NEBRASKA DEPARTMENT OF JUSTICE

Opinion No. 24-004 — July 17, 2024

OPINION FOR THE SECRETARY OF STATE

Constitutionality of L.B. 20 and Underlying Statutes

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

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

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

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

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

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

I.

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

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

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

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

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

II.

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

A.

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

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

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

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

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

---

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

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

B.

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

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

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

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

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

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

---

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

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

The right to vote is a civil right. *Ways*, 264 Neb. at 255, 646 N.W.2d at 626. A felon loses that right as a constitutionally mandated consequence of his felony. Neb. Const. art. VI, § 2. The loss of this civil right, which flows from the conviction of a felony, necessarily then is part of the legal consequences of the crime. Simply put, restoring the right to vote is "nullifying . . . legal consequences of a crime." *Spady*, 264 Neb. at 103, 645 N.W.2d at 542 (quoting Pardon, *Black's Law Dictionary* (7th ed. 1999)). It is thus a pardon. And a pardon is solely within the hands of the Board of Pardons under our constitution.

C.

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

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

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

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

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

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

III.

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

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

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

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

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

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

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

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

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

IV.

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

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

---

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

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

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

V.

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

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

---

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

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

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

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

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

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

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

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

VI.

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

MICHAEL T. HILGERS
Attorney General of Nebraska