DOCKET NO. 19-14551

for the

KELVIN LEON JONES, JEFF GRUVER, EMORY MARQUIS MITCHELL, BETTY RIDDLE, KRISTOPHER WRENCH, KEITH IVEY, KAREN LEICHT, RAQUEL WRIGHT, STEVEN PHALEN, CLIFFORD TYSON, JERMAINE MILLER, FLORIDA STATE CONFERENCE OF THE NAACP, ORANGE COUNTY BRANCH OF THE NAACP, LEAGUE OF WOMEN VOTERS OF FLORIDA, CURTIS D. BRYANT, JR., JESSE D. HAMILTON, LATOYA A

Defendants/Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
CASE NO: 4:19-cv-00300-RH-MJF
(Hon. Robert L. Hinkle)

BRIEF OF GRUVER/JONES PLAINTIFFS/APPELLEES

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

STATEMENT REGARDING ORAL ARGUMENT

This Court's Order on December 13, 2019 provides for the appeal of the district court's preliminary injunction order to be heard for oral argument on January 28, 2020. Appellees agree that this important voting rights case warrants oral argument.

TABLE OF AUTHORITIES

Cases

The district court therefore correctly determined that "Florida ... cannot deny restoration of a felon's right to vote solely because the felon does not have the financial resources to pay the ... financial obligations." ECF 207 at 30.[2] The district court then issued a narrow injunction prohibiting the Secretary of State (the "Secretary") from removing the 17 Plaintiffs from the voter rolls or preventing them from voting based on outstanding LFOs that they cannot pay.

The Equal Protection Clause does not allow a state to condition restoration of the franchise on wealth. If this Court reverses the preliminary injunction, Plaintiffs will suffer the irreparable constitutional injury of being disenfranchised in upcoming elections solely because they lack financial resources. Defendants, on the other hand, have failed to identify any concrete harm that the district court's injunction causes them. Moreover, reversing the district court's order risks creating confusion and chaos among Florida's electorate and election officials just ahead of the February 18, 2020 registration deadline, and the early voting period that begins on March 7, 2020.

For these reasons, this Court should affirm the district court's preliminary injunction.

JURISDICTIONAL STATEMENT

The district court's subject matter jurisdiction arises under 28 U.S.C. §§ 1331 and 1343. It granted a preliminary injunction on October 18, 2019. ECF

other three prerequisites to a preliminary injunction of the scope set out in [the] order." ECF 207

requirement violates the Fourteenth Amendment's prohibitions on conditioning access to the franchise on a person's financial resources?

STATEMENT OF THE CASE

I. Factual Background

A. Amendment 4's Passage

Before January 2019, Florida was one of only four States that permanently disenfranchised nearly all its citizens convicted of a felony and had the most punitive felony disenfranchisement scheme in the nation. As of 2016, Florida was responsible for more than 25% of criminal disenfranchisement nationwide. *See* ECF 98-1 at 12–13. Although Black people comprised 16% of Florida's 2016 population, they comprised approximately 33% of those disenfranchised because of felony convictions. *Id.* at 12 n.3.

During the 2018 elections, returning citizens launched a ballot initiative campaign to end Florida's system of permanent disenfranchisement. W

Amendment 4's passage. ECF 207 at 6. Following Amendment 4's ratification, Article VI, Section 4 of Florida's Constitution, in pertinent part, 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 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(a), (b) (2019) (emphasis added).

Amendment 4 went into effect on January 8, 2019, automatically restoring voting rights to returning citizens. *See 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[.]").

B. Amendment 4's Implementation Before July 1, 2019

From January 8 until July 1, 2019, the Florida Department of State's ("DOS") Division of Elections (the "Division") and county Supervisors of Elections ("SOEs") treated returning citizens as eligible registrants, approving their facially sufficient voter registration applications, notwithstanding any outstanding LFOs they might have had. On February 11, 2019, the Secretary instructed SOEs

requires payment of LFOs that a Florida court has converted to a civil lien—"a longstanding Florida procedure that courts often use for obligations a criminal defendant cannot afford to pay." ECF 207 at 7; *see also* Fla. H. Staff Analysis, H.B. 1381 (May 13, 1998) (noting courts typically reserve civil lien conversion for when returning citizens have "no ability to pay" the LFOs assessed); ECF 98-25 ¶ 14 (courts enter civil judgments "when clients are indigent or the amount of [LFOs] owed is so high that it is unrealistic to believe they could ever pay it.").

During the 2019 legislative session, election officials noted that procuring complete and accurate information about outstanding LFOs owed by returning citizens is impossible, because Florida's records of LFOs are decentralized, and sometimes inaccessible, inconsistent, or missing altogether. ECF 207 at 43–44; Complaint at 45–46,

commission "a study to know how many people are impacted" by SB7066; similarly, another co-sponsor, Representative Perry, testified that he did not know how many Floridians had outstanding LFOs. *Gruver* Compl. at 49.

In his signing statement, Governor DeSantis opined that the breadth of automatic restoration under Amendment 4 "was a mistake." *See* Letter from Ron DeSantis, Governor, to Laurel Lee, Secretary of State (June 28, 2019), http://www.flgov.com/wp-content/uploads/2019/06/6.282.pdf.

D. Effect of SB7066

For many returning citizens who are unable to pay, including Plaintiffs, SB7066 reinstates lifetime disenfranchisement. *See, e.g.*, *Gruver* Compl. at 47–48. The Florida House of Representatives Staff determined in two reports that "[m]ost criminal defendants are indigent." Fla. H. Staff Analysis, H.B. 1381 (May 13, 1998); Fla. H. Staff Analysis, H.B. 13 (June 23, 1999). In ha (lorida

Plaintiffs' expert, Dr. Daniel Smith, collected data from 58 of Florida's 67 counties, and identified 542,207 returning citizens with Florida felony convictions. ECF 153-1 ¶¶ 5–6. Dr. Smith determined 19.5% of these individuals have no outstanding LFOs, while the remaining 80.5%—more than 436,000 people—have outstanding LFOs and remain disenfranchised by SB7066. *Id.* at 4, tbl.1, ¶ 7. Nearly 59% of Floridians with felony convictions have at least $500 in outstanding LFOs; 37.5% have at least $1,000 outstanding. *Id.* at 12, tbl. 3. Black returning citizens are more likely than white returning citizens to have outstanding LFOs. *See id.*, *see also id.* ¶ 9.

Dr. Smith's findings were based on data available at the time of his analysis. They are limited to data from the 58 counties that provided himFpithdt t wa3.6(n)8.3(sd)]TJ -

and reliable records, *see* ECF 207 at 43–44; ECF 152-93 at 184:14–20; ECF 153-4 (stating records are often misplaced or destroyed by Clerks of Court, and some clerks will only provide Division unofficial summaries instead of case documents).

SB7066 established a Restoration of Voting Rights Work Group, tasked with studying restoration of voting rights in Florida. Fla. Laws Ch. 2019-62 § 33. In November 2019, the Work Group submitted a report with non-binding recommendations, including that individuals be provided an opportunity "to demonstrate a partial or full inability to pay outstanding [LFOs] and obtain a judicial determination on ability to pay." ECF 240-1 at 25. None of the recommendations have been implemented.

F. Upcoming Elections and Registration Deadline

Florida is holding a presidential preference primary and local elections on March 17, 2020, with an early voting period beginning March 7, 2020. The registration deadline is February 18, 2020. Fla. Stat. § 97.055(1)(a). Plaintiffs seek to vote in the upcoming election. Though the State is not yet implementing SB7066's LFO provisions, Plaintiffs face removal from the rolls and potential prosecution for illegal voting if the injunction is reversed.

II. Prior Proceedings

Gruver Plaintiffs[8] filed suit on June 28, 2019. *Gruver* Compl. Luis Mendez filed suit on June 15, 2019, No. 4:19-cv-272, ECF 1. Kelvin Leon Jones filed suit on June 28, 2019, No. 4:19-cv-300, ECF 1. The case was subsequently consolidated with two other actions filed in the Northern District of Florida. Order of Transfer & Consolidation, *Gruver v. Barton*, No. 1:19-cv-121 (N.D. Fla. June 30, 2019), ECF 3.[9] Defendants in the consolidated actions are the Secretary, the Governor, and SOEs of the ten counties where Plaintiffs reside.

SOE Defendants ("County Defendants") jointly moved to dismiss Plaintiffs' Complaints. ECF 96. State Defendants filed a separate motion to dismiss or abstain. ECF 97. The district court denied the motions on August 15, 2019 and October 18, 2019, respectively. ECF 107; 207.

On August 2, 2019, all Plaintiffs in the consolidated cases jointly moved for a preliminary injunction on their claims under the First, Fourteenth, and Twenty-Fourth Amendments. ECF 108; 98-1. After a two-day hearing on October 7–8,

[8] *Gruver* Plaintiffs-Appellees are Jeff Gruver, Emory Marquis "Marq" Mitchell, Betty Riddle, Kw 1.7Ao.5(u)8.3(nc)8 F.5(ty(M)4.7(.2(ty)]T)8.5(ty)1l 0 Td (107(.2(ty)4(c)12.

2019, *see* ECF 201; 202, the district court granted in part Plaintiffs' requested preliminary injunction on October 18, 2019, ECF 207.

The district court granted narrow relief, ruling that denying Plaintiffs' right to vote based on their inability to pay LFOs violates the Fourteenth Amendment. *Id.* The district court applied this Court's *en banc* decision in *Johnson* that "[a]ccess to the franchise cannot be made to depend on an individual's financial resources." 405 F.3d at 1216 n.1. The injunction applies only to the Secretary and nine SOEs. It prohibits them from taking any action that "prevents an individual plaintiff from applying or registering to vote ... based only on a failure to pay a financial obligation that the plaintiff asserts the plaintiff is genuinely unable to pay,

similarly-

unconstitutional.

injunction, other than speculative administrative burdens should the district court expand its injunction to a proposed class. And the preliminary injunction serves the public interest because, as Defendant Governor DeSantis conceded in his public statements, it will prevent disenfranchisement due to financial hardship.

Though Defendants have separately raised Plaintiffs' Twenty-Fourth Amendment claim, this Court should confine its review to the Fourteenth Amendment claim because the district court withheld judgment on the Twenty-Fourth Amendment claim and Defendants lack appellate standing to contest that decision. If this Court did entertain the claim, it should determine that SB7066's broad LFO provisions encompass assessments that meet the definition of impermissible taxes under the Twenty-Fourth Amendment.

Finally, any severability analysis is inappropriate in this case, given that the district court did not strike down SB7066, much less Amendment 4, but simply provided a constitutionally required exception for Plaintiffs.

The judgment below should be affirmed.

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits

A. The District Court Correctly Applied *Johnson v. Governor* in Holding that SB7066 Unconstitutionally Conditions Access to the Franchise Based on Wealth

The district court's injunction follows binding Supreme Court and Eleventh Circuit precedent. This Court sitting *en banc*h d7

F.3d at 1216 n.1 (citing *Harper*, 383 U.S. at 668).[11] *Second*, it applied the law to the facts of the case, noting that returning citizens otherwise entitled to apply for restoration, but "who cannot afford to pay restitution," could have the restitution requirement waived and apply for restoration via a hearing. *Id*.[12]

Defendants argue for the first time on appeal that *Johnson*'s application of *Harper* was dicta.[13] App. Br. at 20. That is wrong. The principle set forth in *Johnson* that restoration cannot depend on an individual's financial resources is a holding and delineates a controlling legal rule. Moreover, it is an accurate statement of binding law. A judicial holding incorporates "not only the result but also those portions of the opinion necessary to that result," including the "rationale upon which the Court based the results of its earlier decisions." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 66–67 (1996). Conversely, "dicta is defined as those portions of an opinion that are not necessary to deciding the case." *United States v. Kaley*, 579 F.3d 1246, 1253 n.10 (11th Cir. 2009) (quotations omitted); *see also id*. (defining dicta as statements "that could have been deleted withouTJ /TTBetFlye

While the last sentence of *Johnson*'s first footnote

candidates cannot be limited to those who can pay for a license.”). Candidate filing fees, for example, are not poll taxes

to the first theory, *Johnson* reaffirmed the principle that the "ability to regain the right to vote" cannot depend on financial resources; and given that the *Johnson* Plaintiffs were not required to make restitution payments in order to apply for rights restoration, the Court declined to reach the question of whether such payments are "the practical equivalent of a poll tax." *Id.* Here, the district court made the same analytical distinction between poll taxes and other forms of wealth discrimination in voting in addressing Plaintiffs' Fourteenth Amendment claim separately from Plaintiffs' Twenty-Fourth Amendment claim. *See* ECF 207 at 41–42.

Thus, the district court correctly recognized that SB7066 violates *Johnson*'s holding by conditioning restoration on returning citizens' ability to pay LFOs. The Eleventh Circuit follows its prior precedent "unless and until … [a] subsequent Supreme Court or en banc decision [that is] clearly on point … actually abrogate[s] or directly conflict[s] with" the prior holding. *United States v. Gillis*

B.

at 123.[15] The district court properly recognized this exception "squarely" applies to SB7066. ECF 207 at 32. SB7066 violates the Equal Protection Clause because it does precisely what *Harper* and *M.L.B.* forbid: it conditions access to the franchise on payment of

Plaintiffs' voting rights were lawfully revoked, but whether Plaintiffs, who would be eligible to vote in Florida but for

intelligently in the electoral process" simply because they were convicted of a felony. *Harper*, 383 U.S. at 668.[18] Defendants fail to explain how the wealth of a person convicted of a felony is more relevant than the wealth of any other voter. *See* ECF 207 at 33. A voter is no less qualified to vote "because he lives in the city or on the farm," *Harper*, 383 U.S. at 667, and a law that made rights restoration contingent on such a distinction would become no more constitutional because it pertained to individuals with felony convictions.

Nor does it matter whether Plaintiffs' interest in voter restoration arises from a state-created mechanism versus an intrinsic "fundamental" right. In *Harper*, the Supreme Court declined to identify the source of the plaintiffs' voting rights, observing that "the right to vote in state elections is nowhere expressly mentioned" in the federal Constitution, but nevertheless held that wealth-based restrictions on the franchise are impermissible in state elections. 383 U.S. at 665. Broadly speaking, States' statutory grants of voting rights are subject to limits under the Equal Protection Clause, even when the underlying

[18] To the extent Defendants contend that payment of LFOs demonstrates *willingness* to complete the financial terms of one's sentence, the district court's injunction accepts the legitimacy of the requirement as applied to returning citizens who can afford to pay. ECF 207 at 27–28. But when a returning citizen cannot pay, imposing the requirement is pure wealth-based discrimination: returning citizens with enough money can vote while the indigent remain disenfranchised solely due to their lack of resources.

rights themselves are not directly protected by the Constitution. *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (observing "citizens [have] no federal constitutional right to vote for electors for [president]," but Equal Protection Clause nevertheless protects the right to vote in Presidential elections against "arbitrary and disparate treatment"); *O'Brien v. Skinner*, 414 U.S. 524, 529–31 (1974) (invalidating the denial of absentee registration privileges to some voters, even though the federal constitution does not guarantee a right to vote by absentee ballot). Here, Florida was not obligated to enact Amendment 4, but once it did, the Equal Protection Clause prohibits the State from cT56oon pal Pr6d [(i)7(r6

heretofore attached such fundamental status" to aspiring candidates' right to ballot access. *Id.*

Johnson, Florida's clemency procedures passed constitutional muster because *any* returning citizen was permitted to submit a clemency petition by seeking a waiver of the requirement that they first pay restitution. *Id*.; *see also* 2001 Fla. R. Exec. Clem. 8(I)(A) (permitting "Waiver of the Rules" for a clemency petition "[i]f an applicant cannot meet the requirements" including payment of restitution). Through the waiver procedure, poor people with felony convictions could apply for clemency just as meaningfully as those with financial means.[20]

That is not the case under SB7066. Defendants assert, App. Br. at 9, that individuals can circumvent SB7066's LFO requirement in three ways: (1) modification allowing termination of the obligation "upon the payee's approval," Fla. Stat. § 98.0751(2)(a)(5)(d)–(e); (2) completion of community service hours "if the court … converts [LFOs] to community service," *id*.; or (3) receiving a discretionary grant of clemency. Though some small subset of returning citizens may be able to relieve some LFO requirements through these mechanisms, they do not provide actual alternatives that make automatic restoration "equally accessible" regardless of financial resources. ECF 207

[20] Though the waiver procedure required an additional step—petitioners with outstanding restitution applied for consideration "with a hearing" (which petitioners were not even required to attend) rather than simply on paper—this alternative ensured that all individuals could access clemency regardless of their financial resources.

at 30.[21]

First, any relief under these procedures is wholly discretionary and does not ensure that those unable to pay their LFOs have the same opportunity for restoration as those who have financial means. SB7066's "termination" procedure vests a "payee"—often a private third party[22]—with absolute and unreviewable discretion to grant or deny termination. Fla. Stat. § 98.0751(2)(a)(5)(e)(II). That payee has no obligation to consider ability to pay at all in making this determination. Similarly, courts have no obligation to convert any LFOs into community service, even if a court finds that an individual is unable to pay. *See id.* §§ 98.0751(2)(a)(5)(e)(III); 938.30(2). By the same token, a grant of clemency is a discretionary act of grace rather than an alternative ensuring automatic rights restoration for individuals who cannot pay. The Clemency Board retains broad discretion to extend or withhold clemency based on unarticulated or subjective criteria. *See Hand v. Scott*, 888 F.3d 1206, 1209 (11th Cir. 2018); *see also*

[21] *Cf.*, *e.g.*, *Lubin*, 415 U.S. at 719 n.5 (noting that a write-in option for indigent candidates likely would not be "an adequate alternative" to candidate filing fees because an indigent candidate must "rest his chances solely upon those voters who would remember his name and take the affirmative step of writing it on the ballot").

[22] The record evidence demonstrates that counties and courts often contract to assign LFO debt to private collections agencies, which would then retain authority over termination of that debt under SB7066. *See, e.g.*, ECF 167-35; ECF 167-36.

Beacham v. Braterman, 300 F. Supp. 182, 184 (S.D. Fla. 1969) (affirming that restoration through the clemency process "is part of the pardon power and as such ... not subject to judicial control.") *aff'd* 396 U.S. 12 (1969). The Board is under no obligation to even consider ability to pay, let alone restore returning citizens' voting rights on that basis. In a system where the wealthy receive automatic rights restoration, it is not a reasonable alternative to make the poor pray for an act of grace.

Second, it is uncontested that these alternatives are wholly unavailable to many returning citizens. Individuals with out-of-state or federal convictions—such as Plaintiffs Karen Leicht and Steven Phalen—cannot seek termination or community service. *See* ECF 207 at 39; ECF 239 at 8:25–9:21.

Even for those with Florida convictions, the district court did not abuse its discretion in finding that community service conversion is an impracticable alternative. *See* ECF 207 at 38–40. Plaintiff Gruver testified that he contacted the court to seek conversion of his LFOs to community service and was advised that because his debt had been assigned to a private company,

And as the district court found, even where community service is offered, the prospect of rights restoration by working off debt "is often wholly illusory" in practice. ECF 207 at 39. Community service hours are credited at the federal minimum hourly wage, *see* Fla. Stat. §§ 938.30(2), 318.18(8)(b)(1)–(2), currently $7.25 per hour, *see* 29 U.S.C. § 206(a)(1)(c),

The record makes clear that the mechanisms cited by Defendants do not make automatic restoration available to all

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(invalidating statute authorizing extension of term of imprisonment beyond the statutory maximum based on failure to pay a fine because it "ma[de] the maximum confinement contingent upon one's ability to pay").

In *Bearden*, the Supreme Court synthesized prior precedent, explaining that "[d]ue process and equal protection principles converge" when people are treated differently based on their wealth: the Due Process Clause guards against practices that are "fundamentally unfair or arbitrary," and the Equal Protection Clause protects people from being "invidiously denied ... a substantial benefit" available to those with the financial resources to pay. 461 U.S. at 665–66. Together, these principles require an "inquir[y] into the reasons for failure to pay" before imposing a sanction for nonpayment. *Id.* at 672–73.

More broadly, *Bearden* held that determining the constitutionality of a particular state sanction requires "a careful inquiry" into four Tw 0.54o4 0096 8.2(.3( )8

consequences" such as the loss of a professional license that could be "even more serious" than confinement. *Id.*

Defendants rely on *United States v. Plate*, 839 F.3d 950 (11th Cir. 2016), but *Plate* did *not* hold that *Bearden*'s constitutional principle is limited "only" to incarceration. App. Br. at 24. To the contrary, *Plate* described the unlawful injury in that case as being "treated more harshly in [one's] sentence than [one] would have been if she (or her family and friends) had access to more money, and that is unconstitutional[.]" *Plate*, 839 F.3d at 956. *Plate* supports Plaintiffs—not Defendants—because "more harsh[]" treatment is precisely what SB7066 imposes in prolonging disenfranchisement. *Id.*

Contrary to Defendants' assertions, App. Br. at 24, the *Griffin*/*Bearden* case line is *not* limited to vindication of a "fundamental" right. In *Griffin*, the Supreme Court emphasized that there is no fundamental right to "appellate courts … or appellate review at all." 351 U.S. at 18.[26] Nevertheless, if a State makes such review available, it cannot do so "in a way that discriminates against some

[26] Likewise, in *San Antonio School District v. Rodriguez*, the Supreme Court observed that it would likely violate *Griffin* if public education were "made available by the State only to those able to pay a tuition assessed against each pupil" despite expressly holding that there is no fundamental right to education. 411 U.S. 1, 25 n.60, 37 (1973). This indicates that the Court did not consider a fundamental right to be a necessary predicate to a wealth-discrimination claim under *Griffin*.

convicted defendants on account of their poverty." *Id*. Similarly, *Bearden* never relied on any "fundamental rights" analysis. Indeed, people convicted of a felony *lose* a fundamental right to physical liberty, in the same manner that, according to Defendants, they lose the fundamental right to vote. *See Morrissey v. Brewer*, 408 U.S. 471, 480 (1972) (stating that probation "[r]evocation deprives an individual,

arose from state law, Plaintiffs' avenue for voter restoration derives from Amendment 4—and neither can be denied based on the inability to pay a fine.

As the district court correctly concluded, the *Griffin*/*Bearden* case line is an independent basis for Plaintiffs' likelihood of success.

E. There Is No Rational Basis for Denying the Right to Vote to Plaintiffs Who Cannot Afford to Pay Outstanding LFOs

Although wealth-based restrictions on voting are categorically prohibited by the Fourteenth Amendment, SB7066's LFO requirement would fail even under rational basis review.

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Despite Defendants' suggestions to the contrary, the "rational-basis standard is not a toothless one," *Schweiker v. Wilson*, 450 U.S. 221, 234 (1981) (quotations omitted), particularly in the elections context. Nearly all the cases that Defendants cite are in the context of "social welfare" laws governing benefits,

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unconstitutional *as applied to plaintiffs that are* "*genuinely unable to pay*." ECF 207 at 53 (emphasis added); *see also* ECF 244 at 4–5 ("[T]he precise issue in this case" is whether Florida may condition restoration on payment of LFOs that a

(1971); *see also Bearden*, 461 U.S. at 670 ("[r]evoking the probation of someone who ... is unable to make restitution will not make restitution suddenly forthcoming."). The denial of returning citizens' voting rights cannot serve as an incentive for repayment if they are genuinely unable to pay.

Second, rights restoration under the preliminary injunction order does not terminate Plaintiffs' debt. Defendants claim that "a specific exemption for indigent felons [might] provide an incentive to conceal assets and would result in the state being unable to compel payments from some non-indigent felons." App. Br. at 29 (quotation omitted). But Florida maintains direct means of collecting LFOs even after a person's voting rights have been restored. *See Bearden*, 461 U.S. at 672 (noting a "State is not powerless to enforce judgments against those financially unable to pay a fine"). If states have "other means for exacting compliance with [payments]" that are "at least as effective," *Zablocki v. Redhail*, 434 U.S. 374, 389 (1978), 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). In fact, the injunction—which requires a process by which returning citizens may assert inability to pay, then permits the state to rebut that assertion—is *likelier* to disclose a person's assets than the existing system, where no such inquiry occurs.

Third, the injunction does not impose an administrative burden on Defendants. Defendants' argument that it would "strain the State'

Finally, even if Defendants' framing were correct—that the question is the general validity of the LFO requirement rather than its application to Plaintiffs—SB7066 still fails. Defendants have conceded that, under rational basis review, SB7066 would be unconstitutional if there were "evidence that felons unable to pay their outstanding [LFOs] vastly outnumber those able to pay." App. Br. at 29. The factual record demonstrates this is indeed the case. As noted *supra*, Florida itself has determined that "[m]ost criminal defendants are indigent," Fla. H. Staff Analysis, H.B. 1381 (May 13, 1998); Fla. H. Staff Analysis, H.B. 13 (June 23, 1999), and state courts typically collect only about 20% of all fines and fees and have "minimal collections expectations" as to the remaining 85% of fines and fees. In light of that record, SB7066's LFO requirement leaves the vast majority of returning citizens disenfranchised

A. Absent an Injunction, Plaintiffs Will Suffer Irreparable Harm

Without an injunction, Plaintiffs will be disenfranchised in the March election. "An injury is irreparable if it cannot be undone through monetary remedies." *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010) (quotation marks omitted). Denial of the right to vote in an election is indisputably irreparable; "there can be no do-over and no redress." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Irreparable injury is thus presumed when laws prevent voting. *League of Women Voters of Fla. v. Detzner*, 314 F. Supp. 3d 1205, 1223 (N.D. Fla. 2018) (citing *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012)).

Defendants argue that Plaintiffs do not have the right to vote, so they will not be harmed by its denial. App. Br. at 4, 18, 47–48. But this is merely a circular repetition of their merits arguments and does nothing to refute Plaintiffs' irreparable harm, independent from the merits.

B. The Balance of Equities Favors Plaintiffs

The balance of the equities favors Plaintiffs because while they will be denied the right to vote absent an injunction, Defendants suffer no harm if the injunction remains in place. Defendants claim two types of harm: (1) being prevented from enforcing a state statute; and (2) the administrative burden of evaluating ability to pay. Both arguments fall flat.

First, Defendants claim they suffer harm by being prevented from enforcing SB7066. *See* App. Br. at 49. If this abstract harm were dispositive, federal courts would never preliminarily enjoin state statutes; but this Court routinely affirms preliminary injunctions doing just that. *Cf., e.g., Lebron v. Sec'y, Fla. Dep't of Children & Families*, 710 F.3d 1202, 1218 (11th Cir. 2013). Moreover, Defendants' reliance on *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345 (1977) (Rehnquist, J., in chambers) and *Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers) is misplaced because the courts below had enjoined the implementation of a statute in full. Likewise, the injunction in *Hand*, cited in App. Br. at 50, 52, prohibited Florida's Clemency Board from "apply[ing] its own l [(hJ 0 TcF0 Tw 3,)6.2(Tc 0.0.3(s Tc 0uT[8.35(ng].4(4 3.863 0 Td ( )Tj1

legal with the constitutionally problematic"); *Ga. Muslim Voters Project v. Kemp*, 918 F.3d 1262, 1276 (11th Cir. 2019) (Jill Pryor, J., concurring) (rejecting Florida's identical argument and affirming an injunction that "borrowed heavily from the processes already in place").

Moreover, Defendants cannot claim irreparable harm from being prevented from enforcing SB7066's LFO requirements when the record demonstrates that they have failed to enforce them thus far. *See supra* Factual Background. Whatever general interest Defendants have in enforcing Florida's laws, it is not present in the context of SB7066's LFO requirements, an "administrative nightmare" that Defendants cannot enforce uniformly or consistently and have not enforced since the law became effective. ECF 205 at 293:8.

Second, Defendants face no administrative burden should County Defendants need to determine Plaintiffs' ability to pay their LFOs. The injunction does not require *any* affirmative actions by State Defendants whatsoever, but simply prohibits them from removing Plaintiffs from the rolls or preventing them from voting on account of their inability to pay. It is the County SOEs who are tasked under Florida law with making final assessments as to voter ineligibility; State Defendants who have brought this appeal provide zero evidence that *they* will be burdened by SOEs' ability-to-pay determinations.

Defendants focus instead on possible administrative burdens if the district court certifies a class and expands the preliminary injunction. App. Br. at 50. But the district court has not yet ruled on class certification. And no party has filed a motion seeking expansion of the preliminary injunction to any yet-to-be-certified class. This Court lacks jurisdiction to c

C. The Preliminary Injunction Serves the Public Interest

An "injunction's cautious protection of the Plaintiffs' franchise-related rights is without question in the public interest." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005). And the public interest is served

not “affect [Defendants’] interest in an adverse way” as is necessary for appellate standing on this claim. *United States v. Pavlenko*

absolutely" any tax "as a prerequisite to voting." *Harman v. Forssenius*, 380 U.S. 528, 542 (1965) (emphasis added). Its drafters and proponents intended for it to reach any obligation that exacted "a price for the privilege of exercising the franchise." *Id.*

Amendment 4. It merely prohibited SB7066's LFO requirement from applying to Plaintiffs because of their inability to pay. Such as-applied relief does not require severing any of SB7066's text, let alone Amendment 4's text, and cannot trigger wholesale invalidation of the amendment. Federal courts do not invalidate swaths of state law whenever the Constitution requires an as-applied exception to a generally applicable law. *See, e.g.*, *Griffin*, 351 U.S. at 18–19 (requiring waiver of fees for appellate transcript for indigent defendants without engaging in severability analysis); *Wooley v. Maynard*, 430 U.S. 705, 717 (1977) (requiring religious exemptions without severability analysis of state criminal statute); *AFSCME v. Scott*, 717 F.3d 851, 870, 873 (11th Cir. 2013) (vacating invalidation of executive orders, remanding with instructions to create as-applied exemption); *see also United States v. Booker*, 543 U.S. 220, 322 (2005) (Thomas, J., dissenting) (acknowledging that courts generally "dispose[] of as-applied challenges to a statute by simply invalidating the particular applications of the statute without saying anything at all about severability"); *id.* at 281 n. 6 (Stevens, J., dissenting) (rejecting contention that courts "must engage in a severability analysis if a statute is unconstitutional only in some of its applications").

Moreover, where a challenged scheme deprives one group of individuals of a particular right granted to others, the Constitution favors extending the right to those excluded, rather than depriving everyone of it. *See Penn v. Att'y Gen. of*

State of Ala., 930 F.2d 838, 844–46 (11th Cir. 1991). Indeed, Defendants agree that nullifying Amendment 4 "is an absurd outcome … that should be avoided." ECF No. 239 at 74–75. Nullification of Amendment 4 is not legitimately at issue where no one is seeking it. *See Califano v. Jobst*, 434 U.S. 47, 90 (1977).

Finally, even if severability were implicated—and it is not—an LFO requirement would be readily severable. The touchstone of severability analysis is whether the law's overall purpose can be accomplished without the infirm provisions. *See WollschlaTT1 6.1(T0 1 -Td [-Td [-T/Aose)3.5( )77)Go3.5( )77)sf5(*

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CERTIFICATE OF COMPLIANCE

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Dated: January 10, 2020

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I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on January 10, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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