

No. 20-12003

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Kelvin Leon Jones, *et al.*,
Plaintiffs-Appellees,

v.

Ron DeSantis, in his official capacity as
Governor of the State of Florida, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Florida, No. 4:19-cv-300-RH/MJF

**EN BANC BRIEF OF *AMICI CURIAE* THE DISTRICT OF
COLUMBIA, ILLINOIS, CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, HAWAII, MARYLAND,
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA,
NEW JERSEY, NEW MEXICO, NEW YORK, OREGON,
PENNSYLVANIA, VERMONT, VIRGINIA, AND
WASHINGTON IN SUPPORT OF PLAINTIFFS-APPELLEES**

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Under Eleventh Circuit Rule 26.1, undersigned counsel certifies that the Certificate of Interested Persons filed by Defendants-Appellants on July 20, 2020, as supplemented by the Certificates of Interested Persons filed by the Texas *Amici* on July 20, 2020, and by the Honest Elections Project on July 23, 2020, is complete with the following exceptions:

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IDENTITY AND INTEREST OF *AMICI* STATES

The District of Columbia, Illinois, California, Colorado, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Vermont, Virginia, and Washington (“*Amici* States”) submit this brief in support of Plaintiffs-Appellees pursuant to Federal Rule of Appellate Procedure 29(a)(2) and Eleventh Circuit Rule 35-8.

As of 2016, an estimated 6.1 million people across the United States could not vote because of state laws that disenfranchise individuals convicted of felony offenses.¹ By contrast, “restoration of voting rights” can “provide[] a clear marker of reintegration and acceptance as a stakeholder in a community of law-abiding citizens.”² To that end, States are actively grappling with their felon disenfranchisement laws. Since 1997, 23 States, including several

¹ Christopher Uggen *et al.*, The Sentencing Project, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016* at 3 (Oct. 2016), <https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>. All websites were last visited on July 30, 2020.

² Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 *Am. Soc. Rev.* 777, 794 (2002).

Amici, “have moved towards restoring the voting rights of individuals who have been convicted of felonies.”³ These initiatives to expand the franchise—which range from repealing permanent disenfranchisement laws to instituting administrative systems that notify returning citizens of their rights—embrace the notion that allowing former felons to vote benefits both the returning citizens and the communities they rejoin.

Although the *Amici* States have reached different conclusions on how best to expand the franchise,⁴ they share an interest in promoting civic participation and public safety by reintegrating former felons as full-fledged, productive members of their societies. Florida’s Senate Bill 7066 (“SB-7066”)—which denies restoration indefinitely for all those who have not paid their legal financial obligations (“LFOs”)—is out of step with these important interests. The *Amici* States thus urge this Court to uphold the district court’s judgment.

³ Bruce E. Cain & Brett Parker, *The Uncertain Future of Felon Disenfranchisement*, 84 Mo. L. Rev. 935, 938 (2019).

⁴ See, e.g., Jean Chung, The Sentencing Project, *Felony Disenfranchisement: A Primer* 1 (updated Dec. 2019), <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> (download PDF).

SUMMARY OF ARGUMENT

At issue is whether Florida’s pay-to-vote system—which indefinitely denies returning citizens the right to vote based on their inability to pay outstanding LFOs and does not provide adequate procedural protections for determining the amount owed—is constitutional. In defense of this system, the Florida defendants and their *amici* argue that SB-7066 is no different than other laws “across the country” that have created an exception to disenfranchisement for those who have paid in full their debts to society, Tex. Am. Br. at 3, or that have made “voting more expensive for some people than others,” Fla. Br. at 23. Accordingly, they argue, if SB-7066 is deemed unconstitutional, many States will be put to a “Hobson’s choice” between “re-enfranchising more broadly and re-enfranchising no one.” Tex. Am. Br. at 1, 3-6; Fla. Br. at 4-5. The *Amici* States disagree.

To begin, only two States in addition to Florida indefinitely deny the right to vote to any returning citizen who has not fully paid his or her LFOs. The vast majority of States have not imposed such a severe burden, and many in recent years have taken additional measures to expand the franchise and facilitate restoration. This clear and growing

consensus toward re-enfranchisement reflects the *Amici* States' understanding—which is supported by empirical evidence—that restoring voting rights to former felons helps these individuals to fully reintegrate into their communities, fosters civic participation, and improves public safety. By contrast, restrictive laws like SB-7066 disparately harm minority communities without any attendant benefit. States retain other means to enforce judgments that do not require indefinite disenfranchisement, and there is no evidence that pay-to-vote systems actually promote full payment of LFOs. This is especially true here, where Florida has not established an administrative vehicle for returning citizens to ascertain what, if anything, they owe.

In short, the district court's conclusion that SB-7066 is unconstitutional does not forebode a reversal of the clear trend among the States toward re-enfranchisement of former felons or endanger the many kinds of state systems that promote restoration of the right to vote. The *Amici* States thus agree with the plaintiffs that the district court's judgment should be affirmed.

ARGUMENT

I. States Have Successfully Expanded The Franchise To Former Felons.

Over the past 20 years, States have restored the right to vote to more than one million people by reforming their felon disenfranchisement laws.⁵ These reform efforts include laws repealing lifetime disenfranchisement, allowing felons to vote while completing the terms of their probation or parole, eliminating requirements to pay LFOs, and providing information to felons leaving correctional facilities about restoration of their voting rights and voter registration.

As one example of actions taken in recent years, Florida, Maryland, Nebraska, Nevada, and New Mexico repealed laws that had permanently disenfranchised convicted felons.⁶ Similarly, Delaware

⁵ Morgan McLeod, The Sentencing Project, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reform* 3 (Oct. 2018), <https://www.sentencingproject.org/wp-content/uploads/2018/10/Expanding-the-Vote-1997-2018.pdf>.

⁶ See Voting Restoration Amendment, Ballot Initiative 14-01 (Fla. 2018); Andrew A. Green, *Felons Gain Right to Vote*, Balt. Sun (Apr. 25, 2007), <https://www.baltimoresun.com/news/bs-xpm-2007-04-25-0704250234-story.html> (describing Maryland law replacing lifetime disenfranchisement with restoration upon completion of sentence); L.B. 53, 99th Leg., 1st Sess. (Neb. 2005) (repealing lifetime disenfranchisement and automatically restoring voting rights two years

amended its laws to repeal permanent disenfranchisement except as to those who commit enumerated disqualifying felonies, and Wyoming lifted restrictions on the ability of felons convicted of nonviolent offenses to regain the right to vote upon completion of their sentences.⁷

Other States have restored the right to vote to individuals living in their communities who are still under the supervision of the criminal justice system. For instance, California, Colorado, Connecticut, Louisiana, Maryland, New Jersey, New York, and Rhode Island have variously restored the right to vote to citizens completing the terms of either their felony probation, parole, or post-release community supervision.⁸ Likewise, Washington eliminated the requirement of

after completion of sentence); A.B. 431, 80th Sess. (Nev. 2019) (automatically restoring voting rights of all felons upon release from prison); S.B. 204, 2001 Reg. Sess. (N.M. 2001) (repealing lifetime disenfranchisement).

⁷ See Del. Const. art. V § 2; Del. Code Ann. tit. 15, § 6102-6103; H.B. 75, 64th Leg., 2017 Gen. Sess. (Wyo. 2017).

⁸ See A.B. 2466, 2015-2016 Reg. Sess. (Cal. 2016) (providing that citizens subject to post-release community supervision and those serving felony sentences in county jail are eligible to vote); H.B. 19-1266, 71st Gen. Assemb., 2019 Reg. Sess. (Colo. 2019) (restoring voting rights to parolees); H.B. 5042, 2001 Gen. Assemb., Jan. Sess. (Conn. 2001) (restoring voting rights to probationers); H.B. 265, 2018 Reg. Sess. (La. 2018) (restoring voting rights to felons, including those

paying all fines, fees, costs, and restitution before regaining the right to vote.⁹

In addition to enacting laws altering the standards for restoration, some States have implemented administrative systems to better facilitate restoration efforts. In California, New Jersey, New Mexico, New York, and Washington, among others, state agencies must now notify felons of the process for seeking restoration of voting rights or provide information about their voting rights prior to or upon release from incarceration.¹⁰ These measures help to reduce confusion among

on parole or probation, who have not been incarcerated in the past five years); H.B. 980, 2015 Reg. Sess. (Md. 2015) (permitting felons discharged from incarceration to register to vote); A.B. 5823, 2018-2019 Reg. Sess. (N.J. 2019) (re-enfranchising felons on parole or probation); N.Y. Exec. Order No. 181 (Apr. 18, 2018) (restoring voting rights to parolees upon release from prison); H.B. 7938, 2006 Gen. Assemb., Jan. Sess. (R.I. 2006) (restoring voting rights upon discharge from incarceration). Additionally, in June 2020, the California Legislature approved placing a proposed constitutional amendment on the November 2020 ballot that would allow parolees to vote. *See* Cal. ACA-6, chaptered June 25, 2020. New York already permits felons on probation to vote. N.Y. Election Law § 5-106.

⁹ H.B. 1517, 61st Leg., 2009 Reg. Sess. (Wash. 2009).

¹⁰ *See* A.B. 1344, 2017-2018 Reg. Sess. (Cal. 2017) (requiring corrections officials to provide information about voting rights restoration online and in person to felons leaving prison); S.B. 2282, 2010-2011 Reg. Sess. (N.J. 2012) (requiring the State Commissioner of

returning citizens by advising them of the process for restoration of rights and providing the information needed to register to vote when eligible. They also encourage individuals returning from incarceration and reintegrating into their communities to exercise the franchise, when possible.

Furthermore, the Governors of both Kentucky and Virginia—States that still rely exclusively on clemency for re-enfranchisement—have recently taken broad executive actions to restore the vote to returning citizens. In a 2019 executive order, for example, the Kentucky Governor restored the franchise to all nonviolent felons who had completed probation and parole.¹¹ And in 2016, the Governor of Virginia announced a restoration of rights policy to re-enfranchise returning citizens who have completed incarceration and any term of

Corrections to provide general written information of a returning citizen's right to vote prior to release); H.B. 64, 2005 Reg. Sess. (N.M. 2005) (requiring the corrections department to notify a former felon of his ability to register to vote upon completion of his sentence); A.B. 9706, 2010 Assemb., Reg. Sess. (N.Y. 2010) (requiring the corrections department to notify a former felon of his right to vote and provide a voter registration application upon release); S.B. 5207, 66th Leg., 2019 Reg. Sess. (Wash. 2019) (similar).

¹¹ Ky. Exec. Order No. 2019-003 (Dec. 12, 2019).

supervision, without regard to legal financial obligations.¹² Between 2016 and 2019, nearly 200,000 Virginians had their rights restored under that policy.¹³

As a result of these reforms, only two States in addition to Florida—Alabama and Arkansas—presently impose the restriction at issue here: indefinitely denying the right to vote to all felons who have not satisfied their LFOs.¹⁴ Seven others—Arizona, Connecticut, Georgia, Kansas, South Dakota, Tennessee, and Texas—also impose indefinite disenfranchisement based on outstanding LFOs, but only with respect to limited categories of convictions or certain kinds of financial obligations.¹⁵

¹² Governor McAuliffe’s Restoration of Rights Policy (Aug. 22, 2016), <https://www.restore.virginia.gov/media/governorviriniagov/restoration-of-rights/pdf/restoration-of-rights-policy-memo-82216.pdf>.

¹³ Margaret Barthel, *Nearly 200,000 Formerly Incarcerated Virginians Have Their Voting Rights Back. Will They Use Them?*, WAMU (Nov. 5, 2019), <https://wamu.org/story/19/11/05/nearly-200000-formerly-incarcerated-virginians-have-their-voting-rights-back-will-they-use-them/>.

¹⁴ Collateral Consequences Resources Center (“CCRC”), *Who Must Pay to Regain the Vote? A 50-State Survey* 4 (July 2020), <https://ccresourcecenter.org/wp-content/uploads/2020/07/Who-Must-Pay-to-Regain-the-Vote-A-50-State-Survey.pdf>.

¹⁵ *Id.*

The remaining 40 States and the District of Columbia do not place such a severe requirement on former felons. Of these, 20 States and the District of Columbia do not take LFOs into account when restoring the franchise: two States do not restrict in any way the voting rights of convicted felons, including those currently in prison;¹⁶ 17 States and the District of Columbia automatically restore a former felon's voting rights upon release from incarceration;¹⁷ and Oklahoma re-enfranchises its residents after a fixed period prescribed in the judgment or sentence.¹⁸ An additional four States restore the franchise by constitutional clemency power—either via individual application or through an

¹⁶ Chung, *supra* note 5, at 1 (updated Dec. 2019) (Maine and Vermont). Additionally, the Council of the District of Columbia recently enacted an emergency bill that temporarily expands the franchise to residents currently incarcerated for felony convictions. B23-825, 23rd Council (D.C. 2020). The Council is also considering a bill that would permanently enfranchise currently incarcerated residents. B23-324, 23rd Council (D.C. 2019).

¹⁷ CCRC, *supra* note 14 at 4 (Colorado, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah).

¹⁸ *Id.*

executive order—with no set requirement that LFOs be paid prior to application for clemency.¹⁹

Finally, in the 16 remaining States, nonpayment of legal financial obligations may result, sometimes indirectly, in delayed restoration of the franchise in certain circumstances.²⁰ These States' systems take many different forms. Regardless of the system imposed, though, these States do not restrict the franchise indefinitely for failure to pay LFOs. For example, some States—such as Nebraska and New Mexico—have created exceptions to the LFO requirement for those who establish indigency.²¹

All told, these trends reflect a clear and growing consensus among the States toward facilitating restoration and expanding the franchise. That so few States impose an indefinite ban on re-enfranchisement based on outstanding LFOs is consistent with these recent efforts.

¹⁹ *Id.* (Iowa, Kentucky, Mississippi, and Virginia).

²⁰ *Id.* (Alaska, California, Delaware, Idaho, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, New York, North Carolina, South Carolina, Washington, West Virginia, Wisconsin, and Wyoming).

²¹ *Id.* at 4, 10-11 (citing Neb. Rev. Stat. § 29-2208; N.M. Stat. Ann. § 31-12-3(A)).

II. States' Recent Experiences Have Shown That Expanding The Franchise Benefits Their Residents And Communities.

As discussed, States have successfully expanded the franchise to former felons in recent years. These efforts reflect the *Amici* States' understanding that restoring voting rights to former felons helps these individuals to fully reintegrate into their communities, thereby fostering civic participation and improving public safety. By contrast, restrictive disenfranchisement laws like SB-7066 disparately harm minority communities and mute their political voices. Put simply, it is in States' interest to broaden the franchise to former felons who have successfully rejoined their communities.

A. Expanding the franchise to returning citizens promotes reintegration, civic participation, and public safety.

It is well established that individuals who engage in prosocial behavior when released from incarceration are more likely to reintegrate into their communities and desist from criminal activities.²² Indeed, studies observe that “attachment to social institutions such as

²² Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 196 (2004).

families and labor markets increase the reciprocal obligations between people and provide individuals with a stake in conforming behavior.”²³

In much the same way, allowing former felons to vote can foster prosocial behavior; when former felons vote, “they are doing what all voters do: actively endorsing the political system.”²⁴ Participating in the political process “produces citizens with a generalized sense of efficacy, who believe that they have a stake in the political system,” which, “in turn, fosters continued political participation.”²⁵ In this way, civic restoration “communicates to the ex-felon that she or he is still part of the community and has a stake in the democratic process.”²⁶ When individuals are excluded from this process, by contrast, they “express a feeling of being an ‘outsider.’”²⁷

²³ *Id.*

²⁴ Alec C. Ewald, *An “Agenda for Demolition”: The Fallacy and the Danger of the “Subversive Voting” Argument for Felony Disenfranchisement*, 36 Colum. Hum. Rts. L. Rev. 109, 130 (2004).

²⁵ *Voting and Subsequent Crime and Arrest*, *supra* note 22, at 198.

²⁶ VCU News, *Restoring Voting Rights of Felons Is Good Public Policy, VCU Expert Says* (Apr. 26, 2016), https://news.vcu.edu/article/Restoring_voting_rights_of_felons_is_good_public_policy_VCU_expert.

²⁷ Mark Haase, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 Minn. L. Rev. 1913, 1926 (2015).

The experience of the *Amici* States confirms that when former felons are fully reintegrated into their communities, “it can help transform one’s identity from deviant to law-abiding citizen.”²⁸ Accordingly, efforts by the *Amici* States to expand the franchise embrace the idea that “restoring voting rights to ex-felons may facilitate reintegration efforts and perhaps even improve public safety.”²⁹ As recognized in an executive order issued by the New York Governor, for instance, there is “a strong positive correlation between the civic engagement associated with voting and reduced rates of recidivism, which improves the public safety for all New Yorkers.”³⁰

²⁸ Erika Wood, Brennan Ctr. for Justice, *Restoring the Right to Vote* 8 (May 2009), https://www.brennancenter.org/sites/default/files/2019-08/Report_Restoring-the-Right-to-Vote.pdf.

²⁹ Christina Beeler, Article, *Felony Disenfranchisement Laws: Paying and Re-Paying a Debt to Society*, 21 U. Pa. J. Const. L. 1071, 1088 (2019) (internal quotations omitted).

³⁰ N.Y. Exec. Order No. 181, at 1; *see also* Press Release, Cal. Secretary of State, *Secretary of State Alex Padilla Launches ‘Restore Your Vote’ Tool to Help Californians with Criminal Convictions Know Their Voting Rights* (Oct. 17, 2018), <https://www.sos.ca.gov/administration/news-releases-and-advisories/2018-news-releases-and-advisories/secretary-state-alex-padilla-launches-restore-your-vote-tool-help-californians-criminal-convictions-know-their-voting-rights/> (“Civic engagement can be a critical piece in reintegrating formerly incarcerated Californians

Studies of former felons’ voting behavior—including one centered on Floridians—support this conclusion. Indeed, a report by the Florida Parole Commission noted a decrease in recidivism beginning in April 2007,³¹ when then-Governor Crist had revised Florida’s rules of executive clemency to automatically restore the rights of most nonviolent felons upon completion of their sentences.³² The report found that between April 2007 and March 2011—the period when Governor Crist’s clemency rules automatically restored civil rights—approximately 11% of former felons reoffended, as compared with 33% of individuals released between 2001 and 2008.³³

Another study found “consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and

into their communities and reducing recidivism.” (internal quotations omitted)).

³¹ James Call, *Study Shows Ex-Cons Benefit from Rights Restoration*, wfsu Pub. Media, <https://news.wfsu.org/show/capital-report/2011-07-29/study-shows-ex-cons-benefit-from-rights-restoration>.

³² Abby Goodnough, *In a Break from the Past, Florida Will Let Felons Vote*, N.Y. Times (Apr. 6, 2007), <https://www.nytimes.com/2007/04/06/us/06florida.html>.

³³ Call, *supra* note 31.

self-reported criminal behavior.”³⁴ This survey of one thousand former high school students analyzed “the effects of voting participation in the 1996 election upon self-reported crime and arrest in the years from 1997 to 2000.”³⁵ The study found that “[a]mong former arrestees, about 27% of the non-voters were re-arrested, relative to 12% of the voters.”³⁶ These studies suggest that “[w]hile the single behavioral act of casting a ballot is unlikely to be the sole factor that turns felons’ lives around, the act of voting manifests the desire to participate as a law-abiding stakeholder in a larger society.”³⁷

Law enforcement authorities have endorsed this view by supporting several States’ voting restoration laws. For example, a police officer testified before the Maryland Legislature that re-enfranchisement “promotes the successful reintegration of formerly incarcerated people, preventing further crime and making our

³⁴ *Voting and Subsequent Crime and Arrest*, *supra* note 22, at 213.

³⁵ *Id.* at 200.

³⁶ *Id.* at 205.

³⁷ *Id.* at 213.

neighborhoods safer.”³⁸ Similarly, a former city police chief in Rhode Island wrote that disenfranchisement “disrupts the re-entry process and weakens the long-term prospects for sustainable rehabilitation,” whereas “[v]oting—like reconnecting with family, getting a job, and finding a decent place to live—is part of a responsible return to life in the community.”³⁹

State legislators have similarly endorsed the notion that restoring voting rights encourages former felons to rejoin society as productive members of their communities. In Colorado, for example, the legislature declared that restoring voting rights to parolees “will help to develop and foster in these individuals the values of citizenship that will result in significant dividends to them and society as they resume their places in their communities.” Colo. H.B. 19-1266 § 1(c). States have also recognized that restoring the franchise benefits their

³⁸ *Restoring the Right to Vote*, *supra* note 28, at 11 (quoting Voter Registration Protection Act: Hearing on S.B. 488 Before S. Comm. on Educ., Health & Env'tl. Affairs, 2007 Leg., 423rd Sess. (Md. 2007) (written testimony of Ron Stalling, Nat'l Black Police Ass'n)).

³⁹ Dean Esserman & H. Philip West, *Without a Vote, Citizens Have No Voice*, *The Providence Journal* (Sept. 25, 2006), <https://www.brennancenter.org/sites/default/files/legacy/Democracy/Esserman%20op-ed%209-25-06.pdf>.

communities more broadly by promoting civic participation. According to the Rhode Island Legislature, “[r]estoring the right to vote strengthens our democracy by increasing voter participation and helps people who have completed their incarceration to reintegrate into society.” R.I. H.B. 7938 § 1(1).

Policymakers have also observed that by welcoming former felons back as full-fledged members of their communities, re-enfranchisement can improve overall public safety. Washington State legislators thus credited testimony that “restoration of the right to vote encourages offenders to reconnect with their community and become good citizens, thus reducing the risk of recidivism.” Wash. H. Comm. on State Gov’t & Tribal Affairs, Report on H.B. 1517, 2009 Reg. Sess., at 3 (2009). And the New Jersey legislature found that “[t]here is no evidence that denying the right to vote to people with criminal convictions serves any legitimate public safety purpose.” N.J. A.B. 5823 § 1(f).

In sum, the *Amici* States share the view that expanding the franchise to returning citizens promotes reintegration into their communities, which, in turn, enhances civic participation and public safety.

B. Restrictive disenfranchisement systems disproportionately impact minority communities.

The *Amici* States also recognize the importance of restoring voting rights to returning citizens given the disparate impact of felon disenfranchisement laws on minority communities. Unfortunately, this country’s mass incarceration problem “has disproportionately impacted people of color,” and “the disparities in incarceration rates by race ultimately become disparities in voting rights.”⁴⁰ Consequently, as of 2016, more than 7.4% of the Black voting age population in the United States could not vote, as compared with only 1.8% of the non-Black voting age population.⁴¹ In Florida, these disparities are even starker: more than 20% of Black adults have been disenfranchised.⁴²

The available data further suggests that disenfranchisement laws may “disproportionately impact individuals of Hispanic origin.”⁴³

⁴⁰ Beeler, *supra* note 32, at 1085.

⁴¹ *6 Million Lost Voters*, *supra* note 1, at 3.

⁴² Chung, *supra* note 5, at 6.

⁴³ The Sentencing Project, *Democracy Imprisoned: A Review of The Prevalence and Impact of Felony Disenfranchisement Laws in the United States*, at 2 (Sept. 30, 2013), <https://www.sentencingproject.org/publications/democracy-imprisoned-a-review-of-the-prevalence-and->

Indeed, “Hispanics are incarcerated in state and federal prisons at higher rates than non-Hispanics: about 2.4 times greater for Hispanic men and 1.5 times for Hispanic women.”⁴⁴

Furthermore, there is evidence that the existence of disenfranchisement laws—as well as misinformation about their scope—is more likely to deter Blacks from voting than their white counterparts. A 2009 study found that “eligible and registered” Black voters “were nearly 12 percent less likely to cast ballots if they lived in states with lifetime disenfranchisement policies,” as compared with white voters, who were only 1 percent less likely to vote in such States.⁴⁵ According to another scholar, “the probability of voting declines for African-Americans, even if they do not possess a criminal record,” in States that impose “restrictive criminal disenfranchisement

impact-of-felony-disenfranchisement-laws-in-the-united-states/
(download PDF).

⁴⁴ *Id.*

⁴⁵ Erin Kelley, Brennan Ctr. for Justice, *Racism & Felony Disenfranchisement: An Intertwined History* 3 (May 2017), https://www.brennancenter.org/sites/default/files/2019-08/Report_Disenfranchisement_History.pdf.

laws.”⁴⁶ In short, barring “so many” returning citizens in minority communities from voting “makes exercising the franchise less a part of the fabric of the community, precipitating a negative ripple effect.”⁴⁷

As a result, the political voice of minority communities is muted.⁴⁸ And when communities lose their political voice, they have less of a say in who represents them at the federal, state, and local levels—and thus lack influence over many matters that affect their daily lives. As one example, parents who live in communities affected by restrictive voting restoration laws may not be heard on a referendum to increase taxes for schools or in efforts to “prevent yet another waste incinerator from

⁴⁶ Anthony C. Thompson, *Unlocking Democracy: Examining the Collateral Consequences of Mass Incarceration on Black Political Power*, 54 *How. L.J.* 587, 607 (2011).

⁴⁷ *Id.*

⁴⁸ See, e.g., Kevin Morris, *Disenfranchisement: The Case of New York City*, *Urban Affairs Review* 19 (2020) (“I find that neighborhoods that are home to lost voters—and particularly neighborhoods with large Black populations—systematically turn out for local elections at lower rates than otherwise similar neighborhoods.”); Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 *B.C. L. Rev.* 255, 282-83 (2004) (“The loss of voting power has ramifications not only for the individual ex-offender, but also for the communities to which ex-offenders return, which will then include growing numbers of residents without a recognized political voice.”).

moving in nearby.”⁴⁹ Lower voter turnout is also associated with less inclusive healthcare policies, which, in turn, cause an increase in the “health disparities” that already exist between voters and nonvoters.⁵⁰ Restoring the vote to former felons will foster political participation in the minority communities that have been long disadvantaged by felon disenfranchisement laws.

To that end, many States have expressly recognized the disparate impact of restrictive restoration systems. In an executive order issued by the New York Governor, for instance, he asserted that “the disenfranchisement of individuals on parole has a significant disproportionate racial impact thereby reducing the representation of

⁴⁹ Christopher Haner, *Felon Disenfranchisement: An Inherent Injustice*, 26 J. Civ. Rts. & Econ. Dev 911, 935 (2013) (quoting Elizabeth A. Hull, *The Disenfranchisement of Ex-Felons* 1-5 (2006)).

⁵⁰ Dr. Nicolas Yagoda, *Addressing Health Disparities Through Voter Engagement*, 17 (5) Ann. Fam. Med. 459, 460 (Sept. 2019); see also Jonathan Purtle, *Felon Disenfranchisement in the United States: A Health Equity Perspective* 103(4) Am. J. Public Health 632 (Apr. 2013) (explaining how “felon disenfranchisement might affect health by means of inequitable public policies that differentially allocate resources for health and the inability to participate fully in society, including by voting”).

minority populations.” N.Y. Exec. Order No. 181, at 1. Likewise, in Rhode Island, the legislature noted that “[b]y denying so many the right to vote, criminal disenfranchisement laws dilute the political power of entire minority communities.” R.I. H.B. 7938 § 1(4). And in Virginia, then-Governor McAuliffe compared a requirement that LFOs be paid prior to regaining the franchise to “poll taxes” in a press release announcing reforms that would remove financial barriers to voting.⁵¹

In short, restoring voting rights benefits returning citizens and their communities in numerous ways, including by fostering civic participation, promoting public safety, and eliminating the structural barriers that disproportionately impact minority communities and mute their political voices.

III. Systems Like SB-7066, Which Lack Adequate Process And Fail To Account For Indigency, Do Not Facilitate Compliance With LFOs.

Notwithstanding the significant negative effects of restrictive re-enfranchisement systems, the Florida defendants contend that SB-7066

⁵¹ Press Release, *Governor McAuliffe Announces New Reforms to Restoration of Rights Process* (June 23, 2015), <https://www.governor.virginia.gov/newsroom/all-releases/2017/mcauliffe-administration/headline-826609-en.html>.

further the State's interest because "demanding that every felon satisfy in full his debt to society is the State's only method for ensuring that no felon who falls short will automatically be allowed to rejoin the electorate." Fla. Br. at 35. At the same time, however, Florida asserts that it should bear no responsibility for establishing a system that allows former felons to ascertain how much, if anything, they owe. *Id.* at 53 (contending that the district court had "no legal basis for charging *the State* with the responsibility of providing felons with information about their own unfulfilled criminal sentences and any payments that they themselves have made toward them"). In the *Amici* States' experience, this approach does not facilitate payment of LFOs or further any legitimate state interests. It also disregards that States have other means for ensuring payment and that many States, including some *Amici*, have established systems for tracking and collecting LFOs.

At the threshold, as this Court previously recognized, there is no evidence that disenfranchisement facilitates compliance with outstanding LFOs. *See Jones v. Governor of Fla.*, 950 F.3d 795, 827 (11th Cir. 2020) (per curiam) ("If a felon is truly unable to pay, it makes no sense to assert that he will be incentivized to pay his LFOs with

money that he does not have.”). For citizens who are willing but unable to pay, “[t]ying repayment to voting rights is unlikely to compel these individuals to pay their LFOs any more quickly than if the franchise was not so conditioned.”⁵²

The number of former felons who find themselves in this position is substantial, as many owe more in fees and fines than they have the means to repay. According to one study, “a returning citizen’s family owes, on average, \$13,600 in fines and fees alone.”⁵³ And if the fines and fees have been turned over to debt collection firms, former felons may face “up to a 40 percent surcharge” on the amount owed.⁵⁴ To exacerbate this problem, “formerly incarcerated people are unemployed at a rate of over 27%,” which is nearly “five times higher than the

⁵² Ryan A. Partelow, *The Twenty-First Century Poll Tax*, 47 *Hastings Const. L. Q.* 425, 463 (2020); see *Bearden v. Georgia*, 461 U.S. 660, 670 (1983) (reasoning that “[r]evoking the probation of someone who through no fault of his own is unable to make restitution will not make restitution suddenly forthcoming”).

⁵³ S. Carter, *The New Poll Tax: How Wealth-Based Disenfranchisement Persists in the United States*, *Harvard Civil Rights–Civil Liberties Law Review* (Oct. 30, 2019), <https://harvardcrcl.org/the-new-poll-tax-how-wealth-based-disenfranchisement-persists-in-the-united-states/>.

⁵⁴ *Id.*

unemployment rate for the general United States population.”⁵⁵ Given this reality, many state and county governments do not anticipate receiving full payment from former felons; from 2014 to 2018, for instance, “the state Clerk of Courts in Florida labeled an average of 83 percent of the money owed as having ‘minimal collections expectations.’”⁵⁶

To be sure, States may ensure that former felons complete the terms of their sentences, including by paying any LFOs owed, through courts’ alternative means of enforcing judgments, including by “extend[ing] the time for making payments, [] reduc[ing] the fine, or direct[ing] that the probationer perform some form of labor or public service in lieu of the fine.” *Bearden*, 461 U.S. at 672; see *Jones*, 950 F.3d at 827. There is no sound governmental interest, however, in refusing the right to vote to returning citizens who lack the means to pay their outstanding LFOs.

⁵⁵ Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment among formerly incarcerated people*, Prison Policy Initiative (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html> (emphasis omitted).

⁵⁶ Carter, *supra* note 53.

When returning felons *do* have the ability to pay, States can facilitate completion of sentences by establishing systems that allow their returning citizens to ascertain how much they owe. To that end, many States task their court systems, not their residents, with maintaining a record of outstanding LFOs and amounts paid. Indeed, it is perfectly reasonable to expect the government actors that impose LFOs to keep track of those obligations.

Consistent with their varying approaches to felon re-enfranchisement, States have implemented a variety of approaches to collecting and tracking LFOs. For example, Washington State relies on its courts and department of corrections to work together to establish payment plans for collecting LFOs. The sentencing court, either on “the judgment and sentence or on a subsequent order to pay,” must “designate the total amount” of LFOs and “segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments.” RCW 9.94A.760(1). “On the same order,” the court must also “set a sum that the offender is required to pay on a monthly basis towards satisfying” the LFO. *Id.* Then, after sentencing, the department of corrections is responsible for collecting LFOs during any

period of supervision. RCW 9.94A.760(9). This responsibility shifts to the county court clerk when any period of supervision concludes. *Id.*

Other States similarly charge court clerks with the responsibility of collecting LFOs. In most California counties, trial courts administer collection programs.⁵⁷ When a case concludes, each trial court “generates an order detailing its decision, which includes any court-ordered debt owed.”⁵⁸ Similarly, in Illinois, the county-level trial court “collects fines, fees and other costs and disburses them to the appropriate state, county, and local funds and agencies.”⁵⁹ And in New Mexico, the municipal court clerks are responsible for collecting fines, fees, and costs assessed in criminal proceedings.⁶⁰ Virginia likewise

⁵⁷ Legislative Analyst’s Office, *Restructuring the Court-Ordered Debt Collection Process* 6 (Nov. 2014), <https://lao.ca.gov/reports/2014/criminal-justice/debt-collection/court-ordered-debt-collection-111014.pdf>.

⁵⁸ *Id.* at 7.

⁵⁹ Alexes Harris *et al.*, *Monetary Sanctions in the Criminal Justice System* 89 (Apr. 2017), <http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf>.

⁶⁰ N.M. Judicial Ed. Ctr., *New Mexico Municipal Court Manual for Judges and Staff* 12-3 (June 2009), <http://jec.unm.edu/manuals-resources/manuals/NMMunicipalJudgesBenchbook.pdf>.

requires its court clerks to track the assessment and collection of LFOs “assessed within their court.”⁶¹

Further, several jurisdictions task their court systems with the responsibility for tracking, as well as collecting, LFOs. For example, Alabama courts maintain a record for each case, which “includes the fines, fees, and restitution assessed to the defendant, including a description of each financial obligation, the amount due, the amount paid, and the remaining balance.”⁶² California courts are also responsible for maintaining a record for each individual with LFOs: “When setting up installment payments, court or collections staff obtain personal, contact, and financial information to establish a payment record for each individual. Courts can then use this information to send monthly payment reminders or billing slips to help individuals maintain timely payments.”⁶³ Similarly, in Texas, a court cost “is not

⁶¹ Va. Compensation Bd., *FY18 Fines and Fees Report 4* (Dec. 2018), <https://rga.lis.virginia.gov/Published/2018/RD555/PDF>; see Va. Code Ann. § 19.2-349.

⁶² Marc Meredith & Michael Morse, *Discretionary Disenfranchisement: The Case of Legal Financial Obligations*, 46 J. Leg. Stud. 309, 320 (2017).

⁶³ *Restructuring the Court-Ordered Debt Collection Process*, *supra* note 57, at 8.

payable” until the sentencing court provides a “written bill” containing the “items of cost” to the person charged with payment. Tex. Code Crim. Proc. Ann. art. 103.001 (a), (b). Further, each county must maintain a receipt book of fines and fees collected in criminal cases. Tex. Code Crim. Proc. Ann. art. 103.010(a). When a person makes a payment toward such fines and fees, the county must provide a receipt showing the amount paid, the date of payment, the “case in which the costs were accrued,” and the “item of costs.” *Id.* art. 103.010(b).

As these examples illustrate, States across the country have implemented a variety of measures for imposing, collecting, and tracking LFOs. Even the Florida defendants acknowledge that the Florida court system has the mechanisms in place to “monitor and manage the collection” of LFOs. Fla. Br. at 54. Their suggestion that it should not be the State’s responsibility to provide information about outstanding LFOs to its citizens is thus untenable.

CONCLUSION

The Court should affirm the district court's judgment.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2016, in 14-point Century Schoolbook font, and complies with the word limitation set forth in Federal Rule of Appellate Procedure 29(a)(5) and Eleventh Circuit Rule 35-8 in that the brief is 5,570 words.

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2020, I electronically filed the foregoing Brief of *Amici Curiae* District of Columbia, *et al.*, with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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