

No. 20-12003

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

KELVIN LEON JONES, ET AL.,
Plaintiffs-Appellees,

v.

RON DESANTIS, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Florida, Case No. 4:19-cv-300

**BRIEF OF *AMICI CURIAE* POLITICAL SCIENCE SCHOLARS IN
SUPPORT OF PLAINTIFFS-APPELLEES**

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In accordance with Federal Rule of Appellate Procedure 26.1 and related Eleventh Circuit Local Rules, the undersigned hereby certifies that, in addition to the Certificate of Interested Persons and Corporate Disclosure Statements submitted by Plaintiffs-Appellees, the following persons or entities have an interest in the outcome of this case:

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II. Corporate Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *amici curiae* certify that *amici* sign as individuals and do not have any parent corporation or any publicly held corporation that owns 10% or more of its stock.

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STATEMENT OF IDENTITY AND INTEREST OF AMICI¹

Amici curiae are political scientists and university research scholars whose studies on political behavior, voting rights and participation, and disenfranchisement in the United States have been published in leading scholarly journals and books. *See infra* Appendix.

Amici have extensive professional knowledge and experience that is relevant and helpful to the Court. They are among the leading scholars to study the political participation of previous offenders and the impact of enfranchisement on the American electorate. *Amici* are well-positioned to explain how enfranchisement is strongly tied to pro-democratic and pro-social benefits, and how Senate Bill 7066 (SB7066), will threaten both the safety of communities and democratic legitimacy more broadly.

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E) and Eleventh Circuit Rule 29(a)(4), counsel for *amici curiae* certify that no party or any counsel for a party in this appeal authored this brief in whole or in part or made a monetary contribution intended to fund its preparation or submission. Counsel for *amici* further certify that no person or entity other than *amici* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

STATEMENT OF THE ISSUE

1. Whether Florida law conditioning felon re-enfranchisement on completion of all terms of sentence, including financial terms such as fines and restitution, violates the Equal Protection Clause, as applied to felons unable to pay.

2. Whether Florida law conditioning felon re-enfranchisement on payment of fees and court costs imposed as part of a criminal sentence is a “tax” prohibited by the Twenty-Fourth Amendment.

3. Whether Florida’s re-enfranchisement scheme violates the Due Process Clause because of either a lack of adequate procedures or because of unconstitutional vagueness.

SUMMARY OF ARGUMENT

Two years ago, in November 2018, Florida voters amended the state constitution to automatically restore the voting rights of previous offenders who completed their sentences, except for those convicted of murder or a felony sexual offense. This measure was codified as Amendment 4. But soon after, in February 2019, the Florida Legislature imposed new roadblocks in the path of persons who had served their sentences and wanted to exercise their right to vote. Senate Bill 7066 (SB7066), signed into law in June 2019, specifies that fines or fees owed to the state are part of a sentence, and that until those financial debts are fulfilled, previous offenders are prohibited from regaining their right to vote—even

though it is often a mystery to Florida itself how much a previous offender owes, and in cases where previous offenders could ascertain the amount, it often exceeds their means.

Amici submit this brief to provide the Court with data confirming the powerful benefits that the right to vote can have for society at large, as well as for those with felony convictions. Studies show that previous offenders who have regained their voting rights may be more likely to become civically engaged and less likely to commit future crimes—all significant benefits to society. On the flip side, disenfranchisement sacrifices these opportunities to deepen civic engagement, bolster re-entry prospects, and promote democratic legitimacy and participation. For these reasons, *amici* urge the Court to hold that Florida's pay-to-vote system is unconstitutional.

ARGUMENT

The value of an individual's right to vote neither begins nor ends with their visit to the ballot box. To the contrary, enfranchisement tracks positively with heightened political participation and civic engagement, as well as lower recidivism rates. The converse is also true. The continued disenfranchisement of previous offenders eliminates a valuable tool for successful re-entry and erodes democratic legitimacy and participation. *Amici* urge the Court to keep these factors in mind when assessing

the constitutionality of SB7066 under the Equal Protection Clause, the Twenty-Fourth Amendment, and the Due Process Clause.

I. Re-enfranchisement fosters political efficacy and civic engagement.

Over the last fifty years, scholars have explored how “the experience of being disenfranchised affect[s] citizens at the individual level.” Victoria Shineman, *Restoring Voting Rights: Evidence That Reversing Felony Disenfranchisement Increases Political Efficacy*, 41 *Pol’y Stud.* 131, 132 (2020).^{2 3} Looking at both the general population and specifically at previous offenders, many scholars have found a strong

² Many theorists have suggested that the right to vote retains value independent of voter turnout or any given electoral outcome. *See, e.g.*, John Stuart Mill, *Considerations on Representative Government* (1861), reprinted in *On Liberty and Other Essays* 327 (John Gray ed., 1991) (“Among the foremost benefits of free government is that education of the intelligence and of the sentiments, which is carried down to the very lowest ranks of the people when they are called to take a part in acts which directly affect the great interests of their country.”); Carole Pateman, *Participation and Democratic Theory* 42 (1970) (“The major function of participation . . . is . . . an educative one, . . . including both the psychological aspect and the gaining of practice in democratic skills and procedures.”); Iris Marion Young, *Justice and the Politics of Difference* 91 (1990) (arguing that justice requires “participation in public discussion and processes of democratic decisionmaking” and that “[a]ll persons should have the right and opportunity to participate in” those processes); Eric Beerbohm, *In Our Name: The Ethics of Democracy* 9–11 (2012) (suggesting that the right to vote allows citizens to avoid complicity in state-sponsored wrongdoing, irrespective of its eventual occurrence).

³ All materials cited by *amici* are publicly available. *Amici* will provide copies of any cited materials to the Court upon request.

correlation—and some have found a causal relationship—between enfranchisement and both internal political efficacy—“an individual’s perception of his or her own ability to engage in politics, become informed, and meaningfully participate in the political process”—and external political efficacy—“an individual’s perception of how responsive and accessible the government is to citizen demands.” *Id.* at 133, 145; *see also* Steven E. Finkel, *Reciprocal Effects of Participation and Political Efficacy: A Panel Analysis*, 29 *Am. J. Pol. Sci.* 891, 906–08 (1985) (tracking the relationship between voting and external political efficacy within the general public).

According to these studies, political participation increases citizens’ general sense of internal efficacy—or sense of ownership over politics—which in turn stimulates continued political participation. *See, e.g.*, Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 *Colum. Hum. Rts. L. Rev.* 193, 198 (2004) (collecting articles); *see also* Finkel, *supra*, at 894, 906–08 (suggesting the more citizens are involved with politics, the greater their external political efficacy—the more faith they repose in government). Indeed, one recent study found vote restoration led individuals with felony convictions to feel more engaged with politics and more likely to vote and to participate in other political activities. Shineman, *Restoring Voting Rights*, *supra*, at 140–44. Even when not reminded of upcoming elections, or offered assistance with registration or voting, previous

offenders still demonstrated these positive changes when told their right to vote had been restored. *Id.* at 145. As Professor Shineman explained:

These results suggest that felony disenfranchisement laws are directly decreasing political efficacy through the act of disenfranchisement – and not only through the decrease in turnout they generate. . . . Regardless as to whether citizens choose to exercise their voting rights, the act of restoring rights alone causes citizens to feel more empowered, more capable, and to be more likely to seek out opportunities for participatory engagement in the future.

Id.

Professor Shineman’s analysis is consistent with research showing that when voters know about and exercise their political franchise, even through the simple act of registering to vote, it creates opportunities and momentum for continued political involvement and competence. Two empirical studies, which focus on both local and national elections, show the concrete, quantifiable positive effects of political mobilization. See Victoria Anne Shineman, *If You Mobilize Them, They Will Become Informed: Experimental Evidence That Information Acquisition Is Endogenous to Costs and Incentives to Participate*, 48 *Brit. J. Pol. Sci.* 189 (2018); Céline Braconnier et al., *Voter Registration Costs and Disenfranchisement: Experimental Evidence from France*, 111 *Am. Pol. Sci. Rev.* 584 (2017). When a potential voter is invited to register or vote, their electoral literacy and political incentives are improved. See Shineman, *If You*

Mobilize Them, supra, at 206; Braconnier et al., *supra*, at 596–97 (showing higher voter aptitude in stating preferred candidates and greater knowledge on forthcoming general elections and politicians’ party identification). And potential voters who are mobilized also become more engaged with politics. See Shineman, *If You Mobilize Them, supra*, at 206 (finding dramatically increased voter turnout after mobilization treatment); Braconnier et al., *supra*, at 597 fig.5 (finding higher voter interest in politics after home canvassing visits).

Re-enfranchisement, therefore, is a key step that persons with felony convictions must take towards a self-sustaining virtuous circle of active political and civic life, which as discussed below offers strong benefits to society as a whole.

II. Re-enfranchisement promotes re-entry and discourages recidivism.

Disenfranchisement needlessly eliminates a powerful tool for the successful re-entry of previous offenders into their communities. Communities have a paramount interest in promoting re-entry and rehabilitation, which can reduce recidivism and advance public safety. The restoration of voting rights plays a unique role in re-entry by “provid[ing] a clear marker of reintegration and acceptance as a stakeholder in a community of law-abiding citizens.” See Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 *Am. Soc. Rev.* 777, 794 (2002). Indeed,

“[v]oting appears to be part of a package of pro-social behavior that is linked to desistance from crime.” Uggen & Manza, *Voting and Subsequent Crime, supra*, at 214. The denial of voting rights thus foregoes a critical mechanism that would “help to foster the skills and capacities that will rehabilitate offenders and help them become law-abiding citizens.” Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 37 (2006); cf. *Restoration of Voting Rights Resolution*, Am. Probation & Parole Ass’n (Sept. 2007), https://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IB_Resolution&wps_key=3c8f5612-9e1c-4f60-8e8b-1bf46c00138e (“[D]isenfranchisement laws work against the successful reentry of offenders”).

Research suggests that disenfranchisement may “increase criminal activity across-the-board for all criminal offenders,” Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 429 (2012), and that individuals with felony convictions who fail to become involved with politics or other civic pursuits may be more likely to commit crimes in the future, see Christopher Uggen et al., *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, 605 *Annals Am. Acad. Pol. & Soc. Sci.* 281, 303–04 (2006) (collecting articles). Two researchers, analyzing data from the Department of Justice’s Recidivism of Prisoners study, for example, found that “states which permanently disenfranchise ex-felons experience significantly higher repeat

offense rates than states that do not.” Hamilton-Smith & Vogel, *supra*, at 423–29. Another 2004 study found that “[a]pproximately 16 percent of [nonvoters in the 1996 presidential election] were arrested between 1997 and 2000, relative to about 5 percent of the voters.” Uggen et al., *supra*, at 303 (citation omitted). That study observed similar trends amongst voters and nonvoters with respect to likelihood of incarceration, and “[a] study of a 1990 Minnesota prison release cohort yielded similar results among convicted felons.” *Id.* at 303–04.

Disenfranchisement also contributes to the “criminal label” that brands persons with felony convictions as “outsider[s] or outcast[s],” communicating “that they are no longer members of society on a basic, fundamental level.” See Hamilton-Smith & Vogel, *supra*, at 415. This label can then “become a self-fulfilling prophecy resulting in increased criminal activity” *Id.* Thus, for example, “[f]or the 78 percent of convicted felons [in Florida] who want to vote and/or feel that voting is related to reintegration, disenfranchisement contributes to . . . feelings of alienation and marginalization, which can contribute to crime” and are “a factor” in driving recidivism. Tanya N. Whittle, *Felony Collateral Sanctions Effects on Recidivism: A Literature Review*, 29 *Crim. Just. Pol’y Rev.* 505, 516 (citing Bryan Lee Miller & Joseph F. Spillane, *Civil Death: An Examination of Ex-Felon Disenfranchisement and Reintegration*, 14 *Punishment & Soc’y* 402 (2012)).

Restricting political participation also impairs civic engagement. This may “have a deeper and longer effect” on communities beyond just their security, as “research suggests that children are more likely to vote as adults if they are raised by parents who engage in the voting process.” Mark Haase, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 Minn. L. Rev. 1913, 1928–29 (2015); cf. Hedwig Lee et al., *Consequences of Family Member Incarceration: Impacts on Civic Participation and Perceptions of the Legitimacy and Fairness of Government*, 651 Annals Am. Acad. Pol. & Soc. Sci. 44, 45 (2014) (“[T]he correctional system serves as a powerful institution for political socialization for the families of those behind bars, influencing . . . their proclivity to vote and their political attitudes.”).

A disenfranchised person may also feel psychological stigma, that they lack identity, and that they are set apart from the rest of society. Shineman, *Restoring Voting Rights*, *supra*, at 134; Uggen & Manza, *Voting and Subsequent Crime*, *supra*, at 212 (noting that those disenfranchised because of a felony conviction have described feeling like “outsiders”); see also Bryan Lee Miller & Laura E. Agnich, *Unpaid Debt to Society: Exploring How Ex-Felons View Restrictions on Voting Rights After the Completion of Their Sentence*, 19 Contemp. Just. Rev. 69 (2016) (explaining that disenfranchised previous offenders tended to view their loss of civil rights in terms of unfairness, shame, or fatalism). That sense of political “otherness” may “caus[e] an individual to feel like they are not

qualified or capable of engaging [in] the democratic process, or perhaps not even deserving of the right to vote,” thus undercutting whatever pre-existing sense of efficacy they may have had. Shineman, *Restoring Voting Rights*, *supra*, at 134.

Disenfranchisement “instructs felons/ex-felons to avoid civic engagement and participation” and “teach[es] them that their potential for individual and collective efficacy as political actors is low.” Michael Leo Owens, *Ex-Felons’ Organization-Based Political Work for Carceral Reform*, 651 *Annals Am. Acad. Pol. & Soc. Sci.* 256, 257–58 (2014). As a result, “their capacity and opportunities to practice, or imagine, democratic action shrinks.” *Id.* at 258.

These findings underscore that “felony disenfranchisement hinders positive reentry by ex-prisoners.” *Id.* at 257. Principally, “[a] key element of successful re-entry is developing a new identity as a free citizen.” Shineman, *Restoring Voting Rights*, *supra*, at 134 (collecting articles); *see also* Miller & Spillane, *supra*, at 409 (“[C]ivic reintegration is an important aspect of criminal desistance allowing offenders to rebuild a pro-social identity.” (citation omitted)). But disenfranchisement impedes the formation of that identity by stigmatizing previous offenders, undermining their sense of efficacy, and, at times, encouraging them to avoid civic engagement altogether. *See, e.g.*, Shineman, *Restoring Voting Rights*, *supra*, at 134; Owens, *supra*, at 257–58. Disenfranchisement therefore “threatens” the goal of civic reintegration by “alienating the ex-offender

from the civic processes that signify membership in the community.” Miller & Spillane, *supra*, at 409.

III. Re-enfranchisement strengthens broader democratic legitimacy and participation.

Felon disenfranchisement not only wastes an important opportunity to bolster successful re-entry and reduce recidivism, but it may also undermine democratic legitimacy and participation more broadly. It is fundamental to the notion of democratic legitimacy that “all . . . persons who are subject to the law ought to be eligible to participate in the decision-making procedures that generate, direct, authorize, and check that law.” Matt S. Whitt, *Felon Disenfranchisement and Democratic Legitimacy*, 43 Soc. Theory & Prac. 283, 285–86 (2017) (citing Robert Dahl, *Democracy and Its Critics* 120–30 (1991)). Indeed, some scholars have suggested that the value of the right to vote lies in its ability to foster “regime stability” by “promot[ing] feelings of legitimacy toward the political system.” Finkel, *supra*, at 893. Disenfranchisement regimes like that imposed by SB7066 “create large populations of ‘semi-citizens’ or internal outsiders who are locked out of the democratic process.” See Whitt, *supra*, at 303. When citizens “who are governed by democratic law but barred” from political processes, democratic legitimacy is undermined. See Whitt, *supra*, at 285; Ihaab Syed, *How Much Electoral Participation Does Democracy Require? The Case for Minimum Turnout Requirements in Candidate Elections*, 66 UCLA L. Rev. 2024, 2049 (2019) (“[L]ow voter

turnout jeopardizes the legitimacy of democracies.”). That loss of legitimacy may, if severe, even “attenuat[e] subjects’ obligation to obey legislation.” Whitt, *supra*, at 304.

Moreover, recent studies have shown that the effects of felon disenfranchisement “are not limited to those that arise from the direct removal of ex-felon populations from the voting booth.” Melanie Bowers & Robert R. Preuhs, *Collateral Consequences of a Collateral Penalty: The Negative Effect of Felon Disenfranchisement Laws on the Political Participation of Nonfelons*, 90 Soc. Sci. Q. 722, 740 (2009). Just as felon disenfranchisement plainly reduces political participation on the part of those with felony convictions, those same policies may ultimately dampen “nonfelons’ propensity to vote as well.” See Bowers & Preuhs, *supra*, at 740 (emphasis removed); Haase, *supra*, at 1928; Lee et al., *supra*, at 48; cf. Traci R. Burch, *Effects of Imprisonment and Community Supervision on Neighborhood Political Participation in North Carolina*, 651 Annals Am. Acad. Pol. & Soc. Sci. 184, 185 (2014) (“The focus on the impact of . . . disenfranchisement on felons ignores . . . [that] [t]he criminal justice system has the power to shape not only the political participation of current and former felons but also the participation of the people who live around them . . .”). It is evident, then, that disenfranchisement and its tendency to undermine civic engagement harms every citizen, previous offender or otherwise.

CONCLUSION

The Florida legislature's pay-to-vote system harms society and democracy at large. By keeping previous offenders disenfranchised, SB7066 results in lower rates of civic engagement and casts aside an important tool for promoting successful re-entry following incarceration. Moreover, Florida's disenfranchisement scheme may have the additional consequence of undermining democratic legitimacy and participation—bedrock components of American government. *Amici* urge the Court to consider these facts in determining the constitutionality of SB7066's restrictions on Amendment 4.

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Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirement of Fed. R. App. P. 32(a)(6). This brief contains 2,722 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(f). It has been prepared in a proportionally spaced font using Microsoft Word in Century Schoolbook, 14 point font.

Dated: August 3, 2020

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CERTIFICATE OF SERVICE

I certify that on August 3, 2020, a true and correct copy of the foregoing was filed using the Court's Electronic Filing System, which will send a Notice of Docket Activity to counsel of records for all parties.

Dated: August 3, 2020

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APPENDIX¹

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