

A MODERN JIM CROW: FELON DISENFRANCHISEMENT IN FLORIDA

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I. INTRODUCTION

John Boyd Rivers eagerly cast his ballot in the 2020 presidential election for Donald Trump.¹ His excitement was later squashed when he was arrested for voter fraud on the grounds that he was ineligible to vote.² The 2020 presidential election was the first time that Rivers voted since the age of eighteen due to Florida's lifetime felon disenfranchisement laws.³ In February 2020, while Rivers was sitting in his jail cell, a county representative delivered the news that Florida's laws had changed, and told Rivers to register to vote so he could exercise his newly restored right once released.⁴ The county representative directed him to disregard the check box on the voter registration form that asks whether the applicant has been convicted of a felony because he did not have a qualifying felony conviction to be exempt from the voting restoration law.⁵ No one ever told Rivers that he needed to pay off any financial obligations associated with his sentence before registering to vote, and the jail did not give Rivers information about his outstanding financial obligations upon his release.⁶

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¹ Bianca Fortis, *A Government Official Helped Them Register. Now They've Been Charged with Voter Fraud*, PROPUBLICA (July 22, 2022, 11:37 AM), <https://wufnews.wusf.usf.edu/politics-issues/2022-07-22/florida-felonies-voter-fraud>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

In November 2018, the people of Florida voted for Amendment 4 to Florida's Constitution, which declares that all individuals with qualifying felony convictions regain the right to vote immediately upon completion of all terms of their sentences.⁷ The passage of Amendment 4 was a triumph and a celebration for individuals who thought they would be disenfranchised for the rest of their lives. Voting rights advocates and local supervisors of elections started doing outreach in local communities including in jails, encouraging individuals to register to vote in accordance with Amendment 4.⁸ Soon after, however, these individuals realized that Florida's state officials never planned on allowing them to vote. Instead, the state imposed procedural barriers to determine what it meant to complete all terms of a sentence to regain voting eligibility.

This Comment examines the history of felon disenfranchisement in Florida and how the state's implementation of the voter initiative, Amendment 4, undermines the restoration of the right to vote for individuals with qualifying felony convictions. It argues that the inability of individuals to determine what they must pay in order regain voting eligibility violates procedural due process, rendering the implementation statutes void for vagueness, and further that the establishment of Florida's Office of Election Crimes is a modern voter intimidation tactic. Part II of this Comment explores the history of felon disenfranchisement in Florida and courts' historical willingness to uphold felon disenfranchisement. Next, Part III explains Amendment 4, Senate Bill 7066 ("SB 7066"), and its accompanying criminal statutes, including their passage, implementation, and ramifications, providing background for the law's violation of procedural due process. Part IV discusses the void for vagueness doctrine, the Fourteenth Amendment's procedural due process standard and analyzes the Eleventh Circuit's *Jones v. Governor of Florida* decision, its implications, and examines how the actions and statements of Florida's top officials led to and will continue to further strong voter intimidation in upcoming elections. Part V briefly concludes.

⁷ Alejandro de la Garza, 'Our Voice Will Count.' *Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People*, TIME (Nov. 7, 2018, 12:34 AM), <https://time.com/5447051/florida-amendment-4-felon-voting>. Qualifying felony convictions include all felonies except murder and felony sexual offenses. FLA. CONST. art. VI, § 4(a)-(b).

⁸ Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

II. FLORIDA'S HISTORY OF FELON DISENFRANCHISEMENT

Prior to November 2018, one in four individuals disenfranchised in the United States were from one state: Florida.⁹ Florida's lifetime felon disenfranchisement laws disproportionately affected Black Floridians and have barred Black individuals from voting at twice the rate of other Florida citizens.¹⁰ Before Amendment 4's passage, 13 percent of voting-age Black citizens in Florida were ineligible to vote.¹¹ Black individuals composed only 16 percent of Florida's population, but they made up nearly one-third of those disenfranchised in the state.¹² Florida's felon disenfranchisement laws date back to as early as Florida's 1838 Constitution, limiting the right to vote to "free [W]hite male[s]" and excluding those "convicted of bribery, perjury or other infamous crime[s]."¹³ Florida's continued felon disenfranchisement provisions are in line with its historical efforts to suppress Black Floridians' vote. This Part first discusses the history of Florida's felon disenfranchisement and then explains how these felon disenfranchisement laws suppress Black Floridians' vote.

A. *History of Felon Disenfranchisement in Florida*

Florida's felon disenfranchisement laws remained relatively unchanged until 1868.¹⁴ After the Civil War, the First Reconstruction Act of 1867 required that "to re-enter the Union, former Confederate states had to adopt new constitutions guaranteeing male suffrage without regard to race."¹⁵ Between 1865 and 1870, Congress also

⁹ ERIKA L. WOOD, BRENNAN CTR. FOR JUST., *FLORIDA: AN OUTLIER IN DENYING VOTING RIGHTS* 3 (2016), <https://www.brennancenter.org/publication/florida-outlier-denying-voting-rights>.

¹⁰ *History of Florida's Felony Disenfranchisement Provision*, BRENNAN CTR. FOR JUST. & FLORIDA RTS. RESTORATION COAL. 1 (Mar. 2006) [hereinafter *Florida's History of Felony Disenfranchisement*], https://www.brennancenter.org/sites/default/files/legacy/d/download_file_38222.pdf.

¹¹ This number does not include those who were currently incarcerated at the time of the study. *Id.*

¹² WOOD, *supra* note 9, at 3.

¹³ FLA. CONST. of 1838, art. VI, §§ 1, 4.

¹⁴ Allison J. Riggs, *Felony Disenfranchisement in Florida: Past, Present and Future*, 28 ST. JOHN'S J. C.R. & ECON. DEV. 107, 108 (2015).

¹⁵ FLA. ADVISORY COMM. TO THE U.S. COMM'N ON C.R., *EX-FELON VOTING RIGHTS IN FLORIDA: REVISED RULES OF EXECUTIVE CLEMENCY THAT AUTOMATICALLY RESTORE CIVIL RIGHTS TO LEVEL-1 OFFENDERS IS THE RIGHT POLICY* 4 (2008) [hereinafter *VOTING RIGHTS IN FLA. REPORT*], <https://www.usccr.gov/files/pubs/docs/EX-FelonVRFL.pdf>.

passed the Reconstruction Amendments as a reaction to continued racial discrimination in the South.¹⁶ The Thirteenth Amendment emancipated enslaved people, the Fourteenth Amendment granted formerly enslaved people citizenship and equal civil and legal rights, and the Fifteenth Amendment prohibited the federal and state governments from denying a citizen's right to vote "on account of race, color, or previous condition of servitude."¹⁷ The Fifteenth Amendment was passed with the aim of protecting voting rights of Black men after the Civil War.¹⁸

But after enslaved people were free, legislators in Florida feared that the Black population, composing 48 percent of the state's total population at that time, would dominate state and local government.¹⁹ In 1866, Florida rejected the Fourteenth Amendment.²⁰ Despite the hope that came with the Fifteenth Amendment's passage, numerous discriminatory practices arose soon after to prevent Black men from voting.²¹ One of these discriminatory practices included the legislature's expansion of felon disenfranchisement as a mechanism to suppress the political power of newly freed enslaved people.²²

Although Florida's defenders of felon disenfranchisement argue that the practice preceded the passage of the Fifteenth Amendment, Black Codes, and Jim Crow, Florida and other states expanded felon disenfranchisement to intentionally exclude Black men from voting.²³ In 1865, Florida "passed a package of laws known as the 'Black Codes' that [increased] the penalties for charges easy to pin on freed blacks, including assaulting a white woman, disobedience and 'vagrancy,' a crime with such a broad definition nearly anyone could be charged."²⁴ The Black Codes were a "perfect precursor" to changes Florida made in its 1868 Constitution that drastically expanded criminal

¹⁶ WOOD, *supra* note 9, at 4.

¹⁷ U.S. CONST. amend. XIII, § 1; *id.* amend. XIV, § 1; *id.* amend. XV, § 1.

¹⁸ See Tim Elfrink, *The Long, Racist History of Florida's Now-Repealed Ban on Felons Voting*, WASH. POST (Nov. 7, 2018, 5:41 AM), <https://www.washingtonpost.com/nation/2018/11/07/long-racist-history-floridas-now-repealed-ban-felons-voting>.

¹⁹ *Florida's History of Felony Disenfranchisement*, *supra* note 10, at 1.

²⁰ VOTING RIGHTS IN FLA. REPORT, *supra* note 15, at 4.

²¹ Elfrink, *supra* note 18.

²² *Florida's History of Felony Disenfranchisement*, *supra* note 10, at 1.

²³ *Id.*

²⁴ Elfrink, *supra* note 18.

disenfranchisement and barred all people with a felony conviction from voting.²⁵

Florida also expanded the list of disqualifying crimes, broadening disenfranchisement to include anyone convicted of minor Black Code offenses.²⁶ Florida historian Jerrell Shofner explained that Florida's amendments to its 1868 Constitution were a direct reaction to being forced to recognize the Reconstruction Amendments.²⁷ He described:

Felony disenfranchisement was a way of reducing the effect of the despised black suffrage that [Florida] Conservatives knew they had no alternative but to accept. Larceny, which included the new category added by the 1865 legislature, was added to the earlier lists of crimes for which convicts could be disfranchised because the Conservatives agreed with [the sponsor's] admonition about its increase resulting from the abolition of slavery.²⁸

One of the 1868 convention delegates confirmed that criminal disenfranchisement provisions were used to reduce the number of Black voters.²⁹ The laws had their intended effect, and by the 1870s–1880s, it is estimated that over 95 percent of the inmates in Florida's "convict camps" were Black, and by 1880, there were almost no eligible Black voters.³⁰

Other states used the tactic of expanding felon disenfranchisement to suppress Black individuals' votes and the Supreme Court recognized this method as racially discriminatory in *Hunter v. Underwood*.³¹ In *Hunter*, the Supreme Court invalidated a section of Alabama's Constitution disenfranchising those convicted of crimes involving "moral turpitude."³² The Supreme Court held that the expansion of felon disenfranchisement was intentionally adopted to disenfranchise Black individuals on account of their race.³³

²⁵ *Id.*; see *Florida's History of Felony Disenfranchisement*, *supra* note 10, at 1.

²⁶ *Florida's History of Felony Disenfranchisement*, *supra* note 10, at 1.

²⁷ WOOD, *supra* note 9, at 5.

²⁸ *Id.* (quoting Expert Report by Prof. Jerrell H. Shofner, Ph.D. at 6, *Johnson v. Bush*, 214 F. Supp. 2d 1333 (S.D. Fla. 2002) (No. 00-CV-3542)).

²⁹ *Johnson v. Governor of Fla.*, 353 F.3d 1287, 1296 (11th Cir. 2003).

³⁰ *Florida's History of Felony Disenfranchisement*, *supra* note 10, at 1; Lawrence Mower & Langston Taylor, *In Florida, the Gutting of a Landmark Law Leaves Few Felons Likely to Vote*, PROPUBLICA (Oct. 7, 2020, 5:00 AM), <https://www.propublica.org/article/in-florida-the-gutting-of-a-landmark-law-leaves-few-felons-likely-to-vote>.

³¹ 471 U.S. 222, 231 (1985).

³² *Id.* at 233–34.

³³ *Id.* at 233.

Additionally, court decisions reflect the historical acceptance of felon disenfranchisement, with the Supreme Court and courts in Florida repeatedly upholding felon disenfranchisement laws.³⁴ In the 2005 case *Johnson v. Governor of Florida*, plaintiffs brought a class action suit on behalf of all Floridians with a felony conviction who had completed all terms of their sentence but were still ineligible to vote under Florida's lifetime disenfranchisement law.³⁵ Plaintiffs argued that the Florida Constitution's lifetime disenfranchisement provision violated the Equal Protection Clause of the Fourteenth Amendment and section 2 of the Voting Rights Act.³⁶ The Eleventh Circuit held that the plaintiffs could not prove that Florida's disenfranchisement law was motivated by racial animus, and therefore it did not violate the Equal Protection Clause.³⁷ Although plaintiffs provided evidence that provisions of Florida's 1868 Constitution were motivated by racial discrimination, the court held this did not "establish that racial animus motivated the criminal disenfranchisement provision, particularly given Florida's long-standing tradition of criminal disenfranchisement."³⁸

While supporters of felon disenfranchisement justify the practice based on the argument that individuals must first fully rehabilitate into society before re-earning the right to vote, this argument is deeply flawed. A study found that there is a "statistically significant relationship between voting and the likelihood of recidivism [after] a felony conviction."³⁹ The study indicated that 27 percent of nonvoters were arrested again, compared with only a 12 percent recidivism rate for individuals with felony convictions who vote.⁴⁰ Those who have been convicted of a felony also arguably have a greater interest in voting, given that they often feel a heightened direct impact of elected officials' decisions, such as those by sheriffs, judges, and legislators, than individuals without a felony conviction.

³⁴ See, e.g., *Richardson v. Ramirez*, 418 U.S. 24, 53, 56 (1974); *Johnson*, 405 F.3d at 1234–35 (11th Cir. 2005); *Hand v. Scott*, 888 F.3d 1206, 1210 (11th Cir. 2018).

³⁵ *Johnson*, 405 F.3d at 1216–17.

³⁶ *Id.* at 1216.

³⁷ *Id.* at 1224.

³⁸ *Id.* at 1219.

³⁹ *Riggs*, *supra* note 14, at 112.

⁴⁰ *Id.*

B. *Voter Suppression of Black Floridians*

Florida's criminal disenfranchisement efforts were part of a wider effort to suppress votes in the Jim Crow era. "In 1889, Florida became the first state to adopt a poll tax," requiring individuals to pay two dollars annually to be able to vote.⁴¹ The state later adopted literacy laws and residency requirements.⁴² All of these measures disproportionately affected Black citizens; "[t]hroughout the Jim Crow era, African Americans who tried to register and vote in Florida were harassed and intimidated, resulting in extremely low voter registration rates."⁴³ By 1940, only 3 percent of Black Floridians were registered to vote.⁴⁴

After the passage of the Civil Rights Act of 1957, the U.S. Commission on Civil Rights's ("Commission") received its first sworn voting complaint came from Gadsden County, Florida.⁴⁵ The complaint asserted, "through threats of bodily harm and losing of jobs, and other means, [that Black] residents of Gadsden County, [Florida, were] deprived of their right to vote."⁴⁶ In its report, the 1958 Commission found that in Gadsden County, out of the 10,930 Black residents, only seven were registered to vote.⁴⁷ Additionally, "[t]he report concluded that 'fear is a real deterrent to registration' in the county."⁴⁸ The Commission released a second report in 1961 recounting further incidents of voter intimidation in Florida, this time in Liberty County, a rural district southwest of Tallahassee.⁴⁹ The report documented that after Black individuals registered to vote in 1956, they were subjected to harassment, including burned crosses, firebombs on their property, and threatening phone calls.⁵⁰ The threats stopped once the Black citizens removed their names from the voter registration books.⁵¹ One citizen refused to remove his name,

⁴¹ Elfrink, *supra* note 18.

⁴² *Id.*

⁴³ WOOD, *supra* note 9, at 6.

⁴⁴ Elfrink, *supra* note 18.

⁴⁵ WOOD, *supra* note 9, at 6–7.

⁴⁶ *Id.* at 7 (citing U.S. COMM'N ON C.R., REPORT OF THE U.S. COMM'N ON C.R. 1959, at 55 (1959) [hereinafter 1959 C.R. REPORT]).

⁴⁷ *Id.*

⁴⁸ *Id.* (citing 1959 C.R. REPORT, *supra* note 46, at 58).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ WOOD, *supra* note 9, at 7.

and he was forced out of the county.⁵² With this political climate, Florida held a constitutional convention in 1968, where it kept intact the lifetime felon disenfranchisement law that persisted until Amendment 4 in 2018.⁵³

While poll taxes, literacy requirements, or cross burnings no longer exist, Black voter suppression in Florida continues beyond the prosecutions for voter fraud discussed in this Comment. In 2022, a court struck down parts of Florida Senate Bill 90, a law restricting ballot drop boxes and third-party voter registration, because provisions of it were enacted with the intent to discriminate against Black voters.⁵⁴ Although the Eleventh Circuit reversed, the Department of Justice agreed in an amicus brief that the law is intentionally discriminatory.⁵⁵

III. AMENDMENT 4 AND SENATE BILL 7066

Florida's lifetime felon disenfranchisement law changed in November 2018, through a voter initiative on the general election ballot. About 65 percent of Florida voters passed Amendment 4 to the Florida Constitution to restore an individual's right to vote automatically upon completion of their felony sentence.⁵⁶ Amendment 4 states that "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."⁵⁷ Amendment 4 does not apply to individuals convicted of murder or a felony sexual offense.⁵⁸

Amendment 4 does not explicitly include a requirement to resolve outstanding financial obligations before regaining the right to

⁵² *Id.* (citing U.S. COMM'N ON C.R., REPORT ON VOTING 1961, at 28–29 (1961) [hereinafter 1961 C.R. REPORT]).

⁵³ *Id.*

⁵⁴ *League of Women Voters of Fla., Inc. v. Lee*, 595 F. Supp. 3d 1042, 1060, 1065, 1169 (N.D. Fla. 2022).

⁵⁵ *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 951 (11th Cir. 2023); Ashley Lopez, *Activists in Florida Say Black Voters Have Seen Their Political Power Curtailed*, NPR (Aug. 21, 2022, 5:00 AM), <https://www.npr.org/2022/08/21/1118503562/florida-black-voters-election-laws-redistricting>; Brief for the United States as Amicus Curiae in Support of Plaintiffs-Appellees at 10, *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363 (11th Cir. 2022) (Nos. 22-11133, 22-11143, 22-11144, 22-11145).

⁵⁶ *Jones v. Governor of Fla.*, 975 F.3d 1016, 1025–26 (11th Cir. 2020).

⁵⁷ FLA. CONST. art. VI, § 4(a).

⁵⁸ *Id.* § 4(b).

vote.⁵⁹ The American Civil Liberties Union (ACLU) of Florida, which helped draft Amendment 4, asserts that the omission of a requirement for individuals to pay off financial obligations before regaining the right to vote was deliberate because the authors believed such a requirement may be unconstitutional, and they did not want to insert a pay-to-vote system into the Florida Constitution.⁶⁰ Drafters intentionally wrote Amendment 4 to be self-executing, meaning it does not require an implementation statute.⁶¹ Supporters of Amendment 4 celebrated the end of Florida’s policy of lifetime disenfranchisement for a felony conviction that “was estimated to disenfranchise [one] in [four] Black men in the state.”⁶² Amendment 4 was estimated to re-enfranchise about 1.4 million Floridians.⁶³ This re-enfranchised group encompasses about 5 percent of Florida’s total population.⁶⁴

Months later, in June of 2019, despite Amendment 4 not requiring an implementation statute, Florida passed SB 7066 to implement Amendment 4, defining “completion of all terms of sentence” as “any portion of a sentence that is contained in the four corners of the sentencing document.”⁶⁵ This includes the payment of certain legal financial obligations (“LFOs”)—fines, restitution, costs, and fees—that are court imposed pursuant to a felony conviction.⁶⁶ The Florida Supreme Court agreed that the definition of “all terms of sentence” includes all LFOs imposed as part of a criminal conviction.⁶⁷ It then became clear that Florida’s lack of a centralized database and procedure would make it terribly burdensome to determine what an individual must pay, and further, if an individual with a felony conviction miscalculated their LFOs and proceeded to vote, they would face prosecution.⁶⁸ In the following sections, Section A discusses

⁵⁹ *Id.* § 4.

⁶⁰ Mower & Taylor, *supra* note 30.

⁶¹ Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

⁶² Gabriella Sanchez, *In Florida, the Right to Vote Can Cost You*, BRENNAN CTR. FOR JUST. (Sept. 7, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/florida-right-vote-can-cost-you>.

⁶³ *Id.*

⁶⁴ Fortis, *supra* note 1.

⁶⁵ FLA. STAT. § 98.0751(2)(a) (2020).

⁶⁶ *Id.*

⁶⁷ Advisory Op. to the Governor Re: Implementation of Amend. 4, The Voting Restoration Amend., 288 So. 3d 1070, 1084 (Fla. 2020).

⁶⁸ *See* Fortis, *supra* note 1.

Florida's voter registration procedure and highlight its inefficiencies, and Section B explains how this procedure and the execution of Amendment 4 through SB 7066 and its accompanying criminal statutes has led to unjust convictions.

A. *Florida's Voter Registration Procedure*

As part of the implementation of Amendment 4, voting rights advocates and county representatives engaged in outreach visits to correctional facilities to inform individuals of their new rights and help them register so they could vote upon the completion of their sentence.⁶⁹ State investigators later found that "the jail visits were 'lacking in both quality and longevity' and 'showed a haphazard registration of inmates.'"⁷⁰ The voter registration outreach also occurred at any place voting rights advocates could think of, including football games and other public places, to get the word out about Amendment 4's passage.⁷¹ Each of the individuals that county officials and voting rights advocates helped to register filed Florida's standard voter registration application, which then goes through a state mandated process.

When an individual submits a voter registration application, it is forwarded to the state, which makes an initial determination of whether the information on the application is credible, verifies the individual's identity, and assesses whether the individual is eligible pursuant to Amendment 4 of the Florida Constitution.⁷² Upon making the initial determination, the application is forwarded to the individual's local supervisor of elections, who is tasked with verifying and making a final determination about the voter's eligibility.⁷³ After the local supervisor of elections determines that they are eligible, the individual's county then issues them a voter registration card.⁷⁴

The fatal flaw in this system, however, is that Florida lacks a centralized database for tracking court debt and payments, and its

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

⁷² FLA. STAT. § 98.0751(3) (2020); Matt Dixon, *Defendants Targeted in DeSantis' Voter Fraud Crackdown Were Told They Could Vote*, POLITICO (Aug. 26, 2022, 5:40 PM), <https://www.politico.com/news/2022/08/26/desantis-voter-fraud-defendants-florida-00053788>.

⁷³ FLA. STAT. § 98.0751(3)(b) (2020).

⁷⁴ Dixon, *supra* note 72.

criminal justice system is highly decentralized, so it is “practically impossible” for the government, let alone a citizen, to determine whether an individual with a qualifying felony conviction is eligible to vote in Florida.⁷⁵ There are sixty-seven counties in Florida, so an individual may need to track down LFO requirements from felony convictions in multiple counties, which can be extremely difficult because of the disorganized nature of many county record-keeping systems.⁷⁶ Most counties now have digital records, but for those who have felony convictions from years ago, many counties had paper records that have now been misplaced, or even destroyed after hurricanes or fires.⁷⁷

Because of this, many individuals relied on the state’s issuance of a voter registration card as confirmation of voting eligibility. Therefore, many individuals with felony convictions do not know they have outstanding debts, do not know that these debts would make them ineligible to vote, and without a proper record-keeping system, state and local officials are unable to help individuals verify what they need to do to register to vote.⁷⁸ By the state’s own estimates, as of 2020, there were over eighty-five thousand registered voters with prior felony convictions whose eligibility screening was outstanding.⁷⁹ The Florida Secretary of State’s Office is only capable of processing fifty-seven voter registrations per day and estimated that it would take until at least 2026 to screen those eighty-five thousand individuals.⁸⁰ As of 2020, the state also had not allocated money in its budget to hire employees to process the influx of Amendment 4 related voter registrations.⁸¹

⁷⁵ Second Supplemental Expert Rep. of Daniel Smith ¶ 11, *Jones v. DeSantis*, No. 4:19-cv-300 (N.D. Fla. 2020).

⁷⁶ See Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

⁷⁷ *Id.*

⁷⁸ Sanchez, *supra* note 62.

⁷⁹ *Id.*

⁸⁰ Mower & Taylor, *supra* note 30.

⁸¹ *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1228 (N.D. Fla. 2020).

B. *Results of Florida's Voting Procedure and Implementation of Amendment 4 and Senate Bill 7066*

Florida's implementation of Amendment 4 through SB 7066 disqualified nearly eight hundred thousand individuals with felony convictions from being able to vote.⁸² Of the over one million people convicted of a qualifying felony in Florida who have completed their sentence, estimates indicate that 77.4 percent of these individuals are not qualified to register or vote under SB 7066 due to outstanding LFOs.⁸³

Ten incarcerated individuals that registered during county official outreach visits and later received voter registration cards, including John Boyd Rivers, Derrick Baldwin, and Kevin Bolton, were charged with voter fraud on the basis that they were ineligible.⁸⁴ Brian Kramer, the state attorney for the Eighth Judicial Circuit of Florida, defended the prosecutions and stated that he believed the men being prosecuted knew they were committing fraud.⁸⁵ This argument is flawed, however, because the personal stories of the individuals charged paint a different picture than the statements of Florida officials.⁸⁶ This demonstrates that the individuals charged with voter fraud did not have the requisite mens rea but were charged regardless as a voter suppression tactic.⁸⁷

Baldwin, "who is in prison for a manslaughter conviction, [and] was sentenced to an additional 364 days" for voting, says he felt "set up" because no one told him that he was ineligible when the county official encouraged him to vote.⁸⁸ Baldwin went on to say about his vote in the 2020 Presidential Election that there was "no way Biden was that important" for him to serve more jail time and that he was "flat out tricked into voting."⁸⁹ Bolton, another individual charged with voter fraud, said that "he would never knowingly jeopardize his release date"

⁸² Mower & Taylor, *supra* note 30.

⁸³ Second Supplemental Expert Rep. of Daniel Smith ¶ 9, *Jones v. DeSantis*, No. 4:19-cv-300 (N.D. Fla. 2020).

⁸⁴ Fortis, *supra* note 1.

⁸⁵ *Id.*

⁸⁶ See Alan Festo, *Sixth Inmate Sentenced Following Voter Fraud Investigation at Alachua County Jail*, GAINESVILLE SUN (Feb. 16, 2023, 10:06 PM), <https://www.gainesville.com/story/news/2023/02/16/sixth-inmate-sentenced-in-alachua-county-voter-fraud-investigation/69910310007>.

⁸⁷ See *id.*; see Fortis, *supra* note 1.

⁸⁸ Fortis, *supra* note 1.

⁸⁹ *Id.*

by voting and “there was no malicious intent” when he registered and voted.⁹⁰ He added that if he had “fully understood the laws at that time,” he would never have voted.⁹¹

Another unidentified individual charged with voter fraud stated that he was approached to register to vote while shopping at his local Walmart, but told the election official that he had a felony conviction and was therefore ineligible.⁹² In response, the official told him that because of the passage of Amendment 4, he could register and vote.⁹³ The official then helped him fill out his paperwork and soon after, he received a voter card in the mail, which led him to believe that he was eligible to vote.⁹⁴

Peter Washington, a fifty-nine-year-old Black man from Orlando, is another individual who was charged with voter fraud after relying on this procedure.⁹⁵ While serving his ten-year prison sentence, Washington “was taking classes to transition back into society as his release date” approached.⁹⁶ He received a voter registration form in the mail from the Orange County Supervisor of Elections Office, completed it, and sent it back.⁹⁷ In response, the “Orange County Supervisor of Elections [Office] mailed him a voter card.”⁹⁸ Another individual was charged with voter fraud after being registered at his local department of motor vehicles when he got his driver’s license.⁹⁹

Despite these stories from citizens charged with election fraud, Florida officials still maintain that these individuals *knowingly* voted illegally.¹⁰⁰ This position is problematic because it demonstrates that individuals with felony convictions are less likely to be believed than other defendants when they claim lack of knowledge, and therefore the law’s knowledge requirement does not remedy the law’s vagueness and notice problems. Additionally, the state’s practice of ignoring whether a defendant has the requisite *mens rea* leads to voter

⁹⁰ Festo, *supra* note 86.

⁹¹ *Id.*

⁹² Dixon, *supra* note 72.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Dixon, *supra* note 72.

⁹⁹ Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

¹⁰⁰ *See* Fortis, *supra* note 1.

suppression by making other individuals scared to vote even if they truly do believe they are eligible. These stories also show that the lack of proper procedures Florida has used to implement Amendment 4 results in individuals receiving misinformation. When an individual receives a voter registration card from their state government after submitting an application form, it is reasonable for them to believe that they are eligible to vote without facing prosecution.

IV. *JONES V. GOVERNOR OF FLORIDA* AND ITS IMPLICATIONS

Due to these difficulties, individuals with felony convictions who could not vote because of an undeterminable amount of LFOs challenged SB 7066 in the case *Jones v. Governor of Florida*.¹⁰¹ This Part describes the *Jones* decision, summarizes SB 7066's procedural due process violation, and suggests a remedy. This Part then discusses the implications of the *Jones* decision and how Florida officials' actions following the decision constitute voter deterrence and suppression, signifying a modern-day Jim Crow tactic.

A. *Background of Jones v. Governor of Florida*

Individuals sued to challenge SB 7066's requirement that they pay their LFOs before regaining the right to vote.¹⁰² Plaintiffs alleged that the requirement violates the Equal Protection Clause of the Fourteenth Amendment for those who are unable to pay the required amounts; it is a poll tax barred by the Twenty-Fourth Amendment; and SB 7066 is void for vagueness, thereby denying individuals procedural due process because the process makes it extremely difficult to determine whether they are eligible to vote.¹⁰³

The district court entered a permanent injunction that allowed any individual who is unable to pay their fines or restitution, or has failed for any reason to pay court fees and costs, to register and vote.¹⁰⁴ The Eleventh Circuit then reversed that decision, holding that the district court was incorrect in determining that Florida's law was unconstitutional.¹⁰⁵ This Comment argues that the requirement that individuals pay legal fines that are extremely difficult to determine violates procedural due process because the individuals face hardships

¹⁰¹ *Jones v. Governor of Fla.*, 975 F.3d 1016, 1026 (11th Cir. 2020).

¹⁰² *Id.* at 1025.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

in determining what they owe, making SB 7066 impermissibly vague, and further that the establishment of Florida's election crimes unit is a voter intimidation tactic.

B. Procedural Due Process Standard and Application

Florida's implementation of Amendment 4 through SB 7066 and its accompanying criminal statutes violates procedural due process because the laws are impermissibly vague.¹⁰⁶ SB 7066 and its accompanying criminal statutes fail to provide proper notice to individuals before stripping them of their right to vote and convicting them of another felony if they miscalculate their fines, because Florida lacks a centralized database to tell individuals what fines they must pay to restore their voting rights.

To analyze a claim for procedural due process, the threshold question a court evaluates is whether the plaintiffs established the "deprivation of a constitutionally protected liberty or property interest."¹⁰⁷ Once plaintiffs establish that they suffered the deprivation of a constitutionally protected interest under the due process clause, the court next considers whether the state's administrative process before denial of that interest is constitutionally adequate.¹⁰⁸ To determine this, the court balances three factors: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of the interest through the procedures used; and (3) the government's interest at stake, including the fiscal and administrative burdens that additional or substitute procedures would entail.¹⁰⁹ Courts have applied this test when examining laws that impact the right to vote.¹¹⁰ This Part proves Florida's implementation of Amendment 4 through SB 7066 and accompanying criminal statutes are void for vagueness and violate procedural due process. This Part then provides a remedy for the procedural due process violation.

¹⁰⁶ When referring to the execution of Amendment 4 through SB 7066 throughout this Comment, this refers to its accompanying criminal statutes as well, which is what actually results in voter fraud charges after voting with outstanding LFOs. See FLA. STAT. §§ 104.011(2), 104.15 (2021).

¹⁰⁷ *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Jones*, 975 F.3d at 1059 (Martin, J., dissenting).

¹⁰⁸ *Mathews*, 424 U.S. at 333, 343; *Jones*, 975 F.3d at 1061 (Martin, J., dissenting).

¹⁰⁹ *Mathews*, 424 U.S. at 335.

¹¹⁰ *Ga. Muslim Voter Project v. Kemp*, 918 F.3d 1262, 1267–68 (11th Cir. 2019) (applying *Mathews* test to challenge of signature matching procedure).

1. Vagueness

To register to vote in Florida, a person must affirm that they are not disqualified from voting because of a felony conviction.¹¹¹ And it is a crime for a person to “willfully submit[] any false voter registration information,”¹¹² or to “[while] knowing [they are] not a qualified elector, willfully vote[] at any election.”¹¹³ The plaintiffs in *Jones* argued that these criminal laws are void for vagueness because SB 7066 makes it difficult or impossible for some individuals with felony convictions to determine whether they are eligible to vote.¹¹⁴

A fundamental principle of the American legal system is that laws “must [provide] fair notice of conduct that is either forbidden or required”¹¹⁵ and a “basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined [because] [v]ague laws offend several important values.”¹¹⁶ The procedural due process requirement ensures that individuals know what the law is so they may act accordingly and avoids problems of arbitrary or discriminatory enforcement.¹¹⁷ When laws are vague, they “trap the innocent by not providing fair warning.”¹¹⁸ The Supreme Court has held that a “conviction or punishment fails to comply with due process if the statute or regulation . . . ‘fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.’”¹¹⁹

The Supreme Court has gone on to reject the view that a law must be vague in all applications in order for it to be found unconstitutionally vague.¹²⁰ Evidence of vagueness can be shown through a “persistent failure” of state effort to establish a workable standard.¹²¹ Florida’s SB 7066 and its accompanying criminal statute,

¹¹¹ See *Fortis*, *supra* note 1.

¹¹² FLA. STAT. § 104.011(2) (2021).

¹¹³ *Id.* § 104.15.

¹¹⁴ *Jones v. Governor of Fla.*, 975 F.3d 1016, 1046 (11th Cir. 2020).

¹¹⁵ *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

¹¹⁶ *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

¹¹⁷ *Fox Television Stations*, 567 U.S. at 253.

¹¹⁸ *Grayned*, 408 U.S. at 108.

¹¹⁹ *Fox Television Stations*, 567 U.S. at 253 (citing *United States v. Williams*, 553 U.S. 285, 304 (2008)).

¹²⁰ *Johnson v. United States*, 576 U.S. 591, 603 (2015).

¹²¹ *Id.* at 598 (finding a felon in possession law impermissibly vague because the term “violent felony” did not have a standard and led to arbitrary enforcement); see also *City of Chicago v. Morales*, 527 U.S. 41, 59 (1999) (finding an ordinance

Florida Statute § 104.15, are void for vagueness because the state has failed to establish a standard for individuals with felony convictions to determine what LFOs they are required to pay before voting, thereby exposing themselves to the possibility of prosecution.

Florida's laws also raise due process concerns because they have resulted in arbitrary enforcement through the state ignoring the criminal law's scienter requirement and threatening individuals with prosecution.¹²² Individuals who have relied on county confirmation of their voting rights—after a county official encouraged them to register—have been prosecuted to the fullest extent of the law, despite the individual's absence of the criminal statute's mens rea requirement. The due process requirement of proper notice requires more than what the Florida law provides.

Although the criminal statute has a knowledge requirement—stating that it is only a felony to knowingly or willfully submit false voter information—this does not solve the statute's vagueness violation.¹²³ In the First Amendment context, just because a criminal statute requires knowledge of the falsity of speech, that does not shield the law from being vague.¹²⁴ These laws can create a chilling effect on the right at issue because the knowledge requirement does not prevent state officials from arbitrarily punishing those who make those statements.¹²⁵ In this instance, the fact that SB 7066's accompanying criminal statute has a mens rea requirement does not deter state officials from arbitrarily enforcing the law because this particularly vulnerable group of individuals are less likely to be believed when they claim lack of knowledge and fear returning to prison.¹²⁶

prohibiting criminal gang members from loitering in a public place to fail the notice requirement and therefore be unconstitutionally vague).

¹²² See discussion *infra* Part IV.C.

¹²³ FLA. STAT. §§ 104.011(2), 104.15 (2021).

¹²⁴ *Frese v. Formella*, 53 F.4th 1, 14 (1st Cir. 2022) (Thompson, J., concurring).

¹²⁵ *Id.* at 7.

¹²⁶ For an explanation of the deterrence effect of Florida's laws despite a mens rea requirement, see discussion *infra* Part IV.C.

2. *Mathews* Factors Application

The threshold for a procedural due process violation is whether the plaintiffs established a deprivation of a constitutionally protected liberty or property interest.¹²⁷ Individuals with felony convictions are deprived of liberty without due process of law when they are convicted of violating SB 7066, resulting in additional fines or imprisonment because the law is vague. SB 7066 leaves individuals with no real way to determine what they owe, therefore individuals unknowingly violate SB 7066, which then triggers another felony conviction, depriving them of due process of law.

Once plaintiffs establish a constitutionally protected liberty interest, as they have here, courts apply the *Mathews* test to determine if the government's procedure is constitutionally adequate.¹²⁸ Applying the first factor, the private interest created by the government action, the right to vote, and the individual liberty deprived after a wrongful conviction are private interests affected by Florida's pay-to-vote requirement. Courts have held that that the fundamental right to vote is a private interest that is entitled to "substantial weight."¹²⁹ This conclusion is also supported by courts' repeated recognition of voting as a fundamental right affording greater constitutional protection in multiple contexts.¹³⁰

The second factor, the risk of erroneous deprivation of the right to vote and the right to due process of law before being deprived of personal liberty, has a very high risk of deprivation due to the vagueness created by the lack of procedure for determining voter eligibility.¹³¹ It is also significant that the risk of erroneous deprivation affects nearly eight hundred thousand individuals with felony convictions, heightening the severity of the risk.¹³² Voting rights experts say that it is the government's responsibility to determine voter

¹²⁷ See *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Jones v. Governor of Fla.*, 975 F.3d 1016, 1059 (11th Cir. 2020) (Martin, J., dissenting).

¹²⁸ Erwin Chemerinsky, *Procedural Due Process Claims*, 16 *TOURO L. REV.* 871, 888 (2016).

¹²⁹ *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018), *aff'd*, *Ga. Muslim Voter Project v. Kemp*, 918 F.3d 1262, 1270 (11th Cir. 2019); *Self Advocacy Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1052 (D.N.D. 2020).

¹³⁰ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964).

¹³¹ *Mathews*, 424 U.S. at 335; see also *Martin*, 341 F. Supp. 3d at 1338 (applying the *Mathews* test in a voting context).

¹³² Mower & Taylor, *supra* note 30.

eligibility, and “[i]t is purely natural for a citizen to rely on the government to make those determinations and that they be accurate.”¹³³ Florida does not dispute that SB 7066 makes it impossible for many to determine their voting eligibility.¹³⁴ Nicholas Warren, an attorney for the ACLU of Florida, says “lawmakers essentially created a ‘pay to vote’ system, but they never created a way for these individuals to figure out how much they owe or if they owe anything at all.”¹³⁵ He went on to say that “[t]here is no simple way for a person who is coming out of their felony sentence to check whether they are eligible to vote.”¹³⁶ Florida’s Divisions of Elections, the office responsible for verifying voter eligibility, cannot say definitively how many individuals with felony convictions have registered to vote.¹³⁷

At the time of the *Jones* trial, Florida had received eighty-five thousand voter registration forms from individuals who believed Amendment 4 re-enfranchised them.¹³⁸ State law mandates that those registrations be screened for the applicant’s failure to complete the terms of their sentences, including LFOs.¹³⁹ By the time of the *Jones* trial in early 2020, Florida had not screened a single one of the eighty-five thousand registrations.¹⁴⁰ The state estimated that it will take until at least 2026, if not until into the 2030s, for state officials to complete voter eligibility determinations.¹⁴¹

While the Eleventh Circuit held that Florida’s law does give proper notice to individuals because they can request an advisory opinion on eligibility before registering to vote, the advisory opinions are not a proper remedy for the vagueness and notice violation because they lack necessary information.¹⁴² The opinions only promise

¹³³ See Dixon, *supra* note 72 (quoting Desmond Meade, Exec. Dir., Fla. Rts. Restoration Coal.).

¹³⁴ See *Jones v. Governor of Fla.*, 975 F.3d 1016, 1089 (11th Cir. 2020) (Martin, J., dissenting).

¹³⁵ Ashley Lopez, *20 Were Charged for Voter Fraud in Florida. Advocates Say a Broken System is to Blame*, NPR (Aug. 27, 2022, 5:00 AM) [hereinafter Lopez, *Voter Fraud in Florida*], <https://www.npr.org/2022/08/27/1119750187/florida-voter-fraud-charges-desantis-felon-rights>.

¹³⁶ *Id.*

¹³⁷ Mower & Taylor, *supra* note 30.

¹³⁸ *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1228 (N.D. Fla. 2020).

¹³⁹ FLA. STAT. § 98.0751(3)–(4) (2020).

¹⁴⁰ *Jones v. Governor of Fla.*, 975 F.3d 1016, 1026 (11th Cir. 2020).

¹⁴¹ *Id.* at 1064 (Martin, J., dissenting).

¹⁴² *Id.* at 1063 (Martin, J., dissenting); Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

individuals a legal determination about whether they would violate voter fraud laws by voting.¹⁴³ The advisory opinions make no promise to give individuals accurate information about their outstanding LFOs.¹⁴⁴ Therefore, even if an individual receives an advisory opinion concluding whether or not they can vote, they are not provided with the necessary information that will allow them to remedy their ineligibility because they are not told specifically what they owe. Additionally, to get an advisory opinion, the individual must provide each case number, which is often difficult to locate due to the lack of a centralized database, especially for individuals with felony convictions dating back multiple decades.¹⁴⁵ Given the reality of the process, requesting an advisory opinion about voter status does not satisfy the notice standard of procedural due process and further supports the argument that the law is impermissibly vague. Individual cases further demonstrate that even when individuals do contact state officials to determine what they owe in order to vote, the state is unable to provide them with an answer.¹⁴⁶

Clifford Tyson sought help from the Hillsborough County Clerk of the Court to determine his required LFO balance.¹⁴⁷ It took the county clerk's office twelve to fifteen hours to respond.¹⁴⁸ When they did respond, they found discrepancies in the record that nobody was able to explain, ultimately leaving him with an unclear answer about what he owed.¹⁴⁹ Similarly, Betty Riddle, one of the plaintiffs in *Jones*, attempted to determine the amount of LFOs she was required to pay by requesting copies of her felony records.¹⁵⁰ Riddle was found guilty of felonies between the years of 1975 and 1988 in two counties.¹⁵¹ When she requested her felony records from these counties, the clerk's office told her they were unable to find her records.¹⁵² Therefore, she still has no possible way to determine how much she is required to

¹⁴³ *Jones*, 975 F.3d at 1063 (Martin, J., dissenting).

¹⁴⁴ *Id.*

¹⁴⁵ Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

¹⁴⁶ *Jones*, 975 F.3d at 1064 (Martin, J., dissenting).

¹⁴⁷ *Id.* at 1063 (Martin, J., dissenting).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1209 (N.D. Fla. 2020).

¹⁵¹ *Id.*

¹⁵² *Id.*

pay.¹⁵³ Despite her best efforts to determine what she owes, she was unable to do so and risks prosecution in the event that she guesses wrong.

Florida further argued that its procedure does not violate procedural due process because an individual who registers to vote “has a right to a hearing before being removed from the roll. The [s]upervisor of [e]lections in the county . . . conducts the hearing and renders a decision. A person who is dissatisfied with the result is entitled to de novo judicial review.”¹⁵⁴ The district court explained that if this procedure was easily available to all individuals who want to register, Florida’s procedure would satisfy due process.¹⁵⁵ This process, however, is not available to all who wish to register because it is only available to those who have registered to vote—not to those who fear prosecution for unknowingly submitting an illegal voter registration form.

The dissent in *Jones* also found that there are three administrative concerns regarding an individual’s ability to determine what LFOs they owe: “(1) determining the original LFO obligation; (2) determining the amount that has been paid; and (3) processing the voter registration.”¹⁵⁶ Based on the above information and lower court findings, all three of these processes are completely inadequate, and therefore the risk of erroneous deprivation of voting rights and additional fines or imprisonment for unknowingly violating SB 7066 for someone who is eligible is very high.

Dr. Traci Burch, an expert for the plaintiffs, tested Florida’s procedures for determining voter eligibility—out of 153 individuals, there were only three individual records that contained no inconsistencies.¹⁵⁷ In addition to inconsistencies in records, individuals are often unable to determine what they owe because many do not have copies of their judgments.¹⁵⁸ The likelihood of obtaining a copy of a judgment only decreases over time, and many times those with felonies from years or decades earlier have no way of obtaining a copy.¹⁵⁹ Additionally, many counties charge a fee for a copy of a

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 1241.

¹⁵⁵ *Id.*

¹⁵⁶ *Jones v. Governor of Fla.*, 975 F.3d 1016, 1062 (11th Cir. 2020) (Martin, J., dissenting).

¹⁵⁷ *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1220 (N.D. Fla. 2020).

¹⁵⁸ *Id.* at 1220–21.

¹⁵⁹ *Id.*

judgment that many individuals cannot afford, an issue presenting more constitutional concerns.¹⁶⁰

Even if an individual is able to obtain a copy of the judgment, it is not easy to determine which fines and fees they must pay in order to vote.¹⁶¹ This process is complicated further if a judgment contains multiple offenses or is in multiple counties or states.¹⁶² Evidence at trial confirmed this when Florida's director of elections was shown a copy of the judgment for Mr. Mendez, one of the plaintiffs in the *Jones* case, whose judgment for a felony and misdemeanor included a \$1,000 fine with no indication of what offense the fine was a result.¹⁶³ "The [d]irector said she did not know whether Mr. Mendez would be allowed to vote" based on the judgment.¹⁶⁴ If Florida's own Director of the Division of Elections cannot determine what an individual owes by looking at his judgment, how could the individual possibly be expected to determine what he is supposed to pay to be eligible to vote?

The third factor of the *Mathews* test is the government's interest at stake in the deprivation of the individual liberty.¹⁶⁵ Florida did not offer any state interest that would justify the denial of proper procedures to carry out Amendment 4's promise of the restoration of voting rights promised to voters and individuals with felony convictions.¹⁶⁶ The only argument Florida put forth was that the state would have to incrementally increase its budget and allocation of resources to make accurate determinations regarding what citizens must pay in order to vote, which the state did not argue is unduly burdensome.¹⁶⁷ Despite Florida conceding that it would not be unduly burdensome, the state did not allocate money to create a better system

¹⁶⁰ *Id.* at 1220. The plaintiff's poll tax argument also failed, but there is significant support for the argument that requiring that formerly incarcerated individuals pay financial obligations to vote that they genuinely are unable to pay is a violation of the Twenty Fourth Amendment barring poll taxes. See Elizabeth Heckmann, Note, *A Modern Poll Tax: Using the Twenty-Fourth Amendment to Challenge Legal Financial Obligations as a Condition to Re-enfranchisement*, 110 CALIF. L. REV. 1417, 1428 (2022).

¹⁶¹ *DeSantis*, 462 F. Supp. 3d at 1221; Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

¹⁶² *DeSantis*, 462 F. Supp. 3d at 1221.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

¹⁶⁶ *Jones v. Governor of Fla.*, 975 F.3d 1016, 1061–62 (11th Cir. 2020) (Martin, J., dissenting).

¹⁶⁷ See *DeSantis*, 462 F. Supp. 3d at 1228.

for processing advisory opinions with quicker response times.¹⁶⁸ But it did spend \$1.1 million to establish an election crimes unit to prosecute those who unknowingly voted illegally.¹⁶⁹

3. Remedying the Procedural Due Process Violation

These laws' procedural due process violations must be remedied to ensure that Amendment 4 restores voting rights for the groups it was intended to protect. After declaring the implementation of Amendment 4 through SB 7066 unconstitutional because it requires individuals with felony convictions to pay amounts that are unknown and difficult to determine, among other constitutional violations, the district court proposed a remedy in the form of an injunction.¹⁷⁰ The injunction required the Florida secretary of state to use a form by which individuals could request an adequate advisory opinion from the Division of Elections including the amount, if any, of outstanding fines that could make the individual with a felony conviction ineligible to vote.¹⁷¹ The advisory opinion request form allowed individuals to check a box if they believed they were unable to pay the required amount.¹⁷² If the Division of Elections failed to respond to a request within twenty-one days, and the requester checked the box, the injunction mandated that the individual be allowed to vote.¹⁷³

This procedure would require Florida to allocate resources to a department that is able to determine what individuals owe in order to vote and establish a centralized database for tracking LFOs associated with felony convictions. If these actions were taken and this procedure was followed, it would remedy the law's procedural due process violation and vagueness by giving individuals proper notice and an opportunity to vote in the event that the state cannot tell them what they are required to pay. This procedure also takes into account cases where individuals are not able to pay the required amount, avoiding

¹⁶⁸ See Dixon, *supra* note 72; Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

¹⁶⁹ Dixon, *supra* note 72.

¹⁷⁰ See *DeSantis*, 462 F. Supp. 3d at 1248.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

additional constitutional concerns of the current procedure constituting a poll tax.¹⁷⁴

C. *Implications, Voter Intimidation and Deterrence as a Modern Jim Crow*

Due to the vagueness, lack of procedure to determine what individuals owe, and the fear of prosecution, SB 7066 deters eligible voters because of the unavailability of clear rules and direction. But the establishment of Florida's Office of Election Crimes goes further to scare individuals with past felony convictions with the threat that they will be put back in prison simply for voting. Governor Ron DeSantis and other Florida officials' statements have amplified individuals' fear of unknowingly voting illegally. Governor DeSantis and other Florida officials' statements show that the unit was established to circumvent Amendment 4 and deter individuals with felony convictions from voting.¹⁷⁵ Governor DeSantis stated that the people that the election crimes unit charged "have been disenfranchised under Florida law" due to their past convictions, and therefore broke the law by voting.¹⁷⁶

Upon establishing the election crimes unit, Governor DeSantis deterred individuals with felony convictions from voting by saying:

Our new election crimes office has sprung into action to hold individuals accountable for voter fraud. Today's actions send a clear signal to those who are thinking about ballot harvesting or fraudulently voting. If you commit an elections crime, you will be prosecuted to the fullest extent of the law.¹⁷⁷

Other Florida officials are ready to enforce Governor DeSantis's statements, with Florida Attorney General Ashley Moody saying, "No voting system can stand without the backing and confidence of the people it serves, and thanks to Governor DeSantis, we are reinforcing that trust, and Florida's elections system will serve as the standard-bearer for the rest of the nation."¹⁷⁸ The unit's director went on to say that its "highly

¹⁷⁴ See generally Heckmann, *supra* note 160 (arguing that Florida's requirement to repay all LFOs before regaining the right to vote under Amendment 4 is a modern poll tax prohibited by the Twenty-Fourth Amendment).

¹⁷⁵ See Lopez, *Voter Fraud in Florida*, *supra* note 135.

¹⁷⁶ *Id.*

¹⁷⁷ Press Release, Ron DeSantis, Governor of Fla., Governor DeSantis Announces the Arrest of 20 Elections Criminals (Aug. 18, 2022), <https://flgov.com/2022/08/18/governor-desantis-announces-the-arrest-of-20-elections-criminals>.

¹⁷⁸ *Id.*

skilled investigators will conduct a thorough investigation, and if any evidence of election crime is found, there will be criminal sanctions.”¹⁷⁹

Framing the establishment of the election crimes unit as protecting voting integrity, Florida Secretary of State and Chief Election Officer Cord Byrd thanked Governor DeSantis saying that because of the establishment of the unit, “we are off to a great start at eliminating election fraud in our elections” and “[t]hese arrests put those who have no regard for the integrity our elections on notice and will ensure integrity in the voting process.”¹⁸⁰ After the unit’s first twenty arrests in August 2022, Governor DeSantis stated “this [was] just the first step [and] [t]here are many more in the pipeline[,]” further adding that he will not “turn a blind eye to this. The days of that happening in Florida are over.”¹⁸¹ Florida’s top officials’ statements send a clear message to those who are unable to determine what they owe in order to vote: if you vote, you will be prosecuted to the fullest extent of the law.

Although the Jim Crow era is over and there are no longer voter intimidation tactics like burned crosses or firebombs being hurled onto individuals’ property, Florida’s establishment of an Office of Election Crimes and Security suppresses votes by instilling fear. The government circumvented voters’ choice of Amendment 4 by scaring individuals away from the polls. While government officials claim that the establishment of the election crimes unit in Florida was a response to claims of voter fraud in the 2020 election, experts say voter fraud remains very rare in American elections.¹⁸²

Despite its emphasis on ensuring that people lawfully vote, “Florida will not lift a finger to help. The government simply allows (and sometimes encourages) people with felony convictions to register to vote, then prosecutes them when it realizes they have outstanding fines.”¹⁸³ The Election Crimes Unit “persecutes people who were only attempting to participate in . . . democracy as full citizens.”¹⁸⁴ The unit and Florida officials’ statements intimidate and deter those who are eligible to vote, and even if they are confident that they can vote, create

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Dixon, *supra* note 72.

¹⁸² Lopez, *Voter Fraud in Florida*, *supra* note 135.

¹⁸³ Michael Waldman, *Florida’s Election Police Come Up Empty*, BRENNAN CTR. FOR JUST. (Sept. 8, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/floridas-election-police-come-empty>.

¹⁸⁴ *Id.*

a fear that if they are incorrect, the election police will come for them too.¹⁸⁵ Curtis Bryant owes over \$10,000 in LFOs from felony convictions and although he is on a payment plan, he is unable to pay the full amount and has not been able to determine what exactly he needs to pay to vote.¹⁸⁶ Even when Bryant temporarily regained the right to vote before the Eleventh Circuit reversed the injunction, Bryant chose not to vote because he feared the risk of prosecution.¹⁸⁷

The district court listed additional reasons why the state's failure to execute the pay-to-vote system reasonably has a deterrent effect on individuals who are afraid to be prosecuted for voting. First, while SB 7066 includes a provision providing immunity to those who registered in good faith between Amendment 4 and SB 7066's implementation on January 8, 2019, and July 1, 2019, respectively, the state rejected a proposal to include a good faith provision to immunize any other registrants.¹⁸⁸ Actions of Florida officials further prove Florida's intolerance for good faith mistakes or even good faith efforts to determine voting eligibility status. A county supervisor of elections advocating for voter registration after the passage of Amendment 4 advised prospective voters who were unsure of their eligibility to submit voter registration forms so their eligibility questions could be addressed.¹⁸⁹ In response, Florida's secretary of state at the time sent the supervisor a scathing letter instructing him never to do this again.¹⁹⁰

Secondly, while Florida's voter registration form includes a warning that making a false statement is a felony, this warning omits the statutory requirement for willfulness, despite the requirement of providing accurate notice of the penalties for illegally voting.¹⁹¹ The impact of the omission of the mens rea requirement on the registration form leads individuals to believe that they will commit a felony if it turns out they are ineligible, regardless of whether they willfully broke the law.¹⁹² This has a major deterrent impact, especially on individuals who were previously system-involved but served their

¹⁸⁵ *Id.*

¹⁸⁶ *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1211 (N.D. Fla. 2020).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 1229.

¹⁸⁹ *Id.* at 1230.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 1229; 52 U.S.C. § 20507(a)(5).

¹⁹² *DeSantis*, 462 F. Supp. at 1229.

time, turned their life around, and wish to avoid any further involvement with the criminal justice system.¹⁹³

Third, in Florida, any voter can challenge any other's eligibility and a mistake can lead to prosecution, so it is unsurprising that an individual who has recently regained voting rights but is unsure of all of the complicated rules would decide not to risk it.¹⁹⁴ The system of anyone being able to challenge a voter's eligibility is additionally overinclusive.¹⁹⁵ For example, the state charged a Florida local official who used their City Hall address when registering to vote to avoid public release of their address, fearing retaliation based on actions in their job, with voter fraud.¹⁹⁶

The deterrent effects of the voter fraud prosecutions have already had an impact and will continue to have an impact on voter turnout in future elections. Director of the League of Women Voters of Florida, Debbie Chandler, explained the impact of the second-hand deterrent effects of the prosecutions.¹⁹⁷ Chandler described that the League of Women Voters, along with other voting rights advocates, have dialed back on efforts to register eligible voters out of a fear that those they assist will later face prosecution from Florida's election crimes unit.¹⁹⁸ Many individuals rely on voting advocates organizations like the League of Women Voters to help them register and vote, so the prosecutions have had their desired effect both by deterring individuals from voting and also by chilling the efforts of voting rights groups. These voter fraud prosecutions and Florida's top officials' statements greatly undercut the efforts of those who advocated for Amendment 4 and the Floridians who voted overwhelmingly to pass it.

V. CONCLUSION

Florida has a continued history of disenfranchising individuals with felony convictions, a remnant of the Jim Crow era that disproportionately affects Black individuals. The passage of SB 7066 was the legislature's way of circumventing Amendment 4, a voter initiative to automatically restore these individuals' voting rights. This

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 1230.

¹⁹⁶ The city official entered into a deferred-prosecution agreement. *Id.* at 1229–30.

¹⁹⁷ Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

¹⁹⁸ *DeSantis*, 462 F. Supp. 3d at 1212; Telephone Interview with Debbie Chandler, Dir., League of Women Voters of Fla. (Jan. 12, 2023).

shows Florida's continued effort to suppress and deter votes from underrepresented groups. Florida discourages individuals with felony convictions from voting with the establishment of its election crimes unit along with state officials' threatening statements, culminating in a modern-day voter intimidation tactic.

The lack of procedure and the inability of the state to determine the number of LFOs individuals owe to restore their voting rights violates their procedural due process right to proper notice before being deprived of the right to vote. Floridians' voices and the fundamental right of all eligible individuals to vote will not be honored until Florida allocates resources to establish a robust procedure for individuals to determine what LFOs they are required to pay before voting, and its officials stop threatening individuals with the fear of reentering the criminal justice system if they miscalculate their outstanding LFOs.