No. _____

In the Supreme Court of the United States

BILLY YORK WALKER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

William Lewis Jenkins, Jr.
Counsel of Record
Wilkerson Gauldin Hayes
Jenkins & Dedmon
113 South Mill Avenue
Dyersburg, TN 38024
(731) 286-2401
ljenkins@tenn-law.com

Counsel for Petitioner

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED

Federal law bars anyone who has been convicted of a felony from possessing a firearm, but further provides that "[a]ny conviction . . . for which a person . . . has had civil rights restored shall not be considered a conviction" for purposes of this prohibition. 18 U.S.C. § 921(a)(20). Petitioner was convicted of a non-violent felony in federal court and later had his state civil rights restored in a Tennessee state court action. By operation of federal law, the state court proceeding had the effect of allowing Petitioner to once again sit on federal juries and vote in federal elections.

The question presented is whether one who regains his or her federal civil rights by operation of federal law has had his civil rights "restored" within the meaning of 18 U.S.C. § 921(a)(20), and therefore may exercise the fundamental constitutional right guaranteed by the Second Amendment.

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Billy York Walker, an individual citizen of the United States. Billy York Walker does not have any corporate affiliations. Billy York Walker was the Plaintiff in the District Court and the Appellant in the Sixth Circuit Court of Appeals.

Respondent

Respondent United States of America was the defendant in the District Court and the Appellee in the Sixth Circuit Court of Appeals.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION

STATUTES AND LAWS

RULES

OTHER AUTHORITIES

Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the Sixth Circuit Court of Appeals in this case.

OPINIONS BELOW

The Sixth Circuit opinion (App. 1) is reported in the Federal Reporter; the citation is 800 F.3d 720 (6th Cir. 2015). The District Court opinion (App. 37) is not reported.

STATEMENT OF JURISDICTION

The judgment of the Sixth Circuit Court of Appeals was entered September 1, 2015. (App. 1) Billy York Walker timely filed a petition for rehearing or for rehearing *en banc*, which the Sixth Circuit denied by order entered November 12, 2015. (App. 53)

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional and statutory provisions:

UNITED STATES CONSTITUTION, Article I, sec. 2, cl. 1, which provides:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

UNITED STATES CONSTITUTION, Amendment XVII, which provides:

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

18 U.S.C. § 921(a)(20), which provides:

> (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include–
>
> (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
>
> (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.
>
> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides

that the person may not ship, transport, possess, or receive firearms.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

Billy York Walker filed this civil action on 15 July 2013, invoking the district court's subject matter jurisdiction under 28 U.S.C. § 1331: Mr. Walker sought a judgment that, upon the undisputed facts he presented, the question left open in footnote * in *Beecham v. United States*, 511 U.S. 368, 373 n.* (1994), should be answered by a judicial determination that Mr. Walker's federal civil rights had been restored by operation of federal law under the Constitution of the United States. (App. 55-87) The District Court, (App. 37-50), and a panel of the Sixth Circuit Court of Appeals denied Mr. Walker's request, (App. 1-21, 36), however one judge dissented in the Sixth Circuit and stated that Mr. Walker's civil rights had been restored under federal law. (App. 22-35)

In 1987, Billy York Walker was convicted of certain non-violent offenses in Case No. CR-87-20074 in the United States District Court for the Western District of Tennessee at Jackson. (App. 56) As a result of his convictions, Billy York Walker lost a number of rights and privileges allowed to citizens of the United States of America and the State of Tennessee, including the right to vote in both federal and state elections and the right to serve on a jury.

On 1 June 2010, after notice to the District Attorney for the Twenty-Ninth Judicial District of Tennessee and the United States Attorney for the Western District of Tennessee, the Circuit Court of Tennessee

for the Twenty-Ninth Judicial District entered an order restoring the full citizenship and civil rights to Billy York Walker under Tennessee law. (App. 56-57, 62-65) Among those rights restored "without limitation" were the right to vote, the right to hold office, and the right to serve on a jury. (*Id.*) On 22 March 2012, the Circuit Court clarified its order and specifically restored to Billy York Walker the "explicit right to bear and possess firearms." (App. 64-65)

On 5 June 2014, the District Court entered an order dismissing Mr. Walker's case in its entirety: the District Court determined that Mr. Walker's federal civil rights had not been restored by operation of law on the undisputed facts presented in the case and that restoration of federal civil rights by operation of federal law could not occur. (App. 37-52) The District Court also held that the procedure outlined in 18 U.S.C. § 925(c) represents the sole method for "removal of federal firearms disability[.]" (App. 46-49) In its ruling, however, the District Court did not heed the plain meaning difference between "restoration of civil rights" and "relief" from disabilities, and its decision was incorrect due to that error.

On 12 June 2014, Billy York Walker timely appealed the decision of the District Court to the United States Court of Appeals for the Sixth Circuit, within the sixty day time period permitted for that act under Fed. R. App. P. 4(a)(1)(B) when the United States is a party to the suit.

In a divided decision, the Sixth Circuit affirmed the judgment of the District Court, though not for any of the reasons employed by the District Court (and not for any reasons ever raised by the United States in the

District Court or the Court of Appeals). (*Compare* App. 1-21 [Sixth Circuit majority opinion] *with* App. 37-50 [District Court opinion].) The Sixth Circuit determined that not enough of Mr. Walker's rights had been "restored" to bring him within the exemption clause of 18 U.S.C. § 921(a)(20), because he had never lost the right to hold federal office, had regained, (but had not had "restored"), the right to vote in federal elections, and had had "restored" only the right to serve on a federal jury; one judge dissented. (App. 1-22 [majority opinion]; App. 22-35 [dissenting opinion])

The dissenting opinion explained in detail the importance of the question presented in this case to the structural integrity of our federal system: when the Constitution assigns responsibility to the states for an act that has effect under federal law, that act should be treated as having the effect assigned to it by the Constitution; in other words, voting rights for federal elections actually are restored when the broad method set out to deal with voting rights for federal elections results in a person who lost those rights regaining them. (App. 22-35)

Walker filed a timely petition for rehearing in the Sixth Circuit. (*See* App. 53-54) On 12 November 2015, the Court of Appeals denied the petition for rehearing, with the dissenting judge voting to grant rehearing for the reasons announced in his original dissent. (App. 53-54)

REASONS FOR GRANTING THE PETITION

I. The Sixth Circuit's Decision Conflicts with This Court's Decision in *Caron v. United States*, 524 U.S. 308 (1998).

In *Caron v. United States*, 524 U.S. 308, 313 (1998), this Court held that it "makes no difference" under 18 U.S.C. 921(a)(20) whether a felon's civil rights are restored in a case-by-case adjudication or "by operation of law." The Sixth Circuit effectively negated that important principle by holding that being "restored" entails some "token of forgiveness" in the official act that allows a convicted felon to once again exercise his civil rights. (App. 10-14; *compare* App. 31-33 [dissenting opinion below]) This Court should grant the writ of certiorari to prevent the erosion of its decision in *Caron*.

In *Caron* this Court held that no statutory consequence inheres, under § 921(a)(20), in whether a restoration occurs by operation of law or by way of an individualized decision by a state actor. *Caron v. United States*, 524 U.S. 308, 313 (1998). *Compare Beecham*, 511 U.S. at 373 n.* (noting the disagreement between two courts of appeal on the question). In *Caron* this Court said:

> We note these preliminary points. First, Massachusetts restored petitioner's civil rights by operation of law rather than by pardon or the like. This fact makes no difference. Nothing in the text of §921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender. While the term "pardon" connotes a

> case-by-case determination, "restoration of civil rights" does not.

Caron, 524 U.S. at 313. So, civil rights may be restored "automatically by operation of law"; restoration does not entail "an affirmative act of a Government official[.]" *Compare Beecham*, 511 U.S. at 373 n.* *with Caron*, 524 U.S. at 313. The Sixth Circuit's decision nevertheless effectively forecloses the possibility that civil rights may be restored absent an affirmative act of a government official by insisting that one whose rights are returned to him without a "token of forgiveness" has nevertheless not had his rights "restored." (*See* App. 10-14)

As the dissenting opinion correctly highlights, (App. 30-35), the Sixth Circuit's decision undermines the rule established in *Caron* by requiring an act by the government denoting some "degree of forgiveness" in order to effect a restoration of civil rights:

> Third, Walker's right to vote in federal elections was not restored under federal law in the sense that the convicting jurisdiction (i.e., the United States), either by across-the-board legislation or by individual adjudication, determined that such a right should be returned to him. The best reading of § 921(a)(20) is that for a civil right to be restored, it must be restored as a result of an evaluation by the convicting jurisdiction of what the consequences of the conviction ought to be. That is not the case here. The provisions of federal law on which Walker relies provide general rules for voting rights that apply to felons to the same extent as to anyone else; the federal scheme does not address Walker's

> conviction—or convictions in general—at all, and so it does not effect a restoration of Walker's right to vote for purposes of § 921(a)(20).

(App. 8-9; *see also* App. 12 [referring to the absence of a "token of forgiveness"] when a constitutional provision makes an across-the-board restoration.)

By contrast, the dissenting opinion stated:

> Though purporting to rely on *Logan*, the majority is in fact adding a new dimension to our well-established inquiry: a requirement that the federal government take an affirmative act to restore Walker's voting rights, and that the affirmative act be explicitly targeted to addressing felons' rights. This requirement is out of sync with the Supreme Court's holding that restoration of rights may be accomplished by operation of law. *See Caron*, 524 U.S. at 313. Just as "[n]othing in the text of § 921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender," 524 U.S. at 313, nothing in the text of the statute requires an affirmative act, explicitly branded as a token of forgiveness, on the part of the convicting jurisdiction. *Cf.* § 921(a)(20) (providing, in passive voice, that "[a]ny conviction ... for which a person ... has had civil rights restored shall not be considered a conviction for purposes of this chapter"). Instead, the text directs us simply to look at whether Walker's rights have been restored "in accordance with the law of the jurisdiction in which the [criminal] proceedings were held." § 921(a)(20); *Beecham*, 511 U.S. at 371, 374. The majority cannot deny that

> Walker's right to vote under federal law has been restored within the ordinary meaning of the term—so in order to avoid a result it dislikes, it saddles the term "restore" with requirements relating to the form and the express purpose of the governing law which have no relation to the word itself, and no other support in the text of the statute.

(App. 32-33)

The dissenting opinion preserves the rule established in *Caron*, and the majority opinion undermines that rule. Review should be granted to protect the rule established by this Court in *Caron*.

II. In *Beecham v. United States*, 511 U.S. 368 (1994), this Court Left Open the Possibility that a Federal Felon's Civil Rights May Be Restored By Operation of Law.

As the dissent below showed, the majority opinion below rested in large measure on a flawed reading of this Court's decision in *Beecham v. United States*, 511 U.S. 368 (1994), which said that only the jurisdiction responsible for a felony conviction may "restore" the felon's rights within the meaning of 18 U.S.C. § 921(a)(20). Petitioner's claim that his civil rights have been restored does not rest on the theory that the State of Tennessee or any other non-federal authority has the power to "restore" his federal civil rights. Rather, Petitioner's argument is that by operation of federal law the state court proceeding in which Petitioner recovered his state civil rights has the effect, under the relevant federal constitutional and

structural factors, of achieving or directing the restoration of his federal civil rights.

In *Beecham* this Court expressly left open that possibility, and the Sixth Circuit made a serious enough mistake to justify review in this Court by holding that *Beecham* forecloses Petitioner's argument: as the dissent below demonstrated, *Beecham* and the cases that follow it regarding the application of 18 U.S.C. § 921(a)(20), bound the Sixth Circuit to reach the opposite result from the one embodied in that Court's majority decision. (App. 22-35 [dissenting opinion])

The definitions within the Gun Control Act of 1968, as amended ("GCA"), permit a person who has a criminal conviction that otherwise would disqualify that person from possessing, shipping, receiving, or transporting firearms in interstate commerce to possess a firearm (and engage in the other otherwise prohibited actions) so long as that person "has had civil rights restored."[1] In relevant part, the statutory definition about which this dispute exists provides:

> What constitutes a conviction of such a crime shall be determined in accordance with the law

---

[1] Gun Control Act of 1968, Pub. L. No. 0-618, § 102, 82 Stat. 1213, 1216 (1968) Firearm Owners Protection Act of 1986, Pub. L. No. 99-308, § 101, 100 Stat. 449, 449-450 (1986) The portion of the GCA under consideration in this case is currently codified, as amended, at the last unnumbered sentence of 18 U.S.C. § 921(a)(20). The statutory language under consideration here may be referred to, at times, as the "exemption clause" (as it was called by this Court in *Beecham v. United States*, 511 U.S. 368, 369 (1994)) or as § 921(a)(20).

> of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 921(a)(20) [last unnumbered sentence].

In 1994, this Court determined that the choice of law provision in 18 U.S.C. § 921(a)(20), i.e., the "[w]hat constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held" language, means that under § 921(a)(20), civil rights must be restored by the "convicting jurisdiction[.]" *Beecham v. United States*, 511 U.S. 368, 371 (1994). Consequently, in order to exempt an otherwise disqualifying state court conviction from the scope of the GCA, civil rights must be restored under the law of the state in which the conviction occurred; in order to exempt an otherwise disqualifying federal conviction from the scope of the GCA, civil rights must be restored under federal law. *Id.* at 371, 374.

This Court decided, in *Beecham*, only the issue raised by the defendants in that case, i.e., "whether these restorations of civil rights by States could remove the disabilities imposed as a result of Beecham's and Jones' federal convictions[,]" *id.* at 370, and declined to determine what constituted a restoration of civil rights after a disqualifying conviction in federal court, saying:

> We express no opinion on whether a federal felon cannot have his civil rights restored under federal law. This is a complicated question, one which involves the interpretation of the federal law relating to federal civil rights, see U.S. Const., Art. I, § 2, cl. 1 (right to vote for Representatives); U.S. Const., Amdt. XVII (right to vote for Senators); 28 U.S.C. § 1865 (right to serve on a jury); consideration of the possible relevance of 18 U.S.C. § 925(c) (1988 ed., Supp. IV), which allows the Secretary of the Treasury to grant relief from the disability imposed by § 922(g); and the determination whether civil rights must be restored by an affirmative act of a Government official, see *United States v. Ramos*, 961 F.2d 1003, 1008 (CA1), *cert. denied*, 506 U.S. 934 (1992), or whether they may be restored automatically by operation of law, see *United States v. Hall*, 20 F.3d 1066 (CA10 1994). We do not address these matters today.

Id. at 373 n.*. (While this Court did not consider, in *Beecham*, *how* a person may have civil rights restored under federal law, the *Beecham* holding does not question that the availability of such remedy: "We therefore conclude that petitioners can take advantage of § 921(a)(20) only if they have had their civil rights restored under federal law . . . ." *Id*. at 374.)

The decision in *Beecham* thus left open two important questions: (1) whether a restoration of civil rights may occur by operation of law or instead requires the affirmative act of a government official; and, (2) whether any avenue exists for a person convicted in federal court to obtain a restoration of

rights. Billy York Walker brought this case to have a definitive answer to the open questions from *Beecham*, and demonstrated in the District Court, (*see, e.g.*, App. 55-87), and in the Sixth Circuit, (*see* App. 22-35 [dissenting opinion of Judge Clay]), that developments in this Court since *Beecham* mandated a determination that his civil rights had been restored. We now know, in addition, that the question presented here concerns the exercise of a fundamental right, one "necessary to our system of ordered liberty." *McDonald v. Chicago*, 561 U.S. 742, 778 (2010); *id* at 806 (Thomas, J., concurring).

III. Petitioner's Civil Rights Have Been Restored Because He May Once Again Vote in Federal Elections and Serve on Federal Juries.

The restoration inquiry begins, as virtually every party or court faced with the issue agrees, with a straightforward question: have three important rights, the right to vote, the right to serve on a jury, and the right to hold office, been regained? In *Logan v. United States*, this Court cited *Caron* and said: "While § 921(a)(20) does not define the term 'civil rights,' courts have held, and petitioner agrees, that the civil rights relevant under the above-quoted provision are the rights to vote, hold office, and serve on a jury." *Logan v. United States*, 552 U.S. 23, 28 (2007) (citing *Caron v. United States*, 524 U.S. 308, 316 (1998)).

In the present case, Mr. Walker never lost the right to hold office, so the inquiry focused on regaining the right to vote in federal elections, and the right to serve

on a federal jury.[2] (*See* App. 27-33) Neither the government nor the majority opinion ever contested Mr. Walker's right to serve on a federal jury following the restoration of his civil rights by the State of Tennessee, (App. 7-8, 28-30), so a decision in the present case turns on whether the Constitution's express delegation of the restoration of federal voting rights to the states should be respected or not for the purpose of 18 U.S.C. § 921(a)(20). (*Compare, e.g.,* App. 8-13 *with* App. 30-35 [dissenting opinion].)

IV. The Sixth Circuit's Decision Contravenes the Plain Meaning of 18 U.S.C. 921(a)(20) and Undermines the Constitution's Federal Structure.

First, as a matter of simple linguistics, (as the dissenting opinion correctly points out, (App. 30-35)), the majority opinion in the Sixth Circuit ignored the plain meaning of "restore," because that word connotes nothing more or less than being given something back, and carries no requirement that a token of forgiveness be tendered. "Restore" means:

> ➢ "[T]o give back (as something lost or taken away) : make restitution of : return <restored the

---

[2] The majority of the Court of Appeals "assumed" that Mr. Walker had regained the right to serve on a federal jury, (App. 7-8), but the dissenting opinion pointed out that no assumption was necessary, (App. 28-30), for the facts established, (and the government never contested), that Mr. Walker's federal jury service rights were restored. Mr. Walker need not raise that issue here, since the government never has contested it, but to the extent necessary, this Court should adopt the reasoning in the Sixth Circuit dissent with respect to federal jury service rights.

> lost child to its parents> . . . to put or bring back (as into existence or use) . . . to bring back to or put back into a former or original state[.] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1936 (2002); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1936 (1976).[3]
>
> ➢ To bring back into existence or use; reestablish . . . To bring back to an original or normal condition: *restore a building* . . . To place in a former position or location: restored the book to the shelf . . . To put (someone) back in a former position or role: restore the emperor to the throne . . . To make restitution of; give back[.] AMERICAN HERITAGE DICTIONARY 1497 (5th ed. 2011); *see also* AMERICAN HERITAGE DICTIONARY 1054 (2nd College ed. 1982)
>
> ➢ To give back, to make return or restitution of (anything previously taken away or lost)[.] 13 OXFORD ENGLISH DICTIONARY 755 (1989).

"Restore" does not carry any connotation or implication of individual forgiveness or even individual assessment, but rather conveys a plain meaning of

---

[3] Dictionaries assist in determining the plain meaning of statutory terms not given a definition within the statute. *Crawford v. Metro. Gov't of Nashville & Davidson Cty., Tenn.*, 555 U.S. 271, 276 (2009) (using Black's Law Dictionary and Webster's Third New International Dictionary); *Schindler Elevator Corp. v. U.S. ex rel. Kirk*, 563 U.S. 401, 407 (2011) ("Because the statute does not define "report," we look first to the word's ordinary meaning.") (using Webster's Third New International Dictionary, the Oxford English Dictionary, Black's Law Dictionary, and the American Heritage Dictionary); *United States v. Castleman*, ___ U.S. ___,134 S. Ct. 1405, 1420 (2014) . *See also Bond v. United States*, ___ U.S. ___, 134 S. Ct. 2077, 2090 (2014).

being given something back. The precise point in *Logan v. United States*, contrary to the assertion of the majority Sixth Circuit opinion, was not that restoration involves forgiveness, but rather that restoration involves something having been taken away in the first instance, i.e., without removal, no restoration. *Logan*, 552 U.S. at 31 ("The restoration of a thing never lost or diminished is a definitional impossibility."); *and id*. at 32 (describing the list of actions in 921(a)(20) as having in common that they "reliev[e] an offender of some or all of the consequences of his conviction."); *and id.* at 37 ("[W]e hold that the words 'civil rights restored' do not cover the case of an offender who lost no civil rights.")

The United States of America has given Billy York Walker back the right to vote, which meets the plain meaning of the word "restore" used in 18 U.S.C. § 921(a)(20). The United States of America has accomplished the return or giving back through its most fundamental law, the United States Constitution, by assigning the task of determining federal voting rights to the states. CONSTITUTION OF THE UNITED STATES, Article I, sec. 2, cl. 1; *id.,* AMENDMENT XVII; *Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation[.]") *and id.* at 178 ("Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.") *See also Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 167 (1996) (mentioning "the Framers' view of the Constitution as fundamental law").

The Sixth Circuit majority opinion undermines the assignment of the voting rights function to the states, because, it said, the assignment merely "articulate[s] the scope of a generalized voting right applicable to all citizens and do[es] not reflect any judgment regarding the consequences of criminal convictions in particular." (App. 14) The majority's statement, though, clashes with the studied compromise of the founders to make voting rights in federal elections a matter of state law:

> FROM the more general inquiries pursued in the four last papers, I pass on to a more particular examination of the several parts of the government. I shall begin with the House of Representatives. The first view to be taken of this part of the government relates to the qualifications of the electors and the elected. Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. *The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned.* To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone. To have reduced the different qualifications in the

> different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention. The provision made by the convention appears, therefore, to be the best that lay within their option.

FEDERALIST No. 52 (emphasis added).

State constitutional provisions and law existed at the time of drafting and ratification of the Constitution disenfranchising felons under state law, therefore, at the time of ratification, the assignment of voting rights decisions to the states was understood to entail state control over the voting rights of convicted felons.[4] The United States Constitution itself does, contrary to the Sixth Circuit majority opinion, represent a judgment regarding the "consequences of criminal convictions" for voting rights, a judgment that places the states in the best position to determine those rights with respect to the right to vote in federal elections.

Despite the straightforward effect and process by which the United States restored Mr. Walker's voting rights, and despite *Beecham's* clear holding that the law of the convicting jurisdiction determines restoration, (and not just the statutory law or the adjudicative, common law, but the "law," including the constitution of the convicting jurisdiction), the Sixth

---

[4] Howard Itzkowitz & Lauren Oldak, *Note: Restoring the Ex-Offender's Right to Vote: Background and Development*, 11 AM. CRIM. L. REV. 721, 725, 725 nn. 36-37 (1972-1973); KATHERINE IRENE PETTUS, FELONY DISENFRANCHISEMENT IN AMERICA 30-31 (2005); ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 62-63.

Circuit imported a requirement of individualized forgiveness into the 921(a)(20) analysis that this Court rejected in *Caron* and that Congress did not make part of the statutory provision. This Court should grant review in order to clarify the law in this important area.

V. This Case Has Far-Ranging Implications for the Gun Rights of Americans and the Proper Application of Federal Criminal Law.

This Court should review this case because the Sixth Circuit's mistaken reading of 18 U.S.C. § 921(a)(20) has major practical and legal consequences that should not stand.

First, the Sixth Circuit's decision in this case curtails a fundamental constitutional right for thousands of Americans who have previously been convicted of federal felonies but were later rehabilitated and had their civil rights restored by operation of law. As the majority opinion below acknowledged, Congress has not appropriated funds for disability relief proceedings under 28 U.S.C. § 925(c). (App. 20-21) As a consequence, the Sixth Circuit's decision effectively makes it impossible for someone convicted in federal court, even of a nonviolent felony, to regain the ability to exercise rights guaranteed by the Second Amendment (short of a pardon). Such a severe restriction on the fundamental federal constitutional rights of thousands of Americans raises grave constitutional concerns, *see Binderup v. Holder*, 2014 WL 4764424, at *1, *12-*32 (E.D. Pa. Sept. 25, 2014), and in any event is an issue of sufficient importance to warrant this Court's review.

Second, the Sixth Circuit's misinterpretation of 18 U.S.C. § 921(a)(20) has important consequences for the application of federal criminal law. Although Petitioner himself initiated this suit in an effort to lawfully purchase a firearm, the issue decided in this case also arises when a federal felon whose civil rights have been restored by operation of federal law is charged with unlawful possession of a firearm under 18 U.S.C. § 922(g). Federal prosecutions under that provision are very common and carry stiff mandatory prison sentences. *See generally* United States Sentencing Commission, *Quick Facts: Felon in Possession of a Firearm*, http://goo.gl/N1uL3R (recounting that in 2012 alone there were 5,768 convictions under 18 U.S.C. § 922(g) and that the average sentence for all such convictions was 75 months imprisonment) (last accessed 10 February 2016).

Third, further underscoring the importance of proper interpretation of 18 U.S.C. § 921(a)(20), this Court has repeatedly agreed to hear cases concerning that provision. *See Logan*, 552 U.S. 23; *Caron*, 524 U.S. 308; *Beecham*, 511 U.S. 368. This Court's repeated willingness to clarify the meaning of 18 U.S.C. § 921(a)(20) reflects both the difficulty the lower courts have had in interpreting this provision and the reality that it has generated a large volume of litigation. This Court's intervention is once again needed, this time to correct the Sixth Circuit's troubling conclusion that Congress has effectively made it impossible for anyone convicted of a federal felony to regain his Second Amendment rights.

CONCLUSION

The relevant civil rights of Billy York Walker have been restored by operation of the law of the United States. Mr. Walker therefore falls within the exemption clause of 18 U.S.C. § 921(a)(20), and should have been granted a judgment to that effect. This Court should grant review of this important question in order to preserve the plain meaning of 18 U.S.C. § 921(a)(20), the effect of its prior decisions, and the Constitution's system of federalism.

For the reasons set forth in this petition, a Writ of Certiorari should be granted and this case brought before this Court on its merits, and the decision of the Sixth Circuit Court of Appeals then should be reversed.

Respectfully submitted,

William Lewis Jenkins, Jr.
Counsel of Record
Wilkerson Gauldin Hayes
Jenkins & Dedmon
113 South Mill Avenue
Dyersburg, TN 38024
(731) 286-2401
ljenkins@tenn-law.com

Counsel for Petitioner

APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 15a0215p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 14-5703

[Filed September 1, 2015]

BILLY YORK WALKER, *Plaintiff-Appellant*,	)
v.	)
UNITED STATES OF AMERICA, *Defendant-Appellee*.	)

Appeal from the United States District Court
for the Western District of Tennessee at Jackson.
No. 1:13-cv-01212—J. Daniel Breen,
Chief District Judge.

Argued: January 13, 2015

Decided and Filed: September 1, 2015

Before: SUHRHEINRICH, CLAY, and ROGERS,
Circuit Judges.

COUNSEL

ARGUED: William Lewis Jenkins, Jr., WILKERSON GAULDIN HAYES JENKINS & DEDMON, Dyersburg, Tennessee, for Appellant. Gary A. Vanasek, UNITED STATES ATTORNEY'S OFFICE, Memphis, Tennessee, for Appellee. **ON BRIEF:** William Lewis Jenkins, Jr., WILKERSON GAULDIN HAYES JENKINS & DEDMON, Dyersburg, Tennessee, for Appellant. Gary A. Vanasek, UNITED STATES ATTORNEY'S OFFICE, Memphis, Tennessee, for Appellee.

ROGERS, J., delivered the opinion of the court in which SUHRHEINRICH, J., joined. CLAY, J. (pp. 15–23), delivered a separate dissenting opinion.

OPINION

ROGERS, Circuit Judge. Federal law generally bars both state-convicted and federally-convicted felons from possessing firearms, unless (among other conditions) their civil rights have been "restored." The Supreme Court has held that whether a felon's civil rights have been restored must be determined under the law of the convicting jurisdiction. *Beecham v. United States*, 411 U.S. 368 (1994). In rejecting the argument that a state's restoration of the civil rights of a federal felon was sufficient to lift the disability under the federal statute, the Supreme Court avoided the arguably anomalous result that a convicted felon's federal firearm disability would depend on the state in which he was physically present when he possessed the firearm. A federal statute was in place that provided a

means for a felon to get his firearm disability lifted. Since then, Congress has rendered inoperative the federal statutory provision directly addressing the lifting of the firearms disability based on a felony conviction. Now Billy Walker, a federal felon residing in Tennessee who has had his civil rights fully restored under Tennessee law, asserts that his Tennessee restoration of rights, because of the federal law effects of that restoration, in conjunction with certain longstanding federal statutory and constitutional provisions, leads to the conclusion that federal law has restored his rights sufficient to lift the disability. If so, the argument could have been made back when the Supreme Court decided *Beecham*, presumably leading to a different result in that very case. That possibility, especially in light of Congress's subsequent legislation to limit the lifting of federal firearms disability for federal felons, should give us pause before holding that a state restoration of rights after all does result in a lifting of federal firearm disability. Such a holding would raise intractable issues about which state's restoration of rights applies to a federal felon's possession of a firearm. Although a lawyer-like argument can be made to that effect, in the end a careful reading of the federal statute does not lead to such a strange result.

Walker argues that the relevant civil rights for firearm-disability-lifting purposes are the right to vote, the right to serve on a jury, and the right to hold government office. When these rights are restored at the state level, the argument goes, federal law in various ways permits the exercise of the same three civil rights at the federal level, thus meeting the federal statutory standard. The argument, however,

works at best only for one of the three rights, and therefore is not sufficient to constitute a federal restoration of federal civil rights (plural) to warrant lifting the firearm disability.

The relevant facts are not in dispute. In 1987, Walker was convicted on multiple non-violent felony charges in federal court located in Tennessee. These convictions rendered him subject to the federal ban on possession of firearms by a convicted felon under the Gun Control Act of 1968. *See* 18 U.S.C. §§ 921(a)(20), 922(g)(1). As a result of his status as a felon, Walker also lost certain rights under the law of Tennessee, where he resided, including the right to vote, the right to hold state office, and the right to serve on a state jury; this had consequences for his federal law rights, including the right to serve on a federal jury. Tenn. Code Ann. § 40-20-112 (loss of right to vote); § 40-20-114 (loss of right to hold public office); § 22-1-102 (loss of right to serve on a state jury); 28 U.S.C. § 1865 (loss of right to serve on a federal jury).

Recently, Walker set out to restore his civil rights and regain the right to possess firearms. In June 2010, Walker obtained a Tennessee state court order ruling that he "is eligible to have all civil and citizenship rights restored, including, without limitation, the right to vote, the right to serve on a jury, and the right to hold an office trust," and ordering Walker's "civil and citizenship rights . . . restored pursuant to Tenn. Code Ann. § 40-29-105." The same court issued a second order on March 22, 2012, confirming the restoration of rights in the prior order, and clarifying that Walker "shall have the explicit right to bear and possess firearms."

In January 2013, Walker attempted to purchase a firearm at Gander Mountain in Jackson, Tennessee, but was prevented from doing so. When Walker appealed to the Tennessee Bureau of Investigation, he received an explanation that he was denied authorization because he was listed as a disqualified person in the background check database maintained by the Federal Bureau of Investigation.

Walker thereafter filed suit in the present action, seeking a declaratory judgment that his civil rights and his right to possess firearms have been restored in full under federal law. The district court subsequently granted the government's motion for judgment on the pleadings and denied Walker's motion for summary judgment. Walker appeals.

Walker was originally prevented from possessing firearms by 18 U.S.C. § 922(g), which prohibits "any person . . . who has been convicted . . . of a crime punishable by imprisonment for a term exceeding one year . . . [from] possess[ing] . . . any firearm or ammunition." Walker would obviously fall under this statute, except that, under 18 U.S.C. § 921(a)(20), "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter," subject to conditions not at issue here. Walker argues that because his civil rights have been restored under Tennessee law, they have been restored for purposes of this statute.

Because Walker was convicted in federal court, the restoration of his rights under Tennessee law is not in itself enough. Presented with factual circumstances materially indistinguishable from the present

case—federal felons whose rights had been restored in the states where they resided—the Supreme Court held that "whether a person has had civil rights restored . . . is governed by the law of the convicting jurisdiction." *Beecham*, 511 U.S. at 371. The Court reasoned that the statute expressly provided that what constitutes a conviction is "determined in accordance with the law of the jurisdiction in which the proceedings were held," and that the exemption clause provides that a conviction for which civil rights have been restored "shall not be considered a conviction." *Id.* The Court noted that a different conclusion would require the Court "to come up with a special choice-of-law principle for the exemption clause." *Id*. (One of the two district courts below in *Beecham* had applied the law of the state in which the federal convicting court had sat, while the other had applied the law of the state in which felon had possessed the firearm. *Id.* at 370.) The Court rejected an argument that Congress would not have wanted the civil rights restoration exemption to be determined by federal law because there was no federal procedure of restoring civil rights to a federal felon. The Court rejected this argument because Congress did not intend that felons convicted in every jurisdiction have access to all the procedures (pardon, expungement, set-aside, and civil rights restoration) specified in the exemption. *Id.* at 372–73. Thus the Court did not need to reach the argument *in favor of the felons* that a federal felon cannot have his civil rights restored under federal law. *Id.* at 373 n.*.

In determining whether Walker's "civil rights" have been restored, precedent indicates that we should look to three civil rights in particular: "the rights to vote, to serve on a jury and to seek and hold public office."

United States v. Cassidy, 899 F.2d 543, 550 (6th Cir. 1990); *see Logan v. United States*, 552 U.S. 23, 28 (2007). Along with the parties, moreover, we assume that in this context the relevant rights are to vote in federal elections, to serve on federal court juries, and to seek and hold federal office. At most one of these has been "restored" under federal law, and that is not enough.

First, we assume for purposes of this appeal that Walker's right to serve on a federal jury has been restored under federal law. Under 28 U.S.C. § 1865, the statute defining eligibility for federal jury service, a person meeting other statutory requirements can serve on a federal jury "unless he . . . has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored." 28 U.S.C. § 1865(b)(5). Assuming that restoration of civil rights in this statutory context refers to the restoration of civil rights in one's state of residence, Walker has had his right to serve on a federal jury restored under federal law. Walker's conviction placed him within the exclusion from federal jury service in the statute, and the restoration of his civil rights under Tennessee law arguably placed him within the exception to the exclusion. Federal law explicitly provides a particular condition under which felons may, in spite of their convictions, serve on federal juries, and Walker has, it appears, met that condition. It thus appears that Walker has had his right to serve on federal juries restored under federal law, albeit by cross-reference to state law. Of course if the language of § 1865(b)(5) were limited in the way that similar language in § 921(a)(20) was limited in *Beecham*, the statute might be read to

mean "and his civil rights have not been restored *by the convicting jurisdiction*." In that case, we might be faced with interpreting circular provisions: whether a civil right is restored under federal law would depend (at least in part) on whether the civil right was restored under federal law. We need not resolve this issue, however, as the other two relevant rights have not been "restored," and one alone is not enough.

Second, Walker's right to seek and hold public office has not been restored, because he was never deprived of that right to begin with. Neither Congress nor the states can add to the constitutional qualifications for holding federal elective office. *Powell v. McCormack*, 395 U.S. 486 (1969); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). Because the constitutional qualifications make no mention of convictions, under federal law, Walker could always run for and hold federal public office. Walker's conviction also had no effect on how federal law regulated his right to run for and hold state public office. The Supreme Court held in the context of the Armed Career Criminal Act that "an offender who lost no civil rights" has not had his civil rights restored for purposes of § 921(a)(20). *Logan*, 552 U.S. at 37. Having a thing "restored," as that word is used in § 921(a)(20), implies that that thing was first lost. *See Logan*, 552 U.S. at 31. Thus Walker's right under federal law to run for federal elected office was never restored because he never lost it.

Third, Walker's right to vote in federal elections was not restored under federal law in the sense that the convicting jurisdiction (i.e., the United States), either by across-the-board legislation or by individual

adjudication, determined that such a right should be returned to him. The best reading of § 921(a)(20) is that for a civil right to be restored, it must be restored as a result of an evaluation by the convicting jurisdiction of what the consequences of the conviction ought to be. That is not the case here. The provisions of federal law on which Walker relies provide general rules for voting rights that apply to felons to the same extent as to anyone else; the federal scheme does not address Walker's conviction—or convictions in general—at all, and so it does not effect a restoration of Walker's right to vote for purposes of § 921(a)(20).

The provisions of federal law on which Walker relies are the constitutional provisions relating to voting in House and Senate elections, both of which provide (with minor and inconsequential style variations) that "[t]he electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature[s]." U.S. Const. art. I § 2; *id.* amend. XVII. This means that under federal law a person has the right to vote in elections for Congress so long as the state where that person resides permits him to vote in state legislative elections. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Thus Walker lost his federal right to vote in congressional elections when he was convicted because Tennessee, his state of residence, prohibited him from voting in Tennessee's legislative elections. When Tennessee lifted that prohibition, Walker regained his federal right. These provisions of federal law are indifferent as to Walker's status as a felon and even as to the reasons that Tennessee first denied and then restored Walker's state legislative voting rights. Instead, Walker's right to vote under federal law turns

entirely on whether or not Tennessee permits him to vote.

Walker's right to vote has not been restored under federal law, because the text of § 921(a)(20) must be read to require that the convicting jurisdiction's civil rights scheme address an individual's conviction in "restoring" that individual's civil rights. Otherwise it is but an exercise of sterile logic to say that the federal law "restored" the right to vote. This gloss, moreover, is supported by the text. Strictly speaking, the question posed by § 921(a)(20) is not whether Walker's civil rights were restored, but whether Walker's "*conviction* [was one] . . . *for which* . . . [he] has had civil rights restored." 18 U.S.C. § 921(a)(20) (emphasis added). Having civil rights restored is a property not of the felon, as one might intuitively expect, but of the conviction. *See Beecham*, 511 U.S. at 371. If the convicting jurisdiction grants a felon the right to vote without in any way considering his conviction or even convictions in general, then the felon's right to vote is not restored *for* the conviction. Rather, "for which" implies that, for a civil right to be restored pursuant to the statute, the convicting jurisdiction must grant the felon the right to vote after some determination that the felon's conviction ought no longer to prevent the felon from exercising the civil right.

Even if this requirement that the scheme restoring rights address the conviction is not the only plausible reading of "conviction . . . for which . . . [he] has had civil rights restored," it finds support in the broader context in which that language appears. Section 921(a)(20) provides alternatives to the restoration of civil rights that all address an individual's conviction:

expunging a conviction, setting it aside, and pardon. 28 U.S.C. § 921(a)(20). These are all legal acts that reflect a judgment by some state actor about whether particular consequences are appropriate responses to the felon's crime. While these are all generally individualized judgments and restoration of civil rights need not be, it is reasonable to assume that Congress intended restoration of civil rights to be of a kind with its partners in the list in reflecting a determination by the convicting jurisdiction that particular consequences of a conviction ought no longer to be imposed. If, as this list suggests, Congress intended to use the convicting jurisdiction's determination as a proxy for whether a felon is sufficiently trustworthy to be allowed to possess firearms, the convicting jurisdiction's determination must somehow take the felon's conviction into account to be meaningful.

This reading of the statute is supported by language in *Logan*, 552 U.S. 23, suggesting that when a convicting jurisdiction restores civil rights it grants a degree of forgiveness to the offender. In that case, Logan was convicted of being a felon in possession of a firearm and sentenced to the mandatory minimum 15-year term because he had three state convictions that qualified as felonies under 28 U.S.C. § 921(a)(20). *Id.* at 26. However, under the law of Wisconsin, the jurisdiction where those convictions took place, the convictions for which Logan was convicted "at no time deprived the offender of civil rights." *Id.* Logan therefore claimed that his rights had been restored under Wisconsin law for purposes of § 921(a)(20), rendering the mandatory minimum 15-year sentence inapplicable. *Id.* The Supreme Court disagreed, holding that never losing one's civil rights is not the same as

having one's civil rights restored. *Id.* The Court noted the context of the "civil rights restored" language: "In § 921(a)(20), the words 'civil rights restored' appear in the company of the words 'expunged,' 'set aside,' and 'pardoned.' Each term describes a measure by which the government relieves an offender of some or all of the consequences of his conviction." *Id.* at 32. Thus, in requiring some affirmative government act, the Court described the restoration of civil rights as a government act that "extend[s] to an offender a measure of forgiveness," and noted that Logan, and other offenders never deprived of their civil rights, receive no "token of forgiveness from the government." *Id.* at 26, 32. Forgiveness always involves a consideration of the wrong committed. Indeed, without such a consideration, there would be little reason for Congress to defer to the convicting jurisdiction's decision to restore civil rights to the convicted individual. *See id.* at 37. If a decision not to deprive the convicted individual of civil rights in the first place is not sufficient in Congress's eyes for a restoration, a decision to deprive and then grant civil rights for reasons only incidentally connected to the conviction should also be insufficient.

There is no token of forgiveness for Walker in the federal law's treatment of his right to vote. That Walker regained the right to vote under federal law reflects no judgment in federal law regarding his conviction in particular or the voting rights of felons in general. Instead, Walker's right to vote hinges entirely on a contingent consequence of his conviction: his loss of voting rights under Tennessee law as a Tennessee resident with a felony conviction. Walker would have retained the right to vote had he resided in a state that

permitted felons to vote.[1] In contrast to the statute governing federal jury service, this deference to state rules is not part of a federal scheme specifically addressing the rights of convicted felons. *Cf.* 28 U.S.C. § 1865(b)(5). In the case of jury service, federal law asks first whether Walker is a felon and then whether Tennessee has restored his rights. When it comes to voting, however, federal law considers only whether Tennessee permits him to vote and does not in any way consider his felony conviction.[2] Walker's federal felony convictions are therefore not ones for which his right to vote has been restored under federal law, and indeed, he was never deprived of this right in the sense necessary for it to be able to be restored.

This conclusion is fully consistent with *Caron*, 524 U.S. at 313, under which civil rights can be restored "by operation of law" rather than by an individual determination. In that case, Caron, a three-time Massachusetts felon convicted of possessing firearms, argued at sentencing and on appeal that his civil rights had been restored under Massachusetts law and therefore his Massachusetts convictions were not

---

[1] Currently, Maine and Vermont permit resident felons to vote, even while they are incarcerated. *See* Me. Rev. Stat. 21-A, § 112(14); Vt. Stat. Ann. 17, § 2121.

[2] This analysis does not necessarily require that a jurisdiction's scheme address a conviction explicitly. For example, it is possible, although we do not consider the question here, that a statute that uses general language to repeal a prohibition on felons voting would restore the voting rights of the felons affected. In that case, the legislature's act might be understood to address the felons' convictions by repealing the statute that had previously addressed the convictions.

predicate felonies for the ACCA's mandatory minimum 15-year sentence. Caron had received no individual restoration; instead, his argument relied on the fact that Massachusetts law does not deprive felons of the right to vote, permits them to run for office upon completion of their sentences, and permits them to serve on juries seven years after their convictions. *United States v. Caron*, 77 F.3d 1, 2 (1st Cir. 1996) (en banc). Eventually, the en banc First Circuit held that the restoration of civil rights for purposes of § 921(a)(20) does not require individualized procedures. *Id.* at 5. The Supreme Court denied certiorari, and, when it decided a separate question on a subsequent appeal, confirmed this conclusion and noted the unanimous agreement of the Circuits that considered the issue. 524 U.S. at 313–14. This is consistent with *Logan*. Massachusetts' scheme for granting civil rights to felons functions as a token of forgiveness in the sense that it reflects a judgment about whether felons, as a general class, ought to have particular civil rights returned to them after enough time has passed. The scheme is thus distinguishable from the constitutional provisions Walker relies on, which articulate the scope of a generalized voting right applicable to all citizens and do not reflect any judgment regarding the consequences of criminal convictions in particular. Forgiveness, under this interpretation of *Logan*, does not require an individualized pardon, but it does require consideration of the felon's conviction and willingness to lighten the burdens imposed as a consequence of it.

Thus Walker appears to have had at most one of the *Cassidy* civil rights restored, a second was not restored because it was never lost, and a third was not restored

within a fair reading of § 921(a)(20). This is not sufficient. First, the language of the statute refers to having multiple "civil rights" restored, not just one civil right. On the most natural interpretation of the statutory language, having only one civil right restored is insufficient. Second, even when other civil rights cannot be restored because they were not lost, having just one civil right restored is not functionally equivalent to having multiple restored. This is because the statute, as interpreted in *Logan*, defers to acts of forgiveness or rehabilitation by the convicting jurisdiction. *Id.* at 37. The restoration of a single civil right, as opposed to multiple civil rights, is insufficiently significant to suggest that Congress intended to defer to that also.

The restoration of civil rights as a whole reflects more trust than the restoration of a single civil right. Restoring a single civil right—the right to serve on a jury, for example—may be a decision guided primarily by administrative practicalities or by considerations unique to the context in which that right is exercised. Such a decision lacks both the symbolic and actual significance of a restoration of multiple civil rights, which suggests that a felon can function as a normal citizen in more than one institutional context. The judgment that a single civil right ought to be restored thus does not reflect the same degree of forgiveness as the restoration of multiple civil rights, and so it is not sufficient for purposes of § 921(a)(20).

Because Walker has had at most one of the *Cassidy* civil rights restored under federal law for purposes of § 921(a)(20), his felony conviction is not one "for which . . . [he] has had civil rights restored," § 921(a)(20), and

so the firearms prohibition of § 922(g) still applies to him.

Acceptance of Walker's argument, on the other hand, would require us to conclude that the Supreme Court simply did not look at the right laws in *Beecham*, when it held that a state restoration of civil rights was not sufficient to lift the firearm disability. The constitutional provisions regarding the right to run for federal office and to vote in federal elections referred to state law just as much in 1994 as now. And the statutory provision regarding federal jury duty was not materially different in 1994 from what it is today. *See United States v. Arce*, 997 F.2d 1123, 1127 (5th Cir. 1993) (quoting—and upholding the constitutionality of—§ 1865(b)(5)). Although we could say that a state restoration of civil rights is also a federal restoration because of these provisions, the Supreme Court could easily have said the same—if true—in 1994. We are not so bold as to draw a conclusion that the Supreme Court was simply misled to look at the wrong law. Walker's proposed interpretation would produce a practical result very similar to the one that the Supreme Court rejected in *Beecham*, albeit by a different legal route. In *Beecham*, the Supreme Court rejected circuit court interpretations of § 921(a)(20) that would have predicated the restoration of a federal felon's civil rights on their restoration under state law. *Beecham*, 511 U.S. at 370–71. Walker's argument would indirectly predicate a federal felon's civil rights on their restoration under state law. While this argument was not presented to the Court in *Beecham*, the Court was obviously aware of the federal law on voting and jury service on which Walker's argument rests. *See id.* at 373 n.*.

In the starred footnote in *Beecham*,[3] the Court indicated that it was not necessary to reach an argument *that would support the felon* that there was *no* available federal restoration of civil rights. (The Ninth Circuit had previously reasoned that the absence of a federal restoration indicated that Congress intended the state restoration to be sufficient. *Id.* at 372–73.) The Court, as indicated above, did not reach the issue because the Court reasoned that, under the statute, the civil rights of a federal convict had to be restored under federal law for the exemption to apply regardless of whether the federal government provided for such a restoration. Apart from a citation of the federal provisions relied upon by Walker for a conclusion opposite to the one that was perceived to favor Beecham, nothing in the footnote suggests that a

---

[3] The footnote in full reads:

> We express no opinion on whether a federal felon cannot have his civil rights restored under federal law. This is a complicated question, one which involves the interpretation of the federal law relating to federal civil rights, see U.S. Const., Art. I, § 2, cl. 1 (right to vote for Representatives); U.S. Const., Amdt. XVII (right to vote for Senators); 28 U.S.C. § 1865 (right to serve on a jury); consideration of the possible relevance of 18 U.S.C. § 925(c) (1988 ed., Supp. IV), which allows the Secretary of the Treasury to grant relief from the disability imposed by § 922(g); and the determination whether civil rights must be restored by an affirmative act of a Government official, *see United States v. Ramos*, 961 F.2d 1003, 1008 (CA1), cert. denied, 506 U.S. 934, 113 S.Ct. 364, 121 L.Ed.2d 277 (1992), or whether they may be restored automatically by operation of law, *see United States v. Hall*, 20 F.3d 1066 (CA10 1994). We do not address these matters today.

Id. n.*.

state restoration of state civil rights would by virtue of those federal provisions result in a federal restoration of rights.

The Government in *Beecham* moreover relied upon the difficulties that would occur if a state restoration of rights lifted the federal firearm disability, difficulties that would apply just as strongly if Walker's argument is adopted:

> The interpretation of the statute proposed by petitioners would lead to intractable problems of construction. Petitioners do not suggest which State's law should be consulted to determine whether a federal felony is to be given continuing effect, and there is nothing in the statute that gives any hint of which State's law should control — the State of the defendant's residence, the State of the defendant's prior federal felony conviction, the State where the defendant commits the new firearms offense, or some other State. Since that question would be such an obvious one if state law were intended to control the construction of federal felonies, the fact that the statute provides no answer casts serious doubt on petitioners' construction.

Brief for Appellant, *Beecham v. United States*, 511 U.S. 368 (1994) (No. 93-445), 1994 WL 96876 at *8.

The Government elaborated on this concern as follows:

> If the term "restoration of civil rights" is not understood to refer to a restoration by the convicting jurisdiction, it would mean that if State A restored a defendant's civil rights

following his conviction in State B, the State B conviction would no longer qualify as a conviction under federal law. That would be so even if State B regarded its own conviction as still perfectly valid and still sufficient to bar the defendant from possessing firearms in that State. Carried to its logical end, petitioners' interpretation of Section 921(a)(20) means that the State of Wyoming could render convictions from every other State and from federal courts unusable as "convictions" under the Gun Control Act if Wyoming law restored civil rights to persons convicted in other jurisdictions as soon as they were released from custody. . . .

[Petitioners] insist (Br. 12-13) that there is no textual basis for construing the phrase "restoration of civil rights" as limited to the convicting jurisdiction. But if the restoration of civil rights is not limited to the convicting jurisdiction, there is no textual basis for deciding what other jurisdiction's law to consult in determining whether a restoration of civil rights has the effect of removing the federal firearms disability. To suggest that the "restoring" jurisdiction should be the State in which the federal conviction was obtained, or the State in which the defendant was residing when he committed the subsequent federal firearms violation, or the State in which the defendant was charged with the federal firearms violation, requires a complete departure from the text of

> the statute to which petitioners claim strict allegiance.

Id. at *11–12.

The Supreme Court adverted to these arguments briefly in its opinion, but noted that applying federal law where the conviction is federal would avoid the need to come up with a special choice of law rule. *Beecham*, 511 U.S. at 371. But accepting Walker's argument in this case would return us to the very quandary that the Government raised in *Beecham* and that the Supreme Court thought it avoided: which state's restoration is the operative one, and does it apply nationally?

In addition, Congress's subsequent treatment of 28 U.S.C. § 925(c), a separate avenue for felons to regain their gun possession rights, lends support to a limited interpretation of "restoration." Section 925(c) provides a mechanism for felons convicted in any jurisdiction to petition to the Attorney General (or, in prior versions of the law, the Secretary of the Treasury) for a restoration of the right to possess firearms. The Attorney General (and previously the Secretary of the Treasury) has delegated this responsibility to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Since 1992, however, Congress has, in annual appropriations bills, prohibited the ATF from acting on such petitions. *See Mullis v. United States*, 230 F.3d 215, 217 (6th Cir. 2000). The legislative histories of these appropriations provisions make it clear that Congress believed that "those who commit felonies should not be allowed to have their right to own a firearm restored." H.R. Rep. No. 104-183, at 15 (1995);

see 142 Cong. Rec. S. 12164 (Oct. 19, 1996) (statement of Sen. Simon); *Mullis*, 230 F.3d at 220 & n.3.

This subsequent intent to prevent felons from possessing firearms suggests that Congress did not view § 921(a)(20) as offering felons who have not been rehabilitated a way to regain firearms rights. Of course these appropriations measures blocking § 925(c) cannot entirely prevent felons from having their firearms rights restored because they could still obtain a pardon, expungement, or restoration of civil rights from the convicting jurisdiction under § 921(a)(20). The appropriations measures do not explicitly address that portion of the statute. But the fact that Congress broadly intended to prevent felons from possessing firearms and, guided by that intent, blocked implementation of § 925(c) without mentioning § 921(a)(20) suggests that Congress did not view § 921(a)(20) as a remaining avenue for non-rehabilitated felons to regain their right to possess firearms. If § 921(a)(20) restored firearms rights to felons who had lost and regained civil rights without any consideration of their crimes by the convicting jurisdiction, then Congress's failure to address this provision would be difficult to explain in light of Congress's stated general intent to prevent felons from possessing firearms.

For the foregoing reasons, the judgment of the district court is affirmed.

DISSENT

CLAY, Circuit Judge, dissenting. This case presents the question of whether the undisputed restoration of Billy York Walker's civil rights under Tennessee law has the effect, by operation of federal law, of restoring his federal civil rights so that he is exempt from the federal firearms ban applicable to felons pursuant to 18 U.S.C. § 921(a)(20). Contrary to the majority, I believe that both binding precedent and the nature of our federal system require a conclusion that Walker's federal civil rights have been restored within the meaning of § 921(a)(20). I therefore respectfully dissent.

DISCUSSION

Under § 921(a)(20), a person who has been convicted of a felony may nonetheless become exempt from the federal ban on weapons and ammunition possession if that person's civil rights have been restored. In relevant part, that provision states:

> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter[.]

§ 921(a)(20). The first sentence of this provision is referred to as the "choice of law clause," and the second

sentence is sometimes called the "exemption clause," as it exempts certain convictions from the application of the Gun Control Act. *See, e.g.*, *Beecham v. United States*, 511 U.S. 368, 369 (1994). Walker claims the protection of the exemption clause on the grounds that his civil rights have been restored.

Though this Court's task in evaluating Walker's claim is essentially one of statutory interpretation, we do not write on a blank slate. Binding precedent prescribes the test: we must evaluate whether Walker's federal civil rights—the right to vote, the right to seek and hold office, and the right to serve on juries—have been restored according to federal law. *Beecham v. United States*, 511 U.S. 368, 371-74 (1994) (requiring that restoration be determined according to the law of the convicting jurisdiction); *United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990) (identifying the three dispositive rights). Additionally, the Supreme Court has settled that the restoration of rights under § 921(a)(20) may be accomplished by operation of law, absent any affirmative act of restoration or particularized decision with regard to an individual felon. *Caron v. United States*, 524 U.S. 308, 313 (1998). Finally, despite the majority's attempt to suggest otherwise, the Supreme Court has adopted a "plain-meaning" interpretation of the restoration of civil rights, in recognition that the word "restore" means simply "'to give back something that had been taken away.'" *Logan v. United States*, 552 U.S. 23, 31 (2007) (quoting with approval *United States v. Logan*, 453 F.3d 804, 805 (7th Cir. 2006)); *see also id.* at n.3 (reviewing dictionary definitions). Faithful application of these precedents, combined with respect for our federal constitutional system, compel a conclusion that

Walker's civil rights have been restored under federal law and that he is therefore no longer subject to the firearms prohibition.

A. The Issue Reserved in *Beecham*

The Supreme Court granted certiorari in *Beecham* to resolve a circuit split about whether the choice of law clause in § 921(a)(20) applied to the post-conviction events (*i.e.*, pardons, expungement, and restoration of rights) listed in the exemption clause. 511 U.S. at 370-71. The Eighth and Ninth Circuits had previously held that the choice of law clause applied only to the conviction itself, not to post-conviction events—leaving state law as the governing standard for the restoration of civil rights. *United States v. Edwards*, 946 F.2d 1347 (8th Cir. 1991); *United States v. Geyler*, 932 F.2d 1330, 1333-34 (9th Cir. 1991). The Fourth Circuit, in the two decisions reviewed by the Court in *Beecham*, reached the opposite result and rejected the proposition that state law governed the restoration of a federal felon's civil rights. *United States v. Beecham*, 993 F.2d 1539 (4th Cir. 1993) (Table); *United States v. Jones*, 993 F.2d 1131 (4th Cir. 1993). The Supreme Court resolved the split in favor of the position taken by the Fourth Circuit, holding that whether a felon's civil rights have been restored "is governed by the law of the convicting jurisdiction." 511 U.S. at 371. Thus, for those convicted of federal felonies, courts "must look to whether [their] civil rights were restored under federal law." *Id.*

The Supreme Court stopped at this holding and on that basis affirmed the Fourth Circuit. Neither the Supreme Court nor the Fourth Circuit addressed how federal law applies to the question of whether a federal felon's civil rights had been restored—an issue that had

not been raised or briefed by the parties. The Supreme Court acknowledged the omission and expressly reserved the question of whether a federal felon's civil rights may be restored under federal law, writing in footnote * (hereinafter "the *Beecham* footnote"):

> This is a complicated question, one which involves the interpretation of the federal law relating to federal civil rights, *see* U.S. Const., Art. I, § 2, cl 1 (right to vote for Representatives); U.S. Const., Amdt. XVII (right to vote for Senators); 28 U.S.C. § 1865 (right to serve on a jury); consideration of the possible relevance of 18 U.S.C § 925(c) (1988 ed., Supp. IV), which allows the Secretary of the Treasury to grant relief from the disability imposed by § 922(g); and the determination whether civil rights must be restored by an affirmative act of a Government Official, see *United States v. Ramos*, 961 F.2d 1003, 1008 (CA1), cert. denied, 506 U.S. 934, 113 S.Ct. 364, 121 L.Ed.2d 277 (1992), or whether they may be restored automatically by operation of law, *see United States v. Hall*, 20 F.3d 1066 (CA10 1994). We do not address these matters today.

511 U.S. at 373 n.*.

Both the government and the district court contend that *Beecham* forecloses Walker's claim because the opinion addressed substantially identical facts—federal felons whose rights were restored under state law—and yet in *Beecham* the Court ultimately rejected the felons' arguments that they were not subject to the federal firearm disability. The majority adopts a version of this argument by emphasizing that the Supreme Court

could have reached the issues in the footnote, and suggests that the Court's failure to do so is tantamount to a rejection of Walker's claim.

Contrary to the majority's argument, it is clear that *Beecham* cannot be characterized as foreclosing a legal argument that it expressly declined to reach. Moreover, the Court's reticence in this regard was perfectly understandable, and even to be expected. Of the several complex legal questions identified in the *Beecham* footnote, only the "possible relevance" of § 925(c) had received any attention—and even that attention was fleeting—in the parties' briefing. The Supreme Court is of course free to disregard arguments not raised in the lower courts or advanced by the parties before it. *See, e.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2776 (2014) ("We do not generally entertain arguments that were not raised below and are not advanced in this Court by any party."); *Bell v. Wolfish*, 441 U.S. 520, 531 n.13 (1979) (declining to reach argument not passed on by the lower courts or urged by the parties); *Knetsch v. United States*, 364 U.S. 361, 370 (1960) (same). It is simply unremarkable that, in the exercise of judicial prudence, the Court chose to leave the issues identified by the footnote for another day.

Now, more than a decade after *Beecham* and squarely presented with a claim that a felon's civil rights have been restored under federal law, we have the benefit of subsequent precedent that provides clear guidance regarding the questions identified in the *Beecham* footnote. We know that a felon's civil rights may be restored by operation of law, without any affirmative act of restoration or case-by-case

decisionmaking by a government agency or official. *Caron*, 524 U.S. at 313. Additionally, the Sixth Circuit has identified the dispositive civil rights which must be restored in order for the exclusion to apply: "the right to vote, the right to seek and hold public office and the right to serve on a jury."[41] *United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990); *see also Hampton v. United States*, 191 F.3d 695 (6th Cir. 1999) (closely examining Michigan law to determine that the petitioner was entitled to serve on a jury before concluding that his civil rights were indeed restored). A direct application of these principles in this case establishes that Walker's federal civil rights have been restored. The majority's efforts to avoid this result are strained and unconvincing.

B. Restoration of Walker's Federal Civil Rights

As the majority notes, Walker's right to seek and hold federal office was never lost, and therefore has not been "restored." *See Logan*, 552 U.S. at 31; *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995); *Powell v. McCormack*, 395 U.S. 486 (1969). That leaves two rights to consider—the right to serve on a federal jury and the right to vote in federal elections. Both rights

---

[1] The Supreme Court has implicitly approved relying on this triad of rights to test whether a felon's civil rights have been restored. *See Logan*, 552 U.S. at 28 ("While § 921(a)(20) does not define the term 'civil rights,' courts have held, and petitioner agrees, that the civil rights relevant under the above-quoted provision are the rights to vote, hold office, and serve on a jury."); *Caron*, 524 U.S. at 316 (1998) ("Restoration of the right to vote, the right to hold office, and the right to sit on a jury turns on so many complexities and nuances that state law is the most convenient source for definition.").

have been "restored" to Walker according to "the word's ordinary meaning" of returning something that had previously been taken away. *See Logan*, 552 U.S. at 31 & n.3.

1. The Right to Serve on Federal Juries

The majority announces that it will "assume" for purposes of this case that Walker's federal right to serve on a jury has been restored pursuant to 28 U.S.C. § 1865(b)(5). Maj. Op. at 5. The majority's squeamishness on this issue is difficult to understand—the majority identifies no reasonable alternative interpretation of § 1865 which would support any other conclusion, and it is impossible to identify what more could be required for Walker to meet that standard.

The federal statute provides that a person shall be deemed "qualified to serve on grand and petit juries in the district court *unless* he . . . has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year *and his civil rights have not been restored*." § 1865(b)(5) (emphasis added). Because this language is nearly identical to the language in § 921(a)(20), the three civil rights identified in *Cassidy*—the right to vote, to hold office, and to serve on a jury—may properly be considered here as well. *See Cassidy*, 899 F.2d at 549; *see also United States v. Green*, 532 F. Supp. 2d 211, 212 (D. Mass. 2005) (holding that the term "civil rights" in § 1865 "plainly involves the right to vote, to serve on juries, to run for office") (citing *Cassidy*, 899 F.2d at 549).

If the measuring stick is state law—after all, 28 U.S.C. § 1865(b)(5) does not contain a choice of law clause like the one in 18 U.S.C. § 921(a)(20)—then it is plain that Walker's civil rights have been restored and he may again serve on a federal jury. The Tennessee state court order obtained by Walker restored to him all "civil and citizenship rights," specifically including "the right to vote, the right to serve on a jury, and the right to hold an office of public trust." (R. 1-1 at PageID 9-10.) Tennessee courts are authorized to restore "full rights of citizenship" under the procedure outlined in Tenn. Code Ann. §§ 40-29-101 to 40-29-105, and there is no dispute that the court-ordered restoration of Walker's state civil rights was valid. *See May v. Carlton*, 245 S.W.3d 340, 344 (Tenn. 2008) (classing "serving as a juror" among the "rights of citizenship" affected by a conviction); Tenn. Code Ann. § 22-1-102 (providing that convicted felons lose their right to serve on a jury); *State v. Black*, 2002 WL 1364043, *11-12 (Tenn. Ct. App. 2002) (affirming the restoration under § 40-29-105 of the petitioner's right to vote); *Bryant v. Moore*, 279 S.W.2d 517 (Tenn. 1955) (holding that the right to seek and hold public office was encompassed in the restoration of rights under substantially similar prior statutory language).

To the extent Walker's federal civil rights are relevant to § 1865(b)(5), his federal right to vote has been restored by operation of law as a result of the reinstatement of his voting rights under state law, U.S. Const. art. I, § 2, cl. 1; *id*. amend. XVII, and his right to seek and hold federal office is, as discussed above, unaffected by his felony conviction. Walker has thus met any conceivable requirement for the restoration of his right to serve on a federal jury. Applying the same

plain-meaning interpretation that the Supreme Court gave the parallel provision in §921(a)(20), the right "had been taken away" from him as a consequence of his felony conviction under § 1865(b)(5), and it has been "give[n] back" under the terms of the same provision as a consequence of the restoration of his civil rights under state law. *See Logan*, 552 U.S. at 31 & n. 3.

2. The Right to Vote in Federal Elections

The majority acknowledges that, by virtue of the restoration of his right to vote under Tennessee law, Walker has regained his right to vote in federal elections. *See* U.S. Const. art. I, § 2, cl. 1; *id*. amend. XVII (adopting state law qualifications for the right to vote in federal elections). This result flows from the constitutional design of our federal system: "[The states] define who are to vote for the popular branch of their own legislature, and the constitution of the United States says the same persons shall vote for members of congress in that state. It adopts the qualification thus furnished as the qualification of its own electors for members of congress." *Ex parte Yarbrough*, 110 U.S. 651, 663 (1884); *see also Gray v. Sanders*, 372 U.S. 368, 379 (1963) ("States can within limits specify the qualifications of voters in both state and federal elections; the Constitution indeed makes voters' qualifications rest on state law even in federal elections."). Although the right to vote in federal elections incorporates voter qualifications set by state law, the right is indisputably a *federal* civil right, with "its foundation in the Constitution of the United States." *Wiley v. Sinkler*, 179 U.S. 58, 62-64 (1900); *see also Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *United States v. Classic*, 313 U.S. 299, 310, 314-15 (1941).

The majority does not dispute that Walker lost his right to vote under Tennessee law as a consequence of his federal felony conviction. *See* Tenn. Code Ann. §§ 2-2-102, 40-20-112, 40-29-201. By operation of federal law, the loss of Walker's state voting rights resulted in the loss of his federal voting rights. U.S. Const. art. 1, § 2, cl. 1; *id*. amend. XVII. Nor does the majority dispute that, by virtue of those same federal constitutional provisions, the restoration of Walker's right to vote under state law has resulted in the reinstatement of his right to vote in federal elections. *Id.*; *see* Tenn. Code Ann. §§ 40-29-101, 40-29-105(b)(1), (b)(6) & (b)(7) (authorizing the reinstatement of citizenship rights, including the right to vote); *see also State v. Johnson*, 79 S.W.3d 522, 527 (Tenn. 2002) (discussing the restoration of rights scheme created by Tennessee statutes). These realities satisfy the plain meaning of the restoration of civil rights clause under § 921(a)(20): Walker's right to vote in federal elections, secured to him by nothing less than the Constitution of the United States, was first taken away as a consequence of his felony, then subsequently reinstated under federal law which, by constitutional design, gives effect to the state law restoration of voting rights. *Logan*, 552 U.S. at 31 & n.3; *see also Caron*, 524 U.S. at 313 (holding that civil rights may be restored by operation of law alone). Walker's federal civil right to vote has been "restored" within the common sense, ordinary meaning of the term.

The majority takes the position that Walker's federal civil right to vote has not been restored within what it terms a "fair reading" of § 921(a)(20). Maj. Op. at 10. This "fair reading" has one precarious source: the Supreme Court's observation in *Logan* that the

restoration of civil rights, like expungement and pardon, "extend[s] to an offender a measure of forgiveness," while a felon whose civil rights were never lost "is simply left alone" and "receives no status-altering dispensation, no token of forgiveness from the government." 552 U.S. at 26, 31. Seizing on the concept of a "token of forgiveness," the majority insists that the law reinstating Walker's federal right to vote must do so out of an explicit federal judgment either "regarding his conviction in particular or the voting rights of felons in general." Maj. Op. at 8. *Logan* cannot be stretched to this extreme. Indeed, the case affirmed the ordinary meaning of the word "restore" as the return of something that had been taken away—a requirement that has been met in Walker's case.

Though purporting to rely on *Logan*, the majority is in fact adding a new dimension to our well-established inquiry: a requirement that the federal government take an affirmative act to restore Walker's voting rights, and that the affirmative act be explicitly targeted to addressing felons' rights. This requirement is out of sync with the Supreme Court's holding that restoration of rights may be accomplished by operation of law. *See Caron*, 524 U.S. at 313. Just as "[n]othing in the text of § 921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender," 524 U.S. at 313, nothing in the text of the statute requires an affirmative act, explicitly branded as a token of forgiveness, on the part of the convicting jurisdiction. *Cf.* § 921(a)(20) (providing, in passive voice, that "[a]ny conviction . . . for which a person . . . has had civil rights restored shall not be considered a conviction for purposes of this chapter"). Instead, the text directs us simply to look at whether Walker's rights have been

restored "in accordance with the law of the jurisdiction in which the [criminal] proceedings were held." § 921(a)(20); *Beecham*, 511 U.S. at 371, 374. The majority cannot deny that Walker's right to vote under federal law has been restored within the ordinary meaning of the term—so in order to avoid a result it dislikes, it saddles the term "restore" with requirements relating to the form and the express purpose of the governing law which have no relation to the word itself, and no other support in the text of the statute.

I have no dispute with the majority's holding that the restoration of rights must be made with respect to a particular conviction, as the statute specifies. That requirement, however, is plainly met here, where the Tennessee state court determined that Walker should regain the state civil rights he lost as a result of his federal conviction. Consistent with principles of federalism, the constitutional provisions governing his right to vote in federal elections give federal effect to the state's "measure of forgiveness" for his conviction. *Logan*, 552 U.S. at 26.

3. The Majority's Purported "Fair Reading" of § 921(a)(20)

The "fair reading" of § 921(a)(20) dictated by the majority is, in the final analysis, a deviation from the ordinary meaning of the text apparently rooted in the majority's distaste for the prospect of reinstating a felon's gun rights.[52] Under a straightforward

---

[2] As support for its preferred policy outcome, the majority points to the annual appropriations ban prohibiting the Bureau of Alcohol, Tobacco, and Firearms from acting on petitions for "relief

application of federal law, Walker's right to vote in federal elections and his right to serve on a federal jury have both been restored—that is, returned to him after they were previously lost as a result of his federal conviction. *See Logan*, 552 U.S. at 31 & n. 3. Unable to gainsay this reality, the majority moves the goalposts—the restoration of his voting rights is not a satisfactory "restoration" because it resulted not from an affirmative act of forgiveness by the federal government, but only the automatic operation of law.

Having found a reason to disregard the restoration of Walker's federal voting rights, the majority abandons the position of high-minded symbolism to insist on the literal import of the plural: the statute exempts only convictions for which civil rights, *plural*, have been restored, so the restoration of the single

---

from the disabilities imposed by Federal laws with respect to the acquisition . . . or possession of firearms." 18 U.S.C. § 925(c). Although acknowledging that § 925(c) itself has no bearing on whether Walker's federal civil rights have been restored, the majority cites to legislative history connected with the appropriations ban to assert that Congress believed that "'those who commit felonies should not be allowed to have their right to own a firearm restored.'" Maj. Op. at 13 (quoting H.R. Rep. No. 104-183, at 15 (1995). Taken at face value, this line from the legislative history proves too much. Congress has never repealed § 921(a)(20), which operates to restore the firearm rights of some who have committed felonies, and it goes without saying that a statement in legislative history cannot negate a duly enacted statute. In context, moreover, it is clear that Congress was expressing a view related to allocation of resources in reference to the application procedure contained in § 925(c); in its words, "[t]here is no reason to spend the Governments' [sic] time or taxpayer's money to restore a convicted felon's right to own a firearm." H.R. Rep. No. 104-183, at 15 (1995).

right the majority is willing to recognize cannot exempt Walker from the firearm disability. The majority explains that the plural matters because the restoration of a single right reflects less trust and forgiveness, less confidence that the felon "can function as a normal citizen in more than one institutional context." Maj. Op. at 10. The federal government, of course, is not withholding any of Walker's civil rights—all three of which he possesses today. Rather, federal law relies on Tennessee's trust in Walker to restore not one, but two of his federal citizenship rights. Under § 1865(b)(5), because Tennessee has restored Walker's state civil rights, federal law restores his right to serve on a federal jury. Similarly, under the constitutional provisions governing voter qualifications, because Tennessee has restored Walker's right to vote in state elections, federal law restores his right to vote in federal elections.

CONCLUSION

It should be beyond the debate that the fairest reading of § 921(a)(20) would give effect to the ordinary meaning of the text and honor the interdependence inherent in our federal constitutional design. Walker lost his federal civil rights to serve as a juror and to vote after his conviction, and, as a result of the Tennessee court order reinstating his state civil rights, those rights have been restored to him in accordance with federal law. I would therefore hold that he has met the requirements of the exemption clause and is not subject to the federal firearms ban applicable to felons.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 14-5703

[Filed September 1, 2015]

BILLY YORK WALKER, Plaintiff - Appellant,	)
v.	)
UNITED STATES OF AMERICA, Defendant - Appellee.	)

Before: SUHRHEINRICH, CLAY, and ROGERS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Western District of Tennessee at Jackson.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/_____
Deborah S. Hunt, Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE EASTERN DIVISION

No. 13-1212

[Filed June 5, 2014]

BILLY YORK WALKER,	)
	)
Plaintiff,	)
	)
v.	)
	)
UNITED STATES OF AMERICA,	)
	)
Defendant.	)
	)

ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This action initiated by the Plaintiff, Billy York Walker, on July 15, 2013, seeks a judgment against the Defendant, the United States of America, declaring that his civil rights have been restored, or alternatively, for restoration of any civil rights remaining to be reinstated as a result of his prior criminal conviction in this Court. (D.E. 1.) Pending are

the United States' motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) and Plaintiff's motion for summary judgment under Fed. R. Civ. P. 56 (D.E. 15 & 18), both of which are now ripe for disposition.

FACTS

The facts in this matter are wholly undisputed. Plaintiff was convicted of non-violent felony offenses in 1987 and, as a result, lost a number of rights and privileges allowed to citizens of the United States and the State of Tennessee, including the right to possess a firearm. (D.E. 27 at ¶ 4.) On June 1, 2010, a Circuit Court for the Twenty-Ninth Judicial District of Tennessee ordered that the "civil and citizenship rights of Billy York Walker are restored pursuant to Tenn. Code Ann. § 40-29-105." (D.E. 27-1 at 2–3.) The restored rights included "without limitation, the right to vote, the right to serve on a jury, and the right to hold an office of public trust." (Id. at 2.) On March 22, 2012, the same court confirmed its previous order and clarified that the restoration included the "explicit right to bear and possess firearms." (D.E. 27-2 at 2.) Despite the state court's orders, Walker remained designated as a person prohibited from possessing or purchasing firearms by the federal government. (D.E. 27 at ¶18.) In January, 2013, Plaintiff attempted to purchase a handgun at Gander Mountain, a sporting goods store that sells firearms, in Jackson, Tennessee, but was prohibited from doing so. (Id.) On January 7, 2013, Walker received a letter from the Tennessee Bureau of Investigation informing him that this denial was based upon the Federal Bureau of Investigation's

listing of Plaintiff as disqualified for firearms in their records database. (Id.; D.E. 27-3.)

STANDARD OF REVIEW

Rule 12(c) provides that "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." When a party does so, "all well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment." JPMorgan Chase Bank, N.A. v. Winget, 510 F.3d 577, 581 (6th Cir. 2007) (quoting S. Ohio Bank v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 479 F.2d 478, 480 (6th Cir. 1973)). As with a motion under Rule 12(b)(6), while "detailed factual allegations" are unnecessary, a plaintiff must still "provide the grounds of his entitlement to relief" beyond just "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations and quotation marks omitted). Thus, "[t]he Court need not accept the plaintiff's legal conclusions or unwarranted factual inferences as true." Barany-Snyder v. Weiner, 539 F.3d 327, 332 (6th Cir. 2008) (internal quotation marks omitted). The motion must be "granted when no material issue of fact exists and the party making the motion is entitled to judgment as a matter of law." Winget, 510 F.3d at 582 (quoting Paskvan v. City of Cleveland Civil Serv. Comm'n, 946 F.2d 1233, 1235 (6th Cir. 1991)).

Rule 56 provides in pertinent part that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact

and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "There is no genuine issue for trial where the record 'taken as a whole could not lead a rational trier of fact to find for the non-moving party.'" Burgess v. Fischer, 735 F.3d 462, 471 (6th Cir. 2013) (quoting Matsushita Elec. Indus., Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)). A court's function at the summary judgment stage is not to "weigh the evidence and determine the truth of the matter[,]" but is "to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). "In doing so, the evidence is construed and all reasonable inferences are drawn in favor of the nonmoving party." Burgess, 735 F.3d at 471 (citing Hawkins v. Anheuser–Busch, Inc., 517 F.3d 321, 332 (6th Cir. 2008)). A court must grant summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); *see* In re Morris, 260 F.3d 654, 665 (6th Cir. 2001) (same).

ANALYSIS

1. Restoration of Federal Civil Rights by Operation of Law[1]

Plaintiff asserts that the Court has federal question jurisdiction to hear this matter under 28 U.S.C. § 1331, and seeks relief in the form of a declaratory judgment under 28 U.S.C. § 2201. (D.E. 27 at ¶2, 19.) The federal question presented is whether Walker has had his civil rights restored by operation of federal law within the meaning of 18 U.S.C. § 921(a)(20). (Id. at ¶11.)

Eighteen U.S.C. § 922(g) prohibits a felon, or a person "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year[,]" from possessing or transporting any firearm or ammunition in or affecting interstate or foreign commerce. What constitutes a felony conviction under the statute is "determined in accordance with the law of the jurisdiction in which the proceedings were held." 18 U.S.C. § 921(a)(20). However, "any conviction . . . for which a person . . . has had civil rights restored" is not " considered a conviction for purposes of [the statute]" unless the "restoration of civil rights expressly provides

[1] Any documents filed by Plaintiff in conjunction with his motion for summary judgment will not be considered in relation to Defendant's motion for judgment on the pleadings. *See* Fed. R. Civ. P. 12(d) (providing circumstances in which a Rule 12(c) motion must be converted to one for summary judgment); *see also* Max Arnold & Sons L.L.C. v. W.L. Hailey & Co. Inc., 452 F.3d 494, 503 (6th Cir. 2006) ("[T]he mere presentation of evidence outside of the pleadings, absent the district court's rejection of such evidence, is sufficient to trigger the conversion of a Rule 12(c) motion to a motion for summary judgment.").

that the person may not ship, transport, possess, or receive firearms." Id. Additionally, "the law of the jurisdiction in which proceedings were held applies not only to what is a conviction, but also to the effect of post-conviction events under the statute." United States v. Jones, 253 F. App'x 550, 552 (6th Cir. 2007) (citing Beecham v. United States, 511 U.S. 368, 372 (1994)). Therefore, to fall under 18 U.S.C. § 921(a)(20), a felon convicted in federal court must obtain a restoration of his civil rights under federal law. Beecham, 511 U.S. at 372.

In Beecham, although the United States Supreme Court clarified the forum in which a felon must seek such a restoration, it explicitly "express[ed] no opinion on whether a federal felon cannot have his civil rights restored under federal law." 511 U.S. at 373 n.*. The Court explained that

> [t]his is a complicated question, one which involves the interpretation of the federal law relating to federal civil rights, *see* U.S. Const., Art. I, § 2, cl. 1 (right to vote for Representatives); U.S. Const., Amdt. XVII (right to vote for Senators); 28 U.S.C. § 1865 (right to serve on a jury); consideration of the possible relevance of 18 U.S.C. § 925(c) (1988 ed., Supp. IV), which allows the Secretary of the Treasury to grant relief from the disability imposed by § 922(g); and the determination whether civil rights must be restored by an affirmative act of a Government official, see United States v. Ramos, 961 F.2d 1003, 1008 (1st Cir. 1992), *cert. denied*, 506 U.S. 934, 113 S. Ct. 364, 121 L. Ed. 2d 277 (1992), or whether they may be restored

> automatically by operation of law, *see* United States v. Hall, 20 F.3d 1066 (10 Cir. 1994). We do not address these matters today.

Id. The Court did, however, point out that many jurisdictions lack procedures for restoring civil rights, and therefore if there is indeed no restoration procedure in federal law, "a person convicted in federal court is no worse off than a person convicted in a court of a State that does not restore civil rights." Beecham, 511 U.S. at 373. Before and after Beecham, courts squarely faced with a request to restore a federal felon's civil rights have rejected the existence of any procedure to provide such relief. *See* United States v. Doran, 113 F.3d 1236 (6th Cir. 1997), *cert. denied*, 522 U.S. 896 (denying federal felon's request for a restoration of his civil rights and concluding that "there is no procedure under federal law for what [the plaintiff] seeks."); United States v. Geyler, 932 F.2d 1330, 1333 (9th Cir. 1991), *abrogated on other grounds by* Beecham, 511 U.S. 368 ("there is no federal procedure for restoring civil rights to a federal felon").[2]

Plaintiff first contends that the text of § 921(a)(20) itself reveals Congress' intention that a federal felon be allowed to restore his civil rights and qualify for the firearms disability exemption. (D.E. 24 at 6.) As Defendant correctly points out, this argument that a federal restoration *must* be available clearly contradicts the Supreme Court's holding in Beecham. There, while the Court did not hold that any

---

[2] As will be discussed, the Court in Beecham rejected only the assumed consequences of this holding in Geyler, not the holding itself. 511 U.S. at 372–73.

restoration procedure was not available, it did explicitly reject the argument that some provisions for the restoration of a federal felon's rights must be available. Beecham, 511 U.S. at 372–73 (stating that "nothing in § 921(a)(20) supports the assumption"). Indeed, the Court acknowledged that if there is no such avenue, then a federal felon is simply left without recourse—the same as felons in many other jurisdictions. Id. at 373. Therefore, Plaintiff's argument that the mere existence of the exemption clause establishes a right to restore his civil rights under federal law is without merit.

Walker further maintains that the open question in Beecham of whether a restoration of federal civil rights for a federal felon may be effected through the operation of law has been answered affirmatively. (D.E. 24 at 9.) Plaintiff discusses United States v. Cassidy, 899 F.2d 543, 549 (6th Cir. 1990), for the proposition that the restoration of civil rights under the statute means restoration of the individual right to vote, to seek and hold public office, and to serve on a jury. (D.E. 24 at 7–9.) He then asserts that the Supreme Court has recognized these same rights as the key ingredients for a restoration under the exemption clause, relying on both Logan v. United States, 552 U.S. 23, 28 (2007), and Caron v. United States, 524 U.S. 308, 316 (1998), for support. (D.E. 24 at 8–9.)

Plaintiff's reliance on the holdings in each of these cases suffers from the same fundamental flaw—each case is grappling with a felon's state conviction and his purported restoration of rights under that state's laws. *See* Logan, 552 U.S. 23 (applying Wisconsin law); Caron, 524 U.S. 308 (applying Massachusetts law);

Cassidy, 899 F.2d 543 (applying Ohio law). These courts, as have a number of others, do indeed discuss the rights described by Walker as those indicative of a restoration of civil rights sufficient to remove a federal firearm disability.[3] However, in every instance, they do so only as an effort to establish congruity between the federal statute and variant state laws providing piecemeal restorations of various civil rights for state, not federal, felons. Thus, none of these cases cited by Plaintiff lend support for his assertion that a federal felon may qualify for exemption from the firearm's disability by regaining these rights.

Even assuming that a restoration by operation of law for a federal felon is possible, the route advanced by Walker directly contradicts the Supreme Court's holding in Beecham. Plaintiff insists that he has regained various rights at both the federal and state level pursuant to the state court order in conjunction with Tennessee statutory law and the United States Constitution.[4] (D.E. 24 at 10–20.) He claims that the

---

[3] Numerous courts recognize these key civil rights that form a collective gateway to a "restoration of civil rights" for state felons under the federal firearms disability statute. *See, e.g.*, Buchmeier v. United States, 581 F.3d 561, 564 (7th Cir. 2009); United States v. Gillaum, 372 F.3d 848, 860 (7th Cir. 2004); United States v. Leuschen, 395 F.3d 155, 160 (3d Cir. 2005); Sittman v. United States, 56 F.3d 73 (9th Cir. 1995)

[4] It is evident from Walker's complaint that the only relief he seeks is to remove his federal firearms disability so that he may possess and transport firearms. (D.E. 27.) The Court's determination of whether or not he possesses the right to vote, to serve on a jury, or to hold public office at the federal level is limited to the analysis for qualification under the § 921(a)(20) exemption clause. The Court

structure of the Constitution grounds the provision of these federal civil rights in state law and state action, and that the Court in Beecham "failed to heed" this "basic verity." (Id. at 19–20.) Therefore, he suggests, because the State of Tennessee has restored him these key civil rights, so has the United States.

Walker cites no case on point recognizing the validity of this Constitutional argument that would essentially render meaningless the Supreme Court's reading of 18 U.S.C. § 921(a)(20) in Beecham. The Court there made very clear that, for purposes of the exemption clause, a federal felon must regain his civil rights, if possible, under federal law—not through an elaborate circumvention of the statute's choice of law clause by indirectly applying state law and state action in the guise of federal law. Beecham, 511 U.S. at 371. Thus, Plaintiff's assertion that his civil rights have been restored by operation of federal law fails to state a claim for which relief may be granted.

2. Removal of Federal Firearms Disability Under 18 U.S.C. § 925(c)

While Walker goes to great lengths to make his argument based on constitutional grounds, he avoids mentioning the one path Congress has explicitly, and seemingly exclusively, provided for which a federally

---

expresses no opinion as to whether Plaintiff may actually exercise these rights. To the extent Walker advances such claims, he clearly fails to present a case or controversy in that he has not shown that any of these rights have been denied to him. Kardules v. City of Columbus, 95 F.3d 1335, 1344 (6th Cir. 1996) (discussing Golden v. Zwickler, 394 U.S. 103, 108 (1969)) (the case or controversy must be ripe for adjudication and fit for judicial resolution).

convicted felon may obtain relief from his firearms disability. Under 18 U.S.C. § 925(c), a person under a federal firearms disability may apply to the Attorney General of the United States for relief provided that certain circumstances reflecting fitness to again possess or transport firearms are established to the Attorney General's satisfaction.[5] Authority to grant relief under this statute has been delegated from the Attorney General to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (the "ATF"). *See* United States v. Bean, 537 U.S. 71, 74 n.2 (2002). If the person's application is denied, they may then seek judicial review of the decision by filing a petition in the United States district court in which they reside. Id.

Walker likely did not raise § 925(c) because Congress, while ostensibly providing this avenue for relief since 1992, has effectively denied all access to the procedure through an annual ban on appropriations for the ATF to process any petitions. *See* Department of Justice Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 5, 57 (Providing that "none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under section 925(c) of title 18, United States Code[.]"); *see also* Bean, 537 U.S. at 74 (describing that the appropriations ban has been in effect since 1992). In doing so, Congress knowingly foreclosed all relief for a federal felon seeking to remove

---

[5] Applications were originally made to the Secretary of Treasury, but the function was given to the Attorney General in 2002 when the ATF was transferred from the Department of Treasury to the Department of Justice. Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2276 (2002).

his firearms disability,[6] and the Supreme Court has recognized that, absent any action by the ATF, district courts lack jurisdiction to review any claims brought under this section. Bean, 537 U.S. at 77–78 ("[T]he very use in § 925(c) of the word 'review' to describe a district court's responsibility in this statutory scheme signifies that a district court cannot grant relief on its own, absent an antecedent actual denial by ATF.").

Likewise, several federal courts have implicitly recognized this statutory procedure as the only method by which a federal felon may remove his federal firearms disability. *See, e.g.*, Drake v. United States, 538 F. App'x 584 (5th Cir. 2013) ("Relief from disabilities imposed by federal law related to firearms ownership and possession is governed by 18 U.S.C. § 925(c) . . . . [The plaintiff] has made no such application, and the federal courts therefore lack jurisdiction."); United States v. Schnell, 353 F. App'x 12, 14 (7th Cir. 2009) (The plaintiff "has neither sought nor received the restoration of his civil rights through the procedure established in 18 U.S.C. § 925(c)."); Drake v. United States, 249 F. App'x 332, 333 (5th Cir. 2007) (same); United States v. Rhynes, 196 F.3d 207,

---

[6] *See, e.g.*, Mullis v. United States, 230 F.3d 215, 220 (6th Cir. 2000) (reviewing legislative history of the appropriations ban); H.R. Rep. No. 104–183 (1995) ("[T]hose who commit felonies should not be allowed to have their right to own a firearm restored. . . . There is no reason to spend the Government's time or taxpayer's money to restore a convicted felon's right to own a firearm."); 142 Cong. Rec. S12164 (Oct. 19, 1996) (statement of Sen. Simon) ("The goal of this provision has always been to prohibit convicted felons from getting their guns back—whether through ATF or the courts. It was never our intention to shift the burden to the courts, and the Supreme Court has approved of the foreclosure.")

235 (4th Cir. 1999) *opinion vacated in part on other grounds on reh'g en banc*, 218 F.3d 310 (4th Cir. 2000) (same).

Thus, to the extent there is a remedy for what Walker seeks, it is through § 925(c), which he has not utilized. Even if Plaintiff had attempted to make such an application, however, this Court would lack subject matter jurisdiction to review it absent an actual denial by the ATF. Bean, 537 U.S. at 77–78.

CONCLUSION

For these reasons, Plaintiff's assertion that his civil rights have been restored by operation of law or should be restored by order of this Court, fails to state a claim for which relief may be granted.[7] Therefore, Defendant's motion for judgment on the pleadings is GRANTED and Plaintiff's motion for summary judgment is DENIED. Walker's complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this 5th day of June, 2014.

---

[7] The parties also disagree as to whether Plaintiff has removed all firearms disabilities placed on him by the State of Tennessee. Under Caron, any remaining disability at the state level triggers a full firearms disability under the federal statute. 524 U.S. at 315–16. Defendant points out that, under Tennessee law, after a felon's civil rights have been restored, he is still required to obtain a carry permit before being allowed to possess a handgun. (D.E. 30 at 8 (citing Tenn. Code Ann. § 39-17-1307).) The United States argues that this represents a limitation sufficient to trigger the full federal disability under Caron's "all-or-nothing" approach. (Id.) However, because the Court finds that Plaintiff's federal disability remains unchanged by any state action, it is unnecessary to address this argument.

s/ J. DANIEL BREEN
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

Civil Case No. 1:13 -cv-1212-JDB/ egb

[Filed June 18, 2014]

BILLY YORK WALKER,	)
	)
Plaintiff,	)
	)
v.	)
	)
UNITED STATES OF AMERICA,	)
	)
Defendant.	)
	)

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and the issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in accordance with the Order Granting Defendant's Motion for Judgment on the Pleadings and Denying Plaintiff's Motion for Summary Judgment entered in the above-styled matter on 6/5/2014, this complaint is DISMISSED WITH PREJUDICE.

APPROVED:

s/J/ Daniel Breen
Chief United States District Judge

THOMAS M. GOULD
CLERK

BY: s/ Evelyn Cheairs
DEPUTY CLERK

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 14-5703

[Filed November 12, 2015]

BILLY YORK WALKER, Plaintiff-Appellant,	)
v.	)
UNITED STATES OF AMERICA, Defendant-Appellee.	)

O R D E R

BEFORE: SUHRHEINRICH, CLAY, and ROGERS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied. Judge Clay would grant rehearing for the reasons stated in his dissent.

ENTERED BY ORDER OF THE COURT

/s/_____
Deborah S. Hunt, Clerk

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE EASTERN DIVISION

Civil Action No. _____

[Filed July 15, 2013]

BILLY YORK WALKER, Plaintiff,	)
vs.	)
UNITED STATES OF AMERICA, Defendants.	)

COMPLAINT FOR DECLARATORY JUDGMENT

Comes the Plaintiff, Billy York Walker, and files this action for a declaratory judgment that his civil rights have been restored, and, alternatively, for restoration of any civil rights remaining to be restored as a result of his conviction in this Court. For his complaint, Billy York Walker states:

PARTIES, JURISDICTION, AND VENUE

1. Billy York Walker is a citizen and resident of Dyer County, Tennessee.

2. As set out in *Beecham v. United States*, 511 U.S. 368 (1994), the question of the full restoration of

civil rights for a person convicted of a criminal offense in federal court currently is one of federal law. Consequently, the question presented in this Complaint arises "under the Constitution [and] laws... of the United States" and this Court has federal question jurisdiction under 28 U.S.C. §1331.

3. The prior conviction of Billy York Walker occurred in this Court and the actions giving rise to the restoration of his civil rights have occurred within the geographic boundaries of this Court; consequently, venue is proper in this Court. 28 U.S.C. §123(c)(1); 28 U.S.C. §1391(b)(2).

FACTS AND CAUSES OF ACTION

4. In case number CR-87-20074 before this Court, styled *United States v. Billy York Walker*, Billy York Walker was convicted of certain criminal offenses, including violations of United States Code, Title 18, sections 2, 371, 1005, 1014, and 1344.

5. Billy York Walker served and completed the sentence of confinement imposed by the judgment in *United States v. Billy York Walker*.

6. In 2010 and 2012, after notice to the United States Attorney for the Western District of Tennessee, Billy York Walker sought and obtained a full restoration of his civil rights in the Circuit Court of Tennessee for the Twenty-Ninth Judicial District. (Certified copies of two orders, one restoring his civil rights and one clarifying the scope of the restoration are attached as Exhibits A and B to this Complaint.)

7. The orders of the Circuit Court of Tennessee for the Twenty-Ninth Judicial District restored the

"civil and citizenship rights of Billy York Walker[.]" (Order, 1 June 2010, p.1 [attached as Exhibit A]) The restoration included, "without limitation, the right to vote, the right to serve on a jury, and the right to hold an office of public trust[,]" as well as the right to possess a firearm (under state law). (*Id.*; Order, 22 March 2012, p. 1 [attached as Exhibit B])

8. The action of the state of Tennessee with respect to Billy York Walker effected a restoration of his federal civil rights, because those rights arise from and depend on certain state actions, as is described below in this Complaint and in the accompanying memorandum of law.

9. The United States Supreme Court has noted that a restoration of civil rights may occur by operation of law. *Logan v. United States*, 552 U.S. 23, 28 (2007) (resolving the question stated to be unanswered in the last clause in note * in *Beecham v. United States*, 511 U.S. 368, 373 n.* (1994)).

10. Under *United States v. Cassidy*, 899 F.2d 543 (6th Cir. 1990), "civil rights" includes the right to vote, the right to seek and hold public office, and the right to serve on a jury.

11. Billy York Walker seeks a declaration from this Court that his civil rights have been restored by operation of federal law within the meaning of 18 U.S.C. §921(a)(20), *Beecham v. United States*, 511 U.S. 368 (1994), *Logan v. United Sta*tes, 552 U.S. 23 (2007), and *United States v. Cassidy*, 899 F.2d 543 (6th Cir. 1990).

12. The right to vote in federal elections, the right to seek and hold federal office, and the right to

serve on a federal jury, i.e., the federal civil rights, of Billy York Walker have been restored by operation of certain provisions of United States Constitution, which refers to state law to determine the existence of federal civil rights, and by the operation of certain federal statutes. *See Beecham v. United States*, 511 U.S. 368, 373 n.* (1994); 28 U.S.C. §1865(b)(5).

13. Billy York Walker possesses the civil right to vote in federal and state elections:

a. He may vote in state elections under the order issued by the Circuit Court of Tennessee for the Twenty-Ninth Judicial District (a copy of which is attached as Exhibit A to this complaint); and,

b. He may vote in federal elections because the determination of voting eligibility in federal elections is made on the basis of state law under Article I, section 2, clause 1 and Amendment XVII of the United States Constitution.

14. Billy York Walker possesses the right to seek and hold federal and state offices:

a. He may seek and hold state office under the order issued by the Circuit Court of Tennessee for the Twenty-Ninth Judicial District (a copy of which is attached as Exhibit A to this complaint); and,

b. He may seek and hold federal offices such as United States Representative or United States Senator because he meets the qualifications contained in the United States Constitution to do so. CONSTITUTION OF THE UNITED STATES, Article I, section 2, clause 2; *id.*, Article I, section 3, clause 3; *Powell v. McCormack*, 395 U.S. 496 (1969).

15. Billy York Walker possesses the right to serve on a jury in federal and state court:

a. He may serve on a jury in state court under the order issued by the Circuit Court of Tennessee for the Twenty-Ninth Judicial District (a copy of which is attached as Exhibit A to this complaint); and,

b. He may serve on a federal jury because 28 U.S.C. §1865(b)(5) permits persons who have had a disqualifying conviction to serve on a jury upon the restoration of civil rights. Since 28 U.S.C. §1865 contains no choice of law provision, (as does 18 U.S.C. §921(a)(20)),[1] restoration of civil rights is most naturally read to include the state court restoration already accomplished and shown by way of Exhibits A and B to this complaint.

16. Since Billy York Walker now possesses those rights, the civil rights of Billy York Walker have been restored within the meaning of 18 U.S.C. §921(a)(20) by operation of federal law, and he no longer has a conviction that disqualifies him from possessing or receiving a firearm.

17. Moreover, the structure of the federal system enshrined in the United States Constitution shows that certain determinations under state law effect a restoration of federal civil rights, as has occurred in the case of Billy York Walker.

---

[1] *See Beecham v. United States*, 511 U.S. 368 (1994) (discussing the choice of law provision in 18 U.S.C. §921(a)(20)).

18. *First Cause of Action – Declaratory Judgment*. Billy York Walker is a person and he has an interest in the preservation and maintenance of his fundamental right to keep and bear arms, which is a right protected by the Amendments XIV and II to the United States Constitution.[2] He also has an interest in a determination that he will not face criminal penalties for possessing or receiving a firearm.

19. Under 28 U.S.C. §2201 and Fed. R. Civ. P. 57, Billy York Walker is entitled to a declaration from this Court that his civil rights have been restored within the meaning of 18 U.S.C. §921(a)(20).

20. Alternatively, Billy York Walker is entitled to a declaration that his conviction was not a "crime punishable by imprisonment for a term exceeding one year" that precludes him from possessing a firearm, under:

a. The definition given in 18 U.S.C. §921(a)(20)(A) (concerning non-violent business regulation offenses); and/or,

b. The definition given in the last unnumbered sentence of §921(a)(20) (following subsection (B) and concerning the exemption of those whose civil rights have been restored from the possession, shipping, receipt, and transportation prohibitions imposed by the GCA).

---

[2] "[T]he right to keep and bear arms [is] among those fundamental rights necessary to our system of ordered liberty." *McDonald v. City of Chicago, Ill.*, 561 U.S. ___, 130 S. Ct. 3020, 3042 (2010).

21. Billy York Walker has filed with this complaint an initial memorandum of law in support of this complaint, in order to facilitate a speedy hearing of this case on the Court's docket under Fed. R. Civ. P. 57. The memorandum of law is attached as Exhibit C to this Complaint.

WHEREFORE, PLAINTIFF PRAYS FOR RELIEF AS FOLLOWS:

A. For a decree of this Court declaring that the civil rights of Billy York Walker, including but not limited to the right to keep and bear arms, have been restored in full;

B. That, pursuant to Rule 57 of the Federal Rules of Civil Procedure, this matter be expedited upon the Court's docket;

C. For such other and further relief to which Billy York Walker may be entitled.

Respectfully Submitted,

Attorneys for Billy York Walker:

WILKERSON GAULDIN HAYES JENKINS & DEDMON
By: /s/ William Lewis Jenkins Jr.
Douglas W. Wilkerson (Tenn. Bar #006048)
Electronic mail: dwilkerson@tenn-law.com
W. Lewis Jenkins Jr. (Tenn. Bar #017423)
Electronic mail: ljenkins@tenn-law.com
112 West Court Street, P.O. Box 220
Dyersburg, Tennessee 38025-0220
Tel.No. 731.286.2401 / Fax No. 731.286.2294

Exhibit A
to
Complaint for Declaratory Judgment

IN THE CIRCUIT COURT OF TENNESSEE FOR THE TWENTY-NINTH JUDICIAL DISTRICT AT DYERSBURG

Civil Action No. 10-CV-38

[Filed July 15, 2013]

IN RE:	)
	)
BILLY YORK WALKER	)
	)

ORDER

This cause came to be heard on the Petition for Restoration of All Citizenship and Civil Rights filed by Billy York Walker. Based on the verified Petition, statements of counsel, and the entire record in this matter the court finds as follows:

1. Notice of the Petition for Restoration of All Citizenship and Civil Rights was properly provided to the District Attorney General for the 29th Judicial District and the United States Attorney for the Western District of Tennessee pursuant to Tenn. Code Ann. § 40-29-103.

2. No opposition to the Petition for Restoration of All Citizenship and Civil Rights was filed by the District Attorney General for the 29th Judicial District or the United States Attorney for the Western District of Tennessee.

3. Billy York Walker is eligible to have all civil and citizenship rights restored, including, without limitation, the right to vote, the right to serve on a jury, and the right to hold an office of public trust.

IT IS, THEREFORE, ORDERED THAT:

A. The civil and citizenship rights of Billy York Walker are restored pursuant to Tenn. Code Ann.§ 40-29-105.

B. The Circuit Court clerk shall issue a certificate of restoration to Billy York Walker upon the form prescribed by the coordinator of elections.

ENTERED this the 1st day of June, 2010.

/s/_____
R. Lee Moore, Circuit Court Judge

APPROVED BY:

WILKERSON GAULDIN HAYES & JENKINS

By: /s/_____
Jason R. Creasy, BPR #019759
Attorneys for Billy York Walker
112 West Court Street, P.O. Box 220
Dyersburg, TN 38025-0220
Tel. No.: (731) 286-2401

[Circuit Court Dyer County, TN Seal]

Exhibit B
to
Complaint for Declaratory Judgment

IN THE CIRCUIT COURT OF TENNESSEE FOR THE TWENTY-NINTH JUDICIAL DISTRICT AT DYERSBURG

Civil Action No. 10-CV-38

[Filed July 15, 2013]

IN RE:	)
	)
BILLY YORK WALKER	)
	)

ORDER

This cause came to be heard on the Petition for Restoration of All Citizenship and Civil Rights filed by Billy York Walker. Based on the Petition, statements of counsel, and the entire record in this matter the court finds as follows:

1. An Order Restoring the Citizenship and Civil Rights of Billy York Walker was entered on June 1, 2010.

2. Said order restored all civil and citizenship rights of Billy York Walker, however, it did not explicitly state that he had the right to possess a firearm.

IT IS, THEREFORE, ORDERED THAT:

A. The Order of June 1, 2010 Order Restoring the Citizenship and Civil Rights of Billy York Walker is confirmed as the order of this court.

B. Billy York Walker shall have the explicit right to bear and possess firearms.

ENTERED this the 22nd day of March, 2012.

/s/_____
R. Lee Moore, Circuit Court Judge

[Circuit Court Dyer County, TN Seal]

APPROVED BY:

WILKERSON GAULDIN HAYES & JENKINS

By: /s/_____
Jason R. Creasy, BPR #019759
Attorneys for Billy York Walker
112 West Court Street, P.O. Box 220
Dyersburg, TN 38025-0220
Tel. No.: (731) 286-2401

/s/_____
C. Phillip Bivens
District Attorney General

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE EASTERN DIVISION

Civil Action No. _____

[Filed July 15, 2013]

BILLY YORK WALKER, Plaintiff,	)
vs.	)
UNITED STATES OF AMERICA, Defendants.	)

INITIAL MEMORANDUM OF LAW IN SUPPORT OF COMPLAINT FOR DECLARATORY JUDGMENT

1. Introduction.

Billy York Walker seeks a declaration that his civil rights have been restored within the meaning of 18 U.S.C. §921(a)(20). This Court convicted Billy York Walker of certain offenses arising under federal law in 1988, but Mr. Walker now possess the right to vote in federal elections, the right to seek and hold federal office, and the right to serve on a federal jury; in short, under applicable case law from the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit, the civil rights of Billy York Walker have been restored within the meaning of §921(a)(20). Under *Beecham v. United States*, 511 U.S. 368 (1994), however, Billy York Walker seeks recognition of the restoration by federal authorities.

The definitions within the Gun Control Act of 1968, as amended ("GCA"), permit a person who has a criminal conviction that otherwise would disqualify that person from possessing, shipping, receiving, or transporting firearms in interstate commerce to possess a firearm (and engage in the other otherwise prohibited actions) so long as that person "has had civil rights restored."[1] In relevant part, the definitions in the GCA applicable to this dispute provide:

> The term "crime punishable by imprisonment for a term exceeding one year" does not include * * * * any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

---

[1] Gun Control Act of 1968, Pub. L. No. 90-618, §102, 82 Stat. 1213, 1216 (1968); Firearm Owners Protection Act of 1986, Pub. L. No. 99-308, §101, 100 Stat. 449, 449-450 (1986). The section of the GCA under consideration in this memorandum is currently codified, as amended, at the last unnumbered sentence of 18 U.S.C. §921(a)(20). In this memorandum, the statute may be referred to, at times, as the "exemption clause" (as it was called by the United States Supreme Court in *Beecham v. United States*, 511 U.S. 368,369 (1994)) or as §921(a)(20).

18 U.S.C. §921(a)(20) [introductory language and last unnumbered sentence].

In 1994, the United States Supreme Court determined that the choice of law provision within 18 U.S.C. §921(a)(20), i.e., the "[w]hat constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held" language, means that under §921(a)(20), civil rights must be restored in the jurisdiction in which the conviction originally occurred. *Beecham v. United States*, 511 U.S. 368 (1994). Consequently, in order to remove an otherwise disqualifying state court conviction from the scope of the GCA civil rights must be restored under state law and in order to remove an otherwise disqualifying federal court conviction from the scope of the GCA civil rights must be restored under federal law. *Id.* at 371, 374.

The *Beecham* court declined to determine what constituted a restoration of civil rights after a disqualifying conviction in federal court, saying:

> We express no opinion on whether a federal felon cannot have his civil rights restored under federal law. This is a complicated question, one which involves the interpretation of the federal law relating to federal civil rights, see U.S. Const., Art. I, § 2, cl. 1 (right to vote for Representatives); U.S. Const., Amdt. XVII (right to vote for Senators); 28 U.S.C. § 1865 (right to serve on a jury); consideration of the possible relevance of 18 U.S.C. § 925(c) (1988 ed., Supp. IV), which allows the Secretary of the Treasury to grant relief from the disability

> imposed by § 922(g); and the determination whether civil rights must be restored by an affirmative act of a Government official, see *United States v. Ramos*, 961 F.2d 1003, 1008 (CA1), *cert. denied*, 506 U.S. 934 (1992), or whether they may be restored automatically by operation of law, see *United States v. Hall*, 20 F.3d 1066 (CA10 1994). We do not address these matters today.

Id. at 373 n.*.

Billy York Walker now asserts that the question not answered by the *Beecham* court must be answered by a determination that restoration of federal civil rights occurs by operation of law once sufficient conditions have been met, and Billy York Walker asserts that he has met those conditions.

2. Under Sixth Circuit precedent approved in discussion by the United States Supreme Court, restoration of civil rights means the restoration of the individual to the right to vote, to seek and hold public office, and to serve on a jury. The United States Supreme Court also has determined that restoration of civil rights can occur by operation of law.

The United States Court of Appeals for the Sixth Circuit determined, in 1990, that the operation of §921(a)(20) did not depend on any formality or specific document, but on the actual investment in the affected person of substantive "civil rights," including "the right to vote, the right to seek and hold public office and the right to serve on a jury." *United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990). The Sixth Circuit stated:

> The language of the statute points out the category of "rights" that Congress intended to reach in the definition of "crime punishable by imprisonment for a term exceeding one year." The fact that Congress used the term "civil rights," as opposed to "all rights and privileges," as the government would have us interpret the statute, indicates that Congress intended to encompass those rights accorded to an individual by virtue of his citizenship in a particular state. These rights include the right to vote, the right to seek and hold public office and the right to serve on a jury.

Id. at 549. *Accord Hampton v. United States*, 191 F.3d 695, 699 (6th Cir. 1999) (under §921(a)(20), the "focus is particularly placed on the three civil rights considered key by the Sixth Circuit—the right to vote, hold public office, and serve on a jury").

The Supreme Court has recited twice in passing the three rights mentioned by the Sixth Circuit as constituting the rights to be restored in order to effect a restoration under §921(a)(20). *Caron v. United States*, 524 U.S. 308, 316 (1998); *Logan v. United States*, 552 U.S. 23, 28 (2007). In *Logan*, the Supreme Court cited *Caron* and said: "While § 921(a)(20) does not define the term 'civil rights,' courts have held, and petitioner agrees, that the civil rights relevant under the above-quoted provision are the rights to vote, hold office, and serve on a jury." 552 U.S. at 28.

In addition, *Caron* settled a question that had occupied some courts of appeal prior to its promulgation and that the *Beecham* opinion has noted as being an open question: whether or not a restoration

that occurred by operation of law, rather than by way of an individualized decision by a governmental actor, qualifies as a restoration under §921(a)(20). *Caron*, 524 U.S. at 313. *Compare Beecham*, 511 U.S. at 373 n.* (noting the disagreement between two courts of appeal on the question). In *Caron* the Supreme Court said:

> We note these preliminary points. First, Massachusetts restored petitioner's civil rights by operation of law rather than by pardon or the like. This fact makes no difference. Nothing in the text of §921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender. While the term "pardon" connotes a case-by-case determination, "restoration of civil rights" does not.

Caron, 524 U.S. at 313. Consequently, one open question noted in the *Beecham* footnote has been resolved by the Supreme Court: civil rights may be restored "automatically by operation of law"; restoration does not require "an affirmative act of a Government official" in order to occur. *See Beecham*, 511 U.S. at 373 n.*.

Presently, then, when a person convicted of a felony in federal court possesses the right to vote (in federal and state elections), the right to hold office (federal and state offices), and the right to serve on a jury (in federal and state courts), civil rights have been restored sufficiently to actuate the restoration provision in §921(a)(20) and to render an otherwise disqualifying conviction inoperative for the purposes of the GCA.

3. Billy York Walker possesses the unrestricted right to vote in federal and state elections.

Billy York Walker possesses the right to vote in federal elections. As the Supreme Court alluded to in *Beecham*, the right to vote in federal elections appears on the face of the United States Constitution. *See Beecham*, 511 U.S. at 373 n.*. The language of the constitutional provisions mentioned in *Beecham* reveals that qualifications to vote in federal elections turns on state law:

> [T]he Electors in each State [for members of the U.S. House of Representatives] shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

CONSTITUTION OF THE UNITED STATES, Article I, section 2, clause 1.

> The electors in each state [for members of the U.S. Senate] shall have the qualifications requisite for electors of the numerous branch of the state legislatures."

CONSTITUTION OF THE UNITED STATES, Amendment XVII. *Cf. also Richardson v. Ramirez*, 418 U.S. 24, 52-56 (1974) (determining that no constitutional prohibition existed on state laws disenfranchising those persons convicted of felonies).[2]

---

[2] The state voter qualification law would have to comply with Amendments XV (prohibiting impairment of voting rights on account of race), XIX (prohibiting impairment of voting rights on account of sex), XXIV (prohibiting poll taxes), and XXVI (setting the voting age at eighteen).

Under Tennessee law applicable to Billy York Walker and Exhibit A to the complaint, Billy York Walker possesses the right to vote in federal elections. First, the Tennessee House of Representatives constitutes Tennessee's most numerous legislative branch. Tenn. Code Ann. §3-1-101. Tenn. Code Ann. §2-1-103 governs the right to vote in elections for the Tennessee House of Representatives: "All elections for public office, for candidacy for public office, and on questions submitted to the people shall be conducted under this title." Tenn. Code Ann. §2-1-103. As permitted by the Tennessee Constitution,[3] the legislature has restricted the franchise of those convicted of certain crimes. Tenn. Code Ann. §2-2-102; *see also* Tenn. Code Ann. §40-29-201 (describing the persons from whom suffrage is removed upon conviction of a crime). Even persons who have been convicted of "infamous" crimes in federal or state court, however, may seek restoration of all citizenship rights, including the right to vote. Tenn. Code Ann. §40-29-101 to §40-29-106 (restoration of citizenship rights, including voting rights); Tenn. Code Ann. §40-29-201 to §40-29-205 (restoration of voting rights only). Once either citizenship or voting rights have been restored, the person may vote again in state and federal

---

[3] "Laws may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes." CONSTITUTION OF THE STATE OF TENNESSEE, Article 4, section 2. "The elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction." CONSTITUTION OF THE STATE OF TENNESSEE, Article I, section 5.

elections in Tennessee: "Any person who has forfeited the right of suffrage because of conviction of an infamous crime may register to vote and vote at any election for which the person is eligible by submitting sufficient proof to the administrator of elections in the country in which the person is seeking to register to vote, that ****[t]he person's full rights of citizenship have been restored as prescribed by law." Tenn. Code Ann. §2-2-139. *See also* Tenn. Code Ann. §40-29-105 (describing restoration of citizenship rights).

The order attached as Exhibit A to the complaint in this matter definitively establishes both the eligibility of Billy York Walker to vote for elections of members of the most numerous house in Tennessee's legislature and the full restoration of all citizenship rights to Billy York Walker. Under the Constitution of the United States, then, the federal voting rights of Billy York Walker have been restored.

4. Billy York Walker possesses the right to serve on a jury in federal court and state court.

The order of the Circuit Court of Tennessee for the Twenty-Ninth Judicial District restored to Billy York Walker the right to serve on a jury, as well as his other civil and citizenship rights. (Order, 1 June 2010, pp. 1-2 [copy attached as Exhibit A to the complaint in this matter) Given the restoration of those rights, Billy York Walker possesses the right to serve on juries in federal and state court.

First, Tennessee law restored to Billy York Walker the right to serve on a jury following restoration of his civil and citizenship rights. *See* Tenn. Code Ann. §40-29-101 ("Persons rendered infamous or deprived of the

rights of citizenship by the judgment of any state or federal court may have their full rights of citizenship restored by the circuit court.")[4]

Second, the statute governing federal jury service contains a specific exemption from its disability

---

[4] The United States District Court for the Middle District of Tennessee discussed in *dicta* whether a blanket restoration under Tenn. Code Ann. §40-29-101 would operate to restore the right to sit on a jury. *See United States v. White*, 808 F. Supp. 586, 589 (M.D. Tenn. 1990). The *White* case concerned a person who had taken no action at all to obtain a restoration of rights, and did not involve an order granting a restoration. The *White* court recognized that it need not even address the issue: "Regardless, the resolution of this question is unnecessary on the facts of the case before this Court." *Id.* Consequently, the discussion in *White* has no bearing on the present case, because the order restoring the full citizenship rights of Billy York Walker under Tenn. Code Ann. §40-29-101 specifically provides that Mr. Walker's right to serve on a jury has been restored.

Moreover, Tenn. Code Ann. §40-29-101 *et seq.* permits a court to make a "full restoration of citizenship rights." Tenn. Code Ann. §40-29-101. Jury service constitutes one important citizenship right in Tennessee. *Wolf v. Sundquist*, 955 S.W.2d 626, 630 (Tenn. App. 1997) ("This right [service on a jury] is of constitutional significance because providing all citizens with an opportunity to participate in the fair administration of justice is fundamental to our democratic system.") *Cf. also Woodson v. Porter Brown Limestone Co., Inc.*, 916 S.W.2d 896, 903 (Tenn. 1996) (holding that jurors "have standing to contest racially-based peremptory challenges"); *May v. Carlton*, 245 S.W.3d 340, 344 (Tenn. 2008) (referring, in passing to "serving as juror, and other rights of citizenship"); *Ehrlich v. Weber*, 88 S.W. 188, 189 (Tenn. 1905) (again, referring in passing to sitting on a jury and "other . . . political rights of citizenship" in a list in the discussion in the case).

provisions for persons convicted of a felony whose civil rights have been restored:

> In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, or the clerk if the court's jury selection plan so provides, shall deem any person qualified to serve on grand and petit juries in the district court unless he—
>
> * * * *
>
> (5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and *his civil rights have not been restored.*

28 U.S.C. §1865(b) (introductory language and subparagraph 5) (emphasis added).

The Supreme Court's decision in *Beecham v. United States*, 511 U.S. 368 (1994) concerned a matter of statutory interpretation, i.e., whether the "choice-of-law clause" in 18 U.S.C. §921(a)(20) mandated that restoration be accomplished under federal law; the Court determined that the presence of the choice-of-law clause did mean that an effective restoration under §921(a)(20) must occur according to federal law. *Beecham*, 511 U.S. at 369-374 (discussing the effect and application of the choice-of-law clause and concluding, at p. 374, that the choice-of-law clause gave the statute a "plain, unambiguous meaning"). *See also U.S. v. Green*, 532 F.Supp.2d 211, 212-214 (D. Ma. 2005) (applying state law to determine the scope of the restoration provision in §1865(b)(5) and making no

distinction between convictions from federal court and convictions from state court).[5]

Congress did not use any choice-of-law clause in 28 U.S.C. §1865(b)(5); instead, it used the words "and his civil rights have not been restored." The words "and his civil rights have not been restored" mean exactly what they say, i.e., have the civil rights of the person been restored. Tenn. Code Ann. §40-29-101 *et seq*. and the order entered by the Circuit Court of Tennessee for the Twenty-Ninth Judicial District on 1 June 2010 show that Billy York Walker has received a full restoration of his civil and citizenship rights, including, but not only, his right to serve on a jury.

In support of the plain meaning of the statute, the 1978 amendment to 28 U.S.C. §1865 deleted the words "by pardon or amnesty" after the word "restored" in the last line of subsection (5). Jury System Improvements Act of 1978, Pub. L. No. 95–572, §3, 92 Stat. 2453, 2453 (1978). By deleting the restrictive language and leaving only "and his civil rights have not been restored[,]" Congress made the statute broader than it had been previously. The Supreme Court has said: "[W]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Pierce Cnty., Wash. v. Guillen*, 537 U.S. 129,

---

[5] The holding of the *Green* court to the effect that no "affirmative act of restoration is required" to actuate the restoration provision in §1865(b)(5) probably has been vindicated by the Supreme Court's determination in *Caron v. United States* that the restoration provision in 18 U.S.C. §921(a)(20) did not require any affirmative act in order to be effective, and can occur operation of law. *Caron v. United States*, 524 U.S. 308, 313 (1998). *See also* discussion, quote, and citations in Section 2 above.

145 (2003) (internal quotation marks and citation omitted).

To the extent relevant,[6] the legislative history of the statute supports the plain meaning of the statute and the inference to be drawn from the 1978 amendment that broadened the coverage of the phrase "has had his civil rights restored":

> Section 1865(b)(5) of title 28 now provides that persons shall be qualified for federal jury service unless, *inter alia*, they have been convicted or are facing pending charges for a state or federal crime punishable by imprisonment for more than 1 year and their civil rights have not been restored by pardon or amnesty. Section 1869(h) further requires that the juror qualification form mailed to prospective jurors elicit this information. Section 3 of the bill would amend these statutory sections by striking the words 'by pardon or amnesty,' thus making eligible for jury service persons who have been convicted but have later had their civil rights restored in any manner recognized by law.

H.R. Rep. No. 1652, 95th Congress, 2nd Sess., at p. 10, *reprinted in* 1978 U.S. Code Congressional & Admin. News 5477, 5483 (1978). The legislative history does not cloud, but supports, the plain meaning, i.e., the persons with an otherwise disqualifying conviction may

---

[6] The Sixth Circuit, following the U.S. Supreme Court, has stated "we do not resort to legislative history to cloud a statutory text that is clear[.]" *Stupak-Thrall v. United States*, 89 F.3d 1269 (6th Cir. 1996) (quoting *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994)).

serve on a federal jury when their civil rights have been restored by any procedure, and the statute makes no distinction between restoration under federal law and restoration under state law.

The order attached as Exhibit A to the complaint in this matter definitively establishes the eligibility of Billy York Walker to serve on federal juries and state juries alike. Under 28 U.S.C. §1865, then, the federal jury service right of Billy York Walker has been restored.

5. Billy York Walker possesses the right to seek and hold federal office.

The United States Constitution prescribes three qualifications for service in the Congress of the United States: a minimum age (25 for the House of Representatives and 30 for the Senate); a citizenship requirement (seven years of citizenship in the United States for Representatives and nine years for Senators); and a residency requirement (of living in the State from which the person is elected). CONSTITUTION OF THE UNITED STATES, Article I, section 2, clause 2; *id*., section 3, clause 3. Although the sole judge of the qualifications of their members, *id*., section 5, neither house may constitutionally prescribe any additional qualifications for membership. *Powell v. McCormack*, 395 U.S. 496, 549-550 (1969).

The terms of the Constitution of the United States of America and the order attached as Exhibit A to the complaint in this matter definitively establish the eligibility of Billy York Walker to seek and hold federal and state offices.

6. While the automatic restoration of civil rights may appear in some state constitutions or statutes, with respect to federal civil rights, the restoration occurs by way of the constitutional structure that founds any federal civil rights in state law and state action.

Many of the cases on the restoration of civil rights by operation of law have in the background explicit state-law structures that provide for automatic restoration of civil rights upon the occurrence of certain events. *See, e.g., U.S. v. Hall*, 20 F.3d 1066, 1068 (10th Cir. 1994) (quoting Colorado's constitutional provision providing for the right to vote and the rights of citizenship to return to convicted persons after they serve the full term of confinement); *U.S. v. Dahms*, 938 F.3d 131, 133 (9th Cir. 1991) (discussing and quoting Michigan's statutory provisions automatic restoration of rights after a sentence of confinement).

The restoration of federal civil rights occurs in a similar manner: it occurs because the structure of the federal-state government established by the United States Constitution derives federal civil rights (the ones mentioned as key in *Cassidy* especially) from state law.

The Supreme Court characterizes the right to vote as a fundamental civil right, perhaps just above many other rights because of its connection to the protection of other rights:

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is

> preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. Almost a century ago [] the Court referred to the political franchise of voting as a fundamental political right, because preservative of all rights.

Reynolds v. Sims, 377 U.S. 533, 561-62 (1964). Fundamental as the suffrage is, the structure of our constitution reveals that that the Constitution refers to the states for a determination of the civil rights of citizens (at least with respect to jury service and voting rights). As already shown above, the Constitution itself mandates that federal voting qualifications are measured solely by reference to state law. CONSTITUTION OF THE UNITED STATES, Article I, section 2, clause 1; *id.*, Amendment XVII. The Voting Rights Act of 1965 carries the Constitution's structure forward into statutory enactments to prevent discrimination in voting registration, but even that statute does not separately set forth any substantive qualifications. *See, e.g.*, 42 U.S.C. §1971(a)(1).[7]

With voting, when a federal conviction occurs, no provision of federal law ever causes a loss of that right;

---

[7] The cited section provides: "All citizens of the United States who are *otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision*, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." (Italics added.)

no provision of the United States Constitution prevents a person with a conviction from voting. (Indeed, given the express textual provisions referring the matter to the states, a federal statute that purported to prevent felons from voting very likely would violate the provisions in Article I, section 2, clause 1 and Amendment XVII making voting qualifications in federal elections specifically dependent upon state law.) Instead, federal law relies on state law in order to determine voter qualification. Given the fundamental nature of the right to vote, the structure adopted by the Constitution for determining suffrage shows that state law determines civil rights in the sense of the phrase as used in §921(a)(20).

The structural argument advanced here draws some support from the *Slaughter-House Cases*, in which the United States Supreme Court recognized that while the Fourteenth Amendment to the United States Constitution created a new category of citizenship, national citizenship, the amendment left intact the basic federal structure of the government of this country under which the basic civil rights of all citizens arise under and are controlled by state law. *Slaughter-House Cases*, 83 U.S. 36, 82 (1872). In the *Slaughter-House Cases*, the Court said:

> Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the State with powers for domestic and local government, including the regulation of civil rights-the rights of person and of property-was essential to the perfect working of our complex form of government, though they have thought proper to

> impose additional limitations on the States, and to confer additional power on that of the Nation.

83 U.S. at 82.[8]

One of the defendants in *Beecham v. United States* advanced the argument that a state law restoration should be sufficient because Congress had not prescribed any statutory process for restoration of civil rights and at least one circuit court of appeals agreed with that argument; the Supreme Court responded that some states have no statutory procedure either. Billy York Walker here presents the argument that the structure of the United States Constitution and the wording of relevant statutes with respect to basic civil rights weighs in favor of the conclusion that Congress has passed no statute because none is needed: substantive federal law looks to state law to make the determinations necessary for a restoration of civil rights, and when the state law procedure has been fulfilled, the only remaining question is whether the product of the process meets the substantive requirements to constitute a restoration under federal law. As Billy York Walker has shown in this memorandum, the state law procedure he followed restored his federal civil rights.

---

[8] Some difficulty appears to exist in reconciling the concepts undergirding *Slaughter-House Cases* and those undergirding *Beecham v. United States*, because the kinds of rights mentioned in *Slaughter-House Cases* are not lost by a conviction. One avenue of reconciliation appears in this memorandum: to the extent federal civil rights of the type relevant to §921(a)(20)(B) exist, the "restoration" of those rights will be measured by some action of a state.

7. The complaint does not seek any "relief from disabilities" that would be barred by* Mullis v. United States, *230 F.3d 215 (6th Cir. 2000) and* United States v. Bean, *537 U.S. 71, 78 (2002).

The GCA provides an administrative method for disqualified persons to obtain "for relief from the disabilities imposed by Federal laws[.]" 18 U.S.C. §925(c). Regulations exist concerning the "relief" provisions, 27 C.F.R. §478.144, however, the Congress of the United States has barred funding of the office for many years. *See Mullis v. United States*, 230 F.3d 215, 217 (6th Cir. 2000). Various individuals have asserted that the lack of funding could be construed as *de facto* administrative exhaustion, however, the Sixth Circuit and other circuit courts of appeal rejected that argument. *See id.* at 218. In *United States v. Bean*, 537 U.S. 71, 78 (2002), the Supreme Court determined that agency inaction on a §925(c) request cannot be the basis for judicial review, affirming the result reached in *Mullis* and other cases.

The present case does not seek "relief from the disabilities[,]" 18 U.S.C. §925(c); 27 C.F.R. §478.144, imposed by the GCA, but rather, guided by the plain language used in the statutory provisions seeks a declaration that federal law operates in such a way on the facts presented here as to bring Billy York Walker within the exemption from the GCA's disabilities (18 U.S.C. §921(a)(20)); Billy York Walker seeks a declaration that he does not have any disabilities, not relief from those disabilities despite their existence. The language of the two statutory provisions shows the difference between their meaning:

> §921(a)(20): Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms[.]
>
> §925(c): A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws[.]

The two provisions speak in different words, excluding one category of persons from the ambit of the statute altogether (those whose civil rights have been restored) and making one included group eligible for relief (and, importantly, relief not connected to a civil rights restoration, as relief under §925(c) would have no impact on voting rights, service on a jury, or seeking and holding office).

In the Firearm Owners Protection Act of 1986, which added the language now codified at §921(a)(20) and the also made a change to §925(c) by adding the judicial review provision for those persons denied "relief" from the operation of the GCA prohibitions, Congress used the 'civil rights restored' terminology in what now appears as §921(a)(20) and used the relief terminology in §925(c). Firearm Owners Protection Act, Pub. L. No. 99-308, §§101, 105, 100 Stat. 449, 449-450, 459 (1986). The choice of different terms for different sections of the statute shows a difference in the meaning for the two provisions, especially where those

differences appear in the same act. As the Supreme Court has said:

> [W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion. This is particularly true here, where subsections (b)(3)(B) and (f)(2) were enacted as part of a unified overhaul of judicial review procedures.

Nken v. Holder, 556 U.S. 418, 430-31 (2009) (quoting, in part, *INS v. Cardoza–Fonseca*, 480 U.S. 421, 432 (1987); internal quotation marks omitted).

The plain words used in the statutes reveal the "relief" provision to be wholly separate and distinct from the "exemption" clause that removes an individual from coverage by the GCA's prohibitions.

8. Conclusion.

Billy York Walker has taken all necessary action for the operation of federal law to restore his federal civil rights, the operation of federal law has restored his civil rights, and he seeks a declaration from this Court that he fits within the exemption clause of 18 U.S.C. §921(a)(20) and no longer has any firearms disabilities under the GCA arising from his prior conviction in this Court.

Respectfully Submitted,

Attorneys for Billy York Walker:

WILKERSON GAULDIN HAYES JENKINS & DEDMON
By: /s/ William Lewis Jenkins Jr.
Douglas W. Wilkerson (Tenn. Bar #006048)
Electronic mail: dwilkerson@tenn-law.com
W. Lewis Jenkins Jr. (Tenn. Bar #017423)
Electronic mail: ljenkins@tenn-law.com
112 West Court Street, P.O. Bo 220
Dyersburg, Tennessee 38025-0220
Tel. No. 731.286.2401 / Fax No. 731.286.2294

[*Certificate of Service omitted in printing of this Appendix.*]