No. 19A1071

# In the Supreme Court of the United States

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BONNIE RAYSOR, ET AL.,

*Applicants*,

v.

RON DESANTIS, ET AL.,

*Respondents*.

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On Application To Vacate the Stay of the United States Court of Appeals for the Eleventh Circuit

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## OPPOSITION TO APPLICATION TO VACATE THE EN BANC ELEVENTH CIRCUIT'S STAY

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## INTRODUCTION

Nearly half a century ago, this Court confirmed in *Richardson v. Ramirez*, 418 U.S. 24 (1974), that States have constitutional authority under Section 2 of the Fourteenth Amendment to disenfranchise individuals convicted of felonies, even permanently. In the years since, the courts of appeals interpreting *Richardson* have converged on two shared understandings: (1) that disenfranchised felons, by definition, do not have a fundamental right to vote; and (2) that State requirements for reenfranchising felons are therefore reviewed deferentially under the Fourteenth Amendment so long as they do not implicate suspect classifications. *See, e.g.*, *Johnson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010); *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (O'Connor, J.); *Hayden v. Paterson*, 594 F.3d 150, 171 (2d Cir. 2010); *Shepherd v. Trevino*, 575 F.2d 1110, 1114–15 (5th Cir. 1978); *Owens v. Barnes*, 711 F.2d 25, 27 (3d Cir. 1983); *see also Madison v. State*, 163 P.3d 757, 768–69 (Wash. 2007) (en banc). Thus, a State, which is under no obligation to reenfranchise felons at all, may constitutionally require felons to complete the terms of their sentences, including the financial terms, as a condition of restoring their voting rights, *see Harvey*, 605 F.3d at 1080, and the State may insist on that requirement even if the felon cannot afford to pay the financial terms of his sentence, *see Johnson*, 624 F.3d at 750–51.

Applicants' suit seeks to upend this consensus, arguing that heightened scrutiny, rather than ordinary rational-basis review, applies to wealth-discrimination challenges to felon reenfranchisement schemes. The district court below, following the lead of a prior three-judge panel decision upholding the district court's preliminary injunction, accepted Applicants' invitation. *See Jones v. DeSantis*, No. 4:19-cv-300, 2020 WL 2618062 (N.D. Fla. 2020); *Jones v. Governor of Florida*, 950 F.3d 795 (11th Cir. 2020) (per curiam) ("*Jones* panel"). In doing so, the district court held that Florida's recent constitutional amendment automatically reenfranchising

felons who have completed "all terms of sentence," Fla. Const. art. VI, § 4(a), is unconstitutional insofar as it requires completion of a financial term of sentence (restitution, fines, or court fees) that the felon is unable to pay. Not only that, the district court also deviated from the established consensus of the courts of appeals when it held that by requiring felons seeking reenfranchisement to pay outstanding court fees and costs *included in their criminal sentences*, Florida had conditioned voting on payment of a "tax" in violation of the Twenty-Fourth Amendment. *See Jones*, 2020 WL 2618062, at *29. *Contra Johnson*, 624 F.3d at 751; *Harvey*, 605 F.3d at 1080; *Howard v. Gilmore*, No. 99-2285, 2000 WL 203984, at *2 (4th Cir. Feb. 23, 2000).

The district issued its permanent injunction on May 26, 2020, shortly before the July 20 registration deadline for Florida's August primary, despite this Court's repeated admonition that "lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam). Worse still, the district court's chosen remedy entailed a wholesale rewriting of the Florida Secretary of State's advisory-opinion process to perform functions it was never meant to perform, using a form and procedural prescriptions of the district court's devising. Thus, the district court not only fundamentally altered the upcoming election by changing the composition of the Florida electorate without any warrant in the Constitution, but also undermined 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).

Fortunately, the en banc Eleventh Circuit recognized that enough was enough. On July 1, 2020, the full court of appeals took the extraordinary measure of granting Respondents' petition for an initial hearing before the en banc court. Simultaneously, the en banc court granted

Respondents' motion to stay the district court's permanent injunction pending appeal, thereby restoring the status quo. In granting the stay motion, the en banc Eleventh Circuit necessarily concluded that Respondents are likely to succeed on the merits and that the State is likely to be "irreparably harmed absent a stay." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (quotation omitted).

Applicants now request vacatur of the en banc Eleventh Circuit's stay. Their application should be denied. Applicants cannot carry their heavy burden of showing (1) that the Court is very likely to review the final judgment of the court of appeals; (2) that the en banc Eleventh Circuit demonstrably erred in its application of accepted legal standards; and (3) that Applicants' rights are likely to be irreparably harmed because of the stay.

## 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." *See* Fla. Const. art. VI, § 4 (1838). And when Florida was admitted to the Union in 1845, 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).

Then, an initiative was placed on the ballot, proposing 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.

*See Advisory Op. to the Attorney Gen. re: Voting Restoration Amendment*, 215 So. 3d 1202, 1204 (Fla. 2017).

During oral argument before the Florida Supreme Court on whether the initiative petition could appear on the ballot, the attorney for the sponsor of the initiative affirmed that the phrase "all terms of sentence" "include[d] the full payment of any fines," Doc. 148-1 at 7–8, and "restitution," *id.* at 14–15. 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." Doc. 148-32 at 2. 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 [the] Amendment" 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*." Doc. 345-16 (emphases added). And supporters of the amendment, including the Brennan Center (counsel for Applicants), 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" required to amend the Florida Constitution without that requirement. Doc. 346-1 at 34.

Appearing on the ballot during the November 2018 election, the amendment, now known as Amendment 4, received 64.55% of the vote—just 4.55% above the 60% threshold to amend the Florida Constitution, *see* Fla. Const. art. XI, § 5(e)—and became effective on January 8, 2019.

### B. Passage of Senate Bill 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. to the Governor 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

Applicants filed several 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. They invoked 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 Respondent Lee from preventing Applicants from registering to vote or voting, finding that Applicants were likely to succeed on the merits of their wealth-based equal-protection claim. *See Jones v. DeSantis*, 410 F. Supp. 3d 1280 1309, 1310–11 (N.D. Fla. 2019). Respondents appealed, and on February 19, 2020, a three-judge panel affirmed. *See Jones*, 950 F.3d 795. The panel held that heightened scrutiny applied to Applicants' wealth-discrimination claim, that Respondents were unlikely to sustain Amendment 4 and SB-7066 under that standard (while suggesting in dicta that the laws would likewise fall under the rational-basis standard), and that Applicants were therefore likely to succeed on the merits.

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

On April 7, 2020, the district court certified a proposed class for Applicants' Twenty-

Fourth Amendment claim and a subclass for the wealth-discrimination claim. *See* Order Certifying a Class & Subclass at 17–18, Doc. 321. The court ordered that the Twenty-Fourth Amendment class would consist of "all persons who would be eligible to vote in Florida but for unpaid financial obligations," *id.* at 17, and that the wealth-discrimination 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," *id.* at 18. The district court indicated that the subclass alone would cover several hundreds of thousands of felons. *See id.* at 8.

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 Jones*, No. 2020 WL 2618062. As relevant here, 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 [court] fees and costs as a condition of voting." *Id.* at *44; *see also* Judgment, Doc. 421 (May 26, 2020). The district court enjoined Respondent Lee from taking "any step to enforce any requirement declared unconstitutional," *Jones*, 2020 WL 2618062, at *44, and also replaced the reenfranchisement scheme set out in Florida law with procedures requiring the Division of Elections, when requested by felons, to issue advisory opinions that detail the precise amount outstanding on the felon's sentence and provide a factual basis for any finding that the felon is able to pay, *id.* at *44–45. Additionally, the district court mandated that failure of the Division of Elections to respond to the advisory opinion request within 21 days would result in an implicit affirmation of the felon's eligibility to vote. *Id.* at *45.

On May 29, 2020, Respondents noticed their appeal and moved the district court to stay its

judgment pending appeal. The district court denied that motion on June 14, and Respondents moved for a stay with the court of appeals on June 17, which the en banc court granted on July 1.

On June 2, 2020, Respondents petitioned for initial hearing en banc. The court granted that petition on July 1. On July 6, the en banc court issued an order expediting the appeal such that briefing would conclude on August 10 and the en banc court would hear argument on August 18.

Applicants filed their application to vacate the Eleventh Circuit's stay on July 8, 2020. On July 10, Justice Thomas called for a response to the application.

## STANDARD OF REVIEW

Although there is no doubt that a Circuit Justice has the power to dissolve a stay entered by a court of appeals, "the cases make clear that this power should be exercised with the greatest of caution and should be reserved for exceptional circumstances." *Holtzman v. Schlesinger*, 414 U.S. 1304, 1308 (1973) (Marshall, J., in chambers).

More specifically, a Circuit Justice may vacate a stay entered by a court of appeals only if "it appears that the rights of the parties to a case pending in the court of appeals, which case could and very likely would be reviewed here upon final disposition in the court of appeals, may be seriously and irreparably injured by the stay." *W. Airlines, Inc. v. Int'l Bhd. of Teamsters*, 480 U.S. 1301, 1305 (1987) (O'Connor, J., in chambers) (quoting *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers)). Moreover, the Circuit Justice "may not vacate a stay entered by a court of appeals unless that court clearly and 'demonstrably' erred in its application of 'accepted standards.' " *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 506 (2013) (Scalia, J., joined by Thomas, J., and Alito, J., concurring in denial of application to vacate stay) (quoting *W. Airlines, Inc.*, 480 U.S. at 1305). And Applicants cannot carry their "heavy burden of showing that [granting the stay] was a clear violation of accepted

legal standards" by demonstrating merely that "[r]easonable minds can perhaps disagree about whether the Court of Appeals should have granted a stay." *Id.* at 507. In short, "where the Court is asked to undo a stay issued below, the bar is high." *Valentine v. Collier*, 140 S. Ct. 1598, 1598 (2020) (Sotomayor, J., joined by Ginsburg, J., respecting the denial of application to vacate stay).

Applicants' task is made even more challenging because a Circuit Justice owes "great deference" to the court of appeals' decision, *Garcia-Mir v. Smith*, 469 U.S. 1311, 1313 (1985) (Rehnquist, J., in chambers), and "such deference is especially appropriate when the Court of Appeals has acted en banc," *O'Connor v. Bd. of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1304 (1980) (Stevens, J., in chambers). Here, the en banc court granted Respondents' stay motion after adversarial briefing on the matter.

Moreover, deference to the court of appeals "is especially warranted when," as also here, "that court is proceeding to adjudication on the merits with due expedition." *Doe v. Gonzales*, 546 U.S. 1301, 1308 (2005) (Ginsburg, J., in chambers); *see also Kemp v. Smith*, 463 U.S. 1321, 1322 (1983) (Powell, J., in chambers). The district court entered final judgment on May 26, 2020, and Respondents filed their stay motion with that court on May 29. Respondents also filed their petition for initial en banc hearing with the Eleventh Circuit on June 2 and—after the district court denied their stay motion on June 14—submitted a stay motion with the court of appeals on June 17. The court of appeals granted both the en banc petition and the stay on July 1 and shortly thereafter set a briefing schedule that would permit argument before the en banc court on August 18. The course of proceedings thus far makes clear that the en banc Eleventh Circuit "will hear argument promptly and render its decision with appropriate care and dispatch." *Gonzales*, 546 U.S. at 1308.

## ARGUMENT

The Court should not vacate the en banc Eleventh Circuit's stay. First, *Purcell v. Gonzalez* in no way supports vacatur of the stay, especially given that, far from *creating* the chaos described

by Applicants, the Eleventh Circuit's order actually *quells* the chaos created by the district court's unprecedented injunction. Second, the Court is extraordinarily unlikely to grant Applicants review on *any* of their claims upon final disposition in the Eleventh Circuit. Third, Applicants have not carried their heavy burden of showing the Eleventh Circuit's stay was premised on demonstrably erroneous legal standards. Fourth, Applicants have not shown that they will be seriously and irreparably harmed by the stay. Rather, the State and all Floridians will be irreparably harmed if the district court's patently erroneous injunction is reinstated, enabling *hundreds of thousands* of ineligible voters to take part in the upcoming elections, one of which is only a month away.

## I. *Purcell v. Gonzalez* Demands That This Court Refrain From Vacating the En Banc Eleventh Circuit's Stay.

In *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), the Court endorsed the common-sense view that court "orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls" and that "[a]s an election draws closer, that risk will increase." *Id.* at 4–5. Therefore, when considering whether to enjoin a State's election law, a lower court is "required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures." *Id.* at 4.

On Applicants' telling of this case, the en banc Eleventh Circuit's stay upended the settled expectations of approximately three-quarters of a million felons who otherwise planned to register for and vote in the August primary election, thereby thrusting that election into chaos. This could not be further from the truth. Rather, it was the district court's unprecedented May 26th injunction that would have thrown Florida's primary into chaos. The federal court's injunction, issued only several weeks before the registration deadline for the primary election, would have held unconstitutional a key requirement for reenfranchisement under Amendment 4 and SB-7066;

thrust upon the State a brand-new, judicially created advisory-opinion process to implement the court's erroneous constitutional holding; and effectively reenfranchised nearly a million felons otherwise ineligible to vote under Florida law.

Yet, Applicants act as if the district court's sweeping affirmative injunction, entered on the eve of a primary election, is the baseline against which to measure the court of appeals' stay. That is not how *Purcell* works. This Court "has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm.*, 140 S. Ct. at 1207. It was the district court, not the Eleventh Circuit, that "alter[ed] the [State's] election rules" just before the August primary. The Eleventh Circuit quickly intervened to reestablish the status quo. How could the court of appeals be faulted for such a modest intervention? Indeed, Applicants' inverted theory of *Purcell* creates perverse incentives for plaintiffs (and for district court judges) in voting-related cases to attempt to delay resolution of the cases until the runup to an election. And if the court of appeals, as here, then stays that district court's injunction because it very likely erroneously enables ineligible voters to cast ballots, the challengers could rush to this Court and secure vacatur of the stay. But that kind of tug-of-war dynamic within the judicial hierarchy is more likely to breed conflicting court orders and drive confusion than permitting the courts of appeals to do their jobs and police the district courts.

Respondents' understanding of *Purcell* was confirmed by this Court just months ago in *Republican National Committee*. In response to the charge that the Court should not grant a stay pending appeal too close to an upcoming election, the Court flatly stated that it "would prefer not to do so, but when a lower court intervenes and alters the election rules so close to the election date, [the Court's] precedents indicate that this Court, as appropriate, should correct that error." *Id.* at 1207. The en banc Eleventh Circuit here could easily say the same: staying the district court's

injunction several weeks before a voter registration deadline is hardly ideal, but the district court forced the Eleventh Circuit's hand by refusing to stay its injunction pending final resolution of the appeal. Surely, if this Court has a duty to correct errant district courts from violating the principle animating *Purcell*, the courts of appeals are obligated to do the same. And given that a court of appeals' "decision to enter a stay is entitled to great deference," *O'Connor*, 449 U.S. at 1304, it is especially important that this Court not vacate the Eleventh Circuit's decision applying the very understanding of *Purcell* that the Court just expressed in *Republican National Committee.*

Applicants' appeal to *Purcell* is fundamentally misguided because it does not appreciate the difference between upending the status quo, on the one hand, and restoring it, on the other. Consider *Purcell* itself. There, after a district court refused to preliminarily enjoin an Arizona voter identification law on the eve of an election, the court of appeals issued an injunction pending appeal, thereby requiring Arizona to depart from the election procedures established by State law. *See* 549 U.S. at 3. This Court held that this was improper. But now consider this case. The Eleventh Circuit has not compelled Florida to do anything contrary to State law. There is a world of difference between a federal court issuing a last-minute order mandating departures from existing State laws governing elections and a court staying such an order and allowing a State to implement its own statutes. The *Purcell* principle is, at bottom, concerned primarily with the former.

There is one final, but important, point about this case that should color how the Court views the Eleventh Circuit's stay. *Purcell* and its progeny are primarily addressed to State regulations that require eligible voters to produce some form of identification to confirm their identity or eligibility. *See, e.g.*, *Veasey v. Perry*, 135 S. Ct. 9 (2014) (voter identification); *Frank v. Walker*, 574 U.S. 929 (2014) (same); *Purcell*, 549 U.S. 1 (same). And it is not surprising that courts are reluctant to tinker with these sorts of procedures in the runup to an election in a

manner that could cause confusion among eligible voters. But this case is not about regulations applicable to eligible voters; rather it concerns *which voters are eligible in the first place*. Every member of the Plaintiff class in this case is *unequivocally ineligible to vote under Florida law*, for the class is defined as "felons who would be eligible to vote but for unpaid financial obligations." Order Certifying a Class & Subclass at 1, Doc. 321. It is inconceivable that a district court order enabling hundreds of thousands of otherwise ineligible voters to cast ballots becomes insulated from prompt appellate review and correction simply because the district court's order was entered in the runup to an election. If "[v]oters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised," *Purcell*, 549 U.S. at 4, then surely voters will feel an even greater sense of disenfranchisement if they fear their votes will be debased or diluted by the votes of hundreds of thousands of persons who are ineligible to vote under a State Constitution and its implementing legislation, and whose claims have been judicially determined to be unlikely to succeed on the merits.

This facet of Florida law also explains why Applicants' allegations of confusion are vastly overstated. In particular, Applicants highlight the alleged confusion and harm from the Eleventh Circuit's stay on those felons who (1) were already registered to vote;[1] (2) "registered following the district court's permanent injunction"; and (3) "already received (and possibly returned) their absentee ballots." Appl. 16–17. But Applicants neglect to recognize that the only relevant confusion under *Purcell* applies to "qualified voters [who] might be turned away from the polls" in error. 549 U.S. at 4. The point of *Purcell* is therefore to maximize the prospect of preserving the

[1] It is unclear why Applicants believe that felons who registered to vote before the district court's permanent injunction—and in violation of Florida law—would be entitled to assail the Eleventh Circuit's stay. The district court's *preliminary* injunction applied only to the seventeen named plaintiffs then bringing the action. *See Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1310–11 (N.D. Fla. 2019).

integrity of elections—i.e., to protect *qualified* voters from practical disenfranchisement—not to assist *disqualified* voters from circumventing the State laws that render them ineligible.

## II. The Court Is Unlikely To Grant Review of this Case.

As Applicants recognize, to secure vacatur of the court of appeals' stay order they must show that, if the en banc Eleventh Circuit reverses the district court, there is "a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari." *Maggio v. Williams*, 464 U.S. 46, 48 (1983) (per curiam) (quoting *White v. Florida*, 458 U.S. 1301, 1302 (1982) (Powell, J., in chambers)). As the Court's own rules state, a petition for certiorari "will be granted only for compelling reasons," such as when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." Sup. Ct. R. 10(a).

The Court is unlikely to grant review to Applicants on any of their claims. The en banc Eleventh Circuit's reversal on their wealth-discrimination and Twenty-Fourth Amendment claims case would align, rather than conflict, with existing consensus among the courts of appeals. And it is also extraordinarily unlikely that the Court would take up Applicants' due process claims, as the district court did not even clearly rule on the merits of their arguments.

### A. The Court Is Unlikely To Review Applicants' Wealth-Discrimination Claim.

If the en banc Eleventh Circuit rejects Applicants' wealth-discrimination claim (as it should), there is no reasonable probability that this Court will grant review. Most importantly, there would be no conflict among the courts of appeals. Every other appellate court to address felon reenfranchisement schemes that do not implicate a suspect class has reviewed them under the rational-basis standard, thus granting States broad leeway in exercising their discretion whether and on what terms to reenfranchise felons. *See, e.g.*, *Hayden*, 594 F.3d at 171; *Shepherd*,

575 F.2d at 1114–15; *Owens*, 711 F.2d at 27. Likewise, the courts of appeals have unanimously confirmed that this discretion includes requiring completion of *all* terms of a felon's sentence, including financial terms, *see Harvey*, 605 F.3d at 1079–80, and that this is true regardless of whether a felon can afford to pay, *see Johnson*, 624 F.3d at 747–50; *see also Madison*, 163 P.3d at 772.

Indeed, no federal court of appeals has applied heightened Fourteenth Amendment scrutiny to a reenfranchisement scheme drawn along non-suspect lines, nor has an appellate court invalidated such a scheme under rational-basis review. To the contrary, the only court of appeals to address the constitutionality of a reenfranchisement scheme challenged by those unable to pay a financial condition upheld under rational-basis review a State's decision to condition restoration of felons' voting rights on the payment of restitution and child support. *See Johnson*, 624 F.3d at 746–47. And this Court denied review. *See Johnson v. Haslam*, 563 U.S. 1008 (2011).

Applicants nevertheless maintain that an Eleventh Circuit ruling favoring Respondents, while aligning with *Johnson*, would nonetheless create a split with the Second Circuit's decision in *Bynum v. Connecticut Commission on Forfeited Rights*, 410 F.2d 173 (2d Cir. 1969). *See* Appl. 18–19. This is wrong. In *Bynum*, a felon challenged the constitutionality of a Connecticut statute requiring him to pay a five-dollar fee, charged "to cover recording costs," to apply for restoration of his voting rights. *See* 410 F.2d at 175. At the time of *Bynum*, federal law permitted only three-judge district courts to entertain constitutional cases in which the plaintiff sought to enjoin a federal or state law. *See* 28 U.S.C. § 2281 (1970). The district court had held that Bynum's constitutional claim was not " 'substantial' enough to merit the § 2281 procedure" and "the sole issue raised by the complaint [was] whether [the district court] was correct in dismissing the complaint denying Bynum's motion for a three-judge court." *Bynum*, 410 F.2d at 176.

In answering that exceedingly narrow question, the Second Circuit found only that Bynum's constitutional claim was "not insubstantial or *obviously* without merit." *Id.* (emphasis added). This tentative conclusion, falling far short of resolving the merits of Bynum's constitutional claim, cannot possibly create the kind of "conflict" between the circuits to which Rule 10(a) refers. Applicants try mightily, but in vain, to squeeze a more definitive holding out of *Bynum*, asserting that the Second Circuit "credited" a host of Bynum's arguments, Appl. 19, and stopped short of reaching an ultimate conclusion on Bynum's constitutional claim only because "certain factual issues" needed to be addressed by the district court, Appl. 19 n.8. That is a highly partisan reading of the Second Circuit's decision.

First, because the "sole issue" raised by Bynum's appeal was whether the district court erred in dismissing his complaint, any legal determinations by the court extraneous to that question would have been both inconsistent with the posture of the appeal and would have constituted nothing more than dicta. Second, nearly all the quotes from the opinion that Applicants' recite represent the Second Circuit's *summary* of Bynum's argument, not the judges' own legal views. *See Bynum*, 410 F.2d at 176–77. And third, because of the posture of Bynum's appeal, the court saw "no need to labor or determine the merits of Bynum's contention," *id.* at 176, and concluded that while the "ultimate result" of Bynum's case was "uncertain," the Court could not "dismiss the problem out of hand," *id.* at 177. Put simply, this is not the language a court uses when saying what the law is, as opposed to what the law *could be*, *maybe*.

If the language of *Bynum* itself were not enough to prove that Applicants' specter of a potential conflict is wholly illusory, additional factors confirm the absence of a genuine circuit split. First, *Bynum* was decided five years *before* the Court's watershed decision in *Richardson v. Ramirez*, 418 U.S. 24 (1974), which recognized that felon disenfranchisement

occupies a special place in the Court's voting-rights jurisprudence by virtue of the Fourteenth Amendment's express contemplation of the practice. While the Second Circuit remarked that Bynum's claim was not "foreclosed by the decisions of the Supreme Court," 410 F.2d at 176, that premise is far less plausible in a post-*Richardson* world. Pointedly, the Second Circuit has *never* cited *Bynum* since it was handed down more than a half-century ago. Indeed, in the years since *Richardson* was decided the Second Circuit has held that "[a]lthough the right to vote is generally considered fundamental, in the absence of any allegation that a challenged classification was intended to discriminate on the basis of race or other suspect criteria, statutes that deny felons the right to vote are not subject to strict judicial scrutiny." *Hayden*, 594 F.3d at 170 (quotation omitted).

Second, Applicants' representation of *Bynum*'s precedential weight is itself unprecedented. For example, the plaintiffs in *Johnson v. Bredesen*, represented by one of Applicants' attorneys here, cited *Bynum* in support of their wealth-discrimination argument. *See* Br. of Pls.-Appellants at 18–19, *Johnson*, 624 F.3d 742 (No. 08-6377); Reply Br. of Pls.-Appellants at 13, *Johnson v. Bredesen*, 624 F.3d 742 (6th Cir. 2010) (No. 08-6377). Although the majority in *Johnson* did not acknowledge *Bynum*, Judge Moore's dissent did cite the decision in passing on two occasions. *See* 624 F.3d at 759, 760 (Moore, J., dissenting).[2] After losing their appeal, the *Johnson* plaintiffs filed a petition for a writ of certiorari with this Court, which the Court denied. *See Johnson*, 563 U.S. 1008. In their petition before this Court, the *Johnson* plaintiffs did not once cite *Bynum*.

[2] Although Applicants' wealth-discrimination claim centers primarily on whether SB-7066 is subject to heightened scrutiny, they studiously avoid mentioning that Judge Moore agreed with the *Johnson* majority that felons "have no fundamental right to vote under existing case law," and that they therefore "b[ore] the burden to show that [the statutory conditions] bear no rational relationship to any legitimate government end." 624 F.3d at 755 (Moore, J., dissenting). Thus, no federal appellate judge before this case had *ever* maintained that heightened scrutiny applied to wealth-discrimination claims leveled against felon reenfranchisement schemes.

If *Bynum* could plausibly be cited as the kind of conflicting decision that Applicants claim it is today, then surely the *Johnson* plaintiffs would have told this Court as much.

Third, even if *Bynum* had held that Connecticut's five-dollar processing fee was beyond the constitutional pale, that holding would not create a split with the Eleventh Circuit here. That is because the Connecticut law in *Bynum* is readily distinguishable from Amendment 4 and SB-7066; the payment there was a flat fee that all (and only) felons had to pay for restoration of voting rights. Certainly, such a fee—wholly unrelated to a felon's sentence and imposed solely as a fee for regaining access to the franchise—presents a different question under rational-basis review than do financial obligations imposed, as here, as terms of a criminal sentence.

In the nearly five decades since the Court decided *Richardson*, it has never returned to the issue of felon disenfranchisement. That is primarily because the federal courts of appeals have demonstrated remarkable consistency in their interpretation of that precedent. Indeed, until the *Jones* panel's aberrational preliminary decision in these proceedings, the circuits had maintained universal consensus in holding that rational-basis review applies to any reenfranchisement scheme not drawn along suspect lines. And the only federal appellate court to address the intersection of felon reenfranchisement and wealth discrimination would accord with the Eleventh Circuit's eventual reversal of the district court. These circumstances simply do not warrant this Court's premature intervention. There is no reasonable probability that four members of the Court will vote to grant review on Applicants' wealth-discrimination claim.

### B. The Court Is Unlikely To Review Applicants' Twenty-Fourth Amendment Claim.

Applicants have not and cannot show that this Court is likely to grant review of the Twenty-Fourth Amendment claim if the Eleventh Circuit reverses the district court. Indeed, Applicants do not even attempt to invoke any of the factors weighing in favor of granting certiorari under

Rule 10(a). Rather than create a circuit split, a ruling in the State's favor would strengthen the consensus among the circuits that felons do *not* have a Twenty-Fourth Amendment claim in challenges to reenfranchisement statutes because felons, like children and noncitizens, simply do not have a right to vote, *see Johnson*, 624 F.3d at 751; *Harvey*, 605 F.3d at 1080; *Howard*, 2000 WL 203984, at *2.

Nor would a reversal of the district court's interpretation of "other taxes" constitute an "important question" that "conflicts with relevant decisions of this Court" or one that "should be[] settled by this Court." *See* Sup. Ct. R. 10(c). Applicants do not argue that this issue even presents an "important question." Rather, they contend that this Court is likely to grant review because it has only once construed the "poll tax" portion of the Twenty-Fourth Amendment, *see Harman v. Forssenius*, 380 U.S. 528, 538–44 (1965), and has *never* construed the phrase "other tax[]" in the Amendment. But the fact that the Court has never addressed an issue has the opposite effect—it generally weighs *against* granting review, particularly where, as here, there is no split of authority in the circuits. *See Arizona v. Evans*, 514 U.S. 1, 24 n.1 (1995) (Ginsburg, J., dissenting) ("We have in many instances recognized that when frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court."); *McCray v. New York*, 461 U.S. 961, 961–63 (1983) (Stevens, J., respecting denial of petitions for writs of certiorari) ("My vote to deny certiorari in these cases does not reflect disagreement with Justice MARSHALL's appraisal of the importance of the underlying issue. . . . In my judgment it is a sound exercise of discretion for the Court to allow the various States to serve as laboratories in which the issue receives further study before it is addressed by this Court."). Indeed, this Court previously denied review of the Sixth Circuit's Twenty-Fourth Amendment ruling that was consistent with the State's position.

*See Johnson*, 624 F.3d 742, *cert. denied*, 563 U.S. 1008 (2011); *see also* Pet. for Writ of Cert. at 21–24, *Johnson*, 563 U.S. 1008.

### C. The Court Is Unlikely To Review Applicants' Due Process Claims.

Applicants have not shown any likelihood that this Court would grant review of their due process claims. While the district court stated that Applicants' arguments "carry considerable force," it did not clearly rule on the ultimate merits of their due process claims. *Jones*, 2020 WL 2618062, at *36. This might be the reason why Applicants cite no case law or reference any of the "compelling reasons" this Court considers for granting certiorari. *See* Sup. Ct. R. 10. Indeed, even if the district court ruled on their due process claims, Applicants can speak in nothing more than broad generalities as to the legal basis for any such ruling. There is no reasonable likelihood that four Justices would find a compelling reason to grant review in such circumstances.

Moreover, because the Court is one "of review, not of first view," a grant of certiorari on the due process claim is exceedingly unlikely. *McLane Co., Inc. v. EEOC*, 137 S. Ct. 1159, 1170 (2017) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). The district court's fleeting due process statements were made on the understanding that Applicants' wealth-discrimination claim succeeded, such that the due process question was whether the Florida law provides insufficient procedural protections or is unduly vague when the standard for felon voting is inability to pay financial terms of sentence. But because the wealth-discrimination decision was in error, this framing of the question is incorrect and will be irrelevant to ultimate resolution of this case. This Court is unlikely to take up a question that the district court did not address.

What is more, once it is understood that this framing of the question is incorrect, the practical implications are drastically reduced as well. The district court found—and Applicants embrace—that "the overwhelming majority of felons who have not paid their [financial terms of

sentence] in full, but who are otherwise eligible to vote, are genuinely unable to pay the required amount." Appl. 9 (quoting *Jones*, 2020 WL 2618062, at *16). It follows that if the State can constitutionally require completion of financial terms of sentence of *every* felon, regardless of ability to pay, then the "overwhelming majority" of felons with unpaid financial terms are *ineligible* for reenfranchisement and face no risk of erroneous deprivation. In light of these facts, this Court is unlikely to review Applicants' due process claims.

## III. The Eleventh Circuit's Stay Order Is Not Demonstrably Erroneous.

When deciding whether to issue the stay challenged here, the en banc Eleventh Circuit had to consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken*, 556 U.S. at 426 (quoting *Hilton v. Braunskill,* 481 U.S. 770, 776 (1987)). The first two factors are "the most critical." *Id.* at 434.

Applicants cannot carry their burden to justify this Court's vacatur of the Eleventh Circuit's stay order. First, the Court's precedents do not support—let alone mandate—the conclusion that a State violates the Constitution when it requires a felon to complete all of the terms of his sentence, including financial terms, to regain eligibility to vote, even though that felon is unable to pay the financial terms. Second, none of the Court's precedents—nor the unanimous consensus of the federal courts of appeals—lends any credence to Applicants' claim under the Twenty-Fourth Amendment. And third, the Court's precedents do not support Applicants' contention that their due process claims support the district court's injunction. As for irreparable harm and the other stay factors, the court of appeals rightly determined that if the State is correct on the merits, the other factors weigh in its favor.

Because the en banc Eleventh Circuit necessarily concluded that Respondents had made a strong showing on the merits, it had every reason to stay the district court's contrary constitutional holding. It therefore did not clearly or demonstrably err in granting Respondents' stay motion.

### A. Florida Reenfranchisement Laws Do Not Violate the Equal Protection Clause.

#### 1. Applicants Do Not State A Wealth-Discrimination Claim Under the Fourteenth Amendment.

The Equal Protection Clause of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Applicants have consistently framed their equal-protection claim as a "wealth-based discrimination" challenge, *see, e.g.*, Amend. Compl. ¶ 7, Doc. 84, alleging that SB-7066 prevents those unable to pay their financial terms of sentence from restoring their right to vote. Wealth, however, is not a suspect classification akin to race, sex, or national origin, *see San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973), so a wealth-based classification does not, standing alone, trigger heightened scrutiny. And more fundamentally, SB-7066's central classification is not even drawn along the lines of wealth; it distinguishes only between those felons who "complet[e] all terms of sentence" and those who do not complete those terms.

At most, therefore, all that Applicants can complain about is that the effects of SB-7066's classification bear more heavily on those felons unable to pay their financial terms of sentence than on those who are able to pay. But they make no claim that Amendment 4 and SB-7066 were adopted for the purpose of discriminating against impecunious felons. Applicants' claim thus represents precisely the kind of disparate-impact theory of equal protection that this Court has rejected even in cases involving race and other suspect classes. *See, e.g.*, *Washington v. Davis*, 426 U.S. 229, 239 (1976). Under Applicants' theory, when a facially *wealth-neutral* statute is alleged to disproportionately disadvantage those unable to pay some amount, those persons so

disadvantaged can bring a wealth-discrimination claim even in the absence of discriminatory purpose. But, under this Court's precedents, even when a facially *race-neutral* statute is alleged to disproportionately disadvantage blacks, a failure to prove discriminatory purpose "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's protection against wealth discrimination is more robust than its protection against racial discrimination when race is a suspect class, and indigency is not.

To surmount this hurdle, Applicants cling to this Court's decision in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), asserting that it stands for the proposition that "discriminatory intent is not an element of wealth discrimination claims." Appl. 28. This misreads *M.L.B.* To be sure, the Court there declined to impose *Davis*'s purposeful-discrimination requirement on a narrow sliver of earlier wealth-discrimination cases in which a wealth-neutral law's disadvantages "are not merely *disproportionate* in impact," but instead "apply to *all* indigents and *do not reach anyone outside that class*." 519 U.S. at 127 (second and third emphases added).

Applicants' challenge to SB-7066 does not fall within the narrow exception identified by the Court in *M.L.B.* SB-7066's payment requirements do not inhibit restoration of voting rights for "all indigents" and no one "outside that class." As Applicants emphasized below, a felon could even be "a millionaire" yet unable to repay an outsized financial penalty. *See* Dec. 3, 2019 Hr'g Tr. at 54, Doc. 239.

To get around this problem, the *Jones* panel invented a new category: the "truly indigent"; that is, "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" means that an individual "lacks the means of subsistence," "Indigency," *Black's Law Dictionary* (10th ed. 2014),

or has an income "beneath any designated poverty level." *San Antonio Indep. Sch. Dist.*, 411 U.S. at 22–23. It does not capture all persons, regardless of wealth, who are unable to satisfy their financial obligations.

The *Jones* panel's capacious definition of "indigency"—untied to any absolute level of poverty—would nullify the Court's distinction in *M.L.B.* between the general discriminatory-purpose 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.*, not to mention the English language.

In a last-ditch effort to resuscitate their wealth-discrimination claim, Applicants point to the district court's "finding" that SB-7066 was enacted with a discriminatory purpose. *See* Appl. 28 n.13. The district court initially credited Applicants' wealth-discrimination 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 Jones*, 2020 WL 2618062, at *13–14. But in its order denying the State's stay motion, the 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." Order Den. State's Mot. To Stay at 8, Doc. 431. This sua sponte "finding" is utterly baseless. 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 id.* at 7–8. And this

"finding" flies in the face of the Legislature's choice to create avenues for completing financial terms of sentence other than payment, such as conversion to community service hours. More fundamentally, the Legislature's mere knowledge of SB-7066's potential effects obviously does not satisfy the well-established requirement that an equal-protection plaintiff prove that the allegedly discriminatory measure was adopted "because of, not merely in spite of," its discriminatory impact. *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (quotation omitted).[3]

Because SB-7066 does not, in practical effect, preclude *only* genuinely indigent felons from restoring their rights to vote, and because Applicants 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, *id.*, they cannot sustain a wealth-discrimination claim. The Eleventh Circuit did not demonstrably err in concluding that Respondents were likely to succeed on the merits.

**2. SB-7066 Must Be Scrutinized Under Rational-Basis Review.**

In *Richardson v. Ramirez*, 418 U.S. 24 (1974), the Court confirmed that the States' longstanding practice of denying convicted felons the franchise—even permanently—did not run afoul of the Constitution. It follows that a felon in such a State no longer has a right to vote and any opportunity the State later offers him to restore that right is a matter of grace. And unless the classification drawn by the State when granting restoration "categorizes on the basis of an

[3] Worse still, the court below did not even have jurisdiction to retroactively fill in this gaping factual hole in its judgment on the merits, because the State's filing of a notice of appeal "transfer[ed] adjudicatory authority from the district court to the court of appeals," *Manrique* v. *United States*, 137 S. Ct. 1266, 1271 (2017), and therefore "divest[ed] the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam).

inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992).

This understanding of felon reenfranchisement was succinctly and persuasively explained by Justice O'Connor, sitting by designation on the Ninth Circuit, in *Harvey v. Brewer*, 605 F.3d 1067 (9th Cir. 2010). As Justice O'Connor succinctly put it, felons challenging a reenfranchisement scheme "cannot complain about their loss of a fundamental right to vote because felon disenfranchisement is explicitly permitted under the terms of *Richardson*." *Id.* at 1079. Instead, what those felons "are really complaining about is the denial of the statutory benefit of re-enfranchisement that [the State] confers upon certain felons," and courts "do not apply strict scrutiny as [they] would if [the felons] were complaining about the deprivation of a fundamental right." *Id.*

Every other court of appeals to consider felon reenfranchisement has adopted this same analytical framework. *See Johnson*, 624 F.3d at 746; *Hayden*, 594 F.3d at 171; *Owens*, 711 F.2d at 27; *Shepherd*, 575 F.2d at 1114–15; *see also Madison*, 163 P.3d at 768–69. They have therefore concluded that the relevant constitutional question is whether the legislative classification is "rationally related to a legitimate state interest." *Harvey*, 605 F.3d at 1079.

Applicants resist this straightforward analysis, asserting that this case is instead governed by some amalgam of this Court's precedents in *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), *Griffin v. Illinois*, 351 U.S. 12 (1956), and *Bearden v. Georgia*, 461 U.S. 660 (1983). But none of these cases, considered either alone or in combination, can justify any departure from rational-basis review.

Begin with *Harper*. There, this Court held unconstitutional a Virginia law making the payment of a $1.50 poll tax a prerequisite to voting in state elections. In doing so, the Court referred

to the "fundamental" right to vote no fewer than three times in its opinion. *See* 383 U.S. at 667, 670. The Court reiterated that "where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined." *Id.* at 670. And because the fundamental right to vote was conditioned on the payment of a tax that itself had "no relation to voting qualifications," *id.*, the Court held that the tax violated the Equal Protection Clause.

*Harper* is inapplicable here for one simple reason: its holding was predicated on government infringement of the fundamental right to vote, a right held by the Virginia electorate generally. Here, however, a felon has no more right to vote than does a child or a noncitizen. Therefore, the only constitutional duty imposed on the State, as Justice O'Connor explained in *Harvey*, is that its treatment of felons be rationally related to a legitimate government interest.

Moreover, *Harper*'s holding—that "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard," *id.* at 666—is inapplicable here. SB-7066 does not "make[] affluence of the voter . . . an electoral standard," because SB-7066 does not create "[l]ines drawn on the basis of wealth." *Harper*, 383 U.S. at 668; *see also McDonald v. Bd. of Election Comm'rs of Chi.*, 394 U.S. 802, 807 (1969). Rather, its requirements apply to felons regardless of the terms of sentence they must complete or their personal capacity to do so. And, quite unlike *Harper* itself, SB-7066 does not require the "payment of a fee," even assuming such a payment would implicate the fundamental right to vote. *Harper* dealt with an arbitrary, uniform poll tax which, by its very design, made wealth the *sole* criterion for voting; if a voter had $1.50, he could vote, and if he did not have enough, he could not vote.

SB-7066 is different because the payments a felon must make under SB-7066 were

imposed as punishment for committing a felony; they are not "fees" imposed as an "electoral standard" with which every voter must comply. Indeed, the only voting-related forms of wealth discrimination that Applicants identify are explicit poll taxes and candidate filing fees. And both of those share a common feature: They impose a flat fee on all voters that necessarily "ma[kes] affluence of the voter an electoral standard, and such a standard is irrelevant to permissible voter [or candidate] qualifications." *Gonzalez v. Arizona*, 677 F.3d 383, 409 (9th Cir. 2012) (en banc), *aff'd sub nom. Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013).

And finally, *Harper* is inapposite because the Court assumed that members of the Virginia electorate were "otherwise qualified" to vote under State law and the poll tax "introduce[d] a capricious and irrelevant factor." 383 U.S. at 668; *see also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 189 (2008) (opinion of Stevens, J.) (explaining that "rational restrictions on the right to vote are invidious *if they are unrelated to voter qualifications*" (emphasis added)). Here, however, whatever payments felons must make to complete their financial terms of sentence are *directly* related to their qualifications to vote because they are tailored to punish them for the crimes that they committed to forfeit their rights to vote in the first place. *See Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 51 (1959) (noting that a "previous criminal record" is an "obvious example[]" of a factor that a State "may take into consideration in determining the qualifications of voters").

At bottom, Applicants' reading of *Harper* is boundless, for it would endanger *any* law that made voting more expensive for some people than others, even if the additional cost was closely related to voter qualifications. For example, state laws requiring voters to provide documents proving their identity are likely vulnerable under Plaintiffs' view, for some individuals would inevitably have to pay to obtain the documents. The Ninth Circuit, sitting en banc, rejected

precisely this sort of challenge, holding that "[r]equiring voters to provide documents proving their identity is not an invidious classification based on impermissible standards of wealth or affluence, even if some individuals have to pay to obtain the documents." *Gonzalez*, 677 F.3d at 409. This Court had previously done the same in another case involving voter identification. *See Crawford*, 553 U.S. at 198 n.17, 199 (upholding a voter identification scheme even though some "persons who because of economic or other personal limitations may find it difficult . . . to secure a copy of their birth certificate" because it costs between $3 and $12). If requiring some people to pay to *prove* their qualifications to vote does not run afoul of *Harper*, then surely requiring felons to satisfy their criminal sentences to *become qualified* should not either, especially when those sentences are not arbitrary but instead reflect the terms of a criminal sentence imposed by a judge or jury.

Having failed to justify application of heightened scrutiny based on *Harper*, Applicants invoke two other wealth-discrimination precedents, one involving the denial of access to the appellate process for inability to pay transcript and other fees, the other involving imposition of imprisonment for inability to pay criminal fines. Both lines of precedent are wholly inapposite.

First, in *Griffin v. Illinois*, 351 U.S. 12, the 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 110. *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 to appeal in nonfelony cases); *M.L.B.*, 519 U.S. 102 (transcript fees to appeal the termination of parental rights). But the Court has carefully circumscribed *Griffin* to cases involving access to the judicial process. *See, e.g.*, *Christopher v. Harbury*, 536 U.S. 403, 413 (2002) (describing the "denial-of-access cases

challenging filing fees that poor plaintiffs cannot afford to pay" in "direct appeals or federal habeas petitions in criminal cases, or civil suits asserting family-law rights"); *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (calling the *Griffin* line "access-to-courts cases"); *Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 460 (1988) (noting that each *Griffin*-like case "involved a rule that barred indigent litigants from using the judicial process in circumstances where they had no alternative to that process"). As the Court most recently explained in *M.L.B.*, the relevant set of decisions "concerning access to judicial processes[] commenc[ed] with *Griffin* and [ran] through *Mayer*." 519 U.S. at 120.

This case does not concern "access to judicial processes in cases criminal or quasi criminal in nature," *id.* at 124, and so there is absolutely no basis for bringing Amendment 4 and SB-7066 into this unique exception from rational-basis scrutiny for such cases. Applicants nonetheless argue that the Court "has applied *Griffin* in many contexts." Appl. 26. But the cases they list either implicated judicial process, *see Boddie v. Connecticut*, 401 U.S. 371, 382–84 (1971), did not cite or rely on *Griffin* at all, *see Zablocki v. Redhail*, 434 U.S. 374 (1978); *Bullock v. Carter*, 405 U.S. 134, 149 (1972), or reflected the views of single Justice, *see Lubin v. Panish*, 415 U.S. 709, 719–21 (1974) (Douglas, J., concurring).

Apparently recognizing that their attempt to expand *Griffin*'s ambit is futile, Applicants next assert that if *Griffin* condemns fees related to the filing of appeals, then surely it should preclude a law like SB-7066 from preventing felons from restoring their rights to vote because of inability to pay. After all, the right to vote is not substantially less valuable than the right to appeal a criminal conviction.

But like their reading of *Harper*, Applicants' understanding of *Griffin*—unmoored from the right of access to judicial process—would upend traditional notions of equal-protection

jurisprudence. As the Eleventh Circuit itself previously explained when invited to expand *Griffin* in the manner pressed here by Applicants, absent a limiting principle tethered to access to judicial process, *Griffin* would conceivably "apply to any government action that treats people of different means differently." *Walker v. City of Calhoun*, 901 F.3d 1245, 1264 (11th Cir. 2018). And if that were true, then "[d]isparate treatment based on wealth . . . would be treated the same as official religious or racial discrimination," and that approach would represent a "radical . . . application of the Equal Protection Clause" that this Court has firmly rejected. *Id.* (citing *San Antonio Indep. Sch. Dist.*, 411 U.S. at 24).

Applicants' proposed application of *Griffin* would mandate heightened scrutiny for State laws having nothing to do with access to judicial process. It is at least a matter of serious debate whether *Griffin* itself can be squared with the Court's more recent equal-protection precedents. *See M.L.B.*, 519 U.S. at 139 (Thomas, J., dissenting) ("If this case squarely presented the question, I would be inclined to vote to overrule *Griffin* and its progeny."). At the very least then, the implications of Applicants' expansive reading of *Griffin* is reason alone to conclude that the Eleventh Circuit did not transgress "accepted standards" of equal-protection jurisprudence by necessarily rejecting Applicants' argument and granting Respondents' stay motion. *W. Airlines, Inc.*, 480 U.S. at 1305.

Along with the *Griffin* line of cases, Applicants rely heavily on the Court's culminating trilogy of decisions in *Bearden v. Georgia*, 461 U.S. 660. These cases concern the power of the State to imprison individuals for failure to pay criminal financial penalties. *See also Tate v. Short*, 401 U.S. 395 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970). 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 rule of *Williams*, *Tate*, and *Bearden* is simple: when the State has determined that its interest in punishing a crime are satisfied by imposition of a fine rather than imprisonment, it may not then *imprison* an individual solely because he is unable to pay the fine. Indeed, the Court's exclusive focus on imprisonment is brought into sharp focus by the Court's insistence in *Bearden* that sentencing courts first "consider alternative measures of punishment *other than imprisonment*," *id.* (emphasis added), to pursue their legitimate interests in punishing an indigent lawbreaker unable to pay his fine, *id.* at 671; *see also id.* at 672. Because Amendment 4 and SB-7066 do not implicate the uniquely serious deprivation that is imprisonment, Applicants' challenge to the laws clearly falls outside the scope of *Williams*, *Tate*, and *Bearden*.

Applicants, however, dispute this commonsense reading of *Bearden*, contending instead that because "[p]hysical liberty does not transcend voting in our constitutional structure," Appl. 29, it is wrong to cabin *Bearden* to cases where only imprisonment is at issue. Put another way, Applicants argue that because "a person convicted of a crime has forfeited his constitutional right to physical liberty," that probation is therefore a "statutory benefit," and *Bearden* therefore holds that a state cannot deprive a person of a statutory benefit based on inability to pay. Appl. 29.

This argument fails for at least two reasons. First, like Applicants' arguments from *Harper* and *Griffin*, it has no limiting principle. If, as Applicants suggest, *Bearden* holds generally that States may not withhold a "statutory benefit" like probation from those unable to pay, then how is any other statutory benefit predicated on the payment of a fee consistent with *Bearden*? Indeed, how then, could the Court five years after *Bearden* hold that a user fee for the statutory benefit of

busing to and from public schools did not run afoul of equal protection? *See Kadrmas*, 487 U.S. at 461–62; *see also id.* at 461 n.* (summarily dismissing the appellants' appeal to *Bearden*).

Second, Applicants' description of *Bearden* entirely misunderstands the doctrinal foundation of the decision. As the Court explained, departure from rational-basis review was justified in *Bearden* because "[d]ue process and equal protection principles converge" in that kind of case. 461 U.S. at 665. In other words, the equal-protection concern in *Bearden* is "substantially similar to asking directly the due process question of whether and when it is fundamentally unfair or arbitrary for the State to revoke probation when an indigent is unable to pay the fine." 461 U.S. at 666. This confluence of equal-protection and due-process principles is key to understanding *Bearden* and, in particular, the Court's special solicitude for the liberty interest asserted in the context of probation. Applicants are quite wrong to characterize probation as a "statutory benefit" in large part because they neglect to recognize that "[t]he Due Process Clause of the Fourteenth Amendment imposes procedural and substantive limits on the revocation of the conditional liberty created by probation" above and beyond other statutory benefits. *Black v. Romano*, 471 U.S. 606, 610 (1985). While there is no constitutional right to probation, "once a State grants a prisoner the conditional liberty properly dependent on the observance of special [probation] restrictions, due process protections attach to the decision to revoke [probation]." *Vitek v. Jones*, 445 U.S. 480, 488 (1980); *see also Gagnon v. Scarpelli*, 411 U.S. 778, 781 (1973). That is because, like parole, probation "includes many of the core values of unqualified liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

The conditional liberty to which due process protections apply is totally different from the right asserted by Applicants: the right of a felon to vote even though the felon has not satisfied a

condition—payment of the financial terms of his sentence—necessary *to bring that right into existence*. Payment of the financial terms of the felon's sentence is thus akin to a person reaching the age of 18 or a foreign national becoming an American citizen: their right to vote does not exist before that moment.

Thus, while probationers have a vested—albeit conditional—interest in remaining out of prison, Applicants here have *no right to vote* because they chose to commit felonies and, in turn, forfeited the right to vote upon conviction. It would be one thing if Florida re-enfranchised felons—thereby arguably creating a protected interest in their right to vote—only to later revoke that right upon failure to satisfy a particular condition. But Amendment 4 and SB-7066 do no such thing; they confer the right to vote only "*upon* completion of all terms of sentence." Fla. Const. art. VI, § 4(a) (emphasis added). Unlike a probationer, whose conditional freedom is analogous to unqualified liberty, Plaintiffs have no constitutionally protected interest because Amendment 4 and SB-7066 extend the right to vote *only upon* the completion of the terms of their criminal sentence. That is why it is a statutory benefit wholly dissimilar from probation. And "when dispensation of a statutory benefit is clearly at the discretion of [a State] . . . then there is no creation of a substantive interest protected by the Constitution." *Jean v. Nelson*, 727 F.2d 957, 981 (11th Cir. 1984), *aff'd*, 472 U.S. 846 (1985).

All told, therefore, *Bearden*'s justification for heightened scrutiny does not apply beyond the unique realm of imprisonment, where "[d]ue process and equal protection principles converge," *Bearden*, 461 U.S. at 665, as to justify departing from the courts' usual framework for assessing claims of wealth discrimination. Rather, in this case, as in the mine-run of wealth-discrimination cases, "[t]he applicable standard [of review] is that of rational justification." *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973). But even if one were to read *Bearden* and its

predecessors more broadly, they would still lend no help to Applicants. Stated at the highest level of generality, *Bearden* holds that once a State has concluded that "the outer limit" of punishment "necessary to satisfy its penological interests and policies" in a particular case does not include imprisonment, it cannot then subject the defendant to the *additional* punishment of imprisonment "solely by reason of [his] indigency." *Id.* at 667; *see also Williams*, 339 U.S. 235. Florida 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 in a very real sense a mandatory minimum—an essential part of the "outer limit" of punishment necessary to satisfy the State's penological interests.

Amendment 4 and SB-7066 do not augment the outer limit of a felon's sentence with an additional punishment; they replace a permanent punishment 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 permanent punishment lawfully imposed as part of a felon's sentence continues only until the felon completes his full sentence. They are entirely unlike what the Court confronted in *Bearden*.

Indeed, the point is can readily illustrated by a hypothetical that would, in fact, approximate *Bearden*: Consider a State where felons are *not* automatically disenfranchised upon conviction. But that same State provides that if a felon is sentenced to pay a fine but fails to do so, even if he is indigent and genuinely unable to pay it, he must forfeit his right to the franchise. The State thus concluded that its penological interests in punishing that felon did not require forfeiture of his right to vote; it only required that he pay a fine. Thus, by stripping the felon of his right to vote for mere inability to pay his fine, the State does not punish the felon for his initial crime. Rather, it is imposing punishment on the *separate* offense of failing to pay the fine. *Bearden* would cast doubt

on the constitutionality of that kind of add-on punishment, when applied to those unable to pay.

But neither Amendment 4 nor SB-7066 works in such a fashion. The felon's loss of his right to vote is part and parcel of his conviction, and it attaches not because the felon cannot pay a financial term of his sentence but because he *committed a felony* in the first place. Although Amendment 4 and SB-7066 allow that punishment to continue, they by no means operate like the laws at issue in *Williams*, *Tate*, or *Bearden*.

This aspect of Amendment 4 and SB-7066—that they do not themselves disenfranchise any felon—reveals another fundamental error in Applicants' equal protection theory. As the Court explained long ago, "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." *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966) (citation omitted); *see also San Antonio Indep. Sch. Dist.*, 411 U.S. at 39 (extending *Katzenbach*'s deferential standard to "affirmative and reformatory" State statutes).

Felon disenfranchisement in Florida *is a consequence of felony conviction*, and before the State's adoption of Amendment 4 and SB-7066, there was *no automatic restoration* of felon voting rights in the State. Amendment 4 and SB-7066 therefore *opened* a way for felons to regain the franchise that previously did not exist. They are wholly reformatory and, unlike the law at issue in *Bearden*, not at all punitive, and it would be perverse to strike them down for not being generous enough. Indeed, perversity would be conjoined with duplicity in a decision striking down a discretionary reform measure like Amendment 4 based on a challenge brought by many of the same groups that, in sponsoring its adoption, assured the voters that it required completion of the very financial terms of sentence that they, and the district court, now say are unconstitutional.

Despite *Katzenbach*'s admonition that "reform may take one step at a time," 384 U.S. at 657, Applicants demand that Florida take one giant leap or no step at all. Neither the Constitution, nor this Court's precedents interpreting it, demand such an extreme result. To the contrary, "that [Florida] has not gone still further . . . should not render void its remedial legislation." *McDonald*, 394 U.S. at 811. The Eleventh Circuit thus did not err—let alone clearly and demonstrably—in finding that the State was likely to succeed on the merits of its appeal.

**3. SB-7066 Is Rationally Related To Legitimate Government Interests.**

Once Applicants' desperate quest to apply heightened scrutiny falls by the wayside, the only question that remains is whether SB-7066 satisfies the rational-basis standard. That standard is exceedingly deferential, and "the Court hardly ever strikes down a policy as illegitimate under rational basis scrutiny." *Trump v. Hawaii*, 138 S. Ct. 2392, 2420 (2018); *see also District of Columbia v. Heller*, 554 U.S. 570, 628 n.27 (2008). Amendment 4 and SB-7066 are no different: it is entirely rational for the People of Florida to demand that *all* felons complete *all* terms of sentence, including *all* financial terms, before they welcome a felon back into the body politic.

Applicants contend that SB-7066 fails rational-basis review. But the kind of scrutiny that Applicants have in mind bears no resemblance to the doctrine applied by this Court.

Applicants' first error rests in their disregard of the principle that rational-basis review requires courts only to consider whether "the legislative *classification*" at issue is rational. *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) (emphasis added). Because Amendment 4 and SB-7066 make a distinction between felons who complete all terms of sentence and those who do not, the rational-basis inquiry therefore asks only 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 nevertheless 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 the law's classification, but the rationality of a classification's effect on the plaintiff. *Jones*, 2020 WL 2618062, at *15. This is wrong. As one court of appeals has helpfully explained, the doctrine's "basic formulation"—asking whether "any reasonably conceivable state of facts . . . could provide a rational basis for the *classification*"—"applies whether the plaintiff challenges a statute on its face, as applied, or . . . challenges some other act or decision of government." *Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006) (emphasis added) (quotation omitted). And the Eleventh Circuit itself maintains that 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)). Applicants' burden under rational-basis review is therefore to disprove the existence of any reasonably conceivable set of facts to justify *the classification* challenged. Indeed, as Justice Kennedy explained, any other approach to rational-basis review 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.). Accordingly, while a plaintiff retains the prerogative to bring an as-applied challenge to a statute, he cannot somehow change the relevant constitutional question by doing so.

Applicants cite but a single equal-protection case, *City of Cleburne v. Cleburne Living*

*Center*, 473 U.S. 432 (1985), to support their reimagination 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; *see also Trump*, 138 S. Ct. at 2420. Here, however, there is no evidence that the classification drawn by the State is inexplicable beyond irrational prejudice against those felons unable to pay the financial terms of their sentences.

Homing in on the legislative classification drawn by Amendment 4 and SB-7066—between felons who complete all their terms of sentence and those who do not—it should be obvious that the classification survives review for mere rationality. 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—regardless of his financial prospects. This interest—that *all* felons complete *all* terms of sentence to repay their debt to society, as determined by the judge and/or jury that found him guilty of committing a felony—is the very definition of *justice*. And given that Florida has a legitimate—indeed, 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), 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 in full his debt to society is the State's only method for ensuring that no felon who falls short will automatically be allowed to rejoin the electorate.

Applicants raise several objections to this analysis, but none is sound. First, Applicants appear to argue that the State's demand that felons repay their debts to society in full is somehow

a disguised "wealth classification." Appl. 34. How so? The requirement that felons repay their debts to society applies whether a given felon is sentenced only to serve a prison term or only to pay a fine. It applies whether a felon owes $1 million in restitution or a $100 fine. It applies whether the felon is millionaire or indigent. Moreover, the very same classification at issue in SB-7066 is present in Amendment 4, yet Applicants never intimate that Amendment 4's classification is a wealth-based classification in sheep's clothing. In the end, Applicants proffer no explanation for how a legislative classification centered on "completion" of all terms of a sentence somehow represents a covert wealth classification.

Second, Applicants assert that SB-7066 is irrational because of various decisions made after the statute's enactment by the State government. To begin, it is not at all clear how these administrative measures designed to implement Amendment 4 and SB-7066 are relevant to the central question presented by rational-basis review: whether the classification drawn *by the People of Florida and the Florida Legislature* is rationally related to a legitimate government interest. Unless a court is willing to attribute the determinations of Florida's executive branch to the Florida Legislature, then one can hardly imagine how the implementation of SB-7066 can form a basis for attacking the constitutionality of *the statute itself*.

In any event, under rational basis review, Applicants' objections to the implementation of SB-7066 are "full of sound and fury" but ultimately "signify[] nothing." William Shakespeare, *The Tragedy of Macbeth*, act 5, sc. 5. Indeed, Applicants largely elide the foundational tenet that a statute comes to the court under rational-basis review "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." *Beach Commc'ns, Inc.*, 508 U.S. at 314–15 (citation and quotation omitted). Indeed, "legislative classifications are valid unless they bear *no rational*

*relationship* to the State's objectives." *Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 501 (1979) (emphasis added).

In defiance of the Court's instruction that laws reviewed for rationality not be struck down merely "because they may be unwise, improvident, or out of harmony with a particular school of thought," *Williamson v. Lee Optical of Okla. Inc.*, 348 U.S. 483, 488 (1955), Applicants sought and received from the district court precisely that kind of declaration, and the Eleventh Circuit rightly suspended the ruling in granting Respondents' stay motion.

Turning briefly to the specifics of Applicants' objections, one can readily see that their allegations of "irrationality" are baseless. For example, Applicants assail the so-called "first-dollar policy," which credits payments from felons on the total outstanding balance of their financial obligations—which includes fines, fees, or costs that accrue *after* the felon's sentence is imposed—first toward satisfaction of the financial obligations ordered as part of criminal sentence. But this policy is entirely consistent with the State's demand that every felon pay his debt to society in full, as that debt was defined at sentencing. 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—again, 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. In other words, the State can reasonably maintain that its interest in ensuring that any felon pay his debt to society is satisfied only after the felon pays in full his financial terms of sentence to the State, his victims, or even private parties contracting with the State to collect the felon's debt, so long as the felon's credited payments are made in connection with his criminal sentence. Moreover, although Applicants do not mention it, 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. At the very least, 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. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 154 (1938).

Finally, Applicants say that SB-7066's completion requirement is irrational because the district court found that "the overwhelming majority of felons who have not paid [the financial terms of their sentences] in full . . . are genuinely unable to pay the required amount." Appl. 33 (quoting *Jones*, 2020 WL 2618062, at *16). This argument is wrong in two respects.

First, it assumes—incorrectly, as we previously demonstrated—that it is irrational for the State to demand that felons complete their financial terms of sentence before restoring their right to vote, including felons are unable to pay them. The State "clearly has an interest in ensuring that felons complete all of the terms of their sentence," *Madison*, 163 P.3d at 772, apart from collecting financial debts, lest it express the view that felons unable to complete their sentences deserve special treatment. *See Owens*, 711 F.2d at 28 (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."). In other words, the State has an interest in ensuring that the scales of justice are put back in balance in each case. And, as Justice Harlan recognized in *Williams*, permitting felons to escape the consequences of their actions simply because they lack 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 (Harlan, J., concurring in the result). The State's decision to treat all felons the same was legitimate and rational. And far from remedying an equal-protection problem, the district court has *created* one.

Second, even if true, the fact that most felons are unable to complete their sentences because of individual circumstance does not undermine the rationality of the State's choice to demand completion. Legislative choices scrutinized under rational-basis review are "not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Beach Commc'ns*, 508 U.S. at 315. Indeed, even if the "assumptions underlying [legislative] rationales may be erroneous," the "very fact that they are 'arguable' is sufficient, on rational-basis review, to 'immuniz[e]' the [legislative] choice from constitutional challenge." *Id.* at 320 (quoting *Vance v. Bradley*, 440 U.S. 93, 112 (1979)) (first and third alterations 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* Smith Second Suppl. Expert Rep. at 18, Doc. 334-1. It would not have been irrational for the Legislature to assume that the 54.2% of felons owing less than $1,000 would eventually be able to repay that debt. Indeed, a felon paying only $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.

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

Applicants cannot show that they are correct on the merits of their Twenty-Fourth Amendment claim, let alone establish that the Eleventh Circuit "clearly and 'demonstrably' erred in its application of 'accepted standards,' " in granting the stay. *Planned Parenthood of Greater Tex. Surgical Health Servs.*, 134 S. Ct. at 506 (quoting *W. Airlines, Inc.*, 480 U.S. at 1305).

As an initial matter, Applicants have not explained how the Eleventh Circuit could have egregiously flouted "accepted standards" in granting a stay on the district court's Twenty-Fourth Amendment ruling when they admit that this Court has never construed the meaning of the term "other tax," *see* Appl. 22, on which the injunction is premised entirely. In any event, the district court's conclusion that court costs and fees are "other tax[es]" prohibited by the Twenty-Fourth Amendment is demonstrably 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 court fees—are not unconstitutional taxes.

Applicants do not have a claim under the Twenty-Fourth Amendment because felons do not have the right to vote and reenfranchisement schemes only *restore* voting rights. Again, *Richardson* stands for the uncontroverted proposition that a State constitutionally may *permanently* bar felons from voting upon conviction. *See* 418 U.S. at 54–56. To repeat, Amendment 4 and SB-7066 do not *disenfranchise* anyone—Florida's constitutional law barring felons from voting accomplished that at the moment of conviction. And the effect of *Richardson* is plain: because disenfranchised felons can be forever barred from voting, their right to vote, by definition, no longer exists, and any extension of the franchise to that class is an act of grace. Justice O'Connor, writing for the Ninth Circuit, explained the simple logic of the State's position best:

> Plaintiffs' right to vote was not abridged because they failed to pay a poll tax; it was abridged because they were convicted of felonies. Having lost their right to vote, they now have no cognizable Twenty–Fourth Amendment claim until their voting rights are restored. That restoration of their voting rights requires them to pay all debts owed under their criminal sentences does not transform their criminal fines into poll taxes.

*See Harvey*, 605 F.3d at 1080. The only other circuits that have considered similar challenges have

also concluded that felons do not have a Twenty-Fourth Amendment claim to challenge reenfranchisement schemes. *See Johnson*, 624 F.3d at 751; *Howard*, 2000 WL 203984, at *2.

Applicants attempt to refute the Respondents' argument by posing hypothetical reenfranchisement schemes that they believe would pass constitutional muster if felons are unable to bring challenges under constitutional provisions regarding the abridgement of the right to vote. But Respondents have never contended that the State is constitutionally unrestrained in the qualifications it can set for restoration. Indeed, the State has maintained that reenfranchisement schemes, which confer a statutory benefit, are subject to the Equal Protection Clause. Justice O'Connor addressed this point in evaluating the reenfranchisement law at issue in *Harvey*:

> Even a statutory benefit can run afoul of the Equal Protection Clause, though, if it confers rights in a discriminatory manner or distinguishes between groups in a manner that is not rationally related to a legitimate state interest. For instance, a state could not choose to re-enfranchise voters of only one particular race, or re-enfranchise only those felons who are more than six-feet tall.

605 F.3d at 1079 (citations omitted).

Moreover, none of the example statutes Applicants provide would survive the appropriate level of scrutiny for their respective classifications. A reenfranchisement scheme only applying to white felons certainly would not satisfy strict scrutiny. *See, e.g.*, *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995). Nor would the State be able to show that reenfranchising only male felons "serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives," as required by intermediate scrutiny. *United States v. Virginia*, 518 U.S. 515, 533 (1996) (quoting *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982)). Finally, a law restoring the right to vote to felons over the age of 65 would fail rational basis review because such an arbitrary classification would not further *any* conceivable legitimate interest. *Cf. Nordlinger*, 505 U.S. at 11. Thus, Applicants' contention that the State's position would give it unfettered discretion in imposing conditions on

reenfranchisement is wholly unfounded.

Applicants make little effort to show that they clear the next necessary hurdle to prevailing on their claim: that, if the Twenty-Fourth Amendment *does apply*, court fees and costs constitute "other tax[es]" prohibited by the Amendment. Indeed, Applicants need to show that the Eleventh Circuit's decision to stay this portion of the district court's injunction was "demonstrably wrong." *W. Airlines, Inc.*, 480 U.S. at 1305 (quoting *Coleman*, 424 U.S. at 1304). Applicants' one-paragraph defense of the district court's conclusion does not come close to meeting that burden.

Applicants, invoking *NFIB v. Sebelius*, 567 U.S. 519 (2012), assert—without more—that "Florida has chosen to run a tax system that applies exclusively to criminal defendants in order to fund its criminal justice system." Appl. 41. That is demonstrably false. Applicants ignore that every financial term of sentence was imposed *as punishment for the conviction of a crime*. Moreover, Applicants fail to acknowledge that this 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). Court fees and costs are terms of criminal sentences just the same as prison terms, parole, fines, and restitution, and are the necessary consequences of a conviction much like the loss of the right to vote. Indeed, court fees and costs are materially indistinguishable from mandatory minimum fines, as defendants can be sure that two things will happen if they are convicted of a felony: they will lose several civil rights, including the right to vote, and they will be required to pay court costs and fees.

The punitive nature of court fees and costs is also applicable to defendants who plead no contest and/or have adjudication withheld. They, like those who plead guilty or are convicted by a jury or judge, are required to pay court fees and costs because they are subject to punishment by

the State. Under Florida law, "[a] plea of nolo contendere admits the facts for the purpose of the pending prosecution" and is "equivalent to a guilty plea only insofar as it gives the court the power to punish." *Vinson v. State*, 345 So. 2d 711, 713, 715 (Fla. 1977). And a judge cannot withhold adjudication for a felony without placing a defendant on probation. *See* Fla. Stat. § 948.01; *see also State v. Tribble*, 984 So. 2d 639, 640–41 (Fla. Dist. Ct. App. 2008) ("[O]nce any required pre-sentencing procedures are concluded, the options available to the trial court are either to adjudge the defendant guilty and order confinement or to withhold adjudication and place the defendant on probation."). Defendants who are acquitted, by contrast, do *not* pay fees and costs. *See* Fla. Stat. § 939.06. Court fees and costs are thus tied to culpability and are punitive.

Moreover, no matter the amount or who collects the proceeds, court costs and 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 fact that court fees and costs are used to defray the costs of operating the criminal justice system does not transform them into taxes. Indeed, the proceeds of criminal fines are often applied to the same fund. *See, e.g.*, Fla. Stat. § 142.01 (designating several criminal fines and court costs to a fund for "performing court-related functions"). The only difference is that a judge does not have discretion over the imposition of court fees and costs but does have a say in imposing *some*—but not all—fines. *See Jones*, 2020 WL 2618062, at *4 (acknowledging that some felony offenses carry mandatory fines). Thus, fines and court costs and fees are materially indistinguishable. On no conceivable reading of the Twenty-Fourth Amendment can the penalties assessed in court fees and costs be a "tax."

Finally, Applicants wrongly characterize 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. Indeed, 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.

### C. Florida's Reenfranchisement Scheme Comports With the Due Process Clause.

Applicants' main contention with regards to their due process claims is that the Eleventh Circuit "stayed aspects of the district court's injunction stemming from legal claims the State did not even contend should be stayed." Appl. 43–44 (emphasis omitted). This is clearly false. The State unambiguously sought to stay the district court's remedial order with regards to the advisory opinion process.[4] *See* State's Mot. for Stay Pending Appeal at 13, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 17, 2020). Indeed, the State addressed the district court's muddled due process analysis by arguing that "[t]he need for these procedures—as the injunction against applying SB-7066 and Amendment 4 to felons unless the State can tell them precisely what they owe—is parasitic on the district court's erroneous wealth-discrimination analysis." *Id.* The State further clarified in its reply in support of the stay that it "argued that the ordered procedures depend on the district court's erroneous wealth-discrimination analysis." *See* State's Reply in Supp. of Mot. for Stay Pending Appeal at 9, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 29, 2020).

The State only briefly addressed Applicants' due process claims because, while the district court stated in a cryptic portion of its opinion that Applicants' arguments "carry considerable force," it did not rule on the merits of the claims. *Jones*, 2020 WL 2618062, at *36. Rather, the court noted that the advisory-opinion procedure and immunity from criminal prosecution that it

[4] The State declined to seek a stay of the district court's injunction with regards to the voter registration form which provided the basis for the court's NVRA holding, so that facet of the injunction remains in place. *See* State's Reply in Supp. of Mot. for Stay Pending Appeal at 9, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 29, 2020).

ordered for Plaintiffs' wealth-discrimination claim would likewise "satisfy due process and remedy the vagueness attending application of the criminal statutes." *Id.* at 36. A ruling on Plaintiffs' due-process claim was not necessary because "[e]ven in the absence of a ruling [on those claims], the same requirements would be included for the constitutional violation addressed" in the court's wealth-discrimination analysis. *Id.* Contrary to Applicants' contention, the court did not "appl[y] basic due process and vagueness principles to its analysis and remedy." Appl. 42. Although the district court acknowledged general vagueness principles, it did not explain their application to Amendment 4 or SB-7066. *Jones*, 2020 WL 2618062, at *36. The court also cited the tripartite framework governing procedural due process claims, *see id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)), but it did not attempt to analyze the *Mathews* factors.

To the extent the district court's opinion endorsed Applicants' due process claims, those rulings are erroneous. A court finding a constitutional violation "is required to tailor 'the scope of the remedy' to fit 'the nature and extend of the constitutional violation.' " *Dayton Bd. Of Ed. v. Brinkman*, 433 U.S. 406, 420 (1977) (quoting *Milliken v. Bradley*, 418 U.S. 717, 744 (1974)). As the State above has shown, Amendment 4 and SB-7066 do not violate the Equal Protection Clause. And the procedures the district court imposed on the State depend upon the erroneous wealth-discrimination analysis—indeed they are the very procedures the district court imposed to remedy its faulty wealth-discrimination holding. If the State can rationally demand that *all* felons—including those unable to pay—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. And the need for such procedures for vagueness and procedural due process necessarily fail together, as the district court based the remedial process for both due process claims and the wealth-discrimination claim on largely the *same* concerns.

The due process claims that the district court found to carry force related to felons whose financial terms of sentence "are unknown and cannot be determined with diligence." *Jones*, 2020 WL 2618062, at *44. But again, this concern was stated in the context of a wealth discrimination holding that made voting eligibility turn on a comparison between financial terms of sentence outstanding and a felon's financial means. Regardless of whether such a scheme would raise due-process concerns as applied to felons who do not know the precise unpaid amounts remaining on their sentences, those same concerns do not attend a system in which the sole question for eligibility is whether *any* amount remains outstanding.

Moreover, the district court's reasoning rests on a mistaken premise: that the State has not informed felons of their financial obligations. But that is false: The State tells every felon the terms of his punishment, including any financial terms, *upon conviction*. And the first-dollar principle facilitates the ability of felons to determine what they owe by automatically crediting all payments toward completing financial terms of sentence toward the principal for purposes of voting. The district court offered no reason for charging the *State* with the responsibility of providing felons with information about their own unfulfilled criminal sentences and any payments that they themselves have made toward them.[5]

As explained above, the district court invoked *Mathews v. Eldridge* but did not conduct the due process analysis it prescribes. That analysis requires consideration of four factors: the private interest affected, the risk of erroneous deprivation, the probable value of additional safeguards, and the fiscal and administrative burdens those safeguards would impose. *Mathews*, 424 U.S. at 335. While the district court did not conduct the analysis, even a cursory review of the

[5] Moving forward, the State will provide felons with information about the financial terms of sentence upon release from prison, parole, probation, and community control. *See* Fla. Stat. §§ 944.705(6)(a)(2); 947.24(3); 948.041.

*Mathews* factors shows that they do not support Plaintiffs. That is because the small, unproven risk of erroneous deprivation—which, in this context, would be an eligible voter prevented from voting—cannot justify the sweeping administrative apparatus ordered by the district court.

Applicants have not shown that a stay of the district court's injunction would disenfranchise a substantial number of eligible voters. Applicants embrace the district court's finding that "the overwhelming majority of felons who have not paid their [financial terms of sentence] in full, but who are otherwise eligible to vote, are genuinely unable to pay the required amount." Appl. 9 (quoting *Jones*, 2020 WL 2618062, at *16). But the stay indicates that the State is likely to prevail on the wealth-discrimination claim, allowing the State to continue to require fulfillment of financial terms from every felon. This means that, on Applicants' view of the case, the "overwhelming majority" of the hundreds of thousands of felons who, according to Applicants, will be harmed absent a stay are *ineligible* and therefore face *zero* risk of erroneous deprivation.

What is more, felons are not bereft of options for seeking to learn the contents of sentences they have not kept track of themselves. Felons can access their sentencing records directly through the County Clerks' office, which retains the records for felony convictions for seventy-five years. *See* Trial Tr. 660:8–15. One of the clerk's primary duties is to monitor and manage the collection of financial obligations included in criminal sentences. *Id.* at 661:5–12. Thus, clerks are able to answer felons' questions and provide information regarding their financial terms over the phone, on the internet, or in person. *Id.* at 661:13–22. One County Clerk official testified that most questions related to financial obligations, typically posed about more recent convictions, can be answered within a few minutes. *Id.* at 649:10–20. Clerks can email sentencing documents stored on their electronic system—which are also available online—or can provide the same information contained in paper records for older convictions. *Id.* at 649:25–650:9. One public defender testified

that in a sampling of over 2,000 cases in Miami-Dade County, sentencing orders for all but five or six cases—mostly concerning decades-old convictions—could be obtained. *Id.* at 397:15–20. While Applicants point to a case in which a County Clerk's office spent 12 to 15 hours assessing what one plaintiff owed, trial testimony reveals that his case was unusually complicated—involving over ten felony convictions over several decades—and not typical. *Id.* at 659:20–660:1.

Notably, at the time of trial in April 2020, since SB-7066 became effective on July 1, 2019 (a timeframe of approximately ten months), the Florida Department of State's General Counsel's Office had received only about thirty inquiries from members of the public or Supervisors of Elections concerning Florida's reenfranchisement scheme in general, and only a handful were related to voter eligibility with regards to financial terms of sentence. *See* Decl. of Ashley Davis at ¶ 3, Doc. 411-1. This does not bespeak widespread confusion.

Applicants' suggestion that a felon risks prosecution if he registers to vote and votes on the good faith, but mistaken, belief that he is eligible is belied by the statutes invoked by the district court, which prevent "*willfully* submitting any *false* voter registration information," Fla. Stat. § 104.011(2) (emphases added), and "*fraud* in connection with any vote cast," Fla. Stat. § 104.041 (emphasis added). And to the extent a felon has any residual uncertainty about the lawfulness of registration, he can make *proper* use of the State's existing advisory opinion process and ask for a *legal* determination on whether he would violate the laws against false registration and fraudulent voting by registering and voting given the facts and circumstances attendant to his case. *See* Tr. 1385:18–22. Indeed, the Division of Elections provides the rules for requesting an advisory opinion online. *See* Fla. Admin. Code R. 1S-2.010, *available at* https://bit.ly/2Zl5hrJ.

Finally, the district court's injunction imposes tremendous burdens on the State by hijacking the advisory opinion process to make the State the investigator and factfinder for

inquiring voters. And the burdens are not merely administrative. Under the district court's injunction, felons who know that financial terms of their sentences remain outstanding and that the amount exceeds their financial means apparently may submit a form to the Division of Elections and register and vote with impunity after a period of 21 days unless and until the Division of Elections tells them of the precise amount remaining on their sentences for purposes of regaining voting eligibility. *See Jones*, 2020 WL 2618062, at *45. The district court's injunction therefore likely will do more to facilitate voting by the *ineligible* than to protect the rights of the eligible.

## IV. Applicants Will Not Be Seriously and Irreparably Harmed if the Eleventh Circuit's Stay Is Not Vacated.

Applicants contend they will be seriously and irreparably harmed if the Eleventh Circuit's stay remains in place. This argument has two fatal flaws.

First, Applicants' assertions regarding their harm relies, again, entirely on the false premise that the felons covered under the district court's injunction are entitled to vote. Applicants cannot establish *any* harm whatsoever without first showing that they are correct on the merits of their claims. Indeed, as the State argued in its stay briefing, once it is established that Applicants are unlikely to succeed on the merits, it follows that every one of the felons they contend will be reenfranchised by the district court's injunction is *ineligible* to vote. The en banc court would not have granted the stay without agreeing with this simple logic. Now that Applicants seek to vacate that stay, their bar for establishing irreparable harm is even higher. *See Valentine*, 140 S. Ct. at 1598 ("[W]here the Court is asked to undo a stay issued below, the bar is high."). Again, Applicants must make the extraordinary showing that the en banc Eleventh Circuit was "demonstrably wrong in its application of accepted standards in deciding to issue the stay." *W. Airlines, Inc.*, 480 U.S. at 1305 (quoting *Coleman*, 424 U.S. at 1304). As the State has explained above, Applicants have utterly failed to carry this heavy burden on their claims. And because

Applicants have not demonstrated that the Eleventh Circuit's stay clearly violates their right to vote, Applicants' contentions regarding the magnitude of the harm they will purportedly suffer under the stay are simply irrelevant. Indeed, Applicants' argument rests entirely on the false notion that they and other felons who have not paid the financial terms of their sentence are entitled to the franchise. But as Respondents have shown—and as the en banc Eleventh Circuit has found is likely the case—they are not.

Applicants also assert that the court of appeals "has risked chaos, confusion, and disenfranchisement in the upcoming elections," Appl. 46, but that is incorrect. In fact, it was *the district court's order* that risked causing confusion and chaos by disrupting the status quo. Applicants imply that felons in Florida had been relying on the preliminary injunction ruling and the *Jones* panel decision declining to reverse that ruling, but any such reliance would have been unfounded. The district court's preliminary injunction ruling was just that—preliminary—and it applied only to the *seventeen named Plaintiffs*. Until the district court's merits ruling, Amendment 4 and SB-7066 have applied with full force to all felons with outstanding financial terms of sentence in Florida beyond the named Plaintiffs.

Second, Applicants ignore the harm the State and the public will suffer if the stay is vacated. "[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1301 (2012) (quotation omitted) (Roberts, C.J., in chambers); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018). Thus, "[w]hen courts declare state laws unconstitutional and enjoin state officials from enforcing them, [the Court's] ordinary practice is to suspend those injunctions from taking effect pending appellate review." *Strange v. Searcy*, 135 S. Ct. 940 (2015) (Thomas, J., joined by Scalia, J., dissenting from denial of the application for a stay).

Here, of course, the irreparable harm threatened by the district court's injunction is much more concrete than a bare abstract interest in the continued enforcement of Florida's election laws. If the State is correct on the merits—as the en banc Eleventh Circuit determined likely—and the stay is vacated, by Applicants' own account, *up to three quarters of a million people will be able to vote even though they are ineligible*. The State and all Floridians will be irreparably harmed if *hundreds of thousands* of ineligible voters take part in the upcoming elections. "A State indisputably has a compelling interest in preserving the integrity of its election process," and "the right of suffrage can be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Purcell*, 549 U.S. at 4. Allowing potentially hundreds of thousands of ineligible citizens to vote would debase and dilute the weight of the votes of Florida's citizens who are eligible to vote and "breed[] distrust of our government." *Id*. Indeed, the district court's injunction, if subsequently reversed, would call into question the validity of any election that took place while it was in effect. The district court itself recognized the threat to the State from allowing ineligible voters to vote when it granted a partial stay of its preliminary injunction, which applied only to *seventeen* Plaintiffs, explaining that "if a plaintiff is allowed to vote but it turns out the plaintiff is ineligible, the State will suffer irreparable harm." Order Staying Prelim. Inj. in Part at 11, Doc. 244. The potential harm here is orders of magnitude greater. Great deference should be given to the en banc Eleventh Circuit's recognition of this harm in granting the stay. *See O'Connor*, 449 U.S. at 1304.

## CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Court should deny Applicant's request to vacate any portion of the Eleventh Circuit's July 1, 2020, stay.

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Respectfully submitted,

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