IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO
THE GOVERNOR

Case No. SC19-1341

RE: IMPLEMENTATION OF
AMENDMENT 4, THE
VOTING RESTORATION
AMENDEMNT

REPLY BRIEF OF INTERESTED PARTIES BONNIE RAYSOR, DIANE SHERRILL, AND LEE HOFFMAN

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Interested Parties Bonnie Raysor, Diane Sherrill, and Lee Hoffman ("the Raysor parties") respectfully request that the Court decline to find an extra-textual mandate in Article VI, § 4 requiring that Floridians pay outstanding legal financial obligations ("LFOs") as a condition of voting rights restoration.

ARGUMENT

I. Article VI, § 4 of the Constitution does not condition rights restoration on payment of LFOs.

A. The plain text of Article VI, § 4 does not include an LFO requirement.

Article VI, § 4 of the Florida Constitution does not condition the restoration of voting rights on payment of LFOs. As explained in the Raysor parties' initial brief, the plain text of the provision excludes LFOs. The provision does not reference LFOs, and any extra-textual components read into the provision are limited to those of the same character as "parole and probation." *See* Raysor Br. at 9-10; *Pro-Art Dental Labs, Inc. v. V-Strategic Grp., LLC*, 986 So. 2d 1244, 1257 (Fla. 2008) (explaining that enumeration following word "including" is "illustrative application of the general principle" (quotation marks and emphasis omitted)); *White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC*, 226 So. 3d 774, 784 (Fla. 2017) (noting that "the illustrative list guides courts in interpretation of what types of non-enumerated" items are included). Individuals with past felony convictions are therefore eligible to vote once they are no longer subject to incarceration, custody,

or supervision under conditional release from confinement. The satisfaction of LFOs is of an entirely different character than "parole and probation," and therefore is not a condition of rights restoration under Article VI, § 4.

At most, Article VI, § 4 is ambiguous as to whether payment of LFOs is a condition for rights restoration. This is evident from the briefs filed in the U.S. District Court for the Northern District of Florida and in this Court, in which the Governor and Secretary of State have taken contradictory positions, and in which the Senate and House disagree as to whether Article VI, § 4 is ambiguous. Before the federal court, the Governor and Secretary jointly asked that court to abstain from deciding the federal constitutional challenge to SB 7066 because of the ambiguity in Article VI, § 4. State Defs.' Br. in Support of Mot. to Dismiss at 12, *Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (Aug. 2, 2019), Dkt. 97. Abstention, they contended, made sense because it was possible this Court would conclude that Article VI, § 4 does *not* require payment of LFOs, and thus it did not make sense for the federal court to decide whether SB 7066 violated the federal Constitution if it was possible that this Court would conclude it violated the Florida Constitution. *Id.*

Having conceded in federal court that Article VI, § 4 is ambiguous, the Governor and the Secretary of State now tell this Court that, in fact, it is not. Their new position is that it is "plain and unambiguous." Gov. Br. at 14; Sec'y Br. at 10-15. Here, the Governor contends that Article VI, § 4 requires that "all fines, fees,

and restitution . . . contained in the four corners of the sentencing document" be paid prior to eligibility for rights restoration. Gov. Br. at 11. Beyond marking a reversal of his position in federal court that the provision is susceptible to more than one interpretation, this contention is fundamentally flawed because there is no such thing as "the four corners of the sentencing document." As plaintiffs in the federal case challenging SB 7066 have shown, election officials cannot identify which records constitute "*the* sentencing document" whose "four corners" the Governor contends govern the meaning of Article VI, § 4. *See* Pls.' Reply Br. in Support of Mot. for Prelim. Inj. at 5-10, *Jones v. DeSantis*, No. 4:19-cv-00300-RH-MJF (N.D. Fla. Sept. 27, 2019), Dkt. 177-1.[1] The Governor's contention that Article VI, § 4 requires payment of LFOs found within the "four corners" of the sentencing document thus bears no relation to reality, and is certainly not derived from the "plain text" of Article VI, § 4.

No reasonable person, after reading and comparing the four conflicting briefs of the Secretary, the Governor, the Senate, and the House, could conceivably

[1] The voluminous record of declarations, deposition testimony, and emails from the Secretary of State's office and from county officials entered into the record in the federal litigation demonstrates that documents associated with sentencing and judgment vary widely, within and among Florida's counties, and the state officials tasked with enforcing the SB 7066's LFO requirement have no idea what constitutes the "four corners" of the sentence for purposes of ascertaining which LFOs are disqualifying. *See generally id.* (citing deposition testimony, declarations, and documentary evidence filed in federal litigation).

conclude that there is a "plain text" argument in favor of requiring payment of LFOs. For example, despite contending that the phrase "completion of all terms of sentence" is controlled by the "four corners" of a sentencing document, the Governor acknowledges that parole is not actually part of the sentence. Gov. Br. at 18. By contrast, the Governor argues that probation *is* a term of sentence, *id.*, while the Senate takes the position that "[u]nder Florida law, a probationary period is generally not considered a 'sentence.'" Senate Br. at 16.

Meanwhile, the Senate and the House wholly disagree as to whether Article VI, § 4 is ambiguous. The Senate joins the newfound position of the Governor and Secretary in contending that a "plain reading" of Article VI, § 4 requires payment of LFOs as a condition for rights restoration. *See* Senate Br. at 5. The House of Representatives, on the other hand, disagrees, and instead takes the position that Article VI, § 4 is ambiguous. The House contends that the phrase "'terms of sentence' surely can have more than one meaning in the abstract," House Br. at 2, that "*a reasonable* reading of the phrase at issue *could* support inclusion of financial obligations imposed at sentencing," *id.* at 5 (emphasis in original), and that the phrase "'terms of sentence' is ambiguous because there is a question about 'which of two or more meanings applies,'" *id.* at 6 (citation omitted).

C. Assuming Article VI, § 4 is ambiguous, the State Parties fail to apply the correct standard for interpretation.

None of the State Parties mention, let alone address, one of the overriding principles that must guide any interpretation of Article VI, § 4: constitutional avoidance.[2] Yet this Court has repeatedly held that Florida courts must construe a law "if fairly possible, as to avoid, not only the conclusion that it is unconstitutional, but also grave doubts upon that score." *In re Seven Barrels of Wine*, 83 So. 627, 632 (Fla. 1920); *see also State v. Presidential Women's Ctr.*, 937 So. 2d 114, 116 (Fla. 2006) (noting that it is a "settled principle that '[w]hen two constructions of a [provision] are possible, one of which is of questionable constitutionality, the [provision] *must* be construed so as to avoid any violation of the constitution.'" (quoting *Indus. Fire & Cas. Co. v. Kwechin*, 447 So.2d 1337, 1339 (Fla. 1983) (emphasis added)).

As the Raysor parties explained in detail in their initial brief, *see* Raysor Br. at 18-36, and as the ongoing federal litigation illustrates, the interpretation of Article VI, § 4 preferred by the State Parties violates the Fourteenth and Twenty-Fourth Amendments to the United States Constitution. Given the House's concession—and

[2] Indeed, the House goes awry in contending that this Court's task is to simply decide whether the reading advanced by the Governor *could* be a *reasonable* interpretation, given that such a reading raises grave constitutional doubts. *Id.* at 5. Nevertheless, the Court must determine not only whether the proposed reading is reasonable and constitutionally sound, but also whether it would fulfill the intent of the voters in enacting Amendment 4. An LFO requirement fails both tests. *See infra* Part II.

the Governor's and Secretary's prior concession—that Article VI, § 4 can reasonably be interpreted to *exclude* payment of LFOs as a condition for rights restoration, this Court "must" interpret it as such to avoid grave doubts as to its constitutionality. *Presidential Women's Ctr.*, 937 So. 2d at 116 (quotation marks omitted). For that reason, the Court need not spend significant time parsing through the various grammatical gymnastics advanced in the State Parties' briefs in order to determine which interpretation is *more* reasonable. It suffices that the interpretation advanced by the Raysor parties is reasonable, and it is the only interpretation that does not jeopardize the constitutionality of Article VI, § 4.

II. The State Parties have failed to show that voters intended to impose an LFO requirement as a condition of voting.

The duty of this Court is to construe Article VI, § 4 "in such a manner as to fulfill the intent of the people," not to defeat it. *Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960). In so doing, the court must be "guided by circumstances leading to the adoption of a provision," and "discern the rationale" behind it. *Gallant v. Stephens*, 358 So. 2d 536, 539 (Fla. 1978). The circumstances surrounding the enactment of Amendment 4 in November of 2018 demonstrate that Florida voters intended to create a streamlined procedure for restoring the right to persons convicted of crimes other than murder or felony sexual offense. *See* Raysor Br. at 36-40. They sought to remove barriers to rights restoration and eliminate disparate treatment of individuals with past felony convictions due to arbitrary factors. *Id.* at 40-42. And, they sought

to re-enfranchise over a million Florida voters who had too long been denied the right to vote due to their past felony convictions. *Id.* at 43-46.

The State Parties suggest that an LFO requirement that appears nowhere in the text is the "chief purpose" of Amendment 4, and that voters did not intend to restore rights to Floridians with outstanding LFOs. *See, e.g.*, Gov. Br. at 21-22; Sec'y Br. at 15. Rather than accepting the rather straightforward conclusion that Florida voters would not have enacted a provision that is entirely silent as to payment of LFOs if their "chief purpose" were to condition rights restoration on payment of LFOs, the State Parties engage in a pages upon pages of textual analysis to support their proposition that an implicit LFO requirement can be read into the provision.[3] The State Parties then offer a simple tautology—if an implicit LFO requirement *can*

[3] For example, the State Parties repeatedly attempt to define a "sentence" in such a way that it necessarily sweeps in LFOs for the purposes of rights restoration under Article VI, § 4. *See, e.g.*, Gov. Br. at 35 ("Consistent with this Court's precedent, the precedent of the Florida Courts of Appeal, and the Florida Rules of Criminal Procedure, every reasonable Floridian would understand the phrase "completion of all terms of sentence" to include 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."). But the State Parties cannot point to a single precedent interpreting "completion of all terms of sentence" to include LFOs *for the purpose of rights restoration*. And they ignore the fact that there is both clear and specific precedent to the contrary: the Florida Rules of Clemency, which governed eligibility for rights restoration at the time voters approved Amendment 4. The Clemency Rules exclude LFOs from the requirement that the "sentence" be "completed," and explicitly state where payment of LFOs are required. *See*, *e.g.*, Raysor Br. at 10-11, 38. A contrary interpretation of Article VI, § 4 would be inconsistent with this precedent, and voters' understanding of "completion of sentence" for purposes of rights restoration.

be read in to the text of Article VI, § 4, then it *must* be what voters intended when they enacted Amendment 4.

But, in relying on extra-textual material in support of their preferred meaning, the State Parties necessarily concede that the text of the provision at issue—"completion of all terms of sentence including probation and parole"—is ambiguous, and thus there is a "question as to which of two meanings" is applied. *See, e.g.*, House Br. at 6. Thus, even assuming State Parties' proposed interpretation is reasonable, which the Raysor parties dispute, *see supra* Part I.A, they have conceded that voters' purpose in enacting Amendment 4 cannot simply be divined from the text of the provision itself. *Compare W. Fla. Reg'l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 9 (Fla. 2012) (finding that if the text of a constitutional provision "is clear, unambiguous, and addresses the matter at issue, [the provision] is interpreted as written"), *with Plante v. Smathers*, 372 So. 2d 933, 936 (Fla. 1979) (finding that where the text is ambiguous, the court must look beyond the plain language to "discern and effectuate the intent and objective of the people" in enacting a constitutional provision).

In suggesting that voters' "chief purpose" was to condition rights restoration on payment of LFOs, the State Parties ignore the broader circumstances giving rise to voters' support of Amendment 4, *see* Raysor Br. Part IV, conflate the intent of the

sponsors with that of the voters; and offer irrelevant evidence in support of a tortured reading of Article VI, § 4 that defies logic, precedent, and common sense.

A. Restoring the right to vote to individuals with outstanding LFOs does not conflict with the creation of additional rights for crime victims.

The Secretary suggests that it is beyond belief that voters could simultaneously support rights restoration while also supporting the rights of crime victims, despite the fact that there is no actual conflict between those two positions. The Secretary points to voters' adoption of Amendment 6, which *inter alia* provided for the creation of constitutional rights for victims of crimes, prohibited judges and hearing officers from deferring to agency interpretation of statutes and rules, *and* raised the mandatory retirement age of justices and judges from seventy to seventy-five,[4] as evidence that voters intended to condition the right to vote on payment of

[4] Proposed Constitutional Amendments and Revisions for the 2018 General Election, Florida Division of Elections at 14 (2018), https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf (Amendment 6 Ballot Summary). Contrary to the Secretary's portrayal, Amendment 6 was not a citizen initiative, but rather was proposed by the Constitution Revision Commission, and thus, unlike citizen initiatives, was not required to comply with the single subject rule. *See* Samantha J. Gross and Elizabeth Koh, *What is Amendment 6 on the Florida ballot? It affects crime victims and judges*, The Miami Herald, Oct. 5, 2018, https://www.miamiherald.com/news/politics-government/election/article219330585.html. As a result, there is no indication whether voters actually supported every provision in Amendment 6, or whether they only supported pieces of it and were therefore indifferent or even opposed to other of its provisions.

LFOs. Not only does this argument defy basic logic, its highlights the constitutional infirmity of conditioning rights restoration on payment of LFOs.

The Secretary posits that voters could not have intended to *explicitly* acknowledge crime victims' right to "full and timely restitution"—a provision that is in the text of Amendment 6, though not included in its ballot summary or title—without also intending to *implicitly* condition rights restoration on payment of LFOs. But, granting an individual the right to vote does not relieve them of the obligation pay off their LFOs, nor does it inhibit or prohibit the collection of debts owed by an individual.[5] Nor is there any evidence that denying an indigent individual the right to vote will suddenly make that person able to pay LFOs where they were unable to before.[6] Indeed, the Secretary essentially concedes that such a rule has no bearing on

[5] Citizens who have obtained rights restoration through the clemency process, for example, are still obligated to pay their outstanding LFOs and the State is still entitled to collect on those debts, including restitution owed to crime victims, through all of the usual means available to it, including by imposing civil liens on the individual's property, or by referring the debt to a collections agencies. *See, e.g.*, Fla. Stat. §§ 775.089, 960.292, 960.295.

[6] By contrast, there is substantial evidence that rights restoration for individuals with past convictions reduces recidivism and increases economic opportunity. *See, e.g.*, The Washington Economics Group, Inc., *Economic Impacts of Restoring the Eligibility to Vote for Floridians with Felony Convictions as a Result of Passage of Amendment 4* at 6 (May 8, 2018) (studies showing high employment penalties for felons "demonstrate that restoring the eligibility to vote for eligible felons has the potential to increase their successful reintegration into the Florida economy through gainful employment."); Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 414 (2012) ("empirical research . . . supports the argument that democratic participation is positively associated with a reduction in

voter qualifications, but is rather an attempt to wring blood from a stone by withholding rights restoration from poor Floridians as collateral for their debts. The State's interest in increasing its own revenues, or in encouraging the payment of LFOs, is not a legitimate basis for denying its citizens the right to vote.[7] *Harper v. Va. Bd. of Elections*, 383 U.S. 663 (1996).

B. It is the province of the judiciary—not the legislature—to say what the Florida Constitution requires.

The Florida Senate argues that the judiciary has no role in interpreting Article VI, § 4, but rather that it is the province of the legislature to determine what the Florida Constitution requires. Thus, it contends, because the legislature has already interpreted Article VI, § 4 to require payment of LFOs, there is no longer any part

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recidivism"). Rights restoration thus would actually *increase* the likelihood that LFOs will actually be repaid while reducing the chance that LFOs will be written off as "uncollectible" due to future incarceration. *See* Florida Court Clerks & Comptrollers, 2018 Annual Assessments and Collections Report, Statewide Summary – Circuit Criminal (2018), https://finesandfeesjusticecenter.org/content/uploads/2019/01/2018-Annual-Assessments-and-Collections-Report.pdf (noting that in 2018, over $145 million in felony LFOs were categorized as at risk for collection due incarceration, or over 55% of the outstanding amounts assessed).

[7] Furthermore, to the extent the State asserts that an interest in increasing its own revenues serves as the basis for denying its citizens the right to vote, such an assertion only highlights the constitutional infirmity of any LFO requirement. *See Crawford v. Marion Cty Election Bd.*, 553 U.S. 181, 189 (2008) (plurality opinion) ("[U]nder the standard applied in *Harper*, even rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications."). As discussed *supra*, this Court has a duty to construe Article VI, § 4 so as to avoid any violation of United States Constitution, and therefore should decline to read an implicit LFO requirement in to the text of the provision.

for the judiciary to play. This argument ignores the clear duty of the judiciary to interpret the Florida Constitution, *see Locke v. Hawkes*, 595 So. 2d 32, 36 (Fla. 1992) ("As the supreme court of the judicial branch, one of our primary functions is to interpret statutes and constitutional provisions."), and it willfully misunderstands those instances where this Court—in exercising that duty—has properly deferred to the legislature's expression of its own intent in crafting and referring a constitutional provision to the voters.[8]

Deferring to the legislature's contemporaneous interpretation of a constitutional provision may be reasonable where the provision at issue was drafted by the legislature, because contemporaneous enactments *by the legislature* are evidence of *legislative* intent. *See, e.g.*, *Brown v. Firestone*, 382 So. 2d. 654, 671 (Fla. 1980) (relying on *Greater Loretta Improvement Ass'n v. State ex rel. Boone*, 234 So. 2d 665 (Fla. 1970) and finding that "[a] relatively contemporaneous construction of the constitution by the legislature is strongly presumed to be correct."). But, contemporaneous enactments by the *legislature* interpreting or implementing *citizen* provisions do not deserve the same deference. *See, e.g.*, *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960) (warning against the risk of legislative interpretation of voter initiatives wherein the "the legislature would have the power

[8] Although the legislature cannot *interpret* Florida's Constitution—a role reserved for the judiciary—it can enact statutes that are consistent with a constitutional provision. *See infra* Part III.

to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people.").

In *Greater Loretta Improvement*, the Court was tasked with determining whether the term "lottery" encompassed games of bingo. The bingo statute as issue had been proposed by the legislature at the same time it proposed a constitutional provision outlawing "lotteries, other than the types of parimutuel [sic] pools authorized by law as of the effective date of this constitution." 234 So. 2d at 670. The Court found that Bingo was not outlawed under the lottery provision, reasoning that the legislature would not have sought to regulate Bingo by statute while at the same time making it illegal under the constitution. *Id.* at 671-72.

At issue in *Firestone* was a gubernatorial veto of a legislative appropriation for library books for the community college and state university systems. The Governor concluded that library books did not constitute a "capital project" as defined by a constitutional provision allowing for appropriations from a specific fund for "any capital project theretofore authorized by the legislature." The Court disagreed, relying on the legislature's contemporaneous statutory definition of "capital projects," as governed by the provision, which included library books, on the grounds that the "legislature's view of its constitutional authority is highly persuasive." In both cases, the provisions being construed by this Court were placed on the ballot by the legislature, and were interpreted with the assistance of

contemporaneous legislative enactments. *See Greater Loretta Improvement*, 234 So. 2d at 671-72; Comm. Substitute for H. Joint Res. No. 2289 & 2984 (June 11, 1974) (Art. XII, § 9), https://fall.fsulawrc.com/crc/conhist/1974amen.html.

A contemporaneous legislative enactment provides no insight, however, into what *voters* may have intended in circumventing the legislature and placing a constitutional provision directly on the ballot. Indeed, it is precisely because the legislature may be incentivized to nullify such propositions that voter-driven initiatives are presumed to be self-executing. *See Gray*, 125 So. 2d at 851. Thus, while a right granted by a voter-initiated provision may be "supplemented by legislation, further protecting the right or making it available," *id*., the legislature may not act in such a way as to severely restrict or diminish the right, *see, e.g.*, *Dep't of Envtl. Protection v. Millender*, 666 So. 2d 882, 887 (Fla. 1996). In *Millender*, the Court rejected the state's interpretation of a constitutional provision initiated by the voters aimed at regulating trawl fishing in near shore waters on the grounds that the provision granted the right to engage in trawl fishing subject to specific guidelines, but the state's proposed interpretation would in fact functionally prohibit trawl fishing. *Id*.[9]

[9] The Court further found that had the provision been intended to encompass the hyper-technical definition proposed by the state, it "would have been more clearly spelled out in the Amendment." *Millender*, 666 So. 2d. at 886.

So too here. Voters sought to simplify and streamline the rights restoration process for all individuals not convicted of murder and felony sexual offenses, and to re-enfranchise over a million Florida citizens. The state's proposed interpretation, by contrast, does not "supplement" rights restoration, or "mak[e] it available," *see Gray*, 125 So. 2d at 851, but rather would functionally prohibit the vast majority of citizens with past felony convictions from voting, regardless of their crime of conviction, based on technical conditions that cannot be found in the text of the Amendment. *Cf. Millender*, 666 So. 2d. at 886 (finding that had the provision at issue been intended to encompass the hyper-technical definition proposed by the state, that definition "would have been more clearly spelled out in the Amendment.").

C. Statements by the sponsors do not represent the will of the voters.

The insistence by the State Parties, particularly the Governor and the Secretary of State, that a few statements made by the sponsors of Amendment 4 must be imputed to the voters who enacted the provision contradicts this Court's precedent. *See Williams v. Smith*, 360 So. 2d 417, 420 (Fla. 1978). Notwithstanding their commendable efforts to put the issue of rights restoration in front of the voters, the sponsors of Amendment 4 cannot claim to speak for the 5,148,926 million Florida voters who voted to restore the right to vote to over a million of their fellow citizens. To suggest otherwise would contravene this Court's holding in *Williams*, by

allowing the stray statements by some representatives of the sponsors of Amendment 4 "to shape constitutional policy as persuasively as the public's perception of the proposal." *Id.* at 420 n.5.

Whatever the sponsors' intent, the fact is that voters did not vote to restore the rights of only those individuals who have paid off their outstanding LFOs. Rather, they voted to restore the right to vote to all citizens disqualified on the basis of their felony conviction, other than those convicted of murder or felony sexual assault, upon completion of all terms of sentence including probation and parole. The Secretary concedes that, absent explicit instruction to the contrary, reasonable people—including this Court—could not have understood that phrase to include LFOs. *See* Sec'y Br. at 13. The Secretary then suggests that absent clarification, the phrase was "beyond the understanding of average voters and thus misleading." *Id.* at 13-14. But, if voters could not read Amendment 4 to include LFOs absent explicit clarification, that does not render the Amendment misleading or unclear, it simply means that Florida voters did not think that LFOs were included as a condition for rights restoration, and they voted for Amendment 4 anyway.

As such, after Amendment 4 went into effect, unknown numbers of Floridians with past felony convictions registered to vote, believing in good faith

they were eligible to do so regardless of any outstanding LFOs.[10] Yet, despite what the Secretary now characterizes as a clear and unambiguous mandate under Article VI, § 4, the Secretary's office made no move to investigate whether newly registered voters had outstanding LFOs related to past felony convictions. *See* Pls.' Reply Br. in Support of Mot. for Prelim. Inj. at 20–21, *Jones v. DeSantis*, No. 4:19-cv-00300 (N.D. Fla. Sept. 23, 2019), Dkt. 177-1. Indeed, the Secretary's current position that Amendment 4 clearly and unambiguously precluded individuals with outstanding LFOs from registering and voting could seem like a bait-and-switch for voters with outstanding LFOs who relied on their valid registration status with the Secretary of State to vote in local elections prior to the enactment of SB 7066.

D. Questions about the meaning of Article VI, § 4 predate the filing of any litigation in federal court challenging SB 7066.

The Governor suggests that questions arose "as to the meaning and intent behind Amendment 4" only after he signed SB 7066 and litigation challenging that statute was subsequently filed in federal court. Gov. Br. at 1. Not so. Whether Article VI, § 4 requires payment of LFOs was hotly debated during the 2019 legislative session. *See*, *e.g.*, Joint H. Mtg. of Crim. J. Subcomm. & Judiciary Comm. at 1:36:33–1:37:00 (Feb. 14, 2019) (Rep. Gottley: "when there's an impossibility, the person simply does not have the ability to pay restitution, just as we don't incarcerate

[10] Lee Hoffman, represented here as an interested party, is one of those newly registered voters.

them, I don't believe that we should prohibit them from voting."); H. Floor Hr'g. at 7:53:50-:59 (Apr. 23, 2019) (Rep. Gottlieb filing an amendment to SB 7066 to clarify "that financial obligations should not be a barrier to voting.").[11] Nor was the Dec. 13, 2018 letter cited by the Governor the only public comment state officials received on the subject; many others noted that the voters did not intend for LFOs to be included. Indeed, the initial "confusion" around the Amendment's meaning appears to have stemmed from comments made by former Secretary of State Ken Detzner, shortly after the Amendment passed. Steve Bousquet, Steve Contorno, & David Smiley, *Confusion clouds restoration of Florida felons' voting rights*, Tampa Bay Times (Dec. 4, 2018), https://www.tampabay.com/florida-politics/buzz/2018/12/04/confusion-and-uncertainty-cloud-restoration-of-felons-voting-rights/; *cf. id.* (attributing to Director of Elections Maria Matthews a statement that "the will of the people is clear: A person who completes their sentence should be able to vote 'and that is what we're going to do.'").

In sum, *none* of the extra-textual evidence relied on by the State Parties suggests that voters themselves read an LFO requirement into Amendment 4, or that they had any intent to require individuals with past convictions to pay of their LFOs as a condition of rights restoration. In contrast, the circumstances surrounding the

[11] Videos available at https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2019021160; https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2019041264.

enactment of Amendment 4 make clear that voters intended to streamline the rights restoration process for all citizens other than those convicted of murder or felony sexual offenses, to remove barriers to restoration and eliminate arbitrary and discriminatory procedures, and to restore the right to vote to over a million Floridians.

III. Even if the Court determines an LFO requirement is not precluded by the text of Article VI, § 4, it should decline to find that one is constitutionally mandated.

At most, this Court should determine that there is no *constitutional* requirement that individuals with past convictions pay off their LFOs. Even if the Court finds that an LFO requirement is not precluded by the text of Article VI, § 4, does not risk severe constitutional problems, and would not contravene the will of the voters, it should not find that such a requirement is *mandated* by the constitutional text. Rather, the Court should defer to the legislature to implement the phrase "completion of all terms of sentence including probation and parole," consistent with its obligations under the Florida and United States Constitutions. The Senate is correct that the Florida Constitution does not define "sentence," whether for purposes of rights restoration or otherwise. Senate Br. at 9. Rather, just as the legislature may determine which crimes constitute felonies, it may also set the punishment for those crimes—again subject to the usual restrictions imposed by the Florida and U.S. Constitutions. Because, for example, the legislature has the

discretion to abolish LFOs associated with criminal convictions, it would be inappropriate for this Court to read a Constitutional requirement to pay LFOs into Article VI, § 4. *See, e.g.*, ACLU Br. at 39-43.

CONCLUSION

For the foregoing reasons, the Court should find that Article VI, § 4 does not contain a requirement that Floridians pay outstanding LFOs to be eligible to vote.

October 3, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 3, 2019, the foregoing document was furnished to The Honorable John A. Thomasino, Clerk of the Supreme Court of Florida, via the Court's e-filing system, which will serve a copy of this filing on all counsel of record.

/s/ Chad W. Dunn
Chad W. Dunn

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief is submitted in 14-point proportionately spaced Times New Roman font.

/s/ Chad W. Dunn
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