COMMENT

FLORIDA COURT FEES COST THE VOTE

ANNEMARIE GREGOIRE*

In 2018, Florida voters passed Amendment 4, a momentous criminal justice reform intended to restore the right to vote to felons in Florida who complete the terms of their sentence. In response, the Florida legislature limited Amendment 4 to apply only to those who have paid all court fees, costs, fines, and restitution. Therefore, Amendment 4 excludes those who have completed their terms of incarceration and parole or probation but still have outstanding legal financial obligations. This Comment discusses the history of the poll tax, felon disenfranchisement, and Florida's LFO requirement. It also examines their disparate impacts on Black Americans. Then, Part II uses the "Obamacare" case, National Federation of Independent Business v. Sebelius*, to distinguish penalties from taxes and to show that Florida courts' fees and costs constitute taxes. Finally, this Comment concludes that conditioning felon re-enfranchisement on the payment of court fees and costs violates the Twenty-Fourth Amendment as a tax abridging the right to vote.*

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* Senior Staff Member, *American University Law Review*, Volume 72; J.D. Candidate, May 2023, *American University Washington College of Law*; B.A., Public Policy, *College of William & Mary*. Thank you to Professor Elizabeth Earle Beske for her invaluable guidance throughout the Comment process, and to the entire *AULR* team, particularly my editors Russell Potter and Luke Hancox, for their thoughtful feedback.

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"Discrimination in virtually every aspect of political, economic, and social life is now perfectly legal, once you're labeled a felon."
— Michelle Alexander[1]

INTRODUCTION

Bonnie Raysor, a long-time Florida resident, developed an opioid addiction that culminated in a 2010 arrest for illegally selling opioids to finance her addiction.[2] Raysor served fifteen months in state prison.[3] Following her release in 2011, Raysor overcame her addiction, graduated from college, and began teaching Sunday school at her local church.[4] Despite Raysor's rehabilitation, her reentry into her community remains incomplete.[5] Raysor's status as a felon initially prevented her from regaining the right to vote under a Florida law that permanently disenfranchised felons.[6] However, in 2018 Florida voters passed Amendment 4,[7] which aimed to restore the right to vote to felons after they complete their sentences.[8] Amendment 4 promised to re-enfranchise Raysor and more than a million Floridians like her.[9] Then, Florida's legislature constricted Amendment 4 by interpreting it to require that felons pay all legal financial obligations ("LFOs") to courts in order to regain the right to vote.[10] Raysor makes $13 an hour as an office manager, and under her payment plan with the county court, she

1. Michelle Alexander, *The New Jim Crow*, 9 OHIO ST. J. CRIM. L. 7, 18 (2011).
2. Bonnie Raysor, *Florida is Trying to Silence Me with a Poll Tax*, CAMPAIGN LEGAL CTR. (May 7, 2019), https://campaignlegal.org/story/florida-trying-silence-me-poll-tax [https://perma.cc/X9KD-R3NS].
3. *Id.*
4. *Id.*
5. *Id.*
6. Ari Berman, *Inside the Unlikely Movement that Could Restore Voting Rights to 1.4 Million Floridians*, MOTHER JONES (2018), https://www.motherjones.com/politics/2018/10/inside-the-unlikely-movement-that-could-restore-voting-rights-to-1-4-million-floridians/ [https://perma.cc/J65E-7WAK].
7. FLA. CONST. art. VI, § 4(a).
8. *Id.*
9. Berman, *supra* note 6; Mark Joseph Stern, *Florida's Republican Legislature Votes to Nullify Popular Ballot Initiative Enfranchising Former Felons*, SLATE (May 3, 2019, 4:02 PM), https://slate.com/news-and-politics/2019/05/florida-republican-senate-ron-desantis-amendment-4-felon-voting-rights.html [https://perma.cc/Y9JV-PJ69].
10. FLA. STAT. § 98.0751(2)(a). Florida felons convicted of murder or a felony sexual offense are categorically excluded from this re-enfranchisement scheme, and they remain permanently disenfranchised unless the governor restores their right to vote. *Id.* § 98.0751(1).

will have outstanding debt until 2031.[11] Under Florida law, Raysor will not regain her right to vote for nearly another decade.[12] Raysor is just one of approximately 900,000 Floridians affected by the Florida law that requires payment of all LFOs (including restitution, fines, and court fees and costs) before felons may regain their right to vote ("LFO requirement").[13]

The Eleventh Circuit upheld Florida's LFO requirement in 2020 and preserved an impressive impediment to widespread felon re-enfranchisement.[14] Since 2016, and despite Amendment 4's passage in 2018, Florida has restored voting rights to only 3,250 Floridians who have completed their sentences.[15] Almost 900,000 Floridians who have completed their sentences remain disenfranchised due to outstanding LFOs, and of them, more than 250,000 are Black.[16] The indigency of Florida's felon population makes the LFO requirement an extremely effective voter suppression tool.[17] Additionally, Florida's administrative

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11. Raysor, *supra* note 2.
12. *Id.*
13. *See* FLA. STAT. § 98.0751(2)(a) ("'Completion of all terms of sentence' means any portion of a sentence that is contained in the four corners of the sentencing document, including . . . [f]ull payment of restitution[, and] . . . [f]ull payment of fines or fees ordered by the court as part of the sentence."); CHRIS UGGEN, RYAN LARSON, SARAH SHANNON, & ARLET PULIDO-NAVA, LOCKED OUT 2020: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION 4, 13 (2020), https://www.sentencingproject.org/wp-content/uploads/2020/10/Locked-Out-2020.pdf [https://perma.cc/Y4YA-MA9J]. While the LFO requirement includes payment of fines, restitution, and court fees and costs, this Comment focuses solely on the constitutionality of requiring payment of court fees and costs prior to re-enfranchisement. This Comment does not address the constitutionality of requiring payment of fines or restitution prior to re-enfranchisement.
14. Jones v. Governor of Fla., 975 F.3d 1016, 1059 (11th Cir. 2020); *see infra* Section I.C for a discussion of the litigation leading up to the Eleventh Circuit's ruling. *See generally* UGGEN ET AL., *supra* note 13, at 4 (showing the persisting disenfranchisement of most felons in Florida despite Amendment 4).
15. UGGEN ET AL., *supra* note 13, at 14 (data as of October 2020).
16. *Id.* at 4 ("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.").
17. *See Jones*, 975 F.3d at 1066 (Jordan, J., dissenting) (describing the evidence presented in the district court showing that the vast majority of criminal defendants in felony cases in Florida are indigent and represented by public defenders). Notably, the Florida Rights Restoration Coalition established the Fines & Fees Modification Program to support widespread re-enfranchisement, assisting eligible Floridians with felony convictions in paying outstanding LFOs. Fines & Fees Modification Program, FLORIDA RIGHTS RESTORATION COALITION, https://floridarrc.com/finesprogram [https://perma.cc/PYL8-6SW2].

failure in tracking outstanding LFOs exacerbates the problem because Floridians cannot even learn how much debt they owe, and because they risk facing criminal penalties if they register to vote when ineligible due to outstanding debt.[18] This Comment argues that the Twenty-Fourth Amendment bars Florida from conditioning felon re-enfranchisement on two components of the LFO requirement—the payment of court fees and costs ("fees and costs requirement")—because those LFOs constitute taxes rather than penalties.[19]

In the seminal "Obamacare" case, *National Federation of Independent Business v. Sebelius*,[20] the Supreme Court identified three factors to determine whether an exaction constitutes a penalty or a tax: first, the amount of the exaction; second, whether a scienter requirement exists; and third, the method of payment collection.[21] This Comment applies the *Sebelius* factors, conducts a primary purpose analysis, and concludes that Florida courts' fees and costs constitute taxes.[22] In turn, because Florida felons' restored right to vote is denied "by reason of" their failure to pay these taxes, the state's fees and costs requirement violates the

18. *See Jones*, 975 F.3d at 1066 (Jordan, J., dissenting) (describing how the state "cannot tell felons . . . how much they owe, has not completed screening a single felon registrant for unpaid LFOs, has processed 0 out of 85,000 pending registrations of felons . . . and has come up with conflicting . . . methods for determining how LFO payments by felons should be credited"); Jones v. DeSantis, 462 F. Supp. 3d 1196, 1239, 1250 (N.D. Fla. 2020), *rev'd*, *Jones*, 975 F.3d 1016 [hereinafter *Jones II*] (describing the "pay-to-vote system's administrative train wreck" and noting due process concerns where LFO amounts "are unknown and cannot be determined with diligence"); Paul E. Pelletier, *Racist Jim Crow Era Lives on in Florida Decision to Disenfranchise Felons over Fines*, USA TODAY (Sept. 17, 2020, 7:00 AM), https://www.usatoday.com/story/opinion/2020/09/17/florida-denies-vote-to-felons-jim-crow-era-lives-column/5815752002 [https://perma.cc/K2Y8-GMWU] (emphasizing that "Florida's court system [is] literally incapable of actually tabulating [the] fees and fines"); *see also* Sam Levine, *Florida Officially Changes Jim Crow-Rooted Felon Disenfranchisement Policy*, HUFFPOST (Jan. 8, 2019 5:45 AM), https://www.huffpost.com/entry/florida-felon-disenfranchisement-reform_n_5c33d3c6e4b01e2d51f5fb5f (last visited July 2, 2022) ("Lying on a Florida voter registration form is a criminal offense punishable by up to 5 years in prison and a $5,000 fine.").

19. *See infra* Part II. While this Comment does not address the constitutionality of requiring payment of fines or restitution prior to re-enfranchisement, those LFOs present an additional financial barrier to re-enfranchisement.

20. 567 U.S. 519 (2012).

21. *Id.* at 566.

22. *See infra* Part II.

Twenty-Fourth Amendment.[23] Accordingly, Florida cannot constitutionally deny the right to vote to felons who would otherwise satisfy the terms of Amendment 4 based upon their failure to pay court fees and costs.[24]

I. BACKGROUND

Section I.A of this Comment provides an overview of the history of the poll tax as a method of voter suppression and the Supreme Court's interpretation of the Twenty-Fourth Amendment.[25] Next, Section I.B discusses the history of felon disenfranchisement and its disproportionate impact on racial minorities.[26] Section I.C describes Florida's LFO requirement,[27] and Section I.D examines the LFO requirement's impact on re-enfranchisement in Florida.[28] Finally, Section I.E describes how the Court distinguishes penalties from taxes under *National Federation of Independent Business v. Sebelius*.[29]

A. The Poll Tax and the Twenty-Fourth Amendment

The United States faced resistance from Southern states as it struggled to provide equal access to voting to all Americans in the wake of the Civil War.[30] The United States ratified the Fifteenth Amendment in 1870 and codified a constitutional right to vote that cannot be

23. U.S. CONST. amend. XXIV (mandating that the right to vote "shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax"); *see infra* Part II.

24. While this Comment concludes that Florida's fees and costs requirement is unconstitutional under the Twenty-Fourth Amendment, other scholars have argued that LFO requirements violate the Fourteenth Amendment. *See, e.g.*, Cherish M. Keller, Note, *Re-Enfranchisement Laws Provide Unequal Treatment: Ex-Felon Re-Enfranchisement and the Fourteenth Amendment*, 81 CHI.-KENT L. REV. 199 (2006) (applying strict scrutiny and concluding that felon re-enfranchisement laws which condition the right to vote on the payment of LFOs are unconstitutional under the Equal Protection Clause).

25. *See infra* Section I.A.

26. *See infra* Section I.B.

27. *See infra* Section I.C.

28. *See infra* Section I.D.

29. *See infra* Section I.E.

30. *Civil Rights in America: Racial Voting Rights*, NAT'L HISTORIC LANDMARKS PROGRAM, 5–6 (2009) https://www.nps.gov/subjects/tellingallamericansstories/upload/CivilRights_VotingRights.pdf [https://perma.cc/68EA-HNMB] [hereinafter *Civil Rights in America*].

abridged because of "race, color, or previous condition of servitude."[31] Responding to the Fifteenth Amendment, Southern states' efforts to disenfranchise Black voters took hold in the early 1880s, with poll taxes, literacy tests, grandfather clauses, and similar disenfranchisement schemes successfully suppressing Black voters.[32] Although these voting restrictions appeared facially neutral, the discriminatory motive behind these restrictions is well-documented.[33]

States ratified the Twenty-Fourth Amendment in 1964 after support from President Kennedy.[34] The Twenty-Fourth Amendment barred the use of poll taxes in federal elections.[35] Still, several states continued to impose poll taxes in state elections.[36] In response, in the midst of the Civil Rights Movement, President Lyndon B. Johnson passed the Voting Rights Act of 1965,[37] which expanded the protections of the Fourteenth and Fifteenth Amendments and prohibited many of the discriminatory practices Southern states used to suppress Black voters.[38] Although the Voting Rights Act did not contain an "outright poll tax ban," the Act instead "instruct[ed] the Justice Department to file suit[s] against state use of poll tax qualifications for voting."[39]

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31. U.S. CONST. amend. XV ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.").

32. *Civil Rights in America*, *supra* note 30, at 14; Valencia Richardson, *Voting While Poor: Reviving the 24th Amendment and Eliminating the Modern-Day Poll Tax*, 27 GEO. J. ON POVERTY L. & POL'Y 451, 454 (2020). *See generally id.* (arguing that the Twenty-Fourth Amendment bars modern voting restrictions, including strict voter registration procedures, identification requirements, and polling place closures).

33. *See* Farrell Evans, *How Jim Crow-Era Laws Suppressed the African American Vote for Generations*, HISTORY (May 13, 2021), https://www.history.com/news/jim-crow-laws-black-vote [https://perma.cc/4GFM-88F5] (noting that "[w]hile southern legislatures claimed that poll taxes for voting were designed to raise state revenue, . . . the main purpose was to suppress the African American vote"); Michael J. Klarman, *The Plessy Era*, 1998 SUP. CT. REV. 303, 353–54 (1998) (discussing various states' disenfranchising schemes).

34. *Civil Rights in America*, *supra* note 30, at 48 (noting that the Amendment may have succeeded in part because it "did not break any new ground" as it was limited to federal elections).

35. *See* U.S. CONST. amend. XXIV; *Civil Rights in America*, *supra* note 30, at 48 (explaining that the poll tax prohibition applies only to federal elections).

36. *Civil Rights in America*, *supra* note 30, at 70.

37. Pub. L. No. 89-110, 79 Stat. 437 (1965).

38. Evans, *supra* note 33.

39. *Civil Rights in America*, *supra* note 30, at 71.

The following year, in 1966, the Supreme Court heard *Harper v. Virginia Board of Elections*.[40] *Harper* involved a challenge to a Virginia state poll tax.[41] While the Twenty-Fourth Amendment already barred the use of poll taxes in federal elections, the Court held in *Harper* that the use of poll taxes in state elections violates the Equal Protection Clause of the Fourteenth Amendment because wealth is irrelevant to voting qualifications.[42] Therefore, a state cannot "make[] the affluence of the voter or payment of any fee an electoral standard."[43] The Supreme Court in *Harper* thus eliminated traditional poll taxes and "repudiated financial tests for the [right to vote] as 'invidious' forms of wealth discrimination."[44]

The Supreme Court applied the Twenty-Fourth Amendment in *Harman v. Forssenius*[45] and struck down a Virginia law that required potential voters to either pay a poll tax or file a certificate of residence to qualify to vote in federal elections.[46] The Court found that the law violated the Twenty-Fourth Amendment because it created an additional requirement for voters who chose to assert their constitutional right not to pay a poll tax.[47] Although the law did not technically require potential voters to pay a poll tax, it nevertheless unconstitutionally abridged Virginia residents' right to vote because failing to pay the poll tax resulted in an additional barrier of having to file a residency certificate.[48] *Harman* contemplates reading the Twenty-Fourth Amendment to "abolish financial burdens on [the right to vote]

40. 383 U.S. 663 (1966).

41. *Id.* at 664.

42. *Id.* at 666. *But cf.* Lassiter v. Northampton Cnty. Bd. of Elections, 360 U.S. 45, 51 (1959) (upholding a state's literacy test because literacy relates to voting qualifications).

43. *Harper*, 383 U.S. at 666 ("Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax.").

44. Bruce Ackerman & Jennifer Nou, *Canonizing the Civil Rights Revolution: The People and the Poll Tax*, 103 NW. U.L. REV. 63, 112 (2009) (quoting *Harper*, 383 U.S. at 668).

45. 380 U.S. 528 (1965).

46. *Id.* at 543 (holding that the state lacked a legitimate justification for its law and concluding that the law was a substitute for a poll tax, intended to disenfranchise Black citizens).

47. *Id.* at 541–42 (explaining the "cumbersome procedure" of obtaining the required residency certificate and finding that the law "impose[d] a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax . . . [and] erect[ed] a real obstacle to voting in federal elections for those who assert their constitutional exemption from the poll tax").

48. *Id.* at 538.

broadly—not just the customary poll tax."[49] Moreover, this interpretation is consistent with the broad understanding of a tax at the time of the Twenty-Fourth Amendment's ratification.[50] While the United States has moved on from discriminatory voter suppression tools like the poll tax, modern felon disenfranchisement laws have similar effects.[51]

B. Felon Disenfranchisement and Resulting Racial Disparities

Felon disenfranchisement laws persist across the United States and continue to suppress minority voters.[52] In 1974, the Supreme Court held in *Richardson v. Ramirez*[53] that state laws that disenfranchise convicted felons, even those who have completed their sentences, do not violate the Fourteenth Amendment's Equal Protection Clause.[54] The Court reasoned that felon disenfranchisement "has an affirmative sanction" in the Fourteenth Amendment.[55]

After *Richardson*, many states instituted felon disenfranchisement laws.[56] States now follow various approaches to felon

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49. Lydia Saltzbart, Note, *"A Dollar Ain't Much if You've Got It": Freeing Modern-Day Poll Taxes from* Anderson-Burdick, 29 J.L. & POL'Y 522, 525 (2021).

50. *See* United States v. La Franca, 282 U.S. 568, 572 (1931) (defining a tax as a contribution to support the government and a penalty as an exaction imposed to punish an unlawful act); Jones v. Governor of Fla., 975 F.3d 1016, 1100 (11th Cir. 2020) (Jordan, J., dissenting) (internal quotation marks and citations omitted) (explaining that the common definition of a tax at the time of the Twenty-Fourth Amendment's ratification was a contribution for the support of the government).

51. *See infra* Section I.B.

52. Alexander, *supra* note 1, at 9.

53. 418 U.S. 24 (1974).

54. *Id.* at 54.

55. *Id.*; *see* U.S. CONST. amend. XIV, § 2 (determining apportionment of representatives and making exceptions "for participation in rebellion, or other crime"); Jennifer Rae Taylor, *Jim Crow's Lasting Legacy at the Ballot Box*, THE MARSHALL PROJECT (Aug. 20, 2018), https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box [https://perma.cc/26F2-AYHX] (explaining the Court's holding that Section 2 of "the Fourteenth Amendment explicitly authorizes denying citizens' voting rights due to criminal conviction" and stating that Section 2 "created a gaping constitutional loophole that has maintained felony disenfranchisement as voter suppression's sturdiest tool").

56. *See Felony Disenfranchisement Laws (Map)*, ACLU, https://www.aclu.org/issues/voting-rights/voter-restoration/felony-disenfranchisement-laws-map [https://perma.cc/D7SA-56TK] (showing the variation of state felon disenfranchisement laws across the country).

disenfranchisement.[57] Eighteen states only disenfranchise people while they are in prison.[58] New York and Connecticut only disenfranchise people while they are in prison or on parole.[59] Eighteen states disenfranchise felons until the completion of their sentences.[60] Seven states, including Florida, re-enfranchise some felons upon completion of their sentences but still permanently disenfranchise certain categories of felons.[61] Only two states, Maine and Vermont, allow citizens to vote regardless of their status within the criminal justice system.[62] Following Florida's implementation of Amendment 4, only Virginia and Kentucky permanently disenfranchise felons unless the governor restores their right to vote.[63] As the incarceration rate in the United States increased exponentially, "felon disenfranchisement laws have caused an unprecedented silencing of voices: from 1.18 million felons disenfranchised in 1976 to 6.1 million by 2016."[64] Notably, this number

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57. *See* CAMPAIGN LEGAL CTR., CAN'T PAY, CAN'T VOTE: A NATIONAL SURVEY ON THE MODERN POLL TAX 5 (2019), https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0.pdf [https://perma.cc/NEX9-XMJ2] (noting that as of 2019, "at least 30 states continue to disenfranchise some of their citizens based on wealth," requiring LFO payments as a condition of re-enfranchisement either explicitly, as a prerequisite to eligibility for clemency, or, most commonly, as a condition of parole or probation). *See generally Felon Voting Rights*, NAT'L CONF. OF STATE LEGISLATURES (June 28, 2021), https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx [https://perma.cc/2Y4H-T4XM] (detailing a comprehensive description of the states' different approaches to felon disenfranchisement and several states' recent trends towards expanding voting rights for felons).

58. *Felony Disenfranchisement Laws (Map)*, *supra* note 56.

59. *Id.*

60. *Id.* Florida is not alone in interpreting the completion of a sentence for re-enfranchisement purposes to require payment of LFOs. *See* UGGEN ET AL., *supra* note 13, at 6 (noting that "[i]n addition to Florida, other states . . . condition re[-]enfranchisement on payment of outstanding fines, fees, court costs, and restitution").

61. *See Felony Disenfranchisement Laws (Map)*, *supra* note 56 (showing states that re-enfranchise some, but not all, felons who have completed their sentences depending on the type of felony committed or whether an offender has previously committed a felony).

62. *Id.*

63. *Id.* Governors in both states have restored voting rights in recent years to certain categories of felons who have completed their sentences. *Id.*

64. Joshua H. Winograd, *Let the Sunshine in: Floridian Felons and the Franchise*, 31 U. FLA. J.L. & PUB. POL'Y 267, 273 (2021). *See generally* James Cullen, *The History of Mass Incarceration*, BRENNAN CTR. FOR JUST. (July 20, 2018), https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration [https://perma.cc/SUR4-BXUF] (discussing the development of mass incarceration in the United States).

has decreased to 5.17 million people as of 2020, reflecting state-level voting reforms.[65]

Felon disenfranchisement laws disproportionately affect racial minorities and therefore have similar consequences as Jim Crow-era disenfranchising efforts.[66] One in sixteen Black citizens is disenfranchised.[67] Nationally, "Black Americans constitute 2.2 million of the disenfranchised, banned from voting at four times the rate of all other racial groups combined."[68] The disenfranchisement of Black citizens is particularly prevalent in Florida.[69] Felon disenfranchisement laws disproportionately harm Black citizens because these laws interact with racial disparities throughout the criminal justice system.[70]

C. Florida's LFO Requirement

In 2018, a supermajority of Florida voters passed Amendment 4, a ballot initiative that required the legislature to restore voting rights to felons "upon [the] completion of all terms of [their] sentence[s] including parole or probation."[71] Before Amendment 4, Florida had a Jim Crow-era policy that permanently disenfranchised felons.[72] Proponents of Amendment 4 saw it as "one of the most significant expansions of the

65. UGGEN ET AL., *supra* note 13, at 4.

66. Alexander, *supra* note 1, at 9 ("During the Jim Crow era, African Americans continued to be denied access to the ballot through poll taxes and literacy tests. Those laws have been struck down, but today felon disenfranchisement laws accomplish what poll taxes and literacy tests ultimately could not."); *see also* Pelletier, *supra* note 18 ("[T]he 'common practice' of felon disenfranchisement laws in the South is rooted in Jim Crow era constitutional and legislative initiatives designed simply to deny Black [citizens] the right to vote.").

67. UGGEN ET AL., *supra* note 13, at 4.

68. Taylor, *supra* note 55.

69. *See* UGGEN ET AL., *supra* note 13, at 4 (noting that Florida is one of seven states where "more than one in seven African Americans is disenfranchised, twice the national average for African Americans"); Winograd, *supra* note 64, at 280 ("In 2016, 21 [percent] of Black voters in Florida were denied suffrage due to felony disenfranchisement.").

70. Winograd, *supra* note 64, at 273 (noting that "the racially discriminatory criminal justice system disproportionately excludes minorities from political participation"). While this Comment focuses on felon disenfranchisement, other collateral consequences of conviction reflect similar racial disparities. *See, e.g.*, Angela J. Davis, *Reimagining Prosecution: A Growing Progressive Movement*, 3 U.C.L.A. CRIM. JUST. L. REV. 1, 3 (2019) (noting "the loss of public housing and public benefits, difficulty finding employment, separation of families, and fiscal burdens on state and federal budgets" as collateral consequences of mass incarceration).

71. FLA. CONST. art. VI, § 4(a); Stern, *supra* note 9.

72. *See* Berman, *supra* note 6 (noting that Florida disenfranchised felons through its state constitution in 1868).

right to vote in modern times."[73] While Amendment 4 proponents expected the Amendment to "automatically giv[e] roughly 1.4 million Floridians the right to vote," Florida's Republican-led legislature "insisted that they had to pass 'enabling legislation'" to implement the Amendment.[74] In turn, the Florida legislature crafted a legislative measure that technically complied with the terms of Amendment 4 but limited its scope to apply only to felons who have first paid all fines, restitution, and court fees and costs imposed at sentencing.[75]

Bonnie Raysor, with sixteen other Floridians, challenged the constitutionality of the LFO requirement, arguing that they were otherwise eligible to vote under Amendment 4 but could not pay their outstanding LFOs due to indigency.[76] The United States District Court for the Northern District of Florida issued a preliminary injunction allowing the plaintiffs to vote if they could show that they were otherwise eligible to vote under Amendment 4 and that their indigency prevented the plaintiffs from paying their LFOs.[77] The Eleventh Circuit affirmed the preliminary injunction on appeal and held that the LFO requirement violated the Equal Protection Clause as applied to the plaintiffs.[78] In doing so, the Eleventh Circuit "ruled . . . that the [s]tate cannot condition voting on payment of an amount a person is genuinely unable to pay."[79]

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73. Levine, *supra* note 18 (noting that when Amendment 4 initially took effect in January 2019, the executive director of the Sentencing Project called it "the single most significant reform in felony disenfranchisement in American history").

74. Stern, *supra* note 9; *see also* Berman, *supra* note 6 (discussing the overwhelming bipartisan support for Amendment 4).

75. FLA. STAT. § 98.0751(2)(a); *see also* Implementation of Amend. 4, the Voting Restoration Amend., 288 So. 3d 1070, 1073 (Fla. 2020) (per curiam) (concluding that the phrase "all terms of sentence" encompasses LFOs). Notably, Republican legislators across the country have introduced bills in 2021 that restrict access to voting. Nathaniel Rakich & Elena Mejia, *Where Republicans Have Made It Harder to Vote (so Far)*, FIVETHIRTYEIGHT (May 11, 2021, 6:00 AM), https://fivethirtyeight.com/features/republicans-have-made-it-harder-to-vote-in-11-states-so-far (last visited July 2, 2022) (noting that "at least 404 voting-restriction bills have now been introduced in 48 state legislatures [and] . . . nearly 90 percent of them were sponsored primarily or entirely by Republicans").

76. Jones v. DeSantis, 410 F. Supp. 3d 1284, 1289–90 (N.D. Fla. 2019), *aff'd sub nom.* Jones v. Governor of Fla., 950 F.3d 795 (11th Cir. 2020) (per curiam).

77. *Id.* at 1310.

78. Jones v. Governor of Fla., 950 F.3d 795, 800 (11th Cir. 2020) (per curiam); U.S. CONST. amend. XIV, § 1 ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

79. *Jones II*, 462 F. Supp. 3d 1196, 1203 (N.D. Fla. 2020), *rev'd sub nom.* Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020).

The district court then conducted a trial and struck down the Florida law "as applied to individuals who are otherwise eligible to vote but are genuinely unable to pay the required amount."[80] The court also held that requiring the payment of fees and costs "as a condition of voting is unconstitutional because they are, in substance, taxes."[81] The court concluded that the LFO requirement violated the Equal Protection Clause and the Twenty-Fourth Amendment and held that Florida could only condition the right to vote on the payment of fines and restitution, not fees or costs, and only for those who are able to pay.[82]

However, the Eleventh Circuit subsequently ordered a hearing en banc and stayed the permanent injunction pending appeal, hampering the petitioners' ability to vote in the 2020 presidential election.[83] The petitioners appealed to the Supreme Court, but the Court denied the petitioners' application to vacate the stay.[84] Ultimately, the Eleventh Circuit reversed the district court's ruling in a 6–4 decision and upheld the constitutionality of Florida's LFO requirement.[85]

D. The LFO Requirement's Impact on Re-enfranchisement in Florida

The LFO requirement significantly narrowed Amendment 4's impact and made a felon's inability to pay their LFOs the sole barrier to re-enfranchisement in many cases.[86] Additionally, Florida has failed to

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80. *Id.* at 1203, 1250.

81. *Id.*

82. *Id.* at 1203, 1234.

83. Jones v. Governor of Fla., No. 20-12003-AA, 2020 WL 4012843, at *1 (11th Cir. July 1, 2020).

84. Raysor v. DeSantis, 140 S. Ct. 2600 (2020) (mem.). As Justice Sotomayor noted in her dissent, which Justices Ginsburg and Kagan joined, the Eleventh Circuit stayed the permanent injunction "[o]n July 1, 2020—over a month after the [d]istrict [c]ourt's judgment and 19 days before the voter-registration deadline," and the Eleventh Circuit "provided no reasons for its order." *Id.* at 2602 (Sotomayor, J., dissenting).

85. Jones v. Governor of Fla., 975 F.3d 1016, 1025 (11th Cir. 2020). Rosemary McCoy and Sheila Singleton, two of the plaintiffs who initially challenged the LFO requirement, cross-appealed the district court's rejection of their gender discrimination claims. *Jones II*, 462 F. Supp. 3d at 1240. They alleged that the LFO requirement violated the Equal Protection Clause and the Nineteenth Amendment as applied to low-income women of color. *Id.* at 1239. The Eleventh Circuit affirmed, holding that "proof of discriminatory intent" was required for both claims. Jones v. Governor of Fla., No. 20-12304, 2021 WL 4839896, at *2 (11th Cir. Oct. 18, 2021).

86. *See supra* notes 14–16 and accompanying text. Professor Daniel A. Smith analyzed county-level data across Florida and estimated that approximately 80 percent of Florida felons who had otherwise completed all terms of their sentence had

accurately track the payment of LFOs, so felons often do not know and cannot find out how much they owe.[87] Felons, therefore, bear an additional burden under this system because even though a felon's eligibility to vote may be impossible to ascertain, felons risk criminal penalties if they register to vote while ineligible.[88]

The LFO requirement affects hundreds of thousands of otherwise eligible voters in Florida, and it disproportionately impacts racial minorities.[89] In a three-month span following Amendment 4's passage, over 44 percent of formerly incarcerated voter registrants identified themselves as Black, while only 13 percent of Florida's overall voter population are Black.[90] Moreover, disenfranchisement impedes felons' ability to successfully reenter their communities.[91] Some criminologists argue that disenfranchisement causes higher recidivism rates because

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outstanding LFOs, making them ineligible to vote under the LFO requirement. *See* Suppl. Expert Report of Daniel A. Smith at 3, Jones v. DeSantis, 462 F. Supp. 3d 1196 (N.D. Fla. 2020) (No. 4:19-cv-300), https://www.brennancenter.org/sites/default/files/2019-10/SupplementalExpertReportofDanielA.SmithPh.D.UniversityofFloridaSeptember172019.pdf [https://perma.cc/EHW4-QYYJ]. Additionally, a significantly lower rate of Black individuals with felony convictions were eligible to vote under the LFO requirement. *Id.* at 19–20.

87. *See supra* note 18 and accompanying text.

88. *See supra* note 18 and accompanying text.

89. *See supra* note 69 and accompanying text; Suppl. Expert Report of Daniel A. Smith, *supra* note 86, at 6 (finding that approximately 77 percent of White Florida felons have outstanding LFOs compared to approximately 85 percent of Black Florida felons). Additionally, Uggen analyzed national data and found that "[e]ven with . . . likely undercounting, 34 states report a higher rate of disenfranchisement in the Latinx population than in the general population." UGGEN ET AL., *supra* note 13, at 12.

90. KEVIN MORRIS, BRENNAN CTR. FOR JUST., ANALYSIS: THWARTING AMENDMENT 4 1 (May 9, 2019), https://www.brennancenter.org/sites/default/files/analysis/2019_05_FloridaAmendment_FINAL-3.pdf [https://perma.cc/SA3A-RM3X] (showing the initial outsized impact of Amendment 4 on Black voter registration).

91. *See* Alexis Hancz, *A Year Later, Florida Needs to Revisit Felon Voting Rights*, THE MICH. DAILY (Oct. 5, 2021), https://www.michigandaily.com/columns/a-year-later-florida-needs-to-revisit-felon-voting-rights [https://perma.cc/FA2W-5WTX] (noting that a study by Florida's government found that "felons without the right to vote were three times more likely to return to prison than those with the right, suggesting a clear link between community engagement and ex-felon reform"); Berman, *supra* note 6 (citing data from Florida's parole commission finding that "ex-felons who have their voting rights restored are less likely to commit future crimes"). *See generally* Bryan Lee Miller & Joseph F. Spillane, *Civil Death: An Examination of Ex-Felon Disenfranchisement and Reintegration*, 14 PUNISHMENT & SOC'Y 402 (2012) (interviewing Florida felons on the impact of the loss of civil rights).

it "create[s] a permanent criminal underclass of outcasts . . . unable to fully rejoin society after their sentence is served."[92]

The LFO requirement has an especially large impact on Floridians because Florida's court funding system relies on the payment of fines and fees.[93] Florida's "fines and fees reflect a budgeting decision about how to fund the court system."[94] Instead of "rais[ing] [] revenue from taxes, Florida criminal courts assess [fees and fines] on criminal defendants in cases ranging from traffic infractions to serious felonies."[95] Florida's standardized court fee scheme includes, among

92. *See* Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407, 428–29 (2012) (finding a correlation between recidivism and disenfranchisement using the Department of Justice's national data on recidivism).

93. *See* Stern, *supra* note 9 ("Florida is a pioneer of cash-register justice, charging defendants user fees to finance its criminal justice system and saddling them with massive fines upon conviction." (internal quotation marks omitted)). While this Comment focuses on Florida's fee system, the same problems persist in other parts of the country. *See, e.g.*, U.S. DEP'T OF JUST. CIV. RTS. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 9 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [https://perma.cc/2X39-GA8G] (finding that police in Ferguson, Missouri were motivated by raising revenue for the city, particularly in enforcing payments of fines and fees).

94. Michael Morse, *The Future of Felon Disenfranchisement Reform: Evidence from the Campaign to Restore Voting Rights in Florida*, 109 CALIF. L. REV. 1143, 1185 (2021) (showing an increase in the median amount of fines and fees assessed annually in the Florida court system and noting that the increase "corresponds to a state constitutional amendment governing the funding of [Florida's] court system that marked a fundamental shift for county clerks from county funding to being a self-funded office" (internal quotation marks omitted)); *see* FLA. CONST. art. V, § 14(b) ("All funding for the offices of the clerks of the circuit and county courts performing court-related functions . . . shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions."); *see also* Jones v. Governor of Fla., 975 F.3d 1016, 1073 (11th Cir. 2020) (Jordan, J., dissenting) ("As the district court found, Florida has chosen to pay for its criminal-justice system in significant measure through fees routinely assessed against its criminal defendants."); MATTHEW MENENDEZ, MICHAEL F. CROWLEY, LAUREN-BROOKE EISEN, & NOAH ATCHISON, BRENNAN CTR. FOR JUST., THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES 6 (2019), https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf [https://perma.cc/M4BZ-RRBG] (describing how the state "increased court fees as a way to address [Florida's] fiscal cris[i]s").

95. MENENDEZ ET AL., *supra* note 94, at 27; *see also* Daniel Rivero, *Co-Author and Attorney for Florida's Amendment 4 Helped Create Statewide Fines and Fees Policy*, WLRN (Mar. 27, 2019, 5:40 PM), https://www.wlrn.org/post/co-author-and-attorney-floridas-amendment-4-helped-create-statewide-fines-and-fees-policy

other assessments, a $225 fee imposed in every felony case.[96] Excluding restitution, felony cases have a median assessment of $815 in fines and fees, and an individual with one or more felony convictions receives a median assessment of $1,093 in fines and fees.[97] A large portion of these fees funds the clerk's office or is collected by the Florida Department of Revenue.[98] The state often cannot collect these assessments due to the indigency of Florida's criminal defendants.[99] As a result, Florida's felons face ongoing financial obligations to the courts as they reenter their communities,[100] and they face a range of negative consequences if they fail to comply with court-ordered payment plans.[101]

Additional debt can accrue through various methods when a person is unable to pay financial obligations to a court.[102] When a Florida court finds that an individual is unable to pay court costs, the individual may enter into a payment plan, but additional processing fees attach to

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[https://perma.cc/EHL6-4PQM] ("[C]ounties can assess 'user fees' for the court system that are used to generate revenue. And the legislature has followed suit by tacking on financial penalties for misdemeanors and felonies. That money keeps the court system afloat, rather than general tax revenue.").

96. *Jones*, 975 F.3d at 1073 (Jordan, J., dissenting).

97. Morse, *supra* note 94, at 1184, 1191.

98. *Jones*, 975 F.3d at 1073 (Jordan, J., dissenting).

99. *See* MENENDEZ ET AL., *supra* note 94, at 27 ("In an average year, Florida courts collect only . . . 36 percent of total criminal fees and fines assessed," and "Florida courts appear to recognize that a significant portion of these debts cannot be collected" due to indigency); *see also* Rivero, *supra* note 95 ("Between 2014 and 2018, an average 83 percent of the money levied per year by the circuit courts for felony convictions is labeled as having 'minimal collections expectations' by the Florida Clerks and Comptrollers," meaning that "the courts know they are likely to never receive payment on the debt" because of defendants' indigency).

100. *See generally* Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117 PENN. ST. L. REV. 349, 349 (2012) (discussing how various carceral debts prevent felons from regaining the right to vote and preserve race and class disparities).

101. *See* Rebekah Diller, *The Hidden Costs of Florida's Criminal Justice Fees*, BRENNAN CTR. FOR JUST. 14 (2010), https://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF&F.pdf [https://perma.cc/7U45-AW4X] (noting that late fees, suspended driver's licenses, and required appearances at debt-related court proceedings can result from defendants' missed payments).

102. *See* Alicia Bannon, Mitali Nagrecha, & Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry*, BRENNAN CTR. FOR JUST. 17 (2010), https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf [https://perma.cc/SDM2-QPP4] (discussing different states' forms of "poverty penalties" including late fees, interest, payment plan fees, and collection fees).

payment plans.[103] Moreover, several counties in Florida assess fixed late fees every time a defendant makes a late payment.[104] Finally, Florida law authorizes court clerks to use private attorneys or collection agents after exhausting any court-established collection procedures in a particular county.[105] Collection fees to pay these private agents may increase an individual's outstanding debt by up to 40 percent.[106] Accruing debt does not technically preclude re-enfranchisement, as the LFO requirement is limited to LFOs imposed at sentencing.[107] Still, the practical effect of accruing debt and a lack of effective tracking of outstanding LFOs is widespread disenfranchisement.[108] Because Florida courts' fees and costs are exactions imposed by the government, they are subject to the Supreme Court's *Sebelius* analysis.[109]

E. Sebelius *Factors*

The Supreme Court sets out three factors to determine whether an exaction imposed by the government constitutes a tax or a penalty: amount of the exaction, scienter requirement, and collection procedure.[110] The Court has applied these factors to an exaction imposed on child labor employment,[111] the Affordable Care Act's individual mandate,[112] and an exaction imposed on illegal drug possession.[113] This Section examines those applications and discusses how the Northern District of Florida applied the *Sebelius* factors in *Jones II*.

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103. *See* FLA. STAT. § 28.246(5)(d); FLA. STAT. § 28.24(27)(b)-(c) (providing that an individual pays either a $5 monthly charge or a $25 one-time charge in addition to their outstanding debt).

104. Bannon et al., *supra* note 102, at 17.

105. FLA. STAT. § 28.246(6).

106. *Id.*

107. FLA. STAT. § 98.0751(2)(a)(5)(c) (noting that the LFO payments required for re-enfranchisement "include only the amount specifically ordered by the court as part of the sentence and do not include any fines, fees, or costs that accrue" after the imposition of the sentence).

108. *See supra* notes 14–18 and accompanying text (discussing how felons in Florida remain disenfranchised in part because the state has failed to track their outstanding debt).

109. *See infra* Section I.D.

110. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 565–66 (2012).

111. Bailey v. Drexel Furniture Co., 259 U.S. 20, 36–38 (1922).

112. *Sebelius*, 567 U.S. at 565–66.

113. Dep't of Revenue of Mont. v. Kurth Ranch, 511 U.S. 767, 780–81 (1994).

In *National Federation of Independent Business v. Sebelius*, twenty-six states challenged the constitutionality of the Affordable Care Act[114] and argued, among other things, that the Act's individual mandate exceeded Congress's authority.[115] The individual mandate required individuals to either purchase and maintain health insurance or pay a shared responsibility payment to the federal government, collected by the Internal Revenue Service together with an individual's taxes.[116] After analyzing the individual mandate using a functional approach that focused on the exaction's practical application, the Court ultimately held that the individual mandate was a tax and was therefore within Congress's taxing powers.[117]

The Court in *Sebelius* discussed a functional approach for lower courts to use when determining whether an exaction is a tax or a penalty.[118] The Court looked to an approach that it adopted in *Bailey v. Drexel Furniture Co.*[119] and clarified its earlier analysis:

> [W]e focused on three practical characteristics of the so-called tax on employing child laborers that convinced us the 'tax' was actually a penalty. First, the tax imposed an exceedingly heavy burden . . . Second, it imposed that exaction only on those who knowingly employed underage laborers . . . Third, this 'tax' was enforced in part by the Department of Labor, an agency responsible for punishing violations of labor laws, not collecting revenue.[120]

The Court concluded that the first factor, the amount of the exaction, indicated that the shared responsibility payment was a tax rather than a penalty because its amount was generally much lower than the price of insurance and could never be more.[121] The Court reasoned that the amount of the payment was not prohibitory because it was "determined by such familiar factors as taxable income, number of dependents, and joint filing status."[122]

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114. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended at 42 U.S.C. § 18001).
115. *Sebelius*, 567 U.S. at 540.
116. *Id.* at 539.
117. *Id.* at 566.
118. *Id.* at 565–66.
119. 259 U.S. 20 (1922).
120. *Sebelius*, 567 U.S. at 565–66.
121. *Id.* at 566.
122. *Id.* at 563.

The Court also found that the second factor, a scienter requirement indicative of a penalty, was absent in the individual mandate.[123] The individual mandate applied to everyone who paid federal income taxes as determined by the Internal Revenue Code, and it gave people the option to either maintain health insurance or pay a tax.[124] Nevertheless, the mandate did not attach any other "negative legal consequences" to either option.[125]

Third, the Court noted that the payment of the exaction was collected by the Internal Revenue Service through typical taxation methods.[126] The Internal Revenue Service collected the exaction with other taxes and could not "use those means most suggestive of a punitive sanction, such as criminal prosecution."[127] A court is likely to find that an exaction is a tax when it is enforced by an agency whose purpose is to collect revenue rather than to punish violations of law.[128] Therefore, the Court found that the individual mandate was a tax under these factors despite its statutory label as a penalty.[129]

The Court also emphasized that a tax may have additional incidental motivations beyond revenue collection and that these additional motivations may include discouraging or incentivizing certain behavior.[130] Therefore, exactions can be characterized as taxes or penalties based on whether their primary purpose is to raise revenue or to disincentivize harmful conduct, regardless of whether additional incidental motives exist.[131] Accordingly, the Court has found exactions

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123. *Id.* at 566 ("[S]cienter requirements are typical of punitive statutes, because Congress often wishes to punish only those who intentionally break the law."). Scienter refers to "[a] degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission; the fact of an act's having been done knowingly, esp. as a ground for civil damages or criminal punishment." *Scienter*, BLACK'S LAW DICTIONARY (11th ed. 2019).

124. *Sebelius*, 567 U.S. at 567–68.

125. *Id.*

126. *Id.* at 566.

127. *Id.*

128. *See id.*

129. *Id.* at 564, 566.

130. *See id.* at 567 ("None of this is to say that the payment is not intended to affect individual conduct . . . . [I]t is plainly designed to expand health insurance coverage. But taxes that seek to influence conduct are nothing new . . . . Today, federal and state taxes can compose more than half the retail price of cigarettes, not just to raise more money, but to encourage people to quit smoking.").

131. *See* Bailey v. Drexel Furniture Co., 259 U.S. 20, 38 (1922); Dep't of Revenue of Mont. v. Kurth Ranch, 511 U.S. 767, 781 (1994) (emphasizing "penal and prohibitory

to be penalties in cases involving exactions that target the same overarching illegal conduct.[132]

The Court previously applied this analysis in *Department of Revenue of Montana v. Kurth Ranch*,[133] a 1994 case involving a state tax on the possession of illegal drugs.[134] The state prosecuted the Kurth family on criminal drug charges after police raided their family farm and found marijuana.[135] The state then imposed a separate tax on the family's illegal drug possession.[136] The exaction's quantity was "either 10 percent of the assessed market value of the drugs as determined by the Montana Department of Revenue [] or a specified amount depending on the drug . . . whichever is greater."[137] Law enforcement officers calculated the amount of the exaction, and the law authorized officers to begin "expedited collection procedures" almost immediately upon arrest.[138] In *Kurth Ranch*, the Montana Department of Revenue aimed to collect almost $900,000.[139] Because the state failed to demonstrate that enforcing the exaction required a lot of resources, the Court doubted the purported revenue-raising purpose of the exaction.[140] The Court ultimately held that the exaction was a penalty because of its high amount, deterrent purpose, and condition on the commission of a crime.[141] The Court emphasized the exaction's punitive nature not only because it resulted from unlawful conduct but because it applied only

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intent rather than the gathering of revenue") (quoting United States v. Constantine, 296 U.S. 287, 295 (1935)); Johnson v. Bredesen, 624 F.3d 742, 770 (6th Cir. 2010) (Moore, J., dissenting) (explaining that an administrative fee on top of child support and restitution payments was a tax).

132. *See Kurth Ranch*, 511 U.S. at 770 (imposing an exaction on the possession of illegal drugs); *Constantine*, 296 U.S. at 288 (imposing an exaction on those who violated state liquor laws); *see also Drexel Furniture Co.*, 259 U.S. at 36–37 (finding evidence of a penalty rather than a tax because the exaction applied evenly to all employers of child labor, regardless of the quantity of child laborers employed).

133. 511 U.S. 767 (1994).

134. *Id.* at 769–70.

135. *Id.* at 771–72.

136. *Id.*

137. *Id.* at 770.

138. *Id.* at 771.

139. *Id.* at 773.

140. *See id.* at 773–75.

141. *Id.* at 781–82; *see also* Bailey v. Drexel Furniture Co., 259 U.S. 20, 36 (1922) (emphasizing the importance of an exaction's purpose by asking, "[d]oes this law impose a tax with only that incidental restraint and regulation which a tax must inevitably involve? Or does it regulate by the use of the so-called tax as a penalty?").

after an arrest for the same unlawful conduct that created the tax obligation.[142]

The district court in *Jones II* applied the *Sebelius* framework to Florida's LFO requirement.[143] First, as to the size of the exaction, a "prohibitory" exaction indicates a penalty, whereas a "modest" exaction indicates a tax.[144] Therefore, the high amount of an exaction indicates its punitive nature.[145] Second, as to scienter, a penalty "is more likely to be imposed on those who intentionally break the law," and an exaction that applies only to those who act knowingly indicates a penalty.[146] Third, as to the enforcer of the exaction, "a taxing authority" that enforces an exaction indicates a tax, while an enforcing authority with a "responsibility to punish those who violate the law" indicates a penalty.[147] Therefore, the district court clarified the applicability of the *Sebelius* framework to analyzing Florida courts' fees and costs and ultimately concluded that the fees and costs constitute taxes.[148] Analyzing Florida courts' fees and costs under the *Sebelius* factors and through their primary purpose demonstrates that they constitute taxes rather than penalties.[149]

II. ANALYSIS

Conditioning felon re-enfranchisement on the payment of Florida courts' fees and costs violates the Twenty-Fourth Amendment.[150] Under the *Sebelius* factor analysis, the court fees and costs constitute taxes

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142. *Kurth Ranch*, 511 U.S. at 781–83.

143. *Jones II*, 462 F. Supp. 3d 1196, 1232 (N.D. Fla. 2020), *rev'd*, Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020).

144. *Id.* (quoting Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 566 (2012)).

145. *See Kurth Ranch*, 511 U.S. at 770, 781 (noting the punitive nature of a purported tax that was ten percent of the value of any illegal drugs possessed); *Drexel Furniture Co.*, 259 U.S. at 34, 38 (concluding that a purported tax on child labor was a penalty in part because it was ten percent of a company's annual net profits).

146. *Jones II*, 462 F. Supp. 3d at 1232; *see Drexel Furniture Co.*, 259 U.S. at 35 (exempting people who did not know a child was under the statutory age from paying the exaction).

147. *Jones II*, 462 F. Supp. 3d at 1232; *see Drexel Furniture Co.*, 259 U.S. at 35, 37 (discussing how the law authorized both the Commissioner of Internal Revenue and anyone authorized by the Secretary of Labor to make inspections about child labor employment and concluding that this indicated a penalty rather than a tax).

148. *Jones II*, 462 F. Supp. 3d at 1203.

149. *See infra* Part II.

150. Florida's LFO requirement encompasses fees, costs, restitution, and fines, but this Comment limits its analysis to two categories of LFOs: fees and costs.

rather than penalties.[151] This conclusion is further supported because the fees' primary purpose is to generate revenue rather than punish offenders.[152] Moreover, the Court's interpretation of the Twenty-Fourth Amendment in *Harman* shows that the fees and costs requirement denies Florida felons' right to vote "by reason of" their failure to pay these taxes.[153] As a result, Florida's fees and costs requirement violates the Twenty-Fourth Amendment.[154]

A. Applying the Sebelius *Factors to Florida Courts' Fees and Costs*

Florida courts' fees and costs constitute taxes as opposed to penalties under the *Sebelius* factors. First, the relatively low amounts of Florida courts' fees and costs indicate taxes rather than penalties.[155] Second, the uniformity of Florida courts' fees and costs, regardless of any scienter requirement in the various underlying offenses, resembles taxes rather than penalties.[156] Third, the method of collecting payments of Florida courts' fees and costs resembles tax collection methods.[157]

1. The amounts of Florida courts' fees and costs indicate taxes rather than penalties

The relatively low amounts of Florida courts' fees and costs compared to fines indicate that they are taxes as opposed to penalties. Florida's mandatory fees imposed at sentencing include "$100 for the cost of prosecution, $50 for a public defender application fee, $225 for additional court costs, and at least $100 more for various crime prevention, crime compensation, and crime stoppers funds, in addition

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151. *See infra* Section II.A.
152. *See infra* Section II.B.
153. *See infra* Section II.C; Harman v. Forssenius, 380 U.S. 528, 542 (1964).
154. Florida's felony disenfranchisement scheme, like those of other states, bars felons from voting in both state and federal elections. *See* FLA. CONST. art. VI, § 4(a). Because the Twenty-Fourth Amendment only prohibits the use of poll taxes in federal elections, this Comment limits its analysis to Florida's fees and costs requirement as applied to federal elections. While a tax barred by the Twenty-Fourth Amendment likely falls as applied to state elections under *Harper*'s Fourteenth Amendment prohibition on poll taxes, this Comment does not reach that conclusion. *See Jones II*, 462 F. Supp. 3d 1196, 1234 (N.D. Fla. 2020), *rev'd*, Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020) ("[T]he Supreme Court has held, in effect, that what the Twenty-Fourth Amendment prescribes for federal elections, the Equal Protection Clause requires for state elections.").
155. *See infra* Section II.A.1.
156. *See infra* Section II.A.2.
157. *See infra* Section II.A.3.

to any local fees tacked on."[158] The indigency of criminal defendants in Florida means that these fees are prohibitory in practice because defendants are often unable to pay them.[159] As a result of Florida's failure to track outstanding LFOs, "no one knows exactly how many ex-felons still owe fines, fees, and restitution . . . [b]ut all available data suggests that the vast majority of them never pay back all this money."[160] However, the nature of the fees as modest service charges, as opposed to punitive fines, indicates that they are taxes.[161]

Different categories of fines apply to particular offenses and can vary according to the severity of the offense.[162] Many of these fines go to particular trust funds related to the offense.[163] Fines with a restitutionary purpose are paid to the victim or aggrieved party, and their amounts vary based on the damage caused by the offense.[164]

Conversely, court fees and costs are generally imposed regardless of the nature of the offense and are much lower values than fines and restitution.[165] Many of these fees fund operational expenses for court administration and court-related functions.[166] The amounts and applications of court fees and costs indicate that they are taxes because, unlike in *Kurth Ranch* where the Court found an exaction to be a penalty

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158. Morse, *supra* note 94, at 1185–86 (internal quotation marks omitted); *see also Jones II*, 462 F. Supp. 3d at 1233 ("For most categories of fees, the amount is fixed, and with rare exceptions, the amount is comparatively modest, certainly not 'prohibitory.'"); *supra* note 96 and accompanying text.

159. *See* MENENDEZ ET AL., *supra* note 99 and accompanying text; *see also* Bannon et al., *supra* note 102, at 13 (finding that 91 percent of fees assessed in Florida felony cases are not expected to be collected).

160. Stern, *supra* note 9. Additionally, existing data does not differentiate among different kinds of outstanding LFOs. *See* Suppl. Expert Report of Daniel A. Smith, *supra* note 86, at 3.

161. *See* Diller, *supra* note 101, at 27–33 (showing the high amounts of fines that vary by offense and the comparatively low standardized fees, including the cost of a public defender, a public defender application fee, costs on conviction, a county court fee, and offender fees, that attach to any offense); *see also* United States v. Constantine, 296 U.S. 287, 295 (1935) (emphasizing the exaction's "penal and prohibitory intent rather than the gathering of revenue" in part because of the "highly exorbitant" amount of the exaction).

162. *See* Diller, *supra* note 101, at 27–33.

163. *See id.* (showing different trust funds that receive fine payments, including the Crimes Compensation Trust Fund, the Brain and Spinal Cord Injury Rehabilitation Trust Fund, the Florida Drug, Device, and Cosmetic Trust Fund, and the Fish and Wildlife Conservation Commission's State Game Trust Fund).

164. *See id.* at 28.

165. *See id.* at 27–33.

166. *See id.*

because of its deterrent purpose, Florida courts impose fees and costs primarily to raise revenue.[167] Finally, courts determine the amounts of fees imposed on particular offenses by reference to the corresponding fines for those offenses.[168] This limitation resembles the tax in *Sebelius*, where the value of the tax was generally less than the price of insurance, but never more.[169] Similarly, fees are generally less than fines, and courts may calculate a fee by capping its maximum amount at the amount of the corresponding fine.[170] In addition to the amounts of Florida courts' fees and costs, the uniformity of these fees and costs further demonstrates that they constitute taxes rather than penalties.[171]

2. The uniformity of Florida courts' fees and costs, regardless of any scienter requirement in the various underlying offenses, indicates taxes rather than penalties

The Court has characterized exactions as penalties where the exactions result from specified discouraged or illegal conduct.[172] Unlike penalties that target specific conduct, Florida courts' fees and costs apply uniformly and do not depend on the type of underlying offense nor whether the offense requires scienter.[173] In *Drexel Furniture Co.*, the

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167. *See* Dep't of Revenue of Mont. v. Kurth Ranch, 511 U.S. 767, 773–75 (1994) (noting the state's failure to show costs associated with enforcement to justify the purported revenue-raising purpose of the exaction and finding that the exaction's true purpose was deterrence); *infra* Section II.B (distinguishing the primary purposes of fines and fees).

168. *See* Diller, *supra* note 101, at 31 (showing that for alcohol or drug related offenses, the costs assessed for alcohol and drug abuse programs may be "[u]p to the amount of the fine authorized for the underlying alcohol or drug related offenses").

169. *See* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 566 (2012).

170. Diller, *supra* note 101, at 31.

171. *See infra* Section II.A.2.

172. *See* Bailey v. Drexel Furniture Co., 259 U.S. 20, 36–37 (1922) (penalizing the employment of child labor); United States v. Constantine, 296 U.S. 287, 288 (1935) (penalizing the violation of state liquor laws); *Kurth Ranch*, 511 U.S. at 770 (penalizing the possession of illegal drugs).

173. *See Jones II*, 462 F. Supp. 3d 1196, 1233–34 (N.D. Fla. 2020), *rev'd*, Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020) ("Most fees and costs are assessed without regard to culpability . . . the fees are assessed regardless of whether a defendant is adjudged guilty, bear no relation to culpability, and are assessed for the sole or at least primary purpose of raising revenue to pay for government operations—for things the state must provide, such as a criminal-justice system, or things the state chooses to provide, such as a victim-compensation fund. A tax by any other name."); *see also id.* at 1232 ("Unlike fees or costs, fines ordinarily are imposed only on those who are adjudged guilty, almost always of an offense that requires scienter."). Additionally, in *Drexel*

Court found that Congress demonstrated an intent to prohibit child labor and that "the penalizing features of the so-called tax . . . [showed] its character as . . . a mere penalty with the characteristics of regulation and punishment."[174] Similarly, the Court in *Department of Revenue of Montana v. Kurth Ranch* emphasized that the exaction on the possession of illegal drugs targeted "precise conduct," thereby indicating a penalty rather than a tax.[175]

Here, "the behavior to which [the exaction] applies" is, practically speaking, a defendant's participation in the criminal process, as court fees and costs directly relate to the various costs associated with court processing.[176] These exactions result from the lawful process of proceeding through the criminal justice system rather than the underlying offense that a felon has committed. In fact, "[e]very criminal defendant who is convicted, and every criminal defendant who enters a no-contest plea of convenience or is otherwise not adjudged guilty but also not exonerated, is ordered to pay [fees]," regardless of what offense has been committed.[177] Scienter differs among defendants,[178] and offenses differ among defendants,[179] but the common thread for each defendant is that they must go through the same criminal process. Courts impose fees on defendants so that "users" of the criminal justice

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Furniture Co., the penalty explicitly excluded those who did not know their employee was underage. This focus on scienter indicated a penalty, as opposed to Florida's fees and costs requirement that does not evaluate or require scienter. *See Drexel Furniture Co.*, 259 U.S. at 36–37.

174. *Drexel Furniture Co.*, 259 U.S. at 38 (emphasizing the "difference between revenue production and . . . regulation" as primary motivations); *see also Constantine*, 296 U.S. at 294 (holding that an exaction constituted a penalty because "its purpose is to punish rather than to tax," and focusing on "the character disclosed by [the exaction's] purpose and operation, regardless of [its] name").

175. *Kurth Ranch*, 511 U.S. at 781–82 (noting that "[p]ersons who have been arrested for possessing marijuana constitute the entire class of taxpayers subject to the Montana tax," and the tax attaches to the same criminal conduct underlying the arrest).

176. *Jones*, 975 F.3d at 1039; *see* Diller, *supra* note 101, at 27–33 (showing the various uniform court fees associated with criminal processing and obtaining court-appointed counsel, regardless of the underlying offense).

177. *Jones II*, 462 F. Supp. 3d at 1233.

178. *Compare* FLA. STAT. § 784.011 (2021) (defining assault as "an intentional, unlawful threat") *with* FLA. STAT. § 784.021 (2021) (defining aggravated assault as assault "[w]ith an intent to commit a felony"). Additionally, some statutes explicitly disclaim a scienter requirement. *See* FLA. STAT. § 794.021 (providing that "ignorance of the [victim's] age is no defense" when a defendant's conduct is criminal because a victim is younger than an age specified by statute).

179. *See generally* FLA. STAT. § 775.081 (2021) (listing the various categories of felonies in Florida).

system fund the criminal process, and this relation to the criminal process rather than to the commission of specific crimes indicates a tax rather than a penalty.[180] Additionally, the third *Sebelius* factor further demonstrates that Florida courts' fees and costs constitute taxes through Florida's use of private collection agencies and the Florida Department of Revenue.[181]

3. The method of collecting payments of Florida courts' fees and costs indicates that they are taxes rather than penalties

Florida's system of collecting payments of fees and costs varies widely by county.[182] Collection procedures can include having defendants pay directly to the county court clerk, using a private collection agency, the Florida Department of Revenue or Florida Department of Corrections acting as collection agents, and establishing civil "collections courts" to monitor payment plans.[183] Some of these methods, like implementing payment plans and using private collection agencies, create additional charges for defendants.[184]

The use of private collection agencies with no punitive authority or involvement in the criminal justice system resembles the tax collection in *Sebelius*.[185] These agencies collect revenue and do not punish legal violations, just as the Internal Revenue Service collected payments

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180. *See* MENENDEZ ET AL., *supra* note 94, at 6 (noting that fees are often "automatically imposed and bear no relation to the offense committed" and are generally "intended to shift the costs of the criminal justice system from taxpayers to defendants, who are seen as the 'users' of the courts").

181. *See infra* Section II.A.3.

182. *See* Diller, *supra* note 101, at 13. LFO collection procedures do not depend on the kind of LFOs owed, as counties use identical procedures regardless of whether a person's outstanding debt consists of fines or fees. *Id.*

183. *Id.* at 13, 15.

184. *Id.* at 15; *see also* Jones v. Governor of Fla., 975 F.3d 1016, 1088–89 (11th Cir. 2020) (Jordan, J., dissenting) (describing how additional fees imposed by these collection methods make it difficult for defendants to determine their outstanding LFOs, and emphasizing Florida's failure to administer a uniform system to track LFO payments).

185. *See* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 566 (2012); *Jones II*, 462 F. Supp. 3d 1196, 1233 (N.D. Fla. 2020), *rev'd*, Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020) (noting that fees assessed in Florida "are ordinarily collected not through the criminal-justice system but in the same way as civil debts or other taxes owed to the government, including by reference to a collection agency").

under the individual mandate.[186] Moreover, the Florida Department of Revenue collects many of Florida courts' LFOs.[187] Florida's collection methods indicate that Florida courts' fees and costs are taxes rather than penalties under *Sebelius*.[188] In addition to the *Sebelius* analysis, the primary purpose of Florida courts' fees and costs demonstrates that they are taxes rather than penalties.[189]

B. Distinguishing the Primary Purposes of Fines and Fees Through Their Plain Meaning

The difference in plain meaning between fines and fees further illustrates fees' character as taxes because their primary purpose is to generate revenue.[190] The Court has emphasized that "words are to be given their ordinary meaning unless the context shows that they are differently used."[191] Black's Law Dictionary defines a fine as a "pecuniary criminal punishment or civil penalty" and a fee as a "charge or payment for labor or services."[192] Similarly, the American Bar Association describes fines "as a form of punishment for criminal offenses" and fees as assessments "which seek to fund programs or services imposed when an individual is sentenced."[193] These modern definitions of fees and fines coincide with the Court's historical interpretations of taxes and penalties.[194] As a general matter within the criminal justice system, "[f]ines seek to punish and deter," while "fees seek to recoup court costs, generate revenue for programs through surcharges or assessments, or

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186. *Sebelius*, 567 U.S. at 566. *But cf.* Dep't of Revenue of Mont. v. Kurth Ranch, 511 U.S. 767, 771 (1994) (noting that law enforcement officers created the reports calculating the amounts owed and began collection procedures, indicating a penalty rather than a tax).

187. *Jones*, 975 F.3d at 1073 (Jordan, J., dissenting).

188. *See supra* note 185 and accompanying text.

189. *See infra* Section II.B.

190. *See supra* notes 165–167 and accompanying text.

191. *See* Bailey v. Drexel Furniture Co., 259 U.S. 20, 36 (1922) (interpreting whether a law imposes a tax with incidental regulatory effects or whether it uses a purported tax to regulate).

192. *Fine*, *Black's Law Dictionary* (11th ed. 2019); *Fee*, *Black's Law Dictionary* (11th ed. 2019).

193. American Bar Association, ABA Ten Guidelines on Court Fines and Fees 1–2 (Aug. 2018), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ind_10_guidelines_court_fines.pdf [https://perma.cc/55K2-PWNV] (recommending that fees "be commensurate with the service they cover, and consistent with the financial circumstances of the individual ordered to pay").

194. *See supra* note 50 and accompanying text.

cover the cost of services related to the justice system."[195] The application of fines and fees demonstrates this distinction in their primary purpose, as "[f]ines . . . are intended as both deterrence and punishment . . . [while] [f]ees, by contrast, are intended to raise revenue."[196]

In Florida, the primary purposes of fines and fees are demonstrably distinct. The state legislature enacted mandatory fixed fees that a judge must impose at sentencing.[197] By contrast, Florida's fines lack uniformity and generally vary on a case-by-case basis according to the judge's assessment of culpability.[198] Unlike in *Drexel Furniture Co.*, where the exaction on child labor was primarily regulatory because it was "a penalty to coerce people . . . to act as Congress wishes them to act," Florida does not allege that courts implement fees and costs to coerce people into general compliance with the law rather than to pay for the processing of cases through the criminal justice system.[199] Moreover, the state's own actions demonstrate that court fees and costs are created, modified, and defined by budgetary considerations rather than crime prevention considerations.[200]

The *Jones* majority noted that "Florida uses criminal fines to fund both its courts and general government operations, but that additional

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195. American Bar Association, *supra* note 193, at 6; *see* United States v. Bajakajian, 524 U.S. 321, 334 (1998) (concluding that a punitive forfeiture constitutes a fine).

196. MENENDEZ ET AL., *supra* note 94, at 6; *see also* Dep't of Revenue of Mont. v. Kurth Ranch, 511 U.S. 767, 781 (1994) ("[A] high tax rate and deterrent purpose lend support to the characterization of the drug tax as punishment."); *Jones II*, 462 F. Supp. 3d 1196, 1232 (N.D. Fla. 2020), *rev'd*, Jones v. Governor of Fla., 975 F.3d 1016 (11th Cir. 2020) ("Fines generate revenue for the government that imposes them, but the primary purpose is to punish the offender, not to raise revenue.").

197. *See supra* note 158 and accompanying text. Additionally, the court clarified in *Jones II* that "[w]hether an assessment is labeled a fee or cost makes no relevant difference[.]" *Jones II*, 462 F. Supp. 3d at 1233. *See generally* Diller, *supra* note 101, at 27–31 (showing the different categories of LFOs established by Florida law, including various types of fines and fees).

198. *See Jones II*, 462 F. Supp. 3d at 1232 ("Fines vary from individual to individual. They are imposed based on the court's assessment of culpability, or, in the case of minimum mandatory fines, based on the legislature's assessment of culpability."); *see also id.* ("Unlike fees or costs, fines ordinarily are imposed only on those who are adjudged guilty, almost always of an offense that requires scienter.").

199. Bailey v. Drexel Furniture Co., 259 U.S. 20, 39 (1922). *See generally supra* Section II.A.2 (distinguishing uniform court fees from offense-specific fines).

200. *See supra* notes 94–95 and accompanying text (showing that court fees increased after Florida's funding scheme changed and county clerk's offices became self-funded).

purpose does not make them taxes."[201] The converse is also true; the fact that fees may have an additional motive of discouraging criminal behavior does not transform them into penalties when their primary purpose is to raise revenue.[202] Moreover, any exaction imposed on felons may have an incidental purpose of discouraging criminal behavior because it attaches to a defendant's criminal status.[203] Still, the criminal justice system generally regards fines as primarily punitive and fees as primarily administrative, even when imposed solely on defendants.[204] Because Florida courts' fees and costs constitute taxes under the *Sebelius* framework and through their primary purpose, a felon's failure to pay these taxes cannot deny or abridge their right to vote under the Twenty-Fourth Amendment.[205]

C. Causation Under Harman's *Interpretation of the Twenty-Fourth Amendment*

A felon's failure to pay Florida courts' fees and costs denies them their right to vote under the Twenty-Fourth Amendment.[206] The Court interpreted the Twenty-Fourth Amendment in *Harman* and concluded that the law involved an unconstitutional indirect poll tax requirement because the alternative to paying a tax was a "cumbersome procedure"

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201. Jones v. Governor of Fla., 975 F.3d 1016, 1039 (11th Cir. 2020) (citing FLA. STAT. §§ 142.01(a), 775.083(1), 316.193(2)(a)).

202. *See supra* notes 130–131 and accompanying text (noting that taxes may plainly aim to incentivize or discourage certain behavior in addition to their primary goal of collecting revenue).

203. In *Jones II*, the court discussed Judge Moore's dissenting opinion in Johnson v. Bredesen, 624 F.3d 742 (6th Cir. 2010) (Moore, J., dissenting), and found that Judge Moore's conclusion (that conditioning felon re-enfranchisement on the payment of a five percent processing fee for child-support payments violated the Twenty-Fourth Amendment as a tax) applies even more strongly in the context of Florida's fees and costs requirement because Florida's fees "are not merely fees for processing payments on assessments that are not themselves taxes; the fees . . . have been directly levied by, and are paid in full to, state governmental entities." *Jones II*, 462 F. Supp. 3d at 1233; *see also Bredesen*, 624 F.3d at 770 (Moore, J., dissenting) (noting that the fees in that case were "payable to the government and . . . plainly for its benefit").

204. *See* American Bar Association, *supra* note 193, at 1–2, 6; *see also* Hamilton-Smith & Vogel, *supra* note 92, at 407–08 (noting that courts have generally regarded disenfranchisement itself as "regulatory rather than punitive" even though it results from a felony conviction).

205. U.S. CONST. amend. XXIV; *see infra* Section II.C.

206. U.S. CONST. amend. XXIV.

of obtaining a residency certificate.[207] Similarly, Florida's LFO system involves a cumbersome (and often impossible) process for felons to learn the status of their outstanding LFOs.[208] The payment of fees and costs as a prerequisite to re-enfranchisement is a more direct poll tax than the procedure found unconstitutional in *Harman*, which provided an alternative option for those unable or unwilling to pay the tax.[209] "[W]hen states regrant the right to vote only to *some* formerly incarcerated people, those individuals who have not paid their LFOs *could* vote but for their failure to pay these obligations. The right to vote for people who have not paid the LFOs, therefore, is 'abridged' by that failure to pay," in violation of the Twenty-Fourth Amendment.[210]

III. CRITICISMS

Proponents of Florida's LFO requirement argue that the penal character of court fees and costs is inherent in their applicability solely to Florida citizens who have committed felonies.[211] However, the *Sebelius* factors and an exaction's primary purpose determine its character as a tax or a penalty, even when imposed on felons, and they demonstrate the character of Florida courts' fees and costs as taxes.[212] Moreover, their applicability to those who have committed felonies is incidental to the exactions' more direct association with case processing in the criminal justice system.[213]

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207. Harman v. Forssenius, 380 U.S. 528, 541–42 (1965). *Cf.* Gray v. Johnson, 234 F. Supp. 743, 746 (S.D. Miss. 1964) (invalidating a state law that created "onerous requirements" for registered voters who fail to pay a poll tax).

208. *See* Jones v. Governor of Fla., 975 F.3d 1016, 1067 (11th Cir. 2020) (Jordan, J., dissenting) (explaining Florida's problems with accurately tracking and reporting LFOs to felons); Diller, *supra* note 101, at 11 (noting that most people surveyed did not know how much debt they owed).

209. *Cf.* John Harland Giammatteo, *A Poll Tax by Another Name: Considering the Constitutionality of Conditioning Naturalization and the "Right to Have Rights" on an Ability to Pay*, 95 N.Y.U. L. REV. ONLINE 259 (2020) (discussing the U.S. Citizenship and Immigration Services' efforts to condition naturalization on the payment of fees and arguing that the policies violate equal protection and due process).

210. Ryan A. Partelow, *The Twenty-First Century Poll Tax*, 47 HASTINGS CONST. L.Q. 425, 459 (2020).

211. *See* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 567 (2012) (quoting United States v. Reorganized CF & I Fabricators of Utah, Inc., 518 U.S. 213, 224 (1996)) ("In distinguishing penalties from taxes, this Court has explained that 'if the concept of penalty means anything, it means punishment for an unlawful act or omission.'").

212. *See generally supra* Part II.

213. *See supra* notes 203–204 and accompanying text; *supra* notes 176–177 and accompanying text.

Additionally, the low collection rates of these exactions may indicate that raising revenue is not their primary purpose.[214] However, the inefficiency of Florida's funding scheme and the indigency of criminal defendants do not determine the punitive nature of fees and costs, and the relatively low amounts of Florida courts' fees as compared to criminal fines indicate that they are not intentionally prohibitory.[215] On the contrary, the correlation between the increase in fees and the funding changes of Florida's court system demonstrates that raising revenue to fund the system is the fees' primary purpose.[216]

Finally, Section III.B.2 of the *Jones* opinion, which notably "does not even garner a plurality of the judges in the majority," argues that even assuming Florida courts' fees and costs are taxes, felons' restored right to vote is not denied "by reason of" their failure to pay these fees under the Twenty-Fourth Amendment.[217] The court stated that the "by reason of" language in the Twenty-Fourth Amendment requires a tighter causal link than but-for causation, so the denial of the right to vote must be *motivated* by failure to pay a tax, rather than merely *caused* by failure to pay a tax.[218] This interpretation of the Twenty-Fourth Amendment would narrow its impact and conflict with the legislative intent at the

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214. *See supra* note 99 and accompanying text.

215. *See supra* note 161 and accompanying text.

216. *See supra* notes 94–95 and accompanying text.

217. Jones v. Governor of Fla., 975 F.3d 1016, 1102 (11th Cir. 2020) (Jordan, J., dissenting) (commenting on the lack of plurality); *see id.* at 1040 (majority opinion) ("A financial obligation that indirectly burdens the right to vote is permissible under the Twenty-Fourth Amendment when the [s]tate has a constitutionally legitimate reason for imposing the voter qualification that creates the indirect burden."). *See generally* Crawford v. Marion Cnty. Election Bd., 553 U.S. 181 (2008) (upholding the constitutionality of a voter identification law despite the costs associated with obtaining valid identification); Sloan G. Speck, Comment, *"Failure to Pay Any Poll Tax or Other Tax": The Constitutionality of Tax Felon Disenfranchisement*, 74 U. CHI. L. REV. 1549 (2007) (noting that failure to pay taxes can result in a felony conviction, which can then result in a denial of the right to vote, so an indirect causal link between the failure to pay taxes and a denial of the right to vote is permissible under the Twenty-Fourth Amendment). *But see generally* Brendan F. Friedman, Note, *The Forgotten Amendment and Voter Identification: How the New Wave of Voter Identification Laws Violates the Twenty-Fourth Amendment*, 42 HOFSTRA L. REV. 343 (2013) (arguing that the Twenty-Fourth Amendment's broad purpose of removing financial barriers to voting includes the costs imposed by voter identification laws).

218. *Jones*, 975 F.3d at 1041–42, 1045 (noting that the Fifteenth, Nineteenth, and Twenty-Sixth Amendments use the phrase "on account of" to indicate but-for causation and arguing that the Twenty-Fourth Amendment therefore uses a different standard of causation).

time of the Amendment's ratification.[219] Moreover, the plain reading of the text of the Twenty-Fourth Amendment contradicts the *Jones* court's suggested interpretation.[220] Therefore, the legislative history, the plain reading of the text, and the Supreme Court's interpretation in *Harman* all indicate a broader reading of the Twenty-Fourth Amendment than the one suggested in *Jones*.[221]

CONCLUSION

Because Florida courts' fees and costs constitute taxes rather than penalties under the Court's analysis in *Sebelius*, the state cannot condition felon re-enfranchisement on the payment of those taxes. Therefore, Florida's fees and costs requirement as a prerequisite to felons' restored voting rights violates the Twenty-Fourth Amendment. To comply with the goals of Amendment 4 and the constitutional prohibition against taxes that deny the right to vote, Florida should restore voting rights to felons upon completion of their sentences without requiring the payment of outstanding court fees and costs prior to re-enfranchisement. This approach would align more closely with the intent of Florida voters and would reduce racial disparities in voting rights that have persisted from the Jim Crow-era poll tax to modern felon disenfranchisement. As states provide avenues for felon re-enfranchisement to address this history, they must ensure that re-enfranchisement laws are equitable and do not require wealth as a prerequisite to regaining the right to vote.

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219. *See Jones*, 975 F.3d at 1106 (Jordan, J., dissenting) (demonstrating the legislature's intent to broadly bar any tax that affects the right to vote by quoting various representatives during floor debates for the Amendment); Partelow, *supra* note 210, at 457 ("Much of the legislative and executive history of the amendment suggests that both the amendment's framers and President Johnson anticipated that the amendment would be construed broadly to apply beyond the traditional poll-tax requirement.").

220. Partelow, *supra* note 210, at 456 (arguing that the language "poll tax or any other tax" should be broadly construed to "include other devices meant to prevent voting based on wealth discrimination, and finally dispos[e] of the notion that wealth and property should be connected to one's ability to participate in democratic self-government"); *see also Jones*, 975 F.3d at 1102–03 (Jordan, J., dissenting) (noting that "by reason of" causation is identical to "on account of" causation under a standard textual analysis).

221. *See Jones*, 975 F.3d at 1104, 1106–07 (Jordan, J., dissenting) ("*Harman* constitutes an expansive interpretation of the Twenty-Fourth Amendment, not a narrow one."); *supra* notes 49–50 and accompanying text.