The New Civil Rights Battle: The Struggle to Implement Amendment #4

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This is a story about equality, about justice and, ultimately, about democracy. It is about the historic struggle to create the kind of nation that America professes to be. But, as frequently happens, those with power have made every effort to bend the moral arc of the universe, in Martin Luther King's Jr. famous statement, away from justice – not towards it.

On Tuesday, November 6, 2018, close to 65% of voters approved an amendment to the Florida Constitution to restore voting rights to approximately 1.4 million people who had committed a felony and been disenfranchised, possibly for life. As Howard Simon, Executive Director of the ACLU proclaimed at the time: "This is transformative in Florida…We will no longer have second class citizens." [1] For the thousands of volunteers, who had worked hard to have Amendment #4 passed, this was a night of euphoria. The people had spoken with a strong bi-partisan voice in favor of correcting one of the major injustices in Florida. Little did we know what was to come.

To tell this story, it is necessary to provide some context.

History of Disenfranchisement

South Florida residents, a significant number of whom are Northeastern transplants, do not regard Florida as a southern state with a shameful history of slavery and a role as a founding member of the Confederate states. They just see Florida as New York state, without the snow. However, Florida's Constitution and politics are very much shaped by the injustices of Reconstruction and the Jim Crow period.[2]

After the Civil War, the U.S. Congress passed the Reconstruction Amendments: The 13th Amendment which emancipated the slaves, the 14th Amendment which

[1] https://time.com/5447051/florida-amendment-4-felon-voting/

[2] The following discussion of the history of voting rights in Florida draws extensively from a report by Erika Wood's on Felon Voting Rights prepared for the Brennan Center for Justice in 2009 https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf

granted equal citizenship to freed slaves, and the 15th Amendment which prohibited denial of the right to vote based on "race, color or previous condition of servitude". Florida, along with nine other Confederate states rejected the 14th Amendment in 1866. The following year, Congress passed the Reconstruction Act which required each state to extend voting rights to all males, regardless of race.

Florida reacted by amending its Constitution in 1868 to include a number of restrictions which would, in practice, almost eliminate black suffrage. One of the most potent of these restrictions imposed a lifetime ban on voting on people with felony convictions (Article XIV, Section 2). To make sure this had the "desired effect' of eliminating as many black voters as possible, the range of crimes that would fall under this ban was expanded.

The restrictions, including this lifetime ban for crimes that were frequently petty (or non-existent), worked to stop Blacks from voting. Florida went even further by imposing a discriminatory poll tax in its 1885 constitution. So, even if they could stay out of the hands of law enforcement, blacks were unlikely to be able to afford to vote. And, if they tried to register to vote, they would be subject to threats and intimidation. Blacks did protest disenfranchisement during the early years of the Jim Crow period, between 1877 and 1890, but to little effect. Violence was a frequent response to any attempt to protest – or to even try to register to vote.

It took America a long time to remove this blatant injustice. In 1957, Congress passed the Civil Rights Act, which set up a Commission to investigate it. It found incidents of voter intimidation in Florida, including cross-burning, abusive telephone calls and other threats. The injustice was clear when the statistics it produced showed that counties with the highest percentage of black populations had among Florida's lowest black voter registration rates."[3]

In response to the federal 1965 Voting Rights Act, Florida revised its Constitution. The 1968 Florida Constitution removed some of the more minor crimes that could result in a lifetime voting ban but left the basic blanket disenfranchisement for a felony conviction. Article VI, section 4 of Florida's Constitution stated: "No person convicted of a felony…shall be qualified to vote…until restoration of civil rights…"

[3] Ibid p.7

The Need for Constitutional Change

By 2016, it was estimated that 1.6 million citizens in Florida were disenfranchised because of the voting bar on people who had been convicted of a felony.[4] This was 10% of Florida's voting-age population! The Jim Crow constitutional provision did not just apply to blacks, but it did disproportionately affect them. While African Americans made up 16% of the Florida's general population, they were nearly one-third of those disenfranchised.[5]

Florida is not alone in disenfranchising people who have committed a felony. Many states, as part of their efforts to engage in voter suppression, have tried to do the same thing. But, by 2016, the trend to eliminate what was clearly a legacy of Jim Crow, had moved many states away from such restrictions, leaving only Iowa, Kentucky and Florida with a lifetime ban for those with a felony conviction. And of these states, Florida, by far, disenfranchised the most residents.

It was time to remove this stain from the past.

But how? From 2000 on, a couple of approaches were used, but none produced the desired, permanent results.

Johnson v. Bush

In 2000, Thomas Johnson, an African American man from Gainesville, filed a class action suit alleging that Florida's felony disenfranchisement law violated the 14th and 15th Amendments of the U.S. Constitution.[6] He lost at the U.S. District Court level, but prevailed in the Court of Appeals for the 11th Circuit. However, when that Court reheard the case *en banc,* they overturned the ruling of the three-judge panel. The U.S. Supreme Court refused to take up the appeal, so the net result was that Florida's felony disenfranchisement law was held not to violate the 14th and 15th Amendments. In fact, U.S. Courts have

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[4] https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/

[5] washingtonpost.com/nation/2018/11/07/long-racist-history-floridas-now-repealed-ban-felons-voting/

[6] https://www.courtlistener.com/opinion/76404/thomas-johnson-v-governor-of-the-state-of-fl/

generally upheld the right of states to disenfranchise convicted criminals (see the 1974 case *Richardson v. Ramirez*, U.S. Supreme Court, 418 U.S. 24). [7]

Executive Action

Since the U.S. Supreme Court did not see its role as the corrective for historical injustice (as it has done in other cases of discrimination), the only solution for the problem seemed to be the ballot box.

The Florida Constitution says a person who has been convicted of a felony is not entitled to vote until his or her "civil rights" are restored. It does not provide any procedural details on how those rights can be restored. This means, rights could be restored virtually automatically, with no waiting periods, applications, interviews, hearings, etc. Or, at the other extreme, they could never be restored if the process is arbitrary, confusing and onerous, with multiple barriers to cross. Between 2007 and 2018, Florida see-sawed between both these approaches.

In April 2007, Governor Charlie Crist, issued new clemency rules that eliminated a formal application process for restoration of rights for some disenfranchised citizens. He believed that to deny the vote to those who have paid their debt to society was "more than reckless or irresponsible, it [was] unjust". [8] **By the stroke of a pen, the rights of thousands of convicted felons were restored.** [9]

However, when Governor Rick Scott, took office in 2010, he reversed Governor Crist's rules and imposed an extremely bureaucratic and arbitrary clemency process [10] **that virtually stopped the restoration of voting rights in its tracks.** [11] **One indication of the difference between the two regimes is the number of Floridians who regained voting rights during each period: In 2008, under**

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[7] https://felonvoting.procon.org/major-legal-cases-affecting-felon-voting/

[8] https://www.nytimes.com/2018/01/02/opinion/florida-missing-voters.html

[9] https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida

[10] https://floridapolitics.com/archives/259928-judge-orders-new-system-for-restoring-rights and https://www.fairelectionscenter.org/hand-v-scott

[11] https://www.tampabay.com/florida-politics/buzz/2018/02/01/federal-judge-strikes-down-floridas-system-for-restoring-felon-voting-rights/

Governor Crist, 115,000 Floridians got back their voting rights. By 2015, after almost five years in office, Gov. Scott's administration had restored voting rights to fewer than 2000 Floridians! Meanwhile, in the period 2010-2016, the disenfranchised population of Floridians grew by nearly 150,000 to 1,686,000![12]

Thus, changing administrations did not seem to be a long-term solution for the injustice, since there would be nothing to stop a new administration from changing the rules once again and reverting to a more restrictive stance. This process of curtailing and expanding disenfranchisement policies and practices continues to this day in many other states as well (e.g. Kentucky).[13]

It was clear that what was needed was a permanent "fix". The only way to do this once and for all was to amend the Florida Constitution.

Amendment #4

In 2016, several organizations including the American Civil Liberties Union, and the Florida Rights Restoration Coalition, joined with the Brennan Center to draft an amendment to the Florida Constitution. The following is the ballot language they came up with (the underlined sections indicate the changes to the pre-existing provisions).[14]

Article VI, Section 4. Disqualifications.—

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.

(b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.

[12] https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida

[13] https://felonvoting.procon.org/state-felon-voting-laws/

[14] A useful reference for any information about Amendment #4, is https://ballotpedia.org/Florida_Amendment_4,_Voting_Rights_Restoration_for_Felons_Initiative_(2018)

The language of the Amendment was not without controversy. Some felt that there should simply be an automatic restoration of voting rights for every convicted felon, as soon as he or she had finished the period of incarceration. On the other hand, some felt that the change should be even more restrictive, requiring more types of violent offenses to be made subject to the clemency process. However, there seemed to be little discussion at the time about another part of the Amendment, namely the clause "voting rights shall be restored upon completion of all terms of sentence including parole or probation". As discussed below, this clause had the potential to become a serious impediment to the implementation of the Amendment.

Why did the Amendment not just provide automatic restoration of voting rights to all convicted people? After all, in two states, Vermont and Maine, even those still in prison can vote. Florida residents, however, are more conservative. In order to be approved, ballot amendments in Florida require a supermajority to pass (60% of those voting). When different formulations of the Amendment were polled during the drafting process, the only one that got at least 60% was one that excluded murderers and sex offenders. The drafters felt this was the least restrictive they could be and still get the Amendment approved.

By October 2016, the FRRC and other organizations had collected enough petitions to have the ballot amendment reviewed by the Florida Supreme Court. The Court is required to decide whether an amendment follows the required rules in order to be included on the ballot. It does not address the substance of the amendment. When the Supreme Court approved the form of the ballot question,[15] a campaign was launched across the state, headed by the coalition Floridians for a Fair Democracy, to collect the required number of signed petitions.

By the end of January 2018, the Coalition had surpassed the 766,200 signed petitions, the threshold to get the Amendment on the November 2018 ballot. This was followed by many social justice, religious and voting rights groups working to explain to the public the importance and consequences of Amendment #4 The FFD spent over $20 million during the petition process and subsequent campaign in order to get the word out to Florida voters.[16]

Somewhat surprisingly, given Florida's dismal history of voting rights, vocal opposition to the Amendment was quite muted. The Florida Attorney General

[15] http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VRA_SupremeCourtOrder.pdf
[16] https://ballotpedia.org/Florida_Amendment_4,_Voting_Rights_Restoration_for_Felons_Initiative_(2018)

just referred the proposed ballot amendment to the Supreme Court in October, without making any submissions to the court.[17] Just about every newspaper in Florida carried an editorial that encouraged voters to say "yes" to Amendment #4. There were few organized groups (and no prominent ones) opposing the amendment. Was this really a "new" Florida where everyone recognized the injustice in our history and decided that it had to be corrected? Was the arc really bending towards justice?

Despite the large majority approving the Amendment on November 6, 2018, it was not very long before the optimism dissipated about the future of voting rights in Florida. The battle had to be re-engaged, and this time the battlefield was the Legislature.

The Florida Legislature

When Amendment #4 passed, the drafters of the language were cautiously optimistic that the amendment was "self-executing'. In other words, voting rights would automatically be restored to those who had felony convictions (unless the felon was a murderer or sexual offender).[18] Their view was that there was no need for legislation to enact the constitutional change.

The new Republican administration, under Governor DeSantis, took a different position. They asserted that implementing legislation was required in order to define such terms as "murder" or "felony sexual offense"* and, in particular, to define the clause, "*completion of all terms of sentence"* . The ballot amendment had specified that this should include "parole or probation". Did that mean that parole and probation were the only parts of the sentence that needed to be completed before voting rights would be restored or were they merely examples of terms and conditions that had to be completed before voting rights could be restored? The Republican majority in the Florida Legislature took the latter position and incorporated the changes they wanted into an omnibus electoral reform bill SB7066 Election Administration Legislation[19]

[17] http://edr.state.fl.us/Content/constitutional-amendments/2018Ballot/VRA_SupremeCourtOrder.pdf
[18] https://www.wlrn.org/post/amendment-4-passed-will-it-actually-get-implemented#stream/0

[19] https://www.flsenate.gov/Session/Bill/2019/7066

The bill defined "all terms of the sentence" to include "any portion of a sentence that is contained in the four corners of the sentencing document" (p46 of the bill). This broad definition meant that not only would parole and probation need to be completed, but all fees, fines and restitution (Legal Financial Obligations, hereafter referred to as LFO's) would need to be paid before an individual's voting rights could be restored. [20]

This interpretation, on the surface, did not seem to be unreasonable. After all, proponents of Amendment #4 always stated that once an individual had "paid their debt to society", their rights should be restored. It certainly could be argued that restitution, fees, and fines were part of that debt.
In fact, when the Ballot Amendment was heard before the Florida Supreme Court in October, 2016, the lawyer for the proponents was asked directly by the Justices if fines and restitution would be included in the "terms of the sentence" and he submitted that they would be. (It should be noted that he was never asked about whether fees should be included.) [21] **Moreover, the clemency process that the state had been using under Governor Scott (arguably, to keep as many felons from getting their voting rights restored as possible) also explicitly considered payment of restitution as a requirement to have one's civil rights restored.** [22]

So, why was there such a strong negative reaction from proponents of Amendment #4 to SB 7066? For the simple reason that SB 7066 would stultify the intent of Amendment #4 by making it virtually impossible to restore the right to vote to felons. Even those who believed that they had paid their LFO's in full, might be too intimidated to register to vote, when faced with issues of proof. SB7066 essentially made Amendment #4 all but irrelevant and negated the will of the people. There were three major reasons why this was the case:

(i) The Reach of Legal Financial Obligations (LFO's)

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[20] https://www.flsenate.gov/Session/Bill/2019/7066/BillText/er/PDF , lines 1333-1385

[21] https://www.courtlistener.com/recap/gov.uscourts.flnd.106435/gov.uscourts.flnd.106435.207.0_3.pdf , p.15

[22] https://www.fcor.state.fl.us/restoration.shtml.

First, the vast majority of ex-felons would never be able to pay their LFO's. Florida is known as a "pioneer of cash-register justice".[23] The state largely funds its courts system through a "mind-boggling array of fees" [24] Therefore, it is not surprising that the amounts of these fees and fines are staggering. In May 2019, a study reported in the Sun Sentinel estimated that if interest was included, felons in Broward, Palm Beach and Miami-Dade counties owed more than a billion dollars simply in fines! [25] In another study presented to the Court of Appeals of the 11th District (discussed below), 80.5% of felons, in the 58 Florida counties examined, had outstanding LFO's and well-over one third of them owed at least $1000. [26] Individuals leaving prison, or on parole, usually have very few resources. Even if they enter into a payment plan to pay off their LFO's, it may take years (if ever) to pay them off before they can get their vote restored.

(ii) Record-keeping

The second reason is administrative. It stems from the absence of centralized, reliable records on LFOs making it extremely difficult for convicted felons to even find out how much they owe. It is scarcely believable that no one in Florida tracks restitution- not county clerks, who record nearly all other aspects of a criminal case and not even the Florida's Department of Corrections. As the Miami Herald noted, "Even felons sometimes don't know how much they owe — or even who they owe it to". [27] And this only related to restitution. There is also no central data base in the state to find out if fees or fines are owed. Usually the Clerk of the county where you committed the crime should be able to tell you about fees and fines owed. But, if it is an old case, this may be a problem.[28]

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[23] It is estimated that, on average, a felon pays $1000 in court fees alone. https://www.palmbeachpost.com/news/20200306/palm-beach-county-court-officials-work-to-help-felons-vote

[24] https://slate.com/news-and-politics/2020/02/amendment-4-eleventh-circuit-florida-voting.html.

[25] https://www.sun-sentinel.com/news/politics/fl-ne-felony-fines-broward-palm-beach-20190531-5hxf7mveyree5cjhk4xr7b73v4-story.html#nt=interstitial-manual.

[26] https://law.justia.com/cases/federal/appellate-courts/ca11/19-14551/19-14551-2020-02-19.html pp 37-38

[27] https://www.miamiherald.com/news/politics-government/state-politics/article228821704.html

[28] https://www.tampabay.com/florida-politics/buzz/2019/05/26/how-felons-can-register-to-vote-in-florida-under-new-amendment-4-law/

(iii) Risks of attempting to Register and Vote

The risk to the felon of making a mistake about whether the LFOs had been fully paid are potentially very serious. The voter registration form states: "It is a 3rd degree felony to submit false information. Maximum penalties are $5,000 and/or 5 years in prison." Given the complexity of the administrative system and the desire to protect those felons who were trying to turn their lives around, many Amendment 4 proponents were reluctant to tell anyone, when there was any possibility that they still had outstanding LFO's anywhere in the state, to register. Even when some state attorneys indicated they would not prosecute anyone who registered in good faith thinking they had acquitted their financial responsibilities, the fear remained.[29] In the current climate, the last thing anyone wanted to do was counsel someone to commit another felony!

Looking at the available evidence, voting rights activists concluded that SB7066 would effectively prohibit at least 80% of the 1.4 million people who would have been entitled to register to vote under Amendment #4 to actually register.

There was a lot of vocal opposition to SB 7066, but the Republican majority would not be moved on the central issue of the payment of all LFO's as a pre-condition to having one's right to vote restored. [30] The bill was approved by the Florida Legislature in May 2019 and signed by Governor DeSantis on June 28, 2019. On the same day, four lawsuits were filed in the federal court system.

The next stage of the struggle was engaged.

The Recent Battle in the Courts

What seemed, in June 2019, to be a narrow case about the specific language in Florida Senate Bill 6077 and the implementation of Amendment #4 is rapidly turning into a landmark voting rights case for the nation. Governor DeSantis has aggressively defended the idea that felons must pay all financial obligations

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[29] https://www.tampabay.com/florida-politics/buzz/2019/05/26/how-felons-can-register-to-vote-in-florida-under-new-amendment-4-law/

[30] There were provisions added for discharging the financial obligations written into SB 7066, including converting the LFO's into community service. However, since community service is usually paid at about $12 hour, it could take years for some convicted felons to get their voting rights back. https://www.flsenate.gov/Session/Bill/2019/7066/BillText/er/PDF lines 1370-78

before getting back their vote. Voting rights and social justice groups, led by the ACLU, have fought back at every step.

Although it has been barely 9 months since the first lawsuit was launched against SB 6077, a great deal has happened in both the federal and state courts.

When U.S District Court Judge Robert Hinkle of the Northern District of Florida, received the four lawsuits against SB7066 in late June 2019, he consolidated them into one case, Jones v. DeSantis. [31] **There were seventeen defendants in the case, all ex-felons, all wanting to vote and all unable to pay their LFOs. Judge Hinkle heard the case in early October 2019. The two major issues he addressed were: "whether the United States Constitution prohibits a state from requiring payment of financial obligations as a condition of restoring a felon's right to vote, even when the felon is unable to pay… (and) whether the state's implementation of this system has been so flawed that it violates the Constitution."**[32] **The case was set to be heard on October 18, 2019.**

In August 2019, before the hearing by the federal district court could occur, Governor DeSantis requested an advisory opinion from the Florida Supreme Court on the meaning of "completion of all terms of sentence" that was in Amendment #4, and is now part of the Florida Constitution. Specifically, he asked the court whether it encompassed "financial obligations, such as fines, fees and restitution (LFOs) imposed by the court in the sentencing order." [33] **The Governor must have felt confident that he would get an opinion supporting his views, since he had recently made three new appointments to the Florida Supreme Court that had tilted the court to a more conservative bench.** [34]

On August 15, 2019, District Court Judge Hinkle held a hearing on Jones v DeSantis to determine whether he should issue a preliminary injunction to stop SB7066, with respect to LFOs, so that the 17 defendants would be allowed to vote.

On October 18, 2019, Judge Hinkle granted the injunction allowing the 17 plaintiffs to register to vote. However, there were some provisos. While acknowledging that under the 14th Amendment, the state can disenfranchise all

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[31] https://www.courtlistener.com/recap/gov.uscourts.flnd.106435/gov.uscourts.flnd.106435.207.0_3.pdf
[32] https://www.courthousenews.com/wp-content/uploads/2019/10/hinkle-decision.pdf .
[33] https://www.floridasupremecourt.org/content/download/567884/6414200/file/sc19-1341.pdf

[34] https://www.heraldtribune.com/news/20190122/desantis-appoints-third-florida-supreme-court-justice-completing-conservative-makeover

felons, Judge Hinkle concluded that the state cannot deny someone's right to vote simply because they cannot afford to pay their LFOs. He also recognized that the process for felons to even find out what LFOs are owed was an "administrative nightmare". He ordered the state to establish a process to verify whether people are "genuinely unable to pay their LFO's" . If it were established that a convicted felon was not able to pay his or her LFOs, this should not act as a barrier to being able to vote. At the same time, he indicated that the Florida Supreme Court would have the "last word" on whether Amendment #4 required the payment of "financial obligations" imposed at the time of sentencing.

Governor DeSantis and the Secretary of State appealed Judge Hinkle's ruling to the 11th U.S. Circuit Court of Appeals and also filed a motion asking Hinkle to put the injunction "on hold" until the Appeals Court had ruled. In December 2019, Judge Hinkle held a hearing on this request. Government lawyers argued that it was "unlikely that Florida voters would have permitted felons to recapture their voting rights without fully repaying their debt to society". In other words, the public expected convicted felons to pay all their LFOs before getting their vote back. They went on to assert that, if their view was correct and Judge Hinkle's judgement stood, this would render the entire Amendment #4 null and void. Judge Hinkle rejected this notion and "excoriated lawyers representing Gov. DeSantis' administration, accusing the state of trying to "run out the clock" to keep felons from voting (in upcoming elections)".[35] Government lawyers confirmed that they had taken no action on Judge Hinkle's request to create an administrative process to ascertain whether a felon is unable to pay and should get their voting rights back without having to pay their LFOs. He rejected their claim that to set up a such a process would be too much of an "administrative burden". The Judge ruled that the 17 plaintiffs should be allowed to register to vote and, if, by February 12, 2020, the Government did not come up with a process to establish whether or not the plaintiffs were able to pay the LFOs, then they should be permitted to vote in the next election.

On January 16, 2020, the Florida Supreme Court provided its advisory opinion on the meaning of "completion of all terms of sentence".[36] Unsurprisingly, they concluded that this included payment of court fees, fines and restitution imposed during a felon's sentence. "It is our opinion that the phrase 'all terms of sentence', as used in article VI, section 4, has an ordinary meaning that the

[35] https://cbs12.com/news/local/federal-judge-hammers-state-on-felons-rights
[36] https://www.brennancenter.org/sites/default/files/2020-01/Supreme%20Court%20Opinion.pdf

voters would have understood to refer not only to durational periods but also to all LFOs imposed in conjunction with an adjudication of guilt". In other words, they were asserting that, when voting for Amendment #4, the voters must have understood that this included LFOs. The decision was welcomed by Governor DeSantis' administration and strongly criticized by the Coalition opposing SB7066.[37]

On February 19, 2020, the 11th U.S. Circuit Court of Appeals released a 78-page opinion on the Government's appeal of Judge Hinkle's ruling.[38]
In a unanimous opinion, the three-judge panel affirmed Judge Hinkle's ruling at the District Court level. They recognized that the state has a general interest in collecting fines and fees, but "disenfranchisement of felons who are genuinely unable to pay (court costs) and who have made a good-faith effort to do so, does not further any legitimate state interest that we can discern". Under a test of "heightened scrutiny", the Court agreed with the lower court decision that since the "LFO requirement punishes those who cannot pay more harshly than those who can" and this violates the Equal Protection clause of the 14th Amendment. So, the 17 plaintiffs in this case should be able to register to vote.

The opinion was regarded as "one of the most vehement condemnations of wealth-based voter suppression ever issued by a federal court" [39] It gave added weight to the argument that all indigent felons – not just the 17 plaintiffs -- who would otherwise qualify to vote under Amendment #4, should be able to vote without paying their LFOs. Evidence highlighted in the decision suggested that 80% of felons might be in this position. Of course, this does not automatically mean that these individuals do not need to satisfy their legal financial obligations (for example, through a payment plan), but the simple fact of being unable to pay should not prevent them from registering to vote.

A spokesman for the Governor immediately said the government would appeal that decision to the 11th Circuit *en banc* (with every active judge sitting on the panel), counting on the fact that recent judicial appointments have also tilted this court to a conservative majority.

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[37] https://www.brennancenter.org/our-work/analysis-opinion/joint-statement-american-civil-liberties-union-aclu-aclu-florida-brennan

[38] https://campaignlegal.org/sites/default/files/2020-02/Document.pdf

[39] https://slate.com/news-and-politics/2020/02/amendment-4-eleventh-circuit-florida-voting.html

The Governor appealed and 10 states and two conservative voting groups filed amicus briefs in support.[40] At this point, what started as a "local" (state) case got transformed into a major national voting rights case. Lawyers for Alabama, Arizona, Arkansas, Georgia, Kentucky, Louisiana, Nebraska, South Carolina, Texas and Utah wrote in their amicus brief that the holding of the 11th Circuit three-judge panel "calls into question the constitutionality of re-enfranchisement statutes in a majority of states" and that these states "have a substantial interest in ensuring that they can continue to pursue the goal of re-enfranchisement alongside other important state interests like deterrence, retribution and restitution". Following the Governor's lead, they asserted that it would be a "difficult task" to determine who is unable to pay and that they, too, had the administrative nightmare concerning the LFO records, that Judge Hinkle had found in Florida And, ignoring the underlying history of racial injustice and voter suppression, they even argued that "If states are limited in their ability to pursue re-enfranchisement alongside their other interests, some states may well throw in the towel and prohibit any felon from regaining the right to vote"!

Whether the 11th Circuit will entertain an appeal *en banc* or whether the case may find its way directly to the Supreme Court is an open question.[41] We have still not had the actual trial on the constitutional issues in the federal District Court. As of now, the decision of the U.S. District Court of Appeals only applies to 17 voters. Will the 11th Circuit want to hear an *en banc* appeal with such a narrow application or would they prefer to wait until the outcome of the U. S. District Court trail before Judge Hinkle scheduled to start on April 6th? Moreover, now that other states have weighed in with their *amicus* briefs and with the addition of another case in the courts of Alabama challenging the payment of fees, fines and restitution[42], it may be more likely that the matter will head directly to the Supreme Court. In any event, it is unlikely that any of this will be resolved in time for anyone other than the 17 original plaintiffs to be able to vote in the 2020 elections.

What Now?

[40] https://miami.cbslocal.com/2020/03/05/states-back-desantis-in-florida-felons-voting-fight/

[41] https://slate.com/news-and-politics/2020/02/amendment-4-eleventh-circuit-florida-voting.html

[42] https://campaignlegal.org/cases-actions/thompson-v-alabama

Almost two-thirds of Florida voters in 2018 approved the restoration of the right to vote to felons who had paid their debt to society. Two years later, very few of these individuals have been re-enfranchised. We do not know if the number is in the hundreds or the thousands, but since it was estimated that Amendment #4 could lead to 1.4 million people getting their voting rights back, either way the actual number who have registered is outrageously small. The will of Florida voters is being flouted and the machinations employed to blunt the effect of the constitutional amendment smack of voter suppression. Courts have so far been reluctant to call the requirements in SB 7066 a new "poll tax", but there can be little question that, under the current system, there is an almost insurmountable barrier to re-enfranchisement for the vast majority of felons.

We do not know as yet how the courts will ultimately decide the issue, but, in the interim, some voting rights groups have been trying diligently to help felons ascertain what they owe and even help them pay off their fees and fines. The Florida Rights Restoration Coalition[43], under Desmond Meade, works with felons to resolve these issues and get out the word of the importance of registering to vote.[44]

A few State Attorneys in Florida have also been trying to find workarounds to facilitate voter registration for felons. Using some "wiggle room" they found in SB 7066 to allow fines and fees to be waived or converted to community service, they have created some processes for modifying felons' previous and future sentences.

For example, in Hillsborough County, State Attorney Andrew Warren has designed a process which allows felons to fill out an application online to indicate that they want to register to vote but cannot pay their fees and fines. Working with the Public Defender's Office, the State Attorney tries to ascertain if this is indeed the case. If they conclude that the felon is unable to pay their fees and fines, the Public Defender's Office sends a motion to the Court to

[43] https://floridarrc.com/

[44] https://www.miamitimesonline.com/news/court-finds-way-around-poll-tax/article_53b62b88-0623-11ea-9aba-839b2bd53755.html

request that the felon's sentence be modified. If the Court agrees, the individual can register to vote.[45]

State attorneys in Miami-Dade[46] and Palm Beach counties have established similar processes to make it easier for felons with outstanding fines or fees to be able access the right to vote.

State Attorney Dave Aronberg and a task force, including the Public Defender and the Clerk of Courts, have devised a "rocket docket" whereby an administrative judge can quickly hear a motion to clear a record by waiving fees that the felon owes. Also, fees will no longer be included in the sentencing document, but in a separate legal document. [47] But, as Public Defender Carey Haughwout admitted, so far their process has only led to the registration of 60 people, "one half of one-tenth of a percent of the estimated 140,00 former felons in the country".

All this seems to be like a game of "whack-a-mole". A positive step by voters or the courts to advance civil rights is soon crushed by a new law, a new interpretation, or a new administrative practice from the state authorities who see voter suppression as a route to electoral victory. In other words, the restoration of voting rights to felons is just another painful part of the historical struggle in America to create a more equal and just society. The passage of Amendment #4 was supposed to be a landmark victory for voting rights but, unless we keep fighting for the right to vote, it may end up being a hollow victory.

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[45] https://www.baynews9.com/fl/tampa/news/2019/12/17/andrew-warren-announces-plan-to-help-ex-felons-even-if-money-is-still-owed

[46] https://www.wlrn.org/post/new-miami-dade-county-process-grants-right-vote-felons-despite-ongoing-lawsuits

[47] https://www.palmbeachpost.com/news/20200306/palm-beach-county-court-officials-work-to-help-felons-vote