

No. 20-12003

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

KEVIN LEON JONES, et al.,

Plaintiffs-Appellees,

v.

RON DESANTIS, et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Florida
No. 19-cv-0300-RH/MJF—Robert L. Hinkle, *Judge.*

**BRIEF OF CURRENT AND FORMER ELECTION
ADMINSTRATORS AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLEES**

Steven Art
Sarah Grady*
Debra Loevy
Lindsay Hagy
Loevy & Loevy
311 N. Aberdeen
St., 3rd Fl.
Chicago, IL 60607
(312) 243-5900
** Counsel of Record*

Jonathan Manes
Roderick & Solange
MacArthur Justice
Center
160 E. Grand Ave.,
6th Fl.
Chicago, IL 60611
(312) 503-0012

Betty Eberle
Miner, Barnhill &
Galland, P.C.
44 E. Mifflin St.,
Ste. 803
Madison, WI 53703
(608) 255-5200

Appellate Court No: 20-12003

Short Caption: Kevin Leon Jones, et al., v. Ron Desantis, et al.,

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Edgardo Cortes, Dustin M. Czarny, Pat Gill, Joseph Gloria, Kevin Kennedy, Roxanna Mortiz, Alex Padilla, Ion Sancho
Lowell Tesch, Maggie Oliver, Grant Veeder, Travis Weipert, Jocelyn Benson

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Loevy & Loevy, Roderick & Solange MacArthur Justice Center, Miner, Barnhill & Galland, PC

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Sarah Grady Date: 8/3/2020

Attorney's Printed Name: Sarah Grady

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes No

Address: 311 N. Aberdeen, 3rd FL, Chicago, IL 60607

Phone Number: 312-243-5900 Fax Number: 312-243-5902

E-Mail Address: sarah@loevy.com

Appellate Court No: 20-12003

Short Caption: Kevin Leon Jones, et al., v. Ron Desantis, et al.,

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Edgardo Cortes, Dustin M. Czarny, Pat Gill, Joseph Gloria, Kevin Kennedy, Roxanna Mortiz, Alex Padilla, Ion Sancho
Lowell Tesch, Maggie Oliver, Grant Veeder, Travis Weipert, Jocelyn Benson

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Loevy & Loevy, Roderick & Solange MacArthur Justice Center, Miner, Barnhill & Galland, PC

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Deb Loevy Date: 8/3/2020

Attorney's Printed Name: Deb Loevy

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes No

Address: 311 N. Aberdeen, 3rd FL, Chicago, IL 60607

Phone Number: 312-243-5900 Fax Number: 312-243-5902

E-Mail Address: debra@loevy.com

TABLE OF CONTENTS

Interests of <i>Amici Curiae</i>	1
Statement of the Issues.....	7
Summary of Argument.....	8
Argument.....	11
I. An Administrable Election System Requires a Clear and Authoritative Source to Determine Voter Eligibility.....	11
II. Hinging Voting Rights on Satisfaction of LFOs Without Providing Guidelines or an Efficient and Accurate Verification Method Places an Impossible Burden on Election Administrators.....	22
A. The Absence of a Single Statewide Database for Determining LFOs, and of Correct Data to Underlay a Database, Prevents Consistent and Accurate Administration.....	23
B. Insufficient Resources Have Been Allocated for LFO Tracking and the Challenges Presented by the COVID Pandemic Exacerbate the Shortfalls	33
Conclusion	37

TABLE OF AUTHORITIES

Cases

Cf. U.S. Dep’t Just. v. Repts. Comm. for Freedom of the Press, 489 U.S.
749 (1989) 19

Statutes

4 Pa. Code § 183.6(d)(1) 14

52 U.S.C. § 20507 13, 24

52 U.S.C. § 20501(a)(2)..... 10

52 U.S.C. § 21083(a)..... 11

52 U.S.C.A. § 10503 24

Fla. Stat. § 98.0751. 30

Fla. Stat. § 98.093(2)(a) 14

Ind. Code § 3-7-45-2.1(b)(1)..... 14

N.Y. Elec. Law § 5-708(1)..... 14

Ohio Rev. Code § 3503.18..... 14

R.I. Gen. Laws § 17-10-1 14

Wash. Rev. Code Ann. § 29A.08.510(1)..... 14

Wis. Stat. §§ 6.03(1)(b) 21

Wis. Stat. §§ 973.09(3)(c) 21

Wis. Stat. §§ 301.03(20m) 21

Wis. Stat. §§ 304.078(3)..... 21

Other Authorities

Adamson, Bryan L., *Debt Bondage: How Private Collection Agencies Keep the Formerly Incarcerated Tethered to the Criminal Justice System*, 15 Nw. J. L. & Soc. Pol’y 305 (2020) 27

Boozer, Chelsea, *Error Flags Voters on Arkansas List; Thousands in Jeopardy of Having Their Registration Canceled*, Ark. Democrat Gazette (July 25, 2016), <https://www.arkansasonline.com/news/2016/jul/25/error-flags-voters-on-state-list-201607/> 16

Brater, Jonathon, et al., *Purges: A Growing Threat to the Right to Vote* 3 (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_Purges_Growing_Threat.pdf 14-15

Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States* (June 12, 2020), https://www.brennancenter.org/sites/default/files/2020-06/Criminal%20Disenfranchisement%20Laws%20Map%2006.12.20_1.pdf 18

Campaign Legal Center, *Can’t Pay Can’t Vote: A National Survey on the Modern Poll Tax* 36-38, 41-50 (2019) (surveying criminal ineligibility rules), https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0.pdf..... 18

Colgan, Beth A., *Wealth-Based Penal Disenfranchisement*, 72 Vand. L. Rev. 55 (2019) <https://www.brennancenter.org/our-work/research-reports/election-officials-national-security-experts-and-business-leaders-support> 18

Department of State, *Report by the Restoration of Voting Rights Work Group to the President of the Florida Senate and the Speaker of the Florida House of Representatives* 18 (Nov. 2019) (“RVRWG Report”), <https://dos.myflorida.com/media/702245/11119-19-rvr-final-report.pdf>..... 23

Eleventh Judicial Circuit of Fla., Admin. Order 20-13, <https://www.jud11.flcourts.org/docs/1-20-13%20Courthouse%20revert%20to%20Phase%201%20-Covid-19%20-%20CONFORMED.pdf>..... 35

Fessenden, Ford, *Florida List for Purge of Voters Proves Flawed*, N.Y. Times (July 10, 2004), <https://www.nytimes.com/2004/07/10/us/florida-list-for-purge-of-voters-proves-flawed.html>..... 17

Florida Dep’t of State, “About Us,” <https://dos.myflorida.com/elections/about-us> 34

Letter from Craig Latimer, President of Florida Supervisors of Elections, to Members of Congress (July 22, 2020), https://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/FSE_letter_Additional_Federal_Funding.pdf 36

Mershon, Matthew, *Pulaski County Clerk Says Sec. of State Needs to Take Responsibility in Possible Voter Purge*, KATV Little Rock (Aug. 12, 2006), <https://katv.com/news/local/pulaski-co-clerk-says-sec-of-state-needs-to-take-responsibility-in-possible-voter-purge> 17

National Association of State Secretaries, *Maintenance of State Voter Registration Lists: A Review of Relevant Policies and Procedures* 4-6 (Dec. 2017), <https://www.nass.org/sites/default/files/reports/nass-report-voter-reg-maintenance-final-dec17.pdf> 14

National Conference of State Legislatures, *Voter List Accuracy*, NCSL
("NCSL Voter List Report"), (Mar. 20, 2020),
<https://www.ncsl.org/research/elections-and-campaigns/voter-list-accuracy.aspx> 12

Pew Center on the States, *Inaccurate, Costly, and Inefficient: Evidence that America's Voter Registration System Needs an Upgrade* 8-9
(Feb. 2012), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewupgradingvoterregistrationpdf.pdf
df 15

Wiseman, Samuel R., *The Criminal Justice Black Box*,
78 Ohio St. L.J. 349 (2017) 16

INTERESTS OF *AMICI CURIAE*

Amici curiae are current and former elections administrators from across the United States who have first-hand experience administering state and local elections and maintaining voter rolls.¹ The *amici curiae* have extensive knowledge and expertise regarding the processes required to register voters, educate voters on their eligibility to vote, and maintain voter rolls in a manner that ensures accuracy and confidence in elections nationwide.

Jocelyn Benson is the 43rd Secretary of State in Michigan and has served in this office since January 1, 2019. The third highest elected constitutional officer, Secretary Benson is also the Chief Election Officer of the State, and a member of the National Association of Secretaries of State. Her office supervises the enforcement of the Michigan Election Law for more than 1,600 local and county election officials across the state. Secretary Benson is a national voting rights

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief. The parties have consented to the filing of briefs of *amici curiae*.

expert and has championed the full restoration of voting rights for returning citizens.

Edgardo Cortés is Former Commissioner of the Virginia Department of Elections, and is also Former Chair, Vice Chair, and Secretary of the U.S. Election Assistance Commission Standards Board. As Commissioner, Mr. Cortés implemented Governor Terry McAuliffe's rights restoration executive order in Virginia.

Dustin M. Czarny is the duly appointed Democratic Elections Commissioner for Onondaga County, New York. In his professional capacity he oversees approximately 300,000 voters. He is also Democratic Caucus Chair of the New York Elections Commissioner Association and routinely testifies at the New York State Legislature about election legislation and how to modernize and bring equity to the New York electoral system.

Pat Gill is the elected County Auditor for Woodbury County, in Sioux City, Iowa. He is completing his 24th year in this position. As Commissioner of Elections, he is chief elections administrator for the County. Over the years, he has had numerous discussions with felons who have completed their time and are striving to right their lives, and

participating in our democracy by voting would be an important step in achieving their journey home.

Joseph Paul Gloria is current Registrar of Voters in Clark County, Nevada, a position he has held since June 2013. He is also a member of the Executive Board for the Election Assistance Commission. He oversees voter registration, voting, and election administration activities in a jurisdiction of approximately 1.1 million voters in the Las Vegas metropolitan area of Clark County, Nevada.

Jena Marie Griswold is Colorado's 39th Secretary of State. She is a member of the National Association of Secretaries of State. As the leader of Colorado's elections, Secretary Griswold has championed the enfranchisement of voters, including overseeing the implementation of automatic registration of eligible voters across the state. Secretary Griswold has also been an advocate for Colorado's vote-by-mail model, a time-tested and secure method of facilitating voting and voter access throughout the state.

Kevin J. Kennedy served as Wisconsin's Chief Election Official from August 17, 1983 until June 29, 2016, the longest-serving individual ever in that role. Under his leadership, Wisconsin was

consistently recognized as a leader and innovator in the administration of elections, lobbying, and campaign finance. He currently serves on the boards of several nonprofit, nonpartisan organizations including the Center for Election Innovation and Research, Massachusetts Institute of Technology Election Data Sciences Lab, and U.S. Vote Foundation. Mr. Kennedy has also been active in several professional organizations including the National Association of State Election Directors, the Council on Governmental Ethics Laws, and the Election Center. He has testified before Congress, several federal and state legislative bodies, and numerous private organizations active in the fields of campaign finance, elections, ethics, and lobbying.

Roxanna Moritz is County Auditor & Commissioner of Elections for Scott County Iowa and has been serving as President of the Iowa State Association of County Auditors since January 2020. She has been Commissioner of Elections since 2008 and is responsible for administering all aspects of elections, including city, school, township, county, state and federal elections. Prior to becoming President of the Iowa State Association of County Auditors, Ms. Moritz served on its Executive Board, and as Secretary, Treasurer, and Vice-President. She

has been a member of C.E.R.A. (Certified Election/ Registration Administrator) since 2011.

Alex Padilla is Secretary of State for California. Secretary Padilla was elected in November 2014 and is currently serving his second term of office. He is a member and former officer of the National Association of Secretaries of State. He is committed to modernizing California's elections, increasing voter registration and participation, and strengthening voting rights.

Ion V. Sancho served 28 years as Supervisor of Elections for Leon County, Florida. Mr. Sancho is recognized for his innovative expertise in voter education and voting technologies. He created Florida's system of early voting in 1994. The Florida Supreme Court appointed Mr. Sancho technical advisor to the 2000 Florida recount. His independent tests of the Diebold voting machine in 2005 uncovered a major security flaw as shown in the 2007 Emmy nominated documentary "Hacking Democracy." The Election Center awarded the Freedom Award to his office in 2008 for creating an intelligent bar code tracking system for vote by mail ballots. Retiring in 2016, he is on the Board for the non-partisan Electronic Verification Network.

Lowell Tesch has been Mitchell County Auditor and Commissioner of Elections since 2001. He is responsible for administering all aspects of elections, including city, school, county, state, and federal elections. Previously he was a City of Osage council member for over fourteen years.

Maggie Toulouse Oliver is the current Secretary of State for the State of New Mexico. Secretary of State Toulouse Oliver has spent her career as a public official working for greater transparency and ethics in government, fair and efficient elections, and increased voter access. First elected in 2016, Secretary of State Toulouse Oliver is focused on providing increased access to the ballot for all New Mexicans. She previously served as Bernalillo County Clerk from 2007 to 2016 and is committed to ensuring that local election administrators are equipped with the resources they need to secure free and fair elections and advocating against legislation that makes the duties of election administrators impossible to complete.

Grant Veeder is County Auditor and Commissioner of Elections in Black Hawk County, Iowa, a position he has held since 1989. From 1981 to 1987, he was the county's deputy commissioner of elections. He

is a member of the Iowa Voting Equipment Board of Examiners and Iowa Secretary of State's Auditors Advisory Group, and he serves on the board of directors for the National Association of Counties, the Iowa State Association of Counties, and the Iowa State Association of County Auditors. He is a past member of the Iowa Secretary of State's Blue Ribbon Task Force on Election Law, the Iowa State Election Administrators Training Committee, and the U.S. Election Assistance Commission Standards Board.

Travis Weipert is Auditor of Johnson County, Iowa, since 2008. Mr. Weipert's office is responsible for administering all elections in the county, including city and school elections. He is also tasked with securing polling places, training election workers, and providing information on voter registration, absentee voting, voters, and elections.

STATEMENT OF THE ISSUES

1. If the legislature makes voter eligibility contingent on payment of legal financial obligations, what mechanisms and sources of data must exist for state and local election administrators to make voter eligibility determinations in an accurate and efficient manner?

2. Does legislation that predicates voter eligibility on payment of legal financial obligations, without providing any mechanism, funding, or training for determining voter eligibility, place an untenable burden on election administrators, particularly in circumstances where comprehensive, reliable or readily accessible sources of data are not available?

SUMMARY OF ARGUMENT

To ensure that election administrators can effectively conduct free and fair elections and inform citizens of their eligibility to vote, access to clear and authoritative information to determine voter eligibility is paramount. Election administrators are charged with the essential task of determining whether individuals are eligible to vote. Erroneous determinations deprive citizens of their right to vote or permit ineligible people to cast a ballot. To make these weighty determinations, elections administrators must have access to both reliable sources of data, and an efficient, accurate means to use them. Such access is especially critical when it comes to navigating criminal ineligibility laws, which can be particularly complicated.

When Florida conditioned voter eligibility on payment of legal financial obligations (“LFOs”), it created an extraordinarily difficult and unworkably burdensome problem for election administrators but provided no means to solve it. LFO data is not available in any centralized, accessible system, and information across several public systems often conflicts. In most cases, there is no reliable source of data about whether an individual has satisfied his or her LFOs, or even what those LFOs are. For convictions that predate online record keeping, election administrators are relegated to searching through warehouse boxes, calling collection agencies, and contacting the Department of Corrections to try to reconcile a conflicting puzzle of debts and payments. This can be even more complicated when LFOs have been leveraged against voters by another entity. Even if relevant data can be found, Florida election administrators are not equipped, trained, funded, or qualified to make the legal assessments necessary to distinguish between disqualifying and non-disqualifying LFOs, or to untangle the complex web of financial obligations and payments reflected in legal documents.

This indecipherable system prevents election administrators from guiding prospective voters on eligibility requirements and promoting the exercise of the right to vote in fulfillment of the election administrators' duties under 52 U.S.C. § 20507(a)(5)(A) and § 20501(a)(2). The lack of a reliable system for understanding eligibility based on LFOs is antithetical to the basic goals of election administration: encouraging eligible voters to vote and ensuring that ineligible voters are removed from the rolls. Affirming the district court's ruling would aid election administration, while reversal would force election officials to abandon their core responsibilities.

Florida has, in effect, left its election administrators without the ability to reliably determine whether voters are eligible. It has placed an impossible burden on election administrators—one that threatens to undermine public confidence in the fairness and accuracy of the electoral process. The district court's permanent injunction, which rightly recognized the central importance of ensuring that election administrators could conduct fair and free elections and support the right to vote, should be affirmed.

ARGUMENT

I. An Administrable Election System Requires a Clear and Authoritative Source to Determine Voter Eligibility.

State and municipal election administrators are charged with numerous tasks to conduct free and fair elections. Among these tasks are the responsibilities to advise people about their eligibility to vote, to process voter registrations, and to maintain accurate lists of eligible voters. While the details of voter registration and list maintenance vary from state to state, election administrators nationwide must generally meet certain minimum federal standards. These standards include maintaining a computerized, statewide list of registered voters that is accessible to all local election administrators and performing regular maintenance of the voter list in a manner that ensures all registered voters appear and only ineligible voters are removed. *See generally* 52 U.S.C. § 21083(a).

States and local governments rely on voter registration lists for many reasons: to confirm that new registrants are able to vote, to speed up check-in at polling places, to assign voters a ballot that corresponds to their particular precinct or ward, to track who has voted, and to communicate information to voters about upcoming elections, among

others. *See generally* National Conference of State Legislatures, *Voter List Accuracy*, NCSL (Mar. 20, 2020) (“NCSL Voter List Report”), <https://www.ncsl.org/research/elections-and-campaigns/voter-list-accuracy.aspx>. It is important, therefore, to maintain voter lists that are as complete and accurate as possible. Inaccurate voting lists can make it more difficult for eligible voters to cast a ballot or allow ineligible people to vote; they also increase burdens on poll workers on Election Day, produce voter confusion, and generally diminish confidence in the fairness of elections.

In order to effectively process voter registrations, maintain voter rolls, and advise potential registrants, election administrators need, at bare minimum, two things: (1) accurate, detailed, and readily accessible sources of data identifying individuals who are legally ineligible to vote; and (2) precise, accurate, and efficient methods to match individual registrants with those data sources. Election administrators must be able to efficiently and unambiguously identify individuals who are ineligible to vote and to deny (or remove) registration of those—and *only* those—individuals. Data sources must not only be accurate—*i.e.* correctly identify only those who are actually ineligible at a given point

in time—but must also be sufficiently detailed and specific so that election administrators can confidently match data with a specific individual.

If election administrators do not have good data and accurate, efficient means of using it, the voting public will be disserved: eligible voters may be improperly removed from rolls or denied registration; improperly registered voters may remain on rolls and will not receive notice of errors they might otherwise correct. *See* NCSL Voter List Report. Indeed, without access to accurate data, state and local election officials will not even be able to answer simple questions from individuals about whether they are eligible to vote.

Election administrators can remove voters from rolls or deny registration for at least four reasons: a disqualifying criminal conviction, mental incapacity, death, and incorrect place of residence. *See* 52 U.S.C. § 20507(a)(3)-(4). Election administrators rely on accurate, detailed, and readily accessible databases to determine eligibility on each of these four grounds.

For example, to determine whether registrants are deceased, election administrators often look to statewide agencies to supply lists

identifying all those who have died. *See, e.g.*, Fla. Stat. § 98.093(2)(a) (“The Department of Health shall furnish monthly . . . a list containing the name, address, date of birth, date of death, social security number, race, and sex of each deceased person 17 years of age or older.”); Ind. Code § 3-7-45-2.1(b)(1); N.Y. Elec. Law § 5-708(1); Ohio Rev. Code § 3503.18; 4 Pa. Code § 183.6(d)(1); R.I. Gen. Laws § 17-10-1; Wash. Rev. Code Ann. § 29A.08.510(1). Some states may identify deceased people by relying on the Social Security Administration’s Death Master File. *See* Jonathan Brater, et al., *Purges: A Growing Threat to the Right to Vote* 3 (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_Purges_Growing_Threat.pdf. To assess residency, election administrators rely on multiple sources of data, including the U.S. Postal Service’s National Change of Address Database, state driver licensing records, and databases shared among multiple states. *See generally* National Association of State Secretaries, *Maintenance of State Voter Registration Lists: A Review of Relevant Policies and Procedures*, at 4-6 (Dec. 2017), <https://www.nass.org/sites/default/files/reports/nass-report-voter-reg-maintenance-final-dec17.pdf>.

These datasets are sufficiently reliable and detailed for election administrators to use to determine ineligibility accurately. *See* Brater, et al., *supra*; Pew Center on the States, *Inaccurate, Costly, and Inefficient: Evidence that America's Voter Registration System Needs an Upgrade* 8-9 (Feb. 2012), https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewupgradingvoterregistrationpdf.pdf.

It is equally important that data be readily accessible, so that state and local election administrators are not burdened with the task of conducting onerous primary research or investigation to determine a voter's eligibility (or continuing eligibility). Election administrators process large numbers of registrations every year, particularly leading up to general elections. They must also undertake myriad other tasks to prepare for orderly and fair administration of elections—and these tasks, too, intensify as elections approach. Election administrators must rely on resources that permit them to determine eligibility in an efficient manner and do not require burdensome, independent research into the eligibility of each registrant. It would be impossible to administer an election that required election administrators to obtain records about each individual registrant from multiple state or local

entities in an effort to cobble together a picture of each voter's eligibility.

These twin requirements—detailed, reliable sources of data, and efficient, accurate means to use them—are especially crucial when it comes to navigating criminal grounds of ineligibility to vote. Criminal convictions can pose unique difficulties and burdens on election administrators because records from the criminal legal system are often dispersed, housed in local or county offices, and typically exist only in hard copy. *See* Samuel R. Wiseman, *The Criminal Justice Black Box*, 78 Ohio St. L.J. 349, 372-79 (2017).

Even where records are readily available, distinguishing between individuals whose criminal offense(s) or custody status render them ineligible to vote and those whose do not is often challenging. For example, in 2016, Arkansas mistakenly removed thousands of voters from registration rolls because they appeared on a list from the Secretary of State that incorrectly included not only people with felony convictions (actually rendering them ineligible to vote), but also people with non-felony convictions or other interactions with the court system which did not disqualify them. *See* Chelsea Boozer, *Error Flags Voters*

on Arkansas List; Thousands in Jeopardy of Having Their Registration Canceled, Ark. Democrat Gazette (July 25, 2016), <https://www.arkansasonline.com/news/2016/jul/25/error-flags-voters-on-state-list-201607/>; Mathew Mershon, *Pulaski County Clerk Says Sec. of State Needs to Take Responsibility in Possible Voter Purge*, KATV Little Rock (Aug. 12, 2006), <https://katv.com/news/local/pulaski-co-clerk-says-sec-of-state-needs-to-take-responsibility-in-possible-voter-purge>. Florida has had similar problems in the past, producing lists of people ineligible to vote on account of felony convictions that erroneously included people with no felony conviction or whose voting rights had been restored. See Ford Fessenden, *Florida List for Purge of Voters Proves Flawed*, N.Y. Times (July 10, 2004), <https://www.nytimes.com/2004/07/10/us/florida-list-for-purge-of-voters-proves-flawed.html>.

The challenge for state and local election administrators is even greater where criminal ineligibility rules are more complicated. In states with simple rules—for example, a bright line rule that all non-incarcerated people can vote—it is quite easy to obtain and use accurate data. But in states that disqualify individuals based on complex rules specific to each individual’s case, the need for accurate and centralized

data is especially acute. In some states, voting eligibility depends on the specific crime of conviction; in others it depends further on whether the person remains under some form of non-custodial supervision; in still others, eligibility depends on whether a person has satisfied various legal financial obligations, even after a person has completed any term of imprisonment or other supervision. *See* Campaign Legal Center, *Can't Pay Can't Vote: A National Survey on the Modern Poll Tax* 36-38, 41-50 (2019) (surveying criminal ineligibility rules), https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0.pdf; *see also* Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States* (June 12, 2020), https://www.brennancenter.org/sites/default/files/2020-06/Criminal%20Disenfranchisement%20Laws%20Map%2006.12.20_1.pdf (same); Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 *Vand. L. Rev.* 55 (2019) (same).

Each additional layer of complexity makes election administrators' tasks increasingly difficult, and the need for authoritative sources identifying ineligible individuals becomes essential. States that condition voting on payment of LFOs arguably present the greatest

challenge because determining eligibility requires: determining the registrant's disqualifying LFOs; tracking all payments to determine whether a balance on the disqualifying portion remains outstanding; sometimes determining LFOs for out-of-state or federal convictions; and addressing all of the exceptions and unique cases that inevitably arise when voting eligibility rules collide with the complex and often messy reality of the criminal legal system.

State and local election administrators are simply not equipped to make these kinds of determinations themselves through their own exhaustive investigations. Complicated eligibility rules require specialized knowledge of the criminal legal system and access to an extraordinary variety of information maintained by different agencies in different ways in different jurisdictions. *Cf. U.S. Dep't Just. v. Reps. Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (“[T]here is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.”). Sometimes, determining voter eligibility requires individualized documentation that no longer

exists. And even with access to the source information and the ability to interpret it, election administrators must also be able to match such information with a particular registrant—something that may be impossible to do accurately if criminal justice records do not contain the unique identifiers that election administrators rely upon.

In short, if state and local election administrators are tasked with determining voter eligibility on the basis of such complicated rules, it is absolutely essential that there be a detailed and readily accessible source of data that reliably identifies who is ineligible. It is not feasible to expect election administrators to take on that burden, and it is, in any case, not the kind of task that election administrators are equipped or trained to undertake, much less with the speed that is required of them in advance of an election.

In other states with relatively complicated criminal ineligibility rules, lawmakers and officials have diligently established systems that permit easy, accurate eligibility determinations. For example, the State of Wisconsin does not permit citizens convicted of felonies to vote unless they have completed both their term of imprisonment and any subsequent period of community supervision, which, in turn, can

sometimes be extended for non-payment of restitution and other LFOs. *See Wis. Stat. §§ 6.03(1)(b), 304.078(3), 973.09(3)(c).* It would be very difficult for elections administrators themselves to determine whether these requirements are met on a case-by-case basis. Wisconsin solves this problem by requiring the state Department of Corrections to keep track of who is ineligible to vote, to notify individuals when they have regained the right to vote, and, crucially, to maintain a list of people currently ineligible to vote on account of a conviction. *Id.* § 301.03(20m); § 304.078(3). That list is transmitted “on a continuous basis” to election administrators statewide to use to verify eligibility. *Id.*

If election administrators do not have ready access to accurate information about an individual’s ineligibility to vote—especially on criminal grounds—they will inevitably make mistakes. They will also shoulder an impossible burden, requiring them to stretch budgets or divert staff to conduct research that is not within their expertise and for which they often lack access to necessary data—all while attending to the many other tasks required to run a fair and free election. If a state wishes to create complex rules restricting eligibility to vote, it is incumbent upon the state to ensure that an entity is charged with

maintaining accurate and detailed data about who, exactly, is ineligible, so that election administrators can accurately and efficiently match this data against registrations and voter rolls.

II. Hinging Voting Rights on Satisfaction of LFOs Without Providing Guidelines or an Efficient and Accurate Verification Method Places an Impossible Burden on Election Administrators.

Florida has not provided any system or resources for election administrators to implement SB7066 and fulfill their duties to facilitate registration of eligible voters and maintain accurate voting rolls.

Implementation of SB7066 would force election administrators to determine whether nearly a million otherwise-eligible voters owe LFOs.

Doc.420 at 1.² There is simply no feasible way for Florida election administrators to accomplish this herculean task.

As detailed below, there are no reliable mechanisms for election administrators to compute disqualifying LFOs or to account for payments previously made on LFOs, particularly for convictions predating online record keeping. Moreover, the State not only lacks the

² References to the record below are abbreviated “Doc.” followed by the ECF document number. References to the trial transcript are abbreviated “Tr.” followed by the page number.

infrastructure necessary to make these determinations, it has not allocated sufficient resources to attempt to remedy what would quickly become a logistical nightmare for election administrators should implementation of SB7066 proceed. Indeed, as the district court found, SB7066 will cause the system of registering anyone who has ever been assessed any kind of felony-related LFO to completely break down. Doc.420 at 85. The dearth of reliable data and guidance on LFOs prevents election administrators from advising potential voters on their eligibility and facilitating access to voting.

A. The Absence of a Single Statewide Database for Determining LFOs, and of Correct Data to Underlay a Database, Prevents Consistent and Accurate Administration.

SB7066 tasks Florida election administrators with determining the eligibility of each prospective voter with one or more felony convictions who has ever had an LFO. But there is no single database or mechanism for administrators to use to determine whether prospective voters have a disqualifying LFO. *See* Department of State, *Report by the Restoration of Voting Rights Work Group to the President of the Florida Senate and the Speaker of the Florida House of Representatives* 18 (Nov. 2019) (“RVRWG Report”),

<https://dos.myflorida.com/media/702245/11119-19-rvr-final-report.pdf>; Tr.908-09 (Manatee County Supervisor of Elections Michael Bennett testifying, “[T]here is no database in the state of Florida to be able to check all the different court costs that might be outstanding. So, not much we could check on[.]”); Tr.913. Instead, “[d]ata and information exists across a handful of different agencies and is maintained in varying formats.” RVRWG Report at 18. SB7066 has already caused election administrators to waste countless hours trying to determine potential voters’ LFOs, without success, and there is still a backlog of 85,000 cases to review and innumerable more potential voters who at one time had or have a felony-related LFO. Tr.78, 481-82, 1300.

While the Florida Division of Elections struggles to develop a process for SB7066 that can “be understood and implemented,” Tr.1265-66, election administrators cannot give prospective voters guidance about their eligibility as required by 52 U.S.C. § 20507(a)(5)(A).³ Before

³ Additionally, Section 203 of the Voting Rights Act mandates that information related to the electoral process be translated for language minority groups. 52 U.S.C.A. § 10503. The complexity and inconsistencies in Florida’s system for determining returning citizens’ eligibility compounds the difficulty of maintaining consistency of information about the electoral process in other languages.

a decision about registration or removal related to an outstanding LFO can be made, election administrators must engage in a multi-step, individualized process to determine whether an individual voter has an outstanding felony-LFO. Tr.1321 (for each voter, “[a] potential match record involves an average of 4-5 and up to over 20 felony records, potentially all from different counties, each of which must be reviewed individually.”). The process of determining a match can take 120 days. Doc.240-1 at 10.

Mary Jane Arrington, Supervisor of Elections for Osceola County described how her office sought LFO information from the Clerk of the Court, collection agencies, and the Department of Corrections, before giving up because she and her colleagues were simply “butting [their] heads against the wall.” Tr.481-82. Unable to determine potential voters’ LFOs, Osceola County election administrators resorted to advising potential voters to hire legal counsel or contact another agency for assistance in determining their eligibility to vote. Tr.481. Although she is Supervisor of Elections, Arrington is unaware of “any reliable database that either [she], as the final arbiter of eligibility, or voters can rely on to assess outstanding LFOs.” Tr.483.

Indeed, when Plaintiffs' expert, Dr. Traci Burch, researched accessibility of LFO information in Florida, it took Dr. Burch, along with ten doctoral research students, two months to evaluate—through a multi-stage study consulting three public sources of information—the LFO amounts owed by 153 people, only 3 of which were ever conclusively determined. Tr.224. Dr. Burch concluded that Florida, “cannot provide reliable or consistent information about what LFOs returning citizens may owe when they are otherwise eligible to register to vote and vote.” Doc.286-14 at 7.

Even more troubling, a centralized database will not solve the data access problem Florida election administrators and voters face. Florida not only fails to aggregate LFO information in one centralized place, but there are also profound deficiencies and inconsistencies in the quality of the underlying data. Tr.210-11, 133-34, 191. There are three primary reasons for this deficit, each presenting an insurmountable hurdle for Florida election administrators.

First, it is often impossible to distinguish between the amount originally owed on the “four corners of the sentencing document” and non-disqualifying amounts later added on. Doc.286-14 at 38-39; Tr.133-

34. In Florida, collection fees (which are non-disqualifying) can comprise as much as 40% of the outstanding LFO debt of obligations transferred to debt collection agencies. Bryan L. Adamson, *Debt Bondage: How Private Collection Agencies Keep the Formerly Incarcerated Tethered to the Criminal Justice System*, 15 Nw. J. L. & Soc. Pol'y 305, 308 (2020).

Once those add-ons fold in, election administrators have no means to reliably determine original LFO amounts. Tr.133-34. For instance, in Hillsborough County, the online records that election administrators access do not distinguish between LFOs from the “four corners of the sentencing documents” and later accrued penalties. Tr.651. Dr. Burch’s study revealed that *for 98%* of the 153 potential voters she and her colleagues examined, different sources asserted varying amounts of LFO owed. Doc.398-1 at 20. This is because there are collection costs, along with interest, payment fees, surcharges, and a host of other fines, fees and costs, that can be added to LFOs of a person convicted of a felony, but that are not part of the “four corners” of the felony conviction and are therefore not disqualifying for voting purposes. *See, e.g.*, Tr.133-34; Doc.286-14 at 11-12.

Because such interest, surcharges, and collection fees are routinely combined in public records with the original fees that appear within the “four corners” of the conviction, election administrators are faced with a confounding morass for every one of each potential voter’s felony convictions. Doc.286-14 at 38-39. For instance, Manatee County Supervisor of Elections Michael Bennett testified that when his office received an LFO assessment, there was no way to determine what portion of the assessment derived from post-judgment interest or collection fees (and therefore was not disqualifying), and no way to discern whether payments had previously been made to a collection agency in satisfaction of the LFO. Tr.943-45.

Additionally, counties often refer collection of outstanding LFOs to private debt collection agencies. Tr.1286. This practice not only further disperses information about each individual’s eligibility to vote, it also removes information about the current amount owed by each individual from the public record entirely. The Florida Division of Elections (“the

Division”) has determined that it will not contact collection agencies to determine whether LFOs are outstanding. Tr.1205-06.⁴

Second, counties often maintain inadequate documentation of both the original LFOs and payments on the LFOs for any older convictions. In fact, some counties reported having difficulty finding LFO information for any convictions before 2013, while others reported that no LFO information was available for cases 10 to 15 years old. Tr.169. According to the Supervisor of Elections for Osceola County, records for the county’s older convictions are inaccessible, “in storage somewhere.” Tr.482-83. Douglas Bakke, chief operating officer of the Hillsborough County Clerk of the Circuit Court and comptroller, testified that to determine LFOs for any conviction from before 2014, his office had to “pull files from [their] off-site storage, bring them downtown and be able to access the judgment and sentence documents within those files.” Tr.650. Manatee County Supervisor of Elections Bennett echoed these

⁴ A further complication is that collection agencies will take payments from an individual without informing any government agency. Tr.1206. The Division has adopted a “first-dollar” approach in which it counts any amount paid for LFOs against the amount in the “four corners,” even if it was allocated to other fees; payments to collection agencies may not be included in that determination even if they were paid.

complaints, adding that he did not even have direct access to felony conviction information from a different county within Florida. Tr.908-09, 913-14. Nor could Bennett access records for out-of-state or federal felony convictions. Tr.920.

Exacerbating the problem, documentation of LFOs may not distinguish whether a financial obligation is incurred for a felony or misdemeanor conviction. Only LFOs incurred for felony convictions can disqualify voters. *See Fla. Stat. § 98.0751*. When someone is convicted of both felonies and misdemeanors and the financial obligation is aggregated, election administrators have no way of discerning what portion of the LFO pertains to the felony conviction (and serves to disqualify the voter if unpaid), and what portion pertains to the misdemeanor (which has no bearing on voting rights). Tr.1310. *See, e.g., Tr.1304-10* (Director of Elections Maria Matthews testifying about being unable to determine which portion of individual plaintiff's LFOs were disqualifying).

Third, there is presently no accurate recordkeeping method for payments made, especially restitution payments. Restitution payments made at sentencing do not appear to be consistently tracked. RVRWG

Report at 18. And no entity tracks restitution payments paid directly to third-party victims. RVRWG Report at 18 (“As to restitution, the Clerks of Courts represented that they would have information as to payments and satisfaction only if ordered to be paid through the Clerk of Court.”); Tr.499-500 (Supervisor of Elections for Osceola County Arrington expressing concern that no one is responsible for keeping an accounting of who paid restitution, and particularly with older convictions, “recordkeeping is poor”); Tr.498-99 (Arrington testifying, “The information that we have found has not been credible, and maybe the Division has access to information that I am not aware if that would be credible. I would hope they would provide us with this information, or let us know where to find it.”).

Dr. Dan Smith determined that only about 12 of 67 Florida counties kept information about restitution payments and that many counties do not keep records of LFOs once they are converted to civil liens for collection. Tr.67. Thus, even with a centralized system, there would be no way for election administrators to determine whether full restitution was made because the records simply do not exist and because there are discrepancies in data across public sources. Tr.144,

159, 182. Questions that cannot be resolved with existing data would require either voters to ask for an advisory opinion about their eligibility (which would take a week to several months), Tr.1381, or the Supervisor of Elections to make an individual credibility determination about a potential voter's truthfulness related to outstanding LFOs. Tr.1202-04.

Simply put, the proposed implementation of SB7066 falls woefully short of the minimum standards necessary to ensure that election administrators can fairly and accurately administer Florida elections. Instead, it puts administrators in the impossible position of having to embark on a goose chase for each individual with a felony conviction to determine the existence and satisfaction of any disqualifying LFOs—a determination that in many cases will be impossible to resolve conclusively. Imposing that burden on election administrators puts them in an untenable position, disserves the voting public, and needlessly diminishes public confidence in the fair administration of elections.

B. Insufficient Resources Have Been Allocated for LFO Tracking and the Challenges Presented by the COVID Pandemic Exacerbate the Shortfalls.

Neither the County Supervisors of Elections nor Florida Department of State election administrators have the resources necessary to track LFOs to determine voter eligibility. Unfortunately, the COVID pandemic exacerbates these resource shortfalls.

Okaloosa County Supervisor of Elections Paul Lux, in his capacity as then-President of the Florida State Association of Supervisors of Elections, informed State Senator Jason Pizzo on April 24, 2019, that county Supervisors “do not have the resources or the access to proper information” to determine whether a voter registration applicant has completed all terms of their sentence “without a substantial investment in our infrastructures and information networks.” Doc.399 at 1-2.

Osceola County Supervisor of Elections Arrington said the same. Tr.472. Like other Supervisors, she and her staff investigate and process all notifications from the Florida Department of State (“DOS”) regarding individuals registered to vote in her county who have committed a felony. Tr.498. The process for each individual can take weeks and can require “numerous contacts to other agencies,” which

often require follow up. Tr.503-04. Further, Arrington does not feel “adequately equipped with information to handle a hearing on outstanding fines and fees if a voter requests one.” Tr.501. Even before this new mandate, her “budget [was] already in pains” and her office did not have “an abundance of staff.” Tr.503, 509. Nonetheless, she did not receive “any new funding as part of SB 7066.” Tr.510.

Like county administrators, state election administrators would also require more resources. The DOS Bureau of Voter Registration Services is tasked with coordinating and maintaining the statewide voter registration system, including “assisting Supervisors of Elections with the voter registration and voter removal process.” Florida Dep’t of State, “About Us,” <https://dos.myflorida.com/elections/about-us>. Prior to enactment of the law, the DOS reported that it had 17 full-time employees whose “primary job duties involve ineligibility determinations.” Doc.383 at 4 (Department of State Draft Bill Analysis of SB7086). A Bill Analysis and Fiscal Impact Statement prepared by the Senate Rules Committee staff reported that SB7066 would require the DOS to hire “an additional 21 [full-time employees]” and would result in an “unquantifiable increase in costs” related to “necessary

information technology modifications” given the new process and the increase in the amount of data. Doc.313 at 27-28 (4/22/19 Bill Analysis and Fiscal Impact Statement).

On top of this, the COVID pandemic has made election operations more difficult. For example, visits to county courthouses and similar buildings to inspect individual criminal records for each voter are now not only a logistical nightmare, they are impossible, as many courthouses are currently closed and operating remotely. *See, e.g.,* Eleventh Judicial Circuit of Fla., Admin. Order 20-13, <https://www.jud11.flcourts.org/docs/1-20-13%20Courthouse%20revert%20to%20Phase%201%20-Covid-19%20-%20CONFORMED.pdf>.

And any such tasks that can still be performed nevertheless require additional staff and resources to complete. Supervisor Arrington has already experienced added expenses during the recent primary to “make sure that our voters and our workers were safe” during the pandemic, thus putting a further strain on their ability to implement new registration procedures. Tr.503.

Because of these challenges, Hillsborough County Supervisor Craig Latimer, current President of the Florida Supervisors of

Elections, recently wrote to leaders of the U.S. Congress requesting “substantial additional funding for elections in [the] next coronavirus stimulus package to ensure that we can conduct accessible and safe elections in this challenging environment.” Letter from Craig Latimer, President of Florida Supervisors of Elections, to Members of Congress (July 22, 2020), https://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/FSE_letter_Additional_Federal_Funding.pdf. Election administrators from across the country have raised similar concerns about shortfalls in funding for the upcoming election. See collected correspondence at <https://www.brennancenter.org/our-work/research-reports/election-officials-national-security-experts-and-business-leaders-support>. Simply put, the COVID-19 pandemic exacerbates the impossible tasks that implementation of SB7066 imposes on Florida election administrators.

The district court correctly recognized the central importance of ensuring that election administrators can actually administer elections. To expect election administrators to spend hours reviewing court orders, investigating payment records, and accessing multiple conflicting databases, collection agency records, and third-party

restitution payments for each prior felony of each potential voter is simply unrealistic. That there has been no training, preparation, added staffing, or additional funding allocated to help in executing this undertaking places election administrators in an impossible situation.

CONCLUSION

For the foregoing reasons, the Court should rule in favor of Plaintiffs-Appellees.

Respectfully submitted,

/s/ Sarah Grady

Sarah Grady

Counsel for Amici Curiae

Steven Art
Sarah Grady*
Debra Loevy
Lindsay Hagy
Loevy & Loevy
311 N. Aberdeen St., 3rd Fl.
Chicago, IL 60607
(312) 243-5900
sarah@loevy.com

Jonathan Manes
Easha Anand
Roderick & Solange MacArthur Justice Center
160 E. Grand Ave., 6th Fl.
Chicago, IL 60611
(312) 503-0012

Betty Eberle
Miner, Barnhill & Galland, P.C.
44 E. Mifflin St.,
Ste. 803
Madison, WI 53703
(608) 255-5200

**Counsel of Record*

CERTIFICATE OF COMPLIANCE

I, Sarah Grady, hereby certify that the Brief of Current and Former Election Administrators as *Amici Curiae* in Support of Plaintiffs-Appellees complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(5) because it contains 6,499 words, excluding the portions of the response exempted by Federal Rule of Appellate Procedure 32(f). In preparing this certificate, I relied on the word count tool of the word-processing system used to prepare the brief, Microsoft Word 365.

I further certify that the response complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(2) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Century Schoolbook 14-point font.

Respectfully submitted,

/s/ Sarah Grady
Sarah Grady
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I, Sarah Grady, hereby certify that I served the Brief of Current and Former Election Administrators as *Amici Curiae* in Support of Plaintiffs-Appellees on August 3, 2020, using the CM/ECF system, which effected service on counsel of record for all of the parties.

Respectfully submitted,

/s/ Sarah Grady
Sarah Grady
Counsel for Amici Curiae