No. 20-12003

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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

v.

RON DESANTIS, IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE STATE OF FLORIDA, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Florida,
Case No. 4:19-cv-300-RH/MJF

BRIEF OF *AMICUS CURIAE* FLORIDA RIGHTS RESTORATION COALITION IN SUPPORT OF PLAINTIFFS-APPELLEES

Chiraag Bains
DĒMOS
740 6th Street NW, 2nd Floor
Washington, DC 20001
(202) 864-2746
cbains@demos.org

Naila S. Awan
DĒMOS
80 Broad Street, 4th Floor
New York, NY 10004
(212) 485-6065
nawan@demos.org

Counsel for Amicus Curiae

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure and Rule 35-8 of this Court, Florida Rights Restoration Coalition (hereinafter "FRRC" or "*amicus curiae*") states that FRRC is a non-profit organization that is a project of Tides Advocacy, a 501(c)(4) social welfare organization. FRRC is not a subsidiary or affiliate of any publicly owned corporation and has not issued shares or debt securities to the public. Therefore, no publicly held corporation holds ten percent or more of its stock. *Amicus curiae* is not aware of any publicly owned corporation that has a financial interest in the outcome of this litigation and has not cooperated with any such corporation.

The undersigned counsel of record certifies that the following listed persons and entities, as described in 11th Cir. R. 26.1-2, have an interest in the outcome of this case:

1. Abudu, Nancy G., *Attorney for Plaintiffs/Appellees*
2. Aden, Leah C., *Attorney for Plaintiffs/Appellee*
3. Adkins, Mary E., *Witness*
4. Alikhan, Loren L., *Counsel for Amici Curiae*
5. American Civil Liberties Union Foundation, *Attorneys for Plaintiffs/Appellees*
6. American Civil Liberties Union of Florida, *Attorneys for Plaintiffs/Appellees*
7. Antonacci, Peter, *Defendant*

8. Arrington, Mary Jane, *Witness*

9. Atkinson, Daryl V., *Attorney for Amicus Curiae*

10. Awan, Naila S., *Attorney for Amicus Curiae*

11. Bagenstos, Samuel R., *Amicus Curiae*

12. Bains, Chiraag, *Attorney for Amicus Curiae*

13. Baird, Shelby L., *Attorney for Defendant/Appellant*

14. Bakke, Douglas, *Witness*

15. Balderas, Hector, *Counsel for Amici Curiae*

16. Bangert, Ryan L., *Counsel for Amicus Curiae*

17. Barber, Michael, *Witness*

18. Barton, Kim A., *Defendant*

19. Becerra, Xavier, *Counsel for Amici Curiae*

20. Bechara, Jacqueline R., *Counsel for Amici Curiae*

21. Becker, Sue, *Counsel for Amicus Curiae*

22. Bennett, Michael, *Defendant/Witness*

23. Bentley, Morgan, *Defendant*

24. Bowie, Blair, *Attorney for Plaintiffs/Appellees*

25. Brazil and Dunn, *Attorneys for Plaintiffs/Appellees*

26. Brennan Center for Justice at NYU School of Law, *Attorneys for Plaintiffs/Appellees*

27. Brnovich, Mark, *Counsel for Amicus Curiae*

28. Brown, S. Denay, *Attorney for Defendant*

29. Brown, Toshia, *Witness*

30. Bryant, Curtis, *Plaintiff/Appellee/Witness*

31. Burch, Traci, *Witness*

32. Cameron, Daniel, *Counsel for Amicus Curiae*
33. Campaign Legal Center, *Attorney for Plaintiffs/Appellees*
34. Carpenter, Whitley, *Attorney for Amicus Curiae*
35. Carr, Christopher M., *Counsel for Amicus Curiae*
36. Cesar, Geena M., *Attorney for Defendant*
37. Clary, Richard W., *Counsel for Amicus Curiae*
38. Coleman, Sandra S., *Amicus Curiae*
39. Common Cause, *Amicus Curiae*
40. Commonwealth of Kentucky, *Amicus Curiae*
41. Connors, Clare E., *Counsel for Amici Curiae*
42. Consovoy, William S., *Counsel for Amicus Curiae*
43. Cooper & Kirk, PLLC, *Attorneys for Defendant/Appellant*
44. Cooper, Charles J., *Attorney for Defendant/Appellant*
45. Covington & Burling LLP, *Counsel for Amicus Curiae*
46. Cowles, Bill, *Defendant*
47. Cravath, Swaine & Moore LLP, *Counsel for Amicus Curiae*
48. Curtis, Kelsey J., *Counsel for Amicus Curiae*
49. Cusick, John S., *Attorney for Plaintiffs/Appellees*
50. Danahy, Molly E., *Attorney for Plaintiffs/Appellees*
51. Daniels, Gilda R., *Amicus Curiae*
52. Danjuma, R. Orion, *Attorney for Plaintiffs/Appellees*
53. Davis, Ashley E., *Attorney for Defendant/Appellant*
54. Debevoise & Plimpton LLP, *Counsel for Amici Curiae*
55. Delaney, Sheila K., *Amicus Curiae*
56. Dēmos, *Attorneys for Amicus Curiae*

57. DeSantis, Ron, *Defendant/Appellant*

58. Diaz, Jonathan, *Attorney for Plaintiffs/Appellees*

59. District of Columbia, *Amicus Curiae*

60. Donovan, Jr., Thomas, J., *Counsel for Amici Curiae*

61. Donovan, Todd, *Witness*

62. Douglas, Joshua, *Amicus Curiae*

63. Dunn, Chad W., *Attorney for Plaintiffs/Appellees*

64. Dunn, John R., *Amicus Curiae*

65. Earley, Mark, *Defendant*

66. Ebenstein, Julie A., *Attorney for Plaintiffs/Appellees*

67. Ellis, Atiba, *Amicus Curiae*

68. Ellison, Keith, *Counsel for Amici Curiae*

69. Ellison, Marsha, *Witness*

70. Ernst, Colleen M., *Attorney for Defendant*

71. Fairbanks Messick, Misty S., *Counsel for Amicus Curiae*

72. Ferguson, Robert W., *Counsel for Amici Curiae*

73. Feizer, Craig Dennis, *Attorney for Defendant*

74. Fitch, Lynn, *Counsel for Amicus Curiae*

75. Florida Justice Institute, Inc., *Attorneys for Amicus Curiae*

76. Florida Rights Restoration Coalition, *Amicus Curiae*

77. Florida State Conference of the NAACP, *Plaintiff/Appellee*

78. Flynn, Diana K., *Amicus Curiae*

79. Ford, Aaron D., *Counsel for Amici Curiae*

80. Forward Justice, *Attorneys for Amicus Curiae*

81. Fram, Robert D, *Counsel for Amicus Curiae*

82. Frosh, Brian E., *Counsel for Amici Curiae*
83. Fuentes-Rohwer, Luis, *Amicus Curiae*
84. Gaber, Mark P., *Attorney for Plaintiffs/Appellees*
85. Geltzer, Joshua A., *Attorney for Amici Curiae*
86. Giller, David, *Attorney for Plaintiffs/Appellees*
87. Glickstein, Howard A., *Amicus Curiae*
88. Gordon-Marvin, Emerson, *Attorney for Amicus Curiae*
89. Grewal, Gurbir S., *Counsel for Amici Curiae*
90. Gringer, David, *Counsel for Amici Curiae*
91. Gross, Mark L., *Amicus Curiae*
92. Gruver, Jeff, *Plaintiff/Appellee*
93. Gupta, Vanita, *Amicus Curiae*
94. Hamilton, Jesse D., *Plaintiff/Appellee*
95. Hancock, Paul F., *Amicus Curiae*
96. Hanson, Corbin F., *Attorney for Defendant*
97. Harrington, Sarah E., *Amicus Curiae*
98. Harris, Jeffrey M., *Counsel for Amicus Curiae*
99. Harrod, Rene D., *Attorney for Defendant*
100. Haughwout, Carey, *Witness*
101. Healey, Maura, *Counsel for Amici Curiae*
102. Heffernan, Brian F., *Amicus Curiae*
103. Herring, Mark R., *Counsel for Amici Curiae*
104. Herron, Mark, *Attorney for Defendant*
105. Hinkle, Robert L., *District Court Judge*
106. Ho, Dale E., *Attorney for Plaintiffs/Appellees*

107. Hoffman, Lee, *Plaintiff/Appellee*
108. Hogan, Mike, *Defendant*
109. Holland & Knight, LLP, *Attorneys for Defendant*
110. Holmes, Jennifer, *Attorney for Plaintiffs/Appellees*
111. Hunger, Sarah A., *Counsel for Amici Curiae*
112. Hunter, David H., *Amicus Curiae*
113. Ifill, Sherrilyn A., *Attorney for Plaintiffs/Appellees*
114. Ivey, Keith, *Plaintiff/Appellee*
115. Jacquot, Joseph W., *Attorney for Defendant/Appellant*
116. James, Letitia, *Counsel for Amici Curiae*
117. Jazil, Mohammad O., *Attorney for Defendant*
118. Jennings, Kathleen, *Counsel for Amici Curiae*
119. Johnson-Betts, Zita, *Amicus Curiae*
120. Jones, Gerald W., *Amicus Curiae*
121. Jones, Kelvin Leon, *Plaintiff/Appellee*
122. K&L Gates, LLP, *Counsel for Amicus Curiae*
123. Katzman, Adam, *Attorney for Defendant*
124. Kelman, Olivia, *Counsel for Amici Curiae*
125. Kengle, Robert A., *Amicus Curiae*
126. King, Loretta, *Amicus Curiae*
127. Klitzberg, Nathaniel, *Attorney for Defendant*
128. Kousser, J. Morgan, *Witness*
129. LaCour, Edmund G., Jr., *Counsel for Amicus Curiae*
130. LaFond, Jason, *Counsel for Amicus Curiae*
131. Landry, Jeff, *Counsel for Amicus Curiae*

132. Landsberg, Brian K., *Amicus Curiae*

133. Lang, Danielle, *Attorney for Plaintiffs/Appellees*

134. Latimer, Craig, *Defendant*

135. League of Women Voters of Florida, *Plaintiff/Appellee*

136. Lee, Bill Lann, *Amicus Curiae*

137. Lee, Laurel M., *Defendant/Appellant*

138. Leicht, Karen, *Plaintiff/Appellee*

139. Lindsay, Steven J., *Attorney for Defendant/Appellant*

140. Marblestone, David B., *Amicus Curiae*

141. Marconnet, Amber, *Witness*

142. Marino, Anton, *Attorney for Plaintiffs/Appellees*

143. Marshall, Steve, *Counsel for Amicus Curiae*

144. Martinez, Carlos J., *Witness*

145. Mateer, Jeffrey C., *Counsel for Amicus Curiae*

146. Matthews, Maria, *Witness*

147. McCord, Mary B., *Attorney for Amici Curiae*

148. McCoy, Rosemary Osborne, *Plaintiff/Appellee/Witness*

149. McVay, Bradley R., *Attorney for Defendant/Appellant*

150. Meade, Desmond, *Witness*

151. Mendez, Luis, *Plaintiff/Appellee*

152. Meros, Jr., George M., *Attorney for Defendant*

153. Meyers, Andrew J., *Attorney for Defendant*

154. Midyette, Jimmy, *Attorney for Plaintiffs/Appellees*

155. Miller, Jermaine, *Plaintiff/Appellee*

156. Mitchell, Emory Marquis, *Plaintiff/Appellee*

157. Moody, Ashley, *Attorney for Defendant/Appellant*
158. Morales-Doyle, Sean, *Attorney for Plaintiffs/Appellees*
159. Moreland, Latoya, *Plaintiff/Appellee/Witness*
160. NAACP Legal Defense and Educational Fund, *Attorneys for Plaintiffs/Appellees*
161. Neily, Clark M. III, *Attorney for Amicus Curiae*
162. Nelson, Janai S., *Attorney for Plaintiffs/Appellees*
163. Nessel, Dana, *Counsel for Amici Curiae*
164. Notz, Jane Elinor, *Counsel for Amici Curiae*
165. Oats, Anthrone, *Witness*
166. Oguntoye, Victoria, *Counsel for Amici Curiae*
167. Orange County Branch of the NAACP, *Plaintiff/Appellee*
168. Patrick, Deval L., *Amicus Curiae*
169. Patterson, Peter A., *Attorney for Defendant/Appellant*
170. Paul Weiss Rifkind Wharton & Garrison LLP, *Attorneys for Plaintiffs/Appellees*
171. Paxton, Ken, *Counsel for Amicus Curiae*
172. Pérez, Myrna, *Attorneys for Plaintiffs/Appellees*
173. Perko, Gary V., *Attorney for Defendant*
174. Peterson, Doug, *Counsel for Amicus Curiae*
175. Phalen, Steven, *Plaintiff/Appellee*
176. Phillips, Kaylan L., *Counsel for Amicus Curiae*
177. Pinzler, Isabelle Katz, *Amicus Curiae*
178. Pollak, Stephen J., *Amicus Curiae*
179. Posner, Mark A., *Amicus Curiae*

180. Pratt, Joshua E., *Attorney for Defendant/Appellant*
181. Price, Tara R., *Attorney for Defendant*
182. Primrose, Nicholas A., *Attorney for Defendant/Appellant*
183. Racine, Karl A., *Counsel for Amici Curiae*
184. Ramirez, Diane, *Counsel for Amicus Curiae*
185. Raoul, Kwame, *Counsel for Amici Curiae*
186. Raysor, Bonnie, *Plaintiff/Appellee*
187. Reingold, Dylan T., *Plaintiff/Appellee*
188. Reyes, Sean, *Counsel for Amicus Curiae*
189. Rich, Joseph D., *Amicus Curiae*
190. Riddle, Betty, *Plaintiff/Appellee*
191. Rivkin, David W., *Counsel for Amici Curiae*
192. Rizer, Arthur L. III, *Attorney for Amicus Curiae*
193. Rosenblum, Ellen F., *Counsel for Amici Curiae*
194. Rosenberg, John M., *Amicus Curiae*
195. Rosenthal, Oren, *Attorney for Defendant*
196. Ross, Alexander C., *Amicus Curiae*
197. Rubin, Lee H., *Amicus Curiae*
198. Rush, Robert R., *Amicus Curiae*
199. Rutledge, Leslie, *Counsel for Amicus Curiae*
200. Schifferle, Carl J., *Counsel for Amici Curiae*
201. Scoon, Cecile M., *Witness*
202. Shannin, Nicholas, *Attorney for Defendant*
203. Shapiro, Josh, *Counsel for Amici Curiae*
204. Sherrill, Diane, *Plaintiff/Appellee*

205. Short, Caren E., *Attorney for Plaintiffs/Appellees*

206. Signoracci, Pietro, *Attorney for Plaintiffs/Appellees*

207. Silver, Jessica Dunsay, *Amicus Curiae*

208. Singleton, Sheila, *Plaintiff/Appellee/Witness*

209. Smith, Daniel A., *Witness*

210. Smith, Paul, *Attorney for Plaintiffs/Appellees*

211. Southern Poverty Law Center, *Attorneys for Plaintiffs/Appellees*

212. Spital, Samuel, *Attorney for Plaintiffs/Appellees*

213. Stanley, Blake, *Witness*

214. State of Alabama, *Amicus Curiae*

215. State of Arizona, *Amicus Curiae*

216. State of Arkansas, *Amicus Curiae*

217. State of California, *Amicus Curiae*

218. State of Colorado, *Amicus Curiae*

219. State of Connecticut, *Amicus Curiae*

220. State of Delaware, *Amicus Curiae*

221. State of Georgia, *Amicus Curiae*

222. State of Hawaii, *Amicus Curiae*

223. State of Illinois, *Amicus Curiae*

224. State of Kentucky, *Amicus Curiae*

225. State of Louisiana, *Amicus Curiae*

226. State of Maryland, *Amicus Curiae*

227. State of Massachusetts, *Amicus Curiae*

228. State of Michigan, *Amicus Curiae*

229. State of Minnesota, *Amicus Curiae*

230. State of Mississippi, *Amicus Curiae*

231. State of Nebraska, *Amicus Curiae*

232. State of Nevada, *Amicus Curiae*

233. State of New Jersey, *Amicus Curiae*

234. State of New Mexico, *Amicus Curiae*

235. State of New York, *Amicus Curiae*

236. State of Oregon, *Amicus Curiae*

237. State of Pennsylvania, *Amicus Curiae*

238. State of South Carolina, *Amicus Curiae*

239. State of Texas, *Amicus Curiae*

240. State of Utah, *Amicus Curiae*

241. State of Vermont, *Amicus Curiae*

242. State of Virginia, *Amicus Curiae*

243. State of Washington, *Amicus Curiae*

244. Steinberg, Michael A., *Attorney for Plaintiff/Appellee*

245. Swain, Robert, *Attorney for Defendant*

246. Swan, Leslie Rossway, *Defendant*

247. Sweren-Becker, Eliza, *Attorney for Plaintiffs/Appellees*

248. Tax and Constitutional Law Professors, *Amici Curiae*

249. The Cato Institute, *Amicus Curiae*

250. The Fines and Fees Justice Center, *Amicus Curiae*

251. The Florida Association of Criminal Defense Lawyers, *Amicus Curiae*

252. The Public Interest Legal Foundation, *Amicus Curiae*

253. The R Street Institute, *Amicus Curiae*

254. Thompson, William T., *Counsel for Amicus Curiae*

255. Tilley, Daniel, *Attorney for Plaintiffs/Appellees*

256. Timmann, Carolyn, *Witness*

257. Todd, Stephen M., *Attorney for Defendant*

258. Tong, William, *Counsel for Amici Curiae*

259. Topaz, Jonathan S., *Attorney for Plaintiffs/Appellees*

260. Trevisani, Dante, *Attorney for Amicus Curiae*

261. Turner, James P., *Amicus Curiae*

262. Turner, Ron, *Defendant*

263. Tyson, Clifford, *Plaintiff/Appellee*

264. Valdes, Michael B., *Attorney for Defendant*

265. Van Zile, Caroline S., *Counsel for Amici Curiae*

266. Walker, Hannah L., *Witness*

267. Wayne, Seth, *Attorney for Amici Curiae*

268. Weber, Ellen M., *Amicus Curiae*

269. Weiser, Phil, *Counsel for Amici Curiae*

270. Weiser, Wendy, *Attorney for Plaintiffs/Appellees*

271. Weinberg, Barry H., *Amicus Curiae*

272. Weinstein, Amanda, *Witness*

273. Weinstein, Steven R., *Attorney for Amicus Curiae*

274. Wenger, Edward M., *Attorney for Defendants/Appellants*

275. White, Christina, *Defendant*

276. Williford, Harold W., *Counsel for Amici Curiae*

277. WilmerHale LLP, *Counsel for Amicus Curiae*

278. Wilson, Alan, *Counsel for Amicus Curiae*

279. Wrench, Kristopher, *Plaintiff/Appellee*

280. Wright, Raquel, *Plaintiff/Appellee*

281. Yeomans, William, *Amicus Curiae*

Dated: August 3, 2020

/s/ Chiraag Bains
Chiraag Bains

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT i

TABLE OF CONTENTS xiv

INTEREST OF AMICUS CURIAE 1

INTRODUCTION 3

SUMMARY OF ARGUMENT 7

ARGUMENT 9

I. THE STATE'S DEMONSTRATED INABILITY TO ACCURATELY DETERMINE WHAT, IF ANY, OUTSTANDING LEGAL FINANCIAL OBLIGATIONS INDIVIDUALS MUST PAY TO REGISTER TO VOTE WITHOUT RISKING CRIMINAL LIABILITY VIOLATES THEIR CONSTITUTIONAL RIGHTS. 9

II. THE DISTRICT COURT AND ELEVENTH CIRCUIT PANEL IN *JONES I* CORRECTLY HELD THAT THE *GRIFFIN/BEARDEN* CASES PROHIBIT PUNISHING PEOPLE THROUGH CONTINUED DISENFRANCHISEMENT DUE TO THEIR INABILITY TO PAY 17

III. NOTHING ABOUT THE UNCONSTITUTIONALITY OF SB7066 REQUIRES THE WHOLESALE INVALIDATION OF AMENDMENT 4. 24

CONCLUSION 28

CERTIFICATE OF SERVICE 29

CERTIFICATE OF COMPLIANCE 29

TABLE OF CITATIONS

Cases

Anderson v. Celebrezze, 460 U.S. 780 (1983) 14

Bearden v. Georgia, 461 U.S. 660 (1983) .... passim

Burdick v. Takushi, 504 U.S. 428 (1992)...14

Crawford v. Marion Cty. Elec. Bd., 553 U.S. 181 (2008) 14

Florida v. Sanchez, Case No. F99000349 (Fla. 11th Cir. Ct. 2014) 4

Florida v. Sanchez, Case No. F99000812 (Fla. 11th Cir Ct. 2014)...........................4

Florida v. Sanchez, Case No. F99001461 (Fla. 11th Cir. Ct. 2014) 4

Ga. Muslim Voter Project v. Kemp, 918 F.3d 1262 (11th Cir. 2019) 15

Griffin v. Illinois, 351 U.S. 12 (1956)...8, 18

Jones v. DeSantis, 2020 WL 2618062 (N.D. Fla. May 24, 2020)........ 12, 15, 17, 25

Jones v. Governor of Fla., 950 F.3d 795 (11th Cir. 2020) 20

M.L.B. v. S.L.J., 519 U.S. 102 (1996) 19, 23, 26

Mathews v. Eldridge, 424 U.S. 319 (1976) 15

McNeil v. Canty, 12 So.3d 215 (Fla. 2009) 25

Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979) 23

Seila Law LLC v. Consumer Fin. Prot. Bureau, 140 S. Ct. 2183 (2020)................27

Storer v. Brown, 415 U.S. 724 (1974) 14

Tate v. Short, 401 U.S. 395 (1971) 19

Trotter v. Sec'y, Dep't of Corrs., 535 F.3d 1286 (11th Cir. 2008)..........................15

Walker v. City of Calhoun, 901 F.3d 1260 (11th Cir. 2018) 22

Washington v. Davis, 426 U.S. 229 (1976) 23

Williams v. Illinois, 399 U.S. 235 (1970) 18, 21, 26

Other Authorities

Amy Gardner & Lori Rozsa, "In Florida, Felons Must Pay Court Debts Before They Can Vote. But with No System to Do So, Many Have Found It Impossible," *Washington Post* (May 13, 2020) 16

Florida Voter Registration Application 8

Florida Statutes

Fla. Const., art. VI, § 4(a) 24

Fla. Sta. § 104.011 ....9, 11

Fla. Sta. § 104.041 9

Fla. Stat. § 98.0751(2)(a) 17

INTEREST OF AMICUS CURIAE[1]

FRRC is a nonpartisan, nonprofit grassroots membership organization run by returning citizens—formerly convicted persons—in the State of Florida. The organization has deep investment in the automatic restoration of rights provided by Amendment 4's changes to the Florida Constitution and in ensuring that its members and other returning citizens it serves can register and vote.

FRRC is dedicated to ending disenfranchisement and discrimination against people with convictions and creating a more humane reentry system. The organization has fought to restore voting rights to Floridians with felony convictions since 2011. FRRC led the campaign for a constitutional amendment to end permanent disenfranchisement in Florida for all felonies other than murder and felony sexual offense. FRRC submitted the first draft of Amendment 4 to the Florida Division of Elections and collected over 66,000 signatures to secure review of the proposed amendment by the Florida Supreme Court. Later, FRRC helped collect signatures from more than 1.1 million voters to qualify Amendment 4 for the November 2018 ballot. The organization created a political action committee, met with legislators, and ran a public education campaign to build support for

[1] None of the counsel for the parties in this litigation has authored this brief, in whole or in part. Furthermore, no party, party's counsel, or outside organization has funded the research, writing, preparation, or submission of this brief.

Amendment 4. These efforts included phone banking and a widespread get-out-the-vote campaign. In 2018 alone, FRRC spent more than $1.4 million to make Amendment 4 a reality. Due in no small part to these efforts, Amendment 4 passed with the support of over 5.1 million Floridians—64.55% of the vote.

Afterward, FRRC engaged with Florida legislators to try to reduce the obstacles to registration and voting contained in Senate Bill 7066 ("SB7066"), *see* 2019 Fla. Laws 27-29, ch. 2019-162 § 25 (codified at Fla. Stat. § 98.0751), and since SB7066's enactment the organization has devoted countless hours to helping people register to vote under the new system. This includes working with county officials to establish efficient processes for rights restoration through SB7066's provisions; responding to questions about voter eligibility from returning citizens received through an organization-run hotline, at meetings of FRRC's 17 chapters, through forums and online events, and during voter registration events; assisting (or attempting to assist) voters in determining the amount of legal financial obligations ("LFOs") they owed before becoming eligible to vote; and raising funds for its Fines and Fees Fund, 100% of which go to paying off outstanding LFOs for returning citizens who cannot afford them so they may regain the vote under SB7066. The organization knows firsthand the many hurdles returning citizens face in determining their eligibility, the dizzying complexity and at times impossibility of determining what financial obligations are owed, and the inconsistencies in record systems and

payment allocation practices from county to county. FRRC's experience is that the majority of returning citizens it engages with who have outstanding LFOs simply cannot afford them, and that conditioning voting rights restoration on the payment of LFOs for these individuals will cement the system of permanent disenfranchisement Amendment 4 was meant to end.

Having engaged in the fight to restore voting rights to Florida's returning citizens for nearly a decade—and informed by the experiences of its directly impacted leaders, members, and constituents—FRRC has a significant interest in this case.

INTRODUCTION

Angel Sanchez is a leader in his community and an upstanding Florida citizen. He paid his way through community college and earned a Jack Kent Cooke Scholarship to the University of Central Florida, where he won the top student award and graduated with University, GPA, and Thesis honors in May 2017. This past spring, he graduated from University of Miami School of Law, where he volunteered as a tutor at Dade Correction Institution, mentored at-risk youth, advocated for wrongfully convicted prisoners with the Innocence Clinic, and served on the University of Miami Law Review's editorial board. He has already published in the Harvard Law Review. *See* Angel E. Sanchez, *In Spite of Prison*, 132 Harv. L. Rev.

1650 (2019). Since 2014, Angel has been a critical member of FRRC, advocating for Amendment 4's passage and now serving as a paid legislative analyst.

Despite his accomplishments, Angel could not vote until Floridians adopted Amendment 4. When he was sixteen years old, Angel was convicted of felonies, sentenced to prison, and ordered to pay $1,698 in LFOs.

After his release from prison, Angel made monthly payments toward his LFOs, first with money orders because he was homeless and had no bank account, and later through JPay, a private LFO-payment company used by many Florida jurisdictions. Florida Department of Corrections Probation Services records indicate that Angel paid $2,308.88 between 2011 and 2014. In early 2014, Angel's probation officer informed Angel that he had paid all the debts imposed as part of his adjudication of guilt through his probation payments, and that subsequent payments would only go toward Angel's probation fees. His attorney also affirmed that he had "paid all fines and court costs" as of March 20, 2014. Mot. to Modify Probation ¶ 9, *Florida v. Sanchez*, Case Nos. F99000349A, F99000812, F99001461 (Fla. 11th Cir. Ct. Mar. 21, 2014). On April 30, 2014, the Eleventh Judicial Circuit Court terminated Angel's probation early and ordered his sentence complete because of his extraordinary turnaround and the positive example he had set.

When Florida voters passed Amendment 4, Angel was elated. After thirty-six years, he would finally be a full citizen, able to express his voice and his leadership

through his ballot. He registered to vote on January 8, 2018—the day Amendment 4 became effective—and cast his first vote in the March 17, 2020 Presidential Preference Primary. It was one of the happiest days of his life.

On July 25, 2020, Angel was researching how much he had paid in LFOs when he discovered that the Miami-Dade Clerk of Courts' Office ("Clerk's Office") still lists outstanding balances on his LFOs, even though the initial total he owed according to the Clerk's Office was only $1,698 and he had paid over $600 more than that through his probation payments, which were supposed to go to the Clerk.

Despite all the money Angel paid; despite Probation Services' records of his payments; despite his probation officer's explicit statement that Angel had terminated his court costs; despite the Circuit Court's early termination of his sentence; despite being allowed to register to vote; and despite the Florida Department of Elections' website showing he is eligible to vote—the Clerk's Office still has incorrect information about his LFOs, because the Clerk failed to properly allocate payments received from probation and/or the probation office failed to properly transmit all payments.

After much digging, Angel learned that one of his balances with the Clerk's Office was sent to a collections agency, which never contacted Angel and now refuses to clear his debt until he pays an additional collection fee *never imposed* as part of his sentence. He has also discovered that the Florida Department of Law

Enforcement lists a $298 fine on his record, even though his sentence had not included any fine. And he learned that his JPay online account reflects no records of his payments, probably because they occurred over six years ago.

Angel is now working to have the Clerk's Office and the Florida Department of Law Enforcement ("FDLE") correct their records, but neither he—nor the officials with whom he has spoken—can determine how this Kafkaesque nightmare arose. A Probation Services employee told him the office has only two employees who work on old fees *for the entire state*. Another said that historically the office would issue a formal letter indicating completion of LFOs but often did not issue such a letter when a person's sentence was ordered terminated early by a court. Employees of the Clerk's Office, Probations Services, and FDLE have all expressed confusion about Angel's situation and directed him to other entities.

Until the Clerk's Office and FDLE confirm that his LFOs are complete, Angel will not vote again. He fears that he will be accused of willfully violating Florida election law unless he has absolute, written confirmation of completed LFOs from each agency involved. Although Angel paid all the money he was told to pay—and thus met the requirements for eligibility to vote under SB7066's interpretation of Amendment 4—Florida's arcane systems, inconsistencies across government offices, poor record keeping, and glacial bureaucracy mean that he may well be precluded from voting in the coming general federal election.

Angel has used all his intelligence and legal training to navigate these obstacles. He has relied on the expertise of his colleagues at FRRC. Despite his skill and his position at the leading rights restoration organization, he is burdened and chilled from exercising his fundamental right to vote. His experience reflects that of many Floridians and is a harbinger of the massive disenfranchisement that will result if this Court reinstates SB7066's unconstitutional pay-to-vote system.

SUMMARY OF ARGUMENT

In passing Amendment 4 the citizens of Florida sent a clear message: it was time to end Florida's system of permanent disenfranchisement. Nearly 65 percent of voters in the November 2018 election cast their ballots for second chances and to restore the right to vote to formerly convicted people.

SB7066 unconstitutionally undermines the fundamental right to vote, as the district court and a panel of this Court concluded. FRRC offers this brief to make three points informed by its experience working with formerly convicted persons struggling to participate in Florida's democracy under the strictures of SB7066.

First, FRRC, its members, and the people it serves have met repeated and utter frustration in attempting to identify whether a given returning citizen has outstanding LFOs and if so, what amount of the LFOs must be repaid to secure the right to vote. There is no consistent, reliable process or source of information available to returning citizens across the State of Florida to confidently assess their eligibility to

vote and register without fear of criminal prosecution.[2] The result is a dramatic chilling effect of the sort illustrated by Angel Sanchez's story. FRRC's experiences support the district court's conclusion that SB7066's pay-to-vote system is unconstitutional.

Second, FRRC members and constituents also find themselves saddled with financial obligations they cannot and will likely never be able to fulfill. For these individuals, SB7066 prevents their re-enfranchisement and renders the promise of Amendment 4 illusory. They continue to live under permanent disenfranchisement, blocked from the ballot because they are unable to pay a certain dollar amount. This amounts to punishment for inability to pay, in violation of the Fourteenth Amendment under the *Griffin*/*Bearden* line of cases. *Bearden v. Georgia*, 461 U.S. 660 (1983); *Griffin v. Illinois*, 351 U.S. 12 (1956). Defendants-Appellants' arguments to the contrary misapprehend the nature of the Supreme Court's jurisprudence in this area.

Finally, FRRC submits that under no circumstance should this Court strike down all of Amendment 4. Defendants-Appellants' assertion that upholding the

---

[2] Florida's voter registration application requires individuals to "affirm" (1) that they are "not a convicted felon, or" if they are that their "right to vote has been restored," and (2) "that all information provided in th[e] application is true." Florida Voter Registration Application, https://dos.myflorida.com/media/703131/dsde39-english-pre-7066-052120.pdf. It also informs individuals that: "It is a 3rd degree felony to submit false information. Maximum penalties are $5000 and/or 5 years in prison." *Id.*

District Court's decision would require this Court to "invalidate Amendment 4 in its entirety," Defs.-Appellants' En Banc Br. at 14, is wrong. This case centers around SB7066, not Amendment 4. Amendment 4 is distinguishable from SB7066, it is amenable to construction that would avoid constitutional infirmity, and any unconstitutional part of it would be severable.

ARGUMENT

I. THE STATE'S DEMONSTRATED INABILITY TO ACCURATELY DETERMINE WHAT, IF ANY, OUTSTANDING LEGAL FINANCIAL OBLIGATIONS INDIVIDUALS MUST PAY TO REGISTER TO VOTE WITHOUT RISKING CRIMINAL LIABILITY VIOLATES THEIR CONSTITUTIONAL RIGHTS.

Many of FRRC's members and constituents have found it difficult or impossible to identify what, if any, LFOs they must pay to qualify to vote—due entirely to the administrative nightmare that is the State's record-keeping systems.[3] The records are frequently incomplete, inconsistent, and unnavigable. Even when individuals have paid all LFOs and should be eligible to vote under SB7066, they often find that Florida maintains they have outstanding payments. Given the threat of prosecution for registering to vote and voting while ineligible, Fla. Sta. §§ 104.011, 104.041, the result is a widespread chilling effect and violation of the Constitution. Specifically, the state's failure to maintain reliable records renders

[3] The problems with the State's record-keeping systems were known as early as 2016, when FRRC's Executive Director, Desmond Meade, provided testimony on this point at the financial impact estimating conference.

SB7066's pay-to-vote regime irrational, creates an undue burden on their right to vote under the First and Fourteenth Amendments by deterring even eligible voters, and puts individuals at high risk of erroneous deprivation of their voting rights in violation of procedural due process.

FRRC regularly receives inquiries from returning citizens attempting to navigate administrative obstacles to identify if they qualify to vote and, if not, how much they owe and what they must do to qualify. Through its hotline, in meetings across Florida and in online forums, and throughout its voter registration efforts, FRRC has encountered thousands of individuals struggling to determine what LFOs they owe. Those who have sought government records often find information that is incomplete, un-uninterpretable, or irreconcilable. Sometimes the information is simply wrong, but because it resides in the State's own records, it poses a potentially insurmountable barrier to rights restoration.

FRRC itself has faced these roadblocks in deploying its Fines and Fees Fund, which helps returning Florida citizens pay off financial obligations, despite its staff's relative sophistication about where records are kept and whom to contact for help. For example, it has found that Monroe, Okeechobee, and Lee counties cannot even provide an assessment of outstanding LFOs without a case number. FRRC has also found it extremely difficult to even get information from certain counties, such as Escambia, to help applicants determine their outstanding LFO. These deficiencies

leave applicants uncertain as to whether outstanding LFOs disqualify them from voting and what they must do to have their rights restored. They also result in a person's voting eligibility often being delayed or determined by where a person lived or what county they had convictions in.

Even individuals who have completed all terms of their sentence in accordance with SB7066, including all LFOs, are often unable to confirm that the state shares their view of their circumstances. As of late July 2020, at least 468 applicants to FRRC's fund had either no disqualifying felony conviction or no outstanding LFOs—indicating that many applicants are seeking FRRC's help simply because they cannot identify their LFOs or navigate state systems themselves. For others, state or county records incorrectly show unpaid LFOs, and it requires hours or days to understand why. Sometimes, no explanation is available. Angel Sanchez's experience illustrates how challenging it can be to identify what amounts the State believes have been imposed and repaid, let alone correct the State's errors.

These returning citizens are left with a perilous choice: register to vote without clarity about their eligibility status and expose themselves to criminal prosecution, or forfeit their fundamental right to vote. It is no answer that a person can register to vote and then avail herself of a hearing the State later provides before removing her from the rolls, as even registering to vote when ineligible is a felony in Florida. Fla. Stat. § 104.011. Conviction requires proof that the false affirmation of eligibility was

willful, but the state's voter registration forms do not mention this, and even the prospect of criminal investigation and accusation are powerful deterrents. In short, FRRC's experience confirms the district court's finding that "it is certain that some eligible voters will choose not to vote because of the manner in which the State has administered—and failed to administer—the pay-to-vote system." *Jones v. DeSantis*, 2020 WL 2618062, at *26 (N.D. Fla. May 24, 2020).

In placing returning citizens in this untenable situation, the State violates the Constitution. First, the administrative nightmare created by SB7066 and the state's incomplete and unreliable record-keeping demonstrates that the statute's pay-to-vote regime irrationally disenfranchises people for LFOs that cannot be determined or that the State wrongly claims are outstanding. Such a system fails constitutional review under the Plaintiffs' Fourteenth Amendment claims, whether this Court applies heightened scrutiny or rational basis review. It serves no state interest—in punishment, equal treatment of people with convictions, restoration of only those who have completed their sentences, debt collection, or administrability—to create havoc for returning citizens through a system suffused with incomplete, inconsistent, and flat-out false information.

Remarkably, the State disavows any responsibility for this mess. Defendants-Appellants claim that if they are correct that the vote rationally can be withheld from those unable to pay their LFOs, the State need not be able to say what a would-be

voter owes. Defs.-Appellants' En Banc Br. at 52. This misapprehends the problem returning citizens face and heaps constitutional indignity onto constitutional indignity. If voters do not know what the State thinks they owe, how can they determine if they are eligible in the State's eyes? Defendants-Appellants further assert that there is no basis to require the State to provide returning citizens with "information about their own unfulfilled criminal sentences and any payments that they themselves have made toward them." *Id.* at 53. This rings hollow. Some individuals' convictions date back decades, they reasonably do not have all their records, and the State should be required to maintain accurate records of LFO requirements and payments if it intends to condition rights restoration on payment, as SB7066 does. Moreover, in FRRC's experience, even when individuals have their own records and know exactly what they have paid, *the State's* records reflect contrary and incorrect information.[4] This is not merely a problem of failure to provide information. It is a problem of actively frustrating access to the vote by maintaining an unreliable system and basing eligibility upon that system.

Second, the deterrence achieved through a combination of an error-laden, arcane record-keeping system and the looming risk of criminal prosecution imposes

---

[4] As the record clearly demonstrates, these experiences are not unique to FRRC and those it serves. Trial Tr., Haughwout, 288:11-295:11; 342:12-19; Trial Tr., Martinez 355:22-358:10.

an undue burden on many Floridians' right to vote, in violation of the First and Fourteenth Amendments. Courts assess such claims under the *Anderson-Burdick* test, weighing the character and magnitude of the asserted injury against the State's proffered justifications for the burdens imposed, taking into consideration the extent to which those justifications require the burden to plaintiffs' rights. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). A law that severely burdens the right to vote must be narrowly drawn to serve a compelling state interest. *Burdick*, 504 U.S. at 434. Burdens are severe "if they go beyond the merely inconvenient." *Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181, 205 (2008) (Scalia, J., concurring).

Here, the burden of the State's failure to administer a minimally reliable system of LFO records is severe because it makes it "virtually impossible" for returning citizens to know whether the State views them as automatically re-enfranchised under SB7066 and thus whether they can safely register and vote without risking criminal exposure. *Storer v. Brown*, 415 U.S. 724, 728 (1974). Strict scrutiny applies, and SB7066's pay-to-vote regime cannot survive that exacting review because the requirement does not even rationally serve the State's professed interests. Plaintiffs brought an undue burden claim in this case, and that claim offers alternative grounds on which to affirm the district court's order. *See Trotter v. Sec'y,*

Dep't of Corrs., 535 F.3d 1286, 1291 (11th Cir. 2008) ("We may affirm on any ground supported by the record.") (internal quotation omitted).

Third, the State's fatally flawed system puts eligible voters at risk of erroneous deprivation of their voting rights, in violation of procedural due process. *Mathews v. Eldridge* provides the three-factor test for procedural due process claims, including the evaluation of the private interest at stake—here, the right to vote—the risk of errnenous deprivation of that interest through the challenged government procedures and the probative value of additional safeguards, and the government's interest in those procedures. 424 U.S. 319, 335 (1976). This Court has applied the *Mathews* test when examining practices that impact the right to vote. *See, e.g.*, *Ga. Muslim Voter Project v. Kemp*, 918 F.3d 1262, 1267-68 (11th Cir. 2019) (challenge to signature matching procedures).

Defendants-Appellants have no adequate process in place for returning citizens to confirm what, if any, disqualifying LFOs they owe *before* registering to vote and exposing themselves to possible criminal liability.[5] This is true even for people who believe they have no outstanding LFOs. All parties agree that individuals

[5] The idea that the processes afforded people who register are sufficient for purposes of procedural due process is also undermined by the determination by the District Court that, "[e]ven without screening for unpaid LFOs," the Secretary of State's Division of Elections would take "a little over 5 years and 8 months" to screen the 85,000 pending registrations it already has in its queue from individuals with past felony convictions. *Jones*, 2020 WL 2618062, at *24.

without unpaid LFOs have already had their voting rights automatically restored pursuant to both Amendment 4 and SB7066. But these individuals cannot secure certainty or concrete proof that they have no disqualifying LFOs left. Many have not yet registered out of quite reasonable fear that some unknown LFO may still exist despite their best efforts to confirm all LFOs with the relevant agencies.

Such individuals do not exist merely in the hypothetical. FRRC has assisted returning citizens in exactly this category. For example, Jamall Williams, who came to FRRC for help, spent months trying to confirm that he had no outstanding LFOs for a 2009 felony conviction in Leon County, turning up no adverse information. Still, he ultimately decided not to vote out of fear that an unpaid LFO might still be lurking in some state database.[6]

The District Court's order gives the advisory opinion process the minimum safeguard necessary to meet the basic guarantees of due process. The advisory opinion process outlined in the District Court's order ensures individuals are not left in indefinite limbo, waiting to hear whether they qualify to vote or what disqualifying LFOs they owe, and provides protections against criminal prosecution.

---

[6] Amy Gardner & Lori Rozsa, "In Florida, Felons Must Pay Court Debts Before They Can Vote. But with No System to Do So, Many Have Found It Impossible," *Washington Post* (May 13, 2020), https://www.washingtonpost.com/politics/in-florida-felons-must-pay-court-debts-before-they-can-vote-but-with-no-system-to-do-so-many-have-found-it-impossible/2020/05/13/08ed05be-906f-11ea-9e23-6914ee410a5f_story.html.

Jones, 2020 WL 2618062, at *44-45. The risk of erroneous deprivation of the right to vote will remain intolerably high for the people FRRC serves without a safeguard like the court-ordered advisory opinion process.

II. THE DISTRICT COURT AND ELEVENTH CIRCUIT PANEL IN *JONES I* CORRECTLY HELD THAT THE *GRIFFIN/BEARDEN* CASES PROHIBIT PUNISHING PEOPLE THROUGH CONTINUED DISENFRANCHISEMENT DUE TO THEIR INABILITY TO PAY.

Even when the returning citizens FRRC serves are able to identify the amount of disqualifying LFOs they owe, many are unable to meet SB7066's "completion" requirements. *See* Fla. Stat. § 98.0751(2)(a). They simply do not have the funds to pay off the LFOs attached to their sentence and are unlikely to have the financial resources to do so in the future. For example, Natesha McClaim-Mathis, a single mother in Martin County whose convictions have left her unable to secure employment for years at a time, had no hope of paying her $1,319.01 in outstanding LFOs until FRRC covered $942 of them. Lakenya Wright, of Miami-Dade County, likewise could not afford her $729.40 outstanding LFOs. FRRC helped her secure a reduction in her balance through the county's LFO modification program and then paid the remainder through its Fines and Fees Fund. These are just two examples. FRRC had 3,649 active fund applicants at the time of Judge Hinkle's May decision. Of those FRRC spoke with, the vast majority indicated that they were represented by a public defender in their criminal case, a proxy for indigency.

FRRC's experience indicates that hundreds of thousands of Floridians will remain disenfranchised under SB7066 based purely on their poverty. This runs afoul of the Fourteenth Amendment's prohibition on punishing people for their inability to pay as articulated in a line of cases that begins with *Griffin v. Illinois*, culminates in *Bearden v. Georgia*, and has been reiterated by the Supreme Court and this Court in the ensuing years.

Bearden provides the applicable analysis. The case involved a defendant who had been sentenced to probation, a fine, and restitution. When the individual could not pay his LFOs, the sentencing court revoked his probation and imposed incarceration. The Supreme Court held that it was "fundamentally unfair" to impose this punishment on a person who did not "willfully refuse[] to pay" LFOs, but rather was unable to pay "through no fault of his own." *Bearden*, 461 U.S. at 668-69, 672-73.[7]

Bearden accorded with predecessor cases that prohibited incarceration as a sanction for those unable to pay LFOs. *See Williams v. Illinois*, 399 U.S. 235, 240-41 (1970) (extending imprisonment because a person cannot pay "a fine or court costs" works "an impermissible discrimination" because it punishes people "solely

---

[7] In denying a stay to Defendants-Appellants, the District Court noted "The State failed to prove the existence of even one person who willfully failed to pay." Stay Order, ECF 431, at 16.

by reason of their indigency"); *Tate v. Short*, 401 U.S. 395, 398 (1971) (imprisoning an indigent person to sit out their court debt by receiving monetary credit for each extra day served because they are unable to pay "constitutes . . . unconstitutional discrimination"). Other cases in the *Griffin/Bearden* line confirm that the prohibition on punishing people for their inability to pay extends beyond incarceration. *See M.L.B. v. S.L.J.*, 519 U.S. 102, 112 (1996) (observing that the Court had previously "declined to limit *Griffin* to cases in which the defendant faced incarceration" and applying the precedents in a parental rights termination proceeding).

Bearden teaches that protection against punishment for inability to pay money is a bedrock principle of fundamental fairness in which "[d]ue process and equal protection principles converge." *Bearden*, 461 U.S. at 665. The *Bearden* Court deliberately avoided traditional equal protection analysis, declining to ask whether a fundamental right or suspect classification was at issue. It did not use traditional tiers of scrutiny, rejecting "resort to easy slogans or pigeonhole analysis." *Id*. at 666. Instead, the Court mandated a "careful inquiry into such factors as the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose" to determine if imposing sanctions for nonpayment is constitutional. *Id*. at 666-67 (internal quotation marks omitted).

The *Jones I* panel properly relied on these cases to apply heightened scrutiny to SB7066's pay-to-vote scheme. *Jones v. Governor of Fla*., 950 F.3d 795, 817 (11th Cir. 2020). Defendants-Appellants dispute the application of this heightened scrutiny. They make three errors.

First, they incorrectly treat *Griffin* and *Bearden* as belonging to different strands of constitutional doctrine, the former concerning only access to transcripts in judicial proceedings and the latter preventing only incarceration for inability to pay LFOs. This misreads the development of the Supreme Court's wealth discrimination jurisprudence. Succeeding cases built upon each other, revealing that the cases in this line target the same ill: *punishing people for their poverty*, whether through fencing them out of appeals in criminal or quasi-criminal proceedings or depriving them of important interests such as liberty or property.

In *Griffin*, the Supreme Court ruled that once a state has provided for the right to appeal a criminal conviction, it cannot deny that right to an indigent defendant based on inability to pay for a transcript needed for the appeal. 351 U.S. at 16. The opinion rested on the principle of "equal justice for poor and rich, weak and powerful alike." *Id.* In *Williams*, the Court relied directly on *Griffin* to prohibit incarceration due to inability to pay: "Applying the teaching of the *Griffin* case here, we conclude that an indigent criminal defendant may not be imprisoned in default of payment of a fine beyond the maximum authorized by the statute regulating the substantive

offense." *Williams*, 399 U.S. at 241. The Court then relied on *Griffin* in *Bearden*, the seminal case under which it violates the Fourteenth Amendment to incarcerate a person for nonpayment of LFOs without a showing that the nonpayment was willful. *Bearden*, 461 U.S. at 664-65 (citing *Griffin* repeatedly).

Then, in *M.L.B. v. S.L.J.*, the Court applied the logic and test of *Bearden* in a challenge involving access to judicial transcripts for appeal. M.L.B. sought to appeal the termination of her parental rights, but she could not afford the mandatory $2,352.36 in transcript and record-preparation costs and she was not permitted to proceed in forma pauperis. In assessing whether this violated her Fourteenth Amendment rights, the Supreme Court explained, "[w]e place this case within the framework established by our past decisions in this area." *M.L.B.*, 519 U.S. at 120. In the immediate next sentence, the Court invoked a streamlined version of the test set forth in *Bearden*: "In line with those decisions, we inspect the character and intensity of the individual interest at stake, on the one hand, and the State's justification for its exaction, on the other. *See Bearden,* 461 U.S. at 666–667." *Id.* at 120-21.

A close reading of these cases thus clarifies that they constitute a single line that broadly prohibits punishing people for inability to pay money.

Second, Defendants-Appellants argue that the *Bearden* test is inapplicable here because SB7066 does not subject returning citizens to "*additional* punishment,"

since they were already disenfranchised upon conviction of a felony. Defs.-Appellants' En Banc Br. at 29. This argument misses that "the sine qua non" of a *Bearden* claim "is that the State is treating the indigent and the non-indigent categorically differently." *Walker v. City of Calhoun*, 901 F.3d 1245, 1260 (11th Cir. 2018). SB7066 introduces wealth discrimination into voter eligibility, ending the punishment of disenfranchisement immediately for those who can afford to pay and continuing the punishment indefinitely and likely permanently for those who cannot. Not surprisingly, FRRC's members certainly experience the denial of rights restoration as punishment based on their financial circumstances.

Walker illustrates why the State's argument is misplaced. That case involved a challenge to a system of pretrial release in Calhoun, Georgia, that worked differently for arrestees depending on their wealth. Upon arrest, defendants would be taken to jail and given the opportunity to pay a cash bond set by a bail schedule. Those who could pay were released immediately. Those who could not had to wait 48 hours for a hearing at which to plead their inability to pay, a finding of which resulted in release on personal recognizance. The Eleventh Circuit explained that because the plaintiff's claim "rests on an allegation of categorically worse treatment of the indigent, it falls within the *Bearden* . . . framework." *Id.*

Walker also thwarts the State's attempt to distinguish SB7066's pay-to-vote system from the wealth-based punishment in *Bearden* by characterizing *Bearden* as

involving the loss of "conditional liberty"—namely, the conditional liberty of being on probation. Defs.-Appellants' En Banc. Br. at 28. "Plaintiffs here do not have a similar conditional franchise," they argue. *Id.* But the arrestees in *Walker* had no "conditional liberty"—both wealthy and indigent defendants were booked at the jail. And yet this Court applied *Bearden*. So should the Court here.

Finally, Defendants-Appellants mischaracterize plaintiffs' Fourteenth Amendment claim as a "disparate impact theory of equal protection" prohibited by *Washington v. Davis*, 426 U.S. 229 (1976) and *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979). But *Griffin/Bearden* cases do not require a showing of purposeful discrimination. These are hybrid equal protection and due process claims that do not fall within the traditional, standalone Equal Protection Clause analysis. *See Bearden*, 461 U.S. at 667 n.8 ("Since indigency in this context is a relative term rather than a classification, fitting the problem of this case into an equal protection framework is a task too Procrustean to be rationally accomplished." (internal quotation marks omitted)).

Moreover, *Bearden* post-dated both *Davis* and *Feeney*, and actually found a constitutional violation due to the *failure* to consider an individual's economic status. In *M.L.B.*, the Supreme Court declined to apply the purposeful-discrimination requirement, remarking that if that were correct "our overruling of the *Griffin* line of cases would be two decades overdue." *M.L.B.*, 519 U.S. at 127 & n16. And again,

just two years ago, the Eleventh Circuit applied *Bearden* without demanding evidence of purposeful discrimination. *Walker*, 901 F.3d at 1261 (referring to the county's bail procedures as involving "differential treatment by wealth").

The *Jones I* panel and district court correctly understood plaintiffs' ability-to-pay claim under the Fourteenth Amendment to require heightened scrutiny under *Griffin/Bearden*. It correctly concluded that under the "careful inquiry" required by *Bearden*, SB7066's regime of continued disenfranchisement for individuals solely for their inability to pay outstanding LFOs is unconstitutional.

III. NOTHING ABOUT THE UNCONSTITUTIONALITY OF SB7066 REQUIRES THE WHOLESALE INVALIDATION OF AMENDMENT 4.

Defendants-Appellants attempt to conflate SB7066 with Amendment 4, referring to the two together throughout their brief. It is far from clear, however, that Amendment 4 raises the same constitutional concerns as SB7066.

Amendment 4 makes voting rights restoration automatic "upon completion of all terms of sentence including probation or parole." Fla. Const., art. VI, § 4(a). In the advisory opinion proceedings, the Governor only asked, and the Florida Supreme Court only answered, "the narrow question of whether the phrase 'all terms of sentence' includes LFOs ordered by the sentencing court." Advisory Op. (Jan. 16, 2020), at 5-6. While the Florida Supreme Court concluded that "all terms of sentence" encompassed all "LFOs imposed in conjunction with an adjudication of

guilt," *id.* at 7, the court did not define what "completion" of the terms of sentence entails, *id.* at 5-6. In the legislative session that produced SB7066, lawmakers in the House and Senate considered bills with different definitions of "completion," and amendments were offered. And, in the run-up to trial in this lawsuit, the State came up with still another way to calculate when LFO payments had been completed—the every-dollar method. *Jones*, 2020 WL 2618062, at *21-23. The word "completion" is apparently susceptible to multiple meanings.

Ultimately, this is a question of state law, and a court could reasonably apply the canon of constitutional avoidance to define "completion" in a way that alleviates the condition of LFOs for people for whom inability to pay is the sole reason for their continued disenfranchisement. *See Jones*, 2020 WL 2618062, at *6 ("'[C]ompletion' could reasonably be construed to mean payment to the best of a person's ability, bringing Amendment 4, though not SB7066, into alignment with the plaintiffs' inability-to-pay argument and [*Jones I*]."); *see also McNeil v. Canty*, 12 So.3d 215, 216-17 (Fla. 2009) (employing the cannon of constitutional avoidance to prevent the Conditional Release Program Act being applied in an unconstitutional manner by prohibiting the Department of Corrections from following the plain language of the statutes and calculating an individual's sentence following revocation of conditional release in a way that would require her to serve more incarceration time than originally imposed by the sentencing judge).

Even if this Court perceives a constitutional infirmity within Amendment 4, and concludes it has jurisdiction to issue a merits ruling about Amendment 4, under no circumstances would the proper remedy be to strike it down altogether.

Insofar as this Court (or any court) finds Amendment 4 violates due process for those unable to determine what LFOs they owe, or impermissibly punishes or discriminates against people for their inability to pay LFOs, this Court can uphold the relief ordered by the District Court as an as-applied remedy. Where the Supreme Court has identified similar Fourteenth Amendment violations, its rulings have depended on the financial circumstances of the individual at risk of constitutional deprivation, and its remedies have been tailored to address those circumstances. *See, e.g.*, *M.L.B.*, 519 U.S. at 128 (holding that the state "may not withhold" from the plaintiff a transcript of parental rights termination proceedings necessary to pursue an appeal on account of her inability to pay for it); *Bearden*, 461 U.S. at 666-68 (prohibiting revocation of probation due to nonpayment of LFOs where individual is unable to pay); *Williams*, 399 U.S. at 242 (holding that a state statute requiring continued incarceration past the statutory maximum in order to pay off a fine and court costs "as applied to Williams works an invidious discrimination solely because he is unable to pay the fine").

If the Court reaches the question of severability with respect to Amendment 4, it should conclude the unconstitutional elements are indeed severable.

FRRC and its partners spent the better part of a decade fighting for a constitutional amendment to end Florida's permanent disenfranchisement scheme. In November 2018, a historic supermajority of over 5 million people, 64.55% of voters, approved that effort and welcomed up to 1.4 million of their fellow Floridians back into the electoral process. It was the greatest expansion of democracy in the United States since the passage of the 26th Amendment. Such a historic achievement—accomplished through the direct democracy channel of a ballot initiative, no less—cannot be easily set aside.

Invalidating Amendment 4 would mean that people who have in fact completed all of terms of their sentence and returned to the electorate would be immediately disenfranchised once more. This includes FRRC leaders and members like Desmond Meade, Neil Volz, Angela Harris, Mark Gonzalez, Terry Beth Hadler, Lance Wissinger, and Marquis Mckenzie—all of whom registered in the days or months after Amendment 4 became operative in January 2019. It would return Florida to the pre-2019 regime of permanent disenfranchisement for *all* people with felony convictions. It is beyond question that this drastic result is not what the people of Florida would have wanted. *Cf. Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2210 (2020) (severing the unconstitutional provision of the Dodd-Frank Act that created a single director of the CFPB who could only be removed for cause, rather than invalidating the agency altogether because "it is far from evident

that Congress would have preferred no CFPB to a CFPB led by a Director removable at will by the President”).

CONCLUSION

For the reasons set forth above, this Court should affirm District Court’s judgment.

Dated: August 3, 2020

Respectfully submitted,

/s/ Chiraag Bains
Chiraag Bains
DĒMOS
740 6th Street NW, 2nd Floor
Washington, DC 20001
(202) 864-2746
cbains@demos.org

Naila S. Awan
DĒMOS
80 Broad Street, 4th Floor
New York, NY 10004
(212) 485-6065
nawan@demos.org

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit on August 3, 2020, using the appellate CM/ECF system, which accomplished service on all counsel of record.

/s/ Chiraag Bains
Chiraag Bains

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 6,469 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface (Times New Roman 14-point type) using Microsoft Word 2016. It is double-spaced consistent with the requirements of 11 Cir. R. 32-3 and 32-4.

/s/ Chiraag Bains
Chiraag Bains