

# Felony Financial Disenfranchisement

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*Individuals with prior felony convictions often must complete all terms of their sentence before they regain voter eligibility. Many jurisdictions include legal-financial obligations (“LFOs”)—fines, fees, and/or restitution stemming from convictions—in the terms of the sentence. Twenty-eight states, governing over 182 million Americans, either directly or indirectly tie LFO repayment to voting privileges, a practice we call felony financial disenfranchisement.*

*Proponents of felony financial disenfranchisement posit that returning citizens must satisfy the financial obligations stemming from convictions to restore themselves as community equals. Moralism aside, others claim low rates*

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of electoral participation among those with felony convictions imply such disenfranchisement is inconsequential.

*In this Article, we challenge both of these claims. To do so, we draw upon new empirical and contextual evidence from Florida, which disenfranchises more returning citizens than any other state. We rely on data and natural experiments from a nonpartisan, nonprofit advocacy group that we launched called Free Our Vote.*

*This Article illustrates how felony financial disenfranchisement creates uncertainty around voter eligibility, which likely deters many otherwise-qualified voters with felony records from participating. We also measure, for the first time, how felony financial disenfranchisement affects voter participation, using a debt relief program implemented by Free Our Vote. Specifically, we compare electoral participation of registered voters whose LFOs were eliminated by Free Our Vote against virtually identical debtors who did not benefit from our program. We find debt relief increased voter turnout by approximately twenty-six percent among this group during the 2020 election.*

*The contextual and empirical evidence we present unequivocally demonstrates that narratives in favor of felony financial disenfranchisement are misguided. Failure to pay criminal court debt typically arises from bureaucratic complications and opacity as well as indigency. Thus, ethics-oriented arguments grossly misconstrue the challenges returning citizens face. Likewise, the purported benefits of induced criminal court revenue from LFOs are overstated. Given the countervailing costs tied to criminal debt, and its disparate impact on indigent and Black defendants, we conclude that felony financial disenfranchisement is, on balance, a socially harmful policy that should be eliminated.*

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INTRODUCTION

In 2018, a supermajority of Florida voters passed a ballot initiative that had the potential to incorporate more Americans into the electorate than any single measure in nearly a half century.<sup>1</sup> The initiative, known as Amendment 4, reversed the state’s historic practice of permanently barring individuals with felony records from voting in Florida. Upon “completion of all terms of sentence including parole or

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1. See Tim Mark, *Over 1 Million Florida Felons Win Right to Vote with Amendment 4*, NPR (Nov. 7, 2018), <https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4> [<https://perma.cc/8RKR-BDKF>].

probation,” any returning citizen, excluding those convicted of murder or a sexual offense, could now participate in elections.<sup>2</sup> Broadly interpreted, this initiative conceivably re-enfranchised nearly 1.7 million individuals.<sup>3</sup>

The campaign that sponsored and guided Amendment 4 through the approval process emphasized the redemptive nature of the initiative. Its slogan, “when a debt is paid, it’s paid,” appealed to a diverse segment of the population, especially Black and economically distressed communities.<sup>4</sup> It also garnered the support of public interest groups across the political spectrum, ranging from the ACLU<sup>5</sup> to Koch Industry partners.<sup>6</sup> The narrative that completing terms of one’s sentences fulfilled their debt<sup>7</sup> unified political interests such that almost no organized opposition to Amendment 4 existed prior to its passage.<sup>8</sup>

While convenient and politically expedient relative to other narratives,<sup>9</sup> the prevailing dialogue surrounding Amendment 4 ignored nuances of its implementation. Ambiguity surrounding the “terms of sentence” language emerged even before its passage. Chiefly, uncertainty pertained to the status of restitution, fines, fees, and other

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2. FLA. CONST. art. VI, § 4; *Constitutional Amendment Petition Form*, FLORIDIANS FOR A FAIR DEMOCRACY, INC. (Oct. 31, 2014), <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/64388-1.pdf> [<https://perma.cc/RE7B-ZGAR>].

3. See JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 275 tbl.A8.1 (2006) (reporting 827,207 disenfranchised citizens in Florida as of the 2000 presidential election); CHRISTOPHER UGGEN, RYAN LARSON & SARAH SHANNON, THE SENT’G PROJECT, 6 MILLION LOST VOTERS: STATE-LEVEL ESTIMATES OF FELONY DISENFRANCHISEMENT, 2016, at 15 tbl.3 (2016), <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/> [<https://perma.cc/QX56-4K5L>] (estimating 1,686,318 disenfranchised returning citizens in 2016).

4. See Michael Morse, *The Future of Felon Disenfranchisement Reform: Evidence from the Campaign to Restore Voting Rights in Florida*, 109 CALIF. L. REV. 1143, 1166, 1170 fig.6, 1171 fig.7 (2021) (documenting support among Black and poor White communities).

5. See *id.* at 1154 fig.2 (illustrating contributions to Amendment 4 campaign).

6. See Press Release, Second Chances Fla., Freedom Partners Chamber of Commerce Endorses Amendment 4 (Sept. 13, 2018), <https://www.secondchancesfl.org/press-releases/freedom-partners-chamber-of-commerce-endorses-amendment-4/> [<https://perma.cc/7QA4-XVYY>].

7. See 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/Q7BZ-8Q5Q>].

8. See Morse, *supra* note 4, at 1147.

9. See Supplemental Appendix to Reply Brief of Secretary of State, Laurel M. Lee, attach. B at 47, Advisory Op. to Governor Re: Implementation of Amend. 4, Voting Restoration Amend., 288 So. 3d 1070 (Fla. 2020) (No. SC19-1341) (“Focusing on the racial element of disenfranchisement is not an effective way to grow support, particularly among Republican and Independent voters . . .”).

court costs tied to the sentence; collectively, these levies are referred to as criminal assessments or legal-financial obligations (“LFOs”).<sup>10</sup>

The Amendment 4 campaign appears to have accepted the premise that returning citizens would need to clear any restitution balances to become eligible.<sup>11</sup> Their initial stance on other forms of LFOs is less clear. Internal documents illustrate the campaign acknowledged the extent of criminal assessments (forty percent of all returning citizens).<sup>12</sup> That said, it did not seem to believe these debts would dramatically reduce the scope of Amendment 4.<sup>13</sup> While the text itself does not refer to assessments, the campaign formally accepted their inclusion.<sup>14</sup>

Supporters hoped “because neither [they] nor the state has any hard data on the fines/fees population” that over a million people would benefit from Amendment 4.<sup>15</sup> If so, this quixotic notion might not have been shared by all of those swayed by the redemptive aspect of the initiative; for some, all assessments needed to be paid to earn full reconciliation.<sup>16</sup> Others, tantalized by the prospect of additional revenue for the state through fee repayments, latched on to the LFO requirement.<sup>17</sup> The potential for induced funding for courts appealed to even left-leaning partisans.<sup>18</sup> Still, others were plausibly motivated by

10. See Fin. Impact Estimating Conf., *Complete Initiative Financial Information Statement Voting Restoration Amendment (14-01)*, FLA. OFF. OF ECON. & DEMOGRAPHIC RSCH. 2, [http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VRA\\_Report.pdf](http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VRA_Report.pdf) (last updated Oct. 28, 2016) [<https://perma.cc/JT2J-SPGA>] (“It is unclear whether the phrase ‘terms of sentence’ includes payment of court-ordered restitution, fines, and court costs.”).

11. Second Chances Fla., *National Military Veterans Organization VoteVets Announces Support for Amendment 4*, CAP. SOUP (Sept. 27, 2018), <https://capitalsoup.com/2018/09/27/national-military-veterans-organization-votevets-announces-support-for-amendment-4/> [<https://perma.cc/HR3C-GPLP>].

12. 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).

13. See *id.*

14. See 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/D25J-83QT>].

15. Memorandum from Howard Simon and Marc Mauer to Exec. Bd., *supra* note 12.

16. See *Jones v. Governor of Fla.*, 975 F.3d 1016, 1036 (11th Cir. 2020) (en banc) (noting that the state argued that an LFO satisfaction requirement ensures that eligibility applies to “only those felons who have paid their debt to society and been fully rehabilitated”).

17. See Daniel Rivero, *Co-Author and Attorney for Florida’s Amendment 4 Helped Create Statewide Fines and Fees Policy*, WLRN MIA. (Mar. 27, 2019, 5:40 PM), <https://www.wlrn.org/news/2019-03-27/co-author-and-attorney-for-floridas-amendment-4-helped-create-statewide-fines-and-fees-policy> [<https://perma.cc/3F8P-5FJN>].

18. See *id.* (quoting Justice Barbara Pariente, long known as one of the most liberal justices on the bench, explicitly connecting the need to pay fines to the right to vote in the 2018 hearing: “This would actually help the state because if fines, costs and restitution are a requirement, for those that want to vote, there’s a big motivation to pay unpaid costs, fines and restitution.”).

the perhaps unjustified fear that unconditional re-enfranchisement would swing elections in favor of Democrats.<sup>19</sup> For them, a mandate that returning citizens satisfy LFOs meant preventing a potential “blue” wave.<sup>20</sup>

These factors spurred political forces to incorporate as many financial preconditions as possible. They did so via a 2019 bill known as Senate Bill 7066 (“S.B. 7066”). That bill implemented Amendment 4 with a broad interpretation of sentence terms: all fines, fees, and/or restitution must be settled to qualify for the electorate.<sup>21</sup> The terms included other criteria as well. For example, S.B. 7066 requires returning citizens to settle all assessments that had been converted to civil judgments; conversions arise when the individual cannot afford to pay the criminal debt.<sup>22</sup>

S.B. 7066 implements something we call “felony financial disenfranchisement” (“FFD”). It effectively reduced the number of individuals re-enfranchised under Amendment 4 by approximately one million voters.<sup>23</sup> While S.B. 7066 is an extreme example, FFD is not unique to Florida; Alabama, Arizona, Arkansas, Connecticut, Georgia, Kansas, South Dakota, Tennessee, and Texas also deny re-enfranchisement indefinitely based on nonpayment of certain criminal assessments.<sup>24</sup> Another fifteen states practice an indirect form of FFD,

19. 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/5LJ7-RX8D].

20. 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/85FX-CZ34].

21. S.B. 7066, 2019 Leg., Reg. Sess. (Fla. 2019).

22. *Id.*

23. See Wayne Washington, *Study: Law Undercuts Restoring Felon Voting Rights*, LEDGER (Aug. 18, 2019, 8:35 PM), <https://www.theledger.com/story/news/crime/2019/08/19/study-law-undercuts-restoring-felon-voting-rights/4436834007/> [https://perma.cc/F34V-YZZT] (referencing work of Professor Daniel Smith, who conducted preliminary research for groups advocating against Senate Bill 7066, finding that the bill would reduce the number of voters re-enfranchised under Amendment 4 by an estimated 82%); see also *Jones v. Governor of Fla.*, 975 F.3d 1016, 1066–67 (11th Cir. 2020) (en banc) (Jordan, J., dissenting) (“[O]f 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 [legal-financial obligation].”).

24. See Margaret Love & David Schlüssel, *Who Must Pay to Regain the Vote? A 50-State Survey*, COLLATERAL CONSEQUENCES RES. CTR. 5 (Nov. 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3873420](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3873420) [https://perma.cc/BV8Z-GUXD]. Alabama, Arkansas, and Florida have the strictest provisions, as they block re-enfranchisement if there are any unpaid LFOs relating to a felony conviction. *Id.* For disqualifying convictions, Arizona and Tennessee block re-enfranchisement for unpaid restitution; Georgia and Texas block for unpaid fines; and Kansas blocks for unpaid fines and certain restitution. *Id.* Connecticut prevents re-enfranchisement for LFOs associated with out-of-state and federal convictions, whereas South Dakota blocks for convictions after June 30, 2012. *Id.* Together these states govern 91 million

whereby parole or probation can be extended for those who do not repay criminal assessments; in turn, voting rights are delayed for those still under supervision.<sup>25</sup> In sum, nearly 160 million Americans live in states where FFD is regularly practiced.<sup>26</sup>

Proponents of FFD assert two primary claims in support of the policy. First, they suggest that returning citizens must satisfy the financial obligations stemming from their convictions to restore themselves as community equals.<sup>27</sup> Those who hold this view maintain S.B. 7066 executes the will of the voters; they believe Amendment 4 supporters formally agreed that sentence terms include criminal court debt.<sup>28</sup> Because the redemptive narrative aligned with voters' views, adoption of S.B. 7066 facilitates reconciliation. Through this lens, Amendment 4 is consistent with another 2018 initiative, Amendment 6, which guarantees crime victims receive timely restitution.<sup>29</sup> Ergo,

Americans. *State Population Totals and Components of Change: 2020-2021*, U.S. CENSUS BUREAU (Dec. 21, 2021), <https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html> [<https://perma.cc/8UEU-28DQ>].

25. These states are: Alaska, Delaware, Idaho, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, New York, North Carolina, South Carolina, West Virginia, Wisconsin, and Wyoming. Love & Schluskel, *supra* note 24, at 5. The State of Washington was on this list until January 1, 2022, when it began to automatically restore voting rights for those individuals “not currently serving a [Department of Corrections] sentence of total confinement in prison.” *Felony Convictions and Voting Rights*, WASH. SECY OF STATE, <https://www.sos.wa.gov/elections/voters/felons-and-voting-rights.aspx> (last visited Sept. 7, 2022) [<https://perma.cc/9XMK-MJJT>].

26. U.S. CENSUS BUREAU, *supra* note 21. And more states might soon be subject to FFD. See Joshua M. Feinzig, *Felon Re-enfranchisement and the Problem of “Lost” Rights*, YALE L.J.F. (Jan. 14, 2022), <https://www.yalelawjournal.org/forum/felon-re-enfranchisement-and-the-problem-of-lost-rights> [<https://perma.cc/B66U-MVN5>] (“Perhaps in response to electoral shifts and the green light from lower federal courts upholding similar policies, state lawmakers across the country continue to embed fine-, court-fee-, and restitution-repayment requirements in restoration proposals.”).

27. See, e.g., Steve Bousquet, *Where They Stand: Candidates for Governor on Vote for Felons*, TAMPA BAY TIMES, <https://www.tampabay.com/florida-politics/buzz/2018/01/30/where-they-stand-candidates-for-governor-on-vote-for-felons/> (last updated Jan. 30, 2018) [<https://perma.cc/LKT5-64ME>] (quoting Speaker Richard Corcoran: “I think they also have to have some sort of re-entry into society and show us that they can be good contributing members of society”); *Florida Governor Ron DeSantis Will Sign Controversial Felons’ Voting Measure*, CBS MIA. (May 7, 2019, 6:11 PM), <https://www.cbsnews.com/miami/news/florida-governor-ron-desantis-felons-voting-measure/> [<https://perma.cc/T5JU-PKJM>] (“The idea that paying restitution to someone is the equivalent to a tax is totally wrong,” [Governor Ron] DeSantis said. “The only reason you’re paying restitution is because you were convicted of a felony.”).

28. See, e.g., Kendall Karson, *Florida GOP Takes Aim at Felon Voting Rights in Key 2020 Battleground*, ABC NEWS (Mar. 30, 2019, 9:36 AM), <https://abcnews.go.com/Politics/florida-gop-takes-aim-felon-voting-rights-key/story?id=61985622> [<https://perma.cc/U6F2-SERN>] (quoting Representative James Grant: “All we’re doing is following statute. All we’re doing is following the testimony of what was presented before the Florida Supreme Court explicitly acknowledging that fines and court costs are part of a sentence”).

29. FLA. CONST. art. I, § 16. As the sponsor of S.B. 7066 noted in defense of the bill, “[v]oters made it crystal clear victims have the right to receive restitution.” Gray Rohrer & Skyler Swisher, *Florida Lawmakers Pass Amendment 4 Restrictions on Ex-felon Voting Rights as Democrats Fume*

restitution and other assessments must be paid in full to make victims “whole.” The franchise, much like other privileges including driver’s licenses, are thus benefits to be enjoyed by those with personal integrity.<sup>30</sup>

Second, supporters of FFD claim that low rates of electoral participation among those with felony convictions imply the effect of FFD is inconsequential. Comments from a former Florida county commissioner, who was herself disenfranchised after she was convicted of a felony and paid \$100,000 in fines out of her own assets, illustrate the argument: “White-collar felons, they are going to vote. But people who have lived the drug and gangster lifestyle, they are not rushing out to be able to be part of any system.”<sup>31</sup>

In this Article, we challenge these assertions. Using new empirical and contextual evidence, we find that eliminating FFD by paying off criminal court debt significantly increases voter participation. We document this result via natural experiments and quasi-experimental evidence, using data collected from a nonpartisan, nonprofit advocacy group that we launched called Free Our Vote.

Free Our Vote informs returning citizens about voter eligibility and intervenes on behalf of those with outstanding balances by settling their debts.<sup>32</sup> In 2020, Free Our Vote began a project in Florida. Marshaling a team of economists, law students, and data scientists, Free Our Vote collected comprehensive criminal court, assessment, incarceration, and voter registration data for nearly half a million returning citizens in Florida.<sup>33</sup> Together with its partners, Free Our

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on *Wild Day*, ORLANDO SENTINEL (May 3, 2019, 8:40 PM), <https://www.orlandosentinel.com/politics/os-ne-florida-legislature-session-friday-20190503-story.html> [<https://perma.cc/9KAJ-TQ7W>].

30. See, e.g., Roger Clegg, George T. Conway III & Kenneth K. Lee, *The Case Against Felon Voting*, 2 U. ST. THOMAS J.L. & PUB. POL’Y 1, 18 (2008) (“[S]ociety considers convicts, even those who have completed their prison terms, to be less trustworthy and responsible than non-convicted citizens. In other areas of the law, full rights and privileges are not always restored to convicts, even though they may have ‘paid [their] debt to society.’”).

31. John Pacenti, *Felon Voting: Forcing Fees to be Paid Not an Issue for Some Wealthy Felons*, PALM BEACH POST, <https://www.palmbeachpost.com/story/news/2020/09/29/felon-voting-paying-fees-not-issue-some-wealthy-felons/3560154001/> (last updated Oct. 1, 2020, 8:09 AM) [<https://perma.cc/S9YW-463G>]. Opponents of S.B. 7066 were not so sanguine about its impact. See Press Release, ACLU Fla., Statement on House Bill Restricting Amendment 4 (Mar. 19, 2019) <https://www.aclufi.org/en/press-releases/aclu-florida-statement-house-bill-restricting-amendment-4> [<https://perma.cc/DMZ9-48MF>] (quoting Kirk Bailey, the political director of the ACLU of Florida: “If this bill passes, it will undoubtedly continue to disenfranchise those who have already served their time and paid their debt to society. . . . This will inevitably prevent individuals from voting based on the size of one’s bank account.”).

32. See *Restore Voting Rights for 1.7M Floridians*, FREE OUR VOTE, <https://freeourvote.com/pages/aboutus.html> (last visited Oct. 2, 2022) [<https://perma.cc/XR8J-69LP>].

33. See *id.*



Vote then cleared criminal court debts for over one thousand registered voters prior to the 2020 election and notified tens of thousands more that they were free to vote.

This Article analyzes Free Our Vote's interventions using a range of causal empirical methodologies, including traditional multivariate regression analysis and more sophisticated quasi-random treatment designs. It shows that by informing eligible registered voters who owed no fines and fees that they were free to vote, Free Our Vote and its partners increased their turnout by approximately sixteen percent.<sup>34</sup> We argue that these results capture the extent to which Florida's LFO-based voting restrictions chilled legally registered voters, discouraging them from casting ballots.

We then show similar, if not stronger, results for those individuals for whom Free Our Vote repaid criminal court debt. Among this population, the intervention increased voter turnout by approximately twenty-six percent.<sup>35</sup> These results demonstrate, for the first time, that eliminating FFD not only affects voter behavior in theory, but in fact can lead to a large and statistically significant increase in voter turnout.

Next, we explain why the purported social benefits of FFD are illusory in practice. We illustrate how LFO repayment is a flawed moral predicate for restoring voting privileges, given the labyrinth that most former defendants must traverse to discover and repay the relevant assessment. We also show how, contrary to their stated goals, LFOs generate minimal revenue in practice, as the vast majority of assessments are uncollected.

This Article then documents the substantial social costs that FFD entails. We show how such a system disproportionately blocks voting access for poor and Black voters, as those groups are overrepresented among registered voters owing court debt. We also highlight existing research on other long-term harms caused by felony disenfranchisement, including social alienation and increased recidivism.

Our results have substantial implications for current state and federal policy discussions on voting rights and the criminal legal system. Taken together, our analyses suggest that the costs of FFD easily outweigh its purported benefits. We conclude that eliminating FFD would correct this imbalance and appropriately restore the voting rights of millions of Americans.

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34. *Infra* Section III.C.3.

35. *Infra* Section III.D.4.

## I. A BRIEF HISTORY OF VOTER DISENFRANCHISEMENT

This Part chronicles voter disenfranchisement in the United States and the rise of felony financial disenfranchisement over the past fifty years. We focus on this practice in Florida, where data and advocacy interventions enable us to empirically assess the effect of FFD and its supporting narratives. In particular, we highlight Amendment 4 and its subsequent legal limitations.

*A. Early Republic and Post-Reconstruction*

Voter disenfranchisement has long been part of the American criminal legal and electoral systems. Its provenance, however, begins in classical societies. In ancient Greece, criminal offenders could be proclaimed as “infamous,” which would strip them of their ability to appear in court, attend assemblies, serve in the army, or vote.<sup>36</sup> Similarly, the label of “infamia” in ancient Rome condemned convicts to “civil death” for their crimes.<sup>37</sup> This practice, later adopted in medieval Europe and England through the practice of “outlawry,”<sup>38</sup> involved “put[ting] an end to the person by destroying the basis of legal capacity, as did natural death by destroying physical existence.”<sup>39</sup> Civil death was sometimes accomplished by stripping convicted criminals of their property rights;<sup>40</sup> in some situations, it involved subjecting them to physical injury or death.<sup>41</sup> For offenders who had voting privileges, civil death entailed disenfranchisement.<sup>42</sup>

While the American colonies dropped many of the practices associated with civil death, they continued to deny many criminal

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36. Note, *The Disenfranchisement of Ex-felons: Citizenship, Criminality, and “The Purity of the Ballot Box,”* 102 HARV. L. REV. 1300, 1301 (1989) (quoting Special Project, *The Collateral Consequences of a Criminal Conviction*, 23 VAND. L. REV. 929, 941 (1970)).

37. See, e.g., Note, *Restoring the Ex-Offender’s Right to Vote: Background and Developments*, 11 AM. CRIM. L. REV. 721, 722–23 (1973) (citing A. GREENRIDGE, *INFAMIA: ITS PLACE IN ROMAN PUBLIC AND PRIVATE LAW* 9 (1894)).

38. See *id.*

39. Robin L. Nunn, *Lock Them Up and Throw Away the Vote*, 5 CHI. J. INT’L L. 763, 765 (2005) (quoting CARLO CALISSE, *A HISTORY OF ITALIAN LAW* 511 (1928)); see also Alec C. Ewald, “*Civil Death*”: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1049 n.13.

40. See R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803, 917 (2004) (citing THE SENT’G PROJECT & HUMAN RIGHTS WATCH, *LOSING THE VOTE: THE IMPACT OF FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES* 2 (1998)).

41. See *id.*

42. See *id.*

offenders voting privileges.<sup>43</sup> By 1821, at least eleven states barred individuals convicted of certain criminal offenses from voting.<sup>44</sup> Similar to its use in England, voter disenfranchisement largely focused on targeting people of “immoral” character; to be a constituent of the electorate, “a voter ought to be a moral person.”<sup>45</sup> Early state constitutions commonly required voters to evince good character; generally, “infamous” offenses and those resulting in prison sentences led to disenfranchisement.<sup>46</sup> Common examples of this included “perjury, forgery, bribery, and larceny . . . as [well as] dueling.”<sup>47</sup>

During this time, broad groups of Americans typically had no voting privileges. Most notably, state laws prohibited ballot access to Black men,<sup>48</sup> women, and in many instances, people who had not lived in a state for a sufficiently long period of time.<sup>49</sup> Property restrictions were also commonplace in the early Republic, though they were gradually eliminated during the first half of the nineteenth century.<sup>50</sup> Given these extant limitations, criminal voter disenfranchisement did not specifically block most people in these groups from the ballot box; likely, other blunter tools already succeeded in accomplishing this.

Voter disenfranchisement evolved, however, as ballot access expanded. Following the Civil War, Reconstruction brought about a new era of privileges and their usurpation. After ratification of the Fourteenth Amendment in 1868<sup>51</sup> and the Fifteenth Amendment in

43. *See id.*; *see also* Ewald, *supra* note 39, at 1061 (“English colonists in North America transplanted much of the mother country’s common law regarding the civil disabilities of convicts, and supplemented it with statutes regarding suffrage.”).

44. *See* Ewald, *supra* note 39, at 1063 & n.65 (citing *Green v. Bd. of Elections*, 380 F.2d 445, 450 (2d Cir. 1967)) (listing states as Alabama, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, New York, Ohio, and Virginia).

45. ALEXANDER KEYSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 163 (2000), *quoted in* Ewald, *supra* note 39, at 1064 n.71.

46. *See* KIRK HAROLD PORTER, *A HISTORY OF SUFFRAGE IN THE UNITED STATES* 147–48 (photo. reprt. 1971) (1918), *cited in* Ewald, *supra* note 39, at 1064.

47. *See* Ewald, *supra* note 39, at 1064.

48. As of 1860, Black men had voting rights in just six states. *See id.* at 1064 & n.73 (six states were Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont). Four of these states (Maine, Massachusetts, New Hampshire, and Vermont) did not disenfranchise criminals. *See id.*

49. *See id.* at 1064 (“[O]f those commonly disqualified on the eve of the Civil War—women, men without extended residency, blacks, soldiers, students, the institutionalized mentally ill, and criminals—only the last two groups are still broadly disenfranchised today.”).

50. *See* MANZA & UGGEN, *supra* note 3, at 52 (“10 of the original 13 states had property requirements. . . . By the middle of the nineteenth century . . . [m]any states abolished requirements of taxpaying and property ownership through constitutional revisions, while newer states never imposed the restrictions.”).

51. U.S. CONST. amend. XIV.

1870,<sup>52</sup> the franchise extended (at least de jure if not de facto) to Black male voters.<sup>53</sup> In response, many states immediately sought to limit Black voting power. Between 1865 and 1900, nearly half of all states amended the scope of disenfranchisement laws,<sup>54</sup> typically covering a wide range of felonies that were not disenfranchising under the common law.<sup>55</sup> Many of these changes happened in the fifteen years after the Civil War ended; thirteen states (including nine former Confederate ones) expanded felony disenfranchisement during that time.<sup>56</sup>

Southern states often explicitly invoked claims of White supremacy to justify these changes in law. For example, Mississippi held a constitutional convention in 1890,<sup>57</sup> despite being a Black majority state,<sup>58</sup> only one Black representative attended out of 134 members.<sup>59</sup> The new constitution instituted several policies overtly designed to limit Black participation at the polls, including charging a two dollar poll tax (which would be over sixty-five dollars in today's dollars)<sup>60</sup> and designating a host of new criminal offenses that would

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52. U.S. CONST. amend. XV, § 1 (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”).

53. Women generally continued to be largely disenfranchised until the twentieth century, and especially until after passage of the Nineteenth Amendment in 1920. U.S. CONST. amend. XIX.

54. See MANZA & UGGEN, *supra* note 3, at 55 (“Between 1865 and 1900, 19 states adopted or amended laws restricting the voting rights of criminal offenders.”).

55. *Id.*

56. See Erin Kelley, *Racism & Felony Disenfranchisement*, BRENNAN CTR. FOR JUST. 2 & 5 n.23 (May 9, 2017), [https://www.brennancenter.org/sites/default/files/publications/Disenfranchisement\\_History.pdf](https://www.brennancenter.org/sites/default/files/publications/Disenfranchisement_History.pdf) [<https://perma.cc/8GU7-HTX2>] (listing disenfranchising states as Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Mississippi, Missouri, Nebraska, North Carolina, South Carolina, Tennessee, and Texas). This constituted one-third of all states at the time. *Id.*

57. See *id.* at 3.

58. Mississippi was fifty-five percent Black after the Civil War. See Jason Phillips, *Reconstruction in Mississippi, 1865-1876*, MISS. HIST. NOW (May 2006), <https://www.mshistorynow.mdah.ms.gov/issue/reconstruction-in-mississippi-1865-1876> [<https://perma.cc/FC8Z-S3M2>]. The U.S. government recorded 1,009,487 Black people in the 1910 Census, out of a total population of 1,797,114 (56.2%). See *Negro Population 1790-1915*, U.S. BUREAU OF THE CENSUS 36, 43 (1918), <https://www2.census.gov/library/publications/decennial/1910/black-population-1790-1915/00480330ch02.pdf> [<https://perma.cc/TP2F-NZWA>]; *Resident Population and Apportionment of the U.S. House of Representatives: Mississippi*, U.S. CENSUS BUREAU (2000), <https://www2.census.gov/library/visualizations/2000/dec/2000-resident-population/mississippi.pdf> [<https://perma.cc/ML8S-MF4S>].

59. See John Ray Skytes, *About the Mississippi Constitutional Convention of 1890*, MISS. HIST. NOW (Sept. 2000), <https://www.mshistorynow.mdah.ms.gov/issue/mississippi-constitution-of-1890> [<https://perma.cc/Y565-MQVG>].

60. Taking the average annual rate of inflation of 2.67% between 1890 and 2022, we can see  $\$2(1.0267)^{132} = \$65.12$ . See 1890, CPI INFLATION CALCULATION, <https://www.in2013dollars.com/us/inflation/1890> (last visited Sept. 19, 2022) [<https://perma.cc/5MSU-APTU>].

trigger disenfranchisement.<sup>61</sup> These new felony disenfranchisement provisions were specifically designed to incorporate offenses for which Black people were thought to be more likely to be convicted, while excluding other more serious offenses (e.g., rape and murder) that White people engaged in with equal or greater propensity.

In upholding these provisions against a federal constitutional challenge six years later, the Mississippi Supreme Court plainly acknowledged, “[T]he [constitutional] convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race.”<sup>62</sup> It further described the racist logic underlying the changes:

By reason of its previous condition of servitude and dependence, th[e Black] race had acquired or accentuated certain peculiarities of habit, of temperament, and of character, which clearly distinguished it as a race from that of the whites—a patient, docile people, but careless, landless, and migratory within narrow limits, without forethought, and its criminal members given rather to furtive offenses than to the robust crimes of the whites.<sup>63</sup>

Following Mississippi’s lead, every other state in the Deep South also held “disenfranchising conventions” in the following twenty years.<sup>64</sup> Hence, during Reconstruction and afterward, felony disenfranchisement was actively wielded to limit the political power of Black people.

### *B. Reforms and Limitations*

After a period of expansion in the late nineteenth and early twentieth centuries, felony voting restrictions remained largely intact and unaltered until the late 1950s.<sup>65</sup> The tide turned with the rise of the Civil Rights movement and passage of the Voting Rights Act of 1965. From the late 1950s through the early 1970s, twenty-three states amended or removed voting bans for some individuals who had past felony convictions.<sup>66</sup> The most substantial changes involved removing

61. See MANZA & UGGEN, *supra* note 3, at 42.

62. See *Ratliff v. Beale*, 20 So. 865, 868 (Miss. 1896).

63. See *id.*

64. See Daniel S. Goldman, *The Modern-Day Literacy Test: Felon Disenfranchisement and Race Discrimination*, 57 STAN. L. REV. 611, 616 (2004) (citing SAMUEL ISSACHAROFF ET AL., *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* 101 (2d ed. 2002)); see also *id.* (“The purpose of these conventions was clear: ‘Discrimination!’ exclaimed Carter Glass, a delegate to the Virginia Convention of 1906. ‘Why that is precisely what we propose; that exactly is what this convention was elected for.’” (citing C. VANN WOODWARD, *ORIGINS OF THE NEW SOUTH, 1877-1913*, 321 (1971))).

65. See MANZA & UGGEN, *supra* note 3, at 51–59.

66. See Angela Behrens, Christopher Uggen, & Jeff Manza, *Ballot Manipulation and the “Menace of Negro Domination”: Racial Threat and Felon Disenfranchisement in the United States, 1850–2002*, 109 AM. J. SOCIO. 559, 591 (2003).

lifetime voting bans for people with such convictions; between 1960 and 2002, the number of states imposing this form of “civil death” dropped from about seventy to twenty-five percent.<sup>67</sup>

Significant progress continued in the late twentieth and early twenty-first centuries. Between 1997 and 2018, twenty-three states reduced certain restrictions in their felony disenfranchisement laws.<sup>68</sup> Several jurisdictions continued the trend of amending or repealing lifetime disenfranchisement laws. Some revised laws that restricted voting privileges for people on community supervision; others relaxed procedures for those seeking to regain voting privileges after completing their sentence.<sup>69</sup> In total, the Sentencing Project estimates these reforms re-enfranchised 1.4 million people.<sup>70</sup>

Despite this progress, the estimated number of people disenfranchised due to past felony convictions swelled from 1.2 million to 5.2 million people between 1976 and 2020.<sup>71</sup> Three countervailing developments help explain this seeming anomaly.

First, legal challenges to felony disenfranchisement laws typically failed in the courts; hence, reformers were limited to pushing changes through legislative or executive channels. The most significant legal roadblock was erected in 1974 when the U.S. Supreme Court upheld the constitutionality of California’s felony disenfranchisement statute in *Richardson v. Ramirez*.<sup>72</sup> There, the challengers claimed the statute violated the Equal Protection Clause under Section 1 of the Fourteenth Amendment. The Court rejected this argument based on a different provision of the same amendment, Section 2, which states in relevant part:

Representatives shall be apportioned among the several States according to their respective numbers . . . *But when the right to vote at any election* for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof,

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67. *Id.* at 567 fig.1.

68. See MORGAN MCLEOD, EXPANDING THE VOTE: TWO DECADES OF FELONY DISENFRANCHISEMENT REFORM (Oct. 2018), <https://www.sentencingproject.org/wp-content/uploads/2018/10/Expanding-the-Vote-1997-2018.pdf> [<https://perma.cc/E4XG-BVM2>].

69. *Id.*

70. *Id.*

71. See CHRIS UGGEN, RYAN LARSON, SARAH SHANNON & ARLETH PULIDO-NAVA, THE SENT’G PROJECT, LOCKED OUT 2020: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION 10 (2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/> [<https://perma.cc/8Z37-R9Z9>]. The estimated number peaked at 6.1 million in 2016. *Id.*

72. 418 U.S. 24 (1974).

is . . . in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced . . . .<sup>73</sup>

The Court, in a 6-3 decision written by then-Associate Justice William Rehnquist, was persuaded by the claim that “those who framed and adopted the Fourteenth Amendment could not have intended to prohibit outright in [Section] 1 of that Amendment that which was expressly exempted from the lesser sanction of reduced representation imposed by [Section] 2 of the Amendment.”<sup>74</sup> And though state restrictions on the franchise typically receive heightened review,<sup>75</sup> the Court sidestepped this requirement because of Section 2’s “affirmative sanction” permitting states to disenfranchise those with past convictions.<sup>76</sup>

Commentators have remarked on the oddity that the Fourteenth Amendment, which was intended to expand voting privileges, formed the legal basis for limiting voting rights for people with past felony convictions.<sup>77</sup> While Section 2 is largely viewed as a dead letter,<sup>78</sup> in *Richardson*, it proved dispositive.

Subsequent challenges to felony disenfranchisement laws have likewise been met with limited success. These challenges again typically involve alleged violations of the Equal Protection Clause, as well as the federal Voting Rights Act of 1965.<sup>79</sup> Courts almost never

73. U.S. CONST. amend. XIV, § 2 (emphasis added).

74. See *Ramirez*, 418 U.S. at 43.

75. See *id.* at 54 (citing cases listing that restrictions on franchise generally must show “compelling state interest”).

76. *Id.*

77. See, e.g., Gabriel J. Chin, *Reconstruction, Felon Disenfranchisement, and the Right to Vote: Did the Fifteenth Amendment Repeal Section 2 of the Fourteenth Amendment*, 92 GEO. L.J. 259 (2004); see also David J. Zeitlin, Note, *Revisiting Richardson v. Ramirez: The Constitutional Bounds of Ex-felon Disenfranchisement*, 70 ALA. L. REV. 259 (2018); Abigail M. Hinchcliff, *The Other Side of Richardson v. Ramirez: A Textual Challenge to Felon Disenfranchisement*, 121 YALE L.J. 194 (2011); Richard W. Bourne, *Richardson v. Ramirez: A Motion to Reconsider*, 42 VAL. U. L. REV. 1 (2007); Pamela S. Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, 71 U. CIN. L. REV. 1345 (2003).

78. See Chin, *supra* note 77, at 269 (arguing that “Section 2 was a dead letter before it became law”); see also George David Zuckerman, *A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment*, 30 FORDHAM L. REV. 93 (1961) (discussing whether Section 2 retained vitality).

79. See, e.g., Christina Beeler, *Felony Disenfranchisement Laws: Paying and Re-Paying a Debt to Society*, 21 U. PA. J. CONST. L. 1071, 1089–90 (2019):

Although challenges to felony disenfranchisement laws under the Equal Protection Clause have had more success than challenges under Section 2 of the VRA, the Equal Protection Clause is still an ineffective tool for challenging most felony disenfranchisement laws because it requires proof of intentional racial discrimination, which is notoriously difficult to prove.

completely invalidate a state's decision to disenfranchise people with past felony convictions.<sup>80</sup>

A second major development that blunted the effect of relaxed felony disenfranchisement laws is the concurrent rise of mass incarceration in the United States. The per capita imprisonment rate slowly started to increase in the 1970s but accelerated steeply throughout the 1980s and 1990s.<sup>81</sup> By 2010, the prison rate in the United States was five times what it was in 1970, increasing from about 100 to 502 people imprisoned per 100,000 residents.<sup>82</sup> And there were gross racial disparities in this increase: A Black man born in the 1960s who did not have a high school degree had a 60–70% chance of experiencing imprisonment by his early thirties (as compared to 11% for a similarly situated White man).<sup>83</sup> Today, the United States imprisons more people than any other nation.<sup>84</sup>

While the increase in incarceration rates is correlated with the so-called War on Drugs, it is not correlated with corresponding measurable increases in violent criminal activity or property crime during this time. Rather, “crime rates . . . trended downward, rather than upward, in the United States [between 1976 and 2006].”<sup>85</sup> What changed is the “likelihood that an arrest will lead to a conviction . . . increased significantly, and convicted felons are now serving a significantly greater portion of their sentences prior to release.”<sup>86</sup>

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80. See MANZA & UGGEN, *supra* note 3, at 53–58. A rare exception is *Hunter v. Underwood*, when the U.S. Supreme Court unanimously struck down an Alabama disenfranchisement law that had been adopted in a 1901 constitutional convention to further a racially discriminatory intent. 471 U.S. 222 (1985). The Court distinguished *Ramirez*, noting, “we are confident that [Section] 2 was not designed to permit the purposeful racial discrimination attending the enactment and operation of [a law] which otherwise violates [Section] 1 of the Fourteenth Amendment.” *Id.* at 233.

81. See MANZA & UGGEN, *supra* note 3, at 97.

82. See SARAH WAKEFIELD & CHRISTOPHER WILDEMAN, CHILDREN OF THE PRISON BOOM: MASS INCARCERATION AND THE FUTURE OF AMERICAN INEQUALITY 13–14 (2014).

83. See *id.* at 13–15 (citing Becky Pettit & Bruce Western, *Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration*, 69 AM. SOCIO. REV. 151 (2004) and Bruce Western & Christopher Wildeman, *The Black Family and Mass Incarceration*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 221 (2009)).

84. *United States Profile*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/profiles/US.html> (last visited Dec. 15, 2022) [<https://perma.cc/HX2D-ZQKU>].

85. MANZA & UGGEN, *supra* note 3, at 100 (emphasis omitted).

86. *Id.* (emphasis omitted).



C. “User” Fees and Felony Financial Disenfranchisement

The third major development that has driven voter disenfranchisement—and a primary focus of this Article—is the rise of legal-financial obligations. LFOs typically stem from one of three categories: fines, restitution, and fees (also known as court costs).

Fines are intended to serve as a form of punishment, often as an alternative to incarceration, to deter future criminal conduct. They are awarded in only a minority of cases.<sup>87</sup> Restitution involves payments that are typically made directly to the victim of a crime; its purpose is more closely related to restorative justice—to make a victim whole again.<sup>88</sup>

Fee assessments, also called “user fees,” are different. These are not imposed to make a victim whole or to punish future conduct. Rather, the goal of user fees is to shift some of the cost of the criminal legal system onto the defendants who pass through it.<sup>89</sup>

Most states charge user fees to fund their courts. This practice has greatly expanded in scope over the past few decades.<sup>90</sup> For example, a survey conducted by NPR and the Brennan Center for Justice found that between 2010 and 2014, forty-eight states increased criminal and civil court fees.<sup>91</sup> In at least forty-three states, defendants can be charged for having a public defender<sup>92</sup>—a practice that would seem to be in at least some tension with the constitutional mandate that a felony defendant should be provided counsel when they are indigent.<sup>93</sup>

This process often results in a complicated patchwork of fee provisions. For example, as of 2017, California had created 269 different

87. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1206 (N.D. Fla. 2020).

88. *Id.* (noting that restitution payments are occasionally made through the Clerk of Court or Department of Corrections, which charge administrative fees for handling these payments).

89. See Ariel Jurow Kleiman, *Nonmarket Criminal Justice Fees*, 72 HASTINGS L.J. 517, 519 (2021); see also Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 VAND. L. REV. 55 (2019); Thea Sebastian, Danielle Lang & Caren E. Short, *Democracy, If You Can Afford It: How Financial Conditions Are Undermining the Right to Vote*, 4 UCLA CRIM. JUST. L. REV. 79 (2020); Caitlin Croley, *Punishment Only for the Poor: The Unconstitutionality of Pay-to-Vote Disenfranchisement Laws*, 71 EMORY L.J. 371 (2021).

90. See Kleiman, *supra* note 89, at 526 (noting proliferation of criminal justice fees in the 1970s and 1980s).

91. See Joseph Shapiro, *Supreme Court Ruling Not Enough to Prevent Debtors Prisons*, NPR (May 21, 2014, 5:01 AM), <https://www.npr.org/transcripts/313118629> [<https://perma.cc/J3QC-MU6H>].

92. See *id.*

93. See *Gideon v. Wainwright*, 372 U.S. 335 (1963); see also Nicolas Sawyer, Note, *Too Poor to Vote: Felony Disenfranchisement in Florida Violates Bearden*, 25 TEX. J. ON C.L. & C.R. 205 (2020) (arguing that Florida’s felony disenfranchisement regime is unconstitutional because it disparately impacts indigent people).

categories of “fines, fees, forfeitures, surcharges[,] and penalty assessments.”<sup>94</sup> And the State of New York has laws requiring ten mandatory surcharges, nineteen fees, and six civil penalties ranging from \$5 to \$750.<sup>95</sup>

In addition, Florida employs fee assessments perhaps more than any other state, with increasing prevalence in recent decades. In 1998, voters amended the Florida Constitution to shift funding of the Florida court system from the county government to a fee-based system.<sup>96</sup> The amendment provided:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided . . . shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law.<sup>97</sup>

A 2010 study by the Brennan Center for Justice found the Florida state legislature authorized more than twenty new categories of fees between 1996 and 2009.<sup>98</sup> To illustrate but a few examples: in 1996, the state legislature authorized a \$40 application fee for a public defender (increased to \$50 in 2008); in 1998, it authorized a \$20 “crime stoppers” fund surcharge; and in 2004, it increased the maximum surcharge for reinstatement of a driver’s license from \$37.50 to \$47.50 (later increased to \$60 in 2009).<sup>99</sup>

In addition to fees assessed at the time of conviction, fees are often assessed after conviction. In Florida, the most commonly assessed post-conviction fees are interest on amounts owed and collection agency fees, which are capped at forty percent of the amount owed.<sup>100</sup>

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94. KARIN D. MARTIN, SANDRA SUSAN SMITH & WENDY STILL, SHACKLED TO DEBT: CRIMINAL JUSTICE FINANCIAL OBLIGATIONS AND THE BARRIERS TO RE-ENTRY THEY CREATE 4 (Jan. 2017), <https://www.ojp.gov/pdffiles1/nij/249976.pdf> [<https://perma.cc/23XQ-U6RF>].

95. *Id.*

96. REBEKAH DILLER, THE HIDDEN COSTS OF FLORIDA’S CRIMINAL JUSTICE FEES 9 (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/G9TZ-XJYU>].

97. FLA. CONST. art. V, § 14(b).

98. DILLER, *supra* note 96, at 1. Clerks of court in Florida have no control over what fees are charged, even though the fees are supposed to be used to fund their operations. *See* OFF. OF PROGRAM POLY ANALYSIS & GOV’T ACCOUNTABILITY, ASSESSMENT, COLLECTION, AND DISTRIBUTION OF FINES AND FEES IN CRIMINAL CASES, Report No. 19-14, at 4 (Fla. 2019), <https://oppaga.fl.gov/Documents/Reports/19-14.pdf> [<https://perma.cc/C8QJ-AJXE>] [hereinafter ASSESSMENT, COLLECTION, AND DISTRIBUTION].

99. DILLER, *supra* note 96, at 5–6.

100. *See* FLA. STAT. § 28.246 (2004).

*D. Voter Disenfranchisement in Florida*

## 1. Background

Voter disenfranchisement in Florida shares a historical tradition with the rest of the country. Under its original constitution, the General Assembly passed legislation that barred from suffrage those who committed crimes that demonstrated immoral character; explicitly, the electorate excluded “all persons convicted of bribery, perjury, forgery, or other high crime, or misdemeanor.”<sup>101</sup>

Like its Southern brethren, Florida expanded its voter restrictions following the Civil War. At a constitutional convention in 1868, delegates drafted a document that limited representation in predominantly Black counties; White supremacists such as W.J. Purman openly celebrated the legalized suppression of racial equality.<sup>102</sup> The new constitution also included a provision that disenfranchised “any person convicted of a felony . . . unless restored to civil rights.”<sup>103</sup> Hence, felony convictions automatically stripped individuals of voting privileges but for a restoration process through the Florida Executive Clemency Board; this channel continues to serve returning citizens to varying degrees of success.<sup>104</sup> To benefit from this process, a formerly convicted individual must submit an application demonstrating their case before the Governor and their Cabinet.<sup>105</sup> Approval of at least two Cabinet members and the Governor are required; the Governor reserves the right to veto any application.<sup>106</sup>

While interest in civil rights restoration gained momentum and manifested itself into legislative reform throughout much of the country,<sup>107</sup> Florida’s voter laws remained virtually stagnant. The only

101. See Allison J. Riggs, *Felony Disenfranchisement in Florida: Past, Present and Future*, 28 J. C.R. & ECON. DEV. 107, 108 (2015) (quoting FLA. CONST. art. VI, §§ 4, 13 (amended 1868)).

102. See Mary Ellen Klas, *Florida Has a History of Making It Harder for Black Citizens to Vote*, MIA. HERALD (Aug. 12, 2016), <https://www.miamiherald.com/news/politics-government/election/article95105602.html> [<https://perma.cc/3F9S-JEYF>].

103. See Riggs, *supra* note 101, at 108 (quoting FLA. CONST. art. VI, §§ 2, 4 (amended 1968)). The provision related to disenfranchisement was not amended in Florida’s 1861 and 1865 Constitutions. See *id.*

104. See Joshua H. Winograd, *Let the Sunshine In: Floridian Felons and the Franchise*, 31 U. FLA. J.L. & PUB. POL’Y 267, 277–78 (2021) (detailing history of felony disenfranchisement in Florida and Amendment 4 litigation).

105. Winograd, *supra* note 104, at 278; FLA. CONST. art. IV, § 4 (the Governor’s Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture).

106. OFF. OF EXEC. CLEMENCY, RULES OF EXECUTIVE CLEMENCY 3–4 (Fla. 2021), [https://www.fcor.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf) [[perma.cc/GD8L-FVJX](https://perma.cc/GD8L-FVJX)].

107. McLEOD, *supra* note 68.

vehicle of mass re-enfranchisement laid with the Florida Executive Clemency Board. Between 2007 and 2011, Governor Charlie Crist restored voting rights for tens of thousands.<sup>108</sup> However, his successor, Rick Scott, ceased the practice and instituted a mandatory moratorium between release from supervision and eligibility for clemency.<sup>109</sup> In recent years, few returning citizens have benefited from the process.<sup>110</sup>

## 2. Amendment 4 and S.B. 7066

In spite of Governor Crist's efforts, over 1.5 million individuals with criminal histories remained disenfranchised.<sup>111</sup> This magnitude had captured national attention for almost a decade.<sup>112</sup> Legislative bills failed to usher in any reform.<sup>113</sup> This spurred a grassroots organization, the Florida Rights Restoration Coalition ("FRRC"), to pursue change through a ballot initiative.<sup>114</sup> With the backing of organizations such as the ACLU, the Brennan Center for Justice, Faith in Action, and Tides Advocacy, the FRRC—spearheaded by Desmond Meade—led a nonpartisan campaign that crafted what eventually became known as Amendment 4.<sup>115</sup> The campaign marketed itself as a colorblind movement based on redemption and dignity.<sup>116</sup>

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108. 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).

109. See Caitlin Shay & Zachary Zarnow, *Free but No Liberty: How Florida Contravenes the Voting Rights Act with Disenfranchisement of Felons*, 69 NAT'L LAW. GUILD REV. 1, 1 (2012).

110. See Press Release, Fla. Dep't of Agric. & Consumer Servs., Statement by Commissioner Nikki Fried on Florida Clemency Board Meeting (Sept. 23, 2020), <https://www.fdacs.gov/News-Events/Press-Releases/2020-Press-Releases/Statement-by-Commissioner-Nikki-Fried-on-Florida-Clemency-Board-Meeting> [<https://perma.cc/4KGR-HT6V>]. Several scholars argued that the pre-Amendment 4 Florida disenfranchisement laws violated either federal statutory or constitutional provisions. See, e.g., Shay & Zarnow, *supra* note 109; Katherine Shaw, *Invoking the Penalty: How Florida's Felon Disenfranchisement Law Violates the Constitutional Requirement of Population Equality in Congressional Representation, and What to Do About It*, 100 NW. U. L. REV. 1439 (2006); see also Guy Stuart, *Databases, Felons, and Voting: Bias and Partisanship of the Florida Felons List in the 2000 Elections*, 119 POL. SCI. Q. 453 (2004) (analyzing Florida's attempt to disenfranchise all people with past felony convictions from voting prior to the 2000 election).

111. See MCLEOD, *supra* note 68, at 6–7; Mark, *supra* note 1.

112. See MANZA & UGGEN, *supra* note 3, at 275 tbl.A8.1.

113. See, e.g., Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment, Exhibit 12: Expert Report of J. Morgan Kousser, Ph.D. at 114–125 tbl.7, *Jones v. DeSantis*, 462 F. Supp. 3d 1196 (N.D. Fla. 2020) (No. 4:19-cv-300).

114. See DESMOND MEADE, LET MY PEOPLE VOTE: MY BATTLE TO RESTORE THE CIVIL RIGHTS OF RETURNING CITIZENS 57–62 (2020).

115. See Morse, *supra* note 4, at 1153–54 (tables documenting donors to the FRRC and general discussion of the campaign's history).

116. See, e.g., Press Release, Second Chances Fla., Freedom Partners Chamber of Commerce Endorses Amendment 4 (Sept. 18, 2018), <https://www.secondchancesfla.org/press-releases/freedom-partners-chamber-of-commerce-endorses-amendment-4/> [<https://perma.cc/GQ6S-UUEW7>].

The message appealed to a diverse swath of Floridians,<sup>117</sup> who overwhelmingly affirmed<sup>118</sup> the initiative that reads:

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.

(b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.<sup>119</sup>

While advocates of reform celebrated Amendment 4,<sup>120</sup> political machinations poised to undermine the initiative's scope existed even before its passage. The principal limitation stems from the phrase, "completion of all terms of sentence including parole or probation."<sup>121</sup> The vague language—which conveniently circumvented uncomfortable conversations about what explicitly composes sentence terms—served as fodder for critics.<sup>122</sup> Several officials<sup>123</sup> argued the language always intended to incorporate criminal court assessments associated with the conviction, as affirmed by the campaign's attorney Jon L. Mills<sup>124</sup> and its partners.<sup>125</sup>

The artful language of the initiative potentially stems from strategic decisionmaking by advocates and opponents. The supermajority behind Amendment 4 relied heavily on a bipartisan coalition;<sup>126</sup> that partnership may have crumbled had the campaign been more transparent about sentence terms, especially given the

117. See Morse, *supra* note 4, at 1170 fig.6, 1171 fig.7 (documenting support among Black and poor White communities).

118. Mark, *supra* note 1 (noting the amendment passed with sixty-four percent of the vote).

119. FLORIDIANS FOR A FAIR DEMOCRACY, INC., *supra* note 2.

120. See, e.g., Jennifer Rae Taylor, *Florida's Election Shows the True Promise of Restoring Voting Rights*, THE MARSHALL PROJECT (Nov. 7, 2018, 10:29 AM), <https://www.themarshallproject.org/2018/11/07/florida-s-election-shows-the-true-promise-of-restoring-voting-rights> [perma.cc/6BX4-N7GF].

121. FLA. CONST. art. VI, § 4.

122. See Blaise Gainey, *Grant Defends Constitutionality of Felon Voting Rights Amendment*, WFSU PUB. MEDIA (Aug. 23, 2019, 3:42 PM), <https://news.wfsu.org/state-news/2019-08-23/grant-defends-constitutionality-of-felon-voting-rights-amendment> [perma.cc/76S8-PGRU].

123. See *id.*

124. See 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/D25J-83QT].

125. See Letter from ACLU, FRRRC, LatinoJustice PRLDEF, The League of Women Voters, to Ken Detzner, Sec'y of State, State of Fla., Re: Implementation of Amendment 4, the Voting Restoration Amendment (Dec. 13, 2018), [https://www.acluf.org/sites/default/files/guidance\\_letter\\_to\\_sos\\_a4\\_implementation.pdf](https://www.acluf.org/sites/default/files/guidance_letter_to_sos_a4_implementation.pdf) [https://perma.cc/HR9V-2G8F].

126. See *supra* note 117.

sensitivity of many to anything remotely resembling a poll tax.<sup>127</sup> The campaign may have also hoped the lack of systematic data on criminal court debt would prevent their inclusion.<sup>128</sup> Regardless of intent, these choices engendered an air of confusion among their intended beneficiaries.<sup>129</sup>

The same cultural awareness may have initially prevented formation of organized opposition or vocal critics.<sup>130</sup> Even those openly against Amendment 4, including then Governor-elect Ron DeSantis,<sup>131</sup> remained relatively silent on the specifics of the issue. But the policy space surrounding the ambiguous phrase “terms of sentence[s]” eventually yielded outright political opposition.<sup>132</sup> Some elected officials believed that incorporation of LFOs upheld the vision presented to voters.<sup>133</sup> Accordingly, the electorate—moved by a narrative that emphasized redemption and dignity—demanded that criminal court debt tied to sentences be settled in order to restore victims and, thus, regain eligibility.<sup>134</sup> Others who argued sentence terms encompass LFOs were lured by potential inflows from their inclusion<sup>135</sup> or political hegemony from the subsequent disenfranchisement.<sup>136</sup>

Ultimately, the political forces fomented S.B. 7066, which instituted Amendment 4 with explicit sentence terms.<sup>137</sup> That clarifying language reads:

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127. See, e.g., Daniel B. Jones, Werner Troesken & Randall Walsh, *A Poll Tax by Any Other Name: The Political Economy of Disenfranchisement*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 18612, 2012), <https://www.nber.org/papers/w18612> [perma.cc/W5LP-J2WC].

128. 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).

129. See Lawrence Mower & Langston Taylor, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*, PROPUBLICA: ELECTIONLAND (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> [perma.cc/NK8K-FCUB] (“Nancy Abudu, deputy legal director for voting rights at the Southern Poverty Law Center in Montgomery, Alabama, said she is advising anyone who is uncertain about whether they owe money to avoid voting next month.”).

130. Morse, *supra* note 4, at 1162–67.

131. See German Lopez, *One in 10 Potential Florida Voters Can't Legally Vote. Amendment 4 Could Change That*, VOX (Nov. 6, 2018, 9:16 AM), <https://www.vox.com/policy-and-politics/2018/10/17/17978502/florida-amendment-4-felons-vote-disenfranchisement> [perma.cc/QZE5-JL9Q].

132. See FLA. CONST. art. VI, § 4.

133. See *supra* note 29.

134. See *Jones v. Governor of Fla.*, 975 F.3d 1016, 1036 (11th Cir. 2020) (en banc) (noting that the state argued that an LFO satisfaction requirement ensures that eligibility applies to “only those felons who have paid their debt to society and been fully rehabilitated”).

135. See *supra* note 18.

136. See *supra* note 20.

137. Florida has a history of overturning ballot initiatives with subsequent legislation. See Case Comment, *Constitutional Law—Equal Protection—Eleventh Circuit Upholds Statute Limiting Constitutional Amendment on Felon Reenfranchisement—Jones v. Governor of Florida*,

(2)(a) “Completion of all terms of sentence” means any portion of a sentence that is contained in the four corners of the sentencing document, including, but not limited to: . . .

5.a. Full payment of restitution ordered to a victim by the court as a part of the sentence . . .

b. Full payment of fines or fees ordered by the court as a part of the sentence or that are ordered by the court as a condition of any form of supervision . . .<sup>138</sup>

The bill prompted criticism from the Amendment 4 campaign and proponents; they argued it could not be enforced given Florida’s inability to inform returning citizens of eligibility and that it violated constitutionally enshrined privileges.<sup>139</sup>

### 3. Litigation

On June 28, 2019, the ACLU, New York University’s Brennan Center, and the NAACP Legal Defense and Education Fund filed suit in the U.S. District Court for the Northern District of Florida on behalf of various named plaintiffs.<sup>140</sup> There they alleged, among other things, that S.B. 7066 violated the Fourteenth Amendment, Fifteenth Amendment, and Twenty-Fourth Amendment by instituting what amounted to a poll tax.<sup>141</sup> The district court granted a preliminary injunction (affirmed on appeal by a panel of the U.S. Court of Appeals for the Eleventh Circuit)<sup>142</sup> that permitted the plaintiffs named in the suit to vote without paying any outstanding criminal assessments.<sup>143</sup>

After an eight-day trial beginning on April 27, 2020, the district court found that Florida’s “pay-to-vote” system was akin to a tax that was unconstitutional as applied to people who are unable to pay and also with respect to “amounts that are unknown and cannot be

975 F.3d 1016 (11th Cir. 2020), 134 HARV. L. REV. 2291, 2291–92 (2021) (noting how the Florida legislature overturned prior separate ballot initiatives that sought to regulate polluters in the Everglades and legalize medical marijuana).

138. S.B. 7066, 2019 Leg., Reg. Sess. § 98.0751(2)(a), (2)(a)(5.a), (2)(a)(5.b) (Fla. 2019).

139. See, e.g., *Litigation to Protect Amendment 4 in Florida*, BRENNAN CTR. FOR JUST. <https://www.brennancenter.org/our-work/court-cases/litigation-protect-amendment-4-florida> (last updated Sept. 11, 2020) [perma.cc/YHT5-Q4HR]; see also Winograd, *supra* note 104; Dalia Figueredo, Comment, *Affording the Franchise: Amendment 4 & the Senate Bill 7066 Litigation*, 72 FLA. L. REV. 1135, 1135 (2020) (exploring “prior legal challenges to financially discriminatory re-enfranchisement schemes and the ongoing litigation over Amendment 4 and S.B. 7066”).

140. Complaint, *Gruver v. Barton*, No. 1:19-cv-00121-MW-GRJ (N.D. Fla. June 28, 2019).

141. *Id.* ¶¶ 91–133.

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

143. Order Denying the Motion to Dismiss or Abstain and Granting a Preliminary Injunction, *Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1310–11 (N.D. Fla. 2019).

determined with diligence.”<sup>144</sup> The court granted a permanent injunction,<sup>145</sup> which was immediately appealed to the Eleventh Circuit.

The Defendants filed a petition with the Eleventh Circuit seeking an en banc hearing. On July 1, 2020, the Eleventh Circuit voted to grant that petition and to stay the permanent injunction until it decided the case on the merits.<sup>146</sup> The Plaintiffs filed a petition for a writ of certiorari with the Supreme Court seeking to reinstitute the stay. On July 16, 2020, this writ was denied without an opinion, though Justice Sonia Sotomayor, joined by Justices Ruth Bader Ginsburg and Elena Kagan, filed a dissent.<sup>147</sup>

On September 11, 2020, the Eleventh Circuit, sitting en banc, overturned the trial court decision and held that S.B. 7066 did not violate the Equal Protection Clause or the Twenty-Fourth Amendment.<sup>148</sup> As such, S.B. 7066 remained in force during the 2020 election; LFO repayment was a prerequisite for most returning citizens to be able to exercise voting privileges.

## II. THE POTENTIAL IMPACT OF FELONY FINANCIAL DISENFRANCHISEMENT

Despite the growth of criminal legal-financial obligations over the past fifty years, their actual impact on the voting behavior of returning citizens remains an open question. The prior empirical literature on voting has not specifically focused on the phenomenon of FFD.<sup>149</sup> Presumably, the sparsity of high quality, individual-level data on LFOs is the primary reason for this dearth of empirical research.

Instead, researchers have studied the impact of felony disenfranchisement writ large. We begin with an overview of this literature, which is equivocal in its findings. We then discuss two specific channels by which FFD might impact voter turnout: a direct impact akin to a poll tax and an indirect impact through increased

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144. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1250 (N.D. Fla. 2020). The system was found to be “not unconstitutional as applied to those who are able to pay.” *Id.*

145. *Id.* at 1249–50.

146. *McCoy v. Governor of Fla.*, No. 20-12003-AA, 2020 WL 4012843 (11th Cir. Jul. 1, 2020). This decision was a mere nineteen days before the voter-registration deadline for the primary election to be held in August 2020. *See Raysor v. DeSantis*, 140 S. Ct. 2600, 2602 (2020) (Sotomayor, J., dissenting).

147. *Raysor*, 140 S. Ct. 2600.

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

149. *But see* Marc Meredith & Michael Morse, *Discretionary Disenfranchisement: The Case of Legal Financial Obligations*, 46 J. LEG. STUD. 309 (2017) (describing LFOs in Alabama without linking these data at the individual level to subsequent voting behavior).



uncertainty and a chilling effect. Along the way, we provide theoretical and empirical evidence supporting these mechanisms from analogous contexts in social science research.

### *A. Prior Empirical Literature*

While the impact of FFD remains unstudied, empirical scholars have studied felony disenfranchisement more generally and found that it might have a significant effect on voter turnout and election outcomes. Most notably, Jeff Manza and Christopher Uggen have argued that felony disenfranchisement laws likely played a dispositive role in a number of U.S. Senate elections as well as the 2000 presidential election between Texas Governor George W. Bush and Vice President Al Gore.<sup>150</sup> Their paper simulates these counterfactual scenarios by either removing or imposing disenfranchisement restrictions for different elections and predicting returning citizen turnout and party preference based on demographic data.<sup>151</sup>

By contrast, other empirical analyses have suggested that felony disenfranchisement has a minimal impact on voter turnout. For example, Professor Tom Miles used a triple-differences regression framework to study whether felony disenfranchisement laws disparately affect Black voter turnout. He finds that “the presence of a law permanently disenfranchising ex-felons has no effect on the state-level turnout rates of African-American men relative to those of whites and females.”<sup>152</sup> More recently, Kevin Morris showed that Floridians living in households with formerly incarcerated people did not turnout at higher rates in 2018, when Amendment 4 was on the ballot, relative to other voters.<sup>153</sup> The author argues this implies that ending felony disenfranchisement, absent more substantial investment and

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150. Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 AM. SOCIO. REV. 777, 777, 789, 792–93 (2002) (further noting that “at least one Democratic presidential victory,” like John F. Kennedy’s 1960 win, “would have been jeopardized had contemporary rates of disenfranchisement prevailed during that time”); see also MANZA & UGGEN, *supra* note 3; Antoine Yoshinaka & Christian R. Grose, *Partisan Politics and Electoral Design: The Enfranchisement of Felons and Ex-felons in the United States, 1960-99*, 37 ST. & LOC. GOV’T REV. 49 (2005) (noting that voter turnout in states that permanently disenfranchise people with past felony convictions is lower than in states that do not in a cross-state comparison amongst southern states).

151. See Uggen & Manza, *supra* note 150.

152. See Thomas J. Miles, *Felon Disenfranchisement and Voter Turnout*, 33 J. LEGAL STUD. 85, 122 (2004).

153. Kevin Morris, *Turnout and Amendment Four: Mobilizing Eligible Voters Close to Formerly Incarcerated Floridians*, 115 AM. POL. SCI. REV. 805, 812 (2021).

engagement, is unlikely to significantly increase electoral participation rates of returning citizens.<sup>154</sup>

Other empirical evidence also suggests that people with past felony convictions vote at lower rates than the population at large, even after voting rights have been restored. For example, Michael Haselswerdt uses data from New York to find that returning citizens eligible to register and vote in certain years had single-digit turnout rates.<sup>155</sup> Similarly, Randi Hjalmarsson and Mark Lopez look at two nationally representative surveys that include formerly incarcerated individuals; they find that returning citizens are thirty-one percentage points less likely to vote than never-incarcerated individuals.<sup>156</sup>

### *B. Priced Out: FFD as a Poll Tax*

Having laid out the general empirical literature on felony disenfranchisement to date, we turn to FFD and the novel ways it might affect voter behavior. Analysis of this issue requires a cursory understanding of why people vote in the first place, a topic of considerable study in political science.<sup>157</sup>

The workhorse rational choice model for voting has a simple but compelling answer: A prospective voter will vote only if the benefits

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154. See *id.* But see Kevin Morris, Welcome Home—Now Vote! Voting Rights Restoration and Post-Supervision Participation 10–11 (Apr. 8, 2020) (unpublished manuscript), [https://www.researchgate.net/publication/341576052\\_Welcome\\_Home\\_-\\_Now\\_Vote\\_Voting\\_Rights\\_Restoration\\_and\\_Post-Supervision\\_Participation](https://www.researchgate.net/publication/341576052_Welcome_Home_-_Now_Vote_Voting_Rights_Restoration_and_Post-Supervision_Participation) [<https://perma.cc/CW9C-LF76>] (finding that restoring voting privileges to parolees in New York increased their voter turnout based on causal analysis that leveraged randomness in parole discharge date).

155. See Michael V. Haselswerdt, *Con Job: An Estimate of Ex-felon Voter Turnout Using Document-Based Data*, 90 SOC. SCI. Q. 262, 268 (2009).

156. See Randi Hjalmarsson & Mark Lopez, *Voting Behavior of Young Disenfranchised Felons: Would They Vote If They Could*, 19 AM. L. & ECON. REV. 356 (2010); see also Traci Burch, *Turnout and Party Registration Among Criminal Offenders in the 2008 General Election*, 45 LAW & SOC'Y REV. 699 (2011) (estimating registration and turnout for men with past felony convictions in Florida, Georgia, Michigan, Missouri, and North Carolina, and finding that their turnout averaged 22.2%); Edward M. Burmila, *Voter Turnout, Felon Disenfranchisement and Partisan Outcomes in Presidential Elections, 1988–2012*, 30 SOC. JUST. RSCH. 72 (2017) (comparing turnout, election outcome, and felony disenfranchisement rates across states).

157. See, e.g., Anthony Downs, *An Economic Theory of Political Action in a Democracy*, 65 J. POL. ECON. 135 (1957); see also John A. Ferejohn & Morris P. Fiorina, *The Paradox of Not Voting: A Decision Theoretic Analysis*, 68 AM. POL. SCI. REV. 525 (1974) (applying the maximin regret model of decisionmaking to voting to show that voting can be a rational choice even when the probability for a single individual to be pivotal is small); Stephen Coate & Michael Conlin, *A Group Rule-Utilitarian Approach to Voter Turnout: Theory and Evidence*, 94 AM. ECON. REV. 1476 (2004) (using a group rule-utilitarian approach to understand voter turnout and testing the model's predictions using turnout data from Texas liquor referenda).

associated with voting exceed the costs of voting.<sup>158</sup> While theoretical models have become more sophisticated, the cost of participation remains a prominent determinant in the calculus of voting.<sup>159</sup> Hence, crucial to whether a person votes are the costs that voting might entail.

Perhaps the most straightforward costs to consider are monetary. In the Amendment 4 litigation, the challengers to S.B. 7066 alleged that conditioning voter restoration on LFO obligations was akin to a poll tax. The district court agreed with the challengers,<sup>160</sup> though the legal argument was ultimately unsuccessful on appeal.<sup>161</sup> Still, from an economic standpoint, LFOs operate exactly as a poll tax would; they augment the monetary cost associated with the act of voting and, on the margin, reduce an individual's propensity to vote. This results in reduced aggregate turnout.

As background, by the early twentieth century, poll taxes were required to register to vote in all eleven Southern states.<sup>162</sup> They ranged from one to two dollars and were due up to nine months in advance of the election in three states.<sup>163</sup> Undoubtedly introduced to primarily disenfranchise Black voters, states often neglected to inform Black citizens and people without property that the tax was due. Naturally, this barred such individuals from voting upon arrival at the polls.<sup>164</sup> And in five states, poll taxes, if unpaid, were allowed to accumulate over time.<sup>165</sup> The ratification of the Twenty-Fourth Amendment in 1964,<sup>166</sup> the passage of the Voting Rights Act of 1965,<sup>167</sup> and the 1966 U.S. Supreme Court decision in *Harper v. Virginia State Board of Elections*<sup>168</sup> had the combined effect of banning poll taxes in future federal and state elections.

158. See Downs, *supra* note 157.

159. See William H. Riker & Peter C. Ordeshook, *A Theory of the Calculus of Voting*, 62 AM. POL. SCI. REV. 25 (1968).

160. Jones v. DeSantis, 462 F. Supp. 3d 1196, 1234 (N.D. Fla. 2020):

If a state chose to fund its criminal-justice system by assessing a \$10 fee against every resident of the state, nobody would doubt it was a tax. Florida has chosen to fund its criminal-justice system by assessing just such a fee, but to assess it not against all residents but only against those who are alleged to have committed a criminal offense and are not exonerated.

161. Jones v. Governor of Fla., 975 F.3d 1016, 1049 (11th Cir. 2020).

162. See J. MORGAN KOUSSER, *THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880-1910*, at 63–66 (1974).

163. See RAYMOND G. LLOYD, *WHITE SUPREMACY IN THE UNITED STATES* 62 (1952).

164. *Id.*

165. See KOUSSER, *supra* note 162, at 65.

166. U.S. CONST. amend. XXIV.

167. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. §§ 10101, 10301–14, 10501–08, 10701–02).

168. 383 U.S. 663 (1966).

Given the similarities between LFOs and poll taxes, understanding the impact of poll taxes on voter turnout might provide insight as to the tax effect of LFOs. John Filer, Lawrence Kenny, and Rebecca Morton conducted such an empirical study, quantifying the effect of the removal of the poll tax in the 1960s on voter participation. They concluded that the imposition of a \$1.99 poll tax lowered voter turnout by thirteen percentage points on average<sup>169</sup> and that much of the “substantial increase in nonwhite turnout since World War II” is attributable “to the removal of various barriers to voting.”<sup>170</sup> A paper by Orley Ashenfelter and Stanley Kelley, Jr. studying the determinants of political participation in presidential elections found a remarkably similar effect of the poll tax on turnout—a one-dollar poll tax in 1960 reduced turnout by seven percentage points.<sup>171</sup>

### *C. Chilling the Franchise: FFD and Information Costs*

While LFOs introduce direct monetary costs that plausibly deter returning citizens from voting, such costs are not the only possible means by which the presence of criminal court debt disincentivizes participation. Conditioning eligibility upon satisfaction of LFOs might raise the likelihood that a voter becomes uncertain as to their ability to vote. For example, legal ambiguities related to outstanding criminal court debt—such as those associated with Amendment 4—potentially deter cautious members of the electorate with felony convictions from

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169. See John E. Filer, Lawrence W. Kenny & Rebecca B. Morton, *Voting Laws, Educational Policies, and Minority Turnout*, 34 J.L. & ECON. 371, 377 (1991).

170. *Id.* at 390–91. Other research has focused on how nonmonetary costs might also deter voting. For example, there is some evidence that rainfall—a factor that makes turning out to vote in person costlier—negatively affects overall turnout and differentially affects turnout by party affiliation. See Brad Gomez, Thomas Hansford & George Krause, *The Republicans Should Pray for Rain: Weather, Turnout, and Voting in U.S. Presidential Elections*, 69 J. POL. 649 (2007). Similarly, distance to the polling location—another nonmonetary cost—plays a significant role in determining turnout, especially in high-minority voter areas. See Enrico Cantoni, *A Precinct Too Far: Turnout and Voting Costs*, 12 AM. ECON. J.: APPLIED ECON. 61 (2020). Based on a large-scale randomized experiment in France, easing registration requirements increased turnout as well as voter interest and knowledge about the political process. See Céline Braconnier, Jean-Yves Dormagen & Vincent Pons, *Voter Registration Costs and Disenfranchisement: Experimental Evidence from France*, 111 AM. POL. SCI. REV. 584 (2017). Long wait times at the polling place can lead to lower turnout due to discouraged voters or voters who abandon their place in the line. See Robert Stein et al., *Waiting to Vote in the 2016 Presidential Election: Evidence from a Multi-County Study*, 73 POL. RSCH. Q. 439 (2019); see also David Cottrell, Michael C. Herron & Daniel A. Smith, *Voting Lines, Equal Treatment, and Early Voting Check-in Times in Florida*, 21 ST. POL. & POL'Y Q. 109 (2021); Hannah L. Walker, Michael C. Herron & Daniel A. Smith, *Early Voting Changes and Voter Turnout: North Carolina in the 2016 General Election*, 41 POL. BEHAV. 841 (2019).

171. See Orley Ashenfelter & Stanley Kelley, Jr., *Determinants of Participation in Presidential Elections*, 18 J.L. & ECON. 708, 708 (1975).

submitting a ballot. The absence of certainty as to one's eligibility theoretically functions as an indirect cost that forestalls otherwise-qualified voters from electoral participation.

Put simply, an eligible returning citizen sensitive to additional criminal sanctions could guarantee they avoid costly errors by forgoing the use of their voting privileges. Such an individual, in economics parlance, is risk averse; as such, even a small risk of felony conviction from voting likely exceeds the perceived benefits.

To be sure, voter fraud statutes, like other fraud statutes, typically impose liability only on those who register to vote or cast a ballot despite knowingly and willfully being aware they are ineligible to do so.<sup>172</sup> Establishing such intent in court is often not straightforward. But returning citizens, generally not steeped in such nuances, might still be reasonably concerned about potential misunderstandings. The mere possibility for an accidental oversight to be misconstrued as deliberate by a prosecutor likely prevents many risk-averse individuals from participating, especially given widespread coverage of harsh penalties faced by returning citizens if found to be illegally registering to vote.<sup>173</sup>

As noted in Part III.A and further detailed in Part IV below, Florida's system for calculating and communicating LFOs is perversely complicated. Therefore, it is plausible that criminal assessments, barring substantial legal clarity and administrative adeptness, generate uncertainty that deter otherwise-eligible returning citizens from exercising their electoral privileges.

Importantly, Florida is not unique in its complexity and bureaucratic malaise; LFO provisions in other states have long been singled out for their opacity and complexity as well. Given potential miscalculations, many returning citizens may rationally choose to abstain rather than submit themselves to risks.

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172. See, e.g., FLA. STAT. § 104.011 (2022):

(1) A person who *willfully* swears or affirms falsely to any oath or affirmation, or *willfully* procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections commits a felony of the third degree . . . (2) A person who *willfully* submits any false voter registration information commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(emphasis added).

173. See Timothy Bella, *She Was Told She Could Vote Again After Felony Convictions. Now She's in Prison for Trying.*, WASH. POST (Feb. 4, 2022, 4:00 PM), <https://www.washingtonpost.com/nation/2022/02/04/tennessee-pamela-moses-voting-fraud-prison/> [<https://perma.cc/P3Z9-XMKJ>]. Since the 2020 election, these concerns have been shown to be not merely theoretical in Florida.

Empirical research is currently silent on the extent to which assessments dissuade participation. But scholars have explored how other information costs and uncertainty attenuate voter participation more generally.<sup>174</sup> In a compelling study using administrative data from Iowa, Marc Meredith and Michael Morse examine returning citizen turnout in Iowa following an overhaul in their voting rights restoration process. They observe substantial increases in participation following the switch from an application-based system to one with automatic restoration of voting rights for those with past felony convictions in 2005.<sup>175</sup> The authors find that turnout rates are higher for those who were notified of the restoration of their right to vote; this, naturally, reinforces the hypothesis that misinformation significantly deters returning citizens' political engagement.<sup>176</sup>

Other authors have instead turned to randomized-control trials ("RCTs") to test the importance of reducing information costs for returning citizens. Partnering with Connecticut state officials, Gerber, Huber, Meredith, Biggers, and Hendry<sup>177</sup> constructed an RCT in which they sent out mailers informing recently discharged inmates about voter eligibility.<sup>178</sup> Control groups did not receive any mailers. Their informational campaigns increased registration by about thirty percent and turnout by approximately twenty-five percent.<sup>179</sup>

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174. Political science research has investigated how voter information might affect turnout more generally. For example, changes in polling places resulted in a three percent reduction in turnout in Los Angeles County during California's 2003 gubernatorial recall elections, sixty percent of which can be attributed to the search effect of voters trying to find their new polling place. See Henry Brady & John McNulty, *Turning Out to Vote: The Costs of Finding and Getting to the Polling Place*, 105 AM. POL. SCI. REV. 115 (2011).

175. 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 (2015).

176. See *id.* at 61–68. The same authors previously published a different study that measured the impact of notification laws in New York, North Carolina, and New Mexico, which required those states to notify former defendants about the status of their voting rights. See Marc Meredith & Michael Morse, *Do Voting Rights Notification Laws Increase Ex-felon Turnout?*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 220, 222 (2014). They found "little evidence that notification increases registration and turnout rates" in these states, though they noted this might be because the voting rights information is "buried in densely worded pamphlets." *Id.* at 222, 240. By contrast, the communication in Iowa involved sending short letters, personally addressed to the dischargees, with language conveying that the state "wants him or her to vote." *Id.* at 240.

177. See Alan S. Gerber, Gregory A. Huber, Marc Meredith, Daniel R. Biggers & David J. Hendry, *Can Incarcerated Felons Be (Re)integrated into the Political System? Results from a Field Experiment*, 59 AM. J. POL. SCI. 912 (2015) (building upon observational evidence that documented a negative correlation between past incarceration status and voter participation).

178. See *id.* at 913. In other treatment arms, the mailers also assuaged concerns about potential penalties associated with voter fraud. *Id.* at 917.

179. See *id.* at 913.

More recently, Doleac, Eckhouse, Foster-Moore, Harris, Walker, and White conducted an RCT in North Carolina but extended their population of interest to incorporate unregistered voters who had been convicted of a felony at any time in the past.<sup>180</sup> They find statistically significant effects of about eleven to twelve percent, for both voter registration and turnout.<sup>181</sup>

Hence, while no prior empirical studies have focused on reducing information costs associated with criminal court debt, the existing body of research on informational interventions suggests that uncertainty surrounding eligibility to vote significantly inhibits returning citizens' electoral involvement. Removal of uncertainty in the LFO context—such as by notifying those returning citizens who do not owe court debt or for whom any remaining assessments have been paid—might increase propensity to vote. These are precisely the types of interventions that Free Our Vote conducted in Florida in 2020. We explore the efficacy of those interventions in the next Part.

### III. EMPIRICS: FELONY FINANCIAL DISENFRANCHISEMENT IN FLORIDA

This Part explains why we founded Free Our Vote and how it intervened along with its partners on behalf of returning citizens in Florida ahead of the 2020 general election. After explaining the underlying problems with LFOs and introducing our approach, we use a variety of causal empirical methodologies to analyze the impact of these interventions. Specifically, we draw on evidence from standard multivariate regressions and quasi-random treatment frameworks.

We find that Free Our Vote's informational campaign, which notified otherwise-eligible people who did not owe criminal assessments that they were qualified to vote, boosted electoral participation by sixteen percent. Free Our Vote's debt relief campaign, which paid off criminal assessments for individuals and thereby made them eligible to vote, increased electoral turnout by twenty-six percent. Both results show the elimination of felony financial disenfranchisement would significantly increase voter participation for returning citizens.

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180. See Jennifer L. Doleac, Laurel Eckhouse, Eric Foster-Moore, Allison Harris, Hannah Walker & Ariel White, *Registering Returning Citizens to Vote* (IZA Inst. of Lab. Econ., Working Paper No. 15121, 2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4114680](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4114680) [<https://perma.cc/398V-NP4X>]. The authors found a null effect for a parallel experiment they ran in Texas, but they attributed that to various logistical problems. *Id.* app.C at 8–10.

181. *Id.* at 2.

### A. Confusion Over LFOs

Prior to the adoption of Amendment 4, the Florida Division of Elections implemented a fairly simple approach to identify ineligible voters: it compared both members of and registrants to the electorate against a list of individuals with felony convictions in Florida. The algorithm required three of the following four fields to match perfectly: the applicant's full legal name, driver's license number, social security number, and state identification number.<sup>182</sup> Unless an individual received the blessing of the Florida Executive Clemency Board or was convicted outside Florida, this process wholly determined eligibility.<sup>183</sup>

With the introduction of Amendment 4 and subsequent passage of S.B. 7066, this once prosaic method became "byzantine."<sup>184</sup> Now, the Division of Elections must screen applicants for outstanding LFO balances.<sup>185</sup>

The process of determining criminal costs, fines, and fees is anything but straightforward. No centralized repository of LFOs or state-mandated reporting standards exist.<sup>186</sup> Rather, each county uniquely tracks such debt; methods vary in terms of frequency of updates and granularity. To obtain even primitive estimates, the Division of Elections must apply a patchwork, county-specific process to systematically measure criminal case debt.<sup>187</sup> Custodial and technological shortcomings mask balances such that even scholars familiar with criminal data cannot state with certainty the true amount due.<sup>188</sup>

To illustrate, authorities might not be able to readily distinguish assessments tied to criminal convictions versus those raised afterward. In certain jurisdictions, such as Pinellas County, clerks' offices meticulously note assessment and payment dates. This careful delineation facilitates tabulation of balances for purposes of Amendment 4. Other, more financially constrained counties might lack

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182. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1228 (N.D. Fla. 2020).

183. *Id.*

184. *Id.* at 1208.

185. *Id.* at 1228.

186. See *Offender Based Transaction System*, FLA. CTS. (Jan. 2002), [https://www.flcourts.org/content/download/216737/file/OBTS\\_20021.pdf](https://www.flcourts.org/content/download/216737/file/OBTS_20021.pdf) [<https://perma.cc/SW7B-N6X8>]. The one fully comprehensive case management system implemented statewide, the Offender Based Tracking System, does not cover criminal fines and fees. See *id.*

187. See Dara Kam, *A Top Florida Elections Official Gets Grilled on Felon Voting*, TAMPA BAY TIMES (May 4, 2020), <https://www.tampabay.com/florida-politics/buzz/2020/05/04/a-top-florida-elections-official-gets-grilled-on-felon-voting/> [<https://perma.cc/CPW8-GG78>].

188. See *Jones*, 462 F. Supp. at 1208–12.



the means to monitor cases with the same fastidiousness. In these jurisdictions, records are understandably cruder; assessments apart from the original sentence are indistinguishable from the initial LFO. In practice, this obfuscates the amount required to vote.

This limitation barely touches the tortuous lengths necessary to determine the amount a returning citizen must pay to become re-enfranchised.<sup>189</sup> Similar variations in reported restitution balances, community service in lieu of payments, withheld adjudications,<sup>190</sup> and conversion to liens further complicate calculations.

Compound these problems with issues endemic to criminal records such as aliases, name changes, and transcription errors, and the logistics of clearing applicants with felony records become more than troublesome. Director of the Division of Elections Maria Matthews testified her office could review about fifty-seven voters' cases per day.<sup>191</sup> A paucity of specialized legal knowledge and technical skills partially explains the glacial pace; the Division of Elections manually reviews cases, insensitive to the immediacy of upcoming elections. Even with additional support that would cost taxpayers a minimum of \$2.2 million, the state could not feasibly provide rough estimates of outstanding debts for at least four to six years.<sup>192</sup> If elections officials could not determine if an individual is eligible, those with convictions, who generally lack administrative and legal expertise, cannot reasonably be expected to do so either.<sup>193</sup>

189. See *infra* Part IV.A.

190. Florida offers judges an option to “withhold adjudication” when sentencing a defendant. See FLA. STAT. § 948.01(2) (2022). Such a sentence means that a defendant was found guilty but was technically not deemed guilty by the judge, who believes the defendant is unlikely to recidivate. *Id.* LFOs imposed in cases in which adjudication was withheld on all counts do not trigger removal of civil rights, including voting; as such, we excluded such cases from our analysis whenever it was possible to identify them using docket sheet data. See *Clemency Information Sheet*, STATE OF FLA. OFF. OF EXEC. CLEMENCY 2 (Mar. 10, 2021), <https://www.fcor.state.fl.us/docs/clemency/Clemency%20Information%20Sheet.pdf> [<https://perma.cc/N2EB-SDZA>] [hereinafter *Clemency Information Sheet*] (“If adjudication was Withheld in your case(s), you did not lose your civil rights, which includes the right to vote, serve on a jury and hold public office.”).

191. See *Jones*, 462 F. Supp. 3d at 1228.

192. See *id.* This calculation is based on six years of an estimated additional twenty-one employees at the Division of Elections, who each earn \$16,000 annually. See *id.* All figures but the salary—an extremely conservative input—come from the Director of the Division of Elections’ testimony. See *id.* It is worth noting that the responsibility of that inefficiency should not be borne by the Division of Elections. Rather, it should be shouldered by advocates of S.B. 7066; they failed to allocate funding to implement a technologically sound, cost-effective method to clear applicants with felony backgrounds. See *id.*

193. See Emily L. Mahoney, *House Passes Amendment 4 Bill Requiring Felons to Pay Up Before They Can Vote*, MIA. HERALD (Apr. 24, 2019), <https://www.miamiherald.com/news/politics-government/state-politics/article229619604.html> [<https://perma.cc/9JET-UCLR>].

*B. Free Our Vote*

Regardless of the merits of Amendment 4 and S.B. 7066, the resulting administrative disarray appalled us; Florida's inability to provide returning citizens with even a ballpark estimate of their balances was morally, if not constitutionally, offensive. Fortunately, given our prior research experiences with Florida court, election, and prison data,<sup>194</sup> we knew estimates using publicly available data sources were possible. Beyond that, it seemed apparent to us that a technological solution could circumvent the bureaucratic inertia baked into the process employed by the Florida Division of Elections. Following the U.S. Supreme Court's decision in July 2020 to not reinstitute the stay issued by the district court, we felt compelled to intervene.<sup>195</sup>

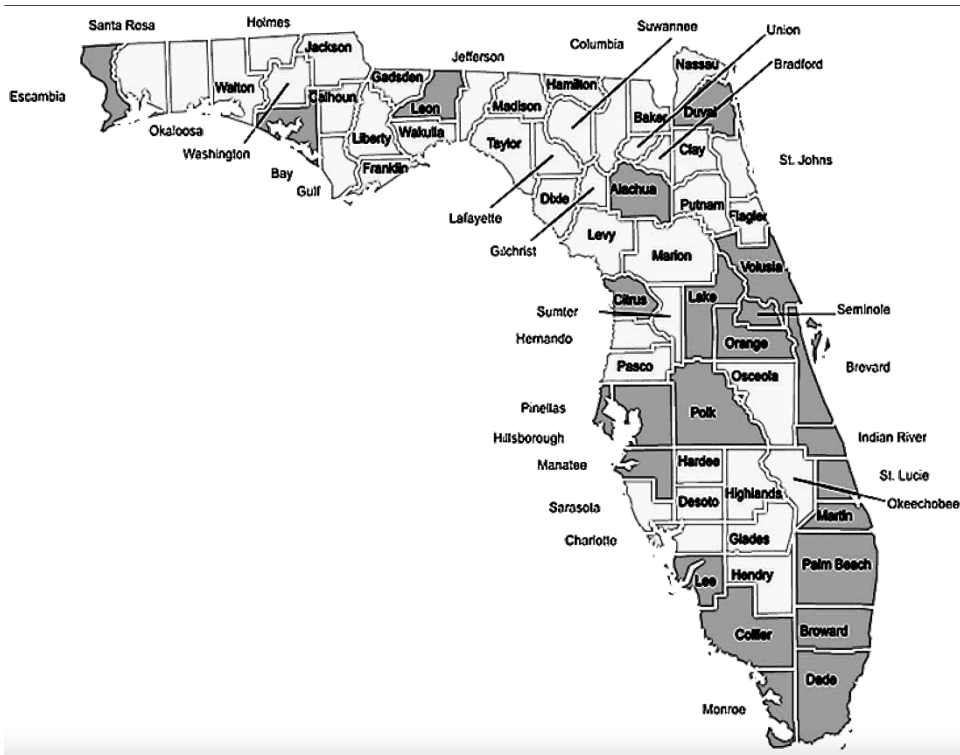
In response, we launched a nonprofit, nonpartisan initiative called Free Our Vote. Free Our Vote pools the talents of economists, law students, and data scientists to inform individuals with felony backgrounds of any remaining LFO balances. Within three months and with no budget, Free Our Vote collected accurate LFO data for nearly a half-million Floridians; the data span over twenty-four counties that encompass more than eighty percent of the state's population. Figure 1 below describes our data coverage by county.

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194. See, e.g., Scott Kostyshak & Neel U. Sukhatme, *Down to the Last Strike: The Effect of the Jury Lottery on Criminal Convictions* (Georgetown L. Fac. Publ'ns & Other Works, Working Paper No. 2156, 2019) (analyzing impact on case outcomes of variation in prospective jurors in felony and misdemeanor cases).

195. See Amy Gardner & Loria Rozsa, *Supreme Court Deals Blow to Felons in Florida Seeking to Regain the Right to Vote*, WASH. POST (July 16, 2020, 2:15 PM), [https://www.washingtonpost.com/politics/supreme-court-deals-blow-to-felons-in-florida-seeking-to-regain-the-right-to-vote/2020/07/16/2ede827c-c5dd-11ea-a99f-3bbdff1af38\\_story.html](https://www.washingtonpost.com/politics/supreme-court-deals-blow-to-felons-in-florida-seeking-to-regain-the-right-to-vote/2020/07/16/2ede827c-c5dd-11ea-a99f-3bbdff1af38_story.html) [https://perma.cc/GG5L-S6AY].

FIGURE 1: FREE OUR VOTE DATA AVAILABILITY BY FLORIDA COUNTY



The shaded counties are where Free Our Vote acquired data either through web scraping techniques or data requests. Unshaded counties are where Free Our Vote did not obtain sufficient data to calculate outstanding LFOs.

Free Our Vote accomplished this by acquiring, cleaning, and merging data from many sources. Specifically, we rely on data from the Florida Department of Corrections and the Florida Department of Elections to sketch case information for all observed defendants.<sup>196</sup> We also pulled historical voter information, including registration dates, past participation, and demographic features from the 2020 Division of Elections' statewide voter file.<sup>197</sup> Leveraging these datasets in combination, we scraped felony assessment and payment records

196. Collected data on file with authors.

197. *Voter Extract Disk Request*, FLA. DIV. OF ELECTIONS, <https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-extract-disk-request/> (last visited Oct. 4, 2022) [<https://perma.cc/ADM9-MCCD>] (requested voter information on file with authors).

directly from clerks' websites; where jurisdictions prohibited the use of web crawlers, we requested the data directly from county clerks.<sup>198</sup>

Using the coalesced data, Free Our Vote served returning citizens through three distinct but related channels. First, Free Our Vote developed a clearinghouse website ([www.freeourvote.com](http://www.freeourvote.com)) that enables individuals to see if they qualify to vote.<sup>199</sup> Based on the data we assembled, individuals can query whether they appear to owe criminal court debt.

Second, Free Our Vote forged partnerships with other charitable entities seeking our empirical insights to buttress their endeavors. Working with the Campaign Legal Center ("CLC") and the FRRC, we contacted returning citizens with no outstanding balances to inform them of their eligibility; for individuals not in the electorate, we also provided details about the registration process.

Third, Free Our Vote began a debt repayment program, actively designed to eliminate court debt and restore voting privileges for otherwise-eligible returning citizens. Because of the attention on the upcoming election, the data's value to donors became palpable. Injections of cash to the FRRC by high-profile figures such as Michael Bloomberg and LeBron James altered the landscape we inhabited.<sup>200</sup> The FRRC conducts grassroots outreach to affected individuals and engages county clerks on behalf of its clients. While it collects some data, those records detail balances for specific individuals it intends to serve rather than the comprehensive universe of potential beneficiaries.

Free Our Vote supported some of the FRRC's efforts. Namely, we flagged individuals who committed offenses that violate the terms of Amendment 4 and shared data that captured accurate amounts owed for their beneficiaries.

Free Our Vote then expanded our efforts through direct contact with donors. In coordination with the FRRC, we formed a collaboration with Robert F. Kennedy Human Rights to raise funds to eliminate criminal assessments and re-enfranchise returning citizens' voting privileges. We focused our energies on counties where the FRRC had a

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198. For one example, see *All Case Records Search*, CLERK OF THE CIR. CT. & COMPTROLLER: PINELLAS CNTY., FLA., <https://ccmspa.pinellascounty.org/PublicAccess/default.aspx> (last visited Oct. 4, 2022) [<https://perma.cc/Z47U-YYUT>] [hereinafter *Pinellas Cnty. All Case Records Search*].

199. FREE OUR VOTE, <https://freeourvote.com> (last visited Sept. 12, 2022) [<https://perma.cc/J4ZU-JNNK>].

200. See Michael Scherer, *Mike Bloomberg Raises \$16 Million to Allow Former Felons to Vote in Florida*, WASH. POST (Sept. 22, 2020, 10:30 AM), [https://www.washingtonpost.com/politics/mike-bloomberg-raises-16-million-to-allow-former-felons-to-vote-in-florida/2020/09/21/6dda787e-fc5a-11ea-8d05-9beaaa91c71f\\_story.html](https://www.washingtonpost.com/politics/mike-bloomberg-raises-16-million-to-allow-former-felons-to-vote-in-florida/2020/09/21/6dda787e-fc5a-11ea-8d05-9beaaa91c71f_story.html) [<https://perma.cc/VZ3P-2VZH>].

minimal footprint, and where clerks’ offices were receptive to receiving funds to clear returning citizens’ balances.

*C. Measuring the Chilling Effect*

1. Information Campaign

Free Our Vote’s first intervention, which we refer to as the “information campaign,” involved sending informative mailers and opt-in text messages to already-registered returning citizens that Free Our Vote had identified as not owing any LFOs. We informed these otherwise-eligible people that they did not seem to owe any LFOs and therefore appeared to qualify under Amendment 4. Figure 2 below shows the mailer sent to the first group that conveys the above message.

FIGURE 2: MAILERS SENT TO INFORMATION CAMPAIGN RECIPIENTS

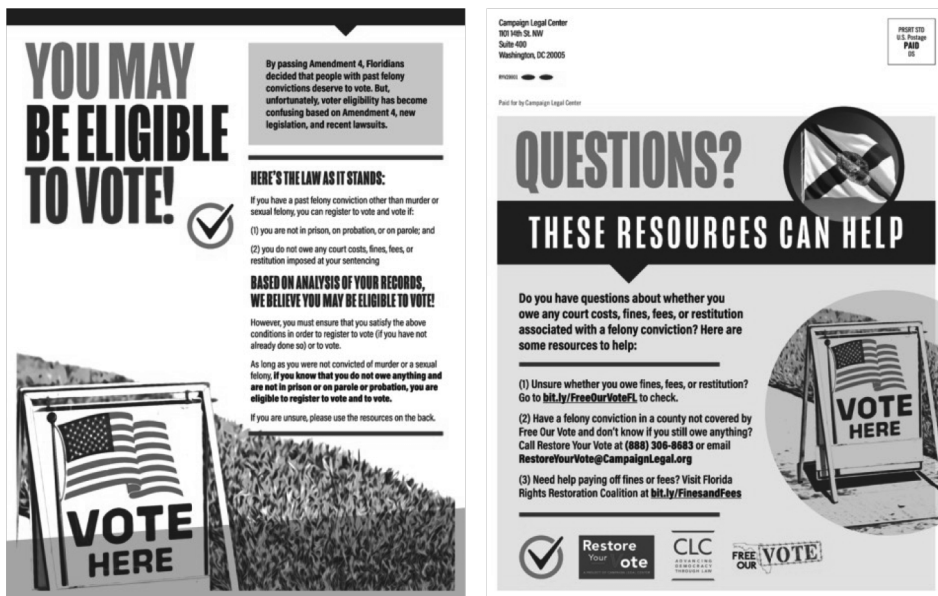


Figure 2 shows two sides of a mailer sent to eligible voters with felony convictions but no LFO balances.

Measuring the effect of any intervention requires having a control group—a set of people who did not receive the treatment; in this case, the informative mailer or opt-in text message functions as the treatment or intervention. An ideal control group consists of people who are virtually identical to those in the treatment group, except they were

not contacted for reasons unrelated to their propensity to vote. Accordingly, any average difference we measure in electoral turnout between the treatment and control groups would be attributable to the treatment. No other non-treatment-related difference between the two groups could explain differences in electoral participation.

Here, our control group consists of people who are observationally similar to the ones that Free Our Vote contacted but who Free Our Vote did not contact simply due to data anomalies or logistical reasons. While Free Our Vote engaged in an extensive effort to accurately identify all outstanding LFOs, variations in reporting methods often proved challenging.

For example, updates to assessments and payments in Pinellas County are reported in entirely new HTML tables. While the most recent financial summary is visible on the county website, archived tables are furtively embedded into the HTML; therefore, particular parsing methods—techniques that convert HTML pages to data amenable to statistical analysis—potentially pull earlier, no longer relevant financial summaries.<sup>201</sup> A separate but similar issue occurred in Polk County, where financial summaries failed to account for payments made.<sup>202</sup> These outdated or inaccurate snapshots consistently overstated balances owed by those once convicted in Pinellas or Polk counties. Notwithstanding these limitations, the accurate balance was available elsewhere on the HTML pages in both jurisdictions.<sup>203</sup>

Given our nonexistent budget and the impending election, Free Our Vote did not have the resources to revisit parsing problems that affected a few hundred cases. Since then, we have implemented methods to systematically address these issues. In the process, we discovered that a number of these individuals owed significantly less criminal debt than our original conservatively high estimates; many owed nothing.

Convenient for purposes of program evaluation, these returning citizens did not receive a mailer or text to inform them of their eligibility. Given these individuals were excluded from the information campaign intervention essentially at random, they constitute a plausibly valid counterfactual group to assess the campaign's effect on voter participation.

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201. See *Pinellas Cnty. All Case Records Search*, *supra* note 198.

202. See *Public Search Options*, CLERK OF CTS. & COMPTROLLER POLK CNTY., FLA., <https://pro.polkcountyclerk.net/PRO/PublicSearch/PublicSearch> (last visited Oct. 4, 2022) [<https://perma.cc/A4G9-MMFB>] [hereinafter *Polk Cnty. Public Search Options*].

203. See *Pinellas Cnty. All Case Records Search*, *supra* note 198; see also *Polk Cnty. Public Search Options*, *supra* note 202.

## 2. Sample Selection

Our population of interest is composed of those returning citizens who were already registered to vote and owed no criminal court debt as of October 2020, with prior felony conviction(s) in only one county. Limitations in Florida Department of Corrections data restrict us only to those convicted after 1997.<sup>204</sup>

We further restrict the sample to those otherwise eligible to vote under Amendment 4, thereby excluding anyone convicted of murder or sexual offenses. Restitution, which must be paid in full to meet Amendment 4 criteria, also influences the sample pool. As noted, restitution balances are difficult to capture. Generally, county clerks do not systematically record these obligations. Therefore, if a returning citizen ever appeared to owe restitution, they are excluded from our analyses.<sup>205</sup> Finally, we omit anyone whose civil rights (including voting privileges) were already restored via the Florida Clemency Board.<sup>206</sup>

Table 1 breaks down the total number of observed individuals who filter through these restrictions. As shown, the control group primarily consists of individuals from Pinellas, Polk, and Volusia counties, where data complexities were most prevalent.

TABLE 1: SAMPLE POOL FOR INFORMATION CAMPAIGN

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	<u>Total Individuals</u>	<u>Less Restitution Owed</u>	<u>Less Prohibited Offense</u>	<u>Less Restored Voters</u>	<u>Recipient</u>	<u>Control</u>	<u>Total</u>
Alachua	318	256	255	214	206	8	214
Escambia	1,213	627	587	496	461	29	490
Leon	360	360	353	315	305	10	315
Pinellas	2,239	1,769	1,763	1,562	962	529	1,491
Polk	1,739	1,253	1,230	647	397	250	647
Volusia	543	348	323	319	70	229	299
Total	6,412	4,613	4,511	3,553	2,401	1,055	3,456

Table 1 illustrates the construction of the sample of interest for the information campaign executed by Free Our Vote. Column 1 lists the total number of individuals convicted of a felony offense who did not owe any criminal court debt as of October 2020. Column 2 removes those who ever appeared to owe restitution from the numbers in Column 1. Columns 3 and 4 further restrict to those not convicted of murder or a sexual offense, and those whose rights were not restored via the Florida Clemency Board, respectively. Columns 5 and 6 respectively break down the filtered sample into treatment and control groups.

204. See FLA. STAT. §§ 921.0017-921.244 (2022) (providing new sentencing guidelines instituted by Florida in 1998; felony court data prior to the adoption of this framework are generally unavailable).

205. We conservatively exclude anyone with a docket that bears the word “restitution.”

206. See FLA. STAT. §§ 940.01-940.061 (2022).

## 3. Causal Estimates

We begin with summary statistics that reinforce the credibility of our design. Recall that the counterfactual group comprises members of the electorate who qualify through Amendment 4 but who were not contacted by Free Our Vote due to quasi-random quirks in clerk of courts' data. If this group is a good counterfactual, it will ideally mirror the treatment group when we compare measurable attributes of both groups.

Comparing two groups in this manner is done by something known as an orthogonality t-test, or "balance test." Table 2 presents the results of that test, which show the recipient and control groups to be quite similar.

TABLE 2: SUMMARY STATISTICS FOR QUASI-RANDOM INFORMATION TREATMENT

	(1)	(2)	(3)
	<u>Recipient</u>	<u>Control</u>	<u>P-Value</u>
Mean Age (Year)	47.44	46.93	0.885
Female (%)	0.26	0.29	0.360
Prior Voter (%)	0.61	0.52	0.048*
Voted Before A4 (%)	0.45	0.53	0.432
Registered After A4 (%)	0.32	0.35	0.377
Republican (%)	0.29	0.22	0.000**
Third-Party (%)	0.27	0.33	0.594
Days Registered Before Election	3,950	3,372	0.142
Asian (%)	0.00	0.00	0.805
Black (%)	0.32	0.30	0.170
Hispanic (%)	0.04	0.04	0.156
White (%)	0.57	0.57	0.623
Median Income (\$1,000)	37.32	37.43	0.869
Observations	2,398	1,053	-

Table 2 contains summary statistics of the information campaign recipients in the first column. The second column lists average values of features for the individuals who were eligible to vote under Amendment 4 criteria but were not



contacted by Free Our Vote. Note that five individuals are missing estimated household income, which is why the sample sizes differ slightly from Table 1. The p-value associated with the orthogonality t-test is listed in the third column. \*\* and \* indicate significance at the 1% and 5% levels, respectively.

But for two features—the shares of the treatment and control groups affiliated with the Republican Party, and those who have previously voted—every observable variable is statistically indistinguishable between the two groups. And there is no good reason to believe the HTML framework or clerks’ capacity to flawlessly update their websites is related to the characteristics in Table 2 or to any unobserved characteristics. At any rate, the empirical specifications control for these characteristics to account for this heterogeneity.

We now present the principal regression analysis for the information campaign. Given the assumption of quasi-random assignment to treatment and control groups, Table 3 below measures the causal impact of being notified that one does not appear to owe LFOs and is hence eligible to vote.

TABLE 3: QUASI-RANDOM INFORMATION TREATMENT RESULTS

	Probability of Voting	
	(1)	(2)
Recipient	0.103** (0.018)	0.086** (0.017)
Covariate Controls		X
Adjusted R-Squared	0.01	0.15
Observations	3,456	3,451

Table 3 shows causal estimates for the quasi-random information treatment. Recipient is a binary variable that indicates if a returning citizen received any contact regarding eligibility through our information program. Column 1 comes from a regression with no controls; in Column 2, we account for a variety of factors including race, age, party affiliation, county of conviction, voting history, and median household income in returning citizens’ zip codes. The second regression includes five fewer observations as estimated household income data are not available for a few individuals. Standard errors clustered by county of conviction are in parentheses. \*\* and \* indicate significance at the 1%, and 5% levels, respectively.

The first column of Table 3 presents the most parsimonious regression specification in this setting. The outcome variable is a binary

variable that captures whether an individual participated in the 2020 general election—i.e., it is “1” if the person voted and “0” otherwise. The treatment variable is “Recipient,” another binary variable that takes a value of “1” if Free Our Vote contacted the individual to inform them of their eligibility and a “0” otherwise.

The second regression adds a host of individual-level and geographic covariates; these are controls for age, race, party affiliation, county of conviction, prior voter participation, registration date, and zip code-level median income.<sup>207</sup>

The coefficients on “Recipient” are interpreted as the percentage point increases in turnout for those who Free Our Vote contacted. Given that turnout in the counterfactual group was approximately 52.4%, and contacted people were 8.6% more likely to vote (see Table 4, column 2), the turnout rate for contacted people was 61.0% (= 52.4% + 8.6%). This means the information campaign increased the likelihood that contacted individuals would vote by 16% ( $0.16 \approx 8.6/52.4$ ).

The specification of choice yields an estimate (16%) similar in magnitude to other empirical work on mailers,<sup>208</sup> lending credence to our study design. The results suggest that reducing uncertainty about eligibility improves electoral participation among an ostracized segment of the population.<sup>209</sup>

#### *D. Measuring the Tax Effect*

In the previous Section, we showed that in a jurisdiction that practices FFD, informing otherwise-eligible returning citizens that they do not owe any criminal assessments boosts their electoral participation

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207. All measures but income data come from the 2020 Department of Elections statewide voter file; we pulled 2020 zip code level income data from the Internal Revenue Service Statistics of Income data file. We cluster standard errors at the county level, a way to control for variation that is correlated with the county of conviction. See Alberto Abadie, Susan Athey, Guido W. Imbens & Jeffrey Wooldridge, *When Should You Adjust Standard Errors for Clustering?* (Nat'l Bureau of Econ. Rsch., Working Paper No. 24003, 2017).

208. See *supra* notes 177–181 and accompanying text.

209. The results here categorize treated individuals as those Free Our Vote was able to contact. In the event this population does not represent the wider community of individuals with no LFO balances, the results potentially suffer from selection bias. To address that concern, we have re-estimated the results using the individuals whom Free Our Vote attempted to reach; this includes those who ultimately received a notification from Free Our Vote as well as those we could not reach. As a further alternate specification, we employ an instrumental variables (“IV”) strategy that relies on the exogeneity and relevance of the pool of individuals Free Our Vote intended to contact. This population strongly correlates with those who received a mailer or text message; likewise, our intended recipient pool likely only affects voting outcomes through contact with our organization. We report these results from alternate OLS and IV specifications *infra* Appendix Table A1. The results there closely match those presented here and remain highly statistically significant. Our conclusions are therefore robust and do not appear to reflect any selection bias.

by about sixteen percent. In this Section, we go further and measure whether paying off someone's debt *and* notifying them of this intervention has a similar or even greater effect. Specifically, we gauge the extent to which criminal debt forgiveness increases voter participation among returning citizens. No prior research has measured this sort of intervention.

### 1. Debt Relief Program

Free Our Vote employs a debt relief program for returning citizens that relies on data-driven tools. This model serves donors who seek a swift, accurate intervention. For example, in one wave of our interventions in Pinellas County we intended to offset 575 returning citizens' balances, which we estimated at \$32,258.07; our estimate overstated the true amount owed by about \$500 (under 2%).<sup>210</sup>

Every dollar that Free Our Vote receives benefits recipients. Moreover, Free Our Vote seeks to re-enfranchise the largest number of people for a given budget. This maximization strategy works as follows.

Suppose three people owe \$10 each in criminal assessments; three people owe \$20; and one person owes \$50. To maximize the number of individuals whose debt can be paid off, one would sequentially eliminate the smallest debts until the budget is exhausted. Here, \$100 could satisfy court debt for the six people who owe either \$10 or \$20 ( $3 \times \$10 + 3 \times \$20 = \$90$ ). Alternatively, one might clear the debts of the person who owes \$50, but doing so would reduce impact to at most five people ( $\$100 = 1 \times \$50 + 3 \times \$10 + 1 \times \$20$ ). Free Our Vote follows the former, rather than the latter, strategy.

To execute this procedure at scale, Free Our Vote first reviewed case data across counties to identify registered voters who would be eligible to vote but for outstanding criminal court debt. Similar to the informational campaign, we excluded any returning citizen who was convicted of murder or a sexual offense, was under supervised release, or who appeared to ever owe restitution. We then determined amounts owed per case attributable to convictions; hence, we did not include, whenever identifiable, amounts such as interest and other post-

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210. The model adopted by Free Our Vote differs from that of the FRRC in myriad ways. We view our organizations as complementary. Free Our Vote conducts no in-person outreach, is politically inactive, and does not connect returning citizens with legal aid. Unlike the FRRC, which employs a labor-intensive, client-based approach, our model potentially overlooks worthy would-be recipients who might owe larger sums of money, and it does not address these individuals' long-term legal needs. See MEADE, *supra* note 114.

sentence fees. Subsequently, we aggregated case-level amounts to the individual level via name, date of birth, and other identifying features.

Next, we presented the clerk in the county with a check that covered criminal assessments for the maximum number of potential beneficiaries.<sup>211</sup> Working with the clerk helps both sides verify that our calculations are correct and allows us to obtain assurances that the beneficiaries are, in fact, clear of all LFO obligations in that county.

Upon receipt of satisfaction of judgment from the clerks' offices, Free Our Vote coordinated with the CLC to inform beneficiaries of their voter eligibility.<sup>212</sup> To execute this informational outreach, the CLC hired a third-party commercial data vendor that specializes in matching names and demographic features to its proprietary address and cell phone number database. Free Our Vote shared its data with the vendor, which then supplemented those records with addresses.

Finally, staff at the CLC conducted outreach via opt-in text messages and mailers. Figure 3 shows examples of the mailer sent to beneficiaries of Free Our Vote's debt relief program.<sup>213</sup>

FIGURE 3: MAILERS SENT TO DEBT RELIEF BENEFICIARIES

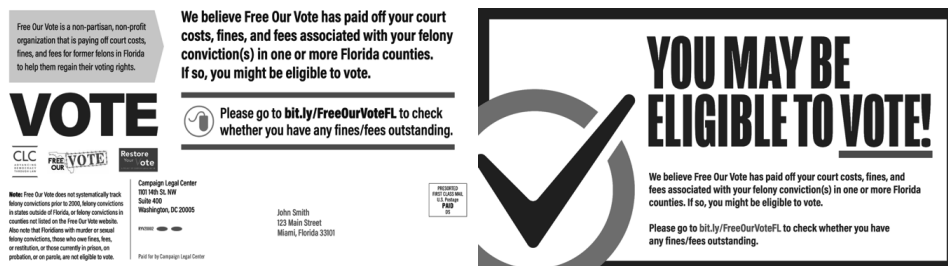


Figure 3 shows two sides of a mailer sent to beneficiaries of Free Our Vote's debt relief intervention.

Individuals who received text messages had opted-in to learning more about their voting rights. These individuals had previously

211. Free Our Vote's focus at the county level arose from our collaboration with the FRRC as well as for efficiency purposes. As noted later in this Article, LFOs older than five years are rarely paid off. *See infra* fig.5 and accompanying text. County clerks are amenable to waiving certain fees or discounting balances altogether in exchange for a portion of revenue they never expect to receive. By focusing on individual counties, Free Our Vote can pay much more debt than the face value of the checks submitted.

212. In a separate arm of Free Our Vote's advocacy efforts, the CLC sent similar notifications to registered voters who no longer appeared to owe any criminal fees, fines, or court costs and otherwise appeared eligible to vote. For more details, see *supra* Part III.B.

213. For the people whose fines or fees that Free Our Vote paid off, the mailer indicates: "We believe Free Our Vote has paid off your court costs, fines, and fees." Otherwise, the mailer is substantially similar to the one sent to the individuals who owed no fines and fees.

received targeted Facebook or Instagram (now collectively, Meta) advertisements that encouraged them to click on a link and provide their phone number if they were interested in being contacted by someone who could help assist them determine their voting rights.<sup>214</sup>

## 2. Summary Statistics and Sample Selection

Table 4 below provides details and summary statistics for our debt relief program. In Alachua County, for example, Free Our Vote paid the balances of all such individuals it identified whose total amount owed was less than or equal to \$148.38.

TABLE 4: SUMMARY STATISTICS FOR DEBT RELIEF PROGRAM

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Threshold	Beneficiaries	Mean Balance	Total Paid	Received Mailer	Received Text	Contacted
Alachua	\$148.38	60	\$54.83	\$3,290	2	41	41
Duval	-	567	\$196.84	\$111,805	-	-	-
Escambia	\$151.47	113	\$57.26	\$6,470	103	83	108
Leon	\$150	31	\$69.77	\$2,163	1	24	24
Pinellas	\$150	581	\$72.55	\$42,297	547	425	562
Polk	\$127	40	\$54.02	\$2,161	22	35	36
Volusia	\$153.31	179	\$53.94	\$9,714	71	127	142
Total	-	1,571	-	\$177,900	726	735	913

Table 4 shows summary statistics for Free Our Vote’s debt relief program. Column 1 displays the maximum amount paid per beneficiary in each county. Column 2 lists the number of individuals financially assisted by Free Our Vote, with the total sum of debts paid listed in Column 4. Note: Duval County recipients are not included in the analyses in Part III as Free Our Vote partnered with the FRRC to intervene at these individuals’ behest, which used a different payment mechanism. Column 3 lists the mean balance per beneficiary. Columns 5 and 6 capture how many beneficiaries were notified of

214. We are presently comparing the effectiveness of mailers versus opt-in text messaging to encourage voter participation via two randomized controlled trials, conducted during the 2022 general election in Iowa and the State of Washington. Both states recently restored voting privileges for tens of thousands of previously disqualified individuals with past felony convictions. See Alexander Billy, JJ Naddeo & Neel U. Sukhatme, RCTR Trial AEARCTR-0010141, *What Encourages Returning Citizens to Vote? Measuring the Impact of Different Forms of Voter Outreach in Iowa* (Oct. 17, 2022, 3:57 PM), <https://www.socialscienceregistry.org/trials/10141> [https://perma.cc/5W9L-XJL6] (describing in a pre-analysis plan an RCT with a pure control group that consists of no treatment and two treatment groups—one that receives mailers and the other that receives targeted Meta advertisements with an invitation to opt in to text messaging); Alexander Billy, JJ Naddeo & Neel U. Sukhatme, RCTR Trial AEARCTR-0010199, *What Encourages Returning Citizens to Vote? Measuring the Impact of Different Forms of Voter Outreach in Washington* (Oct. 17, 2022, 5:14 PM), <https://www.socialscienceregistry.org/trials/10199> [https://perma.cc/JWG5-V58S] (describing in a pre-analysis plan a similar RCT in the State of Washington, minus the pure control group). We obtained Georgetown University Institutional Review Board approval for both trials prior to their initiation.

settled balances via a mailer or text message, respectively. Column 7 shows the total number of individuals who received some communication.

Among returning citizens whose total balances fell at or below our dollar threshold,<sup>215</sup> the population of interest consists of those who would be eligible to vote under Amendment 4 but for outstanding criminal court debt.<sup>216</sup> As with our previous analysis, we exclude those convicted of murder or a sexual offense, as well as those who appear to owe restitution and did not receive clemency.<sup>217</sup> Table 5 captures the number of observed individuals who meet these criteria.

TABLE 5: SAMPLE POOL FOR DEBT RELIEF PROGRAM

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	<u>Total Individuals</u>	<u>Less Restitution Owed</u>	<u>Less Prohibited Offense</u>	<u>Less Restored Voters</u>	<u>Beneficiary</u>	<u>Control</u>	<u>Total</u>
Alachua	928	631	625	483	44	439	483
Escambia	1,173	388	365	291	51	240	291
Leon	638	637	620	577	25	552	577
Pinellas	2,824	1,809	1,801	1,268	187	1,081	1,268
Polk	1,084	608	576	452	9	443	452
Volusia	1,206	770	726	569	51	518	569
Total	7,853	4,843	4,713	3,640	367	3,273	3,640

Table 5 captures the sample of interest for the natural experiments facilitated by Free Our Vote. In Column 1, the total number of individuals convicted of a felony offense are listed per county. Column 2 adjusts the numbers in Column 1 for those who potentially owe restitution. In Column 3, the sample is further restricted to those not convicted of prohibited offenses. The final sample per jurisdiction (in Column 4) eliminates individuals who received clemency from the figures in Column 3. Columns 5 and 6 decompose the analysis sample into treatment and control groups, respectively. Note: Many of Free Our Vote's beneficiaries were eligible under Amendment 4 criteria, namely they received clemency or only had withheld adjudications; however, these data were not readily available until 2021. This is why the beneficiary columns in Tables 4 and 5 differ.

Among the population of interest, the mean debtor carried approximately \$3,156 in debt. Note that a few large debtors skew this statistic upward; the median returning citizen in this sample held

215. As before, we focus on individuals with one or more felony convictions, after 1997, in a single county. *See supra* Section III.C.2 and accompanying text.

216. *See Clemency Information Sheet, supra* note 190, at 2 (noting that when adjudication is withheld in a case a defendant does not lose his or her civil rights). Likewise, if the state prosecutor drops the charges or a jury finds the defendant not guilty, then any court debt has no bearing on voting privileges. *See Jones v. DeSantis*, 462 F. Supp. 3d 1196, attach.2 at 1253 (N.D. Fla. 2020).

217. As with our analysis in the previous Section, we exclude everyone with a docket that includes the word "restitution."

nearly \$980 in court debt.<sup>218</sup> Figure 4 depicts the distribution of outstanding criminal court debt.

FIGURE 4: DISTRIBUTION OF LFOs

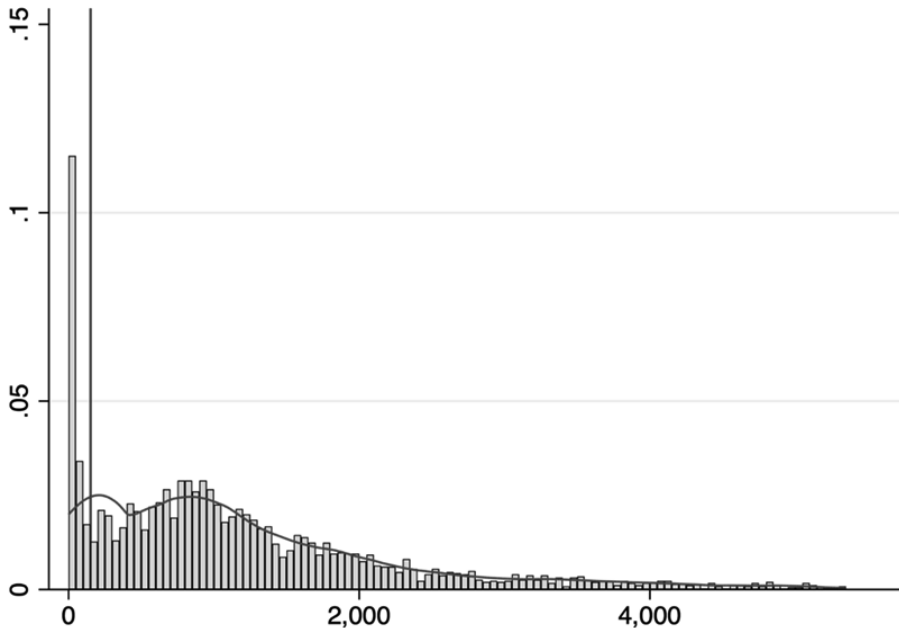


Figure 4 shows the distribution of criminal court debt held by individuals convicted in one county but who otherwise are eligible to vote under Amendment 4 criteria. The distribution, with bins incremented by \$50, has been truncated above \$5,400, which essentially constitutes the 95<sup>th</sup> percentile. The vertical line at \$150 approximates the thresholds at which Free Our Vote intervened.

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218. Michael Morse found a median amount of \$815 in fines and fees assessed and \$667 remaining across a sample of 400,000 Florida felony cases. *See Morse, supra* note 4, at 1184–85; *see also* Alex Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOCIO. 1753, 1774 tbl.5 (2010) (finding median LFO amount of \$1,347 across 3,366 felony cases in Washington state); 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, 1105 fig.4a.1, 1106 fig.4a.2 (2016) (median balance of \$2,000 for sample of felonies in Alabama in 2005).

## 3. Descriptive Evidence

Table 6 below shows descriptive evidence from the dataset of all LFO holders that strongly suggests Free Our Vote's debt relief interventions bolstered voter turnout among the returning citizen population.

TABLE 6: DESCRIPTIVE RESULTS FROM 2020 GENERAL ELECTION

	Probability of Voting			
	(1)	(2)	(3)	(4)
Beneficiary	0.180** (0.031)	0.186** (0.032)	0.143** (0.022)	0.082 (0.045)
Contacted Beneficiary				0.069 (0.028)
Covariate Controls			X	X
LFO Balance Controlled		X	X	X
Adjusted R-Squared	0.01	0.01	0.17	0.17
Observations	3,640	3,640	3,631	3,631

Table 6 shows regression coefficients and standard errors (in parentheses) from regressions of a binary variable that equals “1” if a returning citizen voted in the 2020 general election on our intervention variables. Beneficiary is a binary variable that indicates if Free Our Vote paid off an individual's LFOs. Contacted Beneficiary, similarly, takes a value of “1” if Free Our Vote sent a mailer or text message to a beneficiary. We control for a host of factors including total criminal court debt due, race, age, party affiliation, county of conviction, voting history, and median household income in returning citizens' zip codes. All estimates are clustered at the county level. The two regressions with all controls rely on fewer data points as reliable zip code-median household income data are not available for nine individuals in the sample. The results suggest Free Our Vote's intervention meaningfully increased voter turnout. That said, these results should be interpreted carefully as they do not represent causal treatment estimates. Standard errors clustered by individual are in parentheses. \*\* and \* indicate significance at the 1% and 5% levels, respectively.

In each specification in Table 6, the outcome is an indicator variable for a ballot cast in the 2020 general election. Therefore, each explanatory variable can be described in terms of probabilities. The variable of interest—beneficiary—receives a value of “1” if the debt holder benefited from the relief program; otherwise, it is “0”. The first three models differ in their coverage of controls. The first lacks any additional independent variables, the second includes a singular control for total LFO balance, and the third incorporates a host of controls. The



fourth specification adapts the third via the inclusion of a linear term that indicates if Free Our Vote contacted the beneficiary via a mailer or text message, with the same covariates as in Part III.B.

Regardless of included controls, the collective evidence implies elimination of felony financial obligations is associated with a statistically significant increase in voter turnout. This effect appears to be concentrated among those who received notification of their eligibility, as per Column 4. In terms of magnitude, the descriptive findings suggest debt relief correlates with approximately fifteen to forty-four percent higher voter turnout relative to the baseline (forty-four percent) in this population. For comparison, nearly seventy-seven percent of registered voters in Florida participated in the 2020 general election.<sup>219</sup>

Note that these estimates are purely suggestive and not causal. The analyses associated with Table 6 include debtors who owe sizably more than our county-specific thresholds. Debtors with larger balances likely differ from the beneficiary pool across multiple characteristics. For example, criminal debt correlates with the severity of the crime tied to the conviction. People who engage in more serious illegal activities generally do not closely resemble those convicted of lesser felonies. Likewise, those on the right-hand side of the thresholds are much more predisposed to be habitual offenders. These observable dissimilarities hint at potential unobservable heterogeneities as well. In concert, these variations may drive the calculations.

#### 4. Causal Estimates

As noted in Part III.C, a series of data irregularities led Free Our Vote to consistently overestimate LFOs. Upon amelioration of these issues, we discovered a tranche of returning citizens who owed criminal court debt less than the thresholds imposed by the financial limits set for each county, which were wholly determined by the total amount of donations we received. Because these individuals owed comparable amounts to our beneficiaries, we can use the fact Free Our Vote did not intervene on their behalf to measure the impact of the debt elimination program. In effect, this adds an incremental restriction to the sample associated with the descriptive evidence. In other words, the analysis now homes in on those with a balance less than or equal to our maximal re-enfranchisement strategy thresholds.

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219. See *Voter Turnout*, FLA. DIV. OF ELECTIONS, <https://www.dos.myflorida.com/elections/data-statistics/elections-data/voter-turnout/> (last visited Oct. 4, 2022) [<https://perma.cc/L84T-Y96T>].

The validity of this framework relies upon the quasi-randomness that prompted individuals' exclusion from treatment. As with the analysis in Part III.C, there is no apparent reason to believe these individuals, who were excluded from the beneficiary pool due to idiosyncrasies in clerk of courts' websites, would differ in meaningful ways from beneficiaries. Empirical evidence in support of this assumption can be found in Table 7.

TABLE 7: SUMMARY STATISTICS FOR QUASI-RANDOM DEBT RELIEF TREATMENT

	(1)	(2)	(3)
	<u>Contacted</u> <u>Beneficiary</u>	<u>Control</u>	<u>P-Value</u>
Total Balance Due (\$)	56.66	59.74	0.565
Mean Age (Year)	47.96	45.13	0.216
Female (%)	0.29	0.29	0.994
Prior Voter (%)	0.66	0.57	0.510
Voted Before A4 (%)	0.39	0.47	0.722
Registered After A4 (%)	0.26	0.26	0.684
Republican (%)	0.25	0.20	0.978
Third-Party (%)	0.29	0.33	0.389
Days Registered Before Election	4,494	3,967	0.545
Asian (%)	0.00	0.01	0.606
Black (%)	0.30	0.37	0.690
Hispanic (%)	0.02	0.06	0.253
White (%)	0.61	0.49	0.311
Median Income (\$1,000)	36.82	36.47	0.861
Observations	325	247	-

Table 7 contains summary statistics of the contacted beneficiaries in Column 1. The next column lists those same features for the individuals who owed less than the threshold per county but did not receive treatment due to technical challenges. The p-value associated with the orthogonality t-test is listed in the final column. \*\* and \* indicate significance at the 1% and 5% levels, respectively.

Like Table 2, Table 7 presents an orthogonality t-test for the contacted beneficiary and control groups. None of the observable

variables in Table 7 exhibits a statistically significant difference, as indicated by the p-values in Column 3. This result reinforces the validity of our quasi-experimental design and resulting estimates. Regardless, our preferred specifications control for these features.

We turn to the primary results associated with this natural experiment, which are presented in Table 8 below.

TABLE 8: QUASI-RANDOM DEBT RELIEF TREATMENT RESULTS

	Probability of Voting			
	(1)	(2)	(3)	(4)
Beneficiary	0.176** (0.029)	0.179** (0.028)	0.107** (0.025)	0.005 (0.026)
Contacted Beneficiary				0.111** (0.012)
Covariate Controls			X	X
LFO Balance Controlled		X	X	X
Adjusted R-Squared	0.03	0.03	0.21	0.21
Observations	575	575	572	572

Table 8 shows causal estimates for the quasi-random debt relief treatment. The outcome variable in each is an indicator variable that identifies if an individual voted in the 2020 general election. Our first variable of interest, Beneficiary, takes the value of “1” if Free Our Vote paid the remaining LFO balance for an individual; Contacted Beneficiary is similarly defined but limits the beneficiary pool to those who received notification of the zero balance. The control variables include total criminal court debt due prior to the intervention, demographic features, electoral data such as party affiliation and voter history, county of conviction, and estimated median household income in returning citizens’ communities. We cluster estimates at the county level. Household income data are unavailable for three individuals, which explains the change in sample size. Given average voter turnout of 42% in the control, our preferred estimates suggest abatement of criminal court debt increased voter turnout by approximately 26% in this group. Standard errors clustered by individual are in parentheses. \*\* and \* indicate significance at the 1% and 5% levels, respectively.

The key distinction between Tables 6 and 8 lies in the construction of the counterfactual group. Recall, the control group in Table 8 consists of individuals with LFO balances less than the county threshold but who did not benefit from Free Our Vote’s debt relief program. The effects are robust across specifications; the evidence documents statistically significant increases in voter turnout among the beneficiary population. Once again, we observe the effects exclusively

in the groups who received the mailer or opt-in text messages. The results in Column 4, therefore, capture our preferred point estimates.<sup>220</sup>

The precise coefficient implies—relative to the mean voter turnout in the counterfactual—LFO abatement prompted a twenty-six percent increase in voter participation. Under the assumption of independence, which appears to hold given the quasi-random assignment mechanism and the evidence in Table 7, this effect represents the average treatment effect of felony debt relief on voter participation.<sup>221</sup>

Our results lend support to the narrative that indigency restricts participation among returning citizens. This flies in the face of accusations that this group of individuals is simply disinterested in the political process. Moreover, our debt treatment program appears to have induced larger effects than the information campaign. This seems to suggest there might be additional benefit to debt elimination. Perhaps, the symmetric argument—S.B. 7066 restrictions chilled individuals with criminal court debt more than returning citizens with no LFO balances—holds.<sup>222</sup>

## 5. Data Limitations

As the above analysis implies, mean voter participation was not zero in the group of people who apparently owed LFOs but did not receive debt relief from Free Our Vote. However, this does not establish evidence of improper voting. Rather, an abundance of factors explains this pattern. The thought experiment behind our intervention poses the

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220. Because the results here suggest that benefits accrue through contact with Free Our Vote, we consider additional specifications in which the outcome of interest is whether a beneficiary was contacted. Because there might be sample selection concerns based on who Free Our Vote was actually able to contact, we present IV estimates in which we instrument for those who were contacted by those whose debts Free Our Vote cleared. Our results from these robustness checks remain highly statistically significant and similar in magnitude to our preferred specifications. See *infra* Appendix Table A2.

221. See SCOTT CUNNINGHAM, CAUSAL INFERENCE: THE MIXTAPE (2021); see also Donald B. Rubin, *Estimating Causal Effects of Treatments in Randomized and Nonrandomized Studies*, 66 J. EDUC. PSYCH. 688 (1974).

222. We caveat this statement with two facts. One, in an unreported difference-in-differences framework, we fail to statistically distinguish the treatment effects associated with the notification and debt relief programs; small sample size and power issues might be hindering us. Separately, the effects of eliminating LFOs might not be symmetric to imposing S.B. 7066 requirements.

In addition, we are pursuing ongoing research using a regression discontinuity framework that focuses on differences in voter participation above and below the threshold monetary cutoffs used by Free Our Vote to determine beneficiary status. Here, we observe much larger treatment effects concentrated among the post-Amendment 4 registrants. But these local average treatment effects are brittle, as they are estimated from a specification with very few observations. We plan to supplement these results with additional data in a future project.

question of what turnout would look like in the absence of Free Our Vote settling LFO balances. That framework inherently accepts the premise that returning citizens may clear their accounts on their own or through other channels, such as the FRRC. Indeed, several returning citizens in the sample did exactly that after we intervened.

Additionally, resource-constrained clerks may not have the means to update records; while we scraped data in September and October 2020, felony financial obligations may not have always reflected actual balances. Therefore, the sample may falsely attribute criminal court debt to individuals who had actually remedied their accounts. In either case, if an individual appeared to carry any debt as of the date of our interventions, they are included in the sample as nonbeneficiaries.

Additional factors explain the level of participation in the population of felony financial debt holders. As we discuss in more detail in the next Section, of the individuals for whom we have LFO data, approximately 13.3% previously received clemency. The vast majority benefited from reforms under Governor Charlie Crist, between 2007 and 2011.<sup>223</sup>

While we remove identified clemency recipients from the main sample, the dataset potentially captures some of these individuals. The state's publicly accessible database is not easily searchable. It requires exact matches of individuals' first and last names as well as either their date of birth or corrections ID number.<sup>224</sup> Variations in naming conventions, including maiden names, aliases, and matronymic or patronymic surname combinations, reduce confidence that the final sample contains no additional clemency recipients. Moreover, the oscillating clemency process potentially obscures returning citizens whose civil rights were officially restored in other unobserved ways. For example, it is unclear if the state database spans all recipients; the Office of Executive Clemency did not respond to a data request we submitted to explore this issue.

Outside these timing and data limitations, abatement of criminal court debt may be missing for other reasons. For instance, many jurisdictions permit returning citizens to engage in charitable work rather than directly settle LFOs.<sup>225</sup> Court records do not

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223. See *supra* note 108 and accompanying text.

224. See *Restoration of Civil Rights Search*, OFF. OF EXEC. CLEMENCY FLA. COMM'N ON OFFENDER REV., <https://fpcweb.fcor.state.fl.us> (last visited Sept. 13, 2022) [<https://perma.cc/CWM5-GNWA>].

225. See FLA. STAT. § 938.30(2) (2022); see also *2021 Assessments Report*, FLA. CT. CLERKS & COMPTROLLERS, <https://www.flclerks.com/page/AssessmentsCollections> (last visited Sept. 13,

systematically include this information. In at least one case, the Florida Department of Corrections failed to notify the relevant clerk of court that an individual performed community service that cleared their account.

Finally, the confusion surrounding Amendment 4 and S.B. 7066 influenced both returning citizens and bureaucrats tasked with monitoring elections. Some individuals believed if they satisfied court-ordered payment plans, they were eligible to vote.<sup>226</sup> Others, unaware of outstanding debts, registered with the approval of their county board of elections; the Division of Elections failed to properly flag these registrants.

Jointly, these phenomena explain the seemingly high turnout among nonbeneficiaries in the population of interest. None of these factors, however, should affect the validity of our results so long as they apply uniformly to individuals in the sample. There is no a priori reason to believe they disconcertingly affect subsamples; in fact, given the rigor with which we vetted beneficiaries, unobserved factors that account for voters in the control population likely attenuate our results. That said, no observable data discounts our methodologies.

### *E. Placebo Test*

One could possibly argue that the findings here are driven by heightened salience and not by the mechanisms we propose. That is, our notifications might have boosted voter turnout simply by making recipients more aware of the upcoming election rather than by easing their concerns about their LFO status (information channel) or reducing their price to vote (tax channel).

To test this alternative hypothesis, we now consider a falsification exercise. This incidental experimental framework focuses on individuals who had already received clemency, which enabled them to vote. As described below, a quasi-random subset of these individuals happened to receive communications from Free Our Vote and its partners.

This cohort—irrespective of Amendment 4 or the presence of court debt they may have accrued prior to clemency—met voter eligibility requirements; moreover, their privileges were officially

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2022) [<https://perma.cc/8XUF-LAE3>] (community service represents a negligible share of payments); DILLER, *supra* note 96, at 23 (“[I]t appears that in practice, courts seldom use [conversion to community service]. In a [2007–2008] report from court clerks, only 16 of 67 counties reported converting any mandatory LFOs imposed in felony cases to community service.”).

226. See Pacenti, *supra* note 31.

restored and recognized by the Florida executive branch, an experience few likely forget. For this group, an incidental mailer or text message sent by Free Our Vote and its partners would be unlikely to inform them of eligibility they likely already knew they have. Rather, the communication might merely have reminded them of their eligibility and made them more aware of the upcoming election. As such, any difference in voter turnout between those who received communications and those who didn't among this subpopulation might reflect a "salience effect" apart from the information and tax channels described earlier.

We examine this possibility by imposing the same restrictions as before on the treatment and control groups, except now we limit the sample only to those individuals for whom civil rights were previously restored. Therefore, the two groups should now be alike but for the fact that those in the treatment arm happened to receive a mailer or text message notifying them that they appear to be eligible to vote.

The final sample consists of 1,050 returning citizens; of this group, we contacted 785. Once again, the sample appears to be fairly well-balanced when conducting an orthogonality t-test, as shown in Table 9.

TABLE 9: SUMMARY STATISTICS FOR PLACEBO TEST

	(1)	(2)	(3)
	<u>Recipient</u>	<u>Control</u>	<u>P-Value</u>
Mean Age (Year)	54.03	54.16	0.281
Female (%)	0.21	0.23	0.242
Prior Voter (%)	0.71	0.57	0.434
Voted Before A4 (%)	0.31	0.48	0.278
Registered After A4 (%)	0.16	0.31	0.011*
Republican (%)	0.24	0.25	0.056
Third-Party (%)	0.26	0.25	0.283
Days Registered Before Election	3,991	3,003	0.016*
Asian (%)	0.00	0.00	0.005**
Black (%)	0.38	0.43	0.854
Hispanic (%)	0.02	0.04	0.387
White (%)	0.54	0.45	0.081
Median Income (\$1,000)	36.76	36.10	0.646
Observations	785	265	-

Table 9 contains summary statistics of the recipients in Column 1. The next column lists those same features for the individuals who owed no criminal debt but did not receive a mailer due to technical challenges. The balance test p-value is listed in the final column. The p-value associated with the orthogonality t-test is listed in the final column. \*\* and \* indicate significance at the 1% and 5% levels, respectively.

As with the previous analyses, most of the observable characteristics are balanced but for three. Among these variables that differ at conventional levels of significance, none failed the orthogonality tests in the previous two Sections. Specifically, the variables that fail this orthogonality test are not the same as the two that failed in the information campaign (whether the individual was a Republican or a prior voter). Hence, there is no observable systematic pattern in the construction of the control and treatment groups.



In addition, the coefficient associated with “Days Registered Before Election” is economically insignificant (0.0000008). That lends further credibility to the claim that there are no systematic baseline differences between treatment and control groups in the specifications.<sup>227</sup> Regardless, there is no indication that there is a correlation between these features and the data issues that prompted the inadvertent construction of the control and treatment groups.

We now present the results of the falsification test in Table 10.

TABLE 10: PLACEBO TEST RESULTS

	Probability of Voting	
	(1)	(2)
Recipient	0.061 (0.056)	0.054 (0.062)
Covariate Controls		X
Adjusted R-Squared	0.00	0.14
Observations	1,055	1,050

Table 10 contains results associated with the placebo test. The dependent variable identifies if an individual participated in the 2020 general election. The variable of interest, Recipient, is coded to equal “1” if Free Our Vote’s agency partners notified an individual they were eligible to vote. Again, the control variables include demographic features, electoral data such as party affiliation and voter history, county of conviction, and estimated median household income in returning citizens’ communities. Estimates are clustered at the county level. Household income data are unavailable for five individuals, which accounts for the change in sample size. The results are not statistically significant at any conventional degree of confidence.

The results in Table 10, like those throughout the paper, consist of two specifications. The first lacks any control variables, whereas the second includes the same explanatory variables we have consistently employed. Both specifications result in similar estimates that, while positive, are not statistically different from zero.

This evidence is reassuring. It further suggests that Free Our Vote encouraged participation only among those re-enfranchised through Amendment 4. In other words, the mechanism that drives our

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227. In sum, only four of forty variables in the orthogonality tests fail balance tests. This implies nearly ninety percent of the variables are balanced, which suggests counterfactual groups are well chosen.

results does not appear to be driven by increased salience about the election among those with felony convictions.

#### IV. ASSESSING THE ASSESSMENTS

Our empirical analyses above demonstrate that FFD forestalls otherwise-qualified returning citizens from casting a ballot by creating uncertainty surrounding eligibility or by pricing individuals out of the ballot box. As we show below, such phenomena generate sizable social costs. The bulwark of extant evidence indicates ostracizing this marginalized population from the electoral process exacerbates their alienation. Such restrictions, therefore, undermine the democratic fiber of the nation and erode faith in institutions that are already arguably decaying.

Some policymakers contend this lens distorts the discussion; they espouse the belief that FFD, regardless of its social cost, is fundamentally moral.<sup>228</sup> According to this perspective, full reconciliation with the community cannot be realized until returning citizens repay their LFOs. Beyond this ethical supposition, many others adopt the consequentialist view that FFD marginally incentivizes former defendants to monetarily support criminal legal systems; in other words, exclusion from the electorate galvanizes collection of “user” fees that finance clerks’ offices and court systems.<sup>229</sup>

Here, we challenge both claims. Outstanding LFOs hardly evince immorality among returning citizens. For one, it is virtually impossible, technological solutions like Free Our Vote aside, for many of these individuals to know the remaining criminal debt they owe. Indigency, prevalent among those with felony backgrounds, further hampers these individuals’ capacity to resolve their financial disrepair.<sup>230</sup> Therefore, logistical and socioeconomic realities subvert much of the rationale that underlies the putative ethics of FFD.

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228. See, e.g., Clegg et al., *supra* note 30, at 17 (“[F]elon disenfranchisement laws are justified on the basis of Locke’s notion of the social contract: As Judge Henry Friendly once put it, someone ‘who breaks the laws’ may ‘fairly have been thought to have abandoned the right to participate’ in making them.” (quoting *Green v. Bd. of Elections*, 380 F.2d 445, 451 (2d Cir. 1967))).

229. Cf. Ann Cammett, *Shadow Citizen: Felony Disenfranchisement and the Criminalization of Debt*, 117 PENN ST. L. REV. 349, 353 (2012) (“States laud income from criminal justice fee revenues, but . . . [a] true cost-benefit analysis of user fees would reveal that costs imposed on sheriffs’ offices, local jails and prisons, prosecutors and defense attorneys, and the courts themselves surpass what the states take in as revenue.”).

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

With respect to claims that FFD incentivizes fee payment, its proponents ignore the empirical realities of fee collection. These regressive assessments, levied against an economically anemic subset of the population, typically remain uncollected.<sup>231</sup> And while FFD might not help generate revenue, it likely creates enduring harms of social alienation and an increased risk of recidivism, which likely disparately impact poor and Black defendants.

A. *“Sometimes Easy, Sometimes Hard, Sometimes Impossible”*

To determine if one currently owes any criminal LFOs, an individual must exhibit a fluency in both the law and the decentralized patchwork of criminal data systems. Expert witnesses with doctorates in political science and a team of Ph.D. candidates could not perfectly ascertain balances in Florida in 2020.<sup>232</sup> As Judge Hinkle aptly noted in the Amendment 4 litigation, calculating applicable LFOs for a returning citizen is “sometimes easy, sometimes hard, sometimes impossible.”<sup>233</sup> We highlight some of these difficulties below.

1. Identifying Relevant LFOs

To begin, case information prior to the advent of digitalized recordkeeping may be altogether inaccessible. In Florida, readily available criminal financial data did not exist until 1998.<sup>234</sup> County clerks may not even possess paper copies of criminal court records. For example, clerks instructed one individual—convicted of felonies between 1975 and 1988—that they simply could not locate her files.<sup>235</sup> Therefore, returning citizens and the state may lack the proper documentation to track LFO balances.

This absence of relevant data does not stem purely from records retention issues. A further complication is that only certain LFOs or components fall under the criteria of S.B. 7066. Disqualifying court costs in Florida must be imposed with the sentence; assessments levied afterward (including interest) do not affect voting rights.<sup>236</sup>

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ASSESSMENTS AND COLLECTIONS REPORT] (estimating that approximately twenty-three percent of debt assessed in 2018 will not be collected due to indigency).

231. *See infra* Part IV.B.

232. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1220 (N.D. Fla. 2020).

233. *Id.* at 1221.

234. The availability of criminal financial data in Florida coincides with the state’s adoption of the 1998 Criminal Punishment Code. *See Fla. R. Crim. P.* 3.704.

235. *Jones*, 462 F. Supp. 3d at 1209.

236. *See* FLA. STAT. § 98.0751(2)(a)(5) (2021).

Such post-sentence costs are common. For example, failure to make court-stipulated payments on time prompts a litany of fees as well as a potential driver’s license suspension.<sup>237</sup> For financially constrained individuals dependent on vehicles, this could result in a “cycle” of fees, as Clerk Pam Childers of Escambia County put it: “The defendant needs to drive but either cannot afford to pay or chooses not to pay [their] court costs and fines. The defendant then gets pulled over and ends up with a charge for driving with a suspended license, which likely ends with additional court costs.”<sup>238</sup>

Likewise, parole or probation violations result in other post-sentence fees.<sup>239</sup> Despite their frequency, few jurisdictions distinguish sentencing costs from those raised later; for older cases, this issue is substantially more pronounced. A characteristic example is in Table 11, which is pulled directly from a case in Brevard County.

TABLE 11: ASSESSMENT EXAMPLE FROM BREVARD COUNTY

Receivable	Amount Assessed	Amount Waived	Amount Paid	Due Date	Balance
DOMESTIC VIOL CC CIR	\$ 115.00	\$ -	\$ -	07/07/2021	\$ 115.00
RAPE CRISIS W/CLK CI	\$ 151.00	\$ -	\$ -	07/07/2021	\$ 151.00
TEEN COURT W/CLK CIR	\$ 3.00	\$ -	\$ -	07/07/2021	\$ 3.00
ADDL CT CLEAR CIRC	\$ 3.00	\$ -	\$ -	07/07/2021	\$ 3.00
BREV POLICE TEST CIR	\$ 3.00	\$ -	\$ -	07/07/2021	\$ 3.00
ADDL COURT FUND CIR	\$ 65.00	\$ -	\$ -	07/07/2021	\$ 65.00
COP PROSECUTE VOP CI	\$ 100.00	\$ -	\$ -	07/07/2021	\$ 100.00
PD APPT CNSL VOP CIR	\$ 100.00	\$ -	\$ -	07/07/2021	\$ 100.00
POL ACAD/LEEF CIR	\$ 2.00	\$ -	\$ -	07/07/2021	\$ 2.00
COI TITUSVILLE CIR	\$ 97.52	\$ -	\$ -	07/07/2021	\$ 97.52
STATE GEN CLK TR CIR	\$ 25.00	\$ -	\$ -	07/07/2021	\$ 25.00
PUB DEF/APPT CNSL CI	\$ 100.00	\$ -	\$ -	07/07/2021	\$ 100.00
COP PROSECUTE CIR	\$ 100.00	\$ -	\$ -	07/07/2021	\$ 100.00
CRIMES CO W/CLK CIR	\$ 50.00	\$ -	\$ -	07/07/2021	\$ 50.00
CRIM JUST W/CLK CIR	\$ 200.00	\$ -	\$ -	07/07/2021	\$ 200.00
DOM VIO TF W/CLK CIR	\$ 86.00	\$ -	\$ -	07/07/2021	\$ 86.00
PD APP/INDG W/CLK CI	\$ 100.00	\$ -	\$ -	07/07/2021	\$ 100.00

Table 11: “Receivable” lists the state trust that obtains collections per the “Amount Assessed” column. The third and fourth columns detail any amounts

237. FLA. STAT. §§ 322.245(1), 318.15 (2021).

238. Free Our Vote and the Fines and Fees Justice Center (“FFJC”) conducted a joint survey of financing issues facing clerks of court. Clerk Pam Childers detailed this issue in response to the question, “In your opinion, what are the downfalls of suspending a person’s driver’s license for unpaid fines or fees?” Florida Clerk of Courts Survey (2021) (on file with authors).

239. See, e.g., DILLER *supra* note 96, at 1 (“Missed payments produce more fees.”).

waived or paid, respectively. The penultimate column captures an expected payment date. The last column indicates the remaining balance per line item.

Table 11 contains the financial summary for a case involving a twenty-nine-year-old defendant who pled guilty to battery in 2019.<sup>240</sup> This person eventually violated the terms of their probation agreement. Under the current interpretation of S.B. 7066, the costs associated with the original sentence must be paid for the defendant to vote. The assessments that arose from the violation of probation, however, do not inhibit this individual’s eligibility. As Table 11 demonstrates, there is no clear way to distinguish which assessments are linked with the original sentence.<sup>241</sup> Hence, there is no way from this record to precisely determine the minimal amount the individual must pay to regain voting privileges.

## 2. Accounting and Data Complexities

This opacity is further amplified by complexities and confusion related to accounting methods that Florida adopted to calculate LFO balances. Initially, the state accepted the “actual-balance” method to track payments.<sup>242</sup> Under this approach, a clerk simply subtracts the amount paid from the total amount owed to calculate the remaining LFO balance.<sup>243</sup>

Under this approach, returning citizen eligibility hinges upon the arbitrary set of accounting practices chosen by the clerk of court. To illustrate, suppose an individual owed \$150 in LFOs associated with their felony conviction. After some time, the clerk assessed \$80 in collection fees and \$40 in interest. The total balance owed is  $\$150 + \$80 + \$40 = \$270$ .

Now, suppose the individual pays \$200; this could cover the original \$150 in LFOs associated with the felony conviction. Instead, the clerk arbitrarily applies the \$200 to cover the \$120 in collection fees and interest. The clerk allocates the remaining \$80 ( $=\$200 - \$120$ ) to the original \$150 owed. That individual would still technically owe \$70 ( $=\$150 - \$80$ ) on the original amount.

Though this hypothetical individual paid more than their original LFO balance, the state originally argued such a person would

240. Data on file with authors. For information regarding how the data was collected, see fig.1 and accompanying text.

241. The field titled “Due Date” merely indicates when the clerk expected payments.

242. *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1221–22 (N.D. Fla. 2020).

243. *See id.*

be ineligible to vote due to their outstanding balance.<sup>244</sup> In essence, their approach caused eligibility to turn on the arbitrary inclinations of clerks of court.

In March 2020, just before trial in federal district court, the state suddenly changed its approach; it adopted an “every-dollar” accounting method for payments.<sup>245</sup> Under this more flexible methodology, the state recognizes any payment—even those made against post-sentence costs—as a credit toward voter eligibility.<sup>246</sup> In the previous example, because the \$200 payment exceeded the \$150 in LFOs associated with the felony conviction, the returning citizen would be eligible to vote.

Yet, problems remained. Often, clerks are not aware whether a payment has been made or the extent of such payments. Several counties, such as Duval County, permit collections agencies, like Penn Credit Corporation, to receive a mutable share of payments before passing the remainder to county courts.<sup>247</sup> If clerks cannot identify these payments, individuals convicted of felonies decades ago should not be expected to identify them either. Judge Hinkle, recognizing this nuisance, stated, “the every-dollar method makes the pay-to-vote system’s constitutional deficiencies worse.”<sup>248</sup>

The Kafkaesque data situation only deteriorates further into the absurd. Felony guilty adjudications are the only dispositions that should factor into financial disenfranchisement under the law.<sup>249</sup> While that condition seems straightforward, the data offer a markedly different perspective; for example, nearly 7.5% of Pinellas County cases lack a disposition.<sup>250</sup>

Likewise, S.B. 7066 requires individuals to settle all civil liens—conversions of criminal obligations individuals cannot afford to pay into civil court matters—to vote.<sup>251</sup> While the questionable ethics around this provision raise concern, so too do the available data; in cases with

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244. *See id.*

245. *Id.* at 1224–25.

246. *See id.*

247. The FFJC requested collections contracts from all sixty-seven counties. The details of the contract document show that the Duval County clerk determines Penn Credit Corporation’s fees on an ad hoc basis and allows the third-party entity to collect its revenue first.

248. *Jones*, 462 F. Supp. at 1226.

249. By contrast, LFOs associated with cases for which the disposition is “withheld adjudication” do not count for voter disenfranchisement purposes. As such, such cases should be excluded from any calculation of relevant LFOs for a defendant. *See supra* note 190.

250. For purposes of our analyses, we treat defendants in cases without dispositions as guilty. Data on file with authors.

251. FLA. STAT. § 98.0751(4) (2021).

a conversion, the criminal balance on docket sheets is often reduced to zero, which conceals the true amount due.

These limitations—as well as those raised in Part III above—do not exhaust the considerations one needs to make to determine their eligibility. If trained legal and empirical scholars well versed in Florida criminal court data cannot perfectly calculate the amount an individual must pay to become re-enfranchised, it is more than unreasonable to expect returning citizens to do so. Assuredly, many well-intentioned individuals will find the time commitment too costly to even determine if they are able to settle their debts. Others who possess the means to eliminate their LFOs may be frightened by the risk of prosecution;<sup>252</sup> the uncertainty about hidden costs only heightens such anxieties. Our empirical findings align with these narratives.

To be sure, Florida represents a particularly difficult case for determining LFO violations. Unlike other states,<sup>253</sup> the presence of any outstanding LFO tied to a felony conviction—whether a fine, fee, or restitution—blocks an individual from the ballot box. Data issues are especially perverse in Florida as well; other states with an integrated data system across their jurisdictions may avoid some of these issues.

Nonetheless, it is unlikely that centralized data represent a panacea. The transfer of balances to collections agencies, conversion to liens, fungibility of payments, identification of community service, and missing data points would continue to plague calculation efforts. Moreover, restitution payments—which are typically made directly to the victim—would likely still be unobserved and untraceable.<sup>254</sup> More generally, critics have long bemoaned the “stunning lack of information and transparency surrounding felon disenfranchisement across the

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252. Sadly, this risk is not merely theoretical. In August 2022, the State of Florida’s newly created Office of Election Crimes and Security arrested twenty people who cast their ballots in the 2020 election for alleged voter fraud. See Tim Craig & Lori Rozsa, *Florida Let Them Vote. Then DeSantis’s Election Police Arrested Them*, WASH. POST (Sept. 4, 2022, 8:00 AM), <https://www.washingtonpost.com/nation/2022/09/04/desantis-election-police-voter-arrests/> [https://perma.cc/9JXN-K8KH]. Most of the defendants are Black; their arrests were captured on video. A court has already dismissed one case for lack of jurisdiction. Lori Rozsa, *Man Arrested By DeSantis’s Election Police Has His Case Dismissed*, WASH. POST (Oct. 21, 2022, 8:00 AM), <https://www.washingtonpost.com/nation/2022/10/21/florida-desantis-voter-fraud-arrests/> [https://perma.cc/N7AS-L6ST].

253. See, e.g., *Restoration of Civil Rights*, COMMONWEALTH OF KY. DEP’T OF CORR., <https://corrections.ky.gov/Probation-and-Parole/Pages/CivilRights.aspx> (last visited Oct. 5, 2022) [https://perma.cc/N68Z-SX96] (describing the process by which the Department of Corrections of Kentucky automatically restores civil rights for returning citizens after release from custody).

254. *Jones*, 462 F. Supp. 3d at 1224.

country.”<sup>255</sup> In 1996, the Department of Justice noted the wide variation of disenfranchisement laws across the country was “something of a national crazy-quilt of disqualifications and restoration procedures.”<sup>256</sup>

Such data problems emphasize that returning citizens’ failure to satisfy LFO requirements implies little in terms of ethics. Likewise, these problems hint at much larger costs that would be needed to make the system even remotely functional.

### *B. LFOs and Revenue Generation*

As discussed in Part I.C, courts across the country have greatly expanded the use of criminal assessments, particularly user fees, over the past fifty years. Despite ever-expanding fee categories, most assessments remain uncollected.<sup>257</sup>

For example, Iowa judges ordered \$159 million in restitution between 2007 and 2012; however, less than 12% (\$19 million) was paid during that time.<sup>258</sup> A study found that more than 90% of all parolees discharged between 2003 and 2008 in Texas still owed restitution as of 2008.<sup>259</sup> Another study showed that only 12% of restitution ordered in Maryland in fiscal year 2007 was collected by the end of the following year.<sup>260</sup> Despite imposing \$7.20 billion in additional monetary sanctions

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255. Opinion, *Felons and the Right to Vote*, N.Y. TIMES (July 11, 2004), <https://www.nytimes.com/2004/07/11/opinion/felons-and-the-right-to-vote.html?smid=url-share> [<https://perma.cc/4CG6-29CK>].

256. Margaret Colgate Love & Susan M. Kuzma, *Civil Disabilities of Convicted Felons: A State-by-State Survey*, OFF. OF THE PARDON ATT’Y, U.S. DEPT OF JUST. (Oct. 1996), <https://www.ojp.gov/pdffiles1/pr/195110.pdf> [<https://perma.cc/UN6S-G3GR>], cited in Alec C. Ewald, *A ‘Crazy-Quilt’ of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Laws*, THE SENT’G PROJECT (Nov. 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> [<https://perma.cc/Z9AY-22SD>].

257. See, e.g., MITALI NAGRECHA, ANNA VANCLEAVE, STEPHANIE GARLOCK, JUDITH RESNIK, LISA FOSTER & JEFF SELBIN, FEES, FINES, AND THE FUNDING OF PUBLIC SERVICES 56 (Brian Highsmith ed., 2020), [https://law.yale.edu/sites/default/files/area/center/liman/document/fees\\_fines\\_and\\_the\\_funding\\_of\\_public\\_services.pdf](https://law.yale.edu/sites/default/files/area/center/liman/document/fees_fines_and_the_funding_of_public_services.pdf) [<https://perma.cc/UX6N-8HLS>] (“A substantial portion of fees and fines is never collected and is likely uncollectable . . .”).

258. CAROLYN COPPS & KELLE THORBURN MCCRORY, IOWA VICTIMS RESTITUTION INITIATIVE, IOWA CRIME VICTIM COMPENSATION PROGRAM RESTITUTION INITIATIVE: NEEDS ASSESSMENT RESULTS 2 (2015).

259. THE NAT’L CTR. FOR VICTIMS OF CRIME, MAKING RESTITUTION REAL: FIVE CASE STUDIES ON IMPROVING RESTITUTION COLLECTION 3 (2011), [https://web.archive.org/web/20121018052118/http://www.victimsofcrime.org/docs/Reports%20and%20Studies/2011\\_restitutionreport\\_web.pdf?sfvrsn=2](https://web.archive.org/web/20121018052118/http://www.victimsofcrime.org/docs/Reports%20and%20Studies/2011_restitutionreport_web.pdf?sfvrsn=2), [<https://perma.cc/H9HU-9K3X>].

260. *Id.* (referencing data from the Maryland Division of Parole and Probation). Hundreds of millions, or even billions, in restitution likely remains unpaid in multiple states. See *id.* (stating



and accrued interest for criminal cases in 2020, the federal government received only \$1.95 billion in payments in that year.<sup>261</sup>

Florida fares no better than these other jurisdictions. In Fiscal Year 2017–2018, Florida assessed \$235.6 million in fines and fees<sup>262</sup> in circuit criminal cases statewide;<sup>263</sup> it collected only 9.31% of these assessments.<sup>264</sup> Similarly, the state collected only 11% of \$5.1 million in fees assessed against juveniles in 2009.<sup>265</sup>

Florida court clerks themselves recognize the inefficiency of this system; they are less than sanguine as to the prospects of collecting outstanding debts. To illustrate, the Florida Clerks of Court Operations Corporation (“FCCOC”) sets performance standards for clerks’ collection of fines and fees.<sup>266</sup> The annual collections rate that the FCCOC sets for circuit criminal cases is just nine percent.<sup>267</sup> So if clerks collect more than nine percent of assessed fines and fees, they exceed the FCCOC expectations.

LFOs not immediately paid are unlikely to ever be collected. Our analysis of collections data confirms that the vast majority of payments made for fines and fees occur within the first few years of case resolution, if at all.

Consider data from Lee County, a jurisdiction in southwest Florida with just under 800,000 residents. Free Our Vote identified 27,189 felony cases with assessments in Lee County from 2010 or earlier. Ten years later, no payments had yet been made on 43.4%

unpaid restitution payments included \$638 million in Pennsylvania, \$831 million in Arizona, and \$70 million in a single Nevada county).

261. UNITED STATES ATTORNEYS’ ANNUAL STATISTICAL REPORT: FISCAL YEAR 2020, at 29 tbl.8A, 32 tbl.8B (2020), <https://www.justice.gov/usao/page/file/1390446/download> [<https://perma.cc/4VDX-VT6T>] (adding the totals in the “All Districts” row in Tables 8A and 8B and comparing the sums of “New Impositions” with the sums of “Payments Received”). Of course, these payments might be for previous fiscal years, but the rough ratio of payments received to newly imposed debt and interest is roughly stable over the years, suggesting that simply dividing receipts over payments for a particular fiscal year is sufficient for the rough estimate here of collection rate.

262. ASSESSMENT, COLLECTION, AND DISTRIBUTION, *supra* note 98, at 5.

263. In Florida, criminal prosecution of all felonies takes place in circuit criminal courts. *See Trial Courts—Circuit*, FLA. CTS., <https://www.flcourts.org/Florida-Courts/Trial-Courts-Circuit> (last visited Oct. 5, 2022) [<https://perma.cc/T84N-7BMJ>]. The state also has county criminal courts that handle misdemeanors. *See Trial Courts—County*, FLA. CTS., <https://www.flcourts.org/Florida-Courts/Trial-Courts-County> (last visited Oct. 5, 2022) [<https://perma.cc/5HKQ-5ZD8>].

264. ASSESSMENT, COLLECTION, AND DISTRIBUTION, *supra* note 98, at 7.

265. *See New Report Reveals Impact of Juvenile Fees on Florida’s Children, Families, and Future*, FINES & FEES JUST. CTR., <https://finesandfeesjusticecenter.org/2022/01/25/new-report-reveals-impact-of-juvenile-fees-on-floridas-children-families-and-future/> (last visited Jan. 13, 2023) [<https://perma.cc/25B3-LVX7>].

266. ASSESSMENT, COLLECTION, AND DISTRIBUTION, *supra* note 98, at 7.

267. *Id.*

(11,800) of those cases. Of the remaining 56.6% (15,389) cases in Lee County with some payment activity, over 90% of inflows came within the first five years after the first charge. This is evident in Figure 5 below, which shows when payments were made in these cases relative to the initial charge date.<sup>268</sup>

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268. *Cf. id.* at 9 ex.4 (showing collection rate for first- and second-degree felonies in Florida topping off at around eight percent and fourteen percent, respectively, four years after being assessed for cases with disposition dates during Fiscal Year 2015–2016).

FIGURE 5: PAYMENT TIMING FOR LFOs IN LEE COUNTY

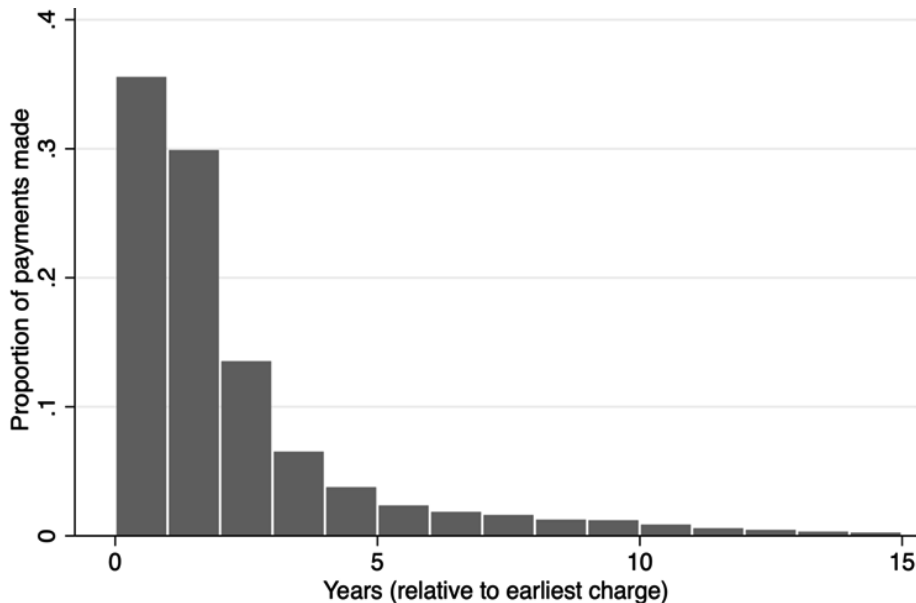


Figure 5 shows a histogram of payments made on LFOs in Lee County, in years relative to the first charge in the case. Cases are limited to those charged in 2010 or earlier on which at least one payment was made.

Lee County is not unusual; we observe similar trends in all jurisdictions. For instance, more than 80% of assessments remain outstanding after five years in Escambia County.<sup>269</sup>

Low collection rates should not be surprising. Returning citizens tend to lack financial stability; individuals exposed to the criminal court system disproportionately come from low-income communities.<sup>270</sup> Nearly forty percent of Americans are not financially positioned to bear an unexpected \$400 bill; therefore, it seems exceptionally unlikely those with felony records will ever be able to pay off LFO balances that typically exceed \$400.<sup>271</sup> Clerks of courts, aware of this, expect

269. Data on file with authors. For information regarding how the data was collected, see fig.1 and accompanying text.

270. See Jens Ludwig, Greg J. Duncan & Paul Hirschfield, *Urban Poverty and Juvenile Crime: Evidence from a Randomized Housing-Mobility Experiment*, 116 Q.J. ECON. 655, 655 (2001); see also Julia Haggerty, Patricia H. Guide, Mark Delorey & Ray Rasker, *Long-Term Effects of Income Specialization in Oil and Gas Extraction: The U.S. West, 1980–2011*, 45 J. ENERGY ECON. 186 (2014).

271. JEFF LARRIMORE, ALEX DURANTE, KIMBERLY KREISS, CHRISTINA PARK & CLAUDIA SAHM, REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017, at 2 (2018).

substantial shares of assessments to remain permanently outstanding due to indigency.<sup>272</sup>

As these data suggest, the vast majority of LFO debt will remain uncollected. Returning citizens with sparse financial means will not be incentivized to remedy their criminal court debt. Hence, one of the primary arguments in favor of FFD fails in practice. Namely, induced payment on assessments cannot realistically alleviate court financing issues.<sup>273</sup>

### C. Enduring Harms

Existing research suggests voter disenfranchisement—and hence, likely FFD—create myriad social harms. For one, empirical evidence implies that felony disenfranchisement might encourage future criminal activity.<sup>274</sup> According to estimates from the Washington Economics Group, restoration of civil rights, including voting rights, correlates with a 12.8% decrease in recidivism.<sup>275</sup> Moreover, Christopher Uggen and Jeff Manza show that amongst those who live in states that re-enfranchise, voters are 0.6 times as likely to self-report any crime relative to nonvoters.<sup>276</sup>

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272. See 2018 ANNUAL ASSESSMENTS AND COLLECTIONS REPORT, *supra* note 230, at 18.

273. Most individuals who are subject to FFD lose their voting privileges because of fees they owe, as compared to fines or restitution. To illustrate, consider data from Alachua County, a small county in central Florida that includes Gainesville (home of the University of Florida). Looking at felonies prosecuted since 1998, Free Our Vote identified 30,235 cases in which a defendant was financially disenfranchised due to an LFO obligation. In nearly half of those cases (14,864), the financial disenfranchisement was solely due to fees owed in the case and not because of any other LFO obligation. These results are consistent with prior research in Alabama, where more than half of assessed LFOs stemmed from court fees. Meredith & Morse, *supra* note 175, at 311.

274. THE WASHINGTON ECON. GRP., INC., ECONOMIC IMPACTS OF RESTORING THE ELIGIBILITY TO VOTE FOR FLORIDIANS WITH FELONY CONVICTIONS AS A RESULT OF PASSAGE OF AMENDMENT 4, at 4–5 (2018).

275. *Id.* at 4 (arguing that passage of Amendment 4 would benefit Florida taxpayers by reducing recidivism rates, and hence court and imprisonment costs, and increase earning potential for returning citizens); see also Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407, 427 (2019) (finding that former defendants in states that disenfranchise are about ten percent more likely to recidivate than those in states that franchise after release even after controlling for the individual's demographic characteristics and criminal history). Such evidence runs counter to claims by some FFD proponents, that if allowed the right to vote, people with past felony convictions would help elect legislators who are “soft on crime.” See Michael Morley, *Felon Rights? Don't Let Lawbreakers Elect Soft-on-Crime Lawmakers*, ORLANDO SENTINEL (June 13, 2017, 11:40 AM), <https://www.orlandosentinel.com/opinion/os-ed-no-rights-for-felons-front-burner-20170613-story.html> [<https://perma.cc/4PX6-AUY3>].

276. See Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 210 (2004); see also Murat C. Mungan, *Over-incarceration and Disenfranchisement*, 172 PUB. CHOICE 377, 379 (2017) (modeling

Outside of that evidence, an extensive literature establishes the importance of social esteem as an extrinsic incentive for prosocial behavior in a variety of contexts.<sup>277</sup> Researchers have demonstrated that similar phenomena exist in the context of voting; people vote because they want to identify as voters.<sup>278</sup> FFD de facto eliminates many returning citizens' opportunities to vote and thereby the recognition of their peers as re-integrated stakeholders in society.

Indeed, research in sociology and psychology suggests the act of political participation can attenuate psychological distress, especially for those in marginalized communities.<sup>279</sup> Using data from Switzerland, Alois Stutzer and Bruno Frey demonstrate the ability to vote serves an important source of "procedural utility."<sup>280</sup> It empowers people to feel like they have a voice in the democratic process independent of electoral outcomes.<sup>281</sup> Evidence from another large-scale, randomized-controlled trial shows that voters are more likely to engage in other prosocial behavior.<sup>282</sup> Accordingly, the authors suggest that messages that promote action towards public goods contribution might be more cost-effective if targeted to voters as opposed to nonvoters.<sup>283</sup>

Vignettes echo these research findings. Paul, a returning citizen, described the impact of disenfranchisement:

I have no right to vote on the school referendums that will affect my children. I have no right to vote on how my taxes [are] going to be spent or used, which I have to pay whether I'm a felon or not, you know? So basically I've lost all voice or control over my government.<sup>284</sup>

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how felony disenfranchisement laws might lead to longer than optimal sentences for crimes). *But see* Morley, *supra* note 275.

277. See Roland Bénabou & Jean Tirole, *Incentives and Prosocial Behavior*, 96 AM. ECON. REV. 1652 (2006).

278. See William Harbaugh, *If People Vote Because They Like To, Then Why Do So Many of Them Lie?*, 89 PUB. CHOICE 63, 65 (1996); *see also* S. Nageeb Ali & Charles Lin, *Why People Vote: Ethical Motives and Social Incentives*, 5 AM. ECON. J. MICROECONOMICS 73 (2013).

279. See Lynn Sanders, Dep't of Foreign & Gov't Affs., *The Psychological Benefits of Political Participation*, Presented at the Annual Meeting of the American Political Science Association 1 (Aug. 30–Sept. 2, 2001), <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.583.1161&rep=rep1&type=pdf> [<https://perma.cc/JX9S-UC2P>]; *see also* Jennifer Davis, *Voting as Empowerment Practice*, 13 AM. J. PSYCH. REHAB. 243 (2010).

280. See Alois Stutzer & Bruno Frey, *Political Participation and Procedural Utility: An Empirical Study*, 45 EUR. J. POL. RSCH. 391, 391 (2006).

281. *See id.*

282. See T. Bolsen, P.J. Ferraro & J.J. Miranda, *Are Voters More Likely to Contribute to Other Public Goods? Evidence from a Large-Scale Randomized Policy Experiment*, 58 AM. J. POL. SCI. 17, 18 (2014).

283. *Id.* at 27.

284. See Christopher Uggen & Jeff Manza, *Lost Voices: The Civic and Political Views of Disenfranchised Felons*, in BRUCE WESTERN, MARY PATTILLO & DAVID WEIMAN, *IMPRISONING*

While the single act of voting might not be transformational for a returning citizen, the research and the lived experiences of these citizens point to the importance of re-enfranchisement as a symbol of dignity and equal stakeholding in society.

Perhaps most troubling, harms associated with FFD seem likely to disparately affect poor and Black individuals.<sup>285</sup> That is because these groups disproportionately carry outstanding LFOs. While Black individuals represent nearly half (47.9%) of the registered voters in our sample, they comprise over two-thirds (66.9%) of the observed people who owe criminal court debt. Similarly, the average estimated income for people in our sample who owe LFOs is less than the income for those who do not (\$32,770 versus \$37,991). Other correlative research indicates that poor and Black defendants likely bear the brunt of LFOs.<sup>286</sup> Therefore, the likely race- and class-specific impacts of FFD further militate against this policy.

#### CONCLUSION: ENDING FELONY FINANCIAL DISENFRANCHISEMENT

Policymakers who advance conditioning voter eligibility on repayment of criminal assessments have alluded to two main justifications. First, they assert financial preconditions are consistent with and facilitate rehabilitation. “[They] believe in redemption. [They] believe in second chances. [They] believe in restoration.”<sup>287</sup> Second, proponents of financial prerequisites maintain such a policy “would actually help the [S]tate because if fines, costs and restitution are a requirement . . . for those that want to vote, there’s a big motivation to pay unpaid costs, fines and restitution.”<sup>288</sup> According to proponents of

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AMERICA: THE SOCIAL EFFECTS OF MASS INCARCERATION 165, 184 (Sara McLanahan et al. eds., 2004).

285. See Beth A. Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529, 1554–55 (2020); see also Steven Mello, Speed Trap or Poverty Trap? Fines, Fees, and Financial Wellbeing 6 (Nov. 14, 2018) (unpublished manuscript), <https://mello.github.io/files/jmp.pdf> [<https://perma.cc/JZ3L-2BTG>].

286. Other studies have confirmed that the brunt of LFOs fall on poorer and Black individuals. See, e.g., Meredith & Morse, *supra* note 175, at 317; Morse, *supra* note 4, at 1166.

287. Scott Powers, *House Panel Clears ‘Guardrail’ Bill for Felon Voting Rights Restoration*, FLA. POL. (Mar. 19, 2019), <https://floridapolitics.com/archives/291304-amendment-4-enabling-bill/> [<https://perma.cc/E9ES-C2H2>]; see also Steven Lemongello, *Amendment 4 Advocates Criticize Florida House Bill That Adds Restrictions to Felon Voting Rights*, ORLANDO SENTINEL, <https://www.theledger.com/story/news/crime/2019/03/19/amendment-4-advocates-criticize-florida-house-bill-that-adds-restrictions-to-felon-voting-rights/5674221007/> (last updated Mar. 19, 2019, 4:00 PM) [<https://perma.cc/T29H-AC7Z>].

288. Advisory Op. to Governor Re: Implementation of Amend. 4, The Voting Restoration Amend., 288 So. 3d 1070, 1073 (Fla. 2020) (No. SC19-1341) (quoting Transcript of Oral Argument

these views, any collateral costs are insubstantial given low electoral participation among the returning citizen population.<sup>289</sup>

In this Article, we descriptively and empirically confront these lines of reasoning. The abject administrative disarray surrounding the calculation of court debt halts progress toward re-enfranchisement and blunts any pretense that mandating FFD is a path to redemption. Data limitations, bureaucratic inertia and underfunding, and arcane accounting methods prevent experts, let alone ordinary citizens, from determining LFO balances. Well-intentioned returning citizens, who are often dealing with indigency and trying to reintegrate into society, certainly cannot be expected to surmount these challenges. Failure to settle criminal court debt often lies with the state, not with rehabilitated individuals with felony histories.

With respect to the pecuniary interests that states derive from LFOs, we find the putative benefits to be trivial. Our data illustrate inflows of criminal court debt become stagnant shortly after their assessment. This is not surprising, since returning citizens often comprise indigent individuals with limited labor market opportunities, who in turn do not possess means to settle long-term criminal financial liabilities. Resource constraints among returning citizens, therefore, explain the inconsequential revenue streams and counter claims that conditioning voter eligibility on the absence of court debt facilitates its repayment.

Though FFD has few social benefits, we confirm its social costs in the empirical research presented here. Using quasi-experimental methods, we find evidence that confusion surrounding eligibility deterred participation among qualified voters in the 2020 election. Specifically, we compare voter participation between two groups of virtually identical returning citizens in Florida. Our nonpartisan, nonprofit advocacy group, Free Our Vote, and agency partners conducted an outreach campaign through which one group received notification of their eligibility; the second group did not receive any contact. Relative to the control group, we observe a statistically significant sixteen percent increase in cast ballots among the contacted group.

In a separate quasi-experimental design, we compare voter participation between two groups of observationally equivalent returning citizens who hold criminal court debt. Free Our Vote

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at 2, Advisory Op. to the Attorney General Re: Voting Restoration Amend., 215 So. 3d 1202 (Fla. 2017) (Nos. SC16-1785, SC16-1981)).

289. *See supra* note 31.

implemented a debt relief program that first cleared LFOs, then notified individuals of their eligibility. While one group benefited from the program, the other did not. We estimate Free Our Vote's debt relief program increased participation relative to the counterfactual group by nearly twenty-six percent.

Together, the empirical evidence suggests confusion and indigency alienate an already marginalized subpopulation. But for negligible financial inflows easily outweighed by social, implementation, and enforcement costs associated with FFD, no tangible benefits exist. Moreover, insistence on LFO repayment adversely impacts poor and Black defendants.

Put simply, the collective evidence shows the justifications behind felony financial disenfranchisement do not survive scrutiny. FFD's negligible financial inflows are easily outweighed by social, implementation, and enforcement costs associated with it. The interests of states and their denizens would best be served through FFD's elimination.



## APPENDIX

TABLE A1: ROBUSTNESS CHECKS AND INSTRUMENTAL VARIABLES ESTIMATES FOR QUASI-RANDOM INFORMATION TREATMENT

	Probability of Voting							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Recipient	0.103** (0.018)	0.098** (0.020)		0.086** (0.017)	0.072** (0.014)		0.096*** (0.021)	0.063** (0.023)
Intended Recipient			0.087** (0.017)			0.058** (0.008)		
Covariate Controls				X	X	X		X
Uncontacted Excluded		X			X			
Estimator	OLS	OLS	OLS	OLS	OLS	OLS	IV	IV
First Stage F-Stat	-	-	-	-	-	-	259	246
Adjusted R-Squared	0.01	0.01	0.01	0.15	0.15	0.15	0.01	0.15
Observations	3,456	3,219	3,456	3,451	3,215	3,451	3,456	3,451

Table A1 shows causal estimates for the quasi-random information treatment for both preferred and alternate specifications. Recipient is a binary variable that indicates if a returning citizen received any contact regarding eligibility through Free Our Vote’s information program. Intended Recipient is a binary variable that indicates if Free Our Vote intended to contact a recipient, regardless of whether it was able to do so. Columns 1 and 4 present OLS specifications without and with covariate controls, respectively; they are identical to the preferred specifications presented in Columns 1 and 2 in Table 3 above. The remaining columns present robustness checks, without and with covariate controls. In Columns 2 and 5, we exclude from OLS regressions those whom Free Our Vote intended to contact but was unable to reach. In Columns 3 and 6, we present results from OLS specifications where the outcome variable is Intended Recipient. Finally, in Columns 7 and 8, we present instrumental variable (“IV”) specifications, in which the regressor of interest (Recipient) is instrumented by Intended Recipient. The first stage of the IV is strong, as measured by the F-statistic (near 250 in both specifications). The exclusion restriction for applying IV here is that being an intended recipient of a Free Our Vote communication must affect one’s probability of voting only if Free Our Vote actually contacted the individual. Across all specifications, the coefficient of interest remains positive, is comparable in magnitude, and is statistically significant. This provides additional support for the results described in Table 3. Standard errors are in parentheses and are clustered by county of conviction for the OLS regressions. \*\* and \* indicate significance at the 1%, and 5% levels, respectively.

TABLE A2: INSTRUMENTAL VARIABLES ESTIMATES FOR QUASI-RANDOM DEBT RELIEF TREATMENT

	Probability of Voting					
	(1)	(2)	(3)	(4)	(5)	(6)
Beneficiary	0.176** (0.29)	0.179** (0.028)	0.107** (0.025)	0.005 (0.026)		
Contacted Beneficiary				0.111*** (0.012)	0.20*** (0.048)	0.116** (0.046)
Covariate Controls			X	X		X
LFO Balance Controlled		X	X	X		X
Estimator	OLS	OLS	OLS	OLS	IV	IV
First Stage F-Stat	-	-	-	-	1,648	1,490
Adjusted R-Squared	0.03	0.03	0.21	0.21	0.02	0.21
Observations	575	575	572	572	575	572

Table A2 shows causal estimates for the quasi-random debt relief treatment for both the preferred and alternate instrumental variable (IV) specifications. Beneficiary is a binary variable that indicates if Free Our Vote paid off any LFOs for a returning citizen; Contacted Beneficiary is a binary variable that indicates which individuals in this group Free Our Vote was able to contact to inform them of payment. Columns 1–4 present are the preferred OLS specifications, replicated from the same columns in Table 8 above. Columns 5 and 6 present alternate IV specifications, in which the regressor of interest (Contacted Beneficiary) is instrumented by Beneficiary. The first stage of the IV is very strong, as measured by the F-statistic (above 1,490 in both specifications). The exclusion restriction for applying IV here is that being a beneficiary must affect one's probability of voting only if Free Our Vote actually contacted the beneficiary. In both IV specifications, the coefficient of interest remains positive and statistically significant and is comparable or larger in magnitude than in the associated preferred OLS specification. Standard errors are in parentheses and are clustered by county of conviction for the OLS regressions. \*\* and \* indicate significance at the 1%, and 5% levels, respectively.