

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1341

ADVISORY OPINION TO THE GOVERNOR

RE: IMPLEMENTATION OF AMENDMENT 4, THE VOTING
RESTORATION AMENDMENT

GOVERNOR RON DESANTIS' INITIAL BRIEF

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STATEMENT OF THE CASE

On June 28, 2019, Governor DeSantis signed Senate Bill 7066 (“SB 7066”) into law. SB 7066 created a statutory structure for the implementation of the Voting Restoration Amendment known as Amendment 4. *See* ch. 2019-162, § 25, Laws of Fla. (codified at § 98.0751, Fla. Stat. (2019)). From the inception of this legislation, Governor DeSantis has believed SB 7066 appropriately implements Amendment 4 to facilitate re-enfranchisement. SB 7066 provides for the waiver of financial obligations or conversion of financial obligations into community service hours to provide indigent felons a pathway to re-enfranchisement. SB 7066 likewise makes clear that commission of a set list of major crimes disqualifies Florida citizens from voting under Amendment 4’s exclusions for “murder” and “felony sexual offense.”

After Governor DeSantis signed SB 7066, and after litigation was filed in federal court, questions arose as to the meaning and intent behind Amendment 4. Specifically, certain plaintiffs now contend that Amendment 4 and SB 7066 operate in disharmony because Amendment 4 did not include the satisfaction of financial obligations as a pre-requisite to re-enfranchisement. Governor DeSantis, cognizant of his absolute responsibility to follow and implement Florida’s Constitution, now seeks the opinion of this Court on his constitutional responsibility and duties to implement Amendment 4.

This Court is well-acquainted with the text of Amendment 4. On October 4, 2016, the former Attorney General exercised her duty to request this Court’s opinion as to the validity of a proposed citizen-initiative amendment to the Florida Constitution. *See* art. IV, § 10, Fla. Const.; § 16.061, Fla. Stat. Specifically, the Attorney General requested this Court’s opinion as to whether Amendment 4 complied with the single-subject requirement of Article XI, section 3 of the Florida Constitution and whether the ballot title and summary of the amendment complied with the clarity requirements of section 101.161, Florida Statutes. *See* First Petition for Advisory Opinion at 1-4, *Advisory Opinion to the Attorney Gen. Re: Voting Restoration Amendment (“Voting Restoration I”)*, 215 So. 3d 1202 (Fla. 2017) (Nos. SC16-1785 & SC16-1981). On October 28, 2016, the Financial Impact Estimating Conference forwarded to the Attorney General a financial impact statement on Amendment 4. *See* Second Petition for Advisory Opinion at 4-23, *Voting Restoration I*, 215 So. 3d 1202 (Fla. 2017) (Nos. SC16-1785 & SC16-1981). On November 1, 2016, the Attorney General requested this Court’s additional opinion as to whether the financial impact statement prepared by the Financial Impact Estimating Conference on Amendment 4 complied with section 100.371, Florida Statutes. *See id.* at 1-2. This Court subsequently consolidated both cases, ordered briefing, and scheduled oral argument for March 6, 2017.

On March 6, 2017, during a colloquy between the justices and Amendment 4’s sponsor, Floridians for a Fair Democracy (“Sponsor”), the Sponsor assured this Court that the amendment presented a “fair question” and “clear explanation” to voters. Transcript of Oral Argument at 2, *Voting Restoration I*, 215 So. 3d 1202 (Fla. 2017) (Nos. SC16-1785 & SC16-1981).¹ Addressing a question posed by Justice Polston as to whether “completion of [all] terms” includes “full payment of any fines,” the Sponsor responded, “Yes, sir. . . . All terms means all terms within the four corners.” *Id.* at 4. Justice Lawson similarly asked, “You said that terms of sentence includes fines and costs. . . . [T]hat’s the way it’s generally pronounced in criminal court. Would it also include restitution when it was ordered to a victim as part of the sentence?” *Id.* at 10. The Sponsor answered, “Yes.” *Id.* Justice Pariente then posited the inclusion of fines, fees, and restitution as part of the completion of sentence “would actually help the state because if fines, costs and restitution are a requirement . . . for those that want to vote, there’s a big motivation to pay unpaid costs, fines and restitution.” *Id.* at 11.

¹ The transcript of oral argument is available here: Transcript of Oral Argument at 4, 10, 11, *Voting Restoration I*, 215 So. 3d 1202 (Fla. 2017) (Nos. SC16-1785 & SC16-1981), https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf (last visited Sept. 18, 2019). A video of the oral argument is available here: Video of Oral Argument at 6:58, 15:46, 17:46, *Voting Restoration I*, 215 So. 3d 1202 (Fla. 2017) (Nos. SC16-1785 & SC16-1981), <https://wfsu.org/gavel2gavel/viewcase.php?eid=2421> (last visited Sept. 18, 2019).

On April 20, 2017, this Court released an advisory opinion in which it approved Amendment 4 for placement on the ballot. *Voting Restoration I*, 215 So. 3d at 1209. Among other things, the Court concluded Amendment 4’s ballot title and summary “clearly and unambiguously” informed voters that the chief purpose of the proposed amendment was to “automatically restore voting rights to felony offenders, except those convicted of murder or felony sexual offenses, *upon completion of all terms of their sentence.*” *Id.* at 1208 (emphasis added).

On November 6, 2018, Floridians voted in favor of amending their Constitution to include the text of Amendment 4.² Amendment 4 automatically restores voting rights for some convicted felons—namely, felons who have been convicted of offenses other than “murder or a felony sexual offense” upon “completion of all terms of sentence including parole or probation.” Art. VI, § 4, Fla. Const. (2018).

On December 13, 2018, consistent with the colloquy with the Florida Supreme Court, the ACLU of Florida, the League of Women Voters of Florida, LatinoJustice, and the Florida Rights Restoration Coalition delivered a letter to the former Secretary of State regarding implementation of Amendment 4. *See*

² The results of the election are available here: Florida Department of State, Division of Elections, *Voting Restoration Amendment*, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1> (last visited Sept. 18, 2019).

Appendix to the Initial Brief of Governor Ron DeSantis at 4-7, *Advisory Op. to the Gov. Re: Implementation of Amend. 4, the Voting Restoration Amend.* (“*Voting Restoration II*”), No. SC19-1341 (Fla. Sept. 18, 2019). In part, the letter explained:

The phrase “completion of all terms of sentence” includes any period of incarceration, probation, parole and financial obligations imposed as part of an individual’s sentence. These financial obligations may include restitution and fines, imposed as part of a sentence or a condition of probation under existing Florida statute. Fees not specifically identified as part of a sentence or a condition of probation are therefore not necessary for ‘completion of sentence’ and thus, do not need to be paid before an individual may register. We urge the Department to take this view in reviewing eligibility of individuals registered to vote as outlined in Chapter 98, Florida Statutes.

Id. at 6 (emphasis added).

On March 11, 2019, the ACLU of Florida, the League of Women Voters of Florida, LatinoJustice, the Florida Rights Restoration Coalition, the Advancement Project, the Brennan Center for Justice, Dēmos, the New Florida Majority, and the SPLC Action Fund delivered a second letter to current Secretary of State Laurel Lee regarding implementation of Amendment 4. *See id.* at 8-12. In part, the second letter explained:

We understand a sentence may include monetary obligations such as restitution, fines, and fees imposed as part of a sentence under existing Florida statute. Monetary obligations not specifically identified as part of a sentence need not be discharged before “completion of sentence.”

Id. at 10 (emphasis added).

During the 2019 Legislative Session, legislators in both chambers debated legislative implementation of Amendment 4. Ultimately, both chambers passed SB 7066 and, on June 28, 2019, Governor DeSantis signed it into law. *See* ch. 2019-162, Laws of Fla. In relevant part, SB 7066, now codified as section 98.0751, provides guidance on restoration of voting rights and determination of ineligibility pursuant to article VI, section 4 of the Florida Constitution. Section 98.0751 defines “[c]ompletion of all terms of sentence” as “any portion of a sentence that is contained in the four corners of the sentencing document.” § 98.0751(2)(a), Fla. Stat. (2019). The Legislature provided five categories of terms included in the sentencing document: (1) release from any term of imprisonment ordered by the court as a part of the sentence; (2) full payment of legal financial obligations ordered by the court as a part of the sentence; (3) fulfillment of any other term ordered by the court as a part of the sentence; (4) termination from any term of supervision monitored by the Florida Commission on Offender Review; and (5) termination from any term of probation or community control ordered by the court as a part of the sentence. *See* § 98.0751(2)(a)1.-5., Fla. Stat. (2019).

On June 15, 2019, Luis Mendez filed a complaint in the United States District Court for the Northern District of Florida seeking injunctive and

declaratory relief and mandamus challenging what is now section 98.0751. In part, Mendez alleges the statute violates article VI, section 4 of the Florida Constitution because it adds requirements for the restoration of voting rights beyond what was prescribed in the Florida Constitution. The ACLU of Florida, the League of Women Voters of Florida, the Brennan Center for Justice, and additional organizations filed complimentary complaints, alleging provisions of what is now section 98.0751 violate the First, Eighth, Fourteenth, Fifteenth and Twenty-Fourth Amendments of the United States Constitution and the ex post facto clause contained within article I, section 10 of the United States Constitution. These challenges are only directed at what is now section 98.0751 and do not question the constitutionality of article VI, section 4 of the Florida Constitution.

On August 9, 2019, Governor DeSantis exercised his authority to request this Court’s opinion on a question of constitutional interpretation affecting his executive powers and duties. *See* art. IV, § 1(c), Fla. Const. Specifically, Governor DeSantis requested the Court’s opinion whether the phrase “completion of all terms of sentence” under article VI, section 4 of the Florida Constitution includes the satisfaction of all legal financial obligations imposed by the court—namely fines, fees, and restitution ordered by the court as part of a felony sentence that would otherwise render a convicted felon ineligible to vote. *See* Request for

Advisory Opinion at 1-4, *Voting Restoration II*, No. SC19-1341 (Fla. Aug. 9, 2019).

On August 29, 2019, this Court determined that it should exercise its discretion to provide an opinion in response to Governor DeSantis’s request. The Court ordered briefing and set oral argument for November 6, 2019.

SUMMARY OF THE ARGUMENT

A plain language analysis of article VI, section 4(a) of the Florida Constitution reveals that the phrase “completion of all terms of sentence including parole or probation” includes the fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

Dictionaries confirm the plain meaning of the constitutional phrase “completion of all terms of sentence including parole or probation.” The word “completion” plainly and unambiguously means “fulfillment.” The word “all” plainly and unambiguously means “every.” The word “terms” plainly and unambiguously means “conditions.” The word “sentence” plainly and unambiguously means “the penalty imposed by the court when a person is found guilty of committing a crime.” The word “including” in context plainly and unambiguously means “comprising a part of a whole (of the judge’s sentence).”

The words “parole” and “probation” are clearly defined and well-understood in their legal meanings.

When read in its entirety, the constitutional phrase “completion of all terms of sentence including parole or probation” plainly means the fulfillment of: (1) every condition of the incarceration, probation, and community control imposed by the court at sentencing and contained in the four corners of the sentencing document; (2) every condition of the legal financial obligations imposed by the court at sentencing and contained in the four corners of the sentencing document; (3) every other condition imposed by the court at sentencing and contained in the four corners of the sentencing document, such as community service;³ (4) every condition of the parole and any other supervision imposed by the Florida Commission on Offender Review; and (5) every condition of the probation as not otherwise specified at the time of sentencing. Consequently, the phrase “completion of all terms of sentence” plainly includes the fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

³ Examples of other conditions that a court might impose on a defendant include writing an apology letter to the victim, attending a drug treatment program, abstaining from alcohol or places that serve it, attending an educational or technical training program, and seeking gainful employment.

A common-sense understanding also dictates in favor of the Governor’s plain-language interpretation of article VI, section 4(a) of the Florida Constitution. Case law and common understanding consistently recognize that courts impose fines, fees, and restitution as parts of a sentence and thus as penalties for criminal acts. This Court should advise that the constitutional phrase “completion of all terms of sentence” plainly includes the fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

ARGUMENT

The Governor’s brief is divided into two arguments. First, the Governor argues that the textual phrase “completion of all terms of sentence” plainly includes the fulfillment of all fines, fees, and restitution (“legal financial obligations”) imposed by the court at sentencing and contained in the four corners of the sentencing document. Second, the Governor contends that context and common sense dictate in favor of the same conclusion. Common understanding of the nature of sentencing supports the notion that the constitutional phrase “completion of all terms of sentence” includes the fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

I. The constitutional phrase “completion of all terms of sentence” plainly includes the fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

“The determination of the meaning of a constitutional provision begins with its plain language.” *Lee Mem’l Health Sys. v. Progressive Select Ins. Co.*, 260 So. 3d 1038, 1043 (Fla. 2018). “If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.” *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019) (quoting *Pleus v. Crist*, 14 So. 3d 941, 944 (Fla. 2009)). In ascertaining the plain meaning of constitutional language, it is appropriate to consult “[w]idely circulated dictionaries” and “[l]egal dictionaries.” *Lee Mem’l*, 260 So. 3d at 1043. It is also appropriate to consider “the ‘common sense understanding’ of words used in the constitution.” *Id.* (citing *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 512 (Fla. 2008)).

“[T]he law is settled that when constitutional language is precise, its exact letter must be enforced and extrinsic guides to construction are not allowed to defeat the plain language.” *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400 (Fla. 1992); *see, e.g., State v. Jacksonville Terminal Co.*, 27 So. 225, 233 (1900). However, if the language of a constitutional provision is ambiguous, courts “must endeavor to construe the constitutional provision in a manner consistent with the intent of the framers and the voters.” *Ford v. Browning*, 992 So. 2d 132, 136 (Fla. 2008).

The phrase “completion of all terms of sentence including parole or probation” can be best understood by examination of its two parts. First, an inquiry must be made into the operative phrase: “completion of all terms of sentence.” Then, the Court must examine the phrase “including parole or probation” to determine the function it serves in elucidating the preceding phrase.

The word “completion” as used in article VI, section 4(a) of the Florida Constitution plainly and unambiguously means “fulfillment.” Webster’s Third New International Dictionary defines the word “completion” in relevant part as “the quality or state of being complete: fulfillment.” *Webster’s Third New International Dictionary* 465 (1993 ed.). Several other widely circulated dictionaries contain similar definitions. *See, e.g., The American Heritage Dictionary* 377 (5th ed. 2011) (defining the word “completion” in relevant part as “the state of being completed”); *Merriam-Webster’s Collegiate Dictionary* 254 (11th ed. 2005) (defining the word “completion” in relevant part as “the quality or state of being complete”).

The word “all” as used in article VI, section 4(a) plainly and unambiguously means “every.” Merriam-Webster’s Collegiate Dictionary defines the word “all” in relevant part as: (1) “the whole amount, quantity, or extent of”; (2) “every member or individual component of”; (3) “every”; and (4) “any whatever.” *Merriam-Webster’s Collegiate Dictionary* 31 (11th ed. 2005). The American

Heritage Dictionary similarly defines the word “all” in pertinent part as:

(1) “[b]eing or representing the entire or total number, amount, or quantity”;
(2) “[c]onstituting, being, or representing the total extent or the whole”;
(3) “[e]very”; and (4) “[a]ny whatsoever.” *The American Heritage Dictionary* 45
(5th ed. 2011). These definitions are united by the common thread that “all” is
“all-encompassing.” This Court has interpreted the word “all” to mean “every” in
various contexts. *See, e.g., LaRue v. State*, 397 So. 2d 1136, 1138 (Fla. 1981)
 (“We also emphasize that all defendants, guilty and innocent, must pay the
 [statutory] surcharge, the ultimate effect of which imposes a pretrial cost
 upon every defendant rather than a post-trial penalty upon those actually found
 guilty.”); *State ex rel. McClure v. Sullivan*, 43 So. 2d 438, 440-41 (Fla. 1949)
 (defining the statutory provision “all grand juries in said counties shall continue in
 force and effect” to mean “each and every Grand Jury existing at the time of the
 passage of said law as well as each and every one subsequently impaneled”).

The word “terms” as used in article VI, section 4(a) has an obvious and
 apparent meaning of “conditions.” It is important to understand at the outset that
 the word “terms” often—particularly in the legal context—has a distinct meaning
 from the word “term.” That distinction is made clear in an everyday example.
 When asked for the “term” of a lease, a tenant will inevitably respond with the
 duration of time he or she will occupy a unit. But when asked about the “terms” of

the lease, the tenant will speak to the conditions he or she is obligated to perform—whether to pay the rent by the first of the month, to refrain from keeping pets, or to change the air filter monthly. The distinction between the common understanding of the singular word and the plural word is a byproduct of the etymology of the word “terms” as a separate and unique concept from the plural form of “term.” Originating in the early 14th century, the word “terms” was first understood to mean “limiting conditions.” See 17 *The Oxford English Dictionary* 800 (2d ed. 1989); *The Online Etymology Dictionary*, https://www.etymonline.com/word/terms#etymonline_v_30604 (last visited Sept. 18, 2019).

Definitions of the word “terms” confirm that it has a plain and unambiguous meaning consistent with this understanding. The Oxford American Dictionary and Thesaurus defines the word “terms” in relevant part as “requirements or conditions laid down or agreed.” *Oxford American Dictionary & Thesaurus* 1349 (2d ed. 2009). Other dictionaries contain similar definitions. See, e.g., *The American Heritage Dictionary* 1796 (5th ed. 2011) (defining the word “terms” in relevant part as “[o]ne of the elements of a proposed or concluded agreement; a condition”); *Terms*, *Black’s Law Dictionary* 1699 (10th ed. 2014) (defining the word “terms” in relevant part as “[p]rovisions that define an agreement’s scope; conditions or stipulations”); *Merriam-Webster’s Collegiate Dictionary* 1289 (11th ed. 2005) (defining the word “terms” in relevant part as “provisions that determine the nature

and scope of an agreement: conditions”); *Webster’s Third New International Dictionary* 2358 (1993 ed.) (defining the word “terms” in relevant part as “propositions, limitations, or provisions stated or offered for the acceptance of another and determining (as in a contract) the nature and scope of the agreement: conditions”).

That “terms” must be understood as “conditions” in article VI, section 4(a) is further bolstered by context. Article VI, section 4(a) refers to “*terms* of sentence,” not “*term* of sentence.” (Emphasis added.) One sentence often, if not always, contains multiple conditions. In contrast, a sentence has only one durational aspect—a single, fixed period of time in which an offender is subject to the State’s control. When the plural “terms” is used in conjunction with a single sentence, the “conditions” meaning makes sense. Moreover, the word “terms” in article VI, section 4(a) is preceded by the word “all.” This textual juxtaposition suggests that “terms” encompasses a wide and varied range of possibilities. Reading “terms of sentence” as “conditions of sentence” makes far more sense in context than reading it to mean some plural or varied “durations of sentence.”

Finally, the word “sentence” as used in article VI, section 4(a) plainly and unambiguously means “the penalty imposed by the court when a person is found guilty of committing a crime.” This Court has long defined the word “sentence” as “the pronouncement by the court of the penalty imposed on a defendant for the

offense of which the defendant has been adjudged guilty.” *E.g.*, *State v. Richardson*, 915 So. 2d 86, 89 (Fla. 2005) (quoting Fla. R. Crim. P. 3.700(a)); *In re Fla. Rules of Criminal Procedure*, 196 So. 2d 124, 168 (Fla. 1967). Several dictionaries contain similar definitions. *See, e.g.*, *The American Heritage Dictionary* 1597 (5th ed. 2011) (defining the word “sentence” in relevant part as “[t]he penalty imposed by a law court or other authority upon someone found guilty of a crime or other offense”); *Sentence*, *Black’s Law Dictionary* 1569 (10th ed. 2014) (defining the word “sentence” in relevant part as “[t]he judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer”).⁴ When read in its proper context, the word “sentence” plainly means “the penalty imposed by the court when a person is found guilty of committing a crime.” In sum, then, the leading phrase “completion of all terms of sentence” means fulfillment of all conditions of sentence.

⁴ Florida Rule of Criminal Procedure 3.700(b) “mandates that the sentence . . . ‘shall be [orally] pronounced in open court.’ ” *Justice v. State*, 674 So. 2d 123, 125 (Fla. 1996) (quoting Fla. R. Crim. P. 3.700(b)). Ordinarily, the sentencing court’s oral pronouncement of the penalties imposed on a defendant at the sentencing hearing—i.e., the sentence—is contemporaneously or subsequently memorialized in a written sentencing document. *See id.* (“Generally, courts have held that a written order must conform to the oral pronouncement as mandated by rule 3.700 because the written sentence is usually just a record of the actual sentence required to be pronounced in open court.”).

The textual analysis of article VI, section 4(a) does not end with this conclusion. The text of article VI, section 4(a) also specifies that parole and probation must be considered when determining whether an offender has completed “all terms of sentence.” Specifically, article VI, section 4(a) states that an offender, to regain voting rights, must complete the terms of sentence “including parole or probation.”

The significance of this phrase begins with an examination of the meaning of the term “including.” As used in article VI, section 4(a), the word “including” plainly and unambiguously means “comprising a part of a whole (of the judge’s sentence).” The American Heritage Dictionary defines the word “include” in relevant part as “[t]o contain or take in as a part, element, or member.” *The American Heritage Dictionary* 888 (5th ed. 2011). Merriam-Webster’s Collegiate Dictionary similarly defines the word “include” in relevant part as “to take in or comprise as a part of a whole or group.” *Merriam-Webster’s Collegiate Dictionary* 629 (11th ed. 2005). Much the same, Black’s Law Dictionary defines the word “include” in pertinent part as “[t]o contain as a part of something.” *Include, Black’s Law Dictionary* 880 (10th ed. 2014). When read in its proper context, the word “including” plainly means “comprising a part of a whole (of the judge’s sentence).”

For article VI, section 4(a)'s purposes, an offender has not completed "all terms of sentence" if he or she has not completed "parole or probation." These forms of controlled release are well-recognized concepts in criminal law. "Parole" is "[t]he conditional release of a prisoner from imprisonment before the full sentence has been served." Parole, *Black's Law Dictionary* 1292 (10th ed. 2014). In Florida, only the Florida Commission on Offender Review has the authority to grant parole. *See Owens v. State*, 308 So. 2d 171, 171 (Fla. 1st DCA 1975) ("A trial court has no authority to grant a parole. That power is vested solely in the Parole Commission."); *Rollins v. Fla. Parole Comm'n*, 170 So. 3d 7, 7 n.1 (Fla. 2d DCA 2015) ("Florida's Parole and Probation Commission is now known as the Florida Commission on Offender Review."). A sentencing court thus does not specify any guarantee or set any specified period of parole in its sentencing order.

Probation, like parole, is a form of supervised release. Specifically, it is "[a] court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison[.]" Probation, *Black's Law Dictionary* 1396 (10th ed. 2014). In Florida, only trial courts have the authority to order probation. *See Floyd v. Parole & Prob. Comm'n*, 509 So. 2d 919, 920 (Fla. 1987) ("Probation is under the jurisdiction of the courts[.]"). However, courts may order probation without delineating certain aspects found in statute or rule. Also, courts may afford

probation officers some discretion in specifying the conditions and obligations attached to a given period of probation. *See Larson v. State*, 572 So. 2d 1368, 1371-72 (Fla. 1991) (concluding that the court did not violate the law by delegating limited discretion over probationary conditions to a probation officer).

Article VI, section 4(a) references “parole or probation” to reinforce that these forms of controlled release and their associated fulfillment are contemplated as parts of a sentence. Unlike the express penalties imposed by a court, both parole and probationary conditions are often implicit parts of a sentence. A sentencing order does not set forth a mandate for some specific period of parole; nevertheless, an offender’s parole period exists by virtue of a court-imposed sentence of incarceration. Likewise, conditions of probation need not be explicitly enumerated in a sentencing order; courts may afford probation officers limited discretion over conditions. Instead, they may be incorporated by reference or imposed at the discretion of a probation officer. *See, e.g., State v. Hart*, 668 So. 2d 589, 593 (Fla. 1996) (holding that the rules of criminal procedure provide an offender with constructive notice of standard conditions and that the court need only pronounce “special” conditions of probation at sentencing); *Larson*, 572 So. 2d at 1371-72 (concluding that the court did not violate the law by delegating limited discretion over probationary conditions to a probation officer). By noting that “completion of all terms of sentence” includes parole and probation, article VI, section 4(a)

removes any question as to whether such obligations that are implicit in a sentencing order are contemplated and covered under “all terms of sentence.”

Including parole and probation is significant for an additional reason. During parole and probation periods, an offender is subject to accompanying conditions, such as reporting requirements, work requirements, drug testing requirements, and other obligations. These obligations exist by virtue of a court’s order, and an offender cannot successfully complete parole or probation absent compliance with these duties. Thus, when article VI, section 4(a) states that an offender must “complete all terms of sentence including parole or probation,” article VI, section 4(a) makes clear that an offender must adhere to the obligations accompanying these forms of controlled release in order to regain his or her voting rights. Including completion of parole and probation as necessary prerequisites for re-enfranchisement thus bolsters the understanding that “completion of all terms of sentence” contemplates satisfaction of all conditions of a criminal penalty. This understanding is consistent with and reinforces the idea that article VI, section 4(a) reaches and encompasses any court ordered fines, fees, and restitution.

In sum, the constitutional phrase “completion of all terms of sentence including parole or probation” plainly means the fulfillment of: (1) every condition of the incarceration, probation, and community control imposed by the court at sentencing and contained in the four corners of the sentencing document; (2) every

condition of the legal financial obligations imposed by the court at sentencing and contained in the four corners of the sentencing document; (3) every other condition imposed by the court at sentencing and contained in the four corners of the sentencing document, such as community service; (4) every condition of the parole and any other supervision imposed by the Florida Commission on Offender Review; and (5) every condition of the probation as not otherwise specified at the time of sentencing. As such, the phrase “completion of all terms of sentence” plainly includes the required fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

* * *

This Court concluded in *Voting Restoration I* that Amendment 4’s ballot title and summary “clearly and unambiguously” informed voters that the chief purpose of the proposed amendment was to “automatically restore voting rights to felony offenders, except those convicted of murder or felony sexual offenses, *upon completion of all terms of their sentence.*” *Voting Restoration I*, 215 So. 3d at 1208 (emphasis added). This Court went on to conclude that Amendment 4’s ballot title and summary “d[id] not mislead voters” regarding the actual content of the proposed amendment. *Id.* Although the Court’s advisory opinion did not opine on the meaning of the phrase “completion of all terms of sentence,” both of its

conclusions were necessarily grounded in the oral-argument colloquy between the justices and Amendment 4’s Sponsor.

A fair reading of the oral argument transcript shows that the Sponsor led the Court to believe that the Amendment 4 phrase “completion of all terms of sentence” includes the required fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document. At oral argument, the Sponsor assured the justices that Amendment 4 presented a “fair question” and “clear explanation” to voters. Transcript of Oral Argument at 2, *Voting Restoration I*, 215 So. 3d 1202 (Fla. 2017) (Nos. SC16-1785 & SC16-1981). Addressing a question posed by Justice Polston as to whether “completion of [all] terms” includes “full payment of any fines,” the Sponsor responded, “Yes, sir. . . . All terms means all terms within the four corners.” *Id.* at 4. Justice Lawson similarly asked, “You said that terms of sentence includes fines and costs. . . . [T]hat’s the way it’s generally pronounced in criminal court. Would it also include restitution when it was ordered to a victim as part of the sentence?” *Id.* at 10. The Sponsor answered, “Yes.” Justice Pariente then posited the inclusion of fines, fees, and restitution as part of the completion of sentence “would actually help the state because if fines, costs and restitution are a requirement . . . for those that want to vote, there’s a big motivation to pay unpaid costs, fines and restitution.” *Id.* at 11.

Were the Sponsor to have taken the position that “completion of all terms of sentence” did not include fines, fees, and restitution, the Court may have reached a contrary conclusion on the issue of Amendment 4’s ambiguity.

II. A common-sense understanding of the nature of sentencing supports the conclusion that the constitutional phrase “completion of all terms of sentence” includes the required fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

A common-sense understanding of the nature of sentencing supports the conclusion that the constitutional phrase “completion of all terms of sentence” includes the fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

This Court’s own precedent expressly acknowledges that fines, fees, and restitution are considered valid parts of a sentence. *See, e.g., Morganti v. State*, 573 So. 2d 820, 821 (Fla. 1991) (“A lawful sentence may comprise several penalties, such as incarceration, probation, and a fine.”); *J.O.S. v. State*, 689 So. 2d 1061, 1063 (Fla. 1997) (“Florida has restitution programs provided by statute which give trial courts the authority to require defendants who are adjudicated guilty to repay their victims as a condition of sentence.”); *Villery v. Fla. Parole & Prob. Comm’n*, 396 So. 2d 1107, 1110 (Fla. 1980) (“Generally, a fine or a sentence of imprisonment or both is the ‘penalty’ which may be imposed [as part of a sentence].”); *cf. Osterhoudt v. State*, 214 So. 3d 550, 551 (Fla. 2017) (holding that

“trial courts must individually pronounce discretionary fees, costs, and fines during a sentencing hearing to comply with due process requirements”); *State v. Sanderson*, 625 So. 2d 471, 473 (Fla. 1993) (holding that “an order of restitution must be imposed at the time of sentencing or within sixty days thereafter”).

The Florida Courts of Appeal have similarly acknowledged that courts may impose fines, fees, and restitution as part of a sentence pursuant to Florida law. *See, e.g., Timmons v. State*, 453 So. 2d 143, 144 (Fla. 1st DCA 1984) (describing the imposition of a 12-year period of incarceration and a \$10,000 fine as “a legal sentence”); *Kirkland v. State*, 575 So. 2d 1315, 1316 (Fla. 2d DCA 1991) (acknowledging that “restitution” is “a part of a legal sentence”); *Ottney v. State*, 571 So. 2d 20, 21 (Fla. 2d DCA 1990) (acknowledging that a trial court “may impose a fine on the defendant as part of the defendant’s sentence”); *Charles v. State*, 59 So. 3d 291, 292 (Fla. 3d DCA 2011) (“Case law is clear that a fine is as much a part of a sentence as is incarceration.”); *Jones v. State*, 590 So. 2d 1061, 1062 (Fla. 4th DCA 1991) (“Restitution is part of a sentence.”); *Kittelson v. State*, 980 So. 2d 533, 535 (Fla. 5th DCA 2008) (“Restitution is a mandated part of sentencing[.]”); *cf. Jones v. State*, 666 So. 2d 191, 192 (Fla. 2d DCA 1995) (“There was no error in imposing the public defender’s fee, which was orally announced at sentencing.”).

In addition, the Florida Rules of Criminal Procedure promulgated by this Court implicitly acknowledge that fines, fees, and restitution are valid penalties when imposed as part of a sentence pursuant to Florida law. Florida Rule of Criminal Procedure 3.986(a) provides that “[t]he forms [related to judgment and sentence] set forth below . . . shall be used by all courts.” *See generally* Fla. R. Crim. P. 3.986(c) (entitled “Form for Charges, Costs, and Fees”); Fla. R. Crim. P. 3.986(d) (entitled “Form for Sentencing”); Fla. R. Crim. P. 3.986(g) (entitled “Form for Restitution Order”). The prior 2017 version of rule 3.986(c)—the standard form for ordering charges, costs, and fees—stated that “[f]ines imposed as *part of a sentence* to section 775.083, Florida Statutes, are to be recorded on the sentence page(s).” (Emphasis added.) The current 2019 version of rule 3.986(d)—the standard form for sentencing—provides an option for the sentencing court to impose, as part of “The Sentence Of The Court,” a “fine of \$ __, pursuant to section 775.083, Florida Statutes, plus \$__ as the 5% surcharge required by section 938.04, Florida Statutes.” The 2019 version of rule 3.986(g)—the standard form for ordering restitution—permits the sentencing court to “apply [restitution] to the sentence imposed in this section” and “[i]nclude all restitution and findings, as authorized by law and pronounced at sentencing.”

Consistent with this Court’s precedent, the precedent of the Florida Courts of Appeal, and the Florida Rules of Criminal Procedure, every reasonable Floridian

would understand the phrase “completion of all terms of sentence” to include the required fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document. It is a matter of common sense that when a court orders a defendant to pay fines, fees, and restitution at sentencing and within the four corners of the sentencing document, the court has imposed such legal financial obligations as part of the “terms” of the defendant’s sentence. This conclusion is supported by the fact that Floridians regularly understand the word “terms” to mean “conditions” in other contexts. *Cf. Johnson v. State*, 238 So. 3d 726, 738 (Fla. 2018) (referring to the “full performance of the terms of the agreement”); *Fla. Dep’t of Transp. v. Schwefringhaus*, 188 So. 3d 840, 845 (Fla. 2016) (referring to the “obligations necessary to fulfill the terms of [a] contract”); *State v. Akins*, 69 So. 3d 261, 264 (Fla. 2011) (stating that the defendant “made continual payments as required by the terms of his probation”); *Swire Pac. Holdings, Inc. v. Zurich Ins. Co.*, 845 So. 2d 161, 169 (Fla. 2003) (“In Florida, coverage under an insurance contract is defined by the language and terms of the policy.”); *In re Amendments to the Rules Regulating the Fla. Bar*, 24 So. 3d 63, 98 (Fla. 2009) (“Contracts or agreements for attorney’s fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements[.]”); *Corp. Exp. Office Prod., Inc. v. Phillips*, 847 So. 2d 406, 408 (Fla. 2003) (“The terms of the

noncompete agreements precluded the employees from competing against their employers or soliciting the employers' customers for one year following the termination of employment.”). To reach a contrary conclusion, one would have to unreasonably view the phrase “terms of sentence” in a hyper-technical fashion divorced from both context and common understanding.

CONCLUSION

For the foregoing reasons, Governor Ron DeSantis respectfully submits that the Justices should advise that the constitutional phrase “completion of all terms of sentence” plainly includes the required fulfillment of all fines, fees, and restitution imposed by the court at sentencing and contained in the four corners of the sentencing document.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of September 2019, a copy of this brief was served by electronic service through the Florida Court’s E-Filing Portal, which will send a copy of this filing to all counsel of record.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is typed in Times New Roman 14-point font and complies with Florida Rule of Appellate Procedure 9.210(a).

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