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

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

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

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STATEMENT OF INTEREST[1]

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit, non-partisan organization with approximately 1.75 million members dedicated to protecting the fundamental liberties and basic civil rights guaranteed by the United States Constitution and our nation's civil rights laws. The NAACP Legal Defense and Educational Fund is American's premier legal organization fighting for racial justice, seeking to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that works to reform, revitalize—and when necessary, defend—our country's system of democracy and justice. The Florida State Conference of Branches and Youth Units of the NAACP ("Florida NAACP") is a nonprofit, nonpartisan civil rights membership organization in Florida dedicated to removing all barriers of racial discrimination through democratic processes and through the enactment of federal, state, and local law securing civil rights. The Orange County Branch of the NAACP is a nonprofit, nonpartisan civil rights membership

[1] Interested parties state that no person, party, or party's counsel—other than interested parties, its members, or its counsel—contributed money to fund the preparation or submission of this brief.

organization in Florida and local branch of the Florida NAACP with the same mission and objectives as the Florida NAACP. The League of Women Voters of Florida is the Florida affiliate of the national League of Women Voters. The mission of the League of Women Voters of Florida is to promote political responsibility by encouraging informed and active citizen participation in government, including by registering citizens to vote and influencing public policy through education and advocacy. Collectively, interested parties submit this brief to assist this Court with resolving the interpretation of the Voting Restoration Amendment's promise.

STATEMENT OF THE CASE

The interested parties who submit this brief currently represent several returning citizens and membership organizations, or are represented membership organizations, who allege that Senate Bill 7066 (2019) ("SB7066"), https://www.flsenate.gov/Session/Bill/2019/07066, violates the U.S. Constitution by imposing financial conditions on their right to vote. *Jones v. DeSantis*, Case No. 4:19-cv-300 (N.D. Fla. 2019). SB7066 purports to implement Amendment 4 by, among other things, redefining the phrase "completion of all terms of sentence including parole or probation" to include fines, fees, and restitution imposed within the "four corners of the sentencing document" for a felony conviction. *Jones v. DeSantis* is pending before the United States District Court for the Northern District of Florida. Florida's Governor improperly requested that this Court issue an advisory

opinion regarding whether Amendment 4 mandates satisfaction of all legal financial obligations before automatic restoration of voting rights. *See* Letter from Ron DeSantis, Governor, to Hon. Charles T. Canady, Chief Justice, and the Justices of the Supreme Court of Florida (Aug. 9, 2019).

ISSUES PRESENTED

> Whether the Governor's request is for an opinion "as to the interpretation of [a] portion of th[e Florida] constitution upon [a] question affecting the governor's executive powers and duties" when the Governor's powers and duties regarding the automatic restoration of voting rights of people with felony convictions have been set forth in statute and are therefore unaffected by the Court's interpretation of the Florida Constitution.
>
> Whether the Voting Restoration Amendment, which amended Article VI, § 4 of the Florida Constitution, requires returning citizens to repay legal financial obligations in order to have their rights restored when there is no mention of such financial obligations in the Voting Restoration Amendment's text, its ballot title, or its ballot summary; and when fines, fees, and restitution are creatures of Florida's statutory, not constitutional, law.

STATEMENT OF FACTS

Before November 2018, Florida was one of just three states that permanently disenfranchised its citizens for committing a single felony offense, unless a person was granted restoration of their civil rights at the discretion of the Florida Board of

Clemency.[2] Florida's system for restoring civil rights to disenfranchised returning citizens rested upon the discretion of four individuals who comprise the Executive Clemency Board (the "Board"): the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture & Consumer Services of the State of Florida.[3] The Board maintained, and continues to maintain, largely exclusive, unfettered power to grant or deny clemency applications for restoration of civil rights and makes the rules regarding who is (or is not) eligible to even seek restoration. *Hand v. Scott*, 285 F. Supp. 3d 1289, 1292-94 (N.D. Fla. 2018) (summarizing Florida's clemency process and only process by which returning citizens could obtain restoration of their voting rights). The Eleventh Circuit sitting en banc has indicated, however, that access to executive clemency cannot be "based on ability to pay" legal financial obligations ("LFOs"). *Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1217 n.1 (11th Cir. 2005) (en banc) (citing *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966), and stating that "[a]ccess to the franchise cannot be made to depend on an individual's financial resources.").

Historically, Florida disenfranchised a higher percentage of its adult citizens than any other state in the United States, more than ten percent of the overall voting

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[2] Brief for The Sentencing Project as Amicus Curiae ("Brief for Sentencing Project"), *Hand v. Scott*, No. 18-11138, 2018 WL 3328534, at *5 (11th Cir. June 28, 2018).

[3] *See* Art. IV, § 8(a), Fla. Const.; § 994.292(1), Fla. Stat. (2018).

age population, and more than twenty-one percent of the African-American voting age population.[4] Florida's history of voter disenfranchisement originated in the 1860s, as part of Florida's prolonged history of denying voting rights to African-American citizens and using the criminal justice system to achieve that goal. The state's 1865 constitution "explicitly limited the right to vote to 'free white males.'"[5]

The badges and incidents of this system have persisted. For example, although Black people comprised sixteen percent of Florida's population in 2016, they were nearly thirty-three percent of those previously disenfranchised by a felony conviction.[6] Additionally, as of 2016, Florida was home to more than twenty-five percent of the approximately 6.1 million U.S. citizens disenfranchised nationwide on the basis of felony convictions.[7]

But on November 6, 2018, more than five million Florida voters approved a sweeping change to this system of disenfranchisement and passed the Voter Restoration Amendment ("Amendment 4") to Article VI, Section 4 of Florida's

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[4] More than one in five of Florida's African-American voting-age population could not vote under the felony disenfranchisement regime Florida's Voting Restoration Amendment revised. *Hand v. Scott*, 285 F. Supp. 3d 1289, 1310 (N.D. Fla. 2018).

[5] *See* Erika L. Wood, *Florida: An outlier in Denying Voting Rights* ("Wood"), 4 Brennan Ctr. for Just. (2016), http://www.brennancenter.org/sites/default/files/publication/Florida_Voting_Rights_Outlier.pdf.

[6] *Id*. at 1, 3.

[7] Brief for Sentencing Project, *Hand v. Scott*, No. 18-11388, 2018 WL 3328534, at *14-16, n.34.

Constitution with 64.55 percent supporting Amendment 4's ratification.[8] Following Amendment 4's passage, Article VI, Section 4 of Florida's Constitution, in pertinent part, provides:

> (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 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.

Art. VI, § 4(a), (b), Fla. Const. (emphasis added).[9]

The media regularly reported—and Florida's voters widely understood—that Amendment 4 automatically restored voting rights to approximately 1.4 million people in Florida when the amendment became effective on January 8, 2019.[10]

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[8] Fla. Div. of Elections, *Voting Restoration Amendment 14-01*, http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1 (last visited May 24, 2019).

[9] Before Amendment 4 restored the voting rights of returning citizens, Article VI, Section 4(a) of Florida's Constitution provided, "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." Art. VI, § 4(a), Fla. Const. (1968).

[10] *See*, *e.g.*, Samantha J. Gross & Elizabeth Koh, *What is Amendment 4 on Florida ballot? It Affects Restoration of Felons' Voting Rights*, Miami Herald (Oct. 5, 2018), https://www.miamiherald.com/news/politics-government/election/article219547680.html (estimating Amendment 4 restored 1.6 million returning citizens right to vote); Steven Lemongello, *Floridians Will Vote This Fall on Restoring Voting Rights to 1.5 Million Felons*, Fla. Sun Sentinel (Jan.

And upon Amendment 4's effective date, it automatically restored voting rights to people with past convictions that met its requirements.[11] Consequently, many returning citizens registered to vote on or after January 8, 2019, using the same process as other voters. Indeed, more than 2,000 formerly incarcerated Floridians from all parties registered to vote between January and March 2019, about forty-four percent of whom were African-American people.[12] The average income of returning citizens who have registered to vote during that time period was $14,000 below the average Florida voter.[13]

But despite the overwhelming will of Florida's voters to automatically re-enfranchise more than 1.4 million of their fellow Floridians, both the Florida Legislature and Florida's newly-elected governor, Governor Ron DeSantis, argued that Amendment 4 should not go into effect until implementing language was

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23, 2018), https://www.sun-sentinel.com/news/politics/os-florida-felon-voting-rights-on-ballot-20180123-story.html (estimating 1.5 million returning citizens regained their voting rights). These estimates included returning citizens with outstanding legal financial obligations, reflecting the common understanding—including by the Floridians who voted for it—that Amendment 4 did not condition the restoration of voting rights on the returning citizens ability to pay legal financial obligations.

[11] *Advisory Op. to the Att'y Gen. Re: Voting Restoration Amendment*, 215 So.3d 1202, 1208 (Fla. 2017) (concluding, "[T]he chief purpose of the amendment is to automatically restore voting rights to [certain] felony offenders[.]").

[12] Kevin Morris, Analysis: *Thwarting Amendment 4*, Brennan Ctr. for Just. 2-3 (May 9, 2019), https://www.brennancenter.org/sites/default/files/analysis/2019_05_FloridaAmendment_FINAL-3.pdf.

[13] *Id*.

added.[14] The Florida Legislature then enacted and Governor DeSantis signed into law SB7066 which dramatically undermines the enfranchising impact of Amendment 4. And when Governor DeSantis signed SB7066 into law, he signaled his opposition to the people's decision by opining that Amendment 4 "was a mistake[,]" and further stated that he would take steps to withhold "blanket benefits" from the returning citizens Amendment 4 sought to re-enfranchise.[15]

The Florida Legislature and Governor's action now precludes the returning citizens that Amendment 4 sought to re-enfranchise from registering or voting until they settle any form of LFOs imposed upon their convictions, even if those returning citizens can never pay outstanding balances, and even when Florida's courts convert their outstanding debts to civil liens. The Florida Legislature and Governor's action reinstates a system of lifetime disenfranchisement for a large number of returning citizens—imposing precisely the system that Floridians clearly rejected when they overwhelmingly approved Amendment 4.[16]

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[14] George Bennett, *EXCLUSIVE: DeSantis to act quickly on water, Supreme Court, Broward sheriff*, Palm Beach Post (Dec. 12, 2019) (noting that Governor DeSantis stated that "Amendment 4, approved by 64.6 percent of Florida voters to restore voting rights to most felons who have completed their sentences, should not take effect until 'implementing language' is approved by the Legislature and signed by him"), https://www.palmbeachpost.com/news/20181212/exclusive-desantis-to-act-quickly-on-water-supreme-court-broward-sheriff.

[15] *See* Letter from Ron DeSantis, Governor, to Laurel Lee, Secretary of State (June 28, 2019), https://www.flgov.com/wp-content/uploads/2019/06/6.282.pdf.

[16] The Florida Clerk of Courts Association anticipates eighty-three percent of all legal financial obligations will remain unpaid, due to the payor's financial status.

Because SB7066 violates several provisions of the United States Constitution, a number of persons and organizations sued Florida's Governor, Secretary of State, and Supervisors of Election. Now, in the wake of the federal action, and over eleven months after Amendment 4's passage and nine months after its effective date, Florida's Governor has improperly requested that this Court issue an advisory opinion regarding Amendment 4's meaning.[17]

To avoid redundancy, additional facts are presented *infra* in the particular sections to which they relate.

SUMMARY OF THE ARGUMENT

First, the Governor's request is improper, and this Court should decline to issue an advisory opinion in this matter. An answer to the Governor's question would violate multiple lines of this Court's precedent on advisory opinions. Moreover, the answer to the Governor's question does not affect his executive powers and duties.

Second, if the Court decides to reach the merits, a plain reading of Amendment 4 demonstrates that "completion of all terms of sentence" cannot mandate inclusion of LFOs that extend beyond the terms of imprisonment, parole,

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See Daniel Rivero, *Felons Might Have to Pay Hundreds of Millions Before Being Able to Vote in Florida*, WLRN Public Radio and Television (Jan. 20, 2019), https://www.wlrn.org/post/felons-might-have-pay-hundreds-millions-being-able-vote-florida.

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

or probation. Even assuming Amendment 4 *allows* inclusion of such LFOs as "terms of sentence," it cannot be read to *require* it—and this reading is consistent with the statement of Amendment 4's proponents cited by the Governor.

ARGUMENT

I. THIS CASE REQUIRES DISMISSAL BECAUSE THE GOVERNOR IMPERMISSIBLY SEEKS AN ADVISORY OPINION BEYOND WHAT ARTICLE IV, SECTION 1(C) OF THE FLORIDA CONSTITUTION PERMITS.

Florida's Constitution provides that "[t]he governor may request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting the governor's executive powers and duties." Art. IV § 1(c), Fla. Const. This Court does not have to answer the question presented—granting the request is discretionary. *See, e.g.*, *In re Advisory Opinion to the Governor*, 509 So. 2d 292, 300 (Fla. 1987) ("It is the decision of the Court that this request is answerable under the above-noted section of the Constitution and we exercise our discretion to do so.").

The Court should decline to issue an opinion in this matter for five reasons. First, although the request is artfully drafted to avoid purported reliance on SB7066 or any statutory law, the Governor is in reality seeking an opinion about the necessity or validity of that legislation and the proper interpretation of other statutory provisions, neither of which is an appropriate subject for resolution by this Court

under Article IV, § 1(c). Second, and relatedly, because SB7066 is now law, neither a negative or an affirmative answer to the Governor's question—whether Amendment 4 *mandates* satisfaction of fines, fees, and restitution—will actually impact the exercise of his executive powers and duties. Third, because the question of whether people with felony convictions must repay LFOs primarily concerns the fundamental voting rights of private individuals, it is more appropriately resolved in traditional, contested litigation rather than through an advisory opinion. Fourth, pursuant to the doctrine of constitutional avoidance, the Court should decline to issue an opinion that could unnecessarily suggest a conflict between the Florida and the U.S. Constitutions. Finally, because the request actually concerns the duties of the Governor's subordinates, not those of the Governor himself, it is markedly different from all other requests from the Governor usually considered by this Court under Article IV, § 1(c).

A. THE COURT SHOULD DECLINE TO ISSUE AN ADVISORY OPINION BECAUSE TO DO SO IT MUST ENGAGE IN INAPPROPRIATE INTERPRETATION OF FLORIDA'S STATUTES.

Opinions of this Court going back more than 120 years make clear that a Governor cannot use a request for an advisory opinion to have the Court interpret a statute. This Court long ago ruled that when a statute imposed certain duties on the Governor, it was inappropriate for the Court to issue an advisory opinion on the

constitutionality of the statute. *Advisory Opinion to Governor*, 39 So. 187, 187 (1905). The Court explained:

> Reduced to its last analysis, the purpose of your letter is not to have us construe any clause of the Constitution affecting your executive powers and duties, but to have us pass upon the constitutionality of an act of the Legislature. Section 13 of article 4 of the Constitution authorizes the justices of the Supreme Court, on the Governor's request, to interpret only some portion of the Constitution, and does not authorize the court, upon such request, to interpret or pass upon the constitutionality of statutes that affect the Governor's executive powers and duties. *Advisory Opinion to Governor*, 39 Fla. 397, 22 South. 681 [(1897)]. For the reasons stated, we must respectfully decline to give any opinion upon the questions propounded."

Id.

The same is true of the Governor's request in this case. Because SB7066 purports to be Amendment 4's implementing legislation, and the legislation defines "all terms of sentence including parole or probation" to include financial obligations after completion of parole or probation, any opinion by this Court concerning the meaning of Amendment 4 is necessarily a commentary on the constitutionality of SB7066.[18]

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[18] The exception to the rule against commenting on statutes—reserved for the few cases where there has been implicated a "potentially chaotic impact upon [the governor's] constitutional duties as fiscal manager of Florida," *In re Advisory Opinion to the Governor*, 509 So. 2d 292, 301 (Fla. 1987)—does not apply here.

B. THE COURT SHOULD DECLINE TO ISSUE AN ADVISORY OPINION BECAUSE THE ANSWER TO THE GOVERNOR'S QUESTION DOES NOT AFFECT THE EXERCISE OF HIS EXECUTIVE POWERS AND DUTIES.

The Governor asks this Court to answer the "question of whether 'completion of all terms of sentence' under Article VI, Section 4 of the Florida Constitution includes the satisfaction of legal financial obligations—namely fees, fines and restitution ordered by the court as part of a felony sentence." As set forth in more detail below, this question—as formulated—is a tautology. The question itself presumes to know the answer to whether LFOs are "part of a felony sentence." But, stated differently, the Governor is asking whether Article VI, Section 4 requires people with felony convictions to pay off all LFOs before being eligible to register and vote. The Court should decline to answer that question because the answer—whether affirmative or negative—does not impact the exercise of the Governor's executive powers or duties.

There is no question that SB7066 *does* require people with felony convictions to pay off LFOs to have their voting rights restored. The Governor already signed SB7066 into law, effective as of July 1, 2019. He is bound by its provisions and is presumptively already enforcing it. So, if the Court answers the question in the affirmative, that the text of Amendment 4 *mandates* satisfaction of financial obligations, the opinion will have absolutely no effect on the Governor's powers or duties pursuant to SB7066, which includes LFO requirements.

By the same token, if the Court answers the question in the negative—as it should—and finds that Article VI, Section 4 does not require the repayment of LFOs that extend beyond the terms of imprisonment, parole, or probation, SB7066 still contains that requirement. Thus, there would still be no effect on the Governor's powers or duties.

The only way that this Court's answer impacts the Governor's powers and duties is if the Court determines that Article VI, Section 4 *prohibits* the Legislature from the specific requirements set forth in SB7066. That question is not raised in the Governor's request and would be tantamount to an advisory opinion that SB7066 violates the Florida Constitution. Again, it is inappropriate for the Governor to use these proceedings to seek an advisory opinion on the constitutionality of a statute.

C. THE COURT SHOULD DECLINE TO ISSUE AN ADVISORY OPINION BECAUSE THE ISSUE IS MORE APPROPRIATELY RESOLVED IN TRADITIONAL, CONTESTED LITIGATION CONCERNING THE RIGHTS OF PRIVATE PARTIES.

As set forth above, a resolution of the question posed by the Governor will not actually impact the Governor's powers and duties. But even if it did, the question is of far more relevance to the hundreds of thousands of Floridians whose voting rights are at issue. But Article IV, Section 1(c) of Florida's Constitution does not "generally authorize this Court to resolve questions concerning the legal rights and obligations of private parties." *In re Advisory Opinion to the Governor*, 509 So. 2d 292, 301 (Fla. 1987). This principle too goes back more than 120 years. In 1897, this

Court considered the legal effect of clemency granted by a majority of the board of pardons where the governor disagreed:

> The gist of the first of your inquiries above is: What is the legal effect of an attempted remission of fines, commutation of punishment, or grant of pardon that may be voted for by a majority of the board of pardons, without the governor's concurrence? Put in this form, it will readily be seen that the matter of this inquiry does not so affect any purely executive power or duty under any provision of the constitution as that this court would be authorized, under the quoted provision of the constitution, to render, on the request of the governor, an opinion upon it. What may be the legal effect of a pardon attempted to be conferred by the majority of the board of pardons without the concurrence of the governor is a *question that more intimately interests the individual upon whom the pardon is thus attempted to be conferred*, and he would, in some appropriate proceeding instituted for its test, be entitled to be heard before the tribunal selected to pass thereon. Any expression from us upon the question would therefore, at this time, be premature, ex parte, and unauthorized.

In re Opinion of Supreme Court, 22 So. 681, 681 (1897) (emphasis added).

So too here. Through approval of Amendment 4, more than five million Floridians sought to restore the right to vote to 1.4 million other Floridians.[19] The rights of all Floridians with felony convictions (other than murder or a felony sexual offense) could ultimately be affected by this Court's opinion on the meaning of Amendment 4. These proceedings are not the proper forum to decide the rights of

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[19] Elina Shiraz, *Florida felons begin registering to vote, though still unclear how they'll reshape political map.* Fox News (Jan. 16, 2019), https://www.foxnews.com/politics/florida-felons-begin-registering-to-vote-though-still-unclear-how-theyll-reshape-political-map.

hundreds of thousands of Floridians.[20] Those rights are better determined through contested litigation on a full record of the impact on affected voters. Proceedings in federal court are already taking place. Furthermore, an advisory decision from this Court could skip over development of state law issues on a full record in lower Florida courts.

D. PURSUANT TO THE DOCTRINE OF CONSTITUTIONAL AVOIDANCE, THE COURT SHOULD DECLINE TO ISSUE AN ADVISORY OPINION.

The pendency of federal proceedings also counsels against the Court's issuance of an opinion in this matter because such an opinion could needlessly create or at least suggest a conflict between the Florida Constitution and the U.S. Constitution. As noted, regardless of whether Amendment 4 itself mandates making voting contingent on the repayment of LFOs, SB7066 did. The U.S. District Court for the Northern District of Florida has been asked in adversarial, non-advisory proceedings to rule on the question of whether that financial requirement in SB7066 violates the U.S. Constitution. The Court will hold a hearing on Plaintiffs' motion for a preliminary injunction in that case on October 7, 2019. If this Court issues an advisory opinion that the Florida Constitution mandates an LFO requirement—despite the fact that it will have no impact on the Governor's powers and duties—

[20] Daniel A. Smith, PhD, *Expert Report of Daniel A. Smith, Ph.D. Professor and Chair Department of Political Science University of Florida* (Aug. 2, 2019), https://www.aclu.org/legal-document/gruver-v-barton-expert-report-daniel-smith.

and the federal court determines that such a requirement, as imposed by SB7066, is unconstitutional under the U.S. Constitution, this Court's discretionary advisory opinion needlessly suggests a conflict between the Florida and the federal constitutions. The doctrine of constitutional avoidance therefore requires this Court to decline to issue an opinion that would generate a constitutional conflict. *Pine v. City of W. Palm Beach, Fla.*, 762 F.3d 1262, 1270-71 (11th Cir. 2014) ("[W]hen one interpretation of a law raises serious constitutional problems, courts will construe the law to avoid those problems so long as the reading is not plainly contrary to legislative intent. . . . Florida courts also apply the canon of constitutional avoidance when interpreting state and local laws.").

E. THE GOVERNOR'S REQUEST IS OUTSIDE THE BOUNDS OF QUESTIONS SUBMITTED TO THIS COURT FOR AN ADVISORY OPINION.

Florida's Constitution provides that "[t]he governor may request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting the governor's executive powers and duties." Art. IV, § 1(c), Fla. Const. With few exceptions, almost all advisory requests by the Governor over the years have pertained to the power and duties of *solely* the Governor—for example, appointing judges and filling vacancies. The undersigned have located 145 advisory opinions to the Governor on Westlaw. Of those 145, 133 of them concern duties of solely the Governor. *See* Addendum A, *infra.* Ten of the remaining 12 were opinions where the Court declined to answer the question. *See*

Addendum B, *infra*. Only 2 of the 145 opinions discussed duties other than those solely of the governor. *Advisory Opinion to Governor--1996 Amendment 5 (Everglades)*, 706 So. 2d 278 (Fla. 1997) [hereinafter *Everglades*]; *In re Advisory Opinion To the Governor*, 290 So. 2d 473, 476 (Fla. 1974) [hereinafter *Askew*]; *see also* Addendum C, *infra*.. Each is plainly inapposite.

Everglades appears to be the only instance in the 145 advisory opinions to the Governor in which the Court looked to the duty of a subordinate in answering the Governor's question, rather than to the Governor's *sole* authority. While that alone makes it the clear outlier, the opinion is inapposite in any event. First, Governor Chiles in *Everglades* sought the interpretation of a constitutional amendment for which no implementing legislation had been created. The legislature had not spoken there; here, it has with SB7066, which purports to answer the Governor's questions and provide officials with all of the information they need to act. Second, and relatedly, in *Everglades*, neither the Florida Water Management District nor the Department of Environmental Protection knew how to enforce Amendment 5 without direction from Governor Chiles. Here, by contrast, Florida's Division of Elections and the various Supervisors of Elections implemented Amendment 4 for almost 6 months before any purported implementing legislation (SB7066) went into effect. The Secretary of State's office, whom the Governor suggests needs his advice, testified to not seeking or relying on his counsel before or after Amendment

4's implementation, belying any contrary suggestion by the Governor to this Court that the Secretary of State in fact needs this Court's assistance. *See, e.g.*, *Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 152-93, Deposition of Maria Matthews, at 74:15-17, 91:6-10 (not recalling communications between Governor's office and Secretary of State's office in late 2018 and early 2019 concerning Amendment 4), Appendix at 78:15-17, 94:6-10. Indeed, between January 8, 2019 and July 1, 2019, the State implemented Amendment 4 to only require completion of incarceration, parole, and probation; they did not require payment of LFOs. *See Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-23, Electronic Mail from Maria I. Matthews, Director of Division of Elections, to Division of Elections Staff and Supervisors of Elections (June 7, 2019), Appendix at 227 (implementing Amendment 4 by limiting lists of potentially ineligible voters to those incarcerated or under supervision by Department of Corrections); *Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-24, Deposition of Mary Jones Arrington, Osceola County Supervisor of Elections, at 75:12-19 (July 21, 2019), Appendix at 237:12-19 (confirming that prior to July 1, 2019 (the effective date of SB7066), payment of LFOs "was not a requirement" and "'not something the Secretary of State said was required.'").[21]

[21] Neither voters nor election officials were informed that Amendment 4 barred returning citizens with outstanding LFOs from registering to vote and voting. Florida's Division of Elections did not send denial of voter registration or removal

Askew is also an outlier. It is unique among the 145 advisory opinions in another way, in that it appears to have less to do with the chief executive than with the judiciary. Governor Askew, citing his authority "to empanel a statewide grand jury," asked this Court "whether the action of this Court in ordering empanelment upon petition by the Governor constitutes involvement to such an extent as to jeopardize the impartiality necessary for appellate review of any matter raised by defendants indicted under the Act." *Askew*, 290 So. 2d at 474. This Court found no such problem. *Id.* at 476-77. So far removed from any issue related to the present matter, *Askew* of course has no bearing on the current request.

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For all these reasons, the Court should exercise its discretion not to answer the question proposed by the Governor and should decline to issue an opinion.

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notices based on outstanding LFOs to any applicants. To the contrary, the Division of Elections and/or the Supervisors of Elections approved the voter registration of applications submitted by returning citizens, and, accordingly, many of those individuals went on to vote in local elections during the Spring. *See*, *e.g.*, *Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-4, Declaration of Jeff Gruver, Appendix at 266, ¶ 7; *Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-8, Declaration of Keith Ivey, Appendix at 269, ¶ 4; *Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-13, Declaration of Clifford Tyson, Appendix at 276, ¶¶ 20-21; *Jones v. DeSantis*, 4:29-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-14, Declaration of Rosemary Osborne McCoy, Appendix at 382, ¶¶ 6-10; *Jones v. DeSantis*, 4:29-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-15, Declaration of Sheila Singleton, Appendix at 385, ¶¶ 6-10.

II. ARTICLE VI, SECTION 4(a)'S PHRASE "COMPLETION OF ALL TERMS OF SENTENCE" DOES NOT REQUIRE THE REPAYMENT OF LEGAL FINANCIAL OBLIGATIONS THAT EXTEND BEYOND THE TERMS OF IMPRISONMENT, PAROLE, AND PROBATION.

Last November, a supermajority of Floridians voted to end Florida's system of permanent disenfranchisement for the majority of Floridians with previous felony convictions by ratifying automatic restoration of rights to all returning citizens, except those convicted of murder or felony sexual offenses, upon completing any terms of confinement, parole, or probation. Indeed, Governor DeSantis's August 9, 2019, request to this Court recognizes this chief purpose of Amendment 4's drafters and supporters. *See* Letter from Ron DeSantis, Governor, to Hon. Charles T. Canady, Chief Justice, and the Justices of the Supreme Court of Florida at 1, ¶ 2 (Aug. 9, 2019) ("Florida voters approved a constitutional amendment, known as Amendment 4, to *automatically* restore voting rights") (emphasis added).

But Governor DeSantis improperly asks this Court to read additional language into Amendment 4's text. This Court must reject the Governor's request. Beyond the jurisdictional infirmity of the Governor's request, *see* Part I, *supra*, this Court should reject the Governor's erroneous interpretation of Amendment 4 for three reasons.

First, reading the entirety of Article VI, Section 4's text in context demonstrates that the provision does not allow the Legislature to require repayment of LFOs that extend indefinitely, beyond the completion of imprisonment, parole,

and probation. Second, even if the phrase "completion of all terms of sentence including parole or probation" is read to *permit* the *Legislature* to include LFOs in the "terms of sentence," it cannot reasonably be read to *require* the repayment of LFOs, which are creatures of statute never mentioned in the Constitution. Third, the statements by Amendment 4's proponents cited by the Governor are consistent with a reading of Amendment 4 that does not require repayment of LFOs prior to voting rights restoration.

A. A Plain Reading Of Article VI, § 4's Text Demonstrates that "Completion Of All Terms of Sentence" Cannot Include LFOs that Extend Beyond the Terms of Imprisonment, Parole, and Probation.

Article VI, Section 4 (a)'s text says nothing about LFOs, and the Court cannot add additional language to the provision. Instead, the phrase "completion of all terms of sentence including parole or probation" should be given its plain meaning, which is to require a person with a felony conviction to serve any term of imprisonment, probation, or parole before having their voting rights automatically restored. Florida statutory law requires that many LFOs be included as conditions of probation and parole, and thus contemplates that they will be repaid by the completion of those terms. But to the extent a person has outstanding LFOs upon completion of those terms, which are generally then converted to civil obligations, they are not included within the text of Amendment 4.

Time and again, this Court has observed the same principles guiding its construction of a challenged statute also guide its interpretation of a constitutional provision, *Graham v. Haridopolos*, 108 So.3d 597, 603 (Fla. 2013) ("[T]his Court follows principles parallel to those of statutory interpretation."), and it begins its analysis with a plain reading of the constitutional provision's text, *id*.; *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n*, 838 So.2d 492, 501 (Fla. 2003). If a plain reading of the text is clear and unambiguous, this Court ordinarily enforces the provision as written, and the Court's analysis ends.

When reading a constitutional provision's plain text, this Court adheres to four principles. First, context matters. Therefore, this Court does not examine a provision's specific words or phrases in rote fashion. Rather, this Court examines the provision's plain text by considering the entire provision to identify the provision's general purpose and ascertain the meaning of the provision's parts. *Bush v. Holmes*, 919 So.2d 392, 407 (Fla. 2006) (quoting *Dep't of Envtl. Prot. v. Millender*, 666 So.2d 882, 886 (Fla. 1996) (observing, "each subsection, sentence, and clause must be read in light of the others to form a congruous whole so as to not render any language superfluous.")); *Plante v. Smathers*, 372 So.2d 933, 936 (Fla. 1976) ("The objective to be accomplished and the evils to be remedied by the constitutional provision *must be constantly kept in view, and the provision must be interpreted to accomplish rather than defeat them*.") (emphasis added); *accord In re*

Senate Resolution of Legislative Apportionment 1176, 83 So.3d 597, 614 (Fla. 2012) (observing the Court examines "the purpose of the provision, the evil sought to be remedied, and the circumstances leading to its inclusion in our constitutional document" to construe the provision consistent with the intent of the framers and voters) (citations omitted); *Bush*, 919 So.2d at 400; *Millender*, 666 So.2d at 885-86.

Second, this Court refrains from adding language into the provision's text. Indeed, this Court exercises more restraint when interpreting constitutional provisions, "because it is presumed that they . . . [are] more carefully and deliberately framed than statutes." *Millender*, 666 So.2d at 886 (citing *City of Jacksonville v. Cont'l Can Co.*, 151 So. 448, 489 (Fla. 1933)); *Ray v. Mortham*, 742 So.2d 1276, 1281 (Fla. 1999) ("[T]he initiative power . . . of citizens to amend the Constitution must be respected as an important aspect of the democratic process.").

Third, the text's clear expression of one thing implies the exclusion of other things dissimilar to matters already expressed. *Bush*, 919 So.2d at 407 (relying on "[t]he principle of construction, 'expressio unius est exclusion alterius,' or 'the expression of one thing implies the exclusion of another") (quoting *Weinberger v. Bd. of Pub. Instruction*, 112 So. 253, 256 (Fla. 1927)). The restrictive clause "parole or probation" limits the definition of "all terms of sentence."

Fourth, this Court presumes words maintain the same meaning throughout a constitutional provision, *cf. Graham*, 108 So.3d at 603 (observing the "provisions

'must be read in pari materia to ensure a consistent and logical meaning that gives effect to each provision'") (quoting *Caribbean Conservation Corp*, 838 So.2d at 501), and any construction that gives rise to doubts regarding the provision's satisfaction of federal constitutional requirements must be avoided when the language permits. *See Tyne v. Time Warner Entm't Co., L.P.*, 901 So.2d 802, 810 (Fla. 2005) ("This Court has an obligation to give a statute [or constitutional provision] a constitutional construction where such a construction is possible.") (citations omitted); *In re Advisory Op. to Att'y Gen.—Restrict Laws Related to Discrimination*, 632 So.2d 1018, 1022–23 (Fla. 1994) (Kogan, J., concurring in judgment) (observing an amendment to Florida's Constitution "would be ineffective if it contravened the dictates of the United States Constitution."). It is through this lens this Court examines Article VI, Section 4's text.

Two years ago, this Court unanimously found that the ballot summary and title for the ballot initiative amending Article VI, Section 4's text "clearly and unambiguously" informed this Court and Florida's voters that Amendment 4 "automatically restore[d] voting rights to [returning citizens], except those convicted of murder or felony sexual offenses, upon completion of all terms of their sentence."

Advisory Op. to the Atty' Gen. Re: Voting Restoration Amend., 215 So.3d 1202, 1208 (Fla. 2017).[22] Article VI, Section 4 of Florida's Constitution now reads:

> (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

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[22] To confirm the drafters and voters' intent, this Court historically looks first to the constitutional amendment's ballot title and summary. *E.g.*, *Graham*, 108 So.3d at 605 (observing the ballot summary "is indicative of voter intent."); *Benjamin v. Tandem Health Care, Inc.*, 998 So.2d 566, 570 N.3 (Fla. 2008) ("[B]allot materials are one source from which the voters' intent and the purpose of the amendment can be ascertained.").

Amendment 4's ballot title reads, "Voting Restoration Amendment." Constitutional Amendment Petition Form, Fla. Dep't of State, https://dos.elections.myflorida.com/initiatives/fulltext/pdf/64388-1.pdf (last visited Sept. 13, 2019). Amendment 4's ballot summary reads:

> **BALLOT SUMMARY:** This amendment restores the voting rights of Floridians with felony convictions after they complete all terms of their sentence including parole and probation. The amendment would not apply to those convicted of murder or sexual offenses, who would continue to be permanently barred from voting unless the Governor and Cabinet vote to restore their voting rights on a case by case basis.

Id. (emphasis in original). Neither Amendment 4's ballot title nor its ballot summary even intimate "completion of all terms of sentence" contemplates a requirement that returning citizens must pay all legal financial obligations, even though both Amendment 4 and its summary clarified "parole or probation" must be completed as "terms of sentence."

Had Amendment 4's drafters intended for returning citizens to complete all legal financial obligations before automatically regaining their right to vote, Amendment 4's drafters would have stated so expressly in Amendment 4's text or Amendment 4's summary. *See Graham*, 108 So.3d at 706 ("If the framers intended that the Board would have expansive authority over setting of and appropriating for the expenditure of tuition and fees, neither the ballot summary nor the title indicate such an intent."). Amendment 4's drafters could have "employed clear and direct language to achieve" a different purpose than restoring the voting rights of approximately 1.4 million returning citizens. *Cf. City of Miami Beach v. Florida Retail Fed., Inc.*, 233 So.3d 1236 (Fla. 2017). They did not.

> 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 felony sexual offense shall be qualified to vote until restoration of civil rights.
>
> (c) No person may appear on the ballot for re-election to any of the following offices:
>
> (1) Florida representative,
>
> (2) Florida senator,
>
> (3) Florida Lieutenant governor,
>
> (4) any office of the Florida cabinet,
>
> (5) U.S. Representative from Florida, or
>
> (6) U.S. Senator from Florida
>
> If, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

Art. VI, § 4, Fla. Const. (emphasis added).

A plain reading of Article VI, Section 4's text demonstrates that both parole and probation are contemplated within the meaning of "all terms of sentence." Tellingly, however, absent from any components of Article VI, Section 4's text are references to penalties not equivalent to confinement or supervised release. Article VI, Section 4's text makes no mention of returning citizens' obligation to do more

than complete their terms of imprisonment or supervised release. *See* Art. VI, § 4(a), Fla. Const. Thus, "completion of all terms of sentence" cannot require something extratextual, because the specific expression of parole and probation implies the exclusion of other penalties. *Bush*, 919 So.2d at 407 (observing, "The principle of construction, 'expressio unius est exclusion alterius,' or 'the expression of one thing implies the exclusion of another,' leads [this Court] to the same conclusion" that absent words and phrases cannot be read into the statute). This is especially true given that LFOs are a very different type of penalty, not equivalent to a term of confinement or supervised release. They often extend indefinitely or even for life when a person is unable to pay. And they are often civil in nature.

Moreover, the word "sentence" commonly refers to a term, *i.e.*, "duration," of imprisonment within a criminal judgment. *See*, *e.g.*, 18 U.S.C. § 3553(c)(1) (using "sentence" to refer only to prison sentence in requiring a statement of reasons "for imposing a sentence at a particular point within" a guideline range exceeding twenty-four months); *Sentence*, BLACK'S LAW DICTIONARY (11th ed. 2019) (observing "sentence" means "the punishment imposed on a criminal wrongdoer[, *i.e.*, ']a sentence of 20 years in prison'"). Indeed, even Florida's Executive Rules of Clemency read "sentence" to mean a term of imprisonment or supervision when considering a returning citizen's eligibility for restoration of civil rights. *E.g.*, Fla. R. Exec. Clemency 9.A. (2011), https://www.flgov.com/wp-

content/uploads/2011/03/2011-Amended-Rules-for-Executive-Clemency.final_.3-9.pdf (observing that completing "all sentences imposed and all conditions of supervision" refers to "imprisonment, parole, probation, community control, control release, and conditional release," and distinguishing it from restitution); Fla. R. Exec. Clemency 10.A. (same). The Florida Rules of Clemency have, at times, permitted an application for the restoration of one's right to vote following the completion of one's term of imprisonment or supervision. *See, e.g.*, *Johnson*, 405 F.3d at 1216 n.1 ("Under the Florida Rules of Executive Clemency, however, the right to vote can still be granted to felons who cannot afford to pay restitution.").

This plain reading of "sentence" is also consistent when coupled with the contextual meaning of "term." The word "term" appears twice in Article VI, Section 4's text. It first appears in subsection (a) where the provision observes, "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*." Art. VI, § 4(a), Fla. Const. (emphasis added). "Term" then appears in subsection (c), precluding persons from appearing on ballots for re-election to public office "[i]f, *by the end of the current term of office*, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years." Art. VI, § 4(c), Fla. Const. (emphasis added). Time and again, this Court has recognized words maintain the same meaning throughout a

constitutional provision, *cf. Graham*, 108 So.3d at 603 (quoting *Caribbean Conservation Corp.*, 838 So.2d at 501). Applying this Court's principle of construction demonstrates "term" in Article VI, § 4's context, refers to the *duration* of one's sentence or public office. In other words, "term" means a period of time covering a precise number of months or years.

As a general matter, Florida's statutes that provide for LFOs make them mandatory conditions of probation and parole. *See* § 947.181, Fla. Stat.; *id.* § 948.03(1)(j); *id*. § 948.032. In other words, to successfully complete a term of parole or probation, a person must complete a number of financial obligations, if those obligations are not waived due to their inability to pay. It would therefore be consistent with the text of Amendment 4—which contemplates that sentences will be in effect for some term, which includes parole or probation, at which point they will be "complete"—to include these commonly assessed LFOs.

However, in reality it is quite often the case that people are unable to repay all of their LFOs beyond the requirements of their parole or probation. In fact, it is frequently the case that people are *never* able to repay all of their LFOs. *See Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 153-1, Supplementary Declaration of Dan Smith ¶¶ 6, 29, Appendix at 390, 405; Daniel Rivero, *Felons Might Have to Pay Hundreds of Millions Before Being Able to Vote in Florida*, WLRN Public Radio and Television (Jan. 20, 2019),

https://www.wlrn.org/post/felons-might-have-pay-hundreds-millions-being-able-vote-florida (Florida Clerk of the Courts Association anticipates that 83 percent of all legal financial obligations will remain unpaid, due to the payor's financial status; Fines & Fees Justice Center, *Annual Assessments and Collections Report [Florida, 2013-2018]* (Sep. 30, 2018) https://finesandfeesjusticecenter.org/articles/annual-assessments-and-collections-report-florida-2013-2018/ (Florida Circuit Criminal Courts failed to collect nearly 80 percent of all fines and fees in 2018). In those instances, the common practice is for courts to convert any outstanding LFOs to civil obligations. *See Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-25, Declaration of Carey Haughwout ¶ 14, Appendix at 567-68. In other words, prior to Amendment 4's passage, Florida's Legislature and courts already provided a system whereby even LFOs that might arguably be considered part of one's sentence would not remain criminal penalties after completion of state supervision (incarceration, probation, or parole). The text of Amendment 4 does not allow for the inclusion of these civil obligations, that extend indefinitely due to the inability to pay, in the phrase "all terms of sentence."

Construing Article VI, Section 4's text differently vitiates Amendment 4's goal of ending permanent disenfranchisement for everyone not convicted of murder or a felony sexual offense. Again, unlike *terms* of state custody, the repayment of

LFOs is often never "completed."[23] When Floridians voted to end lifetime disenfranchisement through Amendment 4, they surely did not expect that permanent disenfranchisement would continue for hundreds of thousands of Floridians who were in fact unable to pay LFOs beyond the completion of any terms of imprisonment, probation, and parole.

B. ASSUMING AMENDMENT 4 *ALLOWS* INCLUSION OF CERTAIN LFOS IN THE "TERMS OF SENTENCE," IT CANNOT BE READ TO *REQUIRE* IT.

It bears repeating that there is no explicit reference to LFOs anywhere in Article VI, Section 4 of the Constitution. So, the question before this Court, should the Court choose to answer it, is whether certain LFOs might be included in the definition of "all terms of sentence including parole or probation." As set forth

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[23] Many returning citizens have outstanding financial obligations they cannot pay. The Florida Circuit Criminal Courts in 2018 reported that "the collections rates for fines and fees was just 20.25%." Fines & Fees Justice Center, *Annual Assessment and Collections Report [Florida, 2013-2018]* (Sept. 20, 2018), https://finesandfeesjusticecenter.org/articles/annual-assessment-and-collections-report-florida-2013-2018/. This suggests the vast majority of Floridians cannot fully pay their outstanding LFOs and that interpreting Amendment 4 to require their payment would have a massive disenfranchising effect. Indeed, more than eighty-three percent of all court-related fines and fees are labeled as "minimal collections expectations." *Id*. This means the Clerk of Courts Association does not anticipate receiving payment on the debt because of the person's financial status. *Id.* Indeed, mainstream media reported this reality. One news report, for example, found that between 2013 and 2018 alone, Florida has issued more than $1 billion in felony fines, only nineteen percent of which had been paid back per year. Daniel Rivero, *Felons Might Have to Pay Hundreds of Millions Before Being Able to Vote in Florida*, WLRN Public Radio and Television (Jan. 20, 2019), https://www.wlrn.org/post/felons-might-have-pay-hundreds-millions-being-able-vote-florida.

above, the undersigned interested parties contend that the language and context of Amendment 4 does not permit a construction that includes LFOs that extend beyond completion of imprisonment, probation, and parole. However, even assuming for the sake of argument that there is sufficient ambiguity in the phrase to *allow* for the inclusion of such LFOs as "terms of sentence," it is not reasonable to read Amendment 4 to *require* their inclusion.

1. Criminal sentences and LFOs are creatures of statute and set by the Legislature and the courts, not the Constitution.

In short, there is nowhere in the Florida Constitution for the Court to look to glean a more specific definition of "all terms of sentence including parole or probation." Instead, the Court would have to look to the Florida statutes that lay out sentencing ranges and create LFOs, and to sentencing orders issued by the courts. But not only is it inappropriate for the Court to interpret statutes in response to a petition under Article IV, Section 1(c), it is inappropriate to interpret constitutional provisions by reference to statutes that are subject to change by the Legislature.[24]

[24] Although some case law indicates a presumption that implementing legislation is consistent with the Constitution, that is distinct from a presumption that what the Legislature does is *required* by the Constitution. So, here, even if the passage of SB7066 were to create a presumption that Amendment 4 allows for the inclusion of LFOs of the sort included in SB7066, it would not mean that there is a presumption that Amendment 4 *requires* their inclusion. Even the Legislature acknowledged that that was not the case when passing SB7066. Moreover, any reliance on this case law by the State necessarily concedes that any advisory opinion from this Court will necessitate this Court opining on a statute, which this Court's advisory-opinion precedent squarely prohibits, as explained in the preceding section.

The Governor's question itself illustrates the impropriety of trying to read such a requirement into the Constitution. The Governor asks, tautologically, "whether 'completion of all terms of sentence' under Article VI, Section 4 of the Florida Constitution includes the satisfaction of all legal financial obligations—namely fees, fines and restitution *ordered by the court as part of a felony sentence*." Letter from Ron DeSantis, Governor, to Hon. Charles T. Canady, Chief Justice, and the Justices of the Supreme Court of Florida at 1 (Aug. 9, 2019). In other words, the Governor asks whether everything that is part of the sentence should be considered part of the sentence. The question itself acknowledges that the Constitution does not define criminal sentences. The courts do, guided by rules set by statute.

In fact, with some very limited exceptions, the Constitution simply does not provide for particular consequences for criminal convictions. The exceptions are primarily the various provisions for collateral consequences, such as disenfranchisement, which are plainly not included within the definition of "sentence" in Article VI.[25] (The Constitution also provides a floor for the punishment appropriate for someone guilty of the misdemeanor offense of "cruel and inhumane confinement of pigs during pregnancy." Art. X, § 21, Fla. Const.) As a general

[25] *See, e.g.*, Art. II, § 8(d), Fla. Const. (requiring the forfeiture of rights and privileges under a public retirement system for public officers and employees convicted of a felony involving a breach of public trust); *id.* at Art. IV, § 7(a) (permitting the governor to suspend from office certain state or county officers for, inter alia, commission of a felony).

matter, the Constitution leaves the Legislature with the discretion to determine the range of appropriate sentences for a particular offense and leaves the courts with the discretion to impose individual sentences based on the facts of the case. *See id.* Art. X, § 10, ("The term 'felony' as used herein and in the laws of this state shall mean any criminal offense that is punishable *under the laws of this state*") (emphasis added). In that context, it would be unreasonable to assume that the voters meant to mandate that the Legislature and the courts include particular LFOs in "terms of sentence" without doing so explicitly.

The Constitution also rarely mentions LFOs. When they are mentioned, it is usually not in the context of a criminal sentence. For instance, the Constitution provides for a fine as a civil penalty for violating the constitutional minimum wage provisions. Art. X, § 24, Fla. Const. In fact, the section of the Constitution that requires the courts and the criminal justice system to be funded by LFOs actually contemplates only "filing fees" and "service charges," and makes no mention of sentences or punishment.

By passing and signing SB7066 into law, and insisting that its passage was necessary to "implement" Amendment 4 and give guidance to the Secretary of State and Supervisors of Elections, the other two branches of government have already made clear that they do not believe Amendment 4 resolved the question of what is included in the "terms of sentence," and that it is up to the Legislature to give

definition to that term. One of the primary proponents of SB7066, Senator Brandes, acknowledged on the floor of the Senate that the Legislature could have adopted a less restrictive definition of "terms of sentence," including one that did not require the repayment of LFOs that had been converted to civil obligations, and it still would have been consistent with the language of Amendment 4. *See* Video: May 2, 2019, Senate Hearing at 6:35:50–6:38:38, 7:01:20–7:02:34, http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2019051020&Redirect=true (colloquies between Senator Brandes and Senators Pizzo and Thurston). Indeed, earlier in the legislative session, Senator Brandes had sponsored an amendment that did just that. Amendment 703932 to S.B. 7086, at 15-17 (Fla. 2019), https://www.flsenate.gov/Session/Bill/2019/7086/Amendment/703932/PDF ("Unless expressly stated, a financial obligation required to be paid in accordance with this subparagraph is deemed completed if such obligation has been converted to a civil lien.").

2. Under Florida law in effect before and after Amendment 4's passage, sentences plainly did not include many of the LFOs captured by SB7066.

The law on the books in Florida both before and after Amendment 4's passage, and enforced by the Governor, also make clear that, to the extent the phrase "all terms of sentence" might be read to include LFOs, it would be unreasonable to conclude that the phrase alone dictates the inclusion of certain LFOs, let alone all of the LFOs included by SB7066. Prior to SB7066, Florida's laws did not contain a

concise definition of "all terms of sentence." But to the extent they provide insight into the question, both Florida's statutes and the Governor's Rules of Executive Clemency suggest that LFOs outstanding at the conclusion of any term of probation or parole and converted into civil liens are not part of a criminal sentence.

First of all, as set forth above, Florida's statutes provide for LFOs to be mandatory conditions of probation and parole, and the criminal justice system already provided for a method for converting those LFOs to civil obligations if there were still some outstanding upon completion of state supervision.

Moreover, as noted above, the Governor's Rules of Executive Clemency also do not include many LFOs within the definition of "sentence." The Rules offer perhaps the best reference point for a definition of "sentence" within the context of voting rights restoration prior to Amendment 4's passage. The Rules require a person to "complete[] all sentences imposed and all conditions of supervision imposed for the applicant's most recent felony conviction" prior to applying for the restoration of voting rights. Fla. R. Exec. Clemency 5.E. (2011), https://www.flgov.com/wp-content/uploads/2011/03/2011-Amended-Rules-for-Executive-Clemency.final_.3-9.pdf. But the only LFOs that the Rules require a person to pay to be eligible for voting rights restoration are restitution and obligations pursuant to Chapter 960 (which governs victim assistance). Fla. R. Exec. Clemency 5.E.; *cf.* Fla. R. Exec. Clemency 5.A. (also requiring repayment of "any pecuniary penalties or liabilities

which total more than $1,000 and result from any criminal conviction or traffic infraction" to be eligible for a full pardon). Furthermore, the Rules list the requirement of paying these LFOs separately from the requirement that a person "complete[] all sentences," suggesting that even the LFOs that must be repaid are not part of one's "sentence."

Again, it would be inappropriate to simply read statutory or executive branch definitions of "sentence" into the text of the Florida Constitution. But it is relevant to note that at that time, Florida law did not contemplate criminal sentences extending indefinitely due to outstanding financial obligations. Instead, it contemplated LFOs being paid off or converted to civil liens when parole and probation were complete.[26]

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[26] Indeed, a court may convert outstanding restitution from a criminal to a civil obligation if full payment is not made within a given period. *See* § 775.089(3)(d), Fla. Stat. Restitution is also reduced to a civil judgment if the court does not order supervision. *See* § 775.089(3)(d), Fla. Stat. If restitution claims are transferred to a civil lien, victims or the state may enforce that civil restitution lien in the same manner as a judgment in a civil action. *See* § 960.294(2), Fla. Stat.

At a joint House committee hearing, Frederick Lauten, Chief Judge of Florida's Ninth Circuit, testified that "enforcement []post-sentence" is a "judicial obligation," and that "when the lawful authority to detain or supervise a person comes to an end, the sentence is completed in the view of [FDOC], regardless of how that authority came to an end." Video: Feb. 14, 2019, Jnt. House Meeting of the Criminal J. Subcomm. & the Judicial Comm. At 1:03:00-1:04:32, https://thefloridachannel.org/videos/2-14-19-joint-house-meting-of-the-criminal-justice-subcommittee-and-the-judiciary-committee/ (last visited May 26, 2019).

Then, consistent with this understanding, after Amendment 4's passage, the Governor and his subordinates allowed thousands of citizens with felony convictions to register and vote without requiring the repayment of LFOs beyond the terms of probation. *See, e.g.*, Morris, *supra* n.12 (in January, February, and March 2019, more than 2,000 formerly incarcerated Floridians registered to vote); *Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-22, Electronic Mail from Maria I. Matthews, Director of Divisions of Elections, to Division of Elections Staff & Supervisors of Elections (Feb. 11, 2019) ("As you all know, Amendment 4 went into effect on January 8 and there has been no delay in implementation."), Appendix 578; *Jones v. DeSantis*, 4:19-cv-00300-RH-MJF (N.D. Fla.), Dkt. 98-23, Electronic Mail of Maria I. Matthews, Director of Divisions of Elections, to Division of Elections Staff & Supervisors of Elections (June 7, 2019) (indicating implementation of Amendment 4 by limiting lists of potentially ineligible voters to those still under supervision by the Florida Department of Corrections), Appendix at 227. The Governor did not struggle to carry out his executive duties under the Amendment nor ask this Court for an opinion as to its meaning for at least eight months after Amendment 4's implementation across the state. During that time, the Legislature considered various definitions of "terms of sentence," which included varying rules as to the inclusion of LFOs. It was not until after the passage of SB7066, which contained a new definition of "terms of sentence," previously unknown to Florida

law, and the pendency of several federal lawsuits, that the Governor sought clarification. This Court should not accept the apparent invitation to cement into the Constitution a statutory definition of "terms of sentence" introduced for the first time by a statute signed into law almost seven months after the effective date of Amendment 4.

C. THE STATEMENTS BY AMENDMENT 4'S PROPONENTS CITED BY THE GOVERNOR ARE CONSISTENT WITH A READING OF AMENDMENT 4 THAT DOES NOT REQUIRE REPAYMENT OF LFOS THAT EXTEND BEYOND ANY PERIOD OF STATE SUPERVISION PRIOR TO VOTING RIGHTS RESTORATION.

Given that the text of Amendment 4 says nothing about LFOs, and that it cannot reasonably be read to *mandate* the inclusion of any particular set of LFOs in "terms of sentence," there is no need for the Court to look to ballot-initiative history to resolve the Governor's question. But even if the Court does turn to that history, the statements of Amendment 4's proponents that the Governor raises in his request are consistent with a finding that Amendment 4 does not contain that specific mandate.

The Governor specifically references statements that counsel for the ballot-initiative sponsor made in a colloquy with the Court during a hearing not about interpreting "terms of sentence" or determining whether LFOs were "terms of sentence," but about whether the Amendment met the legal requirements for placement on the ballot. Counsel for the sponsor stated that people with felony convictions would have to pay off various LFOs to have their voting rights restored

when those LFOs were "terms within the four corners" of the sentence and, as Justice Lawson put it, when "that's the way it's generally pronounced in criminal court." Transcript of Oral Argument at 14:22-23 (Mar. 6, 2017), *Advisory Op. to the Att'y Gen. Re: Voting Restoration Amend.*, 215 So.3d 1202 (Fla. 2017).[27]

In other words, both the Court and counsel for the sponsor, while acknowledging that certain LFOs might be included in the "terms of sentence," assumed that the determination of whether they were included would be based on the treatment of those LFOs by Florida's criminal laws and the sentencing court—not by some static definition of "terms of sentence" written into the Amendment. Just as the Governor's request starts with the premise that certain LFOs are part of the sentence, so did the Court in the colloquy referenced by the Governor. And just as Senator Brandes acknowledged that Amendment 4 gave the Legislature the discretion to interpret "terms of sentence" to exclude any LFOs converted to civil obligations by the sentencing court, *see* Video: May 2 Senate Hearing at 6:35:50-6:38:38,https://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2019051020&Redirect=true (colloquy between Senator Pizzo and Senator Brandes), the colloquy allows for the same. Again, the Court should not freeze the definition of

[27] The transcript of oral argument is available at https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf. A video recording of oral argument is available at https://wfsu.org/gavel2gavel/viewcase.php?eid=2421&jwsource-cl.

"terms of sentence" written into SB7066 into the Constitution. To do so would impose an interpretation of Amendment 4 not supported by the text, and unnecessarily and improperly strip the Legislature and sentencing courts of the discretion to determine the contours of criminal sentences.

CONCLUSION

Answering the question presented before this Court would have sweeping consequences that affect the lives of over 1.6 million Floridians and their families. An overwhelming majority of Florida's voters sought to restore automatically the rights of returning citizens, except for those convicted of murder or felony sexual offenses. For the foregoing reasons, the ACLU of Florida, the ACLU, the NAACP Legal Defense and Educational Fund, the Brennan Center for Justice at NYU School of Law, the Florida State Conference of Branches and Youth Units of the NAACP, the Orange County Branch of the NAACP, and the League of Women Voters of Florida request that the Court decline to answer the Governor's request. But if the Court should decide to issue an opinion, the undersigned urge the Court to conclude that Article VI, Section 4 of the Florida Constitution does not require that the restoration of voting rights for people with felony convictions be contingent on the repayment of legal financial obligations that extend beyond the terms of imprisonment, parole, or probation.

Respectfully submitted,

/s/ Daniel B. Tilley

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**Pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished via E-Portal to all other interested parties who have appeared, on this 18th day of September, 2019.

/s/ Daniel B. Tilley
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CERTIFICATE OF COMPLIANCE

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

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ADDENDUM A
List of advisory opinions concerning the powers of *solely* the governor

1. *In re Advisory Opinion to Governor re Judicial Vacancy Due to Resignation*, 42 So. 3d 795, 795 (Fla. 2010) (concerning "judicial vacancy in the Escambia County Court")
2. *In re Advisory Opinion To Governor re Comm'n of Elected Judge*, 17 So. 3d 265, 265 (Fla. 2009) (concerning "authority to commission a circuit judge-elect who is suspended from the practice of law at the time the judge-elect is to take office")
3. *Advisory Opinion to Governor re Appointment or Election of Judges*, 983 So. 2d 526, 527 (Fla. 2008) (concerning "judicial vacancy in the Leon County Court")
4. *Advisory Opinion to Governor re Judicial Vacancy Due to Mandatory Ret.*, 940 So. 2d 1090, 1090 (Fla. 2006) (concerning "mandatory judicial vacancy in the First District Court of Appeal")
5. *Advisory Opinion to Governor re Sheriff And Judicial Vacancies Due To Resignations*, 928 So. 2d 1218, 1219 (Fla. 2006) ("One question involves a judicial vacancy created by the resignation of a circuit court judge. The other question pertains to a vacancy created by the intended resignation of a county sheriff.")
6. *In re Advisory Opinion to Governor re: Appointment or Election of Judges*, 824 So. 2d 132, 134 (Fla. 2002) (concerning "the proper method of selecting circuit and county judges in the situation where a vacancy occurs in a circuit or county judge position during an election period")
7. *In re Advisory Opinion to the Governor-Terms of Cty. Court Judges*, 750 So. 2d 610, 612 (Fla. 1999) (concerning governor's "duties and responsibilities to commission officers pursuant to article IV, section 1(a), Florida Constitution")
8. *In re Advisory Opinion to the Governor--State Revenue Cap*, 658 So. 2d 77, 77 (Fla. 1995) (concerning "executive powers and responsibilities for state planning and budgeting pursuant to article IV, section 1(a) of the Florida Constitution")
9. *Advisory Opinion to the Governor-Dual Office-Holding*, 630 So. 2d 1055, 1056 (Fla. 1994) (concerning "executive powers and duties to appoint members of a community college's board of trustees")
10. *In re Advisory Opinion to Governor-Sch. Bd. Member-Suspension Auth.*, 626 So. 2d 684, 685 (Fla. 1993) (concerning "executive powers and duties to suspend school board members under article IV, section 7(a), of the Florida Constitution")

11. *In re Advisory Opinion to the Governor*, 600 So. 2d 460, 462 (Fla. 1992) (concerning "duties and responsibilities regarding the appointment of judges")
12. *In re Advisory Opinion to the Governor--Land Acquisition Tr. Fund*, 572 So. 2d 1356, 1358 (Fla. 1990) (concerning "executive duties and responsibilities as chief executive of the State and Chairman of the Division [of Bond Finance of the Department of General Services of the State of Florida] to structure the Preservation 2000 revenue bonds in the manner most beneficial to the State"
13. *In re Advisory Opinion to the Governor*, 551 So. 2d 1205, 1208 (Fla. 1989) (concerning judicial appointments and the judicial nominating commission)
14. *In re Advisory Opinion to the Governor*, 509 So. 2d 292, 301 (Fla. 1987) (concerning governor's "constitutional duties as fiscal manager of Florida")
15. *In re Advisory Opinion to Governor Request of June 29, 1979*, 374 So. 2d 959, 962 (Fla. 1979) (concerning "duty as governor to fill vacancies in judicial office and to appoint members of the judicial nominating commissions" (footnote omitted)
16. *In re Advisory Opinion of Governor Request of Nov. 19, 1976 (Constitution Revision Comm'n)*, 343 So. 2d 17, 18 (Fla. 1977) (concerning "executive powers and duties relative to the Constitution Revision Commission")
17. *In re Advisory Opinion to the Governor Request of July 12, 1976*, 336 So. 2d 97, 98 (Fla. 1976) (concerning governor's constitutional authority to suspend county officers)
18. *In re Advisory Opinion of The Governor*, 334 So. 2d 561, 562 (Fla. 1976) (concerning "gubernatorial grants of executive clemency")
19. *In re Advisory Opinion of Governor Appointment of Cty. Comm'rs, Dade Cty.*, 313 So. 2d 697, 698 (Fla. 1975) (concerning governor's authority "to make the appointments to the offices of Dade County Commissioners during the period of suspension" under Article IV, Section 7 of the Florida Constitution)
20. *In re Advisory Opinion to Governor*, 313 So. 2d 717, 721 (Fla. 1975) (concerning governor's constitutional authority "to fill the subject position of Tax Collector in Sarasota County")
21. *In re Advisory Opinion of Governor, Term of Appointments for Governor*, 306 So. 2d 509, 510 (Fla. 1975) (concerning "appointments by the Governor of officers serving at his pleasure")
22. *In re Advisory Opinion of Governor Civil Rights*, 306 So. 2d 520, 521 (Fla. 1975) (concerning "constitutional power of the Governor to restore civil rights")

23. *In re Advisory Opinion of Governor, Broward Cty. Sch. Bd. Vacancies*, 302 So. 2d 748, 750 (Fla. 1974) (concerning governor's duty and authority to fill school-board vacancies)
24. *In re Advisory Opinion of Governor Request of Sept. 6, 1974*, 301 So. 2d 4, 7 (Fla. 1974) (concerning authority to fill judicial vacancy)
25. *In re Advisory Opinion to The Governor*, 298 So. 2d 366, 368 (Fla. 1974) (concerning governor's ability to suspend a school superintendent)
26. *In re Advisory Opinion To The Governor*, 281 So. 2d 328, 333 (Fla. 1973) (concerning judicial vacancies)
27. *In re Advisory Opinion to Governor*, 276 So. 2d 25, 30 (Fla. 1973) (concerning governor's authority with respect to judicial nominating commissions)
28. *In re Advisory Opinion to Governor*, 271 So. 2d 128, 129-30 (Fla. 1972) (concerning governor's authority with respect to judicial commissions)
29. *In re Advisory Opinion to Governor*, 247 So. 2d 428, 433 (Fla. 1971) (concerning "power to fill a vacancy by appointment")
30. *In re Advisory Opinion to Governor*, 243 So. 2d 573, 581 (Fla. 1971) (concerning governor's "authority under Article IV, section 1(a) of the Constitution, to require officials of the State (a) to provide me with a summary of anticipated revenues from existing sources, and (b) to estimate for me the amounts of additional revenue which will be required from new sources," and the "constitutional power (Const. Art. III, section 3(c)(1)) to convene a special session of the Legislature")
31. *In re Advisory Opinion to Governor*, 239 So. 2d 247, 248-49 (Fla. 1970) (concerning judicial vacancies)
32. *Opinion to the Governor*, 239 So. 2d 1, 11 (Fla. 1970) (concerning governor's authority "to countersign warrants based" on "the 1970 General Appropriations Act")
33. *In re Advisory Opinion to Governor*, 229 So. 2d 229, 232 (Fla. 1969) (concerning judicial vacancies)
34. *In re Advisory Opinion to the Governor*, 223 So. 2d 35, 36 (Fla. 1969) (concerning governor's duty to "by message at least once in each regular session inform the legislature concerning the condition of the state, Propose such reorganization of the executive department as will promote efficiency and economy and recommend measures in the public interest")
35. *Advisory Opinion to the Governor*, 225 So. 2d 512, 515 (Fla. 1969) (concerning "constitutional power of the Governor to make appointments under the Constitution")

36. *Advisory Opinion to Governor*, 217 So. 2d 289, 292 (Fla. 1968) (concerning governor's "duty to appoint a Lieutenant Governor for an interim term")
37. *In re Advisory Opinion to the Governor*, 214 So. 2d 473, 475 (Fla. 1968) (concerning governor's "filling of vacancies in office wherein the incumbent's removal from office has been confirmed by the Senate")
38. *In re Advisory Opinion to the Governor*, 213 So. 2d 716, 718 (Fla. 1968) (concerning governor's "constitutional authority to review the judicial accuracy and propriety of a Judge of the Criminal Court of Record of Dade County, Florida, and to suspend him from office if it does not appear to you that the Judge has exercised proper judicial discretion and wisdom")
39. *Advisory Opinion to the Governor*, 206 So. 2d 641, 642-43 (Fla. 1968) (concerning governor's constitutional authority "to convene an extra session for a period of not more than twenty days")
40. *In re Advisory Opinion to the Governor*, 206 So. 2d 212, 214 (Fla. 1968) (concerning governor's authority to "call for an extra session of the Legislature for a period of time to be determined by you but not in excess of twenty days")
41. *Advisory Opinion to the Governor*, 201 So. 2d 446, 448 (Fla. 1967) (concerning governor's authority "to fill vacancies in the office of assistant state attorney throughout the state")
42. *Advisory Opinion to the Governor*, 201 So. 2d 226, 227 (Fla. 1967) (concerning governor's authority to receive private contributions to support "[e]mployment of gubernatorial special investigators")
43. *Advisory Opinion to the Governor*, 200 So. 2d 534, 536 (Fla. 1967) (concerning governor's authority to employ special investigators and accept contributions for that purpose)
44. *In re Advisory Opinion to the Governor*, 192 So. 2d 757, 759 (Fla. 1966) (concerning governor's authorization to sign a judicial commission)
45. *In re Advisory Opinion to the Governor*, 171 So. 2d 539, 544 (Fla. 1965) (concerning governor's authority to fill vacancies on Board of Regents)
46. *Advisory Opinion to the Governor*, 156 So. 2d 3, 4 (Fla. 1963) ("The Chief Executive does not have the constitutional duty to report to the Senate, when convened for purpose of trying Articles of Impeachment, while the House is not in session, suspensions made since the last session of the Florida Legislature.")
47. *Advisory Opinion to the Governor*, 154 So. 2d 838, 839 (Fla. 1963) (concerning whether to bills "may be treated by you [(i.e., the governor)] as being properly presented for your consideration and action")
48. *In re Advisory Opinion to the Governor*, 150 So. 2d 721, 724 (Fla. 1963) (concerning governor's "power to continue to call recurring extra sessions

under Section 8, Article IV, Florida Constitution, until such times as a reapportionment bill is enacted by the Legislature in conformity with the Fourteenth Amendment of the Constitution of the United States")

49. *In re Advisory Opinion to the Governor*, 132 So. 2d 1, 2 (Fla. 1961) (concerning governor's "responsibility to fill vacancies in office, Section 7, Article IV, Florida Constitution, and also your executive responsibility to countersign warrants for legitimate expenditures, such as salaries of duly selected employees")
50. *In re Advisory Opinion to the Governor*, 132 So. 2d 163, 165 (Fla. 1961) (concerning governor's authority to appoint an additional judge in Duval County)
51. *In re Advisory Opinion to the Governor*, 131 So. 2d 196, 197 (Fla. 1961) (concerning "time allowed for the approval or disapproval of a bill by the Governor")
52. *In re Advisory Opinion to the Governor*, 116 So. 2d 425, 428-29 (Fla. 1959) (concerning governor's "authority to fill the vacancy on the Board of County Commissioners of Dade County")
53. *In re Advisory Opinion to the Governor*, 112 So. 2d 843, 848 (Fla. 1959) (governor's proposed 30-day absence from the state "will not constitute inability to discharge your official duties or constitute any other cause for the devolution of the powers and duties of the office of Governor")
54. *In re Advisory Opinion to the Governor*, 96 So. 2d 904, 905-06 (Fla. 1957) (concerning governor's authority to appoint "additional judges of the criminal court of record")
55. *Advisory Opinion to the Governor*, 96 So. 2d 546, 549 (Fla. 1957) (concerning the determination of "the population of a judicial circuit and the number of circuit judges which should be provided to serve the people thereof")
56. *Advisory Opinion to the Governor*, 96 So. 2d 541, 546 (Fla. 1957) (concerning "appointments to fill a vacancy in a circuit judgeship")
57. *Advisory Opinion to the Governor*, 96 So. 2d 413, 416 (Fla. 1957) (concerning governor's "constitutional authority to call the Legislature into extraordinary session under Section 3, Article VII of the Constitution")
58. *Advisory Opinion to the Governor*, 95 So. 2d 603, 606 (Fla. 1957) (concerning time "within which to consider and act upon any bills presented to [the governor]")
59. *Advisory Opinion to the Governor*, 92 So. 2d 513, 514 (Fla. 1957) (concerning governor's power to fill "a vacancy in the office of Assistant State Attorney for the Fifth Judicial Circuit")

60. *In re Advisory Opinion to the Governor*, 91 So. 2d 204, 205 (Fla. 1956) (concerning governor's authority "to appoint an additional circuit judge for the circuit court of the judicial circuit wherein the state capital is located")
61. *Advisory Opinion to the Governor*, 88 So. 2d 756, 759 (Fla. 1956) (concerning governor's authority to "declare [a judicial slot] vacant and appoint a successor" following prior judge's "mysterious disappear[ance]")
62. *Advisory Opinion to the Governor*, 88 So. 2d 131, 132 (Fla. 1956) (concerning governor's "power to call a special session of the Legislature")
63. *In re Advisory Opinion to the Governor*, 86 So. 2d 158, 160 (Fla. 1956) (concerning "authority for [the governor] designating a circuit judge to decide the case in question")
64. *Advisory Opinion to the Governor*, 82 So. 2d 494, 498 (Fla. 1955) (concerning governor's authority "to countersign monthly warrants predicated upon and in accordance with the requisitions submitted by the retired justices described in your inquiry")
65. *In re Advisory Opinion to the Governor*, 81 So. 2d 778, 780 (Fla. 1955) ("[Y]ou not only have no power to declare the office vacant but you have no power to increase the number of circuit judges fixed in the constitution by appointing someone to serve in Judge Chillingworth's stead.")
66. *In re Advisory Opinion to the Governor*, 81 So. 2d 782, 786 (Fla. 1955) ("[A]pportionment bills enacted pursuant to Section 3, Article VII of the Constitution do not ipso facto become laws when passed by the L[e]gislature but should be submitted to the Governor for his consideration and approval or rejection as contemplated by Section 28, Article III of the Constitution.")
67. *Advisory Opinion to Acting Governor Johns*, 67 So. 2d 413, 414 (Fla. 1953) (concerning governor's authority to "countersign[]" "warrants" and to appoint self "Acting Governor" following preceding governor's death)
68. *In re Advisory Opinion to the Governor*, 63 So. 2d 321, 327 (Fla. 1953) (concerning governor's "duty under Section 27 of Article 3, and Section 7 of Article 4 of the State Constitution to make the appointment of a Florida Hotel Commissioner")
69. *In re Advisory Opinion to the Governor*, 63 So. 2d 274, 276 (Fla. 1953) (concerning governor's authority to assign judges)
70. *In re Advisory Opinion to the Governor*, 60 So. 2d 285, 286-87 (Fla. 1952) (concerning governor's authority to call a special primary election to fill a judicial vacancy and to set a date for the primary)
71. *In re Advisory Opinion to the Governor*, 58 So. 2d 319, 322 (Fla. 1952) (concerning governor's authority to assign judges)
72. *In re Advisory Opinion to Governor*, 55 So. 2d 99, 101 (Fla. 1951) (concerning governor's authority "to countersign a Comptroller's order or

warrant drawn on the State Treasury to be used in payment of the expenses of the [House of Representatives Interim Committee Created By Resolution of the 1951 Legislature for Purpose of Inquiring Into All Matters Connected With Official Conduct of State or County Officers and Employees]")

73. *In re Advisory Opinion to the Governor*, 52 So. 2d 646, 648 (Fla. 1951) (concerning governor's "power under the Constitution to recommend to the Senate while in session the permanent removal of a member of the Game and Fresh Water Fish Commission")
74. *In re Advisory Opinion to the Governor*, 46 So. 2d 21, 22 (Fla. 1950) (concerning governor's authority "a vacancy on the Board of Public Instruction of Indian River County")
75. *Advisory Opinion to the Governor*, 42 So. 2d 170, 172 (Fla. 1949) (concerning governor's "appointment and commission" of "Judge of the Criminal Court of Record for Broward County and County Solicitor")
76. *Advisory Opinion to the Governor*, 159 Fla. 464, 467, 31 So. 2d 854, 855 (1947) (concerning governor's duty to fill vacancies on county school boards)
77. *Advisory Opinion to the Governor*, 158 Fla. 872, 875–76, 30 So. 2d 377, 379 (1947) (concerning governor's authority "to countersign warrants drawn by the Comptroller to pay [certain "legitimate legislative expenses"]")
78. *Advisory Opinion to Governor*, 157 Fla. 885, 890, 27 So. 2d 409, 411 (1946) (concerning governor's authority "to fill the vacancy in the office of United States Senator caused by the death of Senator Andrews by 'granting a commission for the unexpired term'")
79. *Advisory Opinion to the Governor*, 156 Fla. 507, 508–09, 23 So. 2d 619, 620 (1945) (concerning governor's personal role in determining a breach of conditions of a commutation)
80. *Advisory Opinion to the Governor*, 156 Fla. 166, 170, 23 So. 2d 158, 159 (1945) (concerning governor's "Executive duty to appoint members to the Board of Commissioners of Overseas Road and Toll Bridge District, who are each qualified registered voters of Monroe County")
81. *Advisory Opinion to Governor*, 156 Fla. 55, 59, 22 So. 2d 458, 459–60 (1945) (concerning governor's authority to fill judicial vacancy with a legislator)\
82. *Advisory Opinion to Governor*, 156 Fla. 48, 53, 22 So. 2d 398, 400–01 (1945) (concerning governor's authority to "countersign Comptroller's warrants or orders covering the pay or compensation and/or expenses of the House of Representatives or of its individual members" with respect to certain payments)

83. *Advisory Opinion to Governor*, 156 Fla. 45, 47, 22 So. 2d 397, 398 (1945) (concerning governor's authority to "countersign[]" "a Comptroller's order or warrant on the State treasury to pay the expenses of the committee provided for, incurred after the close of the Legislature, or whether a legislative act is necessary")
84. *In re Advisory Opinion to Governor*, 154 Fla. 866, 871, 19 So. 2d 370, 372 (1944) (concerning governor's duties surrounding death warrants)
85. *Advisory Opinion to Governor*, 154 Fla. 822, 823, 19 So. 2d 198, 198 (1944) (concerning governor's authority to fill "a vacancy on the Board of Public Instruction of Broward County")
86. *In re Advisory Opinion to Governor*, 153 Fla. 650, 653, 15 So. 2d 765, 766 (1943) (concerning governor's authority to make appointments to the "Civil Service Board of Duval County")
87. *In re Advisory Opinion to the Governor*, 153 Fla. 581, 583–84, 15 So. 2d 291, 292 (1943) (concerning governor's authority "to countersign warrants in payment of salaries of certain State Attorneys and Assistant State Attorney")
88. *In re Advisory Opinion to Governor*, 153 Fla. 344, 346, 14 So. 2d 663, 663 (1943) (concerning governor's "power and authority to assign the Judge of the Court of Record of Escambia County to serve as Judge of any Criminal Court of Record in the State of Florida as Judge Pro Hac Vice")
89. *Advisory Opinion to Governor*, 152 Fla. 686, 693, 12 So. 2d 876, 879 (1943) (concerning governor's authority to fill judicial vacancy under "ad interim appointment")
90. *Advisory Opinion to Governor*, 152 Fla. 674, 675–76, 12 So. 2d 879, 880 (1943) (concerning governor's authority to appoint certain acting officials, without senate confirmation, where the permanent officials had been granted military leave of absence)
91. *Advisory Opinion to the Governor*, 152 Fla. 547, 550–51, 12 So. 2d 583, 584 (1943) (concerning governor's duty to approve or disapprove a bill based on form of legislative journal entries")
92. *In re Advisory Opinion to Governor*, 152 Fla. 356, 361, 11 So. 2d 580, 582 (1943) (concerning governor's "executive powers and duties as to countersigning warrants for the distribution and disbursement of funds inherited by the Board of Administration on January 1, 1943")
93. *Advisory Opinion to Governor*, 152 Fla. 119, 122, 10 So. 2d 926, 927 (1942) (concerning governor's "power to assign the county solicitor of the criminal court of record of any other county to discharge the duties of the County Solicitor of the Criminal Court of Record for Palm Beach County")

94. *In re Advisory Opinion to the Governor*, 151 Fla. 44, 47–49, 9 So. 2d 172, 173–74 (1942) (concerning governor's power to fill vacancies and suspend public officials)
95. *In re Advisory Opinion to Governor*, 150 Fla. 556, 573–74, 8 So. 2d 26, 32 (concerning governor's power to fill vacancies), *supplemented sub nom. In re Advisory Opinion to the Governor*, 151 Fla. 44, 9 So. 2d 172 (1942)
96. *Advisory Opinion to Governor*, 147 Fla. 157, 162–63, 2 So. 2d 378, 380 (1941) (concerning judicial vacancies)
97. *Advisory Opinion to Governor*, 147 Fla. 148, 153, 2 So. 2d 372, 374 (1941) (concerning governor's duty to "to submit to the Senate an appointment for the office of Assistant State Attorney for the Tenth Judicial Circuit")
98. *Advisory Opinion to Governor*, 146 Fla. 622, 627, 1 So. 2d 636, 638 (1941) (concerning governor's ability to appoint secretary of state to "State Planning Board")
99. *In re Advisory Opinion to Governor*, 137 Fla. 298, 299–300, 188 So. 218, 218 (1939) (concerning governor's authority to appoint "Judge of the Court of Record" and "County Solicitor" for Escambia County)
100. *Advisory Opinion to the Governor*, 128 Fla. 334, 337–38, 174 So. 740, 741–42 (1937) (concerning governor's ability to appoint circuit judges)
101. *In re Advisory Opinion to Governor*, 120 Fla. 142, 151–52, 162 So. 346, 350 (1935) (concerning a judicial commission)
102. *In re Advisory Opinion to the Governor*, 117 Fla. 773, 777–78, 158 So. 441, 442 (1934) (concerning existence of a vacancy for governor to fill)
103. *In re Advisory Opinion to the Governor*, 114 Fla. 520, 526, 154 So. 154, 156 (1934) (concerning governor's authority "to countersign warrants based upon the requisitions of circuit judges, state attorneys, and official court reporters")
104. *In re Advisory Opinion to Governor*, 101 Fla. 1510, 1512–14, 136 So. 623, 624 (1931) (concerning governor's authority and duty to fill judicial vacancy)
105. *In re Advisory Opinion to the Governor*, 98 Fla. 843, 846, 124 So. 728, 729 (1929) (concerning governor's authority to "countersign" a "warrant" for a private citizen)
106. *In re Advisory Opinion to Governor*, 97 Fla. 705, 709, 122 So. 7, 8 (1929) (concerning governor's "power to suspend members of the board of public instruction in any county in this state")
107. *In re Advisory Opinion to Governor*, 94 Fla. 986, 988–89, 114 So. 889, 890 (1927) (concerning governor's commission of the "clerk of the criminal court of record for Palm Beach county")

108. *In re Advisory Opinion to Governor*, 94 Fla. 967, 981, 114 So. 850, 854 (1927) (concerning governor's duty "to countersign certain warrants drawn by the comptroller of the state on the state treasurer for the payment of interest due a certain bank in this city on a loan made by it to the state road department")
109. *Advisory Opinion to the Governor*, 94 Fla. 620, 624, 113 So. 913, 914 (1927) (concerning "power of the Governor to appoint a Senator or member of the House of Representatives who was a member of the Legislature of Florida of 1927, to be state motor vehicle commissioner under chapter 11901, Acts of 1927, or to be a special assistant to the Attorney General under chapter 11820, Acts of 1927")
110. *In re Advisory Opinion to Governor*, 93 Fla. 1024, 1026–27, 113 So. 115, 116 (1927) (concerning governor to issue fill judicial vacancy)
111. *In re Advisory Opinion to Governor*, 93 Fla. 948, 954, 113 So. 113, 115 (1927) (concerning judicial commission)
112. *In re Advisory Opinion to the Governor*, 92 Fla. 989, 995, 111 So. 252, 254 (1926) (concerning governor's "appointment to fill the vacancy in the office of tax collector of Manatee county")
113. *In re Advisory Opinion to the Governor*, 90 Fla. 708, 710, 107 So. 366, 366 (1925) (concerning "authority of the Governor to countersign orders or warrants drawn upon state funds for 'the pay of members of the Senate and House of Representatives'")
114. *In re Advisory Opinion to Governor*, 85 Fla. 505, 508, 97 So. 127, 127 (1923) (concerning governor's "executive duty to appoint an additional judge for the Eleventh judicial circuit of Florida")
115. *In re Advisory Opinion to the Governor*, 79 Fla. 137, 137–38, 83 So. 672, 672 (1920) (concerning governor's authority "to countersign a warrant drawn on the state treasurer for expenditures incurred in the year 1920")
116. *In re Advisory Opinion to Governor*, 78 Fla. 9, 12, 82 So. 608, 609 (1919) (concerning governor's power to suspend state health officer; on separate question, rejecting authority to "advise you upon the scope and effect of any statute")
117. *In re Advisory Opinion to Governor*, 78 Fla. 5, 8, 82 So. 612, 613 (1919) (concerning judicial commission)
118. *In re Advisory Opinion to Governor*, 76 Fla. 649, 652, 80 So. 519, 520 (1919) (concerning judicial commission)
119. *In re Advisory Opinion to the Governor*, 76 Fla. 500, 502-03, 80 So. 17, 17 (1918) (concerning governor's authority to suspend the "food, drug, and fertilizer inspectors for the chemical division of the department of agriculture of the state of Florida")

120. *In re Advisory Opinions to the Governor*, 76 Fla. 417, 417–20, 79 So. 874, 874–75 (1918) (concerning governor's authority to appoint county solicitors, call a special election to fill a senate vacancy, and call a special session of the legislature)
121. *In re Advisory Opinion to the Governor*, 75 Fla. 674, 675, 78 So. 673, 673 (1918) (concerning governor's "duties and powers with reference to making certain appointments and issuing commissions to county officers")
122. *In re Advisory Opinion to the Governor*, 74 Fla. 250, 253, 77 So. 102, 103 (1917) (concerning governor's authority "to countersign a warrant drawn on the State Treasurer" for the "Food, Drug and Fertilizer Inspector")
123. *In re Advisory Opinion to Governor*, 74 Fla. 92, 94, 77 So. 87, 88 (1917) (concerning governor's "power and authority to call out the militia of the state to preserve the public peace, to execute the laws of the state, to suppress insurrection, etc.")
124. *In re Advisory Opinion of Governor*, 72 Fla. 422, 424–25, 73 So. 742, 743 (1916) (concerning governor's authority to fill vacancies in "elective county offices")
125. *In re Advisory Opinion to Governor*, 69 Fla. 508, 510, 68 So. 450, 450 (1915) (concerning governor's authority to suspend or remove county officers)
126. *In re Advisory Opinion to the Governor*, 65 Fla. 434, 441, 62 So. 363, 365 (1913) (concerning governor's authority to fill vacancies)
127. *In re Advisory Opinion to Governor*, 64 Fla. 168, 171, 60 So. 337, 338 (1912) (concerning governor's power "suspend an incumbent of the office of county commissioner for an act of malfeasance of misfeasance in office")
128. *In re Advisory Opinion to the Governor*, 64 Fla. 21, 23, 59 So. 786, 786–87 (1912) (concerning "data relative to fines and forfeitures remitted, and to reprieves, pardons, and commutations granted, required by section 11 of article 4 of the Constitution to be communicated to the Legislature by the Governor")
129. *In re Advisory Opinion to the Governor*, 64 Fla. 16, 20–21, 59 So. 782, 784 (1912) (concerning governor's "executive duty to transmit to the Senate for its action thereon, at the 'extra' session convened by executive proclamation, appointments to the offices of circuit judge, state attorney, and judge of the criminal court of record that have been made since the adjournment of the last session of the Senate")
130. *In re Advisory Opinion to Governor*, 62 Fla. 7, 8–9, 55 So. 865, 865 (1911) (concerning governor's power "to grant in a case successive reprieves which taken together cover a period of more than 60 days")

131. *In re Advisory Opinion to the Governor*, 45 Fla. 154, 156, 34 So. 571, 571 (1903) (concerning "duty of the Governor to submit appointees to fill such vacancies to the Senate for confirmation for the unexpired term")
132. *In re Advisory Opinion to the Governor*, 34 Fla. 500, 500–01, 16 So. 410, 410–11 (1895) (concerning governor's authority to sign "a warrant in payment of the costs of criminal prosecutions that have accrued since the result of the election")
133. *In re Advisory Opinion to Governor*, 31 Fla. 1, 1–2, 12 So. 114, 114 (1893) (concerning governor's "power and duties" with respect to commissioning county tax collector)

ADDENDUM B
List of opinions where this Court declined to answer the Governor's question

1. *In re Advisory Opinion to Governor Request of Aug. 28, 1980*, 388 So. 2d 554, 555-56 (Fla. 1980) ("the justices of this Court are without authority to render an advisory opinion regarding your responsibilities under the statutory provisions referred to in your request")
2. *Advisory Opinion to the Governor*, 196 So. 2d 737, 739 (Fla. 1967) ("The question does not merely invite a definition of the limits of purely executive power. An answer must affect directly the rights of individuals against whom it is contemplated the power will be exercised. In re Opinion of Supreme Court, 39 Fla. 397, 22 So. 681. These individuals are not parties to this non-adversary proceeding. An opinion without their participation would deny to them a traditional aspect of due process—the right to be heard.")
3. *In re Advisory Opinion to the Governor*, 113 So. 2d 703, 705 (Fla. 1959) ("the Justices of this Court are without authority to render an advisory opinion to the Governor determining the constitutional validity vel non of Chapter 59-516, Acts of 1959, and we must respectfully decline your request.")
4. *In re Advisory Opinion to the Governor*, 96 So. 2d 900, 902 (Fla. 1957) ("our authority to give advisory opinions is limited to the interpretation of any portion of the Constitution upon any question affecting your executive powers and duties")
5. *In re Advisory Opinion to Governor*, 103 Fla. 668, 671, 137 So. 881, 882 (1931) ("The Justices are not authorized to render an opinion to the Governor as to the validity of a statute.")
6. *In re Advisory Opinion to the Governor*, 78 Fla. 156, 158, 82 So. 606, 607 (1919) ("Your request for an opinion as to your authority to countersign warrants for the payment of expenses incurred under the provisions of a law, chapter 7919, Acts of 1919, in effect involves the interpretation of a statute and not a portion of the Constitution, and the Justices are not authorized to render to the Governor an opinion on the validity or effect of a statute.")
7. *In re Advisory Opinion to the Governor*, 64 Fla. 1, 15, 59 So. 778, 782 (1912) ("Even though the Senate had never acted at all on the joint resolution, and the publication thereof, as a proposed amendment to the

Constitution, is not required by law, yet a valid statutory appropriation of money to pay for such publication may authorize the Governor to exercise his constitutional power and duty to countersign an order or warrant drawn in accordance with such statutory appropriation. Therefore the power and duty to countersign an order or warrant to pay for such publication would depend, not upon the Constitution, but upon the statutory tory appropriation; and the Justices of the Supreme Court are not authorized to render to the Governor, at his request, an opinion upon statutory enactments that affect his executive powers and duties. In the *Advisory Opinion to the Governor*, 43 Fla. 305, 31 South. 348, the opinion related to the Governor's power and duty in countersigning a warrant for the payment of money from the state treasury where the attempted appropriation was made by a joint resolution which was held to be not a law within the meaning of section 4 of article 9 of the Constitution. No such question is presented here.")

8. *Advisory Opinion to the Governor*, 61 Fla. 1, 5–6, 55 So. 460, 462 (1911) ("This provision of our organic law is directed solely to the legislative department of our government, in which you as the Chief Executive are in no way concerned, as it does not involve any executive duty or function, and we are not authorized in this manner to construe it or to give any opinion as to it.")
9. *Advisory Opinion to Governor*, 50 Fla. 169, 171, 39 So. 187, 187 (1905) ("Reduced to its last analysis, the purpose of your letter is not to have us construe any clause of the Constitution affecting your executive powers and duties, but to have us pass upon the constitutionality of an act of the Legislature. Section 13 of article 4 of the Constitution authorizes the justices of the Supreme Court, on the Governor's request, to interpret only some portion of the Constitution, and does not authorize the court, upon such request, to interpret or pass upon the constitutionality of statutes that affect the Governor's executive powers and duties.")
10. *In re Opinion of Supreme Court*, 39 Fla. 397, 399, 22 So. 681, 681 (1897) ("What may be the legal effect of a pardon attempted to be conferred by the majority of the board of pardons without the concurrence of the governor is a question that more intimately interests the individual upon whom the pardon is thus attempted to be conferred, and he would, in some appropriate proceeding instituted for its test, be entitled to be heard before the tribunal

selected to pass thereon. Any expression from us upon the question would therefore, at this time, be premature, ex parte, and unauthorized. Your second inquiry, as to your power to issue the 'death warrant' without consultation with the other members of the board of pardons, where there is an application on file, but not acted upon, for commutation or pardon, the court is not authorized to express any opinion upon, because its opinion, in response to requests therefor from the governor, must be confined, under the quoted provision of the constitution, to an interpretation of some portion of the constitution. There is no provision in the constitution relating to the issue of death warrants by the governor, but that duty is imposed upon him wholly by statute (section 2946, Rev. St.). The quoted provision of the constitution does not authorize the court, in response to requests from the governor, to interpret statutes that affect his powers and duties.")

ADDENDUM C
List of advisory opinion concerning
something other than the power of *solely* the governor

1. *Advisory Opinion to Governor--1996 Amendment 5 (Everglades)*, 706 So. 2d 278, 280-81 (Fla. 1997) ("Amendment 5 directly affects your duty as governor to see that the law is faithfully executed (by providing the South Florida Water Management District and the Department of Environmental Protection with direction as to their enforcement responsibilities) and to report on the state's progress in restoring the Everglades System") (footnote omitted)
2. *In re Advisory Opinion To the Governor*, 290 So. 2d 473, 476 (Fla. 1974) (concerning judicial impartiality and composition of statewide grand juries)