IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1341

ADVISORY OPINION TO THE GOVERNOR

RE: IMPLEMENTATION OF AMENDMENT 4, THE VOTING RESTORATION AMENDMENT

GOVERNOR RON DESANTIS' REPLY BRIEF

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ARGUMENT

The interested parties present various arguments in their initial briefs. Governor DeSantis raises three arguments in response and rebuttal. First, the Governor argues that this Court has jurisdiction to answer the Governor's request for an advisory opinion under the plain language of article IV, section 1(c) of the Florida Constitution. Second, the Governor maintains that this Court should affirm that the word "sentence" legally and in common understanding means "every penalty imposed by the court when a person is found guilty of committing a crime." And third, the Governor argues that this Court should abstain from employing the canons of construction identified in several of the interested parties' initial briefs because the meaning of the constitutional phrase "completion of all terms of sentence" is plain.

I. This Court has jurisdiction to answer the Governor's request for an advisory opinion under the plain language of article IV, section 1(c) of the Florida Constitution.

Some of the interested parties argue that this case requires dismissal because the Governor is purportedly seeking an advisory opinion beyond what the Florida Constitution permits. *See* Initial Brief of the ACLU et al. at 17-27. However, that argument should be disregarded because this Court has jurisdiction to answer the

Governor's request for an advisory opinion under the plain language of article IV, section 1(c) of the Florida Constitution.[1]

Article IV, section 1(c) provides in relevant part that "[t]he governor may request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting the governor's executive powers and duties." Article IV, section 1(c) plainly authorizes the justices of the Florida Supreme Court, on the Governor's written request, to interpret *any* portion of the Florida Constitution on *any* question affecting the Governor's executive powers and duties.

The Governor has requested this Court's opinion on the question of whether the phrase "completion of all terms of sentence" under article VI, section 4(a) of the Florida Constitution includes the satisfaction of all legal financial obligations imposed by the court—namely fines, fees, and restitution ordered by the court as part of a felony sentence. *See* Request for Advisory Opinion at 1-4, *Advisory Op. to the Gov. Re: Implementation of Amend. 4, the Voting Restoration Amend.* ("*Voting Restoration II*"), No. SC19-1341 (Fla. Aug. 9, 2019). That question comfortably rests within the plain language of article IV, section 1(c).

[1] It should be noted that this Court has already determined that the Governor's request is within the purview of article IV, section 1(c). *See* Fla. R. App. P. 9.500(b)(2); Fla. S. Ct. Internal Op. P. II.H.1.

The question before the Court plainly affects the Governor's constitutional powers and duties to take care that Florida's voter registration and election laws are faithfully executed, to transact all necessary business regarding such laws with the Secretary of State, and to directly supervise the administration of the Department of State to ensure the proper administration of voter registration and disqualification. Article IV, section 1(a) prescribes that "[t]he supreme executive power shall be vested in [the] governor," and as such that "[t]he governor shall take care that the laws be faithfully executed" and "transact all necessary business with the officers of government." Article IV, section 6 of the Florida Constitution places direct administration and supervision of "[a]ll functions of the executive branch"—including the Department of State—under the constitutional authority of the Governor pursuant to Florida law. *See* § 20.02(3), Fla. Stat. (the administration of any executive branch department or entity placed under the direct supervision of an officer or board appointed by and serving at the pleasure of the Governor shall at all times be under the constitutional executive authority of the Governor); § 20.10(1), Fla. Stat. (creating the Department of State, headed by the Secretary of State, who is appointed by and serves at the pleasure of the Governor).

The executive branch is entrusted with implementing voter registration and election laws. *See* pt. II, ch. 97, Fla. Stat; ch. 98, Fla. Stat. In particular, section 98.075(5), Florida Statutes, directs the Department of State to identify registered

voters for eligibility under article VI, section 4 and section 98.0751, Florida Statutes. It is ultimately the Governor's responsibility, through the Department of State, to "protect the integrity of the electoral process" by maintaining accurate and current voter registration records, including ensuring only eligible voters remain on the statewide voter registration system. *See* § 98.035, Fla. Stat; § 98.075(1), Fla. Stat.

The ACLU and other interested parties assert that this Court lacks jurisdiction to render an advisory opinion in this matter for five reasons. *See* Initial Brief of the ACLU et al. at 17-27. All of them fail. First, contrary to the interested parties' assertion, the Governor's request for an advisory opinion is solely a request for this Court to interpret the meaning of a phrase contained in article VI, section 4(a). The Governor's request will be searched in vain for *any* request to interpret or pass upon the constitutionality of *any* portion of Senate Bill 7066 ("SB 7066"). Second, because the Florida Constitution binds the Governor, this Court's interpretation of article VI, section 4(a) will affect the manner in which the Governor faithfully executes that provision in the exercise of his constitutional duties. Third, article IV, section 1(c) expressly authorizes the Governor to request an advisory opinion from this Court. He does not have to await litigation. Fourth, the Governor's request affirmatively "do[es] not ask this Court to address any issues regarding [SB 7066] or the United States Constitution." Request for

Advisory Opinion at 4, *Voting Restoration II*, No. SC19-1341 (Fla. Aug. 9, 2019). And fifth, as the chief executive officer in whom the supreme executive power is vested pursuant to article IV, section 1(a), the Governor has the constitutional power and duty to take care that Florida's voter registration and election laws are faithfully executed and to transact all necessary business regarding such laws with the Secretary of State. Pursuant to article IV, section 6, the Governor has direct supervisory authority over the administration of the Department of State under sections 20.02(3) and 20.10(1), Florida Statutes. This constitutional responsibility relates to the Governor's power and duty to directly supervise the administration of the Department of State to ensure the proper administration of voter registration and disqualification.

This Court should confirm that the question at the heart of the Governor's request for an advisory opinion is within the purview of article IV, section 1(c) because the question is limited to an interpretation of the Florida Constitution impacting the Governor's executive powers and duties.

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The Governor's ultimate responsibility is to follow and implement the Florida Constitution—the supreme law of Florida. Therefore, when some of the interested parties questioned whether article VI, section 4(a) of the Florida Constitution includes the satisfaction of financial obligations as a pre-requisite to

re-enfranchisement, the Governor sought the opinion of this Court on his *constitutional* responsibility and duties to implement article VI, section 4(a).

This Court is the final interpreter of state law, including questions of constitutional interpretation. *See State v. White*, 24 So. 160, 166 (Fla. 1898) ("The supreme court of this state is the final arbiter of all questions of law and fact properly presented to it[.]"). When the Court speaks, the law is definitively interpreted. *Cf. Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). By submitting a valid request for an advisory opinion to the justices of the Florida Supreme Court pursuant to article IV, section 1(c) of the Florida Constitution, the Governor has subjected himself to the jurisdiction of this Court and triggered a process for the Court to authoritatively interpret the meaning of the constitutional phrase "completion of all terms of sentence" as it applies to his constitutional powers and duties. The Governor is not free to disregard the reasoned interpretation of the Florida Constitution rendered by this Court in the advisory-opinion context. *See Advisory Op. to the Gov. Re: Judicial Vacancy Due to Resignation*, 42 So. 3d 795 (Fla. 2010) (adjudicating in the Court's most recent advisory opinion to the governor—a per curiam opinion—a question of constitutional interpretation involving the governor's executive powers and duties pursuant to article IV, section 1(c)); *The Fla. Star v. B.J.F.*, 530 So. 2d 286, 288

(Fla. 1988) (explaining that this Court is "the final authority on the meaning of the Florida Constitution" (citing art. IV, § 1(c), Fla. Const.; art. V, § 3(b)(1), (3), Fla. Const.)); *Greene v. Massey*, 384 So. 2d 24, 27 (Fla. 1980) ("[H]ere there was a per curiam opinion which gained a majority and this opinion constitutes the only opinion of the Court."). To the contrary, he is duty-bound to faithfully implement it.

II. This Court should affirm that the word "sentence" legally and in common understanding means "every penalty imposed by the court when a person is found guilty of committing a crime."

The meaning of the word "sentence" is firmly established both in law and in the common lexicon to mean "every penalty imposed by the court when a person is found guilty of committing a crime." The word does not only encompass periods in which a person is subject to the State's control; instead, Florida law and case law make plain that the word refers to all penalties legally imposed by a court. Because this meaning is obvious, the Court should reject the assertion that including legal financial obligations is a "judicial rewrite" of the Florida Constitution. *See* Initial Brief of Bonnie Raysor et al. at 9.

Critical for the question before the court, Florida law repeatedly uses the word "sentence" to include fines, fees, and restitution. Both sections 435.07 and 633.107, Florida Statutes, refer to the payment of "any fee, fine, fund, lien, civil judgment, restitution, cost of prosecution, or trust contribution imposed by the

court *as part of the judgment and sentence*" for an offense. *See* § 435.07(1)(b), Fla. Stat.; § 633.107(1), Fla. Stat. (emphasis added). Other statutes expressly authorize courts to impose fines, fees, and restitution as part of a criminal sentence. For example, section 27.52, Florida Statutes, authorizes the court to "[a]ssess the application fee [for the appointment of a public defender] *as part of the sentence*." § 27.52(1)(b)1., Fla. Stat. (emphasis added). Section 775.083, Florida Statutes, explains that "[a] person who has been convicted of an offense other than a capital felony may be *sentenced to pay a fine*." § 775.083(1), Fla. Stat. (emphasis added). And section 812.15, Florida Statutes, gives the court authority to "*sentence a person* convicted of violating this section *to make restitution* as authorized by law." § 812.15(7), Fla. Stat. (emphasis added).[2]

Case law echoes and reaffirms this understanding. This Court's own precedent reveals consistent usage of the word "sentence" when describing fines. In *State v. Beasley*, for example, the Court noted that the trial court imposed a $50,000 fine "[a]s part of [the defendant's] sentence." 580 So. 2d 139, 140 (Fla. 1991). Likewise, in *Morganti v. State*, the Court approved of a sentence that

[2] Some of the interested parties attempt to support their understandings of the word "sentence" with the Rules of Executive Clemency. *See, e.g.*, Initial Brief of the ACLU et al. at 35-36, 44-45; Initial Brief of Bonnie Raysor et al. at 10-11; Initial Brief of the Fair Elections Center at 13-15. But the Rules have no bearing on the matter of constitutional interpretation before this Court. The Rules define the conditions for the clemency process, a matter that lies wholly in the discretion of the executive branch of the State government.

included five and one-half years' incarceration, eighteen months' probation, and a $10,000 fine, noting that such a "sentence . . . is clearly not a more severe sentence" than 15 years' incarceration alone. 573 So. 2d 820, 821 (Fla. 1991). Opinions of the District Courts of Appeal confirm this understanding. *See, e.g.*, *Mariano v. State*, 933 So. 2d 111, 114 (Fla. 4th DCA 2006) ("[The defendant] was sentenced to fifteen years in prison and to pay a $5,000 fine.").

Like fines, fees and costs are parts of a sentence.[3] In 2017, this Court noted in a criminal appeal that the "sentence imposed [on a defendant in a prior case] was to 'pay [a] fine and costs in the amount of $100.00.' " *Smith v. State*, 235 So. 3d 265, 270 (Fla. 2017) (alteration in original). The Court expressed the same view in 2004. *See Rollman v. State*, 887 So. 2d 1233, 1234 (Fla. 2004) ("[T]he same sentencing judge pronounced [the defendant's] sentence, which imposed ten years

[3] The words "fees" and "costs" are synonymous. *Compare* Fee, *Black's Law Dictionary* at 732 (10th ed. 2014) (defining the word "fee" in relevant part as "[a] charge or payment for labor or services, esp. professional services"), *with* Costs, *Black's Law Dictionary* at 423 (10th ed. 2014) (defining the word "costs" in relevant part as "[t]he charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees" and "[t]he expenses of litigation, prosecution, or other legal transaction, esp. those allowed in favor of one party against the other"). Florida courts often use the words interchangeably. *See, e.g.*, *Maddox v. State*, 760 So. 2d 89, 109 (Fla. 2000) ("Assuming that prior to the sentence a defendant is not given notice of the state's intent to impose costs and a public defenders' fee, once the fees are imposed in the sentence, the defendant surely has notice of them." (quoting *Hyden v. State*, 715 So. 2d 960, 962 (Fla. 4th DCA 1998), *approved in part, disapproved in part sub nom. Maddox v. State*, 760 So. 2d 89 (Fla. 2000)); *Robinson v. State*, 667 So. 2d 384, 386 (Fla. 1st DCA 1995) (referring to a "fee" as a "cost").

in prison, ten years of probation, and the payment of restitution and court costs."). And the District Courts of Appeal regularly use the same "sentence" terminology for fees and costs. *See, e.g.*, *Bassett v. State*, 23 So. 3d 236, 236 (Fla. 2d DCA 2009) ("As part of his sentence he was ordered to pay certain costs and fees.").

Even the interested parties who claim fees and costs should not be understood to constitute "terms of sentence" acknowledge that "costs may be part of a judgment or a condition of supervised release, including parole, probation, and community control." Initial Brief of the Fair Elections Center at 11. The inclusion of such fees and costs in the court's sentence necessitates the conclusion that these financial obligations fall within "all terms of sentence" under article VI, section 4(a).[4]

In any event, the interested parties are wrong to suggest that fees and costs must serve a societally retributive purpose in order to constitute part of a sentence. Florida courts widely acknowledge that criminal sentences and their respective components serve many purposes, including deterrence of similar acts and protection of society. *See Boyd v. State*, 546 So. 2d 132, 133 (Fla. 4th DCA 1989)

[4] Interested party Adam Richardson asserts that the constitutional phrase "all terms of sentence" is limited to or defined by the Court-mandated sentencing forms contained in Florida Rule of Criminal Procedure 3.986(d)-(f). *See* Initial Brief of Adam Richardson at 5-10. But that assertion is belied by the plain language of rule 3.986(a), which provides that "[v]ariations from these forms do not void a . . . sentence . . . that [is] otherwise sufficient."

(noting that "one purpose of punishment is deterrence, as it surely must be"), *quashed on other grounds*, 558 So. 2d 1025 (Fla. 1990); *Freeman v. State*, 382 So. 2d 1307, 1308 (Fla. 3d DCA 1980) ("A sentence may be imposed for one or more of the following purposes: (a) to punish; (b) to deter similar criminal acts; (c) to protect society; or (d) to rehabilitate."). Courts reject as artificially narrow the notion that a sentence, to punish a defendant, must reflect the goal of societal retribution. *See Charles v. State*, 204 So. 3d 63, 67 & n.5 (Fla. 4th DCA 2016) (rejecting this view of sentence and punishment as too narrow); *see also United States v. Brown*, 381 U.S. 437, 458 (1965) ("It would be archaic to limit the definition of 'punishment' to 'retribution.' "). Even the parties who press for exclusion of fees and costs admit that these financial obligations facilitate the continued operation of the criminal justice system and thus, by necessity, protect the public and deter future offenders. *See* Initial Brief of the Fair Elections Center at 9-13, 17, 20.[5]

[5] Some of the interested parties assert that fees and costs cannot be categorized as part of a defendant's "sentence" without implicating the jury fact-finding requirement of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *See* Initial Brief of the Fair Elections Center at 20-34. But that assertion misapprehends *Apprendi* and its progeny. "In *Apprendi*, the United States Supreme Court held that '[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime *beyond the prescribed statutory maximum* must be submitted to a jury, and proved beyond a reasonable doubt.' " *Brown v. State*, 260 So. 3d 147, 150 (Fla. 2018) (alteration in original) (quoting *Apprendi*, 530 U.S. at 490). "In *Blakely v. Washington*, 542 U.S. 296, 303 (2004), the Supreme Court defined the 'statutory maximum' as 'the maximum sentence a judge may impose solely on

Finally, restitution is necessarily included in descriptions of a court-imposed sentence. In 1997, this Court examined a case involving theft from a Beall's Outlet. *Glaubius v. State*, 688 So. 2d 913 (Fla. 1997). In reviewing the sentence, this Court noted that the defendant, "[*a*]*s part of his sentence*, . . . was also ordered to pay restitution to Beall's." *Id.* at 914 (emphasis added). When discussing modifications of sentence, this Court also has made clear that restitution is a modification that may be added by courts: "[W]e hold that any modification to a juvenile's sentence, *including the imposition of restitution*, should occur within sixty days of sentencing." *State v. M.C.*, 666 So. 2d 877, 878 (Fla. 1995) (emphasis added). Lower court opinions reveal the same view. *See, e.g.*, *Evans v. State*, 678 So. 2d 863, 864 (Fla. 2d DCA 1996) ("As a part of the sentence, the trial court ordered [the defendant] to pay restitution in full to the victim.").

Such statutes and case law definitively undermine the contention that the word "sentence" means no more than the period in which an individual is under the

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the basis of the facts reflected in the jury verdict or admitted by the defendant.' " *Id.* Fees and costs are not affected by *Apprendi* and *Blakely* because they do not include "statutory maximums" that could be "increased" by a given finding of fact. *See, e.g.*, *S. Union Co. v. United States*, 567 U.S. 343, 353 (2012) ("Nor, *a fortiori*, could there be an *Apprendi* violation where no maximum is prescribed."); *United States v. Behrman*, 235 F.3d 1049, 1054 (7th Cir. 2000) (holding that a federal restitution statute was not affected by *Apprendi* in part because it "d[id] not include a 'statutory maximum' that could be 'increased' by a given finding"); *Bridges v. Johnson*, No. 7:08-cv-000613, 2009 WL 982868, at *3 n.1 (W.D. Va. Apr. 9, 2009) (explaining that *Apprendi* "would not apply to court costs because they have no statutory maximum").

State's control. Contrary to the position of several interested parties in this case, "sentence" is a broad term. Indeed, in addition to the legal financial obligations discussed above, the word "sentence" is regularly used in statute to describe community service requirements, hazing education course requirements, and a variety of other permissible sentencing conditions. *See, e.g.*, § 893.13(1)(c)3., Fla. Stat. ("A person who violates this paragraph with respect to . . . [a]ny other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a $500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law."); § 948.036(2), Fla. Stat. ("The provisions of this section do not apply to any person performing labor under a sentence of a court to perform community services as provided in s. 316.193."); § 1006.63(4), Fla. Stat. ("As a condition of any sentence imposed pursuant to subsection (2) or subsection (3), the court shall order the defendant to attend and complete a 4-hour hazing education course and may also impose a condition of drug or alcohol probation."). And courts share that view. *See, e.g.*, *Thornton v. State*, 48 So. 3d 198, 198 (Fla. 2d DCA 2010) ("As part of her sentence, [the defendant] was to participate in PAR, a residential drug treatment program."); *Curry v. State*, 522 So. 2d 887, 887 (Fla. 2d DCA 1988) ("The defendant was adjudicated guilty and sentenced to pay a $1,171.50 fine, serve twelve months on probation, perform eighty hours of community service work, and submit to an alcohol abuse

evaluation."); *State v. Nelson*, 780 So. 2d 91, 93 (Fla. 4th DCA 2000) ("[I]n order to justify a downward departure on drug treatment needs, a showing must be made that the defendant is amenable to rehabilitation in an alcohol or drug treatment program in which he is placed as part of his sentence.").

When Floridians voted to re-enfranchise certain felony offenders, they did so with the understanding that all terms of sentence must be complete. The voters' understanding of "all terms of sentence" was informed by the legal context in which the concept of "sentence" was and continues to be employed. The common legal usage makes plain that the word "sentence" is not confined to durational terms of State control. Instead, it refers to *all penalties and punishments* imposed by sentencing courts. The voters did not shed their common sense at the poll-location doors. This Court should reject any hyper-technical interpretation of article VI, section 4(a) offered by interested parties that is inconsistent with plain text and common sense understanding.

III. This Court should abstain from employing the canons of construction identified in several of the interested parties' initial briefs because the meaning of the constitutional phrase "completion of all terms of sentence" is plain.

To avoid the consequences of a plain-meaning, common-sense interpretation, some of the interested parties invite this Court to invoke the canons of construction to find ambiguity in the phrase "completion of all terms of sentence." *See, e.g.*, Initial Brief of the ACLU et al. at 18, 23-24, 31, 35 (referring

to the constitutional avoidance canon and the *expressio unius* canon); Initial Brief of Bonnie Raysor et al. at 8, 16-18 (referring to the constitutional avoidance canon and the *ejusdem generis* canon). But those arguments are contrary to the text of article VI, section 4(a) and this Court's precedent. Indeed, they turn the proper method of textual interpretation on its head.

When interpreting a provision of the Florida Constitution, this Court "begins with its plain language." *Lee Mem'l Health Sys. v. Progressive Select Ins. Co.*, 260 So. 3d 1038, 1043 (Fla. 2018). If the constitutional provision is "clear, unambiguous, and addresses the matter in issue," the first and simplest rule of constitutional interpretation demands that it "must be enforced as written." *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019) (quoting *Pleus v. Crist*, 14 So. 3d 941, 944 (Fla. 2009)).

In Florida, "the law is settled that when constitutional language is precise, its exact letter must be enforced and extrinsic guides to construction are not allowed to defeat the plain language." *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400 (Fla. 1992). As this Court explained long ago:

> In construing constitutions, as well as statutes, the object is to ascertain the true intention or meaning expressed in the instrument. Where the language is plain and unambiguous, there is nothing to construe. The meaning conveyed by plain and unambiguous language must not be changed or distorted by the application of any technical rule of construction.

State v. Jacksonville Terminal Co., 27 So. 225, 233 (Fla. 1900). Thus "[i]f the language in the constitution is [plain], there is no need to resort to other tools of construction." *Garcia v. Andonie*, 101 So. 3d 339, 343 (Fla. 2012). Stated differently, "[a]mbiguity is an absolute prerequisite to judicial construction" of the Florida Constitution. *Fla. League of Cities*, 607 So. 2d at 400.

This Court already has opined on whether the phrase "completion of all terms of sentence including parole or probation" is ambiguous. In 2017, the Court considered whether the ballot summary and title for the ballot initiative behind Amendment 4 "clearly and unambiguously" informed voters of the amendment's chief purpose. *See Advisory Op. to the Atty' Gen. Re: Voting Restoration Amend.* ("*Voting Restoration I*"), 215 So. 3d 1202, 1208 (Fla. 2017). That summary, like the text of article VI, section 4(a), explained the amendment would restore voting rights to Floridians with felony convictions after they complete "all terms of . . . sentence including parole or probation." *Id.* at 1204. This Court determined the language was clear. By inviting the Court to invoke the canons, the ACLU and other interested parties rest their arguments on the assumption this Court will find ambiguity that the Court already rejected.

The Governor's initial brief provides a systematic and detailed breakdown of the plain meaning of each word in the constitutional phrase "completion of all terms of sentence including parole or probation." Neither the phrase as a whole

nor the individual terms admit of ambiguity. In context and against the backdrop of common sense and common legal usage, the constitutional phrase must be understood to encompass all penalties imposed by the court at sentencing and contained in the four corners of the sentencing document, including any fines, fees, and restitution. The Court should not resort to any technical canons to introduce ambiguity. The canons simply have no place in the Court's plain-meaning inquiry.[6]

In any event, the canons invoked by the interested parties cannot be applied as suggested. The canon of *expressio unius* has no utility in the context of article VI, section 4(a). The constitutional provision, by using the term "including"

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[6] Some of the interested parties assert that the Governor has "conceded" in a motion to dismiss in the ongoing federal litigation that the article VI, section 4(a) phrase "completion of all terms of sentence" is susceptible to multiple interpretations and thereby ambiguous. *See* Initial Brief of Bonnie Raysor et al. at 6, 11-12, 16. But that assertion is not accurate. Among other things, the Governor argued in his motion to dismiss that the federal district court should abstain from deciding whether SB 7066 violates the federal constitution because: (1) the meaning of article VI, section 4(a) is an unsettled question of state constitutional law and (2) resolution of the meaning of article VI, section 4(a) by the Florida courts could prove dispositive and avoid the need for the federal district court to decide whether SB 7066 violates the federal constitution. *See* Florida Governor's and Florida Secretary of State's Joint Motion to Dismiss at 11-15, *Jones et al. v. DeSantis et al.*, No. 4:19-cv-300-RH-MJF (N.D. Fla. Aug. 2, 2019). The Governor went on to acknowledge two alternative possibilities, namely, that the Florida courts would either interpret article VI, section 4(a) to *include* or *exclude* fines, fees, and restitution. *Id.* at 14-15. He did not, however, concede that the latter alternative possible interpretation of article VI, section 4(a) is a *plausible* one. In sum, an unsettled question of state constitutional law for abstention purposes does not make plain words ambiguous.

before parole and probation, makes clear the listing is not exhaustive. *See White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC*, 226 So. 3d 774, 781 (Fla. 2017) ("Generally, it is improper to apply *expressio unius* to a statute in which the Legislature used the word 'include.' . . . This follows the conventional rule in Florida that the Legislature uses the word 'including' in a statute as a word of expansion, not one of limitation." (citation omitted)); *Bush v. Holmes*, 919 So. 2d 392, 420 (Fla. 2006) (Bell, J., dissenting) ("It is generally agreed in courts across this nation that *expressio unius* is a maxim of statutory construction that should rarely be used when interpreting constitutional provisions and, then, only with great caution.").[7] Likewise, *ejusdem generis* is inapt. This canon comes into play only when a statute is ambiguous on its face and only when a "list of specific items [is] followed by a general term or phrase." *State v. Hobbs*, 974 So. 2d 1119, 1122 (Fla. 5th DCA) (emphasis omitted), *approved*, 999 So. 2d 1025 (Fla. 2008). Here, the word "sentence" comes before the words "parole or probation." And here, it is separated from the non-exhaustive list by the non-exhaustive word "including." Finally, constitutional avoidance is inapplicable. Constitutional avoidance informs the interpretation of an ambiguous statute where the statute admits of two plausible

[7] The Governor adopts by reference the Secretary of State's response and rebuttal to interested party Mark Schlakman's argument regarding the lack of a comma between the words "sentence" and "including." *See* Secretary of State's Reply Brief at 3-4.

interpretations: one that is consistent with a constitutional provision and one that violates it. As the Governor explained in his initial brief, article VI, section 4 creates a system of felon re-enfranchisement. *See* Initial Brief of the Governor at 4. Any argument premised in the notion that article VI, section 4(a) violates the federal constitution by requiring a felon to complete "all terms of sentence" before regaining the right to vote assumes a non-existent constitutional violation. The Court should reject these vain attempts to distract from plain language.

CONCLUSION

For the reasons outlined in Governor DeSantis' initial brief and this reply, the justices should advise that the constitutional phrase "completion of all terms of sentence" plainly includes the required fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of October 2019, a copy of this brief was served by electronic service through the Florida Court's E-Filing Portal, which will send a copy of this filing to all counsel of record.

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I HEREBY CERTIFY that this brief is typed in Times New Roman 14-point font and complies with Florida Rule of Appellate Procedure 9.210(a).

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