

Amendment 5 Would Impede Reform of the Court Fees System

Tachana Marc
October 2018

Florida’s court system receives a substantial portion of its budget from obligatory fees, fines, costs and restitutions the courts impose on persons accused or convicted of crimes, also known as “legal financial obligations.”¹ These monetary penalties have proven to disproportionately impact low-income defendants due to their regressive nature. In Florida, these user fees are so pervasive and continuously increasing that the state system is commonly referred to as “cash register justice.”²

*On November 6, Florida voters will decide on Amendment 5, which would make it nearly impossible to reverse these unfair practices that have **contributed** to significant growth in Florida’s jail population. The measure would require a two-thirds (supermajority) vote of the state Legislature to approve any new state revenue, taxes and fees, or to eliminate tax incentives, loopholes and other such expenditures.*

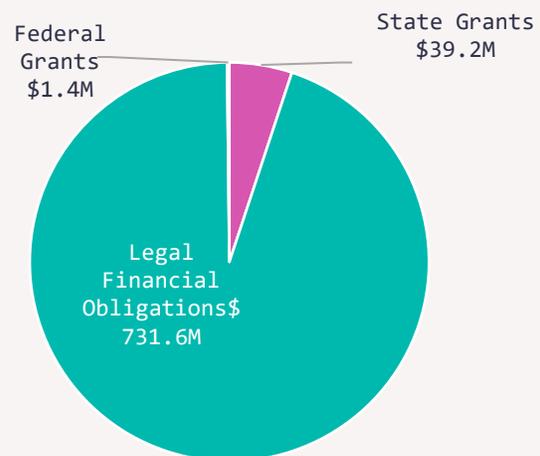
Florida currently has the wrong priorities, giving special tax breaks to big corporations while relying on a system of regressive fees and fines to generate revenue for our courts. Amendment 5 locks in these failed priorities before the state has a chance to recover from deep cuts following the Great Recession and a supermajority requirement would likely require huge funding cuts in the wake of another fiscal crisis. Amendment 5 would unnecessarily restrict investments in Florida’s future.

The Court System Has Increasingly Depended on Court Fees

Florida’s judiciary system receives its revenue from federal and state grants, and legal financial obligations — fees, fines, costs and restitutions — collected by each county’s Clerk of Courts. In 2016, total revenue for all of Florida’s courts was roughly \$772 million, with county court fees accounting for 94 percent of this revenue (see Figure 1).³

Over the past few decades, Florida has increased its dependence on court fees for revenue. Except for 1999 and 2000, the Florida Legislature has enacted at least one new court-related fee each year from 1996 to 2009.⁴ A total of 20 new court fees were added within a 13-year span. For example, in 2008, Florida increased the application fee for public

FIGURE 1. COURT SYSTEM REVENUE SOURCES,



defenders from \$40 to \$50, and in 2009,⁵ the state mandated clerks to send unpaid fees to a collection agency or a private attorney after 90 days.⁶

A trend throughout these years is that as newer fees are added, waiver opportunities for those who cannot afford to pay are being eliminated. For instance, in 2003, the state eliminated the court’s ability to waive the \$50 offender fee and made it mandatory for all defendants to pay for the costs of their prosecution and public defense regardless of their financial abilities.⁷ The latter is highly uncommon throughout other jurisdictions in the U.S. mainly because it fails to comply with the American Bar Association guidelines.⁸

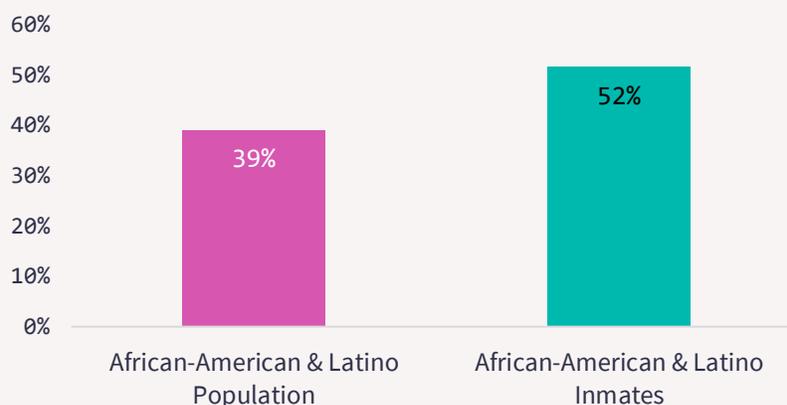
Florida is one of only two states that does not waive the application fees for public defenders for indigent defendants.⁹ In states like Minnesota, a similar law was found to be unconstitutional by the state’s Supreme Court.¹⁰ Whereas in Florida in 2010, there were actually efforts to increase the fees.¹¹ The only relief current laws offer to indigent defendants is allowing their application fees to be rolled in as part of sentencing or as a condition of probation.¹²

Amendment 5’s supermajority requirement would all but cement these fees in place, as raising other revenue to supplant legal financial obligations would become much more difficult. In doing so, the inequities in the court system would also become locked in.

Regressive Court Fees have Direct and Indirect Impacts

Court fees are regressive, as the state does not account for defendants’ personal income when imposing fees such as probation and parole. A \$50 flat fee, for instance, is a greater expense for someone with a \$100 weekly income than for someone with a \$500 weekly income. As a result, low-income defendants are disproportionately impacted. Further, these disparities increase across racial lines. Since Florida arrests and incarcerates African-Americans and Hispanics at a higher rate than their white counterparts, these groups are likely to experience the hardest blow from legal financial obligations. In 2014, African-Americans and Hispanics made up 51.5 percent Florida’s inmate population but 39 percent of the state population (see Figure 2).¹³

FIGURE 2. FLORIDA'S RACIAL AND ETHNIC DISPARITY IN THE INMATE POPULATION



Source: The Color of Justice: Racial and Ethnic Disparity in State Prisons.

Court fees are the antithesis of criminal justice reform efforts. They compromise public safety and defendants' chances at successfully re-entering into society. The state actively arrests and sends to jail defendants with legal financial obligations who fail to appear in courts for not making their payments. Between 2007 and 2008, Leon County made more than 800 arrests with more than 20,000 hours of jail time.¹⁴ These were primarily non-violent offenders who were being sent back to jail, with taxpayer money being used to process them through the system and house them at local jails.

In addition to arrest, Florida relies on other harsh and punitive measures, like suspension of licenses as a response to unpaid court fees. This is another harmful practice that deprives defendants of a significant tool for being productive members of society.¹⁵ Without a driver's license, it is harder to get and maintain a job, and a lack of real employment can lead individuals to return to the same activities that landed them inside the criminal justice system. By suspending the licenses or arresting of those who cannot make their payment, the state ends up hurting more than the defendants-- it hurts society with loss of economic benefits of foregone wages and taxpayers' dollars that could be invested in other crucial public services, respectively.

Road to Reform Unlikely Under Amendment 5

A supermajority threshold would likely lock in the current fee system and all its financial inequalities. Presently, the state Legislature can add new fee categories or increase existing fees with a simple majority vote. While an imposed supermajority would make it harder for the Legislature to continue its egregious practice of increasing fees, it would simultaneously shut the door on the possibilities of enacting crucial reform.

This is because the state will not likely reduce criminal justice fines and fees if it is unable to raise other revenue to make up the difference. Even with a simple majority requirement, it has been difficult to push for effective reforms that ameliorate the discriminatory aspects of the system. For example, in 2017, legislators from both ends of the political spectrum introduced a bill that would "revise requirements relating to the payment of court-related fines or other monetary penalties, fees, charges, and costs." This bill did not move forward, and it was never brought to the floor for a vote.¹⁶ A supermajority would further decrease the chance of a similar reform bill passing in the Florida Legislature.

Conclusion

The Florida court system's dependence on fees has led to disproportionate impacts on Floridians of color and low-income Floridians. With fines and fees accounting for a majority of court revenue, the climate is already tough for reform. Amendment 5 would likely cement Florida's court fees system by making reform nearly impossible, thus maintaining an unjust system that preys on low-income Floridians and people of color.

¹ Fines, Fees, Bail, and Bail, Council of Economic Advisers Issue Brief, Accessed on June 28, 2018
https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf

² The Hidden Costs of Florida’s Criminal Justice Fees, Brennan Justice Center, Accessed on June 28, 2018

<https://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF&F.pdf?nocdn=1>

³ Department of Financial Services, Division of Accounting and Auditing, Bureau of Local Government. Total County Government Revenues Reported by Account Code. Fiscal Year 2016.

⁴ Id

⁵ Fla. Stat. Ann. 27.52(1)(c)

⁶ Id. § 28.246(6)

⁷ Id. § 938.03(2)

⁸ Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases, Guideline 2, The American Bar Association, Accessed on June 28, 2018 <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/rec110.pdf>

⁹ Id (II)

¹⁰ State V. Tennin No. A03-1281 (Minnesota, 2004), Accessed on June 28, 2018.

<https://caselaw.findlaw.com/mn-supreme-court/1457681.html>

¹¹ Id (ii)

¹² Id (ii)

¹³ The Color of Justice: Racial and Ethnic Disparity in State Prisons, accessed on June 19, 2018

<http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

¹⁴ Id (ii)

¹⁵ Id(ii)

¹⁶ CS/SB 302: Penalties and Fees, The Florida Senate, Accessed on July 2, 2018

<https://www.flsenate.gov/Session/Bill/2017/302/BillText/c1/HTML>