

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA,  
FIRST DISTRICT**

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Appeal No.: 1D23-1473

L.T. No.: 22-CF-924

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JOHN BOYD RIVERS,  
*Appellant,*

v.

STATE OF FLORIDA,  
*Appellee.*

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ON APPEAL FROM THE CIRCUIT COURT FOR THE EIGHTH  
JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA

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**BRIEF OF *AMICI CURIAE*  
BRENNAN CENTER FOR JUSTICE,  
AMERICAN CIVIL LIBERTIES UNION,  
ACLU FOUNDATION OF FLORIDA, AND  
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND  
IN SUPPORT OF APPELLANT JOHN BOYD RIVERS**

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**ACLU FOUNDATION OF  
FLORIDA, INC.**

Caroline A. McNamara (FBN  
1038312)  
Daniel B. Tilley (FBN 102882)  
4343 W Flagler St, Suite 400  
Miami, FL 33138  
(786) 363-2714  
cmcnamara@aclufl.org  
dtilley@aclufl.org

Nicholas L.V. Warren (FBN  
1019018)  
1809 Art Museum Drive, Suite  
203  
Jacksonville, FL 32207  
(786) 363-1769  
nwarren@aclufl.org

**O'MELVENY & MYERS LLP**

Andrew Frackman (*pro hac vice*  
pending)  
Danielle Feuer (*pro hac vice*  
pending)  
Harrison Meyer (*pro hac vice*  
pending)  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
(212) 326-2000  
afrackman@omm.com  
dfeuer@omm.com  
hmeyer@omm.com

Patrick Jones (*pro hac vice*  
pending)  
O'Melveny & Myers LLP  
1625 Eye Street NW  
Washington, DC 20006  
(202) 383-5300  
pjones@omm.com

*Counsel for Amici Curiae*

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## **STATEMENT OF INTEREST OF AMICI CURIAE**

The Brennan Center for Justice at NYU School of Law<sup>1</sup> (“Brennan Center”) is a nonprofit, nonpartisan law and policy institute that seeks to strengthen, revitalize, and defend our systems of democracy and justice. Through its Voting Rights Program, the Brennan Center works nationwide to re-enfranchise Americans with past convictions. The Brennan Center regularly participates as counsel or *amicus* in litigation related to felony disenfranchisement.

The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization dedicated to defending the civil liberties guaranteed by the Constitution and our nation’s civil rights laws. The ACLU Foundation of Florida, Inc. (“ACLU-FL”) is its Florida affiliate and has more than 50,000 members statewide. The protection and expansion of voting rights, and the rights of the accused in criminal proceedings, are of great concern to both organizations.

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<sup>1</sup> This brief does not purport to convey the position of NYU School of Law.

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is a nonprofit, nonpartisan, legal organization founded under the leadership of Thurgood Marshall to secure equal justice under the law for all Americans and break down barriers that prevent Black people from realizing their basic civil and human rights. To this end, LDF has spearheaded litigation, legislation, education, and other advocacy to end felony disenfranchisement and challenge baseless prosecutions of Black voters for alleged voter fraud.

For over two decades, *amici* have worked inside and outside the courtroom to expand and defend the right to vote of returning citizens<sup>2</sup> in Florida and other states. *Amici* advocated for the passage of Amendment 4, the historic amendment to Florida’s constitution that was meant to end the State’s system of categorical lifetime disenfranchisement.

As civil and voting rights organizations that advocate for the rights of returning citizens in Florida, *amici* have a significant interest in this case. Affirming the jury verdict below, despite the State’s failure to adduce evidence that Mr. Rivers *willfully* voted *knowing* he

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<sup>2</sup> A “returning citizen” is an individual who has a felony conviction.

was ineligible, would criminalize good-faith mistakes by returning citizens like Mr. Rivers, whom the State has confused or misled about their eligibility and then prosecuted only after allowing them to vote. Given the widespread confusion and uncertainty that has resulted from the State’s practices, the criminalization of such good-faith mistakes would also chill voting by returning citizens who *are* eligible. And that chilling effect is not shouldered equally: Bias in various aspects of the criminal legal system has meant that a disproportionate number of such citizens in Florida are Black people.

### **PRELIMINARY STATEMENT**

In 2018, Florida voters overwhelmingly approved Amendment 4, automatically restoring voting rights for returning citizens, except those convicted of murder or felony sexual offenses, who have completed the terms of their sentences, including probation and parole. Art. VI, § 4(a)–(b), Fla. Const. In 2019, the State enacted Senate Bill 7066 (“SB7066”), which prevents returning citizens from registering and voting until they have paid off certain legal financial obligations (“LFOs”) and defines the terms “murder” and “felony sexual offense,” for which voting rights are not automatically restored

by Amendment 4, to include an amorphous list of crimes. Ch. 2019-162, § 25, Laws of Fla.

Since then, Florida’s rights-restoration regime has been an “administrative train wreck.” *Jones v. DeSantis (Jones I)*, 462 F. Supp. 3d 1196, 1239 (N.D. Fla. 2020).<sup>3</sup> This “train wreck” resulted in Mr. Rivers’ conviction. As explained in Mr. Rivers’ brief, the State did not prove he *willfully* voted *knowing* he was ineligible. *Amici* write to present two additional considerations in support of Mr. Rivers’ arguments.

*First*, the *mens rea* requirement applicable to the crime of conviction—that the defendant, “*knowing* he or she is not a qualified elector, *willfully* vote[d in an] election,” § 104.15, Fla. Stat. (emphasis added)—is imperative given the significance of the rights at stake. Courts interpreting criminal statutes that implicate the right to vote and the right to free political expression must take care to avoid chilling the exercise of those fundamental rights. Affirming Mr.

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<sup>3</sup> In *Jones v. Governor of Florida (Jones II)*, the Eleventh Circuit reversed the district court’s holding that the State’s practices were unconstitutional; however, it did not disturb the factual findings referenced herein. See 975 F.3d 1016, 1026 (11th Cir. 2020).

Rivers' conviction, despite the State's failure to adduce evidence that he *willfully* voted *knowing* he was ineligible, would do exactly that.

*Second*, Florida's election-administration regime *actively misleads* returning citizens like Mr. Rivers about their eligibility—casting serious doubt on any potential finding of knowledge or willfulness.

## **ARGUMENT**

### **I. Proving *Mens Rea* Is, and Should Be, a High Bar to Clear in Cases Implicating Voting Rights.**

Under the relevant statute, the State was required to prove beyond a reasonable doubt that Mr. Rivers, “*knowing* he . . . [wa]s not a qualified elector, *willfully* vote[d]” in an election. § 104.15, Fla. Stat. (emphasis added). This *mens rea* requirement is necessary to preserve the fundamental right to vote; any lesser standard would chill the exercise of lawful political expression.

In general, the “knowing” and “willful” *mens rea* standards are intended to “assure[] that ‘no one will be convicted of a crime because of a mistake or because he does something innocently.’” *Corrales v. State*, 84 So. 3d 406, 408 (Fla. 1st DCA 2012) (citation omitted); *Polite v. State*, 973 So. 2d 1107, 1112–14 (Fla. 2007). Florida appellate

courts routinely reverse convictions when the State has not presented evidence establishing the requisite *mens rea*. See, e.g., *Corrales*, 84 So. 3d at 408–10 (reversing conviction because State “failed to put on evidence from which the jury could find, beyond a reasonable doubt, that [defendant] *willfully* failed to appear” in court (emphasis added)); *Tinker v. State*, 341 So. 3d 1136, 1139, 1144–45 (Fla. 4th DCA 2022) (reversing conviction where State’s evidence, “without more, . . . d[id] not provide a sufficient basis upon which a rational juror could find beyond a reasonable doubt that Defendant *knew or intended* fraud” (emphasis added)).

It is particularly important to ensure that the jury’s finding of the requisite *mens rea* is based on sufficient evidence in this case because the *actus reus* of the offense is voting, a vitally important, constitutionally-protected activity. Florida’s constitution establishes the fundamental right to vote for every “citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law.” Art. VI, § 2, Fla. Const. Amendment 4 restores that right to returning citizens under most circumstances. *Id.* § 4(a)–(b). Voting has long been “regarded as a fundamental political right” that is “preservative of all rights.” *Yick*

*Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *Reform Party of Fla. v. Black*, 885 So. 2d 303, 311 (Fla. 2004) (recognizing “the right of qualified voters . . . to cast their votes effectively” as “among our most precious freedoms” (quoting *Williams v. Rhodes*, 339 U.S. 23, 30–31 (1968))). Not only is voting a protected activity in and of itself, but it also implicates voters’ First Amendment rights to political expression and association. See *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) (“Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views.”); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws[.]”). Because of this, courts have recognized that “in construing statutes relating to elections,” they must apply “a liberal construction in favor of the citizen whose right to vote they tend to restrict.” *State ex rel. Carpenter v. Barber*, 198 So. 49, 50–51 (Fla. 1940). The Florida Legislature acknowledged this convention in SB7066, requiring that any ambiguous provision of the law “be construed in favor of the

registrant” for purposes of determining their eligibility. Ch. 2019-162, § 25, Laws of Fla.

Recognizing this, Florida has long criminalized only “willfully” or “knowingly” casting an illegal vote. See *Ex parte Senior*, 19 So. 652, 656–57 (Fla. 1896) (construing earlier criminal statute applying to “whoever casts knowingly an illegal vote at any election in this state”). As numerous courts have recognized, without a robust *mens rea* requirement, statutes that encroach upon constitutionally protected activities can have a serious “chilling effect” on those activities. See, e.g., *State v. N. Fla. Women’s Health & Counseling Servs.*, 852 So. 2d 254, 269 (Fla. 1st DCA 2001) (holding law must be construed as requiring scienter to avoid chilling effect on constitutionally protected activity), *quashed on other grounds*, 866 So. 2d 612, 639–40 (Fla. 2003); *United States v. Vaghela*, 970 F. Supp. 1018, 1022 (M.D. Fla. 1997) (finding statute “free from any chilling effects on constitutionally protected rights” because “statute’s specific intent requirement, ‘knowing and willfully,’ ensures that these penalties will not be imposed” arbitrarily and without fair warning); *Rice v. Paladin Enters., Inc.*, 128 F.3d 233, 247 (4th Cir. 1997) (“[T]he First Amendment may . . . superimpose” “a



heightened intent requirement in order that preeminent values underlying that constitutional provision not be imperiled.”).

Indeed, even as it rejected a vagueness challenge to SB7066’s LFO requirement, the Eleventh Circuit recognized the importance of the *mens rea* requirement in the statute under which Mr. Rivers was convicted, emphasizing that “no felon who honestly believes he has completed the terms of his sentence commits a crime by registering and voting.” *Jones II*, 975 F.3d at 1048; *see also id.* at 1047 (“The challenged laws are not vague. Felons and law enforcement can discern from the relevant statutes exactly what conduct is prohibited: a felon may not vote or register to vote if he *knows* that he has failed to complete all terms of his criminal sentence. This clear standard, which includes a scienter requirement, provides fair notice to prospective voters and limits prosecutorial discretion.” (cleaned up) (emphasis in original)).

Failure to enforce the *mens rea* requirement in this case would not just harm Mr. Rivers, but would chill the political expression of voters who *are* eligible. The U.S. Department of Justice has recognized that conducting election-related arrests close to an

election “runs the risk of chilling legitimate voting.”<sup>4</sup> This is especially true in Florida where, as explained below, the State does not provide timely notice of ineligibility to registered voters who have felony convictions. And the State, by design, does not remove from the rolls ineligible voters whose voting rights have not been restored before elections. Nor does the State provide easily-accessible information that returning citizens can use to determine eligibility on their own. Indeed, the State’s prosecution of dozens of other returning citizens like Mr. Rivers for what appear to be honest mistakes about their eligibility to vote has reportedly already had a chilling effect on their communities, family and friends, and on other returning citizens.<sup>5</sup> As one county Supervisor of Elections (“SOE”) put it: “I have not encountered in the past this many voters calling,

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<sup>4</sup> See, e.g., U.S. Dep’t of Just., *Justice Manual*, ch. 9-85.300 (2022), <https://www.justice.gov/jm/jm-9-85000-protection-government-integrity>.

<sup>5</sup> Lori Rozsa, *The First Arrests from DeSantis’s Election Police Take Extensive Toll*, Wash. Post (May 1, 2023), <https://www.washingtonpost.com/nation/2023/04/30/desantis-election-police-arrests-florida>; Paul Blest & Trone Dowd, *‘Complete Setup’: Florida Crackdown Has Ex-Felons Afraid to Vote*, Vice (Nov. 3, 2022), <https://www.vice.com/en/article/k7bkpm/florida-felons-voters-rights-election-police>).

concerned that they may be prosecuted . . . . And these are all eligible voters that have contacted me.”<sup>6</sup>

## **II. Florida’s Election-Administration Regime Does Not Provide Timely Notice of Ineligibility.**

### **A. Florida’s Regime Is Broken for All Returning Citizens.**

Florida’s election-administration regime is not designed to provide timely notice of ineligibility to registered voters with felony convictions, or to remove from the rolls those ineligible voters whose voting rights have not been restored. Such basic safeguards would prevent the entrapment and prosecution of unwitting ineligible voters. To the contrary, the State has actively misled returning citizens, including Mr. Rivers, to believe they could vote—and then arrested and prosecuted them when they did exactly that. The State’s system is broken in three main ways.

*First*, Florida provides virtually no information at the time of registration that returning citizens could use to determine if they are eligible. The State admits that it does not maintain a public database

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<sup>6</sup> Matt Shuham, *Some Eligible Ex-Felons Fear Voting Because of Ron DeSantis*, Huffington Post (Oct. 28, 2022), [https://www.huffpost.com/entry/ron-desantis-florida-former-ex-felon-voter-fraud-arrests\\_n\\_635c084ae4b0cf522df862a8](https://www.huffpost.com/entry/ron-desantis-florida-former-ex-felon-voter-fraud-arrests_n_635c084ae4b0cf522df862a8).

for returning citizens to consult to verify their eligibility. *See Jones I*, 462 F. Supp. 3d at 1209–10, 1220; *see also* Ashley Lopez, *Advocates in Florida Clamor for a Fix for the Formerly Incarcerated Who Want to Vote*, NPR, (May 4, 2023), <https://news.wgcu.org/2023-05-04/advocates-in-florida-clamor-for-a-fix-for-the-formerly-incarcerated-who-want-to-vote> (quoting Secretary of State Cord Byrd as saying to Florida lawmakers: “I would love to see a statewide database . . . but until that day comes we have to continue to do it the way we are doing it[.]”). Further, the uniform statewide voter registration application form Mr. Rivers completed—which remains in use by the State—says next to nothing about felony convictions, providing only the ambiguous statement that, “[i]f you have been convicted of a felony . . . you cannot register until your right to vote has been restored.” R-259. The form does not mention Amendment 4, SB7066, or the types of felony convictions that are disqualifying, nor does it explain the effect of outstanding LFOs or sentence terms, like community control. Making matters worse, Florida has refused to provide meaningful public guidance about its complicated voter eligibility requirements for returning citizens, which vary depending on the crime, terms of sentence, and court of conviction. The State’s

intransigence has perpetuated widespread confusion among would-be voters and government officials alike.<sup>7</sup>

*Second, all* newly registered voters receive an official Voter Information Card (“Card”) that can easily be mistaken for confirmation of eligibility. SOEs mail a Card to each newly registered voter when their application is “complete” and the Department of State (“DOS”) has confirmed that the registrant is a real person. §§ 97.053(2), (6), .071, Fla. Stat. The Card, which under Florida law constitutes notice of approval of registration, provides information about the recipient’s polling location, voting district, legal residence, registration date, and registration number. *Id.* §§ 97.071(1), 97.073(1); *see also* R-213 (Mr. Rivers’ Card); T-124 (SOE Kim Barton testifying that a person’s “receipt of a voter information card is saying they are now registered to vote in the Florida system”).

At the time Mr. Rivers received it, his Card said nothing to suggest that any additional steps were required of the recipient or the

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<sup>7</sup> *See* Matt Dixon, *Defendants Targeted in DeSantis’ Voter Fraud Crackdown Were Told They Could Vote*, Politico (Aug. 26, 2022), <https://tinyurl.com/rx4pamr3>; Sam Levine, *Floridians Charged Over Voting Believed They Were Eligible, Documents Show*, The Guardian (Aug. 25, 2022), <https://tinyurl.com/mwen363f>.

State to confirm the recipient's eligibility. Only *after* Mr. Rivers was convicted (and dozens of other returning citizens were charged for allegedly registering and voting while ineligible) did the State add, in July 2023, a disclaimer to the Card:<sup>8</sup>

This card is for information purposes only. This card is proof of registration but is not legal verification of eligibility to vote. It is the responsibility of a voter to keep his or her eligibility status current. A voter may confirm his or her eligibility to vote with the Department of State.

See Ch. 2023-120, § 5, Laws of Fla.

Returning citizens like Mr. Rivers who received a Card confirming their registration (especially the disclaimer-less version), and no countervailing information suggesting their ineligibility, have every reason to believe they are eligible to vote.<sup>9</sup> Accordingly, some

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<sup>8</sup> Dara Kim, *Florida Senate Passes Controversial Election Law Changes*, ClickOrlando.com (May 24, 2023), <https://www.clickorlando.com/news/2023/04/26/florida-senate-passes-controversial-election-law-changes/>.

<sup>9</sup> See Douglas Soule, *Voter Fraud Charges Dropped Against 69-Year-Old Florida Woman Arrested at 3 A.M.*, USA Today Network (Oct. 17, 2023), <https://www.tallahassee.com/story/news/politics/2023/10/17/florida-voter-fraud-case-dropped-against-69-year-old-arrested-at-3-a-m/71217722007/> (charges dropped where no witness could testify to defendant being told she was ineligible, and

state attorneys have declined to pursue charges against returning citizens who voted while ineligible, noting that receiving a Card “would lead one to believe they could legally vote in the election.”<sup>10</sup> And it is why at least one circuit court in a similar case, in which an SOE provided an ineligible returning citizen a Card, found that “no prosecuting authority could ever prove the elements” of voter fraud in such a case, “[g]iven the statutory authority vested in [SOEs] and [DOS] to be final arbiters of Defendant’s eligibility to register and vote.” *State v. Suggs*, No. 22-008080CF10A (Fla. 17th Cir. Ct. May 19, 2023).<sup>11</sup>

*Third*, the State has failed to timely perform its statutory obligations to verify the eligibility of returning citizens, as well as

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some evidence, such as her receipt of a Card, corroborated her assertion that she believed she could lawfully vote).

<sup>10</sup> See Letter re: Sex Offenders Voting in Elections, Jonathan Olsen, State Attorney’s Office, Fifth Judicial Circuit, <https://www.brennancenter.org/sites/default/files/2022-11/2022.06.13%20Non-prosecution%20letter%20from%20State%20Attorney%205th%20Judicial%20Circuit%20re%20voters%20with%20sex%20offenses.pdf>.

<sup>11</sup> For similar reasons, the Seventh Circuit has held that a state’s “official authorization” of a non-citizen’s voter registration would provide an affirmative defense to the federal crime of “voting by aliens.” *Keathley v. Holder*, 696 F.3d 644, 646–47 (7th Cir. 2012).

identify and provide notice to SOEs about potentially-ineligible voters whose voting rights have not been restored so they could be removed from the rolls. This basic failure has further engendered confusion for voters. Under Florida law, DOS has the obligation to verify the eligibility of newly registered voters who have felony convictions. § 98.075(5), Fla. Stat. DOS also has the obligation to identify and provide notice to the relevant SOE about ineligible voters whose voting rights have not been restored. *Id.* § 98.0751(3)(a); Fla. Admin. Code R. 1S-2.041(4)(c). If an SOE receives notice from DOS that a voter with a felony conviction may be ineligible, the SOE must provide written notice to the voter within seven days, and the voter then has the right to request a hearing before removal from the rolls. § 98.075(7)(a), (b)(3), Fla. Stat.

Yet during the past four years, DOS has failed to meet its responsibilities. Between January 8, 2019, when Amendment 4 took effect, and May 2020, DOS flagged approximately 85,000 pending registrations by returning citizens for vetting. *Jones II*, 975 F.3d at 1026. At the end of that 16-month period, however, DOS had “yet to complete its screening of any of the [85,000] registrations.” *Id.* A federal court found that the projected completion date for DOS to



review *just those pending registrations* would be 2026; however, given additional expected registrations because of the 2020 presidential election, “the anticipated completion date might well be pushed into the 2030s.” *Jones I*, 462 F. Supp. 3d at 1228. Reviewing this evidence, the Eleventh Circuit stated that until Florida is “able to find information justifying the removal of *any* of them from the voting rolls[,] [] *all . . . are entitled to vote.*” *Jones II*, 975 F.3d at 1026, 1035–36. It was during that limbo period that Mr. Rivers registered to vote and voted.

DOS is not the only Florida agency that has failed to perform its responsibilities. Through as many as three statewide elections, the Florida Department of Law Enforcement (“FDLE”) failed to identify potentially-ineligible voters “in a time and manner that enables [DOS] to meet its obligations under state and federal law.” § 98.093(2)(d), Fla. Stat. (2020). For example, between 2019 and at least January 2022, FDLE did not send *any* monthly reports to DOS concerning potential matches of voters with individuals in the Florida Offender Registration and Tracking Service database. FDLE, *Investigative Report* (2021), <https://tinyurl.com/3n5uwkdd>.

The State has had significant trouble keeping up with its obligations to administer its convoluted voter eligibility laws—exemplified by the staggering backlog and DOS’s 32-page “workflow” for determining whether a voter who has a felony conviction is eligible to vote.<sup>12</sup> It is unfair for the State to hold its ordinary citizens—who enjoy none of the same knowledge, resources, or expertise as DOS—to a higher standard than its career civil servants, and under penalty of criminal prosecution.

**B. Florida’s Confusing Regime Misled Mr. Rivers.**

Mr. Rivers had the misfortune of falling into this dysfunctional system. Any finding of the requisite *mens rea* to violate section 104.15 is highly suspect here given how deeply confusing Florida’s election-administration regime is, and how the State has actively misled Mr. Rivers about his eligibility.

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<sup>12</sup> See Bureau of Voter Registration Services, Florida Division of Elections, *Processing Potential Felon Match Files* (2021), pt. A, at 11 to pt. B, at 4, available at: <https://www.brennancenter.org/sites/default/files/2022-12/BVRS%20Internal%20Procedures%20-%20Felony%20Match%20Case%20File%20Processing.pdf> (outlining process of searching multiple independent databases, evaluating special felony cases, and supervisor’s review of evaluations).

Mr. Rivers was detained in the Alachua County Jail on February 5, 2020, when then-Director of Communications and Outreach at the Supervisor of Elections' Office, T.J. Pyche, visited the facility. T-34, T-45, T-195. At the outset of a visit, Mr. Pyche would "announce that [he] was there from the supervisor of elections' office," T-41, and he "was always accompanied in the jail" by a member of the corrections staff, T-39-40, T-70, giving him a further stamp of legitimacy. Mr. Pyche announced that a change in law had allowed people with felony convictions to vote, but "[t]he two things that excluded you" were convictions for "sex crimes and murder." T-195.

Mr. Pyche gave Mr. Rivers a voter registration application that made no mention of probation or LFOs. T-84-85, T-196-97. Mr. Rivers explained his criminal history, including the fact that he was in jail for a probation violation, to Mr. Pyche, who "told [him] that as long as [he] didn't have a sex crime or murder charge, [he] would be eligible to get [his] rights restored." T-196, T-209-10. Mr. Rivers took Mr. Pyche's word as fact: after all, he "was a representative of the office of elections." T-207. Although Mr. Pyche testified that he typically brought informational fliers explaining Amendment 4 with him, T-49, T-68, T-71-72, those fliers said nothing about LFOs, T-

84–85. Mr. Pyche also had no recollection of giving one to Mr. Rivers. T-64, T-70. Mr. Rivers, in turn, testified that the fliers were just used as sign-in sheets and that he never saw the side of the flier that contained information about Amendment 4. T-196–97. Mr. Rivers thought Mr. Pyche was going to check to see if he was eligible first before submitting his registration. T-198–99.<sup>13</sup>

Not long after submitting his application, Mr. Rivers received a Card in the mail. R-213; T-199, T-201. Mr. Rivers testified that he was “excited about the opportunity to vote” after receiving his Card, logically believing the State had endorsed his eligibility. T-199–201.

Despite DOS’s and SOE’s obligations to identify, notify, and remove registered voters who are ineligible to vote, no one notified Mr. Rivers that he was ineligible until he was brought in for questioning by FDLE Special Agent Tracy Rousseau nearly a year after the election. T-168, T-201–03.<sup>14</sup> Mr. Rivers testified that “it

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<sup>13</sup> Nothing in the record disputes Mr. Rivers’ account; Mr. Pyche testified that he “actually d[id]n’t have much of a memory at all of that visit,” T-70, did not know Mr. Rivers or recognize him, T-64, and “d[id]n’t have any memory” of their interaction, *id.*

<sup>14</sup> SOE Kim Barton testified DOS was “short staffed” had “a lot of backlog” in 2020 because of “all of the restoration of civil rights

blew [him] away” to hear that he was ineligible. T-203.<sup>15</sup> He testified he never intended to vote knowing that he was ineligible. T-204. Agent Rousseau herself testified that her investigation did not support that Mr. Rivers had acted willfully, and she therefore did not recommend charges. T-174–75. Yet he was later arrested, prosecuted, and convicted nonetheless.

**C. Florida’s Confusing Regime Has Also Mised Other Returning Citizens.**

Mr. Rivers is far from the only returning citizen who has been confused or misled about their eligibility by Florida’s confusing regime. Within the last 16 months alone, the State has prosecuted

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issue[s].” T-124–25, T-129. Barton also testified that her office would sometimes not receive information from DOS about ineligible voters until “months down the road” after they had already issued the voter a Card. T-122–25, T-129, T-132.

<sup>15</sup> Mr. Rivers’ community control order for his April 2020 conviction had not offered him any guidance, as it did not mention voting and could be read as suggesting that “community control” is not a sentence. R-223–28 (ordering “that the imposition of sentence is hereby withheld and that you be placed on Community Control for a period of 24 MONTHS under the supervision of the Department of Corrections”). Mr. Rivers testified to his confusion about the language on the order, that he did not believe his being on community control disqualified him from voting, and that he continued to believe he was eligible to vote at the time of the election. *E.g.*, T-203, T-220–21.

dozens of returning citizens for allegedly registering to vote or voting while ineligible.<sup>16</sup> Publicly available evidence—including police body-camera footage showing utter shock and confusion on the faces of individuals who have been charged—presents a unifying theme: Those charged made honest mistakes about their eligibility.<sup>17</sup> Most, if not all, of them, like Mr. Rivers, received a Card in the mail.<sup>18</sup> Several of them, also like Mr. Rivers, were told by a government

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<sup>16</sup> See Bianca Fortis, *A Government Official Helped Them Register. Now They've Been Charged with Voter Fraud*, ProPublica (July 21, 2022), <https://tinyurl.com/2p8dpehz>; Rhonda Sonnenberg, *Florida Sets Up Formerly Incarcerated People to Vote—Then Arrests Them*, S. Poverty L. Ctr. (Aug. 11, 2023), <https://www.splcenter.org/news/2023/08/11/florida-laws-criminalize-voting-returning-citizens>.

<sup>17</sup> Douglas Soule & Elena Barrera, *'How? What?' Body Camera Footage of 3 A.M. Florida Voter Fraud Arrest Shows Confusion*, USA Today Network (Oct. 17, 2023), <https://tinyurl.com/4ey8mbc4>; Sam Levine, *'What's This About?': Body-cam Footage Shows Confusion as Florida Man Arrested for Voter Fraud*, The Guardian (Sep. 1, 2022), <https://tinyurl.com/3pjxjsvn>; Lawrence Mower, *Police Cameras Show Confusion, Anger Over DeSantis' Voter Fraud Arrests*, Tampa Bay Times (Oct. 18, 2022), <https://tinyurl.com/57s3rf29>.

<sup>18</sup> Dixon, *supra* note 7; Levine, *supra* note 7; Tim Craig & Lori Rozsa, *Florida Let Them Vote. Then DeSantis's Election Police Arrested Them.*, Wash. Post (Sept. 4, 2022), <https://tinyurl.com/ycnfd4bf>.

official they could vote,<sup>19</sup> or did not learn about their ineligibility until long after they voted.<sup>20</sup>

Widespread confusion about voter eligibility, especially coupled with criminal consequences for even honest mistakes, results in the de facto disenfranchisement of untold numbers of would-be voters with felony convictions who are, in fact, eligible to vote.<sup>21</sup> And for those facing the worst of a broken system, like Mr. Rivers, it can yield criminal convictions for innocent conduct.

Due to bias in the criminal legal system, a disproportionate number of those affected by this de facto disenfranchisement are Black. Since the Office of Election Crimes and Security commenced

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<sup>19</sup> See, e.g., Aff. Supp. Prob. Cause ¶ 7, *State v. Washington*, No. 2022-CF-009611-A-O (Fla. 9th Cir. Ct. Aug. 17, 2022); Aff. Supp. Prob. Cause ¶ 8, *State v. Foster*, No. 2022-CF-009607-A-O (Fla. 9th Cir. Ct. Aug. 17, 2022); Levine, *supra* note 7; Fortis, *supra* note 15.

<sup>20</sup> See, e.g., Mary Ellen Klas et al., *Cases Against Arrested Voters on Shaky Legal Ground. Florida Issued Them Voter IDs*, Mia. Herald (Aug. 31, 2022), <https://tinyurl.com/389d2b95>; Dixon, *supra* note 7.

<sup>21</sup> Ernest Drucker & Ricardo Barreras, *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio*, The Sentencing Project, at 9 (2005) (finding that, among a sample of people with felony convictions in New York and Connecticut, 44.3 percent believed that they could not vote or did not know if they could vote).

operations in July 2022, it has largely focused its resources on pursuing Black returning citizens who were confused or misled about their eligibility.<sup>22</sup> Prosecutions of returning citizens will continue to harm Black voters disproportionately. Because of persistent discrimination in the criminal legal system, approximately one in eight Black Floridians is disenfranchised, a rate roughly twice that of non-Black Floridians.<sup>23</sup> That disparity further compounds the injustice perpetrated by the State’s confusing elections regime and prosecution of returning citizens.

\* \* \*

For all these reasons, the State should proceed with caution in pursuing returning citizens for elections crimes. The impact of unjustified prosecutions—especially ones premised on innocent mistakes in eligibility—reverberates throughout Florida. Mr. Rivers’

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<sup>22</sup> Wayne Washington, *Voter Intimidation? Black Voters Over-Represented Among Those Arrested So Far for Election Crimes*, Palm Beach Post (Oct. 10, 2022), <https://tinyurl.com/36bp627e>.

<sup>23</sup> *Florida Bans Voting Rights of Over One Million Citizens*, Sent’g Proj. (Jan. 2023), <https://tinyurl.com/5n6fnkfw>.



case presents a textbook example, and his conviction should not stand.

### **CONCLUSION**

The Court should vacate Mr. Rivers' conviction.

Dated November 16, 2023.

Respectfully submitted,

**ACLU FOUNDATION OF  
FLORIDA, INC.**

/s/ Nicholas L.V. Warren

Caroline A. McNamara (FBN  
1038312)  
Daniel B. Tilley (FBN 102882)  
4343 W Flagler St, Suite 400  
Miami, FL 33138  
(786) 363-2714  
cmcnamara@aclufl.org  
dtilley@aclufl.org

Nicholas L.V. Warren (FBN  
1019018)  
1809 Art Museum Drive, Suite  
203  
Jacksonville, FL 32207  
(786) 363-1769  
nwarren@aclufl.org

**O'MELVENY & MYERS LLP**

/s/ Andrew Frackman

Andrew Frackman (*pro hac vice*  
pending)  
Danielle Feuer (*pro hac vice*  
pending)  
Harrison Meyer (*pro hac vice*  
pending)  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
(212) 326-2000  
afrackman@omm.com  
dfeuer@omm.com  
hmeyer@omm.com

Patrick Jones (*pro hac vice*  
pending)  
O'Melveny & Myers LLP  
1625 Eye Street NW  
Washington, DC 20006  
(202) 383-5300  
pjones@omm.com

*Counsel for Amici Curiae*

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY, under Florida Rule of Appellate Procedure 9.045(e), that this Brief complies with the applicable font and word-count requirements. It was prepared in Bookman Old Style 14-Point font, and it contains 4,774 words.

/s/ Nicholas L.V. Warren  
Nicholas L.V. Warren

Dated: November 16, 2023

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 16, 2023, a true and correct copy of the foregoing will be furnished via the Florida Court's E-Filing Portal to:

**Jessica J. Yeary**  
**Public Defender**  
**Second Judicial Circuit**  
Justin F. Karpf  
Leon County Courthouse  
301 S. Monroe St., Ste. 401  
Tallahassee, FL 32301  
(850) 606-8500  
justin.karpf@flpd2.com

*Counsel for Appellant*

**Office of the Attorney General**  
Trisha Meggs Pate  
David Welch  
The Capitol, PL-01  
Tallahassee, Florida 32399  
(850) 414-3300  
trisha.pate@myfloridalegal.com  
david.welch@myfloridalegal.com

*Counsel for Appellee*

/s/ Nicholas L.V. Warren  
Nicholas L.V. Warren