IN THE SUPREME COURT OF FLORIDA

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

Case No. SC19-1341

REPLY BRIEF OF INTERESTED PARTY FAIR ELECTIONS CENTER

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TABLE OF CONTENTS

TABLE OF CITATIONS

Constitutions

Statutes

Rules

Cases

Other Authorities

SUMMARY OF ARGUMENT

The four interested state parties urge this Court to construe the phrase "all terms of sentence" in Article VI, Section 4 of the Florida Constitution to include costs and fees. *See* Governor Ron DeSantis' Initial Brief at 8–10, 20–21, 23–27 (hereafter, "Governor's Brief"); Initial Brief of Secretary of State Laurel M. Lee at 1 (hereafter, "Secretary of State's Brief"); Initial Brief of the Florida House of Representatives at 3, 23–24 (hereafter, "House Brief"); Brief of the Florida Senate at 8, 13–16 (hereafter, "Senate Brief"). They appear to think this reading is self-evident, repeatedly stating in conclusory fashion that sentences include costs and fees. However, they fail to marshal adequate legal support for this unsubstantiated assertion.

One would think that if criminal sentences embraced costs and fees under Florida law—and that if this dovetailed with the common, popular understanding of the word "sentence"—then the state's legislators, judges, and Justices would have explicitly mentioned this and on more than one occasion. But each of these four briefs strains to present legal authorities to this Court that include costs and fees within the ambit of the "terms of sentence." The closest any of the cited statutes comes is the unremarkable statement that the assessment of certain discretionary costs and fees must be pronounced at sentencing, and the only case presented that suggests costs and fees are part of the sentence is the outlier decision in *Martinez v.*

State, 91 So. 3d 878 (Fla. 5th DCA 2012), which is in considerable tension with this Court's decisions.

On the other side of the scale, there are countless Florida statutes and rules that distinguish between penalties and sentences, on the one hand, and costs and fees on the other. And, as documented in Fair Elections Center's initial brief, this Court and the Courts of Appeals have repeatedly characterized costs and fees as non-punitive, purely for administrative purposes, and not part of criminal sentences.

The near-total absence of statutes, rules, or judicial opinions that include costs and fees within the terms of a criminal sentence speaks volumes. Before SB 7066, the Florida Legislature had never sought to include costs and fees within the criminal sentence. Now this Court must decide whether Article VI, Section 4 of the Florida Constitution and the decades of statutory enactments and case law that inform the meaning of "terms of sentence" nevertheless give Florida lawmakers leeway to break so suddenly and completely with the settled understanding that costs and fees are non-punitive and not part of criminal sentences.

ARGUMENT

The initial briefs filed by the Florida House, the Florida Senate, the Governor, and the Secretary of State do not marshal the necessary legal support in Florida statutes and rules for the proposition that costs and fees are part of the criminal sentence. The Florida House's brief notes that the constitutional amendment should

be interpreted in light of "the typical meaning of related statutes and decisional law extant at the time the constitutional language was adopted." House Brief at 10 (citing *Benjamin v. Tandem, Healthcare, Inc.*, 998 So. 2d 566, 571 (Fla. 2008); *Jenkins v. State*, 385 So. 2d 1356, 1357 (Fla. 1980)). On that, Fair Elections Center agrees. But the interested parties differ as to what that legal backdrop shows as to costs and fees.

1. **The interested state parties could not identify any Florida statutes or rules that demonstrate costs and fees are part of criminal sentences.**

The interested state parties largely gloss over the lack of support in Florida statutes and rules for their argument that costs and fees are "terms of sentence." Instead, they retreat to a higher level of generality, invoking the catch-all term "legal financial obligations," which includes required payments that are punitive and required payments that are non-punitive. This attempt to conflate all financial obligations imposed upon criminal conviction does not suffice to establish that costs and fees are part of a criminal sentence.

The omission of citations as to costs and fees is most glaring in the Florida House's brief. On pages 15 and 16, the authors enumerate and quote from various statutes "that are specific about the type of sentence being referenced." House Brief at 15. Not one mentions costs or fees. Then, from the bottom of page 19 through the end of page 23, the brief progresses through statutes and cases on fines and

restitution,[1] but then completely omits any discussion of costs and fees before ending with the conclusory, unsubstantiated statement: "This discussion demonstrates, then, that under Florida law extant at the time Amendment 4 was approved, a criminal sentence, to accomplish the goals of the criminal justice system, may include financial obligations like restitution, *fees*, and fines." House Brief at 19–23 (emphasis added).

Fla. Stat. § 921.187 comes closer to supporting the House's argument, but also collapses upon a reading of the full text of the statute. Section 921.187 is actually, in large part, an enumeration of "alternatives" to a prison sentence, "[i]f the offender does *not* receive a state prison sentence . . . ." FLA. STAT. § 921.187(1) (emphasis added). Such an enumeration of alternatives to a prison sentence is not solid evidence of what a sentence is or includes. The preceding sentence notes that what follows are alternative "disposition[s] of criminal cases," and even the stated objectives to "best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation" do not necessarily imply that *all* of these objectives are furthered by every listed possible disposition or that every such possible disposition is necessarily a punitive criminal sentence. *Id*.

The Florida Senate's brief similarly spends very little time with the statutes and rules on costs and fees, implicitly acknowledging that they largely demonstrate

[1] *See infra* at 7–19 for more discussion on the cases cited.

that costs and fees do not bear the hallmarks of sentencing and are not punitive in nature. Tellingly, the Senate does provide numerous statutory citations for restitution and fines but, as to costs and fees, cites only to Fla. Stat. § 938.27 and Fla. Stat. § 775.083(2). Senate Brief at 11–13. Section 775.083(2) mandates the assessment of court costs, but does not state that they are part of the sentence or intended as punitive. Section 938.27 authorizes the assessment of costs of prosecution against convicted persons "[i]n all criminal and violation-of-probation or community-control cases." FLA. STAT. § 938.27(1). The statute makes this assessment mandatory: "The court shall include these costs in every judgment rendered against the convicted person." *Id*. But notably, the law does not use the phrase "in every sentence" and instead uses the term "judgment." As this Court knows, under Florida law, a judgment is "the adjudication by the court that the defendant is guilty or not guilty," FLA. R. CRIM. P. 3.650, whereas "[t]he term sentence means the pronouncement by the court of the penalty imposed on a defendant for the offense of which the defendant has been adjudged guilty." FLA. R. CRIM. P. 3.700(a); *see also* FLA. STAT. § 932.51 (treating judgments, sentences, and orders as distinct categories). As countless other statutes reflect, the Legislature knows how to use the word "sentence" when it means the punishment for the crime, but in Section 938.27, it used the word "judgment." Costs and fees are more accurately thought of as orders that are issued collateral to and at the same time as

sentencing, not as actual parts of a criminal sentence. *See infra* at 7–9 (discussing *Jackson v. State*, 983 So. 2d 562, 566 (Fla. 2008)). Nothing in Sections 938.27 or 775.083 is to the contrary or renders costs and fees punitive.

Finally, the Governor's and Secretary of State's initial briefs do not cite any statute or rule that states that costs and fees are part of criminal sentences.

By contrast, there are countless statutes and rules in Florida law that treat "costs and fees" as wholly distinct from "sentences" or "penalties." The Governor's brief notes one of the clearest such examples. Governor's Brief at 25. Florida Rule of Criminal Procedure 3.986 sets forth separate standard forms for the "judgment," FLA. R. CRIM. P. 3.986(b), "charges, costs, and fees," FLA. R. CRIM. P. 3.986(c), "sentencing," FLA. R. CRIM. P. 3.986(d), and "restitution order[s]," FLA. R. CRIM. P. 3.986(g).

Examples of statutes that exclude costs and fees from "the sentence" or the category of "penalties" are legion. For instance, Fla. Stat. § 903.286(1) quite clearly excludes costs and fees from the category of "penalties":

> [T]he clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid costs of prosecution, costs of representation as provided by ss. 27.52 and 938.29, court fees, court costs, *and criminal penalties*.

FLA. STAT. § 903.286(1) (emphasis added). Subsection (5)(d) of Fla. Stat. § 985.0301, which confers jurisdiction in juvenile prosecutions, lists "costs" and

"penalties" as two distinct categories. The beginning of the title for Fla. Stat. § 28.246 is "Payment of court-related fines or other monetary penalties, fees, charges, and costs," illustrating that costs and fees are something other than a "penalty." And even Florida Rule of Appellate Procedure 9.140 enumerates each part of the record for criminal appeals and lists orders assessing costs and fees separately from the sentence.

The four interested state parties frequently conflate all "legal financial obligations," but the Florida Legislature has actually been careful over the years to designate certain payments as "penalties" with a punitive purpose and others as "costs" or "fees" with a non-punitive, administrative purpose. If a payment lacks a punitive purpose, then it is inexorably not part of a criminal sentence.

2. The cases cited by the interested state parties do not support a finding that costs and fees are component parts of a sentence.

a. The Senate's reliance on *Jackson* and *Martinez* is misplaced; *Jackson* strongly suggests costs and fees are separate from the sentence itself, and *Martinez* is an outlier that is in tension with this Court's precedents.

In its brief, the Florida Senate discusses two cases in support of its argument that sentences include costs and fees: *Jackson v. State*, 983 So. 2d 562 (Fla. 2008), and *Martinez v. State*, 91 So. 3d 878 (Fla. 5th DCA 2012). The first construed the meaning of "sentencing error" in Rule 3.800(b) of the Florida Rules of Criminal

Procedure, and the latter upheld a prisoner's challenge to costs under the Double Jeopardy Clause.

In *Jackson*, this Court implicitly distinguished costs from a criminal sentence, writing that Florida Rule of Criminal Procedure 3.800(b) "was intended to permit preservation of errors in orders entered as a result of the sentencing process—in other words, errors in cost and restitution orders, probation or community control orders, *or in the sentence itself*." 983 So. 2d at 566 (emphasis added). The court's taxonomy here mirrors this Court's comments to the 1999 Amendments to Rule 3.800, which read:

> [T]he amended rule is intended to provide one mechanism whereby all sentencing errors may be preserved for appellate review. The comments to the proposed rule defines a "sentencing error" as including "harmful errors in orders entered as a result of the sentencing process. This includes errors in orders of probation, orders of community control, cost and restitution orders, as well as errors within the sentence itself." The amendment to rule 3.800(a) will make it clear that a rule 3.800(b) motion can be used to correct any type of sentencing error, whether we had formerly called that error erroneous, unlawful, or illegal.

Amendments to Florida Rules of Criminal Procedure 3.111(e) and 3.800 and Florida Rules of Appellate Procedure 9.020(H), 9.140, and 9.600 (hereafter, "Comments on Rule 3.800 Amendments"), 761 So. 2d 1015, 1019 (Fla. 1999). This language provides additional evidence that costs and fees are more properly thought of as orders issued collateral or incidental to sentencing, but not part of "the sentence itself." *Id*. In *Jackson*, this Court further emphasized that Rule 3.800(b) reached

these types of collateral orders, recognizing that "rule 3.800(b) is intended to permit defendants to bring to the trial court's attention errors in sentence-related *orders* . . ." 983 So. 2d at 572 (emphasis in original). "[E]rrors we have recognized as 'sentencing errors' are those apparent in *orders* entered as a result of the sentencing process." *Id.* (emphasis in original). It concluded, "the rule may be used to correct and preserve for appeal any error in an order entered as a result of the sentencing process—that is, orders *related* to the sanctions imposed." *Id.* at 574 (emphasis added).

Tellingly, since *Jackson*, Florida courts have repeatedly held that costs assessed without statutory authority cannot be appealed as illegal sentences under Rule 3.800(a). *See, e.g.*, *Durant v. State,* 177 So. 3d 995, 995 (Fla. 5th DCA 2015); *Lindquist v. State*, 155 So. 3d 1193, 1194 (Fla. 2d DCA 2014); *Walden v. State*, 112 So. 3d 578, 579 (Fla. 4th DCA 2013). An illegal sentence is one "that no judge under the entire body of sentencing laws could possibly impose" and whose illegality is "of a fundamental nature." *Durant*, 177 So. 3d at 996 (quoting *Wright v. State*, 911 So. 2d 81, 83–84 (Fla. 2005)). One type of sentence that falls within this category is a sentence that exceeds the statutory maximum. *Id*. at 997 (quoting *Wright v. State*, 911 So. 2d 81, 84 (Fla. 2005)). And yet, though costs imposed without statutory authority technically exceed legal maxima, and can amount to thousands of dollars, this Court has rejected arguments that they constitute illegal sentences, finding that they "do not warrant the attention of the appellate courts." *Maddox v.*

State, 760 So. 2d 89, 109 (Fla. 2000). They remain "minor errors." *Durant*, 177 So. 3d at 998 (quoting *Walden v. State*, 112 So. 3d 578, 579 (Fla. 4th DCA 2013)). These cases underscore the fact that costs and fees are incidental to—and separate from—sentences.

Throughout the opinion in *Jackson*, this Court cited to its prior decision in *Maddox*, which held that defendants who do not preserve objections to erroneous cost assessments cannot appeal these costs, because they do not constitute a "serious, patent sentencing error." 760 So. 2d at 109. To be remediable on appeal, an unpreserved error must represent a fundamental error—that is, an error that is patent and serious. *Id*. at 99. In measuring the seriousness of an error, the court gauges "the nature of the error, its qualitative effect on the sentencing process and its quantitative effect on the sentence." *Id.* (citing *Bain v. State*, 730 So. 2d 296, 304–05 (Fla. 2d DCA 1999)). An error has a quantitative effect on a sentence when it "affects the determination of the length of the sentence such that the interests of justice will not be served if the error remains uncorrected." *Id.* at 100. This Court noted:

> Our societal values are such that in the sentencing context we are more solicitous of personal liberty than of pecuniary interests. Thus, an error that improperly extends the defendant's incarceration or supervision likely would impress us as fundamental. But only in an extreme case would an improper cost assessment or public defender's lien qualify as fundamental error.

Id. (quoting *Bain v. State*, 730 So. 2d 296, 305 (Fla. 2d DCA 1999)). Applying these principles, this Court found that the cost at issue in *Maddox* did "not have a

quantitative effect on the length of the sentence the defendant . . . is required to serve nor d[id] it have a qualitative effect on the sentencing process." *Id*. at 109. The fact that this Court prohibited all defendants from appealing unpreserved cost assessment errors under Rule 3.800(b) indicates that it found that wrongly assessed costs generally do not have any quantitative effect on the length of a sentence or the qualitative effect of the sentencing process.

The Fifth District Court of Appeal's decision in *Martinez* is in tension with *Jackson* and other cases decided by this Court. In *Martinez*, the trial court imposed $100 in prosecution costs at the defendant's sentencing. However, after his conviction and sentence were confirmed on appeal, the state filed—and the trial court granted—a motion for additional prosecution costs, namely the costs of the defendant's extradition from Pennsylvania to Florida. 91 So. 3d at 879. The appellate court reversed, explaining that, "[u]nder double jeopardy principles, a defendant's sentence cannot be increased after he begins serving it," *id.* (citing *Ashley v. State*, 850 So. 2d 1265, 1267 (Fla. 2003)), and that the controlling question was whether the Legislature intended the sanction as a criminal punishment. *Id.* at 880 (citing *Hudson v. United States*, 522 U.S. 93, 98–99 (1997)). In holding that prosecution costs constituted a criminal penalty and that imposing them after sentencing violated the Double Jeopardy Clause, the appellate court observed that: (1) the costs could be imposed only upon criminal conviction or the violation of

community supervision; (2) the statute required trial courts to make payment of costs conditions of probation and made failure to pay grounds for revocation; (3) the costs could be converted to community service; and (4) the costs were "ordinarily . . . imposed during the sentencing process." *Id.*

The *Martinez* court's analysis is infirm for two reasons. First, the court assumed that costs were "criminal punishments" without actually determining, as a threshold matter, whether they were punitive. Second, the decision appears to conflict with this Court's rulings in *Jackson* and *Maddox*, by holding that (a) costs are part of an offender's sentence, and therefore (b) additional costs may increase the offender's sentence.

To the first point, the Double Jeopardy Clause is concerned with "successive punishments" and "successive prosecutions" for the same offense. *United States v. Usery*, 518 U.S. 267, 273 (1996) (quoting *United States v. Dixon*, 509 U.S. 688 (1993)). The federal and state constitutional provisions prohibiting double jeopardy[2] "provide three separate constitutional protections: (1) they protect against a second prosecution for the same offense after acquittal; (2) they protect against a second prosecution for the same offense after conviction; and (3) they protect against multiple *punishments* for the same offense." *State v. Akins*, 69 So.3d 261, 269 (Fla.

[2] *See* U.S. CONST. amend. V, cl.4; FLA. CONST. art. I, § 9.

2011) (citing *Delemos v. State*, 969 So. 2d 544, 546 (Fla. 2d DCA 2007)) (emphasis added). In this vein, the *Martinez* court observed:

> Under double jeopardy principles, a defendant's sentence cannot be increased after he begins serving it. However, to be part of a sentence for double jeopardy purposes, a particular sanction must constitute criminal, rather than civil, *punishment*. "Whether a particular *punishment* is criminal or civil is, at least initially, a matter of statutory construction. A court must ... ask whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other." Thus, in determining whether extradition costs constitute criminal *punishment*, we focus on the authorizing statutes.

91 So. 3d at 879–80 (internal citations omitted) (emphasis added). Yet, glossing over the very issue in dispute in this matter, the court simply assumed that costs were punitive, without first determining that they indeed serve such a purpose. For reasons already addressed in Fair Elections Center's initial brief, costs and fees do not serve this purpose, because they do not bear any of the hallmarks of sentencing: they do not require findings of fact; they do not vary with the nature or severity of the defendant's offense; and an offender's community supervision cannot be extended due to a failure to pay them. Florida statutes and cases on costs and fees—other than *Martinez*—illustrate, conclude, or militate in favor of concluding that costs and fees are non-punitive.

The second flaw in the court's analysis arises from its treatment of costs as part of the defendant's sentence, even though *Griffin v. State* and *Jackson*, both decided four years prior, indicated that they are not. *Griffin v. State*, 980 So. 2d 1035,

1037 (Fla. 2008) (adopting *Ridgeway v. State*, 892 So. 2d 538 (Fla. 1st DCA 2005)) (finding cost was a "mandatory, non-punitive civil remedy"); *Jackson*, 983 So. 2d at 566, 572–74. And because costs and fees are not part of the defendant's sentence, it follows that additional costs cannot increase the sentence. *Maddox* further undermines the *Martinez* court's reasoning. As discussed above, *Maddox* found that costs generally do not lengthen a defendant's sentence and that "only in an extreme case would an improper cost assessment or public defender's lien qualify as fundamental [*i.e.*, patent and serious] error." 760 So. 2d at 100 (quoting *Bain v. State*, 730 So. 2d 296, 305 (Fla. 2d DCA 1999)). But *Martinez* offered no evidence to support a finding that the defendant's costs represented the kind of "extreme case" contemplated by the *Maddox* Court, or that it increased the defendant's sentence at all.

Finally, if this Court were to find that *Martinez* was correctly decided, it would raise questions as to whether other Florida statutes that impose costs and fees at sentencing, but which may increase over time post-sentencing, would violate the Double Jeopardy Clause as impermissible increases in sentences or enhancements of the conditions of probation. *See, e.g.*, FLA. STAT. §§ 28.246 (collection costs), 948.09 (costs of supervision), 951.032 (costs of medical treatment while incarcerated), 951.033 (subsistence costs while incarcerated).

The *Martinez* decision is an outlier opinion, one that overlooks this Court's earlier rulings. Accordingly, and respectfully, this Court should not base its construction of the phrase "terms of sentence" in Article VI, Section 4 of the Florida Constitution on this stray decision, nor invoke it to abruptly change course in its jurisprudence.

b. *Osterhoudt* does not support the Governor's argument that "[t]his Court's own precedent expressly acknowledges that fines, fees, and restitution are considered valid parts of a sentence."

The Governor's initial brief declares that "[t]his Court's own precedent expressly acknowledges that fines, fees, and restitution are considered valid parts of a sentence," and then fails to cite any case that reaches such a conclusion with respect to costs and fees. Governor's Brief at 23. *Osterhoudt v. State*, 214 So. 3d 550, 551 (Fla. 2017), and *Jones v. State*, 666 So. 2d 191, 192 (Fla. 2d DCA 1995), merely stand for the proposition that discretionary costs and fees must be pronounced during a sentencing hearing. In *Osterhoudt*, this Court held that "trial courts must individually pronounce discretionary fees, costs, and fines during a sentencing hearing to comply with due process requirements." 214 So. 3d 550, 551 (Fla. 2017); *see also* FLA. R. CRIM. P. 3.700(b) ("Every sentence or other final disposition of the case shall be pronounced in open court, including, if available at the time of sentencing, the amount of jail time credit the defendant is to receive.").

In reaching this holding, it approved the appellate court opinions in *Williams v. State*, 198 So. 3d 778 (Fla. 2d DCA 2016), and *Nix v. State*, 84 So. 3d 424 (Fla. 1st DCA 2012). However, *Nix* provides that "[s]tatutorily-mandated costs may be imposed without notice and, thus, need not be specifically pronounced at the sentencing hearing. By contrast, discretionary costs must be orally pronounced at sentencing because such costs may not be imposed without affording the defendant notice and an opportunity to be heard." 84 So. 3d at 426 (citing *Bradshaw v. State*, 638 So. 2d 1024 (Fla. 1st DCA 1994)) (internal citations omitted); *see also Waller v. State*, 911 So. 2d 226, 228 (Fla. 2d DCA 2005). This is so because courts must automatically impose mandatory costs. *Jones v. State*, 700 So. 2d 776, 776 (Fla. 2d DCA 1997).

The Governor's reliance on *Osterhoudt* is misplaced. Pronouncement at a sentencing hearing is not the essential ingredient or defining feature of sentences. By that logic, discretionary costs, but *not* mandatory costs, would constitute parts of a defendant's sentence—a patently *illogical* result. Furthermore, *Osterhoudt* must be read in the context of this Court's discussion in *Jackson*. As noted above in Section 2.a, *supra* at 7–15, the Court in *Jackson* implicitly distinguished sentencing-related cost orders from sentences. *See, e.g.*, 983 So. 2d at 566 (Rule 3.800 "was intended to permit preservation of errors . . . in cost and restitution orders, probation or community control orders, *or in the sentence itself*") (emphasis added); *see also*

Comments on Rule 3.800 Amendments, 761 So. 2d at 1019. Had the Court viewed costs as "valid parts of a sentence," it presumably would have said so directly. But it did not. Numerous precedents from *State v. Jones*, 180 So. 3d 1085, 1088 (Fla. 4th DCA 2015) (citing *United States v. Bajakajian*, 524 U.S. 321, 329 (1998)) to *Griffin v. State*, 980 So. 2d 1035, 1037 (Fla. 2008) to *Jackson* and *Maddox* expressly or implicitly distinguish between costs or fees, on the one hand, and sentences or penalties, on the other. Respectfully, this Court should rule consistent with that precedent by declining to now recognize costs as parts of the criminal sentence.

c. *Castrillon* does not support the Florida House's assertion that "a criminal sentence, to accomplish the goals of the criminal justice system, may include" costs and fees because costs and fees do not serve the punitive goals of Florida's criminal justice system.

The citation to *Castrillon v. State*, 821 So. 2d 360, 361 (Fla. 5th DCA 2002) in the Florida House's brief only mentions "financial obligations" and only begs the ultimate question of whether costs and fees are punitive and part of the criminal sentence. Just because costs and fees are assessed at the same time as sentencing does not mean that they are part and parcel of the sentence.

The court in *Castrillon* did not address whether costs and fees were part of a sentence. In that case, the defendant was sentenced, *inter alia*, to ten years of incarceration and to pay restitution and over $2,500 in costs. Pursuant to an amended administrative order, the defendant was ordered at sentencing to reappear before the

court within thirty days of his release from prison to schedule a status hearing. Following his release, the defendant was placed in a collections program operated by the court. In response, he claimed that the amended administrative order violated his due process rights because it provided inadequate notice, and that the court lacked authority under Florida law to operate a collections program. 821 So. 2d at 361. The court rejected both arguments. *Id*.

Nothing in *Castrillon* supports the House's assertion that "a criminal sentence, to accomplish the goals of the criminal justice system, may include" costs and fees. House Brief at 23. In passing, the court observed that "what has been created is a program into which a judge may place a defendant when he or she is unable to meet the financial obligations imposed by a sentence," 821 So. 2d at 363, but that statement is not a declaration that sentences include costs. The defendant in *Castrillon* had also been sentenced to pay restitution, and the court program at issue also applied to undeniably punitive sanctions like fines. *See id.* at 361. At best, the court's phrasing serves as shorthand for the types of financial assessments imposed at the time of sentencing, which *Jackson* referred to collectively as obligations imposed pursuant to "sentence-related *orders*." 983 So. 2d at 572 (emphasis in original).

Moreover, punishment remains the goal of the Florida criminal justice system, FLA. STAT. § 921.002(1)(b), while the Florida Constitution requires the establishment of "adequate and appropriate . . . service charges and costs *for performing court-*

related functions." FLA. CONST. art. V, § 14(b) (emphasis added). The drafters of the constitutional amendment creating this requirement cited historically poor funding for state courts as the reason for imposing this requirement. Fla. Const. Revision Comm'n, *Statement of Intent Regarding Article V, Section 14*, 30 J. OF THE 1997-1998 CONST. REV. COMM'N 260, 261 (May 5, 1998), http://edocs.dlis.state.fl.us/fldocs/crc/1997-1998/journal1997.pdf ("It is the intent of the proposers that local needs which are caused by reduced or inadequate allocations by the state for the state courts system, either as a result of a decrease in the dollars allocated, an insufficient increase in the dollars allocated or a percentage reduction relative to other statewide allocations, do not create local requirements."). Costs and fees serve an entirely different goal than that of criminal sentencing, and therefore do not comprise any part of a sentence.

CONCLUSION

The four interested state parties are grasping at straws to try to bring costs and fees within the "terms of sentence" for the first time in the development of Florida's criminal law. The extreme dearth of legal support for this move is readily apparent in each of their briefs.

For the foregoing reasons and those stated in its initial brief, Fair Elections Center respectfully submits that this Court should construe "terms of sentence" in Article VI, Section 4 of the Florida Constitution to exclude all costs and fees.

DATED: October 3, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2019, I electronically filed a true and correct copy of the foregoing via the Florida Courts E-Filing Portal, which will send a copy of this filing to all counsel of record.

/s/ Jon Sherman

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing has been typed in Times New Roman 14-point font in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

DATED: October 3, 2019 */s/ Jon Sherman*