**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF FLORIDA**
**TALLAHASSEE DIVISION**

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| KELVIN LEON JONES, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>RON DESANTIS, in his official capacity as Governor of Florida, et al.,<br><br>Defendants. | Consolidated Case<br>No. 4:19-cv-300-RH-CAS |

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION OR, IN THE ALTERNATIVE, FOR FURTHER RELIEF**

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# I. INTRODUCTION

All Plaintiffs in this consolidated action respectfully submit this Memorandum of Law in Support of their Motion for Preliminary Injunction, or in the Alternative, for Further Relief.

The Motion seeks urgently-needed preliminary relief to enjoin the enforcement of Senate Bill 7066 (2019) ("SB7066"), which unconstitutionally denies the right to vote to returning citizens[1] with past felony convictions based solely on their inability to pay outstanding costs, fines, fees, and restitution (referred to as legal financial obligations, or "LFOs"). Absent a preliminary injunction, hundreds of thousands of eligible returning citizens will face the risk that their newly restored voting rights will be revoked and that they will be unable to register or will be removed from the registration rolls simply because they are unable to pay legal debts. If not enjoined, SB7066 will wreak havoc on election administration, apply unequally to similarly situated voters, lead to the erroneous deprivation of the right to vote, and undermine confidence in Florida elections. Florida cannot be permitted to deny the right to vote to hundreds of thousands of Floridians on the basis of law that it has no plan to implement in an accurate and uniform manner.

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[1] This document refers to persons with felony convictions as "returning citizens" throughout, even though some such individuals have convictions from several decades ago.

As detailed below and in Plaintiffs' Complaints, such relief is warranted and necessary to prevent imminent and irreparable injury to Plaintiffs and other Florida citizens.

## II. FACTUAL BACKGROUND

Prior to November 2018, Florida was one of just three states that permanently disenfranchised its citizens for committing a single felony offense, unless a person was granted restoration of their civil rights at the discretion of the Florida Board of Executive Clemency.[2] Florida disenfranchised a higher percentage of its adult citizens than any other state in the United States (more than 10 percent of the overall voting age population, and more than 21 percent of the African-American voting age population[3]) and was responsible for more than 25

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[2] Br. for The Sentencing Project as Amicus Curiae ("Brief for Sentencing Project"), *Hand v. Scott*, No. 18-11388, 2018 WL 3328534, at *5 (11th Cir. June 28, 2018).

[3] More than one in five of Florida's African American voting-age population could not vote under the felony disenfranchisement regime that Amendment 4 revised. *Hand v. Scott*, 285 F. Supp. 3d 1289, 1310 (N.D. Fl. 2018). While Black people comprised 16 percent of Florida's population in 2016, they made up nearly 33 percent of all those previously disenfranchised by a felony conviction. *See* Erika L. Wood, *Florida: An Outlier in Denying Voting Rights* ("Wood") 1, 3 Brennan Ctr. for Just. (2016), https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf.

percent of the approximately 6.1 million U.S. citizens disenfranchised nationwide on the basis of felony convictions.[4]

On November 6, 2018, more than 5 million Florida voters approved a sweeping change to this system of disenfranchisement by passing Amendment 4 to the Florida Constitution with 64.55 percent in support.[5] Amendment 4 provides:

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

Fla. Const., Art. VI, § 4 (emphasis added).

It was regularly reported and widely understood that Amendment 4 would automatically restore voting rights to approximately 1.4 million people in Florida when the amendment went into effect on January 8, 2019.[6]

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[4] Brief for Sentencing Project, *Hand v. Scott*, No. 18-11388, 2018 WL 3328534, at *14–*16, n.34.

[5] Fla. Div. of Elections, *Voting Restoration Amendment 14-01*, https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1 (last visited May 24, 2019).

[6] *See, e.g.*, Samantha J. Gross & Elizabeth Koh, *What is Amendment 4 on Florida ballot? It Affects Restoration of Felons' Voting Rights*, Miami Herald (Oct. 5,

But despite Florida voters' passage of Amendment 4 to automatically re-enfranchise more than 1.4 million Floridians, the Florida Legislature enacted and Governor DeSantis signed into law SB7066. SB7066 purports to implement Amendment 4 but actually undercuts it.[7] By attempting to deny voter eligibility to any returning citizens with outstanding LFOs assessed upon their felony convictions, SB7066 disenfranchises hundreds of thousands of Floridians in one fell swoop. Based on the analysis of Plaintiffs' expert, Dr. Dan Smith, less than twenty percent of those whose voting rights were restored pursuant to Amendment 4 will remain eligible to vote; fewer than one in five returning citizens has paid all of their LFOs. The remaining eighty percent with outstanding LFOs will be disenfranchised for upcoming elections by the terms of SB7066. Ex. A ("Smith Report"), ¶¶ 8, 61.

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2018), https://www.miamiherald.com/news/politics-government/election/article219547680.html (estimated 1.6 million); Steven Lemongello, *Floridians Will Vote This Fall on Restoring Voting Rights to 1.5 Million Felons*, Fla. Sun Sentinel (Jan. 23, 2018), https://www.sun-sentinel.com/news/politics/os-florida-felon-voting-rights-on-ballot-20180123-story.html (estimated 1.5 million).

[7] In his signing statement for SB 7066, Governor DeSantis declared his belief that the Florida voters' choice to enfranchise returning citizens was a "mistake" insofar as it restored "voting rights to violent felons." Letter from Florida Governor Ron DeSantis to Florida Secretary of State Laurel Lee (June 28, 2019), https://www.flgov.com/wp-content/uploads/2019/06/6.282.pdf.

## A. PLAINTIFFS

Individual Plaintiffs are each over 18 years old, U.S. citizens, and Florida residents. Individual Plaintiffs completed any incarceration, probation, or parole associated with their felony sentences before Amendment 4 went into effect on or after January 8, 2019. All Plaintiffs except for Raysor and Sherrill registered to vote after January 8, 2019 and their voter registration applications were accepted. Plaintiffs Gruver, Ivey, Tyson, McCoy, and Singleton have since voted in local Florida elections.

Individual Plaintiffs all have outstanding LFOs associated with their respective felony convictions that they are unable to pay in full before the next election in which they wish to participate. Thus, SB7066's fines and fees requirement will disenfranchise them absent this Court's intervention.

Individual Plaintiffs in the *Gruver* Complaint—all of whom are registered voters—are as follows:

- Jeff Gruver is a 33-year-old white man who works at a homeless shelter in Gainesville and is pursuing a Master of Social Work at Florida State University. Mr. Gruver owes $801 in court costs and fees stemming from felony convictions, which he is unable to pay. He voted in the Gainesville election in March 2019. Ex. B, Gruver Decl., ¶¶ 2, 3, 6, and 7.

- Emory Marquis "Marq" Mitchell, a 29-year-old Black man, is the president and founder of a non-profit organization committed to reducing recidivism. Mr. Mitchell also serves as a trained Peer Support Specialist at the South Florida Wellness Network, which assists young people and

families with co-occurring disorders; a mentor with an employment-readiness nonprofit; and a member of two subcommittees on the Broward County Reentry Coalition. He owes $4,483 in outstanding court costs and fines, which he is unable to pay. Mr. Mitchell is eligible to receive assistance under the Supplemental Nutrition Assistance Program. He only learned of his outstanding LFOs when he received a notice from the Miami-Dade Clerk of Court earlier this year. Ex. C, Mitchell Decl., ¶¶ 3–7, 19–21.

- Betty Riddle is a 62-year-old Black woman who works as a communications assistant for the Public Defender of Sarasota. She owes about $1,800 in court costs and fees, which she cannot afford to pay. Ex. D, Riddle Decl., ¶¶ 1, 3, 15, 17.

- Karen Leicht is a 62-year-old white woman who works as a senior paralegal at a civil rights law firm and is the principal caregiver for her mother, who suffers from Parkinson's disease. Ms. Leicht owes approximately $58 million in outstanding restitution jointly and severally with her former co-defendants, even though she only played a minor role in the crime and did not benefit financially from it. She is unable to pay off the outstanding amount in her lifetime. Ex. E, Leicht Decl., ¶¶ 1, 2, 6.

- Keith Ivey is a 46-year-old Black man who manages a car dealership in Jacksonville. Mr. Ivey has conducted speaking engagements to motivate and connect with at-risk youth in Florida. Mr. Ivey owes $400 in costs stemming from a conviction more than 15 years ago, but was not even aware of those costs until a reporter notified him of them earlier this year. He registered to vote after Amendment 4 went into effect and voted in the March 2019 Duval County election and the May 2019 runoff election. Ex. F, Ivey Decl., ¶¶ 1, 4–6.

- Kristopher Wrench is a 42-year-old white man who works as a painter in Alachua County, where he and his wife are expecting their first child

later this year. He owes $3,000 in court costs and fees, which he is unable to pay. Ex. G, Wrench Decl., ¶¶ 1, 2, 6.

- Raquel L. Wright is a 44-year-old Black woman who works part-time as a legal assistant to the Special Counsel to the Florida State Conference of the NAACP and part-time as the Assistant Secretary of the Indian River County Branch of the NAACP. Ms. Wright owes at least $50,000 in court costs and a mandatory fine, which she is unable to pay. Ex. H, Wright Decl., ¶¶ 1, 10, 13, 14.

- Steven Phalen is a 36-year-old white man who works in HVAC logistics and has a Ph.D. in organizational and relational communication. He still owes approximately $110,000 in restitution, court costs, and fees stemming from a felony conviction in Wisconsin state court. Though he makes regular monthly payments toward these obligations. Mr. Phalen cannot afford to pay back his obligations in full. Ex. I, Phalen Decl., ¶¶ 3, 4, 6.

- Jermaine Miller, a 28-year-old Black man, is a community advocate. Mr. Miller owes $1,221.25 in fines, fees, and costs. Additionally, the Florida Department of Corrections contends that Mr. Miller owes $1.11 in restitution, even though he has paid $18.20 *more* than the $233.80 restitution ordered. Ex. J, Miller Decl., ¶¶ 2, 4, 7, 9.

- Clifford Tyson is a 62-year-old Black man and a pastor. Pastor Tyson has paid off all of the $1,867.94 that he was assessed for restitution. But he may owe more than $2,000 in costs and fees, which he cannot afford to pay. The exact amount of Pastor Tyson's outstanding obligations is unknown because of discrepancies and ambiguities in county and state records. Ex. K, Tyson Decl., ¶¶ 2, 3, 5, 11, 17, 18, 24.

Examples of affected Florida NAACP Members (beyond Ms. Wright) are as follows:

- Curtis D. Bryant Jr., a 38-year-old Black man and father, is a member of the Organizational Plaintiff Orange County NAACP. To the best of his knowledge, Mr. Bryant owes approximately $10,000 in LFOs. Each month Mr. Bryant makes a $30 payment to a debt collection agency, which Orange County has contracted with to collect his LFOs. Although he would be eligible to vote in the November 5, 2019 City of Orlando General Election, any necessary December 2019 runoff election, and elections in 2020 and beyond, Mr. Bryant cannot afford to pay his outstanding LFOs. Ex. Q, Neal Decl., ¶ 6; Ex. R, Nweze Decl.,¶ 8.

- Anthrone J. Oats, a 40-year-old Black man and father, is a small-business owner. He is also an executive member of the Marion County Branch of the NAACP. To the best of his knowledge, Mr. Oats was assessed approximately $3,107 in LFOs which remain outstanding. However, he was told in court proceedings that he would never be required to pay absent a huge financial windfall (e.g., he won the lottery). Mr. Oats had his voting rights restored via Amendment 4 on January 8, 2019. He registered to vote in Marion County on January 9, 2019 and remains an active registered voter. He fears voting in light of state records indicating that he still has outstanding LFOs. Although otherwise eligible to vote in the September 17, 2019, City of Ocala General Election, any necessary November 2019 runoff election, and elections in 2020 and beyond, Mr. Oats is chilled from participating in upcoming elections due to SB7066. Ex. R, Nweze Decl., ¶ 8.

Individual Plaintiffs in the *McCoy* Complaint are as follows:

- Rosemary McCoy is a 61-year-old Black woman and resident of Duval County. Ms. McCoy paid all of the costs and fees associated with her criminal case, but according to Duval County, she still owes $7,531.84 in restitution. Ms. McCoy cannot afford to pay her restitution despite her efforts to secure adequate employment. Ms. McCoy registered to vote and has since voted in countywide elections. Ex. L, McCoy Decl., ¶¶ 1, 6, 8–11.

- Sheila Singleton is a 56-year-old Black woman and resident of Duval County. The Duval County Clerk of Court informed Ms. Singleton that she owes more than $15,000 in fines, costs, and restitution associated with a criminal conviction from 2011. Ms. Singleton struggles to find stable employment because of her criminal conviction and lacks the ability to pay the debt. After Amendment 4 went into effect, Ms. Singleton registered to vote and has since voted in countywide elections. Ex. M, Singleton Decl., ¶¶ 1, 6–11.

Individual Plaintiffs in the *Raysor* Complaint are as follows:

- Bonnie Raysor is a 58-year-old resident Boynton Beach who works as an office manager for thirteen dollars per hour. Ms. Raysor currently owes $4,260 in outstanding fees and costs related to her 2010 convictions. She is unable to determine what amount of that balance is related to her misdemeanor convictions rather than her felony convictions. Ms. Raysor pays $30 per month toward her LFO balance according to a court-ordered payment plan based on her ability to pay. Ms. Raysor wishes to register and vote in upcoming elections. Ex N, Raysor Decl., ¶¶ 3, 5, 7, 8, 10.

- Diane Sherrill is a 58-year-old resident of St. Petersburg, Florida and active member of her church. She largely lives on a fixed SSI income of $770 per month, lives in public housing, and receives SNAP benefits (i.e. food stamps). Ms. Sherrill owes $2,279 in outstanding LFOs related to her convictions, which she cannot afford to pay. Ms. Sherrill wishes to register and vote in upcoming elections. Ex. O, Sherrill Decl., ¶¶ 3, 6, 14, 15.

- Lee Hoffman is a 60-year-old resident of Plant City, Florida. He is a disabled U.S. military veteran that currently spends his time as a minister and advocate for the homeless. He lives primarily on a monthly disability benefit and seasonal work. After the passage of Amendment 4, Mr. Hoffman registered to vote since he long ago completed all his felony sentences. He is currently listed as an active voter on the State of Florida Voter Information Lookup tool. Mr. Hoffman owes a total of $1,772.13 in LFOs, only some of which are associated with his felony convictions. He is unable to pay these LFOs in full prior to the 2020 election cycle. Ex. P, Hoffman Decl., ¶¶ 3–4, 7, 11–12.

Organizational Plaintiffs in the *Gruver* Complaint—the Florida State Conference of the NAACP ("Florida NAACP"), the Orange County Branch of the NAACP ("Orange County NAACP"), and the League of Women Voters of Florida ("LWVF" or "League")—are nonpartisan, not-for-profit membership organizations that do civil rights and voter registration work in Florida. Members of the Florida NAACP, the Orange County NAACP, and LWVF include low-income people with felony convictions, who will be immediately, and in many cases permanently, disenfranchised by SB7066 because they are unable to pay their LFOs. Organizational Plaintiffs also devote significant resources to registering voters, getting out the vote, and conducting voter protection on election days. SB7066 has forced all three groups to divert substantial time and resources away from other core activities to, for example, work with returning citizens to help clarify the voter registration process, determine whether they have outstanding LFOs, and/or are eligible to register to vote, and vote. Ex. Q, Neal Decl. on behalf of Orange County NAACP, ¶¶ 2–6, 8–9; Ex. R, Nweze Decl. on behalf of Fla. NAACP, ¶¶ 2, 5–8, 10–11; Ex. S, Brigham Decl. on behalf of LWVF, ¶¶ 3, 7, 16, 18.

## B. DEFENDANTS' IMPLEMENTATION OF AMENDMENT 4 PRIOR TO JULY 1, 2019

Amendment 4 went into effect on January 8, 2019 and *automatically* restored voting rights to people with past convictions that met its requirements.

*Advisory Op. to the Attorney Gen. Re: Voting Restoration Amendment*, 215 So. 3d 1202, 1208 (Fla. 2017) ("[T]he chief purpose of the amendment is to automatically restore voting rights to [certain] felony offenders[.]"); *see also* Ex. T (Feb. 11 email from Secretary of State's office) ("As you all know, Amendment 4 went into effect on January 8 and there has been no delay in implementation."). As such, many of the Individual Plaintiffs and other returning citizens registered to vote on or after January 8, using the same process as all other voters.

To register to vote, an individual must complete and submit a voter registration form. *See* Fla. Stat. §§ 97.052; 97.0525. Before SB7066—but after the effective date of Amendment 4—the form gave the applicant the option to check a box with the following statement: "I affirm I am not a convicted felon, *or, if I am, my rights relating to voting have been restored*." Form DS-DE #39, R1s-2.040, F.A.C. (2013), *available at* https://voter-registration-fl.connect.clarityelections.com/connect/site/publicpages/GenericForm.jsp?gid=1 (last visited Aug. 2, 2019) (emphasis added). Pursuant to the plain language of Amendment 4, returning citizens whose sentences, including parole and probation, were complete and whose convictions did not fall within the limited exceptions signed the affirmation indicating their rights had been restored and submitted it.

Florida Supervisors of Elections ("SOEs") are required to accept voter registration applications from all applicants in their county offices. Fla. Stat.

§ 97.053(1). SOEs are charged with "determin[ing] whether a voter registration applicant is ineligible based on [whether] . . . (c) The applicant has been convicted of a felony for which his or her voting rights have not been restored." *Id.* § 98.045(1). Upon receipt of a voter registration application, SOEs "must notify [the] applicant of the disposition of the . . . application within 5 business days after voter registration information is entered into the statewide voter registration system." *Id.* § 97.073(1). SOEs' notification "must inform the applicant that the application has been approved, is incomplete, has been denied, or is a duplicate of a current registration." *Id.* The mailing of a voter information card "constitutes notice of approval of registration." *Id.* All Individual Plaintiffs except for Raysor and Sherrill received their voter information cards after registering to vote and are active registered voters in Florida at this time, according to publicly available records.

Between January 8, 2019 and July 1, 2019, Defendants interpreted and implemented Amendment 4 to only require completion of incarceration, parole, and probation; they did not require payment of LFOs. *See* Ex. U (June 7 email from Secretary of State's office) (implementing Amendment 4 by limiting lists of potentially ineligible voters to those still under supervision by Department of Corrections); Ex. V (Deposition of Mary Jane Arrington, Osceola County Supervisor of Elections) ("Arrington Dep." at 75:12–19) (confirming that prior to

July 1 payment of LFOs "was not a requirement" and ""not something the Secretary of State said was required").

Defendants did not inform voters or election officials that Amendment 4 barred returning citizens with outstanding LFOs from registering to vote and voting. Defendants did not send denial of voter registration or removal notices based on outstanding LFOs to any applicants. To the contrary, Defendants approved the voter registration applications submitted by the Individual Plaintiffs and many others similarly situated, and accordingly many of those individuals went on to vote in local elections during the spring. *See*, *e.g.* Ex. B, Gruver Decl. ¶ 7; Ex. F, Ivey Decl. ¶ 4; Ex. K, Tyson Decl. ¶ 21; Ex. M, Singleton Decl. ¶ 10; Ex. L, McCoy Decl. ¶ 10.

### C. CHALLENGED PROVISIONS OF SB7066

SB7066 requires returning citizens to pay all LFOs "specifically ordered by the court as part of the sentence" before their voting rights are restored. Fla. Stat. § 98.0751(2)(a)(5)(the "LFO requirement"). The exact boundaries of what LFOs are covered by SB7066 are far from clear.[8] And, though the law specifically states that LFOs remain disqualifying even if converted to a civil lien, it does not address

[8] Arrington Dep. at 87:10–17 (testifying that she has never reviewed a "sentencing document" and does not know which documents from the clerk of court would fall within that definition).

the circumstance of individuals such as Plaintiff Raysor, whose LFOs were imposed as a civil lien in the first instance. *Id.*

SB7066 neither requires nor provides for any determination of whether a person is able to pay their outstanding LFOs. The law indicates that the LFO requirement can be met in one of three ways: (1) actual payment of all covered LFOs in full, (2) termination of the obligation "upon the payee's approval" either in open court or through a notarized consent, or (3) completion of community service hours "if the court, unless otherwise prohibited by law or the State Constitution, converts the financial obligation to community service." *Id.* § 98.0751(2)(a)(5)(e). These alternative options are, however, largely illusory and do not provide relief to many of those unable to pay their LFOs.

First, these provisions do not apply to Florida residents' LFO obligations for out-of-state or federal convictions, like those owed by Individual Plaintiffs Leicht and Phalen, because Florida courts lack jurisdiction to modify or terminate those LFOs.

Even for in-state convictions, third-party payees, including, for example, insurance companies, for-profit debt collection agencies, and private individuals, appear to have absolute discretion to grant or deny a person's request for approval to terminate LFOs, for any reason or no reason. *Id.* § 98.0751(2)(a)(5)(e)(II). SB7066 provides no standard or guidance to courts or state agencies acting as

payees on whether to approve termination of LFOs. SB7066 also provides no mechanism for approval if a payee is unavailable or non-responsive.

Furthermore, conversion of LFOs to community service is wholly discretionary: courts have no obligation to convert LFOs into community service, even if a court finds that an individual has no ability to pay. *See id.* § 98.0751(2)(a)(5)(e)(III); § 938.30(2). Indeed, SB7066 appears to add nothing to the already existing option of Florida courts to order community service in lieu of LFOs.[9]

Conversion to community service has been rare in practice. The Florida Clerks of Court found in 2008 that "only 16 of 67 counties reported converting any mandatory LFOs imposed in felony cases to community service," and "[o]f those 16 that did report using community service, 10 converted less than $3,000 of mandatory LFOs to community service in one year."[10] According to the 2018 annual report by the Florida Court Clerks, the circuit criminal courts in charge of felony cases assessed over $264 million in legal financial obligations in the 2017-

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[9] *See* Video: May 3, 2019 House Sess. Part 2 ("May 3 House Hearing") at 37:33, https://thefloridachannel.org/videos/5-3-19-house-session-part-2/ (House sponsor Representative James Grant testifying that SB7066 did not require any courts to have a community service conversion program, stating only that circuits could follow whatever practices they currently undertake).

[10] Rebekah Diller, *The Hidden Cost of Florida's Criminal Justice Fees* 1, 23 Brennan Ctr. for Just. (2010), https://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF&F.pdf?nocdn=1.

2018 fiscal year alone.[11] Of that sum, just over $1 million was converted to community service.[12] In other words, less than one-half of one percent of LFOs were converted to community service last year. Even in rare instances where applicants successfully move the court to grant community service conversion, Florida law generally requires that individuals performing court-ordered community service get credit toward their debt at the federal minimum hourly wage, *see* Fla. Stat. §§ 938.30(2), 318.18(8)(b)(1–2), currently $7.25 per hour. At that rate—and given Individual Plaintiffs' job responsibilities and/or disability limitations—Individual Plaintiffs will not be able to complete adequate community service hours prior to the next election (or in many cases, any reasonably proximate election).

In addition to these new onerous requirements, SB7066 changed Florida's voter registration form to include three checkboxes related to felony convictions. Voters must now affirm whether they have (1) never been convicted of a felony; (2) had their civil rights restored by executive clemency; or (3) had their voting

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[11] Florida Court Clerks & Comptrollers, 2018 Annual Assessments and Collections Report, Statewide Summary – Circuit Criminal at 10 (2018), https://finesandfeesjusticecenter.org/content/uploads/2019/01/2018-Annual-Assessments-and-Collections-Report.pdf.

[12] Likewise, less than three percent of those LFOs were reduced, suspended, or waived. *Id.*

rights restored "pursuant to s. 4, Art VI of the State Constitution upon completion of all terms of my sentence, including parole or probation." *Id.* § 97.052(2)(t).

SB7066 then tasks the Department of State with using data from various governmental organizations to make the initial determination about whether a person who registers to vote is eligible pursuant to Amendment 4. *Id.* §§ 8.0751(3)(a), 98.075(5). If the Department determines the information is "credible and reliable," it is sent to the local supervisor of elections for final determination and action on the voter's registration. *Id.* § 98.0751(3). There is no clarification of what information will be considered "credible and reliable."

## D. TYPES OF LEGAL FINANCIAL OBLIGATIONS UNDER FLORIDA LAW

SB7066 requires payment of myriad different forms of LFOs including fines, fees, costs, and restitution.[13] LFOs in Florida are often mandatory and are imposed without consideration of a defendant's ability to pay. In fact, all but about $21 million of the over $264 million in LFOs assessed by circuit criminal courts in the 2017-2018 fiscal year were mandatory LFOs.[14]

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[13] SB7066 sweeps much wider than LFOs under Florida law by requiring payment related to federal or out-of-state conviction, including those owed by Plaintiffs Leicht and Phalen.

[14] Florida Court Clerks & Comptrollers, 2018 Annual Assessments and Collections Report at 10, *supra* note 12.

In Florida, the criminal justice system is largely funded by fees and costs imposed on people with convictions.[15] Indeed, in 1998, Florida's Constitution was amended to shift much of the cost of maintaining its court system from general tax funds to revenue collected from fees and surcharges imposed on criminal defendants and other users of the court system. *See* Fla. Const. Art. V, § 14. *Crist v. Ervin*, 56 So.3d 745, 752 (Fla. 2010) ("[C]ourt-related functions of the clerks' offices are to be funded entirely from filing fees and service charges."). In Florida, courts must "impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay." *See* Fla. Stat. § 938.27(2)(a). This includes a minimum prosecution fee of $100 in felony cases, which is used to fund State Attorney's offices. *Id*. § 938.27(8) (mandating a prosecution fee of at least $100 for felony offenses). The state charges an application fee to determine indigency when a defendant applies for a public defender and charges at least $100 for their public defender's fees. *Id.* § 938.29(1). These costs are imposed "notwithstanding the defendant's present ability to pay." *Id.* Felony convictions usually result in a minimum of approximately $698 in court costs and fees if a defendant is represented by a court-appointed lawyer, or $548 if a defendant is represented by a privately retained lawyer. *See* Ex. W, Haughwout Decl. ¶ 6.

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[15] *See generally* Alicia Bannon et al., Criminal Justice Debt: A Barrier to Reentry, Brennan Center for Justice 7 (2010), https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf.

Florida also imposes mandatory and substantial fines for many convictions, including for certain drug convictions, without consideration of ability to pay. *See, e.g.*, Fla. Stat. § 893.13(1)(c)(3). Drug convictions can lead to mandatory fines up to $750,000. Fla. Stat. § 893.135(1). Over $110 million was assessed in drug trafficking cases in the 2017-2018 fiscal year alone.[16] For example, Ms. Wright has a $50,000 mandatory fine for a drug conviction. Wright Decl. ¶ 5. .

Florida courts order restitution pursuant to Fla. Stat. §§ 960.29(3)(a)–(b), typically based on the amount of loss sustained by the victim. *Id.* § 775.089(6)(a). Here too, restitution obligations are imposed without a determination of the defendants' ability to pay. *Noel v. State*, 191 So.3d 370, 375 (Fla. 2016) ("[T]he defendant's financial resources or ability to pay does not have to be established when the trial court assesses and imposes restitution.") (quotation marks omitted).

Florida courts may convert various LFOs to civil judgments. *See*, *e.g.*, Fla. Stat. §§ 775.089(3)(d) (restitution); 938.30(6) (costs); Ex. W, Haughwout Decl. ¶¶ 13, 14. For purposes of voting rights restoration, SB7066 provides that LFOs are "not deemed completed upon conversion to a civil lien." Fla. Stat. § 98.0751(2)(a)(5)(e)(III).

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[16] Florida Court Clerks & Comptrollers, 2018 Annual Assessments and Collections Report at 11, *supra* note 12.

Unsurprisingly, since courts need not determine a defendant's ability to pay before imposing LFOs, many returning citizens cannot afford to pay their LFOs, nor does Florida anticipate that they will. The Florida Circuit Criminal Courts in 2018 reported that the collections rate for fines and fees was just 20.55%.[17] Over 85% of all felony-related fines and fees in Florida are categorized as at risk—meaning the courts have "minimal collections expectations" due to the defendant's lack of financial resources.[18] Of all felony-related LFOs, 22.9% are labeled at risk (i.e., "minimal collections expectations") specifically because the defendant was indigent.[19]

### E. FLORIDIANS AFFECTED BY SB7066 LFO REQUIREMENTS

To determine how many people would be affected by SB7066, Plaintiffs' expert, Dr. Dan Smith[20] analyzed data from 48 counties using the Florida Department of Corrections ("FDC") database, and the Offender Based Information System ("OBIS"). He identified 375,256 individuals with non-disqualifying Florida state felony convictions, meaning convictions other than for murder or felony sexual offenses, and matched their conviction record and their LFO

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[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] Dr. Smith is Professor and Chair of Political Science at the University of Florida ("UF"). He is widely regarded as a leading expert on voting and elections in the American states. Ex. A, Smith Report, ¶ 1.

information. Ex. A, Smith Report ¶ 61. Based on his analysis, Dr. Smith estimates that overall approximately 17.6 percent of post-sentence individuals with qualifying offenses have no outstanding LFOs balance in the 48 counties.[21] The remaining 82.4 percent of the individuals identified in the 48 counties have outstanding LFOs and will be disenfranchised as a result of SB7066. *Id.* ¶ 8.

Dr. Smith also sought to determine characteristics of otherwise eligible returning citizens had completed payment of all LFOs. He looked at individuals in each of the 48 counties who had non-disqualifying Florida state felony convictions, had completed all sentenced terms of incarceration and supervision (including parole or probation), and had a zero balance with the county. For individuals in those counties who had been incarcerated or supervised by FDC, only 8.0% of black individuals and 13.5% of white individuals identified had a zero balance of LFOs. *Id.* ¶ 54. For individuals who were never incarcerated or supervised by FDC, only 13.5 percent of Black individuals and 23.6 percent of white individuals had an LFO balance of $0.00. *Id.* ¶ 45. These figures are limited to identifiable individuals for whom Dr. Smith could confirm a balance of $0.00 in the 48

[21] This figure likely overstates the number of persons who are eligible to vote since an individual may have a balance of $0.00 LFOs in a county analyzed by Dr. Smith, yet have outstanding LFOs in the remaining 19 counties county, another state or from a federal conviction. Dr. Smith's analysis also does not include Florida residents who have past out-of-state or federal felony convictions or have a conviction from after 1997 and LFOs owed since the early 2000s, as this data is unavailable.

counties and are therefore a conservative estimate of those who will not be disenfranchised by SB7066.

Dr. Smith's analysis is under-inclusive of the total numbers of returning citizens with unpaid debt because the individuals he identified with no outstanding LFOs does not account for who among those individuals who: (1) have outstanding out-of-state or federal LFOs; (2) have outstanding LFOs in any of the 19 counties from which Dr. Smith could not obtain data (even if they have a balance of $0.00 among the 48 analyzed counties); or (3) have a conviction from before 1997 for which FDC records are unavailable, or an outstanding LFO from before the early 2000s, when county records of outstanding LFOs are likely unavailable. *Id.* ¶ 43.

## F. FLORIDA DOES NOT RELIABLY TRACK OR DISAGGREGATE LFOS.

There is no accessible or reliable source of information in Florida—either at the state or county level—for determining which LFOs were originally ordered as part of a sentence, and whether those LFOs have been paid, or the amount outstanding. Nor is there any clear mechanism for people with LFOs to prioritize the payment of disqualifying LFOs over non-disqualifying LFOs, particularly for those on a consolidated payment plan or whose LFOs have been consolidated and converted to civil liens. In sum, there are no publicly available sources that the Department of State, local election officials, and returning citizens can rely on to determine if the citizen has paid all LFOs for felony convictions, how much a

citizen must pay to become eligible to vote under SB7066, or how a citizen can pay her disqualifying LFOs first.

### G. THERE IS NO STATE DATABASE THAT RECORDS OUTSTANDING LFOS

Florida has no central database that is capable of tracking outstanding LFOs that would bar a returning citizen from voting under SB7066. As Representative Grant, sponsor of SB7066's predecessor in the House, explained: "the State of Florida nowhere keeps a discrete data element that documents whether or not somebody completed the term of their sentence."[22] Even for LFO data that Florida purports to track, the Financial Impact Estimating Conference ("FIEC") conceded that Defendants would not be able to confirm LFOs for in-state felony convictions before the 1990s.[23]

The Florida Department of Law Enforcement ("FDLE") maintains a criminal history database with Florida convictions and sentences.[24] Members of the general public and non-governmental agencies can request a criminal history report

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[22] *See* Video: Apr. 23, 2019, House Floor Hearing at 6:02:20–6:03:10, https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2019041264 (hereinafter "Apr. 23 House Hearing").

[23] Video: Oct. 17, 2016, FIEC Workshop at 1:09:37–1:10:54, https://thefloridachannel.org/videos/101716-financial-impact-estimating-conference-principals-workshop-voter-restoration-amendment/.

[24] *See* FDLE Criminal History Info. website, available at http://www.fdle.state.fl.us/Criminal-History-Records/Obtaining-Criminal-History-Information.aspx.

for $24, payable by credit card, while an individual can make a request for a free personal review of their own criminal record by mailing a form and fingerprinted card. *Id*. Although an FDLE Report sometimes includes a record of LFOs originally assessed as part of a sentence, it does not always. *Compare* Ex. J Miller Decl. ¶ 5, Ex. J-2 ("Miller FDLE Report") at 7 (reflecting no LFOs imposed), *with id*. ¶ 4, Ex. J-1 (reflecting LFOs ordered). Further, FDLE Reports do not include information on whether LFOs have been paid. *See*, *e.g.*, id., ¶ 5, Ex. J-2, Miller FDLE Report.

Nor does FDOC consistently track the status of outstanding LFOS once supervision is completed. In fact, according to Lee Adams, Chief of FDOC's Bureau of Admission and Release, there are "enormous gaps" in information about what happens to LFOs that are still outstanding at the time supervision is terminated, because the FDOC "has no way of knowing" what happens to those LFOs *after* termination.[25] *See also* Ex. A, Smith Report, ¶¶ 24-29.

## H. LOCAL DATABASES ARE INCONSISTENT, INCOMPLETE, AND INACCURATE

Without a centralized state database, returning citizens must look to county clerks of court on a county-by-county basis for information on their outstanding

[25] Video: Feb. 14, 2019, Jnt. House Meeting of the Criminal J. Subcomm. & the Judiciary Comm. at 1:18:00–1:18:36, https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2019021160 (hereinafter "Feb. 14 Hearing").

LFOs. But available data varies widely among counties. Florida officials and lawmakers testified that many, if not all, counties lack complete and accurate data regarding some LFOs, particularly with respect to restitution. *See, e.g.*, Feb. 14 Hearing at 1:03:30–1:04:05 (Chief Judge Frederick J. Lauten testifying: "If I order to someone to pay restitution as a condition of probation . . . then the Probation Department keeps those records. *The clerk may or may not have that evidence*. And so, if the Supervisor contacted the Clerk, the Clerk might go, 'I don't know, contact DOC.'") (emphasis added); *id.* at 29:56–31:42, 54:18–54:34 (Martin County Clerk of Court Carolyn Timmann testifying that the biggest limitation on data regarding returning citizens is restitution, noting: "in some cases we have restitution information, but in the majority we do not," particularly in cases where individuals pay restitution directly to victims, without receipts or documentation of payments); *see also* Apr. 23 House Hearing at 7:11:40–7:15:16 (Representative Grant: "the clerks absolutely have restitution information, *it's just not conclusive*.") (emphasis added).[26]

Similarly, clerks of court may not have information regarding the payment of LFOs after they are converted to civil liens and referred to collections agencies.

[26] SOEs have also reported difficulty obtaining LFO records created by county-run and privately-run jails. Video: Oct. 17, 2016, FIEC Workshop at 2:48:25–2:52:49, https://thefloridachannel.org/videos/101716-financial-impact-estimating-conference-principals-workshop-voter-restoration-amendment/.

*See* Ex. V, Arrington Dep. at 125:10–19 ("And an example would be . . . that when you pull the clerk of court record, there is something there about fines and fees. But it doesn't tell you if they've been paid. One of our staff members tried to call the clerk of the court . . . [and t]hey were told that it had been turned over to a collection agency. And they had no knowledge if it was paid—if it had been paid."). Even the information that counties do have is often confusing and inaccurate. For example, Pastor Tyson's original sentencing documents for his 1998 conviction, which are available through the Hillsborough County Clerk's website, ordered payment of $661 in LFOs and noted he was ordered to pay restitution "in accordance with the attached order," but no order is attached, and no order regarding restitution is available for download on the Clerk's website. *See* Ex. K, Tyson Decl. ¶ 13, Ex. K-6. By contrast, the "Events/Documents" subpage of the Clerk's website suggests that—for the same 1998 conviction—Pastor Tyson was ordered to pay $1,066 in LFOs and $530 in restitution. *See id.* ¶ 14, Ex. K-7. The "Financial" subpage of the *same* website indicates that he owes $573 in LFOs—also for the same 1998 conviction—but does not mention restitution. *See id.* ¶ 15, Ex. K-8. In other words, three kinds of records, which are all available through the Hillsborough County Clerk's website, reflect three different amounts owed *for a single conviction*.

The Leon County Clerk's website appears to overstate *and* understate Plaintiff Jermaine Miller's obligations. Mr. Miller's original Judgment ordered payment of $1,221.25 in fines, fees, and costs, along with $233.80 in restitution. *See* Ex. J, Miller Decl. ¶ 4, Ex. J-4. But the Clerk's website indicates he was ordered to pay $1,547.25 (which is not the sum of those two amounts). *Id.* ¶ 6, Ex. J-3. The website does not show any restitution obligation, or that Mr. Miller has made any payments, despite references to a "partial payment late fee." *Id.*

Plaintiff Betty Riddle's documents are similarly inconsistent in detailing her obligations. Records that Ms. Riddle has received from the Sarasota County Clerk identify LFOs that are not included in her FDLE Report. *See* Ex. D, Riddle Decl. ¶ 16. Ms. Riddle cannot access records to determine the amount of LFOs that she owes for obligations incurred before 1990. *Id.*

Because online information is unreliable, Individual Plaintiffs have called one or more county clerks where they have a felony conviction to determine whether they have outstanding LFOs. As set forth in Dr. Smith's affidavit, given the limited data that the state makes publicly available, for many individuals with a past felony conviction it is exceedingly difficult, if not practically impossible, to know whether they have satisfied all LFOs originally assessed as part of a felony conviction in Florida courts, much less completed financial terms of a felony conviction handed down by another state or a federal court. Ex. A, Smith Report,

¶¶ 12, 13; *see also* Ex. W, Haughwout Decl. ¶¶ 17–22. Even assuming that returning citizens ask the right questions, in many cases they will still be unable to determine their LFOs and voter eligibility because, as set forth above, county clerks simply do not have complete or accurate records, and there is no alternative, public source of information readily available.

## I. PLAINTIFFS CANNOT VERIFY WHETHER THEY ARE ELIGIBLE TO REGISTER OR VOTE UNDER SB7066

None of the databases described above—whether at the state or local level—fully disaggregate the amount owed on an LFO "ordered by the court as part of the sentence," which have to be repaid before registering under SB7066, from the amount of "any fines, fees, or costs that accrue after the date the obligation is ordered," which do not. Fla. Stat. § 98.0751(2)(a)(5)(c). For example, the available online records for Plaintiff Raysor fail to disaggregate the LFOs for her misdemeanors and felony convictions within the same case. *See* Ex. X, Bowie Decl.

The Florida Legislature apparently recognized that the information needed to implement SB7066 is currently unavailable. SB7066 mandates the creation of "Restoration of Voting Rights Work Group" tasked with, among other things, developing recommendations for the Legislature related to "consolidation of all relevant data" needed to implement the law and inform individuals regarding eligibility. Fla. Laws Ch. 2019-62 § 33. Yet the Florida Legislature directed that

the law goes into effect immediately on July 1, 2019 without the benefit of any guidance from the work group. *Id.*

Since the Department of State is charged with relying upon the data described above to make its initial determination of eligibility pursuant to SB7066, *see* Fla. Stat. § 98.0751(3)(a), the Department will be making these determinations based on incomplete, contradictory, and inaccurate data.

Likewise, a returning citizen cannot rely on any publicly available source of information to determine, with certainty, that they have paid all LFOs required by SB7066—and cannot therefore register to vote without risk of criminal prosecution. Chapter 104 of the Florida Code details criminal penalties punishable by up to five years in prison for certain instances where individuals certify incorrectly on a voter registration that they have had their rights restored, or improperly register to vote or vote. *See* Fla. Stat. §§ 104.011(1)–(2); 104.041; *id.* § 104.15. Supervisor Arrington testified that her office is unable to assist voters in determining their eligibility under SB7066 and her office has already had a potential voter who could not determine his eligibility under SB7066 and therefore did not register. Ex. V, Arrington Dep. at 126:14–17.

Dr. Smith also notes that because Florida has no central repository of information on LFOs, "even if a person is able to identify all the LFOs he or she owes in one Florida county, he or she might have difficultly determining any

outstanding LFOs he or she owes in another Florida county, in another state, or in the federal court system." Ex. A, Smith Report, ¶ 12.

Finally, even if returning citizens could determine the total amount of their outstanding LFOs under SB7066, there is no system permitting them to disaggregate or prioritize paying off the debt that precludes the restoration of their voting rights from LFOs that accrued post-sentence or arise from misdemeanors.

## J. DEFENDANTS HAVE NO PLAN TO ENSURE ORDERLY OR UNIFORM IMPLEMENTATION OF SB7066

SB7066 became effective on July 1, 2019. Despite the considerable confusion regarding what LFOs are covered and how they can be ascertained, Defendant Lee has not issued any public guidance on SB7066's LFO requirement. Defendant Lee's office has sent only *one* email to Supervisors of Elections about SB7066's implementation and that email only relayed information about the new voter registration form. *See* Ex. Y (July 2, 2019 email from Maria Matthews). The promised memo on SB7066 mentioned in the email has not materialized and Defendant Lee has not provided *any* other guidance to SOEs about how to determine who is eligible to vote under SB7066. Ex. V, Arrington Dep. at 83:6–11.

Though SB7066 is in effect—and barring the registration and participation of voters—its application is necessarily haphazard, uninformed, and arbitrary. Supervisor Arrington testified that SB7066 is the only restriction on voting eligibility that she cannot fully explain to her residents. *Id*. at 106:15–107:4. Thus,

voters are left to their own devices to parse SB7066 and the available public records for themselves. Supervisor Arrington and her staff—and likely most other SOEs—have no knowledge of which documents are "sentencing documents" under SB7066 or which LFOs are disqualifying or not under SB7066. *Id.* at 87:10–89:17. Nor does she or any of her staff know how to review public documents to distinguish between felony and misdemeanor LFOs, sentencing and post-sentence LFOs, or any of the relevant distinctions under SB7066. *Id.* at 109:12–111:5. She does not know how to determine if LFOs have been converted to community service, waived, or terminated. *Id.* Despite the foregoing, Supervisor Arrington is the final arbiter of determining whether someone is eligible to vote under SB7066. *Id.* at 23:13–16, 113:18–22.

As of July 1, SB7066 imposes a set of voter eligibility requirements that Supervisors of Elections cannot explain to their residents; leaves voters to come to their own conclusions about its contours; denies voters the factual information needed to ascertain their eligibility; and requires elected officials that have no understanding of the law and no access to the necessary information to make the final determination of voter eligibility. This is a recipe for erroneous denial of the right to vote and arbitrary application of the law across counties.

## K. UPCOMING ELECTIONS

Florida counties and cities may hold 88 more elections during the remainder of 2019, including nearly 50 such elections on November 5, 2019, with a registration deadline of October 7, 2019.[27] The Florida NAACP has members who would vote in September, November and potentially December 2019 municipal elections and the statewide presidential preference primary in March 17, 2020. And members of the alleged class in the *Raysor* Complaint would be eligible to vote in each of these elections absent SB7066.

The presidential preference election for 2020 will be held in Florida on March 17, 2020 and the registration deadline for that election is February 18, 2020. All Individual Plaintiffs and members of Organizational Plaintiffs seek the opportunity to vote in that election.

# III. ARGUMENT

## A. LEGAL STANDARD

A preliminary injunction is warranted under Fed R. Civ. P. 65 if Plaintiffs show: "(1) [they have] a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant[s] outweighs whatever damage the proposed injunction may

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[27] Dates of Local Elections, Fla. Department of State (2019), https://dos.elections.myflorida.com/calendar/.

cause to the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005) (quoting *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc)). Trial courts are entrusted with sound discretion to issue a preliminary injunction. *Palmer v. Braun*, 287 F.3d 1325, 1329 (11th Cir. 2002).

As set forth below, Plaintiffs meet all four prongs of this standard. "The chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated." *Ne. Fla. Chapter of Ass'n of General Contractors of Am. v. Jacksonville, Fla.*, 896 F.2d 1283, 1284 (11th Cir. 1990); *see also U.S. v. Lambert*, 695 F.2d 536, 540 (11th Cir. 1983) ("Preservation of the status quo enables the court to render a meaningful decision on the merits."). In this case, Plaintiffs seek only to maintain the status quo prior to the passage of SB7066 during which time Defendants registered the Individual Plaintiffs and those similarly situated and permitted them to vote. Accordingly, the Court should preliminarily enjoin the challenged provisions of SB7066 Fla. Stat. § 98.0751(2)(a), and amendments to § 97.052(2)(t)(u),which unconstitutionally deny the right to vote to Individual Plaintiffs, members of the Organizational Plaintiffs, and other returning citizens who have outstanding LFOs.

## B. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

SB7066's LFO requirement violates the U.S. Constitution in multiple respects and should be enjoined.

Interrelated strands of Supreme Court jurisprudence make clear that SB7066's LFO requirements are unconstitutional. First, in the specific context of voting, a "requirement of fee paying" is flatly unconstitutional under the Fourteenth and Twenty-Fourth Amendments when, as here, it is used as "a condition of obtaining a ballot[.]" *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966); *Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1217 n.1 (11th Cir. 2005) ("Access to the franchise cannot be made to depend on an individual's financial resources.").

Second, the U.S. Supreme Court has held more broadly that States may not "punish[] a person for his poverty" by imposing sanctions solely due to a person's lack of financial resources or by completely denying access to an important interest because a person cannot afford to pay LFOs. *See Bearden v. Georgia*, 461 U.S. 660, 671 (1983). These two related sources of Supreme Court authority prohibit SB7066's LFO requirement under independent and mutually supporting constitutional rationales.

Third, under the First and Fourteenth Amendments, an election law must serve a legitimate purpose sufficient to warrant the burden it imposes on the right

to vote. *See Anderson v. Celebrezze*, 460 U.S. 780, 788–89 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *see also Democratic Executive Comm. of Florida v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019). SB7066 imposes inordinate and insurmountable burdens for the Individual Plaintiffs by forcing them to settle often extraordinary sums of LFO debt, even though wealth and fee paying have no relation to voter qualifications.

Fourth, there can be no rational basis for denying the right to vote to returning citizens who are unable to pay LFOs because the distinction based on "wealth or fee paying" is not rational. *Harper*, 383 U.S. at 666.

Fifth, SB7066 unlawfully strips Individual Plaintiffs of the right to vote restored to them on January 8, 2019. Individual Plaintiffs have not committed any crime since the restoration of their voting rights that would justify the revocation of those rights.

Sixth, SB7066 violates the Due Process Clause because there is no viable way for returning citizens or election officials to determine with certainty whether potential voters have satisfied their LFOs and are eligible to register. The lack of this crucial information will preclude eligible voters from registering; result in erroneous deprivation by election officials without pre-deprivation notice and opportunity to respond; and make it impossible for voters to prioritize payment of their disqualifying LFOs over non-disqualifying LFOs. SB7066's LFO

requirement also renders Florida's prohibitions on registering and voting while ineligible unconstitutionally vague.

### i. SB7066 VIOLATES THE TWENTY-FOURTH AMENDMENT

SB7066 contravenes the Twenty-Fourth Amendment's prohibition on laws "den[ying] or abridg[ing]" the right to vote "by reason of failure to pay any poll tax or other tax." The Twenty-Fourth Amendment's prohibition on payments constituting a "poll tax or other tax" is a blanket prohibition. *See Harman v. Forssenius*, 380 U.S. 528, 542 (1965) (under the Twenty-Fourth Amendment, "the poll tax is abolished absolutely as a prerequisite to voting"). Thus, the sole question is whether SB7066 requires payment of "poll tax[es] or other tax[es]." It does.

The Supreme Court has held that the Twenty-Fourth Amendment's expansive language is intended to "nullif[y] sophisticated as well as simple minded modes" of taxing prospective voters and extends to "equivalent or milder substitute[s]" to a general poll tax. *Id.* at 540–41. The inclusion of the phrase "other tax" in addition to poll tax demonstrates that the 24th Amendment reaches beyond formal poll taxes to any state charge that must be paid in exchange for access to the ballot. The legal definition of "tax" at the time of the Twenty-Fourth Amendment's debate and ratification was "a pecuniary contribution . . . for the support of a government." Black's Law Dictionary 28 (4th ed. 1951); *see also*

*United States v. State Tax Comm'n of Miss.*, 41 U.S. 599, 606 (1975) (indicating that the "standard definition of a tax" is an "enforced contribution to provide for the support of government").

SB7066 undoubtedly requires the payment of "other taxes" that meet this simple definition. It directly requires that Plaintiffs pay a variety of fines and fees for the general upkeep of Florida's court system in order to vote. Indeed, Florida abolished general taxes to finance various court functions and now relies on fees and costs to fund those functions. *See supra* § II.D; *Crist*, 56 So.3d at 752 ("[C]ourt-related functions of the clerks' offices are to be funded entirely from filing fees and service charges."). Under SB7066, those fines and fees now must be paid before returning citizens are eligible to vote.

### ii. SB7066 UNCONSTITUTIONALLY CONDITIONS THE ABILITY TO VOTE ON PAYMENT OF FEES IN VIOLATION OF THE FOURTEENTH AMENDMENT

SB7066 violates the Fourteenth Amendment by disqualifying returning citizens from voting until they make "full payment" of any "fines or fees," "restitution," or other financial obligations specified in the sentencing document. Fla. Stat. § 98.0751(2)(a)(5) (2019). The statute creates two classes of individuals—those who can vote because they can pay the required LFOs and those who cannot.

Each Individual Plaintiff has completed his or her sentence including supervision or probation. Most are already registered to vote. Plaintiffs Gruver, Ivey, Tyson, McCoy, and Singleton have already voted in local elections held earlier in 2019, Ex. B, Gruver Decl. ¶ 7; Ex. F, Ivey Decl. ¶ 4; Ex. K, Tyson Decl. ¶ 21, Ex. M, Singleton Decl. ¶ 10, Ex. L, McCoy Decl. ¶ 10, and all other Individual Plaintiffs seek to participate in upcoming elections. Similarly, returning citizen members of Organizational Plaintiffs have registered to vote pursuant to Amendment 4. *See* Ex. Q, Neal Decl. ¶ 7, Ex. R, Nweze Decl.¶ 7. SB7066 now affixes a price tag on their ability to vote by conditioning that right on the completion of all LFOs payments.

This regime directly contravenes the Supreme Court's directive that "wealth or fee paying has . . . no relation to voting qualifications." *Harper*, 383 U.S. at 670. In striking down a poll tax of $1.50,[28] the Supreme Court made clear that "a State violates the Equal Protection Clause . . . whenever it makes the affluence of the voter or payment of any fee an electoral standard." *Id.* at 666. The Supreme Court has repeatedly confirmed that "[t]he basic right to participate in political processes

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[28] The $1.50 poll tax invalidated in *Harper* is equivalent to approximately $12 when adjusted for inflation. *See Dep't of Labor Statistics*, CPI Inflation Calculator, *available at* https://data.bls.gov/cgi-bin/cpicalc.pl (last visited July 31, 2019). Each Individual Plaintiff has substantially greater outstanding LFO debt. *See supra* § II.A (Individual Plaintiffs' LFOs ranging from $59 million to $400).

as voters and candidates cannot be limited to those who can pay for a license." *M.L.B. v. S.L.J.*, 519 U.S. 102, 123–24 (1996) (observing that while "fee requirements" are typically permissible, the Court's precedents "solidly establish [an] exception[] to that general rule" for cases where access to the franchise is at stake); *see also Crawford v. Marion County Election Board*, 553 U.S. 181, 198 (2008) (photo identification requirement for voters at the polls would be invalid "under our reasoning in *Harper*, if the State required voters to pay a tax or a fee to obtain a new photo identification").

By its plain terms, SB7066 requires precisely what *Harper* forbids: it directly requires payment of sums of money and seeks to disqualify Plaintiffs, who are "otherwise qualified to vote" under Amendment 4, but for LFOs that they cannot afford. Like the challenged provisions in *Harper*, SB7066 "exclud[es] those unable to pay a fee to vote or who fail to pay." *Harper*, 383 U.S. at 668.

The Constitution's prohibition on wealth-discrimination in voting applies with equal force to a system that requires returning citizens to pay fees to restore their voting rights. The question in this case is not whether Plaintiffs' rights were lawfully revoked upon felony conviction,[29] but whether discriminatory wealth

[29] While felony convictions are a permissible factor, like residency or citizenship, for states to consider in establishing qualifications for the franchise, the *manner* of felony disenfranchisement must still conform with the Fourteenth Amendment. *See Richardson v. Ramirez*, 418 U.S. 24, 56 (1974) (remanding Plaintiffs' challenge to

restrictions may be placed on a subclass of otherwise eligible voters—people with convictions. They cannot. "[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Harper*, 383 U.S. at 665. In the specific context of voter restoration, the Eleventh Circuit sitting *en banc* has affirmed that "access to the franchise cannot be made to depend on an individual's financial resources." *Johnson*, 405 F.3d at 1216 n.1 (citing *Harper* and observing that "access to the restoration of the franchise" cannot be "based on ability to pay"); *see also Thompson v. Alabama*, 293 F.Supp.3d 1313, 1332 (M.D. Al. 2017) (denying motion to dismiss Fourteenth Amendment challenge to LFO requirement for voting rights restoration).[30]

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felony disenfranchisement for consideration of their claim that the manner of felony disenfranchisement lacked uniformity and violated the Equal Protection Clause); *Hunter v. Underwood*, 471 U.S. 222 (1985) (striking down an intentionally discriminatory criminal disenfranchisement scheme); *Hobson v. Pow*, 434 F. Supp. 362, 366–67 (N.D. Ala. 1977) (striking down a felony disenfranchisement law that discriminated on the basis of gender); *see also Shepherd v. Trevino*, 575 F.2d 1110, 1114 (5th Cir. 1978) (rejecting "proposition that section 2 [of the Fourteenth Amendment] removes all equal protection considerations from state-created classifications denying the right to vote to some felons while granting it to others").

[30] The Second Circuit similarly applied *Harper* in the voting rights restoration context in *Bynum v. Connecticut Comm'n on Forfeited Rights*, 410 F.2d 173, 175 (2d Cir. 1969).

To the extent that SB7066 purports to provide alternatives to fee payment, *see* Fla. Stat. § 98.0751(2)(a)(5)(d)–(e), the proposed alternatives are legally ineffectual and facially inadequate.

*First*, for Florida residents with out-of-state or federal convictions, like Plaintiffs Leicht and Phalen, Florida courts have no jurisdiction to modify their LFOs. Indeed, Representative Grant conceded that this provision "probably doesn't help" returning citizens with out-of-state convictions. May 3 House Hearing at 13:48.

*Second*, even for individuals with in-state convictions, the standard for termination of LFOs is not based on inability to pay, but instead may be granted or withheld arbitrarily or according to unrelated criteria. Fla. Stat. § 98.0751(2)(a)(5)(e)(II). And as discussed above, *see supra* §II.C, SB7066 vests a "payee"—often a private third party—with absolute and unreviewable discretion to deny termination of LFOs to returning citizens who cannot pay. *Id*.

*Third*, the community service option—even where available—is extraordinarily burdensome. Community service hours are credited at the minimum wage rate. *See* Fla. Stat. §§ 938.30(2), 318.18(8)(b)–(1-2); Ex. W, Haughwout Decl. ¶ 25. Returning citizens who have their LFO obligation modified will face the burden of completing hundreds, if not thousands, of community service hours, which will invariably leave many unable to complete the

requirements. Those unable to complete payment of LFOs or a modified community service obligation have no failsafe to mitigate the burden.

Because the modification provisions are not based on ability to pay and will not provide relief to many returning citizens, SB7066 violates *Harper* and *Johnson*'s command that "access to the restoration of the franchise" cannot be "based on ability to pay." *Johnson*, 405 F.3d at 1216 n.1; *see also Harman*, 380 U.S. at 541–42 (holding a state cannot enact what is "plainly a cumbersome procedure" to circumvent prohibition on payment of fees).

### iii. SB7066 UNCONSTITUTIONALLY PUNISHES PLAINTIFFS FOR THEIR INABILITY TO PAY

Furthermore, SB7066 punishes Individual Plaintiffs for failing to do the impossible: pay off their LFOs when they lack the means to do so. The Supreme Court's holding in *Harper* accords with a long line of cases holding that the state cannot apply penalties or withhold access to a significant interest because a person cannot afford to pay LFOs. To do so "would be little more than punishing a person for his poverty" in violation of "the fundamental fairness required by the Fourteenth Amendment." *Bearden*, 461 U.S. at 671, 673.

The Supreme Court has held that it violates basic constitutional principles of equal protection and due process to subject those who cannot afford to pay LFOs to additional punishment not imposed on those who can pay. *See, e.g.*, *Griffin v. Illinois*, 351 U.S. 12, 17–18 (1956); *Bearden*, 461 U.S. at 671; *M.L.B.*, 519 U.S. at

123–24. The Due Process Clause protects individuals from being punished for something beyond their control. *See Scales v. United States*, 367 U.S. 203, 224–25, (1961); *Southwestern Tel. & Tel. Co. v. Danaher*, 238 U.S. 482, 490 (1915). The Equal Protection Clause protects individuals from being "invidiously denied . . . a substantial benefit" available to those with the financial resources to pay. *Bearden*, 461 U.S. at 665. Therefore, "[d]ue process and equal protection principles converge" to prohibit a State from punishing individuals for their inability to pay. *Id*.

To determine whether wealth-based discrimination violates the Fourteenth Amendment, courts evaluate, among other factors, whether individuals "because of their impecunity were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973). "[H]eightened scrutiny" applies "where [these] two conditions [outlined in *Rodriguez*] are met[.]" *ODonnell v. Harris Cty.*, 892 F.3d 147, 162 (5th Cir. 2018); *see also Bearden*, 461 U.S. at 665–66 (evaluating four "factors" relevant to whether wealth-based punishment is unconstitutional and rejecting "pigeonhole analysis" that would automatically apply "rational basis" review"). SB7066 enacts such an absolute deprivation of Individual Plaintiffs' voting rights because of their "impecunity." *Rodriguez*, 411 U.S. at 20. Though all Individual Plaintiffs have

completed their sentences and probation, SB7066 wholly denies their ability to vote because of outstanding LFOs that they are unable to pay. *Id*.

A line of authority directs that States may not deny access to a significant interest or impose additional punishment based on ability to pay even where the State is under no initial obligation to make a benefit available or vindicate any underlying fundamental right. First, *Griffins*, 351 U.S. 12, 18 (1956), held that equal protection and due process prohibited as "invidious discrimination" the denial of trial transcripts to indigent defendants who could not pay the requisite transcript fees. *Griffin* ruled that even though "a State is not required by the Federal Constitution to provide . . . a right to appellate review at all," if it does provide such review, it cannot do so "in a way that discriminates against some convicted defendants on account of their poverty." *Id.*[31] Likewise, *Bearden*, 461 U.S. at 672–73, prohibited the revocation of a person's probation for failure to pay fines or restitution the person was unable to pay, even though an individual has no fundamental right to probation.[32] Regardless, once probation has been granted, it

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[31] *Griffin* imposes a "flat prohibition against pricing indigent defendants out" of an effective appeal and its analysis is not contingent on the threat of possible incarceration. *Mayer v. City of Chicago*, 404 U.S. 189, 196–97 (1971) (requiring state-subsidized transcript where defendant faced only possible fine).

[32] *See Escoe v. Zerbst*, 295 U.S. 490, 492–93 (1935) ("Probation or suspension of sentence comes as an act of grace" and has no "basis in the Constitution, apart from any statute").

violates due process and equal protection to condition probation on the individual's ability to pay. *Bearden*, 461 U.S. at 668 ("it is fundamentally unfair to revoke probation automatically" where probationer cannot pay LFOs); *see also Williams v. Illinois*, 399 U.S. 235, 242 (1970) (noting that the State may not subject a class of persons to additional punishment "solely by reason of their indigency" because the option of payment is "an illusory choice").

In *Rodriguez*, the Supreme Court reviewed a wealth-discrimination challenge to Texas's public school financing system and held that the Constitution affords no fundamental right to education. 411 U.S. at 37. Nevertheless, the Court indicated that it would be unconstitutional if public education was "made available by the State only to those able to pay a tuition assessed against each pupil" because those unable to pay "the prescribed sum . . . would be absolutely precluded from receiving an education." *Id*. at 25 n.60. Texas's program was upheld because the Equal Protection challenge rested on a contention that plaintiffs were "receiving a poorer quality education" than students in wealthier districts as opposed to "no public education" at all. *Id*. at 23.

In reviewing the constitutionality of a sanction for inability to pay, *Bearden* delineated "a careful inquiry" into four factors in order to gauge the proper level of constitutional scrutiny: (1) "the nature of the individual interest affected," (2) "the extent to which it is affected," (3) "the rationality of the connection between

legislative means and purpose," and (4) "the existence of alternative means for effectuating the purpose." 461 U.S. at 666–67 (quotations omitted). *Rodriguez*'s analysis of whether one's "lack of personal resources has [] occasioned an absolute deprivation of the desired benefit," *Rodriguez*, 411 U.S. at 23, may be the strictest articulation of the Supreme Court's wealth-discrimination doctrine.

Under either analytical lens, SB7066 directly contravenes the Fourteenth Amendment's prohibition against punishment for inability to pay. SB7066 imposes an "absolute deprivation" on Individual Plaintiffs' access to the franchise solely because of their "inability to pay the prescribed sum." *Id.* at 25 n.60, 37. *Bearden*'s multi-factor analysis leads to the same conclusion. The first two factors—the nature of the interest and the extent to which it is affected—tip unquestionably in Plaintiffs' favor. The nature of the interest—access to the franchise—is paramount. *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014) ("There is no right more basic in our democracy than the right to participate in electing our political leaders."). And Plaintiffs' interest in voting has been affected to the fullest possible extent; it has been completely denied. As further detailed below, *infra* § III.B.v, there is no rational connection between SB7066's LFO requirement and a legitimate legislative purpose while there are a multitude of alternative and more appropriate means for effectuating any state purpose behind the requirement.

Florida voters were not obligated to approve Amendment 4. But now that they have amended the Florida constitution to automatically restore voting rights to people with past convictions, the Florida Legislature cannot deny access to the franchise solely based on a person's inability to pay. "[O]nce a State affords that right, . . . the State may not "bolt the door to equal justice" based on ability to pay. *M.L.B.*, 519 U.S. at 110 (1996).

### iv. SB7066 UNDULY BURDENS THE RIGHT TO VOTE

SB7066 violates the Fourteenth Amendment for the independent reason that it imposes severe and undue burdens on Individuals Plaintiffs' ability to vote without advancing any legitimate state interest. The sliding scale standard applied to laws that burden the franchise, which balances the severity of the burden against the state's "precise interests put forward by the state as justifications," weighs heavily in Plaintiffs' favor given the insurmountable burden of paying LFOs one cannot afford.[33] *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789).

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[33] The Supreme Court has also carefully scrutinized laws that target "historically disadvantaged or unpopular" groups. *Massachusetts v. U.S. Dep't of Health & Human Servs.*, 682 F.3d 1, 10 (1st Cir. 2012); *see, e.g., Romer v. Evans*, 517 U.S. 620 (1996); *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985). Individuals with a past felony conviction with limited economic means are one such unpopular group. *See Thomas v. Haslam*, 329 F. Supp. 3d 475, 493 (M.D. Tenn. 2018) ("It is difficult to imagine a group more politically unpopular than criminal defendants or less able to protect itself politically than the very poor."). Because marginalized groups typically lack political power, statutes that harm or target those groups merit close consideration. *Cleburne*, 473 U.S. at 440

And even the few voters who can petition and are approved for conversion of LFOs to community service may need to complete months, years, or decades of community service in order to vote.

SB7066 imposes a severe and insurmountable burden on the franchise by requiring Individual Plaintiffs to pay hundreds, thousands, or even millions of dollars that they cannot afford. As the Individual Plaintiffs' cases demonstrate, much of this debt is exorbitant or imposed in plain disregard of their inability to pay. *See supra* § II.A.

The severe burdens imposed by SB7066's fee requirement are underscored by the sheer magnitude of those disenfranchised; SB7066 will preclude *hundreds of thousands* of returning citizens from voting. Dr. Smith has identified 309,148 individuals who have completed their sentence but will be disenfranchised by SB7066 because they have outstanding LFO debt. According to his analysis, only 17.6% for whom Dr. Smith had matched data have paid off their LFOs in the analyzed counties. Ex. A, Smith Report, ¶ 8.

There were too few county clerks of court data for Dr. Smith to estimate with any degree of certainty how many of The Sentencing Project's estimated 1.4

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("[D]iscrimination [against those groups] is unlikely to be soon rectified by legislative means.").

million individuals in Florida who have completed all the terms of their felony conviction might unable to vote under SB7066.[34] *Id.* ¶ 59. But if the estimates of LFOs from the 48 counties analyzed in this report are representative, only a fraction of The Sentencing Project's estimated 1.4 million individuals—roughly 261,861 (17.6%)—will be likely to be eligible to vote under SB7066; the remaining 1,225,986 individuals are likely to be disenfranchised by SB7066 due to their outstanding LFOs. *Id*.

Courts have held that laws completely disenfranchising *thousands* of voters unconstitutionally burden the right to vote. *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014) ("[E]ven one disenfranchised voter—let alone several thousand—is too many"); *Democratic Executive Comm. of Florida v. Lee*, 915 F.3d 1312 (11th Cir. 2019) (upholding a court's decision on *Anderson/Burdick* grounds to enjoin Florida's rejection of approximately 4,000 vote-by-mail ballots for a signature non-match). The burden is sever where, as here, the challenged law likely disenfranchise over a million returning citizens. Ex. A, Smith Report, ¶ 59.

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[34] *See* Christopher Uggen, Ryan Larson, and Sarah Shannon, "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016," *The Sentencing Project*, October 6, 2016, Table 3 (p. 15). Available at: https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/.

The right to vote is severely burdened on the basis of wealth even if there are—in theory—alternate procedures to satisfy LFOs. *See Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1257 (N.D. Fla. 2016) (holding that the right to vote was severely burdened by the state's refusal to extend a voter registration deadline, even if other opportunities to vote were purportedly available). That is particularly the case since modification provisions, now codified in § 98.0751(2)(a)(5), do not meaningfully mitigate the burdens of SB7066. As noted *supra* §§ II.C; III.B.ii, the modification provisions have no application to voters with out-of-state or federal debt and, even when they do apply, are discretionary and unlikely to be granted to most affected voters.

Even if community service conversion is granted, that option is extraordinarily burdensome. Since community service time is credited at minimum wage, the amount of working time required in order to vote would be staggering for many. For instance, Ms. Wright's $50,000 in LFOs would translate into nearly 7,000 hours of community service. If she quit her job and devoted full-time work to community service it would still take her more than three years in order to resolve that debt.

In *Crawford*, the Supreme Court noted that "[t]he severity of that burden [imposed by Indiana's voter ID law]" was "mitigated" because voters "may cast provisional ballots that will ultimately be counted" if they provide an affidavit to

the circuit court clerk's office within 10 days after the election. *Crawford*, 553 U.S. at 199. Unlike the provisional ballot process available in *Crawford*, SB7066 provides no recourse for returning citizens who cannot fulfill their LFO obligation by Election Day.

SB7066 imposes further burdens on returning citizens who may *not* have outstanding LFOs—and are therefore eligible under SB7066—but are stymied by the byzantine labyrinth of state and local records that prevents them from determining their eligibility. A voter's rights are severely burdened if they must expend hours of time and great effort to register and vote. For instance, in *Georgia Coalition of People's Agenda, Inc. v. Kemp*, the Court found that a rule requiring a voter to make two trips to the polls, conduct his own research, and hunt down a name and telephone number to give to election officials to verify his citizenship imposed a severe burden because it went "beyond the merely inconvenient." 347 F. Supp. 3d 1251, 1264 (N.D. Ga. 2018) (quoting *Crawford*, 553 U.S. at 205 (Scalia, J., concurring)).

SB7066 imposes unconstitutional burdens by making compliance virtually impossible for many. Supervisor of Elections Arrington testified that SB7066 greatly increases the difficulty of determining eligibility for voters with past convictions; the voter is responsible for making that determination prior to registering; her office is unable to assist them in that determination; and she

believes that determination will sometimes require an attorney. Ex. V, Arrington Dep. at 109:3–6. She testified that the current set of procedures makes it likely that eligible voters will be unable to ascertain their eligibility and therefore will be prevented from registering to vote. *Id.* at 120:3–8. Even for voters who ultimately determine they are eligible, the extensive research required to comply with the law goes well beyond "mere inconvenience."[35] *Ga. Coalition of People's Agenda*, 347 F. Supp. 3d at 1264; *see also Veasey v. Abbott*, 830 F.3d 216, 254–55 (5th Cir. 2016) (determining that requiring Plaintiff to make a two-hour round trip visit to a state office to obtain government identification made Texas' voter ID law burdensome).

Despite the severe burden SB7066 imposes on returning citizens, there is little, if any, connection between SB7066's LFO requirement and the "precise interests put forward by the state as justifications." *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). As explained more fully below, *see infra* § III.B.v, the legislation was not necessary to implement Amendment 4; SB7066 confuses rather than clarifies applicants' eligibility; and prolonging

[35] By the same token, SB7066 is unconstitutional because it requires only returning citizens to devote extensive time and resources to verify their eligibility even if they have, in fact, fully completed payment on their disqualifying LFOs. *See One Wisconsin Institute, Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016) (treating election regulations as more burdensome in light of their disparate impact on an identifiable subgroup). SB7066's imposes a severely disproportionate impact on Floridians with a past conviction.

disenfranchisement does not aid in the collection of unpaid debt. Denying the right to vote does not effectuate these interests.

### v. SB7066'S LFO REQUIREMENT FAILS EVEN RATIONAL BASIS REVIEW

SB7066 fails any level of scrutiny under the Equal Protection Clause because the law arbitrarily disenfranchises voters. There can be no rational basis for denying individuals the right to vote solely because they are unable to pay.

"[T]his rational-basis standard is 'not a toothless one.'" *Schweiker v. Wilson*, 450 U.S. 221, 234 (1981) (quoting *Mathews v. Lucas*, 427 U.S. 495, 510 (1976)). "To overcome an equal protection challenge, distinctions between similarly situated persons must be reasonable, not arbitrary, and substantially related to the object of the legislation," *MacKenzie v. Rockledge*, 920 F.2d 1554, 1559 (11th Cir. 1991), which itself must "rationally advance[] a reasonable and identifiable governmental objective," *Schweiker*, 450 U.S. at 235.

Even though the Supreme Court has found that States have a legitimate interest in disenfranchising felony offenders, *see Richardson v. Ramirez*, 418 U.S. 24, 54 (1974), courts have routinely determined that felony disenfranchisement schemes would fail rational basis review under the Equal Protection Clause if they create irrational or arbitrary classifications that do not rationally advance the state interest. The Equal Protection Clause, for instance, does not permit Florida to "disenfranchise similarly situated blue-eyed felons but not brown-eyed felons,"

*Owens v. Barnes*, 711 F.2d 25, 27 (3d Cir. 1983); distinguish according to arbitrary criteria such as height, *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (A state could not choose to re-enfranchise "only those felons who are more than six-feet tall."); or based on gender, *Shepherd*, 575 F.2d at 1114; *see also Thompson*, 293 F. Supp. 3d at 1332 (denying Alabama's motion to dismiss a Fourteenth Amendment challenge to Alabama's LFO requirement for voting rights restoration) (noting Alabama's "thin arguments" in support of the LFO requirements). In other words, even if Florida has the general authority to disenfranchise returning citizens, it cannot do so using irrational criteria.

The Supreme Court and Eleventh Circuit have often struck down laws under the Equal Protection Clause pursuant to rational basis review when it has determined that the proposed classification "is so attenuated" to the state's "asserted goal" that the classification is arbitrary, illogical, or irrational. *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985); *see also, e.g.*, *Quinn v. Millsap*, 491 U.S. 95, 108 (1989) (striking down requirement that all state board members own real property, because "an ability to understand the issues concerning one's community does not depend on ownership of real property"); *Williams v. Vermont*, 472 U.S. 14, 25 (1985) (finding no rational connection between state's interest in incentivizing residents to buy cars in Vermont and taxing cars purchased by people outside Vermont before those people moved to the state); *Fulani v. Krivanek*, 973

F.2d 1539, 1547 (11th Cir. 1992) (holding ability to pay a fee was not rationally related to the state's claimed interest); *Harper*, 383 U.S. at 670 ("wealth or fee paying has . . . no relation to voting qualifications").

In *Yeung v. INS*, the Eleventh Circuit invalidated a requirement under the Immigration and Nationality Act that permitted only those immigrants who departed and returned to the U.S. after being convicted of a deportable offense from applying for a waiver of excludability. 76 F.3d 337 (11th Cir. 1995). *Yeung* held that the requirement violated equal protection because it "create[d] two classes of aliens identical in every respect except [one]." *Id.* at 339. The court found that the two classes "are similarly situated and deserving of similar treatment under the law," and were "equally deserving" of the benefit conferred by statute despite a "slender factual distinction." *Id.* at 340.

SB7066 erects a system whereby certain returning citizens obtain their voting rights and other similarly situated returning citizens do not, based entirely on a "slender factual distinction" not germane to voting: their ability to pay LFOs. Regardless of any general interest in disenfranchising returning citizens or requiring payment of LFOs, Florida has *no* rational reason to grant voter restoration only to those returning citizens who have means to pay their LFOs. This classification that SB7066 creates between those with and without means to pay LFOs serves none of Florida's stated or unstated interests. This classification

cannot promote rehabilitation, incentivize payment of unpaid debts from people who are unable to pay their LFOs, nor does it help clarify an individual's eligibility for voting rights restoration when so few returning citizens even know or can know how much debt they have outstanding.

There is little, if any, rational connection between SB7066's LFO requirement and any legitimate legislative purpose and there are a multitude of alternative and more appropriate means for effectuating any state purpose behind the requirement.

*First*, Defendants cannot justify the burdens of SB7066 by arguing that the legislation was necessary to implement Amendment 4. *See supra* § III.B.iv. There is a presumption that provisions of the Florida Constitution are self-executing, *see, e.g.*, *Browning v. Fla. Hometown Democracy, Inc.*, 29 So. 3d 1053, 1064 (Fla. 2010), because "in the absence of such presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people," *Fla. Hosp. Waterman v. Buster*, 984 So. 2d 478, 485–86 (Fla. 2008) (quoting *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960)). While the Legislature may "supplement, protect, or further the availability of the constitutionally conferred right . . . the Legislature may not modify the right in such a fashion that it alters or frustrates the intent of the framers and the people." *Fla. Hometown Democracy, Inc.*, 29 So. 3d at 1064. Moreover, Florida *did*

implement Amendment 4, register returning citizens, including most Individual Plaintiffs, and hold elections without SB7066. *See*, *e.g*, Ex. V, Arrington Dep. at 54:23–24 ("I don't know if [Amendment 4] needed explaining."), *id.* at 55:24–25 (noting that Amendment 4 was implemented in January 2019).

In any event, any implementing legislation of Amendment 4 certainly did not need to include the LFO requirement in order to serve that purpose. Legislators sponsoring SB7066 and its precursor bills implicitly conceded that less restrictive requirements for restoration would have effectuated Amendment 4 by introducing numerous bills and amendments creating alternative restoration schemes, yet in the end the legislature adopted the most restrictive among them.[36]

*Second*, SB7066 confuses rather than clarifies applicants' eligibility. SB7066 fails to provide any criteria or guidelines for how an SOE is supposed to "verify and make a final determination . . . regarding whether the person who registers to vote is eligible pursuant" to Amendment 4. Fla. Stat. § 98.0751(3)(b) (2019). Instead of providing clear criteria, SB7066 requires SOEs to search for, find, and parse a morass of convoluted, incomplete, sometimes inaccurate, and difficult to access LFO data. SB7066 does not provide *more* clarity for SOEs, or

[36] *See* Video: May 2, 2019, Senate Hearing at 6:35:50–6:38:38, http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2019051020&Redirect=true (colloquy between Senators Pizzo and Brandes).

serve to advance uniformity in registration across counties throughout the state. *See supra* § II.F-H, J.

*Third*, to the extent SB7066 is intended to promote Florida's interest in collecting unpaid debts, imposing prolonged disenfranchisement on people unable to pay does not "aid[] collection of the revenue." *Tate v. Short*, 401 U.S. 395, 399 (1971); *see also Bearden*, 461 U.S. at 670 ("Revoking the probation of someone who through no fault of his own is unable to make restitution will not make restitution suddenly forthcoming."); *Zablocki v. Redhail*, 434 U.S. 347, 389 (1978) ("[W]ith respect to individuals who are unable to meet the statutory requirements, the statute merely prevents the applicant from getting married, without delivering any money at all into the hands of the applicant's prior children."). An interest in collecting debts cannot support a policy that imposes sanctions without regard to ability to pay. SB7066 provides no such safeguard. *See supra* § II.C.

Absent SB7066, Individual Plaintiffs are under the *exact* same legal obligation to pay their LFOs with or without SB7066. Moreover, Florida retains all the ordinary means of collecting that debt. If states have existing "other means for exacting compliance with [payments]" that are "at least as effective," *Zablocki*, 434 U.S. at 389, it "necessarily casts considerable doubt upon the proposition that the [new provision] could rationally have been intended to prevent those very same abuses[.]" *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 537 (1973); *see also*

*Eisenstadt v. Baird*, 405 U.S. 438, 452 (1972) (finding that a law was not rationally related to its stated purpose of "preventing[ing] the distribution of" dangerous drugs, because existing "federal and state laws already regulat[ed] the distribution of harmful drugs," making the new law "not required"). Here, Florida retains all the ordinary means of collecting its debt. But it cannot predicate the right to vote on payment of debts that it could not, for example, enforce through criminal contempt. Such a method of debt collection—beyond being unproductive—is unduly harsh and discriminatory. *See James v. Strange*, 407 U.S. 128, 138 (1972) (striking down a recoupment statute that denied debtors the protections provided for indigent debtors in the civil judgment context) ("[A] State may not impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor.").

*Fourth*, SB7066 does not encourage rehabilitation. In fact, multiple Individual Plaintiffs dutifully make monthly payments on those LFOs. *See* Ex. E, Leicht Decl., ¶ 6; Ex. I, Phalen Decl., ¶¶ 3, 9; Ex. N, Raysor Decl., ¶ 8. If anything, SB7066 *discourages* rehabilitation: "[I]t is more likely that 'invisible punishments such as disenfranchisement act as barriers to successful rehabilitation.'"[37] Indeed,

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[37] Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 414 (2012) (quoting Jeff Manza & Christopher Uggen, Locked Out: Felon Disenfranchisement and American Democracy 25 (Dedi Felman ed., 2006)).

"empirical research . . . supports the argument that democratic participation is positively associated with a reduction in recidivism[.]" *Id.* Recidivism rates are higher in states with permanent felony disenfranchisement than those in states that restore voting rights post-release.[38] SB7066 has, at best, a tenuous connection to any legitimate government interest, and fails to justify the burden on Individual Plaintiffs' voting rights.

The Equal Protection Clause is not a rubber stamp, even when courts apply rational basis review. The Supreme Court and this Court have consistently required that legislatures provide a logical and reasonable connection between a challenged legislative classification and a reasonable government objective. *See e.g.*, *Fla. Democratic Party v. Detzner*, No. 4:16-cv-607-MW/CAS, 2016 WL 6090943, *7 (N.D. Fla. Oct. 16, 2016) (noting that Florida's stated interests had no rational relationship to Florida's statutory scheme.); *Scott*, 215 F. Supp. 3d at 1257 ("Florida's statutory framework is unconstitutional even if rational basis review applied (which it does not)."). Were rational basis review proper here—and it is not—legislation that treats similarly situated citizens differently based exclusively on their wealth cannot withstand any level of constitutional scrutiny.

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[38] *See* U.S. Commission on Civil Rights, Collateral Consequences: The Crossroads of Punishment, Redemption and the Effects on Communities, 100 (June 13, 2019).

### vi. SB7066 UNCONSTITUTIONALLY STRIPS PLAINTIFFS OF THE RIGHT TO VOTE

The Fourteenth Amendment safeguards the right to vote—"a fundamental political right." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *see also McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014) ("There is no right more basic in our democracy than the right to participate in electing our political leaders."). Constitutional protection for the fundamental right to vote applies to returning citizens whose voting rights were automatically restored pursuant to Amendment 4, just as it would to any other Florida electors.

The Equal Protection Clause guarantees qualified voters a right to participate equally with other qualified voters in the electoral process. *Reynolds*, 377 U.S. at 565–66. Having had their voting rights automatically restored by Amendment 4, Individual Plaintiffs are entitled to constitutional protection of their rights on equal terms with all other Florida voters. *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000) ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."); *Obama for Am. v. Husted*, 697 F.3d 423, 435 (6th Cir. 2012) ("*OFA*") (holding that early voting access, once granted, could not be arbitrarily revoked for one group of voters).

SB7066 purports to retract Individual Plaintiffs' voting rights, unless they make full payment of their outstanding LFOs. The Fourteenth Amendment,

however, does not authorize Defendants to strip voting rights after they have been restored, absent a subsequent disenfranchising felony conviction. *See United States v. Tait*, 202 F.3d 1320, 1324–25 (11th Cir. 2000) (holding a federal statute barring persons with a felony conviction from possessing firearms could not be applied to plaintiff whose civil rights had been automatically restored according to state law, because having "civil rights [] restored" gave plaintiff "the same protections as any other person without state-imposed limitations on his civil rights[.]"); *cf. Perry v. Brown*, 671 F.3d 1052, 1079–80 (9th Cir. 2012), *vacated and remanded sub nom. Hollingsworth v. Perry*, 570 U.S. 693 (2013) ("Withdrawing from a disfavored group the right to obtain a designation with significant societal consequences is different from declining to extend that designation in the first place, regardless of whether the right was withdrawn after a week, a year, or a decade."); *see also Doe v. Trump*, 275 F. Supp. 3d 167, 215 (D.D.C. 2017) ("The targeted revocation of rights from a particular class of people which they had previously enjoyed—for however short a period of time—is a fundamentally different act than not giving those rights in the first place"). Individual Plaintiffs' disqualification from voting terminated when Amendment 4 became effective. *See* Fla. Const., Art VI § 4. The State may not retroactively claw back Individual Plaintiffs' rights after restoration.

### vii. DEFENDANTS' IMPLEMENTATION OF SB7066 VIOLATES DUE PROCESS

Plaintiffs are likely to succeed on the merits of their claims because SB7066—as currently implemented—violates the Due Process Clause. The implementation of SB7066 will certainly lead to erroneous deprivation of the right to vote in violation of procedural due process. SB7066 also renders Florida's prohibitions on registering and voting while ineligible unconstitutionally vague. Florida is woefully unprepared to implement SB7066, as lawmakers themselves recognized in sketching out a "Voting Rights Work Group," necessary to deploy its intricate statutory scheme. This Court should enjoin its enforcement to ensure that Defendants do not erroneously deprive the right to vote to innumerable eligible voters.

SB7066 conditions voter eligibility on whether a person has fully paid all LFOs incurred from a disqualifying offense. But Florida has *no* reliable and credible public data for individuals or election officials to determine their outstanding LFOs, and no way to calculate which outstanding obligations are exempt because they "accrue[d] after the date the obligation is ordered." Fla. Stat. § 98.0751(2)(a)(5)(c). Defendants do not reliably track LFOs for those discharged from supervision in the State, and they have no system whatsoever to calculate disqualifying debt from convictions in other States. *See supra* § II.F–H, J. As demonstrated by the records of Plaintiffs Miller and Tyson, State and county

records for the same conviction offer dramatically different accountings of what is owed. *See* Ex. J, Miller Decl. ¶¶ 4–7; Ex. K, Tyson Decl. ¶¶ 4–17. Moreover, state agencies incorrectly show outstanding debt, even after the original amount has been paid off, because of surcharges automatically taken out of returning citizens' payments. Ex. J, Miller Decl. ¶ 7.

Meanwhile, Defendant Lee has provided no meaningful guidance to SOEs on how to implement SB7066. Supervisors of Elections do not have an understanding of which LFOs are disqualifying under SB7066 and do not have the means to assess whether disqualifying LFOs are settled. Thus, SOEs are unable to provide voters with basic information about voter eligibility requirements and are unable to properly perform their function as the final arbiter of whether a voter should be removed from the rolls. The result is that eligible voters will be denied access to voter registration and erroneously removed from the rolls. And the application of SB7066 will undoubtedly vary from county to county and voter to voter. *See* Ex. V, Arrington Dep. at 104:25-105:6.

This failure to provide the means of proper implementation of SB7066 gives rise to serious due process violations under both the *Matthews v. Eldridge* framework as well as the Supreme Court's void for vagueness doctrine.

Under *Mathews v. Eldridge*, the determination of what process is due rests on the balance between (1) the interest affected; (2) the risk of erroneous

deprivation under the current procedures and the "probable value, if any, of additional or substitute procedural safeguards;" and (3) the state's interest, including the "fiscal and administrative burdens" additional procedures would entail. 424 U.S. 319, 335 (1976).

The interest at stake—the right to vote—is fundamental. Despite the critical importance of this interest, SB7066 is practically guaranteed to cause erroneous deprivation of the right to vote in a several ways. *First*, people with past convictions who do *not* have any disqualifying LFOs—and are therefore eligible voters even under SB7066—will be dissuaded from registering because the State has deprived them of the necessary resources to determine their eligibility under penalty of perjury yet requires them to affirm their eligibility in order to register to vote. *See* Ex. V, Arrington Dep. at 107:18-22, 119:22-120:7. Such a Kafka-esque double bind violates the core procedural protections guaranteed by the Due Process Clause.

*Second*, even if a person is able to confirm their eligibility to register to vote, there is a high likelihood of erroneous deprivation by election officials because SB7066 directs them to use data that is flawed and inaccurate to determine their eligibility before they register.[39] *See supra* § II.F–H, J. Given the admissions already in the record, it is plain that the Department and Supervisors of Elections cannot

[39] Voters who are already on the rolls are entitled to notice and an opportunity to respond prior to removal from the registration rolls. However, the Supervisors of Elections are the arbiters in that appeals process. A process wherein the arbiter does not understand the rules and lacks the means to assess eligibility hardly meets even the lowest threshold of due process.

accurately make determinations about eligibility pursuant to Amendment 4 to allow a returning citizen to verify his or her eligibility to register. *See id*.; *infra* § III.C; *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("[T]he root requirement of the Due Process Clause" is "that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest." (emphasis in original) (internal quotation marks omitted)); *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982) ("[A]bsent the necessity of quick action by the State or the impracticality of providing any pre-deprivation process, a post-deprivation hearing [] would be constitutionally inadequate." (internal quotation marks omitted)). SB7066 has been effective for over one month but Defendants have outlined no system by which they could possibly implement it without a high risk of error.

*Third*, SB7066 erects a system of voting rights restoration that requires the payment of certain LFOs and not other LFOs. *See infra* § II.C. Yet, SB7066 creates *no* procedural mechanism for Plaintiffs to pay their disqualifying LFOs prior to any other non-disqualifying LFOs. *See supra* § II.F. Individual Plaintiffs are unaware of any mechanism available to them to prioritize the payment of their disqualifying LFOs. In other words, SB7066 grants citizens the substantive right to vote if they have paid their disqualifying LFOs, even if they have not paid other LFOs but provides no procedural mechanism for Individual Plaintiffs to vindicate that right. This system does not accord with fundamental principles of fairness.

For much the same reasons that SB7066 conflicts with basic tenets of procedural due process, it also runs afoul of the Supreme Court's void for vagueness doctrine. The Due Process Clause "requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage

arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). A law that fails to provide sufficient notice to citizens or "minimal guidelines to govern law enforcement" is "void-for-vagueness." *Id.* at 357–58 (quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)). As the Supreme Court held just last month, vague laws transgress constitutional requirements because they "leave people with no sure way to know what consequences will attach to their conduct. *U.S. v. Davis*, No. 18-432 (June 24, 2019) slip op. at 1.

The void-for-vagueness doctrine applies even where the language of a statute is not itself ambiguous, but it requires citizens to guess at how the law will apply to indiscernible facts. *See Giaccio v. State of Pa.*, 382 U.S. 399, 402 (1966) ("It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits[.]"); *Watkins v. U.S.*, 354 U.S. 178, 209–15 (1957) (invalidating conviction because application of the law necessitated reference to sources of factual information that "leave the matter in grave doubt"); *Int'l Harvester Co. of Am. v. Commonwealth of Ky.*, 234 U.S. 216, 221 (1914) (invalidating conviction based on Kentucky courts' construction of several statutes together because the construction provided a standard premised on an unknowable fact: "the market value . . . under normal market conditions"); *see also* Anthony G. Amsterdam, Note, *The Void for Vagueness Doctrine in the Supreme Court*, 109 U.

Pa. L. Rev. 67, 68 n.4 (1960) (noting that in *Watkins* "vagueness was imported into a statute relatively definite on its face by a chain of affairs in the several-year history of a legislative investigatory committee").

Plaintiffs cannot adhere to a law that is, in practice, impossible to follow. In *League of Women Voters of Florida v. Browning*, this court enjoined a law that burdened voting rights and voter registration activities because in practice it imposed requirements that were "virtually unintelligible, close to the point, if not past the point, at which a statute—especially one that regulates First Amendment rights and is accompanied by substantial penalties—becomes void for vagueness." 863 F. Supp. 2d 1155, 1160–61 (N.D. Fla. 2012). The same is true here.

SB7066 requires returning citizens to affirm that their "voting rights have been restored," Fla. Stat. § 97.052(2)(t), and returning citizens who register or vote while mistakenly believing themselves eligible risk prosecution for a felony offense. *See* Fla. Stat. §§ 104.011, 104.15. But as detailed above, neither SB7066 nor Sections 104.011 and 104.15 provide election officials or returning citizens an accurate and reliable data source for determining which returning citizens continue to owe LFOs and are therefore prohibited from registering to vote. In fact, because the data concerning outstanding LFOs are so unreliable and inconsistent, even returning citizens who exercise extraordinary diligence and care will risk exposure to prosecution.

SB7066's regime unconstitutionally chills individuals based on uncertainty over whether their conduct violates the law. Even to the extent that Florida's prosecutors decline to pursue criminal charges for unlawful registration based on the uncertainty surrounding SB7066's regime, that would not save the statute. *See United States v. Stevens*, 559 U.S. 460, 480 (2010) (statutory scheme is not made constitutional "merely because the Government promised to use it responsibly").

### C. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY IN THE ABSENCE OF A PRELIMINARY INJUNCTION

The injury to Individual Plaintiffs and members of Organizational Plaintiffs in the absence of an injunction is by its nature irreparable. Irreparable injury is presumed when a restriction on the right to vote is at issue. *League of Women Voters of Florida v. Detzner*, 314 F. Supp. 3d 1205, 1223 (N.D. Fla. 2018) (*quoting OFA*, 697 F.3d at 436). Once the election comes and goes, "there can be no do-over and no redress." *Id.* (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d at 247); *Madera v. Detzner*, 325 F. Supp 3d 1269, 1282 (N.D. Fla. 2018) (same).

Consistent with this authority, courts, including this one, routinely grant preliminary injunctions in election-related cases because they are necessary to prevent irreparable injury. *See, e.g.*, *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d at 1318 (affirming a preliminary injunction of a signature requirement which posed an undue burden on the right to vote ); *Detzner*, 314 F. Supp. 3d at 1224–25

(observing that "irreparable injury is presumed" when plaintiffs right to vote is at stake); *LWVF v. Browning*, 863 F. Supp. 2d at 1167.

Without preliminary injunctive relief, Individual Plaintiffs, members of Organizational Plaintiffs, and prospective class members in the *Raysor* complaint are under imminent threat of having their voting rights revoked because they cannot pay outstanding LFOs before upcoming elections. Because of outstanding debt or their inability to determine their disqualifying LFOs, members of Organizational Plaintiffs and prospective class members in the *Raysor* complaint are unable to register or vote in September and November municipal elections, as well as potential December 2019 runoff elections. *See supra*, § II.K. Likewise, Individual Plaintiffs and members of Organizational Plaintiffs would further be denied the right to vote in the March 2020 presidential primary elections. *Id*. Individual Plaintiffs and other organizational members who are registered to vote are at risk of being removed from the rolls and fear criminal prosecution should they exercise their voting rights. If purged from the rolls, affected individuals will lose their ability to sign petitions and otherwise participate in the democratic process. *See* Fla. Stat. § 100.371(11)(d). Given the high risk of error in SB7066's implementation, affected individuals are at a high risk of erroneous deprivation of the right to vote.

Each Organizational Plaintiff also will suffer direct irreparable injury to its organizational mission upon SB7066's enactment. Ex. Q, Neal Decl. ¶¶ 2–3, 8–9; Ex. R, Nweze Decl. ¶¶ 2, 5, 10–11. *See, e.g.*, *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010) ("An injury is irreparable if it cannot be undone through monetary remedies."); *see also LWVF v. Browning*, 863 F. Supp. 2d at 1160; *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1339–40 (S.D. Fla. 2006) (finding irreparable harm where organization "halted or significantly scaled back their voter registration operations" and "los[t] valuable time" in registering voters prior to registration deadline); *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (finding "obstacles" that "make it more difficult for the Leagues to accomplish their primary mission of registering voters" before registration deadline "provide injury for purposes both of standing and irreparable harm.").

### D. THE BALANCE OF THE EQUITIES FAVORS GRANTING PRELIMINARY INJUNCTION

The threatened injury of voter disenfranchisement outweighs any damage that an injunction might cause to Defendants.

A preliminary injunction will not cause Defendants any harm. Plaintiffs' requested relief requires Defendants to continue to register Individual Plaintiffs, members of Organizational Plaintiffs, and other returning citizens, as they did between January 8, 2019 and July 1, 2019. Fla. Stat. § 97.053(1). Defendants will

suffer no harm in continuing in this manner until there is a final resolution to this case. *Lambert*, 695 F.2d at 540 ("[T]he harm considered by the district court is necessarily confined to that which might occur in the interval between ruling on the preliminary injunction and trial on the merits."). Meanwhile, Individual Plaintiffs like Mr. Gruver, Mr. Mitchell, Ms. Wright, Mr. Miller, Pastor Tyson and others similarly situated, including members of Organizational Plaintiffs, are at risk of being purged from the voter rolls and re-disenfranchised in upcoming elections because they have outstanding LFOs and cannot pay them. *See, e.g.*, Ex. B, Gruver Decl. ¶¶ 6, 8; Ex. C, Mitchell Decl. ¶¶ 19–22; Ex. H, Wright Decl. ¶¶ 13–14, 23; Ex. J, Miller Decl. ¶¶ 8–9; Ex. K, Tyson Decl. ¶¶ 24.

Defendants may contend that the State will incur administrative burdens or costs if injunctive relief is granted. But the accuracy and significance of any such harms to the State are doubtful. As noted above, SB7066 creates, rather than reduces, administrative burdens and costs on the state. *See supra* § III.B.vii. And SB7066 creates more confusion for Defendants *and* Plaintiffs rather than providing clarity to them. *See supra* § III.B.iv–v.

Even assuming that Defendants would be harmed by an injunction, courts have repeatedly held that such administrative burdens and costs do not outweigh fundamental voting rights. *See, e.g.*, *OFA*, 697 F.3d at 434 ("[T]he State has not shown that its regulatory interest in smooth election administration is 'important,'

much less 'sufficiently weighty' to justify the burden it has placed on nonmilitary Ohio voters."); *United States v. Georgia*, 892 F. Supp. 2d 1367, 1377 (N.D. Ga. 2012) (describing the imposition of administrative, time, and financial burdens on Georgia as "minor when balanced against the right to vote, a right that is essential to an effective democracy"). Thus, "[a]ny potential hardship imposed" by the State "pales in comparison to that imposed by unconstitutionally depriving [Plaintiffs] of their right to vote." *Fla. Democratic Party*, 2016 WL 6090943, at *8 (administrative inconvenience "cannot justify stripping Florida voters of their fundamental right to vote and to have their votes counted.").

### E. A PRELIMINARY INJUNCTION WILL SERVE THE PUBLIC INTEREST

Enjoining SB7066 undoubtedly promotes the public interest by allowing returning citizens with LFOs to register and vote as Amendment 4 intended. "The vindication of constitutional rights and the enforcement of a federal statute serve the public interest almost by definition." *LWVF v. Browning*, 863 F. Supp. 2d at 1167. The public interest "favors permitting as many qualified voters to vote as possible," *OFA*, 697 F.3d at 437, so that every eligible voter "can exercise their constitutional right to vote," *Scott*, 215 F. Supp. 3d at 1258. By contrast, permitting SB7066's enforcement will violate Plaintiffs' voting right and strike "at the heart of representative government." *Reynolds*, 377 U.S. at 555.

SB7066 has already begun to wreak havoc on election administration. Under SB7066, SOEs are now responsible for determining the satisfaction of LFOs for every voter registration applicant who identifies as eligible pursuant to Amendment 4 on the new registration forms. SOEs are not equipped for this task. *See generally* Ex. V, Arrington Dep. SOEs have received no meaningful guidance outlining the contours of SB7066's requirements or how to enforce them. *Id.* Defendant Lee and SOEs will be unable to make accurate determinations for applicants given ambiguous, erroneous, and conflicting county and State records. Moreover, such determinations would require Defendant Lee and/or SOEs to determine whether applicants owed or satisfied LFOs in *every* judicial jurisdiction in the country. SB7066 thus makes uniform, nondiscriminatory, and accurate voter registration and voter list maintenance impossible.

SB7066 resurrects the very lifetime disenfranchisement that motivated millions of voters to support Amendment 4 by predicating the ability to register to vote and vote on wealth. Allowing SB7066 to stand thus will erode the public's confidence in Florida elections. *See Ga. Muslim Voter Project v. Kemp*, 918 F.3d 1262, 1274 (11th Cir. 2019) (protecting public confidence in elections is critical to democracy and "public knowledge that legitimate votes were not counted due to no fault of the voters . . . would be harmful to the public's perception of the election's legitimacy") (citing *Crawford*, 553 U.S. at 197 (plurality opinion)).

The public interest therefore weighs in favor of enjoining SB7066. As deadlines approach and pass to register, sign constitutional amendments initiatives, and vote, SB7066 unconstitutionally deprives Plaintiffs of these rights. Under these circumstances, "the injunction's cautious protection of the Plaintiffs' franchise-related rights is without question in the public interest." *Cox*, 408 F.3d at 1355.

## IV. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request the Court grant their Motion for Preliminary Injunction.

## NORTHERN DISTRICT OF FLORIDA LOCAL RULE 7.1 CERTIFICATION

Pursuant to N.D. Fla. L.R. 7.1(F), this memorandum contains fewer than 18,000 words as consented to by all Defendants.

**Date: August 2, 2019**

Respectfully submitted,

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