 13-1; N.D. Cent. Code § 12.1-33-03(1); Ohio Rev. Code Ann. § 2961.01(A)(2); Okla. Stat. tit. 26, § 4-101(1); Or. Rev. Stat. § 137.281(1); 25 Pa. Cons. Stat. § 1301(a); *Mixon v. Commonwealth*, 759 A.2d 442 (Pa. Commw. Ct. 2000); R.I. Const. art. II, § 1; S.C. Code Ann. § 7-5-120(B)(3); S.D. Codified Laws § 12-4-1.2; Tex. Elec. Code Ann. § 11.002(4)(a); Utah Code Ann. § 20A-2-101.5; Wash. Rev. Code § 29A.08.520; W. Va. Const. art. IV, § 1; Wis. Stat § 304.078(3); *see also* Me. Const. art. II, § 1; Vt. Stat. Ann. tit. 28, § 807(a); D.C. Code § 1–1001.07 (citizens never lose their voting rights on account of a felony conviction in Maine, Vermont, and the District of Columbia).

4. While Governor Jim Pillen declined to sign L.B. 20, it became law without his signature with an effective date of July 19, 2024. *See* Neb. Const. art. IV, § 15.

5. Yet two days before the law was to take effect, Attorney General Mike Hilgers released a nonbinding opinion declaring that L.B. 20 violates Article IV, section 13, of the Nebraska Constitution. *See* Attach. A, Ex. 1. The Attorney General also unilaterally announced that *no one* convicted of a felony offense—no matter how old the conviction—can lawfully vote in Nebraska without a pardon from the Board of Pardons. The Attorney General’s opinion, in other words, would effectively overturn not just L.B. 20 but also L.B. 53 and two decades of rights restoration law in Nebraska. *Id.*

6. Yet the Nebraska Supreme Court has already held that voter restoration is a power of the Legislature and that “[r]estoration of the right to vote is implemented through statute.” *Ways v. Shively*, 264 Neb. 250, 255, 646 N.W.2d 621, 626 (2002).

7. Secretary Evnen relied on the conclusion of the opinion and released a statement commanding local election officials to subvert L.B. 20 and L.B. 53 by rejecting all voter registrations of Nebraskans with a prior felony conviction except those voters who had received a pardon from the Board of Pardons. *See* Attach. A, Ex. 2. He then

changed every voter registration form in the State of Nebraska to conform to the Attorney General's non-binding opinion. *See* Attach. A, Ex. 6.

8. Secretary Evnen's directive is plainly violative of the fundamental separation of powers. Indeed, the Nebraska Constitution mandates that "[n]o legislative act shall be held unconstitutional except by the concurrence of five judges." Neb. Const. art. V, § 2; *see also State v. Coffman*, 213 Neb. 560, 561, 330 N.W. 2d, 727, 728 (1983) ("[A]n Attorney General's opinion . . . has no controlling authority on the state of the law discussed in it, . . . [a]n Attorney General's opinion is, simply, not a judicial utterance.").

9. Secretary Evnen's actions, taken less than four months before a presidential election, have dramatically upended two decades of settled election law and created chaos, confusion, and uncertainty in Nebraska's electoral process. Thousands of Nebraskans whose right to vote has been restored by the Legislature have been swiftly and unilaterally disenfranchised by the Secretary of State. Voters and organizations that assist with voter registration, such as Relator Civic Nebraska, are now at risk, or potential risk, of prosecution.

10. This uncertainty threatens a cornerstone of our democracy—the fundamental right to vote. Secretary Evnen's actions have already resulted in eligible voters, like Relators King, Spung, and Jonak, being unable to exercise or denied their right to register to vote.

11. In acting unilaterally, Secretary Evnen has usurped both the authority of the courts to declare what is and is not unconstitutional, as well as the power of the Legislature to make law on behalf of constituents to whom they are accountable. Instead, Secretary Evnen has unlawfully attempted to aggrandize the Board of Pardons—a board whose three members are: the Governor, Attorney General, and the Secretary himself. Neb. Const. art. IV, § 13.

12. Relators request leave of the Court to file an original action seeking (1) a writ of mandamus requiring the Secretary of State to prescribe voter registration forms which state, as required by Nebraska statute: "[t]o the best of my knowledge and belief, I declare

under penalty of election falsification that: . . . I have not been convicted of a felony; *or if convicted, I have completed my sentence for the felony, including any parole term*"; (2) a writ of mandamus requiring the Secretary of State to effectuate the automatic removal of disqualification of eligibility for electors upon completion of the terms of their felony sentence; (3) writs of mandamus ordering the Douglas County Commissioner to accept the voter registration forms from Relators King and Sprung, enter the information from their applications in the voter registration register, and send them an acknowledgement of registration to the postal address shown on the registration application; and (4) a writ of mandamus ordering the Hall County Election Commissioner to accept voter registration form from Relator Jonak, enter the information from his application in the voter registration register, and send Jonak an acknowledgement of registration to the postal address shown on the registration application.

RELATORS

13. Relators TJ King, Gregory Spung, and Jeremy Jonak are citizens of the United States. Relators King and Spung are residents of Douglas County, Nebraska. Relator Jonak is a resident of Hall County, Nebraska.

14. Relators King, Spung, and Jonak have been separately convicted of felonies and lost their right to vote under Nebraska's felony disenfranchisement laws.

15. Relators King, Spung, and Jonak have all completed their sentences related to their felony convictions and thus, under Nebraska law, their disqualification from voting should be "automatically removed" upon completion of their sentence including any parole term. Neb. Rev. Stat. §§ 29-112, 32-313.

16. Relators King, Spung, and Jonak are qualified voters under Nebraska law. Neb. Rev. Stat. §§ 32-313, 32-110.

17. Relators King, Spung, and Jonak desire to register to vote and participate in the upcoming November 2024 General Election taking place on November 5, 2024.

18. But for Secretary Evnen's and Commissioners' Kruse and Hall's refusal to comply with Nebraska law, King, Spung, and Jonak would be registered to vote.

19. Jonak has a federal conviction, which cannot be pardoned by the Nebraska Board of Pardons. *See* Neb. Const. art. IV, § 13.

20. King has out-of-state convictions, which cannot be pardoned by the Nebraska Board of Pardons and can only be pardoned by the pardon and clemency laws of the respective states. *See* Neb. Const. art. IV, § 13.

21. Relator Civic Nebraska is a nonprofit corporation organized under Nebraska law, whose mission is to create a more modern and robust democracy for all Nebraskans by, among other things, ensuring elections are nonpartisan and helping Nebraskans register to vote and vote.

22. Any person or organization which distributes voter registrations by mail is required to use the form prescribed by the Secretary of State. Neb. Rev. Stat. § 32-320.01. Secretary Evnen, however, has failed to provide legal voter registration forms as required by Nebraska law. Neb. Rev. Stat. §§ 32-312 (providing what the Secretary of State is required to include in voter registration forms), 32-321 (requiring the Secretary of State to make registration applications as prescribed by law available to any elector).

23. Anticipating the Re-enfranchisement Statutes to take effect on July 19, 2024, Civic Nebraska spent the organization's resources and staff time planning and conducting outreach to new voters informing them of the anticipated change in the law. Civic Nebraska planned to host celebration events as soon as July 20, 2024 to invite new voters to register after the Re-enfranchisement Statutes took effect.

24. Since Secretary Evnen sent his directives to election commissioners across the state to halt compliance with the Re-

enfranchisement Statutes, Civic Nebraska had to immediately stop their outreach and organizing efforts to register voters impacted by the Re-enfranchisement Statutes. Civic Nebraska incurred even greater expenses and diversion of resources due to the required re-strategizing and re-organizing of their outreach efforts. Resources that would have gone to helping register new voters and inform new voters of the law to increase civic participation are now being devoted to informing Nebraskans and newly disenfranchised voters about Secretary Evnen's actions and that they could not rely on the Re-enfranchisement Statutes as expected. Civic Nebraska also had to spend resources to re-program the scheduled celebration events as opportunities for the community and impacted Nebraskans to get information on the sudden new development.

25. Civic Nebraska has also had to expend resources to research and re-strategize their communications to donors and stakeholders because their outreach and organizing plans around the Re-enfranchisement Statutes had changed unexpectedly due to Secretary Evnen's actions.

26. In the separately filed Verified Petition, Relators seek a writ of mandamus ordering Secretary Evnen to prescribe voter registration forms in compliance with Neb. Rev. Stat. § 32-312. Relators also seek a writ of mandamus ordering Respondent Evnen to effectuate the automatic removal of disqualification of eligibility for citizens who have completed the terms of their felony sentences, in compliance with Neb. Rev. Stat. §§ 32-202, 32-213. Individual Relators King and Spung also seek a writ of mandamus requiring Commissioner Kruse to accept their voter registration forms, enter the information from their applications in the voter registration register, and to send an acknowledgement of registration to the postal address shown on the registration application. Neb. Rev. Stat. §§ 32-301, 32-322. Similarly, Relator Jonak seeks a writ of mandamus requiring the Commissioner Overstreet to do the same for his voter registration application. *See id.*

JURISDICTION

27. The Court has original jurisdiction over this matter pursuant to Neb. Const. art. V, § 2 and Neb. Rev. Stat. § 24-204, as Relators seeking writs of mandamus.

28. The Secretary of State has a nondiscretionary duty to prescribe and distribute a registration application which may be used statewide to register to vote and update voter registrations. Neb. Rev. Stat. § 32-311.01. Further, the Secretary of State has a nondiscretionary duty to prescribe that form in the manner directed by the Legislature in Neb. Rev. Stat. § 32-312. Specifically, the form must state, “[t]o the best of my knowledge and belief, I declare under penalty of election falsification that: . . . I have not been convicted of a felony or if convicted, I have completed my sentence for the felony, including any parole term.” Neb. Rev. Stat. § 32-312.

29. Additionally, as part of his “duties prescribed by law, the Secretary of State shall . . . [e]nforce the Election Act.” Neb. Rev. Stat. § 32-202(3); *accord* Neb. Rev. Stat. §§ 32-101 to 32-1552.

30. Pursuant to the Election Act, an elector previously disqualified due to a felony conviction is eligible to vote when their “sentence is completed . . . [t]he disqualification is *automatically* removed at such time.” Neb. Rev. Stat. § 32-313(1) (emphasis added). Secretary Evnen thus has a nondiscretionary duty to perform this automatic removal of disqualification for voters that have completed the terms of their felony sentence.

31. The Hall County and Douglas County Election Commissioners have a nondiscretionary duty to provide for the registration of electors of the county, to carry on voter registration at all times during business hours, to accept voter registration applications, to enter the information from a voter registration application in the voter registration register upon receipt, and to send an acknowledgment of registration to the postal address shown on the registration application. Neb. Rev. Stat. §§ 32-301(2), 32-302, 32-311.01(1), 32-322.

32. Relators King, Spung, and Jonak are qualified voters and have a clear legal right to register as a voter in Nebraska. Neb. Rev. Stat. §§ 32-313, 32-110, 29-112, 32-313.

33. King, Spung, and Jonak have a right to register as a voter under the correct voter registration form prescribed by the Secretary of State and made available by the Douglas and Hall County Election Commissioners showing that they are a qualified voter. Neb. Rev. Stat. §§ 32-312, 32-311.01, 32-313, 32-110.

34. King, Spung, and Jonak have a right to a voter registration form that reflects Nebraska law which provides that the Secretary of State *must* prescribe a voter registration form that states: “[t]o the best of my knowledge and belief, I declare under penalty of election falsification that: . . . I have not been convicted of a felony; *or if convicted, I have completed my sentence for the felony, including any parole term.*” Neb. Rev. Stat. § 32-312, 32-311.01 (emphasis added). This statute was updated after passage of L.B. 20 was passed and is the law of Nebraska.

35. Relators King, Spung, and Jonak have no alternative remedy that adequately compels the performance of the duty of Secretary Evnen and Commissioners Kruse and Overstreet as completely and effectively as a writ of mandamus and that resolves the issue with the urgency necessary in an election year.

NECESSITY OF AN ORIGINAL ACTION

36. The November 2024 General Election and various election related deadlines are rapidly approaching. Secretary Evnen’s actions jeopardize public confidence in the electoral process, infringe on thousands of individuals’ right to vote less than four months out from a presidential election, and incentivize people to stay away from the polls. Many upcoming electoral deadlines, including those which directly impact Relators, further necessitate an original action in the Supreme Court.

37. Upcoming election related deadlines include: (1) the October 18, 2024, deadline to register online or by mail to vote in the general election; (2) the October 25, 2024, deadline to register to vote

in person for the general election; and (3) the October 25, 2024, deadline to request early voting ballots to be mailed. *See* Neb. Rev. Stat. §§ 32-302, 32-311.01, 32-949.01. In light of these upcoming deadlines, it would be inefficient to adjudicate this matter in the District Court of Lancaster County. With little time until the registration deadline for the general election, it might be difficult to seek appellate review from a district court decision. Other pressing election deadlines for voter registration, signature verification, and ballot certification, also warrant exercise of the Court's original jurisdiction.

38. Further, the Verified Petition presents only questions of law that require interpreting Neb. Rev. Stat. §§ 29-112, 32-313, and Neb. Const. art. V, § 2. This interpretation would inevitably fall to the Nebraska Supreme Court as the final interpreters of the Nebraska Constitution and would require a *de novo* review, even if this action was initially adjudicated in a district court.

39. This matter presents only questions of law and should stipulated facts be necessary, Relators would seek to agree with Respondents upon jointly stipulated facts.

40. This Court has previously exercised original jurisdiction in cases with similar time constraints. *See State ex rel. Wagner v. Eppen*, 307 Neb. 142, 948 N.W.2d 244 (2020) (exercising original jurisdiction with fourteen days till the certification deadline); *State ex rel. McNally v. Eppen*, 307 Neb. 103, 948 N.W.2d 463 (2020) (exercising original jurisdiction with seventeen days till the certification deadline); *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014) (exercising original jurisdiction with forty-six days till the certification deadline).

WHEREFORE, Relators apply to this Court for leave to file their Verified Petition for Writ of Mandamus accompanying this Application, docket this case as an original action on the Supreme Court Docket, expedite proceedings as necessary, and take any other action necessary or appropriate for the commencement of said original action.

DATED this 29th day of July, 2024.

JOHN THOMAS JEFFREY
KING, Relator
GREGORY SPUNG, Relator
JEREMY JONAK, Relator
CIVIC NEBRASKA, Relator,

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ATTACHMENT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

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STATE OF NEBRASKA *ex rel.*,
JOHN THOMAS JEFFREY
KING, GREGORY SPUNG,
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Respondents.

Case No. 24-____

**VERIFIED PETITION FOR
WRIT OF MANDAMUS**

COME NOW Relators John Thomas Jeffrey King (“TJ King”), Gregory Spung (“Spung”), Jeremy Jonak (“Jonak”), and Civic Nebraska, seeking a peremptory writ of mandamus pursuant to Neb. Rev. Stat. §§ 25-2156 to 25-2169, requiring Respondent Secretary of State Robert Evnen (“Secretary Evnen”) to prescribe voter registration applications that comply with Neb. Rev. Stat. § 32-312.

Relators also seek a peremptory writ of mandamus requiring Secretary Evnen to effectuate the automatic removal of disqualification of eligibility for persons who have completed the terms of their felony sentence pursuant to Neb. Rev. Stat. §§ 32-202, 32-313.

Additionally, Relators King and Spung seek a peremptory writ of mandamus requiring Douglas County Election Commissioner Brian W. Kruse (“Commissioner Kruse”) to find King and Spung to be qualified registered voters, accept their voter registration forms, enter the information from their applications in the voter registration list, and mail them an acknowledgement of registration as required by Neb. Rev. Stat. §§ 32-301 and 32-322.

Relator Jonak seeks a peremptory writ of mandamus requiring Hall County Election Commissioner Tracy Overstreet (“Commissioner Overstreet”) to find Jonak to be a qualified registered voter, accept his voter registration form, enter the information from his application in the voter registration register, and mail him an acknowledgement of registration as required by Neb. Rev. Stat. §§ 32-301, 32-322.

This petition directly concerns election matters, the outcome of which will determine Relators King, Spung, and Jonak’s right to register to vote and to vote and Relator Civic Nebraska’s ability to register voters in the November 2024 General Election. Relators request expedited treatment and adjudication of their petition and in support thereof allege as follows:

INTRODUCTION

1. This spring, the Nebraska Legislature passed legislation restoring voting rights to thousands of Nebraskans who have been convicted of a felony offense and completed their sentences. That legislation, Legislative Bill 20 (“L.B. 20”), reinstates Nebraskans’ voting rights automatically after completion of their felony sentence, including any parole term. Legis. B. 20, 108th Leg., 2d. Sess. (Neb. 2024) (“L.B. 20”). Before it was enacted, there was a two-year waiting period after completion of the sentence before voting rights were restored; L.B. 20 removed that waiting period and is codified at Neb. Rev. Stat. §§ 29-112, 29-113, 32-313, 32-1530, 29-2264, 32-3312, and 83-1,118 (hereinafter the “Re-enfranchisement Statutes”).

2. This was not the first time the Nebraska Legislature restored voting rights to Nebraskans with felony convictions through

legislation. In 2005, the Nebraska Legislature passed Legislative Bill 53 (“L.B. 53”) to restore voting rights automatically two years after the completion of the felony sentence, including any parole term. Legis. B. 53, 99th Leg., 1st Sess. (Neb. 2005). Consistent with this historical practice and the legislature’s authority, L.B. 20 simply removed the two-year waiting period. In doing so, it aligned Nebraska’s voting procedures with the vast majority of other states that recognize that citizens who have served their time should be able to participate fully in democracy. *See* Alaska Stat. § 15.05.030(a); Ark. Const. amend. LI, § 11(d)(2)(A-D); Cal. Const. art. II, § 4; Colo. Const. art. VII, § 10; Conn. Gen. Stat. § 9-46a(b); Ga. Const. art. II, § 1, para. III(a); Haw. Rev. Stat. § 831-2(a)(1); Idaho Code § 18-310(2); Ill. Const. art. III, § 2; Ind. Code § 3-7-13-4; Kan. Stat. Ann. § 22-3722; Md. Code Ann., Elec. Law § 3-102(b)(1); Mass. Gen. Laws ch. 51, § 1; Mich. Comp. Laws § 168.758b; Minn. Stat. § 609.165, subdiv. 1; Mo. Rev. Stat. § 115.133.2; Mont. Const. art. IV, § 2; Nev. Rev. Stat. § 213.157; N.H. Rev. Stat. Ann. § 607-A:2(I); N.J. Stat. Ann. § 19:4-1; N.M. Const. art. VII, § 1; N.Y. Elec. Law § 5-106(2); N.C. Gen. Stat. § 13-1; N.D. Cent. Code § 12.1-33-03(1); Ohio Rev. Code Ann. § 2961.01(A)(2); Okla. Stat. tit. 26, § 4-101(1); Or. Rev. Stat. § 137.281(1); 25 Pa. Cons. Stat. § 1301(a); *Mixon v. Commonwealth*, 759 A.2d 442 (Pa. Commw. Ct. 2000); R.I. Const. art. II, § 1; S.C. Code Ann. § 7-5-120(B)(3); S.D. Codified Laws § 12-4-1.2; Tex. Elec. Code Ann. § 11.002(4)(a); Utah Code Ann. § 20A-2-101.5; Wash. Rev. Code § 29A.08.520; W. Va. Const. art. IV, § 1; Wis. Stat § 304.078(3).

3. Many Nebraskans, including Relators TJ King, Gregory Spung, and Jeremy Jonak, became eligible to vote after the law took effect on July 19, 2024. Relator Civic Nebraska relied on the law and expected the organization would be able to distribute voter registration forms and assist in voter registration efforts to voters re-enfranchised by the Re-enfranchisement Statutes.

4. Then, just two days before the legislation was to take effect, on July 17, 2024, Attorney General Michael Hilgers published a nonbinding opinion stating that the Re-enfranchisement Statutes

unconstitutionally violate separation of powers principles because the power to restore voting rights to Nebraskans with felony convictions is purportedly vested exclusively in the Board of Pardons, which is housed in the Executive Branch. A copy of Attorney General Hilgers's opinion is attached as Exhibit 1.

5. That same day, immediately after the nonbinding opinion was published, Secretary Evnen issued a press release indicating he was treating the opinion as binding law and had ordered local election officials to refuse the voter registrations of any person with a prior felony conviction unless they have been restored to their civil rights by the Board of Pardons. A copy of Secretary Evnen's Press release is attached as Exhibit 2 and a copy of Secretary Evnen's directive to election officials is attached as Exhibit 3.

6. The Secretary's interpretation, in other words, is that the Attorney General has the unilateral authority to: (1) invalidate L.B. 20 and the rights restoration statutes that have been on the books since 2005, and (2) refuse to comply with duly enacted Nebraska statutes. That remarkable, unprecedented, and unlawful action prompts this lawsuit.

7. This case is about the fundamental right to vote, a cornerstone of our democracy. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Williams v. Rhodes*, 393 U.S. 23, 31 (1968) (citation omitted); *see also Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (noting the right to vote is a fundamental political right because it is preservative of all other rights).

8. Secretary Evnen's actions have dramatically upended two decades of election law less than four months before the November 2024 General Election. He has justified denying thousands of Nebraskans the right to vote based on a so-called violation of separation of powers. But, in fact, it is Secretary Evnen who has violated the separation of powers by usurping the authority of the

courts to declare what is and is not constitutional, as well as the power of the Legislature to make law on behalf of constituents to whom they are accountable. Instead, Secretary Evnen has unlawfully attempted to aggrandize the Board of Pardons—a board whose members are the Governor, the Attorney General, and the Secretary himself. Neb. Const. art. IV, § 13.

9. “It is emphatically the province and duty of the judicial department to say what the law is.” *Neb. Coal. for Educ. Equity & Adequacy (Coal.) v. Heineman*, 273 Neb. 531, 546, 731 N.W.2d 164, 176 (2007) (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)). And indeed, Nebraska law is clear that “[n]o legislative act shall be held unconstitutional except by the concurrence of five judges.” Neb. Const. art. V, § 2; *see also Jaksha v. State*, 241 Neb. 106, 133, 486 N.W.2d 858, 875 (1992) (“[I]t is the duty of the judicial branch of our government to determine whether an act of the Legislature contravenes the provisions of the Constitution.”). The Executive Branch thus cannot refuse to enforce a law passed by the Legislative Branch based solely on its unilateral determination that the law is unconstitutional. *See Neb. Rev. Stat. § 84-731* (“the Governor . . . shall immediately . . . commence implementation” of a statute “unless,” at the very least, “an action challenging the constitutionality of the act is pending . . .”).

10. Secretary Evnen’s attempt to assume the judiciary’s role to assess the constitutionality of statutes passed by the Nebraska Legislature and relied on by voters for decades, and to unilaterally refuse to enforce such statutes, violates these fundamental principles and is plainly unlawful.

11. Secretary Evnen’s basis is also plainly wrong. L.B. 20 and L.B. 53 were validly enacted legislation and the Nebraska Legislature has the power to restore voting rights through statute. *See Ways v. Shively*, 264 Neb. 250, 255, 646 N.W.2d 621, 626 (2002). Nearly all states in the country have pardon or clemency powers vested in the executive while simultaneously permitting state legislatures to pass laws governing automatic voting rights restoration.

12. A writ of mandamus is urgently needed ahead of the upcoming November 2024 General Election to redress this violation of Nebraska law and prevent the disenfranchisement of thousands of eligible Nebraska voters.

JURISDICTION AND VENUE

13. The Court has original jurisdiction over this matter pursuant to Neb. Const. art. V, § 2 and Neb. Rev. Stat. § 24-204, as Relators seek writs of mandamus.

PARTIES

A. Relators

TJ King

14. Relator, John T.J. (TJ) King, is a resident and citizen of Omaha in Douglas County, Nebraska.

15. King is over eighteen years old, has not been held to be *non compos mentis* and has never been convicted of treason.

16. King is a qualified voter pursuant to Neb. Rev. Stat. §§ 32-313, 32-110 and would register to vote in the November 2024 General Election if legally permitted.

17. King was born in Lincoln, Nebraska and has lived almost his entire life in Nebraska. King has devoted his career to community advocacy and engagement but because of Respondents' failure to comply with the law, is not able to participate in our democratic process through voting.

18. Prior to being disenfranchised, King voted in elections and was proud to do so. King was previously registered as a Democrat and if eligible to vote, would register to vote as a Democrat again and cast his ballot in the November 2024 General election.

19. Between 1993 and 2016, King was convicted of one or more felonies under state law across three states.

20. As of September 21, 2022, King has completed all terms of his sentences.

21. The Nebraska Board of Pardons cannot pardon King's convictions in Florida and Iowa. Those convictions can only be pardoned by the pardon and clemency laws of their respective states. *See Neb. Const. art. IV, § 13.*

22. King has paid all legal financial obligations associated with all of his sentences.

23. King is not currently serving a sentence for any felony conviction in any jurisdiction.

Gregory Spung

24. Relator, Gregory Spung, is a resident and citizen of Omaha in Douglas County, Nebraska.

25. Spung was born in Omaha and has lived in Nebraska his entire life.

26. Spung is over eighteen years old, has never been held to *non compos mentis*, and has never been convicted of treason.

27. Spung is an eligible voter pursuant to Neb. Rev. Stat. §§ 32-313 and 32-110.

28. Prior to being disenfranchised, Spung regularly exercised his right to vote and was enthusiastic about doing so. After the passage of L.B. 20, Spung was excited to have his voting rights restored and vote again.

29. On or about July 18, 2024, Spung submitted an application to register to vote on the Secretary of State's website believing he was eligible to vote. On or about that same day and upon learning of Secretary Evnen's action to refuse voting rights to those with felony convictions, Spung submitted an email to the Douglas County Election Commissioner requesting to withdraw his voter registration application out of concern and fear of criminal liability for election falsification. On July 28, 2024, Spung received notice from the Douglas County Election Commission that "based upon [his] request,

and with all due consideration” they will honor Spung’s request to withdraw his registration application. In his application, Spung requested to register as Nonpartisan.

30. If allowed to register to vote, Spung intends to register as Nonpartisan and vote in the November 2024 General Election.

31. In 2022, Spung pled guilty to a felony conviction. On March 9, 2023, Spung was discharged early from his term of probation, completing all terms of his sentence related to his felony conviction.

32. Spung paid all legal financial obligations related to his conviction.

33. Spung is not currently serving a sentence for any felony conviction in any jurisdiction.

Jeremy Jonak

34. Relator, Jeremy Jonak, is a resident and citizen of Wood River in Hall County, Nebraska.

35. Jonak was born in Saint Paul, Nebraska and has lived in Nebraska his entire life.

36. Jonak is over eighteen years old, has not been held to be *non compos mentis* and has never been convicted of treason.

37. Jonak is a qualified voter pursuant to Neb. Rev. Stat. §§ 32-313 and 32-110.

38. Prior to being disenfranchised, Jonak exercised his right to vote and was proud to do so.

39. Jonak was excited to get his right to vote back upon completing his sentence so that he could vote in the November 2024 General Election as a registered Republican.

40. On December 11, 2019, Jonak pled no contest to a felony conviction under Nebraska law. On January 5, 2022, Jonak was released from probation and completed all terms of his sentence related to that conviction.

41. In August of 2020, Jonak pled guilty to a federal felony conviction.

42. On April 7, 2022, Jonak was sentenced to three years of probation.

43. On April 19, 2024, Jonak was released early from his probation. At that point, Jonak had completed all terms of his sentence.

44. Jonak paid all legal financial obligations related to his sentences.

45. Jonak is not currently serving any sentence for any felony conviction in any jurisdiction.

46. Jonak's federal conviction cannot be pardoned by the Nebraska Board of Pardons. *See* Neb. Const. art. IV, § 13.

Civic Nebraska

47. Relator, Civic Nebraska, is a registered nonpartisan nonprofit corporation organized under the laws of Nebraska with offices located in Lincoln, Nebraska.

48. Civic Nebraska's mission is to create a more modern and robust democracy for all Nebraskans by educating voters, providing guidance to Nebraskans about registering to vote, and registering voters.

49. Civic Nebraska is required by law to use voter registration forms issued by Secretary Evnen and uses the forms to further their mission. *See* Neb. Rev. Stat. § 32-320.01.

50. As discussed in greater detail below, Civic Nebraska has been forced to divert money, staff time, and resources away from its other core activities as a result of Secretary Evnen's unlawful directive.

B. Respondents

51. Respondent Robert Evnen serves as the Secretary of State, Nebraska's chief election official and is prescribed to "enforce the election act," "supervise the conduct of primary and general elections in this state," and "provide training and support for election commissioners, county clerks, and other election officials in providing for day-to-day operations of the office, registration of voters, and the

conduct of elections.” Neb. Rev. Stat. § 32-202; *accord* Neb. Rev. Stat. §§ 32-101 to 32-1552. Secretary Evnen is sued in his official capacity.

52. Respondent Brian W. Kruse serves as the Douglas County Election Commissioner and is “responsible for the enforcement of the Election Act as it relates to his... office and for the competency, integrity, and conduct of his... chief deputy election commissioner and all personnel appointed by him...” Neb. Rev. Stat. § 32-214; *accord* Neb. Rev. Stat. §§ 32-101 to 32-1552. Respondent Kruse is sued in his official capacity.

53. Respondent Tracy Overstreet serves as the Hall County Election Commissioner and is “responsible for the enforcement of the Election Act as it relates to...her office and for the competency, integrity, and conduct of ...her chief deputy election commissioner and all personnel appointed by ... her.” Neb. Rev. Stat. § 32-214; *accord* Neb. Rev. Stat. §§ 32-101 to 32-1552. Respondent Overstreet is sued in her official capacity.

FACTS

A. Background on L.B. 20

54. In 2005, the Nebraska Legislature passed L.B. 53, which ended permanent felony disenfranchisement in the state. Legis. B. 53, 99th Leg., 1st Sess. (Neb. 2005). L.B. 53 restored Nebraskans’ right to vote two years after completion of a felony sentence, including any parole. *Id.*

55. The re-enfranchisement of Nebraskans formerly convicted of felonies means more than just the ability to cast a vote. Rather, the restoration of one’s voting rights has been shown to reduce recidivism, increase community engagement, and foster reintegration into the community following a felony conviction.

56. After the passage of L.B. 53, lawmakers, voting rights advocates including Relator Civic Nebraska, and Nebraska citizens then began laying the groundwork for their next legislative effort: removing the two-year waiting period. Over the next nineteen years, they formed coalitions, engaged in bipartisan dialogue, and educated

the community about the benefits of civic engagement for Nebraskans re-entering the community after a felony conviction. Nate Jenkins, *Effort Under Way to get Ex-felons Registered to Vote*, Lincoln J. Star (Sept. 11, 2005), https://journalstar.com/news/local/effort-under-way-to-get-ex-felons-registered-to-vote/article_75945fad-fbea-51b6-9975-21911ed8bfe3.html, Exhibit 4.

57. At the time of L.B. 53's passage, approximately 59,000 Nebraskans had their voting rights restored pursuant to L.B. 53. Ex. 4.

58. Over the past two decades, Nebraska citizens who have completed the terms of their felony sentences have relied on the rights restoration scheme set out by L.B. 53 to register to vote, vote, and otherwise rejoin the democratic process. Logan Seacrest, Legis. Rsch. Off., *Prisoner Reentry FAQ 2* (2014), <https://www.nebraskalegislature.gov/pdf/reports/research/prisonerreentryfaq2014.pdf>, Ex. 5.

59. Since the passage of L.B. 53, approximately 38,000 more voters have been re-enfranchised since 2005.

60. On April 11, 2024, the Nebraska Legislature overwhelmingly passed L.B. 20 in a bipartisan, 38-6 vote. Legis. J., 108th Leg., 2d Sess. 1700-01 (Neb. 2024). L.B. 20 restores voting rights to Nebraskans convicted of a felony immediately upon completion of their sentence, including any parole, eliminating the two-year wait period in L.B. 53. *Compare* Legis. B. 20, 108th Leg., 2d. Sess. (Neb. 2024) *with* Legis. B. 53, 99th Leg., 1st Sess. (Neb. 2005).

61. While Governor Jim Pillen declined to sign L.B. 20, it became law without his signature with an effective date of July 19, 2024. *See* Neb. Const. art. IV, § 15.

B. Attorney General Hilgers's Opinion and Secretary Evnen's Directive

62. On July 17, 2024, nearly three months after the bill was passed into law and less than forty-eight hours before the legislation was to take effect on July 19, 2024, Attorney General Hilgers published a nonbinding opinion stating that L.B. 20 unconstitutionally

restores voting rights to Nebraskans with felony convictions in violation of article IV, section 13 of the Nebraska Constitution. In his view, only the Board of Pardons — comprised of himself, Secretary Evnen, and Governor Pillen — has that authority. *See* Neb. Const. art. IV, § 13.

63. Attorney General Hilgers has determined that *no Nebraskan* convicted of a felony offense—no matter how old the conviction, or how many times they have lawfully voted since 2005—can lawfully vote without a pardon from the Board of Pardons. This opinion would, therefore, affect not just L.B. 20 but also L.B. 53, which has restored voting rights to tens of thousands of Nebraska voters over the past two decades. *See* Ex. 5 at 2.

64. And yet, Secretary Evnen issued a press release indicating he is interpreting the Attorney General’s opinion as binding law. In the press release, Secretary Evnen represented that he is “directing county election offices to stop registering individuals convicted of felonies who have not been pardoned by the Nebraska Board of Pardons.” Ex. 2; *accord* Ex. 3.

65. Neither Attorney General Hilgers’ opinion nor Secretary Evnen’s statement specify any legal basis for how a non-binding Attorney General opinion can overturn and invalidate laws passed by a democratically elected legislature—especially when it is emphatically the province of the *judicial* branch to say whether a law is constitutional or not. *See* Neb. Const. art. V, § 2.

66. It is axiomatic that only the judiciary has the authority to invalidate a statute as unconstitutional or otherwise unlawful. This is plain from the Nebraska Constitution itself, which makes clear that “[n]o legislative act shall be held unconstitutional except by the concurrence of five judges.” Neb. Const. art. V, § 2; *see also* *Jaksha v. State*, 241 Neb. 106, 133, 486 N.W.2d 858, 875 (1992).

67. In fact, the Nebraska Supreme Court has already held that the Legislature has the power to restore the right to vote, stating and that the “[r]estoration of the right to vote is implemented through

statute.” *Ways v. Shively*, 264 Neb. 250, 255, 646 N.W.2d 621, 626 (2002).

68. And even more specifically, the Nebraska Supreme Court has found that “an Attorney General's opinion . . . has no controlling authority on the state of the law discussed in it, . . . [a]n Attorney General's opinion is, simply, not a judicial utterance.” *State v. Coffman*, 213 Neb. 560, 561, 330 N.W.2d 727, 728 (1983).

69. To the extent the Executive Branch believes a law to be unconstitutional, it must seek relief before the judiciary; it cannot refuse to enforce a law based solely on a unilateral finding of unconstitutionality. *See* Neb. Rev. Stat. § 84-731 (“the Governor . . . shall immediately . . . commence implementation” of a statute “unless,” at the very least, “an action challenging the constitutionality of the act is pending . . .”).

70. The Secretary’s decision to treat the Attorney General’s opinion as binding law and his refusal to enforce duly passed statutes thus violate the plain text of the Nebraska State Constitution and Nebraska statute, as well as binding holdings from the Nebraska Supreme Court. It must end now.

C. Respondent’s Legal Duty

Secretary of State

71. Nebraska law provides that the Secretary of State *must* prescribe a voter registration form that states: “[t]o the best of my knowledge and belief, I declare under penalty of election falsification that: . . . I have not been convicted of a felony; *or if convicted, I have completed my sentence for the felony, including any parole term.*” Neb. Rev. Stat. §§ 32-312, 32-311.01 (emphasis added). This statute was updated after L.B. 20 was passed and is the law of Nebraska.

72. In contravention of the Re-enfranchisement Statutes and his duty as Secretary of State, Secretary Evnen unilaterally changed the voter application oath. A copy of the voter registration form currently being utilized by the Secretary of State is attached as Exhibit 6. Secretary Evnen unilaterally changed the voter application oath to

read: “I have not been convicted of a felony or, if convicted, *my civil rights have been restored.*” Ex. 6 (emphasis added). Secretary Evnen has directed county elections to use forms and to register voters which utilize language in violation of the Re-enfranchisement Statutes. *See* Ex. 3.

73. Secretary Evnen has a legal duty to provide the correct voter registration form pursuant to Nebraska law. Neb. Rev. Stat. §§ 32-312, 32-311.01.

74. Also part of his “duties prescribed by law, the Secretary of State shall . . . [e]nforce the Election Act.” Neb. Rev. Stat. § 32-202(3); *accord* Neb. Rev. Stat. §§ 32-101 to 32-1552. Pursuant to the Election Act, an elector previously disqualified due to a felony conviction is eligible to vote when their “sentence is completed”: “[t]he disqualification is *automatically* removed at such time.” Neb. Rev. Stat. § 32-313(1) (emphasis added).

75. Contrary to Secretary Evnen’s duty to automatically remove an individual’s disqualification upon completion of their felony conviction, Secretary Evnen directed all county commissioners via email correspondence to send any pending registrations dated on or after July 18 with a felony conviction a “new felon suspension notice” and be “made ineligible” for voter registration. *See* Ex. 3.

76. The Secretary’s failure to perform this *automatic* removal of disqualification for voters that have completed the terms of their sentence is a violation of his duty under Neb. Rev. Stat. §§ 32-202(3), 32-313(1). *Accord* Neb. Rev. Stat. §§ 32-101 to 32-1552; *see* Exs. 2, 3.

Election Commissioner

77. The Election Act provides that election commissioners “shall provide for the registration of the electors of the county.” Neb. Rev. Stat. § 32-301(2). After receiving “a voter registration application from an eligible elector, . . . [the election commissioner] shall enter the information from the application in the voter registration register” Neb. Rev. Stat. § 32-301(2); *see also* Neb. Rev. Stat. §§ 32-311.01(1)

(“Every election commissioner or county clerk shall accept [an application to register to vote]”), 32-322.

78. After receiving a voter registration application, the Election Commissioner “will . . . send an acknowledgment of registration to the applicant indicating whether the application is proper or not.” Neb. Rev. Stat. §§ 32-304(d), 32-311.01(2)(e), 32-322.

D. Relator’s Legal Right

79. Secretary Evnen’s actions have already resulted in eligible voters being denied their right to register to vote, including Relators King, Jonak, and Spung, and denied Relator Civic Nebraska’s ability to register voters.

King and Spung

80. Being qualified voters under Nebraska statutes, King and Spung have a clear legal right to participate in upcoming elections. Neb. Rev. Stat. §§ 32-313, 32-110.

81. King and Spung have a clear legal right to register as a voter in Nebraska and be placed on the voter registration register under the Re-enfranchisement Statutes.

82. To vote in Nebraska, King and Spung must first register as a voter with the Secretary of State’s Office. King and Spung can apply to register to vote in person at the Douglas County Election Commission. Neb. Rev. Stat. § 32-311.

83. Although King and Spung have completed all terms of their sentences, the Douglas County Election Commissioner would not be able to register them to vote under the Secretary of State’s guidance because of their past felony convictions.

84. King and Spung have a right to register as a voter under the correct voter registration form prescribed by the Secretary of State and made available by the Douglas County Election Commissioner showing that they are a qualified voter. Neb. Rev. Stat. §§ 32-312, 32-311.01, 32-313, 32-110.

85. King and Spung have a right to a voter registration form that reflects Nebraska law which provides that the Secretary of State *must* prescribe a voter registration form that states: “To the best of my knowledge and belief, I declare under penalty of election falsification that: . . . I have not been convicted of a felony; *or if convicted, I have completed my sentence for the felony, including any parole term.*” Neb. Rev. Stat. §§ 32-312, 32-311.01 (emphasis added). This statute was updated after L.B. 20 was passed and is the law of Nebraska.

86. Secretary Evnen is not providing the form required by law and instead unilaterally changed the voter application oath to read: “I have not been convicted of a felony or, if convicted, *my civil rights have been restored.*” Ex. 6 (emphasis added). Should King and Spung register to vote, they will be provided forms using an oath in violation of the Re-enfranchisement Statutes, causing them to run the risk of being charged with election falsification, which is a Class IV felony under Nebraska law. Neb. Rev. Stat. § 32-1502.

Jonak

87. Jonak is a resident and citizen of Hall County, Nebraska. Jonak has a clear right to a correct voter registration form from the Hall County Election Commissioner.

88. Being a qualified voter under Nebraska statutes, Jonak has a clear legal right to participate in upcoming elections. Neb. Rev. Stat. §§ 32-313, 32-110.

89. As a qualified voter and pursuant to the Re-enfranchisement Statutes, Jonak has a clear legal right to register to vote in Nebraska and to be placed on the voter rolls. Neb. Rev. Stat. §§ 29-112, 29-113, 32-313, 32-1530, 29-2264, 32-3312, and 83-1,118.

90. To vote in Nebraska, Jonak must first register as a voter with the Secretary of State’s Office. Under Nebraska statute, Jonak is permitted to register in person at his county election office. Neb. Rev. Stat. § 32-311.

91. On July 19, 2024—the day that L.B. 20 took effect — Jonak visited the Hall County Election Commission in-person to attempt to register to vote.

92. As the election commissioner in Hall County, Commissioner Overstreet has a nondiscretionary duty to provide for the registration of electors of the county, to enter the information from a voter registration application in the voter registration register upon receipt, and to send an acknowledgment of registration to the postal address shown on the registration application. Neb. Rev. Stat. §§ 32-301(2), 32-302, 32-322.

93. Although Jonak meets all of the qualifications to register to vote under Nebraska law, Commissioner Overstreet refused to accept Jonak’s voter registration applications, citing Attorney General Hilgers’ opinion and the directive from Secretary Evnen.

94. When Commissioner Overstreet refused to accept Jonak’s voter registration application, Commissioner Overstreet provided Jonak a letter explaining the reason for her rejection. The letter is attached as **Exhibit 7** and states:

Attorney General Hilger’s opinion “concluded that LB20 passed by the Nebraska Legislature in 2024 and LB53 passed by the Nebraska Legislature in 2005 are unconstitutional,” and that “Secretary Evnen has directed county election officials to stop registering individuals convicted of felonies who have not been pardoned by the Nebraska Board of Pardons.”

95. Although Jonak has completed all terms of his sentence, under the Secretary of State’s guidance, the Hall County Election Commissioner would not register him to vote because of his past felony convictions.

96. Jonak has a right to register as a voter under the voter registration form required by Nebraska statutes showing that he is a qualified voter. Neb. Rev. Stat. §§ 32-312, 32-311.01, 32-313, 32-110.

97. Jonak has a right to a voter registration form that reflects Nebraska law which provides that the Secretary of State *must*

prescribe a voter registration form that states: “To the best of my knowledge and belief, I declare under penalty of election falsification that: . . . I have not been convicted of a felony; *or if convicted, I have completed my sentence for the felony, including any parole term.*” Neb. Rev. Stat. §§ 32-312, 32-311.01 (emphasis added). This statute was updated after L.B. 20 was passed and is the law of Nebraska.

98. Secretary Evnen is not providing the form provided under law and instead unilaterally changed the voter application oath to read: “I have not been convicted of a felony or, if convicted, *my civil rights have been restored.*” Ex. 6 (emphasis added).

99. Should Jonak register to vote, he will be provided a form using an oath in violation of the Re-enfranchisement Statutes, causing him to run the risk of being charged with election falsification, which is a Class IV felony. Neb. Rev. Stat. § 32-1502.

Civic Nebraska

100. Relator Civic Nebraska is required to use the voter registration applications distributed by the Secretary of State and often brings the applications to events, sends them in the mail, and emails the electronic link to the voter registration application to eligible voters. *See* Neb. Rev. Stat. § 32-320.01 (requiring organizations distributing voter registration forms by mail to use the form prescribed by the Secretary of State).

101. Secretary Evnen’s mandate to election officials has created an environment of confusion and uncertainty just weeks before key election deadlines. Nebraskans face a risk of criminal prosecution if they fraudulently register to vote, as do those assisting them, including Civic Nebraska. *See* Neb. Rev. Stat. §§ 32-1502, 32-1503. The laws on the books in Nebraska —Neb. Rev. Stat. §§ 32-312 and 32-313—do not match the directive given by Secretary Evnen or the oath he has printed on voter registration applications.

102. Civic Nebraska is an organization whose core mission is to create a more modern and robust democracy through voter and civic education and participation, in large part by helping Nebraskans

register to vote and vote. To that end, Civic Nebraska has spent significant resources in support of felony voting rights restoration. To support this mission, Civic Nebraska has a devoted staff person committed primarily to felony voter restoration outreach, coordination, and organizing.

103. Anticipating the Re-enfranchisement Statutes to take effect on July 19, 2024, Civic Nebraska spent the organization's resources and staff time planning and conducting outreach to new voters informing them of the anticipated change in the law. Civic Nebraska planned to host celebration events as soon as July 20, 2024 to invite new voters to register after the Re-enfranchisement Statutes took effect.

104. Since Secretary Evnen sent his directives to election commissioners across the state to halt compliance with the Re-enfranchisement Statutes, Civic Nebraska had to immediately stop their outreach and organizing efforts to register voters impacted by the Re-enfranchisement Statutes. Civic Nebraska incurred even greater expenses and diversion of resources due to the required re-strategizing and re-organizing of their outreach efforts. Resources that would have gone to helping register new voters and inform new voters of the law to increase civic participation are now being devoted to informing Nebraskans and newly disenfranchised voters about Secretary Evnen's actions and that they could not rely on the Re-enfranchisement Statutes as expected. Civic Nebraska also had to spend resources to re-program the scheduled celebration events as opportunities for the community and impacted Nebraskans to gather and distribute information on the sudden new development.

105. Civic Nebraska has also had to expend resources to research and re-strategize their communications to donors and stakeholders because their outreach and organizing plans around the Re-enfranchisement Statutes had changed unexpectedly due to Secretary Evnen's actions.

E. Writs of Mandamus Sought

106. Relators seek a writ of mandamus requiring Secretary Evnen to prescribe voter registration forms which state: “[t]o the best of my knowledge and belief, I declare under penalty of election falsification that: . . . I have not been convicted of a felony; or if convicted, I have completed my sentence for the felony, including any parole term,” in compliance with Neb. Rev. Stat. § 32-312.

107. Additionally, Relators seek a writ of mandamus requiring Secretary Evnen to automatically remove the disqualification of voters previously disqualified for a felony conviction upon completion of all terms of sentence, as required by Neb. Rev. Stat. §§ 32-202(3), 32-313(1). *See also* Neb. Rev. Stat. §§ 32-101, 29-112, 29-113, 32-313, 32-1530, 29-2264, 32-3312, 83-1,118.

108. Relators King and Spung seek a writ of mandamus requiring Commissioner Kruse to accept their voter registration forms, enter the information from their applications in the voter registration register, and mail them an acknowledgment of registration as required by Neb. Rev. Stat. §§ 32-301, 32-322.

109. Jeremy Jonak seeks a writ of mandamus requiring Commissioner Overstreet to accept his voter registration forms, enter the information from his applications in the voter registration register, and mail him an acknowledgement of registration as required by Neb. Rev. Stat. §§ 32-301, 32-322.

CLAIMS

FIRST CLAIM FOR RELIEF

Writ of Mandamus Requiring Secretary Evnen to Lawfully Prescribe Voter Registration Applications Pursuant to Neb. Rev. Stat. §§ 32-312, 32-311.01.

110. Relators incorporate enumerated paragraphs above as though set forth here in full.

111. All eligible voters who properly complete an application to be a registered voter “shall be a registered voter and the election

commissioner or county clerk shall send . . . an acknowledgment.” Neb. Rev. Stat. § 32-322.

112. Relators King, Jonak, and Spung have a clear right to be a registered voter as an eligible voter who properly completed the application to register to vote because they have “a direct interest in participating in the upcoming election that will be affected by the actions of the election commissioner which they challenge as unlawful.” *State ex rel. Steinke v. Lautenbaugh*, 263 Neb. 652, 658, 642 N.W.2d 132, 138 (2002).

113. Respondent Secretary Evnen has a statutory duty to “supervise the conduct of primary and general elections in the state.” Neb. Rev. Stat. § 32-202.

114. Respondent Kruse and Overstreet have a statutory duty to “provide for the registration of the electors” in their county. Neb. Rev. Stat. § 32-301(2).

115. Once an election commissioner receives a “complete and correct registration application showing that the registrant is qualified to be a registered voter pursuant to sections 32-312.01 to 32-312.05, the registrant shall be a registered voter and the election commissioner or county clerk shall send . . . an acknowledgment of registration to the registrant.” Neb. Rev. Stat. § 32-322.

116. Respondents failed to fulfill their ministerial duty of supervising and registering electors by failing to comply with and the Re-enfranchisement Statutes, and registering Relator King, Jonak, and Spung to vote.

117. Relator Civic Nebraska is unable to fulfill its mission and plan to register new voters who would have been eligible to vote under the Re-enfranchisement Statutes.

118. Respondents failed to fulfill their ministerial duty to Relator Civic Nebraska by failing to provide registration forms that comply with the Re-enfranchisement Statutes. Neb. Rev. Stat. §§ 32-312; 32-311.01.

119. Relators have no other plain and adequate remedy available in the ordinary court of law. *State ex rel. Johnson v. Gale*, 273 Neb. 889, 895, 734 N.W.2d 290, 298 (2007).

120. A preemptory writ is proper because Relator's right to acceptance and acknowledgment of their registration application is clear and Respondents have no valid excuse in whether to register Relator to vote. Neb. Rev. Stat. § 25-2159.

121. A peremptory writ of mandamus is necessary to compel Respondents to lawfully prescribe voter registration applications as no other remedy at law adequately resolves the issue with the urgency necessary in an election year.

SECOND CLAIM FOR RELIEF

Writ of Mandamus Requiring Secretary Evnen to Effectuate the Automatic Removal of Disqualification of Eligibility for Electors Upon Completion of Terms of Sentence Pursuant to Neb. Rev. Stat. §§ ~~32-202~~, 32-313.

122. Relators incorporate enumerated paragraphs above as though set forth here in full.

123. As part of his "duties prescribed by law, the Secretary of State shall . . . [e]nforce the Election Act." Neb. Rev. Stat. § 32-202(3).

124. Under the Election Act, an elector who had previously been disqualified due to a felony conviction becomes eligible to vote when their "sentence is completed, including any parole term." Neb. Rev. Stat. § 32-313(1). "The disqualification [of the elector] is *automatically* removed at such time." *Id.* (emphasis added).

125. Respondent Secretary Evnen thus has a ministerial duty to perform this automatic removal of disqualification of voters who have completed the terms of their sentence. The Secretary's failure to perform this automatic removal of disqualification constitutes a violation of his ministerial duty.

126. The Secretary's failure to perform these ministerial duties directly harms Relators King, Spung, and Jonak, who have the legal right to be an eligible registered voter under Nebraska law.

127. Relators have no other plain and adequate remedy available in the ordinary court of law. *State ex rel. Johnson v. Gale*, 273 Neb. 889, 895, 734 N.W.2d 290, 298 (2007).

128. A peremptory writ is proper because Relators King, Spung, and Jonak's right to acceptance and acknowledgment of the act is clear and Respondent Secretary Evnen have no discretion in whether to remove Relators King, Spung, and Jonak's disqualification to register to vote. *See* Neb. Rev. Stat. § 25-2159.

THIRD CLAIM FOR RELIEF

Writ of Mandamus Requiring Election Commissioners Tracy Overstreet and Brian Kruse to Register Relators King, Spung, and Jonak as Qualified Voters Pursuant to Neb. Rev. Stat. §§ 32-301, 32-322.

129. Relators incorporate enumerated paragraphs above as though set forth here in full.

130. Relators King, Spung, and Jonak are qualified voters under Nebraska law.

131. Relators have a legal right to be an eligible registered voter under Nebraska law.

132. The duty to register voters is held by county election commissioners. "The election commissioner or county clerk shall provide for the registration of the electors of the county." Neb. Rev. Stat. § 32-301(2).

133. "Every election commissioner or county clerk shall accept such an application for registration." Neb. Rev. Stat. § 32-311.01.

134. Election Commissioners Kruse and Hall have a duty to register voters upon their application:

"Upon receipt by the election commissioner or county clerk of a complete and correct registration application showing that the registrant is a qualified to be a registered voter pursuant to sections 32-312.01 to 32-312.05, the registrant *shall be a registered voter* and the election commissioner or county clerk shall send, by

nonforwardable first-class mail, an acknowledgment of registration to the registrant at the postal address shown on the registration application.”

Neb. Rev. Stat. § 32-322 (emphasis added).

135. As county election commissioners, Respondents Overstreet and Kruse have a duty to register Relators King, Spung, and Jonak in their respective counties.

PRAYER FOR RELIEF

WHEREFORE, Relators respectfully requests that the Court grant relief as follows:

1. That the Court advance this matter on the docket, issue a briefing schedule as soon as possible, and hear and decide this matter in an expedited manner due to the necessity of adjudication before upcoming election deadlines ahead of the November 2024 General Election;

2. That the Court issue a writ of mandamus requiring Respondent Secretary Evnen to prescribe voter registration applications that comply with Neb. Rev. Stat. §§ 32-312, 32-311.01;

3. That the Court issue a writ of mandamus requiring Respondent Secretary of State Robert Evnen to effectuate the automatic removal or disqualification of eligibility for persons who have completed all terms of their felony sentences, including Relators King, Spung, and Jonak pursuant to Neb. Rev. Stat. §§ 32-202, 32-313;

4. That the Court issue a writ of mandamus requiring Douglas County Election Commissioner to accept Relators TJ King’s and Gregory Spung’s voter registration forms, enter the information from their applications in the voter registration register, and mail them an acknowledgement of registration as required by Neb. Rev. Stat. §§ 32-301, 32-322;

5. That the Court issue writ of mandamus requiring Hall County Election Commissioner Tracy Overstreet to accept Relator Jeremy Jonak’s voter registration forms, enter the information from their applications in the voter registration register, and mail him an

acknowledgement of registration as required by Neb. Rev. Stat. §§ 32-301, 32-322;

6. That the Court award Relators costs and reasonable attorney's fees pursuant to Neb. Rev. Stat. § 25-2165 or as otherwise permitted by Nebraska Law; and

7. For such other and further relief as is appropriate at law and equity and the court deems proper.

Dated this 29th of July, 2024

Respectfully submitted,

JOHN THOMAS JEFFREY
KING, Relator
GREGORY SPUNG, Relator
JEREMY JONAK, Relator
CIVIC NEBRASKA, Relator,

By: /s/Jane Seu

Jeffrey P. Justman*
Craig Coleman*
Martin S. Chester*
Anderson C. Tuggle*
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**pro hac vice application
forthcoming*

Joe Quinn, #27970
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American Civil Liberties Union
Foundation
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New York, NY 10004
212-549-2500
jtopaz@aclu.org
slakin@aclu.org
**pro hac vice application
forthcoming*

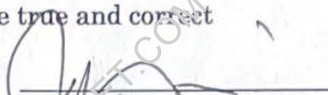
ATTORNEYS FOR RELATORS

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VERIFICATION

STATE OF NEBRASKA)
)ss.
COUNTY OF Douglas)

Relator, John T.J. King being first duly sworn upon oath, deposes and stated that he is the Relator herein, and that he has read the foregoing Verified Petition for Writ of Mandamus and knows the contents thereof; and that the facts stated therein are true and correct



John T.J. King

SUBSCRIBED AND SWORN to before me the 28 day of
July 2024.



Notary Public


EMMA JOHNSON
General Notary - State of Nebraska
My Commission Expires Apr 6, 2025

RETRIEVED FROM DEMOCRACYDOCS.COM

VERIFICATION

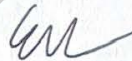
STATE OF NEBRASKA)
)ss.
COUNTY OF Douglas)

Relator, Gregory Spung being first duly sworn upon oath, deposes and stated that he is the Relator herein, and that he has read the foregoing Verified Petition for Writ of Mandamus and knows the contents thereof; and that the facts stated therein are true and correct



Gregory Spung

SUBSCRIBED AND SWORN to before me the 28 day of
July, 2024.



Notary Public

EMMA JOHNSON
General Notary - State of Nebraska
My Commission Expires Apr 6, 2025

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VERIFICATION

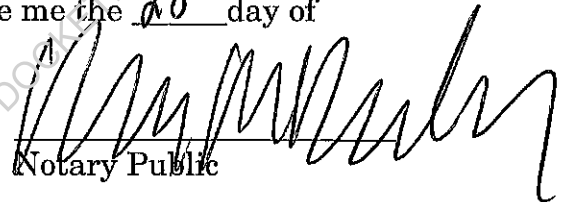
STATE OF NEBRASKA)
)ss.
COUNTY OF Hall)

Relator, Jeremy Jonak being first duly sworn upon oath, deposes and stated that he is the Relator herein, and that he has read the foregoing Verified Petition for Writ of Mandamus and knows the contents thereof; and that the facts stated therein are true and correct



Jeremy Jonak

SUBSCRIBED AND SWORN to before me the 28th day of July, 2024.



Notary Public



RETRIEVED FROM DEMOCRACYDOCKET.COM

VERIFICATION

STATE OF NEBRASKA)
)ss.
COUNTY OF Lancaster)

Relator, Kyle Cartwright being first duly sworn upon oath, deposes and stated that he is the Relator herein, and that he has read the foregoing Verified Petition for Writ of Mandamus and knows the contents thereof; and that the facts stated therein are true and correct



Kyle Cartwright
Interim Executive
Director, Civic Nebraska

SUBSCRIBED AND SWORN to before me the 28th day of July , 2024.



Notary Public

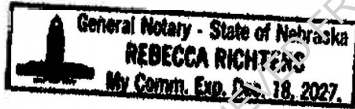


EXHIBIT 1

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JUL 17 2024


MICHAEL T. HILGERS

NEBRASKA DEPARTMENT OF JUSTICE

Opinion No. 24-004 — July 17, 2024

OPINION FOR THE SECRETARY OF STATE

**Constitutionality of L.B. 20 and Underlying
Statutes**

Summary: The Constitution vests the power to restore a felon's right to vote in the Board of Pardons not the Legislature. Because L.B. 20 and the statutes it amends seek to exercise power belonging to the Board of Pardons, they violate the Separation of Powers Clause of the Nebraska Constitution.

You have asked whether L.B. 20, 108th Leg., 2d Sess. (2024), and the statutes it amends violate the Nebraska Constitution by exercising powers reserved exclusively to the Board of Pardons. We conclude that they do.

Neb. Rev. Stat. § 29-112 purports to restore felons' right to vote two years after completing their sentence. L.B. 20 amends Neb. Rev. Stat. § 29-112, removing the two-year waiting period contained in that statutory section and restoring felons' voting rights immediately upon the completion of their sentence.

Neither Neb. Rev. Stat. § 29-112 nor L.B. 20 rests on any decision of, or disposition by, the Board of Pardons. Yet the Constitution vests the Board of Pardons alone with the authority to grant pardons. A pardon is an act of grace that relieves a person of legal consequences of his crime. A legal consequence of a felony is losing the right to vote. Restoring that right is an act of grace that undoes a legal consequence of a crime. In other words, as this Office has opined dating back to at least 1996, the act of restoring civil

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rights is a pardon and within the exclusive power of the Board of Pardons. Because L.B. 20 and Neb. Rev. Stat. § 29-112 attempt to restore the right to vote for felons, they are unconstitutional.

Our opinion proceeds in six parts. Section I describes the relevant constitutional and statutory provisions, and in particular that the Nebraska Constitution bars felons from voting unless they have been “restored to civil rights.” Section II concludes the term “restored to civil rights” embraces the powers of the Board of Pardons. Section III explains why that fact prevents the Legislature from restoring the right to vote by statute. Section IV applies Section III to L.B. 20 and underlying statutes, concluding they unconstitutionally attempt to restore the right to vote. Section V examines two Nebraska Supreme Court cases that you have cited and explains that neither warrants a different conclusion. Section VI summarizes our opinion.

I.

We begin with the constitutional and statutory background. The Nebraska Constitution separates the powers of the government into three distinct departments—the Legislative, the Executive, and the Judicial. Neb. Const. art. II, § 1. In so doing, the Constitution expressly declares that no department “shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution.” *Id.*

The Constitution creates various offices and boards within the three branches and vests those offices and boards with certain (and often exclusive) powers. One of these constitutionally created boards is the Board of Pardons. The Board of Pardons sits in the Executive Branch, *see Johnson v. Exxon*, 199 Neb. 154, 158, 256

Constitutionality of L.B. 20 and Underlying Statutes

N.W.2d 869, 871 (1977), and consists of three officials: “[t]he Governor, Attorney General and Secretary of State.” Neb. Const. art. IV, § 13. The Constitution vests the Board of Pardons with the “power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment.” *Id.*

A separate provision in the Nebraska Constitution strips felons of the right to vote: “No person shall be qualified to vote who is non compos mentis, or who has been convicted of treason or felony under the laws of the state or of the United States, unless restored to civil rights.” Neb. Const. art. VI, § 2. Our Constitution therefore makes plain: a felon cannot vote in Nebraska unless he is “restored to civil rights.” *Id.* As discussed below, “restor[ation] [of] civil rights” is an executive power whereby the Board of Pardons removes a legal consequence imposed on a person convicted of a crime that is distinct from the person’s sentence of punishment. *See* pp. 6–8, *infra*.

Neb. Rev. Stat. § 29-112 provides, “Any person sentenced to be punished for any felony, when the sentence is not reversed or annulled, is not qualified to vote until two years after he or she has completed the sentence, including any parole term. The disqualification is automatically removed at such time.” Neb. Rev. Stat. § 29-112 (Reissue 2016). During this year’s legislative session, the Legislature passed L.B. 20, which removes a felon’s two-year waiting period before he becomes eligible to vote under Neb. Rev. Stat § 29-112. *See* L.B. 20, §§ 1–3, 108th Leg., 2d Sess. (2024) (enacted). Thus, when L.B. 20 becomes effective, *see* Neb. Const. art. III, § 27, a felon will automatically qualify to vote upon completion of his sentence.

II.

Because the Nebraska Constitution bars felons from voting unless they have been “restored to civil rights,” to answer your question we must decide who the Constitution contemplates will “restore[] [felons] to civil rights.” We conclude that the restoration of civil rights is an act of grace constituting a pardon, vested solely within the Board of Pardons. Our conclusion derives from three observations: *First*, Nebraska history from the time of ratification of the Nebraska Constitution reveals “restored to civil rights” has been understood as an Executive Branch prerogative. *Second*, this view that restoration of civil rights is an executive power is consistent with the Nebraska Supreme Court’s case law respecting the pardon power. *Third*, other jurisdictions have concluded restoration of civil rights is an executive function.

A.

Since the State’s founding, it has been understood that the power to restore one to civil rights was a part of the power to pardon. In 1873, two years before the 1875 Nebraska Constitution, Nebraska General Statutes provided, “Any person sentenced to be punished for any felony . . . shall be deemed incompetent to be an elector . . . unless said convict shall receive from the governor of this state a general pardon . . . in which case said convict shall be restored to his civil rights and privileges.”¹ Neb. Gen.

¹ Under the 1866 Constitution, which was in effect in 1873, the Governor individually, rather than the Board of Pardons, possessed the pardon power. The Legislature amended the statute in 1951 to reflect amendments to the Nebraska Constitution from the Nebraska Constitutional Convention of 1919–1920, which vested the pardon power in the Board of Pardons rather than the Governor individually. See 1951 Neb. Laws ch. 86, § 1, p. 249 (“ . . . unless such convict shall receive from *the Board of Pardons* of this state a general pardon”) (emphasis added); Neb.

Constitutionality of L.B. 20 and Underlying Statutes

Stat. ch. 58, § 258, p. 783 (1873). For the next 86 years, and through several amendments, the Legislature continued to recognize that the pardon power included the power to restore civil rights. *See* Neb. Rev. Stat. § 8912 (1913); 1919 Neb. Laws, ch. 56, § 1, p. 160; Neb. Comp. Stat. § 29-112 (1929); Neb. Rev. Stat. § 29-112 (1943); 1951 Neb. Laws ch. 86, § 1, p. 249.

In 1959, the Legislature modified this statute (section 29-112) to require the Board of Pardons to issue a “warrant of discharge”—which had the effect of restoring civil rights—upon receiving from the sentencing court a certificate showing satisfaction of the felon’s sentence. 1959 Neb. Laws ch. 117, § 1, p. 448. In 2001, this Office objected to the statutory command that the Board of Pardons issue warrants of discharge restoring civil rights. We opined that the statute was unconstitutional because the Legislature improperly “mandate[d] that the Board of Pardons exercise [its] power” to issue pardons. Op. Att’y Gen. No. 01-011, at 4 (March 23, 2001). “[T]he restoration of any civil rights which are forfeited by an offender upon conviction of a felony is a matter within the discretion of the Board of Pardons.” *Id.* at 1. The Nebraska Supreme Court then held that a felon who had not been granted a warrant of discharge by the Board of Pardons was not entitled to vote. *Ways v. Shively*, 264 Neb. 250, 256, 646 N.W.2d 621, 627 (2002).

In an apparent response to this Office’s 2001 opinion, the Legislature again amended section 29-112 (and related statutes) to give the Board of Pardons discretion to “enumerate[] or limit[]” the civil rights restored by a warrant of discharge. 2002 Neb. Laws, L.B. 1054, §§ 3–4, p. 567. The legislation further clarified that the sentencing court’s order of satisfaction “shall provide

Const. Convention, 1919–1920, Proposal No. 13; Neb. Const. art. IV, § 13 (1920).

notice that the person’s voting rights are not restored upon completion of probation. The order shall include information on restoring such civil rights through the pardon process, including application to and hearing by the Board of Pardons.” *Id.* § 6, p. 568. That is consistent with our view that the restoration of civil rights, including voting rights, falls within the pardon power.

B.

Under Nebraska Supreme Court precedent, removing any legal consequence of a crime is an act of mercy or grace. That mercy and grace, under Nebraska Supreme Court precedent, is what we call a pardon. The Nebraska Supreme Court has defined a pardon as “an act of grace, proceeding from the power [e]ntrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed.” *Campion v. Gillan*, 79 Neb. 364, 372, 112 N.W. 585, 588 (1907) (quoting *United States v. Wilson*, 32 U.S. (7 Pet.) 150, 160 (1833)). “The administration of mercy is a power that is vested in the executive department of our state, in the exercise of its authority to pardon.” *Dinsmore v. State*, 61 Neb. 418, 442, 85 N.W. 445, 453 (1901). More recently, the Nebraska Supreme Court has described a pardon as “[t]he act or an instance of officially nullifying punishment or other legal consequences of a crime.” *State v. Spady*, 264 Neb. 99, 103, 645 N.W.2d 539, 542 (2002) (quoting Pardon, *Black’s Law Dictionary* (7th ed. 1999)).

Therefore, giving a reprieve from any one, or all, of the legal consequences, is an exercise of the pardon power.²

² It may be asserted that under *Spady*, a pardon does not include any removal of legal consequences that falls short of relieving *all* legal consequences. That conclusion is not justified by the constitutional text, which broadly empowers the Board of

Constitutionality of L.B. 20 and Underlying Statutes

As an example, if one were to have their sentence reduced, that would be a removal of a legal consequence and therefore a commutation. *See State v. Jones*, 248 Neb. 117, 119–20, 532 N.W.2d 293, 295 (1995). If one were to have a financial penalty removed, then that would be a remission of a fine. *See* Neb. Const. art. IV, § 13.

It necessarily follows that the restoration of a felon’s civil rights, including restoration of the right to vote, is a pardon. When a person is convicted of a felony, there are certain legal consequences. All felonies come with the possibility of at least two years in prison and a \$10,000 fine. Neb. Rev. Stat. § 28-105 (Cum. Supp. 2022). Consequences of a felony also include the loss of various civil rights, which are distinct from imprisonments and penalties. Some rights are lost by a requirement set forth in our Constitution, such as the right to hold certain governmental and fiduciary offices. Neb. Const. art. XV, § 2. Statutes impose other consequences, such as stripping a felon’s ability to sit as a juror, Neb. Rev. Stat. § 29-112, possess certain firearms, *id.* § 28-1206 (Cum. Supp. 2022), and hold certain professional licenses, *id.* § 38-178(5), § 53-125(4) (Reissue 2021).

The Nebraska Supreme Court has more than once held that an act of grace by the Board of Pardons was necessary to restore certain civil disabilities imposed on a felon as a consequence of the felony, including the right to vote. *See Ways*, 264 Neb. at 255, 646 N.W.2d at 627 (issuance of a warrant of discharge by the Board of Pardons

Pardons to remove the legal consequences of a crime. Nevertheless, as we will explain in Section V, *Spady* dealt with the Legislature’s creation of a vehicle for a misdemeanor to avoid consequences the Legislature itself imposed. *See* pp. 16–17, *infra*. In other words, with the set-aside statute, the Legislature created an exception to its own civil disability statutes; it did not, as here, attempt to remove a consequence already imposed by the Constitution. *See id.*

necessary to restore voting rights); *State v. Illig*, 237 Neb. 598, 611, 467 N.W.2d 375, 384 (1991) (pardon expressly restoring right to bear arms required to restore a felon’s right to arms). Though the Board of Pardons had statutory authority to restore civil rights in both these cases, it does not necessarily follow that statutory authorization is required or that statutory limitation on the pardon power is permitted. *See* pp. 10–13, *infra*. But these cases illustrate that the Court has before recognized the restoration of civil rights as within the purview of the Board of Pardons.

The right to vote is a civil right. *Ways*, 264 Neb. at 255, 646 N.W.2d at 626. A felon loses that right as a constitutionally mandated consequence of his felony. Neb. Const. art. VI, § 2. The loss of this civil right, which flows from the conviction of a felony, necessarily then is part of the legal consequences of the crime. Simply put, restoring the right to vote is “nullifying . . . legal consequences of a crime.” *Spady*, 264 Neb. at 193, 645 N.W.2d at 542 (quoting Pardon, *Black’s Law Dictionary* (7th ed. 1999)). It is thus a pardon. And a pardon is solely within the hands of the Board of Pardons under our constitution.

C.

Other jurisdictions have agreed that the pardon power includes restoration of civil rights. Shortly before the ratification of the Nebraska Constitution, the U.S. Supreme Court defined a pardon as including the restoration of civil rights. In the seminal U.S. Supreme Court case on the pardoning power, the Court said that a pardon “removes the penalties and disabilities, and restores [a criminal] to all his civil rights.” *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 381 (1866). The Court repeated this sentiment in later cases: “[A] full pardon released the offender from all penalties imposed by the offense pardoned, and restored to him all his civil

Constitutionality of L.B. 20 and Underlying Statutes

rights . . .” *Austin v. United States*, 155 U.S. 417, 428 (1894) (citing *Knote v. United States*, 95 U.S. 149, 152 (1877)).

State courts of last resort posited a similar understanding. The Massachusetts Supreme Judicial Court held that “[i]t is only a full pardon” that can “restore the convict of his civil rights.” *Perkins v. Stevens*, 41 Mass. 277, 280 (1834). In *State v. Benoit*, 16 La. Ann. 273, 274 (1861), the Louisiana Supreme Court held that only a pardon can restore the right to serve as a juror. The Oregon Supreme Court explained that “a general absolute pardon relieves the offender not only from imprisonment but from all the consequential disabilities of the judgement of conviction, and restores him to the full enjoyment of his civil rights.” *Wood v. Fitzgerald*, 3 Or. 568, 575 (1870). The Supreme Court of Missouri held, “It is only a full pardon of the offense which can . . . restore the convict to his civil rights.” *State v. Grant*, 79 Mo. 113, 126 (1883) (quoting *Perkins*, 41 Mass. at 280). The Kansas Supreme Court also clarified that the power to restore civil rights was within the pardon power when it held that the power to give good time is not within the pardon power because it is not a power “to restore to civil rights.” *State v. Page*, 57 P. 514, 517 (Kan. 1899).

Recently, other jurisdictions have continued to acknowledge that the power to restore civil rights lies with a state’s board of pardons. The Seventh Circuit stated that “a pardon releases the offender from all disabilities imposed by the offense, and restores him to all his civil rights.” *Bjerkan v. United States*, 529 F.2d. 125, 127 (7th Cir. 1975) (quoting *Knote*, 95 U.S. at 153); accord *State v. Lee*, 370 So. 3d 408, 414 (La. 2023); *State v. Winkler*, 473 P.3d 796, 801 (Idaho 2020). The Florida Supreme Court articulated that “a full pardon has the effect of removing all legal punishment for the offense and restoring one’s civil rights.” *R.J.L. v. State*, 887 So. 2d 1268, 1270 (Fla.

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2004) (quoting *Randall v. Fla. Dep’t of L. Enf’t*, 791 So. 2d 1238, 1245 (Fla. Dist. Ct. App. 2001)). The Nevada Supreme Court recently explained that “a pardon is an act of forgiveness that restores civil rights.” *In re Sang Man Shin*, 206 P.3d 91, 91 (Nev. 2009).

In short, the common understanding in the nineteenth century and today is that the pardon power includes the authority to restore civil rights. We likewise conclude that the pardon power created by the Nebraska Constitution includes the restoration of the right to vote.

III.

Having concluded that the Constitution’s pardon power includes the ability to restore civil rights, including the franchise, we turn to whether the Legislature may restore voting rights by statute. The Separation of Powers Clause provides that “no person or collection of persons being one of the[] departments shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution.” Neb. Const. art. II, § 1. This clause prevents the Executive from exercising a power belonging to the Legislature, and the Legislature cannot exercise a power vested in the Executive.

Applying separation of powers, the Nebraska Supreme Court has made very plain that the Board of Pardons’ powers are exclusive, concluding more than once that neither the Legislature nor any other governmental office can execute these powers. *See Otey v. State*, 240 Neb. 813, 824–25, 485 N.W.2d 153, 163 (1992); *Jones*, 248 Neb. at 119–20, 532 N.W.2d at 295; *State v. Philipps*, 246 Neb. 610, 615, 614–15 521 N.W.2d 913, 917 (1994); *Boston v. Black*, 215 Neb. 701, 710, 340 N.W.2d 401, 407 (1983); *see also State v. Bainbridge*, 249 Neb. 260, 543 N.W.2d 154 (1996); Op. Att’y Gen. No. 01-011; Op. Att’y Gen. No. 96-

Constitutionality of L.B. 20 and Underlying Statutes

023 (March 18, 1996). For instance, in *Otey v. State*, 240 Neb. at 824–25, 485 N.W.2d at 163, the Nebraska Supreme Court explained that the pardon power is “vested solely” in the Board of Pardons. Our office has also opined that the pardon power “is vested *absolutely* in the Board of Pardons under the Nebraska Constitution.” Op. Att’y Gen. No. 01-011, at 3–4 (emphasis added). And “[w]here [the] state constitution fixes the power to pardon, that power is not subject to legislative control except as is provided by the constitution itself.” *Id.* at 4.

Any legislative or judicial interference with such power violates the Constitution. For example, in *State v. Jones*, the Court held that a statute that allowed a court to modify an original sentence to allow for early parole eligibility “permits the judicial branch to exercise the power of commutation, which belongs to the executive branch [and] . . . is therefore unconstitutional.” 248 Neb. at 120, 532 N.W.2d at 295. In *Boston v. Black*, the Court explained that “commutation of a sentence by legislative action . . . is a power denied to the Legislature by this state’s Constitution.” 215 Neb. at 710, 340 N.W.2d at 407. And in *State v. Philipps*, the Court held that a statute which allowed judicial resentencing was “a legislative invasion of the power of commutation constitutionally consigned to the [Board of Pardons].” 246 Neb. at 615, 521 N.W.2d at 917.

Other provisions in the Constitution indicate that the Board of Pardons alone is entrusted with restoring civil rights with no interference from the Legislature. Elsewhere, the Legislature is given express authority to limit or define Executive Branch prerogatives. For example, article IV, section 13, the same section that creates the Board of Pardons, creates another board—the Board of Parole. The Board of Parole has the power to grant paroles “under such conditions as may be prescribed by law.” Neb. Const. art. IV, § 13. “The plain language of the

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conditions clause recognizes that the Legislature may place conditions on parole eligibility.” *Adams v. State Bd. of Parole*, 293 Neb. 612, 619, 879 N.W.2d 18, 23 (2016). But article IV, section 13 does not have a similar clause that would allow the Legislature to place conditions on the pardon power, indicating the framers did not intend to give the Legislature any authority over the pardon power.³ And given that no branch “shall exercise any power properly belonging to either of the others *except as expressly directed or permitted in this Constitution*,” Neb. Const. art. II, § 1 (emphasis added), the fact that article IV, section 13 expressly permits the Legislature to establish limits for the Board of Parole but does not expressly permit the Legislature to limit the Board of Pardons solidifies that the Legislature cannot legislate powers belonging to the Board of Pardons, including the restoration of civil rights.

For this reason, we have opined that “the legislature cannot legislate the restoration of civil rights.” Op. Att’y Gen. No. 96-023, at 4. “Neither can the legislature direct the Board of Pardons in exercising its duties by passing legislation that states that the Board shall restore civil rights to any person or group of people. To do so would be a violation of the separation of powers of the state constitution.” *Id.* Because restoring civil rights is a power of the Board of Pardons, and because the Constitution does

³ This was not a mere oversight. The 1875 version of the pardons clause did provide the Legislature some ability to regulate the power of the Board of Pardons: “The governor shall have the power to grant reprieves, commutations and pardons after conviction . . . *subject to such regulations as may be provided by law* relative to the manner of applying for pardons.” Neb. Const. art V, § 13 (1875) (emphasis added). This language was removed when the Constitution vested the pardon power within the Board of Pardons. *See* Neb. Const. Convention, 1919–1920, Proposal No. 13; Neb. Const. art. IV, § 13 (1920).

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not expressly direct or permit the Legislature to restore civil rights, the Legislature cannot restore the right to vote.

IV.

Having concluded that the Legislature cannot restore the right to vote, we now move to the question of whether L.B. 20 and Neb. Rev. Stat. § 29-112 attempt to unlawfully restore the right to vote. They clearly do.

Despite decades-long history of understanding that the pardon power includes the power to restore felons' voting rights, a history which stems to the ratification of our Constitution, the Legislature attempted a radical departure in 2005. In that year, the Legislature, over the Governor's veto, amended section 29-112 to strip the Board of Pardons of its power to restore the right to vote—as amended, the statute would *automatically* restore a felon's right to vote two years after the completion of sentence. 2005 Neb. Laws, L.B. 53, § 1, p. 82. In amending the statute, the Legislature acknowledged that the power to restore civil rights stemmed from the issuance of a pardon. *Id.* § 3 (amendment to clarify that the sentencing court's satisfaction order “shall include information on restoring other civil rights through the pardon process”). Yet despite this acknowledgment, the Legislature carved out one civil right—the right to vote—from the others, without basis for doing so.⁴

⁴ L.B. 20 retains that carveout. *See* L.B. 20, § 3. While we acknowledge felons have been allowed to vote over the past two decades under this scheme, separation-of-powers concerns do not vanish with time. And our Office has made clear since at least 1996 that any attempt by the Legislature to restore civil rights is unconstitutional. Op. Att'y Gen. No. 96-023, at 4 (“Any attempt by the judicial or legislative branches of government to [commute a sentence or restore civil rights lost through conviction] would be a violation of the constitutional separation

L.B. 20 and Neb. Rev. Stat. § 29-112 are plainly attempts to restore felons’ right to vote. Neb. Rev. Stat. § 29-112 provides, “Any person sentenced to be punished for any felony, when the sentence is not reversed or annulled, is not qualified to vote until two years after he or she has completed the sentence, including any parole term. The disqualification is automatically removed at such time.” Neb. Rev. Stat. § 29-112 (Reissue 2016). L.B. 20 removes the two-year waiting period and amends Neb. Rev. Stat. § 29-2264 to make clear that a “person’s voting rights are *restored* upon completion of probation.” See L.B. 20, § 3 (emphasis added). L.B. 20 and underlying statutes attempt to restore voting rights.

This attempt is unlawful. As discussed in Section III, restoring civil rights is solely within the power of the Board of Pardons. See pp. 10–13, *supra*. Thus, when the Constitution disqualifies felons from voting absent that restoration, the Constitution is placing the power to restore the franchise in the Board of Pardons. And we find no other provision in the Constitution that “expressly direct[s] or permit[s]” the Legislature to also exercise this power. Thus, the Legislature cannot exercise that “power properly belonging to” the Board of Pardons. Neb. Const. art. II, § 1.

V.

We have also considered the effect of *Ways v. Shively*, 264 Neb. 250, 646 N.W.2d 621 (2002), and *State v. Spady*, 264 Neb. 99, 645 N.W.2d 539 (2002). Neither changes our analysis.

Ways v. Shively held that a felon did not have the right to vote until the Board of Pardons issued a warrant

of powers.”); see also Op. Att’y Gen. No. 01-011, at 5 (“[The pardon] power is not subject to legislative control.”).

Constitutionality of L.B. 20 and Underlying Statutes

of discharge under a previous version of section 29-112. 264 Neb. at 256, 646 N.W.2d at 627. The *Ways* opinion expressly declined to answer whether the Legislature had constitutional authority to restore the right to vote. *See Ways*, 264 Neb. at 253–54, 646 N.W.2d at 625–26; *see also* Brief of Amicus Curiae, State of Nebraska, *Ways v. Shively*, 264 Neb. 250, 646 N.W.2d 621 (2002) (A-01-0382). To be sure, the Court explained that “[r]estoration of the right to vote is implemented through statute.” *Ways*, 264 Neb. at 254–55, 646 N.W.2d at 626. But that describes only the statutory process and necessarily cannot be construed as a statement on the statute’s constitutionality given *Ways*’s statement that it was not addressing the constitutional question. Further, the *holding* in *Ways* was that a felon was not entitled to vote without a warrant of discharge from the Board of Pardons. *Id.* at 256, 646 N.W.2d at 627. It would be strange then to reason that *Ways* allows the Legislature to unilaterally restore a felon’s franchise without an act from the Board of Pardons. In any event, the explanation about voting rights being restored by statute was *dicta* because it was unnecessary to its holding. *See Clemens v. Emme*, 316 Neb. 777, 795, 7 N.W.3d 166, 182 (2024).

Neither does *State v. Spady* change our analysis. In *Spady*, the Supreme Court held that a statute of recent vintage enabling courts to “set aside” a conviction was constitutional. 264 Neb. at 105, 645 N.W.2d at 543–44 (discussing Neb. Rev. Stat. § 29–2264 (Cum. Supp. 2000)). The statute was constitutional because it did not provide for pardons, and it did not provide for pardons because offenders “[were] not exempted from the punishment imposed for [a] crime.” *Id.* at 104, 645 N.W.2d at 543. The Court reasoned that the statute did “not nullify all of the legal consequences of the crime committed . . . as occurs when a pardon is granted.” *Id.* at 105, 645 N.W.2d at 543.

For at least three reasons, *Spady* does not change our analysis above. *First*, and critically, the *Spady* court was not faced with the fundamental question of “who” is constitutionally empowered to restore civil rights. Subsection (4)(b) of Neb. Rev. Stat. § 29-2264, the relevant subsection in *Spady*, dealt with “[r]emov[ing] . . . civil disabilities and disqualifications imposed as a result of” a conviction. *See id.* at 102, 645 N.W.2d at 541. Notably, the Court did not address subsection (1), which required the sentencing court to issue an order upon completion of a probation sentence purporting to “restore the offender’s civil rights.” *Id.* *Spady* cannot be understood to interpret language it was not asked to interpret. *Second*, and related, the *Spady* court did not address to what degree the disabilities imposed by the *Constitution* could be relieved by a statutory reprieve; the consequences addressed in *Spady* were statutory in nature. It is one thing for the Legislature to create exceptions for legislatively imposed disabilities. *See State v. Gnewuch*, 316 Neb. 47, 81–82, 3 N.W.3d 295, 320–21 (2024). It is quite another thing for the Legislature to undo consequences already imposed by the *Constitution*. *See id.* *Third*, and finally, *Spady* was a misdemeanor case, not a felony case. And the *Constitution*’s voting disqualification applies to felons, not misdemeanants. *See* Neb. Const. art. VI, § 2. So, *Spady* was not even stripped of his right to vote.

One might argue, under *Spady*’s logic, that section 29-112 is constitutional because it is not a pardon as it does not nullify all the legal consequences of a crime. But *Spady* cannot be read that far. The Court did not consider whether a pardon could restore the right to vote, which is a constitutionally mandated civil disability. *Spady* could not have addressed the constitutionality of a statute that restores a constitutionally withdrawn civil right because the *Spady* petitioner was convicted of a misdemeanor and apparently dealt with statutorily imposed liabilities. The set-aside petition in *Spady* did not restore the right to vote.

Constitutionality of L.B. 20 and Underlying Statutes

We are thus reluctant to copy and paste *Spady*'s reasoning to the question before us which centers on the interpretation of a constitutional section not even relevant in *Spady*.

The Court's recent discussion of *Spady* in *State v. Gnewuch* confirms this limited reading of the case. *Gnewuch* distinguished between the Executive Branch's authority to "relieve offenders from legal consequences" and the Legislature's authority to "define[] criminal conduct and fix[] boundaries of criminal punishment." 316 Neb. at 81, 3 N.W.3d at 320. The Court recognized that the Executive's ability to relieve legal consequences does not create in the Executive an interest in the "imposition of legal consequences." *Id.* In other words, the pardon power gives the Executive the ability to remove legal consequences of a crime. It does not give the Executive the ability to decide what those consequences are. And the court in *Gnewuch* apparently considered the set-aside statute in *Spady* to fall within the Legislature's discretion in deciding the appropriate penalties for crimes.

Here, however, restoration of the right to vote is not within the Legislature's power to impose penalties—it is set by the Constitution and can be repealed only by the People. It is within the Executive's power to relieve consequences of a crime. The Constitution strips a felon of the right to vote. Neb. Const. art. VI, § 2. This civil disability is thus a "legal consequence[]" of a felony. *See* pp. 6–8, *supra*. By attempting to unilaterally re-enfranchise felons, the Legislature is not attempting to impose anything. The Constitution already imposes the consequence of disenfranchisement. Instead, the Legislature is attempting to relieve the legal consequences of a felony imposed by the Constitution. And the power to "relieve offenders from legal consequences" is vested exclusively in the Board of Pardons. *Gnewuch*, 316 Neb. at 81, 3 N.W.3d at 320.

Op. Att'y Gen. No. 24-004 (July 17, 2024)

VI.

L.B. 20 and the statutes it amends violate the separation of powers. By restoring the franchise for felons, the Legislature impermissibly arrogated the Board of Pardons' executive power to itself. We conclude that they are therefore unconstitutional.

MICHAEL T. HILGERS
Attorney General of Nebraska

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EXHIBIT 2

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STATE OF NEBRASKA

ROBERT B. EVNEN
SECRETARY OF STATE

EXHIBIT
2

For immediate release:
July 17, 2024

Media contact:
Jackie Ourada
(402) 471-4086

Secretary Evnen following new opinion from Nebraska Attorney General's Office

Today, Nebraska Attorney General Mike Hilgers published an [opinion](#) concluding that [LB20](#), passed by the Nebraska Legislature this year, and the law that preceded it, [LB53](#), are unconstitutional. In accordance with the opinion, Secretary Evnen is directing county election offices to stop registering individuals convicted of felonies who have not been pardoned by the Nebraska Board of Pardons.

LB20 would have restored voting rights to an individual convicted of a felony immediately after they completed their sentence. LB53, which was enacted by the Nebraska Legislature in 2005, implemented a two-year waiting period for felony voting rights restoration.

The Attorney General concluded that LB20 and LB53 violates the Separation of Powers Clause set forth in the Nebraska Constitution. The opinion concluded that only the Board of Pardons could restore voting rights to an individual convicted of a felony.

At the August 20th Pardon's Board meeting, Secretary Evnen intends to request the restoration of voting rights for currently registered voters with felony convictions who were properly registered under LB 53 – the law that implemented a two-year waiting period. Prior to the meeting of the Nebraska Board of Pardons, Secretary Evnen does not intend to remove voters with felony convictions from the voter registration system.

EXHIBIT 3

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: [SOS ELECT](#)
To: [SOS ELECT](#)
Subject: Felon Voting Rights: AGO 24-004
Date: Wednesday, July 17, 2024 4:42:26 PM
Attachments: [English VR - O Form.pdf](#)
[image001.png](#)
[Spanish VR - O Form.pdf](#)
Importance: High

Dear County Election Officials,

As discussed with you earlier today, the Attorney General published an opinion ([AGO 24-004](#)) on the constitutionality of [LB20](#) (2024) related to the restoration of felon voting rights. The opinion concludes that LB20 (2024) and the law that proceeded it [LB53](#) (2005) are unconstitutional. Based upon this opinion, we will not be implementing LB20 and will no longer register individuals convicted of felonies under the laws of Nebraska unless their voting rights have been restored by the Board of Pardons.

Accordingly, we will be updating voter registration forms, notices, processes, and felon voting rights information. Attached are new VR forms for your use. We will notify you when updates to the forms in the voter registration system have been completed.

-

County Election Official FAQ

- **Can I still process registrations?**
 - Yes, please continue to process registrations.

- **What if a new registration matches to the felon table?**
 - Any registrations dated on or after July 18 that match to the felon table will need to be made ineligible and sent the new felon suspension notice.
 - Any pending registrations dated on or before July 17 that match to the felon table may be processed under the prior procedure.
 - **For any new registrations, dated on or after July 18, please wait on mailing new felon suspension notices until after the new notice has been added into PowerProfile.**
 - We will notify you when all of the PowerProfile updates are done.

- **Will we still be receiving Monthly Felon Batches?**
 - Yes.

- **What about currently registered voters with felony convictions who had previously registered two or more years after the completion of their sentence?**
 - You do not need to do anything with these registrations at this time.
 - The Secretary intends to request the Board of Pardons consider restoring the voting rights of these individuals at the next meeting of the Board of Pardons.

- **What if a registrant indicates they have received a pardon?**

If a person has received a pardon for their felony conviction and is otherwise eligible, you can register them to vote.

- **What if I receive an old voter registration form that has the prior oath language?**
 - You can still accept a voter registration using an old registration form. However, you should still process the registration form based upon the guidance in this email.
- **Will the Secretary of State be providing new paper voter registration forms to counties?**
 - New voter registration forms are attached to this email and are currently available on our website. We will let you know when new paper voter registration forms are available.
- **Will this impact petition signature verification for petitions turned in on or before July 17?**
 - No. Petition signers had to be registered voters as of the deadline for petition signatures to be turned in (July 3 for initiatives; July 17 for the referendum). Secretary Evnen does not intend to remove voters with felony convictions from the voter registration system prior to the meeting of the Pardons Board on August 20.
- **What do I do if the public has concerns?**
 - If you are not able to answer their questions, or for complaints or concerns, you may direct them to contact our office at sos.elect@nebraska.gov.

If you have any additional questions or concerns, please do not hesitate to contact our office.

Andrew Buller

Assistant Deputy for Elections
Nebraska Secretary of State's Office

Direct: (402) 471-6149

andrew.buller@nebraska.gov

301 S 13 St, Ste 410, P.O. Box 94608, Lincoln, NE 68509

Phone: (402) 471-2555 | Fax: (402) 471-7834 | sos.nebraska.gov

WE'VE MOVED! Our office moved in May 2023 to the 4th Floor of the Cornhusker (same PO Box):

301 S 13 St, Ste 410

PO Box 94608

Lincoln, NE 68509

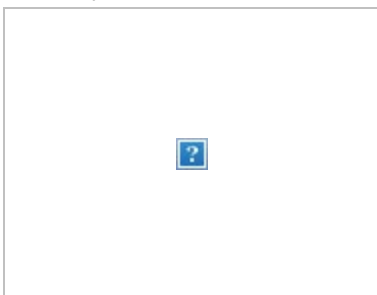


EXHIBIT 4

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https://journalstar.com/news/local/effort-under-way-to-get-ex-felons-registered-to-vote/article_75945fad-fbea-51b6-9975-21911ed8bfe3.html

Effort under way to get ex-felons registered to vote

NATE JENKINS / Lincoln Journal Star

Sep 11, 2005



Eric Gregory

NATE JENKINS / Lincoln Journal Star

When Julie Flynn completed her two-year probationary sentence in 2002 for burglary, she assumed her slate was clean in the eyes of the law. She would someday be able to resume something she'd always done — voting.

“I was more than a little upset when I found out I couldn’t,” said Flynn, who recently got a master’s degree and works as an outreach coordinator at an Omaha homeless shelter.

Many felons were surprised by the restriction, she said. Now, because of a recent change in state law and a public education effort announced Monday, Flynn and others will spread the news of what should come as a pleasant surprise to many of the 59,000 felons who live in Nebraska.

Felons at least two years removed from their sentences can now vote because of legislation introduced by Sen. DiAnna Schimek of Lincoln and approved by the Legislature last session. Senators had to override a veto by Gov. Dave Heineman to put the law on the books.

People are also reading...

- 1 **LPS board considering selling south Lincoln land for city park; more vape detectors bought**
- 2 **Time, TV for Jordan Larson and the US women's volleyball team at the Paris Olympics**
- 3 **'Ready to learn from this': John Cook updates Harper Murray's status for 2024 season**
- 4 **Nebraska Gov. Pillen would reduce own property tax bill nearly \$1M if cuts pass**

Voting-rights advocates and state officials aren’t sure how many felons may be eligible to vote because of the change.

“I’d say the great majority of them ... will be eligible,” Schimek said.

The campaign announced Monday to alert eligible felons they can vote is a cooperative project of the League of Women Voters of Nebraska and the Nebraska Voting Rights Coalition. The coalition is comprised of 13 groups, including the

Nebraska Appleseed Center for Law in the Public Interest, NAACP, and Archdiocese of Omaha Social Ministry Commission.

In passing the law, Nebraska joined a majority of states that restore voting rights at some point after felons complete their sentences.

The Nebraska Right to Vote Campaign will consist of more than passing out brochures. Government agencies will be assisted in educating felons about voting rights, groups that work with offenders will be given information on the new law, and workshops on the law will be conducted.

The previous voting ban had a disproportionate effect on blacks and Latinos, according to a group that advocates restoring voting rights. Right to Vote reported one in five black citizens of voting age in Nebraska was ineligible to vote under the previous law; one in seven Latinos was ineligible.

According to the state Department of Corrections, 40 percent of the state's more than 4,000 inmates are racial or ethnic minorities.

Under the new law, felons seeking the right to vote must sign oaths on voter registration applications swearing they completed their sentences at least two years before registering.

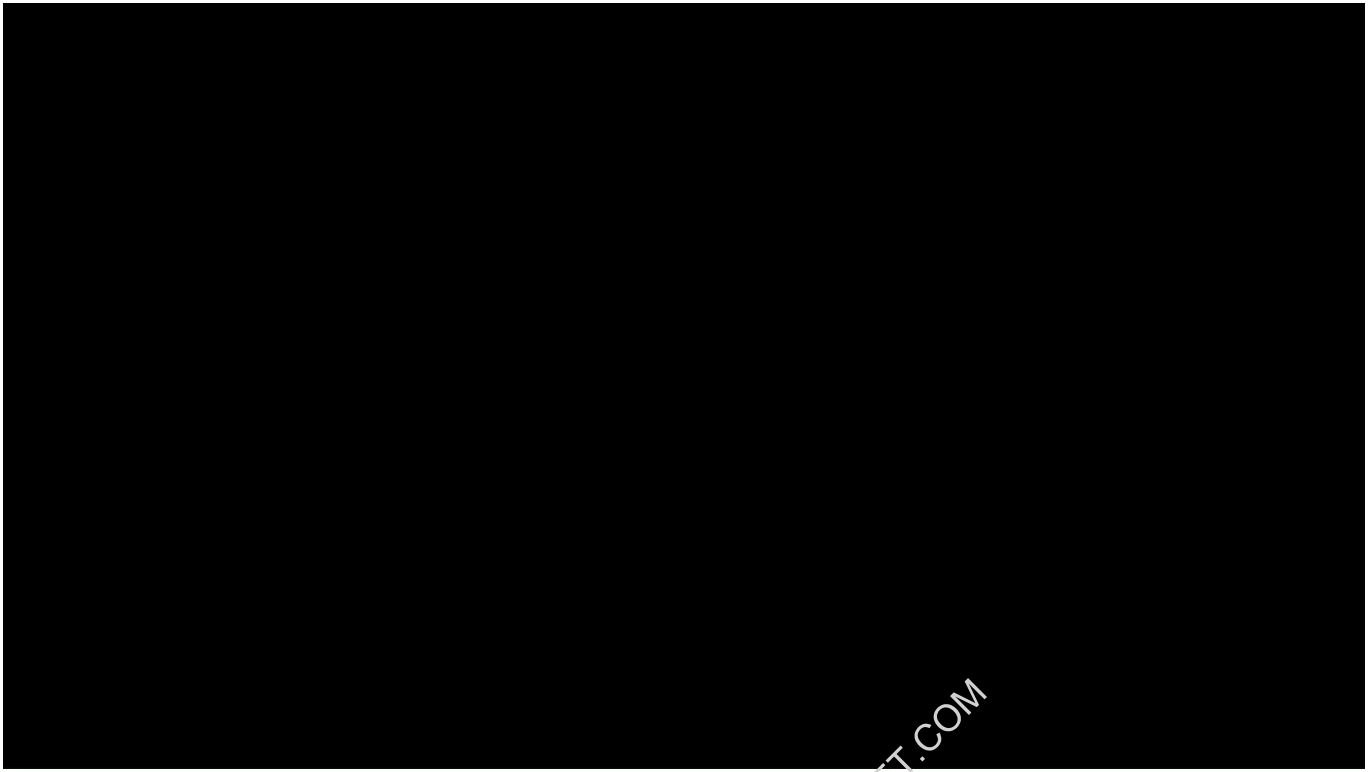
The veracity of the statements will not automatically be checked by county election commissioners because of cost concerns, said Peggy Adair, project coordinator of the Nebraska Right to Vote Campaign.

Lying on applications about meeting the two-year requirement is a felony with a penalty of up to five years imprisonment, a fine of up to \$10,000, or both.

Reach Nate Jenkins at 473-7223 or njenkins@journalstar.com.

League of Women Voters: <http://www.lwv.org/>

Right to Vote: <http://www.righttovote.org/>



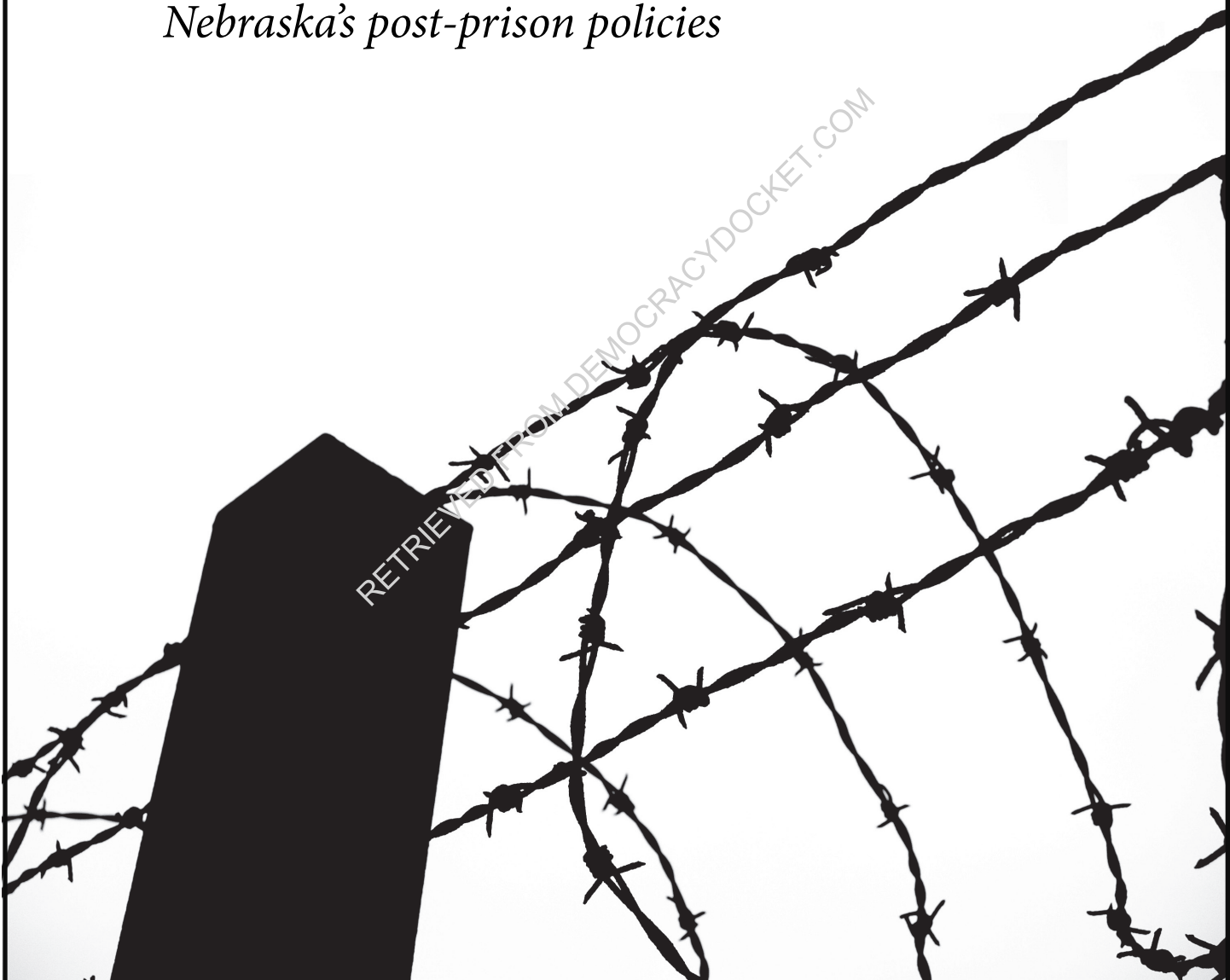
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EXHIBIT 5

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PRISONER REENTRY **FAQ**

*Frequently asked questions about
Nebraska's post-prison policies*



Prepared by:
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Published by:
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www.nebraskalegislature.gov
402-471-2221

Acknowledgements

This FAQ began life as a research request from Sen. Brad Ashford, chairperson of the Legislature's Judiciary Committee. In consultation with the Senator and his staff, the Legislative Research Office expanded the document in the hope it serves as a useful resource for policymakers, legislative staff, and others. A special thanks to Sen. Ashford and Judiciary Committee Legal Counsel Diane Amdor, whose cooperation and support were critical to this project.

Additional thanks to:

Department of Correctional Services
Board of Parole
Office of Probation Administration
Legal Action Center
UNO School of Criminal Justice
CSG Reentry Resource Center
Nebraska Community Action Partnership
National Association of Criminal Defense Lawyers
Omaha Housing Authority
Bridges to Hope
Aftercare in Action
Released and Restored

Introduction



Nebraska's nine prisons hold 4,782 men and women. Almost all of them will eventually be released.

Nebraska prisons release over 2,000 inmates every year.¹

They return to their communities needing housing and jobs, but their prospects are often bleak. Many ex-prisoners lack a high school diploma and often have a history of substance abuse. Some have severe physical or mental disabilities. Without the stable social bonds and support networks crucial for a fresh start, the challenges facing former prisoners reentering society are daunting. Thus, it is not surprising that almost three in ten former state prisoners are back behind bars within three years.²

In Nebraska, a felony conviction has lasting legal ramifications that continue long after a sentence has been served. Convicted felons lose basic rights of citizenship -- the right to vote, hold public office, and own a firearm. They are also restricted in their ability to obtain occupational or professional licenses. These and other collateral consequences of a felony conviction are ongoing burdens, compounding the challenges inherent to reentry. Some of these rights can be restored via the passage of time, completion of parole, or through an executive or judicial act. Others can never be restored.

Nebraska's nine prisons hold 4,782 men and women.³ Almost all of them will eventually be released. Although the Department of Correctional Services annual budget is now over \$160 million, a relatively small percentage of those resources are invested in parole supervision and prisoner reentry.⁴ In fact, there is no central clearinghouse for information relevant to inmates leaving prison. This FAQ is a first attempt at gathering reentry information in one place.

Access to Criminal Records

Who can obtain criminal records?

Any member of the public can obtain criminal records. However, information regarding an arrest by a federal officer is subject to more restrictive dissemination requirements.⁵

What types of records can be disclosed to non-law enforcement agencies?

Most arrests and all convictions are public record.⁶

Is there a time limit after which criminal history information cannot be reported to non-law enforcement entities?

Arrests that do not result in charges and with no active court proceedings are not available to the public after one year; arrests for which diversion is completed are not available to the public after two years; and arrests for which charges were filed, but later dismissed by the court, are not available to the public after three years.⁷

Are there penalties for violating limitations on dissemination of criminal records?

Yes, any person who permits unauthorized access to, or disseminates nondisclosable criminal records, is guilty of a Class IV misdemeanor.⁸ Aggrieved persons may also bring actions to compel compliance, including, but not limited to, court order.⁹

Can arrest records be sealed or expunged?

Arrests due to an error by a law enforcement agency can be expunged upon proof by clear and convincing evidence by filing a motion with the court.¹⁰

What happens when an arrest record is expunged?

Expunged arrest records are destroyed.

Can criminal conviction records be sealed or expunged?

No. Adult criminal conviction records cannot be sealed or expunged. Convictions can be pardoned or “set aside,” but they cannot be erased entirely. If the court grants a set-aside request, the original conviction is nullified, but not expunged. Instead, an addendum is made to the original conviction noting that it has been set aside. Even a pardon will not expunge or seal a criminal record.

What does it mean to have a conviction “set aside”?

State law permits an offender sentenced to probation, or sentenced to pay a fine only, to petition the court to “set aside” the conviction. In determining whether to set aside the conviction, the court considers the behavior of the offender after sentencing, the likelihood that the individual will reoffend, and any other

information the court considers relevant. The court may set aside the conviction when, in the opinion of the court, the set-aside order will be “in the best interest of the offender and consistent with the public welfare.”¹¹

What is the effect of having a conviction set aside?

A set-aside order nullifies the conviction and removes “all civil disabilities and disqualifications imposed as a result of the conviction.” A conviction that has been set aside can still be used as a predicate offense to enhance a subsequent sentence, to impeach a witness, or to deny or revoke a law enforcement training certification. A set-aside order also does not relieve the obligation to register as a sex offender.¹²

Can juvenile criminal records be sealed or expunged?

If the offense occurred on or after July 15, 2010, juvenile records are automatically sealed when the juvenile turns 17 years of age, as long as the juvenile has successfully met the conditions set out by the court. Juveniles convicted before July 15, 2010 may petition the court for sealing under limited circumstances, including arrests in which no charges are filed and after the successful completion of probation of a diversion/treatment program. The court must hold a hearing if there is opposition to sealing and may also hold a hearing even in the absence of opposition. The court may grant sealing upon a finding of satisfactory rehabilitation.¹³

What is the effect of having a juvenile conviction sealed?

Sealed juvenile records do not show up on criminal background checks, as if the conviction never occurred. However, law enforcement agencies still have access to the records.

Where can the public go to search for an individual’s criminal history?

The State Patrol Criminal Identification Division oversees access to criminal records in Nebraska, including who has legal access to criminal records. Members of the public may request a conviction-only Record of Arrest and Prosecution (RAP) sheet.¹⁴

Are any state criminal records available on the internet?

Yes, the Department of Correctional Services maintains an online database listing currently incarcerated individuals.¹⁵

Where can the public go for information on state laws related to individuals with criminal histories?

Employers and service providers may obtain information from the State Attorney General regarding occupational bars, the licensing of individuals with criminal records in certain jobs, and state restrictions on ex-offenders to public benefits.¹⁶

Employment

Can employers ask job applicants about criminal convictions?

Yes.

Can employers ask job applicants about minor criminal convictions, like misdemeanors?

Yes.

Can employers consider arrests even if no charges were filed?

Yes.

Does Nebraska prohibit employment discrimination by employers based on arrest or conviction records?

No. Nebraska does not have a law regulating how employers consider a criminal record in evaluating potential employees.

What professional licenses can be affected by a conviction record?

Nebraska has no general law regulating consideration of conviction in licensure. Certain convictions may be grounds for denial, suspension, or revocation of a professional or occupational license, including pharmacy,¹⁷ real estate,¹⁸ and employment agency.¹⁹

How does a criminal conviction affect the ability to operate a franchise business?

Certain termination protections available to franchisees are rendered inapplicable when the alleged grounds for the termination is the conviction of the franchisee of a criminal offense directly related to the business.²⁰

Does Nebraska restrict people with criminal records from employment in the field of home health care?

Yes. An applicant for home health care employment must not have been convicted of a crime (in Nebraska or any other state) punishable by imprisonment for more than one year that is rationally related to the individual's fitness or capacity to work as a home health aide.²¹

Are there any state agencies that can help formerly incarcerated individuals find jobs?

Nebraska Workforce Development offers resources to community

service providers and individuals with criminal histories who are looking for assistance in finding employment.²²

Are there any programs that provide employers with insurance coverage as an incentive to hire ex-offenders?

Yes. The Federal Bonding Program provides fidelity bonding insurance coverage to former prisoners and other high-risk job applicants who are qualified, but fail to get jobs because regular commercial bonding is denied due to their backgrounds.²³

Are there incentives available for employers to hire individuals with a criminal history?

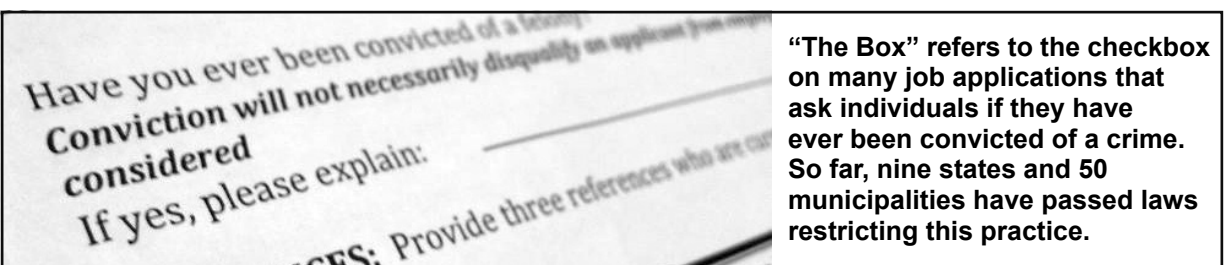
Yes. The Work Opportunity Tax Credit is a federal tax credit designed as an incentive for employers to hire individuals from eight different targeted groups: Temporary Assistance for Needy Families (TANF) recipients, veterans, ex-felons, high risk youth, summer youth, food stamp recipients, Social Security recipients, and vocational rehabilitation referrals.²⁴

What is a "Ban the Box" law?

"The Box" refers to the prominent checkbox on many job applications that ask individuals whether they have ever been convicted of a crime. "Ban the box" laws prohibit employers from inquiring about an individual's criminal history on the initial application, delaying any potential criminal background check until later in the hiring process. So far, nine states and 50 municipalities have passed "ban the box" legislation. Despite past attempts (LB 913 in 2010 and LB 306 in 2013), Nebraska has not yet passed such a law. LB 932, which would restrict government agencies from performing criminal background checks until determining if an applicant meets minimum hiring standards, is currently pending.

What is a Certificate of Rehabilitation?

A Certificate of Rehabilitation is a resource some states offer to support reentry by lifting statutory bars to jobs, licenses, and housing, that result from a felony conviction. Certificates may be used to provide a way for qualified people with criminal records to demonstrate a commitment to rehabilitation. Six states -- Arizona, California, Nevada, New Jersey, New York, and Illinois -- currently have laws authorizing certificates of rehabilitation or other similar means of removing legal barriers to employment. Nebraska does not have such a law.



Public Assistance & Housing

Are people with felony convictions eligible for Temporary Assistance for Needy Families (TANF) benefits in Nebraska?

Generally yes. However, certain kinds of felony convictions can disqualify individuals from TANF benefits.

What kind of felony convictions disqualify an individual from receiving TANF benefits?

Due to federal legislation, people with drug convictions dated after 1996 are ineligible to receive TANF benefits.

Are there any states where people with felony drug convictions can receive TANF benefits?

Yes, the federal legislation allows states to opt out of the ban. Many states have modified or eliminated the ban. Eleven states, including Nebraska,²⁵ have kept the ban in place in its entirety.

Are people with criminal records eligible for Supplemental Nutrition Assistance Program (SNAP) benefits?

Yes, with certain restrictions. A person becomes ineligible for SNAP benefits if he or she has three or more felony convictions for the possession or use of a controlled substance or has been convicted of a felony involving the sale or distribution of a controlled substance. A person with only one or two felony convictions for the possession or use of a controlled substance is eligible for SNAP benefits if he or she completes a substance abuse treatment program.²⁶

Does a criminal record disqualify an individual from receiving Medicaid assistance?

No. In fact, federal requirements mandate that individuals who entered prison on Medicaid must be returned to Medicaid eligibility upon release.

Are there federal laws that prohibit formerly incarcerated individuals from receiving public housing?

Yes. Federal law mandates that public housing authorities (PHAs) must deny public housing benefits to any individual who has been evicted from federally assisted housing for drug-related criminal

activity. This ban lasts for three years. Federal law also mandates that a PHA must deny public housing benefits to individuals with a pattern of illegal drug use that threatens the "health, safety, or right to peaceful enjoyment of the premises by other residents."²⁷

Are there federal laws that permanently prohibit formerly incarcerated individuals from receiving public housing?

Yes. Any individual subject to a lifetime registration requirement under a state sex offender registration program is prohibited from receiving public housing benefits. In addition, individuals convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing are prohibited from future benefits.²⁸

Do Nebraska housing authorities consider felony convictions in its admission criteria?

Yes. In addition to the prohibitions mandated by federal law, local housing authorities are permitted to use their discretion in crafting policies regarding the admission of people with criminal records to public housing. Both the Lincoln and Omaha Housing authorities evaluate eligibility for vouchers and housing assistance on a case-by-case basis.²⁹

What kind of system do housing authorities in Nebraska use to determine the eligibility of applicants with criminal records?

Pursuant to federal regulations, both the Lincoln and Omaha Housing Authorities use a point system: 4 points for felonies, recent drug convictions and prostitution, 3 points for serious misdemeanors and drug offenses older than a year, and 2 or fewer points for all other misdemeanors and infractions. The evaluation period is two, three or five years depending on the severity of the offense.³⁰

Do local housing authorities consider arrests that did not lead to conviction in its admission criteria?

No. Neither the Lincoln or Omaha Housing authorities consider arrests that did not lead to conviction.



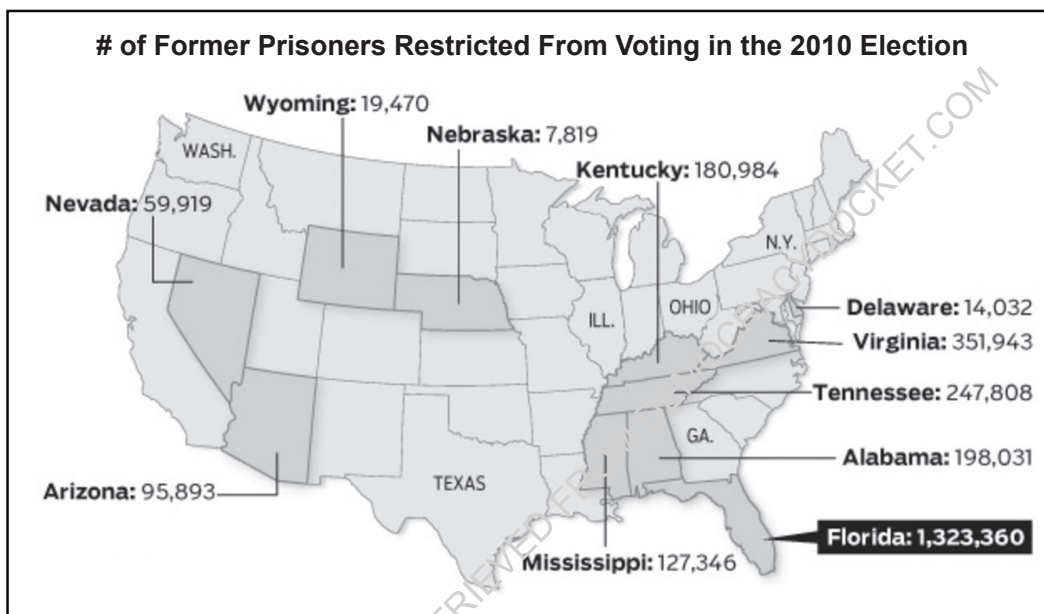
Civil Rights

Does Nebraska take away the right to vote from individuals with criminal records?

At one time, Nebraskans with felony convictions lost their right to vote forever, but in 2005 the state law changed. Now, a person convicted of a felony can vote two years after the completion of his or her sentence, including any parole term. This same two-year voting restriction applies to individuals convicted of felonies in other states and federal offenders as well.³¹ A person who has been declared “not sound of mind” or has been convicted of treason cannot vote, “unless restored to civil rights.”³²

Can a convicted felon serve on juries or hold public office in Nebraska?

A convicted felon cannot serve on juries or “hold any office of honor, trust, or profit” unless the Board of Pardons grants him or her a warrant of discharge. In such case, the Board of Pardons can decide which civil rights to restore or continue to limit.³³ A person convicted of a felony in another state must be restored to jury and office-holding rights “under the laws of the state in which the felony was committed.”³⁴ These restrictions do not apply to an individual sentenced to a non-prison sentence.³⁵



Nebraska is one of eleven states that revoke the civil rights of a convicted felon for some period of time after the completion of his or her sentence. Nebraska restores voting rights two years after an offender leaves prison.

Source: The Sentencing Project

Firearms

What happens to gun rights after a felony conviction?

Firearm rights are lost upon conviction of a felony in Nebraska. State firearm restrictions also apply to anyone in violation of a domestic violence protection order and/or to individuals convicted within the past seven years of a misdemeanor crime of domestic violence.³⁶

Is there any way for gun rights to be restored?

Firearm rights may be regained only if the Board of Pardons empowers the Governor to expressly authorize a pardoned individual to receive, possess, or transport guns in commerce.³⁷

How do federal gun laws apply to convicted felons in Nebraska?

Similarly, anyone who has been convicted of a felony is banned by federal law from possessing firearms or ammunition. Specifically, a person “convicted in any court of a crime punishable by imprisonment for a term exceeding one year” cannot possess a firearm. Federal gun rights can be restored by a state pardon, unless the pardon specifically forbids the restoration of gun rights. If the crime was prosecuted as a violation of federal law, there is no process in the federal system for restoration of those rights, short of a Presidential pardon or an executive order.³⁸

Driver's License Privileges

What crimes can result in suspension or revocation?

Motor vehicle homicide³⁹, and driving under the influence of alcohol or any drug can result in suspension or revocation.⁴⁰

What is the length of the suspension or revocation for a DUI conviction?

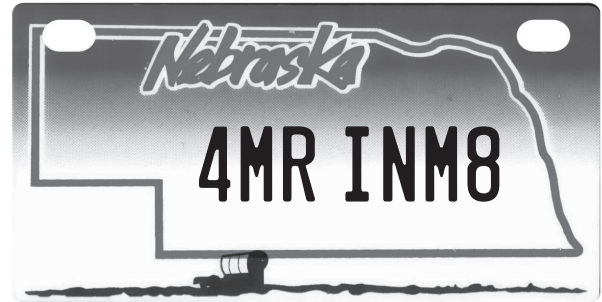
Length of revocation varies depending on the number of DUI convictions.⁴¹

Can an individual convicted of a DUI continue to drive during the revocation period?

Any individual convicted of a DUI who wishes to continue driving must obtain an ignition interlock permit (IPP) and install an ignition interlock device on his or her motor vehicle.⁴²

Are individuals with an IPP limited to driving for purposes of employment, education, and/or medical care?

No, legislation in 2013 removed these restrictions from IPPs. Individuals convicted of a DUI can now use an IPP to operate an ignition interlock-equipped vehicle in any context.⁴³



Can a driver's license revocation be reinstated early?

Any person whose license has been revoked for a period of 15 years or more may apply to the Department of Motor Vehicles for early reinstatement.⁴⁴

Will Nebraska accept prison documentation as the proof of identity in obtaining a state ID card after release?

The Department of Motor Vehicles will accept an ID card issued by the Department of Correctional Services as a secondary proof of identity, but requires a primary form of identification as well.

Adoptive & Foster Care

Do individuals convicted of a felony in Nebraska automatically lose custody of their children?

The federal Adoption and Safe Families Act (ASFA) requires state child welfare agencies to initiate termination of parental rights if a child is in foster care for 15 out of the previous 22 months. Nebraska has adopted two exceptions related to incarcerated parents. Parental rights in Nebraska will not be terminated if the child is being cared for by a relative, and the Department of Health and Human Services determines that filing such a petition would not be in the best interests of the child.⁴⁵

Does the federal law also apply to individuals with criminal records that want to adopt a child or become a foster parent?

Yes. ASFA mandates that states perform criminal record checks on prospective parents and bars individuals with certain convictions from becoming foster or adoptive parents. But ASFA allows states to substitute their own rules for the federal requirements in order to make individualized determinations about the suitability of applicants.

Does Nebraska consider criminal history records in barring people from becoming foster and/or adoptive parents?

Yes, for foster care. A conviction, admission, or substantial

evidence of offenses involving intentional bodily harm, crimes against children, or those involving moral turpitude which have a current bearing on the applicants' provision of foster care, is basis for denial or revocation of a foster care license.⁴⁶

No, for adoption. The preplacement or post-placement adoptive home study must include a criminal background check and a check of the child protection cases register for history of behavior which may endanger the health or morals of a child. However, the statute does not establish any legal barrier to adoption based on the results of the investigation.⁴⁷

Can applicants be barred by the convictions of other household members?

Yes, for foster care. Foster parent applicants can be barred by the criminal records of other adult household members. No, for adoption.⁴⁸

Does Nebraska restrict people from becoming foster parents for longer than required by federal law?

Yes, insofar as the foster care statutes leave the length of the bar up to the Department of Health and Human Services. However, as noted previously, denial or revocation of a foster care license applies only to crimes that have a current bearing on the applicants' provision of foster care.⁴⁹

Parole, Pardons, & Probation

What are the differences between parole, pardons, and probation?

Parole allows an incarcerated individual to complete their sentence in the community. A pardon means that an individual is forgiven from the legal consequences of a criminal conviction. Probation is ordered by a judge as an alternative to incarceration and allows the convicted person to remain in the community.

Who grants parole in Nebraska?

The Board of Parole. The board consists of five full-time members, appointed by the Governor to six-year terms.⁵⁰

What does the Board of Parole do?

The board reviews the status of committed offenders, determines when committed offenders are released on parole, fixes parole conditions, may revoke parole and issue warrants to arrest parole violators, and discharges an offender upon expiration of the parole term.

What happens after an offender is granted parole?

If an offender is granted parole, he or she is referred to the Parole Administration Office within the Department of Correctional Services to obtain approved residence and employment.

Who grants pardons in Nebraska?

The authority to grant pardons is vested in the Board of Pardons⁵¹, which is composed of the Governor, Secretary of State, and Attorney General.⁵² The Governor acts as chair.⁵³

What can the Board of Pardons do?

The board has the power to (1) remit fines and forfeitures, (2) grant respites, (3) grant reprieves, (4) grant pardons, and (5) grant commutations, in all cases of conviction for offenses against the laws of the State of Nebraska, except for treason and cases of impeachment.⁵⁴

What does a pardon do?

A pardon restores civil rights lost due to a felony conviction,⁵⁵ including the right to vote, the right to be a juror, the right to hold public office, and the right to hold certain licenses (liquor and public health and welfare licenses). However, a felony offender may only regain firearm privileges if the Board of Pardons empowers the Governor to “expressly” authorize the individual to receive, possess, or transport in commerce a firearm.⁵⁶

Who is eligible for a pardon?

Any convicted felon, 10 years from final discharge, including payment of any associated fines. For misdemeanors, the time

limit for a pardon is three years. Persons convicted under federal law or the laws of another state are ineligible for a pardon or a discharge.⁵⁷

How does a person with a criminal history attain a pardon?

Eligible individuals with a criminal history must apply for a pardon. The Board of Pardons will consider the application and conduct further investigation as it deems appropriate. Then, the board makes the decision to grant or deny relief by majority vote.⁵⁸ The board holds open hearings quarterly, and the entire process takes about one year.⁵⁹

Who handles probation in Nebraska?

The Office of Probation Administration. The State Probation Administrator is appointed by the Governor.⁶⁰

What does the Office of Probation do?

Under the structure of the Nebraska Supreme Court, the Office of Probation Administration provides central management of probation services, offers sentencing alternatives, conducts investigations, and assists those on probation with supervision and support.

What reentry resources are available within the corrections system itself?

The Department of Correctional Services has a special Reentry Furlough program in addition to standard reentry assistance.

What is the Reentry Furlough program?

This program allows offenders who have been program compliant, demonstrated stable institutional behavior, and deemed low risk by Department of Correctional Services staff, to temporarily live outside prison prior to their parole or release date. The program may include restitution, drug and alcohol testing, community-based treatment opportunities, itineraries, electronic monitoring, and other conditions necessary for their successful participation in the program. Such supervised pre-release is designed to help prisoners re-acclimate to society.⁶¹

What is the standard reentry assistance the Department of Correctional Services provides?

The Corrections Reentry program focuses on a variety of reentry issues, including substance abuse, mental health, housing, employment, education, mentoring, transportation, criminal thinking, vocational, and parenting/family reunification needs. To accomplish these goals, the Department of Correctional Services partners with community-based service providers, including the Department of Health and Human Services and the Department of Labor, along with faith-based prison ministries and other social service entities.⁶²

Community Service Providers



What is a “Community Service Provider”?

Community Service Providers are private, non-governmental organizations that assist formerly incarcerated individuals with employment, education, training, substance abuse treatment, medical care, mental health issues, and financial assistance.

What kind of Community Service Providers are available in Nebraska?

The Adult Parole Administration keeps records of Community Service Providers that provide a variety of services to parolees across the state. An exhaustive list of these resources can be accessed here: <http://www.corrections.nebraska.gov/pdf/LRO%20Resource%20Summary%202013.pdf>

Metro Community College has also developed a Reentry Initiative Resource Handbook which can be accessed at: <http://jjpf.co.douglas.ne.us/images/stories/Final2.pdf>

Sources

¹ Department of Correctional Services. Email communication. January 2014.

² UNO Center for Public Affairs Research. 2012-2013 Legislative Planning Database. http://www.unomaha.edu/nebpolicybriefs/documents/2012-13_Database.pdf

³ Department of Correctional Services. Email communication. January 2014.

⁴ State Budget Division. General Fund Appropriations Summary, 2013-2015 Biennium, By Agency. http://budget.nebraska.gov/das_budget/budget14/gfsummary0713.pdf

⁵ 78 Neb. Admin. Code ch. 3, §§ 006.05 and 006.11.

⁶ Neb. Rev. Stat. § 29-3506 and 78 Neb. Admin. Code ch. 3, § 006.09.

⁷ Neb. Rev. Stat. § 29-3523

⁸ Neb. Rev. Stat. § 29-3527

⁹ Neb. Rev. Stat. § 29-3527 and 78 Neb. Admin. Code ch. 3, § 009

¹⁰ Neb. Rev. Stat. § 29-3523 and 78 Neb. Admin. Code ch. 3, § 006.09.

¹¹ Neb. Rev. Stat. § 29-2264

¹² Neb. Rev. Stat. § 29-2264

¹³ Neb. Rev. Stat. § 43-2,108.01 to § 43-2,108.05

¹⁴ State Patrol Criminal Identification Division, <https://statepatrol.nebraska.gov/CID.aspx>

¹⁵ Department of Correctional Services Inmate Information Locator. http://dcs-inmatesearch.ne.gov/Corrections/COR_input.html

¹⁶ State Attorney General, www.ago.state.ne.us

¹⁷ Neb. Rev. Stat. § 38-131

¹⁸ Neb. Rev. Stat. § 31-885.24

¹⁹ Neb. Rev. Stat. § 48-503

²⁰ Neb. Rev. Stat. § 87-404

²¹ 175 Neb. Admin. Code ch. 15, § 003.01C

²² Nebraska Workforce Development, dol.nebraska.gov/

²³ Federal Bonding Program, <https://dol.nebraska.gov/center.cfm?PRICAT=2&SUBCAT=1C5>

²⁴ Work Opportunity Tax Credit - <http://dol.nebraska.gov/center.cfm?PRICAT=2&SUBCAT=1F&action=wotc>

²⁵ 468 Neb. Admin. Code ch. 2, § 022.03 and 475 Neb. Admin. Code ch. 3, § 001.08.

²⁶ Neb. Rev. Stat. § 68-1017.02

²⁷ 24 CFR § 960.204

²⁸ 24 CFR § 960.204

²⁹ Douglas County Housing Authority, <http://www.douglascountyhousing.com> and Lincoln Housing Authority, <http://www.l-housing.com/>

³⁰ OHA Criminal Background Check Procedure. Email communication. February 2014.

³¹ Neb. Rev. Stat. § 29-113

³² Neb. Rev. Stat. § 32-313

³³ Neb. Rev. Stat. § 29-112

³⁴ Neb. Rev. Stat. § 29-113

³⁵ Neb. Rev. Stat. § 29-112.01

³⁶ Neb. Rev. Stat. § 28-1206

³⁷ Neb. Rev. Stat. § 83-1,130

³⁸ 18 U.S.C. § 921(a) and 18 U.S.C. 922(g)

³⁹ Neb. Rev. Stat. § 28-306

⁴⁰ Neb. Rev. Stat. § 60-6, 196

⁴¹ Neb. Rev. Stat. § 60-6,197.03

⁴² Neb. Rev. Stat. § 60-6,197.03

⁴³ Neb. Rev. Stat. § 60-498.02, § 60-4,118.06 and § 60-6,211.05

⁴⁴ Neb. Rev. Stat. § 60-6,209 and § 60-6,211

⁴⁵ Neb. Rev. Stat. 43-292.02

⁴⁶ 474 Neb. Admin. Code ch. 6, § 003.25A

⁴⁷ Neb. Rev. Stat. § 43-107

⁴⁸ Neb. Rev. Stat. § 43-107 and 474 Neb. Admin. Code ch. 6, § 003.25A.

⁴⁹ Neb. Rev. Stat. § 43-107 and 474 Neb. Admin. Code ch. 6, § 003.25A.

⁵⁰ Board of Parole. <http://www.pardons.state.ne.us/>

⁵¹ Board of Pardons. <http://www.pardons.state.ne.us/>

⁵² Neb. Const. art. IV, § 13

⁵³ Neb. Rev. Stat. § 83-1,126

⁵⁴ Neb. Const. art. IV, § 13

⁵⁵ Neb. Rev. Stat. § 32-313

⁵⁶ Neb. Rev. Stat. § 83-1,130

⁵⁷ <http://www.pardons.state.ne.us/content/new-application.pdf>

⁵⁸ Neb. Rev. Stat. § 83-1,130 and 83-1,128

⁵⁹ Policy and Procedure Guidelines, Neb. State Bd. Pardons, § 003.01

⁶⁰ Office of Probation Administration. <http://supremecourt.ne.gov/probation>

⁶¹ Department of Correctional Services Reentry Furlough Program - <http://www.corrections.state.ne.us/reentry-furlough-program.html>

⁶² Department of Correctional Services Reentry Program - <http://www.corrections.state.ne.us/reentry.html>



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EXHIBIT 6

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Register to Vote OR Update Your Voter Registration

EXHIBIT

6

Eligibility

! **WARNING:** If you checked 'no' in response to either of these questions, do not complete this application.

1	Are you a citizen of the United States of America?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of this year?	<input type="checkbox"/> Yes <input type="checkbox"/> No

I am using this form for:

Check all that apply.

2	<input type="checkbox"/> New Registration <input type="checkbox"/> Name Change <input type="checkbox"/> Address Change <input type="checkbox"/> Party Change
---	--

Print Your Name

3	Last _____ First _____
	Middle (name or initial) _____ Suffix (Jr, III, if any) _____

Identification

! If you do not have a Nebraska Driver's License or State ID, please provide the last 4 digits of your Social Security Number.

4	Date of Birth (mm/dd/yyyy)	<input type="text"/> / <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Nebraska Driver's License/State ID Number	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Last 4 digits of Social Security Number (SSN)	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Place of Birth (City and State or Country)	_____
	Maiden Name (if applicable)	_____

Address Where You Live

Residential Only.

5	Street Address _____
	Apartment or Lot (if any) _____
	City, State, ZIP _____

Address Where You Receive Mail

6	<input type="checkbox"/> Same as above OR Mailing Address _____
	Apartment or Lot (if any) _____
	City, State, ZIP _____

Optional Contact Information

Check box(es) if private.

7	<input type="checkbox"/> Phone Number(s) _____
	<input type="checkbox"/> Email Address _____

Previous Registration Information

8	Previous Name _____
	Previous Address _____

Political Party

Must choose one.

9	<input type="checkbox"/> Democratic <input type="checkbox"/> Republican <input type="checkbox"/> Libertarian <input type="checkbox"/> Legal Marijuana NOW
	<input type="checkbox"/> No Labels Nebraska <input type="checkbox"/> Nonpartisan (No Party) <input type="checkbox"/> Other _____

(Print party name. Must be a party currently recognized in Nebraska.)

! If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration application. If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices by requesting a nonpartisan/partisan ballot of your choice.

Applicant's Oath

To the best of my knowledge and belief, I declare under penalty of election falsification that:
(1) I live in the State of Nebraska at the address provided in this application;
(2) I have not been convicted of a felony or, if convicted, my civil rights have been restored;
(3) I have not been officially found to be non compos mentis (mentally incompetent); and
(4) I am a citizen of the United States.

! **WARNING:** Any registrant who signs this application knowing that any of the information in the application is false shall be guilty of a **Class IV felony** under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to two years imprisonment and twelve months post-release supervision, a fine of up to \$10,000.00, or both.

Your Signature or Mark

10	X _____	Date _____
----	---------	------------

Assistance

Fill in if someone helped you with this form or witnessed you make a mark for your signature.

Name _____	Address _____
Phone _____	Signature of Assistant x _____



Nebraska Secretary of State's Official Voter Registration Frequently Asked Questions



What can I use the form for? You can use this form to register to vote in Nebraska or update any information on your voter registration including signature. You must re-register to vote whenever you change your:

- Name
- Residential or Mailing Address
- Political Party Affiliation
- Signature

Failure to vote in a previous election does not require re-registration.

Where do I send this form? Return the completed form to your county election office at the address listed below.

By mail

Must be postmarked by the 3rd Friday prior to any election. If you are mailing this application and are a first time registrant in Nebraska, law requires a copy of a photo identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is dated within 60 days before the date you register and shows your name and residence address.

By personal messenger or agent

Must be delivered to your county election office by the 3rd Friday prior to any election.

In person

Must appear at your county election office by 6 p.m. on the 2nd Friday prior to any election.

How do I know I completed this form correctly? Within 10-14 days, your county election office will send either:

- An acknowledgement to you verifying the information on your application and advising you of your polling location, or
- An incomplete notice to you requesting additional information to ensure your voter registration record is accurate, or
- A request for valid photo ID, or other documentation if you are a first time registrant in Nebraska, registering by mail.

How can I check to see if I am already registered to vote? Check your voter registration at ne.gov/go/votercheck.

Can I register or update my voter registration online? Yes, if you have a valid Nebraska driver's license or state-issued identification card, you can register online at ne.gov/go/NEReg2Vote.

What if I am unable to sign this form? If you are unable to sign this form, any person may print your name in the signature section of the form and you may make a mark next to your printed name. This qualifies as a valid signature. The person providing assistance should fill out the assistance section located underneath the signature section.

What determines residence? By law, (Neb. Rev. Stat. §32-116), your residence is that place at which you have established a home, where you are habitually present, and to which, when you depart, you intend to return. You do not need to change your residence for voting purposes if you leave for temporary purposes, such as military service, school attendance, hospital stays, or missions work. However, any permanent change in your residence or address will require you to re-register to vote. You may only register and vote in one place.

Which information is confidential? By law, (Neb. Rev. Stat. §32-330), all information becomes part of a public record and may be included in public service requests related to elections, political activities, voter registration, law enforcement or jury selection. Exceptions include:

- Driver's License or State ID number
- Last 4 digits of your SSN
- Signature
- Phone numbers and email addresses you marked private
- Place of birth
- Maiden name
- Source of registration
- Previous registration information

If you are a program participant under the Address Confidentiality Act or you have a court order showing good cause that a life-threatening circumstance exists in relation to you or a member of your household, your voter registration will remain confidential. You must submit a voter confidentiality affidavit at the time of registering to be designated as a confidential voter. For more information, contact your local election office.

Questions? Contact your local election office, or the Nebraska Secretary of State by phone at **402-471-2555** or toll free at **888-727-0007**; via our website: sos.nebraska.gov; or email SOS.ELECT@nebraska.gov.

Find your county election office listed in red below.

Adams / 500 W 4th Ste 109 Hastings / 68902-2067	Cheyenne / PO BOX 217 Sidney / 69162	Furnas / PO BOX 387 Beaver City / 68926	Johnson / PO BOX 416 Tecumseh / 68450	Nuckolls / PO BOX 366 Nelson / 68961	Sheridan / PO BOX 39 Rushville / 69360
Antelope / PO BOX 26 Neligh / 68756-0026	Clay / 111 W Fairfield St Clay Center / 68933	Gage / PO BOX 429 Beatrice / 68310	Kearney / PO BOX 339 Minden / 68959	Otoe / 1021 Central Ave, Rm 103 Nebraska City / 68410	Sherman / PO BOX 456 Loup City / 68853
Arthur / PO BOX 126 Arthur / 69121	Colfax / 411 E 11th St Schuyler / 68661	Garden / PO BOX 350 Oshkosh / 69154	Keith / 511 N Spruce Ste 102 Ogallala / 69153	Pawnee / PO BOX 431 Pawnee City / 68420	Sioux / PO BOX 158 Harrison / 69346
Banner / PO BOX 67 Harrisburg / 69345	Cuming / 200 S Lincoln St, Rm 100 / West Point / 68788	Garfield / PO BOX 218 Burwell / 68823-0218	Keya Paha / PO BOX 349 Springview / 68778	Perkins / PO BOX 156 Grant / 69140	Stanton / PO BOX 347 Stanton / 68779
Blaine / 145 Lincoln Ave Brewster / 68821	Custer / 431 S 10th St Broken Bow / 68822	Gosper / PO BOX 136 Greeley / 68842	Kimball / 114 E 3rd St Ste 6 Kimball / 69145	Phelps / PO BOX 404 Holdrege / 68949	Thayer / 225 N 4th Rm 201 Hebron / 68370
Boone / 222 S 4th St Albion / 68620-1247	Dakota / PO BOX 39 Dakota City / 68731	Grant / PO Box 139 Hyannis / 69350	Knox / PO BOX 166 Center / 68724	Pierce / 111 W Court Rm 1 Pierce / 68767	Thomas / PO BOX 226 Theadford / 69166
Box Butte / PO BOX 678 Alliance / 69301	Dawes / 451 Main St Chadron / 69337	Greeley / PO Box 287 Greeley / 68842	Lancaster / 601 N 46th St Lincoln / 68503	Platte / 1464-26th Ave Ste 300 Columbus / 68601	Thurston / PO BOX 159 Pender / 68047
Boyd / PO BOX 26 Butte / 68722	Dawson / 700 N Washington Rm A / Lexington / 68850	Hall / 121 S Pine St, Ste. 8 Grand Island / 68801	Lincoln / 301 N Jeffers Rm 101 North Platte / 69101	Polk / PO BOX 276 Osceola / 68651	Valley / 125 S 15th St Ste 202 / Ord / 68862
Brown / PO BOX 25 Ainsworth / 69210	Deuel / PO BOX 327 ChapPELL / 69129	Hamilton / 1111-13th St Ste 1 Aurora / 68818-2017	Logan / PO BOX 8 Stapleton / 69163	Red Willow / 502 Norris Ave McCook / 69001	Washington / PO BOX 466 Blair / 68008
Buffalo / PO BOX 1270 Kearney / 68848	Dixon / PO BOX 546 Ponca / 68770	Harlan / PO BOX 698 Alma / 68920-0698	Loup / PO BOX 187 Taylor / 68879	Richardson / 1700 Stone St Rm 203 / Falls City / 68355	Wayne / 510 N Pearl St Ste 5 / Wayne / 68787
Burt / PO BOX 87 Tekamah / 68061	Dodge / 435 N Park Ave Rm 102 / Fremont / 68025	Hayes / PO BOX 370 Hayes Center / 69032	Madison / PO BOX 290 Madison / 68748	Rock / PO BOX 367 Bassett / 68714	Webster / PO BOX 250 Red Cloud / 68970
Butler / 451 N 5th St David City / 68632	Douglas / 12220 W Center Rd Omaha / 68144	Hitchcock / PO BOX 248 Trenton / 69044	McPherson / PO BOX 122 Tryon / 69167	Saline / PO BOX 865 Wilber / 68465	Wheeler / PO BOX 127 Bartlett / 68622
Cass / 145 N 4th St Rm 201 Plattsmouth / 68048	Dundy / PO BOX 506 Benkelman / 69021-0506	Holt / PO BOX 329 O'Neill / 68763	Merrick / PO BOX 27 Central City / 68826	Sarpy / 1102 E 1st St., Ste. 1 Papillion / 68046	York / 510 Lincoln Ave Rm 103 York / 68467
Cedar / PO BOX 47 Hartington / 68739	Fillmore / PO BOX 307 Geneva / 68361	Hooker / PO BOX 184 Mullen / 69152	Morrill / PO BOX 610 Bridgeport / 69336	Saunders / PO BOX 61 Wahoo / 68066	
Chase / PO BOX 1299 Imperial / 69033	Franklin / PO BOX 146 Franklin / 68939	Howard / PO BOX 25 St Paul / 68873	Nance / PO BOX 338 Fullerton / 68638	Scotts Bluff / 1825 10th St Gering / 69341	
Cherry / PO BOX 120 Valentine / 69201	Frontier / PO BOX 40 Stockville / 69042	Jefferson / 411-4th St Fairbury / 68352	Nemaha / 1824 N St Ste 201 Auburn / 68305	Seward / PO BOX 190 Seward / 68434	

EXHIBIT 7

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Hall County Election Office

121 South Pine Street, Suite 8, Grand Island, NE 68801

Phone (308) 385-5085 (308) 385-5071 fax

Tracy Overstreet, Hall County Election Commissioner

tracyo@hallcountyne.gov

July 18, 2024

RE: Voter Registration in Nebraska for individuals with a felony conviction

Beginning July 18, 2024, the Hall County Election Office will not be able to register Nebraska voters with a past felony conviction unless that voter has had voting rights restored.

This is in response to Opinion No. 24-004 issued July 17, 2024 by Nebraska Attorney General Mike Hilgers for Nebraska Secretary of State Robert Evnen. That opinion concluded that LB20 passed by the Nebraska Legislature in 2024 and LB53 passed by the Nebraska Legislature in 2005 are unconstitutional. LB20 would have restored voting rights to an individual convicted of a felony immediately after they completed their sentence. LB53 implemented a two-year waiting period for felony voting rights restoration. LB20 was set to take effect July 19, 2024.

Secretary Evnen has directed county election offices to stop registering individuals convicted of felonies who have not been pardoned by the Nebraska Board of Pardons, and has provided no legal form to county offices for voter registration to occur unless voting rights have been restored.

Concerns about this change should be directed to the Nebraska Secretary of State's Office at (402) 471-2555 or the Nebraska Attorney General's Office at (402) 471-2682.

Additionally, you may contact a Nebraska state senator or legal counsel.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tracy Overstreet", is written over a large, light blue circular watermark that says "RETRIEVED FROM ELECTIONS PACKET.COM".

Tracy Overstreet

Hall County Election Commissioner

Certificate of Service

I hereby certify that on Monday, July 29, 2024 I provided a true and correct copy of this *Application to Docket Original Action* to the following:

Evnen,Robert, (Self Represented Litigant) service method: **Personal Service**

Kruse,Brian,W (Self Represented Litigant) service method: **Certified Mail**

Overstreet,Tracy, (Self Represented Litigant) service method: **Certified Mail**

Signature: /s/ Rosangela Godinez (25925)

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