IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TREVA THOMPSON, *et al.*, Plaintiffs, v. JOHN H. MERRILL, in his official capacity as Secretary of State, *et al.*, Defendants.	)	CIVIL ACTION NO. **2:16-cv-783-ECM-SMD**

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' EIGHTH AMENDMENT CLAIMS AND RESPONSE TO DEFENDANTS' EVIDENTIARY OBJECTIONS

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INTRODUCTION

Pending before the Court is the Defendants' motion for summary judgment, Doc. 261, which was due to be fully briefed on October 13, 2020. In their reply brief however, Defendants raised a variety of objections to certain of Plaintiffs' evidentiary submissions and sought to remove for summary judgment on Plaintiffs' Eighth Amendment claim based on their misunderstanding of controlling Eighth Amendment law. Reply Br., Doc. 274. On October 15, 2020, this Court ordered Plaintiffs to respond to Defendants' evidentiary objections and to the new arguments raised by Defendants with respect to Plaintiffs' Eighth Amendment claim. Order, Doc. 278. The Court should deny Defendants' supplemental motion for summary judgment because there are genuine disputes of material fact at issue with respect to Plaintiffs' Eighth Amendment Claim, such that summary judgment is improper. Further, the Court should overrule Defendants' evidentiary objections because they are groundless.

ARGUMENT

I. Genuine Disputes of Material Fact Preclude Summary Judgment on Plaintiffs' Eighth Amendment Claim.

Summary judgment is improper on Plaintiffs' Eighth Amendment cause of action. As stated in Plaintiffs' prior response brief, genuine disputes of material fact remain concerning whether Alabama's felony disenfranchisement scheme amounts to punishment. *See* Doc. 268 at 24–33. In addition, there are also genuine disputes of material fact concerning Defendants' new arguments that Alabama's Certificates of Eligibility to Register to Vote ("CERV") process under Ala. Code § 15-22-36.1 supports the conclusion that felony disenfranchisement serves legitimate penological goals of rehabilitation and retribution. *See* Doc. 274 at 36–37. Resolving these disputes in Plaintiffs' favor, as the Court must, demonstrates that Alabama's lifetime disenfranchisement

scheme is inherently disproportionate and categorically violates the Eighth Amendment. As such, Defendants' second motion for summary judgment should be denied.

A. Standard of Review

Summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Strickland v. Norfolk S. Ry. Co.*, 692 F.3d 1151, 1154 (11th Cir. 2012). Under Rule 56, "a party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, . . . or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). In examining whether Defendants have carried this burden, the Court is "required to resolve all reasonable inferences and facts in a light most favorable to" Plaintiffs as "the nonmoving party." *Sauls v. Pierce Cty. Sch. Dist.*, 399 F.3d 1279, 1283 (11th Cir. 2005) (citation omitted).

B. Defendants Are Not Entitled to Summary Judgment on Plaintiffs' Eighth Amendment Cruel and Unusual Punishment Claim.

As Plaintiffs have fully argued in their previous opposition brief, *see* Doc. 268 at 24–33, Alabama's lifetime disenfranchisement is a punitive measure subject to the Eighth Amendment, which proscribes "cruel and unusual punishment," U.S. Const. amend. VIII. The Eighth Amendment "guards against abuses of government's punitive or criminal-law-enforcement authority." *Timbs v. Indiana*, 139 S. Ct. 682, 686 (2019). It expresses "the duty of the government to respect the dignity of all persons," *Hall v. Florida*, 572 U.S. 701, 708 (2014), by "succinctly prohibit[ing] 'excessive' sanctions," and requiring that "punishment for crime should be graduated and proportioned to [the] offense," *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (citation omitted). This admonition requires "look[ing] beyond historical conceptions" of punishment to instead consider "the evolving standards

of decency that mark the progress of a maturing society." *Graham v. Florida*, 560 U.S. 48, 58 (2010) (quoting *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)). Thus, evaluation of an Eighth Amendment claim "is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change." *Id.* (citation omitted).

Alabama's permanent and extensive disenfranchisement punishment violates these evolving principles and is categorically disproportionate. Lifetime deprivation of voting rights constitutes cruel and unusual punishment because it excessively revokes the "citizen's link to his laws and government" and eliminates the primary means of "protect[ing] . . . all fundamental rights and privileges." *See Evans v. Cornman*, 398 U.S. 419, 422 (1970). When a category of citizens are disenfranchised for life, they becomes "severed from the body politic and condemned to the lowest form of citizenship," and "must sit idly by while others elect [their] civic leaders and while others choose the fiscal and governmental policies which will govern [them] and [their] family." *McLaughlin v. City of Canton*, 947 F. Supp. 954, 971 (S.D. Miss. 1995). Such a severe punitive measure is tantamount to civil death and cruelly relegates a subset of society to second-class status in a way that far exceeds what may be deemed proportional punishment under the Eighth Amendment. *See Trop v. Dulles*, 356 U.S. 92, 99–100 (1958) (plurality op.).

Plaintiffs incorporate by reference their prior Eighth Amendment arguments against summary judgment, *see* Doc. 268 at 43–56, and provide additional responses to Defendants' contentions pursuant to the Court's October 15, 2020 Order, *see* Doc. 278. Resolving the remaining factual disputes concerning disenfranchisement as punishment and Defendants' CERV process rehabilitation and retribution justifications in Plaintiffs' favor, Alabama's particular disenfranchisement punishment—permanently depriving citizens of the right to vote due to conviction for one of a long list of disenfranchising crimes and without regard for the individual facts of an offense—categorically violates the Eighth Amendment.

1. Alabama's Disenfranchisement Scheme Is Categorically Cruel and Unusual Punishment.

In an Eighth Amendment challenge to "a sentencing practice itself" that "applies to an entire class of offenders who have committed a range of crimes," the Court employs the two-part test from *Graham v. Florida*, 560 U.S. 48, 61 (2010). First, the Court "considers objective indicia of society's standards, as expressed in legislative enactments and state practice, to determine whether there is a national consensus against the sentencing practice at issue." *Id.* (citation and internal quotation marks omitted). Second, "the Court must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution." *Id.* (citations and internal quotation marks omitted). This analysis must not be "fastened to the obsolete" of decades-old practices because the Eighth Amendment "acquire[s] meaning as public opinion becomes enlightened by a humane justice." *Hall*, 134 S. Ct. at 1992. The Court also "considers whether the challenged sentencing practice serves legitimate penological goals"; if the punishment is "lacking any legitimate penological justification" it "is by its nature disproportionate to the offense." *Graham*, 560 U.S. at 67, 71 (citations omitted).

i. An Unmistakable Consensus of Other Jurisdictions Has Disavowed Lifetime Disenfranchisement Punishment.

Alabama's lifetime disenfranchisement punishment stands in stark contrast to the overwhelming and growing consensus of States and other jurisdictions abandoning this punitive practice. *See* Doc. 268 at 47–49. Failing to "provide any data of its own" to attempt to disprove this point, *see Graham*, 560 U.S. at 63, Defendants instead urge the Court to bypass the consensus analysis altogether and skip to part two of the *Graham* test to "render[] any dispute about consensus within or without the country's borders non-material," *see* Doc. 274 at 34. Tellingly, Defendants make this invitation without citing any authority for support and despite their own recognition that the "*Graham* 'analysis begins with objective indicia of national consensus.'" *Id.* at 32 (citing *Graham*, 560 U.S. at

62). The Supreme Court has repeatedly stated in no uncertain terms that evidence of "[c]ommunity consensus" against a sentencing practice within the United States is "entitled to great weight" in the Eighth Amendment analysis. *Graham*, 560 U.S. at 67 (quoting *Kennedy v. Louisiana*, 554 U.S. 407, 434 (2008)). Thus, the Court should reject Defendants' request to short-circuit the *Graham* analysis in their attempt to avoid addressing the uncomfortable reality that Alabama's lifetime disenfranchisement is an outlier across numerous points of analysis.

First, the unidirectional state legislative movement across the country in recent years shows a clear consensus against lifetime disenfranchisement punishment. "The 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'" *Graham*, 560 U.S. at 62 (quoting *Atkins*, 536 U.S. at 312). A "national consensus" may be present even if there is "divided opinion but, on balance, an opinion against" the challenged practice. *Kennedy*, 554 U.S. at 426; *see also Miller v. Alabama*, 567 U.S. 460, 480-83 (2012) (rejecting argument that there was no "national consensus" against mandatory sentences of life without parole for juveniles despite fact that twenty-nine jurisdictions allowed such sentences); *Atkins*, 536 U.S. at 314–16 (finding national consensus where thirty states rejected the punishment of executing individuals with intellectual disabilities); *Roper v. Simmons*, 543 U.S. 551, 564 (2005) (finding "evidence of national consensus against the death penalty for juveniles" despite the fact that twenty states lacked a prohibition on executing juveniles).

Here, legislative enactments show an unmistakable national consensus against Alabama's lifetime disenfranchisement for a litany of different convictions with drastically divergent levels of culpability. According to a recent and authoritative report from The Sentencing Project,[1] only

[1] Defendants have previously objected to Plaintiffs reliance on third-party compilations of state laws. For the reasons addressed more fulsomely below, *see infra* Part II, these objections are groundless because the evidence contained in these publicly available sources, including data from governmental sources and the laws governing felony disenfranchisement in each state, can be

ten states other than Alabama "continue to deny voting rights to some or all of the individuals who have successfully fulfilled their prison, parole, or probation sentences." Christopher Uggen et al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, THE SENTENCING PROJECT (Oct. 14, 2020), Ex. 1 at 6. Even within that circumscribed list, Alabama is one of only eight states that permanently disenfranchises its citizens for at least some crimes and is even more of an outlier for its lengthy list of disenfranchising offenses. *See* Docs. 268–24 at 2–4, 268–25 at 2–3, 268–25 at 7–8. The overwhelming majority of states do not disenfranchise their citizens after they have completed their period of supervised release. Ex. 1 at 5.

Second, the national trend is undoubtedly in the opposite direction of Alabama. As the Eleventh Circuit panel emphasized in *Jones*, "[i]n the past two decades, nearly half of the states have in some way expanded felons' access to the franchise." 950 F.3d at 801; *see id.* at n.1 (collecting state laws expanding voting rights for formerly incarcerated individuals). Eleven states and the District of Columbia have collectively restored suffrage rights to over one million previously disenfranchised citizens since 2016. *See* Docs. 268–27 at 2, 268–25 at 5. And in recent months, the Governors of Iowa and Kentucky have both acted to restore voting rights for thousands of individuals previously barred from voting. *See* Ex. 2 (Iowa Order); Ex. 3 (Kentucky Order). This "consistency of the direction of change" provides "powerful evidence" of a national

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determined accurately and readily from sources whose accuracy cannot reasonably be questioned. As such, the information contained within these sources is judicially noticeable pursuant to Fed. R. Evid. 201. Indeed, the Eleventh Circuit and district courts within this Circuit have repeatedly considered Sentencing Project reports as a reliable source for sentencing trends, including involving felony disenfranchisement. *See, e.g.*, *Jones v. Governor of Fla.*, 950 F.3d 795, 801 n.1 (11th Cir. 2020), *abrogated on other grounds in* 2020 WL 5493770 (11th Cir. Sept. 11, 2020) (en banc); *Johnson v. Governor of Fla.*, 353 F.3d 1287, 1302 n.16 (11th Cir. 2003), *vacated on other grounds by* 377 F.3d 1163 (11th Cir. 2004) (*en banc*); *United States v. Griffin*, 730 F.3d 1252, 1255 (11th Cir. 2013) (Barkett, J., dissenting from denial of rehearing en banc); *Hand v. Scott*, 285 F. Supp. 3d 1289, 1310 nn.19–20 (N.D. Fla. 2018), *vacated on other grounds by Hand v. Desantis*, 946 F.3d 1272 (11th Cir. 2020). Thus, Defendants' evidentiary objections to these reports are without merit.

consensus against Alabama's permanent disenfranchisement punishment, particularly given "the well-known fact that anti-crime legislation is far more popular than legislation providing protections for [convicted] persons." *Atkins*, 536 U.S. at 315.

Third, in measuring consensus, courts must look to evidence other than just legislation, including "[a]ctual sentencing practices" across jurisdictions. *See Graham*, 560 U.S. at 62. This factor also weighs against Alabama's use of disenfranchisement as punishment. In terms of both percentage of voting age population and raw numbers, Alabama permanently disenfranchises more of its otherwise eligible citizens than all but two states. Alabama disenfranchises an estimated 328,198 otherwise eligible individuals based on a prior felony conviction. Ex. 1 at 16. It is one of just three states that disenfranchises "more than 8 percent of the adult population, one of every thirteen people." *Id.* at 4. Furthermore, the CERV process has done little to reduce these high disenfranchisement totals, lagging far behind the practices of the consensus of other States. *Id.* at 14. Since 2016, Alabama has relieved its harsh disenfranchising penalty for only 3,493 citizens—a trivial amount compared to the 45,376 Iowans, 181,361 Kentuckians, and 195,371 Virginians who have had this punishment lifted during the same period. *Id.* Moreover, Alabama is also an outlier when it comes race and disenfranchisement. The most recent data shows that "more than one in seven African Americans is disenfranchised" in Alabama, which is "twice the national average for African Americans." *Id.* at 4.

Finally, the Supreme Court instructs courts to "look[] beyond our Nation's borders for support . . . that a particular punishment is cruel and unusual." *Graham*, 560 U.S. at 80 (collecting cases). Although not dispositive, the near-uniform consensus "within the world community" against lifetime disenfranchisement also favors Plaintiffs. *See Atkins*, 536 U.S. at 316 n.21. As Plaintiffs previously argued, with only one notable exception the United States is the only

industrial nation that denies citizens convicted of certain crimes their voting rights for life, and the United Nations has unequivocally denounced this punitive practice. Doc. 268 at 48–49. Moreover, numerous constitutional courts in Europe, Canada, Australia, and South Africa have in recent years curtailed laws that punish citizens with disenfranchisement. *See* Docs. 268–28, 268–29, 268–30, 268–31. The global community has consistently disavowed lifetime disenfranchisement punishment, leaving behind the United States in general and Alabama in particular as a world outlier.

In sum, disenfranchisement as a punishment for a felony conviction is a "practice rejected the world over." *See Graham*, 560 U.S. at 80. That Alabama is part of a diminishing minority of jurisdictions in the United States that have held onto this form of punishment supports a finding that lifetime disenfranchisement violates the Eighth Amendment. Such an overwhelming national and international consensus and the "consistency of the direction of change" against disenfranchisement provides "the clearest and most reliable objective evidence of contemporary values" and Alabama's failure to meet evolving standards of decency by continuing to punish its citizens with lifetime disenfranchisement. *See Atkins*, 536 U.S. at 312, 315.

ii. Lifetime Disenfranchisement Punishment Violates the Constitution and Serves No Legitimate Punitive Interests.

In addition to giving "great weight" to the overwhelming national consensus against Alabama's lifetime disenfranchisement punishment, the court must "determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution." *Graham*, 560 U.S. at 61, 67. The Court makes this judgment by considering the "culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question" and looking to "whether the challenged sentencing practice serves legitimate penological goals." *Graham*, 560 U.S. at 67 (citation omitted). Because the Eighth Amendment is governed by "the norms that

currently prevail," the Court must heed the reality that a punishment deemed constitutionally permissible decades ago might nevertheless violate the Eighth Amendment today. *See Kennedy*, 554 U.S. at 419. Both analyses support the conclusion that Alabama's lifetime disenfranchisement punishment violates the Eighth Amendment.

a. The Severity of the Penalty Is Grossly Disproportionate to the Culpability of the Offenders.

Alabama's harsh, lifetime disenfranchisement punishment for a range of qualifying offenses with wide variances in levels of culpability is precisely the type of punitive measure prohibited under the Eighth Amendment's proportionality principle. *See Miller*, 567 U.S. at 470 (stating that "categorical bans on sentencing practices" involve "mismatches between the culpability of a class of offenders and the severity of a penalty" (citing *Graham*, 560 U.S. at 60–61)). Alabama criminal law, federal sentencing guidelines, and the criminal justice administrators that have adjudicated the gravity and characteristics of the individual plaintiffs' offenses in this case all establish that crimes demonstrating different degrees of blameworthiness should not receive the same degree of punishment. But Alabama's undifferentiated lifetime disenfranchisement disavows this precept of criminal law because it is excessively overinclusive of less serious crimes and underinclusive of more serious crimes that are nonetheless excluded from Alabama's severe voting punishment.

Alabama criminal law codifies the Eighth Amendment's proportionality principle by recognizing that more serious crimes must carry more severe terms of imprisonment and fines as compared to less serious crimes. *See* Ala. Code §§ 13A-5-6 (imprisonment), 13A-5-11 (fines). These gradations of punishment rely in part on the varying levels of culpability, with offenders who are deemed to have greater blameworthiness being subjected to worse criminal sanctions. *See id.* § 13A-2-2 (defining levels of culpability); *see also Ex parte Edwards*, 816 So. 2d 98, 105 (Ala.

2001) (discussing principle that "more severe punishment [is] available for" offenders who are viewed as "more culpable"). Federal sentencing guidelines adhere to this same principle. For example, the minor participant downward sentencing adjustment in conspiracy prosecutions is warranted "to cover defendants who are plainly among the least culpable of those involved in the conduct of a group." *United States v. Rodriguez De Varon*, 175 F.3d 930, 939 (11th Cir. 1999) (quoting U.S.S.G. § 3B1.1, comment. (n.1)). But Alabama's felony disenfranchisement punishment fails to observe these established Eighth Amendment principles because it sanctions different offenders having drastically different levels of culpability with the same harsh penalty.

Alabama's lifetime disenfranchisement is also categorically disproportionate because it punishes less serious but disqualifying crimes with a harsher penalty than more serious offenses not on Alabama's moral turpitude list. For example, more serious crimes that are not classified as involving moral turpitude in Alabama—such as second degree arson, a class B felony under Ala. Code § 13A-7-42—carry no disenfranchising sentence, whereas Plaintiff Thompson's less serious theft conviction in practice permanently disables her voting rights. Furthermore, citizens who have committed more serious public corruption offenses, including those specifically related to the electoral process, are not stripped of their voting rights, unlike the individual plaintiffs here. *Compare* Ala. Code §§ 36-25-7 (listing public corruption offenses), 26-25-27 (designating intentional public corruption violations as Class B felonies), 13A-5-6 (detailing incarceration penalties of up to twenty years in prison), 13A-5-11 (detailing substantial fines), *with* 16-3-30.1 (listing disenfranchising offenses).

Unlike other features of the criminal justice system that seek to calibrate punishment to the individual offender's relative culpability and the characteristics of the particular offenses at issue, Alabama's undifferentiated lifetime punishment of disenfranchisement for vastly differently

crimes constitutes "extreme sentences that are 'grossly disproportionate." *See Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (plurality op.) (quoting *Solem v. Helm*, 463 U.S. 277, 288 (1983)). Such a punitive scheme flouts the core Eighth Amendment principle that "[w]hatever interest the State may have in punishment, this interest is surely limited to a punishment that is applied in proportion to culpability." *See Jones*, 950 F.3d at 812. Accordingly, Alabama's lifetime disenfranchisement punishment categorically violates the Eighth Amendment because it is both under- and over-inclusive. Thus, considering the "culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question," *see Graham*, 560 U.S. at 67 (citation omitted), the Court should reject Defendants' summary judgment arguments.

b. Alabama's Lifetime Disenfranchisement Is Punishment That Serves No Penological Purposes.

Although disenfranchisement is punishment, *see* Doc. 268 at 32-41, Alabama's choice to impose *lifetime* disenfranchisement does not legitimately advance any recognized penological goals. *See Graham*, 560 U.S. at 71 ("A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense.").

"[N]one of the goals of penal sanctions that have been recognized as legitimate—retribution, deterrence, incapacitation, and rehabilitation—provides an adequate justification" here. *See Graham*, 560 U.S. at 71 (citing *Ewing v. California*, 538 U.S. 11, 25 (2003)).[2] Moreover, "[e]ven if the punishment has some connection to a valid penological goal" that Defendants

[2] Defendants also ask this Court to rule that Alabama's lifetime disenfranchisement punishment serves legitimate penological justifications based on their speculation that "the Supreme Court would recognize a different interest as satisfactory in light of the different nature of felon disenfranchisement." Doc. 274 at 37. Defendants cite no authority for this proposition, and none supports it. The Court is bound to follow Supreme Court precedent recognizing that retribution, deterrence, incapacitation, and rehabilitation are the pertinent goals of punishment under this analysis. *See Graham*, 560 U.S. at 71.

identify, they are still unable to "show[] that the punishment is not grossly disproportionate in light of the justification offered." *See id.* at 72.

First, Alabama's permanent disenfranchisement scheme serves no rehabilitative interest. The deprivation of citizen's voting rights is for life, and such a lifetime "penalty forswears altogether the rehabilitative ideal." *Id.* at 74. By determining that disenfranchised voters are to be excluded for life, either because of the nature of their crime or their ineligibility for, or inability to obtain a CERV, "the State makes an irrevocable judgment about that person's value and place in society." *See id.* Indeed, the message sent by the State in permanently excluding citizens from the franchise is that those individuals are beyond redemption.

Contrary to Defendants' argument, the CERV process does not alter this conclusion because that process conditions rights restoration on citizens' ability to pay rather than any measure of their rehabilitated condition. As recognized in the restitution context, setting a financial criminal penalty at an "amount the defendant cannot possibly pay . . . strongly detracts from any hope of rehabilitation for the defendant." *United States v. Fuentes*, 107 F.3d 1515, 1529 n.26 (11th Cir. 1997). In other words, under Alabama's CERV process, a wealthy person convicted of a disenfranchising crime who has otherwise done nothing to rehabilitate can relieve this punitive punishment while a poor but rehabilitated offender cannot do so. For example, because of their inability to pay, Plaintiffs Gamble and Thompson are unable to overcome the insurmountable barrier of paying off steep LFOs to meet CERV requirements, *see* Docs. 106–1 ¶¶ 9–10, 106–2 ¶¶ 9–10, and Plaintiffs King and Lanier are categorically barred from CERV eligibility, *see* Docs. 106–3 ¶¶ 3–5, 106–4 ¶¶ 3–4. As a result, lifetime disenfranchisement that can technically (for some) but not practically be relieved through the CERV process does not serve any interest in rehabilitation. At the very least, whether the CERV process actually provides meaningful relief for

a substantial number of Alabamians, given its financial conditions, is a disputed material fact that precludes entry of summary judgment for Defendants.

Second, pursuing retribution does not justify Alabama's lifetime disenfranchisement punishment. Retribution "reflects society's and the victim's interests in seeing that the offender is repaid for the hurt he caused." *Kennedy*, 554 U.S. at 442 (citations omitted). But "the heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *Graham*, 560 U.S. at 71 (citation omitted); *see also Enmund v. Fla.*, 458 U.S. 782, 800 (1982) ("[R]etribution as a justification . . . very much depends on the degree of [the defendant's] culpability–what [the defendant's] intentions, expectations, and actions were."). Other states that tailor disenfranchisement to the length of a sentence might vindicate a reasonable retributive goal. *See, e.g.*, *Graham*, 560 U.S. at 72 (stating a tailoring requirement between the punitive justification offered and the punishment imposed). Alabama's lifetime disenfranchisement scheme lacks any relationship, much less a direct one, to the personal blameworthiness of the criminal offender because, as discussed above, it *permanently* deprives voting rights from people with a range of convictions for offenses that carry drastically differing levels of moral culpability.

Defendants contend that the possibility of a disenfranchised citizen having his or her punishment lifted through a pardon or the CERV process supports that retributivist goals underly Alabama's disenfranchisement scheme. *See* Doc. 274 at 32, 36–37. Neither of these arguments are persuasive. First, "the remote possibility of [receiving a pardon] does not mitigate the harshness of the sentence." *Graham*, 560 U.S. at 70 (citation omitted). While an individual may obtain the rare opportunity to have his or her disenfranchisement punishment relieved through the subjective pardon process, others who committed exactly the same crime with the same level of culpability

will likely not be so fortunate. Thus, the off chance of receiving a pardon in no way supports that Alabama's disenfranchising penalty serves retributivist goals. Second, similar to how the CERV process does not further a rehabilitative justification, it also fails to ensure that Alabama's disenfranchisement punishment achieves retributivist purposes. Instead, CERV effectively "punishes those who cannot pay more harshly than those who can" rather than punishing those with greater moral culpability more than those with less. *See Jones*, 950 F.3d at 807. In any event, Defendants' suggestion that the existence of avenues for relief from punishment through the pardon or CERV processes demonstrates that Alabama's disenfranchisement is justified by retributivist goals has not been borne out in reality. Indeed, under those avenues only 3,493 of Alabama's estimated 328,198 disenfranchised citizens have restored their voting rights in the last four years, a total of about one percent. *See* Ex. 1 at 14–16. And Plaintiffs' efforts to obtain pardons or CERVs have failed.

Defendants also suggest that lifetime disenfranchisement is justified because "murderers may receive the most serious forms of punishment" and Alabama's suffrage penalty is a fitting reprisal for that type of serious crime. Doc. 274 at 35. Yet the vast majority of permanently disenfranchised Alabamians are not murderers, but citizens who have committed much less serious offenses. These other crimes that count as disenfranchising convictions in Alabama "cannot be compared to murder in their severity and irrevocability." *See Graham*, 560 U.S. at 69 (citation and internal quotation marks omitted).[3] As such, Defendants' argument proves the opposite point: Alabama's system of categorically punishing individuals with the same harsh lifetime disenfranchisement cannot be justified by the core retributivist goal of tailoring punishment to the offenders' level of culpability.

[3] Moreover, Alabama does not impose lifetime imprisonment for all murder convictions; Plaintiff King served fifteen years in prison.

Third, Alabama's lifetime disenfranchisement does not meaningfully further any deterrence or incapacitation interest for the State. The touchstone of these two penological rationales is preventing recidivism, and the State undoubtedly has a legitimate purpose to reduce "serious risk to public safety." *Graham*, 560 U.S. at 72 (citing *Ewing*, 538 U.S. at 26). But by imposing *lifetime* disenfranchisement upon a single conviction, Alabama eliminates the possibility of disenfranchisement advancing a reduction in recidivism. Only if disenfranchisement *ends* could it serve such a purpose, because having regained the right to vote, on would be deterred by their experience of losing it to re-offend. But Alabama assumes that persons convicted of first-time offenses must be deemed "simply incapable of conforming to the norms of society as established by its criminal law." *See Ewing*, 538 U.S. at 29. That assumption is mistaken, and Defendants have put forward no indications that lifetime disenfranchisement punishment has any relationship to reducing recidivism or protecting public safety.

Moreover, most of the offenses listed as disenfranchising convictions in Section 17-3-30.1, and all of the convictions of the individual plaintiffs here, have nothing to do with elections or the political process, undercutting any deterrence rationale. In that respect, Alabama's system of lifetime disenfranchisement for certain crimes is cruel and unusual compared not just to other states and countries, but to *itself*. It is cruel and unusual for Alabama to permanently disenfranchise a person for a crime having nothing to do with the political process while allowing a politician convicted of public corruption to vote from prison and to continue voting for life. *See, e.g.*, *Jones.* 950 F.3d at 813 (emphasizing in Florida's felony disenfranchisement scheme that "the classification at issue is not . . . among groups of felons who have committed crimes that demonstrate that they are more hostile to democracy and the rule of law than are others").[4]

[4] To actually achieve deterrence or incapacitation goals, Alabama could instead follow the lead of several states that tailor their disenfranchisement punishment only for persons convicted of

By contrast, the experiences of numerous other States shows that permanent disenfranchisement aggravates instead of reduces recidivism and risks of harm to society. As nineteen States and the District of Columbia highlighted in the Florida disenfranchisement litigation, "reintegrating former felons as full-fledged, productive members of their societies" by eliminating disenfranchising penalties "promot[es] civic participation and public safety" and more effectively achieves deterrence and incapacitation objectives. *See* Ex. 4 at 14 (collecting sources). In Colorado, for example, the state legislature justified restoring voting rights to parolees because doing so would "help to develop and foster in these individuals the values of citizenship that will result in significant dividends to them and society as they resume their places in their communities." Colo. H.B. 19-1266 § 1(c) (2019). Legislators in Washington State likewise credited testimony that "restoration of the right to vote encourages offenders to reconnect with their community and become good citizens, thus reducing the risk of recidivism." Wash. H. Comm. on State Gov't & Tribal Affairs, Report on H.B. 1517, 2009 Reg. Sess., at 3 (2009).

Thus, participating in the political process "produces citizens with a generalized sense of efficacy, who believe that they have a stake in the political system," which, "in turn, fosters continued political participation" and diminished criminal conduct. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 198 (2004) (analyzing study of 1,000 individuals showing correlation between civic participation and reduced rates of criminality). Accordingly, allowing citizens with prior convictions to vote can foster prosocial behavior and integration into society through their endorsement of the political process, thereby better serving the State's penological objectives centered on reducing recidivism.

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electoral-related crimes. *See, e.g.*, Md. Code Ann., Elec. Law § 2-103(b)(3) (permanently disenfranchising only those convicted of buying and selling votes).

Defendants attempt to bolster their incapacitation argument by relying on *Green v. Bd. of Elections of City of New York*, 380 F.2d 445 (2d Cir. 1967). *See* Doc. 274 at 35. Defendants' reliance on *Green* is unfounded for numerous reasons. First, the language Defendants cite from *Green* concerns the Second Circuit's analysis of the plaintiff's Equal Protection Clause claim, which the court discusses wholly apart from its Eighth Amendment analysis. *See* 380 F.2d at 451–52. Second, the decision's Eighth Amendment ruling turns in part on the conclusion that "the framers of the Bill of Rights would not have regarded [the punishment] as cruel and unusual" and considerations of the John Locke's theory of punishment. *See id.* at 450–51. But this mode of analysis is inconsistent with modern Eighth Amendment jurisprudence, which this Court has recognized requires evaluating modern practices that represent "evolving standards of decency that mark the progress of a maturing society." *Washington v. Dep't of Corr.*, No. 2:17-CV-764-ECM, 2019 WL 2583089, at *4 (M.D. Ala. June 21, 2019) (quoting *Thomas v. Bryant*, 614 F.3d 1288, 1304 (11th Cir. 2010)). Third, the Second Circuit's Eighth Amendment analysis considered the fact that in 1967, forty-two States had disenfranchisement laws similar to the challenged New York statute. *Green*, 380 F.2d at 450 & n.6. As discussed *supra* Part I.B.1.i, the trend has reversed and the overwhelming majority of States today do not maintain disenfranchisement punishments similar to Alabama. Fourth, the facts of the case involved the disenfranchisement of a communist conspirator who violated a law "designed to prevent violent overthrow of the government" and who was held in contempt for "refusing for four and a half years to obey" a Supreme Court order while on the run from authorities, *id.* at 452, a far cry from the types of convictions that are punished with disenfranchisement in Alabama, *see* Ala. Code § 17-3-30.1. In sum, it is unclear how a fifty-year-old, non-precedential case that applied an erroneous Eighth Amendment analysis to determine the province of disenfranchising "mafiosi" and communists conspirators attempting

to overthrow the government supports the State's incapacitation interest or has any bearing on whether Alabama's lifetime disenfranchisement constitutes cruel and unusual punishment.

Even setting *Green* aside, the Court must still reject Defendants' arguments that lifetime disenfranchisement serves incapacitation interests because it "protect[s] the ballot box" from persons with convictions by preventing them from voting to influence elections for district attorneys, judges, sheriffs, or Attorneys General. *See* Doc. 274 at 35. This is not a legitimate penological interest. Instead, Defendants "protect the ballot box" rationale is flatly "constitutionally impermissible" because it attempts to "[f]enc[e] out from the franchise a sector of the population because of the way they may vote." *See Carrington v. Rash*, 380 U.S. 89, 94 (1965); *see also Dunn v. Blumstein*, 405 U.S. 330, 355–56 (1972) (reinforcing that a state determining voter eligibility by considering how a group of individuals may vote is a "constitutionally impermissible reason for depriving them of their chance to influence the electoral vote" (citation omitted); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 668 (1966) (prohibiting voter qualification that "is not germane to one's ability to participate intelligently in the electoral process"). Indeed, under federal law, citizens cannot be denied the right to vote because of "failure to comply with any test or device," including "any requirement that a person as a prerequisite for voting or registration for voting . . . possess good moral character." *See* 52 U.S.C. § 10501. Thus, Defendants argument that criminal disenfranchisement is justified by a need to safeguard the ballot box is constitutionally and statutorily prohibited; it is more akin to "a bare . . . desire to harm a politically unpopular group [that] cannot constitute a legitimate governmental interest," much less a legitimate penological purpose. *See U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

2. Defendants' Contention that Plaintiffs' Eighth Amendment Arguments Render the Constitution "Internally Inconsistent" Is Meritless.

As Plaintiffs detailed in their prior opposition brief, *see* Doc. 268 at 55–56, the Court should reject Defendants' logically unsound "internally inconsistent" argument. Accepting this argument would violate the Supreme Court's unambiguous rule that constitutional "provisions that grant Congress or the States specific power to legislate in certain areas . . . are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution." *Williams v. Rhodes*, 393 U.S. 23, 29 (1968). That the Supreme Court has interpreted Section 2 of the Fourteenth Amendment to condone felon disenfranchisement does not mean it is free from constitutional restraint. A contrary interpretation would turn constitutional law on its head and countenance the absurd results that Plaintiffs previously described. *See* Doc. 268 at 56.

II. Defendants' evidentiary objections are groundless and due to be overruled.

The evidentiary objections scattered throughout Defendants' reply brief are groundless and should be overruled. The evidence relied on by Plaintiffs is admissible and was timely disclosed to Defendants. Further, at the summary judgment stage, evidence may be "submitted in inadmissible form . . . though at trial it must be submitted in admissible form," *McMillian v. Johnson*, 88 F.3d 1573, 1584 (11th Cir. 1996), and all of the evidence relied on by Plaintiffs in their response easily meets that standard. Finally, "[t]he court's role at the summary-judgment stage is not to weigh the evidence or to determine the truth of the matter, but to assess whether a genuine issue exists for trial." *Van Meter v. City of Lannett*, Ala., 504 F. Supp. 1229, 1230 (M.D. Al. 2007). The evidence submitted by Plaintiffs demonstrates that genuine issues of fact exist for trial and that summary judgment is therefore precluded.

Plaintiffs address each of Defendants' objections in turn.

First, Defendants object to the law review article Plaintiffs introduce in a footnote 4. Doc. 268 at 6: Julia Ann Simon-Kerr, *Moral Turpitude*, UTAH L. REV.. 1001 (2012). Defendants contend the article is inadmissible because Plaintiffs did not disclose Simon-Kerr as an expert and did not disclose her law review article during discovery. Doc. 274 at 6. True enough. Plaintiffs did not disclose Simon-Kerr as an expert because they do not intend to rely on her as such. And, it was Defendants who disclosed the Simon-Kerr article during discovery. Indeed, Defendants' own expert Dr. David T. Beito relied on the Simon-Kerr article in offering his opinion that disenfranchisement for offenses of moral turpitude "has a very long history." *See* Beito Dep. at 56:10-57:4; *see also* Doc. 257-1 at 18 ("American politicians and journalists used the term moral turpitude as early as the late eighteenth century to characterize acts of betrayal, disloyalty, and financial fraud."); *id*. at 18 n.56 (citing Julia Ann Simon-Kerr, *Moral Turpitude*, UTAH L. REV. 1001, 1018, 1022 (2012)); 19, n.59 (same, citing pages 1048, 1052). Thus, the article could be submitted in admissible form at trial under Fed. R. Evid. 803(18) as statements in a learned treatise called to the attention of an expert witness on cross-examination. Finally, as Defendants' expert has relied on passages from the article to support his opinions, Fed. R. Evid. 106 warrants admission of Plaintiffs' reference in order to provide necessary context to contradict Dr. Beito's characterization of the article. And Plaintiffs' historical experts should certainly be permitted to rely on the article in rebuttal. The objection should be overruled.

Second, Defendants object to Plaintiffs' introduction of data compiled by the Vera Institute of Justice and the Sentencing Project by claiming that it is hearsay evidence that is not subject to cross-examination. Doc. 274 at 13. But the data compiled in both the Vera Institute of Justice report and the Sentencing Project report comes directly and exclusively from the U.S. Bureau of Justice Statistics and the U.S. Census Bureau, or from Alabama itself. *See* Vera Institute of Justice,

Incarceration Trends in Alabama (Dec. 2019) at 4, https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-alabama.pdf; *see also* Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT (Jun. 14, 2016) at 14, https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/. Official data from United States governmental agencies is admissible under the public records exception to hearsay. Fed. R. Evid. 803(8). Defendants cannot show that these records otherwise indicate a lack of trustworthiness and therefore the data pulled directly from these records and cited accordingly in the reports is exempt from exclusion as hearsay. To the extent that any data was obtained directly from Alabama, it is admissible as an opposing party's statement under Fed. R. Evid. 801(d)(2) and as such is not hearsay. Furthermore, Plaintiffs are entitled to call the data compiled in these reports to the attention of Defendants' experts and to cross-examine them on it at trial, Fed. R. Evid. 803(18)(A), and thus their reliance on it here is timely, and can be considered by the Court on summary judgment. The objection should be overruled.

Third, Defendants object to Plaintiffs' reliance on the work of Donald Strong. Doc. 274 at 14. Defendants acknowledge that Dr. Strong's writings are exempt from exclusion as hearsay by virtue of being an ancient document under Fed. R. Evid. 803(16). When a document is exempted from exclusion as hearsay under Fed. R. Evid. 803(16), the party opposing admission can only argue for its exclusion by refuting the document's authenticity, which Defendants failed to do. Instead, Defendants contend that Plaintiffs' reliance on publicly available, admissible, and timely disclosed evidence is tantamount to introducing an *untimely* and *undisclosed* expert witness. This argument is frivolous. Plaintiffs do not seek to call Dr. Strong as an expert witness. Fed. R. Civ.

P. 26(a)(2)(B) only requires the disclosure of experts when the expert is "retained or specially employed to provide expert testimony" or "one whose duties as the party's employee regularly involve giving expert testimony." Dr. Strong does not satisfy either of these requirements. Further, Dr. Strong's work was cited in Dr. Peyton McCrary's timely disclosed expert report, Doc. 270-4 at 18, and thus Plaintiffs' reliance on it is not untimely. Nor do Defendants contend that Dr. Strong's work presents facts and data on which experts in the field would not reasonably rely, such that it is inadmissible as basis for Dr. McCrary's report under Fed. R. Evid. 703. The objection should be overruled.

Fourth, Defendants object to Plaintiffs' introduction of *Gooden v. Worley* complaint as hearsay, to the extent it is being offered to prove the truth of the allegations asserted. Doc. 274 at 14. However, the complaint in *Gooden v. Worley* is offered not for the truth of the allegations asserted but rather as evidence that Defendants were on notice that their failure to define which crimes involve moral turpitude caused sustained confusion about the phrase's meaning and a lack of uniformity in its application. Thus, it is not hearsay. *See* Fed. R. Evid. 801(c)(2). Furthermore, the *Gooden v. Worley* complaint is a publicly available document that was served on Defendants' predecessors and thus can be presumed to be in Defendants' possession. As such, Plaintiffs' introduction of the complaint is not untimely.

Fifth, Defendants object to Plaintiffs' reliance on official communications from Griffin Sikes, made during his tenure as the Director of the Alabama Administrative Office of the Court. Doc. 274 at 15. Mr. Sikes can be called to testify to this evidence at trial, and thus it is properly before the court on summary judgment. Further, Mr. Sikes was the Director of the Alabama Administrative Office of the Court, and as such was an employee of the State. Mr. Sikes's communications while he served in that capacity are therefore public records excepted from

exclusion as hearsay pursuant to Fed. R. Evid. 803(8). Finally, any objections to the weight of the communications from Mr. Sikes are not relevant at the summary judgment stage. The objection should be overruled.

Sixth, Defendants object to Plaintiffs' introduction of a law review article by Richard M. Re & Christopher M. Re, *Voting and Vice: Criminal Disenfranchisement and the Reconstruction Amendments*, 121 YALE L. J. 1584 (2012) as hearsay. Doc. 274 at 16-17. Defendants do not object to the introduction of a January 29, 1866 statement by Representative John Bingham as quoted in the article, *see* Doc. 274 at 17,[5] but only to the authors' characterization of Representative Bingham. Even then, Defendants objections appear to go to the weight of the evidence, rather than its admissibility. *See id.* Defendants have not shown that the articles' characterization of Representative Bingham are not supported by sufficient guarantees of trustworthiness (indeed they admit the characterization is accurate, though they dispute the relevance) or that it is not more probative than other evidence Plaintiffs can reasonably obtain. As such, the Re article is admissible under Fed. R. Evid. 807. The objection should be overruled.

Seventh, Defendants object to Plaintiffs' introduction of the Campaign Legal Center letter to Morgan County as hearsay. Doc. 275 at 15. First, the letter and accompanying documents are exceptions to hearsay as records of regularly conducted activity by Campaign Legal Center

[5] Nor could they reasonably do so. As indicated in Plaintiffs' parenthetical citation, and acknowledged by Defendants, the quote from Richard and Christopher Re's law review article, *Voting and Vice: Criminal Disenfranchisement and the Reconstruction Amendments*, comes directly from the Congressional Globe. *See* Doc. 268 at 34-35. Statements reported in the Congressional Globe—the official record of the proceedings and debates of the 23rd through 42nd United States Congresses—meet the public records exception to hearsay under Fed. R. Evid. 803(8). The quote also meets the exception to hearsay under Fed. R. Evid. 807(a)(1) because it is supported by sufficient guarantees of trustworthiness and more probative of the intent underlying the disenfranchisement provision of the 1868 Readmission Act than any other evidence Plaintiffs can obtain through reasonable efforts.

pursuant to Fed. R. Evid. 803(6). In addition, Defendants have not explained how Plaintiffs will be unable to present this evidence in an admissible form at trial. Even if Plaintiffs are unable to introduce the letter itself, Plaintiffs disclosed the Morgan County Board of Registrars as a potential witness in their initial disclosures, and thus the Board can be called to testify to the truth of the allegations contained in the letter and the Board's response therein at trial. As such, the letter and accompanying documents meet the standard for consideration at the summary judgment stage. Finally, whether the letter and Morgan County's responsive documents demonstrate either the Secretary of State's failure to train registrars on the 2017 law or the law's racially discriminatory intent speak to the weight of the evidence, not its admissibility, and therefore is irrelevant. The objection should be overruled.

Eighth, Defendants appear to reserve the right to object should Plaintiffs call Representative Tony Harrison at trial. Doc. 274 at 19. This objection is premature and without merit. Plaintiffs reserve the right to respond to any objection raised by Defendants, should it become necessary, in the proper course.

Ninth, Defendants object to Plaintiffs' introduction of a statement made by Defendant Merrill on the grounds that the article quoting Defendant Merrill is hearsay. Doc. 274 at 20-21. First, Defendant Merrill's statements are not hearsay, because they are statements of a party opponent. Fed. R. Evid. 801(d)(2). Further, to the extent the article's quote of Defendant Merrill is determined to be hearsay, Plaintiffs would be more than happy to call Defendant Merrill to the stand to testify to the truth of the statements quoted in the article at trial, and as such the statements may be properly considered by the Court on summary judgment. But, to the extent Defendant Merrill is exempted from testimony at trial due to an asserted privilege, the statement is admissible as a statement against interest under Fed. R. Evid. 804(a)(1) and 804(b)(3) because it is directly

contrary to Defendants' position in this litigation and was made during the pendency of the same. Finally, the reporter's question is not introduced for the truth of the matter asserted in the question, but merely to provide context for the statement made by Defendant Merrill, which incorporates the question itself. As such, the question is not hearsay, and ought to be considered pursuant to Fed. R. Evid. 106. The objection should be overruled.

Tenth, Defendants object to Plaintiffs' introduction of a Washington Post article, Brittany Renee Mayes & Kate Rabinowitz, *Since 2016, 11 states and D.C. have expanded voting rights for the currently and formerly incarcerated*, WASHINGTON POST (Aug. 12, 2020). Doc. 274 at 33. Plaintiffs simply cite this article as a compilation of various states' voting rights laws, all of which are judicially noticeable, and Defendants fail to show that Plaintiffs will be unable to provide this evidence in an admissible form at trial. *See Church of Scientology Flag Serv. Org., Inc. v. City of Clearwater*, 2 F.3d 1514 (11th Cir.1993) (holding that "[e]ven if [the newspaper articles] would have been inadmissible at trial (and we do not hold that they would have been), such materials were appropriately submitted by the non-moving party in opposition to the motion for summary judgment"). The objection should be overruled.

Eleventh, Defendants broadly object to the following documents as hearsay and as not disclosed prior to the close of discovery: The Brennan Center, *Criminal Disenfranchisement Laws Across the United States* (Aug. 5, 2020), Exhibit 24, and Jean Chung, *Felony Disenfranchisement: A Primer*, THE SENTENCING PROJECT at 4 (June 27, 2019), Exhibit 25.[6] *See* Doc. 274 at 33. Again, however, Plaintiffs cite to these reports as compilations of the voting rights laws in each state. This

[6] Defendants also object to Exhibit 26, Christopher Uggen, Ryan Larson, and Sarah Shannon, *6.1 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, THE SENTENCING PROJECT (October 2016). Defendants are correct, however, that Plaintiffs did not actually rely on this document in their response. As such, although Plaintiffs contest the objection, they would consent to withdrawing the exhibit.

information can be determined accurately and readily from sources whose accuracy cannot reasonably be questioned. As such, the court may take judicial notice of the information contained within these sources pursuant to Fed. R. Evid. 201. Furthermore, state laws are public records subject to exception from exclusion under Fed. R. Evid. 803(8). Finally, even to the extent the reports are hearsay, Defendants have not shown why Plaintiffs will be unable to present this evidence in admissible form at trial. The objection should be overruled.

Twelfth, Defendants object to Plaintiffs' citation to two law review articles discussing felony disenfranchisement in an international context. Doc. 274 at 33. Sarah C. Grady, *Civil Death Is Different: An Examination of A Post-Graham Challenge to Felon Disenfranchisement Under the Eighth Amendment*, 102 J. CRIM. L. & CRIMINOLOGY 441 (2012); and Alec Ewald & Brandon Rottinghaus, *Criminal Disenfranchisement in an International Perspective* (2009). Like the previous articles, both sources simply provide compilations of international law with respect to felony disenfranchisement, which themselves can be determined accurately and readily from sources whose accuracy cannot reasonably be questioned. As such, the information contained within these sources is judicially noticeable pursuant to Fed. R. Evid. 201. And, again, Defendants have failed to show why Plaintiffs will be unable to present this evidence in admissible form at trial. The objection should be overruled.

Thirteenth, Defendants object to Plaintiffs' inclusion of a report from the United Nations Human Rights Commission as hearsay. Doc. 274 at 33. But United Nations commissions are "public office[s] or agenc[ies]" and their reports are public records under Fed. R. Evid. 803(8)(C). *See Chavez v. Carranza*, 413 F.Supp.2d 891, 903–905 (W.D. Tenn. 2005) (finding that report prepared by the United Nations Truth Commission "is admissible under Rule 803(8)(C)" because the commission "is a 'public office or agency' under the meaning of Rule 803(8)(C)"); *see also*

United States v. M'Biye, 655 F.2d 1240, 1242 (D.C. Cir. 1981) (same). Thus, the United Nations Human Rights Commission report is exempted from exclusion as hearsay under Fed. R. Evid. 803(8)(C). The objection should be overruled.

Fourteenth, Defendants object to Plaintiffs' inclusion of international court documents as inadmissible hearsay. Doc. 274 at 48. Whether or not these documents are admissible as evidence, the court is allowed to consider them under Fed. R. Civ. P. 44.1. "In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence." *Id*. The objection should be overruled.

Finally, Defendants have objected to several of the sources relied on by Plaintiffs on the grounds that these sources were not disclosed in discovery. This is not a proper evidentiary objection. Furthermore, each of the documents objected to is publicly available and equally accessible to Defendants as it is to Plaintiffs. As such, Plaintiffs were not under any obligation to disclose these materials to Defendants, and Defendants cannot assert any prejudice due to the purported lack of disclosure. *See Tequila Centinela, S.A. de C.V. v. Bacardi & Co. Ltd*., 242 F.R.D. 1, 11 (D.D.C. 2007) ("Typically, courts do not order discovery of public records which are equally accessible to all parties."); *Krause v. Buffalo & Erie Cty. Workforce Dev. Consortium, Inc.*, 425 F. Supp. 2d 352, 374–75 (W.D.N.Y. 2006) ("[D]iscovery need not be required of documents of public record which are equally accessible to all parties."); *SEC v. Samuel H. Sloan & Co.*, 369 F. Supp. 994, 995 (S.D.N.Y. 1973) ("The purpose of discovery is to enable a party to discover and inspect material information which by reason of an opponent's control, would otherwise be unavailable for judicial scrutiny."); *see also Hobson v. Mattis*, 2017 WL 11475404 at *7 (M.D. Tenn. Sept. 11, 2017) (collecting cases). Indeed, it is telling that Defendants have not alleged—nor could

they—any harm caused by Plaintiffs' reliance on these publicly available sources, nor have they cited any authority for the proposition that Plaintiffs had a duty to disclose them. Finally, even to the extent Plaintiffs had an obligation to disclose these publicly available documents, they have a right to supplement their disclosures up until trial to the extent they become aware of or come into possession of relevant information, *see* Fed. R. Civ. P. 26(e). As such, the proper remedy for Plaintiffs' purported failure to disclose—which does not violate any rule—would not be to exclude the evidence, but to allow Plaintiffs to provide these documents to Defendants as a supplemental disclosure. Plaintiffs have no objection to such a remedy.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' Motion for Summary Judgment of Plaintiffs' Eighth Amendment claim and overrule the objections raised by Defendants to Plaintiffs' evidentiary submission.

Dated: October 22, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on October 22, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record as listed below.

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EXHIBIT 1

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★★★ 2020 ★★★

ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION

THE SENTENCING PROJECT
RESEARCH AND ADVOCACY FOR REFORM

THE SENTENCING PROJECT

RESEARCH AND ADVOCACY FOR REFORM

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This report was written by Christopher Uggen, Regents Professor of Sociology at the University of Minnesota; Ryan Larson, Ph.D. candidate at the University of Minnesota; Sarah Shannon, Associate Professor of Sociology at the University of Georgia; and Arleth Pulido-Nava, undergraduate student and McNair Scholar at the University of Minnesota.

The Sentencing Project is a national non-profit organization engaged in research and advocacy on criminal justice issues. Our work is supported by many individual and institutional donors from around the country. We are especially grateful for the support of Squarespace for our work on the voting rights of individuals involved in the criminal justice system.

TABLE OF CONTENTS

OVERVIEW

In the past 25 years, half the states have changed their laws and practices to expand voting access to people with felony convictions. Despite these important reforms, 5.2 million Americans remain disenfranchised, 2.3 percent of the voting age population.

In this presidential election year, the question of voting restrictions, and their disproportionate impact on Black and Brown communities, should receive greater public attention.

This report is intended to update and expand our previous work on the scope and distribution of felony disenfranchisement in the United States (see Uggen, Larson, and Shannon 2016; Uggen, Shannon, and Manza 2012; Uggen and Manza 2002; Manza and Uggen 2006). For the first time, we present estimates of the percentage of the Latinx population disenfranchised due to felony convictions. Although these and other estimates must be interpreted with caution, the numbers presented here represent our best assessment of the state of felony disenfranchisement as of the November 2020 election.

Our key findings include the following:

- As of 2020, an estimated 5.17 million people are disenfranchised due to a felony conviction, a figure that has declined by almost 15 percent since 2016, as states enacted new policies to curtail this practice. There were an estimated 1.17 million people disenfranchised in 1976, 3.34 million in 1996, 5.85 million in 2010, and 6.11 million in 2016.
- One out of 44 adults – 2.27 percent of the total U.S. voting eligible population– is disenfranchised due to a current or previous felony conviction.
- Individuals who have completed their sentences in the eleven states that disenfranchise at least some people post-sentence make up most (43 percent) of the entire disenfranchised population, totaling 2.23 million people.
- Rates of disenfranchisement vary dramatically by state due to broad variations in voting prohibitions. In three states – Alabama, Mississippi, and Tennessee more than 8 percent of the adult population, one of every thirteen people, is disenfranchised.
- We estimate that nearly 900,000 Floridians who have completed their sentences remain disenfranchised, despite a 2018 ballot referendum that promised to restore their voting rights. Florida thus remains the nation's disenfranchisement leader in absolute numbers, with over 1.1 million people currently banned from voting – often because they cannot afford to pay court-ordered monetary sanctions or because the state is not obligated to tell them the amount of their sanction.
- One in 16 African Americans of voting age is disenfranchised, a rate 3.7 times greater than that of non-African Americans. Over 6.2 percent of the adult African American population is disenfranchised compared to 1.7 percent of the non-African American population.
- African American disenfranchisement rates vary significantly by state. In seven states – Alabama, Florida, Kentucky, Mississippi, Tennessee, Virginia, and Wyoming – more than one in seven African Americans is disenfranchised, twice the national average for African Americans.
- Although data on ethnicity in correctional populations are still unevenly reported, we can conservatively estimate that over 560,000 Latinx Americans or over 2 percent of the voting eligible population are disenfranchised.
- Approximately 1.2 million women are disenfranchised, comprising over one-fifth of the total disenfranchised population.

STATE DISENFRANCHISEMENT LAW

Table 1. Summary of State Felony Disenfranchisement Restrictions in 2020

No restriction (2)	Prison only (17)	Prison & parole (4)	Prison, parole & probation (16)	Prison, parole, probation, & post-sentence — some or all (11)
Maine	Colorado	California[a]	Alaska	Alabama[d]
Vermont	Hawaii	Connecticut	Arkansas	Arizona[e]
	Illinois	Louisiana[b]	Georgia	Delaware[f]
	Indiana	New York[c]	Idaho	Florida[g]
	Maryland		Kansas	Iowa[h]
	Massachusetts		Minnesota	Kentucky[i]
	Michigan		Missouri	Mississippi[j]
	Montana		New Mexico	Nebraska[k]
	Nevada		North Carolina	Tennessee[l]
	New Hampshire		Oklahoma	Virginia[m]
	New Jersey		South Carolina	Wyoming[n]
	North Dakota		South Dakota	
	Ohio		Texas	
	Oregon		Washington	
	Pennsylvania		West Virginia	
	Rhode Island		Wisconsin	
	Utah			

a. California - In 2016, lawmakers restored voting rights to people convicted of a felony offense housed in jail, but not in prison. That year, officials authorized persons sentenced to prison to be released to probation rather than parole, affirming voting rights for residents under felony community supervision.
b. Louisiana – In 2019, authorized voting for residents under an order of imprisonment for a felony who have not been incarcerated for five years, including those on probation and parole.
c. New York – In 2018, Governor Cuomo reviewed and restored voting rights to persons currently on parole via executive order. There is currently no assurance that this practice will continue, however, so New York is listed as a state that continues to disenfranchise people on parole.
d. Alabama - In 2016, legislation eased the rights restoration process after completion of sentence for persons not convicted of a crime of "moral turpitude." The state codified the list of felony offenses that are ineligible for re-enfranchisement in 2017.
e. Arizona - Permanently disenfranchises persons with two or more felony convictions. In 2019, removed the requirement to pay outstanding fines before rights are automatically restored for first time felony offenses only.
f. Delaware – In 2013, removed the five-year waiting period to regain voting eligibility. Apart from some disqualifying offenses, people convicted of a felony are now eligible to vote upon completion of sentence and supervision.
g. Florida – In 2018, voters passed an amendment to restore voting rights to most people after sentence completion. In 2019, legislation was passed that made restoration conditional on payment of all restitution, fees, and fines. As of October, 2020, only the rights of those who had paid all legal financial obligations (fines and fees) had been restored.
h. Iowa – In 2020, Governor Reynolds signed an executive order restoring voting rights to people who have completed their sentences, except for those convicted of homicide. This follows previous executive orders from Governor Vilsack (restoring voting rights to individuals who had completed their sentences in 2005) and Governor Branstad (reversing this executive order in 2011).
i. Kentucky – In 2019, Governor A. Beshear issued an executive order restoring voting rights to those who had completed sentences for nonviolent offenses. This follows a similar 2015 executive order by Governor S. Beshear, which had been rescinded by Governor Bevin later that year.
j. Mississippi – Permanently disenfranchises individuals convicted of certain offenses.
k. Nebraska – In 2005, Reduced its indefinite ban on post-sentence voting to a two-year waiting period.
l. Tennessee - Disenfranchises those convicted of certain felonies since 1981, in addition to those convicted of select crimes prior to 1973. Others must apply to the Board of Probation and Parole for restoration.
m. Virginia – In 2019, Governor Northam reported that his administration has restored voting rights to 22,205 Virginians previously convicted of felonies. Governor McAuliffe had earlier restored rights to 173,166.
n. Wyoming – In 2017, restored voting rights after five years to people who complete sentences for first-time, non-violent felony convictions.

To compile estimates of disenfranchised populations, we take into account new U.S. Census data on voting eligible populations and recent changes in state-level disenfranchisement policies, including those reported in *Felony Disenfranchisement: A Primer* (Chung 2019) and *Expanding the Vote* (Porter 2010; McLeod 2018). Since 2016, five states have re-enfranchised some non-incarcerated populations: Nevada (all non-prison, including post-sentence), Colorado (parole), Louisiana (probation and many on parole), New Jersey (probation and parole), and New York (parole). Other states have revised their waiting periods and streamlined the process for regaining civil rights. In November 2018, Florida voters passed Amendment 4, which allowed most people who have completed their sentences to vote (with the exception of people convicted of sex offenses and murder). A legal battle has ensued over whether legal financial obligations (LFOs) must be paid before voting rights are restored. In June of this year, U.S. District Judge Robert Hinkle ruled that it is unconstitutional to require payment of LFOs in order to vote, but on September 11, 2020, the U.S. Court of Appeals for the 11th Circuit in Atlanta reversed that ruling.

As shown in Table 1, Maine and Vermont remain the only states that allow persons in prison to vote (as well as the Commonwealth of Puerto Rico). In July 2020, the Washington, D.C. Council passed an emergency bill that authorized all incarcerated residents with a felony conviction to vote in the November 2020 election. The Council intends to make the change permanent. Twenty-seven U.S. states deny voting rights to felony probationers, and 30 states disenfranchise people on parole. In the most extreme cases, 11 states continue to deny voting rights to some or all of the individuals who have successfully fulfilled their prison, parole, or probation sentences.

METHODOLOGY

We estimated the number of people released from prison and those who have completed their terms of parole or probation based on demographic life tables for each state, as described in Uggen, Manza, and Thompson (2006) and Shannon et al. (2017). We modeled each state's disenfranchisement rate in accordance with its distinctive felony voting policies, as listed in Table 1. For example, some states impose disenfranchisement for two years after release from supervision, some states only disenfranchise those convicted of multiple felonies, and some only disenfranchise those convicted of violent offenses.[1]

In brief, we compiled demographic life tables for the years 1948-2020 to determine the number of released individuals lost to recidivism (and therefore already included in our annual head counts) and to mortality each year. This allows us to estimate the number of individuals who have completed their sentences in a given state and year who are no longer under correctional supervision yet remain disenfranchised. Because data on correctional populations are currently available only through year-end 2018, we extended state-specific trends from 2015-2018 to obtain estimates for 2020. Our duration-specific recidivism rate estimates are derived from large-scale national studies of recidivism for people released from prison or on probation. Based on these studies, our models assume that most released individuals will be re-incarcerated (66 percent) and a smaller percentage of those on probation or in jail (57 percent) will cycle back through the criminal justice system. We also assume a substantially higher mortality rate for people convicted of felony offenses relative to the rest of the population. Both recidivists and deaths are removed from the post-sentence pool to avoid overestimating the number of individuals in the population who have completed their sentences. Each release cohort is thus reduced each successive year – at a level commensurate with the age-adjusted hazard rate for mortality and duration-adjusted hazard rate for recidivism – and added to each new cohort of releases. Overall, we produced more than 200 spreadsheets covering 72 years of data. These provide the figures needed to compile disenfranchisement rate estimates that are keyed to the appropriate correctional populations for each state and year.

1. In Florida, some can avoid a formal felony conviction by successfully completing a period of probation. According to the Florida Department of Law Enforcement, as much as 40 percent of the total probation population holds this "adjudication withheld" status. According to reports by the Bureau of Justice Statistics, only about 50 percent of Florida probationers successfully complete probation. In light of this, we reduce the annual current disenfranchised felony probation numbers by 40 percent and individuals disenfranchised post-sentence by 20 percent (.4*.5=.20) in each year in the life tables.

2. Our data sources include numerous United States Department of Justice (DOJ) publications, including the annual Sourcebook of Criminal Justice Statistics, Probation and Parole in the United States, as well as the Prisoners and Jail Inmates at Midyear series. Where available, we used data from state departments of corrections rather than national sources, as in the case of Minnesota. For early years, we also referenced National Prisoner Statistics, and Race of Prisoners Admitted to State and Federal Institutions, 1926-1986. We determined the median age of released prisoners based on annual data from the National Corrections Reporting Program. The recidivism rate we use to decrease the releasee population each year is based upon the Bureau of Justice Statistics (1989) "Recidivism of Prisoners Released in 1983" study and "Recidivism of Felons on Probation 1986-1989." For those in prison or on parole, we use a reincarceration rate of 18.6 percent at one year, 32.8 percent at two years, 41.4 percent at 3 years. Although re-arrest rates have increased since 1983, the overall reconviction and reincarceration rates used for this study are much more stable (Langan and Levin (2002), p. 11). For those on probation or in jail, the corresponding three-year failure rate is 36 percent, meaning that individuals are in prison or jail and therefore counted in a different population.

   To extend the analysis to subsequent years, we calculated a trend line using the ratio of increases provided by Hoffman and Stone-Meierhoefer (1980) on federal prisoners. By year 10, we estimate a 59.4 percent recidivism rate among released prisoners and parolees, which increases to 65.9 percent by year 62 (the longest observation period in this analysis). Because these estimates are higher than most long-term recidivism studies, they are likely to yield conservative estimates of the formerly incarcerated population. We apply the same trend line to the 3-year probation and jail recidivism rate of 36 percent; by year 62, the recidivism rate is 57.3 percent. 1948 is the earliest year for which detailed data are available on releases from supervision.

DISENFRANCHISEMENT IN 2020

Figure 1 shows the distribution of the 5,177,780 disenfranchised individuals across correctional populations. Three-quarters of the disenfranchised population are people living in their communities, having fully completed their sentences or remaining supervised while on probation or parole, including nearly half (43%) who have completed their sentence. People currently in prison and jail now represent about one-fourth (25 percent) of those disenfranchised. Our intent here is to provide a portrait of disenfranchisement that would be accurate as of the 2020 November election, though we stress that much of the data we report are based on estimates rather than head counts.

Figure 1. Disenfranchisement Distribution Across Correctional Populations, 2020

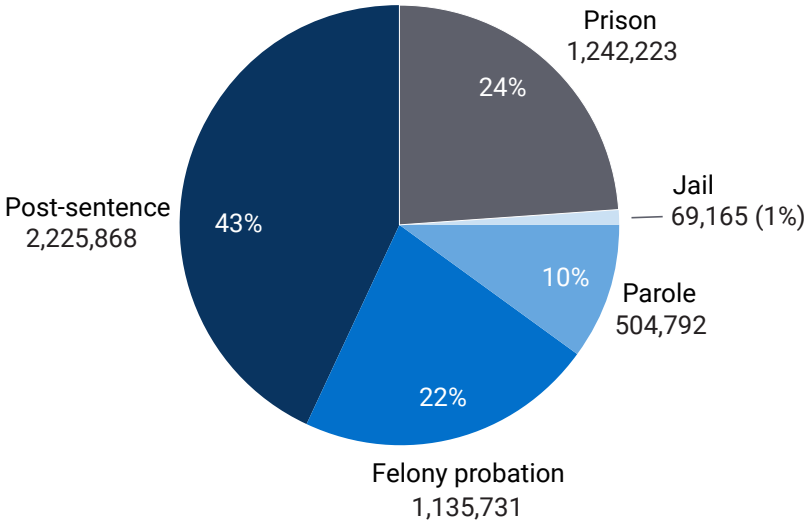
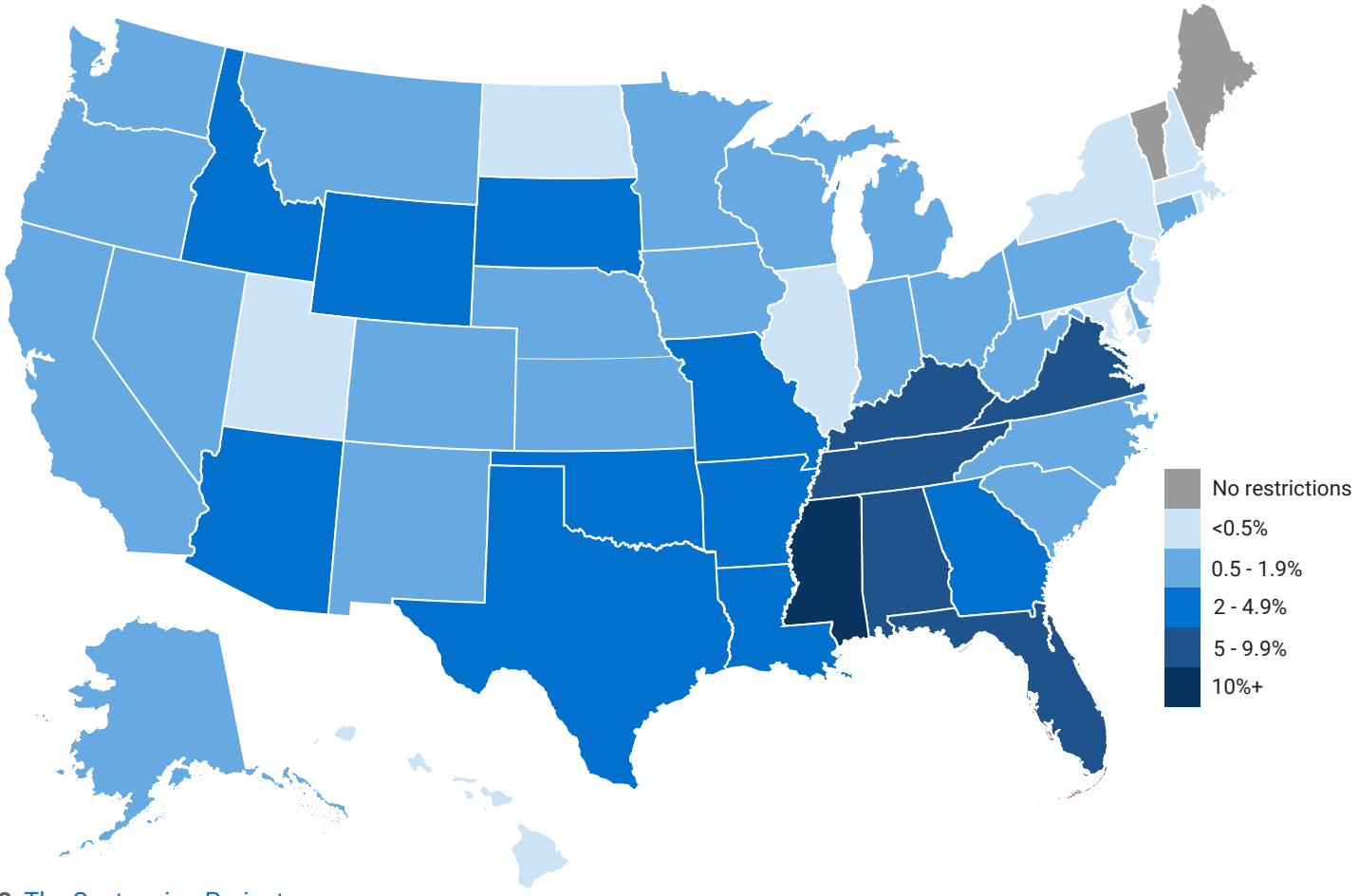


Figure 2. Total Felony Disenfranchisement Rates, 2020



VARIATION ACROSS STATES

Due to differences in state laws and rates of criminal punishment, states vary widely in the practice of disenfranchisement. These maps and tables represent the disenfranchised population as a percentage of the adult voting eligible population in each state. As noted, we estimate that 5,177,780 Americans are currently ineligible to vote by state law. As Figure 2 and the statistics in Table 3 show, state-level disenfranchisement rates in 2020 varied from 0.18 percent in Massachusetts (and zero in Maine and Vermont) to more than 8 percent in Alabama, Mississippi, and Tennessee.

These figures reflect significant but uneven change in recent decades. Although half of the states have scaled back voting restrictions for people with felony convictions, the others have retained such restrictions and their disenfranchised populations have increased commensurate with the expansion of the criminal legal system.

The cartogram in Figure 3 provides another way to visualize the impact of these policies by highlighting the large regional differences in felony disenfranchisement laws. Cartograms distort the land area on the map under an alternative statistic, in this case the total felony disenfranchisement rate. Southeastern states appear bloated because they disenfranchise hundreds of thousands of people who have completed their sentences. In contrast, the many Northeastern and Midwestern states shrink because they limit disenfranchisement to individuals currently in prison, or not at all. This distorted map thus provides a clear visual representation of the great range of differences in the scope and impact of felony disenfranchisement across the 50 states.

Figure 3. Cartogram of Total Disenfranchisement Rates by State, 2020

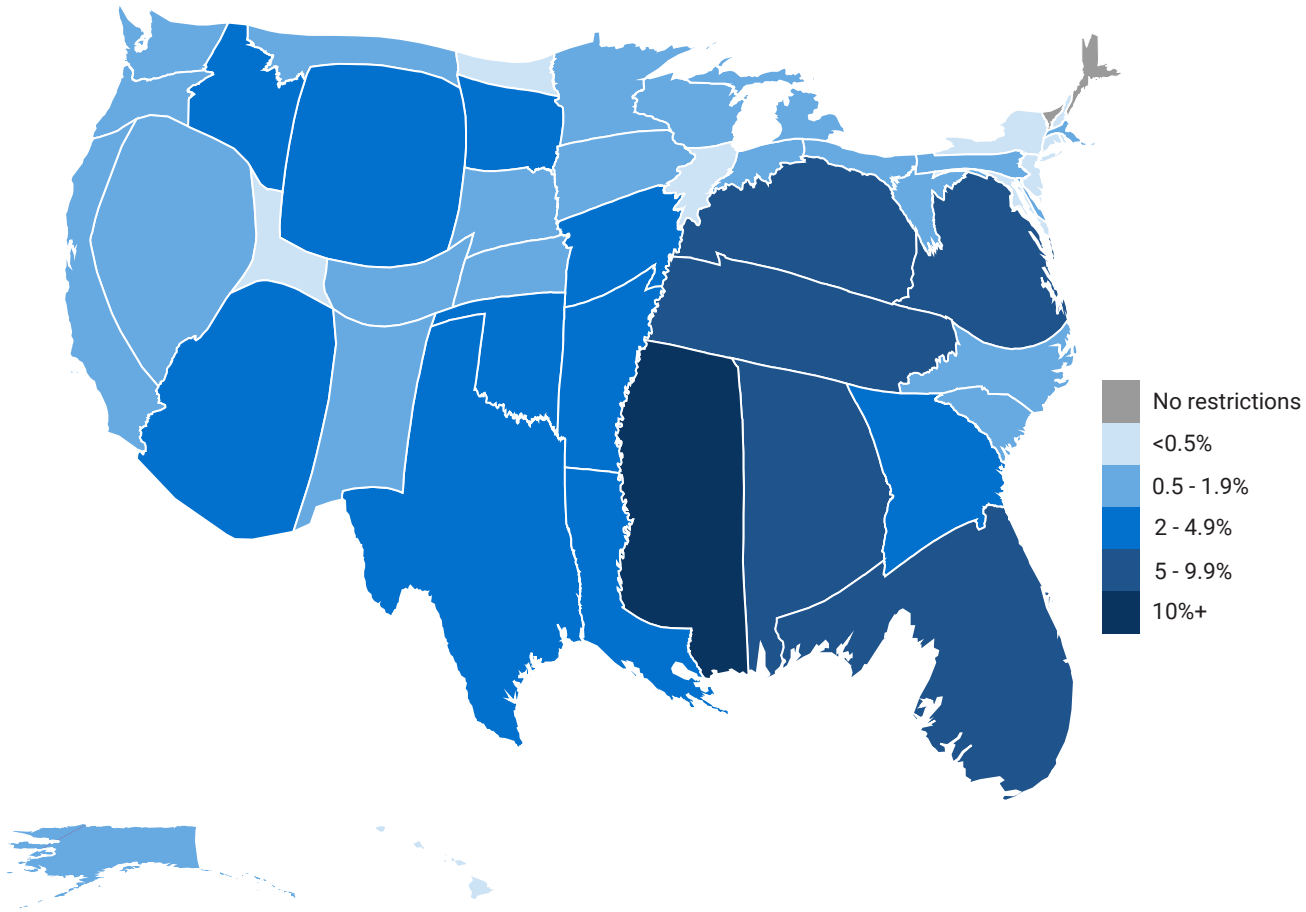
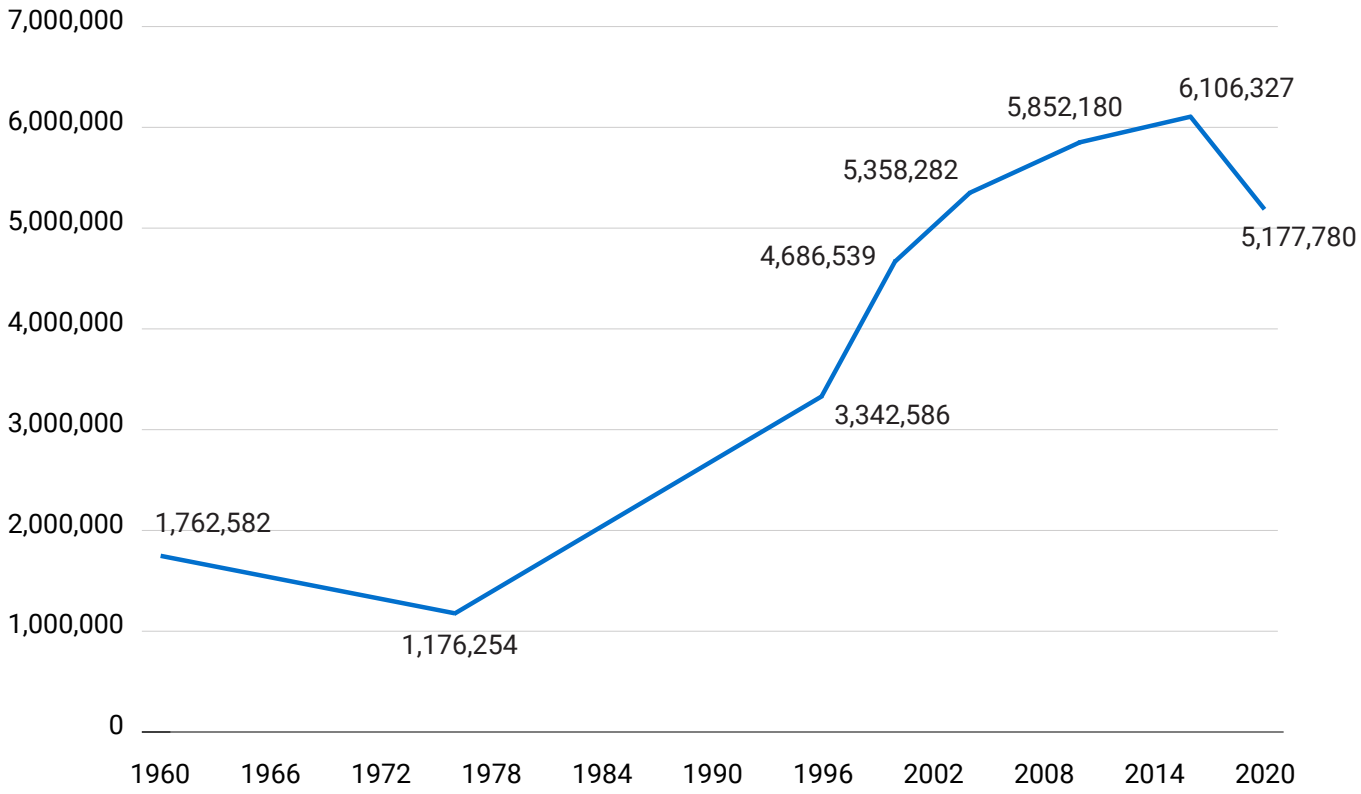


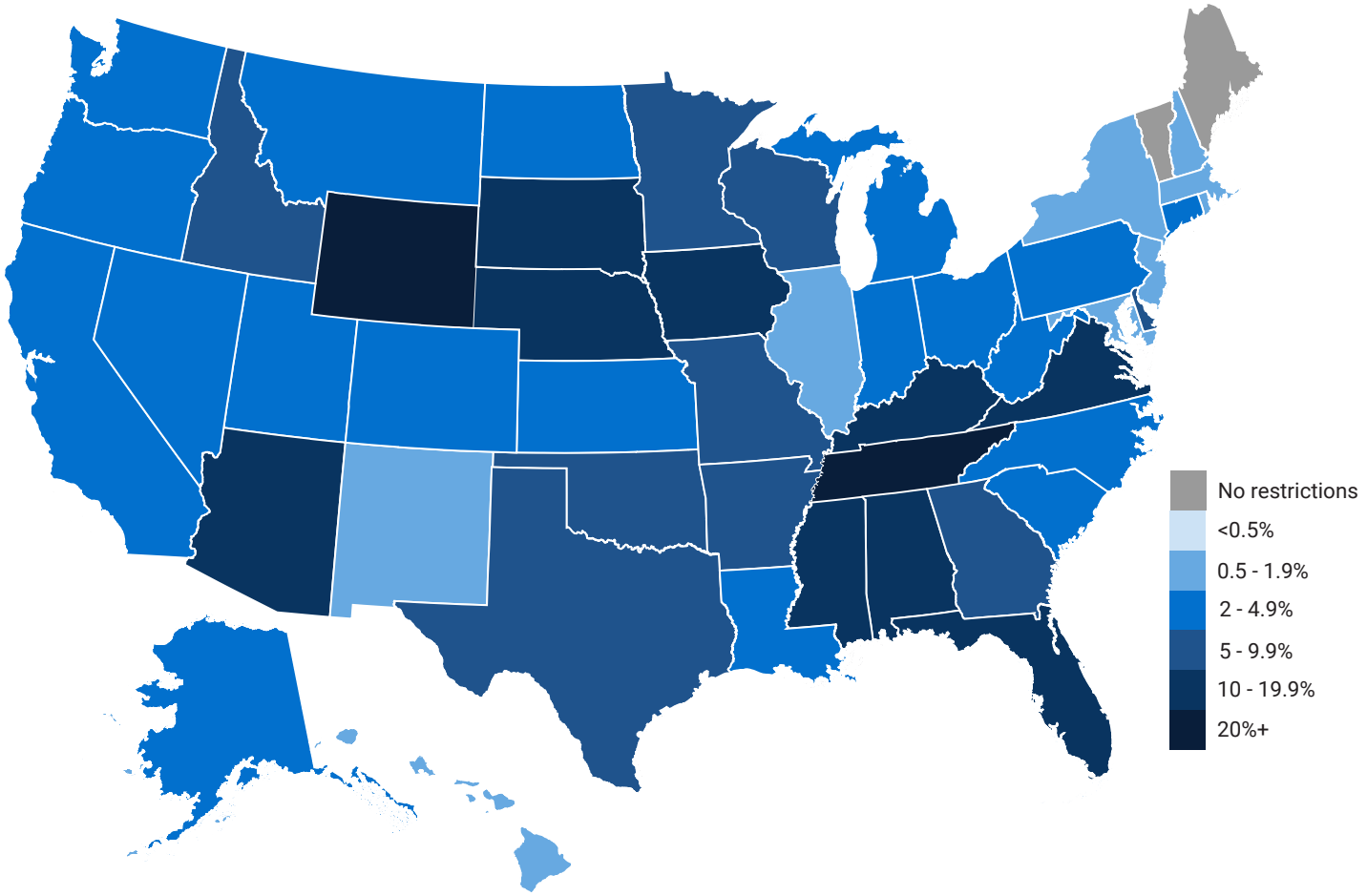
Figure 4. Number Disenfranchised for Selected Years, 1960-2020



TRENDS OVER TIME

Figure 4 illustrates the historical trend in U.S. disenfranchisement, showing growth in the disenfranchised population for selected years from 1960 to 2020. The number disenfranchised dropped from approximately 1.8 million to 1.2 million between 1960 and 1976, as states expanded voting rights in the civil rights era. Many states have pared back their disenfranchisement provisions since the 1970s (see Behrens, Uggen, and Manza, 2003; Manza and Uggen, 2006). Nevertheless, the total number banned from voting continued to rise with the significant expansion in U.S. correctional populations since 1970.The total disenfranchised population rose from 3.3 million in 1996 to 4.7 million in 2000, to 5.4 million in 2004, to 5.9 million in 2010, and 6.1 million in 2016. Today, we estimate that 5.2 million Americans are disenfranchised by virtue of a felony conviction. Roughly the same number of voters will be disenfranchised in the 2020 presidential election as in 2004.

Figure 5. African American Felony Disenfranchisement Rates, 2020



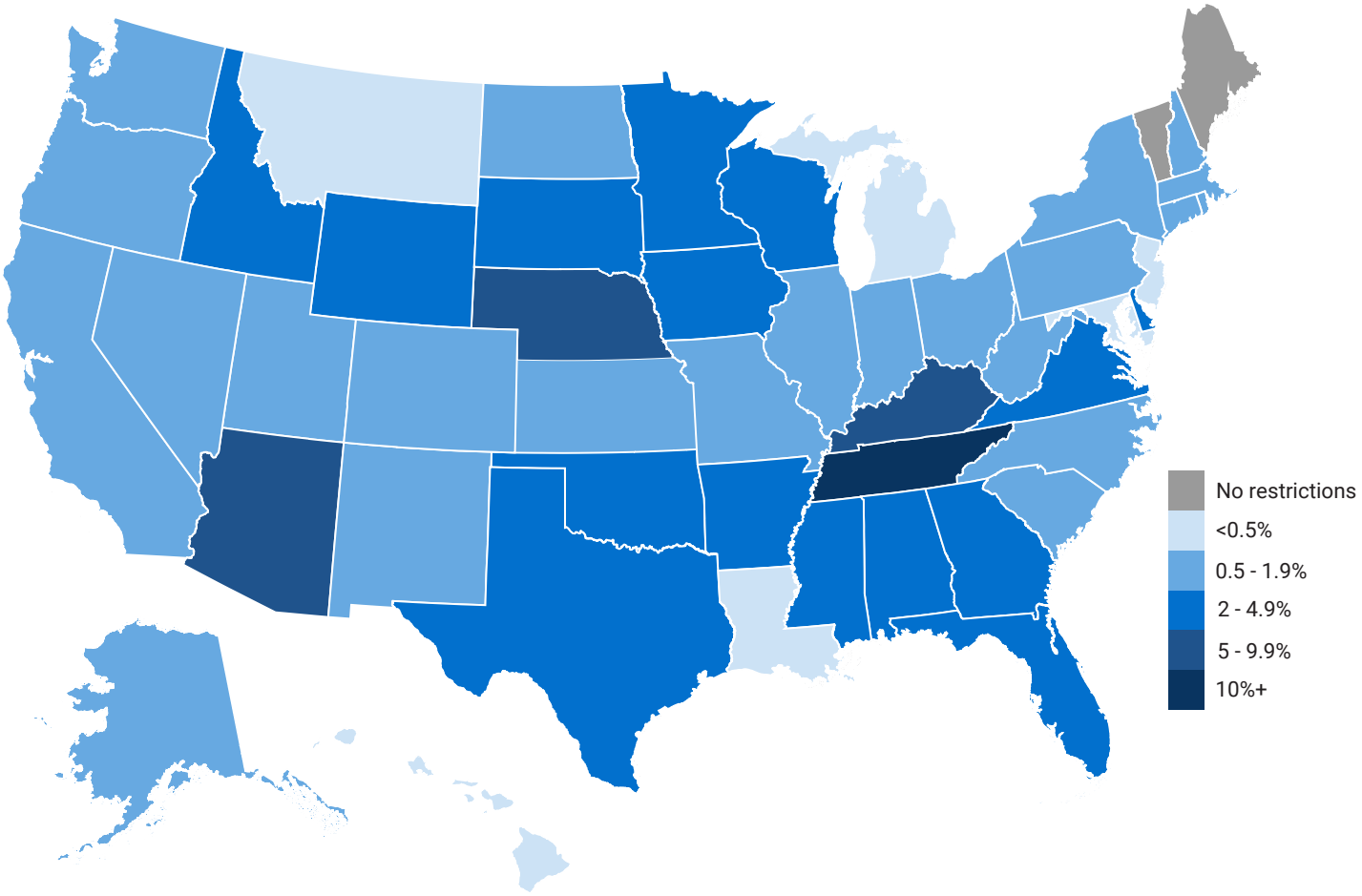
VARIATION BY RACE AND ETHNICITY

Disenfranchisement rates vary widely across racial and ethnic groups; felony disenfranchisement provisions have an outsized impact on communities of color. Ethnicity data in particular have not been consistently collected or reported in the data sources used to compile our estimates, so our ability to construct these estimates is limited. This is especially the case for Latinx populations, who now constitute a significant portion of criminal justice populations. Race data on criminal justice populations is more complete, and we have used the most recent data available from the Bureau of Justice Statistics to develop a complete set of state-specific disenfranchisement estimates for the African American voting eligible population.

Figure 5 shows the corresponding rates for 2020. African American disenfranchisement rates in Tennessee and Wyoming now exceed 20 percent of the adult voting age population.

Data are limited regarding ethnicity, but more states are now consistently reporting Latinx or Hispanic ethnicity for justice-involved populations. We therefore compiled estimates for these populations but present them with the caveat that these figures likely undercount the true rate of Latinx disenfranchisement in many states. Although data on Latinx ethnicity in correctional populations are still unevenly reported, we can conservatively estimate that over 560,000 Latinx

Figure 6. Latinx Felony Disenfranchisement Rates (Available Data), 2020



Americans (over 2 percent of the voting eligible population) are disenfranchised. In Arizona and Tennessee over 7 percent of the Latinx voters are disenfranchised due to felony-level convictions. Even with the likely undercounting, 34 states report a higher rate of disenfranchisement in the Latinx population than in the general population. Many of those disenfranchised today were convicted at a time when the Latinx population was significantly smaller than it is today. Because the overall U.S. Latinx population has quadrupled since 1980, we anticipate that Latinx disenfranchisement will comprise an increasing share of those disenfranchised due to felony convictions in coming years.

SEX AND DISENFRANCHISEMENT

To estimate the percentage of disenfranchised male and female voters, we compiled national prison, probation, parole and jail statistics, and prepared a national life table to obtain the post-sentence sex distribution. By this method, we estimate that approximately 1.24 million women are disenfranchised in 2020, making up over one-fifth of the total disenfranchised population.

RECENT CHANGES

The total disenfranchisement rate in 2020 (2.27 percent) shows a small decline relative to the figures our team reported in 2016 (2.47 percent) and 2006 (2.42 percent), due in part to state changes in disenfranchisement policy and population growth. Our estimates for African American disenfranchisement in 2020 are also lower than those for 2016: 6.26 percent, versus 7.44 percent in 2016, 7.66 percent in 2010, and 8.25 percent in 2004. For the 2020 estimates, we used the American Community Survey to obtain denominators for the African American voting eligible population. For 2020, 2016 and 2010, we used race-specific recidivism rates (resulting in a higher rate for African Americans) that more accurately reflect current scholarship on recidivism. This results in a higher rate of attrition in our life tables, but produces a more conservative and, we believe, more accurate portrait of the number of disenfranchised African Americans. Though lower than in 2004, the 6.26 percent rate of disenfranchisement for African Americans remains 3.7 times greater than the non-African American rate of 1.69 percent.

Given the size of Florida's disenfranchised population, we also note our estimation procedure for this state. Based on a state-specific recidivism report in 1999, our 2004 estimates included much higher recidivism rates for African Americans in Florida (up to 88 percent lifetime). A 2010 report from the Florida Department of Corrections shows that rates of recidivism for African Americans are now more closely in line with the national rates we apply to other states. In light of this more recent evidence, we apply our national rate of recidivism for African Americans (up to 73 percent lifetime) to Florida's African American population with prior felony convictions from 2005 onward.

As detailed in the notes to Table 1, there have been numerous significant changes in state disenfranchisement policies since our last report in 2016. States have advanced a diversity of reform measures. Perhaps most notably, Florida voters passed Amendment 4 in 2018, which should have reenfranchised most people who have completed their sentences (with some offenses exempted). We estimate that almost 900,000 people who owe outstanding legal financial obligations (fines, fees, and restitution) remain disenfranchised. Wyoming in 2017 restored voting rights after five years to people who complete sentences for first-time, non-violent felony convictions. Governors in Iowa (2020), Kentucky (2019), and Virginia (2019) issued executive orders restoring civil rights to people who had completed their sentences, and the New York governor (2018) restored voting rights to people on parole. California restored voting rights to people serving time for felony convictions in jails (though not prisons) in 2016. Colorado and Nevada authorized voting rights for residents on parole in 2019. Maryland (2016), Louisiana (2019), and New Jersey (2019) reenfranchised people serving probation and parole terms.

RESTORATION OF VOTING RIGHTS

States typically provide some limited mechanism for disenfranchised persons to restore their right to vote. These vary greatly in scope, eligibility requirements, and reporting practices. It is thus difficult to obtain consistent information about the rate and number of disenfranchised Americans whose rights are restored through these generally administrative procedures. Nevertheless, we contacted each of the appropriate state agencies by email and phone and compiled the information they made available to us in Table 2. These numbers provide some information about the frequency of state restoration of rights – outside of law changes regarding eligibility – in those 11 states that disenfranchise beyond sentence completion.

We subtracted all known restorations of civil rights (including full pardons) from each state's total disenfranchised post-sentence figure. Even accounting for these restorations, it is clear that restoration of voting rights is rare in most states. The states reporting the greatest number of restorations since 2016 -- Iowa, Kentucky, and Virginia – have had executive orders that re-enfranchised large categories of people who had completed their sentences. Indeed, some states have significantly curtailed restoration efforts since 2016, including Florida. Table 2 shows restorations of voting rights from 2016 to the most recent year available (for restorations in previous years, see Uggen, Larson, and Shannon, 2016).

Table 2. Restoration of Voting Rights Since 2016 in States that Disenfranchise Residents Post-Sentence

State	Restorations
Alabama	3,493
Arizona	1
Delaware	1,676
Florida	3,250
Iowa	45,376
Kentucky	181,361
Mississippi	26
Nebraska	44
Tennessee	35
Virginia	195,371
Wyoming	0

SUMMARY

This report provides new state-level estimates on felony disenfranchisement for 2020 in the United States to update those provided by Uggen, Larson, and Shannon (2016) for previous years. In Tables 3 and 4, we provide state-specific point estimates of the disenfranchised population and African American disenfranchised population, subject to the caveats described below.

Despite significant legal changes in recent decades, about 5.2 million Americans are disenfranchised in 2020. When we break these figures down by race and ethnicity, it is clear that disparities in the criminal justice system are linked to disparities in political representation. The distribution of disenfranchised individuals shown in Figure 1 also bears repeating: about one-fourth of this population is currently incarcerated, and about 4 million adults who live in their communities are banned from voting. Of this total, 1.3 million are African Americans.

It's clear that disparities in the criminal justice system are linked to disparities in political representation

CAVEATS

We have taken care to produce estimates of current populations and "post-sentence" populations that are reliable and valid by social science standards. Nevertheless, readers should bear in mind that our state-specific figures for the 11 states that bar individuals from voting after they have completed their sentences remain point estimates rather than actual head counts.

In addition, the prison, probation, parole, and jail populations we report for 2020 are also estimated, based on year-end 2018 data and the recent state-specific trends in each state. In other work, we have presented figures that adjust or "bound" these estimates by assuming different levels of recidivism, inter-state mobility, and state-specific variation.

With these caveats in mind, the results reported here present our best account of the prevalence of U.S. disenfranchisement in 2020. These estimates will be adjusted if and when we discover errors or omissions in the data compiled from individual states, U.S. Census and Bureau of Justice Statistics sources, or in our own spreadsheets and estimation procedures.

Table 3. Estimates of Disenfranchised Individuals with Felony Convictions, 2020

State	Prison	Parole	Felony Probation	Jail	Post-sentence	Total	VAP	% Disenfranchised
Alabama	25,370	11,302	31,334	1,486	258,706	328,198	3,671,110	8.94
Alaska	4,342	1,003	188	8		5,541	530,385	1.04
Arizona	41,955	7,534	56,117	1,337	126,873	233,816	4,812,764	4.86
Arkansas	17,269	26,595	42,468	855		87,187	2,195,870	3.97
California	123,930	119,252				243,181	25,232,634	0.96
Colorado	21,251			1,356		22,607	3,979,325	0.57
Connecticut	12,990	7,134				20,124	2,600,979	0.77
Delaware	5,380	317	3,229		2,599	11,524	704,108	1.64
Florida	95,634	4,201	137,053	5,788	889,817	1,132,493	14,724,113	7.69
Georgia	53,607	19,206	197,627	4,650		275,089	7,254,693	3.79
Hawaii	4,899					4,899	1,016,556	0.48
Idaho	8,837	5,613	17,621	429		32,500	1,192,742	2.72
Illinois	37,115			1,890		39,005	9,055,187	0.43
Indiana	28,668			1,991		30,659	4,876,218	0.63
Iowa	10,262	7,014	11,581	447	4,923	34,227	2,312,666	1.48
Kansas	10,731	5,764	4,032	729		21,256	2,077,566	1.02
Kentucky	23,209	15,003	29,509	2,354	127,597	197,672	3,338,198	5.92
Louisiana	29,871	39,499	4,389	3,165		76,924	3,452,767	2.23
Maine						0	1,059,542	0.00
Maryland	17,874			904		18,778	4,262,388	0.44
Massachusetts	7,873			1,084		8,956	4,964,686	0.18
Michigan	37,012			1,806		38,819	7,472,668	0.52
Minnesota	8,988	8,097	46,932	683		64,700	4,037,295	1.60
Mississippi	19,624	10,887	26,272	1,488	176,881	235,152	2,228,659	10.55
Missouri	26,353	22,902	44,916	1,314		95,485	4,585,994	2.08
Montana	3,903			319		4,221	804,263	0.52
Nebraska	5,865	910	5,759	376	9,485	22,396	1,358,786	1.65
Nevada	13,581			816		14,397	1,973,652	0.73
New Hampshire	2,735			170		2,905	1,048,201	0.28
New Jersey	18,924			973		19,896	6,117,615	0.33
New Mexico	6,563	2,870	8,384	634		18,451	1,485,490	1.24
New York	41,461			2,882		44,343	13,686,685	0.32
North Carolina	32,091	15,078	34,630	2,037		83,837	7,413,181	1.13
North Dakota	1,640			180		1,821	562,632	0.32
Ohio	48,400			2,002		50,402	8,797,915	0.57
Oklahoma	26,861	1,778	27,033	1,323		56,995	2,819,168	2.02
Oregon	15,368			503		15,871	3,002,261	0.53
Pennsylvania	45,125			3,699		48,823	9,748,290	0.50
Rhode Island	2,588					2,588	789,062	0.33
South Carolina	17,400	5,739	20,265	1,180		44,584	3,731,348	1.19
South Dakota	3,904	3,818	5,421	196		13,339	635,405	2.10
Tennessee	21,713	9,937	56,687	2,787	365,356	456,480	4,964,909	9.19
Texas	165,861	109,337	217,621	7,655		500,474	17,859,496	2.80
Utah	7,078			909		7,987	1,982,911	0.40
Vermont						0	494,674	0.00
Virginia	35,684	2,203	64,469	3,286	260,424	366,065	6,096,244	6.00
Washington	19,260	13,558	10,848	1,423		45,090	5,173,974	0.87
West Virginia	6,183	5,786	4,734	570		17,274	1,442,035	1.20
Wisconsin	24,304	21,417	22,295	1,329		69,344	4,347,413	1.60
Wyoming	2,689	1,038	4,317	151	3,208	11,403	432,284	2.64
Total	**1,242,223**	**504,792**	**1,135,731**	**69,165**	**2,225,868**	**5,177,780**	**228,407,007**	**2.27**

Table 4. Estimates of Disenfranchised Black Americans with Felony Convictions, 2020

State	Prison	Parole	Felony Probation	Jail	Post-sentence	Total	VAP	% Disenfranchised
Alabama	13,309	6,739	10,421	770	118,478	149,716	962,519	15.55
Alaska	443	91	16	0		551	17,254	3.19
Arizona	6,112	910	6,559	255	13,078	26,914	212,026	12.69
Arkansas	7,060	9,829	12,158	356		29,403	331,460	8.87
California	35,159	15,201				50,360	1,711,799	2.94
Colorado	3,669			407		4,076	155,659	2.62
Connecticut	5,479	2,633				8,111	254,176	3.19
Delaware	3,208	173	1,365		3,094	7,839	150,907	5.19
Florida	44,842	2,245	33,915	2,366	255,066	338,433	2,194,488	15.42
Georgia	32,109	10,577	101,003	1,911		145,601	2,322,275	6.27
Hawaii	219					219	21,173	1.03
Idaho	242	169	177	18		606	6,563	9.24
Illinois	20,510			1,023		21,533	1,340,632	1.61
Indiana	9,440			398		9,838	431,560	2.28
Iowa	2,613	1,328	2,026	115	1,180	7,263	63,856	11.37
Kansas	2,912	1,530	1,094	204		5,740	118,653	4.84
Kentucky	4,882	3,018	5,092	516	25,157	38,665	256,024	15.10
Louisiana	20,008	23,669	2,630	1,644		47,951	1,087,270	4.41
Maine						0	7,846	0.00
Maryland	12,527			783		13,310	1,285,703	1.04
Massachusetts	2,153			264		2,417	313,707	0.77
Michigan	19,783			1,036		20,820	1,009,883	2.06
Minnesota	3,221	2,150	7,705	256		13,333	184,269	7.24
Mississippi	12,225	6,444	15,082	770	95,980	130,501	817,493	15.96
Missouri	8,786	6,875	10,066	502		26,229	509,168	5.15
Montana	101			8		108	3,234	3.35
Nebraska	1,627	202	735	94	3,468	6,126	57,843	10.59
Nevada	4,215			220		4,435	184,740	2.40
New Hampshire	178			18		197	12,277	1.60
New Jersey	11,579			452		12,031	841,994	1.43
New Mexico	463	169	392	70		1,095	31,136	3.52
New York	20,015	0		1,388		21,402	2,095,434	1.02
North Carolina	16,560	7,452	14,838	1,140		39,989	1,625,122	2.46
North Dakota	182			29		211	10,287	2.06
Ohio	21,750			782		22,532	1,028,789	2.19
Oklahoma	6,767	658	3,489	325		11,240	205,844	5.46
Oregon	1,402			47		1,449	52,290	2.77
Pennsylvania	20,903			1,454		22,357	1,009,279	2.22
Rhode Island	751					751	42,294	1.78
South Carolina	10,363	3,571	9,867	700		24,501	1,002,736	2.44
South Dakota	302	220	419	22		962	6,999	13.75
Tennessee	9,177	4,183	19,549	1,045	142,415	176,368	814,576	21.65
Texas	54,153	38,598	43,854	2,321		138,926	2,372,001	5.86
Utah	477			65		542	19,111	2.84
Vermont						0	4,750	0.00
Virginia	19,785	1,486	27,640	1,724	139,970	190,605	1,195,603	15.94
Washington	3,394	2,121	673	259		6,447	180,900	3.56
West Virginia	786	569	387	170		1,912	51,252	3.73
Wisconsin	10,165	7,330	4,450	427		22,371	249,187	8.98
Wyoming	134	47	97	15	1,048	1,341	3,702	36.22
Total	**486,138**	**160,186**	**335,701**	**26,372**	**798,933**	**1,807,329**	**28,867,743**	**6.26**

Table 5. Estimates of Disenfranchised Latinx Americans with Felony Convictions, 2020

State	Prison	Parole	Felony Probation	Jail	Post-sentence	Total	VAP	% Disenfranchised
Alabama	261	49	322	60	2,254	2,947	70,238	4.20
Alaska	124	37	7	0		167	29,913	0.56
Arizona	16,255	2,858	18,559	364	39,797	77,832	1,092,101	7.13
Arkansas	552	974	1,615	56		3,197	74,003	4.32
California	54,660	23,230				77,890	7,374,123	1.06
Colorado	6,688			387		7,075	605,212	1.17
Connecticut	3,465	1,797				5,261	300,896	1.75
Delaware	260	8	186		327	781	37,159	2.10
Florida	12,000	409	18,544	749	59,113	90,816	2,854,688	3.18
Georgia	2,118	1,114	5,013	306		8,551	324,368	2.64
Hawaii	225					225	85,884	0.26
Idaho	1,352	994	1,149	146		3,642	91,366	3.99
Illinois	4,780			245		5,025	987,195	0.51
Indiana	1,147			152		1,298	186,226	0.70
Iowa	655	629	914	48	569	2,815	73,841	3.81
Kansas	1,329	649	500	113		2,592	138,716	1.87
Kentucky	317	160	369	71	2,512	3,429	54,997	6.23
Louisiana	31	137	15	63		247	102,494	0.24
Maine						0	12,978	0.00
Maryland	664			100		763	213,436	0.36
Massachusetts	2,075			328		2,403	411,760	0.58
Michigan	356			113		470	242,530	0.19
Minnesota	535	586	2,792	76		3,989	107,405	3.71
Mississippi	180	128	270	39	1,101	1,719	35,809	4.80
Missouri	478	462	769	84		1,794	113,614	1.58
Montana	77			19		95	22,735	0.42
Nebraska	819	84	809	75	2,705	4,493	77,167	5.82
Nevada	2,833			189		3,021	363,507	0.83
New Hampshire	172			18		191	26,645	0.72
New Jersey	2,962			194		3,156	878,964	0.36
New Mexico	3,914	1,743	4,330	602		10,589	626,184	1.69
New York	10,066			616		10,682	1,955,580	0.55
North Carolina	1,742	684	1,328	137		3,890	291,933	1.33
North Dakota	101			22		123	14,496	0.85
Ohio	1,363			89		1,452	220,859	0.66
Oklahoma	2,001	211	1,534	199		3,945	152,914	2.58
Oregon	1,883			73		1,956	213,432	0.92
Pennsylvania	4,369			491		4,860	482,098	1.01
Rhode Island	620					620	78,894	0.79
South Carolina	416	62	315	21		814	99,565	0.82
South Dakota	144	148	200	4		496	14,449	3.44
Tennessee	461	307	1,722	90	9,298	11,878	111,238	10.68
Texas	55,066	32,571	85,062	2,480		175,180	5,243,729	3.34
Utah	1,413			196		1,609	165,480	0.97
Vermont						0	7,475	0.00
Virginia	979	13	1,213	101	5,066	7,372	314,949	2.34
Washington	2,508	933	171	203		3,815	366,411	1.04
West Virginia	24	18	36	18		95	15,805	0.60
Wisconsin	1,906	1,928	1,171	95		5,100	164,926	3.09
Wyoming	346	123	390	17	248	1,125	29,769	3.78
Total	**206,692**	**73,047**	**149,307**	**9,452**	**122,989**	**561,486**	**27,560,156**	**2.04**

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Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction

Christopher Uggen, Ryan Larson, Sarah Shannon, and Arleth Pulido-Nava

October 2020

THE SENTENCING PROJECT
RESEARCH AND ADVOCACY FOR REFORM

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Related publications by The Sentencing Project:

- Voting in Jails (2020)
- Felony Disenfranchisement: A Primer (2020)
- Expanding the Vote: Two Decades of Felony Disenfranchisement Reforms (2018)
- 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016

The Sentencing Project works for a fair and effective U.S. justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.

EXHIBIT 2

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER SEVEN

WHEREAS, the Bill of Rights set forth in Article I of the Constitution of the State of Iowa recognizes that the political power of the State of Iowa is inherent in the people, and the government is instituted for the protection, security, and benefit of its people; and

WHEREAS, the Constitution of the State of Iowa demonstrates the significance of the right to vote by devoting all of Article II to protecting the right of suffrage; and

WHEREAS, a person convicted of any infamous crime forfeits the right to vote and hold office pursuant to Article II, section 5, of the Constitution of the State of Iowa; and

WHEREAS, the Iowa Supreme Court has interpreted infamous crime to mean a felony criminal conviction; and

WHEREAS, Article IV, section 16, of the Constitution of the State of Iowa grants the Governor of the State of Iowa the power to restore the rights of citizenship that were forfeited by such a conviction; and

WHEREAS, restoring the right to vote of Iowans who have discharged their felony sentences will make our communities safer because those who are welcomed back as full members of society are less likely to recidivate; and

WHEREAS, restoring the right to vote of Iowans who have discharged their felony sentences recognizes that path to redemption following a felony conviction necessarily includes reintegration into our political process; and

WHEREAS, restoring the right to vote of Iowans who have discharged their felony sentence will reduce unnecessary burdens on Iowans who wish to obtain their rights back and conserve limited taxpayer resources currently used to review applications for restoration of voting rights; and

WHEREAS, two years ago in my Condition of the State address, I proposed an amendment to the Constitution of the State of Iowa to ensure that Iowans who have completed their felony sentences have their right to vote restored without relying on the discretion of the Governor of the State of Iowa; and

WHEREAS, a constitutional amendment continues to be the only permanent solution to this issue, but the process for proposing and ratifying such an amendment will likely take several additional years during which time Iowans would be deprived of these advantages; and

WHEREAS, the people of Iowa will benefit now from the restoration of the right to vote for Iowans who have completed their sentences and a clear and consistent process that continues to restore the right to vote immediately to Iowans who discharge their sentences.

NOW, THEREFORE, I, Kim Reynolds, Governor of the State of Iowa, do hereby restore the rights of citizenship, including that of voting and qualification to hold public office, to any person who forfeited those rights by conviction of an infamous crime, except for a violation of chapter 707 of the Iowa Code, and who has discharged his or her sentence on or before August 5, 2020. I further order the following:

I. **Discharge of sentence.** For purposes of this Executive Order, a person has discharged his or her sentence upon completion of any term of confinement, parole, probation, or other supervised release for all felony convictions, and completion of any special sentence imposed pursuant to chapter 903B.

II. **Convictions in other jurisdictions.** This restoration of citizenship rights shall apply to convictions of an infamous crime in any jurisdiction, including felony convictions in federal court or the court of another state, to the extent that the conviction has resulted in the forfeiture of citizenship rights in Iowa.

III. **Limitations of restoration.** The provisions of this Executive Order do not restore rights with respect to firearms as provided in chapter 724 of the Iowa Code, do not grant an absolute pardon, do not relieve an individual from paying fines, costs, restitution, or other monetary obligations resulting from a criminal conviction, and do not operate as a bar to greater penalties for second offenses, subsequent convictions, or conviction as a habitual offender. This Executive Order does not restore the rights of citizenship in another jurisdiction unless the other jurisdiction requires the restoration of citizenship rights in Iowa because of a person's Iowa felony conviction.

IV. **Ongoing restoration.** I will restore the rights of citizenship, including that of voting and qualification to hold public office, to any person who has forfeited those rights by conviction of an infamous crime, except for a violation of chapter 707 of the Iowa Code, and who discharges his or his sentence, on a daily basis beginning on August 6, 2020. Such restorations shall be effective immediately upon the discharge of a person's sentence.

V. **Proof of restoration.** This Executive Order shall serve as serve as evidence of the restoration of citizenship rights for any person who forfeited those rights by conviction of an infamous crime, except for a violation of chapter 707 of the Iowa Code, and who has discharged his or her sentence, as defined above, on or before August 5, 2020. The certificate of restoration of citizenship issued daily, and available from the Office of the Governor, shall serve as evidence of the restoration of citizenship rights for any such person who discharges his or her sentence after August 5, 2020.

VI. **Records of discharge of sentence.** The Iowa Department of Corrections shall provide the Iowa Secretary of State records necessary to assist in updating the database of disqualified persons to reflect the restoration of citizenship rights in this Executive Order. The Department shall also continue to provide a record of all additional persons convicted of a felony, except for a violation of chapter 707 of the Iowa Code, in Iowa court who discharge their sentences directly from prison or after completing a term of parole or probation to the Iowa Secretary of State on at least a weekly basis.

VII. **Registration and exercise of the right to vote.** I strongly encourage all Iowans whose citizenship rights are restored by the Executive Order or who are otherwise eligible to vote in this state, to register to vote by submitting a voter registration form to their county auditor or completing the online voter registration. And I strongly encourage all these Iowans to begin participating fully as a citizen in our local, state, and national elections.

VIII. **Applications for restoration of citizenship rights.** Nothing in this Executive Order prohibits an Iowan from submitting an application for restoration of citizenship rights to the Office of the Governor.

IX. **Interpretation and severability.** This Executive Order shall be interpreted in accordance with all applicable laws and regulations and shall not supersede any laws or regulations in place as of its effective date. The provisions of paragraphs III through X of this Executive Order do not create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the State of Iowa, its departments, agencies, or political subdivisions, or its officers, employees, agents, or any other persons. If any provision of this Executive Order is found to be invalid, unenforceable, or otherwise contrary to applicable law, then the remaining provisions of this Executive Order, as applied to any person or circumstance, in shall continue in full force and effect and shall not be affected by such finding of invalidity or unenforceability.

X. **Effective date and expiration.** This Executive Order shall apply prospectively only as of its effective date and it shall expire upon the ratification of any future amendment to Article II, section 5, of the Constitution of the State of Iowa. The expiration of this Executive Order shall not affect the validity of any restoration of citizenship rights granted while this Executive Order is in effect.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME AND CAUSED THE GREAT SEAL OF IOWA TO BE AFFIXED TO THIS EXECUTIVE ORDER. DONE IN DES MOINES, IOWA THIS 5TH DAY OF AUGUST IN THE YEAR OF OUR LORD TWO THOUSAND AND TWENTY.

Kim Reynolds

KIM REYNOLDS
GOVERNOR OF IOWA

ATTEST:

Paul D. Pate

PAUL D. PATE
SECRETARY OF STATE

EXHIBIT 3

ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort, Kentucky

2019-003
December 12, 2019

RELATING TO THE RESTORATION OF CIVIL RIGHTS FOR CONVICTED FELONS

WHEREAS, the right to vote is the foundation of a representative government; and

WHEREAS, under the Constitution of the Commonwealth of Kentucky, an individual convicted of a felony is denied the right to vote or hold public office; and

WHEREAS, these restrictions may continue long after a sentence has been fully served; and

WHEREAS, according to media reports, an estimated more than 140,000 Kentuckians have already completed their sentences for non-violent felonies but remain disenfranchised and cannot vote; and

WHEREAS, research indicates that people who have completed their sentences and who vote are less likely to re-offend and return to prison; and

WHEREAS, restoration of the right to vote is an important aspect of promoting rehabilitation and reintegration into society to become law-abiding and productive citizens; and

WHEREAS, Kentucky is one of only two states that does not currently provide an automatic process for restoring voting rights for citizens upon final discharge of their sentences; and

WHEREAS, the current means by which Kentuckians who have completed their sentences seek to have their rights restored is unnecessarily time consuming; and

ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort, Kentucky

2019-003
December 12, 2019

WHEREAS, pursuant to Sections 145 and 150 of the Constitution of the Commonwealth of Kentucky, the Governor is authorized and empowered to restore the civil rights of any citizen that are forfeited by reason of a felony conviction:

NOW, THEREFORE, in consideration of the foregoing and by virtue of the authority vested in me by Sections 69, 145, and 150 of the Constitution of the Commonwealth of Kentucky, I, Andy Beshear, Governor of the Commonwealth of Kentucky, do hereby Order and Direct the following:

1. The civil rights, hereby expressly limited to the right to vote and the right to hold public office denied by judgment of conviction and any prior conviction, are hereby restored to all offenders convicted of crimes under Kentucky state law who have satisfied the terms of their probation, parole, or service of sentence (hereinafter collectively referred to for purposes of this Order as "Final Discharge"), exclusive of restitution, fines, and any other court-ordered monetary conditions.

2. This Order shall not apply to any person presently convicted of:

   a) Treason,
   b) Bribery in an election,
   c) A violent offense defined in KRS 439.3401,
   d) Any offense under KRS Chapter 507 or KRS Chapter 507A,
   e) Any Assault as defined in KRS 508.020 or KRS 508.040,
   f) Any offense under KRS 508.170, or
   g) Any offense under KRS 529.100.

3. The provisions of this Order, as mentioned above, only restore the right to vote and the right to hold public office and do not restore any other civil right.

4. Kentuckians convicted of crimes under Kentucky state law not meeting the criteria for automatic restoration as set forth in this Order, as well as Kentuckians convicted of crimes under federal law or the laws of jurisdictions other than Kentucky, may still make application for restoration of civil rights under guidelines provided by the Governor and the provisions of KRS 196.045.

ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort, Kentucky

2019-003
December 12, 2019

5. This Executive Order, and all future restorations of civil rights issued pursuant hereto, shall not be construed as a full pardon under Section 77 of the Constitution of the Commonwealth of Kentucky, or as a remission of guilt or forgiveness of the offense; shall not relieve any obligation to pay restitution, fines, or any other court-ordered monetary conditions; and shall not operate as a bar to greater penalties for second offenses or a subsequent conviction as a habitual criminal.

6. In addition to the above, no civil rights shall be restored pursuant to this Order to any person who has at the time of Final Discharge any pending felony charges or arrests, nor to any person who was convicted under federal law or the laws of a jurisdiction other than Kentucky. The Department of Corrections shall take all reasonable steps necessary to effectuate compliance with the mandates and criteria set forth in this Order.

7. The Department of Corrections, including the Division of Probation and Parole within the Office of Community Services and Facilities, shall provide the information regarding any Kentuckian who meets the criteria as set forth in this Order to the necessary election officials.

8. Any Kentuckian who has received a Final Discharge prior to the effective date of this Order and who meets the criteria for automatic restoration of civil rights as set forth herein shall be eligible to request verification from the Department of Corrections of the restoration of their civil rights.

9. The provisions of this Order shall be effective as of December 12, 2019, and shall have both prospective and retroactive application.

10. The Justice and Public Safety Cabinet and all other Kentucky state agencies are hereby directed to comply with the provisions of this Order.

11. The provisions of Executive Order 2015-052, dated December 22, 2015, be and are hereby rescinded, declared null and void, and are no longer in effect.

ANDY BESHEAR, GOVERNOR
Commonwealth of Kentucky

ALISON LUNDERGRAN GRIMES
Secretary of State

EXHIBIT 4

No. 20-12003

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Kelvin Leon Jones, *et al.*,

Plaintiffs-Appellees,

v.

Ron DeSantis, in his official capacity as Governor of the State of Florida, *et al.*,

Defendants-Appellants.

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

EN BANC BRIEF OF *AMICI CURIAE* THE DISTRICT OF COLUMBIA, ILLINOIS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, PENNSYLVANIA, VERMONT, VIRGINIA, AND WASHINGTON IN SUPPORT OF PLAINTIFFS-APPELLEES

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Under Eleventh Circuit Rule 26.1, undersigned counsel certifies that the Certificate of Interested Persons filed by Defendants-Appellants on July 20, 2020, as supplemented by the Certificates of Interested Persons filed by the Texas *Amici* on July 20, 2020, and by the Honest Elections Project on July 23, 2020, is complete with the following exceptions:

1. AliKhan, Loren—Counsel for *Amicus Curiae*
2. Balderas, Hector—Attorney General of New Mexico; Counsel for *Amicus Curiae*
3. Becerra, Xavier—Attorney General of California; Counsel for *Amicus Curiae*
4. Bechara, Jacqueline—Counsel for *Amicus Curiae*
5. Commonwealth of Massachusetts—*Amicus Curiae*
6. Commonwealth of Pennsylvania—*Amicus Curiae*
7. Commonwealth of Virginia—*Amicus Curiae*
8. Connors, Clare—Attorney General of Hawaii; Counsel for *Amicus Curiae*
9. District of Columbia—*Amicus Curiae*
10. Donovan Jr., Thomas—Attorney General of Vermont; Counsel for *Amicus Curiae*
11. Ellison, Keith—Attorney General of Minnesota; Counsel for *Amicus Curiae*

12. Ferguson, Robert—Attorney General of Washington; Counsel for *Amicus Curiae*

13. Ford, Aaron—Attorney General of Nevada; Counsel for *Amicus Curiae*

14. Frosh, Brian—Attorney General of Maryland; Counsel for *Amicus Curiae*

15. Grewal, Gurbir—Attorney General of New Jersey; Counsel for *Amicus Curiae*

16. Healey, Maura—Attorney General of Massachusetts; Counsel for *Amicus Curiae*

17. Herring, Mark—Attorney General of Virginia; Counsel for *Amicus Curiae*

18. Hunger, Sarah—Counsel for *Amicus Curiae*

19. James, Letitia—Attorney General of New York; Counsel for *Amicus Curiae*

20. Jennings, Kathleen—Attorney General of Delaware; Counsel for *Amicus Curiae*

21. Nessel, Dana—Attorney General of Michigan; Counsel for *Amicus Curiae*

22. Notz, Jane Elinor—Counsel for *Amicus Curiae*

23. Racine, Karl—Attorney General of the District of Columbia; Counsel for *Amicus Curiae*

24. Raoul, Kwame—Attorney General of Illinois; Counsel for *Amicus Curiae*

25. Rosenblum, Ellen—Attorney General of Oregon; Counsel for *Amicus Curiae*

26. Schifferle, Carl—Counsel for *Amicus Curiae*

27. Shapiro, Josh—Attorney General of Pennsylvania; Counsel for *Amicus Curiae*

28. State of California—*Amicus Curiae*

29. State of Colorado—*Amicus Curiae*

30. State of Connecticut—*Amicus Curiae*

31. State of Delaware—*Amicus Curiae*

32. State of Hawaii—*Amicus Curiae*

33. State of Illinois—*Amicus Curiae*

34. State of Maryland—*Amicus Curiae*

35. State of Michigan—*Amicus Curiae*

36. State of Minnesota—*Amicus Curiae*

37. State of Nevada—*Amicus Curiae*

38. State of New Jersey—*Amicus Curiae*

39. State of New Mexico—*Amicus Curiae*

40. State of New York—*Amicus Curiae*

41. State of Oregon—*Amicus Curiae*

42. State of Vermont—*Amicus Curiae*

43. State of Washington—*Amicus Curiae*

44. Tong, William—Attorney General of Connecticut; Counsel for *Amicus Curiae*

45. Van Zile, Caroline—Counsel for *Amicus Curiae*

46. Weiser, Phil—Attorney General of Colorado; Counsel for *Amicus Curiae*

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IDENTITY AND INTEREST OF *AMICI* STATES

The District of Columbia, Illinois, California, Colorado, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Vermont, Virginia, and Washington ("*Amici* States") submit this brief in support of Plaintiffs-Appellees pursuant to Federal Rule of Appellate Procedure 29(a)(2) and Eleventh Circuit Rule 35-8.

As of 2016, an estimated 6.1 million people across the United States could not vote because of state laws that disenfranchise individuals convicted of felony offenses.[1] By contrast, "restoration of voting rights" can "provide[] a clear marker of reintegration and acceptance as a stakeholder in a community of law-abiding citizens."[2] To that end, States are actively grappling with their felon disenfranchisement laws. Since 1997, 23 States, including several

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[1] Christopher Uggen *et al.*, The Sentencing Project, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016* at 3 (Oct. 2016), https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf. All websites were last visited on July 30, 2020.

[2] Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 Am. Soc. Rev. 777, 794 (2002).

Amici, "have moved towards restoring the voting rights of individuals who have been convicted of felonies."[3] These initiatives to expand the franchise—which range from repealing permanent disenfranchisement laws to instituting administrative systems that notify returning citizens of their rights—embrace the notion that allowing former felons to vote benefits both the returning citizens and the communities they rejoin.

Although the *Amici* States have reached different conclusions on how best to expand the franchise,[4] they share an interest in promoting civic participation and public safety by reintegrating former felons as full-fledged, productive members of their societies. Florida's Senate Bill 7066 ("SB-7066")—which denies restoration indefinitely for all those who have not paid their legal financial obligations ("LFOs")—is out of step with these important interests. The *Amici* States thus urge this Court to uphold the district court's judgment.

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[3] Bruce E. Cain & Brett Parker, *The Uncertain Future of Felon Disenfranchisement*, 84 Mo. L. Rev. 935, 938 (2019).

[4] *See, e.g.*, Jean Chung, The Sentencing Project, *Felony Disenfranchisement: A Primer* 1 (updated Dec. 2019), https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/ (download PDF).

SUMMARY OF ARGUMENT

At issue is whether Florida's pay-to-vote system—which indefinitely denies returning citizens the right to vote based on their inability to pay outstanding LFOs and does not provide adequate procedural protections for determining the amount owed—is constitutional. In defense of this system, the Florida defendants and their *amici* argue that SB-7066 is no different than other laws "across the country" that have created an exception to disenfranchisement for those who have paid in full their debts to society, Tex. Am. Br. at 3, or that have made "voting more expensive for some people than others," Fla. Br. at 23. Accordingly, they argue, if SB-7066 is deemed unconstitutional, many States will be put to a "Hobson's choice" between "re-enfranchising more broadly and re-enfranchising no one." Tex. Am. Br. at 1, 3-6; Fla. Br. at 4-5. The *Amici* States disagree.

To begin, only two States in addition to Florida indefinitely deny the right to vote to any returning citizen who has not fully paid his or her LFOs. The vast majority of States have not imposed such a severe burden, and many in recent years have taken additional measures to expand the franchise and facilitate restoration. This clear and growing

consensus toward re-enfranchisement reflects the *Amici* States' understanding—which is supported by empirical evidence—that restoring voting rights to former felons helps these individuals to fully reintegrate into their communities, fosters civic participation, and improves public safety. By contrast, restrictive laws like SB-7066 disparately harm minority communities without any attendant benefit. States retain other means to enforce judgments that do not require indefinite disenfranchisement, and there is no evidence that pay-to-vote systems actually promote full payment of LFOs. This is especially true here, where Florida has not established an administrative vehicle for returning citizens to ascertain what, if anything, they owe.

In short, the district court's conclusion that SB-7066 is unconstitutional does not forebode a reversal of the clear trend among the States toward re-enfranchisement of former felons or endanger the many kinds of state systems that promote restoration of the right to vote. The *Amici* States thus agree with the plaintiffs that the district court's judgment should be affirmed.

ARGUMENT

I. States Have Successfully Expanded The Franchise To Former Felons.

Over the past 20 years, States have restored the right to vote to more than one million people by reforming their felon disenfranchisement laws.[5] These reform efforts include laws repealing lifetime disenfranchisement, allowing felons to vote while completing the terms of their probation or parole, eliminating requirements to pay LFOs, and providing information to felons leaving correctional facilities about restoration of their voting rights and voter registration.

As one example of actions taken in recent years, Florida, Maryland, Nebraska, Nevada, and New Mexico repealed laws that had permanently disenfranchised convicted felons.[6] Similarly, Delaware

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[5] Morgan McLeod, The Sentencing Project, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reform* 3 (Oct. 2018), https://www.sentencingproject.org/wp-content/uploads/2018/10/Expanding-the-Vote-1997-2018.pdf.

[6] *See* Voting Restoration Amendment, Ballot Initiative 14-01 (Fla. 2018); Andrew A. Green, *Felons Gain Right to Vote*, Balt. Sun (Apr. 25, 2007), https://www.baltimoresun.com/news/bs-xpm-2007-04-25-0704250234-story.html (describing Maryland law replacing lifetime disenfranchisement with restoration upon completion of sentence); L.B. 53, 99th Leg., 1st Sess. (Neb. 2005) (repealing lifetime disenfranchisement and automatically restoring voting rights two years

amended its laws to repeal permanent disenfranchisement except as to those who commit enumerated disqualifying felonies, and Wyoming lifted restrictions on the ability of felons convicted of nonviolent offenses to regain the right to vote upon completion of their sentences.[7]

Other States have restored the right to vote to individuals living in their communities who are still under the supervision of the criminal justice system. For instance, California, Colorado, Connecticut, Louisiana, Maryland, New Jersey, New York, and Rhode Island have variously restored the right to vote to citizens completing the terms of either their felony probation, parole, or post-release community supervision.[8] Likewise, Washington eliminated the requirement of

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after completion of sentence); A.B. 431, 80th Sess. (Nev. 2019) (automatically restoring voting rights of all felons upon release from prison); S.B. 204, 2001 Reg. Sess. (N.M. 2001) (repealing lifetime disenfranchisement).

[7] *See* Del. Const. art. V § 2; Del. Code Ann. tit. 15, § 6102-6103; H.B. 75, 64th Leg., 2017 Gen. Sess. (Wyo. 2017).

[8] *See* A.B. 2466, 2015-2016 Reg. Sess. (Cal. 2016) (providing that citizens subject to post-release community supervision and those serving felony sentences in county jail are eligible to vote); H.B. 19-1266, 71st Gen. Assemb., 2019 Reg. Sess. (Colo. 2019) (restoring voting rights to parolees); H.B. 5042, 2001 Gen. Assemb., Jan. Sess. (Conn. 2001) (restoring voting rights to probationers); H.B. 265, 2018 Reg. Sess. (La. 2018) (restoring voting rights to felons, including those

paying all fines, fees, costs, and restitution before regaining the right to vote.[9]

In addition to enacting laws altering the standards for restoration, some States have implemented administrative systems to better facilitate restoration efforts. In California, New Jersey, New Mexico, New York, and Washington, among others, state agencies must now notify felons of the process for seeking restoration of voting rights or provide information about their voting rights prior to or upon release from incarceration.[10] These measures help to reduce confusion among

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on parole or probation, who have not been incarcerated in the past five years); H.B. 980, 2015 Reg. Sess. (Md. 2015) (permitting felons discharged from incarceration to register to vote); A.B. 5823, 2018-2019 Reg. Sess. (N.J. 2019) (re-enfranchising felons on parole or probation); N.Y. Exec. Order No. 181 (Apr. 18, 2018) (restoring voting rights to parolees upon release from prison); H.B. 7938, 2006 Gen. Assemb., Jan. Sess. (R.I. 2006) (restoring voting rights upon discharge from incarceration). Additionally, in June 2020, the California Legislature approved placing a proposed constitutional amendment on the November 2020 ballot that would allow parolees to vote. *See* Cal. ACA-6, chaptered June 25, 2020. New York already permits felons on probation to vote. N.Y. Election Law § 5-106.

[9] H.B. 1517, 61st Leg., 2009 Reg. Sess. (Wash. 2009).

[10] *See* A.B. 1344, 2017-2018 Reg. Sess. (Cal. 2017) (requiring corrections officials to provide information about voting rights restoration online and in person to felons leaving prison); S.B. 2282, 2010-2011 Reg. Sess. (N.J. 2012) (requiring the State Commissioner of

returning citizens by advising them of the process for restoration of rights and providing the information needed to register to vote when eligible. They also encourage individuals returning from incarceration and reintegrating into their communities to exercise the franchise, when possible.

Furthermore, the Governors of both Kentucky and Virginia—States that still rely exclusively on clemency for re-enfranchisement—have recently taken broad executive actions to restore the vote to returning citizens. In a 2019 executive order, for example, the Kentucky Governor restored the franchise to all nonviolent felons who had completed probation and parole.[11] And in 2016, the Governor of Virginia announced a restoration of rights policy to re-enfranchise returning citizens who have completed incarceration and any term of

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Corrections to provide general written information of a returning citizen's right to vote prior to release); H.B. 64, 2005 Reg. Sess. (N.M. 2005) (requiring the corrections department to notify a former felon of his ability to register to vote upon completion of his sentence); A.B. 9706, 2010 Assemb., Reg. Sess. (N.Y. 2010) (requiring the corrections department to notify a former felon of his right to vote and provide a voter registration application upon release); S.B. 5207, 66th Leg., 2019 Reg. Sess. (Wash. 2019) (similar).

[11] Ky. Exec. Order No. 2019-003 (Dec. 12, 2019).

supervision, without regard to legal financial obligations.[12] Between 2016 and 2019, nearly 200,000 Virginians had their rights restored under that policy.[13]

As a result of these reforms, only two States in addition to Florida—Alabama and Arkansas—presently impose the restriction at issue here: indefinitely denying the right to vote to all felons who have not satisfied their LFOs.[14] Seven others—Arizona, Connecticut, Georgia, Kansas, South Dakota, Tennessee, and Texas—also impose indefinite disenfranchisement based on outstanding LFOs, but only with respect to limited categories of convictions or certain kinds of financial obligations.[15]

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[12] Governor McAuliffe's Restoration of Rights Policy (Aug. 22, 2016), https://www.restore.virginia.gov/media/governorvirginiagov/restoration-of-rights/pdf/restoration-of-rights-policy-memo-82216.pdf.

[13] Margaret Barthel, *Nearly 200,000 Formerly Incarcerated Virginians Have Their Voting Rights Back. Will They Use Them?*, WAMU (Nov. 5, 2019), https://wamu.org/story/19/11/05/nearly-200000-formerly-incarcerated-virginians-have-their-voting-rights-back-will-they-use-them/.

[14] Collateral Consequences Resources Center ("CCRC"), *Who Must Pay to Regain the Vote? A 50-State Survey* 4 (July 2020), https://ccresourcecenter.org/wp-content/uploads/2020/07/Who-Must-Pay-to-Regain-the-Vote-A-50-State-Survey.pdf.

[15] *Id.*

The remaining 40 States and the District of Columbia do not place such a severe requirement on former felons. Of these, 20 States and the District of Columbia do not take LFOs into account when restoring the franchise: two States do not restrict in any way the voting rights of convicted felons, including those currently in prison;[16] 17 States and the District of Columbia automatically restore a former felon's voting rights upon release from incarceration;[17] and Oklahoma re-enfranchises its residents after a fixed period prescribed in the judgment or sentence.[18] An additional four States restore the franchise by constitutional clemency power—either via individual application or through an

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[16] Chung, *supra* note 5, at 1 (updated Dec. 2019) (Maine and Vermont). Additionally, the Council of the District of Columbia recently enacted an emergency bill that temporarily expands the franchise to residents currently incarcerated for felony convictions. B23-825, 23rd Council (D.C. 2020). The Council is also considering a bill that would permanently enfranchise currently incarcerated residents. B23-324, 23rd Council (D.C. 2019).

[17] CCRC, *supra* note 14 at 4 (Colorado, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah).

[18] *Id.*

executive order—with no set requirement that LFOs be paid prior to application for clemency.[19]

Finally, in the 16 remaining States, nonpayment of legal financial obligations may result, sometimes indirectly, in delayed restoration of the franchise in certain circumstances.[20] These States' systems take many different forms. Regardless of the system imposed, though, these States do not restrict the franchise indefinitely for failure to pay LFOs. For example, some States—such as Nebraska and New Mexico—have created exceptions to the LFO requirement for those who establish indigency.[21]

All told, these trends reflect a clear and growing consensus among the States toward facilitating restoration and expanding the franchise. That so few States impose an indefinite ban on re-enfranchisement based on outstanding LFOs is consistent with these recent efforts.

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[19] *Id.* (Iowa, Kentucky, Mississippi, and Virginia).

[20] *Id.* (Alaska, California, Delaware, Idaho, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, New York, North Carolina, South Carolina, Washington, West Virginia, Wisconsin, and Wyoming).

[21] *Id.* at 4, 10-11 (citing Neb. Rev. Stat. § 29-2208; N.M. Stat. Ann. § 31-12-3(A)).

II. States' Recent Experiences Have Shown That Expanding The Franchise Benefits Their Residents And Communities.

As discussed, States have successfully expanded the franchise to former felons in recent years. These efforts reflect the *Amici* States' understanding that restoring voting rights to former felons helps these individuals to fully reintegrate into their communities, thereby fostering civic participation and improving public safety. By contrast, restrictive disenfranchisement laws like SB-7066 disparately harm minority communities and mute their political voices. Put simply, it is in States' interest to broaden the franchise to former felons who have successfully rejoined their communities.

A. Expanding the franchise to returning citizens promotes reintegration, civic participation, and public safety.

It is well established that individuals who engage in prosocial behavior when released from incarceration are more likely to reintegrate into their communities and desist from criminal activities.[22] Indeed, studies observe that "attachment to social institutions such as

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[22] Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 196 (2004).

families and labor markets increase the reciprocal obligations between people and provide individuals with a stake in conforming behavior."[23]

In much the same way, allowing former felons to vote can foster prosocial behavior; when former felons vote, "they are doing what all voters do: actively endorsing the political system."[24] Participating in the political process "produces citizens with a generalized sense of efficacy, who believe that they have a stake in the political system," which, "in turn, fosters continued political participation."[25] In this way, civic restoration "communicates to the ex-felon that she or he is still part of the community and has a stake in the democratic process."[26] When individuals are excluded from this process, by contrast, they "express a feeling of being an 'outsider.'"[27]

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[23] *Id.*

[24] Alec C. Ewald, *An "Agenda for Demolition": The Fallacy and the Danger of the "Subversive Voting" Argument for Felony Disenfranchisement*, 36 Colum. Hum. Rts. L. Rev. 109, 130 (2004).

[25] *Voting and Subsequent Crime and Arrest*, *supra* note 22, at 198.

[26] VCU News, *Restoring Voting Rights of Felons Is Good Public Policy, VCU Expert Says* (Apr. 26, 2016), https://news.vcu.edu/article/Restoring_voting_rights_of_felons_is_good_public_policy_VCU_expert.

[27] Mark Haase, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 Minn. L. Rev. 1913, 1926 (2015).

The experience of the *Amici* States confirms that when former felons are fully reintegrated into their communities, "it can help transform one's identity from deviant to law-abiding citizen."[28] Accordingly, efforts by the *Amici* States to expand the franchise embrace the idea that "restoring voting rights to ex-felons may facilitate reintegration efforts and perhaps even improve public safety."[29] As recognized in an executive order issued by the New York Governor, for instance, there is "a strong positive correlation between the civic engagement associated with voting and reduced rates of recidivism, which improves the public safety for all New Yorkers."[30]

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[28] Erika Wood, Brennan Ctr. for Justice, *Restoring the Right to Vote* 8 (May 2009), https://www.brennancenter.org/sites/default/files/2019-08/Report_Restoring-the-Right-to-Vote.pdf.

[29] Christina Beeler, Article, *Felony Disenfranchisement Laws: Paying and Re-Paying a Debt to Society*, 21 U. Pa. J. Const. L. 1071, 1088 (2019) (internal quotations omitted).

[30] N.Y. Exec. Order No. 181, at 1; *see also* Press Release, Cal. Secretary of State, *Secretary of State Alex Padilla Launches 'Restore Your Vote' Tool to Help Californians with Criminal Convictions Know Their Voting Rights* (Oct. 17, 2018), https://www.sos.ca.gov/administration/news-releases-and-advisories/2018-news-releases-and-advisories/secretary-state-alex-padilla-launches-restore-your-vote-tool-help-californians-criminal-convictions-know-their-voting-rights/ ("Civic engagement can be a critical piece in reintegrating formerly incarcerated Californians

Studies of former felons' voting behavior—including one centered on Floridians—support this conclusion. Indeed, a report by the Florida Parole Commission noted a decrease in recidivism beginning in April 2007,[31] when then-Governor Crist had revised Florida's rules of executive clemency to automatically restore the rights of most nonviolent felons upon completion of their sentences.[32] The report found that between April 2007 and March 2011—the period when Governor Crist's clemency rules automatically restored civil rights—approximately 11% of former felons reoffended, as compared with 33% of individuals released between 2001 and 2008.[33]

Another study found "consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and

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into their communities and reducing recidivism." (internal quotations omitted)).

[31] James Call, *Study Shows Ex-Cons Benefit from Rights Restoration*, wfsu Pub. Media, https://news.wfsu.org/show/capital-report/2011-07-29/study-shows-ex-cons-benefit-from-rights-restoration.

[32] Abby Goodnough, *In a Break from the Past, Florida Will Let Felons Vote*, N.Y. Times (Apr. 6, 2007), https://www.nytimes.com/2007/04/06/us/06florida.html.

[33] Call, *supra* note 31.

self-reported criminal behavior."[34] This survey of one thousand former high school students analyzed "the effects of voting participation in the 1996 election upon self-reported crime and arrest in the years from 1997 to 2000."[35] The study found that "[a]mong former arrestees, about 27% of the non-voters were re-arrested, relative to 12% of the voters."[36] These studies suggest that "[w]hile the single behavioral act of casting a ballot is unlikely to be the sole factor that turns felons' lives around, the act of voting manifests the desire to participate as a law-abiding stakeholder in a larger society."[37]

Law enforcement authorities have endorsed this view by supporting several States' voting restoration laws. For example, a police officer testified before the Maryland Legislature that re-enfranchisement "promotes the successful reintegration of formerly incarcerated people, preventing further crime and making our

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[34] *Voting and Subsequent Crime and Arrest*, *supra* note 22, at 213.

[35] *Id.* at 200.

[36] *Id.* at 205.

[37] *Id.* at 213.

neighborhoods safer."[38] Similarly, a former city police chief in Rhode Island wrote that disenfranchisement "disrupts the re-entry process and weakens the long-term prospects for sustainable rehabilitation," whereas "[v]oting—like reconnecting with family, getting a job, and finding a decent place to live—is part of a responsible return to life in the community."[39]

State legislators have similarly endorsed the notion that restoring voting rights encourages former felons to rejoin society as productive members of their communities. In Colorado, for example, the legislature declared that restoring voting rights to parolees "will help to develop and foster in these individuals the values of citizenship that will result in significant dividends to them and society as they resume their places in their communities." Colo. H.B. 19-1266 § 1(c). States have also recognized that restoring the franchise benefits their

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[38] *Restoring the Right to Vote*, *supra* note 28, at 11 (quoting Voter Registration Protection Act: Hearing on S.B. 488 Before S. Comm. on Educ., Health & Envtl. Affairs, 2007 Leg., 423rd Sess. (Md. 2007) (written testimony of Ron Stalling, Nat'l Black Police Ass'n)).

[39] Dean Esserman & H. Philip West, *Without a Vote, Citizens Have No Voice*, The Providence Journal (Sept. 25, 2006), https://www.brennancenter.org/sites/default/files/legacy/Democracy/Esserman%20op-ed%209-25-06.pdf.

communities more broadly by promoting civic participation. According to the Rhode Island Legislature, "[r]estoring the right to vote strengthens our democracy by increasing voter participation and helps people who have completed their incarceration to reintegrate into society." R.I. H.B. 7938 § 1(1).

Policymakers have also observed that by welcoming former felons back as full-fledged members of their communities, re-enfranchisement can improve overall public safety. Washington State legislators thus credited testimony that "restoration of the right to vote encourages offenders to reconnect with their community and become good citizens, thus reducing the risk of recidivism." Wash. H. Comm. on State Gov't & Tribal Affairs, Report on H.B. 1517, 2009 Reg. Sess., at 3 (2009). And the New Jersey legislature found that "[t]here is no evidence that denying the right to vote to people with criminal convictions serves any legitimate public safety purpose." N.J. A.B. 5823 § 1(f).

In sum, the *Amici* States share the view that expanding the franchise to returning citizens promotes reintegration into their communities, which, in turn, enhances civic participation and public safety.

B. Restrictive disenfranchisement systems disproportionately impact minority communities.

The *Amici* States also recognize the importance of restoring voting rights to returning citizens given the disparate impact of felon disenfranchisement laws on minority communities. Unfortunately, this country's mass incarceration problem "has disproportionately impacted people of color," and "the disparities in incarceration rates by race ultimately become disparities in voting rights."[40] Consequently, as of 2016, more than 7.4% of the Black voting age population in the United States could not vote, as compared with only 1.8% of the non-Black voting age population.[41] In Florida, these disparities are even starker: more than 20% of Black adults have been disenfranchised.[42]

The available data further suggests that disenfranchisement laws may "disproportionately impact individuals of Hispanic origin."[43]

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[40] Beeler, *supra* note 32, at 1085.

[41] *6 Million Lost Voters*, *supra* note 1, at 3.

[42] Chung, *supra* note 5, at 6.

[43] The Sentencing Project, *Democracy Imprisoned: A Review of The Prevalence and Impact of Felony Disenfranchisement Laws in the United States*, at 2 (Sept. 30, 2013), https://www.sentencingproject.org/publications/democracy-imprisoned-a-review-of-the-prevalence-and-

Indeed, "Hispanics are incarcerated in state and federal prisons at higher rates than non-Hispanics: about 2.4 times greater for Hispanic men and 1.5 times for Hispanic women."[44]

Furthermore, there is evidence that the existence of disenfranchisement laws—as well as misinformation about their scope—is more likely to deter Blacks from voting than their white counterparts. A 2009 study found that "eligible and registered" Black voters "were nearly 12 percent less likely to cast ballots if they lived in states with lifetime disenfranchisement policies," as compared with white voters, who were only 1 percent less likely to vote in such States.[45] According to another scholar, "the probability of voting declines for African-Americans, even if they do not possess a criminal record," in States that impose "restrictive criminal disenfranchisement

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impact-of-felony-disenfranchisement-laws-in-the-united-states/ (download PDF).

[44] *Id.*

[45] Erin Kelley, Brennan Ctr. for Justice, *Racism & Felony Disenfranchisement: An Intertwined History* 3 (May 2017), https://www.brennancenter.org/sites/default/files/2019-08/Report_Disenfranchisement_History.pdf.

laws."[46] In short, barring "so many" returning citizens in minority communities from voting "makes exercising the franchise less a part of the fabric of the community, precipitating a negative ripple effect."[47]

As a result, the political voice of minority communities is muted.[48] And when communities lose their political voice, they have less of a say in who represents them at the federal, state, and local levels—and thus lack influence over many matters that affect their daily lives. As one example, parents who live in communities affected by restrictive voting restoration laws may not be heard on a referendum to increase taxes for schools or in efforts to "'prevent yet another waste incinerator from

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[46] Anthony C. Thompson, *Unlocking Democracy: Examining the Collateral Consequences of Mass Incarceration on Black Political Power*, 54 How. L.J. 587, 607 (2011).

[47] *Id.*

[48] *See, e.g.*, Kevin Morris, *Disenfranchisement: The Case of New York City*, Urban Affairs Review 19 (2020) ("I find that neighborhoods that are home to lost voters—and particularly neighborhoods with large Black populations—systematically turn out for local elections at lower rates than otherwise similar neighborhoods."); Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. Rev. 255, 282-83 (2004) ("The loss of voting power has ramifications not only for the individual ex-offender, but also for the communities to which ex-offenders return, which will then include growing numbers of residents without a recognized political voice.").

moving in nearby.'"[49] Lower voter turnout is also associated with less inclusive healthcare policies, which, in turn, cause an increase in the "health disparities" that already exist between voters and nonvoters.[50] Restoring the vote to former felons will foster political participation in the minority communities that have been long disadvantaged by felon disenfranchisement laws.

To that end, many States have expressly recognized the disparate impact of restrictive restoration systems. In an executive order issued by the New York Governor, for instance, he asserted that "the disenfranchisement of individuals on parole has a significant disproportionate racial impact thereby reducing the representation of

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[49] Christopher Haner, *Felon Disenfranchisement: An Inherent Injustice*, 26 J. Civ. Rts. & Econ. Dev 911, 935 (2013) (quoting Elizabeth A. Hull, *The Disenfranchisement of Ex-Felons* 1-5 (2006)).

[50] Dr. Nicolas Yagoda, *Addressing Health Disparities Through Voter Engagement*, 17 (5) Ann. Fam. Med. 459, 460 (Sept. 2019); *see also* Jonathan Purtle, *Felon Disenfranchisement in the United States: A Health Equity Perspective* 103(4) Am. J. Public Health 632 (Apr. 2013) (explaining how "felon disenfranchisement might affect health by means of inequitable public policies that differentially allocate resources for health and the inability to participate fully in society, including by voting").

minority populations." N.Y. Exec. Order No. 181, at 1. Likewise, in Rhode Island, the legislature noted that "[b]y denying so many the right to vote, criminal disenfranchisement laws dilute the political power of entire minority communities." R.I. H.B. 7938 § 1(4). And in Virginia, then-Governor McAuliffe compared a requirement that LFOs be paid prior to regaining the franchise to "poll taxes" in a press release announcing reforms that would remove financial barriers to voting.[51]

In short, restoring voting rights benefits returning citizens and their communities in numerous ways, including by fostering civic participation, promoting public safety, and eliminating the structural barriers that disproportionately impact minority communities and mute their political voices.

III. Systems Like SB-7066, Which Lack Adequate Process And Fail To Account For Indigency, Do Not Facilitate Compliance With LFOs.

Notwithstanding the significant negative effects of restrictive re-enfranchisement systems, the Florida defendants contend that SB-7066

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[51] Press Release, *Governor McAuliffe Announces New Reforms to Restoration of Rights Process* (June 23, 2015), https://www.governor.virginia.gov/newsroom/all-releases/2017/mcauliffe-administration/headline-826609-en.html.

furthers the State's interest because "demanding that every felon satisfy in full his debt to society is the State's only method for ensuring that no felon who falls short will automatically be allowed to rejoin the electorate." Fla. Br. at 35. At the same time, however, Florida asserts that it should bear no responsibility for establishing a system that allows former felons to ascertain how much, if anything, they owe. *Id.* at 53 (contending that the district court had "no legal basis for charging *the State* with the responsibility of providing felons with information about their own unfulfilled criminal sentences and any payments that they themselves have made toward them"). In the *Amici* States' experience, this approach does not facilitate payment of LFOs or further any legitimate state interests. It also disregards that States have other means for ensuring payment and that many States, including some *Amici*, have established systems for tracking and collecting LFOs.

At the threshold, as this Court previously recognized, there is no evidence that disenfranchisement facilitates compliance with outstanding LFOs. *See Jones v. Governor of Fla.*, 950 F.3d 795, 827 (11th Cir. 2020) (per curiam) ("If a felon is truly unable to pay, it makes no sense to assert that he will be incentivized to pay his LFOs with

money that he does not have."). For citizens who are willing but unable to pay, "[t]ying repayment to voting rights is unlikely to compel these individuals to pay their LFOs any more quickly than if the franchise was not so conditioned."[52]

The number of former felons who find themselves in this position is substantial, as many owe more in fees and fines than they have the means to repay. According to one study, "a returning citizen's family owes, on average, $13,600 in fines and fees alone."[53] And if the fines and fees have been turned over to debt collection firms, former felons may face "up to a 40 percent surcharge" on the amount owed.[54] To exacerbate this problem, "formerly incarcerated people are unemployed at a rate of over 27%," which is nearly "five times higher than the

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[52] Ryan A. Partelow, *The Twenty-First Century Poll Tax*, 47 Hastings Const. L. Q. 425, 463 (2020); *see Bearden v. Georgia*, 461 U.S. 660, 670 (1983) (reasoning that "[r]evoking the probation of someone who through no fault of his own is unable to make restitution will not make restitution suddenly forthcoming").

[53] S. Carter, *The New Poll Tax: How Wealth-Based Disenfranchisement Persists in the United States*, Harvard Civil Rights–Civil Liberties Law Review (Oct. 30, 2019), https://harvardcrcl.org/the-new-poll-tax-how-wealth-based-disenfranchisement-persists-in-the-united-states/.

[54] *Id.*

unemployment rate for the general United States population."[55] Given this reality, many state and county governments do not anticipate receiving full payment from former felons; from 2014 to 2018, for instance, "the state Clerk of Courts in Florida labeled an average of 83 percent of the money owed as having 'minimal collections expectations.'"[56]

To be sure, States may ensure that former felons complete the terms of their sentences, including by paying any LFOs owed, through courts' alternative means of enforcing judgments, including by "extend[ing] the time for making payments, [] reduc[ing] the fine, or direct[ing] that the probationer perform some form of labor or public service in lieu of the fine." *Bearden*, 461 U.S. at 672; *see Jones*, 950 F.3d at 827. There is no sound governmental interest, however, in refusing the right to vote to returning citizens who lack the means to pay their outstanding LFOs.

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[55] Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment among formerly incarcerated people*, Prison Policy Initiative (July 2018), https://www.prisonpolicy.org/reports/outofwork.html (emphasis omitted).

[56] Carter, *supra* note 53.

When returning felons *do* have the ability to pay, States can facilitate completion of sentences by establishing systems that allow their returning citizens to ascertain how much they owe. To that end, many States task their court systems, not their residents, with maintaining a record of outstanding LFOs and amounts paid. Indeed, it is perfectly reasonable to expect the government actors that impose LFOs to keep track of those obligations.

Consistent with their varying approaches to felon re-enfranchisement, States have implemented a variety of approaches to collecting and tracking LFOs. For example, Washington State relies on its courts and department of corrections to work together to establish payment plans for collecting LFOs. The sentencing court, either on "the judgment and sentence or on a subsequent order to pay," must "designate the total amount" of LFOs and "segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments." RCW 9.94A.760(1). "On the same order," the court must also "set a sum that the offender is required to pay on a monthly basis towards satisfying" the LFO. *Id.* Then, after sentencing, the department of corrections is responsible for collecting LFOs during any

period of supervision. RCW 9.94A.760(9). This responsibility shifts to the county court clerk when any period of supervision concludes. *Id.*

Other States similarly charge court clerks with the responsibility of collecting LFOs. In most California counties, trial courts administer collection programs.[57] When a case concludes, each trial court "generates an order detailing its decision, which includes any court-ordered debt owed."[58] Similarly, in Illinois, the county-level trial court "collects fines, fees and other costs and disburses them to the appropriate state, county, and local funds and agencies."[59] And in New Mexico, the municipal court clerks are responsible for collecting fines, fees, and costs assessed in criminal proceedings.[60] Virginia likewise

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[57] Legislative Analyst's Office, *Restructuring the Court-Ordered Debt Collection Process* 6 (Nov. 2014), https://lao.ca.gov/reports/2014/criminal-justice/debt-collection/court-ordered-debt-collection-111014.pdf.

[58] *Id.* at 7.

[59] Alexes Harris *et al.*, *Monetary Sanctions in the Criminal Justice System* 89 (Apr. 2017), http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf.

[60] N.M. Judicial Ed. Ctr., *New Mexico Municipal Court Manual for Judges and Staff* 12-3 (June 2009), http://jec.unm.edu/manuals-resources/manuals/NMMunicipalJudgesBenchbook.pdf.

requires its court clerks to track the assessment and collection of LFOs "assessed within their court."[61]

Further, several jurisdictions task their court systems with the responsibility for tracking, as well as collecting, LFOs. For example, Alabama courts maintain a record for each case, which "includes the fines, fees, and restitution assessed to the defendant, including a description of each financial obligation, the amount due, the amount paid, and the remaining balance."[62] California courts are also responsible for maintaining a record for each individual with LFOs: "When setting up installment payments, court or collections staff obtain personal, contact, and financial information to establish a payment record for each individual. Courts can then use this information to send monthly payment reminders or billing slips to help individuals maintain timely payments."[63] Similarly, in Texas, a court cost "is not

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[61] Va. Compensation Bd., *FY18 Fines and Fees Report* 4 (Dec. 2018), https://rga.lis.virginia.gov/Published/2018/RD555/PDF; *see* Va. Code Ann. § 19.2-349.

[62] Marc Meredith & Michael Morse, *Discretionary Disenfranchisement: The Case of Legal Financial Obligations*, 46 J. Leg. Stud. 309, 320 (2017).

[63] *Restructuring the Court-Ordered Debt Collection Process*, *supra* note 57, at 8.

payable" until the sentencing court provides a "written bill" containing the "items of cost" to the person charged with payment. Tex. Code Crim. Proc. Ann. art. 103.001 (a), (b). Further, each county must maintain a receipt book of fines and fees collected in criminal cases. Tex. Code Crim. Proc. Ann. art. 103.010(a). When a person makes a payment toward such fines and fees, the county must provide a receipt showing the amount paid, the date of payment, the "case in which the costs were accrued," and the "item of costs." *Id.* art. 103.010(b).

As these examples illustrate, States across the country have implemented a variety of measures for imposing, collecting, and tracking LFOs. Even the Florida defendants acknowledge that the Florida court system has the mechanisms in place to "monitor and manage the collection" of LFOs. Fla. Br. at 54. Their suggestion that it should not be the State's responsibility to provide information about outstanding LFOs to its citizens is thus untenable.

CONCLUSION

The Court should affirm the district court's judgment.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2016, in 14-point Century Schoolbook font, and complies with the word limitation set forth in Federal Rule of Appellate Procedure 29(a)(5) and Eleventh Circuit Rule 35-8 in that the brief is 5,570 words.

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2020, I electronically filed the foregoing Brief of *Amici Curiae* District of Columbia, *et al.*, with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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