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The Case Against Florida Statute §98.0751

Lyndsey Gallwitz

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THE CASE AGAINST FLORIDA STATUTE § 98.0751

*Lyndsey Gallwitz**

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I. INTRODUCTION

As Americans, we often pride ourselves on our democratic system, many of us believing that we have the greatest system in the world. The best thing about being an American is that we can have our voices heard through our democratic process. But what many people fail to realize is that members of marginalized communities often do not have the same ability to have their voices heard because of several mechanisms of voter suppression. Black people, in particular, often struggle to participate in elections.¹

While Black people have had a constitutional right to vote in the United States since the Fifteenth Amendment was ratified in 1869,² fair and equal access to the polls has been a consistent fight for Black people throughout history—a fight that is not over yet. After the Fifteenth Amendment was ratified in 1870, allowing Black Americans to vote, the legislature used two major weapons to suppress the Black vote: the implementation of poll taxes and felony disenfranchisement laws.³ These two voter suppression strategies were especially prevalent in the Southern states, including Florida.⁴

Florida is notorious for having particularly draconian voter suppression laws. It was the first state in the nation to implement a poll tax in 1888.⁵ Additionally, Florida's constitution used to permanently disenfranchise anyone convicted of a felony.⁶ The combination of these two weapons has historically been detrimental to the Black community's electoral power.⁷

The harshness of Florida's voter suppression laws has been reduced following the repeal of Florida's poll tax in 1937, the Twenty-Fourth Amendment to the U.S. Constitution, and most recently, Article VI, section 4 of the Florida Constitution which allows felons to regain their voting rights after their sentences have been completed.⁸ While much

1. *Block the Vote: Voter Suppression in 2020*, ACLU (February 3, 2020), <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020/> [<https://perma.cc/RW3E-75AM>].

2. U.S. CONST. amend. XV, § 1.

3. Kelly Phillips Erb, *For Election Day, A History of the Poll Tax in America*, FORBES (Nov. 5, 2018, 8:30 PM), <https://www.forbes.com/sites/kellyphillipserb/2018/11/05/just-before-the-elections-a-history-of-the-poll-tax-in-america/#14408f9b4e44> [<https://perma.cc/VV5M-S5FE>].

4. *Id.*

5. *Florida Becomes First Southern State to Propose a Poll Tax*, THE HIST. ENGINE, <https://historyengine.richmond.edu/episodes/view/1615> [<https://perma.cc/7YK6-APP9>].

6. FLA. CONST. art. VI, § 4 (1991).

7. See discussion *infra* Sections II.C, II.D.

8. U.S. CONST. amend XXIV, § 1; FLA. CONST. art. VI, § 4.

progress has been made, unfortunately there are still flaws in Florida's voting system that continue to suppress Black voters. Soon after Article VI, section 4 was passed in 2018, the Florida Legislature quickly passed Florida Statute section 98.0751—that impedes the coverage of Article VI, section 4 by requiring felons to pay off all their legal financial obligations before they are eligible to vote again.⁹ This prevents felons who would otherwise be eligible voters from regaining their voting rights simply because they are impoverished.

Section 98.0751 received significant backlash, with many people claiming that it created a poll tax.¹⁰ Several felons who were impacted by the statute sued Governor DeSantis and the State of Florida in 2020, challenging the statute's validity.¹¹ The Northern District of Florida ruled that section 98.0751 created a poll tax in violation of the Twenty-Fourth Amendment.¹² The Eleventh Circuit overruled this decision.¹³ When the plaintiffs appealed, the Supreme Court denied the application to vacate stay, leaving the statute in place for the 2020 election.¹⁴

In this article, I will provide policy arguments against section 98.0751 and demonstrate why the Eleventh Circuit ruled incorrectly. This article will first highlight the racist history of felony disenfranchisement and poll taxes. Next, this article will make policy arguments against the statute by showing how it results in unrepresentative elections, falters in comparison to international voting rights policies, makes reentry into society more difficult for felons. Lastly, this article will demonstrate that the statute violates the Twenty-Fourth Amendment to the Constitution by requiring felons to pay off legal financial obligations, which functionally operate as taxes, before the right to vote is restored.

9. FLA. STAT. ANN. § 98.0751 (West 2020).

10. Fabiola Cineas, *What It's Like to Be Formerly Incarcerated and Fight for the Right to Vote*, VOX (Sept. 22, 2020, 8:30 AM), <https://www.vox.com/21439753/florida-felon-voting-rights> [<https://perma.cc/N65M-6WT3>].

11. *Jones v. DeSantis*, 462 F. Supp. 3d 1196 (N.D. Fla.) *vacated*, 975 F.3d 1016 (11th Cir. 2020).

12. *DeSantis* 462 F. Supp. 3d at 1234.

13. *Jones v. Governor of Florida*, 975 F.3d 1016 (11th Cir. 2020).

14. *Raysor v. DeSantis*, 140 S. Ct. 2600 (2020).

II. BACKGROUND

A. *Why Do We Disenfranchise Felons?*

The concept of felony disenfranchisement dates back to the practice of “civil death” in medieval Europe.¹⁵ Civil death extinguished a convicted criminal’s civil rights and stripped them of the law’s protections.¹⁶ Often, civil death meant that convicted criminals were required to forfeit all of their property to the king. The state deemed their blood corrupt; they could no longer inherit any estate or pass their estate to their heirs, they lost their right to bring any legal action or testify as a witness, and they were overall considered dead-in-law.¹⁷ As was common in early American law, the United States borrowed this idea from English law in the early-nineteenth century.¹⁸

By the mid-twentieth century, most of the harsh civil-death statutes that encompassed the original medieval-European view were repealed or voided in the United States.¹⁹ Similar practices continue, however, under a related system of collateral consequences applicable to people convicted of crimes.²⁰ The philosophy behind this new system is not the idea that convicted criminals are dead in the eyes of the law, but rather that convicted criminals have a “shattered character” that they carry with them through life.²¹ Some of the collateral consequences imposed on convicted criminals include disenfranchisement, the loss of the right to hold federal or state office, being barred from certain professions, firearm disabilities, and even deportation for noncitizens.²²

These consequences are indicative of the American criminal justice system’s retributive nature. Retributive justice provides that those who commit wrongful acts morally deserve to suffer a proportionate punishment.²³ Society inflicts these consequences on felons because we

15. JEAN CHUNG, THE SENT’G PROJECT, FELONY DISENFRANCHISEMENT: A PRIMER, (2019), <https://www.sentencingproject.org/wp-content/uploads/2015/08/Felony-Disenfranchisement-Primer.pdf> [<https://perma.cc/M4Y9-RBMV>].

16. Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1790 (2012), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1067&context=penn_law_review [<https://perma.cc/3QM6-RCXB>].

17. *Id.* at 1794.

18. *Id.*

19. *Id.* at 1798.

20. *Id.* at 1799.

21. *Id.* at 1790.

22. *Id.* at 1800.

23. Alec Walen, *Retributive Justice*, THE STAN. ENCYC. OF PHIL. (Edward N. Zalta ed., Fall 2020 ed.), <https://plato.stanford.edu/entries/justice-retributive/> [<https://perma.cc/TZB8-LB6X>].

believe that they are morally bankrupt and do not deserve to be welcomed back into the community.²⁴ The scarlet letter that a felony conviction provides in the United States prevents reentry into nearly every aspect of life.²⁵ Disenfranchisement is an additional barrier that keeps felons from becoming productive members of society by preventing electoral participation.

B. *The Origin of Poll Taxes*

Poll taxes were outlawed by the Twenty-Fourth Amendment in 1964, but they had previously been present in the United States since colonial times.²⁶ Poll taxes in the colonies, and shortly after the American Revolution, were not always linked to voting. The phrase “poll tax” derives from the German word “poll,” meaning “head.” Poll taxes were considered per person taxes.²⁷ Typically, poll taxes were used because the government wanted to raise revenue from everyone, even those who made enough money or owned enough assets to pay income or property taxes.²⁸ Poll taxes linked to voting—as we think of them today—were not very prevalent in the United States until the Reconstruction Era after the Civil War.²⁹

C. *The Fifteenth Amendment and the Rise of Suppressing the Black Vote*

The use of both poll taxes and felony disenfranchisement rose significantly during the Reconstruction Era.³⁰ When the Fifteenth Amendment granted Black people the right to vote in 1870, Southern states responded by suppressing the Black vote in any way they could. Several laws were passed that prevented Black people from voting even though they did not expressly deny the right to vote based on race. These laws included poll taxes, literacy tests, and felony disenfranchisement.³¹

24. *Id.*

25. Chin, *supra* note 16, at 1800.

26. Erb, *supra* note 3.

27. *Id.*

28. *Id.*

29. *Id.*; see also Allison Keyes, *Recalling an Era When the Color of Your Skin Meant You Paid to Vote*, SMITHSONIAN MAG. (Mar. 18, 2016), <https://www.smithsonianmag.com/smithsonian-institution/recalling-era-when-color-your-skin-meant-you-paid-vote-180958469/> [https://perma.cc/8M82-8AUR].

30. Erb, *supra* note 3; see also CHUNG, *supra* note 15, at 3.

31. Keyes, *supra* note 29.

Poll taxes were simple: a fee was charged at the polling booth, they could not pay, they could not vote. This was extremely effective in suppressing the Black vote, especially during Reconstruction, because recently freed Black Americans had very little opportunity to own property or find gainful employment.³² In 1865, General William Sherman issued an order in 1865 reallocating hundreds of thousands of acres of land for settlement of Black families.³³ When President Lincoln was assassinated, Vice President Andrew Johnson rescinded the order and returned the land to the original white owners.³⁴ Additionally, the Freedmen's Bureau, which was created to help freed slaves find financial freedom, was dismantled after only seven years.³⁵

Poll taxes were implemented quickly, and they worked. In Mississippi, fewer than 9,000 of the 147,000 voting-age Black Americans were registered to vote in 1890.³⁶ Some states took a neutral position on poll taxes, labeling them as a revenue raiser, while other states were more blatant with their intentions.³⁷ The Tuscaloosa Newspaper made the following statement regarding poll taxes in their November 3, 1939 edition:

This newspaper believes in white supremacy, and it believes that the poll tax is one of the essentials for the preservation of white supremacy. It

32. See Trymaine Lee, *A Vast Wealth Gap, Driven by Segregation, Redlining, Evictions and Exclusion, Separates Black and White America*, N.Y. TIMES MAG. (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/racial-wealth-gap.html> [<https://perma.cc/FN9L-49BM>].

Similar issues continued post-Reconstruction. President Franklin Roosevelt's New Deal excluded occupations commonly held by Black people, such as agricultural laborers and domestic workers, from its wealth building programs. Black people also struggled to own property because the Home Owners Loan Corporation largely excluded black neighborhoods from government insured loans, deeming them dangerous and marking them red on maps, a practice that became known as "redlining." *Id.*

33. *Id.*

34. *Id.*

35. *Id.* While the Freedmen's Bureau helped freed slaves find financial freedom by providing employment and supervising employment contracts to ensure fair compensation, it also assisted people by overseeing the transition between slavery and freedom generally. It issued necessities like food and clothing, operated hospitals, helped find family members, and provided legal representation among other things. See *African American Records: Freedmen's Bureau*, NAT'L ARCHIVES, <https://www.archives.gov/research/african-americans/freedmens-bureau> (Sept. 19, 2016) [<https://perma.cc/VC7W-FWZJ>]; see also *The Southern "Black Codes" of 1865-66*, CONST. FOUND., <https://www.crf-usa.org/brown-v-board-50th-anniversary/southern-black-codes.html> [<https://perma.cc/7CZ6-2GHW>].

36. Erb, *supra* note 3.

37. *Id.*; see also Ben Windham, *Black Vote Carries Heavy History in the Deep South*, TUSCALOOSA NEWS (Jan. 20, 2008, 12:43 AM), <https://www.tuscaloosaneews.com/article/DA/20080120/News/606112666/TL> [<https://perma.cc/43DE-V3GP>].

does not believe in a democracy with a small ‘d’, because it knows this country has never had such a democracy and never will have such a democracy as long as white supremacy is preserved . . . If it is ‘undemocratic’ to argue for white supremacy—as it certainly is—then we plead guilty to the charge. . . .³⁸

Election officers also enforced poll taxes discriminatorily against black voters by picking and choosing from whom they demanded a poll tax receipt.³⁹ Black voters also faced intimidation throughout the voting process. Poll tax laws frequently forced voters to pay the tax in cash and at specific locations, often the local police station.⁴⁰ Black people were harassed when they registered to vote, and often faced violence.⁴¹

The Twenty-Fourth Amendment, which outlawed the use of poll taxes, was passed in 1962. At the time, five states maintained poll taxes that disproportionately disenfranchised Black voters: Virginia, Alabama, Mississippi, Arkansas, and Texas.⁴²

Felony disenfranchisement was another easy tool to turn away Black voters during Reconstruction. The Thirteenth Amendment prohibited slavery and involuntary servitude, but it provided an exception that allowed involuntary servitude as a punishment for a crime.⁴³ This provided an incentive to arrest recently freed slaves en masse to still have access to free labor.⁴⁴

Early-colonial felony disenfranchisement laws were typically limited to “egregious violations of moral code,” such as rape and murder.⁴⁵ But after the Civil War, many states implemented felony disenfranchisement laws targeting crimes believed to be most committed by Black people, such as vagrancy.⁴⁶ In 1901, Alabama changed its felony disenfranchisement laws to all crimes involving “moral turpitude,” which

38. Erb, *supra* note 3; *see also* Windham, *supra* note 37.

39. Erb, *supra* note 3.

40. *Id.*

41. Keyes, *supra* note 29.

42. Office of the Historian & Office of Art and Archives, *Historical Highlights: The 24th Amendment*, HIST., ART & ARCHIVES, <https://history.house.gov/HistoricalHighlight/Detail/37045> [<https://perma.cc/QM98-VBQN>].

43. U.S. CONST. amend. XIII, § 1.

44. Flores A. Forbes, *How a 13th Amendment Loophole Created America’s Carceral State*, THE CRIME REPORT (June 3, 2019), <https://thecrimereport.org/2019/06/03/539754/> [<https://perma.cc/Y9GH-WYCV>].

45. CHUNG, *supra* note 15.

46. *Id.* at 3; *see also* Danyelle Solomon, Connor Maxwell & Abril Castro, *Systematic Inequality and American Democracy*, CTR. FOR AM. PROGRESS (Aug. 7, 2019, 7:00 AM), <https://www.americanprogress.org/issues/race/reports/2019/08/07/473003/systematic-inequality-american-democracy/> [<https://perma.cc/BZ3D-8MXY>].

was applied vaguely and generally to misdemeanors and increased the chance of disenfranchisement.⁴⁷ The author of Alabama's disenfranchisement law "estimated the crime of wife-beating alone would disqualify sixty percent of the Negroes."⁴⁸

Several states implemented "Black Codes," which were laws that only applied to Black people.⁴⁹ Those who were convicted under the Black Codes were then "leased out" by the prisons and provided free labor.⁵⁰ After the implementation of the Black Codes, the percentage of Black prisoners in Alabama rose from 2% to 74% in 1870.⁵¹ By the late 1800s, at least 90% of leased prison laborers were black.⁵²

This disproportionate prosecution continues today. As of 2016, Black people are incarcerated in state prisons at 5.1 times the rate of white people.⁵³ Additionally, one in thirteen African Americans of voting age were disenfranchised in 2016, a rate which was more than four times greater than that of non-Black Americans.⁵⁴

D. *Florida's Infamous Voter Suppression Laws and the Emergence of Article VI, Section 4*

Voter suppression is still a large issue in the United States—especially in Florida.⁵⁵ Poll taxes were outlawed nationally by the

47. Solomon, *supra* note 46.

48. CHUNG, *supra* note 15, at 3.

49. Solomon, *supra* note 46. An example of this type of law is South Carolina's Black Code, which applied to only persons of color, which included anyone who had more than one-eighth of Black descent. South Carolina's Black Codes created a separate court system for all cases involving a party who was Black. Crimes that white people believed Black people were more likely to commit, such as rebellion, arson, burglary, and assaulting a white woman, carried penalties that were harsher for Black people than for white people. These harsh punishments for minor crimes included the death penalty, "hiring out," or whipping. *See* CONST. RTS. FOUND., *supra* note 35.

50. Solomon, *supra* note 46.

51. Jeffrey Robinson, *The Racist Roots of Denying Incarcerated People Their Right to Vote*, ACLU (May 3, 2019, 10:45 AM), <https://www.aclu.org/blog/voting-rights/racist-roots-denying-incarcerated-people-their-right-vote> [https://perma.cc/2AX8-GSRF].

52. *Id.*

53. Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENT'G PROJECT (June 14, 2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/> [https://perma.cc/B9K8-EQRF].

54. Christopher Uggen, Ryan Larson, & Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, THE SENT'G PROJECT (Oct. 6, 2016), <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/> [https://perma.cc/BXE2-VGDZ].

55. ERIKA L. WOOD & MYRNA PEREZ, THE BRENNAN CENTER FOR JUSTICE, FLORIDA: AN OUTLIER IN DENYING VOTING RIGHTS, 1 (2016), https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf [https://perma.cc/P22V-J2NU].

Twenty-Fourth Amendment in 1962,⁵⁶ but the Supreme Court has found felony disenfranchisement constitutional.⁵⁷ The recent trend has been to roll back disenfranchisement laws, but every state currently has a different system of disenfranchisement: two states allow felons to vote in jail, eighteen states reenfranchise felons immediately after release from prison, twenty states reenfranchise felons after the completion of their sentences, and eleven states permanently disenfranchise felons.⁵⁸

Florida has historically utilized both poll taxes and felony disenfranchisement.⁵⁹ In 1888, Florida implemented the first poll tax.⁶⁰ While Florida no longer has a formal poll tax in place, it continues to disenfranchise felons.⁶¹ Until 2018, Florida's disenfranchisement policy fell into the harshest category by permanently disenfranchising everyone convicted of a felony, even after they were released from prison.⁶² As of 2016, Florida accounted for more than a quarter (27%) of the disenfranchised population in the entire United States.⁶³ Experts have speculated that if Florida alone did not have such harsh disenfranchisement laws, the outcome of the 2000 Bush-Gore election could have been drastically different.⁶⁴

Efforts have been made to reform Florida's voting laws with Article VI, section 4.⁶⁵ Desmond Meade, a voting rights activist and the Executive Director of the Florida Right Restoration Coalition, spearheaded the movement for the amendment in 2018.⁶⁶ Meade is an inspiring example of a formerly incarcerated person who has been fully reformed and has turned his life around. After serving his time, he earned a law degree at

56. U.S. CONST. amend. XXIV.

57. *Richardson v. Ramirez*, 418 U.S. 24 (1974).

58. CHUNG, *supra* note 15, at 1.

59. Wood & Perez, *supra* note 55.

60. THE HIST. ENGINE, *supra* note 5.

61. FLA. CONST. art. VI, § 4.

62. FLA. CONST. art. VI, § 4 (1991).

63. Uggen et al., *supra* note 54, at 3.

64. Ari Berman, *How the 2000 Election in Florida Led to a New Wave of Voter Disenfranchisement*, THE NATION (July 28, 2015), <https://www.thenation.com/article/archive/how-the-2000-election-in-florida-led-to-a-new-wave-of-voter-disenfranchisement/> [<https://perma.cc/K5N3-7G7Z>].

65. FLA. CONST. art. VI, § 4.

66. *About Desmond Meade*, FLORIDA RIGHTS RESTORATION COALITION, <https://floridarc.com/desmond-meade/> [<https://perma.cc/94U3-URHR>]. The Florida Rights Restoration Coalition's mission statement is: "FRRC is a grassroots, membership organization run by Returning Citizens (Formerly Convicted Persons) who are dedicated to ending the disenfranchisement and discrimination against people with convictions, and creating a more comprehensive and humane reentry system that will enhance successful reentry, reduce recidivism, and increase public safety." *About Us*, FLORIDA RIGHTS RESTORATION COALITION, <https://floridarc.com/about/> [<https://perma.cc/3R2Q-6NFQ>].

Florida International University.⁶⁷ Meade was inspired to advocate for felon voting rights when his wife ran for office, but he could not vote for her because of his felony convictions.⁶⁸

Article VI, section 4 gained a massive amount of bipartisan support and passed by more than 60%.⁶⁹ The amendment was met with great celebration, as over one million people were expected to regain their right to vote.⁷⁰ Unfortunately, these hopes were crushed when Governor Ron DeSantis signed section 98.0751, which required felons to pay off their legal financial obligations before their sentence was considered complete.⁷¹ The number of people expected to regain their right to vote plummeted from over one million to around two-hundred thousand.⁷²

III. POLICY ARGUMENTS AGAINST FLORIDA STATUTE § 98.0751

A. § 98.0751 Results in Unrepresentative Elections

1. § 98.0751 Suppressed the Black Vote

Because of the additional restrictions imposed by section 98.0751, hundreds of thousands of Black voters were left behind in the 2020 election.⁷³ The racist roots of felony disenfranchisement and poll taxes continued their original intended effects under Florida's voting laws. The goal of the United States should be to completely erase all lasting impacts of slavery and Jim Crow Laws, and section 98.0751 only does so halfheartedly.

67. Martha Anne Toll, *'Let My People Vote' Tells of One Black Man's Journey to Getting 1.4 Million Back a Voice*, NAT'L PUB. RADIO (Oct. 7, 2020, 8:34 AM), <https://www.npr.org/2020/10/07/921051422/let-my-people-vote-tells-of-one-mans-journey-to-getting-1-4-million-back-a-voice> [https://perma.cc/3V62-NDVZ].

68. DESMOND MEADE, *LET MY PEOPLE VOTE: MY BATTLE TO RESTORE THE CIVIL RIGHTS OF RETURNING CITIZENS* xi (Beacon 2020).

69. Toll, *supra* note 67.

70. Lawrence Mower & Langston Taylor, *Florida Ruled Felons Must Pay to Vote. Now, it Doesn't Know How Many Can*, TAMPA BAY TIMES (Oct. 7, 2020), <https://www.tampabay.com/news/florida-politics/elections/2020/10/07/florida-ruled-felons-must-pay-to-vote-now-it-doesnt-know-how-many-can/> [https://perma.cc/6D8G-LQFX].

71. FLA. STAT. ANN. § 98.075 (West 2020).

72. Mower & Taylor, *supra* note 70.

73. When Amendment 4 originally passed, the Florida Rights Restoration Coalition hoped that between 10 and 20 percent of the 1.4 million Floridians with felony convictions would register to vote. But because of the fees and fines restriction, that number was much lower: only 80,000 felons have registered since Amendment 4 passed, and only 50,000 of those who registered actually voted. See Lawrence Mower, *Florida's New Bloc of Felon Voters Didn't Decide the Election. Some Say That's Good*, MIAMI HERALD (Nov. 6, 2020), <https://www.miamiherald.com/news/politics-government/state-politics/article247019212.html>.

Felony disenfranchisement laws still have a disparate impact against Black Americans in recent times⁷⁴: Black people make up the highest percentage of prisoners in the United States.⁷⁵ Black people are an estimated 16% of Florida's population, yet Black males make up 45% of Florida's federal inmate population.⁷⁶ Compare this to the fact that about 77% of Florida's population is white, yet white men make up only 35% of Florida's federal inmate population.⁷⁷ Because of this higher rate of incarceration, Black people are more likely to be disenfranchised.⁷⁸ Nationally, one in thirteen Black people of voting age are disenfranchised, four times greater than non-Black Americans.⁷⁹

Section 98.0751, which added an extra hurdle to Article VI, section 4 by requiring felons to pay off their court costs and various fines before they were eligible to vote (the “fees-and-fines restriction”) was introduced by Florida's Republican-controlled legislature.⁸⁰ The legislature knows that felony disenfranchisement still disproportionately affects Black people. This fact was emphasized by activists who spearheaded Article VI, section 4.⁸¹ While felony disenfranchisement and poll taxes have undoubtedly had racist motivations in the past, the motivation behind section 98.0751 was possibly that Florida has a lot of Black felons, and Black Floridians vote overwhelmingly Democratic.⁸² Some Republicans

74. Karina Schroeder, *How Systemic Racism Keeps Millions of Black People from Voting*, VERA INST. OF JUST. (February 16, 2018), <https://www.vera.org/blog/how-systemic-racism-keeps-millions-of-black-people-from-voting> [<https://perma.cc/MT76-GRPU>]; see also *Democracy Imprisoned: the Prevalence and Impact of Felony Disenfranchisement Laws in the United States*, THE SENT'G PROJECT (September 30, 2013), <https://www.sentencingproject.org/publications/democracy-imprisoned-a-review-of-the-prevalence-and-impact-of-felony-disenfranchisement-laws-in-the-united-states/> [<https://perma.cc/A2BK-J7XC>].

75. John Gramlich, *The Gap Between the Number of Blacks and Whites in Prison is Shrinking*, PEW RSCH. CTR. (April 30, 2019), <https://www.pewresearch.org/fact-tank/2019/04/30/shrinking-gap-between-number-of-blacks-and-whites-in-prison/> [<https://perma.cc/253K-FNXP>].

76. *QuickFacts: Florida*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/FL/RHI225219> [<https://perma.cc/J6A2-T2MH>]; *Annual Report 2018–19*, FLA. DEP'T OF CORR., http://www.dc.state.fl.us/pub/annual/1819/FDC_AR2018-19.pdf [<https://perma.cc/9SLW-P82R>].

77. U.S. CENSUS BUREAU, *supra* note 76; FLA. DEP'T OF CORR., *supra* note 76.

78. Schroeder, *supra* note 74; THE SENT'G PROJECT, *supra* note 74.

79. Uggen et al., *supra* note 54, at 3.

80. FLA. STAT. ANN. § 98.075 (West 2020).

81. Hot 97, *Desmond Meade on Restoring Voting Rights with Felony Convictions in Florida + the Challenges Ahead*, YOUTUBE (Feb. 25, 2020), <https://www.youtube.com/watch?v=C2FgQ7X3Se8> [<https://perma.cc/8STL-JWK9>].

82. 1,526,297 Black Floridians registered as Democrats for the 2020 General Election compared to 68,383 Black Floridians who registered as Republican. *2020 General Election County Voter Registration by Party by Race*, FLA. DEP'T OF STATE DIV. OF ELECTIONS (Oct. 6, 2020), <https://dos.myflorida.com/media/703596/3-by-party-by-county-by-race.pdf> [<https://perma.cc/8FBB-MEUA>]. District Judge Robert Hinkle speculated that this is why Republicans voted for this bill. Lloyd Dunkelberger, *Judge Says He Will Consider Whether Florida's Felon Voting Law*

may have supported the statute out of concern that the impact of Article VI, section 4 would have cost them their seats.⁸³

While Black voters are often considered the most loyal voting bloc to the Democratic Party,⁸⁴ the political views of Black people as a whole should not be overly generalized and viewed as monolithic.⁸⁵ Because of the racism that Black Americans presently and historically have faced, they have a unique civic interest.⁸⁶ They tend to have great concerns about criminal justice policies, community policing, and the way that those issues intersect with racism.⁸⁷ However, according to a survey conducted by the Pew Research Center in 2019, 43% of Black Democrats identified as moderate, 29% as liberal, and 25% as conservative.⁸⁸

Lawmakers should not consider a voting law's predicted partisan impact firstly because it is self-serving to politicians, and secondly because party affiliation does not always show the whole picture. As demonstrated by the Pew Research study, the political views among Black voters are diverse,⁸⁹ indicating that they do not all vote the same and are capable of being persuaded one way or another.

Every American deserves the right to have their voice heard, regardless of political or electoral projections. As Representative Charlie Crist stated, "What the [DeSantis] administration is doing and the Legislature—it's suppressing the vote. It's not right. It's wrong. And this isn't right versus left. This is right versus wrong."⁹⁰

Discriminates on Race, FLA. PHOENIX (May 5, 2020), <https://www.floridaphoenix.com/2020/05/05/judge-says-he-will-consider-whether-floridas-felon-voting-law-discriminates-on-race/> [<https://perma.cc/GCT2-6MKS>].

83. Dunkelberger, *supra* note 82.

84. Khalil Abdullah, *Black Voters Most Loyal Democratic Voting Bloc*, ETHNIC MEDIA SERV. (Nov. 9, 2020), <https://ethnmediaservices.org/politics/black-voters-most-loyal-democratic-voting-bloc/> [<https://perma.cc/PJX7-WZMG>].

85. Tina Rodia, *African Americans Have Been Blocked from Voting, But the Black Vote is Not a 'Bloc'*, PENN TODAY (Feb 26, 2020), <https://penntoday.upenn.edu/news/african-americans-have-been-blocked-voting-black-vote-not-block> [<https://perma.cc/6746-U8FP>].

86. Abdullah, *supra* note 84.

87. *Id.*

88. Hannah Gilberstadt & Andrew Daniller, *Liberals Make Up the Largest Share of Democratic Voters, but Their Growth Has Slowed in Recent Years*, PEW RSCH. CTR. (Jan. 17, 2020), <https://www.pewresearch.org/fact-tank/2020/01/17/liberals-make-up-largest-share-of-democratic-voters/> [<https://perma.cc/U48X-NQEG>].

89. *Id.*

90. Mitch Perry, *Voting Rights Activist Desmond Meade Admits Amendment 4 Language "Was Not Perfect"*, SPECTRUM NEWS (Mar. 10, 2020, 8:11 AM), <https://www.baynews9.com/fl/tampa/news/2020/03/09/voting-rights-activist-desmond-meade-admits-amendment-4-language-was-not-perfect-> [<https://perma.cc/PD5A-999E>].

Article VI, section 4 was never meant to be partisan.⁹¹ According to Desmond Meade, the campaign began as non-political, avoided partisan back and forth, and received support from people from all walks of life.⁹² He claimed that when they campaigned for the amendment, they were “fighting just as hard for that person that wanted to vote for Donald Trump as that person that wished they could vote for Barack Obama.”⁹³

The disparate racial impact of section 98.0751 highlights the injustice in our democracy. Black Americans are not adequately represented by the government when they are not given an equal opportunity to vote.

2. § 98.0751 Created an Administrative Disaster

Despite disqualifying the majority of felons from regaining their right to vote under Article VI, section 4, section 98.0751 has left a surprising loophole to the fees-and-fines restriction⁹⁴: Sections (5)(e)(ii)—(iii) of the law allow the court to terminate a defendant’s financial obligations by either obtaining consent from the payee or converting them to community service.⁹⁵ This exception leaves the voting rights of felons to the discretion of individual judges, and this exception has not been utilized consistently across Florida.⁹⁶

Florida does not have a uniform database that tracks legal financial obligations, which makes it difficult to determine who owes money.⁹⁷ Data regarding felony convictions is dispersed across Florida’s county clerks’ offices, requiring the Florida Secretary of State to request this data from the county clerks before they can remove ineligible voters from the rolls.⁹⁸ Several counties have had trouble coming up with accurate data,

91. Hot 97, *supra* note 81.

92. *Id.*

93. Sam Koltich, *Let My People Vote: An Interview with Desmond Meade*, BROWN POL. REV. (Nov. 20, 2020), <https://brownpoliticalreview.org/2020/11/let-my-people-vote-bpr-interviews-desmond-meade/> [<https://perma.cc/HZD6-CSBS>].

94. FLA. STAT. ANN. § 98.0751(5)(e)(ii)–(iii) (West 2020).

95. *Id.*

96. Mark Joseph Stern, *Florida Republicans’ Voter Suppression Scheme May Backfire*, SLATE (Jan. 7, 2020), <https://slate.com/news-and-politics/2020/01/florida-felon-voting-rights-amendment-4-counties-poll-tax.html> [<https://perma.cc/3P5H-V8HP>].

97. Lawrence Mower & Langston Taylor, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*, PROPUBLICA (Oct. 7, 2020, 5:00 AM), <https://www.propublica.org/article/in-florida-the-gutting-of-a-landmark-law-leaves-few-felons-likely-to-vote> [<https://perma.cc/EA5W-FLZC>].

98. *Id.*

resulting in several felons remaining on the rolls even though they were ineligible to vote.⁹⁹

To combat this disorganization, several counties in Florida created “rocket docket” programs. Sections (5)(e)(ii)—(i) of section 98.0751 created an opportunity for courts to gather felons and modify their sentences en masse to terminate their outstanding fees and allow them to register to vote under Article VI, section 4.¹⁰⁰ The counties that created rocket-dockets to take advantage of this opportunity include Miami-Dade, Broward, Palm Beach, and Hillsborough,¹⁰¹ all of which are blue counties.¹⁰² No Republican counties have initiated any kind of rocket docket programs to help people get their voting rights restored.¹⁰³

Elected, Democratic state attorneys in these counties have tried to provide an efficient system to quickly restore felons’ voting rights despite Florida’s disorganized records.¹⁰⁴ The Florida Rights Restoration Coalition worked with several counties in Florida to create an application on its website that former prisoners can fill out to determine the status of their fines.¹⁰⁵ Katherine Fernandez Rundle, the state attorney in Miami-Dade, created a system by which applicants are divided into three categories: those with outstanding debts, those with debts but facing inability to pay, and those looking to get on a debt payment plan.¹⁰⁶ The Miami-Dade Public Defender’s Office then reviews the Coalition applicants from their county, determines which category they are in, and assigns them to volunteer lawyers.¹⁰⁷

While it is encouraging that individual prosecutors in Florida have taken it upon themselves to organize these rocket dockets,¹⁰⁸ section 98.0751 puts too much strain on local courts. The lack of a uniform system to track court fees in Florida makes determining the status of these cases

99. *Id.*; Lawrence Mower, *No, Florida is Not Purging Felons from the Voter Rolls Before Election Day*, TAMPA BAY TIMES (Oct. 16, 2020), <https://www.tampabay.com/news/florida-politics/elections/2020/10/16/no-florida-is-not-purging-felons-from-the-voter-rolls-before-election-day/> [https://perma.cc/9UKC-ZMDS].

100. Patricia Mazzei, *‘A Proud Day’: Ex-Felons Clear Final Hurdle to Vote*, N.Y. TIMES (Sept. 17, 2020), <https://www.nytimes.com/2019/11/09/us/florida-felon-voting-rocket-docket.html> [https://perma.cc/653Y-BU5Z].

101. *Stem*, *supra* note 96.

102. *Id.*

103. *Id.*

104. Mazzei, *supra* note 100.

105. *Id.*; see also *Fines & Fees Program*, FLA. RTS. RESTORATION COAL., <https://floridarc.com/finesprogram/> [https://perma.cc/R595-MDZQ].

106. Mazzei, *supra* note 100.

107. *Id.*

108. *Id.*

a very costly and time-consuming process.¹⁰⁹ An official in the Hillsborough County clerk's office once testified that he and four co-workers spent twelve to fifteen hours trying to determine how much one felon owed.¹¹⁰

Smaller, more rural counties with less funding and manpower may be unlikely to utilize the waiver exception to section 98.0751 because of the hassle and cost that goes into determining the status of these debts. Additionally, conservative counties are usually less likely to utilize the waiver exception, since restoring voting rights to felons tends to be a more liberal policy.¹¹¹ A felon's ability to get his debts waived and his voting rights restored should not depend on what county he happens to live in. Previously incarcerated individuals who live in rural, conservative areas deserve to have their voices heard just as much as those who live in urban counties such as Miami-Dade.

3. Disappointing Voter Turnout Due to § 98.0751

When Article VI, section 4 was passed in 2018, many people speculated that it could have a significant impact on the 2020 presidential election.¹¹² Florida is known as a swing state because of its close elections.¹¹³ When it was predicted that the amendment would reenfranchise around one million people, this huge bloc of new voters created an element of uncertainty and for many people, hope.¹¹⁴ Unfortunately, this predicted impact did not materialize because section 98.0751 dramatically decreased the number of new voters.¹¹⁵

When analyzing the effect of Florida's recent legislation on the 2020 general election, the impact of the fees-and-fines restriction in section 98.0751 must be emphasized. Article VI, section 4 was initially estimated to restore voting rights to 1.4 million people.¹¹⁶ Unfortunately, because

109. Mower & Taylor, *supra* note 97.

110. *Id.*

111. Austin Sarat, *Stripping Voting Rights from Felons is About Politics, Not Punishment*, THE CONVERSATION (June 4, 2020, 8:27 AM), <https://theconversation.com/stripping-voting-rights-from-felons-is-about-politics-not-punishment-139651> [<https://perma.cc/FE5M-MV8M>].

112. Tim Mak, *Over 1 Million Florida Felons Win Right to Vote with Amendment 4*, NAT'L PUB. RADIO (Nov. 7, 2018, 2:46 AM), <https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4> [<https://perma.cc/WXG3-49N5>].

113. Robbie Gaffney, *A Looking into Why Florida is a Swing-State in Presidential Races*, WUWF PUB. MEDIA (Oct. 31, 2020), <https://www.wuwf.org/post/looking-why-florida-swing-state-presidential-races> [<https://perma.cc/7MJS-MMB9>].

114. Mak, *supra* note 112.

115. Mower, *supra* note 73.

116. Lawrence Mower, *What Happened to Florida's Amendment 4? Five Takeaways from Our Investigation*, TAMPA BAY TIMES (Oct. 11, 2020), <https://www.tampabay.com/news/florida->

around 78% of people with felony convictions are estimated to owe court fees, fines, or restitution,¹¹⁷ the number of people who had their voting rights restored by the amendment plummeted. Nearly 800,000 people were disqualified from voting after the statute was implemented.¹¹⁸

Florida's disorganization in tracking both felons and their outstanding debts was a further hindrance to the amendment's restorations. When registering to vote in Florida, applicants are required to check a box indicating that they are not convicted felons, or if they are that their rights have been restored (i.e., that their fees and fines have been paid off).¹¹⁹ In Florida, it is a third-degree felony to submit any false voter-registration information.¹²⁰ Because of Florida's fees-and-fines disorganization, felons are often unsure whether they are eligible to vote.¹²¹ This deterred many felons from registering because if a felon has an unknown, outstanding fee but didn't know about it, they could inadvertently commit voter fraud and face prosecution for another felony.¹²²

Article VI, section 4 caused such a low turnout among felons in the 2020 election that their votes were likely not dispositive of the results.¹²³ Donald Trump won Florida by more than 370,000 votes.¹²⁴ Since the amendment passed, approximately 80,000 people with felony convictions have registered to vote.¹²⁵ Of those 80,000 people, it is estimated that only 50,000 voted in the general election.¹²⁶ Even if every single one of those people voted Democratic, it likely would not have changed the outcome.

However, If the legislature had not implicated the fees-and-fines restriction, the election results may have turned out much differently. According to a Tampa Bay Times investigation, about half of the newly registered voters who had been convicted of felonies were Black, and among all the newly registered felons, half registered as Democrats and

politics/2020/10/11/what-happened-to-floridas-amendment-4-five-takeaways-from-our-investigation/ [https://perma.cc/XQH9-9C22].

117. *Id.*

118. Mower & Taylor, *supra* note 70.

119. Florida Department of State, *Florida Online Voter Registration System*, <https://registertovoteflorida.gov/eligibilityreactive> [https://perma.cc/F93T-WPTQ].

120. FLA. STAT. ANN. § 104.011 (West 2020).

121. Mower & Taylor, *supra* note 97.

122. *Id.*

123. Mower, *supra* note 73.

124. *2020 Election Results: Live Florida and Presidential Results*, ORLANDO SENTINEL <https://www.orlandosentinel.com/politics/results/> (Feb. 17, 2021, 10:18 PM) [https://perma.cc/LD6K-2CLT].

125. Mower, *supra* note 73.

126. *Id.*

half as Republicans.¹²⁷ If the fees-and-fines restriction had not reduced felon registration, there could have been significantly more Democratic votes, making Florida race closer.

B. § 98.0751 Falters in Comparison to International Voting Policies

The concept of felony disenfranchisement is so deeply engrained in American law that many Americans may think it is the international norm. In reality, the United States has unusually severe disenfranchisement laws in comparison to many other developed countries.¹²⁸ In a study conducted of over forty-five countries accounting for major countries in Europe, North America, Asia, South America, and Australia, almost half of the countries allow felons to vote.¹²⁹

Types of disenfranchisement laws vary internationally by country, just as they do between states in the United States.¹³⁰ Countries that never take away a felon's right to vote, even while in prison, include Canada, Austria, Denmark, Finland, Ireland, Israel, Latvia, Lithuania, Norway, Spain, South Africa, Sweden and Switzerland.¹³¹ Some countries have allowed selective restrictions on voting, such as taking away voting rights on rare, court-mandated instances or for prison terms longer than four years.¹³² Some of these more moderate countries include: Germany, Iceland, Australia, France, Greece, Italy, Luxembourg, Malta, and Portugal.¹³³ Only three countries permanently disenfranchise felons, even post-conviction.¹³⁴ These countries are Armenia, Chile and Belgium.¹³⁵

In comparison, the United States has only two states that have never disenfranchised felons and allow them to vote from prison: Vermont and Maine.¹³⁶ Of the remaining forty-eight states, twenty states allow felons to regain their voting rights at some point after their prison sentence, and eleven states disenfranchise at least some felons permanently.¹³⁷

127. Mower & Taylor, *supra* note 97.

128. CHUNG, *supra* note 15, at 4.

129. Ali Rickart, *Disenfranchisement: A Comparative Look at the Right of the Prisoner to Vote*, UNIV. OF BALT. SCH. OF L.'S CTR. FOR INT'L & COMPAR. L. FELLOWS (Feb. 6, 2015), <https://ubaltcielfellows.wordpress.com/2015/02/06/disenfranchisement-a-comparative-look-at-the-right-of-the-prisoner-to-vote/> [https://perma.cc/5UMP-CQ5V].

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. CHUNG, *supra* note 15, at 1.

137. Colorado, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and

Article VI, section 4, while seemingly progressive in the United States, lags behind other developed countries because it does not allow felons to vote from prison at all.¹³⁸ The added fees-and-fines restriction of section 98.0751 further limits formerly incarcerated people from voting.¹³⁹ In 2005, the European Court of Human Rights ruled that a blanket ban on voting from prison violates the European Convention on Human Rights, which guarantees the right to free and fair elections.¹⁴⁰ Under this standard, the entire United States, excluding Vermont and Maine, is violating basic human rights by not allowing its citizens to vote from prison.¹⁴¹

C. *§ 98.0751 Hinders Reentry into Society*

In the United States, a felony conviction comes with collateral consequences that affect nearly every aspect of life.¹⁴² A felony conviction may prevent a felon from obtaining housing, finding gainful employment, owning guns, voting, and even qualifying for certain public assistance.¹⁴³ Studies show that such stigmatization is counterproductive to preventing recidivism because it perpetuates the idea of once a criminal, always a criminal.¹⁴⁴

Disenfranchisement can have an added, alienating effect on those who have felony convictions. Many individuals who are subject to disenfranchisement have indicated that the inability to vote makes them feel like they do not belong and that they are outsiders in their own

Utah disenfranchise felons only when they are in prison. Felons in these states regain voting rights upon release. California, Connecticut, Louisiana, and New York disenfranchise felons during prison and parole. Alaska, Arkansas, Georgia, Idaho, Kansas, Minnesota, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, Washington, West Virginia, and Wisconsin disenfranchise felons during prison, parole, and probation. Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia and Wyoming disenfranchise at least some felons permanently. This may depend on the number of felonies a person has, what they have been convicted of, etc. Chris Uggen, Ryan Larson, Sarah Shannon, & Arleth Pulido-Nava, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, THE SENT'G PROJECT (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/> [https://perma.cc/TL4T-PSCM].

138. FLA. CONST. art. VI, § 4.

139. FLA. STAT. § 98.0751 (2020).

140. CHUNG, *supra* note 15, at 4.

141. *Id.*

142. DESMOND MEADE, LET MY PEOPLE VOTE: MY BATTLE TO RESTORE THE CIVIL RIGHTS OF RETURNING CITIZENS xi–xii (Beacon Press 2020).

143. *Id.*

144. Guy Padriac Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley LA RAZA L.J. 407, 414 (2012).

community.¹⁴⁵ Steve Phalen, a thirty-six-year-old Floridian who was convicted of a felony when he was twenty-three, has described the psychological effect that disenfranchisement has had on him:

It was terrible, frankly. I feel civic engagement is incredibly important. Not being able to cast a vote is something that feels like my civic identity, my identity as a citizen, is just completely erased. Made irrelevant. It's, like, you're never going to fully be a part of this country anymore.¹⁴⁶

Disenfranchisement does nothing to foster skills that help rehabilitate ex-convicts and reintegrate them into society.¹⁴⁷ In fact, “invisible punishments” such as disenfranchisement often act as a barrier to successful rehabilitation and reentry.¹⁴⁸

Studies show that democratic participation is positively associated with reductions in recidivism.¹⁴⁹ Successful reentry is best achieved by targeting traits that are directly linked to recidivism, including antisocial attitudes and beliefs.¹⁵⁰ Successful reentry programs stress the importance of community ties and prosocial attitudes.¹⁵¹ A study conducted by Victoria Shineman and the University of Pittsburgh concluded that restoring voting rights to ex-offenders increases trust in the government, law enforcement, and the criminal justice system.¹⁵² This trust leads ex-offenders to be more willing to cooperate with law enforcement, and since respect for the law is a predictor for not breaking the law, restoring voting rights to ex-offenders increases attitudes and behaviors that make recidivism less likely.¹⁵³

A study conducted in Florida showed that restoring an individual's civil rights decreases the likelihood of recidivism.¹⁵⁴ Only 11% of individuals who had their rights restored between 2009 and 2010

145. *Id.*

146. Daniel A. Gross, *What It Felt Like for a Florida Man with a Felony to Regain His Voting Rights*, THE NEW YORKER (Nov. 7, 2018), <https://www.newyorker.com/news/as-told-to/what-it-felt-like-for-a-florida-man-with-a-felony-to-regain-his-voting-rights> [https://perma.cc/C2Y7-4P3S].

147. Hamilton-Smith & Vogel, *supra* note 144, at 414.

148. *Id.*

149. *Id.*

150. VICTORIA SHINEMAN, RESTORING RIGHTS, RESTORING TRUST: EVIDENCE THAT REVERSING FELON DISENFRANCHISEMENT PENALTIES INCREASES BOTH TRUST AND COOPERATION WITH GOVERNMENT 2 (2019), https://cpb-us-w2.wpmucdn.com/web.sas.upenn.edu/dist/7/538/files/2019/07/Shineman_RestoringRightsRestoringTrust_ESRA2019.pdf [https://perma.cc/ZP2L-R3L2].

151. *Id.*

152. *Id.* at 3.

153. *Id.*

154. Meade, *supra* note 142, at xii.

reoffended, while the overall recidivism rate for inmates released between 2001 and 2008 was 33%.¹⁵⁵

Felony disenfranchisement laws, such as this statute, are often supported on the theory that criminals have breached the social contract and are no longer fit for citizenship.¹⁵⁶ In other words, if these offenders could not show respect for or follow the law, they do not deserve to participate in the democratic process. While proponents of section 98.0751 may argue that disenfranchisement is supported on retributive grounds, this argument is not as strong as the rehabilitation argument.

It is counteractive to implement policies perpetuating recidivism simply because ex-offenders “deserve” to be punished. Felons face instability in every aspect of life once they enter the criminal justice system—society makes it very clear that their actions are unacceptable. Rehabilitation, rather than retribution, should be the priority to create a more peaceful society by decreasing recidivism and reintegrating ex-offenders into society as productive citizens.

Section 98.0751 continues to perpetuate the stigmatization of ex-felons that makes recidivism more likely. It is arguably even more ostracizing than Florida’s previous disenfranchisement system because it further alienates those ex-felons who are impoverished by punishing those who are unable to pay off their criminal justice debts. Florida’s recidivism rate is 25%,¹⁵⁷ meaning that one in four inmates that are released from prison will eventually return to prison. Any change in law that would improve the attitudes and perspectives of ex-offenders while making it less likely for them to reoffend would be a step in the right direction. Abolishing section 98.0751 is one of those many steps.

155. *Id.*

156. Hamilton-Smith & Vogel, *supra* note 144, at 412.

157. Florida has one of the lowest recidivism rates in the country. However, when reviewing this statistic, it is important to emphasize that Florida abolished parole in 1983. This means that Florida has significantly fewer offenders under supervision after their release from prison than other states do, which contributes heavily to the low recidivism rates. Mark S. Inch, *Florida Prison Recidivism Report: Releases From 2010 to 2017*, FLA. DEP’T OF CORR. (June 2019), <http://www.dc.state.fl.us/pub/recidivism/RecidivismReport2019.pdf> [<https://perma.cc/QC5Y-FCBW>]; see also *Recidivism Rates by State 2021*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/recidivism-rates-by-state> [<https://perma.cc/9JCU-VRT2>].

IV. § 98.0751 VIOLATES THE TWENTY-FOURTH AMENDMENT

A. *Purpose of Twenty-Fourth Amendment*

Florida Statute section 98.0751 violates the Twenty-Fourth Amendment. The official purpose of the Twenty-Fourth Amendment was “to prevent the United States or any State from denying or abridging the right to vote . . . because of an individual’s failure to pay any poll tax or other tax.”¹⁵⁸ This statement is very cut and dry, but Congress had several goals in mind when passing the Twenty-Fourth Amendment. Notably, two of these goals were advancing civil rights and increasing voter turnout by removing obstacles in the voting process.¹⁵⁹

The Twenty-Fourth Amendment was passed in 1962 and ratified in 1964, when the Civil Rights Movement was very prevalent and national efforts were being made to rid the country of Jim Crow laws.¹⁶⁰ President John F. Kennedy made the following comments in his State of the Union Address on January 11, 1962, regarding poll taxes and civil rights:

Among the bills now pending before you . . . are appropriate methods of strengthening these basic rights which will have our full support. The right to vote, for example, should no longer be arbitrarily denied through such iniquitous local devices as literacy tests and poll taxes.¹⁶¹

William L. Higgs was a lawyer and civil rights activist working in Mississippi in the early 1960s.¹⁶² While the Twenty-Fourth Amendment was being debated, Higgs made a statement emphasizing the racial impact of the poll tax on Black people in Mississippi.¹⁶³ He brought attention to several issues, one being the fact that a \$4 poll tax was often equal to an entire day’s income for the average Black family in Mississippi.¹⁶⁴ Additionally, many black people were facing intimidation from election officers and protestors that prevented them from paying their poll taxes, even if they had enough money to pay.¹⁶⁵ Higgs advocated for the

158. H.R. REP. NO. 87-1821, at 2 (1962).

159. *Id.* at 3–4.

160. U.S. CONST. amend. XXIV (editor and reviser’s notes).

161. H.R. REP. NO. 87-1821, at 4.

162. *Higgs, William L.*, CIV. RTS. DIGIT. LIBR., http://crdl.usg.edu/people/h/higgs_william_l/?Welcome [<https://perma.cc/W6X6-PKE7>].

163. *Abolition of Poll Tax in Federal Elections: Hearing on H.J. Res. 404, 425, 434, 594, 601, 632, 655, 663, 670, S.J. Res. 29 Before Subcomm. No. 5, H. Comm. on the Judiciary*, 87th Cong. 48–53 (1962) (statement of William L. Higgs, attorney, Jackson, Miss.).

164. *Id.* at 50.

165. Higgs mentioned that in many Mississippi counties, sheriffs would not accept payment of poll taxes, and many Black citizens were too afraid to attempt to pay the poll tax. *Id.* at 50. There was intimidation around nearly every aspect of voting—Higgs also referenced an incident where “a State

Amendment because with the poll tax eliminated, Black people in Mississippi would face fewer obstacles in the voting process.¹⁶⁶

Section 98.0751 provision requiring felons to pay off legal financial obligations before they can regain their right to vote is a financial obstacle to voting that the Twenty-Fourth Amendment was intended to prevent. The statute has a similar disparate impact on Black Americans that traditional poll taxes had in the 1960s. Black families today are still more likely to be impoverished than white families, just as they were when the Twenty-Fourth Amendment was being passed in 1962.¹⁶⁷ Black people are also more likely to be convicted of a felony and subsequently disenfranchised.¹⁶⁸

It is also important to note that the cost of poll taxes in 1962 seemed quite minimal, and Congress still voted to outlaw them.¹⁶⁹ Today, the cost of legal financial obligations vary, but they tend to be astronomical in comparison to the \$4 fees that were considered unreasonable in 1962. In Miami-Dade County, Florida, the average felon owes between \$700 and \$800.¹⁷⁰ The majority of this money owed goes to “user fees,” such as a fee to use a public defender or a fee to cover the cost of prosecution.¹⁷¹ Instead of raising taxes to fund the expansion of the criminal justice system, Florida has targeted “users” of the system for funding.¹⁷² Nearly 80% of Florida’s felons are estimated to owe money to the courts.¹⁷³ A vast majority of felons in Florida are unable to pay these fees upfront and end up on payment plans, taking years to pay off.¹⁷⁴ The poll taxes that

representative shot a Negro man who was merely trying to learn how to vote and to teach others how to vote.” *Id.* at 48.

166. *Id.* at 50.

167. Josh Creamer, *Inequalities Persist Despite Decline in Poverty for all Major Race and Hispanic Origin Groups*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html> [<https://perma.cc/7M4D-N4UR>]; *Abolition of Poll Tax in Federal Elections: Hearing on H.J. Res. 404, 425, 434, 594, 601, 632, 655, 663, 670, S.J. Res. 29 Before Subcomm. No. 5, H. Comm. on the Judiciary*, 87th Cong. 48–53 (1962) (statement of William L. Higgs, attorney, Jackson, Miss.).

168. Uggen et al., *supra* note 54.

169. *Abolition of Poll Tax in Federal Elections: Hearing on H.J. Res. 404, 425, 434, 594, 601, 632, 655, 663, 670, S.J. Res. 29 Before Subcomm. No. 5, H. Comm. on the Judiciary*, 87th Cong. 48–53 (1962) (statement of William L. Higgs, attorney, Jackson, Miss.).

170. Dara Kam, *Majority of Felons Seeking Voting Rights Can’t Afford the Cost*, PENSACOLA NEWS J. (Apr. 29, 2020, 6:00 AM), <https://www.pnj.com/story/news/2020/04/29/majority-felons-seeking-voting-rights-cant-afford-pay-cost/3044690001/> [<https://perma.cc/B92Y-2S7J>].

171. Mower & Taylor, *supra* note 97.

172. *Id.*

173. *Id.*

174. Kam, *supra* note 170.

were outlawed by the Twenty-Fourth Amendment were never this costly.¹⁷⁵

Striking down section 98.0751 and similar disenfranchisement laws would help accomplish the intentions of Congress and the Twenty-Fourth Amendment by increasing election participation significantly. When Florida initially adopted Article VI, section 4, it was predicted that around 1.4 million Floridians would have their voting rights restored.¹⁷⁶ Unfortunately, once the legislature implemented the statute, nearly 800,000 of those felons were again disqualified from voting.¹⁷⁷

B. § 98.0751 Creates a Poll Tax

While the motivating purpose behind Twenty-Fourth Amendment is, by itself, important, the functions of its actual text must also be carefully considered. The Twenty-Fourth Amendment states that a citizen's right to vote "shall not be denied or abridged . . . by reason of failure to pay any poll tax or other tax."¹⁷⁸ The text establishes two components of analysis: (1) whether the costs imposed are taxes, and (2) whether the right to vote has been denied "by reason of" failing to pay a tax.¹⁷⁹

When Governor DeSantis signed section 98.0751, several plaintiffs filed action to court and claimed the bill violated the Twenty-Fourth Amendment.¹⁸⁰ The Northern District of Florida (hereinafter District Court) correctly ruled that court costs were taxes under the Twenty-Fourth Amendment and that the State of Florida cannot constitutionally condition the right to vote upon the payment of court costs.¹⁸¹ Unfortunately, the Eleventh Circuit overruled the District Court's decision.¹⁸² The United States Supreme Court declined to review the statute, leaving the Eleventh Circuit decision in place.¹⁸³

The District Court, focusing on the plain meaning of "tax" and the pay-to-vote nature of section 98.0751, provided the most logical argument, delivering both desirable results and a precedent that was

175. *Abolition of Poll Tax in Federal Elections: Hearing on H.J. Res. 404, 425, 434, 594, 601, 632, 655, 663, 670, S.J. Res. 29 Before Subcomm. No. 5, H. Comm. on the Judiciary*, 87th Cong. 48–53 (1962) (statement of William L. Higgs, attorney, Jackson, Miss.).

176. Mower & Taylor, *supra* note 97.

177. *Id.*

178. U.S. CONST. amend. XXIV, § 1.

179. *Id.*; Jones v. Governor of Fla., 975 F.3d 1016, 1037 (11th Cir. 2020).

180. Jones v. DeSantis, 462 F. Supp. 3d 1196 (N.D. Fla.), *vacated*, 975 F.3d 1016 (11th Cir. 2020).

181. *Id.* at 1234.

182. *Governor of Fla.*, 975 F.3d at 1045.

183. Raysor v. DeSantis, 140 S. Ct. 2600 (2020).

simple to understand and apply.¹⁸⁴ While the Eleventh Circuit made a compelling, textualist argument, the ruling's results are outdated, unpopular, and seemingly against the purpose of the Twenty-Fourth Amendment.¹⁸⁵ Under the Eleventh Circuit's analysis, the Twenty-Fourth Amendment is rendered almost useless given the second prong's interpretation allowing a fallback reason or justification for denying the right to vote. The following sections will dive deeper into the Eleventh Circuit's opinion, highlighting the flaws in its arguments and explaining why the District Court's decision should have been affirmed.

1. What Constitutes a "Tax"?

I will discuss in detail the first component of the Twenty-Fourth Amendment analysis: the definition of "tax."¹⁸⁶ The Supreme Court has held that the "standard definition of a tax" is an "enforced contribution to provide for the support of the government."¹⁸⁷ The general definition of a tax becomes murky when considering the various types of payments that are imposed on criminal defendants.

It is important to understand the distinction between restitution, criminal fines, and court costs when considering whether these costs amount to taxes under the Twenty-Fourth Amendment. Section 98.0751 requires felons to pay off all of these assessments before restoring voting rights¹⁸⁸ but some of these assessments may constitute taxes while others do not.¹⁸⁹

Restitution is paid to a victim to compensate for their loss.¹⁹⁰ Consider a hypothetical defendant convicted of shoplifting a television from Best Buy that is worth \$1,000. That defendant could be sentenced to pay Best Buy \$1,000 in restitution to compensate for their financial loss.

The government also fines defendants to punish them.¹⁹¹ A defendant may have to pay a fine in addition to any other punishments they receive, such as jail time.¹⁹² Alternatively, depending on the severity of the crime, a defendant may pay a fine in lieu of jail time.¹⁹³

184. *Jones*, 462 F. Supp. 3d at 1131.

185. See discussion *supra* Section IV.A.

186. U.S. CONST. amend. XXIV, § 1.

187. *United States v. State Tax Comm'n*, 421 U.S. 599 (1975).

188. FLA. CONST. amend. IV, § 1.

189. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1232–33 (N.D. Fla.) *vacated*, 975 F.3d 1016 (11th Cir. 2020).

190. FLA. STAT. ANN. § 775.089 (West 2020).

191. *Jones*, 462 F. Supp. 3d at 1232.

192. FLA. STAT. ANN. § 775.083 (West 2020).

193. *Id.*

Court costs cover operating costs of the court.¹⁹⁴ In Florida, all funding for court operations and functions comes from court costs and fees, such as filing fees and service charges.¹⁹⁵

Courts are understandably hesitant to label all costs associated with the justice system as taxes. Courts often debate whether costs imposed in criminal cases are taxes or penalties.¹⁹⁶ Taxes are compulsory payments made to the government to fund government functions¹⁹⁷ while penalties are “punishment[s] for an unlawful act or omission.”¹⁹⁸ Many costs associated with the criminal justice system are penalties because courts impose them as a punishment.¹⁹⁹

Relevant case law, including the District Court and Eleventh Circuit decisions, have correctly determined that restitution and criminal fines are penalties, not taxes.²⁰⁰ Restitution is not a tax because it lacks the most important characteristic of a tax—it is not paid to the government.²⁰¹ Instead, restitution is paid to private victims of crimes.²⁰² Additionally, restitution lacks the second characteristic of a tax as it is paid to compensate victims for their loss, not to fund governmental functions.²⁰³

Fines are not as clear as restitution. While fines are compulsory payments to the government, often providing revenue for governmental functions, they are not taxes because their primary purpose is not to raise revenue.²⁰⁴ The primary purpose of a fine is to punish defendants.²⁰⁵ The punitive nature of a fine distinguishes it from a tax and categorizes it as a penalty.

The issue of whether court costs are taxes is where the District Court and the Eleventh Circuit disagree.²⁰⁶ The District Court determined that court costs are taxes because they are paid to the government to fund government functions.²⁰⁷ The District Court also referred to Florida’s

194. FLA. CONST. art. 5, § 14.

195. *Id.*

196. *Jones v. Governor of Florida*, 975 F.3d 1016, 1037–38 (11th Cir. 2020).

197. *United States v. State Tax Comm’n*, 421 U.S. 599, 607 (1975).

198. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 567 (2012).

199. *Governor of Fla.*, 975 F.3d at 1038.

200. *Id.*; *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1231–32 (N.D. Fla.) *vacated*, 975 F.3d 1016 (11th Cir. 2020).

201. *Jones*, 462 F. Supp. 3d at 1232.

202. FLA. STAT. ANN. § 775.089 (West 2020).

203. *Id.*; *Jones*, 462 F. Supp. 3d at 1232.

204. *Jones*, 462 F. Supp. 3d at 1232.

205. *Id.*; FLA. STAT. ANN. § 775.083 (West 2020).

206. *Jones*, 462 F. Supp. 3d at 1234; *Jones v. Governor of Fla.*, 975 F.3d 1016, 1039 (11th Cir. 2020).

207. *Jones*, 462 F. Supp. 3d at 1234.

constitutional provision that required Florida state courts to operate strictly through court costs, which further indicates that court costs are equivalent to taxes.²⁰⁸ Additionally, every criminal defendant who is convicted or enters a no-contest plea must pay the same amount of court fees, indicating that court fees are not necessarily tied to culpability or given as a unique punishment.²⁰⁹

Conversely, the Eleventh Circuit determined that court fees are penalties, not taxes.²¹⁰ When analyzing the definition of tax, the Eleventh Circuit focused mostly on the culpability of the defendants.²¹¹ Because court costs are only imposed on those who are convicted of crimes and not on the general public, the Eleventh Circuit decided that they are penalties and not taxes.²¹² This resulted in grouping nearly all costs associated with a criminal proceeding as a penalty, regardless of the payment's purpose or how the government utilized it.²¹³

The Eleventh Circuit is incorrect because court costs serve a fundamentally different purpose than restitution and fines. The Eleventh Circuit points to Florida Statute section 142.01(1), which establishes the “fine and forfeiture fund” for use “in performing court-related functions”; although court fees are used to fund the courts, the money is referred to as a “fee and forfeiture fund” and not a tax fund.²¹⁴ However, this argument fails because whether an exaction is a “tax” is determined using a “functional approach.”²¹⁵ It is not sufficient to simply point to the label that the legislature has given the exaction.²¹⁶

The primary purpose of court fees in Florida is to raise revenue because Florida courts are often funded exclusively by these fees.²¹⁷ Court fees are often flat fees that are imposed uniformly among felons, regardless of their offense's severity.²¹⁸ For example, there is a \$225 flat fee for every felony case.²¹⁹ Part of this fee funds the clerk's office and part of it goes to Florida's general revenue fund.²²⁰

208. *Id.*

209. *Id.* at 1233.

210. *Governor of Fla.*, 975 F.3d at 1039.

211. *Id.* at 1038.

212. *Id.*

213. *Id.*

214. *Id.* at 1039.

215. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1231 (N.D. Fla.) *vacated*, 975 F.3d 1016 (11th Cir. 2020).

216. *Id.*

217. FLA. CONST. art. V, § 14(b).

218. *Jones*, 462 F. Supp. 3d at 1233.

219. *Id.* at 1206; FLA. STAT. ANN. § 938.05(1)(a) (West 2020).

220. *Jones*, 462 F. Supp. 3d at 1206; FLA. STAT. ANN. § 938.01(1) (West 2020).

Similarly, there is a flat fee of \$93.50 to obtain a marriage license in Florida.²²¹ The money generated by marriage license fees funds both the Department of Children and Families and domestic violence centers.²²² No one would call a marriage license fee a penalty for getting married. This fee operates like a tax by generating money for government programs.²²³ Court fees in criminal cases operate the same way.

Court fees are functionally equivalent to taxes, and therefore, they trigger the Twenty-Fourth Amendment's protections. Section 98.0751 is unconstitutional because it conditions the right to vote on the payment of taxes.

2. Denial by Reason of Failure to Pay a Poll Tax or Other Tax

Within the second prong of the Twenty-Fourth Amendment's analysis are two important components. The first component is whether the right to vote has been "denied or abridged."²²⁴ The second component is determining whether this denial occurred "by reason of" failure to pay a tax.²²⁵

As for the first "denial" component, relevant case law provides that re-enfranchisement laws like Article VI, section 4 do not implicate the Twenty-Fourth Amendment because they do not deny or abridge any rights: they restore them.²²⁶ Many courts have found that felony disenfranchisement is constitutionally acceptable.²²⁷ Because felons have already been stripped of their rights, they have no right to vote in the first place and have no Twenty-Fourth Amendment claim.²²⁸

This approach should be abandoned. Firstly, a felony conviction is not an acceptable reason to disenfranchise a person, regardless of its constitutionality. Felony disenfranchisement has a racist history,²²⁹ hinders rehabilitation and reentry into society,²³⁰ and results in unrepresentative elections.²³¹ Secondly, the distinction between denying

221. FLA. STAT. ANN. § 741.01(2) (West 2020).

222. *Id.*

223. *Id.*

224. *Johnson v. Bredesen*, 624 F.3d 742, 750 (6th Cir. 2010).

225. *Jones v. Governor of Fla.*, 975 F.3d 1016, 1040 (11th Cir. 2020); U.S. CONST. amend. XXIV, § 1.

226. *Bredesen*, 624 F.3d at 750.

227. *See, e.g., Richardson v. Ramirez*, 418 U.S. 24 (1974) (holding that felony disenfranchisement does not violate equal protection).

228. *Bredesen*, 624 F.3d at 750; *Harvey v. Brewer*, 605 F.3d 1067, 1080 (9th Cir. 2010).

229. *See discussion supra* Section II.

230. *See discussion supra* Section III.C.

231. *See discussion supra* Section III.A.

the right to vote and denying the restoration of the right to vote is unnecessary. A felon who would otherwise become eligible to vote absent their outstanding criminal justice debt is not significantly discernible from a voter who would otherwise be eligible to vote absent the payment of a poll tax. Under Article VI, section 4, a felon who has served his time in prison and finished probation is an eligible voter—the only thing standing in their way is the payment of court costs.²³²

Other courts, including the Eleventh Circuit, have rejected this argument.²³³ The Eleventh Circuit correctly stated that a reenfranchisement law that reenfranchises some felons but not others for failure to pay a tax would violate the Twenty-Fourth Amendment, just as reenfranchising only white felons but not Black felons would violate the Fifteenth Amendment.²³⁴

The “by reason of” component seems like it should be straightforward, but the Eleventh Circuit’s interpretation in *Jones v. Governor of Florida* shows that the meaning can be convoluted.²³⁵ The plaintiffs in *Jones* contended that the Twenty-Fourth Amendment “by reason of” component requires a but-for causation relationship between the nonpayment of a poll tax and the denial of voting rights, just as the “on account of” phrase contained in the Fifteenth, Nineteenth, and Twenty-Sixth Amendments.²³⁶ On the other hand, the Eleventh Circuit points to the difference in wording between the Twenty-Fourth Amendment and the other voting amendments, suggesting a difference in meaning.²³⁷ The Twenty-Fourth Amendment states that the right to vote cannot be denied “by reason of” failure to pay a poll tax, while the Fifteenth, Nineteenth, and Twenty-Sixth Amendments use the phrase “on account of” race, sex, and age.²³⁸

The Eleventh Circuit ruled that “on account of” refers to a but-for causal relationship, while “by reason of” does not.²³⁹ Under *Jones*, “the Twenty-Fourth Amendment prohibits denials of the right to vote for which the failure to pay a tax is not only the but-for cause, but also the *reason* for the State’s action.”²⁴⁰ The Eleventh Circuit states that the

232. FLA. CONST. amend. IV, § 1; FLA. STAT. ANN. § 98.0751 (West 2020).

233. *Jones v. Governor of Fla.*, 975 F.3d 1016, 1040 (11th Cir. 2020).

234. *Id.*

235. *Id.* at 1041.

236. *Id.*

237. *Id.* at 1042

238. *Id.*; U.S. CONST. amend. XV, § 1; U.S. CONST. amend. XIX, § 1; U.S. CONST. amend. XXVI, § 1.

239. *Governor of Fla.*, 975 F.3d at 1042.

240. *Id.* at 1045.

reason for disenfranchisement under section 98.0751 is not the failure to pay a tax, but the State’s constitutionally acceptable interest in “restoring to the electorate only fully rehabilitated felons who have satisfied the demands of justice.”²⁴¹

The Eleventh Circuit incorrectly relied upon *Harman v. Forssenius*, the only Supreme Court case to date that has applied the Twenty-Fourth Amendment.²⁴² *Harman* considered a Virginia statute that required voters to either pay a poll tax or file a witnessed or notarized certificate of residence.²⁴³ Focusing on the purpose of the Twenty-Fourth Amendment, the Supreme Court declared the Virginia code unconstitutional because it “unquestionably erects a real obstacle to voting in federal elections for those who assert their constitutional exemption from the poll tax.”²⁴⁴ When Virginia argued that the residence requirement was no more onerous than the poll tax, the Supreme Court asserted that neither an equivalent nor milder substitute for a poll tax may be imposed.²⁴⁵ Additionally, when Virginia argued that the poll tax was a necessary alternative method of proving residence, the *Harman* court concluded that constitutional deprivations “may not be justified by some remote administrative benefit to the State.”²⁴⁶

The Eleventh Circuit insists that the reason the Virginia code was unconstitutional in *Harman* was that Virginia’s interest in proving residence was not an acceptable reason to disenfranchise those who did not pay the poll tax.²⁴⁷ But the Supreme Court explicitly stated that whether the poll tax was a reliable way to serve the state’s interest in proving residence “need not be decided.”²⁴⁸ *Harman* makes it very clear that the State may not present a voter with the option of either performing a task or paying a poll tax, regardless of the state’s reasoning.²⁴⁹

Section 98.0751 functions very similarly to the Virginia code in *Harman*. The statute offers felons the choice to either pay off their court fees, which are functionally equivalent to taxes, or request to have those fees waived or converted to community service by a judge before they can vote.²⁵⁰ The Eleventh Circuit claims that the tax is constitutionally

241. *Id.*

242. *Jones v. Governor of Fla.*, 975 F.3d 1016, 1044 (11th Cir. 2020).

243. *Id.* at 529.

244. *Id.* at 540.

245. *Id.* at 542.

246. *Id.*

247. *Jones v. Governor of Fla.*, 975 F.3d 1016, 1045 (11th Cir. 2020).

248. *Harman*, 380 U.S. at 544.

249. *Id.*

250. FLA. STAT. ANN. § 98.971 (West 2020).

supported by Florida's interest in "restoring to the electorate fully rehabilitated citizens who have satisfied the demands of justice." But this interest is irrelevant under *Harman*,²⁵¹ which found that the Twenty-Fourth Amendment abolished the poll tax "regardless of the service it performs."²⁵²

The Eleventh Circuit should have accepted the but-for causation argument presented by the plaintiffs and affirmed the decision of the District Court. The plaintiffs correctly emphasized the importance of the existence of an exchange of a payment for a vote.²⁵³ Court costs are taxes under the Twenty-Fourth Amendment,²⁵⁴ and denying felons their right to vote but-for the payment of those taxes violates the Twenty-Fourth Amendment.²⁵⁵

V. CONCLUSION

The Eleventh Circuit upholding section 98.0751, and the Supreme Court declining to review it leading into the 2020 election, was very disheartening. The statute silences the voices of multiple marginalized groups, particularly lower-income Black Floridians; courts have enforced it inconsistently across Florida; has created an administrative disaster; and resulted in a low voter turnout among people with felony convictions. The statute requires felons to pay a poll tax before they can exercise their right to vote—a direct violation of the Twenty-Fourth Amendment.

While the effects of section 98.0751 were disappointing, Desmond Meade and the Florida Rights Restoration Coalition have not let it discourage them. They have worked tirelessly raising money to help indigent felons pay off their court fees and get them their right to vote.²⁵⁶ Several celebrities have joined the cause, including John Legend and LeBron James.²⁵⁷ The positive impact of Article VI, section 4 must not be ignored.

251. *Harman*, 380 U.S. at 544.

252. *Id.*

253. *Id.*

254. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1234 (N.D. Fla.) *vacated*, 975 F.3d 1016 (11th Cir. 2020); *see discussion supra* Section IV.B.1.

255. *Harman v. Forssenius*, 380 U.S. 528 (1965).

256. Amy Goodman, *Voting Activist Desmond Meade on Re-enfranchising People & Why "Ex-Felon" Is a Dehumanizing Label*, DEMOCRACY NOW (Nov. 13, 2020), https://www.democracynow.org/2020/11/13/desmond_meade_florida_voting_rights [<https://perma.cc/L8JD-3ZZY>].

257. Morgan Simon, *Is Voting Free? Not for All Americans: Why Desmond Meade, LeBron James, John Legend, and Camila Cabello Have Raised over \$20M for Floridians to Gain the Chance to Vote*, FORBES (Sept. 24, 2020, 4:49 pm), <https://www.forbes.com/sites/morgansimon/>

Meade himself was able to vote for the first time in 30 years because of the amendment. When he left the polls, he explained how meaningful his voting experience was:

When I went in there to vote, I didn't just take my family in there with me, I brought all of my ancestors that were hung on trees, that were burned, that was bitten by dogs, that was sprayed by fire hoses. I thought their spirit with me in there. But I also brought over 774,000 returning citizens who can't vote, who aren't getting to experience what I'm experiencing right now.²⁵⁸

Meade views voting as “sacred,” and claims to have a “newfound respect for the right to vote.”²⁵⁹ The fight against felony disenfranchisement is not over, but the accomplishments of the Florida Rights Restoration Coalition and Article VI, section 4 serve as a beacon of hope.

2020/09/24/is-voting-free-not-for-all-americans-why-desmond-meade-john-legend-lebron-james-and-camila-cabello-have-raised-over-20m-for-floridians-to-gain-the-chance-to-vote/?sh=1fa90fb1fead [https://perma.cc/5697-K3WN].

258. Lesley Stahl, *The Legal and Political Fight over Amendment 4, Granting as Many as 1.4 Million Florida Felons the Right to Vote*, 60 MINUTES (Sept. 27, 2020), <https://www.cbsnews.com/news/amendment-4-florida-felony-voting-rights-60-minutes-2020-09-27/> [https://perma.cc/CBR4-CXNK].

259. 60 Minutes, *Desmond Meade: Voting is “Sacred,”* YOUTUBE (Sept. 27, 2020), <https://www.youtube.com/watch?v=pRxPexng4Eo> [https://perma.cc/87WC-RZ3N].