

# The Future of Felon Disenfranchisement Reform: Evidence from the Campaign to Restore Voting Rights in Florida

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*This Article offers an empirical account of felon disenfranchisement and legal financial obligations in the era of mass incarceration. It focuses on a 2018 ballot initiative, known as Amendment 4, which sought to end lifetime disenfranchisement in Florida. At the time, the Republican-controlled state accounted for more than a quarter of the six million citizens disenfranchised across the United States. Marshaling hundreds of public information requests, the Article analyzes the petitions collected to qualify the initiative for the ballot, the ballots cast for its remarkable bipartisan victory, the voter registration records of people whose voting rights were restored, and the outstanding fines and fees that still prevent most people with felony convictions from voting. Part I offers a history of the campaign and the tradeoffs it made to win Republican support, including its decisions to deemphasize race and limit the scope of reform. Part II validates the campaign's effort to depoliticize disenfranchisement by demonstrating the limited partisan consequences of restoring the right to vote to people with felony convictions. Finally, Part III shows how unpaid fines and fees undermined the campaign's attempt to dismantle disenfranchisement. Despite Amendment 4, Florida continues to disenfranchise more citizens than any other state.*

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## INTRODUCTION

In 1974, on the eve of the era of mass incarceration, the Supreme Court held that the Fourteenth Amendment gave states an “affirmative sanction” to disenfranchise those convicted of a crime.<sup>1</sup> In the years since the Court’s decision in *Richardson v. Ramirez*, the number of people unable to vote because of a criminal conviction swelled from less than two million to more than six

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1. *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974) (“[T]he exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment.”). The Court’s summary affirmation of a challenge to North Carolina’s felon disenfranchisement statute during the prior term foreshadowed its decision in *Ramirez*. See *Fincher v. Scott*, 352 F. Supp. 117, 119 (M.D.N.C. 1972) (“Putting it positively, we think § 1 must be read in light of § 2, and, so read, denial of the franchise to felons is specifically excepted from the Equal Protection Clause contained in § 1.”), *aff’d*, 411 U.S. 961 (1973) (mem.). The Court had also previously sanctioned in dicta the practice of disenfranchising persons convicted of a crime. See *Green v. Bd. of Elections of City of N.Y.*, 380 F.2d 445, 451 (2d Cir. 1967) (collecting cases). For example, fifteen years prior, in *Lassiter v. Northampton County Board of Elections*, a unanimous court upheld North Carolina’s literacy test and noted that “[r]esidence requirements, age, [and a] previous criminal record . . . are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters.” 360 U.S. 45, 51 (1959).

million.<sup>2</sup> Felon disenfranchisement also became partisan.<sup>3</sup> While Democratic states have liberalized their laws, Republican states, often in the South, remain bastions of disenfranchisement.<sup>4</sup> By 2016, Republican-controlled Florida accounted for more than one-quarter of the entire country's disenfranchised citizens.<sup>5</sup>

Because *Ramirez* suggests that “the facial validity of felon disenfranchisement may be absolute,”<sup>6</sup> substantially reducing the scope of disenfranchisement depends on building bipartisan coalitions in states like Florida, including addressing the expectation that expanding the right to vote will dramatically benefit Democrats. Yet even if these political coalitions can come together, the many collateral consequences of a criminal conviction can complicate efforts to expand the right to vote. As the number of people with a criminal conviction has grown, so has the court-ordered assessment of fines, fees, and restitution.<sup>7</sup> In its wake, an emerging issue is whether the payment of these legal financial obligations (LFOs) is required to vote, particularly when a state restores voting rights upon the general requirement that an individual complete the terms of their sentence.<sup>8</sup>

This Article focuses on a 2018 ballot initiative, known as Amendment 4, which sought to end lifetime disenfranchisement in Florida. It marshals hundreds of public information requests to introduce four novel datasets that cover the hundreds of thousands of petitions collected to put the initiative on the ballot, the millions of ballots cast for its victory, the voter registration records of people

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2. See CHRISTOPHER UGGEN, RYAN LARSON & SARAH SHANNON, SENT’G PROJECT, 6 MILLION LOST VOTERS: STATE-LEVEL ESTIMATES OF FELONY DISENFRANCHISEMENT 9 fig.5 (2016), <https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf> [<https://perma.cc/T2L3-5JN5>] (reporting the estimated number disenfranchised for selected years, 1960–2016); see also NAT’L RSCH. COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 39 fig.2-3, 41 fig.2-4, 43 fig.2-5 (Jeremy Travis, Bruce Western & Steve Redburn eds., 2014) (showing an increase in imprisonment beginning in the 1970s and vastly accelerating in the 1980s and 1990s).

3. See Jason Belmont Conn, *Felon Disenfranchisement Laws: Partisan Politics in the Legislatures*, 10 MICH. J. RACE & L. 495, 499 (2005) (arguing that “partisan politics drives changes to the state laws governing felon voter eligibility”).

4. See UGGEN ET AL., *supra* note 2, at 8 fig.4 (displaying a cartogram of total disenfranchisement rates by state); MORGAN MCLEOD, SENT’G PROJECT, EXPANDING THE VOTE: TWO DECADES OF FELONY DISENFRANCHISEMENT REFORM (2018), <https://www.sentencingproject.org/wp-content/uploads/2018/10/Expanding-the-Vote-1997-2018.pdf> [<https://perma.cc/8E2M-QBNN>] (cataloging reforms by state and year).

5. See UGGEN ET AL., *supra* note 2, at 15 tbl.3 (reporting estimates of disenfranchisement by state, with Florida having about 1.6 million disenfranchised citizens of the 6.1 million nationwide).

6. *Farrakhan v. Locke*, 987 F. Supp. 1304, 1314 (E.D. Wash. 1997).

7. See U.S. GEN. ACCT. OFF., GAO-01-664, CRIMINAL DEBT: OVERSIGHT AND ACTIONS NEEDED TO ADDRESS DEFICIENCIES IN COLLECTION PROCESSES 9 (2001), <https://www.gao.gov/assets/gao-01-664.pdf> [<https://perma.cc/EQE6-SK4J>] (explaining that outstanding criminal debt rose from \$260 million in 1985 to about \$13 billion in 2001).

8. See Beth Colgan, *Wealth-Based Penal Disenfranchisement*, 72 VAND. L. REV. 55, 66–67 (2019) (explaining that “the relevant laws . . . in many jurisdictions use vague language in which penal disenfranchisement and restoration requirements are hidden”).

with felony convictions, and the outstanding fines and fees that cause them to remain disenfranchised.

The Article proceeds chronologically, from the ballot initiative to its partisan implementation and finally to the ensuing litigation. It makes three observations about the role of partisanship, poverty, and equality in the restoration of voting rights. First, the campaign for Amendment 4 won a remarkable bipartisan victory, drawing Republican support from poorer and more racially diverse neighborhoods. Second, expanding the right to vote to people with felony convictions has smaller partisan consequences than the typical politics of reform would suggest. Third, because the vast majority of people with felony convictions owe fines and fees, the vast majority still remain disenfranchised, likely too poor to restore their right to vote. Together, these empirical lessons from the campaign for Amendment 4 suggest that the debate around felon disenfranchisement should be recast: as a question of citizenship, rather than partisanship; and as an issue intertwined with, not separate from, the criminal justice system.

Part I explains the success of the ballot initiative. The campaign for Amendment 4 promised to reorder the landscape of felon disenfranchisement by amending the state constitution to replace lifetime disenfranchisement with automatic restoration of the right to vote “upon completion of all terms of sentence.”<sup>9</sup> In some ways, the campaign was typical of recent efforts at felon disenfranchisement reform, drawing heavily on civil rights organizations and Democratic support for its fundraising and petition collection.<sup>10</sup> In order to amend the state constitution, though, the campaign needed to win the support of a supermajority of the electorate, which necessarily included a substantial share of Republicans.<sup>11</sup> The electoral constraint forced the campaign to depoliticize disenfranchisement. The campaign recognized that the typical focus on racial disparities in discussions of felon disenfranchisement left little room for the support of white, more likely Republican, communities. The racial framework also likely inflated the public’s sense of how many disenfranchised people are African American. This is critical because, as Part II will show, the partisan consequences of felon disenfranchisement are largely tied to the racial composition of who stands to regain the vote. The campaign instead

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9. *Constitutional Amendment Petition Form for Voting Restoration Amendment*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS (Oct. 31, 2014), <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/64388-1.pdf> [<https://perma.cc/48UP-SALT>] [hereinafter *Voting Restoration Amendment*].

10. See *infra* Table 2 (reporting the number of petitions signed by registered voters to put Amendment 4 on the ballot by party and by race); Table 3 (same but by precinct income and by precinct race).

11. See FLA. CONST. art. XI, § 5(e) (requiring that constitutional amendments by initiative have 60 percent support to take effect); *infra* Table 2 (reporting that, as of November 2018, approximately one-third of registered voters in Florida were registered Democrats, one-third were registered Republicans, and one-third were independent).

deemphasized race and focused on the concept of redemption to cultivate Republican support.

Remarkably, no political committee ever registered to oppose Amendment 4. Beyond the narrative choice, this lack of organized opposition was in large part because the campaign made a series of tradeoffs about the scope of reform. The campaign took a cautious approach, strategically excluding those convicted of murder or sexual offenses.<sup>12</sup> Critically, the campaign also proposed restoring voting rights upon the “completion of all terms of sentence” and did not specifically address the status of outstanding fines, fees, or restitution in the text of the amendment. While the campaign’s early focus groups showed that limiting the scope of reform polled better, the campaign may also have been unaware of the magnitude of LFOs and the number of people potentially affected.<sup>13</sup> Ultimately, the campaign told the Florida Supreme Court during the ballot approval process that the restoration of voting rights would require the payment of fines, fees, and restitution as part of the completion of all terms of sentence.

The campaign’s strategy worked. Amendment 4 passed with the support of nearly 65 percent of voters, including 40 percent of Republicans.<sup>14</sup> The campaign was particularly successful at getting Republican support in lower-income areas.<sup>15</sup> And even with its deemphasis of race, the campaign did not lose its core Black support.<sup>16</sup>

Despite Amendment 4’s watershed victory, partisan politics eventually engulfed the ballot initiative’s implementation. While Florida now automatically restores the right to vote “upon completion of all terms of sentence,”<sup>17</sup> the state legislature ultimately defined “completion of all terms of sentence” to explicitly include the full payment of fines, fees, and restitution.<sup>18</sup> Every Republican legislator voted for the legislation; every Democrat opposed it.<sup>19</sup>

Part II gathers novel data on the political behavior of people with felony convictions to show that this sharp partisan divide is at odds with the empirical evidence. It focuses on two groups of people with felony convictions—first, those who registered to vote after Amendment 4 went into effect in January 2019

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12. See *Voting Restoration Amendment*, *supra* note 9 (“No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.”).

13. See *infra* Part I.C.2 (discussing the campaign’s strategy in formulating the text of the amendment, including focus groups which addressed fines and fees); *infra* note 188 (discussing the campaign’s awareness of the magnitude of LFOs and the number of people affected).

14. See *infra* Figure 4 (showing the vote choice on Amendment 4 by vote for either the Democratic or Republican candidate for governor or senator based on ballot-level data).

15. See *infra* Figure 6 (showing that the percentage of Republican voters supporting Amendment 4 is highest when the estimated household income of a precinct is lowest).

16. See *infra* Figure 7 (showing that the percentage of Democratic voters supporting Amendment 4 increases with the share of Black registered voters in a precinct).

17. FLA. CONST. art. VI, § 4(a).

18. S. 7066, 2019 Leg., Regular Sess. (Fla. 2019), *codified at* Fla. Stat. § 98.0751(2).

19. See *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1236 (N.D. Fla. 2020) (describing the “straight party-line vote”), *rev’d and vacated sub nom.* *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020) (en banc).

but before the implementing legislation went into effect in July; and second, those who registered to vote after being automatically granted clemency as part of a 2007 executive reform. Together, the registrations of people with felony convictions make clear that the expected partisan consequences of felon disenfranchisement reform should be revised. For one, the view that felon disenfranchisement reform is a boon to Democrats is a distinctly racial one—most people with felony convictions are not Black, and these other individuals are more likely to register as Republicans.<sup>20</sup> For another, people with felony convictions are consistently unlikely to vote.<sup>21</sup> For both reasons, Republicans need not fear a “blue wave” from the restoration of voting rights.<sup>22</sup>

Finally, Part III assesses the role of fines and fees in perpetuating felon disenfranchisement. In general, it has been difficult to document the growth and scope of LFOs because of the decentralized nature of the criminal justice system. Part III helps to fill this gap by collecting sentencing records from twenty-seven of Florida’s sixty-seven counties. The available data paint a stark portrait: the median person convicted of at least one felony was assessed more than \$1,000 in fines and fees; about three-quarters of all people with felony convictions, including even more African Americans with felony convictions, currently have outstanding debt; and, based on the pattern of payments, most people appear unable—not unwilling—to pay.<sup>23</sup>

Various civil rights organizations immediately sought to enjoin the Republican legislation requiring the payment of LFOs to vote as unconstitutional.<sup>24</sup> But their effort faced a substantial doctrinal hurdle—after all, it was the very deference of courts to state felon disenfranchisement regimes that led to reform in Florida taking the form of a ballot initiative.

The plaintiffs’ hopes for judicial relief largely depended on presenting substantially similar empirical evidence about the burden of LFOs. Their effort was initially successful. After a limited preliminary injunction<sup>25</sup> was affirmed on appeal,<sup>26</sup> Judge Robert Hinkle of the Northern District of Florida issued a historic permanent injunction. Judge Hinkle held that Florida’s law was unconstitutional as applied to people unable to pay their LFOs, and further, that conditioning voting rights on the payment of court fees amounted to an unconstitutional poll

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20. See *infra* Figure 8 (showing the party affiliation of persons with felony convictions).

21. See *infra* Table 5 (showing the turnout of persons with felony convictions).

22. See *infra* Table 6 (showing the estimated counterfactual Democratic gain in Florida’s 2016 presidential election, if all of the people in Florida who had completed any period of prison or supervision were eligible to vote, is less than President Trump’s margin of victory).

23. See *infra* Table 9 (estimating the amount of fines and fees assessed in felony cases per person as well as the percent with a remaining balance); Figures 12 & 13 (showing when individuals pay fines and fees over time, if they ever do).

24. See *Jones v. DeSantis*, 462 F. Supp. 3d at 1203–05 (describing how five lawsuits eventually consolidated).

25. *Jones v. DeSantis*, 410 F. Supp. 3d 1284 (N.D. Fla. 2019).

26. *Jones v. Governor of Fla.*, 950 F.3d 795 (11th Cir. 2020).

tax.<sup>27</sup> But the Eleventh Circuit, sitting en banc, ultimately “relegated [the district court’s empirical assessment] to the dustbin” and vacated the injunction.<sup>28</sup> As a result, Florida continues to disenfranchise more citizens than any other state,<sup>29</sup> highlighting how far similar campaigns need to go to create a truly inclusive democracy.

## I.

### THE WATERSHED VOTE: ESTIMATING PUBLIC SUPPORT FOR REFORM

The campaign for Amendment 4 was launched by a group of people unable to vote as a response to Florida’s drastic scale of disenfranchisement. Since the 2000 election first called national attention to the issue, the estimated number of people disenfranchised in the state had ballooned from about eight hundred thousand to more than 1.6 million.<sup>30</sup> While many other states had liberalized their laws,<sup>31</sup> attempts at legislative reform in Florida from Black and Democratic lawmakers routinely failed in the Republican-led state legislature.<sup>32</sup> Attempts at judicial reform in the state fared no better.<sup>33</sup>

Initially, executive reform showed some promise. In 2006, Charlie Crist, the then-Republican candidate for governor, backed the automatic restoration of voting rights for people with felony convictions. After his election, Florida granted clemency between 2007 and 2011 to about one hundred fifty thousand people previously convicted of a felony.<sup>34</sup> But the executive reform did not last. At the end of his term, Crist left the Republican Party, first to become an Independent and then a Democrat.<sup>35</sup> His successor, Republican Governor Rick

27. See *Jones v. DeSantis*, 462 F. Supp. 3d at 1250–51.

28. See *Jones v. Governor of Fla.*, 975 F.3d 1016, 1066 (11th Cir. 2020) (en banc) (Jordan, J., dissenting).

29. See CHRISTOPHER UGGEN, RYAN LARSON, SARAH SHANNON & ARLETH PULIDO-NAVA, SENT’G PROJECT, LOCKED OUT 2020: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION 16 tbl.3 (2020), <https://www.sentencingproject.org/wp-content/uploads/2020/10/Locked-Out-2020.pdf> [<https://perma.cc/9DTM-GVGR>] (reporting estimates of disenfranchised individuals with felony convictions by state).

30. See JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 275 tbl.A8.1 (2008) (reporting 827,207 disenfranchised citizens in Florida as of the 2000 presidential election); UGGEN ET AL., *supra* note 2, at 15 tbl.3 (estimating 1,686,318 disenfranchised citizens in Florida as of 2016).

31. See MCLEOD, *supra* note 4, at 4 (cataloging reforms by state and year).

32. See, e.g., Expert Report of J. Morgan Kousser, Ph.D. at app. 114 tbl.7, *Jones v. DeSantis*, 462 F. Supp. 1196 (No. 4:19-cv-300), 2020 WL 3130149 [hereinafter Kousser Report] (listing Florida bills and resolutions on the rights of people with felony convictions, 1998–2018).

33. See, e.g., *Johnson v. Governor of Fla.*, 405 F.3d 1214, 1223–25 (11th Cir. 2005) (en banc) (concluding that “Florida’s felon disenfranchisement provision is constitutional because it was substantively altered and reenacted in 1968 in the absence of any evidence of racial bias.”).

34. See *Hand v. Scott*, 285 F. Supp. 3d 1289, 1310 (N.D. Fla. 2018), *vacated and remanded sub nom. Hand v. DeSantis*, 946 F.3d 1272 (11th Cir. 2020) (summarizing the restoration of voting rights in Florida over time).

35. See Associated Press, *Changing Affiliation Again, Former Governor of Florida Becomes a Democrat*, N.Y. TIMES (Dec. 8, 2012), <https://www.nytimes.com/2012/12/09/us/politics/charlie-crist-former-florida-governor-joins-democratic-party.html> [<https://perma.cc/LMS6-88GA>].

Scott, immediately rescinded Crist's policy when he took office in 2011. Scott instituted new rules that required each person who had completed all prison, probation, and parole requirements to wait a minimum of five additional years before applying to be considered for clemency.<sup>36</sup> During the next eight years, from 2011 to 2018, only about three thousand people successfully regained their right to vote.<sup>37</sup>

About six months before the vote on Amendment 4, a federal district court judge held that Florida's executive clemency process had become so partisan as to be unconstitutional.<sup>38</sup> To Judge Mark Walker, Florida's seesawing policy from Crist to Scott was an example of how the "spigot [of voting rights] is turned on or off depending on whether politicians perceive they will benefit from the expansion or contraction of the electorate."<sup>39</sup>

In fact, there are many examples of Republican politicians describing their opposition to even modest efforts to restore voting rights to people with felony convictions in terms of its expected partisan consequences. In Alabama, the chairman of the state Republican Party once explained his opposition to reform in simple terms: "As frank as I can be," he said at the time, "we're opposed to it because felons don't tend to vote Republican."<sup>40</sup> In Iowa, an executive order by a Democratic governor<sup>41</sup> led a former Republican governor of the state to remark that reform "looks like a very political move. All of the sudden, you're just going to make fifty thousand people eligible to vote."<sup>42</sup> When that former Republican governor won office again, he reversed the reform hours after being sworn in.<sup>43</sup> In the same vein, the Republican leadership in Virginia's state legislature labelled the Democratic governor's attempt at reform "a transparent effort to win votes."<sup>44</sup> The state legislature successfully sued the governor in state court.<sup>45</sup> For

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36. See *Hand v. Scott*, 285 F. Supp. 3d at 1293 (citing Fla. R. Exec. Clemency § 9(A)(4)).

37. See *id.* at 1310.

38. See *id.* at 1299–1304 (holding Florida's partisan clemency process violates the First Amendment's ban on viewpoint discrimination); *id.* at 1306–08 (holding that it also violates the Fourteenth Amendment's Equal Protection Clause).

39. *Id.* at 1310.

40. Shaila Dewan, *In Alabama, A Fight to Regain Voting Rights Some Felons Never Lost*, N.Y. TIMES (Mar. 2, 2008), <https://www.nytimes.com/2008/03/02/us/02felons.html> [<https://perma.cc/6UQW-BCRU>].

41. See Iowa Exec. Order No. 42, 28 Iowa Admin. Bull. 218 (Aug. 3, 2005) (restoring the right to vote to individuals who had completed prison, probation, and parole).

42. Todd Dorman, *Former Governor Criticizes Vilsack's Voting Rights for Felons Decision*, QUAD-CITY TIMES (June 21, 2005), [https://qctimes.com/news/state-and-regional/former-governor-criticizes-vilsack-s-voting-rights-for-felons-decision/article\\_d4133c91-be2f-506f-ba48-7acefb5ee2e0.html](https://qctimes.com/news/state-and-regional/former-governor-criticizes-vilsack-s-voting-rights-for-felons-decision/article_d4133c91-be2f-506f-ba48-7acefb5ee2e0.html) [<https://perma.cc/QMM8-N4DV>].

43. See Iowa Exec. Order No. 70, 33 Iowa Admin. Bull. 1165 (Feb. 9, 2011) (reversing Iowa Exec. Order 42).

44. Sheryl Gay Stolberg & Erik Eckholm, *Virginia Governor Restores Voting Rights to Felons*, N.Y. TIMES (Apr. 22, 2016), <https://www.nytimes.com/2016/04/23/us/governor-terry-mcauliffe-virginia-voting-rights-convicted-felons.html> [<https://perma.cc/82V8-GR69>].

45. See *Howell v. McAuliffe*, 788 S.E.2d 706 (Va. 2016) (invalidating the governor's effort as exceeding the gubernatorial clemency power).



these same reasons, Kentucky's felon disenfranchisement policy recently changed a total of three times in four years, depending on the party of the governor.<sup>46</sup>

To expand the restoration of voting rights, the campaign for Amendment 4 proposed amending the state constitution to provide that "voting rights shall be restored upon completion of all terms of sentence," rather than at the governor's mercy.<sup>47</sup> Precisely because of the expected Republican opposition, Hillary Clinton's presidential campaign reportedly did not want the amendment to appear on the 2016 ballot.<sup>48</sup>

For their initiative to make the ballot and become law, the campaign needed to clear three electoral thresholds. First, it needed to initially collect about one hundred thousand petitions from registered voters before the Florida Supreme Court would consider whether the proposed ballot language met state constitutional and statutory standards.<sup>49</sup> Second, it needed to ultimately collect about one million petitions to actually qualify for the ballot.<sup>50</sup> Third, it needed to garner 60 percent of all votes cast to become law.<sup>51</sup>

The different thresholds suggested that the campaign needed the support of three overlapping constituencies: a small donor class to fund the effort; a medium number of voters to sign the petition necessary to qualify for the ballot; and a

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46. See Ky. Exec. Order No. 2015-871 (Nov. 15, 2015) (expanding right to vote); Ky. Exec. Order No. 2015-052 (Dec. 22, 2015) (rescinding expansion); Ky. Exec. Order No. 2019-003 (Dec. 12, 2019) (reinstating expansion).

47. Compare *Voting Restoration Amendment*, *supra* note 9 (providing for automatic restoration of voting rights), with FLA. CONST. art. IV, § 8(a) ("[T]he governor may . . . with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses."). A state constitutional amendment was necessary because of an earlier decision by the Florida Supreme Court limiting the power of the legislature to restore voting rights. In 1974, during the same year the Supreme Court upheld lifetime disenfranchisement in *Richardson v. Ramirez*, 418 U.S. 24 (1974), the state legislature enacted a bill for the automatic restoration of voting rights immediately upon "discharge[] from parole or release[] . . . without parole . . ." Advisory Op. of Governor C.R., 306 So. 2d 520, 520 (Fla. 1975). However, the state supreme court ultimately invalidated the reform, holding that it "constitute[d] a clear infringement upon the constitutional power of the Governor to restore civil rights." *Id.* at 521.

48. See DESMOND MEADE, LET MY PEOPLE VOTE: MY BATTLE TO RESTORE THE CIVIL RIGHTS OF RETURNING CITIZENS 111 (2020) ("[T]hey calculated that it was an issue that would be decided along partisan lines. They believed that Republicans would be dead set against it, and that would rally turnout of people who would also vote for their candidate for president.").

49. See FLA. STAT. ANN. § 15.21(3) (2018) (amended 2020) (threshold for initiative to qualify for 2018 election is "equal to 10 percent of the number of electors statewide and in at least one-fourth of the congressional districts required"); FLA. DEP'T OF STATE, DIV. OF ELECTIONS, 2018 INITIATIVE PETITION HANDBOOK 8 (2018), <https://fldoswebumbracoprod.blob.core.windows.net/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> [<https://perma.cc/QY7H-A9KV>] [hereinafter INITIATIVE PETITION HANDBOOK] (reporting the threshold per congressional district to qualify for the November 2018 ballot).

50. See FLA. CONST. art. XI, § 3 (threshold is "equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen"); INITIATIVE PETITION HANDBOOK, *supra* note 49, at 8 (detailing the threshold requirement of at least 766,200 petitions statewide to qualify for the November 2018 ballot).

51. See FLA. CONST. art. XI, § 5(e).

supermajority of actual voters, including many registered Republicans. Part I introduces three new datasets, based on public records requests to each of Florida's sixty-seven counties, to track who contributed to the campaign, who signed the petition, and which voters supported the initiative.

### A. Donors

The campaign for Amendment 4 was the product of more than a decade of organizing by the Florida Rights Restoration Coalition and its president Desmond Meade.<sup>52</sup> The campaign registered its official political action committee, formally known as Floridians for a Fair Democracy, in October 2014; it submitted the proposed ballot language that same month.<sup>53</sup> Although the campaign often struggled to raise money, it ultimately attracted a core group of liberals and Democrats to finance the effort.

In its first year, the campaign raised little in terms of direct contributions. It principally relied on in-kind donations<sup>54</sup> from three progressive groups to help with the petition drive: the ACLU of Florida, the Brennan Center for Justice, and Faith in Florida, a faith-based community organizing group. By the end of 2015, though, the campaign had collected only about 5 percent of the necessary petitions to qualify for the ballot.<sup>55</sup> The initial lack of funding explains why it ultimately took the campaign about three years to collect the first half of the necessary petitions, then only four months to collect the rest.<sup>56</sup>

Figure 1 charts the cumulative direct contributions to the campaign,<sup>57</sup> from when it began in late 2014 to when it eventually qualified for the ballot in early 2018.<sup>58</sup> Each point represents an additional direct contribution by a particular donor on a particular day. The points are semitransparent, making it easier to distinguish overlapping donations. Significant donations are labelled by donor.

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52. See MEADE, *supra* note 48, at 57–62, 65 (describing the history and role of the Florida Rights Restoration Coalition in the campaign for Amendment 4).

53. See Floridians for a Fair Democracy, Inc., *Statement of Organization of Political Committee*, FLA. DEP'T OF STATE (Oct. 16, 2014), <https://dos.elections.myflorida.com/campaign-docs/?account=64388> [<https://perma.cc/2HPP-APFE>] (select file with description "PAC Statement of Organization").

54. From the start of the campaign in late 2014 until the end of 2015, the ACLU of Florida reported \$16,842.25 in in-kind contributions related to staff time for petition collection; the Brennan Center reported \$27,479; and Faith in Florida reported \$54,265.70.

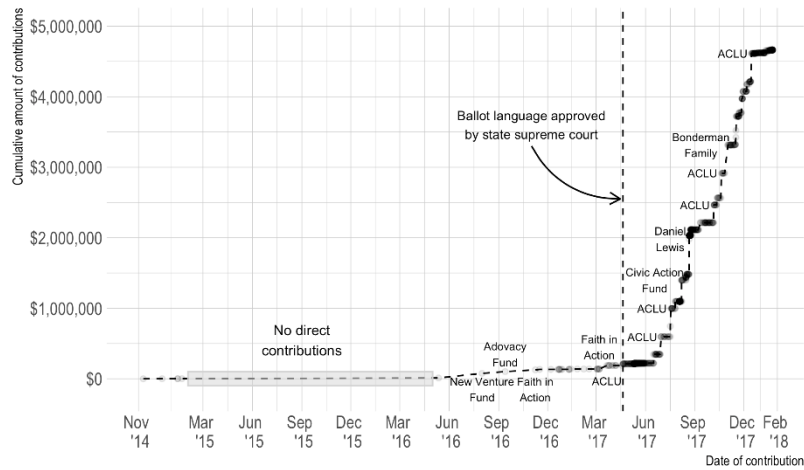
55. See *infra* Figure A.2 in the Appendix (showing the cumulative number of valid petitions for Amendment 4 over time).

56. See *id.*

57. Appendix I describes the collection of campaign finance records.

58. See *Voting Restoration Amendment*, *supra* note 9 (listing all relevant dates for the amendment).

Figure 1: Direct Contributions Before Ballot Qualification



The Florida Supreme Court approved the language of the amendment on April 20, 2017,<sup>59</sup> which Figure 1 marks with a dotted vertical line. Before the state supreme court approval, the campaign had raised just under \$200,000. In fact, from March 2015 to March 2016, the campaign collected no direct contributions at all. The first significant contribution came in August 2016 when the New Venture Fund, a nonprofit administered by Arabella Advisors, donated \$65,000. Other early supporters included Tides Advocacy, part of a social justice nonprofit accelerator that also funded the Florida Rights Restoration Coalition, and Faith in Action, the national organization of Faith in Florida.

The campaign’s fundraising accelerated after the state supreme court approved the ballot language, largely fueled by the support of the ACLU. Beginning in the summer of 2017 and stretching through January 2018, the campaign raised roughly \$4 million. It used these new funds to pay a nationwide petition management firm. With the firm’s help, the campaign collected about seven hundred thousand petitions over the final six months and qualified for the ballot with just eight days to spare.<sup>60</sup>

Figure 2 extends Figure 1, using one line to chart cumulative daily contributions by donor to the campaign and another to chart cumulative

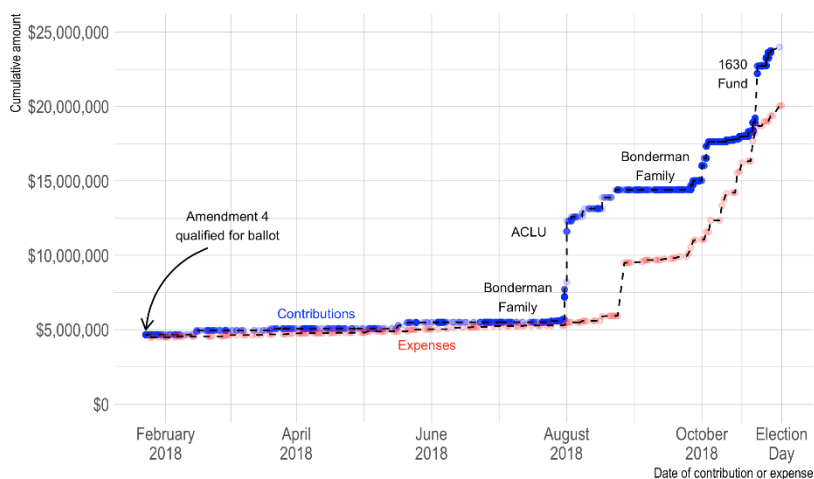
59. See Advisory Op. to the Att’y Gen. Re: Voting Restoration Amend., 215 So. 3d 1202 (Fla. 2017).

60. Compare *Voting Restoration Amendment*, supra note 9 (reporting that the initiative qualified for the ballot on January 23, 2018), with FLA. CONST. art. XI § 5(b) (providing a deadline of February 1 of the year in which the general election is held for initiatives to qualify for the ballot). Once the collection effort began, it became a race against the clock, as a voter’s signature is only good for two years. See FLA. ADMIN. CODE r. 1S-2.0091(2)(a)(2).

expenses, beginning in January 2018 when Amendment 4 qualified for the ballot. The figure illustrates the pivotal role of three particular donors: the ACLU, which continued to lend substantial support to the campaign; the Sixteen Thirty Fund,<sup>61</sup> a liberal secret-money nonprofit related to the New Venture Fund; and the Bonderman family, long-time Democratic donors.<sup>62</sup>

For most of 2018, after Amendment 4 qualified for the ballot, the campaign had little money to spare. But Figure 2 shows that, in two summer days, the campaign doubled what it had raised in the previous four years. Of the \$6.6 million haul, \$3.4 million came from the ACLU and \$1.5 million came from the Bonderman family. Contributions continued to well outpace expenses until near Election Day, when the Sixteen Thirty Fund donated \$3 million for the final push.

Figure 2: Direct Contributions and Expenses After Ballot Qualification



Ultimately, consistent with the historically partisan approach to the re-enfranchisement of people with felony convictions, the largest donors to Amendment 4 were distinctly liberal and Democratic. Table 1 shows all donors

61. See Scott Bland, *Liberal Secret-Money Network Hammers House GOP*, POLITICO (July 29, 2018), <https://www.politico.com/story/2018/07/29/democrats-dark-money-midterms-house-745145> [<https://perma.cc/98UY-53YF>].

62. See Liz Essley Whyte, *How Billionaires from Other States Are Shaping This Year's Ballot Measures*, CTR. FOR PUB. INTEGRITY (Nov. 7, 2018), <https://publicintegrity.org/politics/state-politics/how-billionaires-from-other-states-are-shaping-this-years-ballot-measures/> [<https://perma.cc/2MFW-3QQM>].

who directly contributed at least \$200,000, or about 1 percent of the \$24 million the campaign eventually directly raised.<sup>63</sup>

Table 1: Top Direct Contributors

Contributor	State	Amount	Percent
ACLU	NY	\$5,028,316	20.9%
Sixteen Thirty Fund	DC	\$3,950,000	16.4%
Bonderman Family	CA-NY-TX	\$3,700,000	15.4%
Simons Family	CA	\$1,000,000	4.2%
League of Conservation Voters	DC	\$800,000	3.3%
Open Philanthropy Action Fund	CA	\$750,000	3.1%
New Approach PAC	NH	\$600,000	2.5%
Beckenstein Family	MA	\$500,000	2.1%
Daniel Lewis	FL	\$500,000	2.1%
National Education Association	DC	\$500,000	2.1%
Samantha Holloway	TX	\$500,000	2.1%
Stacy Schusterman	OK	\$500,000	2.1%
State Engagement Fund	DC	\$500,000	2.1%
Nicholas Pritzker	CA	\$450,000	1.9%
Mary Quinn Delaney	CA	\$400,000	1.7%
Advocacy Fund	CA	\$375,000	1.6%
Civic Action Fund	DC	\$300,000	1.2%
Simons Family	NY	\$300,000	1.2%
Marsha Laufer	FL	\$250,000	1.0%
New Florida Vision PAC	FL	\$250,000	1.0%
Seth Klarman	MA	\$250,000	1.0%
Tides	CA-FL	\$243,318	1.0%
New Approach PAC	DC	\$200,000	0.8%

### B. Petitioners

The almost one million registered voters who ultimately signed the petition to put Amendment 4 on the ballot offer an early snapshot of registered voters' support for Amendment 4. As might be expected, the early coalition was distinctly Democratic and disproportionately Black. But, importantly, there were signs of Republican support, particularly in lower income and more racially diverse neighborhoods.

In order to determine which registered voters signed the petition, I made a public information request to each of Florida's sixty-seven counties for all the valid ballot petitions that the campaign collected and submitted. Although the

63. The top five in-kind contributors to the campaign were all entities associated with Tides (\$668,083), Ben and Jerry's (\$623,428), ACLU of Florida (\$381,489), ACLU national (\$285,738), and Organize Florida (\$245,705).

data provided by each county varied, all counties provided the voter registration number of each registered voter who signed the petition, and all but one provided the date each petition was signed. I was able to learn the race and party affiliation of nearly every petitioner by merging the petition data with an October 2018 copy of the statewide voter file.<sup>64</sup>

Table 2 breaks down the party affiliation and race of each petitioner. The first two rows provide a statewide benchmark: the number of registered voters at the time of the November 2018 election and the corresponding percentage of registered voters by party and by race. The remainder of the table reports three quantities of interest about the petitions collected: (1) the number of petition signers; (2) the take-up rate, or percentage of registered voters who signed the petition; and (3) the relative composition of petition signers.

In general, about 6 percent of registered voters signed the petition, though this take-up rate is inexact because the petition was circulated over the course of multiple years, during which the total number of registered voters changed. Still, although there were approximately equal numbers of registered Democrats and registered Republicans in the state, Democrats were three times more likely than Republicans to sign the petition. Similarly, while only about 13 percent of registered voters were Black, Black registrants were also about three times more likely than all other registrants to sign the petition.

Table 2: Petitioners by Party and Race

Quantity	Overall	By Party		By Race	
		Dem	Rep	Black	Not Black
Registered Voters (Nov. '18)	14,081,632	5,244,265	4,902,198	1,892,464	12,189,168
(Pct. of Reg. Voters)		(37.2%)	(34.8%)	(13.4%)	(86.6%)
Num. Overall Petitions Signed	881,261	521,768	150,571	292,154	586,268
(Take-up Rate)	(6.3%)	(9.9%)	(3.1%)	(15.4%)	(4.8%)
(Relative Composition)		(77.6%)	(22.4%)	(33.2%)	(66.5%)

Table 2 reflects both initial expressions of support for Amendment 4 and the campaign's strategic decisions about which areas to target to collect petitions. Nonetheless, in order to explain which types of registered Republicans signed the petition, Table 3 calculates the petition take-up rate for registered voters living in precincts at various deciles of estimated household income and percent of Black registrants.<sup>65</sup> Foreshadowing the campaign's eventual success, the take-up rate by both registered Democrats and registered Republicans was substantially higher in poorer precincts and more racially diverse ones. For example, about 14 percent of Democrats and about 4 percent of Republicans

64. Appendix II offers more details on the data collection and data validation process. In particular, Table A.1 shows that there were few issues with petition data quality; Table A.2 shows that I was able to collect virtually every petition available; and Table A.3 shows that nearly every petitioner was successfully matched to the voter file.

65. I constructed the racial and class composition of each precinct using both the voter file and the American Community Survey. The demographic data construction and validation process are explained in Appendix II.E.

signed the petition in the poorest precincts, relative to about 7 percent and about 2 percent in the richest ones. Similarly, about 17 percent of Democrats and about 6 percent of Republicans signed the petition in precincts with the highest proportions of Black registrants, relative to about 5 percent and about 2 percent in those with the lowest proportions.

Table 3: Petitioners by Precinct Household Income and Race

Decile	By Household Income				By Percent of Black Registrants			
	Income		% Sign Petition		Black		% Sign Petition	
	Min	Max	Dem	Rep	Min	Max	Dem	Rep
1	\$17,430	\$45,120	14.1%	4.5%	0.0%	0.9%	5.4%	1.8%
2	\$45,120	\$51,800	11.0%	4.1%	0.9%	1.8%	6.9%	2.5%
3	\$51,800	\$57,260	9.7%	3.6%	1.8%	3.1%	6.9%	2.6%
4	\$57,260	\$62,510	9.7%	3.6%	3.1%	4.7%	7.9%	3.3%
5	\$62,510	\$67,660	9.7%	3.4%	4.7%	6.5%	7.7%	3.0%
6	\$67,660	\$74,510	8.8%	3.1%	6.5%	9.1%	8.3%	3.4%
7	\$74,510	\$83,700	8.6%	2.8%	9.1%	12.4%	8.4%	3.3%
8	\$83,700	\$95,000	8.2%	2.6%	12.4%	18.5%	9.5%	3.6%
9	\$95,000	\$115,370	7.8%	2.4%	18.5%	36.8%	10.8%	4.0%
10	\$115,370	\$685,240	7.1%	1.9%	36.8%	100.0%	16.8%	6.3%

### C. Message

The general election campaign was, in many ways, unlike the petition drive for the simple reason that the electoral threshold was different. While the campaign only needed to collect a minimum number of petitions to qualify for the ballot, it needed at least 60 percent support from voters to amend the state constitution.<sup>66</sup> As a result, if the petition drive was about turning out support, the general election was about coalition building, particularly with Republicans and conservatives.

#### 1. Defining the Narrative

The campaign polled various possible narratives to garner bipartisan support.<sup>67</sup> Two narratives in particular stood out: a liberal frame, which cast reform in terms of racial justice, and a conservative frame, which cast reform in terms of redemption.

The racial justice framework was likely to be particularly compelling for the major donors to Amendment 4. For example, although law professor Michelle Alexander brought the analogy of mass incarceration to the New Jim

66. See FLA. CONST. art. XI, § 5(e) (constitutional amendments by initiative require 60 percent support).

67. See, e.g., Supplemental Appendix to Reply Brief of Secretary of State, Laurel M. Lee, at attach. C, Advisory Op. to Governor Re: Implementation of Amend. 4, The Voting Restoration Amend., 288 So. 3d 1070 (Fla. 2020) (No. SC19-1341) [hereinafter Supplemental Appendix to Lee Reply Brief] (providing the results of the campaign's internal March 2017 telephone survey, which polled various supporter messaging, including "[s]econd chances and forgiveness" and "disproportionate minorit[y]" impact).

Crow into the mainstream,<sup>68</sup> she built off of the ACLU's earlier efforts to develop that narrative.<sup>69</sup> The Florida chapter of the ACLU not only founded<sup>70</sup> and housed the Florida Rights Restoration Committee, which had served as the hub for re-enfranchisement efforts in the state, but also helped draft the amendment itself.<sup>71</sup> The national ACLU was the campaign's largest supporter.<sup>72</sup>

The New Jim Crow framework fits comfortably into reform efforts. Academics and activists have compared felon disenfranchisement to the New Jim Crow because felon disenfranchisement is, literally, a product of the old Jim Crow. After the Civil War, the South embraced felon disenfranchisement as an explicit tool to maintain white supremacy.<sup>73</sup> Felon disenfranchisement laws also continue to have a starkly disparate racial impact. The Sentencing Project, the primary research and advocacy organization for felon disenfranchisement reform, estimates that about one in thirteen Black citizens across the country of voting age could not vote in 2016 because of a criminal conviction.<sup>74</sup> To drive this home, the cover of the Sentencing Project's prominent publication cataloguing "Two Decades of Felony Disenfranchisement Reform" is a Black man at a voting booth.<sup>75</sup>

The strength of the New Jim Crow framework is that it offers a systemic critique of the historical practice of disenfranchisement. Many previous reform efforts have thus invoked racial justice to support reform.<sup>76</sup> But to its credit, the

68. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 14 (2012) (arguing that "mass incarceration is, metaphorically, the New Jim Crow").

69. See James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21, 25–27 (2012) (explaining "a brief history of the [phrase] 'New Jim Crow,'" including its earlier use by Ira Glasser, former executive director of the ACLU, and Graham Boyd, former leader of the ACLU's Drug Policy Litigation Unit).

70. See Emily Bazelon, *Will Florida's Ex-Felons Finally Regain the Right to Vote?*, N.Y. TIMES MAG. (Sept. 26, 2018), <https://www.nytimes.com/2018/09/26/magazine/ex-felons-voting-rights-florida.html> [<https://perma.cc/SP3N-WNH2>].

71. Howard Simon, the then-executive director of the Florida chapter of the ACLU, explained in an interview, "I was on a committee of three people that worked for a year and a half on crafting th[e] language." Daniel Rivero, *Amendment 4 Passed. Will It Actually Get Implemented?*, WLRN (Nov. 8, 2018), <https://www.wlrn.org/post/amendment-4-passed-will-it-actually-get-implemented> [<https://perma.cc/PH63-JH4W>].

72. See *supra* Table 1 (reporting the top direct contributors to the campaign).

73. See MANZA & UGGEN, *supra* note 30, at 41–68 (explaining the racial origins of modern felon disenfranchisement). This racial history has been widely acknowledged, even by a judiciary reticent to strike down felon disenfranchisement laws for their historical intent. See, e.g., *Hunter v. Underwood*, 471 U.S. 222, 229 (1985) ("The Alabama Constitutional Convention of 1901 was part of a movement that swept the post-Reconstruction South to disenfranchise blacks.").

74. See UGGEN ET AL., *supra* note 2, at 3 (providing an overview of felon disenfranchisement).

75. See MCLEOD, *supra* note 4.

76. Virginia Governor Terry McAuliffe, for example, explained his 2016 executive order to effectively end the state's practice of lifetime disenfranchisement by noting that "we've had a horrible history in voting rights as relates to African Americans" and arguing that "we should remedy it . . . as soon as we possibly can." Stolberg & Eckholm, *supra* note 44. Further, Iowa Governor Tom Vilsack's executive order explained that "disenfranchisement of offenders has a disproportionate racial impact . . ." Iowa Exec. Order No. 42, 28 Iowa Admin. Bull. 218 (Aug. 3, 2005). New York Governor Andrew Cuomo used nearly identical language. See N.Y. Exec. Order No. 181, 40 N.Y. Reg. 122 (May



campaign recognized that framing reform in terms of the New Jim Crow was, at best, a difficult political strategy to win a supermajority of a battleground state like Florida.<sup>77</sup>

As Meade, the campaign's chair, explained, "most of [the] narrative" about felon disenfranchisement reform "has been about the disproportionate impact it has on the African American community, [which has in turn] created a narrative that would make people naturally assume that . . . it's only African Americans that are impacted by this particular policy . . ." <sup>78</sup> Meade recognized that the racialization of disenfranchisement led to a series of "quick, barely conscious processes" in which people would say "African American people are in prison. African Americans are disenfranchised. African Americans generally vote for Democrats. . . . [The] ballot initiative [i]s for Democrats."<sup>79</sup>

But "in reality," Meade explained, "the average person in Florida [who has] lost their voting rights does not look like me. They're not African American."<sup>80</sup> In fact, only about one-third of people nationally who have been convicted of a felony and completed any period of prison or supervision are African American.<sup>81</sup> In Florida, it is closer to one-quarter.<sup>82</sup>

The campaign's internal polling revealed that only about one-quarter of likely voters found a racial justice framework "very convincing;"<sup>83</sup> similar results led the campaign to conclude that "[f]ocusing on the racial element of disenfranchisement is not an effective way to grow support, particularly among

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16, 2018) ("Disenfranchisement of individuals on parole has a significant disproportionate racial impact thereby reducing the representation of minority populations."). Notably, executive orders that have invoked racial justice to frame reform require no legislative or public support.

77. See MEADE, *supra* note 48, at 113 ("That racialization of our ballot initiative was the next hurdle we had to face, and it was a large one. In a state like Florida, we would need more than just African Americans to support the issue.").

78. At Liberty, *Desmond Meade and Dale Ho on Restoring the Right to Vote* (ep. 5) (July 19, 2018), ACLU, <https://www.aclu.org/print/node/69130> [<https://perma.cc/5MVH-74P8>]; see also MEADE, *supra* note 48, at 121–22 ("Because a lot of the attention was put on the disproportionate impact mass incarceration has had on African American and Latinx populations, it was natural to start thinking of felon disenfranchisement as a Black or Brown issue.").

79. MEADE, *supra* note 48, at 125.

80. At Liberty, *supra* note 78; see also MEADE, *supra* note 48, at 114 ("The math, however, doesn't support this conclusion."). For the more general, and academic, version of this argument, see MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 138 (2015) (arguing that the frame of The New Jim Crow "has helped perpetuate the mistaken view that the problem of the carceral state is a problem confined primarily to African Americans and members of other minority groups").

81. See UGGEN ET AL., *supra* note 2, at 15 tbl.3, 16 tbl.4 (estimating a total of 3,092,471 disenfranchised persons "post-sentence," of which 1,061,377 are African American).

82. See *id.* (estimating a total of 1,487,847 disenfranchised persons in Florida "post-sentence," of which 418,224 are African American); see also MEADE, *supra* note 48, at 114 (same).

83. Supplemental Appendix to Lee Reply Brief, *supra* note 67, attach. C, at 73–74 (reporting the results of the campaign's internal March 2017 telephone survey, which asked how convincing various statements were as a reason to support the amendment, including that "[t]his amendment returns fairness to the historically-biased Florida criminal justice system").

Republican and Independent voters . . . .”<sup>84</sup> Further, the vast majority of people surveyed also thought that the beneficiaries of Amendment 4 would register as Democrats, fueling the counternarrative that reform was nothing but a political organizing effort for the left.<sup>85</sup>

Instead of focusing on racial justice, the campaign charted a new course. As Meade explained during the height of the campaign: “I ask folks . . . would you like to never be forgiven for anything you’ve done in your life? I think at the end of the day, this thing is about forgiveness, it’s about redemption and restoration . . . .”<sup>86</sup> The same internal polling showed that respondents were twice as likely to rate this alternative frame as “very convincing.”<sup>87</sup>

Rather than echo Michelle Alexander and the New Jim Crow framework, the campaign’s message instead evoked the work of the Prison Fellowship, a Christian nonprofit that “emphasiz[es] . . . the humanity of the imprisoned and the possibility of redemption . . . .”<sup>88</sup> The campaign thus described Amendment 4 as a “human issue,” “not a partisan issue.”<sup>89</sup> Their moral language won the campaign the endorsement of the Christian Coalition of America, which expressly referenced forgiveness in its endorsing op-ed.<sup>90</sup> Together, Meade, a Black Democrat, and the campaign’s political director, Neil Volz, a white Republican, often stressed that they were “fighting just as hard, if not more, for that guy that wanted to vote for Donald Trump than a guy who wishes to vote for Hillary Clinton or Barack Obama.”<sup>91</sup>

To emphasize what might otherwise be unexpected given the dominant framing of felon disenfranchisement reform around racial justice, the organizers set out to “educat[e] people about the impact a felony conviction can have on a

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84. Supplemental Appendix to Lee Reply Brief, *supra* note 67, attach. B, at 47 (summarizing “key learnings that may impact the success of the Campaign’s messaging efforts from previous research”).

85. See Supplemental Appendix to Lee Reply Brief, *supra* note 67, attach. C, at 86 (reporting the results of the campaign’s internal March 2017 telephone survey, which included the question, “Do you think that those who have their voting rights restored are more likely to register as . . . .”).

86. At Liberty, *supra* note 78; see also MEADE, *supra* note 48, at 101 (“I was fortunate enough to attend four out of the five focus groups, and one of the things I felt strongly was that people there did believe in redemption. They did believe in restoration as a matter of moral principle.”); *id.* at 141 (“What I was talking about was based on values that are shared by everyone, especially when you talk about forgiveness and redemption and restoration.”).

87. Supplemental Appendix to Lee Reply Brief, *supra* note 67, attach. C, at 73 (summarizing the results of the campaign’s internal March 2017 telephone survey).

88. DAVID DAGAN & STEVEN M. TELES, PRISON BREAK: WHY CONSERVATIVES TURNED AGAINST MASS INCARCERATION 143 (2016).

89. MEADE, *supra* note 48, at 114–15.

90. See Keith den Hollander, Opinion, *We Support Restoration of an Ex-Felon’s Voting Rights*, NEWS-PRESS (Sept. 13, 2018), <https://www.news-press.com/story/opinion/contributors/2018/09/13/we-support-restoration-ex-felons-voting-rights/1289891002/> [<https://perma.cc/U5SF-QZVV>] (“As Christians . . . divinity is what we strive for, and forgiving those who have trespassed against society, and restoring them to a right relationship is just a little more divine, and why we are supporting Amendment 4.”).

91. Bazelon, *supra* note 70.

family in a way that reflects the diversity of who is affected . . . .”<sup>92</sup> The campaign “was very intentional in going to places that were predominately white or predominately conservative to talk about felon disenfranchisement . . . .”<sup>93</sup> Advertisements for Amendment 4 largely focused on older whites. For example, the first ad, produced by a partner organization, featured a white father returning home from prison to his wife and teenage daughter.<sup>94</sup> In another ad, aptly titled “Redemption,” the campaign highlighted a series of people who had lost their right to vote for life.<sup>95</sup> Figure 3 presents four sequential scenes from the ad.

Figure 3: Four Scenes from “Redemption”



The campaign spotlighted Brett Ramsden, the white father shown in the bottom left of Figure 3, more than anyone else. Along with a solo spot in September and “Redemption” in October, the campaign released a third ad featuring him and his family.<sup>96</sup> The ad introduced Brett as someone who “was addicted to opioids and has a non-violent felony conviction. Now he’s clean, has completed the terms of his sentence, and is helping others.”<sup>97</sup>

The campaign also focused on redemption’s purported tangible benefits, particularly in its outreach to business conservatives. As one ad put it, a vote for Amendment 4 was a vote to “[r]educe crime, create safer communities, and foster a healthier economy.”<sup>98</sup> In this sense, the campaign also evoked the

92. *Id.*

93. MEADE, *supra* note 48, at 122.

94. See Alliance for Safety and Justice, *#TimeDone: When Will Our Sentence End?*, YOUTUBE (Aug. 28, 2018), <https://www.youtube.com/watch?v=Xf2TEMubNp8> [<https://perma.cc/225H-QQAD>].

95. See Second Chances Florida, *Redemption*, YOUTUBE (Oct. 15, 2018), <https://www.youtube.com/watch?v=TQwWfQZBVDY> [<https://perma.cc/G9MB-GJTM>].

96. See Second Chances Florida, *Brett and Mallery*, YOUTUBE (Oct. 15, 2018), <https://www.youtube.com/watch?v=maKY4vocHLU> [<https://perma.cc/3SNQ-MZ8M>].

97. *Id.*

98. Second Chances Florida, *Turn the Page*, YOUTUBE (Sept. 7, 2018), [https://www.youtube.com/watch?v=nDQ8X\\_59Ixo](https://www.youtube.com/watch?v=nDQ8X_59Ixo) [<https://perma.cc/8JCC-FZS7>].

messaging of Right on Crime, another conservative group that champions a “return on investment” approach focused on the cost savings of reducing prison and jail populations.<sup>99</sup> Although felon disenfranchisement does not fit neatly into this framework, the campaign cast the restoration of voting rights as a re-entry program in and of itself.<sup>100</sup>

## 2. *Defining the Terms of Sentence*

The campaign’s redemption narrative did not stir the type of organized Republican opposition found across the country in response to other efforts to restore voting rights to people with felony convictions.<sup>101</sup> In fact, the campaign’s inclusive, moral, and business language won the endorsement of the influential Koch brothers, two of the leading Republican donors in the nation and central supporters of the conservative group Right on Crime.<sup>102</sup> Ron DeSantis, the Republican candidate for governor, “ha[d] been ducking questions from the press about the ballot initiative for months.”<sup>103</sup> Eventually, in a debate, he came out as opposed to Amendment 4.<sup>104</sup> But the Republican Party of Florida took no

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99. See DAGAN & TELES, *supra* note 88, at 73.

100. An economic impact analysis touted by the campaign claimed reform would significantly reduce both crime and unemployment. See THE WASHINGTON ECON. GRP., ECONOMIC IMPACTS OF RESTORING THE ELIGIBILITY TO VOTE FOR FLORIDIANS WITH FELONY CONVICTIONS AS A RESULT OF PASSAGE OF AMENDMENT 4 (2018), <https://drive.google.com/file/d/1sP2BiK-CEmkqJOiKjAgUBAwI75H5UP08/view> [<https://perma.cc/P3LB-2WJA>]. Key supporters repeated this fact and the campaign amplified it. See, e.g., Press Release, Second Chances Florida, Economic Study Says Amendment 4 to Add \$365 Million to Florida’s Economy Annually (May 17, 2018), <https://web.archive.org/web/20180926152350/https://secondchancesfl.org/media/press-releases/economic-study-says-amendment-4-to-add-365-million-to-floridas-economy-annually/>; see also MEADE, *supra* note 48, at xii–xiii (recounting these claims by the campaign). The conservative firm’s analysis, though, was less than logical, the result of flagrantly misinterpreting a state report on recidivism and confusing the restoration of the right to vote with the expungement of a felony conviction, which is the actual barrier to employment. But the shoddy analysis was never seriously contested.

101. See MEADE, *supra* note 48, at 144 (describing the concern throughout the campaign “if some misleading attack ads were going to drop at any minute, from a previously unknown group, and if they did, what kind of impact that would have”).

102. See Press Release, Second Chances Florida, Freedom Partners Chamber of Commerce Endorses Amendment 4 (Sept. 13, 2018), <https://capitalsoup.com/2018/09/13/freedom-partners-chamber-of-commerce-endorses-amendment-4/> [<https://perma.cc/PJH8-T5ZL>].

103. Bazelon, *supra* note 70.

104. See Steve Bosquet, *Diverse Donors Fund Final Push in Campaign to Win Voting Rights for Florida Felons*, MIAMI HERALD (Nov. 7, 2018), <https://www.miamiherald.com/news/politics-government/state-politics/article220614240.html> [<https://perma.cc/MEY5-TYEA>] (quoting Ron DeSantis as saying that “I think it’s wrong to automatically restore rights to felons who’ve committed very serious crimes . . . . I want people to be redeemed. But you’ve got to prove that you’re getting back with the law.”).

position on Amendment 4.<sup>105</sup> In fact, no political committee registered to oppose Amendment 4.<sup>106</sup>

This lack of organized opposition was largely because the campaign took a cautious and conservative approach, evoking, if not following, the playbook set by former Governor Crist to explain the restoration of voting rights years before. “If you’re a fair-minded person and you truly believe in the concept that an individual pays their debt to society,” Crist said in 2006, “then if they’ve paid their debt to society, they’ve paid it.”<sup>107</sup> To win his cabinet’s support, and perhaps to align with the redemption narrative, Crist excluded individuals convicted of murder, sexual offenses, and other violent offenses from his executive reform.<sup>108</sup> He also explicitly required the payment of restitution.<sup>109</sup>

The campaign for Amendment 4 used nearly the same slogan as Crist, arguing that Florida should expand voting rights because “when a debt is paid it’s paid,”<sup>110</sup> and made the same strategic exclusions about who would not be restored the right to vote. The campaign specifically excluded individuals convicted of “murder or a felony sexual offense,” regardless of whether they had

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105. See Steve Bousquet, *A Long, Hot Summer of Building Support to Grant Felons the Right to Vote*, TAMPA BAY TIMES (July 19, 2018), <https://www.tampabay.com/florida-politics/buzz/2018/07/19/a-long-hot-summer-of-building-support-to-grant-felons-the-right-to-vote/> [<https://perma.cc/YDX9-DZ5E>] (“The Republican Party of Florida has endorsed eight of the 13 ballot questions, but took no position on Amendment 4.”).

106. Richard Harrison incorporated the group Floridians for a Sensible Voting Rights Policy in 2017 and wrote op-eds opposing Amendment 4. See, e.g., Richard Harrison, *Column: Reject Effort to Restore Voting Rights for Most Felons*, TAMPA BAY TIMES (Aug. 31, 2017), <http://www.tampabay.com/opinion/columns/column-reject-effort-to-restore-voting-rights-for-most-felons/2335809> [<https://perma.cc/N7K2-53ZQ>]. But he never formed a political committee to legally accept contributions or make expenditures to advocate against Amendment 4.

107. William March, *Crist Would Let All Felons Vote*, TAMPA BAY TRIB. (Oct. 14, 2006) (describing Crist’s approach). Crist, however, did not invent the analogy. For example, former President Clinton used it to support expanding the restoration of voting rights, see William Jefferson Clinton, *Opinion, Erasing America’s Color Lines*, N.Y. TIMES (Jan. 14, 2001), <https://www.nytimes.com/2001/01/14/opinion/erasing-america-s-color-lines.html> [<https://perma.cc/DL7Z-2DKA>] (“[I]t is long past time to give back the right to vote to ex-offenders who have paid their debts to society.”), and Justice Marshall used it at the Supreme Court, see *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974) (“The Court today holds that a State may strip ex-felons who have fully paid their debt to society of their fundamental right to vote . . .”).

108. See FLA. COMM’N ON OFFENDER REV., OFF. OF EXEC. CLEMENCY, RULES FOR EXECUTIVE CLEMENCY (2007) [hereinafter 2007 RULES FOR EXEC. CLEMENCY], [https://scholar.harvard.edu/files/morse/files/crist\\_2007\\_policy.pdf](https://scholar.harvard.edu/files/morse/files/crist_2007_policy.pdf) [<https://perma.cc/3X89-DZQN>] (listing each disqualifying offense in section 9(A)(4)); see also Farhad Manjoo, *What Was Charlie Crist Thinking?*, SALON (Apr. 6, 2007), [https://www.salon.com/2007/04/06/crist\\_10/](https://www.salon.com/2007/04/06/crist_10/) [<https://perma.cc/4GPF-HLXF>] (describing the negotiation between Crist and his cabinet members, including this concession).

109. See 2007 RULES FOR EXEC. CLEMENCY, *supra* note 108, at 7 § 9(A)(3) (“The person has paid all restitution pursuant to a court order or civil judgment . . .”).

110. For uses of the slogan in press releases, see, for example, Press Release, Second Chances Florida, Freedom Partners Chamber of Commerce Endorses Amendment 4, *supra* note 102. For uses in other advertisements, see, for example, Second Chances Florida, *Gary Winston*, YOUTUBE (Oct. 15, 2018), [https://www.youtube.com/watch?v=9YnEU\\_m4OG0](https://www.youtube.com/watch?v=9YnEU_m4OG0) [<https://perma.cc/W3VT-E6YJ>] and Second Chances Florida, *Redemption*, *supra* note 95.

completed the terms of their sentence.<sup>111</sup> After a series of focus groups, the campaign concluded that “[e]xcluding murderers and sex offenders is central to developing potentially passable ballot language” as it “preempt[s] the opposition[’]s strongest message against the amendment.”<sup>112</sup> The campaign repeatedly reminded the public of this tradeoff in its press releases and advertisements.<sup>113</sup>

While Amendment 4’s requirement to “complet[e] . . . all terms of sentence,” did not specifically mention restitution, the campaign made clear that those who owed restitution would not be able to vote because restitution implicated personal responsibility. As the campaign explained, people with felony convictions had to earn back their right to vote by ensuring victims are “made whole.”<sup>114</sup> Consistent with this, the campaign’s website explained how “Amendment 4 restores the eligibility to vote to people with past felony convictions who *fully complete* their entire sentence—including any probation, parole, and restitution—before earning back the eligibility to vote.”<sup>115</sup>

As with restitution, the text of Amendment 4 also did not mention the court-ordered assessment of fines or fees. Early on, a statewide finance committee, formed after the campaign collected 10 percent of the necessary petitions, flagged the campaign’s proposed language as ambiguous. “It is unclear,” they wrote in late 2016, “whether the phrase ‘terms of sentence’ includes payment of court-ordered restitution, fines and court costs.”<sup>116</sup> When Jon L. Mills, the campaign’s lawyer and a drafter of the amendment, went before the Florida Supreme Court several months later to seek approval of the ballot

111. See *Voting Restoration Amendment*, *supra* note 9 (codified at FLA. CONST. art. VI, § 4(b)).

112. Supplemental Appendix to Lee Reply Brief, *supra* note 67, attach. F, at 122 (reporting the results of the campaign’s internal August 2014 online survey); see also MEADE, *supra* note 48, at 101 (“We did focus groups throughout the state of Florida . . . We found out a few things of distinct interest. The first was that people were strongly opposed to restoring voting rights to people who were convicted of crimes like murder, child molestation, and rape.”); MANZA & UGGEN, *supra* note 30, at 216 & fig.9.3 (explaining that “the main avenue through which defenders of felon disenfranchisement might influence public opinion would be to target the most stigmatized categories of criminal offenders”).

113. E.g., Second Chances Florida, Gary Winston, *supra* note 110.

114. Lawrence Mower, *Amendment 4 Will Likely Cost ‘Millions’ to Carry Out. Here’s Why.*, TAMPA BAY TIMES (Apr. 4, 2019), <http://www.tampabay.com/florida-politics/2019/04/04/amendment-4-will-likely-cost-millions-to-carry-out-heres-why> [<https://perma.cc/ZH7T-6L62>].

115. Advisory Op. to Governor Re: Implementation of Amend. 4, The Voting Restoration Amend., 288 So. 3d 1070, 1077 (Fla. 2020) (referencing the campaign’s website). Similarly, campaign press releases routinely emphasized how “Amendment 4 would restore the eligibility to vote to Floridians who have served their time and completed all terms of their sentence as ordered by a judge—including parole, probation, and restitution.” E.g., Press Release, Second Chances Florida, National Military Veterans Organization VoteVets Announces Support for Amendment 4 (Sept. 27, 2018), <https://capitalsoup.com/2018/09/27/national-military-veterans-organization-votevets-announces-support-for-amendment-4/> [<https://perma.cc/5YE8-PE5E>].

116. FIN. IMPACT ESTIMATING CONF., FLA. OFF. OF ECON. & DEMOGRAPHIC RSCH., COMPLETE INITIATIVE FINANCIAL INFORMATION STATEMENT VOTING RESTORATION AMENDMENT (14-01) 2 (2016), [http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VRA\\_Report.pdf](http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VRA_Report.pdf) [<https://perma.cc/5YKS-R4ZY>]. At the time, the ambiguity redounded to the benefit of the campaign, because it meant that “[t]he revenue impact, if any” of the amendment “c[ould] not be determined.” *Id.*

language, he specifically addressed these questions. When asked during oral argument whether the amendment “would . . . include the full payment of any fines,” Mills responded, “Yes, sir. . . . [A]ll terms means all terms within the four corners.”<sup>117</sup> When asked whether it “would . . . also include restitution,” Mills responded, “Yes.”<sup>118</sup> One justice took the requirement to pay fines to mean a requirement to pay fees, or costs, too.<sup>119</sup> When another justice later described how “fines, costs, and restitution are a requirement” of the amendment and asked whether the Secretary of State could “require . . . the registrant . . . to . . . themselves certify [that they’ve] done this,” Mills embraced the premise.<sup>120</sup> “There’s no reason that the Secretary of State couldn’t do that,” he said.<sup>121</sup> “The scope of this clearly says that’s what’s required.”<sup>122</sup>

Another indicia of the campaign’s own understanding of “completion of all terms of sentence” came in a February 2018 memorandum written by Howard Simon, the campaign’s vice chair and a drafter of Amendment 4, and Marc Mauer, the then executive director of the Sentencing Project.<sup>123</sup> Simon and Mauer were focused on correcting “[t]he number of people who could be directly impacted by Amendment 4.”<sup>124</sup> Although the memo acknowledged that there are “no good estimates” for the extent of fines and fees, the memo explained that under Amendment 4, “Floridians who have completed supervision of a felony

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117. Transcript of Oral Argument at 4, Advisory Op. to Att’y Gen. Re: Voting Restoration Amend., 215 So. 3d 1202 (Fla. 2017) (Nos. 16-1785, 16-1981) [https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785\\_16-1981.pdf](https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf) [<https://perma.cc/6P77-R4UL>]; see also Advisory Op. to Governor Re: Implementation of Amend. 4, The Voting Restoration Amend., 288 So. 3d 1070, 1072–73 (Fla. 2020) (recounting this exchange in addressing the meaning of the phrase “all terms of sentence”).

118. Transcript of Oral Argument, *supra* note 117, at 10.

119. See *id.* (Justice Lawson prefacing his question by noting that “you said that terms of sentence include fines and costs”).

120. *Id.* at 11.

121. *Id.*

122. *Id.* In his subsequent history of the campaign, Meade sought to distance the campaign from Mills’s representations, characterizing the questions as coming “out of nowhere” and the answers as made “in a different context” and “on the fly.” MEADE, *supra* note 48, at 151. But Mills’s response was consistent with the campaign’s brief seeking approval for Amendment 4 to be placed on the ballot, which explained that “the drafters intend that individuals with felony convictions . . . will automatically regain their right to vote upon fulfillment of all obligations imposed under their criminal sentence.” Advisory Op. to Governor Re: Implementation of Amend. 4, The Voting Restoration Amend., 288 So. 3d 1070, 1077 (Fla. 2020) (recounting the campaign’s earlier brief to the court). Further, there was no immediate effort to correct the representation. In fact, after the hearing, Howard Simon issued a press release thanking the court and “express[ing] our gratitude to Jon Mills . . . for his work so far in the effort to restore voting rights.” Press Release, ACLU of Fla., ACLU Statement on Florida Supreme Court Hearing on Voting Rights Restoration Ballot Language (Mar. 6, 2017), <https://www.aclufla.org/en/press-releases/aclu-statement-florida-supreme-court-hearing-voting-rights-restoration-ballot> [<https://perma.cc/R4JF-HJAF>].

123. See Memorandum from Howard Simon, Exec. Dir., ACLU Fla., and Marc Mauer, Exec. Dir., Sent’g Project, to Exec. Bd., Second Chances Team (Feb. 11, 2018) [hereinafter Simon-Mauer Memorandum], <https://docs.google.com/document/d/1om20yURi8GKBdtYUuur-RyAagoY1SvmWDWRYghVss/edit> [<https://perma.cc/RZV8-D5Y5>].

124. *Id.* at 2.

sentence . . . could be eligible for the restoration of their ability to vote [only] upon payment of fines, fees, and restitution.”<sup>125</sup>

One reason the campaign proposed restoring voting rights upon “completion of all terms of sentence” is that polling showed “[a]n exclusion for fines and fees will lower support” for reform.<sup>126</sup> For example, during a research briefing in September 2014, about a month before the ballot language was finalized, the campaign reviewed various options for when to propose restoring the right to vote.<sup>127</sup> The participants, including Desmond Meade, the campaign’s chair, and Myrna Perez, the director of voting rights and elections for the Brennan Center, discussed the pros and cons of restoring voting rights after the “full sentence” as opposed to “post time served.”<sup>128</sup> The pros for the “full sentence” option included the fact that it “[p]olls higher” and that, relatedly, there are “[l]ess opposition arguments.”<sup>129</sup> The cons were that there would be a “[d]isparate impact on the poor [who would be] unable to pay fines and restitution.”<sup>130</sup> As a result, the campaign understood this option would “restore[] voting rights to less people.”<sup>131</sup> Conversely, the pros of the “post time served” option were that it would “[r]estore[] voting rights to more impacted people” and that “[m]ore people [would] get their voting rights faster.”<sup>132</sup> But the cons were clear: it would be a “[h]arder fight to win 60% + 1% approval,” particularly because the “opposition c[ould] use [the] ‘didn’t pay back full debt’ argument.”<sup>133</sup>

Still, the campaign never squarely addressed to the public, as opposed to the court, whether the proposed amendment would require the payment of outstanding fines and fees, at least with the same clarity used to address murder, sexual offenses, and restitution. The campaign’s slogan, “when a debt is paid, it’s paid,” is a metaphor about redemption, but also, literally, about money. As a

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125. *Id.*

126. Supplemental Appendix to Lee Reply Brief, *supra* note 67, attach. B, at 42 (summarizing the results of an August 2014 online survey); see MEADE, *supra* note 48, at 101–02 (explaining how, based on a series of focus groups to understand support for reform, the campaign “carved out those convicted of homicide, sexual crimes, or crimes against children, and . . . introduced the stipulation that a returning citizen must have completed all of their post-release obligations. When we did that, the support for restoration skyrocketed.”).

127. See Supplemental Appendix to Lee Reply Brief, *supra* note 67, attach. D, at 90, 103 (showing the “[p]ros and [c]ons of [p]olicy [c]hoices” as part of the “Florida Rights Restoration Briefing (Sept. 2, 2014)”).

128. *Id.* at 103.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.* When the campaign announced the support of the Koch brothers, their representative, Senior Vice President of Koch Industries Mark Holden, explained that “[w]e believe that when individuals have served their sentences *and paid their debts as ordered by a judge*, they should be eligible to vote.” Press Release, Second Chances Florida, Freedom Partners Chamber of Commerce Endorses Amendment 4, *supra* note 102 (emphasis added). Although the campaign’s slogan that “when a debt is paid, it’s paid,” could sometimes be interpreted symbolically as a reference to time served, the Koch brothers appeared to be literally describing the importance of paying fines, fees, and restitution to their support.



result, some have argued that newspaper coverage at the time was distinctly ambiguous about the actual scope of Amendment 4.<sup>134</sup>

#### D. Victory

The organizers of Amendment 4 ran a new type of campaign in perhaps the toughest state for felon disenfranchisement reform in the country and won a watershed victory.<sup>135</sup> To understand the breadth of the electoral coalition supporting Amendment 4, I made another round of public information requests to the supervisor of elections in each of Florida's counties to gather the ballots cast in the 2018 election.

Ballot-level data is about as difficult to obtain as it is useful to analyze. Most states, including Florida, make aggregate election results readily available online. These summaries report how many votes each candidate or amendment received—either by precinct, county, or statewide. This format makes sense given the job of election administrators to certify the results of each contest. In recent years, though, it has become possible for election administrators to electronically preserve the raw, ballot-level data when tallying each ballot cast. By definition, aggregating the raw data can verify the reported number of votes in each contest. But the primary benefit of obtaining ballot-level data is that it reveals how individuals vote across contests.

The ballot data, however, are not posted online. Many counties had difficulty fulfilling my request because they had never received a similar one—no one had ever comprehensively compiled ballot-level data in Florida, for 2018 or any other year. Ultimately, my baseline dataset includes ballots from fifty-two of Florida's sixty-seven counties.<sup>136</sup>

Figure 4 uses ballot-level data to illustrate support for Amendment 4 by party, using individuals' votes for governor in the top panel or senator in the bottom panel as a proxy for partisanship.<sup>137</sup> Each panel shows the relative percentage of people who voted yes on Amendment 4 given their vote for

134. See Kousser Report, *supra* note 32, app., at 30–33 tbl.2, 35 tbl.3, 36–37 tbl.4, 39–42 tbl.5, 42 tbl.6 (collecting newspaper articles that refer to Amendment 4's requirement to complete "terms of a sentence" in different ways).

135. See *November 6, 2018 General Election Official Results Voting Restoration Amendment*, FLA. DEP'T OF STATE, DIV. OF ELECTIONS, <https://results.elections.myflorida.com/DetailRpt.Asp?ELECTIONDATE=11/6/2018&RACE=A04&PARTY=&DIST=&GRP=&DATAMODE=> [https://perma.cc/3Y44-LN8Y].

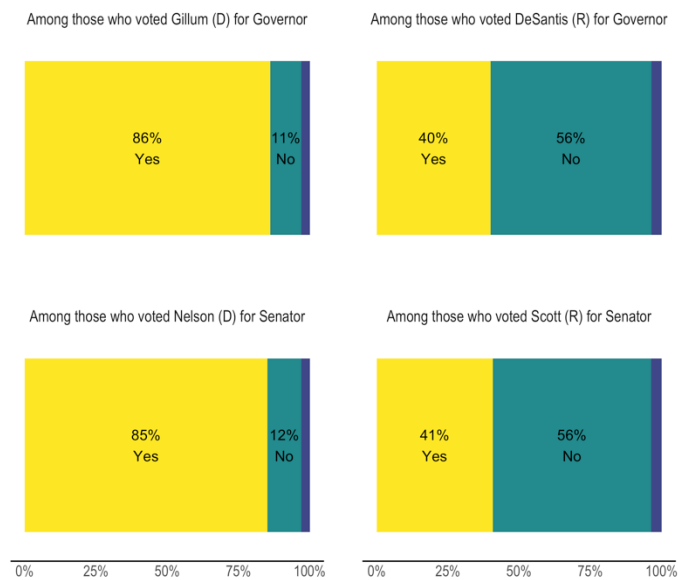
136. Appendix III details my collection effort for each county. Table A.4 reports that I collected about 6.1 million total votes for Amendment 4. However, in some counties, each page of the ballot is separated and cannot be linked together. Thus, my baseline dataset focuses on the 5.4 million Amendment 4 votes which can be linked to a vote for statewide office. Given that about 8 million votes were cast for Amendment 4 statewide, my baseline ballot dataset includes roughly 67 percent of the votes cast in the state. Table A.5 validates the ballot data by showing that the total votes recorded for governor in the ballot data is very similar to the total votes reported for governor according to the statewide results, with the exception of a few counties which did not provide mail ballots.

137. Figure A.3 and Figure A.4 show how this marks an improvement over the standard approach of ecological inference, which relies on aggregate precinct-level rather than individual ballot-level data.

governor or senator. By design, the percentages within a panel sum to 100 percent.

As expected,<sup>138</sup> Democrats were strongly supportive of Amendment 4. Among those who voted Democratic for governor, the top-left panel shows that 86 percent supported Amendment 4. But critically, Republicans were supportive of reform too. Among those who voted Republican for governor, the top-right panel shows that 40 percent voted for Amendment 4.<sup>139</sup> The pattern in the bottom panels using the Senate race is essentially the same.

Figure 4: Vote for Amendment 4 by Vote for Statewide Offices

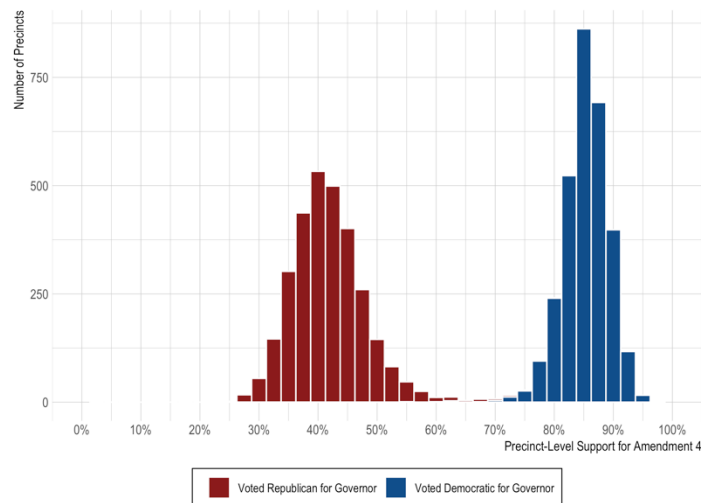


138. The polling before the election consistently showed bipartisan support for Amendment 4, but the extent of Republican support varied over time and by pollster. In March 2017, for example, an internal poll found 82 percent support among Democrats and 58 percent support among Republicans. See Supplemental Appendix to Lee Reply Brief, *supra* note 67, attach. C, at 67, 78. A September 2018 poll commissioned by the campaign showed 88 percent support among Democrats and 59 percent support among Republicans. See Press Release, Second Chances Florida, Latest Statewide Poll Finds 74% of Floridians Support Amendment 4 (Oct. 1, 2018), <https://capitalsoup.com/2018/10/01/latest-statewide-poll-finds-74-of-floridians-support-amendment-4/> [<https://perma.cc/S524-V8XU>]. But an October poll by a different firm commissioned by a media group instead put Republican support at 40 percent. See STPETEPOLLS.ORG, FLORIDA STATEWIDE GENERAL-ELECTION SURVEY CONDUCTED FOR FLORIDAPOLITICS.COM (2018), [http://stpetepolls.org/files/StPetePolls\\_2018\\_State\\_GEN\\_Amend46\\_October28\\_PD5S.pdf](http://stpetepolls.org/files/StPetePolls_2018_State_GEN_Amend46_October28_PD5S.pdf) [<https://perma.cc/H3FV-9SDG>].

139. One concern is that some votes for Amendment 4 may reflect ballot fatigue rather than true preferences, particularly in light of the fact that Amendment 4 was one of twelve statewide amendments in addition to potentially numerous local amendments. But Table A.6 shows that the estimate of partisan support for Amendment 4 is similar when limiting the analysis to ballots with at least one yes vote and at least one no vote on any of the statewide amendments.

In order to explain the campaign's broad support, particularly among Republicans,<sup>140</sup> I supplemented the ballot data with the racial and class composition of each precinct. Figure 5, below, shows the distribution of partisan support for Amendment 4 at the precinct level, using the forty-four counties for which ballot data with precinct information is available. The height of each bar shows the number of precincts with various levels of partisan support among voters categorized as either Democrats or Republicans, as determined by their vote for governor. In the median precinct, about 41 percent of Republicans and 85 percent of Democrats voted for Amendment 4.

Figure 5: Precinct-Level Partisan Support for Amendment 4



This variation in support for Amendment 4 provides some leverage to explore which types of voters were most likely to support felon disenfranchisement reform.

Figure 6, below, shows that the campaign was particularly successful at persuading Republicans in poorer neighborhoods to buck their partisanship and support reform. More specifically, the figure plots the relationship between support for Amendment 4 and the estimated household income of precincts. The left panel examines ballots that voted Democratic for governor, while the right panel examines ballots that voted Republican. Each point in each panel represents a precinct. The size of the point represents the number of ballots cast and the darkness of the point indicates the number of similar precincts overlaid on one another.

140. Importantly, all analyses that follow in this Section are limited to precincts with at least 100 ballots cast.

In general, Democratic support was high and steady across all estimated household income levels. By contrast, there was a strong class difference in the preference of Republican voters. While the relationship between income and Republican support is roughly linear for the bulk of precincts, the overall relationship appears non-linear because Republicans in the poorest precincts were particularly supportive of Amendment 4 while Republicans in the richest precincts were about as supportive as Republicans in the median precinct. One reason that the campaign may have persuaded Republican voters to support reform is that the expanding carceral net has also caught many white, often poor people too.

Figure 6: Partisan Support for Amendment 4 by Precinct Class Context

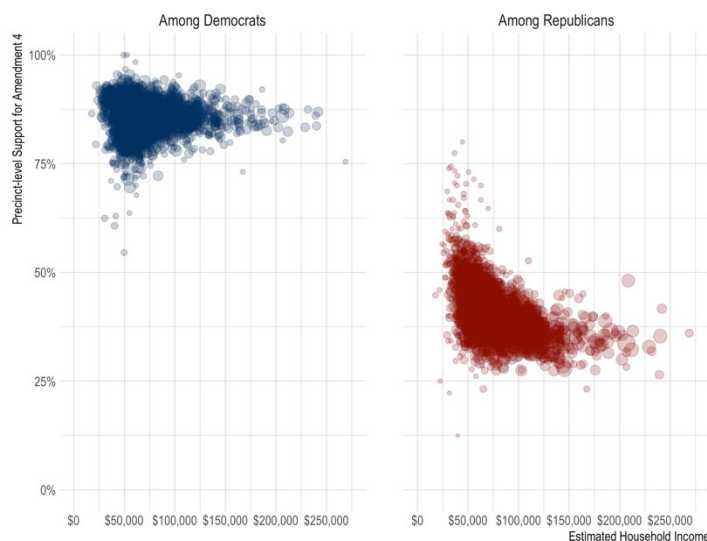
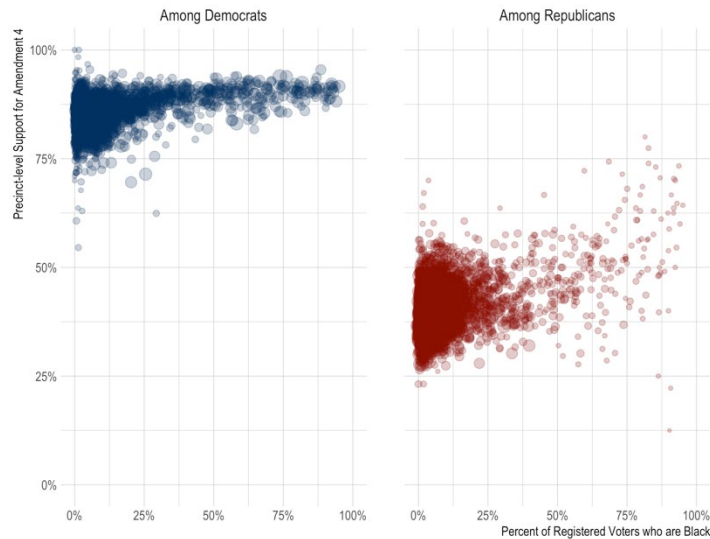


Figure 7 shows that the campaign's focus on redemption, rather than racial justice, did not come at the cost of reducing Democratic support. The figure is styled the same way as Figure 6 but focuses on the percentage of African Americans among all registered voters in the precinct, constructed using the statewide voter file. Both Democratic and Republican voters were more likely to support reform in more racially diverse precincts. This pattern is particularly interesting because the typical perception that expanding voting rights to people with felony convictions would harm Republicans was more likely to be a relevant consideration in areas with more racial diversity.

Figure 7: Partisan Support for Amendment 4 by Precinct Racial Context



## II.

### THE PARTISAN IMPLEMENTATION: ESTIMATING THE PARTISAN CONSEQUENCES OF REFORM

Despite the watershed electoral victory, partisan politics quickly engulfed the implementation of Amendment 4. Although the campaign took the position that the amendment was self-implementing,<sup>141</sup> the actual scope of reform depended on the interpretation of the requirement that a person first “complet[e] all terms of [their] sentence” before regaining their right to vote.<sup>142</sup> The media coverage of the campaign’s victory and the closeness of other statewide elections only amplified the entrenched expectation that the restoration of voting rights would benefit the Democrats.<sup>143</sup> Consistent with this expectation, every Republican in the legislature ultimately voted to limit the scope of Amendment 4 by defining the term “completion of all terms of sentence” to include the

141. See, e.g., Rivero, *supra* note 71 (quoting Howard Simon, then the executive director of the Florida ACLU and a drafter of Amendment 4 that, “the language that we wrote . . . is as clear as it could be, and it’s self-executing”).

142. FLA. CONST. art. VI, § 4(a).

143. For example, Rick Scott, the Republican candidate for Senate who had so restricted the restoration of voting rights as governor that he prompted the campaign for Amendment 4, won his race by only one-tenth of one percent. See *November 6, 2018 General Election Official Results United States Senator*, FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://results.elections.myflorida.com/DetailRpt.Asp?ELECTIONDATE=11/6/2018&RACE=USS&PARTY=&DIST=&GRP=&DATAMODE=> [<https://perma.cc/2GBN-UTZB>].

payment of fines, fees, and restitution.<sup>144</sup> Every Democratic colleague opposed the legislation.<sup>145</sup>

While the stark legislative divide was a sharp break from the campaign, it fit neatly into the many examples of Republican politicians' opposition to reform. And to the extent the campaign's bipartisan coalition was built, in part, on the ambiguity of what was included in a sentence, it appears to have collapsed when that ambiguity was resolved.<sup>146</sup> Once the legislature became polarized, the public did as well: about 70 percent of Democrats opposed the implementing legislation, and about 70 percent of Republicans supported it.<sup>147</sup>

Part II gathers new data on the political behavior of people with felony convictions to show that this sharp partisan divide is at odds with the empirical evidence. Ultimately, the estimated political preferences and turnout of people who initially benefited from Amendment 4 or previously benefitted from executive clemency reform validates the campaign's strategy to reframe the restoration of voting rights as a question about citizenship.

#### A. *How to Measure the Political Behavior of People with Felony Convictions*

The roughly six-month period between when Amendment 4 went into effect and when the Republican implementing legislation went into effect offers a limited opportunity to assess the actual, rather than perceived, political behavior of the people who stood to benefit from a more robust interpretation of Amendment 4.<sup>148</sup> The roughly one hundred fifty thousand people who regained

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144. See *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1236 (N.D. Fla. 2020) (describing the “straight party-line vote”), *rev'd and vacated sub. nom.* *Jones v. Governor of Fla.* 975 F.3d 1016 (11th Cir. 2020) (en banc). The legislation defined “completion of all terms of sentence” to “mean[] any portion of a sentence that is contained in the four corners of the sentencing document, including, but not limited to . . . [f]ull payment of restitution . . . [and] [f]ull payment of fines or fees ordered by the court . . .” FLA. STAT. § 98.0751(2)(a). While the legislation permitted a judge to “modify[] the financial obligations of an original sentence,” including “convert[ing] the financial obligation to community service,” the legislation made clear that “[t]he requirement to pay any financial obligation . . . is not deemed completed upon conversion to a civil lien.” *Id.*

145. See *Jones v. DeSantis*, 462 F. Supp. 3d at 1236 (describing the “straight party-line vote”).

146. See MEADE, *supra* note 48, at 150 (observing that the legislative debate “revealed again the sharp partisan divide that Amendment 4 seemed to have started to mend”).

147. See Press Release, Quinnipiac Univ. Poll, Florida Voters Support Almost 4-1 Minimum Wage Hike, Quinnipiac Poll Finds; Voters Split on Making Felons Pay Fines Before Voting (June 20, 2019), [https://poll.qu.edu/images/polling/fl/06202019\\_fhcr21.pdf](https://poll.qu.edu/images/polling/fl/06202019_fhcr21.pdf) [<https://perma.cc/8SVP-44RX>].

148. During this window, people with felony convictions who owed outstanding fines and fees were able to register to vote. See *Jones v. DeSantis*, 462 F. Supp. 3d at 1206 (“Under Florida law, the amendment's effective date was January 8, 2019. Individuals with felony convictions began registering to vote on that day. Supervisors of Elections accepted the registrations.”); *id.* at 1208–11 (explaining how multiple named plaintiffs who owe outstanding LFOs registered to vote in this period); *id.* at 1235 (noting that, at the time SB7066 was enacted, “felons with unpaid financial obligations” were “already” “allowed to register and vote”); *id.* at 1229 (“SB7066 provides immunity from prosecution for those who registered in good faith between January 8, 2019, when Amendment 4 took effect, and July 1, 2019, when SB7066 took effect.”).

the right to vote as part of the prior, 2007 executive reform led by former Governor Crist offers a similar opportunity.

To estimate the partisan consequences of felon disenfranchisement, I gathered individual-level data on people convicted of a felony in Florida<sup>149</sup> and people granted clemency.<sup>150</sup> Importantly, no previous paper has managed to gather information on as many persons with felony convictions in the state or who were granted clemency. Some studies have used easily accessible data on persons released from state prison,<sup>151</sup> but these studies suffer from a significant missing data problem: the vast majority of people who have been convicted of a felony in Florida have never been to prison.<sup>152</sup> Although the records of people who have been released from probation are no longer public record, I gathered the data before this change in policy. As a result, my correctional dataset has roughly 400,000 records of people released from state prison and 1.45 million records of people who have been convicted of a felony but never been to prison. Similarly, I gathered clemency records before a change in policy restricted public access. For both of these reasons, this paper is able to present for the first time a relatively complete picture of which persons with felony convictions in Florida subsequently registered or voted, either because of the passage of Amendment 4 or because of Crist's earlier executive reform.<sup>153</sup>

### B. Political Preferences

Figure 8 illustrates the breakdown in the party registration of people with felony convictions. Each panel shows a relative percentage, such that within a panel, the percentages sum to 100 percent. Importantly, a substantial number of

149. Appendix IV explains the data collection process and data available for correctional records.

150. Appendix V explains the data collection process and data available for clemency records.

151. See, e.g., KEVIN MORRIS, BRENNAN CTR. FOR JUST., THWARTING AMENDMENT 4, at 2 (2019) (acknowledging that, “[t]o be clear, this analysis includes only a slice of the population enfranchised by Amendment 4”) [https://www.brennancenter.org/sites/default/files/analysis/2019\\_05\\_FloridaAmendment\\_FINAL-3.pdf](https://www.brennancenter.org/sites/default/files/analysis/2019_05_FloridaAmendment_FINAL-3.pdf) [<https://perma.cc/6B2U-PHHL>]; see also Lawrence Mower & Langston Taylor, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*, ELECTIONLAND FROM PROPUBLICA (Oct. 7, 2020), <https://www.propublica.org/article/in-florida-the-gutting-of-a-landmark-law-leaves-few-felons-likely-to-vote> [<https://perma.cc/USG9-6L3D>] (acknowledging that the analysis “excludes felons who didn’t serve time in a Florida prison or were released before 1997”).

152. See Sarah K. S. Shannon, Christopher Uggen, Jason Schnittker, Melissa Thompson, Sara Wakefield & Michael Massoglia, *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 DEMOGRAPHY 1795, Online Resource 3 (2017), <https://read.dukeupress.edu/demography/article/54/5/1795/167743/The-Growth-Scope-and-Spatial-Distribution-of-supplementary-data> [<https://perma.cc/QM8Z-95Y4>] (estimating Florida had 1,818,825 people with felony convictions in 2010, of which only 307,655 people were previously in prison).

153. Appendix VI develops a general methodology to match individuals across lists using their full name and date of birth, including estimating the degree of uncertainty of the total number of matches. I used this methodology to merge the correctional data with the clemency data and then to merge both the combined dataset and a subset of the clemency dataset limited to Crist’s executive reform with the statewide voter file. Table A.8 and Table A.9 indicate the strength of each match to the voter file, for the initial Amendment 4 registrations and the Crist registrations, respectively, while Table A.11 and Table A.12 use a permutation test to show that there were very few false matches.

people in Florida, with and without felony convictions, register to vote without selecting a party affiliation. The figure identifies these registrations by shading them a lighter color and labelling them “NPA.” Rather than assume that half of these unaffiliated registrants would support Democrats and half would support Republicans, the figure uses the partisanship of people with felony convictions who did register with a major party to predict the partisanship of those who did not.<sup>154</sup>

The left panel of Figure 8 focuses on the best estimate<sup>155</sup> of initial Amendment 4 registrations, from the effective date of the amendment until about a month before the effective date of the implementing legislation. The right panel focuses on the best estimate of registrations from persons automatically granted clemency by former Governor Crist.

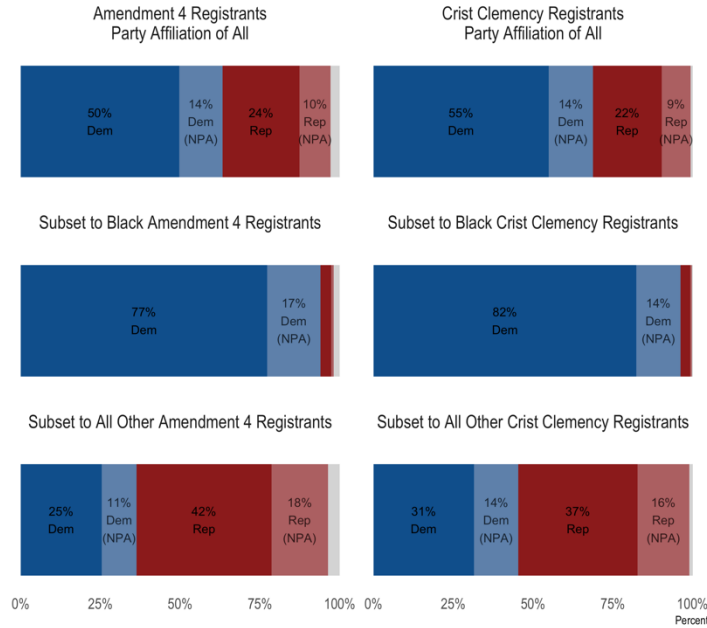
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154. Specifically, I estimate the total number of unaffiliated registrants who would be likely to support each major party based on the proportion of two-party registration among persons with felony convictions by race and county. I do not predict the partisanship of the small number of registrants affiliated with a minor party. The percentage of minor party registrants are shown in Figure 8, but without a label.

155. The best estimate focuses on people who were previously in the custody of the Florida Department of Corrections and for whom there is no indication that either their adjudication was withheld, their conviction was for a misdemeanor, or they were subsequently granted a still-valid clemency. Because these variables may be measured with error, and because people with felony convictions whose eligibility does not legally stem from Amendment 4 may nonetheless believe it does, I also calculated all possible Amendment 4 registrations, defined as people with felony convictions who registered on or after Amendment 4’s effective date. Table A.10 shows both measures of initial Amendment 4 registrations.



Figure 8: Party of Registration of People with Felony Convictions



Overall, the top-left panel shows that half of the people with felony convictions (50 percent) who initially registered as a result of Amendment 4 registered as Democrats, while about one-quarter (24 percent) registered as Republicans. Among those people who did not register with a party, there was likely a slight Democratic advantage with an additional 14 percent of people registering with no party affiliation but likely supporting Democrats and an additional 10 percent of people registering with no party affiliation but likely supporting Republicans. The remainder of the left panel shows a clear racial divide in party affiliation. The vast majority of African Americans (77 percent) registered as Democrats, while more than half of all other registrants either registered as Republicans (42 percent) or were unaffiliated but likely Republicans (18 percent).<sup>156</sup>

Particularly because there were only an estimated twelve thousand initial Amendment 4 registrations from January through May 2019,<sup>157</sup> it is important

156. For a recent survey of the politics of persons incarcerated which reaches a similar conclusion, see Nicole Lewis, Aviva Shen & Anna Flags, *What Do We Really Know About the Politics of People Behind Bars?*, MARSHALL PROJECT (Mar. 11, 2020), <https://www.themarshallproject.org/2020/03/11/what-do-we-really-know-about-the-politics-of-people-behind-bars> [<https://perma.cc/86FY-9GEW>] (“Overall, the survey responses reflect a diverse and often contradictory set of beliefs from people who, should they ever get the right to vote, cannot be seen as a single bloc.”).

157. Table A.11 reports the absolute numbers of initial Amendment 4 registrations while Figure A.5 visualizes the number of new registrations by day, using both the best estimate and an alternative

to note that the right panel, which uses registrants whose voting rights Crist restored, shows almost exactly the same breakdown of partisanship by race. The reason that Crist registrants are overall more Democratic than initial Amendment 4 registrants is only partly because African Americans restored voting rights by Crist are somewhat more Democratic. It is also because there are relatively more African Americans in the population of Crist registrants than initial Amendment 4 registrants. But despite this difference, the two pools of voters—restored by Amendment 4 and former Governor Crist—demonstrate similar political preferences.

Table 4 confirms the overriding role of race in the political preferences of people with felony convictions, above and beyond the effect of a criminal conviction itself. It reports the results of a series of regressions that focus on the party of registration among registrants in Florida, including those with and without felony convictions. The dependent variable in each regression is whether the registrant is a Democrat. To explain Democratic party preference, each regression includes an indicator for whether a registrant had a prior felony conviction based on three different measures: (1) registrants specifically restored voting rights by Crist; (2) registrants specifically restored voting rights by Amendment 4; and (3) all registrants previously in the Florida Department of Corrections, either in prison or on supervision, and subsequently released, including those who were granted clemency or who never lost their right to vote.

The first three columns report the raw difference in Democratic preference between registrations with and without a felony conviction according to each measure of prior felony conviction. Among all three measures, people with felony convictions are between 10 and 18 percent more likely to register as Democrats than people without felony convictions, before accounting for any difference in demographics.

Table 4: Effect of Felony Conviction on Party of Registration

Dependent Variable:	Registered Democrat					
	Crist Clemency	Amendment 4	Any Supervision	Crist Clemency	Amendment 4	Any Supervision
Model:	(1)	(2)	(3)	(4)	(5)	(6)
<i>Variables</i>						
Prior Felony Conviction	0.181 (0.003)	0.129 (0.004)	0.101 (0.0008)	0.040 (0.003)	0.001 (0.004)	0.027 (0.0008)
Black				0.417 (0.002)	0.417 (0.002)	0.418 (0.002)
Male				-0.070 (0.0003)	-0.070 (0.0003)	-0.070 (0.0003)
Year of Birth De-Meaned				-0.002 (0.00002)	-0.002 (0.00002)	-0.002 (0.00002)
(Intercept)	0.367 (0.0001)	0.367 (0.0001)	0.367 (0.0001)			
<i>Fixed-Effects</i>						
Precinct	No	No	No	Yes	Yes	Yes

estimate of Amendment 4 registrations. A subsequent analysis by ProPublica examining only persons released from prison but covering a longer time period from January 2019 through October 2020 estimated that at least 31,400 people had registered to vote as a result of Amendment 4. *See* Mower & Taylor, *supra* note 151.

The second set of three columns show that the bulk of this difference is, in fact, attributable to demographics. Columns (4), (5), and (6) account for the role of demographics in partisan preferences by including indicators for whether a registrant is Black or is male as well as their year of birth relative to the average year of birth and precinct. The precinct is used as a proxy for income because of both the clustering of neighborhood home values and other unobserved neighborhood-level differences, such as racial context.<sup>158</sup> Overall, the difference in Democratic preference between people with and without felony convictions shrinks to between no difference at all and about 4 percent, once accounting for race, gender, age, and precinct. As a result, the potential political consequences of felon disenfranchisement reform will be shaped in large part by the racial profile of those who stand to regain their right to vote.

Despite the importance of demographics in estimating political preferences, the relevant demographic profile of those who stand to regain their right to vote can be easily confused. Importantly, the racial profile of those in prison can be dramatically different than the racial profile of those who are disenfranchised, particularly in states that practice lifetime disenfranchisement. Figure 9 illustrates the divergence between the two measures in each state in 2016, before Amendment 4 passed.<sup>159</sup> In many states, African Americans make up a smaller percentage of the total disenfranchised population than the prison population. In Florida, for example, while about half of state prisoners in 2016 were Black, Black Floridians made up only about one-quarter of those disenfranchised. Given this difference, if the public or the media assumes that the racial composition of those disenfranchised is the same as those in prison, they will overestimate the potential Democratic gain from reform by obscuring the importance of more conservative whites in the ranks of the disenfranchised.<sup>160</sup>

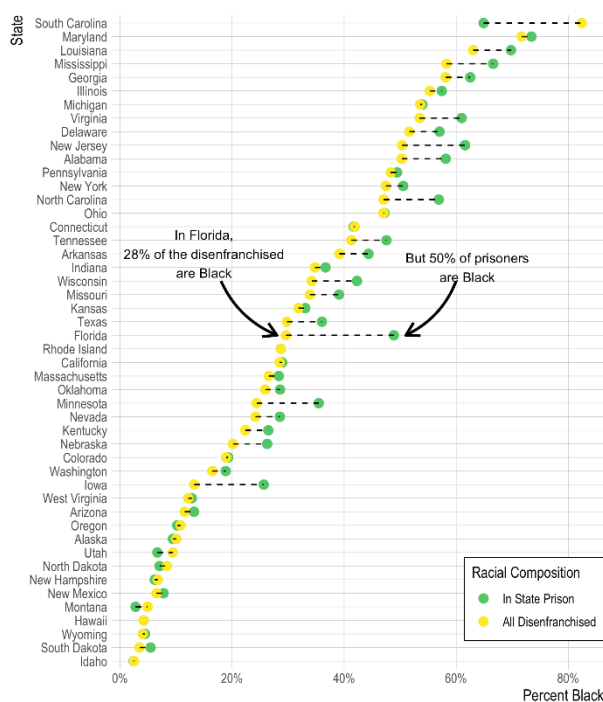
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158. For example, while registrants identified as not Black in the voter file could be either Hispanic or Caucasian, registrants in a particular precinct are more likely to be one or the other.

159. See UGGEN ET AL., *supra* note 2, at 16 tbl.4 (reporting the two measures).

160. In fact, as further discussed in Part II.D, data constraints required Chris Uggen and Jeff Manza to use the racial composition of state prisoners to approximate the racial composition of people with felony convictions when estimating the partisan consequences of felon disenfranchisement. See MANZA & UGGEN, *supra* note 30, at 62, 270–71.

Figure 9: Racial Composition of Disenfranchised Population by State (2016)



### C. Turnout

Table 5 examines the turnout of people with felony convictions. The first row estimates that about 11 percent of people who were automatically restored voting rights under Crist's reform ultimately participated in the 2016 election.<sup>161</sup> The depressed turnout rate is consistent with what I have found in other states using a similar method of combining individual-level public records. For example, the estimated 2012 turnout of people who had completed any term of incarceration or supervision was about 13 percent in Iowa and North Carolina, 12 percent in Maine, 9 percent in Rhode Island, and 8 percent in New York.<sup>162</sup>

161. For additional quantities of interest, see *infra* Table A.12 (reporting party of registration and turnout of Crist registrants).

162. See Marc Meredith & Michael Morse, *The Politics of the Restoration of Ex-Felon Voting Rights: The Case of Iowa*, 10 Q.J. POL. SCI. 41, 72 tbl.6 (2015) (reporting the estimated turnout rates for Iowa, Maine, and Rhode Island); Marc Meredith & Michael Morse, *Do Voting Rights Notification Laws Increase Ex-Felon Turnout?*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 220, 232 tbl.3 (2014) (New Mexico); *id.* at 234 tbl.4 (North Carolina); *id.* at 230 tbl.2 (New York). I summarized the turnout estimates reported in prior work by taking the baseline turnout measure and subtracting the average estimated error rate in measuring turnout.

Table 5: Estimated Turnout of People with Felony Convictions

State	Year	Turnout
Florida	2016	10.7%
Iowa	2012	13.3%
North Carolina	2012	12.6%
Maine	2012	11.5%
Rhode Island	2012	9.1%
New York	2012	8.2%

People with felony convictions may vote at a low rate, at least in part, because they are more likely to be young, less educated, and a minority, all of which are correlated with reduced participation. But turnout may be even lower than predicted by demographics alone because contact with the criminal justice system depletes trust in government. Consistent with this theory, political scientists Amy Lerman and Vesla Weaver have shown that survey respondents who report more contact with the criminal justice system also report reduced political participation.<sup>163</sup> However, more recent work which leverages variation in sentencing in administrative data has suggested that the causal effect of incarceration on voting is minimal.<sup>164</sup>

Another partial explanation is that confusion is a significant culprit for the turnout gap between demographically similar people with and without felony convictions. In previous work with Marc Meredith, I have shown that Iowans with felony convictions who are provided notice about their eligibility to vote are about one-third more likely to vote than their peers who were also restored voting rights but were not notified.<sup>165</sup> This suggests that the converse might also be true: misinformation could decrease turnout. In line with this, a few audit studies have found that local election officials can play a disruptive role in administering felon disenfranchisement policies.<sup>166</sup>

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163. See Vesla M. Weaver & Amy E. Lerman, *Political Consequences of the Carceral State*, 104 AM. POL. SCI. REV. 817, 830 fig.3 (2010) (estimating a 4-percentage point reduction in turnout between self-reported drug users who had been convicted at the time of the survey and self-reported drug users who had not been convicted at the time but subsequently were convicted).

164. See Alan S. Gerber, Gregory A. Huber, Marc Meredith, Daniel R. Biggers & David J. Hendry, *Does Incarceration Reduce Voting? Evidence About the Political Consequences of Spending Time in Prison*, 79 J. POL. 1130, 1144 tbl.6 (2017) (estimating the effect of incarceration on voting is about half of a percentage point).

165. See Meredith & Morse, *The Politics of the Restoration of Ex-Felon Voting Rights*, *supra* note 162, at 63 fig.2, 66 tbl.4 (estimating that the effect of notification on turnout is about 6 percentage points, while baseline turnout without notification is about 15 percent).

166. See Jessie Allen, *Documentary Disenfranchisement*, 86 TUL. L. REV. 389, 417 (2011) (reporting that about half of the local election boards in New York inaccurately reported the conditions under which voting rights could be restored); ALEC EWALD, SENT'G PROJECT, A 'CRAZY-QUILT' OF TINY PIECES: STATE AND LOCAL ADMINISTRATION OF AMERICAN CRIMINAL DISENFRANCHISEMENT LAW i (2005), <https://www.sentencingproject.org/wp-content/uploads/2016/01/A-Crazy-Quilt-of-Tiny-Pieces-State-and-Local-Administration-of-American-Criminal-Disenfranchisement-Laws.pdf>

*D. Trump Won Florida, But Not Because of Felon Disenfranchisement*

The administrative data now available on the registration and turnout of people with felony convictions should lead us to revise the political consequences of felon disenfranchisement reform. Before Amendment 4 passed, some election analysts had speculated about the partisan consequences of such reform.<sup>167</sup> Had people who had completed any period of prison or supervision been allowed to participate in 2016, the story went, their votes would have wiped out President Trump's victory. This recalled the initial claim by Chris Uggen and Jeff Manza that, but for felon disenfranchisement, Al Gore would have won Florida and become President.<sup>168</sup> Perhaps after Amendment 4 passed, the Florida state legislature was considering these same scenarios.

Uggen and Manza used national survey data from the public and applied it to the demographic profile of those incarcerated to estimate the political consequences of felon disenfranchisement. Their method suggested that about 69 percent of people with felony convictions would have supported Democrats in 2000.<sup>169</sup> Based on Figure 8, above, Uggen and Manza's estimate is largely consistent with the data in Florida, although it obscures the fact that party preference varies largely as a function of race. However, the Uggen and Manza method consistently overestimated turnout. For example, the method suggests that 27 percent of people with felony convictions would have voted in 2000.<sup>170</sup> But the Crist results in Florida and administrative data collected elsewhere consistently show that people with felony convictions turn out less than half as often as demographics predict.

Importantly, the data collected here suggest that Republicans should not fear a "blue wave" from supporting robust reform, at least to the extent that the analogy suggests a massive turn towards Democrats. Table 6 imagines various counterfactual scenarios: had all of the estimated 1.48 million<sup>171</sup> people in Florida who had completed any period of prison or supervision been eligible to vote, how many additional votes would they have generated for Democrats? Depending on the assumptions used for Democratic preference and turnout,<sup>172</sup> Democrats would have gained between about twenty thousand to sixty thousand additional votes. This would not have wiped out President Trump's 113,000-vote

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[<https://perma.cc/2GTM-M7A7>] (reporting that more than one-third of one hundred local election officials across ten states stated a central aspect of the law incorrectly).

167. See, e.g., Nate Cohn, *A 'Blue Florida'? There Are No Quick Demographic Fixes for Democrats*, N.Y. TIMES (Feb. 1, 2018), <https://www.nytimes.com/2018/02/01/upshot/a-blue-florida-there-are-no-quick-demographic-fixes-for-democrats.html> [<https://perma.cc/XA6C-2MZ2>].

168. See MANZA & UGGEN, *supra* note 30, at 191–92 (making the claim); *id.* at 275 tbl.A8.1 (showing how they arrived at the claim).

169. See *id.*

170. See *id.* at 275 tbl.A8.1.

171. See UGGEN ET AL., *supra* note 2, at 15 tbl.3 (reporting estimates of disenfranchisement by state and overall).

172. For estimated party preference, see *supra* Figure 8, and for estimated 2016 turnout of Crist registrants, see *supra* Table 5 (overall turnout); *infra* Table A.12 (turnout by race).

margin of victory in 2016.<sup>173</sup> But the difficulty with these exercises is that the 2000 election was determined by just 537 votes.<sup>174</sup> The estimation exercise is helpful primarily because it underscores how reforming felon disenfranchisement would not lead to a wholesale partisan realignment of the state. The fact that some razor-thin elections may or may not go the other way does not indicate otherwise. Rather, the net vote gain should be understood in relation to the more than 9.5 million ballots cast in 2016.<sup>175</sup> The estimated Democratic gain from a more inclusive democracy is equal to roughly one half of one percent of all ballots cast in the election.<sup>176</sup>

Table 6: Counterfactual Democratic Margin

	Population (2016)		Preference			Turnout (2016)		Dem. Margin	
	Type	Number	Source	Dem.	Rep.	Source	Turnout	Subset	Total
1	Overall	1,487,847	Amendment 4	63.3%	33.8%	Crist	10.7%		46,850
2	Overall	1,487,847	Crist	68.8%	30.6%	Crist	10.7%		60,741
3	Black	418,224	Amendment 4	94.0%	4.1%	Crist	13.1%	49,228	25,830
	Not Black	1,069,623		36.3%	60.0%	Crist	9.2%	-23,398	
4	Black	418,224	Crist	96.2%	3.6%	Crist	13.1%	50,750	42,623
	Not Black	1,069,623		45.4%	53.6%	Crist	9.2%	-8,126	

173. See November 8, 2016 General Election Official Results President of the United States, FLA. DEP'T OF STATE, DIV. OF ELECTIONS, <https://results.elections.myflorida.com/DetailRpt.Asp?ELECTIONDATE=11/8/2016&RACE=PRE&PARTY=&DIST=&GRP=&DATAMODE=> [https://perma.cc/QAL3-H87J]. I previously made an abbreviated version of this argument in the run-up to the November 2018 election. See Marc Meredith & Michael Morse, *Why Letting Ex-Felons Vote Probably Won't Swing Florida*, VOX (Nov. 2, 2018), <https://www.vox.com/the-big-idea/2018/11/2/18049510/felon-voting-rights-amendment-4-florida> [https://perma.cc/EG7G-EM77]. Similarly, Traci Burch has disputed Manza and Uggen's initial claim about the 2000 election, arguing that Bush would still have won Florida in 2000, even without felon disenfranchisement, both because of "[u]ntenable assumptions about the political participation of ex-offenders" and because "the majority of ex-felons in Florida are white men," who are more likely to support Republicans. Traci R. Burch, *Did Disenfranchisement Laws Help Elect President Bush? New Evidence on the Turnout Rates and Candidate Preferences of Florida's Ex-Felons*, 34 POL. BEHAV. 1, 3 (2012).

174. See November 7, 2000 General Election Official Results President of the United States, FLA. DEP'T OF STATE, DIV. OF ELECTIONS, <https://results.elections.myflorida.com/DetailRpt.Asp?ELECTIONDATE=11/7/2000&RACE=PRE&PARTY=&DIST=&GRP=&DATAMODE=> [https://perma.cc/3TTD-7JE4].

175. See November 8, 2016 General Election Official Results Voter Registration and Turnout, FLA. DEP'T OF STATE, DIV. OF ELECTIONS, <https://results.elections.myflorida.com/TurnoutRpt.asp?ElectionDate=11/8/2016&DATAMODE=> [https://perma.cc/XW52-UKJZ].

176. When President Trump won Florida in the 2020 presidential election by approximately three hundred seventy thousand votes, or 3.4 percentage points, the campaign was reportedly happy that newly enfranchised people with felony convictions did not make the difference because a tight race would have further fueled "acrimony and partisanship." Lawrence Mower, *Florida's New Felon Voters Didn't Decide Tuesday's Election. Advocates Are Happy About That*, TAMPA BAY TIMES (Nov. 6, 2020), <https://www.tampabay.com/news/florida-politics/elections/2020/11/06/floridas-new-felon-voters-didnt-decide-tuesdays-election-advocates-are-happy-about-that/> [https://perma.cc/F3WL-J88W].

## III.

## THE ENSUING LITIGATION: ESTIMATING THE BURDEN OF FINES &amp; FEES

The ACLU challenged the Republican legislation limiting Amendment 4 hours after it went into effect.<sup>177</sup> In response, Republican officials claimed they were merely implementing the campaign's own representations.<sup>178</sup> The state supreme court did ultimately find that the campaign intended to restore voting rights only upon the payment of fines, fees, and restitution—collectively known as LFOs—and that the plain text of Amendment 4 compelled such an interpretation.<sup>179</sup> But the Republican state legislature went further than the campaign in defining the “completion of all terms of sentence.” For example, the implementing legislation defined “all terms of sentence” to include fines and fees converted to a civil lien, which the campaign had not addressed.<sup>180</sup> In Florida, judges routinely convert LFOs to civil liens when “the defendant is unable to pay,”<sup>181</sup> so requiring the payment of civil liens was a sure way to extend disenfranchisement.

Regardless of whether the requirement to pay LFOs is better viewed as the result of voter suppression or campaign strategy, various civil rights organizations claimed that selectively restoring voting rights based on the payment of LFOs was unconstitutional. Both the Ninth Circuit and the Sixth Circuit had previously rejected similar challenges in 2010.<sup>182</sup> These opinions established that state laws which condition the restoration of voting rights on the payment of LFOs should be evaluated under a deferential rational basis

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177. See Patricia Mazzei, *Florida Limits Ex-Felon Voting, Prompting a Lawsuit and Cries of 'Poll Tax'*, N.Y. TIMES (June 28, 2019), <https://www.nytimes.com/2019/06/28/us/florida-felons-voting-rights.html> [<https://perma.cc/E43H-JWRR>]; see also *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1203–05 (N.D. Fla. 2020) (describing how the five lawsuits eventually consolidated), *rev'd and vacated sub. nom. Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020).

178. See, e.g., Mazzei, *supra* note 177 (quoting Governor DeSantis defending the law by referencing the campaign's earlier representation to the state supreme court); see also Kousser Report, *supra* note 32, at 19–51 (summarizing and analyzing the “faithful steward” argument).

179. See Advisory Op. to Governor Re: Implementation of Amend. 4, The Voting Restoration Amend., 288 So. 3d 1070 (Fla. 2020).

180. FLA. STAT. § 98.0751(2)(a); *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1236 (N.D. Fla. 2020) (explaining that “it cannot be said that on the subject of civil liens, SB7066 simply followed Amendment 4”), *rev'd and vacated sub. nom. Jones v. Governor of Fla.* 975 F.3d 1016 (11th Cir. 2020) (en banc). In fact, buried in the hundreds of pages produced by the statewide estimating conference after the campaign collected 10 percent of the necessary petitions to qualify for the ballot is a letter from the general counsel of the Office of State Courts Administrator in which he offered the position that “[a]ny outstanding civil judgment would . . . not [be] part of the ‘sentence’ for purposes of the proposed constitutional amendment.” E-mail from Thomas A. “Tad” David, General Counsel, Off. of the State Cts. Adm’r, to Amy Baker, Coordinator, Off. of Econ. & Demographic Rsch. (Oct. 20, 2016), in FIN. IMPACT ESTIMATING CONF., FLA. OFF. OF ECON. & DEMOGRAPHIC RSCH., NOTEBOOK FROM THE FORMAL CONF. OCT. 26 AND 27, 2016, at 409, 409 (2016), [http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VRANotebook3\\_10-27-16.pdf](http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VRANotebook3_10-27-16.pdf) [<https://perma.cc/A3B9-USQ5>].

181. *Jones v. DeSantis*, 462 F. Supp. 3d at 1235.

182. See *Harvey v. Brewer*, 605 F.3d 1067 (9th Cir. 2010); *Johnson v. Bredesen*, 624 F.3d 742 (6th Cir. 2010); see also *Madison v. State*, 163 P.3d 757 (Wash. 2007) (state supreme court reaching same conclusion).



standard—both because of a doctrinal distinction between the right to vote, which is fundamental, and the restoration of that right, which is not, and because poverty is generally not considered a suspect class.<sup>183</sup> The courts had “little trouble” finding such a rational basis.<sup>184</sup>

The plaintiffs’ hopes for judicial relief largely depended on presenting new empirical evidence about the burden of fines, fees, and restitution. Both the Ninth Circuit and the Sixth Circuit decisions were made with limited evidence available about the “type, burden, and disparate impact of criminal debt,”<sup>185</sup> including no expert testimony on the issue. Importantly, Justice O’Connor, sitting by designation on the Ninth Circuit, had explicitly left some room for rational basis relief based on such evidence, noting that “[p]erhaps withholding voting rights from those who are truly unable to pay their criminal fines due to indigency would not pass this rational basis test,” although the plaintiffs in that case had not alleged they were indigent.<sup>186</sup>

The campaign notably did not join the lawsuit.<sup>187</sup> Nonetheless, the empirical burden of fines and fees on people with felony convictions also informs an evaluation of the campaign’s strategy. While the campaign’s decision to not explicitly address the status of outstanding LFOs in the text of Amendment 4 may have been the result of a tradeoff necessary to ensure supermajority support, there is at least some indication in the campaign’s statements that it was unaware of both the magnitude of LFOs and the number of people affected.<sup>188</sup>

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183. See *Harvey*, 605 F.3d at 1079 (“[W]e do not apply strict scrutiny as we would if plaintiffs were complaining about the deprivation of a fundamental right.”); *Johnson*, 624 F.3d at 746 (“[B]ecause Tennessee’s re-enfranchisement law neither implicates a fundamental right nor targets a suspect class, the district court properly applied rational basis review, not strict scrutiny, to Plaintiffs’ equal protection challenge.”).

184. *Harvey*, 605 F.3d at 1079; accord *Johnson*, 624 F.3d at 747–48.

185. Marc Meredith & Michael Morse, *Discretionary Disenfranchisement: The Case of Legal Financial Obligations*, 46 J. LEGAL STUD. 309, 309 (2017).

186. *Harvey*, 605 F.3d at 1080.

187. The campaign instead submitted an amicus brief in support of neither party to the district court, see Brief of Florida Rights Restoration Coalition as Amicus Curiae in Support of Neither Party with Respect to Plaintiffs’ Motion for Preliminary Injunction, *Jones v. DeSantis*, 410 F. Supp. 3d 1284 (N.D. Fla. 2019) (No. 4:19-cv-300), and an amicus brief in support of the plaintiffs to the Eleventh Circuit, see Brief of Amicus Curiae Florida Rights Restoration Coalition in Support of Plaintiffs-Appellees, *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020), 2020 WL 4698622.

188. For example, in 2018, more than three years after the campaign finalized its ballot language, an internal memorandum from the vice chair of the campaign and the director of the Sentencing Project stated there were “no good estimates” on the number of Floridians with felony convictions who had outstanding fines and fees. See Simon-Mauer Memorandum, *supra* note 123. Further, the campaign routinely promoted that Amendment 4 would restore the right to vote for 1.4 million people with felony convictions even though this figure only represented the number of people with felony convictions who had finished any term of prison or supervision and did not account for the number of people who continued to owe LFOs. Compare *id.* with Press Release, Second Chances Florida, Voting Restoration Amendment Qualifies for November Ballot (Jan. 23, 2018), <https://www.acluf.org/en/press-releases/voting-restoration-amendment-qualifies-november-ballot> [<https://perma.cc/KGB5-LP9L>]. To be fair, Amendment 4 was drafted beginning in 2013, before most of the legal and academic community turned their attention to the explosion in LFOs. Still, the Brennan Center for Justice had written a report specifically warning about the “hidden costs” of Florida’s criminal justice fees in 2010. REBEKAH

To assess both the plaintiffs' legal claims and the strategy for reform, I collected administrative court records for felony cases in Florida. The aggregate, statistical evidence strongly suggests that most people with felony convictions in Florida owe fines and fees and are unable, not unwilling, to pay their debt. Although the plaintiffs had some initial success in federal court presenting substantially similar facts, the Eleventh Circuit, sitting en banc, ultimately "relegated [the empirical assessment] to the dustbin."<sup>189</sup> As a result, despite Amendment 4, the vast majority of people with felony convictions in Florida remain ineligible to vote.

### A. *The Growth and Scope of Fines and Fees*

The growth and scope of LFOs across the United States is difficult to document, in large part because of the decentralized nature of the criminal justice system. To quantify the obstacle of fines and fees to the restoration of voting rights in Florida, I took advantage of the fact that Florida has a unified court system, although not all counties fully participate in it. After a series of public information requests, I collected administrative court records for each felony case in twenty-seven of Florida's sixty-seven counties since the year 2000, including information on the total amount of combined fines and fees assessed and the current total balance owed.<sup>190</sup> The data do not consistently include restitution, so all analyses are limited to fines and fees.<sup>191</sup> Nonetheless, the administrative data reveals that the Republican legislation will likely lead many people with felony convictions to be too poor to vote.

#### 1. *Fines and Fees per Case*

Table 7 reports the 25th, 50th, and 75th percentiles of the distribution of fines and fees assessed in total and the current balance remaining for all cases in my dataset. It shows that, overall, across more than four hundred thousand felony cases, the median felony case resulted in about \$815 in fines and fees and has a current balance of \$667.<sup>192</sup> Further, 80 percent of cases have some remaining balance.

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DILLER, BRENNAN CTR. FOR JUST., *THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES* (2010), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_The%20Hidden-Costs-Florida%27s-Criminal-Justice-Fees.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_The%20Hidden-Costs-Florida%27s-Criminal-Justice-Fees.pdf) [https://perma.cc/CH8D-M85X].

189. *Jones v. Governor of Fla.*, 975 F.3d 1016, 1066 (11th Cir. 2020) (en banc) (Jordan, J., dissenting).

190. Appendix VIII details the data collection process. Table A.13 validates the data by comparing it to aggregate information published in annual reports. While my data does not separate fines from fees, "[f]ines are imposed in a minority of cases" in Florida. *Jones v. DeSantis*, 462 F. Supp. 3d at 1206.

191. See Mower, *supra* note 114 (explaining that "[n]o one tracks restitution").

192. For comparison, Alexes Harris, Heather Evans, and Katherine Beckett looked at the 3,366 felony cases sentenced in Washington State during January and February 2004 and found that the median felony resulted in \$1,347 in LFOs. See Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115

Table 7: Fines and Fees by Case

# Cases	Percentile						Cases with Balances
	Amount Due			Balance Remaining			
	25th	50th	75th	25th	50th	75th	
400,577	\$618	\$815	\$1,166	\$100	\$667	\$940	80%

While Table 7 aggregates information across all cases, Figure 10 shows that the median amount assessed has increased over time, more than doubling from about \$475 in 2000 to a peak of about \$935 in 2011.<sup>193</sup> The legend at the bottom of the figure shows how the scale of each point is proportional to the number of observed cases.

Importantly, these fines and fees reflect a budgeting decision about how to fund the court system. The sharp change in the amount of fines and fees assessed in the mid-2000s corresponds to a state constitutional amendment<sup>194</sup> governing the funding of the state court system that marked a “fundamental shift” for county clerks “from county funding to being a self-funded office.”<sup>195</sup> Of particular significance is the fact that Jon L. Mills, the lawyer who helped draft Amendment 4 and represented the campaign at the state supreme court, was one of the co-sponsors of the court-funding amendment.<sup>196</sup> At the time, Mills embraced a fee-centric model of justice and suggested funding the court system by raising fees.<sup>197</sup>

The Florida state legislature has enacted a litany of statutory fees that are mandatorily imposed by the judge at sentencing, such as \$100 for the “cost of prosecution,” \$50 for a “public defender application fee,” \$225 for “additional

AM. J. SOC. & SOCIO. 1753, 1774 tbl.5 (2010). My prior work collected a random sample of roughly 1 percent of felony court records in Alabama and found that the median felony resulted in about \$2,000 in LFOs in 2005. See Claire Greenberg, Marc Meredith & Michael Morse, *The Growing and Broad Nature of Legal Financial Obligations: Evidence from Alabama Court Records*, 48 CONN. L. REV. 1079, 1104 fig.4a.1, 1105 fig.4a.2 (2016). One reason that the overall amount assessed in Florida is lower than what was found in Alabama or Washington State is that both of those studies also included restitution. In Alabama, for example, about one-quarter of all LFOs assessed were estimated to be for restitution. See Meredith & Morse, *Discretionary Disenfranchisement*, *supra* note 185, at 323 fig.1.

193. Similarly, the median amount of LFOs assessed in felony cases in Alabama doubled between 1995 and 2005. See Greenberg et al., *supra* note 192, at 1105 fig.4A.2.

194. See FLA. CONST. art. V, § 14.

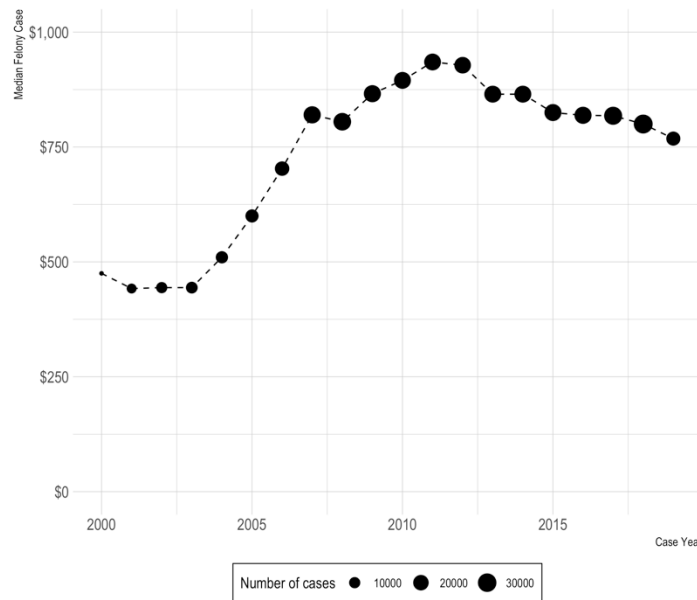
195. FLA. CT. CLERKS & COMPTROLLERS, DISTRIBUTION SCHEDULE OF COURT-RELATED FILING FEES, SERVICE CHARGES, COSTS AND FINES 2 (2020), [https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories\\_2021/21bull005\\_Attach\\_2\\_2020\\_Dist.pdf](https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2021/21bull005_Attach_2_2020_Dist.pdf) [<https://perma.cc/8BPJ-RNVP>]; see also MATHEW MENENDEZ, MICHAEL F. CROWLEY, LAUREN-BROOKE EISEN & NOAH ATCHISON, BRENNAN CTR. FOR JUST., THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES 39 (2019) (describing how “[t]he shift toward reliance on court fee collections came with a 1998 amendment to the Florida Constitution”); DILLER, *supra* note 188, at 5–6 (compiling legislative action expanding court-related debt).

196. See Daniel Rivero, *Co-Author and Attorney for Florida’s Amendment 4 Helped Create Statewide Fines and Fees Policy*, WLRN (Mar. 27, 2019), <https://www.wlrn.org/post/co-author-and-attorney-floridas-amendment-4-helped-create-statewide-fines-and-fees-policy> [<https://perma.cc/BP93-UST2>].

197. *Id.*

court costs,” and at least \$100 more for various “crime prevention,” “crime compensation,” and “crime stoppers” funds, in addition to any local fees tacked on.<sup>198</sup>

Figure 10: Median Fines and Fees Assessed by Year



The amount of fines and fees is staggering when the estimated average annual income of people with felony convictions is likely less than \$25,000, and the estimated income of those formerly incarcerated is dramatically less.<sup>199</sup> While the court data cannot distinguish between whether any particular individual is unable versus unwilling to pay, the fact that individuals who do not pay can already face a range of sanctions, from a driver’s license suspension to

198. See DILLER, *supra* note 188, at 27–33 (listing specific fines and fees); see also Jones v. DeSantis, 462 F. Supp. 3d 1196, 1206–07 (N.D. Fla. 2020) (discussing some of these fines and fees), *rev’d and vacated sub nom.* Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020) (en banc).

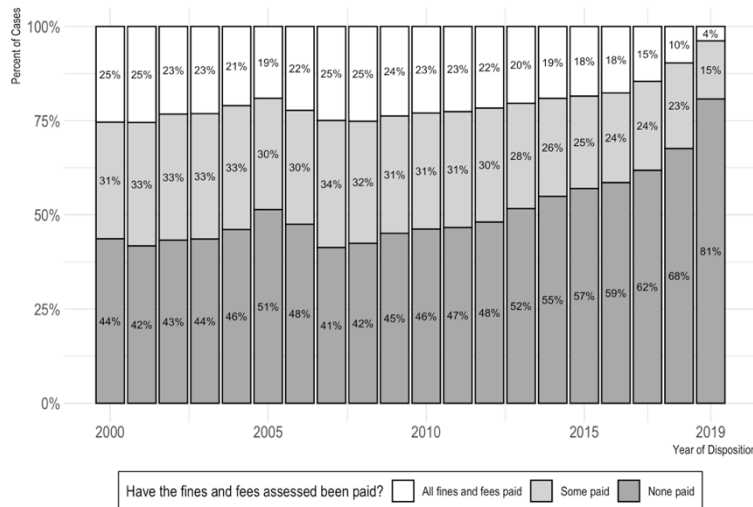
199. See TERRY-ANN CRAIGIE, AMES GRAWERT & CAMERON KIMBLE, BRENNAN CTR. FOR JUST., CONVICTION, IMPRISONMENT, AND LOST EARNINGS: HOW INVOLVEMENT WITH THE CRIMINAL JUSTICE SYSTEM DEEPENS INEQUALITY 15 tbl.3 (2020), [https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport\\_pdf.pdf](https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf) [<https://perma.cc/ZC4H-YVLT>] (estimating the average earnings of people with felony convictions as about \$23,000 and the average earnings of formerly incarcerated people as about \$6,700 based on the National Longitudinal Survey of Youth); see also BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 116 tbl.5.2 (2006) (estimating the average annual earnings of persons at age 27 before incarceration as about \$13,000 in 2004 dollars (about \$18,000 in 2021 dollars) and after incarceration as between \$7,000 to \$10,000 in 2004 dollars (about \$10,000 to \$14,000 in 2021 dollars) based on the National Longitudinal Survey of Youth).

the revocation of supervision,<sup>200</sup> at least suggests that many are too poor to pay these financial obligations.

Figure 11, Figure 12, and Figure 13 highlight the pattern of stubborn debt by focusing on the balance remaining in each case.

In Figure 11, the bars illustrate the relative percentage of cases sentenced each year in which all fines and fees have been paid, some fines and fees have been paid, or no fines and fees have been paid. Together, the dark grey and light grey bars indicate the percentage of cases from that year with a remaining balance today. While Table 7 reports that 80 percent of cases overall have a remaining balance, this percent changes over time. The individuals in the vast majority of recent cases in my dataset have paid no fines and fees at all. This relative percentage decreases over time, presumably as people have more time to pay and complete any period of incarceration or supervision. But even for cases decided back in 2000, the white bar indicates that only one-quarter of cases have no remaining fines and fees today.

Figure 11: Relative Balance of Fines and Fees by Year



One indicia of ability to pay is the time it takes to pay all fines and fees assessed. Figure 12 and Figure 13 complement Figure 11 by examining when individuals pay fines and fees over time, if they ever do. Both use the cases sentenced in 2010 as an example. Figure 12 examines the 23 percent of cases that year in which individuals paid all fines and fees, while Figure 13 examines

200. See, e.g., *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1219 (N.D. Fla. 2019), *rev'd and vacated sub. nom.* *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020) (en banc) (describing Florida's enforcement methods); DILLER, *supra* note 188, at 13–22 (explaining Florida's collection practices in more detail).

the 31 percent of cases in which individuals paid some. Individuals have made no payments at all in the remaining 46 percent of cases decided that year.

Consistent with the theory that most individuals with outstanding fines and fees cannot afford to pay their debt, Figure 12 shows that those cases with no remaining balance today were paid off relatively quickly. The x-axis tracks the time from the date of disposition to the date of last payment. About one-third of fully-paid cases were paid within one year and about 70 percent were paid within three years. In other words, if fines and fees are not paid off quickly, they are unlikely to be paid at all. This suggests that the majority of the extant debt, assessed years ago, is stubborn debt, unlikely to be paid back.

Figure 12: Time to Payback for Cases Sentenced in 2010

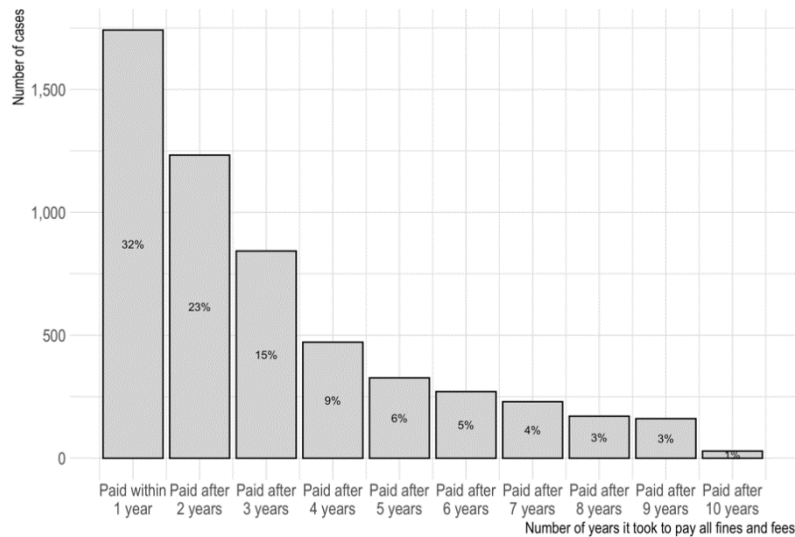
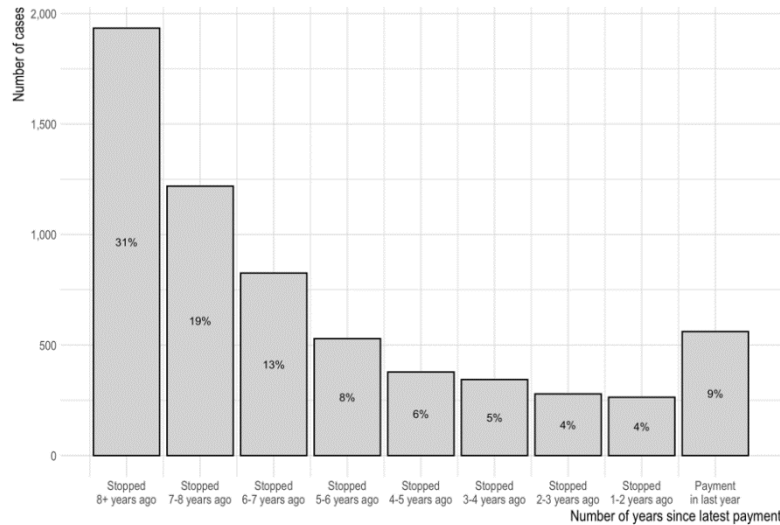


Figure 13 shows that cases in which some, but not all, fines and fees have been paid had little recent payment activity. The x-axis shows the time from the last payment to today. In about two-thirds of cases, individuals made a payment within three years of the sentence, but never paid again. As a result, because all of the cases displayed were sentenced in 2010, the last payment in these cases was seven or more years ago.

Figure 13: Time Since Last Payment for Cases Sentenced in 2010



Unsurprisingly given these payment patterns, the statewide association of court clerks in Florida estimate that about 23 percent of all fines and fees assessed in felony cases in 2018 is unlikely to ever be collected because the defendant is indigent and about 8 percent is unlikely to ever be collected because the debts have been converted to civil liens.<sup>201</sup>

Although few people are able to pay off all of the fines and fees associated with a given criminal case, Table 8 and Figure 14 show a distinct racial gap in who has an outstanding balance. Because the assessments per case are not significantly different by race, this racial gap is best understood as a wealth gap.

The two rows of Table 8 report the same information as in Table 7 but broken down by the race of the defendant.<sup>202</sup> Although the amount assessed to White and Black defendants is largely the same, the distribution of the balance owed is quite different. Because most people, of any race, struggle to pay back this debt, the difference in balance owed is only seen at the 25th percentile in the distribution, where Black defendants still owe \$368 while White defendants owe just \$25. In total, 86 percent of cases with a Black defendant have a remaining balance, while 76 percent of cases with a White defendant do.

201. See FLA. CT. CLERKS & COMPTROLLERS, 2018 ANNUAL ASSESSMENTS AND COLLECTIONS REPORT 18 (2018), <https://flccoc.org/wp-content/uploads/2018/12/2018-Annual-Assessments-and-Collections-Report.pdf> [<https://perma.cc/F5DX-L4JK>].

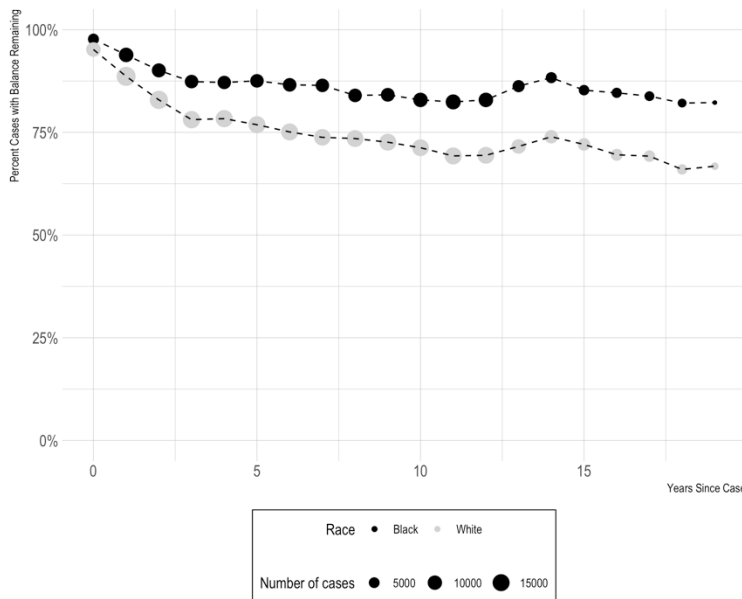
202. There are fewer total observations in Table 8 than Table 7 because defendants with an inconsistent race over time or no race are dropped.

Table 8: Fines and Fees per Case by Race

	# Cases	Percentile						Cases with Balances
		Amount Due			Balance Remaining			
		25th	50th	75th	25th	50th	75th	
Black Defendant	147,746	\$601	\$780	\$1,095	\$368	\$671	\$953	86%
White Defendant	239,010	\$628	\$818	\$1,198	\$25	\$648	\$935	76%

Figure 14 shows the percentage of cases with outstanding fines and fees based on the number of years since disposition and the race of the defendant. The racial gap emerges quickly and grows over time as individuals with more means have more opportunities to pay. For example, among all cases sentenced by summer 2019, nearly every case has a remaining balance, Black or White. But among all cases sentenced in 2010, cases with a Black defendant are about 12 percentage points more likely to have a remaining balance.

Figure 14: Cases with Balance Remaining by Year and Race



2. Fines and Fees per Person

Because disenfranchisement applies to an individual, not a case, case-level data is ultimately limited in its ability to characterize the effect of conditioning voting rights on the payment of fines and fees. To estimate the percentage of people with felony convictions in Florida who owe fines and fees, Table 9



aggregates all cases in my twenty-seven-county dataset associated with each individual.<sup>203</sup>

Table 9: Fines and Fees by Person

	# People	Percentile						Persons with Balances
		Amount Due			Balance Remaining			
		25th	50th	75th	25th	50th	75th	
All Persons	240,142	\$688	\$1,093	\$2,085	\$36	\$738	\$1,586	76%
Black Persons	78,983	\$716	\$1,162	\$2,235	\$366	\$865	\$1,854	84%
White Persons	150,785	\$683	\$1,073	\$2,025	\$0	\$672	\$1,480	73%

Overall, the first row of Table 9 shows that the median individual in my dataset with at least one felony conviction was assessed \$1,093 in fines and fees, in contrast to the median felony which results in \$815 in fines and fees. The case-level racial disparity is prominent in the individual-level data too. Although conditioning voting rights on fines and fees leaves the vast majority of people with felony convictions disenfranchised, it disproportionately affects African Americans. Table 9 shows that about 73 percent of White people with felony convictions and 84 percent of Black people with felony convictions have outstanding fines and fees.<sup>204</sup>

Despite this pattern of legal debt, some critics have argued that even if the majority of people with felony convictions are unable to pay their fines and fees, many are uninterested in voting. To some extent, this argument draws support from the generally low rates of observed registration and turnout, both in Florida and across the country, among people with felony convictions.

Table 10 is the result of matching persons in the sentencing data with the statewide voter file.<sup>205</sup> It shows that initial Amendment 4 registrants from the twenty-seven counties in my sentencing dataset owed fines and fees at almost the same amount and same rate as people with felony convictions in general.<sup>206</sup> While Table 10 is informative of the extent of interest in voting, despite legal debt, the data is most appropriate for its relative information on the composition of Amendment 4 registrants by fines and fees owed, rather than an assessment of the total number of such initial registrants. Nonetheless, under the definition of “completion of all terms of sentence” adopted by the Republican legislature

203. Appendix VI describes the matching methodology, which was also used in Part II. *See supra* note 158.

204. This is almost exactly the same pattern of debt observed in Alabama. *See Meredith & Morse, Discretionary Disenfranchisement, supra* note 185, at 326 tbl.2 (reporting that 77 percent of people with felony convictions in Alabama continue to owe LFOs, with a racial gap of 9 percentage points). It is also consistent with the plaintiffs’ expert in the litigation over the scope of Amendment 4. *See Jones v. Governor of Fla.*, 975 F.3d 1016, 1066 (11th Cir. 2020) (en banc) (Jordan, J., dissenting) (summarizing that “of the over one million people convicted of a qualifying felony in Florida who have otherwise completed the terms of their sentences, 77.4% owe some form of [LFO]”).

205. Table A.14 details the high quality of the match.

206. Table A.15 shows that this distribution is roughly the same under a different, more capacious definition of an Amendment 4 registrant that does not remove persons granted clemency, who had their adjudication withheld, or who were convicted of a misdemeanor.

and the Florida Supreme Court, the vast majority of initial registrations produced by Amendment 4 will likely be removed from the voter rolls.

Table 10: Fines and Fees by Persons Initially Registered

	# Initial Registrations (27 of 67 counties)	Percentile						Registrants with Balances
		Amount Due			Balance Remaining			
		25th	50th	75th	25th	50th	75th	
All Registrants	2,315	\$810	\$1,447	\$2,680	\$40	\$808	\$1,902	77%
Black Registrants	1,099	\$810	\$1,447	\$2,629	\$308	\$943	\$1,996	83%
White Registrants	1,194	\$804	\$1,444	\$2,725	\$0	\$688	\$1,770	71%

### B. No Doctrinal Intervention

Approximately four months after the implementing legislation went into effect, Judge Robert Hinkle of the Northern District of Florida found that the plaintiffs had established a substantial likelihood of success on the merits of their Equal Protection claim. He issued a limited preliminary injunction only as to the named plaintiffs.<sup>207</sup> A panel of the Eleventh Circuit Court of Appeals subsequently affirmed the district court’s decision.<sup>208</sup>

Following Justice O’Connor’s earlier dicta, the Eleventh Circuit panel suggested that Florida’s scheme would be irrational as applied to the named plaintiffs—because the plaintiffs alleged, and the district court found, they were truly unable to pay their outstanding LFOs<sup>209</sup>—and therefore may also be irrational as applied to the whole class of people with felony convictions—if those who were truly unable to pay “are in fact the *mine-run* of felons affected by this legislation.”<sup>210</sup> However, in part because of the limited development of the factual record as to the “mine-run felon,”<sup>211</sup> the panel did not affirm the preliminary injunction under rational basis review.<sup>212</sup> Instead, the panel embraced the sort of “doctrinal intervention” proposed by Beth Colgan<sup>213</sup> to apply heightened scrutiny.<sup>214</sup> The panel acknowledged that conditioning the

207. Jones v. DeSantis, 410 F. Supp. 3d 1284 (N.D. Fla. 2019).

208. Jones v. Governor of Fla., 950 F.3d 795 (11th Cir. 2020).

209. See *id.* at 810 (“If the question on rational basis review were simply whether the LFO requirement is rational as applied to those unable to pay, we think it is clearly not.”).

210. *Id.* at 814; see also *id.* at 816 (“In the absence of any fact-finding by the district court, and on this limited record, we cannot say that the plaintiffs have carried their burden of establishing that a substantial proportion of felons . . . are indigent and, therefore, that the plaintiffs represent the mine-run felon.”).

211. *Id.* at 815–16.

212. See *id.* at 809–17 (“[W]e do not affirm the district court’s preliminary injunction under a rational basis review . . .”).

213. See generally Colgan, *supra* note 8 (proposing a doctrinal intervention to dismantle wealth-based penal disenfranchisement based on *Bearden v. Georgia*, 461 U.S. 660 (1983) and related cases). While Colgan’s proposal would circumvent the traditional tiers of scrutiny, she recognized that “lower courts and litigants—including the parties in *Bearden*—have attempted to shoehorn *Bearden* into the traditional tiers [of scrutiny].” *Id.* at 94 (citations omitted).

214. See *Jones v. Governor of Fla.*, 950 F. 3d at 817–25 (justifying the application of heightened scrutiny). The district court based its preliminary injunction in large part on a single footnote in *Johnson v. Governor of Florida*, 405 F.3d 1214 (11th Cir. 2005), a prior Eleventh Circuit en banc case about

restoration of voting rights on the payment of LFOs “does not neatly fit the traditional categories that call for heightened scrutiny.”<sup>215</sup> But it reasoned that “[b]ecause Florida’s re-enfranchisement scheme directly implicates wealth discrimination both in the administration of criminal justice and in access to the franchise, we are obliged to apply some form of heightened scrutiny.”<sup>216</sup> Following two strands of precedent set forth in *Bearden v. Georgia*, 461 U.S. 660 (1983), and *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966), the panel had “little difficulty” holding Florida’s scheme unconstitutional.<sup>217</sup>

After an eight-day bench trial in which the plaintiffs put forth substantially similar data to the data presented in Part III.A,<sup>218</sup> Judge Hinkle found “as a fact that the overwhelming majority of felons who have not paid their LFOs in full, but who are otherwise eligible to vote, are genuinely unable to pay the required amount.”<sup>219</sup> Judge Hinkle issued a permanent injunction, holding that Florida’s “pay-to-vote system” violated the Equal Protection Clause of the Fourteenth Amendment “as applied to individuals who are otherwise eligible to vote but are genuinely unable to pay the required amount,”<sup>220</sup> under both heightened scrutiny and rational basis review.<sup>221</sup> Importantly, the court constructed a simple remedy for the Equal Protection violation, creating a rebuttable presumption that those who had a public defender “in the last proceeding that resulted in a felony conviction” were genuinely unable to pay.<sup>222</sup> Judge Hinkle further held that

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Florida’s practice of lifetime disenfranchisement. *Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1301–03 (N.D. Fla. 2019). That footnote said:

The plaintiffs also allege that Florida’s voting rights restoration scheme violates constitutional and statutory prohibitions against poll taxes.... Under Florida’s Rules of Executive Clemency, however, the right to vote can still be granted to felons who cannot afford to pay restitution.... Because Florida does not deny access to the restoration of the franchise based on ability to pay, we affirm the district court’s grant of summary judgment in favor of the defendants on these claims.

*Johnson v. Governor of Fla.*, 405 F.3d at 1216–17 n.1. To the district court, this was “[t]he starting point of the analysis of this issue, and pretty much the ending point.” *Jones v. DeSantis*, 410 F. Supp. 3d at 1300. But the Eleventh Circuit panel “disagree[d] with the district court that [the] en banc decision in *Johnson* controls the resolution of this case.” *Johnson v. Governor of Fla.*, 950 F.3d at 824. While the district court briefly discussed how the *Johnson* footnote is “consistent with a series of Supreme Court decisions,” *Jones v. DeSantis*, 410 F. Supp. 3d at 1301, the Eleventh Circuit panel took on the bulk of the work of justifying the application of heightened scrutiny.

215. *Jones v. Governor of Fla.*, 950 F.3d at 808.

216. *Id.* at 817.

217. *Id.* at 827.

218. For the plaintiffs’ expert Daniel Smith’s reports, see Expert Report of Daniel A. Smith, Ph.D., *Jones v. DeSantis*, 462 F. Supp. 3d 1196 (No. 4:19-cv-300), 2019 WL 9077508; Supplemental Expert Report of Daniel A. Smith, Ph.D., *Jones v. DeSantis*, 462 F. Supp. 1196 (N.D. Fla. 2020) (No. 4:19-cv-300), 2017 WL 11539888; Second Supplemental Expert Report of Daniel A. Smith, Ph.D., *Jones v. DeSantis*, 462 F. Supp. 1196 (No. 4:19-cv-300), 2020 WL 3124393. The district court credited this expert testimony in full. *Jones v. DeSantis*, 462 F. Supp. 3d at 1219 n.82.

219. *Jones v. DeSantis*, 462 F. Supp. 3d at 1219.

220. *Id.* at 1250.

221. *See id.* at 1219 (explaining that “the outcome [here] is the same regardless of which approach to rational-basis scrutiny is applied”).

222. *Id.* at 1251.

conditioning voting rights on the payment of court fees amounted to an unconstitutional poll tax, in violation of the Twenty-Fourth Amendment.<sup>223</sup> To the extent there was a due process ruling, Judge Hinkle held that “[t]he requirement to pay, as a condition of voting, amounts that are unknown and cannot be determined with diligence is unconstitutional.”<sup>224</sup>

Based on the data presented in Part III.A, the district court’s injunction, issued in May 2020, likely would have made hundreds of thousands of people with felony convictions in Florida eligible to vote in the November 2020 presidential election. Instead, the en banc Eleventh Circuit summarily stayed the injunction, with no reasoning,<sup>225</sup> and subsequently reversed it, in the process overruling the prior panel decision.<sup>226</sup>

The en banc court’s decision marked a quick return from a historic doctrinal intervention to what has become standard jurisprudence. The en banc court agreed with the Sixth and Ninth Circuits that rational basis was the appropriate standard of review.<sup>227</sup> Importantly, in contrast to the functional approach of the district court, which focused on the fact that Florida had “adopted a system under which nearly a million otherwise-eligible citizens will be allowed to vote only if they pay an amount of money,”<sup>228</sup> the en banc court considered the restoration of voting rights at a level of abstraction that made the district court’s factfinding irrelevant. In fact, the court held that the district court’s factfinding on the empirical burden of fines and fees “has no bearing” on the rational basis inquiry.<sup>229</sup> Unmoored from the facts, the court “readily conclude[d]” that Florida’s classification survives scrutiny, explaining that “[t]he people of Florida could rationally conclude that felons who have completed their sentences,

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223. *See id.* at 1250.

224. *Id.* The Eleventh Circuit, sitting en banc, disagreed about whether the district court ruled on the plaintiffs’ procedural due process claim. *See Jones v. Governor of Fla.*, 975 F.3d 1016, 1090 (11th Cir. 2020) (en banc) (Jordan, J., dissenting) (“The majority says that the district court did not decide whether Florida’s reenfranchisement scheme violates the Due Process Clause. In my view, the district court concluded that the LFO requirement violates due process.”).

225. *See McCoy v. Governor of Fla.*, No. 20-12003-AA, 2020 WL 4012843 (11th Cir. July 1, 2020), *aff’d sub nom.*, *Raysor v. DeSantis*, 140 S. Ct. 2600 (2020) (mem.).

226. *See Jones v. Governor of Fla.*, 975 F.3d at 1033 (“We . . . overrule the contrary holding by the panel in the earlier appeal from the preliminary injunction.”).

227. *See id.* at 1032. The en banc court cabined the cases the district court relied on to justify heightened scrutiny as either relating to extending imprisonment or to limiting access to judicial proceedings based on inability to pay, not selectively restoring voting rights. *See id.* (“The Supreme Court has never extended *Bearden* beyond the context of poverty-based imprisonment.”); *id.* at 1033 (“[T]his exception to rational basis review applies only when the State makes access to judicial processes in cases criminal or quasi criminal in nature turn on ability to pay.” (internal quotation omitted)).

228. *Jones v. DeSantis*, 462 F. Supp. 3d at 1203. Justice Sotomayor, joined by Justices Ginsburg and Kagan, similarly explained when reviewing the initial stay of the district court’s injunction that “otherwise eligible voters [are prevented] from participating in Florida’s . . . election simply because they are poor.” *Raysor v. DeSantis*, 140 S. Ct. at 2600.

229. *Jones v. Governor of Fla.*, 975 F.3d at 1037.

including paying their fines, fees, costs, and restitution, are more likely to responsibly exercise the franchise than those who have not.”<sup>230</sup>

The en banc court quickly disposed of the plaintiffs’ other claims too. The court held, as a matter of law, that because “[c]ourt fees and costs imposed in a criminal sentence[,] . . . they are part of the State’s punishment for a crime” and thus “are not taxes.”<sup>231</sup> The court similarly summarily rejected the plaintiffs’ due process challenge, holding that it is enough that plaintiffs know they must pay fines, fees, and restitution.<sup>232</sup>

The jurisprudence of felon disenfranchisement must be updated to reflect the reality of mass incarceration. Even if Florida may have an “interest in restoring felons to the electorate after . . . they have been fully rehabilitated by the criminal justice system,”<sup>233</sup> it is at best unresponsive to claim that such an interest is furthered by requiring the payment of significant amounts of fines and fees by plaintiffs who are genuinely unable to pay them, as the district court found. Further, it is a misstatement of the record that it “may at times be difficult” to know exactly what LFOs are owed.<sup>234</sup> The district court found that “even with a team of attorneys and unlimited time, the State has been unable to show how much each plaintiff must pay to vote under the State’s view of the law.”<sup>235</sup> However, a full critique of the en banc decision is beyond the scope of this project.<sup>236</sup>

While the consequences of the en banc decision were dramatic, the actual vote was close. Six judges voted to reverse the district court, and four voted to affirm, in three joint dissents,<sup>237</sup> with two judges recused<sup>238</sup> and two who voted to reverse declining to recuse.<sup>239</sup> After an improbable campaign that captured the

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230. *Id.* at 1035.

231. *Id.* at 1038.

232. *Id.* at 1046–47.

233. *Id.* at 1034.

234. *Id.* at 1046.

235. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1208 (N.D. Fla. 2020), *rev’d and vacated sub. nom Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020) (en banc).

236. For one critique of the decision, see Recent Case, *Jones v. Governor of Florida*, 134 HARV. L. REV. 2291, 2295 (2021) (arguing that “the court conflated the legislature’s will with the people’s and mechanically applied a highly deferential standard”).

237. See *Jones v. Governor of Fla.*, 975 F.3d at 1059 (Martin, J., dissenting); *id.* at 1065 (Jordan, J., dissenting); *id.* at 1107 (Pryor, J., dissenting).

238. Both Judge Brasher and Judge Rosenbaum recused. The plaintiffs sought to disqualify Judge Brasher because of his prior participation in similar litigation as Solicitor General of Alabama, but he instead explained his recusal as the result of the fact that the Alabama Attorney General had filed an amicus brief in the instant case. The plaintiffs did not ask for Judge Rosenbaum’s recusal and Judge Rosenbaum did not explain her recusal.

239. The plaintiffs sought the recusal of Judges Lagoa and Luck because both had participated in the state supreme court decision interpreting the language of Amendment 4 prior to being elevated to the federal bench, but both judges declined to recuse. *Jones v. Governor of Fla.*, No. 20-12003 (11th Cir. July 27, 2020) (denying appellants’ disqualification motion). Both voted to reverse Judge Hinkle’s permanent injunction. See *Jones v. Governor of Fla.*, 975 F.3d at 1024.

support of a supermajority of Florida voters, the en banc decision ultimately broke down along predictable partisan lines.<sup>240</sup>

#### CONCLUSION

The passage of Amendment 4 is part of a clear political trend towards the re-enfranchisement of people with felony convictions.<sup>241</sup> In fact, perhaps buoyed by the victory and attention paid to Amendment 4 in Florida, California voters, the Washington State Legislature, and the Iowa governor all recently expanded the restoration of voting rights.<sup>242</sup> While the campaign's example of coalition building offers an important strategic path to continue to reduce the extent of felon disenfranchisement, particularly in Republican states with the most disenfranchisement, the amendment's implementation and the subsequent litigation also represent a cautionary tale. Despite Amendment 4, Florida continues to disenfranchise more citizens than any other state.<sup>243</sup>

As of 2020, about five million people could not vote because of a criminal conviction.<sup>244</sup> About one-quarter of people who are disenfranchised are in prison; about one-third are on probation or parole; and slightly less than half have completed any period of prison, probation, or parole<sup>245</sup>—although, as the case of Florida demonstrates, it obscures the role of LFOs to refer to these people as having completed their sentence.

The future of reform must directly address the rise of fines and fees used to fund the criminal justice system.<sup>246</sup> Although perhaps more empirical evidence will persuade judges outside the Eleventh Circuit that no one should be too poor to vote,<sup>247</sup> the roller coaster legal loss should not obscure the political

240. Perhaps suspecting a similar outcome at the Supreme Court, the plaintiffs never petitioned for a writ of certiorari.

241. See *Jones v. Governor of Fla.*, 975 F.3d at 1029 (making this observation); *Jones v. Governor of Fla.*, 950 F.3d 795, 801 & nn.1–3 (11th Cir. 2020) (same); MCLEOD, *supra* note 4 (cataloging reforms over time by state and year).

242. See *Disenfranchisement and Rights Restoration: Spotlight on States*, APPEAL: POL. REP., <https://theappeal.org/political-report/disenfranchisement-states/> [https://perma.cc/5M3N-E49U]; Daniel Nichanian, *She Lost Her Right to Vote over a Felony. Now This Lawmaker Helped Enfranchise Thousands*, APPEAL: POL. REP. (Apr. 8, 2021), <https://theappeal.org/politicalreport/washington-voting-rights-tarra-simmons/> [https://perma.cc/N2DN-GWG2] (explaining how Washington State's first formerly incarcerated legislator sponsored the successful bill).

243. See UGGEN ET AL., *supra* note 29, at 16 tbl.3 (reporting estimates of disenfranchised individuals with felony convictions).

244. See *id.*

245. See *id.* at 8 fig.1 (reporting estimates of disenfranchisement across correctional populations); *id.* 16 tbl.3 (reporting estimates of disenfranchised individuals with felony convictions).

246. See generally Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117 PENN ST. L. REV. 349, 349 (2012) (arguing that “for ex-felons in particular, criminal justice debt can serve as an insurmountable obstacle to the resumption of voting rights and broader participation in society”).

247. The en banc precedent quickly led to the defeat of a similar effort by some of the same civil rights organizations to challenge effectively the same practice in Alabama. See *Thompson v. Merrill*, No. 2:16-cv-783, 2020 WL 7080308, at \*22 (M.D. Ala. Dec. 3, 2020) (“[T]he distinction between Florida's law, which requires completion of sentence which includes payment of money, and Alabama's

opportunity, shown by Amendment 4, to extend the restoration of voting rights with the public's support. In fact, during the litigation over the scope of Amendment 4, the federal district court found that "voters would have approved Amendment 4 by more than the required 60%" had they known it would have restored voting rights regardless of any court fees owed, and, for those genuinely unable to pay, regardless of any LFO.<sup>248</sup> The district court's finding is about the predicted support of the public, not the intention of the campaign. But it suggests an ambitious path forward for future reform—in Florida and throughout the country.

One of the central reasons that the campaign was so successful at the ballot box was that it played a crucial information-sharing role. It showed, with its message and its outreach, that the vast scale of disenfranchisement has impacted all sorts of communities, not easily defined by partisanship. A campaign designed to specifically tackle wealth-based disenfranchisement should look different. For example, it should retire the slogan "when a debt is paid, it's paid." It should also adopt a thicker narrative of redemption. But to move beyond embracing personal responsibility, advocates and researchers must continue to educate the public and legislators alike on the labyrinth of unjust fines and fees we have erected in this era of mass incarceration.

Voting rights advocates should also grapple with the criminalization of poverty in the first instance, rather than just the collateral consequence of continued disenfranchisement. State legislatures should eliminate court fees and fund courts with tax dollars. The recent incorporation of the excessive fines clause presents another opportunity to press for state-level reform.<sup>249</sup>

To quote Desmond Meade, the campaign's chair and driving force, "Amendment 4 accomplished what it was intended to do."<sup>250</sup> We should celebrate its watershed victory—and use the lessons from the rise, fall, and legal fight for Amendment 4 to continue the project of building a more inclusive democracy.

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law, which requires completion of sentence and payment of money imposed as part of that sentence, does not distinguish this case from *Jones II*.”)

248. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1246 (N.D. Fla. 2020), *rev'd and vacated sub. nom. Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020) (en banc); *see also* Recent Case, *Jones v. DeSantis*, *supra* note 236, at 2297 (“It is . . . hard to imagine the Floridians who voted to amend their constitution did so intending to benefit almost no one.”).

249. *See* Beth A. Colgan & Nicholas M. McLean, *Financial Hardship and the Excessive Fines Clause: Assessing the Severity of Property Forfeitures After Timbs*, 129 *YALE L.J.F.* 430 (2020). There are other, less ambitious, litigation opportunities too. For example, even if it is somehow not a violation of *Bearden* to extend disenfranchisement for someone who is unable to pay LFOs, the Florida Supreme Court held in 1991 that it is a violation of *Bearden* to collect those same LFOs. *See State v. Beasley*, 580 So. 2d 139, 142–43 (Fla. 1991).

250. MEADE, *supra* note 48, at 149.