No. 24-

IN THE

Supreme Court of the United States

LARRY D. SAPP,

Petitioner,

v.

KIMBERLY FOXX,
COOK COUNTY STATE'S ATTORNEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CAPITAL CASE

DANIEL A. DAILEY
Chief Federal Litigation Counsel
Counsel of Record
KINGDOM LITIGATORS INTERNATIONAL, LTD.
The Jubilee Process
500 North Michigan
Suite 536
Chicago, IL 60611
(312) 278-4000
ddailey@kglit.com

Counsel for Petitioner

333140

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED
"CAPITAL 'CIVIL DEATH' CASE"

Reference to history here is peculiarly appropriate. *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 n.23, 83 S. Ct. 554 (1963). Forfeiture of citizenship and the related devices of banishment and exile have throughout history been used as punishment. *Id.* In ancient Rome, "[t]here were many ways in which a man might lose his freedom, and with his freedom he necessarily lost his citizenship also. *Id.* Thus, he might be sold into slavery as an insolvent debtor or condemned to the mines for his crimes as *servus poenae*." *Id.* Banishment was a weapon in the English legal arsenal for centuries, but it was always "adjudged a harsh punishment even by men who were accustomed to brutality in the administration of criminal justice." *Id.* "By the ancient common law . . . [t]here were three principle incidents consequent upon an attainder for treason or felony, forfeiture, corruption of blood, and an extinction of civil rights, more or less complete, which was denominated civil death.". *Kanter v. Barr*, 919 F.3d 437, 459 (7th Cir. 2019) *(dissenting* Barrett, J.)). Civil death was a state in which a person "though living, was considered dead"—a status "very similar to natural death in that all civil rights were extinguished." *Id.*

Within this context, the question presented is whether Illinois's punishment disability statutes—without time limits—violate the Eighth Amendment's Cruel and Unusual Clause constituting a "civil death." This resolves the procedural question can *res judicata* apply to a "civil death."

Mr. Sapp's precedent setting question will ease the suffering nation and provide procedural and substantive guidance to a "civil death" under the Eighth Amendment. As the Seventh Circuit agreed, Mr. Sapp is a righteous man by any standard of measurement. 1a.

PARTIES TO THE PROCEEDINGS

1. Larry D. Sapp is an individual with no parent company owning more than 10%.

2. Kimberly Foxx is the current State's Attorney for Cook County, Illinois.

RELATED CASE STATEMENT

In Mr. Sapp's stand for freedom through the *Jubilee Process*, the following related proceedings were entered containing important orders:

Larry Sapp v. Foxx, 23-2502. The United States Court of Appeals for the Seventh Circuit. Judgement entered July 3, 2024.

Larry Sapp v. Foxx, 1:22-cv-5314. The United States District Court for the Northern District of Illinois. Judgment entered June 21, 2023.

People of Illinois v. Larry Sapp 22 CH 2567, the Cook County Circuit Cout. Judgement on the People of Illinois's Second Motion for Ruling to Show Cause. Judgment entered January 5, 2023. (Unreported on Westlaw or Lexis).

People of Illinois v. Larry Sapp, 22 CH 2567 the Cook County Circuit Court *quo warranto* proceedings. Judgement granting the People's Motion for Summary Judgment entered September 30, 2022. (Unreported on Westlaw or Lexis).

People of Illinois v. Larry Sapp, 22 CH 2567, the Cook County Circuit Court. Judgement granting the People of Illinois motion to strike Mr. Sapp's Petition for Relief from Disability entered July 20, 2022. (Unreported on Westlaw or Lexis).

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ON PETITION OF WRIT OF CERTIORARI

Mr. Sapp's petition on a writ of certiorari for review of the U.S. Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit appears at Appendix A 1a-17a to the petition and is reported *Larry D. Sapp v. Kimberly Foxx*, No. 23-2502, 106 F.4th 660, 662 (7th Cir. 2024). Judgement entered July 3, 2024. (Reported Lexis and Westlaw).

The opinion of the United States District Court for the Northern District of Illinois appears at Appendix B 18a-36a to the petition and reported *Larry Sapp v. Foxx*, 1:22-cv-5314, 2023, U.S. District Court for the Northern District of Illinois. Judgment entered June 21, 2023. U.S. Dist. LEXIS 106731, *1 (N.D. Ill. June 21, 2023). (Reported Lexis and Westlaw).

The opinion of the Cook County Chancery Court of Illinois appears at Appendix C through E and is reported unpublished.

People of Illinois v. Larry Sapp 22 CH 2567, the Cook County Circuit Court appears at Appendix C 40a to 41a. Judgment on the State's Attorney's Second Motion for Ruling to Show Cause entered January 5, 2023. (Unreported on Westlaw or Lexis).

People of Illinois v. Larry Sapp, 22 CH 2567 the Cook County Circuit Court *quo warranto* proceedings appears at Appendix E 42a to 49a. Judgement granting

the State's Attorney's Motion for Summary Judgment entered September 30, 2022. (Unreported on Westlaw or Lexis).

People of Illinois v. Larry Sapp, 22 CH 2567, the Cook County Circuit Court appears at Appendix F 43a to 50a. Judgement granting the State's Attorney's motion to strike Mr. Sapp's Petition for Relief from Disability entered July 20, 2022. (Unreported on Westlaw or Lexis).

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S. Code § 1254. The United States' Court of Appeal for the Seventh Circuit entered judgement on July 3, 2024.

CONSTITUTIONAL & STATUTORY PROVISIONS

EIGHTH AMENDENT

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. USCS Const. Amend. 8.

THIRTEENTH AMENDMENT

Sec. 1. [Slavery prohibited.] Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. USCS Const. Amend. 13.

FOURTEENTH AMENDMENT

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. USCS Const. Amend. 14.

ILLINOIS ELECTION CODE

[a]ny person convicted of an infamous crime as such term is defined in Section 124-1 of the Code of Criminal Procedure of 1963, as amended, . . . from holding any office of honor, trust, or profit, unless such person is again restored to such rights by the terms of a pardon for the offense, has received a restoration of rights by the Governor, or otherwise according to law. 10 ILCS 5/29-15.

ILLINOIS MUNICIPAL CODE

[a] person is not eligible to take the oath of office for a municipal office if that person is, at the time required for taking the oath of office, in arrears in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony, unless such person is again restored to his or her rights of citizenship that may have been forfeited under Illinois law as a result of a conviction, which includes eligibility to hold elected municipal office, by the terms of a pardon

for the offense, has received a restoration of rights by the Governor, or otherwise according to law. 65 ILCS 5/3.1-10-5(b).

STATEMENT OF THE CASE

A. Illinois Sentenced Mr. Sapp to a Civil Death.

Larry Sapp is an Army veteran with an admirable history of service to the nation. (2a -3a). He is also a victim of sexual assault. *Id.* In 1975, during basic training at Fort Leonard Wood, Missouri, several servicemembers of Mr. Sapp brutally raped him and left him for dead. *Id.* The trauma of that event followed Mr. Sapp long after he left the military. *Id.* For years, his mental health struggles went untreated. *Id.* And so Sapp turned to illegal drugs to cope. *Id.* That path led to felony drug convictions in 1988 and 1998 for manufacturing-controlled substances in violation of Illinois law, as well as a stint in state prison. *Id.*

Mr. Sapp left prison resolved to turn his life around. *Id.* With the help of mental health treatment, he overcame his addiction, came to grips with his past, and set course on a life of community service. *Id.* In the years since his recovery, Mr. Sapp has founded two non-profit organizations and became a mentor to others struggling with addiction and post-traumatic stress disorder. *Id.* By any measure, he has become a productive citizen and a respected member of his community. *Id.*

In 2021, the people of Sauk Village elected Mr. Sapp to a four-year term on the Village's Board of Trustees. *Id.* Mr. Sapp ran for the post believing in good faith that he was eligible to hold public office, despite his criminal history. And for several months, he served without incident. *Id.* But

after a political dispute, Mr. Sapp's felony convictions came to the attention of the Cook County State's Attorney's Office, which filed a so-called *quo warranto* action against Sapp in Cook County Circuit Court. *Id.* at 3a.

The purpose of a *quo warranto* proceeding is to "achieve the ouster of a person who is illegally occupying a public office." *Id* at 3a. *Goral v. Dart*, 181 N.E.3d 736, 753–54 (Ill. 2020). Upon proof that a person is ineligible to hold a particular position, an appropriate court may enter an order removing the person from office. *See* 735 ILCS 5/18-108. The State's Attorney's Office's complaint identified two Illinois statutes it believed barred Mr. Sapp from continued service as a Board Trustee: 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) (Illinois Punishment Statutes). *Id.* Neither statute contain terms or time limits. Only a pardon from the governor would allow Mr. Sapp to obtain relief from the punishment.

In 2020, Mr. Sapp sought a pardon from Governor Pritzker, but after two years of waiting, the Governor denied Mr. Sapp's pardon for freedom. The denial was based on conversations with Foxx's office that followed a political dispute in Sauk Village. *Quo warranto* proceedings were instituted 30 days after Governor Pritzker denied Mr. Sapp's pardon for freedom.

Mr. Sapp began fighting for his freedom through the jubilee process. He filed a certificate of relief from disabilities. However, the chancery court struck his petition advising Mr. Sapp to go to criminal court. 50a. Mr. Sapp then argued that forfeiting his salary of $600 would amount to excessive fees because he already was sentenced and fined. The chancery court disagreed. 48a. Mr. Sapp then filed a declaratory action in federal court and reran

for political office. The district court for the Northern District of Illinois dismissed his complaint with prejudice on grounds that the Illinois Punishment statutes were not "punishments." 32a-36a. Mr. Sapp timely appealed to the Seventh Circuit. The Seventh Circuit sidestepped the question of punishments and held Mr. Sapp filed his declaratory action too close in time, origin, and space to the chancery court proceedings. 16a-17a. However, the Seventh Circuit said that Mr. Sapp could challenge the Illinois Punishment Statutes in the future. *Id.*

Mr. Sapp timely filed this petition for review because the Seventh Circuit's dismissal claims that Mr. Sapp can challenge the statutes in the future, however, the district court dismissed Mr. Sapp's case with prejudice. *Id.* This conundrum is due to the fact that there are no time limits on the statutes, thus Mr. Sapp will continue to suffer until he is dead.

Mr. Sapp has resolved to serve his divine purpose, although mocked by the district court. 35a. God asked Mr. Sapp to serve his good purpose as a trustee in the Village of Sauk Village. The small city is impoverished, divided, and needs a man of God's own heart with a vision to serve and an ear for the people. *(see* Unclassified memo to the Department of Defense and Defense Technical Information Center (DTIC 19950619 077 ("The Vision of Our Founding Fathers: One Nation Under God") (Colonel Thomas H. Norton Project Advisor) (1995). People of God cannot serve the nation's future in leadership roles due to indefinite government punishments.

i. In the "Eyes of the Law" America's Criminal Justice System *is* Slavery.

May it please the Court, Mr. Sapp prescribes *Ruffin* as the best corrective legal eyewear in view of the facts before the court. *Ruffin v. Commonwealth*, 62 Va. 790, 798 (1871). *Ruffin* explained "his vicinage [meaning vicinity or space] as to him is within the walls of the penitentiary, which (if not literally and actually) yet in the eye of the law surround him wherever he may go, until he is lawfully discharged." *Id.* "He is for a time being a slave, subject to the laws and penalties as much as prison, the whipping post, or any other criminal punishment." *Id. Ruffin* described the criminal record—a civil death.

With these corrective lenses, we see clearly why the entire nation is struggling to understand the conundrum of "criminal records" and its eternal affects. It is because the criminal justice system was intertwined with the cruel and unusual dictates of African slavery after the Civil War. Unlike many other countries, America had an unusually brutal slavery system for Africans. The slave system of slave codes and disabilities were transferred to the criminal justice system. States exchanged slave records for criminal records. ("This condition on readmission, also imposed on other formerly Confederate states, was meant to address the nefarious tactics to restrict black suffrage already emerging in the Southern states despite the Fifteenth Amendment's recent passage."). *Hopkins v. Hosemann*, 76 F.4th 378, 402 (5th Cir. 2023). In a twist of irony, however, today, more white Americans have criminal records than Black Americans. Albeit Black Americans are still disproportionately targeted, based on their population.

In the State of Illinois's, slaves or "convicted felons" are at the mercy of officers of the court who represent their respective governments.

a. Where Does the Illinois Government Derive Its Authority for Inflicting Civil Disabilities on Free Men?

The State of Illinois derives the power to place civil penalties and disabilities on convicted felons from the Thirteenth Amendment. *See*, USCS Const. Amend. 13. The Thirteenth Amendment is subject to the Eighth Amendment restrictions because the criminal justice system is the only constitutional exception to the rule against slavery. Slavery was not just forced labor, it included rules and regulations for slaves.

The prohibition of 'slavery and involuntary servitude' in every form and degree, except as a sentence upon a conviction for crime, comprises much more than the abolition or prohibition of African slavery. *Slaughter-House Cases*, 83 U.S. 36, 49–50, 21 L. Ed. 394 (1872). Slavery in the annals of the world had been the ultimate solution of controversies between the creditor and debtor; the conqueror and his captive; the father and his child; ***the state and an offender against its laws***. *Id.*

The long existence of African slavery in this country gave us very distinct notions of what it was, and what were its necessary incidents. *C.R. Cases*, 109 U.S. 3, 22, (1883). Compulsory service of the slave for the benefit of the master, restraint of his movements except by the master's will, ***disability to hold property***, to make contracts, to have a standing in court, to be a witness against a white person, and such like burdens and incapacities were the

inseparable incidents of the institution of slavery *Id.* More extreme punishments for crimes were imposed on the slave than on free persons guilty of the same offenses. *C.R. Cases*, 109 U.S. 3, 22, (1883) (emphasis added).

The "incidents of slavery" described in *United States v. Stanley*, (the Civil Rights cases) were the legal "disabilities imposed upon slaves in different southern states." *United States v. Roof*, 225 F. Supp. 3d 438, 448 (D.S.C. 2016). Slavery in the United States was a "system made up of various component parts." *United States v. Roof*, 225 F. Supp. 3d 438, 448 (D.S.C. 2016); *see also* Darrell A.H. Miller, *The Thirteenth Amendment, and the Regulation of Custom*, 112 Colum. L. Rev. 1811, 1848 (2012) ("Slavery is not unitary; it is a bundle of disabilities, bound together by conventions.").

Those parts, collectively, are the badges and incidents of slavery, and "[o]f the two attributes of slavery identified as badges and incidents, the 'incidents' of slavery had a far more definite and accepted legal sense than the 'badges.'" *United States v. Roof*, 225 F. Supp. 3d 438, 448 (D.S.C. 2016); citing, George Rutherglen, *The Badges and Incidents of Slavery and the Power of Congress to Enforce the Thirteenth Amendment, in* Promises of Liberty: The History and Contemporary Relevance of the Thirteenth Amendment 163, 164 (Alexander Tsesis ed. 2010).

ii. Mr. Sapp is Technically a Slave in the "Eyes of the Law."

In the eyes of Illinois law, Mr. Sapp remains a legal slave, or as commonly referred to as a "convicted felon." This phrase is derived from the Thirteenth Amendment's

exception to prohibition against slavery. *United States v. Reynolds*, 235 U.S. 133, 149, 35 S. Ct. 86, 90, 59 L. Ed. 162 (1914). (the accused is "convicted" when the sentence is imposed). *People ex rel. Grogan v. Lisinski*, 113 Ill. App. 3d 276, 281, 68 Ill. Dec. 854, 857, 446 N.E.2d 1251, 1254 (1983). So, when Mr. Sapp was duly "convicted a felon," the court punished him to slavery as property of the State of Illinois. Mr. Sapp even received a property number on the outside of his jumpsuit to indicate the number of slaves held by the State of Illinois. The criminal court, in its discretion, sentenced Mr. Sapp to involuntary servitude in the Illinois Department of Corrections.

Next, the criminal court stripped Mr. Sapp of his property and rights. The criminal court assessed Mr. Sapp's current and future ability to earn an income (or economic worth) before it assessed fines and fees. (In imposing a fine, a circuit court must consider the financial resources and future ability of the offender to pay the fine. *People v. Sturgess*, 364 Ill. App. 3d 107, 118, 845 N.E.2d 741, 751 (2006) (citing) 730 ILCS 5/5–9–1(d)(1) (West 2004); *People v. Williams*, 256 Ill.App.3d 370, 373, 195 Ill. Dec. 433, 628 N.E.2d 897 (1993).

Finally, 1,189 civil disability statutes stripped Mr. Sapp of his ability to function in a civil society. Namely, 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b), (Punishment Statutes) could only attach, after sentencing was pronounced. *People ex rel. Grogan v. Lisinski*, 113 Ill. App. 3d 276, 281, 68 Ill. Dec. 854, 857, 446 N.E.2d 1251, 1254 (1983) (holding quo warranto proceedings could not be used to oust a man convicted, but not yet sentenced) *id. citing Slawik v. Folsom* (Del. 1979), 410 A.2d 512. (In *Slawik* the plaintiff, tried for making false declarations

before a grand jury, was removed from an elective office after he was found guilty but prior to sentencing. The Supreme Court of Delaware rejected a removal before sentencing). Hence, the forfeiture of his right to run for public office *only* attached after Mr. Sapp was sentenced, demonstrating the intent of the statute was a criminal punishment.

The Illinois Punishment Statutes further make clear only a pardon can free Mr. Sapp. He needs freedom from the sentence(s) imposed upon him without time limits. The pardon "removes the penalties and disabilities [to] restore him to all his civil rights." *People v. Glisson*, 44 Ill. App. 3d 108, 111 (1976), aff'd in part, rev'd in part. These slavery devices (IL Punishment Statutes) still exist and explain the origin of a "Civil death in America."

B. Civil Death is a National Issue.

As Justice Barrett, writing for the dissent explained "[a]s originally conceived, civil death signified "a transitional status in the period between a capital sentence and its execution." *Kanter v. Barr*, 919 F.3d 437, 459 (7th Cir. 2019) (internal citation omitted). Civil death came to be understood "as an incident of life conviction." *Id.* at 460, citing, *See* Saunders, 11 Wm. & Mary L. Rev. at 990; *see also Troup v. Wood*, 4 Johns. Ch. 228, 248 (N.Y. Ch. 1820) (a person convicted of felony and sentenced to imprisonment in the state prison for life is "*civiliter mortuus*"). Mr. Sapp, like 70-100 million Americans are in the "space" where there is no time limit on their execution date. They are not physically incarcerated, but they have been stripped up their ability to fully function in society. They are disabled from living free and serving their good purpose. And in the case of Mr. Sapp, his God's purpose.

According to a 2019 comprehensive report by the United States Commission on Civil Rights, "collateral consequences" have been a feature of the American justice system since colonial times. "Civil death" was historically the fate of many criminals dating back to Greek and Roman times, but also existed in English colonial society, as individuals were essentially stripped of their civil rights and property and could face banishment from society—a status akin to death. Gabriel Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV.1789, 1793-94, n.24 (2012); Mark Hasse, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 MINN. L. REV. 1913, 1913-14 (2015).

In the United States, the disenfranchisement of criminally convicted people dates to colonial times, and since then, many states have written restrictive provisions into their constitutions. Starting in the late 18th century, and continuing into the Jim Crow era. For example, after the 15th Amendment granted the right to vote to Black men, several states enacted laws to disenfranchise individuals with criminal convictions. *See Hopkins v. Hosemann*, 76 F.4th 378, 391 (5th Cir. 2023), reh'g en banc granted, opinion vacated *Hopkins v. Hosemann*, 83 F.4th 312 (5th Cir. 2023).

States quickly criminally convicted black men, and placed them back into slavery. Admittedly, civil sanctions and the collateral consequence may promote the traditional aim of retributive punishment. Though denying a civil liberty can be a deterrent, (for example, by prohibiting a sex offender from living within the vicinity of a park or school) prohibiting a non-violent drug possession

offender from applying for a student loan serves little to no deterrent purpose. In many cases, an ostracizing punishment becomes so excessive in its prevention of the pursuit of "life, liberty, and the pursuit of happiness," that it completely defeats the aim of deterrence. *Id.*

Individuals have no other choice to make ends meet because of the social restrictions imposed by permanent civil sanctions and collateral consequences. *Id.* Those that would otherwise seek gainful employment and lead lives of economic benefit to society have no choice but to survive except through criminal recidivism. *Id.*

As John Malcolm, Vice President of the Institute for Constitutional Government and Director of the Meese Center for Legal and Judicial Studies wrote in his statement to the U.S. Commission on Civil Rights:

> It is not in anyone's best interests to consign ex-offenders to a permanent second-class status. Doing so will only lead to wasted lives, ruined families, and more crime . . . Other collateral consequences, though, have a tenuous connection to public safety, appear to be more punitive in nature, and they certainly make it more difficult for an ex-offender to reintegrate into society. State and federal legislators should periodically review existing collateral consequences to ensure that they are truly necessary to protect public safety, not punitive in nature, and are reasonably related to the offense that was committed. Collateral consequences that do not fit these parameters should be amended or repealed so that ex-

> offenders who are earnestly working to lead lawful, prosperous lives and to provide for their families are not needlessly thrown off-course.

There are 70 to 100 million (or one-third) of America's approximate 330 million citizen population, suffering under 44,000 state and federal statutory chains.

i. Illinois is Notorious for Permanent Punishments.

According to a 2020 Report by Heartland Alliance, in Illinois 3.3 million adults alive today have been arrested or convicted of a crime in Illinois since the advent of mass incarceration in 1979. Of these: 36.7% of all people with records (1.2 million adults) have a conviction record; and 18.5% of all people with records (602,201 adults) have a felony conviction record. Permanent punishments deeply restrict people's civil liberties to the extent of death and recidivism. "Never Fully Free:" The Scale and Impact of Permanent Punishments: Illinois Heartland Alliance Report (June 2020).

The report further detailed those 627,945 adults, or 19.2% of all people with Illinois records, have acquired an arrest record in Illinois, but were not convicted of a crime. *Id*. Even though they were not convicted, arrests still appear on some background checks and websites, carrying with it a stigma that could make it harder to get jobs or housing. *Id*.

The blanket of civil death reaches to every corner of society, from urban to rural in the areas of employment, housing, education, and beyond. Most shocking, forty

sanctions apply permanent punishments around housing. *Most* permanent punishment laws in Illinois (982) prevent or hinder access to employment. *Id.* There are twenty-eight sanctions which govern education access. *Id.* There are at least 364 state laws and regulations that restrict occupational licensing for people with a criminal record. *Id.* Formerly incarcerated people have worse education outcomes than people who have not been incarcerated. *Id.* A key barrier to education noted by people with records include not having sufficient financial support to pursue an education, either by being barred from receiving financial aid or needing to keep a job to provide for one's family. *Id.*

People with criminal records are often thought to be an urban phenomenon—and it's true that, in Illinois, most people with records acquired them in Cook County, where Chicago is located. *Id.* However, data shows that people are acquiring records throughout the state. *Id.* No matter your community, there are people being denied employment, housing, and education because of their criminal backgrounds.

Taken together, these hurdles have been described as amounting to a "new civil death," and on a collective scale, this phenomenon magnifies racial disparities in employment and other outcomes due to disparities in the distribution of criminal records. Expungement Of Criminal Convictions: An Empirical Study, 133 Harv. L. Rev. 2460, 2461-2462. In recent years, policymakers, civil rights advocates, and scholars have paid increasing attention to the substantial barriers to employment, housing, and social integration that these records can pose, not to mention the hundreds of collateral legal consequences that typically flow from criminal convictions,

such as restrictions on public-benefits eligibility and occupational licensing. *Id.*

But rest easy, granting freedom will decrease crime *overnight*. *See* The Great American Pardon Proclamation, Daniel A. Dailey (2024). Can you imagine a man receiving a coveted pardon and going to celebrate by committing another crime? NO! *Id.* He will use his newfound freedom to follow his dream and pursue his purpose. *Id.* In 2020 Harvard Law Review published the first of its kind, empirical study of recidivism rates after an individual's record was cleared. Article: Expungement Of Criminal Convictions: An Empirical Study, 133 Harv. L. Rev. 2460, 2463. "We find very low rates of recidivism: just 7.1% of all expungement recipients are rearrested within five years of receiving their expungement (and only 2.6% are rearrested for violent offenses), while reconviction rates are even lower: 4.2% for any crime and only 0.6% for a violent crime. Indeed, expungement recipients' recidivism rates compare favorably with those of the Michigan population as a whole." *Id.*

For all these reasons, a core part of this century's emergent criminal justice reform movement has been a search for effective policy levers to mitigate the reentry barriers faced by people with criminal records. *Id.* Against these odds, Mr. Sapp triumphed over rape while in the military, post-traumatic stress disorder, drug addiction, homelessness, jobless, and recovered to serve his local community as a trustee. Mr. Sapp has become the symbol of hope, freedom, and jubilee for this Court to hear and ease the suffering of the nation.[1]

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1. *See e.g.* (https://www.nbcchicago.com/news/loc; al/suburban-chicago-trustee-who-lost-his-job-due-to-felony-

REASONS TO HEAR THE CASE

This case is of national importance. It is the true, the criminal justice system is politically weaponized against: judges, prominent families, politicians, pastors, the rich, the poor, the white, the black, the immigrant, the innocent, and the guilty. The justice system is on political autopilot with an error; permanent civil punishments. If, the justice system refuses to free Mr. Sapp, who honorably served his country, was sexually assaulted, suffered through the crack epidemic, and is still serving twenty years later; it will not free anyone. This case is important to every voter in the nation, because it deals with the aftermath of using the justice system as a weapon in a political war. Regardless of who wins the election, the nation will suffer a slow and painful civil death *without dying*. Time limits are first substantive *then* procedurally critical to everything.

This case will reconcile the past. Today the nation is suffering the consequences of a criminal justice system intertwined with the "incidents" of slavery after the Civil War and the Thirteenth Amendment passed. The slave laws turned to civil disabilities, and for a time were inflicted only upon people of color. Today it is a system effecting all members of society.

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convictions-wants-job-back/2984116/); (https://news.bloomberglaw.com/litigation/court-affirms-illinois-convicted-felons-ouster-from-office); (https://www.chicagotribune.com/2022/10/21/column-trustee-larry-sapp-ousted-from-sauk-village-board-due-to-felonies-wants-people-to-know-the-truth-about-his-past/).

This case will set the precedent. Former President Trump is a convicted felon, but incarceration is the least of his problems. He will soon experience the devastating civil statutes without time limits that affect a man economically, politically, socially, and finally physically until the man is dead. "The laws might enslave a man to the soil." *Slaughter-House Cases*, 83 U.S. 36, 50, 21 L. Ed. 394 (1872). The issue of a "civil death" is of national and precedential importance.

The immediate answer, insert time limits on all statutes and (overnight) crime will reduce, prosperity will come, and our nation will avoid a civil rebellion. Expungement Of Criminal Convictions: An Empirical Study, 133 Harv. L. Rev. 2460, 2461-2462, *see also* Mass Pardons in America: Rebellion, Presidential Amnesty, and Reconciliation Professor Graham G. Dodds (2021).

This Court in *Kennedy* already agreed the right to hold office, and right to suffrage are criminal punishments. Under *Graham*, time limits must be reasonable. Hence no time limits, (unless specifically legislated as such) are, on its face, unreasonable.

This case will reconcile Circuit splits. The Fifth Circuit is bitterly divided. The Seventh Circuit punted the question by improperly applying *res judicata*. Yet in doing so highlighted the problem regarding time limits, or the lack thereof under the Eighth Amendment. Indeed, Illinois doctrine of *res judicata* cannot apply to a man who is continually suffering a civil death. Moreover, the Seventh Circuit cannot reinterpret a state court judgement to avoid a controversial subject. Finally, the Circuits are in internal conflict. Behind the robes, the slave debates have begun.

Accordingly, Mr. Sapp urges this Court to grant his petition.

A. Punishments Without Time Limits Violate the Eighth Amendment's Cruel & Unusual Clause.

Although a novel question, the analysis is straightforward. A party bringing a claim against felon disenfranchisement must establish that the law in question is punitive to invoke the protections of the Eighth Amendment. The determinative question is whether the legislature meant to establish "civil proceedings" *Kansas v. Hendricks*, 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501, or if the intention of the law were to impose punishment. *Smith v. Doe*, 538 U.S. 84, 85, 123 S. Ct. 1140, 1142–43, 155 L. Ed. 2d 164 (2003). "In deciding whether or not a law is penal, the [Supreme Court] has generally based its determination upon the purpose of the statute." *Trop v. Dulles*, 356 U.S. 86, 96, 78 S. Ct. 590, 595, 2 L. Ed. 2d 630 (1958).

Statutory proscriptions or impositions can constitute cruel and unusual punishment if they are (1) punitive and (2) grossly disproportionate to the corresponding offense. See *Graham v. Fla.*, 560 U.S. 48, 59 (2010), as modified (July 6, 2010) ("Embodied in the Constitution's ban on cruel and unusual punishments is the precept of justice that punishment for crime should be graduated and proportioned to the offense.") (cleaned up); *Solem v. Helm*, 463 U.S. 277, 284 (1983) ("The principle that a punishment should be proportionate to the crime is deeply rooted and frequently repeated in common-law jurisprudence.").

And "because we ordinarily defer to the legislature's stated intent, only the clearest proof will suffice to

override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Smith v. Doe*, 538 U.S. 84, 92 (2003) (cleaned up). If, as here, "the intention was to enact a regulatory scheme that is civil and nonpunitive, [the Court] must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate [the State's] intention to deem it civil." *Id.*

i. *Kennedy v. Mendoza* is Controlling.

In *Kennedy*, this court answered the question whether stripping a felon of his citizenship as a deserter was an *ex post facto* penalty. To do that, the seven factors from *Kennedy v. Mendoza–Martinez*, 372 U.S. 144, 168–69 (1963), serve as a useful framework. *Smith*, 538 U.S. at 97. That framework has been traditionally used in different contexts to determine whether a statute "is penal or regulatory in character." *Id.* at 168. The specific factors are whether the statutory scheme "involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned." *Id.* at 168–69.

The *Kennedy* case ultimately held, §§ 401 (j) and 349 (a)(10) invalid because in them Congress has plainly employed the sanction of deprivation of nationality as a punishment—for the offense of leaving or remaining outside the country to evade military service—without

affording the procedural safeguards guaranteed by the Fifth and Sixth Amendments. *Id.* at 165-166.

In striking the statutes, *Kennedy* relied on congressional debates. "The debates in Congress in 1865 confirm that the use of punitive language in § 21 was not accidental. The section as originally proposed inflicted loss of rights of citizenship only on deserters." *Id.* at 171. Senator Hendricks of Indiana made one last argument stating:

> "It seems to me to be very clear that this section proposes to punish desertions which have already taken place, with a penalty which the law does not already prescribe. In other words, it is an *ex post facto* criminal law which I think we cannot pass . . . . One of the penalties known very well to the criminal laws of the country is the denial of the right of suffrage and *the right to hold offices of trust or profit.*

Id. at 171-72.

Kennedy agreed with Senator Hendricks's position noting that the rights to hold public office and vote are two well-known criminal penalties. In this case, four reasons support the historical view that Illinois Punishment Statutes are intentionally punitive.

First, Illinois courts have already said that the statutes cannot be invoked to oust an individual holding office until after his sentence. Second, the chancery court specifically directed Mr. Sapp to the criminal court because it was forum nonconviens for the chancery to hear a petition to strike the disability. Third, the Illinois

Punishment statutes, on its face, are triggered upon a conviction and sentencing defined by the criminal code. (Section 124-1 of the Code of Criminal Procedure of 1963). Fourth, only a pardon, which frees Mr. Sapp from the disabilities and penalties attached to his crime can provide him relief. The question as to whether the statutes are intentional criminal penalties is clear and unambiguous. This Court need not conduct a seven-factor analysis for the right to hold public office or right to vote. Yet, even if this Court were inclined to conduct a seven-factor analysis, a nominal punitive effect without time limits is debilitating *over time*. Accordingly, the only question is how long do punishments last before they become disproportionately cruel and unusual?

"U.S. Supreme Court precedents consider punishments challenged not as inherently barbaric but as disproportionate to the crime." *Graham v. Fla.*, 560 U.S. 48, 59, (2010), as modified (July 6, 2010)). "The Court's cases addressing the proportionality of sentences fall within two general classifications. The first involves challenges to the length of term-of-years sentences given all the circumstances in a particular case. The second comprises cases in which the Court implements the proportionality standard by certain categorical restrictions on the death penalty." *Id* at 48, 59. On the far end of the proportionality scale, lifetime disenfranchisement does not contribute to reforming an offender. *Hopkins v. Hosemann*, 76 F.4th 378, 409-10 (5th Cir. 2023). Quite to the contrary, it hinders reintegration into society by denying voting, a cherished marker and right of citizenship. *Id.*

Accordingly, this Court can make quick work of any *Graham* analysis because the Illinois Punishment

Statutes do not contain *any* terms, rendering them disproportionately eternal punishments. Even if the punishments were considered permanent, the Illinois Punishment statues do not state such in plain language.

B. The Entire Nation Is Suffering—this Court Can Free Good People.

Political persecution by prosecution is running rampant in our Nation. This however is only the first phase of the life cycle. *Sapp v. Foxx* is of national importance because it highlights what happens after the politics have run its life cycle. Individuals are left with permanent punishments, thus disabling good men and women from meeting basic needs or truly being free.

As Webster Hubbell, former U.S. associate attorney general, convicted of mail fraud and tax evasion (2001) stated:

> "In the prison reform movement, it's called the "mark of Cain," but contrary to the biblical injunction, God's mercy isn't attached. Rather, it shackles former offenders like me with restrictions barring us—often permanently—from the means to live a normal life. Legally, these restrictions are called "civil disabilities." More realistically, they are called "civil death," a condition that, for many of us, offers little option but to return whence we came: to prison.[2]

2. Colloquium Getting There From Here: An Exploration Of Regionalism And Transportation In The United States: Note: Erasing The Mark Of Cain: An Empirical Analysis Of The Effect

i. National Attention on Political Prosecutions.

No one better outlined the important ethical standards that have enabled state and federal prosecutors to maintain an image of integrity and honesty than Supreme Court Justice Robert Jackson. In a speech to the nation's federal prosecutors on April 1, 1940, he noted that prosecutors should select cases where the offense is "most flagrant and the public harm the greatest," while warning that the prosecutor's ability to choose defendants is the "most dangerous power." 24 J. Am. Jud. Soc'y 18 (1940), 31 J. Crim. L. 3 (1940) (address at Conference of United States Attorneys, Washington, D.C., April 1, 1940). Choosing to prosecute a former or sitting president for concealing a private extramarital affair is a witch hunt—plain and simple.

Choosing defendants, Jackson said, requires judgment. It is a power that can be abused. "With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding a technical violation of some act on the part of almost anyone," Jackson said.

Jackson went on to say, "it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him." It is when the prosecutor "picks some person whom he dislikes or desires to embarrass or selects some group

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Of Ban-The-Box Legislation On The Employment Outcomes Of People Of Color With Criminal Records, 44 Fordham Urb. L.J. 1153.

of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies," Jackson warned. Former President Trump, like Mr. Sapp, were targets of political fights that rely on the criminal record, instead of fundamental issues for political power.

ii. Life After Political Prosecution is Unbearable.

Former President Trump, now a convicted felon of the State of New York, is facing consequences far greater than incarceration. Indeed, he will be divested of his civil rights, business licenses, economic opportunities, and personal liberties indefinitely. All due to political persecution, which will pass. But his status as a "civilly dead man" will destroy all the former President has built or ever will build in the financial capital of the nation. The world stock market, the world trade centers, and banking institutions will be shut off to him and everything he owns indefinitely.

From coast to coast, over 44,000 civil punishment statutes throughout the United States constitute a civil death for everyone duly convicted under the Thirteenth Amendment. There is no place they can go in the nation to live an abundant, redeemed life. In the absence of any legislation on the subject, the common-law consequences of a conviction for felony attached in a state remain until abrogated or changed by Constitution or statute. *Avery v. Everett*, 110 N.Y. 317, 323-324, 18 N.E. 148, 150 (1888) (internal citation omitted).

Speaking of New York, "[b]y the common law the civil death of the offender was one of the consequences of attainder for treason or felony. *Id.* In *Troup v. Wood* (citation omitted), the chancellor seemed to entertain no

doubt that, on a conviction in this state, prior to 1799, of an offense which was a felony at common law, the common-law incident of civil death attached, and this as well where the statute had changed the punishment from death to imprisonment for life as in the case of a capital sentence." *Id.* To ascertain the meaning of the phrase "civil death," as used in the Revised Statutes, and whether the statute, on a sentence of an offender to imprisonment for life, operates *eo instanti* to divest him of his estate, it is important to consider how civil death affected rights of property at common law.

Today, New York enforces 1,457 indefinite state and federal consequences barring employment, housing, public aide, financial resources and more. *https://niccc.nationalreentryresourcecenter.org/consequences.* There are 124 banking and financial statutory indefinite bars in the financial capital of the nation. *Id.* These statutes devastate every fabric of the economy and local communities while recycling crime. In total there are 2,222 collateral consequences that attach as punishments to convicted felons. *Id.* 765 are federal statutes, and these numbers increase based on foreign countries independent regulations.

In Florida, 1,063 collateral consequences, 747 of the punishments are indefinite. Under federal law, there are 1,016 statutory punishments, and 718 contain indefinite time limits. In Illinois there are 1,338 collateral consequences, and 875 are indefinite bars on the most critical areas to function in society. *https://niccc.nationalreentryresourcecenter.org/consequences.* Namely, the right to hold public office is an indefinite punishment and devastates local communities such as the Village of Sauk Village, Illinois significantly.

Against this backdrop, Mr. Sapp's case is poised to provide this Court both the procedural and substantive considerations attached to a civil death under the Eighth Amendment. The lower courts are both divided and confused. Most shocking, however, is one district court in Illinois that mocks the justice of God as Mr. Sapp fights to pursue his divine purpose to serve.

C. The Lower Courts Exacerbated the Fundamental Legal Issue.

i. A Bitterly Divided Fifth Circuit.

The "incidents of slavery" described in *United States v. Stanley*, (the Civil Rights cases) were the legal "disabilities imposed upon slaves in different southern states." *United States v. Roof*, 225 F. Supp. 3d 438, 448 (D.S.C. 2016). One of the well-known slave states was Mississippi highlighting the bitterly divided Fifth Circuit Court of Appeal's issue and remedy—slavery and the right to vote.

The Fifth Circuit's original panel held that Miss. Const. art. XII, § 241, which disenfranchises former offenders' life, is unconstitutional cruel and unusual punishment for life, within the meaning of the Eighth Amendment. *Hopkins v. Hosemann*, 76 F.4th 378, 387. By severing former offenders from the body politic forever, Miss. Const. art. XII, § 241 ensures that they will never be fully rehabilitated, continues to punish them beyond the term their culpability requires, and serves no protective function to society. *Id. Hopkins* dissenting *en banc* justices argue that the permanent felon-ban is a criminal penalty because it was identical to the slave codes imposed on

Black slaves. Mississippi was required to remove all slave laws under the Readmission Act, except laws imposed as punishments—right to vote.

The *Hopkins* majority *en banc* justices rejected the notion of a criminal penalty and relied on the 14th Amendment as the power for imposing rules on felons subject to a reasonableness standard. If the *Hopkins* majority agreed that the permanent felon-bar was a criminal penalty transferred from slavery, then it would effectively agree the power to impose such a penalty was derived from the Thirteenth Amendment. Hence, striking down the law would end the slavery condition of legal disability, permanent felon bar to vote. As the learned Harlan Crowe expressed, it is time to reopen the slave debates.

Legally, however, the *Hopkins* majority struggles to reconcile two cases. First, this Court's ruling that a constitutional challenge under the 14th Amendment is not the same as a constitutional challenge under the 8th Amendment. This Court has "rejected the view that the applicability of one constitutional amendment pre-empts the guarantees of another." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 49, 114 S. Ct. 492, 499 (1993). Second, *Kennedy* specifically supported the position that right to suffrage was a well-known criminal penalty. Thus, the Fifth Circuit's bitter divide is just the beginning of a long civil debate regarding the pros and cons of slavery. As *Kennedy* makes clear the right to vote is a criminal penalty. Mississippi's pro-slavery stance enforced a law forbidding black slaves to vote. A deeper view of the *en banc* court will reveal the individual judge's positions regarding slavery.

Notably, Mr. Sapp's case is most appropriate for review. Even from the district court stage, he narrowed his argument to an Eighth Amendment challenge ensuring a clean and clear path for this Court to make a decisive ruling. Hence, Mr. Sapp's writ should be granted because it presents the least divisive path for reconciling the judicial turmoil.

ii. The Seventh Circuit Exacerbated the Issue with a Procedural Conundrum.

The Seventh Circuit failed to answer the puzzling Eighth Amendment question, and instead punted the matter to this court on procedural grounds, but that only magnified the issue. 1a. To be clear, Mr. Sapp never defended against the *quo warranto* proceeding. *cf.* 5a. He did, however, always challenge his sentence but the chancery court was the wrong forum. *Id. cf.* 52a-53a This is consistent with the chancery's court understanding and the parties' legal positions. *Id.* Hence, Illinois doctrine of *res judicata* cannot apply to a "civil death" because there is no preclusive legal effect to time limits which do not exist—and time keeps going. If, however, there were time limits, and Mr. Sapp failed to present an Eighth Amendment challenge at the chancery court then perhaps the analysis would change.

Under the doctrine of *res judicata*—known as claim preclusion in many other jurisdictions—"a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to a subsequent suit between the parties involving the same cause of action," regardless of whether the second proceeding involves new arguments not passed upon in the initial action. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 703 N.E.2d 883, 889, 234

Ill. Dec. 783 (Ill. 1998). Put another way, where a second suit involves "the same cause of action" as an earlier one between the same parties, the bar of *res judicata* prohibits parties in the second suit from raising a "matter [ ] that could have been decided in [the first] suit." *Id.*

Illinois law does not use "cause of action" here in its technical sense, as denoting, for instance, the source of a party's authority to sue or the source of the legal rights sought to be vindicated. The phrase instead carries a "transactional" meaning. See *River Park*, 703 N.E.2d at 893; see also *Village of Bartonville v. Lopez*, 2017 IL 120643, 413 Ill. Dec. 34, 77 N.E.3d 639, 650 (Ill. 2017). Separate claims constitute a single cause of action under Illinois law if they arise from a single group of operative facts." *River Park*, 703 N.E.2d at 893.

The Illinois Supreme Court has stressed time and again that this is a flexible inquiry that courts should approach "'pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.'" *First Midwest Bank v. Cobo*, 2018 IL 123038, 429 Ill. Dec. 416, 124 N.E.3d 926, 930 (Ill. 2018) (quoting *River Park*, 703 N.E.2d at 893 (in turn quoting Restatement (Second) of Judgments § 24(2) (1982)))

Even if the Seventh Circuit were correct (and they are not), every attempt by the State's Attorney to enforce the Punishment Statutes restarted the (non-existent) clock for Mr. Sapp to challenge *specifically* the punishment's time. 38 a. If a man were lawfully imprisoned to 20 years, challenged the sentence, once and lost; but each year after

20 years the warden continued the sentence—the offender could challenge the same punishment, until time limits were pronounced. The problem with a civil death is, there was no time limit to begin. The injury became clear only after Mr. Sapp attempted to re-run for trustee *and* the State's Attorney attempted to hold Mr. Sapp in contempt using an outdated order.

The Parties Expectation

First, the chancery court specifically, struck Mr. Sapp's petition for relief from his sentence saying "the chancery court was not the correct forum and Mr. Sapp needed to seek relief from his civil death sentence in criminal court. 51a. Hence, the Mr. Sapp (like the State's Attorney) clearly understood the chancery court was not the proper forum to challenge or seek relief from his criminal sentence. *Id.* The Seventh Circuit had no authority to reinterpret the state court's order for a preclusive effect. Second, the chancery court specifically said, it was not the forum to determine eligibility. 38a. Thus, Mr. Sapp understood he could not bring a constitutional challenge to the underlying statute. 46a-48a.

Time, Space, Origin

In the procedural context of the *res judicata* doctrine, the Illinois civil punishment statutes contain *no* time-limits. Therefore, when Mr. Sapp ran for office again, he sought to restart the clock and fight his sentence at the eligibility phase of the election process. Thus, Mr. Sapp discovered time was an ongoing Eighth Amendment issue because the State's Attorney pursued a contempt order attempting to relate back to the chancery proceedings.

However, the chancery court rejected the State's Attorney's position that its order had any preclusive effect on Mr. Sapp's future eligibility. The chancery court even made clear that the facts were separate and distinct therefore *res judicata* cannot apply to a civil death.

Recall, a civil death was a state in which a person "though living, was considered dead"—a status "very similar to natural death in that all civil rights were extinguished." *Kanter*, 919 F.3d 437, 459 (7th Cir. 2019); As originally conceived, civil death signified "a transitional status in the period between a capital sentence and its execution."). *Id.*

What is this period? Because the substantive time period effects the procedural rights of Mr. Sapp. He is still living, and there are no time markers to determine when, if ever, he could run for office again. In fact, Mr. Sapp attempted one final time to run for office prompting an emergency restraining order to enjoin the State's Attorney's aggressive stance. 18a. Indeed, Mr. Sapp has a new claim, not barred by res judicata, on any day in the future in which he chooses to run for public office.

Finally, the Seventh Circuit concluded its opinion with language that exacerbated the issue causing confusion. In holding, "[o]ur conclusion is limited. We are not saying that Sapp is forever barred from challenging these statutes going forward. The passage of time may bring with it changed circumstances that alter the analysis under Illinois law." *Sapp v. Foxx*, 106 F.4th 660, 668 (7th Cir. 2024).

The Seventh Circuit's paradoxical statement is due to the procedural and substantive conflict under the Eighth Amendment's Cruel and Unusual Clause regarding "time limits" or the lack thereof. How much "time," procedurally, must Petitioner and similarly situated individuals, wait to exercise the right to run for local trustee? Moreover, the district dismissed Mr. Sapp's case with prejudice. The punishment is still going so the dismissal with prejudice directly conflicts with the Seventh Circuit's statement, that Mr. Sapp can challenge the statutes in the future. This case is poised to resolve the substantive and procedural questions issue of a civil death in America.

CONCLUSION

Accordingly, Mr. Sapp requests this Court to grant his petition for review. Mr. Sapp, like millions, can never repay their "moral debt" to the State of Illinois. Therefore, this Court must establish time limits so men will be free overnight.

Respectfully submitted,

DANIEL A. DAILEY
Chief Federal Litigation Counsel
Counsel of Record
KINGDOM LITIGATORS INTERNATIONAL, LTD.
The Jubilee Process
500 North Michigan
Suite 536
Chicago, IL 60611
(312) 278-4000
ddailey@kglit.com

Counsel for Petitioner

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED JULY 3, 2024

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 23-2502

LARRY D. SAPP,

Plaintiff-Appellant,

v.

KIMBERLY FOXX, INDIVIDUALLY
AND IN HER OFFICIAL CAPACITY,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:22-cv-05314. **Edmond E. Chang**, *Judge.*

ARGUED MARCH 28, 2024—DECIDED JULY 3, 2024

Before BRENNAN, SCUDDER, and LEE, *Circuit Judges.*

SCUDDER, *Circuit Judge.* Like many other states, Illinois bars certain felons from holding public office. Before us is a constitutional challenge to two such statutes, which the Cook County State's Attorney's Office used to oust Larry Sapp from his position on the

Sauk Village Board of Trustees. Sapp contends that by barring him from public service—and by depriving him of the income a career in public service would generate—these laws violate the Cruel and Unusual Punishment and Excessive Fines Clauses of the Eighth Amendment to the U.S. Constitution. We do not reach the merits of those contentions, however, because they are foreclosed by Illinois principles of collateral estoppel and *res judicata*. Accordingly, we affirm the dismissal of Sapp's complaint.

I

A

Larry Sapp is an Army veteran with an admirable history of service to the nation. He is also a victim of sexual assault. During basic training in 1975, Sapp was raped by several of his fellow servicemembers. The trauma of that event followed Sapp long after he left the military. For years, his mental health struggles went untreated. And so Sapp turned to illegal drugs to cope. That path led to felony drug convictions in 1988 and 1998 for manufacturing controlled substances in violation of Illinois law, as well as a stint in state prison.

Sapp left prison resolved to turn his life around. With the help of mental health treatment, he overcame his addiction, came to grips with his past, and set course on a life of community service. In the years since his recovery, Sapp has founded two non-profit organizations and become a mentor to others struggling with addiction and post-traumatic stress disorder. By any measure, he

has become a productive citizen and a respected member of his community.

B

In 2021 the people of Sauk Village elected Sapp to a four-year term on the Village's Board of Trustees. Sapp ran for the post believing in good faith that he was eligible to hold public office, despite his criminal history. And for several months, he served without incident. But in time Sapp's felony convictions came to the attention of the Cook County State's Attorney's Office, which filed a so-called *quo warranto* action against Sapp in Cook County Circuit Court. See *People of Illinois v. Sapp*, No. 22-CH-02567.

The purpose of a *quo warranto* proceeding is to "achieve the ouster of a person who is illegally occupying a public office." *Goral v. Dart*, 2020 IL 125085, 450 Ill. Dec. 384, 181 N.E.3d 736, 753-54 (Ill. 2020). Upon proof that a person is ineligible to hold a particular position, an appropriate court may enter an order removing the person from office. See 735 ILCS 5/18-108.

The State's Attorney's Office's complaint identified two Illinois statutes it believed barred Sapp from continued service as a Board Trustee: 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b). The first of these statutes is section 29-15 of the Illinois Election Code, which prohibits

> [a]ny person convicted of an infamous crime as such term is defined in Section 124-1 of the Code of Criminal Procedure of 1963, as amended,

> ... from holding any office of honor, trust, or profit, unless such person is again restored to such rights by the terms of a pardon for the offense, has received a restoration of rights by the Governor, or otherwise according to law.

10 ILCS 5/29-15.

The second is section 3.1-10-5(b) of the Illinois Municipal Code, which provides that

> [a] person is not eligible to take the oath of office for a municipal office if that person is, at the time required for taking the oath of office, in arrears in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony, unless such person is again restored to his or her rights of citizenship that may have been forfeited under Illinois law as a result of a conviction, which includes eligibility to hold elected municipal office, by the terms of a pardon for the offense, has received a restoration of rights by the Governor, or otherwise according to law.

65 ILCS 5/3.1-10-5(b).

Represented by counsel, Sapp did not dispute that his drug felonies triggered application of these statutes. (He did appear to argue that a different statute, 730 ILCS

5/5-5-5, restored his right to run for office, but the Cook County Court rejected that position and Sapp has not pressed it here.) Nor did he contest that his position on the Sauk Village Board of Trustees qualified as an "office of honor, trust, or profit" under the Election Code and as a "municipal office" under the Municipal Code. Sapp instead attacked the constitutionality of the statutes, arguing that enforcing either against him would violate the Eighth Amendment's Excessive Fines Clause by indefinitely depriving him of the economic opportunity to earn a living as a public servant. Sapp reasoned that such a result would be tantamount to asset forfeiture, grossly disproportionate to the severity of his drug felonies.

The Cook County Court disagreed, determining that enforcing the statutes against Sapp would not offend the Excessive Fines Clause because the "the deprivation of future salary" does not constitute a "fine" within the meaning of the Eighth Amendment. The State of Illinois, after all, would not receive anything of value—whether in cash or in kind—by ousting Sapp from office. Sapp's removal would mean only that someone else would receive the $600 stipend Sauk Village had previously paid Sapp each month. Having rejected Sapp's sole defense to removal, the state court held that Sapp was ineligible to serve as a Board Trustee and entered an order removing him from his position.

C

Two days before the Cook County Court issued that order, Sapp commenced this suit against Illinois

Governor J.B. Pritzker and State's Attorney Kimberly Foxx in federal court. Sapp's initial aim was to forestall his removal from office by securing either a declaratory judgment that the State's proposed application of 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) would violate the Eighth Amendment or an injunction requiring the Governor to issue him a pardon.

But Sapp's litigation strategy evolved following his removal from office. He remained committed to returning to service on the Sauk Village Board of Trustees, but Illinois law and the State's Attorney's Office stood in the way. When Sapp filed a statement with the Village declaring his intent to run anew for an open Board seat, the State's Attorney's Office asked the Cook County Court to hold him in contempt. The court denied that motion, explaining that its order had removed Sapp only from the specific position he occupied at the time of the *quo warranto* action. But Sapp withdrew from the race nonetheless due to what he saw as "relentless and aggressive" efforts by the State's Attorney's Office to enforce 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) against him.

To clear a path forward, Sapp filed an amended complaint seeking to bar the Cook County State's Attorney from enforcing either statute against him in future elections. As he had in both the Cook County Court and his initial federal complaint, Sapp insisted that the application of either Illinois statute to him would violate the Eighth Amendment. Sapp gave two reasons for this conclusion. He first renewed his contention, already rejected by the Cook County Court, that enforcement of

the statutes would violate the Excessive Fines Clause by depriving him of the opportunity to earn a salary as a public servant.

To that Sapp added a new argument: that enforcing the statutes against him would violate the Cruel and Unusual Punishment Clause by inflicting a criminal punishment—debarment from public service—grossly disproportionate to his drug felonies. See *Rummel v. Estelle*, 445 U.S. 263, 271, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980) (explaining that "the Eighth Amendment prohibits imposition of a sentence that is grossly disproportionate to the severity of [a defendant's] crime"); see also *Ewing v. California*, 538 U.S. 11, 21, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (2003) (same). In this way, then, Sapp's federal lawsuit evolved from a last-ditch effort to remain in public office into a vehicle for winning election a second time.

The State's Attorney moved to dismiss Sapp's amended complaint under Federal Rule of Civil Procedure 12(b)(6). Although disagreeing with the merits of Sapp's position, the State's Attorney principally sought dismissal on grounds of collateral estoppel and *res judicata*. The State's Attorney emphasized that the Cook County Court had rejected Sapp's excessive fines argument just six months before, in an action in which Sapp had every opportunity to raise his Cruel and Unusual Punishment Clause argument.

The district court granted the State's Attorney's motion on the merits (as well as on a few other grounds we need not discuss) without reaching the question of

preclusion. Concluding that 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) are civil—rather than penal—in nature, the district court held that the Eighth Amendment's Cruel and Unusual Punishment Clause does not apply. The district court then rejected Sapp's "argument that the Excessive Fines Clause applies to the loss of potential future earnings," agreeing with the conclusion of the Cook County Court.

II

A

Sapp challenges these rulings on appeal. For her part, the State's Attorney emphasizes that the appeal lends itself to swift resolution on the non-constitutional grounds of collateral estoppel and *res judicata*. We agree.

In an ordinary case, this dispositional ground would not be before us. That is because collateral estoppel and *res judicata* are affirmative defenses that generally must be asserted by defendants in their answer to the plaintiff's complaint and then raised in either a motion for judgment on the pleadings, see Fed. R. Civ. P. 12(c), or summary judgment, see Fed. R. Civ. P. 56(a). See *Walczak v. Chi. Bd. of Educ.*, 739 F.3d 1013, 1016 n.2 (7th Cir. 2014); *H.A.L. NY Holdings, LLC v. Guinan*, 958 F.3d 627, 631-32 (7th Cir. 2020); *Hicks v. Midwest Transit, Inc.*, 479 F.3d 468, 470 (7th Cir. 2007). Although this case did not proceed on those lines, the parties fully litigated the issue in the district court and have continued to do so on appeal. Even more, we may affirm "on any ground supported by the record

so long as the issue was raised and the non-moving party had a fair opportunity to contest the issue in the district court." *Locke v. Haessig*, 788 F.3d 662, 666 (7th Cir. 2015).

In these circumstances, where the parties have litigated the preclusion issue not once but twice, we are comfortable resolving the case on that ground. See *Carr v. Tillery*, 591 F.3d 909, 913 (7th Cir. 2010) (reaching the same conclusion under similar circumstances); see also *H.A.L. NY Holdings, LLC*, 958 F.3d at 632. That course accords with our general obligation to refrain from unnecessary forays into constitutional law. See *Jean v. Nelson*, 472 U.S. 846, 854, 105 S. Ct. 2992, 86 L. Ed. 2d 664 (1985) ("'Prior to reaching any constitutional questions, federal courts must consider nonconstitutional grounds for decision.'" (quoting *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99, 101 S. Ct. 2193, 68 L. Ed. 2d 693 (1981))); see also *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 341, 56 S. Ct. 466, 80 L. Ed. 688 (1936) (Brandeis, J., concurring).

B

We apply Illinois law to determine whether preclusion principles bar Sapp's federal claims. That conclusion follows from 28 U.S.C. § 1738, which requires us to give the Cook County Court's *quo warranto* judgment "the same preclusive effect it would have in" an Illinois court. *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 560 (7th Cir. 1999); *Walczak*, 739 F.3d at 1016; see also *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S. Ct. 1327, 84 L. Ed. 2d 274 (1985) ("Section 1738 embodies concerns of comity and federalism that allow the States to

determine, subject to the requirements of the statute and the Due Process Clause, the preclusive effect of judgments in their own courts.").

Recall again the procedural history: Sapp used the *quo warranto* action in the Cook County Court as an opportunity to challenge the constitutionality of 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) under the Excessive Fines Clause of the Eighth Amendment. The state court rejected the merits of Sapp's position in a reasoned opinion that followed full briefing by both sides. That legal ruling was necessary to the court's ultimate judgment ousting Sapp from public office.

Our task on appeal is to decide what preclusive effect Illinois law gives to that judgment in the context of the Eighth Amendment claims Sapp presses in this federal action.

As for Sapp's claim under the Excessive Fines Clause, the answer is straightforward. The Illinois doctrine of collateral estoppel "precludes a party from relitigating an issue decided in a prior proceeding." *Am. Family Mut. Ins. Co. v. Savickas*, 193 Ill. 2d 378, 739 N.E.2d 445, 451, 250 Ill. Dec. 682 (Ill. 2000). For the doctrine to apply, three things must be true: "(1) the issue decided in the prior proceeding must be identical to the one in the current suit; (2) the prior adjudication must have been a final judgment on the merits; and (3) the party against whom the estoppel is asserted must have been a party to, or must be in privity with a party to, the prior adjudication." *Hope v. Clinic for Women, Ltd. v. Flores*, 2013 IL 112673,

991 N.E.2d 745, 764, 372 Ill. Dec. 255 (Ill. 2013); see also *Herzog v. Lexington Twp.*, 167 Ill. 2d 288, 657 N.E.2d 926, 930, 212 Ill. Dec. 581 (Ill. 1995) (applying the same three-factor test).

All three requirements are met here. Sapp was a party to the *quo warranto* action. That litigation resulted in a final judgment on the merits removing Sapp from his position on the Sauk Village Board. And necessary to that judgment was the Cook County Court's rejection of the precise excessive fines argument Sapp presses in his amended federal complaint. So we have no trouble concluding that Illinois's doctrine of collateral estoppel precludes Sapp from relitigating that argument in this suit

That leaves Sapp's claim under the Cruel and Unusual Punishment Clause. The State's Attorney suggests that Sapp presented this argument to the Cook County Court. We disagree. Although Sapp did touch on proportionality in his state court brief—describing 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) as "excessive" in relation to his drug felonies—he appeared to do so in the context of explaining why the indefinite forfeiture of future earnings in his case constituted an excessive fine. Sapp's discussion of proportionality took place in a sub-heading expressly dedicated to establishing that those statutes imposed an excessive fine. Nowhere did he rely on case law that would support an argument under the Cruel and Unusual Punishment Clause. So we cannot say that the issue was raised, let alone decided, in the state court litigation.

But that does not mean Sapp is free to raise the claim in this federal case. Under the doctrine of *res judicata*—known as claim preclusion in many other jurisdictions—"a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to a subsequent suit between the parties involving the same cause of action," regardless of whether the second proceeding involves new arguments not passed upon in the initial action. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 703 N.E.2d 883, 889, 234 Ill. Dec. 783 (Ill. 1998). Put another way, where a second suit involves "the same cause of action" as an earlier one between the same parties, the bar of *res judicata* prohibits parties in the second suit from raising a "matter[] that could have been decided in [the first] suit." *Id.*

As with collateral estoppel, Illinois law tells us that three things must be true for *res judicata* to bar subsequent litigation: (1) "a final judgment on the merits rendered by a court of competent jurisdiction," (2) "an identity of cause of action," and (3) "an identity of parties or their privies." *Id.* There can be no doubt that the first and third requirements are satisfied here. The Cook County Court entered a final judgment on the merits in the *quo warranto* action, and it had jurisdiction to do so. See 735 ILCS 5/18-108. And although the State's Attorney brought the *quo warranto* action in the name of the people of Illinois (in short, the State)—whereas here she is a defendant in her personal capacity—Illinois law deems state officers, like State's Attorneys, to be in privity with the state itself. See *Licari v. City of Chicago*, 298 F.3d 664, 667 (7th Cir. 2002); *Ingemunson v. Hedges*, 133 Ill.

2d 364, 549 N.E.2d 1269, 1271-72, 140 Ill. Dec. 397 (Ill. 1990). Whether *res judicata* bars Sapp's claim under the Cruel and Unusual Punishment Clause turns therefore on the second factor—on there being an "identity of cause of action" between this federal lawsuit and the *quo warranto* action in the Cook County Court.

Illinois law does not use "cause of action" here in its technical sense, as denoting, for instance, the source of a party's authority to sue or the source of the legal rights sought to be vindicated. The phrase instead carries a "transactional" meaning. See *River Park*, 703 N.E.2d at 893; see also *Village of Bartonville v. Lopez*, 2017 IL 120643, 413 Ill. Dec. 34, 77 N.E.3d 639, 650 (Ill. 2017). Separate claims constitute a single cause of action under Illinois law if "they arise from a single group of operative facts." *River Park*, 703 N.E.2d at 893. This is so "regardless of whether they assert different theories of relief." *Id.* That Sapp seeks something different in this action (declaratory and injunctive relief clearing a path to future election) than he sought in the Cook County Court (the right to remain in office) is thus of little moment. What matters is whether each proceeding arose from the same core of operative facts.

The Illinois Supreme Court has stressed time and again that this is a flexible inquiry that courts should approach "'pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.'" *First*

Midwest Bank v. Cobo, 2018 IL 123038, 429 Ill. Dec. 416, 124 N.E.3d 926, 930 (Ill. 2018) (quoting *River Park*, 703 N.E.2d at 893 (in turn quoting Restatement (Second) of Judgments § 24(2) (1982))).

Applying these principles to the unusual facts of this case, three considerations lead us to conclude that Sapp's federal lawsuit arises out of the same group of operative facts as did the State's Attorney's *quo warranto* action.

First, the two cases align closely in time, origin, and motivation. The federal action began *during* the quo warranto litigation, and by Sapp's own admission its purpose was to bring the state suit to a favorable end. Both proceedings thus trace their origins to the State's Attorney's effort to remove Sapp from the Sauk Village Board of Trustees. And although the remedial scope of the federal suit evolved after Sapp was removed from office, the suit nonetheless remained at its core a dispute over the State's Attorney's Office's efforts to bar Sapp's future service on the Sauk Village Board of Trustees.

Second , in the brief interlude between the end of the *quo warranto* litigation and the present appeal, the essential facts have remained unchanged. Sapp's criminal record remains the same, and 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) continue to apply to those convictions. The only difference is that Sapp is no longer a sitting Sauk Village Trustee. On these facts, this lawsuit represents nothing less than a request for a second bite at the apple—an effort to bring a better and perhaps stronger version of the defense that fell short in the Cook County Court.

Opening the courthouse door to such litigation risks far-reaching consequences. If a candidate could overcome the strictures of *res judicata* merely by pointing to the fact that he is re-running for an old position, candidates for election could relitigate legal challenges every election cycle without meaningful limit. We find it most unlikely the Illinois Supreme Court would approve of such a practice, at least where nothing has changed from one election cycle to the next.

Third, Sapp's own conduct in the Cook County litigation shows that he understood that *then* was the time to challenge the constitutionality of 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b). Rather than contest the applicability of the statutes to his criminal history or to the position of Sauk Village Board Trustee, Sapp raised a constitutional defense. Holding Sapp to the arguments he made in that proceeding is hardly unreasonable given his strategic choice to invoke the protection afforded to him by the Eighth Amendment to the U.S. Constitution. Once he made that decision, Illinois law obligated him to bring all arguments to bear on that issue. See *Village of Bartonville*, 77 N.E.3d at 650 ("*Res judicata* embraces all grounds of recovery and defense involved and which might have been raised in the first action."); *Lake v. Tomes*, 405 Ill. 295, 90 N.E.2d 774, 777 (Ill. 1950) (same).

Sapp's sole argument against preclusion rests on the Cook County Court's refusal to hold him in contempt for pursuing reelection to the Sauk Village Board of Trustees. Stressing that the Cook County Court "clarified" that the scope of its order was limited to removing him from his

position at the time—not to bar him from standing for election in the future—Sapp insists that he can relitigate constitutional objections to 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) in this federal case. That position misses the mark. The Cook County Court's ruling did not opine on the preclusive effect that its rulings might have in future cases. It responded to the very different question whether Sapp's efforts to win reelection to the Board violated the terms of its order ousting Sapp from office.

At the end of the day, we conclude that this suit—including Sapp's claim under the Cruel and Unusual Punishment Clause—arises out of the same group of operative facts as did the State's Attorney's *quo warranto* action in Cook County Court. The two cases thus constitute the same "cause of action" under Illinois law, with the consequence being that Illinois's doctrine of *res judicata* bars Sapp from raising arguments in this suit that were available to him before the Cook County Court. When Sapp decided to challenge the constitutionality of 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) in state court, it was incumbent on him to raise a complete defense.

C

Our conclusion is limited. We are not saying that Sapp is forever barred from challenging these statutes going forward. The passage of time may bring with it changed circumstances that alter the analysis under Illinois law. We note, too, that Illinois law recognizes a number of exceptions to *res judicata* that we do not consider because Sapp did not raise them. See *Tebbens v. Levin & Conde*,

2018 IL App (1st) 170777, 423 Ill. Dec. 892, 107 N.E.3d 263, 285 (Ill. App. Ct. 2018) ("Where [a] defendant[] ... establish[es] a *prima facie* case for application of *res judicata*, it is [the plaintiff's] burden to establish the applicability of any exception."); see also *Venturella v. Dreyfuss*, 2017 IL App (1st) 160565, 416 Ill. Dec. 404, 84 N.E.3d 386, 395 (Ill. App. Ct. 2017) (same).

For today, all we hold is that given the close relationship of the *quo warranto* action and this proceeding—in time, origin, and purpose—Sapp may not raise constitutional challenges to 10 ILCS 5/29-15 and 65 ILCS 5/3.1-10-5(b) in this proceeding that were available to him in the *quo warranto* action.

For these reasons, we AFFIRM.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED JUNE 21, 2023

2023 WL 4105942
No. 1:22-CV-5314

UNITED STATES DISTRICT COURT, N.D. ILLINOIS, EASTERN DIVISION.

Larry D. SAPP,

Plaintiff,

v.

KIMBERLY FOXX, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY,

Defendant.

Signed June 21, 2023

MEMORANDUM OPINION AND ORDER

Edmond E. Chang, United States District Judge

Larry Sapp challenges the constitutionality of two Illinois statutes barring those convicted of felonies from holding public office. It was under those statutes that, back in September 2022, the Circuit Court of Cook County ousted Sapp from the office of Trustee of Sauk

Village, Illinois. R. 34-4, 2022 State Court Op. and Order at 4.[1] The state court agreed with the State of Illinois that the two laws, 65 ILCS 5/3.1-10.5(b), 10 ILCS 5/29-15, disqualified Sapp from holding public office absent a pardon or restoration of rights. *Id.* at 1–4. Sapp then brought this federal action, and eventually filed an amended complaint against Cook County State's Attorney Kimberly Foxx individually and in her official capacity, seeking declaratory and injunctive relief. R. 33, Am. Compl. ¶¶ 88–90.[2] Specifically, Sapp seeks a declaration that the Illinois laws are unconstitutional under the Eighth Amendment, and he also asks for preliminary and permanent injunctions to prevent Foxx from enforcing those statutes. *Id.* Foxx moves for dismissal of the case for failure to adequately state a claim. Fed. R. Civ. P. 12(b)(6); R. 34, Mot. Dismiss. For the reasons explained in this opinion, Foxx's motion is granted and Sapp's motion for provisional relief is correspondingly denied.

I. Background

For purposes of this motion to dismiss, the Court accepts all well-pleaded allegations as true and draws all reasonable inferences in Sapp's favor. *Hayes v. City of Chicago*, 670 F.3d 810, 813 (7th Cir. 2012).

Sapp has twice been convicted of felony drug offenses, once in 1988 and again in 1998. Am. Compl. ¶ 1. Decades

1. Citations to the record are "R." followed by the docket entry number and, if needed, a page or paragraph number.

2. The Court has subject matter jurisdiction over this federal-question case under 28 U.S.C. § 1331.

later, on April 6, 2021, he was elected to the Sauk Village Board of Trustees; the position comes with a monthly salary of $600. *Id.* ¶ 2. His election went unchallenged until the Cook County State's Attorney's Office received an anonymous tip about Sapp's old felony convictions. *Id.* ¶ 3. Representing the State of Illinois, the Office then filed a lawsuit to have Sapp removed as a trustee. Following the state laws, the Circuit Court of Cook County entered an order ousting Sapp under 65 ILCS 5/3.1-10.5(b) and 10 ILCS 5/29-15. *Id.*; 2022 State Court Op. and Order. In its order, the state court noted that it had earlier struck Sapp's petition for relief from disabilities—which would have made him eligible for office—because that type of petition must be addressed to the criminal courts that imposed his sentences.

After the removal, Sapp filed a candidacy statement to run for another open Trustee position. Am. Compl. ¶ 4. The State's Attorney's Office again found out. The Office filed a motion in state court, seeking to hold him in contempt. *Id.* But the state court denied the motion, clarifying that its prior order was limited to ouster and did "not extend to prevent Mr. Sapp ... from filing a petition for candidacy for office now or in the future." R. 40-1, 2023 State Court Order. The court also explained that the State could challenge Sapp's candidacy petition in a separate action or, if he was elected, could bring another proceeding to remove him. *Id.* There was no need; Sapp withdrew from the Trustee election, allegedly due to the efforts to enforce the statutes barring him from public office. Am. Compl. ¶ 56.[3]

3. A separate allegation says that "Sauk Village rejected Mr. Sapp's name as a result of Defendant Foxx's relentless efforts." Am.

Sapp later filed this lawsuit, and he filed an amended complaint after two dismissal motions were filed, one filed by the Governor in his official capacity (so, in effect, by the State of Illinois) and one by the Cook County entities. R. 18, 19, 20. Via the amended complaint, Sapp dropped the State from the lawsuit. *See* R. 33, Am. Compl. The remaining Defendants—the State's Attorney's Office and Foxx individually—again have moved to dismiss. Mot. Dismiss. Recently, Sapp learned of the intention of a Sauk Village Trustee to resign; the resignation allegedly took effect on June 1, 2023. R. 42, TRO Mot. Sapp filed a motion for a temporary restraining order to prevent Foxx from interfering with his attempts to occupy that newest vacancy. *Id.*[4]

II. Legal Standard

Under Federal Rule of Civil Procedure 8(a)(2), a complaint generally need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This short and plain statement must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (cleaned up).[5]

Compl. ¶ 4. In any event, it does not matter to this opinion whether Sapp withdrew on his own or was rejected by the Village.

4. For the sake of completeness, the Court considers those arguments in the TRO briefing that are relevant to the motion to dismiss. But obviously, the TRO motion itself is rendered moot by the dismissal of this case.

5. This Opinion uses (cleaned up) to indicate that internal quotation marks, alterations, and citations have been omitted from

The Seventh Circuit has explained that this rule "reflects a liberal notice pleading regime, which is intended to 'focus litigation on the merits of a claim' rather than on technicalities that might keep plaintiffs out of court." *Brooks v. Ross*, 578 F.3d 574, 580 (7th Cir. 2009) (quoting *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002)).

"A motion under Rule 12(b)(6) challenges the sufficiency of the complaint to state a claim upon which relief may be granted." *Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). "[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). These allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The allegations that are entitled to the assumption of truth are those that are factual, rather than mere legal conclusions. *Iqbal*, 556 U.S. at 678–79.

III. Analysis

In her motion to dismiss, Foxx argues that the amended complaint should be dismissed for four reasons, asserting that Sapp's claim (1) is barred by issue preclusion or claim preclusion; (2) is meritless as a matter of law; (3) does not set forth sufficient individual-capacity allegations; and (4) fails as to the official-capacity claim because the State's Attorney's Office is entitled to Eleventh Amendment

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quotations. *See* Jack Metzler, *Cleaning Up Quotations*, 18 Journal of Appellate Practice and Process 143 (2017).

immunity. Mot. Dismiss at 4–13. Sapp responds that his claim is sufficiently pled and that the state court that barred him from office already rejected Foxx's issue- or claim-preclusion arguments. R. 40, Pl.'s Resp. to Mot. Dismiss at 14–19. He also attempts to unilaterally dismiss the individual-capacity claim against Foxx, though he says that he will replead the claim after this Court decides the remainder of the dismissal motion. *Id.* at 19. Relatedly, he does not respond to Foxx's argument that she is protected by Eleventh Amendment immunity in her official capacity. With those lines drawn, the Court turns to deciding the necessary issues.

A. Eleventh Amendment Immunity

First, "the Eleventh Amendment prohibits federal courts from deciding suits brought by private litigants against states or their agencies, and that prohibition extends to state officials acting in their official capacities." *Garcia v. City of Chicago, Ill.*, 24 F.3d 966, 969 (7th Cir. 1994) (cleaned up). Importantly, "the Illinois Supreme Court decided in 1990 that State's Attorneys [like Foxx] are state officials. *Id.* There are exceptions to Eleventh Amendment immunity, *see Indiana Prot. & Advoc. Servs. v. Indiana Fam. & Soc. Servs. Admin.*, 603 F.3d 365, 371 (7th Cir. 2010), but Sapp fails to meaningfully point to any in his response to Foxx on this issue. In the summary of argument, Sapp mentions that "under *Ex Parte Young*, Defendant Foxx knowingly enforces punishment statutes without term limits." Pl.'s Resp to Mot. Dismiss at 11. But beyond that one assertion, he fails to explain how *Ex Parte Young* might apply to defeat sovereign immunity here. He

does the same thing in his reply on the TRO motion—he mentions that *Ex Parte Young* provides an exception to Foxx's sovereign-immunity defense but does not elaborate. R. 46, Pl.'s TRO Reply at 1, 13.

In essence, Sapp fails to develop an argument on an exception to sovereign immunity. The Court cannot step in to develop it for him. The result is that he effectively abandons or forfeits his litigation of this key issue. *Firestone Fin. Corp. v. Meyer*, 796 F.3d 822, 825 (7th Cir. 2015) ("A party generally forfeits an argument or issue not raised in response to a motion to dismiss.") (cleaned up); *Alioto v. Town of Lisbon*, 651 F.3d 715, 721 (7th Cir. 2011) ("We apply that rule where a party fails to develop arguments related to a discrete issue, and we also apply that rule where a litigant effectively abandons the litigation by not responding to alleged deficiencies in a motion to dismiss."). So, Foxx is entitled to immunity for those allegations brought against her in her official capacity. Having said that, the merits (or lack thereof) of the claims is discussed later in this opinion, because it is true that injunctive and declaratory relief can be ordered against a state official acting in her official capacity so long as there is no monetary-damages aspect to that kind of go-forward relief.

B. Individual-Capacity Allegations

Before getting to the merits of the claims against the Cook County State's Attorney's Office, the Court notes that Sapp's attempt at a voluntary, partial dismissal of the individual-capacity allegations against Foxx has no

basis in the Rules of Civil Procedure. Sapp declares, on his own, that he voluntarily dismisses the individual-capacity claim against Foxx—but will replead it after this Court decides the dismissal motion on the claims against the State's Attorney's Office. Pl.'s Resp. to Mot. Dismiss at 19. But when—as in this case—the defendant has already answered the complaint, voluntary dismissal may only be obtained "by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). In other words, Sapp cannot unilaterally dismiss part of his action. *See Wojtas v. Cap. Guardian Tr. Co.*, 477 F.3d 924, 927 (7th Cir. 2007) ("Motions for voluntary dismissal under Rule 41(a)(2) are committed to the district court's discretion[.]") (cleaned up).

What's more, Sapp is proposing piecemeal litigation. He offers no explanation for why he did not include individual-capacity allegations in the operative amended complaint. The amended complaint does not include any plausible allegations that Foxx was personally involved in the state case to oust Sapp from the trustee position. True, the amended complaint repeatedly mentions that "Foxx" took actions against Sapp. But those allegations are made against Foxx in her *official* capacity as the State's Attorney responsible for enforcing the challenged statutes.

For instance, Sapp highlights the allegation that "Defendant Foxx learned of Mr. Sapp's felonies through an anonymous tip to the chief of the municipal division for Defendant Foxx." Pl.'s Resp to Mot. Dismiss at 14–19 (quoting Am. Compl. ¶ 3). This allegation is instructive

for two reasons. For one, it illustrates the point that when Sapp refers to the actions of Foxx, he is really referring to the actions of her Office in enforcing the challenged statutes. After all, the tip is alleged to have been made to the chief of the municipal division, not to Foxx personally. There are no allegations that Foxx personally worked on the case—the state court filings are signed by Silvia Mercado Masters, an Assistant State's Attorney. *See, e.g.*, R. 34-1, State Court *Quo Warranto* Compl. And secondly, the anonymous-tip allegation—like the rest of the allegations in the amended complaint—does not speak to any personal vendetta that Foxx might have had against Sapp, or to some corrupt or illegitimate motive for pursuing action against him. Rather, what *is* alleged is that the State's Attorney (through the Office) worked to enforce statutes on the books. Put another way, the allegations are against Foxx acting in her official capacity. That makes sense. After all, Sapp is suing for declaratory and injunctive relief from a set of laws, not for damages against Foxx individually for some kind of tortious or improper conduct. *See Miller v. Smith*, 220 F.3d 491, 494 (7th Cir. 2000) (explaining in the context of Section 1983 that "where the plaintiff seeks injunctive relief from official policies or customs, the defendant has been sued in her official capacity" but "where the plaintiff alleges tortious conduct of an individual acting under color of state law, the defendant has been sued in her individual capacity") (cleaned up).

In any event, Foxx also argues that any personal-involvement claim against her would be barred by absolute prosecutorial immunity. Mot. Dismiss at 12–13. Sapp

does not respond to this contention. And so he once more forfeits an important issue that he should have addressed. For all these reasons—including that Sapp implicitly concedes that he failed to include personal-involvement allegations—any individual-capacity claim against Foxx is dismissed. The dismissal is with prejudice because Sapp has already amended the complaint once and also provides no hint as to what individual-capacity allegations would fix the deficiency.[6]

C. Eighth Amendment

In the alternative, Sapp's constitutional claims are without merit. Specifically, Sapp argues that Illinois's felon-bar statutes run afoul of the Cruel and Unusual Clause and (perhaps he argues this too) the Excessive Fines Clause of the Eighth Amendment. Pl.'s Resp. to Mot. Dismiss at 11, 13–18.[7] He repeatedly (and emphatically)

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6. In the TRO motion reply, Sapp argues that Foxx acted outside her official authority to prevent Sapp from obtaining a pardon from the Governor because she "is the only individual with sufficient authority to urge the Governor to make a pardon decision after two years, among other critical reasons, *i.e.*, close relationships to the Mayor of Sauk Village." Reply to TRO Mot. at 4–5 n.1. But this argument is completely speculative; it is absent from the motion-to-dismiss briefing; and, importantly, disconnected from any allegation in the amended complaint.

7. In his TRO reply, Sapp argues that Foxx forfeited her argument about the constitutionality of the felon-bar statutes under the Eighth Amendment's Cruel and Unusual Punishment Clause because she misclassified the challenge as arising under the Double Jeopardy Clause. Pl.'s TRO Reply at 1. Yet, Foxx *did* substantively address Sapp's contention that the statutes at issue are punitive,

disclaims any attempt to challenge the statutes under any other clause of the Constitution, like the Double Jeopardy Clause of the Fifth Amendment. R. 42, TRO Mot.; R. 42-1, Pl.'s TRO Br. at 22 ("By conjuring a Double Jeopardy theory Defendant ignores Plaintiff's legal claim that the statutes are subject to the Eighth Amendment and require a time limit."); Pl.'s TRO Reply at 9 ("This motion for temporary restraining order is predicated on Mr. Sapp's Amended Complaint allegations—strictly dealing with the Cruel and Unusual Clause of the Eighth Amendment—not the Excessive Fines Clause, the Double Jeopardy Clause, the Equal Protection Clause, the Commerce Clause, or any other constitutional clause Defendant would like to address.").[8]

Sapp does not cite any case—nor has the Court found any—that has ever held that felon-bar statutes like 65 ILCS 5/3.1-10.5(b) and 10 ILCS 5/29-15 constitute cruel

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even if she did so in the belief that the underlying challenge was under the Double Jeopardy Clause—and the case law is the same. And, more importantly, Sapp is raising a question of law. The Court would probably not declare a statute unconstitutional simply because a party did not address an argument or because, as here, a party misunderstood the basis for a constitutional challenge in light of a sprawling and, at times, meandering pleading.

8. Sapp also argues that the felon-bar statutes make him what he calls a "legal slave" under the Thirteenth Amendment. Pl.'s Resp. to Mot. Dismiss at 4. But involuntary servitude in the context of the Thirteenth Amendment prohibits "situations in which *labor* is compelled by physical coercion or force of law." *United States v. Kozminski*, 487 U.S. 931, 943 (1988) (emphasis added) (cleaned up). Here, Sapp is not being compelled to perform labor. Instead, he is prohibited from doing something: holding office.

and unusual punishment under the Eighth Amendment. Indeed, he does not even cite any case that has ever held felon-disenfranchisement statutes—those that deprive felons of the right to vote—to violate the Eighth Amendment. That is important because the right to vote is a fundamental right, *Tully v. Okeson*, 977 F.3d 608, 611 (7th Cir. 2020), whereas "the right to candidacy is not," *Brazil-Breashears v. Bilandic*, 53 F.3d 789, 792 (7th Cir. 1995); *Parker v. Lyons*, 757 F.3d 701, 707 (7th Cir. 2014) ("The right to run for or hold public office is not a fundamental right.") (cleaned up), *overruled on other grounds by Hadzi-Tanovic v. Johnson*, 62 F.4th 394 (7th Cir. 2023). In short, Sapp does not cite any authority in support of his legal argument that felon-bar statutes—even those that are indefinite and premised on long-ago convictions—violate the Eighth Amendment.

That said, it is true that statutory proscriptions or impositions can constitute cruel and unusual punishment if they are (1) punitive and (2) grossly disproportionate to the corresponding offense. *See Graham v. Fla.*, 560 U.S. 48, 59 (2010), *as modified* (July 6, 2010) ("Embodied in the Constitution's ban on cruel and unusual punishments is the precept of justice that punishment for crime should be graduated and proportioned to the offense.") (cleaned up); *Solem v. Helm*, 463 U.S. 277, 284 (1983) ("The principle that a punishment should be proportionate to the crime is deeply rooted and frequently repeated in common-law jurisprudence."). In the context of that test, Sapp argues that Illinois's felon-bar statutes are punitive. Pl.'s Resp. to Mot. Dismiss at 13. He makes that argument even though "Illinois's stated interest in barring felons from

elective office is to ensure public confidence in the honesty and integrity of those serving in state and local offices." *Parker*, 757 F.3d at 707. In other words, Illinois intended the felon-bar statutes to be civil in nature and nonpunitive. And "because we ordinarily defer to the legislature's stated intent, only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Smith v. Doe*, 538 U.S. 84, 92 (2003) (cleaned up). If, as here, "the intention was to enact a regulatory scheme that is civil and nonpunitive, [the Court] must further examine whether the statutory scheme is so punitive either in purpose or *effect* as to negate [the State's] intention to deem it civil." *Id.* (cleaned up) (emphasis added).

So, with no clear reason to believe that Illinois intended the felon-bar statutes to be punitive, it is necessary to evaluate the laws' effect.[9] To do that, the

9. Sapp argues that the felon-bar statutes are intended to be punitive because a relief-from-disabilities petition must be brought before the criminal court that sentenced the individual seeking relief. Pl.'s Resp. to Mot. Dismiss at 14. And because the felon-bar statutes only apply to convicted felons. *Id.* at 15. But "felons are not a protected class." *United States v. Hook*, 471 F.3d 766, 774 (7th Cir. 2006) (cleaned up); *see also Talley v. Lane*, 13 F.3d 1031, 1034 (7th Cir. 1994) ("Ex-convicts are not a suspect class.") (cleaned up). And so, Illinois need only a rational basis for the felon-bar statutes. *Hook*, 471 F.3d at 774. Here, the state's stated basis—which Sapp acknowledges—is trying to ensure public confidence in the honesty and integrity of those serving in state and local offices. Pl.'s Resp. to Mot. Dismiss at 10, 13–14. That is enough. That a felon might need to seek relief from disabilities from the criminal court that sentenced him does not make 65 ILCS 5/3.1-10.5(b) and 10 ILCS 5/29-15 punitive in contravention of the legislature's intent.

seven factors from *Kennedy v. Mendoza–Martinez*, 372 U.S. 144, 168–69 (1963), serve as a useful framework. *Smith*, 538 U.S. at 97. That framework has been traditionally used in different contexts to determine whether a statute "is penal or regulatory in character." *Mendoza–Martinez*, 372 U.S. at 168. The specific factors are whether the statutory scheme "involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned." *Id.* at 168–69.

In his dismissal-motion response, Sapp raises two points under the *Mendoza–Martinez* framework. One, that "[o]ne-third of Illinoisans, including Mr. Sapp, suffer under 1,189 Disability Statutes[,] which cumulatively amount to civil death because they do not have time restrictions." Pl.'s Resp. to Mot. Dismiss at 15. And relatedly, that the statutes are unreasonable on their face because they "do not have term limits or time periods." *Id.* at 16. Sapp expands on these points in the TRO briefing. There, he adds that being barred from holding public office is an affirmative disability or restraint that has historically been regarded as a punishment, that comes into play on a finding of scienter, that promotes retribution, for which there is no alternative, nonpunitive purpose, and which appears excessive in relation to the alternative, non-

punitive purpose. Pl.'s TRO Br. at 14–19. Even though this argument comes in the context of Sapp's TRO arguments, and were not developed in the response to Foxx's motion to dismiss, the Court will consider them here.

To start, Sapp does not explain how his ineligibility is an affirmative disability or restraint. Pl.'s TRO Br. at 14. He simply asserts that it must be so because it was imposed because of his criminal conduct. *Id.* But there is no authority that holds that barring someone from public office constitutes an affirmative disability or restraint. On the contrary, the statutes "impose[ ] no physical restraint, and so do[ ] not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint." *Smith*, 538 U.S. at 100. And "occupational debarment" has routinely been held to be *non*punitive, even when the disqualification is lifelong. *Id.* (compiling case law about the nonpunitive disqualification of bankers, union officials, and medical professionals from their chosen professions). Importantly, Sapp is not prohibited from earning a living. He can currently choose from countless other jobs and professions aside from being a state politician in Illinois.

Sapp's second point that barring someone from office has historically been regarded as a punishment is similarly unsupported. Again, the right to hold office is not a fundamental right. *Brazil-Breashears*, 53 F.3d at 792. Neither are those convicted of felonies a protected class. *Hook*, 471 F.3d at 774. So, Sapp's attempt to equate his inability to hold office with slavery, involuntary servitude, or—more broadly—historical discrimination against

Black Americans is unconvincing. Sapp thus does not cite any authority for the proposition that felon-bar statutes have been historically regarded as punishment.

Moving on, the *Mendoza–Martinez* factors on scienter and on whether the behavior to which the statutory scheme applies is already a crime are "of little weight in this case" because the felon-bar "regulatory scheme applies only to past conduct." *Smith*, 538 U.S. at 105. That said, Foxx is correct that felony convictions that trigger the felon-bar statutory scheme do not all have a scienter component. *See Cox v. Commodity Futures Trading Comm'n*, 138 F.3d 268, 273 (7th Cir. 1998) ("Several of the relevant crimes and statutes listed in §§ 8a(2)(D) and (E) do not require scienter.... The sanction thus does not come into play only on a finding of scienter.") So, the scienter factor weighs against Sapp. Conversely, the behavior to which the felon-bar statutes apply—committing a felony—is criminal. But that single factor favoring Sapp "is insufficient to render [the felon-bar statutes] criminally punitive." *Hudson v. United States*, 522 U.S. 93, 105 (1997).

That leaves three related factors to consider: whether barring someone from public office promotes retribution; whether there is a nonpunitive purpose for the statutory scheme; and whether the scheme appears excessive in relation to that non-punitive purpose assigned. As to the first of these, Sapp argues that the felon-bar statutes are retributive because they are "continued punishment for crimes he committed nearly thirty years ago." Pl.'s TRO Br. at 17. But as discussed earlier, the purpose of the felon-bar statutes is not continued punishment; it is to ensure

public confidence in the honesty and integrity of those serving in state and local offices. That nonpunitive purpose is served by the provision included in 65 ILCS 5/3.1-10.5(b) and 10 ILCS 5/29-15 that allows felons to hold office after pardon, restoration of rights, or otherwise according to law. If the statute's purpose was primarily retributive, it would likely not include a restorative provision. Instead, a punitive statute would categorically ban any felon, regardless of any attempt to show rehabilitation, from holding office. *See Cox*, 138 F.3d 268, 273 (7th Cir. 1998) ("Although conviction of one of the listed crimes gives rise to a presumption that a person is unfit for registration, a person may retain his registration by making a clear and convincing showing that his continued registration would not pose a substantial risk to the markets."). In short, there is no clear reason to believe that the felon-bar statutes are retributive, or that they do not have a nonpunitive purpose.

The final factor to consider is whether the felon-bar is excessive in relation to its nonpunitive purpose. Sapp argues that it is excessive because its effects are indefinite in time. But the statutes in question allow for the possibility of a lifting of the bar. Sapp would need to receive a pardon or a restoration of rights. It is true that obtaining either of those can be difficult, but "a statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance." *Smith*, 538 U.S. at 103. On balance, then, Sapp has not come close to showing that 65 ILCS 5/3.1-10.5(b) and 10 ILCS 5/29-15 are punitive. On the contrary, there is ample reason to believe that the laws serve their intended

nonpunitive purpose: to promote confidence in public servants in Illinois.

For all those reasons, Sapp's constitutional challenge under the Cruel and Unusual Punishment Clause fails. The statutes in question are not punitive, and Sapp does not argue that they are grossly disproportionate. That conclusion is nearly the end of the analysis. But there is an epilogue. In his response to the motion to dismiss, Sapp argues that his removal from office resulted in him forfeiting future earnings as Trustee of Sauk Village in violation of the Excessive Fines Clause. Pl.'s Resp. to Mot. Dismiss at 16–18. He later disclaims this argument in his TRO briefing. *See* Pl.'s TRO Reply at 9 ("This motion for temporary restraining order is predicated on Mr. Sapp's Amended Complaint allegations—strictly dealing with the Cruel and Unusual Clause of the Eighth Amendment—not the Excessive Fines Clause...."). In any event, Sapp was not subjected to any fines or fees when he was removed from office. 2022 State Court Op. and Order at 3. And there is no authority to support the argument that the Excessive Fines Clause applies to the loss of potential future earnings.

IV. Conclusion

The final loose end is Foxx's issue- and claim-preclusion arguments. The Court does not address those arguments because the amended complaint fails on two other independently dispositive grounds, namely (1) because of Sapp's failure to overcome sovereign immunity and to include individual-capacity allegations; and more

importantly (2) because the underlying unconstitutionality claim is without merit. Importantly, Sapp has received two opportunities to develop his arguments. In its analysis, the Court considered his response to the motion to dismiss as well as his later TRO briefing. Given that Sapp has received ample opportunity to develop his arguments, and that he has nonetheless failed to remedy crucial deficiencies, dismissal with prejudice is appropriate. Allowing him to amend his complaint once again would be futile. Foxx's motion to dismiss is granted, Sapp's TRO motion is thus denied, and final judgment will be entered. The hearing of June 22, 2023, is vacated.

ENTERED:

/s/ Edmond E. Chang

Honorable Edmond E. Chang

United States District Judge

DATE: June 21, 2023

APPENDIX C — ORDER OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION, FILED JANUARY 5, 2023

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT,
CHANCERY DIVISION

Case No. 22 CH 02567
Judge Celia Gamrath
Calendar 6

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

LARRY D. SAPP,

Respondent.

ORDER

This matter came on the Petitioner's Second Petition for Rule to Show Cause against Mr. Sapp, which is scheduled to be heard on January 6, 2023. After reviewing the Petition and plain language of the September 30, 2022 court order, which Mr. Sapp is alleged to have violated, the court finds no briefing or oral argument is necessary on the Petition. For the following reasons, the Petition is denied.

Appendix C

Petitioner seeks a finding of contempt against Mr. Sapp for filing a petition for candidacy for office after the court ousted him from office in a quo warranto action on September 30, 2022. The ouster has taken effect and Mr. Sapp no longer holds the elected office. The court's judgment was complied with and there are no grounds for contempt or issuance of a rule to show cause against Mr. Sapp.

The court's quo warranto order entered on September 30, 2022, is limited to the ouster of Mr. Sapp from the position he occupied on that date, based on facts and circumstances as they existed at the time of judgment. The order does not extend to prevent Mr. Sapp from forever holding office if he is eligible, or from filing a petition for candidacy for office now or in the future. Indeed, the purpose of quo warranto is to oust a person from the office he or she occupies. It is not used to evaluate one's eligibility to hold a future position or bar them from seeking office in the future.

If Mr. Sapp is ineligible to file a petition for candidacy, perhaps there will be a challenge to his petition in a separate action. If he is elected to an office and takes office while he is ineligible to hold the office, perhaps there will be another quo warranto proceeding. However, it is not the province of this court to be the gatekeeper for Sauk Village or to hold Mr. Sapp in contempt of court for filing a petition for candidacy to hold an elected position in the future, even if it is the same position from which he was ousted in 2022.

IT IS ORDERED:

1. Petitioner's Second Petition for Rule to Show Cause is denied.

2. The presentment date of January 6, 2023 at 9:15 AM is stricken.

ENTERED:

/s/_____
Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
County Department, Chancery Division

APPENDIX D — ORDER OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION, FILED OCTOBER 14, 2022

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT,
CHANCERY DIVISION

No. 22 CH 2567

PEOPLE OF THE STATE OF ILLINOIS,
BY KIMBERLY M. FOXX,
STATE'S ATTORNEY OF COOK COUNTY,

Plaintiff,

v.

LARRY D. SAPP, IN HIS CAPACITY AS
VILLAGE TRUSTEE OF THE VILLAGE OF
SAUK VILLAGE, ILLINOIS,

Defendant.

October 14, 2022, Filed

ORDER

This Matter coming to be heard on Plaintiff's *Emergency* Petition for Rule to Show Cause ("Petition"), the parties being present via Zoom, and the Court having jurisdiction and being duly advised in the premises,

IT IS HEREBY ORDERED:

The Petition is denied as moot based on the representations of defense counsel Daniel Dailey that Mr. Sapp has and will comply with this Court's September 30, 2022 Order which ousted him as Village Trustee as of that date.

Mr. Dailey further represented that he advised the attorney for the Village of Sauk Village on October 3, 2022, via email, that Mr. Sapp "advised he would not be performing any functions as a Trustee over the ten days" and that he will "return any Village property to his office immediately." Mr. Dailey subsequently advised in an October 6, 2022 email that "Trustee Sapp has already spoken with the Village Attorney to advise the Mayor of his plans to always comply with any Court's order."

ENTERED:

/s/ Celia G. Gamrath
Hon. Celia G. Gamrath

APPENDIX E — FINAL MEMORANDUM OPINION AND ORDER OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION, FILED SEPTEMBER 30, 2022

IN THE CIRCUIT COURT OF COOK COUNTY
ILLINOIS COUNTY DEPARTMENT
CHANCERY DIVISION

Case No. 22 CH 02567
Judge Celia Gamrath
Calendar 6

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

v.

LARRY D. SAPP, IN HIS CAPACITY
AS VILLAGE TRUSTEE OF THE VILLAGE
OF SAUK VILLAGE, ILLINOIS,

Defendant.

FINAL MEMORANDUM OPINION AND ORDER GRANTING SUMMARY JUDGMENT ON COUNT I FOR QUO W ARRANTO

This matter came on the People's motion pursuant to section 2-1005 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005) for an order entering judgment in their favor and against Defendant Larry D. Sapp for quo

warranto, declaratory relief, and injunction relating to his unlawful holding of the office of Village Trustee of the Village of Sauk Village, Illinois. For the following reasons, the motion is granted as to count I for quo warranto. The court need not decide the other two counts, for this decision fully resolves the matter.

STANDARD OF REVIEW

Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c). " In a proper case, a quo warranto action may be decided by summary judgment." *People ex rel. Alvarez v. Price,* 408 Ill. App. 3d 457, 461 (1st Dist. 201 1). The Illinois quo warranto statute provides that such a proceeding may be brought against "[a]ny person [who] usurps, intrudes into, or unlawfully holds or executes any office, or franchise, or any office in any corporation created by authority of this State." 735 ILCS 5/18-101(1). A person's eligibility to hold office may be challenged at any time during the term of that office. *Geer v. Kadera,* 173 Ill. 2d 398, 409 (1996). In response to a quo warranto complaint, a defendant may "disclaim or justify, and, if the defendant justifies, shall set out the facts which show the lawful authority to exercise the right claimed." 735 ILCS 5/18-103. If defendant is found guilty as charged in the complaint, the court may enter judgment of ouster against defendant. 735 ILCS 5/18-108.

Appendix E

ANALYSIS

The facts are undisputed that Mr. Sapp was elected Village Trustee of the Village of Sauk Village and sworn in on May 11, 2021. To date, he continues to serve as a Village Trustee. Prior to being sworn into office as Village Trustee, Mr. Sapp was convicted of felonies on two separate occasions, one on October 12, 1988, and one on April 2, 1998, both for Manufacture/Delivery of a Controlled Substance. He was sentenced to probation and completed probation for the first conviction. For the second conviction, Mr. Sapp was sentenced to a three-year term in the Department of Corrections, which he completed.

The Village of Sauk Village is incorporated under the Illinois Municipal Code. *See* 65 ILCS 5/1-1-1 *et seq.* The office of Village Trustee is an elected municipal office and subject to the Illinois Municipal Code (65 ILCS 5/1-1-2(2)) and Illinois Election Code (10 ILCS 5/1-3(5)).

The Illinois Municipal Code states in relevant part: "A person is not eligible to take the oath of office for a municipal office if that person [ ], at the time required for taking the oath of office, ... has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony, unless such person is again restored to his or her rights of citizenship that may have been forfeited under Illinois law as a result of a conviction, which includes eligibility to hold elected municipal office, by the terms of a pardon for the offense, has received a restoration of rights by the Governor, or otherwise according to law." 65 ILCS 5/3.1-10.5(b).

Appendix E

The Illinois Election Code states: "Any person convicted of an infamous crime as such term is defined in section 124-1 of the Code of Criminal Procedure of 1963, as amended, shall thereafter be prohibited from holding any office of honor, trust, or profit, unless such person is again restored to such rights by the terms of a pardon for the offense, has received a restoration of rights by the Governor, or otherwise according to law." 10 ILCS 5/29-15.

It is undisputed that Illinois has not pardoned Mr. Sapp in connection with either of these convictions. Nor has Mr. Sapp been restored of his rights by the Governor, or otherwise according to law. In response to the People's complaint seeking his ouster as Village Trustee, Mr. Sapp filed a Petition for Relief from Disabilities in this chancery court, claiming this would amount to a restoration of his rights and remove the impediment to his holding office. Mr. Sapp's supposition is far from proven.

Under the Illinois Municipal Code, a person is not eligible to take the oath of office if he or she at the time was convicted of a felony, unless such person is again restored to his or her rights of citizenship by the terms of a pardon for the offense, has received a restoration of rights by the Governor, or otherwise according to law. Petitioning for relief of disabilities or seeking a certificate of good conduct is not the equivalent to petitioning the Governor for a restoration of rights. *See* 730 ILCS 5/5-5.5-45 ("no certificate issued under this Article shall be deemed or construed to be a pardon"). As the People contend, a Certificate of Relief from Disabilities is designed to help someone get a license they may need for certain

types of jobs. It is not designed to put a convicted felon into an elected office without a gubernatorial pardon or restoration of rights by the Governor, or otherwise according to law.

Nonetheless, the court struck the Petition for Relief from Disabilities without prejudice to Mr. Sapp's right to file it in the related criminal case by the court that imposed his sentences. *See* 730 ILCS 5/5-5.5-15. Thus far, Mr. Sapp has not received a Certificate of Relief from Disabilities. This court is not required to wait and see if he eventually does and then decide its significance.

As set forth above, in response to a quo warranto complaint, a defendant may "disclaim or justify, and, if the defendant justifies, shall set out the facts which show the lawful authority to exercise the right claimed." 735 ILCS 5/18-103. If defendant is found guilty as charged in the complaint, the court may enter judgment of ouster against defendant. 735 ILCS 5/18-108.

Here, Mr. Sapp has not disclaimed or justified or set out the facts which show the lawful authority to hold elected municipal office. Instead of filing an answer and asserting defenses to the complaint, Mr. Sapp filed the Petition for Relief from Disabilities, which the court struck. In his response to the People's motion for summary judgment, he raises Eighth Amendment claims. But these claims fail and are insufficient to overcome the People's right to summary judgment.

Appendix E

Mr. Sapp cannot prove, and has not attempted to prove, that he is entitled to hold the office of Village Trustee. Nor is the court moved by his claim he is being "punished" for crimes he committed more than twenty years ago. To the contrary, he is being held to the same standard as every person who seeks to hold municipal office in the State of Illinois - no person is eligible to take the oath of office or hold elected office if they have been convicted of any infamous crime, bribery, perjury, or other felony, unless their rights of citizenship are restored. Before taking the oath of office, Mr. Sapp had the right and opportunity to seek a pardon or restoration of rights. The Governor declined. Mr. Sapp was therefore not eligible to hold the office of Village Trustee when he was sworn in, and he has no lawful authority to remain in office.

Mr. Sapp's claimed good-faith belief that he thought he was eligible to hold office by completing his sentence does not pass muster. The statute he cites, 730 ILCS 5/5-5-5(b), pertains to offices created by the Constitution, not a statutorily-created office like Village Trustee.

There is no fundamental right to run for a statutorily-created position, and nothing unconstitutional about "'requiring a convicted felon who wants to run for a statutorily created office to establish to the Governor's satisfaction that he has re habilitated himself and is worthy of the public trust.'" *People v. Agpawa,* 2018 IL App (1st) 171976, ¶43, quoting *People v. Hofer,* 363 Ill. App. 3d 719, 724 (2006). Illinois "has an important interest in protecting the integrity of elective municipal offices and may do so by enacting legislation that prohibits convicted

felons from holding such offices." *Id.,* ¶45. Such laws "'were established to ensure public confidence in the honesty and integrity of those serving in state and local offices.'" *Id.,* ¶43, quoting *Hofer,* 363 Ill. App. 3d at 723. Mr. Sapp's attack on the Illinois Municipal and Election Codes fails in light of this precedent.

Lastly, the court disagrees with Mr. Sapp's argument that removal of him as Village Trustee - a public office he is ineligible to hold - would constitute a civil forfeiture of his assets violative of the Eighth Amendment restriction against excessive fines. There is no forfeiture proceeding pending against Mr. Sapp, and the People are not seeking any fines or fees against Mr. Sapp in this action. Mr. Sapp's case law is distinguishable insofar as the cases he cites deal with an actual forfeiture proceeding instituted by the government. Here, the People are seeking to oust Mr. Sapp from an elected office he is not entitled to hold, not the forfeiture of earnings and earning capacity. Naturally, Mr. Sapp is not entitled to compensation upon his ouster from a public office. But this is a consequence of every quo warranto proceeding. It is axiomatic that the deprivation of future salary for a position one no longer holds is not a violation of the Eighth Amendment.

IT IS ORDERED:

1. The court grants the People's motion for summary judgment as to count I for quo warranto in accordance with 735 ILCS 5/18-101 *et seq.*

2. Because Defendant Larry D. Sapp was ineligible to be sworn into office, and remains ineligible to hold office, he is ousted immediately from the office of Village Trustee of the Village of Sauk Village, Illinois.

3. No judgment is entered on counts II and III of the complaint, for any such relief would be duplicative or unnecessary given the final disposition on count I.

4. This Judgment is final and immediately enforceable and appealable, and disposes of all matters in this case.

5. Case disposed.

ENTERED:

/s/_____
Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
County Department, Chancery Division

APPENDIX F — ORDER OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION, ENTERED JULY 20, 2022

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT,
CHANCERY DIVISION

Case No. 22 CH 02567
Judge Celia Gamrath
Calendar 6

PEOPLE OF THE STATE OF ILLINOIS,
BY KIMBERLY M, FOXX, STATE'S
ATTORNEY OF COOK COUNTY,

Plaintiff,

v.

LARRY D. SAPP, IN HIS CAPACITY AS
VILLAGE TRUSTEE OF THE VILLAGE
OF SAUK VILLAGE, ILLINOIS,

Defendant.

ORDER GRANTING THE PEOPLE'S MOTION TO STRIKE

This matter came on the People's Motion to Strike Defendant Larry D. Sapp's Petition for Relief from Disabilities. The court having reviewed the Motion, Response, Reply, and all facts and laws cited within.

For the following reasons, the court grants the Petition without prejudice to Defendant seeking relief in criminal court as contemplated by 730 ILCS 5/5-5.5-15.

Defendant's Petition is not a matter to be heard in Chancery; rather, it is an action suited for criminal court where the court that imposed the sentence may issue a certificate of relief from disabilities to an eligible offender for a conviction that occurred in that court. See 730 ILCS 5/5-5.5-15. Mr. Sapp's reliance on General Order 1.3(b) is misplaced. While the General Order provides no action shall be dismissed because it was filed in the wrong division, it does not provide that the action should remain in the wrong division. As stated, Mr. Sapp may still seek relief in criminal court. Nonetheless, even if this court had discretion to decide the Petition, to do so would impede the administration of justice and delay adjudication of the limited action before the court—a quo warranto action.

Section 18-103 of the quo warranto statute specifically prohibits the joinder or counterclaim of "matters not germane to the distinctive purpose of the proceeding." 735 ILCS 5/18-103. The "purpose of bringing [a quo warranto] action is to correct an improper appointment or election and to achieve the ouster of a person who is illegally occupying a public office." *Goral v. Dart*, 2020 IL 125085, ¶79. Defendant seeking a certificate of relief from disabilities now, more than a year after taking the oath of office, is not a matter "germane to the distinctive purpose" of a quo warranto proceeding designed to determine whether Mr. Sapp was eligible to hold office at the time he was sworn in. Therefore, the court need not

entertain Mr. Sapp's Petition seeking affirmative relief in an ancillary matter.

The parties dispute what effect a certificate of relief from disabilities would have at this late stage. The People contend even if Mr. Sapp were to receive a certificate now, it would not cure the defect at the time he took the oath of office. As such, he would still be prohibited from holding office. The court need not decide this question or give an advisory opinion. Should Mr. Sapp obtain a certificate of relief from disabilities from the criminal court that imposed the sentence, he may present it to the court and explain its relevance. However, for now, because the Petition does not belong in this proceeding, the court strikes Defendant's Petition without prejudice to him seeking relief in the appropriate court.

IT IS ORDERED: The court grants the People's Motion to Strike Defendant's Petition for Relief from Disabilities without prejudice to Defendant seeking relief in the court that imposed the sentence as contemplated by 730 ILCS 5/5-5.5-15. The August 15, 2022, 8:45 AM status date shall stand and will be conducted remotely via Zoom.

ENTERED:

/s/_____
Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
County Department, Chancery Division