No. 20-12003

# UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

KELVIN LEON JONES, ET AL.,
*Plaintiffs-Appellees*,

*v.*

GOVERNOR OF FLORIDA, ET AL.,
*Defendants-Appellants.*

On Appeal from the United States District Court for the Northern District of Florida, No. 4:19-cv-00300 (Hinkle, J.)

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

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## STATEMENT OF AMICI'S IDENTITY AND INTEREST[1]

*Amici curiae* are scholars of election law and the law of democracy. *Amici*'s research and scholarship is devoted to exploring the history of voter disenfranchisement in America, and to protecting the franchise for all Americans irrespective of age, national origin, race, sex, or socioeconomic status. *Amici*'s interest in this appeal arises out of serious concerns regarding Florida Senate Bill 7066's ("SB7066") resurrection of economic barriers to the franchise, in contravention of the text and purpose of the Twenty-Fourth Amendment to the United States Constitution. An amicus brief outlining the history of economic disenfranchisement in the United States and the intent of the Twenty-Fourth Amendment's Framers to sweep broadly to undo that history and prevent its reocurrence may aid the Court in the resolution of this matter.

## STATEMENT OF ISSUE

Whether Florida's law requiring citizens with felony convictions to pay costs to support the operation of the government as a condition to both registering to vote and voting in federal elections violates the Twenty-Fourth Amendment of the United States Constitution.

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[1] All parties consent to the filing of this brief. Amici state that no party or party's counsel authored this brief in whole or in part. No party, party's counsel, or any person other than amici or their counsel contributed money intended to fund the preparation or submission of this brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

"[T]he right *of citizens of the United States* to vote … shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax." U.S. Const. amend. XXIV (emphasis added). Cognizant of the long history of states imposing financial requirements as barriers to voting, Congress drafted the Twenty-Fourth Amendment ("the Amendment") broadly to rid the country of the scourge of poll taxes and other economic barriers to the franchise.[2]

The long history of voter disenfranchisement in states – from property requirements in Colonial America to poll taxes employed throughout the 19th and 20th centuries – shaped the Twenty-Fourth Amendment. The Amendment's framers understood the long history of these economic impediments to voting, and wrote a sweeping and comprehensive provision to eliminate them.[3]

SB7066 harkens back to the earlier era the Amendment was to have ended. It conditions the right to vote for hundreds of thousands of citizens – who are disproportionately Black people – on the payment of money to the government to fund general government operations. In other words, these citizens must pay a tax to vote. By conditioning the ability for hundreds of thousands of citizens to

[2] *See* 87 Cong. Rec. 17,654, 17,669 (1962).

[3] *See* 87 Cong. Rec. 5072, 5077 (1962).

register to vote on the payment of taxes, SB7066 violates the letter, spirit and historical underpinnings of the Amendment.

Florida halfheartedly argues otherwise, instead making its central claim that the Amendment does not apply to individuals who have been convicted of a felony. That is clearly false. The constitutional protection afforded by the Amendment, by its terms, applies to all "citizens" without condition. Nor is it relevant that those with felony convictions seek to regain the franchise, having once lost it. The Amendment – again by its terms – "does not merely insure that the franchise shall not be 'denied' by reason of failure to pay [a] tax; it expressly guarantees that the right to vote shall not be 'denied or abridged' for that reason." *Harman v. Forssenius*, 380 U.S. 528, 540 (1965). Thus, this Court should affirm the district court's holding that SB7066's requirement that citizens who were convicted of a felony pay costs and fees before having their right to vote restored violates the Twenty-Fourth Amendment.

## ARGUMENT

### I. THE UNITED STATES' LONG HISTORY OF ECONOMIC DISENFRANCHISEMENT

#### A. Florida's SB7066 Replicates Restrictions Employed Throughout American History to Block Individuals of Lower Economic Status from Voting.

From the earliest days of the Republic until the passage of the Twenty-Fourth Amendment, states imposed economic restrictions on voting to limit the

franchise to one privileged class or another.[4] Initially, the "linchpin" of economic restraints was property ownership.[5] Proponents of property qualifications believed extending the franchise to those without property would become "a menace to the maintenance of a well-ordered community."[6]

Although states eased or nixed property requirements toward the end of the 18th century and through the first half of the 19th century to broaden the franchise, economic limitations on the franchise endured.[7] Indeed, although all states eradicated property requirements for white voters by 1856, voters generally still

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[4] Seven of the American colonies maintained voting laws requiring men to own land of specified acreage or monetary value to vote, with only some colonies offering an income alternative. Schultz & Clark, *Wealth v. Democracy: The Unfulfilled Promise of the Twenty Fourth Amendment*, 29 Quinnipiac L. Rev. 375, 381 (2011); Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* 4, 11-12 (2000). Generally, one had to either be a real property owner, or possess at least $300 to $500 in personal property to vote. Ellis, *The Cost of the Vote: Poll Taxes, Voter Identification Laws, and the Price of Democracy*, 86 Denv. U. L. Rev. 1023, 1038 (2009).

[5] Keyssar, *supra* note 4, at 5.

[6] *Id.* at 9.

[7] Even in the early nineteenth century, economic disenfranchisement was anything but widely accepted. *See* Waldman, *The Fight to Vote* 15 (2016) ("Today a man owns a jackass worth fifty dollars and he is entitled to vote; but before the next election the jackass dies. The man in the meantime has become more experienced, his knowledge of the principles of government, and his acquaintance with mankind, are more extensive, and he is therefore better qualified to make a proper selection of rulers -- but the jackass is dead and the man cannot vote. Now gentlemen, pray inform me, in whom is the right of suffrage? In the man or in the jackass?" (quoting Benjamin Franklin, *The Casket, or Flowers of Literature, Wit and Sentiment* (1828)).

needed to enjoy some minimum economic status to vote;[8] for example, several states imposed tax-paying requirements for voters to prove their stake, or "meaningful contribution," to society.[9] As property requirements phased out, a number of states instituted "pauper exclusions," which barred from voting anyone who received relief or public assistance, or who was an inmate of a poorhouse.[10]

Economic encumbrances on the franchise continued in the post-Civil War era. In 1867, after Congress required states to write new constitutions consistent

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[8] Wood et al., Brennan Ctr. for Just., *Jim Crow in New York* 4-5 (2009), https://www.brennancenter.org/sites/default/files/2019-08/Report_JIMCROWNY_2010.pdf; Sokoloff, *The Evolution of Suffrage Institutions in the New World: A Preliminary Look*, in *Crony Capitalism and Economic Growth in Latin America: Theory and Evidence* 75, 84 Tbl. 3.1, 93 (Stephen Haber ed., 2002); Ellis, *supra* note 4, at 1037; *see e.g.*, Pa. Const. § 6 (1776) (abolishing property requirement but requiring voters to pay taxes for at least a year before elections and allowing sons of property owners to vote without paying taxes.).

[9] Cogan, *The Look Within: Property, Capacity, and Suffrage in Nineteenth Century America*, 107 Yale L.J. 473, 482-483 (1997); *see also e.g.* Ga. Const. art. IV, § 1 (1798) (conditioning voting on paying taxes); La. Const. art. II, § 8 (1812) (offering taxpaying as an alternative to property requirements); N.C. Const. art. VIII (1776) (imposing a taxpaying requirement for those voting for members of the House of Commons); S.C. Const. art. I, § 4 (1790) (offering a taxpaying alternative to the property requirement).

[10] Issacharoff et al., *The Law of Democracy: Legal Structure of the Political Process* 21 (3d ed., 2007). Fourteen states maintained pauper exclusions as late as 1934. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 Stan. L. Rev. 335 (1989). The rationale for these exclusions, much like property and taxpaying requirements, was that only financially independent, wage-earning men had the "independence" required to exercise the franchise. *Id*. at 337-338; Keyssar, *supra* note 4, at 62.

with the Fourteenth Amendment that extended the franchise to all males, regardless of race,[11] several states responded by enacting poll taxes, and denying the franchise for anyone unable to pay.[12] In 1885, Florida permitted poll taxes,[13] and by 1908, every state in the former Confederacy had enshrined a poll tax in its constitution.[14] By the late 19th century, the poll tax was understood as "a tax that one had to pay in order to vote."[15]

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[11] Wood, Brennan Ctr. for Justice, Florida: An Outlier in Denying Voting Rights, 4 (2016) (citing Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, at 276 (1988)) https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf.

[12] Poll taxes generally shared four qualities that made them effective disenfranchisement devices: poll taxes (1) were optional and not assessed with other taxes, (2) accumulated over time, (3) had to be paid in advance of election day, and (4) entailed onerous documentation requirements. Ellis, s*upra* note 4, at 1041-1042. Guised in the cloak of facially neutral legislation, the intent behind poll taxes was discriminatory, particularly against African Americans. *Id*. at 1041-1044. This intent was documented throughout constitutional conventions across the South. Keyssar, *supra* note 4, at 111-114 (quoting one Virginia State Senator as proclaiming, "discrimination! Why, that is precisely what we propose!").

[13] Fla. Const. art. VI, § 8 (1885) ("The Legislature shall have power to make the payment of the capitation tax, a prerequisite for voting . . . .").

[14] Ogden, *The Poll Tax in the South* 281 (1958); Keyssar, *supra* note 4, at Tbl. A.10. Not all states retained their poll taxes; Virginia initially repealed its poll tax in 1882 when a liberal, agrarian political party swept state elections. Ogden, *The Poll Tax in the South* 3 n.5.

[15] Keyssar, *supra* note 4, at 112.

Poll taxes were remarkably successful in preventing access to the ballot based on economic status. Black people were hit hardest.[16] But the poll tax's impact extended across racial lines and accumulated over time.[17] Florida's poll tax was brutally effective at reducing the overall voter participation rate.[18] Only 23 percent of otherwise eligible voters participated in Florida's 1904 gubernatorial election, down from "as many as 95 percent" in 1876.[19] In ten southern states between 1889 and 1908, poll taxes caused an average decline in voter turnout of 35 percent in presidential elections.[20]

States also linked poll taxes to procedural hurdles that reinforced the poll tax's intended effects.[21] These hurdles included onerous receipt and timing

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[16] Ellis, *supra* note 4, at 1042-1045. In Alabama, the eligible Black voting population declined to less than two percent. Seven years after Virginia implemented its poll tax, Black voter registration rate sunk. *Id*. at 1042. Black voter turnout declined substantially across the south, varying by state. *See e.g.* Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South* 174 Tbl. 6.9. (1974).

[17] Ellis, s*upra* note 4, at 1041-1042 (citing Ogden, *supra* note 15, at 32-33 tbl.1). For many, the actual payment would be even higher, as poll taxes in some states accumulated over several years if they went unpaid. Ogden, *supra* note 14, at 34-35.

[18] Ogden, *supra* note 14, at 115.

[19] *Id.*, at 116 (estimating that as much as half of this decline directly resulted from poll taxes).

[20] Lloyd, *White Supremacy in the United States* 9 (1952).

[21] Pls' Consolidated Pretrial Br. ¶¶ 255-275, Dist. Ct. ECF No. 340 (including statements from witnesses and election officials detailing the intricacies and difficulties of determining voter eligibility under Florida's system.)

requirements, enhancing the effectiveness of poll taxes at disenfranchising people, even when the amount of money charged seemed relatively modest.[22]

Although poll taxes initially survived constitutional scrutiny,[23] they faced increasing political opposition in the mid-twentieth century as social movements mobilized to repeal them. The movement against the poll tax garnered support from across the racial and ideological spectrum, including the NAACP, state chapters of the Chamber of Commerce,[24] and President Franklin D. Roosevelt.[25]

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[22] Little effort was made to collect poll taxes, forcing would-be voters to go out of their way to pay the tax. Karlan, *Lightning in the Hand: Indians and Voting Rights*, 120 Yale L.J. 1420, 1430 n.40 (2011). Poll taxes were collected separately from other taxes: "usually, no tax assessor would solicit payment of the poll tax along with the payment of other taxes." Ellis, *supra* note 4, at 1042. Timing requirements varied by state; some voters had to pay the poll tax nine months before election day to become eligible to vote. Ogden, *supra* note 14, at 46. By requiring proof of poll tax payment to vote, states further disenfranchised those who were "unaccustomed to preserving records." *Id*. at 52.

[23] *See Butler v. Thompson*, 97 F. Supp. 17, 21 (E.D. Va. 1951) (holding a facially race-neutral tax did not violate the 14th Amendment despite evidence of discriminatory legislative intent) (*superseded by constitutional amendment*, U.S. Const. amend. XXIV), *aff'd*, 341 U.S. 937 (1951); *Breedlove v. Suttles,* 302 U.S. 277, 283 (1937) (holding states could choose whom to extend the "[p]rivilege of voting," and that poll taxes did not violate the 15th Amendment because they applied to all men equally) (*superseded by constitutional amendment*, U.S. Const. amend. XXIV.).

[24] Ogden, *supra* note 14, at 218-219, 235.

[25] *See id*. at 225.

By the time the Amendment passed in 1962, all but five states had repealed their poll taxes.[26]

Florida abolished its Jim Crow-era poll tax in 1937, but through SB7066, it seeks to reimpose payment of a tax as a prerequisite to voting for those citizens with felony convictions. Much like property ownership requirements, tax-paying requirements, and poll taxes before it, SB7066 creates economic barriers to registration and voting and therefore to democratic participation, for otherwise eligible voters.

Chiefly, SB7066 requires citizens previously convicted of a felony to pay *all* legal financial obligations, including taxes that are within the "four corners" of a sentencing document, to be able to register to vote. Fla. Stat. § 98.0751(2)(a). For example, in every felony case resulting in a conviction, ranging from drug offenses to irregular sale of a malt beverage, the state assesses a flat fee of $225: $200 of this fee funds the clerk's office, with the remaining $25 remitted to the [Florida] Department of Revenue to be transmitted into the [state's] general revenue fund. *Id*. §§ 561.5101, 938.05(1)(a). In fact, Florida's state constitution expressly requires *all* funding for court clerks come exclusively from such fees. *See* Fla.

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[26] Alabama, Arkansas, Mississippi, Texas, and Virginia maintained poll taxes, despite facing significant pressure from repeal movements in all but Mississippi. *Id.* at 201. *See also id.* at 178 (noting that North Carolina, the first state to implement a poll tax, repealed it by constitutional amendment in 1920).

Const. art. V, § 14(b). The remaining $25 "is remitted to the Florida Department of Revenue for deposit in the state's general revenue fund." Fla. Stat. § 938.05(1)(a). Under Florida law, the General Revenue fund "shall be expended pursuant to General Revenue Fund appropriations acts," and when in surplus, is "considered the working capital balance of the state[.]" *Id*. § 215.32. The General Revenue Fund's statutory authorization can be found in Title XIV of the Florida Statutory Code entitled *Taxation and Finance*, and in fact, most of the statutes in this Title set forth Florida's tax laws. *Cf. National Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 563 (2012) (noting that whether a levy is a tax may be influenced by if it resides in section of Code devoted to the Tax code). Additionally, there is a flat $3 court cost in each case that is remitted to Florida's Department of Revenue for further allocation into other state funds; 92% of these collected court costs fund the state's Department of Law Enforcement Criminal Justice Standards and Training Trust Fund. Fla. Stat. § 938.01(1)(a)(1).

### B. The Twenty-Fourth Amendment Established a Broad Prohibition on the Use of Any Tax to Abridge the Right to Vote

As the Supreme Court noted soon after ratification, the Amendment was passed in the wake of "widespread national concern" about economic disenfranchisement. *Harman v. Forssenius*, 380 U.S. 528, 539 (1965). Thirty-eight states ratified the Amendment with "blinding speed," buoyed by "the rising

tide of support for the civil rights movement."[27] The Amendment's history, coupled with the text's broad scope, demonstrates the unmistakable intent of its framers to eliminate monetary barriers to the franchise, however they are styled, and to whomever they may apply.

The Amendment is not limited to the formal poll tax. Congress sought to prohibit the government "from setting up any substitute tax in lieu of a poll tax" or to negate "the amendment's effect by a resort to subterfuge in the form of other types of taxes." H.R. Rep. No. 87-1821, at 5 (1962). Therefore, Congress designed the catch-all "other tax" language to prevent governments from circumventing the Amendment's prohibition through semantic trickery.[28] The Amendment was thus intended to prevent *all* economic restrictions that "exact[] a price for the privilege of exercising the franchise." *Harman*, 380 U.S. at 539 (citing legislative history).

That purpose was confirmed repeatedly by the framers of the Amendment. Senator Spessard Holland of Florida, who introduced the Amendment in the

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[27] Ackerman & Nou, *Canonizing the Civil Rights Revolution: The People and the Poll Tax*, 103 Nw. U. L. Rev. 63, 87 (2009).

[28] *See Abolition of Poll Tax in Federal Elections: Hearing on H.J. Res. 404, 425, 434, 594, 601, 632, 655, 663, 670 & S.J. Res. 29 Before the Subcomm. No. 5 of the H. Comm. on the Judiciary*, 87th Cong., 2d Sess. 51 (1962) ("[I]f the language 'or other tax' is not in there, then it will be used in Mississippi to disqualify many Negro voters.").

Senate, decried "any effort to confine the voice that is heard at elections to a much smaller segment of the citizens than that which truthfully represents the whole people." 87 Cong. Rec. 5072, 5076 (1962). Representative Neil Gallagher expressed that "[a]ny charge for voting unjustly discriminates against people of limited means," and "a citizen of the United States should not have to pay for his constitutional right to vote." 87 Cong. Rec. 17,654, 17,667 (1962); H.R. Rep. No. 87-1821, at 2-4. In the words of Representative Dante Fascell of Florida, the payment of money "should never be permitted to reign as a criterion of democracy." 87 Cong. Rec. 17,654, 17,657.

Since the Amendment's passage, there has been relatively little case law construing the Amendment – precisely because its mandate is so clear and unequivocal that states have seldom come near a violation. Moreover, courts construing the Equal Protection Clause of the Fourteenth Amendment have made clear that states cannot restrict access to the ballot by imposing explicit economic restrictions. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966). "[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Id.* at 665. For example, the Court held in *Harper* that "a State violates the Equal Protection Clause … whenever it makes the affluence of the voter or payment of any fee an electoral standard." *Id*. at 666. There, as here, introducing "wealth or

payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor," *id*. at 668, whether analyzed under the Equal Protection Clause or the Amendment.

## II. FLORIDA'S PAY-TO-VOTE LAW VIOLATES THE AMENDMENT'S CLEAR TERMS, ITS INTENDED EFFECTS, AND SUPREME COURT PRECEDENT

As explained, SB7066 imposes financial barriers to the franchise upon a large class of citizens – those convicted of a felony – who seek to register to vote and vote after rejoining society: Florida assesses a flat fee of $225 in all felony cases as well as a $3 court cost. There is also an additional $100 fee for the cost of prosecution and a $50 state public defender fee.[29] These fees easily meet the definition of "other taxes" as understood by the Amendment.

These payments constitute a "tax" under the Amendment for two reasons. First, the common understanding and dictionary definition of the term "tax" at the time of the Amendment's drafting would have included these payments, and the legislative history so confirms. Second, long-standing precedent makes clear the

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[29] Local governments may also impose additional fines. "If you're convicted of a felony in Pinellas County, for example, you're going to pay at least $413 in fees, in the form of a crime prevention fee ($50), crimes compensation fund fee ($50), fine and forfeiture fund fee ($225), Crime Stoppers fee ($20), a teen court fee ($3) and a court costs fee ($65)." Mower & Ovalle, *How much will regaining the right to vote cost Florida felons? It could be a lot.*, Miami Herald (Mar. 21, 2019), https://www.miamiherald.com/news/politics-government/state-politics/article228192699.html.

Amendment bars economic barriers to the franchise like those imposed by SB7066.

### A. SB7066 Is A Tax As Understood By The Amendment's Framers

The operative phrase in the Amendment prohibits the government from denying the right to vote to a citizen for "failure to pay any poll tax *or other tax*." U.S. Const. amend. XXIV, § 1. (emphasis added). As evidenced by common usage at the time of ratification, precedent interpreting the Amendment, and by fundamental canons of interpretation, this prohibition sweeps broadly.

"When interpreting constitutional text, the goal is to discern the most likely public understanding of a particular provision at the time it was adopted." *McDonald v. City of Chi.*, 561 U.S. 742, 828 (2010) (Thomas, J., concurring in part); *see also District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) ("[T]he public understanding of a legal text in the period after its enactment or ratification [is a] critical tool of constitutional interpretation").[30] "[O]ne of the ways to figure out that meaning is by looking at dictionaries in existence around the time of enactment." *EEOC v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018, 1026 (11th Cir. 2016).

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[30] *See also* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 78-92 (2012) (discussing the Fixed-Meaning Canon, and observing that words must be given the meaning they had when the text was adopted).

Dictionaries published at the time of the Amendment's passing defined a tax as "a usu[ally] pecuniary charge imposed by the legislature or other public authority upon persons or property for public purposes: a forced contribution of wealth to meet the public needs of government." *Johnson v. Bredesen*, 624 F.3d 742, 769 (6th Cir. 2010) (Moore, J., dissenting) (quoting *Webster's International Dictionary* 2345 (14th ed. 1961 & 15th ed. 1966)).[31] The legal definition was almost identical: "[A] pecuniary contribution ... for the support of a government." *Black's Law Dictionary* 1628 (4th ed. 1951).[32] Public usage also reflected this broad and inclusive definition of "tax." In economic and policy parlance, a tax

[31] Judge Moore's dissent in *Bredesen* thoroughly engages in the type of exhaustive historical review and textual analysis the Supreme Court requires in interpreting the Constitution. As voting rights scholars, we find her detailed reasoning far more persuasive than that of the majority's cursory analysis. 624 F.3d at 769.

[32] *See also id.* (quoting *Ballentine's Law Dictionary* 1255 (3d ed. 1969) ("[a] forced burden, charge, exaction, imposition, or contribution assessed … to provide public revenue for the support of the government, the administration of the law, or the payment of public expenses.")); *Radin Law Dictionary* 341 (Lawrence G. Greene ed., 1955) (defining "tax" as "[a] sum of money or, in the case of taxes in kind, a demand for other forms of contribution, made by the government on those subject to its authority.").

was "a charge made by government the payment of which is legally required."[33] And to legal scholars, a tax was "a forced charge, imposition or contribution."[34]

Moreover, recently reaffirmed bedrock textual canons demonstrate that "other tax" is a broad, catch-all provision covering *any* government-mandated payment imposed as a condition to voting. As used here, "other," like "otherwise," introduces a "catchall phrase." *Helsinn Healthcare S.A. v. Teva Pharm. USA, Inc.*, 139 S. Ct. 628, 633 (2019). It denotes, "[o]n textual analysis alone," an "intent on the part of Congress to afford broad rather than narrow protection." *NLRB v. Scrivener*, 405 U.S. 117, 122 (1972).

Florida charges former offenders fees that support government operations as a condition for accessing the polling booth. Whatever Florida chooses to call that exaction, it constitutes an "other tax" within the meaning of the Twenty-Fourth Amendment. Both sums evince the hallmark of a tax: a fee charged to some or all of the public to support the government.

Florida's attempt to disguise its scheme with an innocuous name – referring to fees as "legitimate portions of a … criminal sentence[s]," Defendants-Appellants Br. 43—is immaterial. *E.g. National Fed'n.*, 567 U.S. at 564 (labeling

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[33] Coldwell III, *The Monetary and Fiscal Policies of 1966*, 45 Taxes 545, 548 (1967).

[34] *E.g.* Schmidt, *Federal Taxation—A Lesson in Direct and Indirect Sanctions*, 49 Iowa L. Rev. 474, 485 (1964).

a fee something other than a tax "does not determine whether the payment may be viewed as [a tax]"); *United States v. Sotelo*, 436 U.S. 268, 275 (1978) (noting "the funds due are referred to as a 'penalty' ... does not alter their essential character as taxes"); *United States v. New York*, 315 U.S. 510, 515 (1942) (upholding a "surcharge" as a tax); *Nelson v. Sears, Roebuck & Co.*, 312 U.S. 359, 363 (1941) ("I[n] passing on the constitutionality of a tax law, we are concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it" (internal quotation marks omitted)).[35] Florida's argument cannot be squared with the Supreme Court's directive, "time and time again," that courts "give effect, if possible, to every word Congress used," *National Ass'n of Mfrs. v. Department of Def.*, 138 S. Ct. 617, 632 (2018),[36] and to the Court's instruction that, when evaluating a tax law, the Court is "concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it." *Nelson*, 312 U.S. at 363.[37] If the Amendment

[35] As this Court has remarked, "much as Shakespeare long ago observed that a rose by any other name is still but a rose," *Solymar Investments, Ltd. v. Banco Santander S.A.*, 672 F.3d 981, 994 (11th Cir. 2012) (citing Shakespeare, *Romeo and Juliet*, act. 2, sc. 2.).

[36] *See also Corley v. United States*, 556 U.S. 303, 314 (2009); Scalia & Garner, *supra* note 30, at 174-176.

[37] That is particularly true where, as here, the term "poll tax" is already strikingly broad, covering all direct taxes levied in exchange for the ability to vote. For example, Representative Elliott explained during debates on the Twenty-Fourth

had in fact been structured so narrowly as to limit its scope to those fees a state *specifically identified* as taxes, or to only taxes imposed universally, rather than on a subset of citizens, its mandate would have been so easily eluded by state actors as to render the Amendment a nullity. This was emphatically not the Framers' intent. As Representative Seymour Halpern explained during its ratification, the Amendment "is broad enough to prevent the defeat of its objectives by some ruse or manipulation of terms." 87 Cong. Rec. 17,654 17,669.

**B. SB7066 Violates the Amendment By Erecting Economic Barriers To Voting**

The Amendment's enactment represents the culmination of a centuries-long battle to banish economic "obstacle[s] to the proper exercise of a citizen's franchise." H.R. Rep. No. 87-1821, at 3.

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Amendment that a poll tax "is nothing more than a per capita or capitation tax." 87 Cong. Rec. 17,654, 17,668 (statement of Rep. Elliott); *see also United States v. Texas*, 252 F. Supp. 234, 238 (W.D. Tex.) ("Although frequently thought of as a tax on the privilege of voting, the poll tax is actually a head tax."), *aff'd*, 384 U.S. 155 (1966). *See also Black's Law Dictionary* 1320 (4th ed. 1951) (defining "poll tax" as any "tax of a specific sum levied upon each person within the jurisdiction of the taxing power and within a certain class."); Poll Tax, *Ballentine's Law Dictionary* 960 (3d ed. 1969) ("A tax of a fixed amount imposed upon all the persons, or upon all the persons of a certain class, resident within a specified territory[.]").

Congress's clear intent to broadly apply the Amendment is confirmed by precedent within a year of its ratification.[38] In *Harman*, the Supreme Court struck down a scheme in which Virginia permitted voters to file a signed, notarized and witnessed certificate of residency in the state six months prior to an election in lieu of payment of its poll tax. 380 U.S. at 529, 542. The Court reasoned that even as an alternative to the poll tax, the certification requirement "perpetuat[ed] one of the disenfranchising characteristics of the poll tax which the Twenty-Fourth Amendment was designed to eliminate." *Id.* at 542. Consequently, "[*a*]*ny material requirement* imposed upon the federal voter solely because of his refusal to waive the constitutional immunity [to poll taxation] subverts the effectiveness of the Twenty-fourth Amendment and must fall under its ban." *Id.* (emphasis added). *Harman* confirms the sweeping edict intended by the Amendment's Framers: to codify that "[*a*]*ny* charge for voting unjustly discriminates against people of limited means." 87 Cong. Rec. 17,654, 17,667 (statement of Rep. Gallagher) (emphasis added).

Likewise, in *Gray v. Johnson*, 234 F. Supp. 743 (S.D. Miss. 1964) (per curiam), the district court invalidated a scheme under which those wishing to vote

[38] Courts are to afford outsized weight to the prevailing legal understanding of a constitutional amendment "when it was adopted." *United States v. Jones*, 565 U.S. 400, 405 (2012).

in federal elections who could not afford to pay a state poll tax nevertheless had to obtain "poll tax receipts" from their county's sheriff – who only issued such receipts during a narrow window of time during the work week when many voters were unable to obtain them – for each federal election. *Id.* at 746. The three-judge panel held that the Amendment sought to ban *all* schemes "that 'circumscribe or burden or impair or impede the right of a voter to the free and effective exercise and enjoyment of his franchise." *Id.* That the scheme created additional procedural requirements for voters who did not pay the tax "just [would] not do" under the Amendment. *Id.*

SB7066 creates precisely the kind of onerous procedural requirement the Supreme Court condemned in *Harman*, as deciphering how much a Florida voter subject to SB7066 owes and determining the appropriate government authority to whom she owes it has proven impossible for many would-be voters. Indeed, plaintiffs exemplify this lack of clarity. Many of the individual plaintiffs have encountered conflicting accounts regarding what they owe, inconsistent court documents, or cannot find any accounting of what is owed. *See* A1028-A1031.[39] Thus, like in *Gray*, SB7066 creates procedural hurdles that reinforce the burdens

[39] The District Court's Opinion on the Merits is provided in the appendix filed by the Defendant-Appellants, A1023-A1142, Dist. Ct. Dkt. 420.

imposed by the tax, and similarly contradict the Amendment's plain and sweeping text, which "should be read as a more expansive prophylactic to prevent the disenfranchisement of individuals *across an array of activities*."[40]

## III. THE AMENDMENT APPLIES TO ALL CITIZENS

Quite remarkably, Florida – supported by a small handful of states with an inexplicable interest in keeping Florida's citizens disenfranchised – asserts the Amendment does not apply to citizens with felony convictions because they initially lost the right to vote for reasons unrelated to the payment of a tax.

This circular argument has no support in the Amendment's text or its purpose. The Amendment protects against the imposition of poll or other taxes on "citizens." Full stop. If Congress wanted to offer a qualification to exclude citizens with felony convictions, "it knew how to use express language to that effect." *Colgrove v. Battin*, 413 U.S. 149, 163 (1973) (quoting *Williams v. Florida*, 399 U.S. 78, 97 (1970)); *see also NLRB v. Canning*, 573 U.S. 513, 600 (2014) (Scalia, Alito, Thomas, JJ., Roberts, C.J., concurring in judgment) ("If the Framers had thought [to enact a given scheme], they would have known how to do so."). The Thirteenth and Fourteenth Amendments are excellent examples. The former banishes "involuntary servitude, ***except*** as a punishment for crime whereof the party shall have been duly convicted[.]" U.S. Const. amend. XIII (emphasis

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[40] Schultz & Clark, *supra* note 4, at 432 (emphasis added).

added); the latter gives Congress the authority to diminish a state's Congressional representation when a state abridges the voters of qualified voters "***except*** for participation in rebellion, or other crime." U.S. Const. amend. XIV (emphasis added). Thus, when Congress wishes to impose qualifications like those suggested by Florida, it does so expressly. That Congress did not do so here speaks volumes.

The Amendment's legislative history further undermines Florida's argument. Fearful states would limit elections to a "smaller segment of the citizens than that which truthfully represents the whole people," 87 Cong. Rec. 5072, 5076 (statement of Sen. Holland), the Amendment sought to cover all economic restrictions that "exact[] a price for the privilege of exercising the franchise." *Harman*, 380 U.S. at 539 (citing legislative history). As detailed *supra*, the legislative history evinces an intent to banish all poll or "other taxes," in whatever form they may appear; there is no suggestion anywhere that it was not to apply to citizens with felony convictions. Florida offers *no* support for its contrary interpretation.

Moreover, as the district court observed, the very idea that the Amendment has no application to citizens with felony convictions because those citizens previously lost their right to vote, or are not currently eligible to vote, is illogical. The fact that a citizen is not *currently* eligible to vote does not permit the state to condition present or future eligibility upon a tax. After all, a State could clearly

strike a citizen from the rolls if he or she moved out of state, but that would not entitle the State to impose a tax before letting the citizen vote if he or she subsequently returned to the State. So too here. Although the Supreme Court has said previously that it does not violate the Fourteenth Amendment for states to disenfranchise those with felony convictions altogether, *see Richardson v. Ramirez*, 418 U.S. 24, 56 (1974), a state, upon *reinstating* the right to vote to those citizens (as the people of Florida did, via Amendment 4), must comply with the Twenty-Fourth Amendment. A1094 ("The State says the amendment does not apply to felons because they have no right to vote at all, but that makes no sense. A law allowing felons to vote in federal elections but only upon payment of a $10 poll tax would obviously violate the Twenty-Fourth Amendment."). Florida's Amendment 4 restored voting rights to citizens convicted of felonies who have reentered society. SB7066 purports to condition the exercise of those restored rights on the payment of a tax. This is precisely what the Amendment forbids. Once Florida decides to permit those who have served their sentences to vote, those newly eligible potential voters enjoy the Amendment's protection. Tellingly, Florida simply ignores this aspect of the District Court's holding. Its silence is revealing.

## CONCLUSION

For the foregoing reasons, *amici curiae* urge the Court to affirm the district court's decision.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1) and 29(a)(4), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and 29(a)(5).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f) and 29(a)(5), the brief contains 5,845 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ David Gringer
DAVID GRINGER

August 3, 2020

## CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ David Gringer
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