IN THE SUPREME COURT OF FLORIDA
CASE NO.: SC19-1341

ADVISORY OPINION TO THE GOVERNOR RE: IMPLEMENTATION OF AMENDMENT 4, THE VOTING RESTORATION AMENDMENT

REPLY BRIEF OF INTERESTED PARTIES THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF FLORIDA, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW, FLORIDA STATE CONFERENCE OF BRANCHES AND YOUTH UNITS OF THE NAACP, ORANGE COUNTY BRANCH OF THE NAACP, AND LEAGUE OF WOMEN VOTERS OF FLORIDA

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I. THE GOVERNOR'S BRIEF DEMONSTRATES HIS REQUEST FALLS OUTSIDE ARTICLE IV, SECTION 1(C)'S NARROW SCOPE.

In his request, the Governor argues this Court's advice remains necessary for him "to ensure the proper administration of voter registration and disqualification."[1] But the Governor's initial brief belies his request. The Governor's brief unequivocally and improperly asks this Court to determine whether SB7066 is constitutional under Article VI, Section 4(a) of Florida's Constitution. (*See* Governor's Brief at 1) (indicating federal constitutional challenges to SB7066 prompted the request).[2] This the Court should not do.

For more than 120 years, this Court has held the Governor cannot seek an advisory opinion regarding a statute's interpretation. This Court has long declined to issue opinions regarding the constitutionality of a statute imposing duties on the

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[1] Letter from Ron DeSantis, Governor, to Hon. Charles T. Canady, Chief Justice, and the Justices of the Supreme Court of Florida (Aug. 9, 2019).

[2] The Senate's initial brief *also* acknowledges the Governor's request does not concern any exercise of his executive powers and duties. The Senate's brief clarifies the Governor's request *solely* concerns the enactment of SB7066. (*See* Senate Brief at 4-5). Undoubtedly, SB7066 requires returning citizens to pay off all legal financial obligations ("LFOs") before qualifying for automatic voter restoration. *See* § 98.0751(2)(a)5 (2019) *et seq.* (requiring returning citizens to pay LFOs, even when outstanding LFOs are converted to civil liens). And as Florida's chief executive, the Governor is bound to SB7066's provisions, *see* Art. IV, § 1(a) (requiring the faithful execution of laws, including laws created by the Legislature pursuant to Art. III, § 1, Fla. Const.), which he presumptively already enforces. SB7066 charges the executive branch, namely Florida's Division of Elections and Supervisors of Elections, with specific duties. Article VI, Section 4(a) does not.

Governor. *Advisory Op. to Governor*, 39 So. 187, 187 (Fla. 1905) (citing *Advisory Op. to Governor*, 22 So. 681 (Fla. 1897)). And Florida's Constitution prohibits Florida's Governor from asking this Court to resolve the legal rights and obligations of thousands of Floridians outside the adversarial process. *See In re Advisory Op. to the Governor*, 509 So.2d 292, 301 (Fla. 1987); *In re Op. of Supreme Court*, 22 So. 681 (Fla. 1897).

Even Florida's House of Representatives recognizes the impropriety of the Governor's request for an interpretation of a statute's constitutionality outside the adversarial process. (House Brief at 4). At its outset, the House's brief emphasizes, "The Justices of this Court ordinarily lack the authority to provide advice 'concerning the validity of statutes enacted by the legislature.'" (*Id.*).[3]

But the Governor's request and brief to this Court, and the Senate's brief, inappropriately ask this Court to consider and approve SB7066 by reading a statutory definition of "sentence" into Florida's Constitution. This Court should reject the Governor's invitation to cement into Florida's Constitution a static

[3] In *In re Advisory Op. to the Governor*, 113 So.2d 703 (Fla. 1959), cited by the House, the Governor asked this Court to consider if Florida's Constitution authorized the Legislature to "effectually abolish the Civil Court of Record for Duval County by" statutory enactment, thereby requiring him to fill a judicial vacancy. *Id*. at 705. Concluding no authority to consider the request existed, this Court observed, "This [C]ourt has many times declined to pass upon the constitutionality of a statute in rendering advisory opinions, particularly where such a test can best be accomplished in adversary proceedings appropriately brief and buttressed by argument of counsel." *Id*. (citations omitted).

definition introduced into law for the first time nine months *after* voters amended the Constitution, and almost seven months *after* the date on which Amendment 4 became part of Florida's Constitution. Even entertaining the Governor's request constitutes a dramatic departure from more than a century of this Court's longstanding precedent,[4] because—as the Governor and the Senate's briefs show—resolving the Governor's question impacts neither his powers nor his duties. But it does broadly impact the rights of hundreds of thousands of Florida's citizens, many who have registered to vote and voted in Florida's elections after Amendment 4's promise of voter restoration became effective.[5]

Because the Governor's brief flatly demonstrates the impropriety of his request, *compare Advisory Op. to Governor*, 39 So. at 187, *and In re Op. of Supreme Court*, 22 So. at 681 *with* (Governor's Brief at 1), this Court should decline to issue an advisory opinion.

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[4] Almost all requests pertained to the powers and duties of solely the Governor. Of the 145 advisory opinions this Court issued previously, 133 of them concern duties of solely the Governor. (Initial Brief of Interested Parties at 24; Addendum A to Initial Brief of Interested Parties at 52-63). In ten of the remaining twelve opinions, this Court declined to answer the Governor's question. (Initial Brief of Interested Parties at 24-25; Addendum B to Initial Brief of Interested Parties at 64-66). And the final two cases are distinguishable. (Initial Brief of Interested Parties at 24-27).

[5] Daniel A. Smith Ph.D., Expert Report of Daniel A. Smith, Ph.D. Professor and Chair Department of Political Science University of Florida (Aug. 2, 2019), https://www.aclu.org/legal-document/gruver-v-barton-expert-report-daniel-smith; *see, e.g.*, Initial Brief of Interested Parties, Appendix at 265, ¶ 7; *id*. at 269, ¶ 4; *id*. at 276, ¶¶ 20-21; *id*. at 382, ¶¶ 6-10; *id*. at 385, ¶¶ 6-10.

II. "COMPLETION OF ALL TERMS OF SENTENCE" CANNOT REQUIRE RETURNING CITIZENS TO PAY LFOS EXTENDING BEYOND THEIR TERMS OF IMPRISONMENT, PAROLE, AND PROBATION TO QUALIFY FOR AUTOMATIC VOTING RESTORATION.

Assuming this Court answers the Governor's question, the Court should limit itself to the question posed. Again, the Governor clarified in his initial brief his request was prompted only by a concern regarding whether his enforcement of Senate Bill 7066 violates the Florida Constitution. As the House clarified in its brief, the Court can resolve that concern without providing a "definitive or far-reaching interpretation of the provision." (House Brief at 5). Instead, as the House states, the Court "need only answer whether a *reasonable* reading of the phrase at issue *could* support inclusion of financial obligations imposed at sentencing." (*Id.*). Therefore, this Court need not and should not conclude that Article VI, Section 4(a) mandates the payment of particular LFOs before voting rights are restored, much less the very LFOs included in SB7066. The Court should decline the Governor's invitation to do so for four reasons.

First, not even the Legislature believed SB7066 provided the sole, definitive, or permanent interpretation of the Constitution's text. SB7066's chief proponent in the Senate acknowledged a reading of Amendment 4 less restrictive of voting rights was reasonable and allowed for legislatively adopting such a future reading. Even now, the House submits "completion of all terms of sentence" is susceptible

of multiple readings, including the reading advanced by the undersigned. And this Court's precedent makes clear the intent of the people ratifying the constitutional amendment controls an interpretation of any constitutional provision ratified by citizen ballot initiative, not "implementing" statutes subsequently enacted. This Court affords no deference to the Legislature's interpretive enactments purporting to "implement" a constitutional provision ratified by ballot initiative, because the legislature otherwise "would have the power to nullify the will of the people expressed in their constitution." *Gray v. Bryant*, 125 So.2d 846, 851 (Fla. 1960).

Second, a plain reading of the text shows "completion of all terms of sentence including parole and probation" does not permit requiring repayment of LFOs that extend indefinitely, beyond completion of any terms of imprisonment, parole, and probation. Third, a common-sense understanding of the phrase "completion of all terms of sentence" yields the same result. Fourth, Amendment 4's text, ballot title, and summary, and the statements made by Amendment 4's sponsors and supporters were clear regarding Amendment 4's chief purpose—to end a lifetime disenfranchisement and replace it with automatic restoration.

A. The Intent of The People Ratifying The Amendment Controls, and the Court Should Not Defer to the Legislature, Let Alone Graft The Language of SB7066 Onto The Constitution.

The *fundamental* principle guiding this Court's interpretation of any constitutional provision ratified by ballot initiative requires this Court to interpret

the provision in a manner that "fulfills the intent of the people [who ratified it], never to defeat it." *Gray*, 125 So.2d at 852. Therefore, this Court closely scrutinizes legislative action following a successful citizen initiative, recognizing the Legislature cannot vitiate the people's will through "implementing legislation." *Gray*, 125 So.2d at 851-52 (Fla. 1960); *accord Browning v. Fla. Hometown Democracy, Inc., PAC*, 29 So.3d 1053, 1063-64 (Fla. 2010); *Zingale v. Powell*, 885 So.2d 277, 282 (Fla. 2004).

Despite this, the Senate argues that any subsequent legislation adopting an interpretation of a citizen ballot initiative's meaning "completely control[s]." (Senate Brief at 17). This argument is meritless and unsupported by this Court's precedent. Moreover, it conflicts with the position of SB7066's chief Senate proponent and the House's position in its brief. Notwithstanding the Senate's arguments, the legislators who passed SB7066 did not understand it to be the only reasonable interpretation, let alone the definitive interpretation, of the people's will as expressed in Amendment 4.[6]

1. <u>The Court should not defer to legislative interpretations of ballot initiatives.</u>

The Senate brief cites inapposite case law suggesting this Court should defer to legislative interpretations of the Constitution. None of the cases cited concerns

[6] Interested Parties emphasize they do not endorse the Legislature's interpretation as reasonable.

constitutional provisions adopted by ballot initiative. Far from deferring to legislative interpretations, this Court closely scrutinizes such "implementing legislation." Otherwise, "the [L]egislature would have the power to nullify the will of the peopled expressed in their constitution, the most sacrosanct of all expressions of the people." *Gray*, 125 So.2d at 851 (emphasis added). And when the people approve of a constitutional amendment departing significantly from a pre-existing scheme, this Court interprets that departure as evidencing significant public concern regarding the previous scheme, as well as the people's affirmative rejection of the previous scheme. *See id*. at 851-52.

Before Amendment 4's ratification, Florida was one of just three states permanently disenfranchising its citizens for committing a single felony, unless granted restoration of civil rights at the Florida Board of Executive Clemency's discretion. That system rested on the nearly unfettered discretion of four individuals comprising the Executive Clemency Board. *See* Art. IV, § 8(a), Fla. Const.; § 944.292(1), Fla. Stat. (2018); (*see also* Initial Brief of Interested Parties at 11-12). Florida disenfranchised a higher percentage of its adult citizens than any other state in the United States—more than ten percent of the overall voting age population and twenty-one percent of the African American voting age population. *Hand v. Scott*, 285 F. Supp. 3d 1289, 1310 (N.D. Fla. 2018). In 2016, more than twenty-five percent of the approximately 6.1 million U.S. citizens disenfranchised

nationwide because of felony convictions lived in Florida.[7]

But more than five million Florida voters, amounting to approximately 64.55 percent of Florida's 2018 electors, approved a dramatic change to Florida's troubling system by ratifying Amendment 4, which the public understood to restore the voting rights of approximately 1.4 million returning citizens throughout the State. *See, e.g.*, Samantha J. Gross & Elizabeth Koh, *What is Amendment 4 on Florida ballot? It Affects Restoration of Felons' Voting Rights*, Miami Herald (Oct. 5, 2018), https://www.miamiherald.com/news/politics-government/election/article219547680.html (estimating Amendment 4 restored 1.6 million returning citizens right to vote); Steven Lemongello, *Floridians Will Vote This Fall on Restoring Voting Rights to 1.5 Million Felons*, South Fla. Sun Sentinel (Jan. 23, 2018), https://www.sun-sentinel.com/news/politics/os-florida-felon-voting-rights-on-ballot-20180123-story.html (estimating 1.5 million returning citizens regained their voting rights). These estimates included returning citizens with outstanding LFOs, reflecting the common understanding Amendment 4 *did not* condition the restoration of voting rights on returning citizens' ability to pay LFOs. Therefore, this Court should reject the Governor, Secretary of State, and Legislature's atextual interpretation, which flatly seeks to undermine the people's

[7] Brief for The Sentencing Project as Amicus Curiae, *Hand v. Scott*, 2018 WL 3328534, at 14-16 & n.34 (11th Cir. June 28, 2018).

intent to restore voting rights to approximately 1.4 million returning citizens who completed their terms of imprisonment, parole, or probation.

2. The Legislature itself did not intend SB7066 to be the permanent, definitive interpretation of Amendment 4.

It would be especially inappropriate to defer to the Legislature's interpretation of Amendment 4 and essentially graft the language of SB7066 onto Amendment 4 by holding Amendment 4 mandates repayment of the same LFOs as SB7066, when the Legislature did not, and does not, believe SB7066 offers the sole interpretation of Article VI, Section 4.

Indeed, SB7066's primary proponent in the Senate, Senator Brandes, acknowledged the Senate could have—consistent with the will of the people in passing Amendment 4—enacted a bill that did not require the repayment of most LFOs converted to civil liens. Senator Brandes introduced an amendment to another bill that did just that. Amendment 703932 to SB7086, at 15-17 (Fla. 2019), https://www.flsenate.gov/Session/Bill/2019/7086/Amendment/703932/PDF. On May 2, 2019, the day before SB7066's passage, Senator Pizzo asked Senator Brandes if that earlier proposal reflected the will of the electorate in its interpretation of "terms of sentence," and Senator Brandes indicated he believed it did. *See* Video: May 2, 2019, Senate Hearing at 6:35:50–6:38:38, http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2019051020&Redirect=true (colloquies between Senator Brandes and Senators Pizzo and

Thurston). He also noted that the Legislature might in the future not require repayment of LFOs converted to civil liens. *Id.* at 7:01:20–7:02:34.

In its brief, the House confirms it concurs with Senator Brandes that SB7066 is not even the only *reasonable* interpretation of Article VI, Section 4, let alone the definitive interpretation. And, like the undersigned, the House does not believe the Governor's request requires the Court to offer a definitive interpretation. (House Brief at 5).

This Court should always defer to the people, not the Legislature, in interpreting ballot initiatives. And the Court should certainly not defer to a Legislature that does not believe its interpretation is definitive. There is no value in tying the Legislature's hands to the extent it determines the interpretation offered by SB7066 is unworkable, unfair, or unconstitutional under the U.S. Constitution. It will do nothing to help the Governor in the execution of his executive powers and duties. There also is no reason to tie the Legislature's or sentencing courts' hands in future determinations as to what penalties should be imposed as part of a person's sentence.

B. A Plain Reading Demonstrates "Completion Of All Terms Of Sentence" Cannot Include LFOs Extending Beyond The Terms of Imprisonment, Parole, Or Probation.

Notwithstanding contentions to the contrary, a plain reading of Article VI, Section 4(a)'s text shows "completion of all terms of sentence" cannot include

LFOs that extend beyond returning citizens' terms of imprisonment, parole, or probation. This Court should reject the Governor and other's efforts to tack additional language into Article VI, Section 4(a)'s text for two reasons.[8]

1. "Terms" means multiple, coexisting, or consecutive terms of imprisonment, parole, or probation.

Contrary to the Governor and others' assertions, the fact "terms" is plural need not mean the word is used to reflect provisions or conditions, but instead reflects that a single sentence for a single felony conviction may contain multiple terms—namely a term of imprisonment and a term of parole or a term of probation.

Florida laws enacted before and after Amendment 4's ratification acknowledge "terms" to mean multiple, coexisting, or consecutive terms of imprisonment, parole, or probation. For example, Florida's existing criminal statutes recognize the trial court's authority to impose split sentences, whereby the court sentences a person to a term of probation *and* a term of imprisonment. *E.g.,* § 948.012(2), Fla. Stat. (2017) (observing if punishment by imprisonment is prescribed, the court may "impose a split sentence whereby the defendant is sentenced to a term of probation which may be followed by a period of

[8] The undersigned Interested Parties outline in their opening brief why the plain language of Article VI, Section 4(a) does not allow voting rights to be made contingent on the repayment of LFOs extending beyond the terms of imprisonment, parole, and probation. These Interested Parties will not rehash those arguments. Instead, they offer responses to two arguments advanced by others.

incarceration."); § 948.012(2), Fla. Stat. (2019) (same); *see also State v. Powell*, 703 So.2d 444 (Fla. 1997) (acknowledging Florida' law permits judges to impose terms of imprisonment and probation simultaneously); *State v. Summers*, 642 So.2d 742 (Fla. 1994) (same); *State v. Holmes*, 360 So.2d 380 (Fla. 1978) (same). Both the 2017 *and* recently enacted 2019 versions of Section 948.012 use the plural "terms" to mean multiple, finite periods of time. *E.g.*, § 948.012(2)(b), Fla. Stat. (2017) ("[T]he court may not impose a subsequent term of probation or community control which, when combined with any amount of time served on preceding terms of probation or community control for offenses pending before the court for sentencing, would exceed the maximum penalty allowable.") (emphasis added); § 948.012(2)(b), Fla. Stat. (2019) (same).

Indeed, the House concedes "terms of sentence" surely can mean narrowly "multiple periods of imprisonment." (House Brief at 2); (*see also id*. at 8) (referencing dictionaries and acknowledging "terms" means "a set period of time" or "duration"). The House's brief also highlights the trial court's authority to impose terms of imprisonment and probation pursuant to § 948.012, Fla. Stat. (*Id*. at 9). And its brief identifies another pertinent statute that uses the plural "terms" to mean periods of confinement or supervised release. (*Id*.) (citing § 944.275(2)(b), Fla. Stat. (2017), which reads, "When a prisoner with an established maximum sentence expiration date is sentenced to an additional term or terms without having

been released from custody, the department shall extend the maximum sentence expiration date by the length of time imposed in the new sentence or sentences") (emphasis added).

Reading "terms" to mean multiple periods of time covering a precise number of months or years is consistent with Amendment 4's chief purpose, which is to automatically restore voting rights to returning citizens, except those convicted of murder or felony sexual offenses. *See Advisory Op. to the Att'y Gen. Re: Voting Restoration Amendment*, 215 So.3d 1202, 1208 (Fla. 2017). Moreover, this plain reading of "terms" is both logical and reasonable when coupled with the word "sentence." (Initial Brief of Interested Parties at 35-36; Raysor Brief at 13-14; House Brief at 6-7).

2. The phrase "including parole or probation" must be read to exclude unending financial obligations, not to include them.

Nothing in Article VI, Section 4's text expressly requires returning citizens to pay off LFOs to have their voting rights restored. Florida's Secretary of State permitted registration immediately when Amendment 4 became effective, and Florida's Legislature later acknowledged the absence of any express language when it included a grace period in SB7066 that provides returning citizens who registered to vote but owed LFOs before SB7066's effective date could not be prosecuted for registering pursuant to Amendment 4 before SB7066 became effective. *See* § 104.011(3), Fla. Stat. (2019) ("A person may not be charged or

convicted for a violation of [false swearing and false voter registration information] for affirming that . . . he or she has had voting rights restored, if such violation is alleged to have occurred on or after January 8, 2019 but before July 1, 2019"). Therefore, the Governor's assertion that "every reasonable Floridian would understand the phrase 'completion of all terms of sentence' to include the required fulfillment of all fines, fees, and restitution," (Governor's Brief at 26), is unsupported by his and the Legislature's erroneously expansive understanding of the phrase and amounts to mere hyperbole.

Yet both he and the Secretary mistakenly aver the use of the words "including parole or probation" means post-supervision LFOs must be completely paid off before returning citizens automatically have their voting rights restored. Not so. That Article VI, Section 4(a) provides, "completion of all terms of sentence including parole or probation[,]" does not mean all other financial obligations are part of the "sentence" as contemplated by Amendment 4. Rather, the phrase "including parole or probation" simply clarifies a person's sentence remains incomplete until she serves out the balance of her sentence under supervised release. *See Parole,* BLACK'S LAW DICTIONARY (11th ed. 2019) ("The conditional release of a prisoner from imprisonment before the full sentence has been served.") (emphasis added); 59 Am. Jur. 2d Pardon and Parole § 6 (2019) ("The essence of parole is release from prison, before completion of the sentence, on condition that

the prisoner abide by certain rules during the balance of the sentence.") (emphasis added); *Probation*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("A court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to a jail or prison . . . on condition of routinely checking with a probation officer over a specified period of time.").

Noting that a sentence contemplates parole or probation only illustrates the type of penalties falling within the scope of the word "sentence." *See White v. Mederi Cartenders Visiting Servs. of Se. Fla., LLC*, 226 So.3d 774, 784 (Fla. 2017). Therefore, "terms of sentence" should be interpreted only to include penalties where the state maintains control over or reduces a person's liberty. *Cf. State v. Hearns*, 961 So.2d 211, 219 (Fla. 2007) (rejecting argument that the phrase "any other felony involving the use or threat of physical force or violence" contemplates physical conduct incomparable to § 776.08, Fla. Stat. (2006)'s enumerated felonies); *Fayad v. Clarendon Nat'l Ins. Co.*, 899 So.2d 1082, 1088-89 (Fla. 2005); *Arnold v. Shumpert*, 217 So.2d 116, 119 (Fla. 1968). A plain reading of Article VI, Section 4 demonstrates "completion of all terms of sentence" cannot include LFOs extending beyond the terms of imprisonment, parole, and probation.

C. COMMON-SENSE UNDERSTANDINGS OF "COMPLETION OF ALL TERMS OF SENTENCE" IN ARTICLE VI, SECTION 4(A) CANNOT REQUIRE THE PAYMENT OF LFOS BEYOND THE TERMS OF IMPRISONMENT, PAROLE, OR PROBATION.

It bears repeating the Governor's contention that "every reasonable Floridian

would understand . . . 'completion of all terms of sentence' to include required fulfillment of fines, fees, and restitution," (Governor's Brief at 26), only constitutes hyperbole. A common-sense understanding of the phrase "completion of all terms of sentence" does not reasonably lead to the conclusion Article VI, Section 4(a) mandates paying all outstanding LFOs beyond terms of imprisonment, parole, or probation, and including post-sentence civil judgments to have voting rights restored.

Indeed, contemporaneous public dialogue demonstrates no reasonable voter would have understood the amended provision—maintaining the "chief purpose" of restoring returning citizens voting rights—wrote into Florida's Constitution a more restrictive definition of completion of sentence than exists under Florida's clemency scheme. *See* Part II.A., *supra*. Amendment 4 intended to significantly change Florida's system of voter disenfranchisement, which Florida's clemency process perpetuates in part. *See* Brief for The Sentencing Project as Amicus Curiae, *Hand v. Scott*, 2018 WL 3328534 (11th Cir. June 28, 2018); *see also Hand v. Scott*, 285 F. Supp. 3d 1289, 1310 (N.D. Fla. 2018). No voter expected Amendment 4 to deprive 1.4 million returning citizens the right to vote when voter restoration was Amendment 4's chief purpose. Additionally, numerous media outlets reported Amendment 4 as automatically restoring returning citizens' right

to vote upon completion of imprisonment, parole, or probation.[9]

That Florida voters also approved Amendment 6—drafted by Florida's Constitution Revision Commission, and which revised Art. I, § 16, Fla. Const.; Art. V, §§ 8, 21, Fla. Const.; and created Art. XII, Fla. Const.— has no bearing on voters' understanding or purpose in ratifying Amendment 4. Amendment 6's ballot summary provided scant information to voters regarding its purposes beyond stating:

> Creates constitutional rights for victims of crime; requires courts to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes. Requires judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency's interpretation. Raises mandatory retirement age of state justices and judges from seventy to seventy-five years; deletes authorization to complete judicial term if

[9] *E.g.*, Kirby Wilson, *John Legend joins Amendment 4 advocates in Orlando to push for felon rights' restoration*, Tampa Bay Times (Oct. 4, 2018), https://www.tampabay.com/florida-politics/buzz/2018/10/03/john-legend-joins-amendment-4-advocates-in-orlando-let-my-people-vote/; Susan Frederick-Gray, *Our opportunity to support Florida's modern-day suffragists*, Florida Politics (Oct. 10, 2018), https://floridapolitics.com/archives/277189-susan-fredrick-gray-our-opportunity-to-support-floridas-modern-day-suffragists; Joe Henderson, *Polls show strong voter support for Amendment 4*, Florida Politics (Oct. 4, 2018), https://floridapolitics.com/archives/276433-joe-henderson-polls-show-strong-voter-support-for-amendment-4; *Editorial: Five good—seven bad—amendments for Florida's Constitution*, South Fla. Sun Sentinel (Oct. 5, 2018), https://www.sun-sentinel.com/opinion/endorsements/fl-op-end-good-bad-constitutional-amendments-20181005-story.html; Press Release: Florida Amendment 4—HRDC Fact Sheet, Human Rights Defense Center (Sept. 17, 2018), https://www.prisonlegalnews.org/news/publications/hrdc-fact-sheet-florida-amendment-4-voting-rights/.

one-half of term has been served by retirement age.[10]

Amendment 6's approval cannot affect Article VI, Section 4(a)'s meaning. Voters can support a criminal victim's right to restitution through civil proceedings as a civil obligation—as is typically the case pursuant to § 775.089(3)(d), Fla. Stat. (2015), and § 960.294(2), Fla. Stat. (1994)—while overwhelmingly recognizing returning citizens deserve a second chance, should be fully integrated into the democratic process, and must have their voting rights automatically restored upon completing their terms of imprisonment, parole, or probation. Indeed, there is no ruling this Court could issue concerning Amendment 4 that would have any bearing on victims' substantive rights under Amendment 6. For all these reasons, common sense dictates Article VI, Section 4(a) cannot include LFOs extending beyond the terms of imprisonment, parole, or probation.

D. Amendment 4's Text, Ballot Title, And Summary, And Its Sponsors and Supporters' Statements Did Not Mislead Voters Or This Court.

Neither Amendment 4's text, ballot title, and summary, nor statements made by Amendment 4's sponsors and supporters misled Florida's voters or this Court. Amendment 4's ballot summary and title "clearly and unambiguously" informed voters and this Court its chief purpose was to "automatically restore voting rights"

[10] Rights of Crime Victims; Judges, Florida Division of Elections, https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=11&seqnum=20 (last visited Sept. 27, 2019).

to returning citizens, "except those convicted of murder or felony sexual offenses, upon completion of all terms of their sentence." *Advisory Op. to the Att'y Gen. Re: Voting Restoration Amendment*, 215 So.3d at 1208. A proposed constitutional amendment's summary and title need only "provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its [singular] purpose, and can cast an intelligent and informed ballot." *Id*. at 1207. And to satisfy § 101.161(1), Fla. Stat. (2014), the ballot title and summary "need not explain every detail or ramification of the proposed amendment." *Advisory Op. to Att'y Gen. re Rights of Elec. Consumers re Solar Energy Choice*, 188 So.3d 822, 831 (Fla. 2016).

Moreover, statements by Amendment 4's proponents are consistent with finding Amendment 4 does not mandate the inclusion of any particular LFOs within the phrase "terms of sentence." This Court and Amendment 4's sponsors acknowledged LFOs might be included in "terms of sentence," but assumed the determination if they were included would be based on the treatment of those LFOs by Florida's criminal laws and sentencing courts—not by a definition cemented into Florida's Constitution. Florida's statutes do generally observe LFOs are mandatory conditions of probation and parole. *See* § 947.181, Fla. Stat. (2014); *id*. at § 948.03(1)(j) (2018); *id*. at § 948.032 (1993). To successfully complete terms of parole or probation, a person must complete a number of financial

obligations, if the obligations are not waived. But when Florida voters approved Amendment 4, Florida law did not extend criminal sentences indefinitely through outstanding LFOs. Florida law contemplates LFOs being paid off before completing parole and probation or converted to civil liens when parole and probation are complete. *See* § 775.089(3)(d), Fla. Stat. (2015). This Court should not freeze the Legislature's definition of "terms of sentence" into the Constitution. Doing so nullifies Amendment 4's chief purpose. *See* Part II.A., *supra*.

CONCLUSION

Answering the Governor's improper request would have sweeping consequences that affect the lives of up to 1.6 million Floridians and their families. Therefore, this Court should dismiss this case. If this Court decides to opine, the undersigned urge this Court to conclude Article VI, Section 4 does not require that the restoration of voting rights for people with felony convictions be contingent on repaying LFOs extending beyond the terms of imprisonment, parole, or probation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished via E-Portal to all other interested parties who have appeared, on this 3rd day of October, 2019.

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.210(a)(2) and Fla. R. App. P. 9.210(b)(8), this brief was prepared in the processing system of Microsoft Word, with Times New Roman typeface, 14-point font text (including 14-point font footnotes).