UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

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

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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

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

A. PLAINTIFFS

Individual Plaintiffs are each over 18 years old, U.S. citizens, and Florida residents.

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 $

- 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 wishe16.8(c)9c1.9Ms

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,

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

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 o 0.004 Tw

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 u prAW

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

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

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 otherwisdhng LDr

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 countieg 6 .512.0ig

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-

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").

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*.

¶¶ 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

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.

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 LFc.3(ut)0 LF -8.3(u 0.004 Tc -0204 Tc 0.489 Tw -27.0.72Td [(c)-4u3

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

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

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.").

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

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.2(06)8g2 ofd [(.4(r)-(o)8.a)8.3(65(ly)16.8

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

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

To the extent that SB7066 purports to provide alternatives to fee payment, *see*

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

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

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.

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 R8(f)12Pd.5.asi¶r

The right to vote is severely burdened on the basis of wealth even if there are—

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

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 Pr

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 tha

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*

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 i

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

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

"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).

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

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

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

SB7066’s regime unconstitutionally chill

(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.

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,'

SB7066 has already begun to

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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