

Desmond Meade and Angel Sanchez

In Conversation

Desmond Meade, Angel Sanchez

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I. INTRODUCTION

On August 6, 1965, President Lyndon Johnson signed the Voting Rights Act into law.¹ The Act, which prohibits racial discrimination in voting, came about at the height of the Civil Rights Movement, after years of tireless advocacy and demonstrations by civil rights activists who routinely faced violence from those who wanted to disenfranchise Black communities.² The country seemed, at long last, to be taking a step toward fulfilling President Abraham Lincoln’s hope for “a government of the people, by the people, for the people.”³

Shortly after passage of the Act, three students at Harvard Law School—Spencer Boyer, Frank Parker, and Joseph Meissner—founded the *Harvard Civil Rights-Civil Liberties Law Review* (CR-CL) to promote progressive scholarship, elevate marginalized voices, and advance civil rights.⁴ In its very first issue, the editors dedicated this journal’s pages to “the civil rights revolution and the modern manifestations of the relation between citizen and state.”⁵ Unsurprisingly, the issue’s first article, *The Federal Government’s Power to Protect Negroes and Civil Rights Workers Against Privately Inflicted Harm* was a direct response to the darkest and most violent moments of the Civil Rights Movement.⁶ In his article, Dean Paul Brest, then just a student, argued that the federal government has the power to

¹ *Voting Rights Act (1965)*, NAT’L ARCHIVES, <https://www.archives.gov/milestone-documents/voting-rights-act> [<https://perma.cc/48F6-EJK6>] (last updated Feb. 8, 2022).

² *See id.*

³ Abraham Lincoln, Gettysburg Address (Nov. 19, 1863).

⁴ *See* Elaine McArdle, *A Journal Dedicated to Promoting ‘Revolutionary Law,’* HARV. L. TODAY (Feb. 24, 2021), <https://hls.harvard.edu/today/a-journal-dedicated-to-promoting-revolutionary-law> [<https://perma.cc/63S4-UZPX>].

⁵ *Preface*, 1 HARV. C.R.-C.L. L. REV., at iii, iii (1966).

⁶ *See* Paul Andrew Brest, *The Federal Government’s Power to Protect Negroes and Civil Rights Workers Against Privately Inflicted Harm*, 1 HARV. C.R.-C.L. L. REV. 2 (1966).

punish private acts of violence or intimidation committed against Black Americans to prevent them from voting.⁷ The question of how to safeguard voting rights has been and continues to be one of the hardest questions with which this journal has grappled.

As this journal publishes our sixtieth volume sixty years after passage of the Voting Rights Act, we continue to wrestle with the reality that racial discrimination in voting has never truly been eliminated. This is particularly salient in the disenfranchisement of millions of citizens on the basis of their criminal convictions. As of 2022, over 4.4 million Americans in forty-eight states are barred from voting because of their felony convictions.⁸ In ten states, disenfranchisement is permanent, even after completion of a sentence and parole.⁹ And it comes as no surprise that felony disenfranchisement laws disproportionately impact Black communities. Due to the racially disparate law enforcement practices that resulted from our decades-long war on drugs, 5.3 percent of Black adults are disenfranchised, compared to 1.5 percent of the population that is not Black.¹⁰ Felony disenfranchisement laws, which the Supreme Court has held does not violate the Equal Protection Clause of the Fourteenth Amendment,¹¹ function to prevent Black Americans from accessing the ballot.

In spite of this country's long history of disenfranchisement, academics, lawyers, and activists are continuing to bring attention to the problem of felony disenfranchisement and fighting to change the state laws that keep this policy alive. As this journal confronts the state of voting rights today, we invited two civil rights activists at the forefront of efforts to end felony disenfranchisement to sit for a conversation on the topic of rights restoration, moderated by members of our editorial board. We hope that by publishing the following edited conversation, we can amplify the voices of those who have been disenfranchised and shine a light on the path to a more just democracy.

II. BIOGRAPHIES

Desmond Meade is the Executive Director of the Florida Rights Restoration Coalition (FRRC),¹² a grassroots organization dedicated to ending voter disenfranchisement and discrimination against people

⁷ See *id.* at 14, 32.

⁸ See Nicole D. Porter, Alison Parker, Trey Walk, Jonathan Topaz, Jennifer Turner, Casey Smith, Makayla LaRonde-King, Sabrina Pearce & Julie Ebenstein, *Out of Step: U.S. Policy on Voting Rights in Global Perspective*, SENT'G PROJECT (June 27, 2024), <https://www.sentencingproject.org/publications/out-of-step-u-s-policy-on-voting-rights-in-global-perspective/> [<https://perma.cc/9WWX-5U9H>].

⁹ See *Disenfranchisement Laws*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-rights-restoration/disenfranchisement-laws> [<https://perma.cc/W8Y8-BB4S>] (last visited Oct. 4, 2024).

¹⁰ See Porter et al., *supra* note 8.

¹¹ See *Richardson v. Ramirez*, 418 U.S. 24, 25 (1974).

¹² *Desmond Meade*, FLA. RTS. RESTORATION COAL., <https://floridarrc.com/about/desmond-meade/> [<https://perma.cc/DU6A-YDPB>] (last visited Oct. 4, 2024).

with prior convictions.¹³ Mr. Meade has led FRRC since its inception and directed FRRC's historic efforts to pass Florida's Amendment 4, the Voting Restoration Amendment,¹⁴ which restored voting rights to 1.4 million Floridians with past convictions.¹⁵ Mr. Meade played a pivotal role in Amendment 4's passage by organizing a citizen's initiative and collaborating with various state and national organizations.¹⁶ Mr. Meade has been recognized for his vital work and was named one of the 100 Most Influential People in the World in 2019 by *Time Magazine*,¹⁷ a MacArthur Genius Fellow in 2021,¹⁸ and Duke Law School's honorary Doctor of Law degree recipient in 2023.¹⁹ Furthermore, under Mr. Meade's stewardship, the FRRC was nominated for a Nobel Peace Prize in 2021 for its dedication to combatting the disenfranchisement of people with convictions.²⁰

Mr. Meade's commitment to re-enfranchisement stems from his own experiences with the criminal justice system. Mr. Meade often describes himself as "an ordinary guy who was taken through extraordinary circumstances;" he has overcome various obstacles and shown unwavering dedication to making a meaningful impact in his state.²¹ In the past, Mr. Meade struggled with drug addiction and found himself in and out of prison.²² This changed in 2005, when, after having been released from prison and struggling with homelessness, Mr. Meade began treatment for his drug addiction and decided to go back to school to prevent himself from relapsing.²³ After completing his AS and BS from Miami Dade College in 2010, Mr. Meade enrolled in Florida International University College of Law and graduated with a JD in 2014.²⁴ While in school, Mr. Meade got involved with organizing efforts focused on re-enfranchisement for returning citizens as he

¹³ *FRRC Mission & History*, FLA. RTS. RESTORATION COAL., <https://floridarrc.com/about> [<https://perma.cc/SHF7-84RV>] (last visited Oct. 4, 2024).

¹⁴ For the text of the amendment, see *Voting Restoration Amendment Text*, ACLU OF FLA., <https://www.acluf.org/en/voter-restoration-amendment-text> [<https://perma.cc/D2TZ-J7MJ>] (last visited Oct. 4, 2024).

¹⁵ *Desmond Meade*, *supra* note 12.

¹⁶ *Desmond Meade*, LATINO JUST. PRLDEF, <https://www.latinjustice.org/en/desmond-meade> [<https://perma.cc/KQ9Y-EPZH>] (last visited Oct. 4, 2024).

¹⁷ Stacey Abrams, *Desmond Meade*, TIME, <https://time.com/collection/100-most-influential-people-2019/5567673/desmond-meade/> [<https://perma.cc/U7GF-QDAD>] (last visited Oct. 4, 2024).

¹⁸ *Desmond Meade*, MACARTHUR FOUND. (Sept. 28, 2021), <https://www.macfound.org/fellows/class-of-2021/desmond-meade> [<https://perma.cc/3TLT-F4XK>].

¹⁹ *Meet the 2024 Honorary Degree Recipients*, DUKE TODAY (Mar. 9, 2024), <https://today.duke.edu/2024/03/meet-2024-honorary-degree-recipients> [<https://perma.cc/G828-5TCF>].

²⁰ *Florida Rights Restoration Coalition (FRRC) Nominated for a Nobel Peace Prize*, FLA. RTS. RESTORATION COAL. (Feb. 17, 2023), <https://floridarrc.com/2-17-23-press-release/> [<https://perma.cc/KF7E-AH3W>].

²¹ Karlos K. Hill, *Desmond Meade on Why Love Is "the Most Powerful Word in the Universe,"* THE NATION (Nov. 24, 2022), <https://www.thenation.com/article/activism/desmond-meade-interview/> [<https://perma.cc/E6TL-8L8Q>].

²² *Id.*

²³ *Id.*

²⁴ *Id.*

himself was not able to vote due to his past felony convictions; this work led Mr. Meade to his current role at the FRRC.²⁵ As his work continues to gain national attention, Mr. Meade maintains a strong connection with his local community and centers his work on their needs. “[I]f we want our counties or our state to be great,” he explained, “then we have to empower those within our communities that have been most weakened by various systems.”²⁶

Angel Sanchez is an attorney and activist advocating to re-enfranchise formerly incarcerated individuals and increase access to education for currently incarcerated people. Mr. Sanchez is a leader in this space and someone acutely aware of the struggles facing those for whom he advocates, having utilized his period of incarceration to receive his GED.²⁷ After being released in 2011, Mr. Sanchez obtained his college degree and later earned his law degree from the University of Miami School of Law.²⁸ He went on to serve as the Senior Policy Analyst and head of the Fines & Fees pro bono program at the Florida Rights Restoration Coalition (FRRC),²⁹ a grassroots organization dedicated to ending the disenfranchisement of and discrimination against people with convictions.³⁰ In 2022, Sanchez was accepted to the Department of Justice’s Bureau of Justice Assistance through the Second Chance Fellows Program.³¹ His work with the Department of Justice focused on restoring and enhancing access to education for people with criminal convictions.³² Most recently, Mr. Sanchez completed a Master of Laws degree at Yale Law School, specializing in issues surrounding mass incarceration and collateral consequences.³³

In 2022, Mr. Sanchez was sworn into the Washington, D.C. Bar in the same courthouse where, at seventeen years old, he was sentenced to thirty years in prison.³⁴ During his sentence, he obtained his GED and paralegal

²⁵ *Id.*

²⁶ Jaclyn Harold, *Desmond Meade Day Aims to Help People Experiencing Homelessness with Voting Registration*, SPECTRUM NEWS 13 (Sept. 11, 2023, 2:04 PM), <https://mynews13.com/fl/orlando/news/2023/09/11/desmond-meade-day-celebration-gives-back-to-people-in-need-> [<https://perma.cc/NR5R-FL3P>].

²⁷ Catherine Skipp, *Miami Law Alumnus Kicks Off National Second Chance Month with Yale Law Acceptance*, UNIV. OF MIAMI SCH. OF L. NEWS & EVENTS (Apr. 21, 2023), <https://news.miami.edu/law/stories/2023/04/alumnus-kicks-off-national-second-chance-month-with-yale-acceptance.html> [<https://perma.cc/DD33-H5TX>].

²⁸ *Id.*

²⁹ Amy L. Solomon, *Introducing Second Chance Fellows John Bae and Angel Sanchez*, U.S. DEP’T OF JUST. OFF. OF JUST. PROGRAMS (Apr. 21, 2022), <https://www.ojp.gov/files/archives/blogs/2022/second-chance-fellows-john-bae-and-angel-sanchez> [<https://perma.cc/DXB6-RN4J>].

³⁰ *FRRC Mission & History*, *supra* note 13.

³¹ Solomon, *supra* note 29.

³² *Id.*

³³ Skipp, *supra* note 27.

³⁴ David C. Adams, *Redemption Story: One Man’s Legal Journey From Behind Prison Bars to Being Admitted to the Bar*, UNIVISION NEWS (Sept. 18, 2022, 9:06 AM), <https://www.>

certificate.³⁵ While working in the prison law library, Mr. Sanchez learned to write pleadings on his own behalf and successfully reduced his sentence to fifteen years.³⁶ After his release at the age of twenty-eight, he set his sights on continuing his education, graduating from Valencia Community College at the top of his class while struggling with homelessness.³⁷ Mr. Sanchez completed his undergraduate education, with honors, at the University of Central Florida, where he explored the impact that felony disenfranchisement has on the Latine community in Florida.³⁸ Throughout his education, Mr. Sanchez has not ceased his efforts to assist incarcerated and formerly incarcerated people. He collected over 300 books for a county jail's inmate library³⁹ and lobbied First Lady Jill Biden to increase federal aid for unhoused college students.⁴⁰

At thirty-six, Mr. Sanchez exercised his right to vote for the first time after passage of Florida's Amendment 4 in 2018. However, Florida has refused to restore his civil rights, making him ineligible to sit for the Florida Bar exam.⁴¹ He continues to fight to get clemency and have his rights restored so that he can practice law in his home state.

III. CONVERSATION

CR-CL: We wanted to start by asking you a question about your Bar Association. As we were doing research into felony re-enfranchisement, we learned that both of you had difficulty trying to get barred. And we thought that it might be useful for our readers and our students to understand that when you are disenfranchised it's not just from the vote, it's from every aspect of life, including from being an attorney. Could you talk about that experience?

Angel Sanchez: I'll answer first. As for my bar status in Florida, I hope to be barred one day and to have the opportunity to give back. Florida is my

univision.com/univision-news/united-states/angel-sanchez-legal-journey-from-prison-to-certified-bar-member [https://perma.cc/MZ24-BEB2].

³⁵ *Valencia College Stories: Angel Sanchez*, VALENCIA COLL., <https://valenciacollege.edu/about/stories/transfer-success-story-angel-sanchez.php> [https://perma.cc/24YM-WNZG] (last visited Oct. 3, 2024).

³⁶ Tony Pipitone, *Story of Redemption: From South Florida Teen Gang-Banger to Attorney*, NBC MIAM, <https://www.nbcmiami.com/news/local/story-of-redemption-from-south-florida-teen-gang-banger-to-attorney/2860378/> [https://perma.cc/H7EC-GWAT] (last updated Sept. 16, 2022, 8:12 PM).

³⁷ *Returning Citizen Stories: Angel*, FLA. RTS. RESTORATION COAL., <https://floridarrc.com/stories/> [https://perma.cc/QS4N-8T6X] (last visited Oct. 3, 2024).

³⁸ Angel E. Sanchez, *What Impact is Felony Disenfranchisement Having on Hispanics in Florida?* (2017) (Honors undergraduate thesis, University of Central Florida) (on file with the University of Central Florida Digital Library).

³⁹ Rachel Williams, *Prison to Law School: How Education Turned a Former Gang Member's Life Around*, UNIV. OF CENT. FLA. TODAY (May 2, 2017), <https://www.ucf.edu/news/how-education-turned-a-former-gang-members-life-around/> [https://perma.cc/G2DV-NUNG].

⁴⁰ Pipitone, *supra* note 36.

⁴¹ *Returning Citizen Stories*, *supra* note 37.

home and one that I hope to make a better place for people like me—but it’s a place where I unfortunately can’t even apply to the state bar. It isn’t a character and fitness problem *per se*. That is a secondary question. I have a primary barrier, which is I am not even eligible to apply to the Florida Bar unless I have had my civil rights restored.⁴² I haven’t had my civil rights restored in Florida.

In fact, my clemency application for civil rights restoration (without the right to possess a firearm) was denied last year, after I spent half a decade waiting to apply and another three years waiting for the Governor’s office to make a decision. Without my civil rights, I can’t even submit an application to the Florida Bar. When you go online to the application, it asks, “Have you been in prison?” If you say yes, it then asks, “Have you had your civil rights restored?” If you say no, you just can’t move forward.⁴³ Even if I have my civil rights restored, it doesn’t necessarily mean that I will be entitled to admission to the Florida Bar either. It just means I get to apply and sit for the exam.⁴⁴ I still may get denied by the character and fitness board.

As for my current status, I am a licensed attorney in Washington, D.C., I recently completed a two-year visiting fellowship at the Department of Justice, and I am currently a doctoral candidate in Yale Law School’s Ph.D. in Law program.⁴⁵ I was aware that I probably wouldn’t have my civil rights restored to apply to the Florida Bar when I graduated from law school, so I looked for a Uniform Bar Examination (UBE) jurisdiction. I chose D.C. for various reasons—I had a fellowship with the Department of Justice lined up, D.C. provided the most flexibility because the UBE was portable, and D.C. is one of the places where most national organizations, including those that partner with us in Florida, will likely have an office. For those reasons, I decided to take the D.C. Bar exam. I had no problem applying because the D.C. Bar doesn’t require you to have your civil rights restored to be eligible to apply.⁴⁶ So I applied and took the exam.

After passing the bar, I sat for about a year or two, waiting for the character and fitness review. Then suddenly I got a letter saying that I’ve been admitted without a hearing. It was something that was shocking both

⁴² See RULES OF THE SUP. CT. RELATING TO ADMISSIONS TO THE BAR § 2-13.3 (FLA. BD. OF BAR EXAM’RS 2022), <https://www.floridabarexam.org/web/website.nsf/rule.xsp#2-133> [<https://perma.cc/VKJ6-AK58>].

⁴³ *Admission Requirements*, FLA. BD. OF BAR EXAM’RS, <https://www.floridabarexam.org/web/website.nsf/52286AE9AD5D845185257C07005C3FE1/F8FE824E0EECACE885257C0B00672021> [<https://perma.cc/B5WX-FCF2>] (last visited Nov. 22, 2024) (“Persons who have been convicted of a felony are not eligible to apply until the person’s civil rights have been restored.”).

⁴⁴ *Id.*

⁴⁵ Ph.D. Profile of Angel E. Sanchez, YALE L. SCH., <https://law.yale.edu/studying-law-yale/degree-programs/graduate-programs/phd-program/phd-candidate-profiles/angel-e> [<https://perma.cc/WY4S-ZH8K>] (last visited Nov. 22, 2024).

⁴⁶ See D.C. CT. APP. R. 46(h) (felony conviction alone does not prevent bar admission in the District of Columbia).

to me and our system-impacted community because, by and large, the hearing is almost an expected requirement. It's expected that you'll be grilled and put through the wringer even if you are admitted later. But thankfully I was admitted without it. I actually called to make sure it wasn't a mistake. I found it very hard to believe. They asked me, "Why would you think that it isn't correct?" I said, "Well, because of the time I spent in prison, and I got serious 'charges.'" This is what they said: "Yes, but that's back when you were a teenager, even though you were tried as an adult." I would love to hear someone in Florida say that. Anyway, that's my status. I'm currently barred in the District of Columbia, while Florida continues to permanently deny me restoration of my civil rights, preventing me from, among other things, applying to the Florida Bar.

Desmond Meade: Being able to be barred is one of many collateral consequences that people with felony convictions face.⁴⁷ Not just in Florida, but really throughout the country. There are thousands of various collateral consequences—the ability to get occupational licensing and to access housing, employment, and educational opportunities are all impacted.⁴⁸ Those are just automatic barriers that are erected once there is a conviction. The sad thing about that is just that these are barriers that are erected after the person serves their time and theoretically pays their debts to society, and so, it's just a continuation of punishment that was not necessarily announced at the time of sentencing.

Angel Sanchez: I want to add on to the discussion of the continuation of punishment. The term "collateral" creates this idea of a very remote, unrelated consequence. However, for jurisprudential reasons, this allows the state's practice of continued punishment to avoid constitutional scrutiny. In other words, by considering something a collateral consequence, the state does not have to carry the burden and ensure that the punishment isn't disproportionate.⁴⁹ For example, by not calling it a punishment, or at least not a direct part of a sentence, it evades Eighth Amendment evaluation,⁵⁰ because the Eighth Amendment only prohibits cruel and unusual "punishment."⁵¹

⁴⁷ See, e.g., *Collateral Consequences Inventory*, NAT'L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, <https://niccc.nationalreentryresourcecenter.org/consequences> [<https://perma.cc/YG3S-QTKT>] (last visited Nov. 30, 2024) (database listing all collateral consequences of a felony conviction for all fifty states). In addition to being ineligible to vote, the collateral consequences of a felony conviction in Florida can include being barred from receiving food assistance, acting as personal representative of a decedent, and serving on a jury. *Id.*

⁴⁸ See, e.g., Abigail E. Horn, *Wrongful Collateral Consequences*, 87 GEO. WASH. L. REV. 315, 319 (2019).

⁴⁹ See Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Incarceration*, 160 U. PA. L. REV. 1789, 1806-07 (2012).

⁵⁰ See generally McCarley Maddock, Note, *Done the Time, Still Being Punished for the Crime: The Irrationality of Collateral Consequences in Occupational Licensing and Fourteenth Amendment Challenges*, 18 DUKE J. CONST. L. & PUB. POL. SIDEBAR 21, 22-23 (2022).

⁵¹ U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

To Desmond's point, getting barred is a form of an occupational license.⁵² This is just one of the many different occupational licenses that formerly incarcerated people are restricted from obtaining.⁵³ The larger issue at play here is that the moment a person gets a conviction and there is a deprivation of civil rights, it creates cascading repercussions. The restoration process effectively becomes a gatekeeper not only for civil rights but also for access to essential opportunities in broader society. A bunch of other entities, like housing, homeowners associations, educational institutions, and so on, use the restoration of civil rights as necessary, though rarely sufficient, proof of rehabilitation.⁵⁴ In other words, if you've been convicted of a felony and have not had your civil rights restored, it creates a legitimizing effect that negatively impacts you in many other areas of life, regardless of how unrelated they may be. The lack of restoration is often taken as proof of unfitness, signaling to others across economic, political, and social sectors that they too can and should deny you access to their respective areas. This is why, despite being a Florida taxpaying voter, a doctoral candidate at Yale, and a licensed attorney in D.C., the Florida Bar can deny me the opportunity to apply to take the bar exam until my civil rights are restored—because, until then, no matter what I achieve or contribute to society, I can never be deemed rehabilitated, which we know is empirically not true.

Race is another dimension of all of this. During the Jim Crow era, if two people—a Black and a white person—were disenfranchised, who do you think will likely have their civil rights restored, and who do you think wouldn't?⁵⁵ It's not hard to conclude that a white person would be more likely to receive rights restoration compared to their Black counterpart. Even today, this disproportionately keeps Black people in the pool of those without restoration, giving states and private actors so-called race-neutral justifications to discriminate against them. Rights restoration, as a proxy for race, is used as the basis for granting or denying access to opportunities.

⁵² See *Professional Certifications and Occupational Licenses: Evidence from the Current Population Survey*, U.S. BUREAU OF LAB. STAT. (June 2019), <https://www.bls.gov/opub/mlr/2019/article/professional-certifications-and-occupational-licenses.htm> [<https://perma.cc/3XS6-XGVG>].

⁵³ See Maddock, *supra* note 50, at 22-23.

⁵⁴ See, e.g., *Restoration of Rights Project*, COLLATERAL CONSEQUENCES RES. CTR., <https://ccresourcecenter.org/restoration-2-2/> [<https://perma.cc/5VDK-4LJQ>] (last visited Oct. 3, 2024) (detailing the practice in each U.S. jurisdiction relating to restoration of rights and the presumption of rehabilitation).

⁵⁵ See James E. Lauerman, *Evaluating Congress's Constitutional Basis to Abolish Felony Disenfranchisement*, 98 WASH. L. REV. 253, 257-58 (2023) (discussing how post-Reconstruction felony disenfranchisement arose to deny Black voters, and not white voters, the right to vote). Even today, sixty years after the end of de jure segregation, voting rights are not restored equally along racial lines. For example, former Florida Governor Rick Scott "restored the voting rights of twice as many whites as [B]lack and three times as many white men as [B]lack men." Lulu Ramadan, Mike Stucka & Wayne Washington, *Florida Felon Voting Rights: Here's Who Got Theirs Back Under Scott*, PALM BEACH POST, <https://www.palmbeachpost.com/story/news/politics/elections/2018/10/25/florida-felon-voting-rights-who-got-theirs-back-under-scott/5886930007/> [<https://perma.cc/ZAU7-ZTXX>] (last updated Oct. 26, 2018).

CR-CL: We're here today to talk about felony disenfranchisement, and both of you work in this space. What has already been done and what is left to do? What has the path to re-enfranchisement been like up until now, and what does the path forward look like for you both?

Desmond Meade: In 2018, we were able to draft language to amend the Florida State Constitution to allow the restoration of voting rights,⁵⁶ and voting is one of numerous civil rights that are lost upon conviction of a felony offense.⁵⁷ That includes the right to serve on a jury, the right to run for office, and the right to bear firearms.⁵⁸ Because of the complexities of Florida law as it relates to citizens' initiatives or ballot initiatives, one of the requirements is that the initiative cannot violate the single subject rule.⁵⁹ Because of those types of complexities, we had to really be laser focused on what it was that we were trying to restore. And when we looked at all of the enumerated civil rights that were lost,⁶⁰ one that seemed to be the most important was the right to vote, so we exclusively focused on that.

We did extensive work researching and polling. And we were able to draft language that basically said, upon completion of all terms of sentence, a person would automatically have his or her voting rights restored.⁶¹ We were able to overcome great odds to collect enough signatures across the State of Florida to get that particular constitutional amendment placed on the ballot.⁶² And once we had it placed on the ballot, it became forever known as Amendment 4.⁶³

From there, we did an enormous amount of heavy lifting to then get over 60 percent of voters to vote yes for it.⁶⁴ Florida at the time, and probably still, is the most difficult state to pass citizens' initiatives. In most states at the time, all you needed was 50 plus one percent of the vote.⁶⁵ You just

⁵⁶ FLA. CONST. art. VI, § 4(a) (2018).

⁵⁷ See *Consequences of an Arrest and/or Conviction*, OFF. OF THE PUB. DEF., 12TH JUD. CIR. OF FLA., <https://www.pd12.org/en/client-information/collateral-consequences> [<https://perma.cc/A7CE-TX47>] (last visited Oct. 3, 2024).

⁵⁸ *Id.*

⁵⁹ FLA. CONST. art. XI, § 3 (1998). The single subject rule requires that each ballot initiative address only one subject, except proposed measures seeking to limit the government's power to raise revenue. *Id.*

⁶⁰ See *Consequences of an Arrest and/or Conviction*, *supra* note 57.

⁶¹ FLA. CONST. art. VI, § 4(a) (2018) (“[A]ny disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.”).

⁶² See Ari Berman, *Inside the Unlikely Movement That Could Restore Voting Rights to 1.4 Million Floridians*, MOTHER JONES (Nov./Dec. 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/SH5B-77GX>].

⁶³ *FRRRC Mission & History*, *supra* note 13.

⁶⁴ *Voting Rights Restoration Efforts in Florida*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida> [<https://perma.cc/X2YG-47BL>] (last updated Aug. 7, 2023).

⁶⁵ See *Initiated Constitutional Amendment*, BALLOTEDIA, https://ballotpedia.org/Initiated_constitutional_amendment [<https://perma.cc/6RTE-GFAY>] (last visited Oct. 4, 2024).

needed a simple majority of voters to approve a constitutional amendment. But Florida required a supermajority;⁶⁶ I think our requirement at the time was 60 percent. We ended up getting around 65 percent of the vote.⁶⁷

I want to note here that it seemed like every time there was a successful citizens' initiative in the State of Florida, the Florida legislature would then react to that and make the requirements even harder.⁶⁸ So at one point it was 50 plus one percent in Florida.⁶⁹ And when certain amendments passed, they went and said, okay, we're going to make it 60 percent.⁷⁰ And so we did that. And once we passed our amendment with over 60 percent of the vote, our legislature went back immediately and said, okay, no, we're going to make it so that you have to have 66.67 percent of the vote in order to pass a citizens' initiative.⁷¹

Immediately after passing Amendment 4, the Florida legislature zeroed in on the phrase "completion of all terms of sentence." They passed a statute, SB 7066, that defined "completion of all terms of sentence" as requiring the satisfaction of all legal financial obligations associated with the conviction,⁷² which was in contrast to what we believed.

We believed that legal financial obligations were separated into two distinct categories: One category was punitive, and the other category was administrative. Basically, there are some legal financial obligations that are statutorily imposed, meaning they are written in the statutes.⁷³ Whoever is found guilty of violating that particular provision can get sentenced to imprisonment and/or assessed a fine. That is a statutorily imposed fine that a person would have to satisfy to complete their sentence. The other part

⁶⁶ FLA. CONST. art. XI, § 5(e) (2018).

⁶⁷ See *FRRC Mission & History*, *supra* note 13 ("In November [2018], 64 percent of Floridians voted to restore voting rights to 1.4 million people, surpassing the 60 percent supermajority required to pass ballot initiatives in Florida.").

⁶⁸ See *Florida Increase Supermajority Requirement to Approve Constitutional Amendments Measure (2024)*, BALLOTPEDIA, [https://ballotpedia.org/Florida_Increase_Supermajority_Requirement_to_Approve_Constitutional_Amendments_Measure_\(2024\)](https://ballotpedia.org/Florida_Increase_Supermajority_Requirement_to_Approve_Constitutional_Amendments_Measure_(2024)) [<https://perma.cc/W4KS-DBZ2>] (last visited Oct. 4, 2024). In 2023, the Florida House of Representatives attempted to pass a bill which would amend the constitution to require a 66.67 percent vote instead of the current 60 percent. *Id.*

⁶⁹ See *Florida United for Majority Rule: Repeal "Supermajority Requirement Amendment,"* FLA. DIV. OF ELECTIONS, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64630&seqnum=4> [<https://perma.cc/Q7YU-G5AB>] (last visited Oct. 4, 2024) (failed ballot initiative that sought to repeal the Supermajority Requirement Amendment of 2006 and re-establish the 50 plus one percent threshold for ballot initiatives).

⁷⁰ *Florida Amendment 3, 60% Majority Requirement for Constitutional Amendments Amendment (2006)*, BALLOTPEDIA, [https://ballotpedia.org/Florida_Amendment_3,_60%25_Majority_Requirement_for_Constitutional_Amendments_Amendment_\(2006\)](https://ballotpedia.org/Florida_Amendment_3,_60%25_Majority_Requirement_for_Constitutional_Amendments_Amendment_(2006)) [<https://perma.cc/ASJ3-Y37R>] (last visited Oct. 4, 2024).

⁷¹ *Florida United for Majority Rule: Repeal "Supermajority Requirement Amendment,"* *supra* note 69. Although the Florida legislature attempted to raise the supermajority requirement to 66.67 percent in 2023, the measure passed the State House but failed in the State Senate. *Id.*

⁷² See FLA. STAT. § 98.0751(2)(a) (2021).

⁷³ See FLA. STAT. § 938.30 (1998).

of the legal financial obligations would be punitive, as in restitution.⁷⁴ We believe that, for example, if I were to break into your car and break your window to get your iPad, and you had to pay \$200 to replace that window, at the time of sentencing, the judge would—of course—adjudicate me guilty and sentence me to a certain amount of time in prison and assess the fine. But then, in addition to that, they may say, well, you know what, it cost the car owner \$200 to fix the window, and so I’m going to order you to pay \$200 in restitution to the car owner. And this obligation would be something that we thought was fair. Because we were asking people to make us whole, there had to be a willingness on our part to make the people, anybody who we’ve harmed, whole as well.

But then you have court costs and fees.⁷⁵ Those things were administrative in nature. The reason that they existed was an attempt by the legislature—and you find that in multiple states where courts are woefully underfunded by state budgets—to play whack-a-mole. Rather than generate revenue through taxes or by increasing taxes, they created these fees and costs as a mechanism that the courts could use to recoup some revenue in order to keep the lights on and pay the employees.⁷⁶ Those were administrative costs.

What we believed at the time we drafted the language to the amendment was that if there was any legal financial obligation that was attached to sentence completion, it would only be the ones that were punitive in nature and that were specifically attached to the offense that the person was charged with and convicted of. We did not expect that administrative costs would be a part of the sentence because they had nothing to do with the offense. It only had to do with the cost of doing business with the courts. The Florida legislature thought differently, and they created a requirement that people had to pay punitive *and* administrative costs prior to being able to vote.⁷⁷ Of course, there was litigation around that.⁷⁸ It was not successful.

Nevertheless, throughout the whole process, we were able to engage with two things. First, under the Florida statute, courts could waive, or convert to community service hours, the legal financial obligations that a person

⁷⁴ *Felon Voting Rights*, FLA. DIV. OF ELECTIONS, <https://dos.fl.gov/elections/for-voters/voter-registration/felon-voting-rights/> [<https://perma.cc/RDC3-59P5>] (last updated July 10, 2024) (“*Completion of the sentence* means . . . [p]ayment of the total amount of all fines, fees, costs, and restitution ordered as part of the felony sentence.”).

⁷⁵ *Jones v. Governor of Fla.*, 975 F.3d 1016, 1038 (11th Cir. 2020) (noting that court fees and costs associated with a criminal sentence should be considered a penalty and are, therefore, included in the “completion of all terms of sentence” language of Amendment 4).

⁷⁶ See, e.g., U.S. DEP’T OF JUST. CIV. RTS. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 10 (2015) (noting that the city, police, and court officials have worked together to “maximize revenue at every stage of the enforcement process, beginning with how fines and fine enforcement processes are established”).

⁷⁷ See *Felon Voting Rights*, *supra* note 74.

⁷⁸ See generally *Jones*, 975 F.3d at 1016; *Jones v. Governor of Fla.*, 950 F.3d 795, 800 (11th Cir. 2020); *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1196 (N.D. Fla. 2020).

had outstanding.⁷⁹ So, we worked on developing a waiver program where we were engaging pro bono attorneys to represent individuals who had outstanding fees before the courts to get the courts to waive or convert those fees to community service hours.⁸⁰ The other thing that we did was that we just raised a ton of money. We raised over \$30 million to help people pay their fines and fees.⁸¹ I believe that access to the ballot box should not be contingent on your ability to pay or how much money you make. No one should be forced to choose between putting food on their table and having the right to vote. We used those two tracks, and we are continuing to use those two tracks, to deal with the stipulations that the Florida legislature created.

Angel Sanchez: I would just add two things to what Desmond just said. When we finally got enough signatures to get the amendment in front of the Florida Supreme Court to evaluate the language, and once the Florida Supreme Court unanimously approved the language without any objections⁸² and it went on the ballot, we were campaigning to get Florida to say, “Yes on Amendment 4.” During that period, I worked on an interview that I was able to do with you all on your Law Review,⁸³ and we put it up and answered a lot of questions regarding why people should approve the restoration amendment we were leading. I would like to flag it as a resource for those interested in that period of our fight to restore voting rights in Florida, as it answers objections that were being discussed at the time.⁸⁴

The other thing I would note is that the amendment does not apply to people convicted of murder or sex offenses.⁸⁵ I would like to say that this is not because we, as people who have been impacted by the carceral system, believe people convicted of a murder or sex offense are not worthy of dignity and the right to vote, but rather because we understood that to get the majority of the state to vote yes—not just a majority but a supermajority of the state⁸⁶—we had to meet people where they were. We made a commitment

⁷⁹ FLA. STAT. § 98.0751(2)(a)5.e(III) (2021).

⁸⁰ *FRRC Fines/Fees Assistance*, FLA. RTS. RESTORATION COAL., <https://floridarrc.com/fines-program/> [<https://perma.cc/FM95-7A4W>] (last visited Oct. 3, 2024).

⁸¹ *FRRC Mission & History*, *supra*, note 13 (noting that FRRC raised over \$30 million for the Fines and Fees Program).

⁸² In 2016, the Florida Supreme Court was asked by the Attorney General whether Amendment 4 met the legal requirements for placement on the ballot, and it unanimously held that it did. Advisory Op. to the Att’y Gen. Re: Voting Restoration Amend., 215 So. 3d 1202, 1209 (2017).

⁸³ *Taking Liberties Episode 7*, HARV. C.R.-C.L. L. REV. (May 13, 2019), <https://journals.law.harvard.edu/crcl/taking-liberties-episode-8/> [<https://perma.cc/KMM9-H3ZW>].

⁸⁴ *Id.*

⁸⁵ FLA. STAT. § 98.0751(1) (2021).

⁸⁶ FLA. CONST. art. XI, § 5(e) (2018).

that we would then use our voting rights to ensure that we could advocate, vote, and pressure legislators to be more responsive to us as a constituency. That would include those people who are convicted of murder or sex offenses. We believe that they, as tax-paying adults in a community, should have a say in how that tax is managed. As people who are subject to the laws and the consequences of a community, they should have a say in how those consequences are meted out.

Desmond Meade: I have one more thing to add to that. There was a very glaring flaw that came about immediately upon passage of the legislation that required the payment of outstanding costs and fees.⁸⁷ The problem was that if a person were to ask, how much do I owe? the State would say, well, we don't know.⁸⁸ So they created the requirement of having to pay the fees, but they didn't have a system in place to be able to tell someone what they owed, which created this black hole of uncertainty. What we've seen was that the State, rather than leaning towards fixing that, chose to lean more into punishing people for their confusion,⁸⁹ which, for the most part, was of no fault of their own. It was the State's failure to have an effective system to enforce and operationalize the laws that it created.

Angel Sanchez: Florida's pay-to-vote system is broken because it was an unfunded mandate. The legislature mandated creation of a pay-to-vote system that was to be criminally enforced, but it failed to appropriate the necessary funds to implement a functioning system. What was most obvious was the need for an accessible and reliable system that provides voter restoration status, not only for the voter, but for the election workers, for the people in the state who need to screen and determine people's eligibility.

Because that system is not in place, we're no longer only talking about the denial of rights restoration. We are also talking about depriving someone who is restored—but uncertain of their status—of their right to vote without fear of prosecution. Judge Jordan's dissent in the Eleventh Circuit's en banc decision in *Jones v. Governor of Florida* lays a lot of these arguments out.⁹⁰ The dissents were over fifty pages, and the vote count in that en banc decision was six to four.⁹¹ There was substantial recognition even within the Eleventh Circuit that Florida's pay-to-vote system is unconstitutional.

⁸⁷ FLA. STAT. § 98.0751(2)(a) (2021).

⁸⁸ See *Jones v. Governor of Fla.*, 975 F.3d 1016, 1068 (11th Cir. 2020) (Jordan, J., dissenting) (quoting FLA. DEP'T OF STATE, AGENCY LEGISLATIVE BILL ANALYSIS FOR SB 7086, D.E. 351-18, at 5 (2019)) ("At this time, no single source exists that confirms for the Department or for the convicted felon that he or she has completed all terms of the sentence for every felony.").

⁸⁹ Casey Smith, *Florida's Statewide Prosecution of Voting with a Past Conviction is Unlawful*, AM. C.L. UNION (Sept. 26, 2023), <https://www.aclu.org/news/voting-rights/floridas-statewide-prosecution-of-voting-with-a-past-conviction-is-unlawful> [<https://perma.cc/4YFG-WTGG>].

⁹⁰ 975 F.3d at 1065-107 (Jordan, J., dissenting).

⁹¹ *Id.* at 1059-112.

Additionally, conservative lawmakers have gone far outside of the ordinary meaning of “completion of all terms of sentence” by including in its meaning unpaid financial obligations that were converted to civil liens.⁹² When someone is indigent and no longer in the criminal system, it’s common practice to convert their remaining financial obligations to civil liens. Just the word “civil” will leave the common person thinking that the ordinary meaning of civil liens is that they are civil, not criminal, right? Yet, Florida lawmakers still conditioned restoration of voting on full payment of any corresponding civil liens.⁹³

Lastly, during the committee hearings, when the legislature was determining what was going to be understood as “completion of all terms of sentence,” the legislature debated what financial obligations they were going to include.⁹⁴ As far as I know, there was not one person, let alone *many* people who voted yes on Amendment 4, who went and spoke in front of the legislature, saying, I understood restoration to require paying court costs and fees. In fact, it was the opposite. There were many people who came and said, I voted for this amendment, and that was not what I intended. I intended “all terms of sentence” to mean the sentence, not financial obligations.⁹⁵ Oftentimes, lawmakers like to cloak themselves with the mantle of the public will and to claim to support the public intent and the public meaning, but they didn’t seem to have that public support on stage when they were making this argument.

CR-CL: I wanted to follow up with you, Angel. I know that you wrote a piece in the *Yale Law and Policy Review* touching on this subject as well.⁹⁶ Could you discuss what recommendations you had and what you focused on after Amendment 4 and SB 7066 were enacted?

Angel Sanchez: The issues discussed in that piece emerged after Florida’s financial barriers to restoration were upheld by the federal courts.⁹⁷ Governor DeSantis and local prosecutors were weaponizing that law to go after unwitting ineligible voters who voted after being led to believe they were eligible to vote.⁹⁸ For that reason, the recommendations I proposed in that piece were focused on reducing the existing harm caused by both the

⁹² *Id.* at 1052 (quoting FLA. STAT. § 98.0751(2)(a)5.e (2021)) (“The requirement to pay any financial obligation specified in this paragraph is not deemed completed upon conversion to a civil lien.”).

⁹³ *Id.*

⁹⁴ *See id.* at 1110 n.8.

⁹⁵ *See Ron DeSantis Signs Bill Making it Harder for Ex-cons to Register to Vote*, FLA. POLITICS (June 28, 2019), <https://floridapolitics.com/archives/298988-desantis-bill-ex-cons-vote/> [https://perma.cc/QHT7-R7CB].

⁹⁶ Angel Sanchez, *Florida’s Bad Faith Prosecutions of Good Faith Voters*, 41 YALE L. & POL’Y REV. 334 (2024).

⁹⁷ *Id.* at 350-51 (discussing the holding and reasoning in *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020)).

⁹⁸ *Id.* at 355-57.

broken pay-to-vote system and the political weaponization of that system to intimidate vulnerable and confused voters.⁹⁹

Once the legislature passed SB 7066, as Desmond noted, we went back to our bread and butter, which is knocking on doors, meeting people where they are, telling our stories, telling them about people that they definitely are standing alongside and would support, and then asking them to donate, just like we asked them to sign petitions. Petitions that we, ourselves, couldn't sign because we weren't eligible voters back then. We then collected donations to pay off the financial obligations. After that, the litigation was happening, the litigation was settled, the elections of 2020 concluded, and what we start seeing going into 2021 were investigations that turned into prosecutions.¹⁰⁰ Governor DeSantis was now using the law enforcement power of the state to go after and criminalize individuals who might have unknowingly voted while ineligible due to outstanding financial obligations or confusion about disqualifying offenses.¹⁰¹ The Governor was doing these press conferences and then highlighting how these people were being prosecuted.¹⁰² As you can imagine, it becomes almost like a public lynching where you do it to one person and you intimidate hundreds.¹⁰³

So I was writing in response to how those bad faith actions by the Governor and other state actors were contrary to much of what the State had represented to the courts during the federal litigation. The State claimed that if people are uncertain about their eligibility, they won't meet the intent requirement needed for prosecution.¹⁰⁴ People have to willfully vote while knowing that they are ineligible.¹⁰⁵ During oral argument, the lawyers for Florida represented to the Eleventh Circuit's en banc panel that those who register without knowing they are ineligible would not be prosecuted.¹⁰⁶ Later, the Eleventh Circuit's majority decision echoed this point, stating that if a registration is not rejected and the individual remains on the voting rolls, they are considered eligible to vote until the State removes them from

⁹⁹ *Id.* at 367-71.

¹⁰⁰ *See* Smith, *supra* note 89.

¹⁰¹ *See* Governor DeSantis Announces the Arrest of 20 Elections Criminals, OFF. OF GOVERNOR RON DESANTIS (Aug. 18, 2022), <https://www.flgov.com/2022/08/18/governor-desantis-announces-the-arrest-of-20-elections-criminals/> [<https://perma.cc/D5V9-GCNE>].

¹⁰² *See id.*

¹⁰³ *See* Smith, *supra* note 89 (“Rather than helping their citizens understand Florida’s complicated voter eligibility rules, the State has instead resorted to these intimidating, anti-democratic prosecutions.”).

¹⁰⁴ *See* Daniel Tilly, *Why Ron DeSantis’ Voter Fraud Bust is Already Falling Apart in Court*, SLATE (Oct. 25, 2022), <https://slate.com/news-and-politics/2022/10/ron-desantis-voter-fraud-videos-prosecution.html> [<https://perma.cc/LV9H-Y2MQ>].

¹⁰⁵ *Id.*

¹⁰⁶ *See* Oral Argument at 01:52:04, *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020) (No. 20-12003), <https://www.ca11.uscourts.gov/oral-argument-recordings> (search “Case Number” 20-12003) [<https://perma.cc/C89L-VPCS>].

the voter rolls.¹⁰⁷ This affirmed the presumption of eligibility that protects voters once they are reviewed and placed on the voter rolls—a presumption that remains until the State meets its self-imposed burden of both proving a person is ineligible and removing them from the rolls.¹⁰⁸ However, in the following election year, after the litigation concluded, the State began prosecuting individuals whom it had processed as eligible voters, issued voter IDs to, and kept on the voter rolls.¹⁰⁹ This directly contradicts the State's earlier assurances of non-prosecution.

Finally, I was writing to the most concerning point which is that this uncertainty and criminalization will leave people who are eligible, but uncertain, from wanting to take the risk of registering and voting.¹¹⁰ People don't want to risk the possibility that the State's information is wrong, or that the State might incorrectly prosecute them years after an election for a partisan reason using faulty records or differing opinions about the law. Even if prosecuted voters are successful at getting their cases dismissed later by proving their eligibility, they would have already suffered the punishment of the process of prosecution. There's a book illustrating this problem called *The Process is Punishment*,¹¹¹ and anyone who has experienced the criminal legal system knows that prosecution itself is punishment. Though not formally punishing, prosecution is certainly consequential and punishing in fact. I was writing to shed light on these issues and to chronicle them in our legal scholarship, while also seeking to make accessible to the broader public legal arguments and sources that might not otherwise be readily available or known to individuals and attorneys on the ground.

How can this chilling effect be avoided? Don't condition restoration of voting rights on payments of financial obligations. Determining whether someone has completed their term of incarceration or supervision produces little, to no, confusion; the confusion often emerges in determining what, if any, financial obligations qualify and are still outstanding. Most importantly, the State needs to have accurate records to ensure that people are not being pursued on the basis of incorrect information. And that information has to be communicated and easily accessible to individuals. I am one of those individuals. I wrote, in the introduction to that article, about how I thought I had outstanding financial obligations and panicked.¹¹² Desmond can tell you, I definitely wanted to hide under a rock. I couldn't believe that I had financial obligations that I was unaware of that made me ineligible, and I had already voted so I couldn't pull the vote back. I thought I committed a crime—only to find out later that those financial obligations weren't correct.

¹⁰⁷ See *Jones v. Governor of Fla.*, 975 F.3d 1016, 1035-36 (11th Cir. 2020).

¹⁰⁸ *Id.*

¹⁰⁹ Tilly, *supra* note 104.

¹¹⁰ Sanchez, *supra* note 96, at 368.

¹¹¹ See generally MALCOLM M. FEELEY, *THE PROCESS IS PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT* (1979).

¹¹² Sanchez, *supra* note 96, at 335-36.

Even worse, those financial obligations had been satisfied, and money was *owed to me* because I had actually overpaid. I was someone who had the resources, the time, and the wherewithal to be able to figure this out; even so, I was intimidated and scared.

Imagine someone else who does not have those resources. We know, as people who have been convicted of felonies, that the world will always have reason to view us as the ones who are not to be trusted. That's how I felt. I felt like it was my word against a computer system, a database, or a state worker. I thought I had no credibility. I had been out of prison, maybe eight years. I was in law school, I was on law review, yet the reality that I felt I had no credibility was pretty unsettling for me—I felt like I had just walked out of prison. I felt as if I had achieved nothing in my life at that moment and wanted to hide. Thankfully, I was lucky because I found proof of payments from many years prior that showed that court records saying I had outstanding financial obligations were wrong.¹¹³

My example illustrates why I made the recommendation that until the broken pay-to-vote system is fixed with proper, reliable, and accessible information, the State should not use criminalization and prosecutions to enforce that system; the State should apply the rule of lenity instead.¹¹⁴

The more important recommendation is we need to ensure that we are engaging with the people who are directly impacted by this broken system and by any policy fixes we propose.¹¹⁵ Even as a system-impacted person—who is a Florida resident and a Florida voter—my positionality puts me in a place where I am a lot more removed and a lot more cushioned from a lot of the blowback and the unintended consequences that any well intentioned policy fix might have. The people on the ground, those who do not have the benefit of going to law school, those who are impacted, and those who are working with them, like people in FRRRC, who are in each and every community, who are having chapter meetings and hearing from different folks, who are knocking on doors and directly engaging and trying to make the state better for everyone involved, and who are thinking of those system-impacted people, those are the people you need to engage with to determine what policy recommendations should be considered. That was, I think, the most important recommendation I made in that article and would make again here.

CR-CL: This issue of the *Harvard Civil Rights-Civil Liberties Law Review* is meant to mark the sixtieth anniversary of the Voting Rights Act

¹¹³ *Id.* at 336 (“I had spent years trying to turn my life around and my efforts suddenly did not matter, simply because I voted. After weeks of searching, I discovered proof of payments showing that the court records were wrong. I was one of the lucky ones. Had I not found those proofs of payments from almost a decade prior, today I could be among the many returning citizen voters in Florida being subject to prosecution for mistakenly registering and voting while allegedly ineligible.”).

¹¹⁴ *See id.* at 372-73.

¹¹⁵ *See id.* at 368.

of 1965 (VRA). We wanted to hear your thoughts on the current state of the VRA, as well as any challenges and opportunities you see in working with the VRA as it exists today.

Desmond Meade: One of the challenges that we face, I think, is the VRA helps a little bit, but there's still a challenge because the affirmative right to vote is not enumerated in the U.S. Constitution.¹¹⁶ So there is theoretically no constitutional right to vote. You have courts that are treating it differently and courts that are not looking at voting as a right.¹¹⁷ The level of scrutiny is at times at the lowest. They're really just asking the state to give any kind of reason to limit the right to vote, and that is good enough for them. We've seen how that has played out in Florida and a few other places. While the VRA is good, it does not overcome the challenge of the level of scrutiny that courts are applying to voting rights cases.

The other piece is that the Constitution does not specifically address felony disenfranchisement,¹¹⁸ which I think is vitally important. There is a school of thought out there that argues the original intent of the language that we find in the Constitution¹¹⁹—language states have used as justification for employing voter disenfranchisement—was to allow states only to bar people who were convicted of treason and people who were convicted of voting-related crimes, and in some instances fraud and perjury.¹²⁰ The states took that language and applied it to even misdemeanors at one point.¹²¹

¹¹⁶ See Mac Brower, *What Does the Constitution Say About the Right to Vote?*, DEMOCRACY DOCKET (Feb. 3, 2022), <https://www.democracydocket.com/analysis/what-does-the-constitution-say-about-the-right-to-vote> [<https://perma.cc/G45R-N6Y7>]; cf. U.S. CONST. AMENDS. XV, XIX, XXVI (failing to grant an affirmative right to vote and only preventing the federal government and the state from abridging the right on the basis of protected categories).

¹¹⁷ See Joshua A. Douglas, *Courts are Supposed to Protect the Right to Vote. Why Aren't They?*, CNN, <https://www.cnn.com/2020/10/14/opinions/courts-not-protecting-voting-rights-douglas/index.html> [<https://perma.cc/5CZK-7CPU>] (last updated Oct. 14, 2020).

¹¹⁸ See *Richardson v. Ramirez*, 418 U.S. 24, 53 (1974); cf. U.S. CONST. AMEND. XIV (no specific provision addressing felony disenfranchisement).

¹¹⁹ See U.S. CONST. AMEND. XIV, § 2 (“except for participation in rebellion, or other crime”).

¹²⁰ See Christopher M. Re & Richard M. Re, *Voting and Vice: Criminal Disenfranchisement and the Reconstruction Amendments*, 121 YALE L. J. 1584, 1655 (2012) (“If *Ramirez*, ‘crime,’ and the affirmative sanction were read narrowly in light of the Reconstruction era’s guiding political philosophy, then Section 2 might be understood as an endorsement of disenfranchisement only for crimes of sufficient moral gravity to constitute renunciation of one’s political allegiance to the state.”); Abigail M. Hinchliff, *The “Other” Side of Richardson v. Ramirez: A Textual Challenge to Felon Disenfranchisement*, 121 YALE L. J. 194, 229 (2011) (“[I]t seems sensible to read ‘rebellion’ as paradigmatic of the sort of offense that justifies disenfranchisement.”); Jason Morgan-Foster, *Transnational Judicial Discourse and Felon Disenfranchisement: Re-Examining Richardson v. Ramirez*, 13 TULSA J. COMP. & INT. L. 279, 291 (2006) (“The phrase ‘rebellion or other crime’ should be interpreted in the proper historical light to sanction disenfranchisement for only those crimes that the Framers intended, which is limited to rebellion or other crime of disloyalty to the state, such as treason.”).

¹²¹ See, e.g., *McLaughlin v. City of Canton*, 947 F. Supp. 954, 966 (S.D. Miss. 1995) (superseded by statute as stated in *Harness v. Hosemann*, No. 3:17-CV-791, 2019 WL 8113392, at *4 n.4 (S.D. Miss. Aug. 7, 2019)) (“[M]isdemeanor conviction for one of the offenses listed in [Miss. CONST. art. XII, § 241] mandated disenfranchisement.”).

I think ultimately the Supreme Court forced them to only apply it to felonies.¹²² I think that section of the Constitution needs revisiting to determine what the framers' intent was when that provision was written. Until that is addressed, I think it leaves a lot of leeway for states to disenfranchise a person simply because they've been convicted of a felony offense. Then, of course, there is nothing that would prohibit states from permanently barring a person from voting.¹²³

At the time that we engaged in our campaign, we knew that Florida was one of four states where you lost your civil rights for the rest of your life.¹²⁴ And any state could adopt that policy. We know Maine and Vermont, of course, are the two states that do not, and that a person never loses their rights.¹²⁵ We see that that is something that is present in many other countries other than the United States.¹²⁶ So my desire would be to have some type of legislation that would mirror legislation in other countries that says that you never lose the right to vote. My position has always been that voting is the greatest indicator of citizenship. Nothing speaks more to you being a citizen of this country than having the right to vote. I think that what happens is that when you strip someone of the right to vote, you strip them of their citizenship and relegate them to second-class status. I always use the analogy of my boys. I have four boys and one girl. My sons, I'm telling you they never disappoint. Every week one of them is doing something that irritates me or makes me shake my head. Especially when they're teenagers. Oh, my God! But the thing about my sons or my kids is that no matter what they do, they never stop being my kids. You know you're not going to stop being a Roberts¹²⁷ or a Guzman.¹²⁸ And I think that no matter what a person does, they should never stop being an American citizen. I think, when we get to that point, we can relax. But for right now, the VRA gives us some ammunition, but not lethal ammunition, to fight against felony disenfranchisement.

Angel Sanchez: I want to continue this line of thought that Desmond is talking about because it brings up a really interesting irony. All along,

¹²² See, e.g., *id.* at 974 (“[The] discussion makes clear that the ‘rebellion, or other crimes’ language of § 2 does not encompass misdemeanors.”) (discussing *Richardson v. Ramirez*, 418 U.S. 24, 43-55 (1974)).

¹²³ See, e.g., *Griffin v. Pate*, 884 N.W.2d 182, 183 (Iowa 2016) (upholding permanent disenfranchisement of any person convicted of a felony).

¹²⁴ Rosalind S. Helderman, *Florida Restores Voting Rights for Felons, Amid Bevy of Ballot Measures Nationwide*, WASH. POST (Nov. 7, 2018), https://www.washingtonpost.com/politics/florida-voters-appear-to-restore-voting-rights-for-felons-amid-bevy-of-ballot-measures-nationwide/2018/11/06/03766f04-dfa8-11e8-b3f0-62607289efee_story.html.

¹²⁵ *Felony Disenfranchisement Laws (Map)*, AM. C.L. UNION, <https://www.aclu.org/issues/voting-rights/felony-disenfranchisement-laws-map> [<https://perma.cc/7L86-8CE5>] (last visited Oct. 3, 2024).

¹²⁶ *Out of Step: U.S. Policy on Voting Rights in Global Perspective*, HUM. RTS. WATCH (June 27, 2024), <https://www.hrw.org/report/2024/06/27/out-step/us-policy-voting-rights-global-perspective> [<https://perma.cc/UG33-F86W>].

¹²⁷ Mr. Meade is referring to a CR-CL editor present during the conversation.

¹²⁸ Mr. Meade is referring to a CR-CL editor present during the conversation.

we've been fighting for "second chances." In the rights restoration context, it has meant seeking a "chance" to be re-admitted into the nation's political community or family as Desmond put it.¹²⁹

The VRA was passed in response to a very segregationist country, a very racist country, that found itself trying to do better.¹³⁰ Under the VRA, many states in the South, and many of those that were part of the former Confederacy, were subject to a preclearance review process.¹³¹ By this century, you heard those states saying that enough time had passed—how much longer do we need to continue to be precleared? This was another way of saying, when will our punishment end—it is no longer justified.¹³² In other words, these states have been saying, give us a "second chance"—do not hold us to our past. Meanwhile, those same states continue to deny its own people "second chances." There is something ironic, if not outright hypocritical, about these states wanting the dignity and opportunity of a "second chance," wanting to not be defined by their past, to be measured by their present practices—which are not great, by the way—and to be given an opportunity for a better and more free future, while simultaneously denying its people "second chances" and outright undermining second chance laws.

I definitely wanted to bring this up because the spirit of FRRC is to meet people where they are and to extend "second chances" to others who might've harmed us, and that includes states. When lawmakers began to craft financial barriers to undermine the restoration amendment we had fought so hard to pass, we still went and met with them in hopes of reducing the damage the law would cause—we met them where they were. They eventually passed the law and erected those barriers, and we're still meeting and working with them to reduce the harm caused by the broken system—again, we are meeting them where they are. In the piece that I wrote for the

¹²⁹ It is important to clarify that many people impacted by the criminal legal system never had a fair "first chance" to begin with. For example, Mr. Sanchez was permanently stripped of his civil rights in Florida before he was old enough to exercise those rights. To Mr. Sanchez, "second chances," especially when applied to people impacted by the criminal legal system, should be taken as (i) a limited metaphor and (ii) a rhetorical policy-campaign-slogan (not a policy-strategy), which has had effective resonance with people across the political spectrum. The term should not be understood as supporting the idea that people are unchangeable or deserving of only limited amounts of opportunities to redeem themselves. Nor should it be taken as a value statement, supporting the idea that impacted people deserve the situation they are in and deserve to be subjected to an economy of charity and favor in order to get the dignity and dignifying opportunities that rightly belongs to them and should never have been taken away. "Second chances," according to Mr. Sanchez, is a value statement saying people are redeemable; forgiveness and restoration are justice-related virtues, and people are inherently deserving of dignity and dignifying opportunities.

¹³⁰ See Leland Ware, *Civil Rights and the 1960s: A Decade of Unparalleled Progress*, 72 MD. L. REV. 1088, 1092 (2013).

¹³¹ See *id.*; Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 437-46 (codified as amended at 52 U.S.C. § 10304).

¹³² See generally *Shelby Cty. v. Holder*, 570 U.S. 529, 536 (2013) (holding that the Voting Rights Acts preclearance requirement and coverage formula are unconstitutional as its disparate treatment of certain states is no longer justified).

Yale Law and Policy Review, one of the things I talked about was that as a community we believe in second chances, so we want to extend that to the states.¹³³ We're not here to be adversarial—we want to create solutions and provide opportunities for healing. We want to prefigure the world we want to live in. It isn't until you really need a second chance that you appreciate how much others should be given a second chance.

I want to briefly go back to the constitutional provision that Desmond was referring to—the provision interpreted by the Court in *Richardson v. Ramirez* as giving states affirmative sanction to permanently disenfranchise its citizens who have a felony conviction.¹³⁴ It's Section 2 of the Fourteenth Amendment, known as the Apportionment of Representation Clause.¹³⁵ Interestingly, this provision is no longer operative and was also not operative when the Court in *Ramirez* found purchase in this provision to support its ruling on states' felony disenfranchisement schemes.¹³⁶ When you read Section 2, you quickly realize that the provision seems to clearly be a voter protection provision, not a felony disenfranchisement one. Indeed, Section 2 was part of the Fourteenth Amendment's efforts to do away with distinctions between enslaved and free individuals born in the United States.¹³⁷ Section 2 basically says that except “for participation in rebellion, or other crime” states cannot abridge the right to vote of any male citizen twenty-one years of age; and if they do, they will be penalized with their representation in Congress “reduced in the proportion.”¹³⁸ The *Ramirez* Court took the provision's exception and turned the provision into an affirmative authorization to states to disenfranchise for felony convictions. This benign provision that was intended to create a floor for minimum franchise was re-interpreted as giving states constitutional approval to restrict the vote from everyone except male citizens, twenty-one years of age, without a criminal conviction.

¹³³ Sanchez, *supra* note 96, at 343, 373.

¹³⁴ 418 U.S. 24 (1974).

¹³⁵ See U.S. CONST. amend. XIV, § 2. The clause states:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, *except for participation in rebellion, or other crime*, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Id. (emphasis added).

¹³⁶ See Michael T. Morley, *Remedial Equilibration and the Right to Vote Under Section 2 of the Fourteenth Amendment*, 2015 U. CHI. LEGAL F. 279, 280-81 (2015).

¹³⁷ See Michael K. Curtis, *The Fourteenth Amendment: Recalling What the Court Forgot*, 56 DRAKE L. REV. 911, 957-58 (2008).

¹³⁸ U.S. CONST. amend. XIV, § 2

It would be great if the Voting Rights Act, or a version of it, addressed the disparities that are created through re-enfranchisement barriers. After the Civil War, states that rarely practiced disenfranchisement prior to the war suddenly saw themselves increasingly invoking it.¹³⁹ They amended and added crimes to what qualified for disenfranchisement and then used it as a strategy to re-disenfranchise the newly free Black folks, males in particular.¹⁴⁰ We have records from Alabama and other states where that was an open conversation.¹⁴¹ These states started looking for legal avenues to achieve unjust ends—and they were open about it.¹⁴² It isn't that the practice of disenfranchisement didn't exist before but rather that it ballooned and blew up as a means of maintaining segregation and the racial subordination of Black people. Now, that does not mean that white folks were not disenfranchised then; in fact, a significant number of white people in Florida are still disenfranchised today.¹⁴³ However, those in power who benefit from the disenfranchisement of people of color are often willing to cast a wide criminalizing net to maintain their dominance, even if it means disenfranchising and sacrificing poor and marginalized white people—many of whom might even vote for them.¹⁴⁴ I think that once political operatives learn how to compete and secure electoral wins in a jurisdiction dependent on disenfranchisement and exclusion, they prefer to keep those practices in place, even if they do not believe in the justness of the practice themselves, to avoid having to compete for and appeal to newly enfranchised constituents. Sadly, they would rather do this than re-enfranchise people and expand democracy in ways that are more inclusive, energetic, and accountable to its people.

I believe the VRA was enacted in part as a response to this type of anti-democratic, racialized, and subordinating spirit that characterized the Jim Crow era. After passage of the VRA, however, states began using so-called “legal” and “race-neutral” means to suppress the vote, which often disparately impacted Black people, as well as other marginalized groups. This included the use of criminalization and law enforcement powers to

¹³⁹ See Najja D. Perry, *Felon Voting Rights: The Suppression of the African American Vote*, 1 S.U. L. REV. BLOG 33, 35 (2023).

¹⁴⁰ See Geneva Brown, *White Man's Justice, Black Man's Grief: Voting Disenfranchisement and the Failure of the Social Contract*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 287, 288 (2008).

¹⁴¹ See 1 OFFICIAL PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ALABAMA, MAY 21ST, 1901, TO SEPTEMBER 3RD, 1901, at 8 (1940). During the 1901 Alabama Constitutional Convention, President of the Convention John Knox opened the proceedings by stating that the goal of the delegation was “to establish white supremacy in this State.” *Id.*

¹⁴² *Id.*

¹⁴³ See KRISTEN M. BUDD, THE SENT'G PROJECT, FLORIDA BANS VOTING RIGHTS OF OVER ONE MILLION CITIZENS 1 (2023), <https://www.sentencingproject.org/app/uploads/2023/01/Florida-Voting-Rights-for-People-with-Felony-Convictions.pdf> [<https://perma.cc/UW9G-UG6W>] (showing that a not insignificant number of white Floridians were incarcerated—and thus disenfranchised—in 2021).

¹⁴⁴ Farrell Evans, *How Jim Crow-Era Laws Suppressed the African American Vote for Generations*, HISTORY, <https://www.history.com/news/jim-crow-laws-black-vote> [<https://perma.cc/9VJR-NL53>] (last updated Aug. 8, 2023).

deprive people of their right to vote.¹⁴⁵ Because of this, I believe disparate impact should be considered in evaluating states' felony disenfranchisement laws. Unfortunately, the VRA appears to lack explicit protections against state abuses relating to felony disenfranchisement, but I'm not an expert on the VRA, so I would just say take that with a grain of salt. I encourage folks to instead check out the amended complaint in the lawsuit we filed against Governor DeSantis last year in response to his use of voter prosecution to intimidate eligible but uncertain or confused voters. The complaint raises some VRA violations, which can provide readers with an example of how the VRA could be leveraged to protect the vote in such scenarios.¹⁴⁶

There are opportunities for thinking creatively about how to achieve protections and potentially limit disparate impact as it relates to states' voting rights restoration processes and practices. Even if *Richardson v. Ramirez* remains controlling law,¹⁴⁷ that ruling is limited to the power of states to disenfranchise due to a felony conviction—it says nothing about whether states can create voter restoration schemes that discriminate against, or have the effect of disparately excluding, marginalized individuals who would otherwise be eligible voters. As Florida's intentionally broken restoration system reveals, how the state crafts, funds, and enforces its restoration process can be constitutionally questionable and unjust, with consequences that compound across class, gender, and race.

Take my sister, for example. She has three kids, she's a single mother trying to make ends meet, and she's an Afro-Latina marked by a criminal record. Despite her limited means, she has been heroic since getting out of prison. In fact, her probation was terminated early because of her good behavior and constant employment, and she has been the manager in the kitchen of a restaurant for several years. However, she has outstanding court costs and fees from her cases that she is paying off monthly through a payment plan that is estimated to take a couple of decades. Because of her outstanding court costs and fees, she will likely remain disenfranchised in Florida for the foreseeable future. Never mind her achievements and important contributions as a mother or her constant struggle to make ends meet and overcome the stigma of a criminal record. She should have the right to vote as a member of the community to which she belongs, pays taxes, and actively gives back. She should have that right even if it is for no other reason than to show my nephews and my niece the importance of civic participation. Unfortunately, her outstanding court costs are being used to deny her this right, even though as a single mother she has less income to give and more barriers to overcome. I definitely wanted to make this point, as it relates to what happens when we're talking about re-enfranchisement processes and

¹⁴⁵ See Ware, *supra* note 130, at 1092.

¹⁴⁶ See generally Amended Complaint, Fla. Rts. Restoration Coal. v. DeSantis, No. 1:23-cv-22688 (S.D. Fla. July 26, 2023).

¹⁴⁷ 418 U.S. 24 (1974).

barriers, because it illustrates the compounding class and gendered effects these practices can have.¹⁴⁸

CR-CL: What do you think are the biggest threats to voting rights in the United States today?

Desmond Meade: Partisan politics is probably the biggest threat. I think partisan politics is probably the best answer, even though I was going to say it is the two-party system. But I think the two-party system is part of this larger umbrella of partisan politics. What we are seeing, and we see it playing out right now at the different conventions,¹⁴⁹ is that you have these two sides—Republicans and Democrats—and folks get so caught up in the parties that they actually lose sight of what is in the best interest of the country. It has gotten to a point where both sides are saying the same thing. You hear people say that if the Democrat becomes president, this country is lost. Then you hear that if a Republican becomes president, this country is lost. Somebody has to be wrong. Who's wrong? I think they're both wrong. I do not think this country is lost based on who becomes president. This country is lost when there's not some collective thing that we could coalesce around, that we rally around, things that transcend partisan politics. Most things do, but we have allowed partisan politics to politicize everything. It is a sad state when we're politicizing whether or not a human being deserves to have clean drinking water or whether human beings deserve to have fresh air.¹⁵⁰ Or even what we should do to prevent people from catching a virus that is taking over the world and killing people.¹⁵¹ Whenever issues like that are geared along political lines, that shows the destructive nature of partisan politics. Partisan politics has led us to a point where the two best options for president of the most powerful nation in the world consisted of a person who was becoming senile and another person who was senile.¹⁵² Those were the two best choices that we had. Ten years ago, if somebody told me that those were going to be our two best candidates, our two best options, I would have laughed them out of the room because there was a certain standard that we had.

¹⁴⁸ At this point in the conversation, Mr. Sanchez had to leave. The rest of the conversation was conducted with only Mr. Meade.

¹⁴⁹ Mr. Meade is referring to the 2024 Democratic National Convention and the 2024 Republican National Convention, both of which took place just weeks before this conversation.

¹⁵⁰ See generally Nathan Richardson, *The Rise and Fall of Clean Air Act Climate Policy*, 10 MICH. J. ENV'T. & ADMIN. L. 69 (2020) (discussing the Trump administration's politicization of Obama era environmental regulations).

¹⁵¹ See generally SHANA KUSHNER GADARIAN, SARA WALLACE GOODMAN & THOMAS B. PEPINSKY, *PANDEMIC POLITICS: THE DEADLY TOLL OF PARTISANSHIP IN THE AGE OF COVID* (2022) (arguing that partisan polarization in the United States deepened the COVID-19 crisis and contributed to its catastrophic death toll).

¹⁵² Mr. Meade is referring to then-former President Donald Trump and then-President Joseph Biden, respectively, prior to the latter's withdrawal from the 2024 presidential election.

I'm reminded of a moment that occurred during a town hall with John McCain when he was running for president.¹⁵³ A John McCain supporter attacked Barack Obama, and John McCain stopped that person, his own supporter.¹⁵⁴ He stopped them and said, "Wait a minute, you're wrong for that. This man and I may have some differences of opinion on some policies, but that does not diminish his humanity and who he is as an individual."¹⁵⁵ You saw how he respected him, but you do not see that today.¹⁵⁶ That is a result of hyper-partisan politics. You have both sides talking about patriotism. But at the end of the day, they are engaging in the very same thing—that is, they are destroying or eroding our democracy when they target and restrict the vote of those whose views might conflict with their partisan interests.

Since the formation of this country, people have wanted to pick and choose who gets to vote for them. That's because of partisan politics. We see gerrymandering, especially prison gerrymandering.¹⁵⁷ We see folks being disenfranchised because of closed primaries.¹⁵⁸ People who don't pick a party don't get a chance to decide who is running in their communities.¹⁵⁹ That's crazy by itself. I believe partisan politics has gotten to a point where it's actually eating itself up.

CR-CL: What sort of legal strategies do you see as promising for voting rights reform? What are the next steps and how is FRRC tackling this?

Desmond Meade: I don't know if there are any legal strategies as they relate to the basic issues around voting rights reform. Whether voting is a right or a privilege, I think that's something that has to be fixed constitutionally. I think that there are probably a couple of other things that can be done on a national level. We do know that states have a lot of power as it relates to voting rights. I think the main thing that we are actually looking at—and it's a reaction to what we've seen over the past few years—is that the people

¹⁵³ See Jonathan Martin & Amie Parnes, *McCain: Obama Not an Arab, Crowd Boos*, POLITICO (Oct. 10, 2008, 9:19 PM), <https://www.politico.com/story/2008/10/mccain-obama-not-an-arab-crowd-boos-014479> [<https://perma.cc/2EED-9UJY>].

¹⁵⁴ See *id.*

¹⁵⁵ See *id.* ("No, ma'am. He's a decent family man [and] citizen that I just happen to have disagreements with on fundamental issues and that's what this campaign's all about.").

¹⁵⁶ See generally Jonathan Oberlander, *Polarization, Partisanship, and Health in the United States*, 49 J. HEALTH POL., POL'Y & L. 329 (2024) (describing the hyper-partisanship and polarization occurring in the United States).

¹⁵⁷ Michael Skocpol, *The Emerging Constitutional Law of Prison Gerrymandering*, 69 STAN. L. REV. 1473, 1483-85 (2017). Prison gerrymandering, the act of counting incarcerated persons where they are incarcerated, "inflates the representation of mostly white, rural prison host communities at the expense of the urban and minority communities from which prisoners disproportionately hail." *Id.*

¹⁵⁸ See Carlo Macomber, *The Effects of Primaries and Statewide Races on Voter Turnout*, UNITE AM. (June 28, 2024), <https://www.uniteamerica.org/articles/nonpartisan-primaries-increase-primary-turnout> [<https://perma.cc/KS9K-PM7A>].

¹⁵⁹ In closed primaries, independent and unaffiliated voters are excluded from voting for a party's nominee. See *State Primary Election Types*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/elections-and-campaigns/state-primary-election-types> [<https://perma.cc/WJX2-5PQW>] (last updated Feb. 6, 2024).

who are getting arrested for so-called illegally voting or voting without having their rights restored all had one thing in common. They were all issued identification cards by their respective states.¹⁶⁰ So, the legal question that I think is looming out there is a simple one: whose responsibility is it to determine voter eligibility? And do citizens have a reasonable expectation that they have the right to vote when they have been issued an identification card by their respective states? I think this is very important because, if this is the case, it would drastically reduce the threat that people are facing when registering to vote or actually voting. There are hundreds, if not thousands, of people who are not voting because they've seen other people get arrested.¹⁶¹ None of those people should have been arrested in the first place because the state has all the infrastructure that it needs to be able to determine whether or not the person is eligible to vote. And any prosecution for voter fraud has a central requirement. There has to be specific intent and an action where a person knew that they were ineligible and they still went ahead and voted.¹⁶² But the states have not been holding themselves to that standard.¹⁶³ They have just been moving forward with prosecutions, and I think having that question answered in court would prevent states like Texas, Kentucky, and Florida from arbitrarily arresting people.

CR-CL: Could you make a case for pursuing voting rights before other types of civil rights?

Desmond Meade: I think that at the end of the day voting and civic engagement are the lifeblood of democracy. We talk about how at one point we had all the rights in the world, and we gave up some of those rights in order to live collectively in a group of people, right? We said, okay, we are going to live together, but what we are going to do in order to govern this society that we have created is that we are going to elect people to manage our affairs. That process occurs through elections, which means that people who are a part of society, a part of the community, have an opportunity to determine who would represent them. There's no other process for choosing our representatives than voting, and when you take away voting, you just killed that process and you killed the opportunity to have a society in which the needs and the will of the people are being heard and addressed.

CR-CL: Do you see voting rights as opening a door to other rights?

Desmond Meade: Yes, I think Angel spoke to that earlier when he talked about being able to address the needs of people who have been

¹⁶⁰ See, e.g., Smith, *supra* note 89.

¹⁶¹ See, e.g., Jonathan Ben-Menachem & Kevin T. Morris, *Ticketing and Turnout: The Participatory Consequences of Low-Level Police Contact*, 117 AM. POL. SCI. REV. 822, 830-31 (2023).

¹⁶² See, e.g., FLA. STAT. § 104.011 (2024).

¹⁶³ Patrick Berry & Gabriella Sanchez, *Florida Changes Law to Boost Unjust 'Voter Fraud' Prosecutions*, BRENNAN CTR. FOR JUST. (Feb. 23, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/florida-changes-law-boost-unjust-voter-fraud-prosecutions> [https://perma.cc/69UZ-GFZN].

convicted of murder or sexual offenses. I think, though, that voting rights do not give the leverage; it's the civic engagement that gives the leverage to obtain other rights or other policy changes that are necessary. The founding of this country came about because of a vote.¹⁶⁴ That is the foundation, and I think that being able to have a say in what happens takes precedence over what it is that you are trying to get done, or what it is that you're trying to accomplish, or what policies you're trying to change. When we were fighting for Amendment 4, we were fighting for people who wanted to vote for Donald Trump. Just like we were fighting for people who wish they could have voted for Barack Obama. When you talk about voting rights, it should never be geared towards just trying to get the type of people that you want to participate. It's for everyone, and the more people we have participating, the more vibrant it is. It's not about an agenda. It's not about moving a particular issue. When we talk about voting, it's about creating an environment that is more robust and more vibrant and that allows everyone to contribute to what we call a democracy.

¹⁶⁴ *Declaration of Independence*, ENCYC. BRITANNICA (Sept. 27, 2024), <https://www.britannica.com/topic/Declaration-of-Independence> [<https://perma.cc/ZV98-GVT9>] (noting how the Continental Congress unanimously voted to declare independence from Britain).

