

I. Loss and Restoration of Voting and Firearms Rights¹

A. Voting rights

The loss and restoration of the right to vote after a conviction depends upon state law, including for people with federal convictions.² The Supreme Court has ruled that the Fourteenth Amendment to the Constitution permits states to permanently deny the vote based on a felony conviction.³

That said, most states do not go so far. In two states (Vermont and Maine) conviction never results in loss of the right to vote. In 22 states and the District of Columbia the vote is lost only if a conviction (usually a felony) results in incarceration.⁴ In all but five of those 22 states, the period of disenfranchisement coincides with the period of actual incarceration.⁵ In the one of the five (Louisiana), reenfranchisement is delayed for a period after release.⁶ In the remaining four states (California, Connecticut, Idaho, and New York) disenfranchisement continues through parole—except that parolees in New York have since 2018 been allowed to vote while by virtue of executive pardon.⁷

Another 22 states provide for loss of vote for a range of felony and certain misdemeanor convictions and restore the vote automatically either when a person completes the sentence or is discharged from supervision.⁸ Nine of these 22 states require a person to pay some or all conviction-related “legal financial obligations” (LFOs) (fines, fees, and restitution) before regaining the franchise.⁹ In 12 of the remaining 13 states in this group, discharge from supervision restores the vote, and LFOs may result in a scenario of delayed restoration of rights, depending on a person’s ability to pay.¹⁰ The wealth-based discrimination inherent in conditioning voting on payment of LFOs has been challenged on constitutional grounds in several states, notably including Florida.¹¹

Since Florida amended its constitution in 2018 to restore the vote automatically upon completion of sentence,¹² only four states (Iowa, Kentucky, Mississippi, and Virginia) now rely exclusively on the discretionary exercise of a constitutional power to restore the vote. These states have pursued differing restoration policies in recent years, with two (Virginia and Kentucky) restoring rights on an automatic or quasi-automatic basis, one (Iowa) restoring on a case-by-case basis through a petition-based system, and the fourth (Mississippi) showing no interest in restoration of the vote.¹³ All four of these “discretionary” states make provision for restoring the vote to people with federal or out-of-state convictions.¹⁴

This national landscape reflects a growing consensus in the states that restoration of the vote is an important aspect of criminal justice reform.¹⁵ Since 2015, there has been a national trend toward expanding the franchise through changes in law and policy. During this five-year period, 17 states and the District of Columbia have enacted a total of 26 laws either limiting disenfranchisement or encouraging the newly enfranchised to vote. Of the 17, eight states revised their restoration laws to remove barriers related to supervision: Colorado, Maryland, Nevada and New Jersey limited

disenfranchisement to a period of actual incarceration,¹⁶ Louisiana restored the franchise to anyone who has not been incarcerated in the last five years pursuant to an “order of imprisonment” for a felony,¹⁷ and three additional states (Delaware, Washington, and Arizona) removed an explicit financial payment condition from their restoration laws.¹⁸ Two more states (California and Oklahoma) and the District of Columbia removed barriers to voting related to incarceration or waiting periods,¹⁹ and three additional states (Arkansas, Florida, and Wyoming) ended indefinite disenfranchisement for at least some individuals.²⁰ Finally, two states passed laws initiating the process of constitutional amendment to enact (Iowa) or expand (California) automatic re-enfranchisement.²¹ In addition to measures expanding voter eligibility, five states passed laws requiring corrections officials to educate and inform people in prison or on supervision about their voting rights.²² More than half of these new laws were enacted after January 1, 2019, so the trend toward making more convicted individuals eligible to vote appears to be accelerating.

This trend toward restricting penal disenfranchisement is also evident in clemency policy. Since 2015, four governors have used their pardon power systematically to restore the vote and remove financial or supervision requirements.²³

During this same five-year period only one state acted to extend penal disenfranchisement. Florida’s June 2019 passage of SB7066, conditioning voting rights on full payment of LFOs, even if they have been converted to a civil lien, severely curtailed the ballot initiative by which 65% of state voters had approved automatic re-enfranchisement of most Floridians with a felony record just six months earlier.²⁴ SB7066 has been challenged on federal constitutional grounds, along with the ballot initiative, which was later interpreted by the Florida Supreme Court to itself require payment of LFOs.²⁵ Challenges have also been brought against laws mandating payment of LFOs as a condition of regaining the vote in Alabama and North Carolina.²⁶

The Collateral Consequences Resource Center plans to file a friend of the court brief in the Florida litigation documenting the nationwide frequency with which unpaid LFOs may delay restoration of the vote or deny it indefinitely.²⁷ This brief will document that in twenty states and the District of Columbia, LFOs have no bearing on eligibility to vote, and in 16 states LFOs potentially affect only the *timing* of re-enfranchisement.²⁸ In some of these 16 states courts are required to consider ability to pay in setting and enforcing terms of supervision, and in others they have discretion to do so. Of the four states that handle restoration of rights exclusively through the discretionary exercise of constitutional clemency, three currently have governors who evidently do not regard unpaid LFOs as disqualifying.²⁹ Accordingly, there are at present only ten states whose laws mandate permanent disenfranchisement based on some or all outstanding court debt, regardless of ability to pay. And only three of these states including Florida require payment of *all* LFOs associated with a disqualifying conviction; the remaining seven states require payment of certain financial obligations.³⁰

In summary, at mid-2020 the trend in state legislatures to expand opportunities for reenfranchisement rivals the trend toward expanding opportunities for people with a criminal record in the workplace. Excluding Florida’s SB 7066, it has been almost a decade since any state passed a law narrowing access to the ballot box based on conviction.³¹ The law in almost half the states now reflects an appreciation of the social and economic value of allowing all those who are living in the community to participate in its governance. Restoring the vote “may facilitate reintegration efforts and perhaps even improve public safety,” providing benefits both to individuals with a record and more broadly to their communities.³² A system linking penal disenfranchisement to actual incarceration is both easier to justify and easier to administer than a system that links the vote to other aspects of the sentence, much less one that makes voting depend upon a person’s ability to pay.

Recognition of the real and symbolic importance of making voting rights part of a reintegration agenda is nothing new. Forty years ago, national law reform organizations like the Uniform Law Commission and the American Bar Association advocated for limiting and even abolishing felony disenfranchisement.³³ Perhaps the country is slowly coming to that view. We agree with those who see no legal rationale or social justification for felony disenfranchisement, and few if any practical obstacles to allowing even prisoners to vote.³⁴ This remnant of ancient civil death and Jim Crow should have no place in the modern American polity.

B. Firearms Rights

In every state except Vermont, the right to possess at least some firearms is lost after conviction of at least some felonies. Even in Vermont, a court may prohibit firearm possession as a condition of granting probation.

The 50-state chart from the Restoration of Rights Project³⁵ attempts to chart a way through legal terrain that is even more complex and potentially treacherous than the one that governs penal disenfranchisement. It is more complex because federal law superimposes another layer of regulation on firearms possession after conviction, and because the right to possess firearms has a degree of constitutional protection even for people who are dispossessed by virtue of a conviction. It is more treacherous because the risk of criminal prosecution by one or both sovereigns is very real, while prosecutions for mistaken voting are considerably rarer (though even these have increased in recent years). Furthermore, while each state is entitled to enforce its own law on firearms dispossession within its borders, it is uncertain what effect relief granted in one jurisdiction will be given in another.³⁶

Just to sketch the general state law picture, in 28 states a person convicted of any felony loses the right to possess any firearm. A few of these 28 states extend dispossession to violent misdemeanors or domestic violence convictions. In 12 other states and the District of Columbia, only people convicted of specific crimes (usually violent, drug or sex crimes) lose any firearms rights. In six states (Alabama, Alaska, Connecticut, Indiana, Oklahoma, and South Carolina)

only handgun rights are ever lost. In three states (Louisiana, New Jersey, and Tennessee) there are different rules for dispossession of long guns and handguns. In Vermont conviction does not affect the right to possess a firearm, but a court may prohibit a person from having a firearm as a condition of granting probation.³⁷

Provisions for regaining lost rights vary widely. In a minority of states dispossession is time-limited and restoration is automatic for at least some types of convictions. In 11 states, including Kansas, Michigan, Minnesota and Rhode Island, restoration is automatic for many convicted of nonviolent crimes as early as completion of sentence, or after a brief waiting period. In Montana, the only people not allowed to have firearms when they complete their sentences are those who used a dangerous weapon in their crime. In North Dakota, even people whose offense involved “violence or intimidation” automatically regain their firearms rights 10 years after completion of sentence.

But in most states, firearms dispossession is indefinite, and everyone who lost rights must petition a court for discretionary relief or ask for a pardon. Some states mix and match the two approaches depending either upon the type of conviction or upon the type of firearm. In 11 of the 26 states in which all firearms rights are permanently lost upon conviction of any felony, a pardon is the exclusive restoration mechanism. In the other 15 states judicial relief is also authorized for at least some types of convictions, though expungement has a role in only a few (Arkansas, Missouri, Oregon, and Utah). Arizona reorganized its restoration scheme in 2019 so that courts may now grant relief for most felonies subject to differing waiting periods, but only the governor may restore rights to those convicted of “dangerous felonies.” In Tennessee, a pardon may restore rights to those who lost only handgun rights, but expungement is the only remedy available to those convicted of a violent or drug crime who lost all firearms rights. A few states (California, New York, Oklahoma) make no provision at all for restoring firearms rights to those convicted of violent crimes or offenses involving a dangerous weapon.

According to a 2011 study by the New York Times of firearms restoration mechanisms across the country, courts in many jurisdictions restored rights with little consideration of an individual’s circumstances, while pardon boards and governors were more cautious.³⁸ Even so, the Georgia Board of Pardons and Parole grants between 200 and 300 pardons every year specifically restoring gun rights, and the Nebraska pardon board has reported dozens of firearms pardons granted each year.³⁹

Separate and apart from state dispossession laws, federal criminal law also restricts firearm rights and privileges based on conviction in any U.S. jurisdiction. Under federal law, no one may possess any firearm (other than an antique) after conviction of a felony punishable by more than one year’s imprisonment, a misdemeanor punishable by more than two years’ imprisonment, or a domestic violence misdemeanor.⁴⁰ For people with state-court convictions, the federal prohibition may be lifted by various state law relief mechanisms, including pardon,

expungement, and general civil rights restoration (as long as the person is not barred from possessing firearms under state law), but the effect of specific state relief mechanisms on federal firearms rights is varied and complex.⁴¹ In contrast, after a conviction in federal court, the federal ban can only be lifted by a presidential pardon.⁴²

The Supreme Court’s landmark 2008 decision in *District of Columbia v. Heller*, which recognized a federal constitutional right to possess a firearm “in defense of home and hearth,”⁴³ opened a new avenue of challenge to the application of dispossession statutes. *Heller* itself anticipated and sought to deflect such challenges by declaring them to be “longstanding” and “presumptively lawful,”⁴⁴ but some lower courts have characterized this statement as dictum, and scholars have questioned its historical accuracy.⁴⁵ One federal court of appeals has upheld an “as applied” challenge to the categorical firearm ban by two individuals with dated state misdemeanors, but another federal appeals court reached the opposite conclusion in the case of a man convicted of felony credit card fraud.⁴⁶ At least one state court has relied upon a “right to bear arms” provision of its state constitution in refusing to apply a newly enacted categorical dispossession statute to an individual whose conviction was decades old, when his firearm rights had been restored under an earlier law, and he had long since demonstrated rehabilitation.⁴⁷

In summary, in all but the six states that limit dispossession to handguns, conviction of some or all felonies results in loss of all firearms rights for varying periods of time, but usually indefinitely. At the same time, relief appears to be available in most states from the courts. However, in a substantial minority of states, and for all those convicted in federal court, the only way to regain firearms rights is through a pardon. To the extent dispossession is permanent or relief hard to obtain through this political channel, this collateral consequence looks more like punishment than regulation, and should be subject to constitutional challenges on this ground, particularly in light of recent Second Amendment jurisprudence. That courts are reluctant to go there is understandable, however, so it will be up to legislatures to devise acceptable and less complex forms of relief.

¹ This report does not include a discussion of other civil rights lost because of conviction, notably the right to hold public office and the right to serve on a jury. In some states all three rights travel together, and in others they are handled differently. Interested readers are referred to the 50-state comparison chart from the Restoration of Rights Project, “Voting, Jury Service, Public Office & State Law on Firearms,” <https://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges/>.

² In states where the right to vote is lost and regained by operation of law, federal and out-of-state convictions are generally subject to the same rules as in-state convictions. Connecticut is a notable exception. *See* Conn. Gen. Stat. Ann. § 9-46a(a) (federal and out-of-state convictions), § 9-46a(b) (Connecticut state convictions). The handful of states that still provide for discretionary re-enfranchisement typically allow those with federal convictions to regain the vote on the same terms as those with in-state convictions, though they may also give individuals the option of

restoration in the jurisdiction of conviction. *See, e.g.*, Iowa governor’s website on clemency, Frequently Asked Questions, <https://governor.iowa.gov/sites/default/files/documents/FAQ%20-%20Voting.pdf> (“If your voting rights were restored in the State where you lost your rights because of a felony conviction, your voting rights are restored.”). Arizona is unusual in denying access to discretionary judicial restoration to those with out-of-state convictions, though it allows those with federal convictions to apply to the courts where they reside. *Cf. State v. Prince*, 226 Ariz. 516, 530, 250 P.3d 1145, 1159 (2011) (“a juror convicted of an out-of-state felony whose civil rights have not been restored is disqualified from jury service by § 21-201(3)”). The specific provisions of state laws restoring the franchise are detailed in each state’s profile from the Restoration of Rights Project.

³ *See Richardson v. Ramirez*, 418 U.S. 24, 54 (1974); *see also Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (O’Connor, J.) (provisions restoring voting rights lost due to conviction are subject to constitutional challenges). For a summary of the legal and policy issues raised by laws disenfranchising people with felony convictions, *see* Nick Harpster and Michael S. Vaughn, *Felon Disenfranchisement Laws: A Review of Current Policies, Challenges of Disenfranchisement Laws, and Recent Trends in Legislative and Legal Change*, 52 Crim. L. Bull. No. 5 (2016).

⁴ In a few of these jurisdictions, people incarcerated for a misdemeanor or election-related misdemeanor may not vote. *See, e.g.*, DC. Code § 1-1001.02(7); Mich. Comp. Laws § 168.758b; Utah Code Ann. § 20A-2-101(2)(b); *see also* S.C. Code Ann. § 7-5-120(B); Ky. Const. § 145(2). People in jail or prison who have not been convicted are never disenfranchised, although this may not be clear to corrections officials otherwise responsible for facilitating the exercise of this civic duty. On July 23, 2020, as part of a bill to reform policing and the administration of justice, the District of Columbia amended D.C. Code §§ 1-1001.02, .05 and .07 to restore the vote to all residents of the District in the custody of the D.C. Department of Corrections and the Federal Bureau of Prisons. *See* [DC Council Bill 23-0826](#) (July 7, 2020). The bill is subject to 30-day review by Congress.

⁵ *See* CCRC’s forthcoming report, “Who Must Pay to Regain the Vote? A 50-State Survey” and forthcoming brief as amicus curiae in *Jones v. DeSantis* (11th Cir.) (citations will be updated when available).

⁶ Louisiana restores the franchise automatically for a person who has not been incarcerated in the last five years pursuant to any “order of imprisonment,” for a felony, or upon earlier completion of such an order. La. Const. art. I, § 10; La. Stat. Ann. §§ 18:102(A)(1), 18:2(8).

⁷ *See* Executive Order 181 (A. Cuomo), April 18, 2018 (making all those released on parole automatically eligible for pardon to restore the vote), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_181.pdf. In June 2020, the California legislature approved a constitutional amendment restoring the vote to parolees for consideration by California voters in November 2020. *See* 2019 Cal. A.C.A. No. 6, chaptered June 25, 2020.

⁸ Most of these 22 states explicitly provide for the situation of people with federal and out-of-state convictions. Some states except from automatic re-enfranchisement specific crimes involving serious violence or sexual offenses, others excepted public corruption or election law crimes, and still others except both. *See, e.g.*, Article V § 2 of the Delaware constitution,

excepting from automatic restoration those convicted of murder, bribery or similar public corruption, or a sexual offense. *See* 50-state comparison chart cited in note 1, *supra*

⁹ In addition, Connecticut requires payment of LFOs for out-of-state and federal convictions (but only discharge from prison and parole for in-state convictions). *See supra* note 5.

¹⁰ These 12 states do not allow nonpayment of LFOs to indefinitely deny reenfranchisement, but they do allow LFOs to delay it in certain circumstances, via early discharge for payment, delayed discharge for nonpayment, or both. Added to this group of 12 “delay” states are four others that disenfranchise only upon a sentence of imprisonment, because of the potential for early discharge from parole upon payment of LFOs (Idaho, California, New York, and Louisiana). Oklahoma is the one state in this group of 13 that reenfranchises after a fixed sentence period, regardless of payment of LFOs. *See supra* note 5.

¹¹ *See* notes 25 and 26, *infra*.

¹² This provision excludes murder and sex offenses. *See* [Fla. Const. art. VI, § 4](#); Brennan Center for Justice, Voting Rights Restoration Efforts in Florida, May 31, 2019, <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida>.

¹³ Recent governors of Virginia and Kentucky have issued executive orders making restoration routine for most people in those states who have been discharged from supervision. *See* note 23, *infra*. Iowa’s recent governors have used a petition-based system, but in May 2020, with gubernatorial encouragement, its legislature initiated the process of amending its constitution to make restoration automatic upon completion of sentence. *See* Iowa Code §§ 48A.6, 48A.6(A). Mississippi’s governors and legislatures, both of which have authority under the state constitution to restore civil rights, have evidenced no interest in restoration of voting rights in recent years. Miss. Const. art. 5, § 124 (executive’s power to pardon limited in cases of treason and impeachment); art. 12, § 253 (restoration of civil rights by vote of 2/3 of the legislature).

¹⁴ Iowa, Kentucky, and Virginia give people with federal and out-of-state convictions access to their restoration process, or recognize restoration in the jurisdiction of conviction, while Mississippi allows those with federal and out-of-state convictions to vote without condition. *See Middleton v. Evers*, 515 So.2d 940, 944 (Miss. 1987) (disqualification not applicable if person was convicted in another state); Op. Miss. Atty. Gen. No. 2005-0193 (Wiggins, April 26, 2005). A few states rely on discretionary restoration in cases excluded from automatic restoration. *See, e.g.,* Ariz. Rev. Stat. §13-908 (discretionary judicial restoration for people with more than one felony conviction and first offenders who have not paid restitution); Wyo. Stat. Ann. §§ 7-13-105(a) (people who are ineligible for automatic restoration must seek restoration from the governor); and the states that except from automatic restoration mentioned in note 7, *supra*.

¹⁵ For a general overview of reenfranchisement trends prior to 2015, *see* Morgan McLeod, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reform*, The Sentencing Project (2018); Harpster & Vaughn, *supra* note 3.

¹⁶ Colo. Rev. Stat. § 1-2-103, *amended by* 2019 Colo. Legis. Serv. Ch. 283 (H.B. 19-1266); Md. Code Ann., Elec. Law § 3-102, *amended by* 2016 Md. Laws Ch. 6 (H.B. 980 (2015)); N.J. Stat. Ann. §19:4-1, *amended by* 2019 NJ Sess. Law Serv. Ch. 270 (A. 5823). Nevada legislated twice during this period, replacing a complex re-enfranchisement system that required people with

non-violent first offenses to pay restitution to regain their rights, and all others to seek restoration through discretionary action of a court or pardon board, with the end result that disenfranchisement is now limited to the period of actual incarceration. Nev. Rev. Stat. § 213.157, *amended by* 2017 Nev. Laws Ch. 362 (A.B. 181) (eliminating restitution requirement), 2019 Nev. Laws Ch. 255 (A.B. 431) (limiting disenfranchisement to imprisonment).

¹⁷ La. Stat. Ann. § 18:102, *amended by* 2018 La. Sess. Law Serv. Act 636 (H.B. 265).

¹⁸ Delaware eliminated its requirement to pay LFOs to regain the vote. Del. Code Ann. tit. 15, § 6102, *amended by* 2016 Del. Laws Ch. 311 (S.B. 242). Washington eliminated its requirement that LFOs be paid in order to be fully restored to the franchise, if five years have elapsed following completion of all non-financial requirements of the sentence. Wash. Rev. Code § 29A.08.520; *id.* § 9.94A.637, *amended by* 2019 Wash. Legis. Serv. Ch. 331 (S.H.B. 1041). Arizona eliminated its requirement to pay LFOs (other than restitution) to obtain automatic restoration of the vote following discharge for a first felony offense, leaving unpaid restitution a potential source of wealth discrimination. Ariz. Rev. Stat. Ann. § 13-907, *amended by* 2019 Ariz. Legis. Serv. Ch. 149 (H.B. 2080).

¹⁹ California allowed those serving felony sentences in county jail to vote. Cal. Elec. Code § 2101, *amended by* 2016 Cal. Legis. Serv. Ch. 757 (A.B. 2466). Oklahoma clarified that those convicted of a felony may register to vote when they have “fully served their sentence of court-mandated calendar days” with no further waiting period. 26 Okla. Stat. Ann. § 4-101, *amended by* 2019 Okla. Sess. Law Serv. Ch. 112 (H.B. 2253). For D.C.’s recent enactment, see note 4.

²⁰ Arkansas closed a loophole that had prevented juveniles charged as adults from regaining the vote; Florida amended its constitution to restore the vote to all who have completed their sentences (excluding those with murder and sex offenses); and, Wyoming restored the vote automatically to those convicted of a single nonviolent felony upon “discharge” of sentence, broadening this relief on three different occasions between 2015 and 2018. *See* Ark. Code Ann. § 16-93-622 (2019); Fla. Const. art. VI, §4(a) (2018); Wyo. Stat. Ann. § 7-13-105 (amended in 2015, 2017, and 2018).

²¹ *See* Iowa Code §§ 48A.6, 48A.6(A); 2019 Cal. ACA-6, chaptered June 25, 2020, *supra* note 6.

²² *See, e.g.,* Cal. Elec. Code § 2105.5; Colo. Rev. Stat. § 17-2-102; 730 Ill. Comp. Stat. Ann. 5/3-14-1(a-3); Ill. Pub. Act 101-0441; N.H. Rev. Stat. Ann. § 504-A:12-a; Wash. Rev. Code § 72.09.275.

²³ Since 2016, Virginia’s governor has regularly restored the vote upon completion of a term of supervision and currently does not require payment of LFOs. *See* Restoration of Rights, Secretary of the Commonwealth of Virginia (last accessed June 23, 2020 at 7:28pm), <https://www.restore.virginia.gov/>. Kentucky’s governor issued an Executive Order automatically restoring the vote to all those with Kentucky convictions, excluding specified violent offenses, if they have completed probation and parole (“final discharge”), regardless of payment of restitution, fines, or other monetary conditions; those with pending felony charges or arrests are excluded. Ky. Exec. Order No. 2019-003 (Dec. 12, 2019). Iowa’s current governor restores votes on a regular basis upon completion of sentence, including to those who owe LFOs who are current on a payment plan. *See* Voting Rights Restoration, Office of the Governor of Iowa, Kim Reynolds, <https://governor.iowa.gov/services/voting-rights-restoration>. New York’s governor issued an Executive Order directing that individuals being released onto parole, or currently on

parole “will be given consideration for a conditional pardon that will restore voting rights without undue delay.” N.Y. Exec. Order No. 181 (2018).

²⁴ [SB7066](#), signed into law by Governor DeSantis in June 2019 and codified at Fla. Stat. § 98.0751(2)(a)(5), defined “completion of sentence to mean “full payment of fines or fees ordered by the court as part of the sentence or that are ordered by the court as a condition of any form of supervision” The law explicitly requires that the payment requirement “is not deemed completed upon conversion to a civil lien.” *Id.*

²⁵ The governor’s signature on SB7066 triggered a [legal challenge](#) in federal district court based upon several constitutional theories, including that the new law, as well as the ballot initiative, violate Equal Protection to the extent that they discriminate between those who are able to pay and those who are not. The United States Court of Appeals for the Eleventh Circuit ruled, in affirming the district court’s preliminary injunction, that Florida cannot condition voting on payment of an amount a person is genuinely unable to pay. *See Jones v. Governor of Fla.*, 950 F.3d 795 (11th Cir. 2020). While the appeal of the preliminary injunction was pending, the Florida Supreme Court issued an advisory opinion that the ballot initiative requires payment of legal financial obligations to regain the vote. *See Advisory Op. to the Governor Re: Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So. 3d 1070 (Fla. 2020). After a full trial on the merits, the federal district court held that the State may condition voting on payment of fines and restitution imposed by the court at sentencing that a person is able to pay, but may not, consistent with the Equal Protection Clause, condition voting on payment of amounts a person is unable to pay. Further, the court held that at least some of the financial obligations are taxes that cannot block access to voting consistent with the Twenty-fourth Amendment, whether a person is able to pay or not. *See Jones v. DeSantis*, 2020 WL 2618062 (N.D. Fla., May 24, 2020). On July 2, 2020, the 11th Circuit granted Florida’s request for *en banc* review of the district court’s decision and stayed its order; on July 16, the Supreme Court declined to lift the stay. Argument in the court of appeals is scheduled for August 18, 2020.

²⁶ *See Community Success Initiative v. Moore*, No. 19-CVS-15941 (N.C. Gen. Ct. Just. filed Nov. 20, 2019); *Thompson v. Merrill*, No. 2:16-cv-783 (N.D. Ala. filed May 27, 2020).

²⁷ *See* note 5, *supra*.

²⁸ In these 16 states the vote is tied to completion of supervision, which may result in a temporary delay in reenfranchisement if a court or supervisory official determines that supervision should be extended to give a defendant some additional incentive to pay, e.g. to make a victim whole. Officials in some of these states must consider a person’s ability to pay in connection with fulfilling conditions of supervision, and officials may consider it in others.

²⁹ *See* note 23, *supra*.

³⁰ *See* CCRC’s forthcoming report, “Who Must Pay to Regain the Vote? A 50-State Survey” and forthcoming brief as amicus curiae in *Jones v. DeSantis* (11th Cir.) (citations will be updated when available).

³¹ *See* 2012 South Dakota Laws Ch. 82 (HB 1247), amending S.D. Codified Laws § 12-4-18 to disenfranchise individuals convicted after June 30, 2012, and sentenced to probation. Individuals convicted prior to July 1, 2012, remain disenfranchised only if sentenced to a term of imprisonment. In February 2020, the South Dakota legislature voted against limiting

disenfranchisement to the term of supervision. *See* HB1247, <https://legiscan.com/SD/bill/HB1245/2020>.

³² Christina Beeler, Article, *Felony Disenfranchisement Laws: Paying and Re-Paying a Debt to Society*, 21 U. Pa. J. Const. L. 1071, 1088 (2019) (internal quotation marks omitted).

³³ *See* American Bar Association, Standards on the Legal Status of Prisoners, Standard 23-8.4 (1983) (hereinafter ABA Standards); National Conference of Commissioners of Uniform State Laws, Model Sentencing and Corrections Act, §§ 4-112, 4-1003 (1979). The commentary to the ABA Standards noted that “little is gained by society” in disenfranchising prisoners while “much is accomplished by retaining and strengthening the ties of offenders with the free community.”

³⁴ *See, e.g.*, The American Law Institute, Model Penal Code: Sentencing § 7.03. *See also id.* At comment b (“Although disenfranchisement has been justified as a fitting punishment for transgressing the rules of civil society, the legal justification for collateral consequences is that they serve regulatory functions, not punitive ones.”)

³⁵ Restoration of Rights Project, “50-State Comparison: Loss & Restoration of Civil/Firearms Rights,” <https://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges/>.

³⁶ *See, e.g.*, *Schoenherr v. Department of State, Div. of Licensing*, 743 So. 2d 536, 537 (Fla. 2d DCA 1998)(deferring to Connecticut’s restoration of right to possess firearm); *Blackwell v. Haslam*, 2013 WL 3379364 (Tenn. Ct. App. 2013) (remanding for consideration whether giving effect in Tennessee to a Georgia pardon restoring firearms rights to a drug offender violates Tennessee’s public policy against restoring firearms rights to violent drug offenders). *See generally* Wayne A. Logan, “*When Mercy Seasons Justice*”: *Interstate Recognition of Ex-Offender Rights*, 49 U. C. Davis L. Rev. 1 (2015) (surveying caselaw regarding interstate recognition); Love, Roberts & Logan, *Collateral Consequences of Criminal Conviction: Law, Policy and Practice* §§ 2:35, 3:22 and 7:24 (WEST/NACDL, 3d ed., 2018-2019).

³⁷ *See State v. Kasper*, 566 A.2d 982, 984 (Vt. 1989); *see also* Jay Buckeye, Note, *Firearms for Felons? A Proposal to Prohibit Felons from Possessing Firearms in Vermont*, 35 Vt. L. Rev. 957 (2011). Persons convicted of a felony under Vermont law who have not been pardoned, or whose convictions have not been sealed or expunged, remain subject to federal firearms restrictions by virtue of the state’s failure to restore all three civil rights.

³⁸ Michael Luo, *Felons Finding It Easy to Regain Gun Rights*, N.Y. Times, Nov. 13, 2011, <https://www.nytimes.com/2011/11/14/us/felons-finding-it-easy-to-regain-gun-rights.html>.

³⁹ *See* Georgia and Nebraska profiles, Restoration of Rights Project, <https://restoration.ccresourcecenter.org/>.

⁴⁰ *See* 18 U.S.C. § 922(g).

⁴¹ *See* 18 U.S.C. § 921(a)(20); *see also Caron v. United States*, 524 U.S. 308 (1998); Love *et al.*, *supra* note 36, § 2:35 (“Restoration of firearms privileges; relationship between state and federal dispossession laws”). *See* Restoration of Rights Project, 50-state comparison chart, *supra* note 35, Chart #2 (“Firearms Rights Under Federal Law”). There has been some disagreement in the federal courts about whether state restoration instruments must address firearms rights to remove the federal firearms bar, a subject that is too complex for treatment in this report.

⁴² See *Beecham v. United States*, 511 U.S. 368 (1994), discussed in *Love et al.*, *supra* note 36, § 2:35.

⁴³ *District of Columbia v. Heller*, 554 U.S. 570, 637 (2008).

⁴⁴ 554 U.S. at 626-27.

⁴⁵ See *Love et al.*, *supra* note 36, § 2:36 (“Second Amendment challenges to felony dispossession laws”), notes 4 through 6.

⁴⁶ Compare *Binderup v. Attorney General*, 836 F.3d 336, 353, 357 (3d Cir. 2016), *cert. denied*, 137 S. Ct. 2323 (2017) (government could not justify applying the bar to persons who had “distinguish[ed their] circumstances from those of persons in the historically barred class,” and that the petitioners’ crimes were “not serious enough to strip them of their Second Amendment rights”) with *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017), *cert. denied*, 138 S. Ct. 500 (2017) (holding that a Maryland resident convicted of a felony in Virginia, whose firearms rights had been restored in Virginia and under federal law, remained subject to Maryland’s dispossession statute without a Virginia pardon).

⁴⁷ See *Britt v. State*, 681 S.E.2d 320 (N.C. 2009). Following the *Britt* decision, North Carolina amended its firearms law to permit individuals who have lived in North Carolina for at least one year, who have a single non-violent felony conviction and no violent misdemeanors, to petition the court in their county of residence twenty years after their civil rights were restored for restoration of firearms rights. N.C. Gen Stat. § 14-415.4.