

April 27, 2020

Plaintiffs' Opening Statement in *Jones v. DeSantis* Provided by Sean Morales-Doyle

For 150 years, Florida permanently disenfranchised every person convicted of a felony. Discretionary relief from the Governor was the only way for returning citizens to end their lifetime of punishment. In 2018, Florida's voters overwhelmingly rejected that policy. But they didn't just reject permanent disenfranchisement. They rejected a rule that disenfranchised one out of every five Black adults. They rejected a rule that disproportionately impacted those living in poverty. They rejected a rule that allowed Florida's government to raise revenue by taxing people for the *same* reason they were denied a role in selecting the elected officials who levied those taxes.

Florida's Legislature and Governor responded to the people's decision by passing a law that continued to deny returning citizens the right to vote until they paid those same taxes. They responded by passing a law that the evidence will show once again discriminates against Black and low-income Floridians. They responded by passing a law that the evidence will show ensures that permanent disenfranchisement continues. What's more, they didn't just put a price tag on voting. The evidence will show they created a system where returning citizens can't even tell what the price is—and where the price might be different in one county than another. The authors of Senate Bill 7066 knew that Florida lacked the data to know whether returning citizens are eligible to vote. Then, after this Court made very clear that the State needed to make the system work, including for those who cannot afford to pay—and laid out a clear constitutional principle to guide the State in fixing it—Defendants did nothing. They let important local elections and a presidential primary election go by while hundreds of thousands of citizens faced the choice of forgoing their right to vote or facing potential prosecution.

You will hear from two of those citizens, Latoya Moreland and Curtis Bryant. Of course, you heard from plaintiffs in the Gruver, McCoy, and Raysor groups last fall. Ms. Moreland and Mr. Bryant are plaintiffs in this suit as well, but as you know, they joined after the preliminary injunction, and without guidance from the Secretary of State, they did not know where they stood. Ms. Moreland will explain that while the Secretary of State stayed mum on how to implement SB7066—and most Supervisors put the removal of voters for outstanding LFOs on hold—Defendant Michael Bennett, the Supervisor of Elections of Manatee County, removed her from the rolls because of her outstanding legal financial obligations.

Latoya Moreland was not alone. We will also call Defendant Bennett, who apparently removed hundreds of returning citizens from the rolls for outstanding LFOs during the pendency of this litigation, many of them after this Court entered a preliminary injunction, and seemingly without any determination of ability to pay.

Those hundreds represent a fraction of the damage done. Professor Dan Smith will update the report he provided this court last fall. Now, with data from all 67 counties, Smith has identified three-quarters of a million Floridians disenfranchised by LFOs alone – almost 80% of the cases he examined. And, as Smith’s testimony will show, most of them can’t afford to pay – with Black returning citizens owing disproportionately more than their white counterparts. Testimony from Carlos Martinez and Carey Haughwout—public defenders with decades of experience in two of the most populous counties in Florida bolsters that assessment. They will testify that at least 70% of felony defendants are indigent. And Doug Bakke, the Chief Operating Officer for the Hillsborough County Clerk, will explain that most of the debt they assess on returning citizens goes uncollected for precisely this reason.

In other words, the evidence will show that most returning citizens in Florida owe LFOs, and in the typical case, they owe more than they can afford.

But the testimony from Mr. Martinez, Ms. Haughwout, and Mr. Bakke will show that is not just because so many returning citizens are indigent. It is also because Florida heaps debt upon them in order to raise revenue to fund the government. Mr. Bakke will testify that someone convicted of a first- or second-degree felony in Florida faces over \$5,000 in LFOs as a baseline. As the record from October’s preliminary injunction hearing shows, some individual plaintiffs owe anywhere from a few thousand dollars, to \$50,000, to \$58 million dollars. Mr. Bakke will explain that the money Clerks’ offices do collect is used to fund both the courts and the government more generally. Florida is taxing returning citizens, and withholding their right to vote until their taxes are paid. Florida’s complex web of fines and fees, now expressly tangled up with the right to vote, has only exacerbated the state’s system of taxation without representation for returning citizens.

To make matters worse, Florida makes it impossible for returning citizens to even know what taxes they owe. Mr. Bakke will explain that his staff spent hours and hours of staff time trying to determine what Plaintiff Pastor Tyson owes—and that there remain unanswered questions. And these are the seasoned professionals. Professor Traci Burch will explain the byzantine reality facing returning citizens trying to make those determinations for themselves. She will testify to the substantial discrepancies in LFO records in 98% of all cases she examined, and other factors discouraging returning citizens from registering and voting. SB7066 says that people aren’t required to pay fees and surcharges that are imposed after their sentences are handed down. But state and local policies can make that impossible.

Cecile Scoon, First Vice President of the League of Women Voters of Florida, and Marsha Ellison, Treasurer for the NAACP Florida State Conference, will speak to this point from experience of trying to help returning citizens register to vote. They will explain that their organizations' registration efforts have ground nearly to a halt—their members terrified to exercise their rights under the First and Fourteenth Amendments, lest they place others in harm's way. In short, there is no process available for returning citizens to determine their eligibility, register, and vote—or to ensure that they are not running afoul of criminal law. This is a tremendous burden placed on voters and on those who work to get them registering and voting. And Mr. Martinez will also testify that the processes he worked so hard to create to help lift this burden by modifying returning citizens' LFO obligations are no longer available in Miami-Dade, and are never available in most other counties.

Furthermore, the evidence will show that this is a burden that falls disproportionately on Black Floridians. Dr. Smith will explain that Black returning citizens are more likely to owe and tend to owe more. This is no surprise. Ms. Ellison and Ms. Scoon will both testify that they were sounding the alarm to the legislature about the law's discriminatory effects as they considered the bill. Professor Morgan Kousser will explain just how racialized an issue felony disenfranchisement has been in Florida for more than 150 years, and how SB7066's chief proponent feigned ignorance about the law's certain effects despite the warnings of the League, the NAACP, and others. Then he and his colleagues proceeded with a bill that stretched the phrase "*completion* of all terms of sentence" to its most restrictive extreme – even when confronted with amendments to the bill that would have mitigated some of the harshest impacts on those who cannot afford to pay. Florida's Legislature and Governor knew just what they were doing to Black Floridians, and they did it anyway.

Finally, the experiences of Ms. Scoon, Mr. Martinez, and Ms. Moreland will demonstrate the extreme variation in SB7066's administration across counties. Depending on where they live, returning citizens face different voter registration forms, different removal criteria and procedures, and even different eligibility standards. The Secretary's utter failure to provide guidance has exacerbated this problem. Now, at the last possible moment, they finally offer up some new voter registration forms and a removal procedure. As the testimony from Mary Jane Arrington, Supervisor of Elections for Osceola County, Toshia Brown, the Secretary of State's chief of voter registration services, and others will demonstrate, this is no solution. Among other problems, it does absolutely nothing to provide clarity to Florida's returning citizens as to whether they are eligible. It does nothing to resolve Florida's lack of data for certain LFOs; nothing to resolve payment policies under which poverty only means racking up more surcharges and fees; and nothing to resolve rules that make it difficult, if not impossible, to know what LFOs are in the four corners of a sentencing document and pay them off.

On November 8, 2018, a supermajority of Floridians from across the state transformed Florida's electorate in manner not seen since the Voting Rights Act. This was after a years-long

ballot initiative campaign, a broken clemency process, decades of unsuccessful legislation to confront this regime, and more than 1 million people locked out of the vote. Rather than embrace the correction of this democratic defect, legislators responded with SB7066. That law violates the First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the U.S. Constitution, as well as the National Voter Registration Act of 1993. I leave it to my esteemed colleague, Ms. Abudu, to offer more on the unique claims of the *McCoy* Plaintiffs.