No. 20-12003

In the United States Court of Appeals for the Eleventh Circuit

KELVIN LEON JONES, ET AL.,

Plaintiffs–Appellees,

v.

RON DESANTIS, ET AL.,

Defendants–Appellants.

BRIEF OF DEFENDANTS-APPELLANTS

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
NO. 4:19-CV-300-RH-MJ

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No publicly traded company or corporation has an interest in the outcome of this case or appeal.

Dated: June 19, 2020

s/Charles J. Cooper
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STATEMENT REGARDING ORAL ARGUMENT

This appeal raises important questions of constitutional dimension. Those questions include whether the district court erred in enjoining substantial portions of a Florida constitutional amendment and statute granting automatic reenfranchisement to felons upon completion of all terms of their criminal sentence for violating the Equal Protection Clause as applied to felons unable to pay financial terms of their sentences and for violating the Twenty-Fourth Amendment as applied to outstanding fees and costs. The Court's answer to these questions will have far reaching effects, as it will determine whether the State must comply with the court's injunction in upcoming elections of national, state, and local significance in 2020. Appellants believe oral argument would assist the Court in deciding this consequential issue.

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INTRODUCTION

Plaintiffs, aided by the district court, have subjected the People of Florida to a grievous bait-and-switch. In the fall of 2018, Amendment 4 appeared on the ballot in Florida. The Amendment called for automatic reenfranchisement of convicted felons, subject to two crucial limitations: first, those felons convicted of murder or a felony sexual offense would not be eligible; and, second, all other felons would be eligible for restoration only "upon completion of *all terms of sentence*," a phrase whose plain meaning the Florida Supreme Court has confirmed includes financial terms of sentence, such as restitution, fines, and fees.

The requirement that felons pay their debt to society *in full* before returning to the electorate was a critical feature of Amendment 4. Organizations including the Brennan Center (counsel for Plaintiffs) had polling data indicating that achieving the 60% of the vote necessary to amend the Florida Constitution would be more difficult without it. *See* A743. And following Amendment 4's passage, the ACLU of Florida (counsel for Plaintiffs), the League of Women Voters of Florida (a Plaintiff), and other groups insisted to the Secretary of State that "all terms of sentence" in Amendment 4 includes "financial obligations imposed as part of an individual's sentence." *See* A396.

It thus came as a surprise when, following the enactment of SB-7066, legislation implementing Amendment 4, Plaintiffs challenged the measure, alleging

that conditioning reenfranchisement on financial as well carceral terms of sentence *is unconstitutional*. And even worse, the district court has now agreed, holding that (a) felons who cannot immediately afford to pay off the financial terms of their sentences must immediately be reenfranchised under the Equal Protection Clause; and (b) requiring felons to pay court fees and costs imposed as part of their criminal sentences as a condition for reenfranchisement is an unconstitutional "tax" on voting under the Twenty-Fourth Amendment. The district court also ordered a remedial process for Florida to implement its merits decision.

The district court's equal-protection decision, which followed a preliminary ruling by a panel of this Court, *Jones v. Governor of Florida*, 950 F.3d 795 (11th Cir. 2020) (per curiam), effectively repeals Amendment 4's "all terms of sentence" limitation on automatic felon reenfranchisement. Indeed, the class of felons unable immediately to pay the financial terms of their sentences in full numbers in the hundreds of thousands. *See* A658. As a result of the district court's ruling, the critical requirement that felons repay their debt to society in full before returning to the electorate has been gutted.

The Constitution does not require this rewriting of Florida's felon reenfranchisement laws. Both the *Jones* panel and the district court agreed that Florida is not required to reenfranchise felons *at all*. *See also Richardson v. Ramirez*, 418 U.S. 24 (1974); *Johnson v. Governor of Florida*, 405 F.3d 1214 (11th Cir. 2005)

(en banc). It therefore follows that Florida had broad leeway in exercising its discretion whether and on what terms to reenfranchise felons. *See, e.g.*, *Shepherd v. Trevino*, 575 F.2d 1110, 1114–15 (5th Cir. 1978); *Owens v. Barnes*, 711 F.2d 25, 27 (3d Cir. 1983). This discretion includes, according to every other appellate court to address the issue, requiring completion of *all* terms of a felon's sentence, including financial terms, *see Harvey v. Brewer*, 605 F.3d 1067 (9th Cir. 2010) (O'Connor, J.), and this is true regardless of whether a felon can afford to pay, *see Johnson v. Bredesen*, 624 F.3d 742 (6th Cir. 2010); *Madison v. State*, 163 P.3d 757 (Wash. 2007) (en banc).

That felons forfeit their constitutional voting rights also undermines the district court's Twenty-Fourth Amendment decision, as costs and fees incurred as part of a criminal sentence cannot be a "tax" on a non-existent right to vote. *See Bredesen*, 624 F.3d at 751; *Harvey*, 605 F.3d at 1080; *Howard v. Gilmore*, 2000 WL 203984, at *2 (4th Cir. Feb. 23, 2000). Furthermore, financial terms *of a criminal sentence* are not a tax of any kind.

The district court's ruling, and the *Jones* panel's as well, reflects a fundamental misunderstanding of Amendment 4's "all terms of sentence" condition on reenfranchisement as punitive. But that could not be further from the truth. Amendment 4 does not add *one day* to the period during which any felon is unable to vote. That is because felon disenfranchisement *is a consequence of felony*

conviction, and, before Amendment 4, there was *no avenue* for automatic restoration of felon voting rights in Florida. Amendment 4 therefore *opened* a way for felons to regain the franchise that previously did not exist. The Amendment is wholly reformatory and not at all punitive, and it would be perverse to strike it down for not being generous enough. *See Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966). Indeed, the district court's decision creates terrible incentives by striking down a discretionary reform measure based on a challenge brought by many of the same groups that pressed for the very terms that they, and the district court, now say are unconstitutional. If the district court's judgment is permitted to stand, the People of Florida—and those of the other states in this Circuit—would be well advised to be wary when presented with a similar "incremental" reform proposal in the future. The district court's erroneous judgment should be reversed.

JURISDICTIONAL STATEMENT

Pursuant to Federal Rule of Appellate Procedure 28(a)(4) and Circuit Rule 28-1(g), Appellants attest that: (1) the district court had subject-matter jurisdiction over Plaintiffs' complaint under 28 U.S.C. §§ 1331 and 1367(a); (2) this Court has subject-matter jurisdiction over the district court's final order and judgment under 28 U.S.C. § 1291; and (3) the district court entered its judgment on May 26, 2020 and Appellants timely filed their notice of appeal on May 29, 2020.

STATEMENT OF THE ISSUES

1. Whether Florida law conditioning felon reenfranchisement on completion of all terms of sentence, including financial terms such as fines and restitution, violates the Equal Protection Clause, as applied to felons unable to pay.

2. Whether Florida law conditioning felon reenfranchisement on payment of fees and court costs imposed as part of a criminal sentence is a "tax" prohibited by the Twenty-Fourth Amendment.

3. Whether the Due Process Clause requires the overhaul of Florida voter registration procedures ordered by the district court.

STATEMENT OF THE CASE

I. Factual Background

A. Passage of Amendment 4

Florida's first constitution empowered the territorial Legislature to "exclude from . . . the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime." FLA. CONST. art. VI, § 4 (1838). When Florida was admitted to the Union, its General Assembly enacted such a law. *See* 1845 Fla. Laws ch. 38, art. 2, § 3, *available at* https://bit.ly/34eeO3k. This general policy persisted, and as of late 2018, Florida's constitution maintained that "[n]o person convicted of a felony . . . shall be qualified to vote or hold office until restoration of civil rights or removal of disability." FLA. CONST. art. VI, § 4(a) (2018).

In 2016, the organization Floridians for a Fair Democracy, Inc. sponsored a ballot initiative called the "Voter Restoration Amendment." *See Advisory Op. to the Att'y Gen. Re: Voting Restoration Amendment*, 215 So. 3d 1202, 1204 (Fla. 2017). The proposed amendment suggested changes to Article VI, section 4 of the Florida Constitution as follows (with new sections underlined):

> (a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.
>
> (b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.

During oral argument before the Florida Supreme Court on whether the initiative petition satisfied the State's "single-subject" requirement and whether its title and summary provided sufficient clarity, the sponsor attorney's affirmed that the phrase "all terms of sentence" "include[d] the full payment of any fines," A372–A373, and "restitution," A379–A380. In urging voters to support the Amendment, the ACLU of Florida stated that it "would return the eligibility to vote to Floridians who have completed the terms of their sentences, including any probation, parole, fines, or restitution." A399. Indeed, the organization, recognizing that a significant portion of felons would not be eligible for reenfranchisement due to unpaid financial terms, described "the impact of Amendment 4" as providing merely a "2nd chance"

to "as many as 1.4 million" felons who "*could be* eligible for the restoration of their ability to vote *upon payment of fines, fees, and restitution*." A708 (emphases added). And supporters of the amendment knew that felon reenfranchisement "polls higher" in Florida when payment of financial punishment was required, and that there would be a "harder fight to win 60% + 1% approval" without that requirement. A743.

Appearing on the ballot during the November 2018 election, the Voter Restoration Amendment, now known as Amendment 4, received 64.55% of the vote—a mere 4.55% above the 60% threshold mandated by the Florida Constitution, *see* FLA. CONST. art. XI, § 5(e)—and became effective on January 8, 2019.

B. Passage of SB-7066

Following Amendment 4's adoption, the State Legislature passed, and Governor DeSantis approved, Senate Bill 7066 ("SB-7066"). *See* 2019-162 Fla. Laws 1. SB-7066 provides that "completion of all terms of sentence" in Amendment 4 means "any portion of a sentence that is contained in the four corners of the sentencing document, including, but not limited to" "[f]ull payment of restitution ordered to a victim by the court as a part of the sentence" and "[f]ull payment of fines or fees ordered by the court as a part of the sentence or that are ordered by the court as a condition of any form of supervision, including, but not limited to, probation, community control, or parole." FLA. STAT. § 98.0751(2)(a)5.a–b.

SB-7066 also provides that the financial obligations above "are considered completed" either by: (1) "[a]ctual payment of the obligation in full"; (2) "the termination by the court of any financial obligation to a payee," upon the payee's approval; or (3) completion of community service hours "if the court . . . converts the financial obligation to community service." *Id.* § 98.0751(2)(a)5.e.(I)–(III). SB-7066 specifies that its requirements to pay financial obligations are "not deemed completed upon conversion to a civil lien." *Id.* § 98.0751(2)(a)5.e.

C. The Florida Supreme Court Interprets Amendment 4

On August 9, 2019, Governor DeSantis requested the Florida Supreme Court's opinion on "whether 'completion of all terms of sentence' under [Amendment 4] includes the satisfaction of all legal financial obligations—namely fees, fines and restitution ordered by the court as part of a felony sentence that would otherwise render a convicted felon ineligible to vote." *Advisory Op. re: Implementation of Amendment 4*, 288 So. 3d 1070, 1074 (Fla. 2020).

On January 16, 2020, the Florida Supreme Court confirmed that "all terms of sentence" "includes 'all'—not some—[financial terms of sentence] imposed in conjunction with an adjudication of guilt," including fines, restitution, fees, and costs. *Id.* at 1075. This interpretation was mandated by the plain language of Amendment 4 and accorded with the "consistent message" disseminated to the

electorate by "the ACLU of Florida and other organizations along with the [Amendment's] Sponsor . . . before and after Amendment 4's adoption." *Id.* at 1077.

II. Prior Proceedings

A. The Preliminary Injunction Proceedings and Prior Appeal

Plaintiffs, seventeen individuals and three organizations, filed five separate suits alleging that SB-7066's conditioning of reenfranchisement on the payment of financial terms of sentence violated the United States Constitution, both on its face and as applied to felons unable to pay. Plaintiffs invoked several constitutional provisions, including the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the Twenty-Fourth Amendment. They also moved for a preliminary injunction to enjoin the provisions of SB-7066 conditioning reenfranchisement on completion of financial terms of sentence.

On October 18, 2019, the district court preliminarily enjoined Appellant Lee from preventing Plaintiffs from registering to vote or voting, finding that Plaintiffs were likely to succeed on the merits of their wealth-based equal-protection claim. A473, A476–A478. The court also held that Plaintiffs were unlikely to succeed on their due process, *see* A471–A472, and vagueness claims and withheld judgment on the Plaintiffs' Twenty-Fourth Amendment claim, *see* A466.

Appellants appealed, and on February 19, 2020, a three-judge panel affirmed the district court's preliminary injunction order. *See Jones*, 950 F.3d 795. The panel

held that heightened scrutiny applied to Plaintiffs' wealth-discrimination claim, that Appellants were unlikely to sustain Amendment 4 and SB-7066 under that standard, and that Plaintiffs were therefore likely to succeed on the merits.

B. The Trial on the Merits and District Court's Final Judgment

On April 7, 2020, the district court certified a proposed class for Plaintiffs' Twenty-Fourth Amendment claim and a subclass for the wealth-discrimination claim. *See* A668–A669. The court ordered that the class would consist of "all persons who would be eligible to vote in Florida but for unpaid financial obligations," A668, and that the subclass would consist of "all persons who would be eligible to vote in Florida but for unpaid financial obligations that the person asserts the person is genuinely unable to pay," A669. The district court indicated that the subclass alone would cover several hundreds of thousands of felons. *See* A659–A660.

The district court held an eight-day bench trial between April 27 and May 6, 2020 and issued its opinion on the merits on May 24, 2020. *See* A1023–A1147. As relevant to this appeal, the district court held the State's reenfranchisement scheme unconstitutional insofar as it (1) restricts felons from voting who are otherwise eligible but "genuinely unable to pay the required amount" of the financial terms of their sentences; (2) requires felons to pay "amounts that are unknown and cannot be determined with diligence"; and (3) requires felons "to pay fees and costs as a condition of voting." A1140; *see also* A1150–A1157. The district court enjoined

Appellant Lee from taking "any step to enforce any requirement declared unconstitutional," A1141, and also replaced the reenfranchisement scheme set out in Florida law with procedures requiring the Division of Elections to issue advisory opinions when requested by felons that detail the precise amount outstanding on the felon's sentence and providing a factual basis for any finding that the felon is able to pay, A1141–A1142.

On May 29, 2020, Appellants filed their notice of appeal and moved the district court to stay its judgment pending appeal. The district court denied that motion on June 14, and Appellants moved this Court for a stay on June 17.

On June 2, 2020, Appellants filed two additional papers in this Court. First, Appellants petitioned for initial en banc hearing of the appeal. That petition remains pending. Second, Appellants moved for an expedited briefing schedule, which the Court granted on June 11.

III. Standard of Review

To obtain a permanent injunction, a plaintiff "must establish actual success on the merits, as opposed to a likelihood of success." *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1268 (11th Cir. 2006). Although this Court "review[s] the district court's entry of a permanent injunction for an abuse of discretion, the district court's underlying legal conclusion"—that Amendment 4 and SB-7066 violate the Constitution—"is reviewed *de novo*." *Thomas v. Bryant*, 614 F.3d 1288, 1303 (11th

Cir. 2010); *see also United States v. Ballinger*, 395 F.3d 1218, 1225 (11th Cir. 2005) (noting that the Court reviews de novo the constitutionality of a statute). This court reviews factual findings for clear error. *Thomas*, 614 F.3d at 1307.

SUMMARY OF ARGUMENT

First, neither Amendment 4 nor SB-7066 discriminate based on wealth in violation of the Fourteenth Amendment. Plaintiffs have no wealth-discrimination claim to make because they have never alleged, let alone proved, a discriminatory purpose, nor does this case fall into one of the narrow categories of cases for which discriminatory purpose need not be proved. Even if Plaintiffs could state a wealth-discrimination claim, Amendment 4 and SB-7066 must be scrutinized according to rational-basis review. The *Jones* panel, in reaching the opposite conclusion and applying heightened scrutiny, misinterpreted binding Supreme Court and Circuit precedents and admittedly departed from the otherwise unanimous consensus of state and federal appellate courts maintaining that felon reenfranchisement schemes that do not rely on suspect classifications must be subject only to rational-basis review.

Amendment 4 and SB-7066 easily pass the rational-basis test. The State has a legitimate interest in ensuring that felons repay their debt to society, and if a felon is unable to do so for whatever reason, the State may reasonably withhold reenfranchisement. Indeed, the State's interest in its criminal judgments and treating

all felons equally means that Amendment 4 and SB-7066 would survive even heightened scrutiny.

Second, Plaintiffs do not have a cognizable injury for purposes of the Twenty-Fourth Amendment because they forfeited their constitutional voting rights when they were convicted of felonies. At that moment they had no more right to vote than a child or a foreign national. Even if the Twenty-Fourth Amendment did apply, the requirement that felons complete the financial terms of their sentences is not an unconstitutional tax. While the district court concluded that court costs and fees are "other taxes" that raise revenue for the government, such obligations are imposed as part of their *criminal sentences*. SB-7066 does not change the obligations incurred in felons' criminal sentences to unconstitutional taxes under the Twenty-Fourth Amendment.

Third, while the district court did not appear to definitively rule on Plaintiffs' procedural due process claim, to the extent that it did make such a ruling, its remedial order is untenable. Its decision imposes on the State an elaborate advisory-opinion process that rewrites Florida's election regulations without any warrant from the Constitution. Indeed, once recognizing that Plaintiffs' wealth-discrimination claim lacks merit, whatever due-process concerns exist should be swept away, as the district court's remedial ruling depends almost entirely on the mistaken conclusion

that the State may not withhold reenfranchisement from felons unable to pay the financial terms of their sentences.

Fourth, if Plaintiffs and the district court were correct on the merits, the appropriate remedy under Florida's severability principles would be to invalidate Amendment 4 in its entirety. Any other result would thwart the intended effect of Amendment 4 and expand the reach of felon reenfranchisement beyond what Florida voters intended.

ARGUMENT

I. Amendment 4 and SB-7066 Do Not Violate the Fourteenth Amendment.

A. Wealth-Discrimination Challenges to Felon Reenfranchisement Laws Are Subject, at Most, to Rational-Basis Review.

The district court did not independently analyze which level of scrutiny applied to Plaintiffs' wealth-discrimination claim. Rather, the district court maintained that "*Jones* settle[d] the issue" and that "[n]o purpose would be served by repeating . . . the Eleventh Circuit's full analysis." A1058. Therefore, Appellants here address the substance of that panel's bases for its holding. The panel's reasoning is clearly erroneous and should not be applied here. A panel of this Court is bound as a matter of precedent, not by *Jones*, but by the earlier Circuit and Supreme Court decisions *Jones* contravened. *See Morrison v. Amway Corp.*, 323 F.3d 920, 929 (11th Cir. 2003). And because contravening precedent is clearly erroneous, *Jones* does not

control as law-of-the-case. *See United States v. Williams*, 728 F.2d 1402, 1405–06 (11th Cir. 1984).

1. Plaintiffs must prove purposeful discrimination to sustain a wealth-discrimination claim.

"[A] law neutral on its face, yet having a disproportionate effect on [a] group will be deemed to violate the Equal Protection Clause only if a discriminatory purpose can be proven." *Joel v. City of Orlando*, 232 F.3d 1353, 1359 (11th Cir. 2000). Thus, "a reenfranchisement scheme could violate equal protection if it had *both* the purpose and effect of invidious discrimination." *Hand v. Scott*, 888 F.3d 1206, 1207 (11th Cir. 2018).

The *Jones* panel reasoned that because "this is not a race discrimination case," Plaintiffs need not prove discriminatory intent or purpose. 950 F.3d at 828. But the purposeful-discrimination requirement is a general principle of equal-protection law that applies just as readily in other contexts, such as sex discrimination, *see Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979), and wealth discrimination, *see Joel*, 232 F.3d at 1357. The *Jones* panel's distinction between this case and those concerning race discrimination makes no sense given the Equal Protection Clause's core purposes. Under the panel's reasoning, when a facially *wealth-neutral* statute is alleged to disproportionately disadvantage a "profoundly important interest," 950 F.3d at 823, of those lacking enough wealth, it is subject to heightened scrutiny. Meanwhile, when a facially *race-neutral* statute is alleged to

disproportionately disadvantage African Americans' "profoundly important interest[s]," the lack of any discriminatory intent "ends the constitutional inquiry." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 271 (1977). It cannot be correct that the Equal Protection Clause somehow protects against wealth discrimination more readily than it protects against racial discrimination when race is a suspect class, *see Ortwein v. Schwab*, 410 U.S. 656, 660 (1973), and indigency is not, *see San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29 (1973).

Moreover, the panel asserted that "the Supreme Court has squarely held that *Davis*'s intent requirement is not applicable in wealth discrimination cases." *Jones*, 950 F.3d at 828 (citing *M.L.B. v. S.L.J.*, 519 U.S. 102, 126–27 (1996)). That is patently erroneous. *M.L.B.* held only that *Davis*'s intent requirement does not apply in the narrow sliver of wealth-discrimination cases in which a wealth-neutral law's disadvantages "apply to *all* indigents and *do not reach anyone outside that class*." 519 U.S. at 127 (emphases added). (And, as explained below, *M.L.B.* ultimately applied heightened scrutiny only because the case involved access to judicial proceedings.)

SB-7066's payment requirements do not inhibit restoration of voting rights for "all indigents" and no one "outside that class." As Plaintiffs themselves emphasized below, a felon could even be "a millionaire" yet unable to repay financial penalties. *See* A617.

To get around this problem, the panel redefined as "truly indigent" "those genuinely unable to meet their financial obligations to pay fees and fines, and make restitution to the victims of their crimes." 950 F.3d at 813. But "indigency" truly means that an individual "lacks the means of subsistence." *See United States v. Shepherd*, 922 F.3d 753, 758 (6th Cir. 2019) (quoting *Black's Law Dictionary* 891 (10th ed. 2014)); *see also Rodriguez*, 411 U.S. at 22–23.

The *Jones* panel's capacious definition of "indigency"—untied to any absolute level of poverty—would nullify the *M.L.B.* Court's distinction between the general purposeful-intent requirement and those rare cases involving disadvantages that "apply to all indigents and do not reach anyone outside that class." 519 U.S. at 127. That is because if "indigency" simply meant "unable to pay," then *every* law requiring payment for some benefit would disadvantage "all indigents"—those unable to pay—and would not disadvantage "anyone outside that class"—those able to pay. *See id.* That understanding of "indigency" is flatly inconsistent with *M.L.B.*

The district court initially followed, in its ruling below on the merits, the *Jones* panel's lead, upholding Plaintiffs' equal protection claim despite their failure to allege, let alone prove, that in passing SB-7066 the Florida Legislature purposely targeted felons who could not satisfy the financial terms of their sentences. *See* A1058–A1061. But in its order denying the State's stay motion, the district court belatedly attempted to hedge its bet, purporting to find as a fact that "[t]he

Legislature would not have adopted SB7066 but for the actual motive to favor individuals with money over those without." A1168. This sua sponte "finding" is utterly baseless, for again, Plaintiffs "have not alleged—let alone established . . . that Florida's scheme has a discriminatory purpose." *Hand*, 888 F.3d at 1270. Indeed, the district court's finding was founded on a tautology—that when the Florida Legislature enacted the text of SB-7066, it was fully aware that felons who are unable to pay their financial terms of sentence will in fact not pay their financial terms of sentence. *See* A1167–A1168. This reality obviously does not satisfy *Feeney's* requirement that an equal protection plaintiff prove that the allegedly discriminatory measure was adopted "because of, not merely in spite of," its discriminatory impact. 442 U.S. at 279.

And the court's finding is untenable for another reason: it wholly ignores Amendment 4 and relies on no evidence beyond the text of SB-7066. But one cannot infer discriminatory motive from the provisions of SB-7066 cited by the district court regarding civil liens and community service. The district court faulted SB-7066 for not restoring voting rights for felons whose financial obligations were converted into civil liens. But conversion is an alternate collection method that "does not alter the criminal nature of the sanction," *Martinez v. State*, 91 So. 3d 878, 880 n.2 (Fla. Dist. Ct. App. 2012), and therefore cannot complete the felon's term. And the provision allowing the payment of financial obligations through community service

favors poorer felons by giving them an alternate way to fulfill those terms. Indeed, this provision is more generous than Amendment 4 itself which does not contemplate *any* alternate means for completing one's sentence. Yet the district court concluded that Floridians adopted Amendment 4 with a "generous spirit." A1135. The State Legislature was even more generous, and the district court's baseless conclusion that SB-7066 purposely discriminates against the poor is "[c]urious if not downright irrational." A1106.

Worse still, the court below did not even have jurisdiction to retroactively fill in this gaping factual hole in its judgment on the merits—the State's filing of a notice of appeal "divest[ed] the district court of its control over those aspects of the case involved in the appeal." *Showtime/The Movie Channel, Inc. v. Covered Bridge Condo. Ass'n, Inc.*, 895 F.2d 711, 713 (11th Cir. 1990) (quotation omitted).

Because SB-7066 does not, in practical effect, preclude *only* the indigent from restoring their rights to vote, and because Plaintiffs have not shown that Amendment 4 and SB-7066 were adopted "because of, not merely in spite of," any purported "adverse effects" upon felons unable to complete the financial aspects of their sentences, *Feeney*, 442 U.S. at 279 (quotation omitted), they cannot sustain a wealth-discrimination claim.

2. This case does not implicate the fundamental right to vote.

Even assuming Plaintiffs' wealth-discrimination claim gets out of the starting gate, the *Jones* panel erred in applying scrutiny beyond rational-basis review. Indeed, binding precedent holds that rational-basis review applies to challenges to reenfranchisement laws. *See Shepherd*, 575 F.2d at 1114–15. *Jones* attempted to distinguish *Shepherd* because that case did not involve a wealth classification, *see* 950 F.3d at 823–24, but nothing in *Shepherd*'s *reasoning* suggested that application of rational-basis review was somehow limited to its precise facts. Rather, it reasoned generally that rational-basis review applies to "selective . . . reenfranchisement of convicted felons." *Shepherd*, 575 F.2d at 1114–15.

The panel erred in resting its conclusion on invocation of the fundamental right to vote. *See Jones*, 950 F.3d at 821–22. It did so despite acknowledging that every other court to consider the constitutionality of felon reenfranchisement schemes has concluded that they do not implicate felons' fundamental rights. *See id.* at 821 (citing *Bredesen*, 624 F.3d at 746; *Harvey*, 605 F.3d at 1079; *Madison*, 163 P.3d at 767). Moreover, the panel expressly noted that by applying heightened scrutiny it created a circuit split with the Sixth Circuit's decision in *Bredesen*. *See id.* at 808–09.

The panel departed from prior appellate decisions on this question even further than it acknowledged. For instance, the panel asserted that because no

plaintiff in *Harvey*, "alleged that he was indigent," Justice O'Connor, writing for the panel, "left open the constitutional question" presented here. 950 F.3d at 821 (citing *Harvey*, 605 F.3d at 1080). But *Harvey* left no doubt regarding the applicable standard of review, specifying that it was not addressing whether "withholding voting rights from those who are unable to pay their criminal fines due to indigency would . . . pass *this rational basis test* . . . ." *Harvey*, 605 F.3d at 1080 (emphasis added).

Justice O'Connor's central reason for adopting rational-basis review is sound. Felons challenging reenfranchisement laws "cannot complain about their loss of a fundamental right to vote because felon disenfranchisement is explicitly permitted under the terms of" *Richardson v. Ramirez*. *Harvey*, 605 F.3d at 1079. Thus, "[w]hat plaintiffs are really complaining about is the denial of the statutory benefit of re-enfranchisement that [the state] confers upon certain felons." *Id.*

The *Jones* panel purported to distinguish *Richardson* because it "did not address what may happen when a state chooses to adopt the automatic re-enfranchisement of felons." 950 F.3d at 822. But as every other court to evaluate felon reenfranchisement schemes has found, the effect of *Richardson* is clear: because felons can be forever barred from voting upon conviction, the right, by definition, is no longer "fundamental" for disenfranchised felons—who stand in the same shoes as a child or a foreign national—and any extension of the franchise to

that class is an act of grace—a "statutory benefit." *E.g.*, *Harvey*, 605 F.3d at 1079. There is no support in *Richardson*—or elsewhere—for the proposition that the State's bare adoption of a reenfranchisement scheme somehow *reinstates* the fundamental nature of a right that felons unquestionably forfeited.

The *Jones* panel also failed to adequately reckon with *Katzenbach v. Morgan*, 384 U.S. 641 (1966). There, the Court held that "the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights, is inapplicable" when "the distinction challenged . . . is presented only as a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise." *Id.* at 657 (citation omitted). The *Jones* panel distinguished *Katzenbach* because it supposedly rested on the Congress's powers under Section 5 of the Fourteenth Amendment and did not concern "a stand-alone measure by a state." 950 F.3d at 824. But the Supreme Court, relying on *Katzenbach*, made clear in *Rodriguez* that where a State statute is "affirmative and reformatory" it "should be scrutinized under judicial principles sensitive to the nature of the State's efforts and to the rights reserved to the States under the Constitution." 411 U.S. at 39. In other words, it must be reviewed deferentially.

3. Neither *Griffin v. Illinois* nor *Bearden v. Georgia* support application of heightened scrutiny.

The *Jones* panel further justified applying heightened scrutiny by asserting that "settled Supreme Court precedent instructs [courts] to employ heightened

scrutiny where the State has chosen to 'open the door' to alleviate punishment for some, but mandates that punishment continue for others, solely on account of wealth." 950 F.3d at 817. But Supreme Court precedent has never made such a general instruction. Instead, the Court has made two specific and limited instructions with respect to "the treatment of indigents in our criminal justice system." *Bearden v. Georgia*, 461 U.S. 660, 664 (1983).

A. First, in *Griffin v. Illinois*, 351 U.S. 12 (1956), the Supreme Court held unconstitutional a statute that "effectively conditioned thoroughgoing appeals from criminal convictions on the defendant's procurement of a transcript of trial proceedings." *M.L.B.*, 519 U.S. at 102. *Griffin*'s holding has been applied to transcript and filing fees related to a variety of legal proceedings, *see, e.g.*, *Mayer v. City of Chicago*, 404 U.S. 189 (1971) (transcript fees in nonfelony cases); *M.L.B.*, 519 U.S. 102 (fees to appeal the termination of parental rights), and the Supreme Court has circumscribed *Griffin* to cases involving access to the judicial process, *see, e.g.*, *Christopher v. Harbury*, 536 U.S. 403, 413 (2002); *Lewis v. Casey*, 518 U.S. 343, 354 (1996); *Kadrmas v. Dickinson Public Sch.*, 487 U.S. 450, 460 (1988); *see also Bush v. Sec'y, Fla. Dep't of Corr.*, 888 F.3d 1188, 1197 (11th Cir. 2018).

The panel asserted that *Griffin* had been applied to "fundamental associational and political participation interests," *Jones*, 950 F.3d at 820, but that is mistaken. One of the cases cited implicated judicial process, *see Boddie v. Connecticut*,

401 U.S. 371, 382–84 (1971), another did not rely on *Griffin* at all, *see Zablocki v. Redhail*, 434 U.S. 374 (1978), and the rest were concurrences, *see* 950 F.3d at 820–21.

Worse still, the *Jones* panel's approach directly conflicts with this Court's previous holding in *Walker v. City of Calhoun*, 901 F.3d 1245 (11th Cir. 2018), that *Griffin*'s exception could not apply unless the challenger explains "what *judicial proceeding* an indigent person cannot access by the terms of" the law. *Id.* at 1264 (emphasis added). As *Walker* explained, cabining *Griffin* to judicial access is necessary because otherwise, it would "apply to any government action that treats people of different means differently." *Id.* And if that were true, then "[d]isparate treatment based on wealth . . . would be treated the same as official religious or racial discrimination," a "radical . . . application of the Equal Protection Clause" that the Supreme Court had already rejected. *Id.* (citing *Rodriguez*, 411 U.S. at 24).

B. The other wealth-discrimination exception to traditional equal-protection analysis stems from a series of three cases concerning the power of the State to imprison individuals for failure to pay outstanding financial penalties. *See Bearden*, 461 U.S. 660; *Tate v. Short*, 401 U.S. 395 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970); *see also Pugh v. Rainwater*, 572 F.2d 1053, 1056 (5th Cir. 1978) (en banc). In *Williams* and *Tate*, the Court held that a State may not "impos[e] a fine as a sentence and then automatically conver[t] it into a jail term solely because the

defendant is indigent and cannot forthwith pay the fine in full." *Tate*, 401 U.S. at 398. And in *Bearden*, the Court held that a State may not revoke an individual's probation—and therefore imprison him—for failure to pay a fine or restitution, when his failure to do so results from indigency. *See* 461 U.S. at 672.

The panel abstracted *Bearden* to stand for the principle that heightened scrutiny applies whenever a State "deprive[s] someone of a profoundly important interest" because of their failure to pay fines or restitution. *Jones*, 950 F.3d at 823. This expansive reading of *Bearden* is incorrect. Even if Amendment 4 and SB-7066 "deprived" felons of their voting rights—when, in truth, the State's *disenfranchisement* laws did that—*Bearden* has no application here. The Court in *Bearden* clearly drew a bright-line rule singling out the imposition of a *prison term* on indigent individuals unable to pay their financial penalties. Indeed, the Court took pains to explain that if a probationer "could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternate measures of punishment *other than imprisonment*" and "[o]nly if alternate measures are not adequate to meet the State's interests in punishment and deterrence may the court *imprison* a probationer who has made sufficient bona fide efforts to pay." *Bearden*, 461 U.S. at 672. Because this case does not involve imprisonment, *Bearden* is inapplicable.

Likewise, *Bearden*'s reasoning—that "[o]nce the State has defined the outer limits of incarceration necessary to satisfy its penological interests and policies, it may not then subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency," *id.* at 667—does not apply. The State has maintained for nearly two hundred years that its interests in punishment *require* that felons lose their right to vote upon conviction. The forfeiture of the right to vote is an essential part of the "outer limit" of punishment necessary to satisfy the State's interests.

Amendment 4 and SB-7066 do not augment the outer limit of a felon's punishment; they replace a permanent boundary with one that can be removed conditionally. Nor do they not convert one form of punishment into another, more severe form. Instead, they dictate that one form of punishment lawfully imposed as part of a felon's sentence must continue for as long as the felon cannot complete his sentence. They are entirely unlike what the Court confronted in *Bearden*.

B. The Classifications Drawn by Amendment 4 and SB-7066 Are Rationally Related to Legitimate Government Interests.

Once concluding that rational-basis review applies to Plaintiffs' wealth-discrimination claim, the remaining analysis should be straightforward: Amendment 4 and SB-7066 are rational insofar as they demand that *all* felons complete *all* terms of sentence, including *all* financial terms.

1. Rational-basis review must ask whether the classification drawn by Amendment 4 and SB-7066 is rational.

Neither the district court nor the *Jones* panel concluded that rational-basis review applies to Plaintiffs' wealth-discrimination claim. However, both courts opined at length in dicta on how Amendment 4 and SB-7066 would likely fall even if scrutinized under rational-basis review. *See Jones*, 950 F.3d at 809–17; A1063–A1091. But these disquisitions on the application of rational-basis review, with due respect, bear no resemblance to the doctrine.

"Almost every statute subject to the very deferential rational basis scrutiny standard is found to be constitutional." *Williams v. Pryor*, 240 F.3d 944, 948 (11th Cir. 2001). That is because such a statute comes to the court "bearing a strong presumption of validity, and those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314–15 (1993) (citation and quotation omitted).

The *Jones* panel and the district court fundamentally misunderstood how to apply this doctrine. Rational-basis review requires courts to consider whether "the legislative *classification*" at issue is rational. *Id.* at 315 (emphasis added). That requires asking merely whether the State could rationally draw a line treating *all* felons of *all* levels of wealth the same with respect to voting restoration.

The district court believed that because plaintiffs are generally not "preclude[d] . . . from asserting that a provision [of a statute] is unconstitutional as applied to the plaintiff," rational-basis review could proceed by considering not the rationality of a classification, but the rationality of a classification's effect on the plaintiff. A1062. This is wrong. As this Court has previously explained, rational-basis review provides that "a court reviewing the constitutionality of a *classification* only may strike down the *classification* if the *classification* is without *any* reasonable justification." *In re Wood*, 866 F.2d 1367, 1370 (11th Cir. 1989) (first three emphases added). Therefore, "even if in a particular case the classification, *as applied*, appears to discriminate irrationally, the classification must be upheld if 'any set of facts reasonably may be conceived to justify it.' " *Id.* at 1370–71 (emphasis added) (quoting *McGowan v. Maryland*, 366 U.S. 420, 426 (1961)). Plaintiffs' burden under rational-basis review is therefore to disprove the existence of any reasonably conceivable set of facts to justify *the classification* challenged. Indeed, any other approach would entail striking down applications of virtually any statute, regardless of the reasonableness of the underlying classification, because "[n]early any statute which classifies people may be irrational as applied in particular cases." *Beller v. Middendorf*, 632 F.2d 788, 808 n.20 (9th Cir. 1980) (Kennedy, J.).

Both the *Jones* panel and the district court could cite only a single equal-protection case, *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985),

to support their conception of rational-basis review. But *City of Cleburne* involved the application of a zoning ordinance requiring a special use permit for a home for the mentally disabled that could only be explained as the product of "an irrational prejudice against the mentally retarded." *Id.* at 450. Here, however, there is no evidence that the classification drawn by State is inexplicable beyond irrational prejudice against those felons unable to pay the financial terms of their sentences.

2. Requiring all felons, regardless of wealth, to complete their sentences to restore their rights to vote is rational.

Plaintiffs cannot reasonably argue that the State has no legitimate interest in treating all felons equally, regardless of financial circumstance. Just as the State may demand that *every* incarcerated felon complete his prison term—regardless of his life expectancy—before restoring his voting rights, it may demand that every felon with financial terms of sentence pay them off entirely—regardless of his financial prospects. This interest—that *all* felons complete *all* terms of sentence to fully repay their debt to society—is legitimate.

The fulcrum for the *Jones* panel's equal-protection analysis was its determination that Amendment 4 and SB-7066 "punish[] more harshly" felons unable to pay "than those who committed precisely the same crime" and that such a punishment "is linked not to their culpability, but rather to . . . their wealth." 950 F.3d at 812. Not so.

Shepherd long ago demonstrated that when a State chooses to reenfranchise some felons, it is not constitutionally required to reenfranchise all felons who share similar levels of culpability. There, the only difference between the felons who could regain the franchise and those who could not was that the former were placed on probation by Texas state courts and the latter were placed on probation by federal courts. *See Shepherd*, 575 F.2d at 1112. Thus, felons with equal degrees of culpability could be treated differently; their eligibility for reenfranchisement hinged not on the substance of their conduct but the court system in which they were convicted and probated. But *Shepherd* nonetheless *upheld* the Texas scheme, *id.* at 1114–15, and nowhere did the Court even hint that treating felon groups differently with regard to voting rights required the State to calibrate reenfranchisement to culpability.

More fundamentally, the *Jones* panel's assertion that Amendment 4 and SB-7066 "punish[]" Plaintiffs "more harshly" ignores that neither law punishes anyone. 950 F.3d at 812. A felon loses his right to vote as punishment for *committing a felony*, not for being unable to satisfy the financial terms imposed as part of that sentence. The financial terms, like any other terms of a sentence, are simply part of the debt that the felon owes to society, as measured by the judge and jury who imposed it on behalf of society. Thus, Amendment 4 and SB-7066 are reform measures alleviating punishments already lawfully rendered. Such reform measures

are "not invalid under the Constitution because [they] might have gone farther than [they] did"; indeed, "reform may take one step at a time." *Katzenbach*, 384 U.S. at 657. The People of Florida and the State Legislature took one discrete step—enfranchising felons based on the repayment of their debt to society *in full*. The State can "rationally determine that [only] those convicted felons who had served their debt to society . . . should therefore be entitled to participate in the voting process." *Owens*, 711 F.2d at 28; *see also Hayden v. Paterson*, 594 F.3d 150, 171 (2d Cir. 2010) (a state may withhold the vote until a felon "has accounted for his actions").

3. Amendment 4 and SB-7066 are rationally related to Florida's legitimate government interest in demanding repayment of felons' debts to society.

Given that Florida has a legitimate interest in demanding a full measure of justice from every felon, Amendment 4 and SB-7066 bear a rational relation to the achievement of that end. Indeed, Amendment 4 and SB-7066 are *narrowly tailored* to the achievement of that interest because demanding that every felon satisfy every societal debt defined by the felon's sentencing document is the State's only method for ensuring that no felon who falls short will automatically be allowed to rejoin the electorate.

The district court nevertheless believed that the State's interest was undermined by the State's "first dollar" policy, which credits payments from felons on the outstanding balance of some legal obligations—such as fines, fees, or costs

that accrue after the felon's sentence is imposed—toward satisfaction of the financial obligations ordered as part of criminal sentence. *See* A1078. But this policy is consistent with the State's demand that every felon pay his debt to society. Amendment 4 and SB-7066 require only that felons pay the monetary amounts set forth in their sentencing documents; the first-dollar policy supports exactly that. That a felon has a financial debt to the State or a victim does not mean that his financial debt to society—defined precisely as the amount set out within the four corners of his sentencing document—is not satisfied for purposes of Amendment 4 and SB-7066. The first-dollar policy benefits felons; it seeks merely to strike a fair balance between the State's criminal justice interests and administrability and felons' interest in prompt restoration once they have paid amounts equal to those imposed by their sentences. In any event, because "the rational relationship between the means adopted" via the first-dollar policy "and the legislation's purpose" is "at least debatable" it satisfies rational-basis review. *Gary v. City of Warner Robins*, 311 F.3d 1334, 1339 (11th Cir. 2002) (quotation omitted).

Finally, the district court impugned the rationality of Amendment 4 and SB-7066 based on its finding that "the mine-run of felons affected by the pay-to-vote requirement are genuinely unable to pay." A1064–A1065. This fact is irrelevant to the State's interest in ensuring that *all felons* complete *all terms* of sentence. Even if most felons are unable to complete their sentences because of individual

circumstance, that fact does not undermine the rationality of the State's choice to nevertheless demand completion. Moreover, legislative choices scrutinized under rational-basis review are "not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." *Doe v. Moore*, 410 F.3d 1337, 1346 (11th Cir. 2005) (quoting *Beach Commc'ns*, 508 U.S. at 315). Indeed, "even if the assumptions underlying the rationales were erroneous, the very fact that they are arguable is sufficient, on rational-basis review, to immuniz[e] the [legislative] choice from constitutional challenge." *Panama City Med. Diagnostic Ltd. v. Williams*, 13 F.3d 1541, 1547 (11th Cir. 1994) (quotation omitted) (second alteration added).

To the extent that the State Legislature acted on the understanding that many felons would eventually be able to complete the financial terms of their sentences, that assumption would have certainly been "arguable." Plaintiffs' own expert, Dr. Daniel A. Smith, calculated that 22.6% of otherwise eligible felons had no outstanding financial terms and that another 31.6% owed less than $1,000. *See* A687.[1] It would not have been irrational for the State Legislature to assume that the

[1] This statistic is also further proof that the *Jones* panel's idea of "indigency" is implausible. *See supra* Part I.A.1. Even if one wanted to describe some of the 54.2% of felons as "indigent" because they cannot make an immediate $1,000 payment to restore their voting rights, that would mean that 60% of Americans are also "indigent." *See* Adrian D. Garcia, *Survey: Most Americans Wouldn't Cover a $1K Emergency With Savings*, BANKRATE (Jan. 16, 2019), https://bit.ly/30QTh2D.

54.2% of felons owing less than $1,000 would eventually be able to repay that debt. Indeed, a felon paying $20 a month would pay back $1,000 in just over four years. The district court's after-the-fact second-guessing of Florida's judgment that felons should fully repay their societal debts is antithetical to the judicial deference required under rational-basis review.

C. Amendment 4 and SB-7066 Are Constitutional even if Analyzed under the *Bearden* Test.

Even if the *Jones* panel did not clearly err in holding that heightened scrutiny applies to Plaintiffs' wealth-discrimination claim, Amendment 4 and SB-7066 are constitutional under the test announced by that panel.[2] The *Bearden*-based approach adopted by the panel analyzed four factors: "(1) 'the nature of the individual interest affected'; (2) 'the extent to which it is affected'; (3) 'the rationality of the connection between legislative means and purpose'; and (4) 'the existence of alternative means

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The Supreme Court's precedents regarding "indigents" simply do not cover the financial circumstances of most Americans.

[2] Where a prior panel "was not asked, and did not decide, the ultimate constitutionality of" a statute, the question remains open. *Lebron v. Sec'y of Fla. Dep't of Children & Families*, 772 F.3d 1352, 1360 (11th Cir. 2014). Because the *Jones* panel "asked only whether the district court had abused its discretion in determining that [Plaintiffs were] likely to succeed on the merits of [their] claim," *id.*, it only held "that the LFO requirement is *likely unconstitutional*" under *Bearden*, 950 F.3d at 827 (emphasis added). The use of the word "likely" demonstrates that the *Jones* panel did not decide the ultimate constitutionality of Amendment 4 or SB-7066 and that this panel is thus free to decide the question in the first instance.

for effectuating the purpose.' " *Jones*, 950 F.3d at 825 (quoting *Bearden*, 461 U.S. at 666–67). Each factor favors the State.

First, the individual interest here is not weighty because felons—by virtue of their convictions—cannot complain that Amendment 4 or SB-7066 deprive them of a fundamental right to vote. Rather, what they complain about "is the denial of [a] statutory benefit of re-enfranchisement." *Harvey*, 605 F.3d at 1079.

Second, Amendment 4 and SB-7066 do not negatively affect felons' interest in reenfranchisement *at all* because those laws do not disenfranchise *anyone*. This stands in stark contrast to *Bearden* itself, where the trial court's revocation of the petitioner's probation had meaningfully changed the felon's circumstances—it caused his incarceration. Furthermore, Florida's requirements do not result in permanent disenfranchisement for most felons based on Plaintiffs' own evidence that approximately 54.2% of felons owe $1,000 or less. *See* A687. Surely some portion of that class can pay off those totals over time.

Moreover, whatever effect Amendment 4 and SB-7066 may have on felons unable to meet the laws' requirements, it is mitigated by the three other means by which felons unable to pay their terms of sentence may regain their right to vote: (1) termination of the terms "[u]pon the payee's approval," FLA. STAT. § 98.0751(2)(a)5.e.(II); (2) completion of community service upon conversion by a court, *id.* § 98.0751(2)(a)5.e.(III) and (3) clemency ordered by the Executive

Clemency Board, *see* FLA. R. EXEC. CLEMENCY 9, 10 (2020). The *Jones* panel found these three alternatives to "suffer from a common and basic infirmity," namely, that they are "discretionary in nature." 950 F.3d at 826. But the *Bearden* test considers the extent of the interest affected in the *totality of the circumstances* and alternative avenues to restoration, even if not perfect substitutes, must inform that analysis.

Third, the means chosen by Amendment 4 and SB-7066 are rationally related to the legislative purpose of demanding that felons repay their debt to society. Indeed, the laws' requirements are a perfect fit with the State's interest in ensuring that only felons who have completed all terms of their sentences are automatically welcomed back to the electorate. Given the tight fit between the State's compelling interest in enforcing the punishments it has imposed for violations of its criminal laws, *see Moran v. Burbine*, 475 U.S. 412, 426 (1986), and the means of requiring felons to complete their sentences before voting, Amendment 4 and SB-7066 would thus satisfy even *strict scrutiny* because they are narrowly tailored to a compelling government interest.

The *Jones*'s panel's central criticism was that applying Amendment 4 and SB-7066 to Plaintiffs is "merely vindictive" because "plaintiffs are not punished in proportion to their culpability but to their wealth" as "equally guilty but wealthier felons are offered access to the ballot while these plaintiffs continue to be disenfranchised." 950 F.3d at 827. This claim's audacity is equaled only by its

absurdity. If a 30-year-old and 80-year-old commit identical crimes with equal culpability and are sentenced to identical prison terms—20 years—could anyone claim that the State acts "vindictively" by reenfranchising the 30-year-old after the conclusion of his term, but not the 80-year-old, assuming he does not reach his release date? Even though "equally guilty but [*younger*] felons are offered access to the ballot" while older felons suffer what amounts to permanent disenfranchisement? *Id.* The *Jones* panel offered no explanation for how a State acts "vindictively" when it demands the *exact same* sacrifice from similarly situated felons.

This issue was flagged by Justice Harlan in his concurring opinion in *Williams*, the very concurrence from which the *Bearden* Court drew its four-factor analysis. *See Bearden*, 461 U.S. at 666–67. Justice Harlan emphatically rejected any rule of law that "would require that consequence of punishment be comparable for all individuals" such that, for example, "the State would be forced to embark on the impossible task of developing a system of individualized fines" tailored to the wealth of each felon. *Williams*, 399 U.S. at 261. But that is essentially what the *Jones* panel's rationale would demand.

Fourth, neither the *Jones* panel nor Plaintiffs have identified any "alternative means for effectuating" the State's restorative interests. *Bearden*, 461 U.S. at 667. The *Jones* panel addressed only what it saw as the State's alternative means for effectuating "its interest in debt collection." 950 F.3d at 827. But the State's interests

run much deeper than raising revenue. *See Gregg v. Georgia*, 428 U.S. 153, 183 (1976) (lead opinion).

The State "clearly has an interest in ensuring that felons complete all of the terms of their sentence," *Madison*, 163 P.3d at 772, wholly apart from collecting financial debts, lest it express the view that some felons unable to complete their sentences deserve special treatment. As Justice Harlan recognized in *Williams*, permitting felons to escape the consequences of their actions simply because they lack financial wealth would have the perverse effect of subjecting "the individual of means . . . to a harsher penalty than one who is impoverished." 399 U.S. at 261. Far from remedying an equal-protection problem, the *Jones* panel and the district court have *created* one. The *Bearden* test clearly favors State.

II. Amendment 4 and SB-7066 Do Not Impose Taxes Prohibited by the Twenty-Fourth Amendment.

Some Plaintiffs contend that Amendment 4 and SB-7066's requirement conditioning reenfranchisement on the completion of the financial terms of felons' sentences violates the Twenty-Fourth Amendment, which provides that citizens' rights to vote in federal elections "shall not be denied or abridged by . . . any State by reason of failure to pay any poll tax or other tax." U.S. CONST. amend. XXIV, § 1. After concluding that Florida has not "explicitly imposed a poll tax"—because "financial obligations at issue were imposed as part of a criminal sentence"—the

court held that restitution and fines are *not* "other tax[es]" prohibited by the Amendment, but that costs and fees *are*. A1094, A1096–A1101.

The district court's latter holding is wrong. First, the Twenty-Fourth Amendment does not apply when the right to vote has been constitutionally forfeited. Second, even if the Twenty-Fourth Amendment applied, financial penalties imposed as part of a *criminal sentence*—whether restitution, fines, or fees—are not unconstitutional taxes.

A. The Twenty-Fourth Amendment Does Not Apply to Amendment 4 and SB-7066.

The district court's first misstep was to apply the Twenty-Fourth Amendment to felon reenfranchisement. Every circuit to consider similar challenges has concluded that felons do *not* have a Twenty-Fourth Amendment claim because felons—again, like children and foreign nationals—simply do not have a right to vote, and reenfranchisement statutes only *restore* voting rights. *See Bredesen*, 624 F.3d at 751; *Harvey*, 605 F.3d at 1080; *Howard*, 2000 WL 203984, at *2. Rather than confront this reasoning, the district court derisively asserted that Appellants' argument "makes no sense." A1094. This cavalier dismissal does not withstand scrutiny.

Plaintiffs' challenge to Amendment 4 and SB-7066 is fundamentally different than the leading Supreme Court cases addressing poll-tax claims because, in those cases, taxes were imposed on citizens who had not forfeited their right to vote. In

Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966), the Supreme Court struck down a poll tax imposed on all citizens of the State who were otherwise eligible to vote. *Id.* at 667. Likewise, *Harman v. Forssenius*, 380 U.S. 528 (1965), involved a statute that required all voters to either pay a poll tax or file a certificate of residency six months before a federal election. *Id.* at 540. In both instances, the state sought to place a tax directly on the right to vote for eligible voters.

Neither Amendment 4 nor SB-7066 denies the right to vote to otherwise qualified voters seeking to exercise a pre-existing right. Rather, they provide requirements for *reenfranchisement*. This distinction is dispositive. The Constitution does not require the State to allow felons to vote. *See Richardson*, 418 U.S. at 53–56. The requirement that felons must satisfy financial obligations imposed as part of their sentences does not condition an existing right to vote on the payment of a fee; rather, the requirement is a condition of "the restoration of [felons'] civil rights." *Howard*, 2000 WL 203984, at *2. As such, it simply does not implicate the Twenty-Fourth Amendment.

B. Even if the Twenty-Fourth Amendment Applied, Financial Penalties Imposed as Part of Felons' Criminal Sentences Are Not Unconstitutional Taxes.

Even assuming the Twenty-Fourth Amendment has any bearing, the district court erred in parsing the different financial obligations imposed as part of felons' criminal sentences. The court considered whether each category of obligation

qualifies as an "other tax" under the Twenty-Fourth Amendment. A1094–A1101. Purporting to follow the "functional approach" outlined in *NFIB v. Sebelius*, 567 U.S. 519, 565 (2012), the court concluded that restitution and fines are *not* taxes, but fees and costs included in a criminal sentence *are*, *see* A1095–A1101. Thus, the court held that the Twenty-Fourth Amendment precludes Florida from conditioning reenfranchisement on the payment of fees and costs included in a felony criminal sentence. A1101–A1102.

The district court's conclusion is erroneous. The court ignored that every financial term of sentence was imposed *as punishment for the conviction of a crime*. The Supreme Court explained in *NFIB* that "[i]n distinguishing penalties from taxes, . . . if the concept of penalty means anything, it means punishment for an unlawful act or omission." 567 U.S. at 567 (quotation omitted); *see also United States v. La Franca*, 282 U.S. 568, 572 (1931). Indeed, the fees and costs felons must satisfy to qualify for reenfranchisement are *not* imposed on those acquitted of criminal charges. *See, e.g.*, FLA. STAT. § 939.06(1). In fact, at least one Florida appellate court has held that costs of prosecution—a type of fee routinely assessed in criminal sentences, *see, e.g.*, A913–A915—constitute a *criminal sanction* for purposes of the Double Jeopardy Clause, resting its conclusion in part on the fact that such costs are applied "[i]n all criminal and violation-of-probation or community-control cases" and ordinarily "imposed during the sentencing process," *Martinez*, 91 So. 3d at 880

(quotation omitted). The district court's conclusion that fees like these are *not* penalties, but rather taxes, is wholly illogical.

The *Martinez* court also noted that while "[p]ayment of costs of prosecution may be enforced by, among other methods, reducing them to a civil judgment," "the fact that one method for enforcing these costs is by civil means does not alter the criminal nature of the sanction." *Id.* at 880 n.2. This refutes the district court's assertion that such fees are taxes because they "are ordinarily collected not through the criminal-justice system but in the same way as civil debts or other taxes owed to the government." A1100.

In *Bredesen*, the Sixth Circuit considered the requirement that felons pay criminal restitution (as well as child support obligations) before regaining the right to vote and determined that such requirements did not "qualify as the sort of taxes the Amendment seeks to prohibit" because "[u]nlike poll taxes, restitution and child support represent legal financial obligations Plaintiffs themselves incurred." 624 F.3d at 751 (citing *Harvey*, 605 F.3d at 1080). Here, just as in *Bredesen*, the State did not force felons to incur the fees they owe—they were imposed as part of the sentence for a felony conviction. And no matter the amount or who collects the proceeds, court fees serve the same "regulation and punishment" ends as do fines and restitution. *See Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 38 (1922).

The district court partially rested its conclusion that these obligations are taxes on the uniformity of some fees and costs. A1100. But it cited no authority for the proposition that penalties must be *proportional* to wrongdoing. And even uniform costs are proportional because the State seeks to place part of the cost to society in determining guilt on those who are convicted of felonies. That the State has set a uniform amount makes it no less a penalty. Indeed, the district court took no issue with "minimum mandatory fines." A1097.

The district court's contention that these fees constitute taxes because they are assessed regardless of whether an individual pleads no contest or is found guilty again misses the key factor that these obligations are incurred in a *criminal sentence*. If these fees are legitimate portions of a felon's criminal sentence, there is no conceptual difference between requiring their payment and fines or restitution, which the district court and other courts have ruled do not violate the Twenty-Fourth Amendment. *See* A1096–A1098; *Bredesen*, 624 F.3d at 751; *Harvey*, 605 F.3d at 1070; *Thompson v. Alabama*, 293 F. Supp. 3d 1313, 1316, 1332–33 (M.D. Ala. 2017). Indeed, the fees and costs required here are much more tightly connected to felons' criminal conduct than the child support payments at issue in *Bredesen*. On no conceivable reading of the Twenty-Fourth Amendment can such penalties be a "tax."

Finally, the district court wrongly characterized Florida law as requiring payment of a fee for the ability to vote. That does not accurately reflect either Amendment 4 or SB-7066, which require full compliance with criminal sentences before a felon may return to the electorate. The State "permissibly limits the vote to individuals without felony convictions . . . and lawfully conditions the restoration of voting rights on satisfaction of such court-ordered obligations that exist independently of the re-enfranchisement statute or any tax law violations," *Bredesen*, 624 F.3d at 751 (citation omitted); *see also Richardson*, 418 U.S. at 53; *Coronado v. Napolitano*, 2008 WL 191987, at *5 (D. Ariz. Jan. 22, 2008). Indeed, the law requires the completion of *all* terms of sentence to qualify for reenfranchisement. Felons who have completed their terms of imprisonment but not their financial terms are ineligible for restoration of their rights just as those who have paid the financial terms but have not fully served their carceral terms.

III. The State's Implementation of Amendment 4 and SB-7066 Does Not Violate Plaintiffs' Due Process Rights.

Plaintiffs also argued before the district court that even if Amendment 4 and SB-7066 could constitutionally require felons to pay the financial terms of their sentences, the method by which the State has made the demand violates the Due Process Clause. In a cryptic portion of its opinion, the district court stated that the Plaintiffs' arguments "carry considerable force" but appeared not to rule on the ultimate merits of Plaintiffs' due process claim. A1118. Rather, the court noted that

the advisory-opinion procedure and immunity from criminal prosecution that it ordered for Plaintiffs' wealth-discrimination claim would likewise "satisfy due process." A1120. A ruling on Plaintiffs' due-process claim was not necessary because "[e]ven in the absence of a ruling [on that claim], the same requirements would be included for the constitutional violation addressed" in court's wealth-discrimination analysis. A1121. Moreover, although the district court acknowledged the tripartite framework governing procedural due-process claims, *see* A1120 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)), it did not attempt to analyze the *Mathews* factors.

To the extent the district court's opinion endorsed Plaintiffs' due-process claim, that ruling cannot stand. "Although federal courts have broad equitable powers to remedy proven constitutional violations, injunctive relief must be tailored to fit the nature and extent of the established violation." *Gibson v. Firestone*, 741 F.2d 1268, 1273 (11th Cir. 1984). As Appellants above have shown, Amendment 4 and SB-7066 do not violate the Equal Protection Clause. And as the district court itself seemed to recognize, the need for the procedures it imposed on the State is parasitic on its erroneous wealth-discrimination analysis. If the State can rationally demand that *all* felons—including those unable to pay—must satisfy all financial aspects of their sentences, then the State need not show the precise amount owed or that any individual felon is able to pay.

The only aspect of the district court's order that sounds in due-process and is arguably unrelated to its wealth-discrimination analysis is the requirement that the State not prevent felons from voting when the financial terms of sentence "are unknown and cannot be determined with diligence." A1140. But the concern animating this holding—that many felons "who owe amounts at issue and some who do not but cannot prove it, would be able to vote or even to register only by risking criminal prosecution," A1088–A1089—does not justify the breadth of the remedy. Once this Court sweeps away the district court's wealth-discrimination holding, the need for any procedures is limited at most only to those felons who do not know if they owe *anything* on their sentence.

Moreover, the district court's holding with respect to "unknown" amounts rests on a premise that finds no legal support: that felons are not independently responsible for knowing the terms of their convictions or the amounts they have already paid to complete them. For instance, the common law has long embraced the settled presumption "that every person kn[o]w the law." *Cheek v. United States*, 498 U.S. 192, 199 (1991); *see also United States v. Duran*, 596 F.3d 1283, 1291 (11th Cir. 2010). But if citizens are responsible for knowing an entire corpus of law—and can be criminally punished should they get it wrong—then why is the State responsible for keeping track of felons' financial terms of sentence? Surely it is more realistic to believe that felons know the substance of their own criminal

sentences and the amounts paid than to believe that every citizen knows every jot and tittle of the U.S. Code. And the first-dollar principle makes it particularly easy for the felon to keep track of what he has already paid on his sentence by automatically crediting his payments as completing his criminal sentence for purposes of voting. By placing the burden squarely on *the State* to offer evidence necessary to prevent a felon from voting, the district court's order all but makes the State a lawyer and accountant for felons requesting advisory opinions.

The district court acknowledged that the State's system for removing voters from the rolls satisfies due process. A1119–A1120. The court instead focused on individuals who are unsure of their eligibility and fail to register due to the risk of prosecution if they are ineligible. *Id.* But after the court's erroneous equal-protection and Twenty-Fourth amendment holdings are corrected, its reasoning would *at most* support enjoining the State from prosecuting people for registering only when they genuinely do not know if they had *any* outstanding financial obligations from their sentences.

Finally, even if the district court were correct that Amendment 4 and SB-7066 violate the Fourteenth Amendment, its chosen remedy—imposing an intricate advisory-opinion process, specifying the exact content of the form that felons must be provided to request the opinion, *see* A1148—exceeds its judicial authority. "The power that the Supremacy Clause grants federal courts that undertake judicial review

of state statutes is limited to refusing to apply state rules of decision that they believe are unconstitutional." *Ga. Muslim Voter Project v. Kemp*, 918 F.3d 1262, 1288 (11th Cir. 2019) (Tjoflat, J., dissenting) (citation omitted). "That power does not extend . . . to prescribing *new* rules of decision on the state's behalf." *Id.* Principles of federalism demand as much. *See Rizzo v. Goode*, 423 U.S. 362, 379 (1976).

The district court's injunction violates these limitations by rewriting Florida's advisory opinion process, even though Florida statutory law dictates that "[r]equests for advisory opinions must be submitted in accordance with [the] rules adopted by the Department of State," FLA. STAT. § 106.23(2), and the Secretary has promulgated regulations specifying the content of such requests, *see* FLA. ADMIN. CODE ANN. R. 1S-2.010(4), and the time in which the Division of Elections must prepare a written response, *see id.* R. 1S-2.010(5)(a). "[T]he decision to drastically alter [Florida]'s election procedures must rest with the [Florida] Secretary of State and other elected officials, not the courts." *Thompson v. Dewine*, 959 F.3d 804, 812 (6th Cir. 2020) (per curiam).

Moreover, once a federal court holds a statute unconstitutional "it is the duty and function of the Legislative Branch to review [its law] in light of [the court's] decision and make such changes therein as it deems appropriate." *Califano v. Westcott*, 443 U.S. 76, 95 (1979) (Powell, J., concurring in part and dissenting in part). The district court therefore transgressed its authority when it "purported to

advise"—actually, *order*—Florida "on the best means of rendering constitutional its election code" even though "that decision rests with the sound judgment of the [Florida] Legislature," the Governor, and the Secretary. *Republican Party of Ark. v. Faulkner County*, 49 F.3d 1289, 1301 (8th Cir. 1995).

Amendment 4 and SB-7066 do not violate any provision of the Constitution. But even if they did, the district court should have enjoined the State's officers from violating Plaintiffs' purported constitutional rights and left it to the State to devise a suitable remedy. And the district court's justification for its remedial scheme—its perception that the State did not make appropriate efforts "to address the problem," A1118—misses the mark. Appellants have consistently maintained that Amendment 4, SB-7066, and the State's methods for implementing both laws comport with the federal Constitution. The district court's preliminary injunction ruling applied to seventeen individual plaintiffs, and the State was under no obligation to voluntarily implement an entirely new system while simultaneously challenging the court's order.

IV. The Requirement that Felons Complete All Terms of Sentence Is Not Severable from the Remainder of Amendment 4.

Even if Plaintiffs succeed on the merits of their equal-protection and Twenty-Fourth Amendment claims, they cannot show that they are entitled to the district court's permanent injunction. Under Florida's settled severability principles, the condition that felons complete "all terms of sentence" cannot be severed from

Amendment 4, requiring the wholesale invalidation of Amendment 4 if Plaintiffs are correct on the merits.

Severability of State legislative provisions is "a matter of state law." *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996). The Florida test for the severability of legislative enactments is as follows:

> When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Smith v. Dep't of Ins., 507 So. 2d 1080, 1089 (Fla. 1987) (citation omitted). This same test applies to constitutional amendments adopted by Florida voters. *See Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999).

The district court's injunction fails every prong of this test because the condition that felons complete "all terms of sentence" is an essential part of the constitutional bargain and inextricably related to the benefit conferred by Amendment 4. To be clear, the Governor and Secretary of State do not believe that Amendment 4 violates the Constitution. But after determining that Florida's reenfranchisement scheme was unconstitutional as-applied to felons who cannot pay the financial terms of their sentence (and all felons with outstanding fees and costs),

the district court compounded its error by concluding that the Amendment still accomplishes its purpose and that the People would have adopted it even after *suspending* the "all terms of sentence" requirement for this group, which the court found constitutes the *overwhelming majority* of otherwise eligible felons. *See* A1131–A1135. This conclusion is patently wrong.

First, the district court's remedy does not *sever* any part of the Florida Constitution but rather effectively *writes additional language into it*. If the district court's decision is allowed to stand, Florida's Constitution effectively will read as follows, with the judicially-created language bolded:

> Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation**, except for fees and costs and the financial terms of sentence for those who are unable to pay such obligations**.

Rewriting Amendment 4 to include these exceptions contravenes Florida law, as the Florida Supreme Court has made clear a court may not "read [an element] into a statute that plainly lacks one" due to "Florida's strong adherence to a strict separation of powers doctrine." *Schmitt v. State*, 590 So. 2d 404, 414 (Fla. 1991) (citing FLA. CONST. art. II, § 3); *see also Westphal v. City of St. Petersburg*, 194 So. 3d 311, 313–14 (Fla. 2016); *Richardson v. Richardson*, 766 So. 2d 1036, 1042 (Fla. 2000).

Additionally, the Florida Supreme Court has explained that courts should not "legislate and sever provisions that would effectively expand the scope of the statute's intended breadth." *State v. Catalano*, 104 So. 3d 1069, 1081 (Fla. 2012). By enjoining the requirement that felons complete all terms of their sentences, the injunction broadens Amendment 4 to provide automatic restoration of voting rights to a larger segment of the felon population than the People of Florida intended to benefit.

Second, the district court erred in failing to apply Florida's well-established four-part test for evaluating severability. *See Smith*, 507 So. 2d at 1089. Instead, the court determined that the "critical issue is whether, if the unconstitutional applications of the amendment are enjoined, it is still reasonable to apply the remainder of the amendment, and whether, if the voters had known the amendment would be applied only in this manner, they still would have approved it." A1131. But the People's intent only covers *one prong* and the origins of the court's reasonability standard for applying the remainder of Amendment 4 is a mystery.

Moreover, the district court's evaluation of the People's intent is clearly erroneous. The court's finding that "voters would have approved Amendment 4 by more than the required 60% had they known it would be applied in the manner required by [its] order," *id.*, is owed no deference because severability is a question of law rather than fact. "[T]he touchstone for [severability analysis] is legislative

intent." *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 330 (2006); *see United States v. Booker*, 543 U.S. 220, 246 (2005). As such, severability is "an exercise in statutory interpretation." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1486 (2018) (Thomas, J., concurring); *see Dorchy v. Kansas*, 264 U.S. 286, 290 (1924); *Alaska Airlines, Inc. v. Donovan*, 766 F.2d 1550, 1555 (D.C. Cir. 1985); *see also Lester v. United States*, 921 F.3d 1306, 1315 (11th Cir. 2019) (W. Pryor, J., dissenting from denial of reh'g en banc). And exercises in statutory interpretation involve questions of law rather than fact. *See United States v. McLean*, 802 F.3d 1228, 1246 (11th Cir. 2015). Therefore, this Court must review de novo the district court's conclusions regarding the People of Florida's intentions in adopting Amendment 4. *See, e.g.*, *United States v. Hastie*, 854 F.3d 1298, 1301 (11th Cir. 2017).

In any event, the district court's finding is clearly erroneous because the injunction, which eliminates Amendment's 4 central requirement for *most* felons, guts its main purpose. It is not simply *unclear* whether the People would have adopted the district court's alternative Amendment 4, *see Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1269 n.16 (11th Cir. 2005), but rather is wholly *implausible* that they would have done so. Amendment 4 was a historic measure, enacted after nearly two centuries of broad prohibitions on felons voting in Florida. In relaxing this prohibition, the People made clear their intent that felons pay their

debt to society *in full* before being extended eligibility to vote. Had the People known that they *could not* insist on this in the *overwhelming majority* of cases it is highly unlikely that they would have ratified Amendment 4. The district court's contention that the payment of financial terms was not "critical to a voter's decision," *see* A1134, is belied by the Florida Supreme Court's holding that "all terms of sentence" unambiguously includes *both* durational *and* financial aspects of criminal punishment, and that this interpretation accorded with the "consistent message" disseminated to the electorate by "the ACLU of Florida and other organizations along with the [Amendment's] Sponsor . . . before and after Amendment 4's adoption." *Implementation of Amendment 4*, 288 So. 3d at 1077.

Indeed, as written, only 64.55% of voters supported Amendment 4—a mere 4.55% above the 60% threshold necessary under the constitutional amendment initiative process. *See* FLA. CONST. art. XI, § 5(e). There is no basis to conclude that Amendment 4 would have cleared the 60% threshold with one of its key provisions severely compromised. And supporters of Amendment 4 *knew* that felon reenfranchisement "polls higher" in Florida when payment of financial punishment was required and that there would be a "harder fight to win 60% + 1% approval" without that requirement. *See* A743. Despite this, the district court concluded that the People would not have rejected its radically permissive version of Amendment 4, finding it instead "far more likely . . . that voters would have adhered to the more

generous spirit that led to the passage of the amendment." A1134–A1135. But rewriting Amendment 4's plain text—even to avoid an unconstitutional result—based on the court's measure of the public's "generous spirit" is the *exact* type of judicial legislation the Florida Supreme Court has routinely rejected.

Thus, if this Court finds any applications of Amendment 4 and SB-7066 unconstitutional, it should invalidate Amendment 4 in its entirety, or, at the very least, certify the question to the Florida Supreme Court.

CONCLUSION

The Court should reverse.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of FED. R. APP. P. 32(a)(7)(B)(i) because this brief contains 12,995 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(f) and 11th CIR. R. 32-4.

This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: June 19, 2020

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on June 19, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 19, 2020

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