

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

KELVIN LEON JONES, *et al.*,

Plaintiffs,

v.

Case No. 4:19-cv-300-MW-MJF
(Lead Case)

RON DESANTIS, *et al.*,

Defendants.

**GOVERNOR AND SECRETARY OF STATE’S MOTION FOR STAY
PENDING RENDITION OF FLORIDA SUPREME COURT
ADVISORY OPINION**

The Governor and Secretary of State (“State Defendants”) ask this Court for a stay pending the Florida Supreme Court’s rendition of an advisory opinion as to the meaning of the phrase “completion of all terms of sentence” in Article VI, section 4(a) of the Florida Constitution, pursuant to Federal Rule of Civil Procedure 60(b), as the opinion would be instructive on a question of state law interpretation that has practical implications on the challenges raised in these actions.

MEMORANDUM OF LAW

I. Background

On August 9, 2019, the Governor requested, under Article IV, section 1(c) of the Florida Constitution, that the Florida Supreme Court provide an advisory opinion on the meaning of the phrase “completion of all terms of sentence,” as its

interpretation affects the Governor's executive powers and duties. On August 29, 2019, the Florida Supreme Court issued an order exercising the Court's discretion to provide the Governor with an advisory opinion in response to his request. A copy of the Governor's request and the Florida Supreme Court's order accepting jurisdiction is provided as **Composite Exhibit "A."** The Florida Supreme Court's Order provides all interested parties shall file initial briefs on or before Wednesday, September 18, 2019, and oral argument will be held at 9:00 a.m. on Wednesday, November 6, 2019.

II. Legal Argument

A district court has the inherent discretionary authority to stay proceedings before it for reasons such as judicial economy. *See, e.g., Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."). Discretion should be exercised here because this Court will have the benefit of the Florida Supreme Court's view of the meaning of the phrase "completion of all terms of sentence" under Florida's Constitution.

In filing this motion for stay, the State Defendants are not abandoning the motion to dismiss filed on August 2, 2019 (ECF No. 97). Indeed, the Florida Supreme Court's order further supports the redressability and abstention arguments

set forth in the motion because the Florida Supreme Court’s opinion could resolve (or at least narrow the issues) by determining that the plain language “all terms of sentence” in Article VI, section 4(a) of the Florida Constitution includes legal fines, fees, restitution, and other financial obligations. *See generally Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-18 (1976) (granting a federal court discretion to abstain where there are ongoing state court proceeding).

But if this Court decides not to dismiss the case after reviewing the motion to dismiss, the Plaintiff’s response filed on August 29, 2019 (ECF No. 121), and the State Defendants’ reply to be filed on September 23, 2019, then the State Defendants respectfully request this Court stay this case until 10 days after issuance of the Florida Supreme Court’s opinion.

A stay, like dismissal, would promote judicial economy and federal-state comity. If the Florida Supreme Court agrees that the phrase “all terms of sentence” encompasses financial obligations imposed as part of the sentence—this might well alter the course of the pending federal proceeding, or at the very least, require Plaintiffs to amend their complaints to include a constitutional challenge to Article VI, section 4(a) of the Florida Constitution. A contrary interpretation might well resolve the Plaintiffs’ concerns without addressing the federal constitutional issues.

The Florida Supreme Court’s briefing schedule allows all interested parties, including the Plaintiffs in this action, to express their views and be heard at oral

argument, which the Florida Supreme Court has scheduled for November 6, 2019. As the Florida Supreme Court has ordered that initial briefs are due on September 18, 2019, the Florida Supreme Court is placing this request on an expedited schedule. In the past two decades, the Florida Supreme Court has resolved advisory opinion requests with a median time of 24 days from the date the request was made.¹

Furthermore, this Court posed a question during the scheduling conference on August 15, 2019, that is at the heart of what the Florida Supreme Court may issue an advisory opinion—if Article VI, section 4(a) of the Florida Constitution includes satisfaction of all legal financial obligations, how does that impact the challenges raised in the federal litigation? This Court requested Plaintiffs and Defendants to address how that interpretation may affect the status of Florida’s scheme on felon disenfranchisement, even though Plaintiffs do not challenge Florida’s Constitution. This Court need not pose hypothetical questions as to what Florida’s Constitution means regarding satisfaction of legal financial obligations because the Florida Supreme Court’s advisory opinion will provide clarity and finality on that issue—

¹ *Adv. Op. to the Gov.—Judicial Vacancy Due to Resignation*, 42 So. 3d 795 (Fla. 2010) (21 days); *Adv. Op. to the Gov.—Commission of Elected Judge*, 17 So. 3d 265 (Fla. 2009) (29 days); *Adv. Op. to the Gov.—Appointment or Elec. Of Judges*, 983 So. 2d 256 (Fla. 2008) (14 days); *Adv. Op. to the Gov.—Sheriff & Jud. Vacancies Due to Resignation*, 928 So. 2d 1218 (Fla. 2006) (15 days); *Adv. Op. to the Gov.—Appointment or Election of Judges*, 842 So. 2d 132 (Fla. 2002) (40 days).

an issue solely in their jurisdiction. *See Arizona v. Evans*, 514 U.S. 1, 8-9 (1995) (Fundamental that state courts be left free to interpret their state constitutions).

The purpose of this motion for stay is not to unduly delay these proceedings. A fair and quick resolution to the issues raised by the Plaintiffs is in Florida's best interest. Therefore, a stay until after the Florida Supreme Court has issued an advisory opinion, with a ten (10) day opportunity to provide supplemental briefing upon issuance of the opinion, would help inform these proceedings and provide this Court with a ruling on a key issue of state law that goes to the very heart of these cases.

WHEREFORE, the Governor and Secretary request that this Court enter a stay until 10 days after issuance of the Florida Supreme Court's advisory opinion on the meaning of the phrase "completion of all terms of sentence," and grant any other relief this Court deems reasonable and just.

Respectfully submitted this 10th day of September, 2019.

/s/ Nicholas A. Primrose

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***Counsel for the Florida Secretary of
State, Laurel M. Lee***

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(C), the undersigned counsel conferred with counsel for the Plaintiffs and counsel for the co-Defendants in accordance with Local Rule 7.1(B) by e-mail and is authorized to state that *Gruver, McCoy, Raysor* and *Jones* Plaintiffs oppose this motion, and the Secretary of State and Supervisors of Elections Kim Barton, Michael Bennett, Mike Hogan, Craig Latimer, Leslie

Rossway Swan, Ron Turner, and Christina White concur and do not oppose this motion.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

The undersigned certifies that the foregoing complies with the size, font, and formatting requirements of Local Rule 5.1(C), and that the foregoing complies with the word limit in Local Rule 7.1(F); the foregoing contains 1,154 words, excluding the case style, signature block, and certificates.

/s/ Nicholas A. Primrose

Attorney

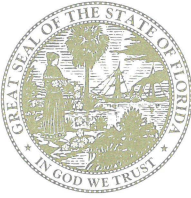
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to all counsel of record through the Court's CM/ECF system on this 10th day of September, 2019.

/s/ Nicholas A. Primrose

Attorney

COMPOSITE
EXHIBIT A



RON DESANTIS
GOVERNOR

August 9, 2019

Honorable Charles T. Canady
Chief Justice and
the Justices of the Supreme Court of Florida
Tallahassee, Florida

Dear Chief Justice Canady and Justices of the Supreme Court of Florida:

Pursuant to Article IV, section 1(c) of the Florida Constitution, I hereby request your opinion on a question involving the interpretation of a portion of the Constitution affecting my executive powers and duties. The question pertains to the meaning of Article VI, section 4 of the Florida Constitution as it affects my constitutional power as the supreme executive to take care that the laws be faithfully executed and to transact all necessary business with the officers of the government under Article IV, section 1(a) of the Florida Constitution. This question also affects my direct administration and supervision of the Department of State under Article IV, section 6 of the Florida Constitution to ensure the proper administration of voter registration and disqualification.

On November 6, 2018, Florida voters approved a constitutional amendment, known as Amendment 4, to automatically restore 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.” *See* Art. VI, § 4, Fla. Const. (2018). I request your interpretation of whether “completion of all terms of sentence” encompasses financial obligations, such as fines, fees and restitution (“legal financial obligations” or “LFOs”) imposed by the court in the sentencing order.

Prior to Amendment 4’s placement on the ballot, this Court was asked to determine whether the amendment met the legal requirements under Florida’s Constitution. On March 6, 2017, during a colloquy between the justices and Amendment 4’s sponsor, Floridians for a Fair Democracy (“Sponsor”), this Court was assured the Amendment presented a “fair question” and “clear explanation” to voters. Transcript of Oral Argument at 2, *Advisory Op. to the Attorney General Re: Voting Restoration Amend.*, 215 So. 3d 1202 (Fla. 2017) (Nos. SC16-1785 and

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SC16-1981).¹ Addressing a question posed by Justice Polston as to whether “completion of [all] terms” included “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 . . . that’s the way it’s generally pronounced in criminal court, would it also include restitution when it was ordered to the victim as part of the sentence?” *Id.* at 10. The Sponsor answered, “Yes.” *Id.* Justice Pariente posited the inclusion of fees, fines, 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. Ultimately, the Court found Amendment 4 clearly and unambiguously informed voters 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.*” *Advisory Op.*, 215 So. 3d at 1208 (emphasis added).

In alignment with the colloquy with the Florida Supreme Court, after Amendment 4 was approved by voters, the ACLU of Florida, League of Women Voters of Florida, LatinoJustice, and the Florida Rights Restoration Coalition delivered a letter to former Secretary of State Ken Detzner regarding implementation of Amendment 4. Exhibit 1, December 13, 2018 Letter. 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. *The 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.

Ex. 1, p. 3 (emphasis added).

During the 2019 Legislative Session, legislators in both chambers debated legislative implementation of Amendment 4. Ultimately, both chambers passed CS/SB 7066 and, on June 28, 2019, I signed it into law. *See* Ch. 2019-162, Laws of Fla. In relevant part, chapter 2019-162, section 25, Laws of Florida, creating section 98.0751, Florida Statutes, provided guidance on restoration of voting rights and determination of ineligibility pursuant to the amendment of Article VI, section 4 of the Florida Constitution. Section 98.0751, Florida Statutes, defines

¹ The transcript of oral argument is available here:

https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf. A video of the oral argument is available here: <https://wfsu.org/gavel2gavel/viewcase.php?eid=2421&jwsourc=cl>.

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“[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; (2) termination of any term of probation or community control; (3) fulfillment of any term ordered by the court as part of the sentence; (4) termination from any term of supervision monitored by the Florida Commission on Offender Review; and (5) full payment of LFOs ordered by the court as 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 Northern District of Florida seeking injunctive and declaratory relief and mandamus challenging chapter 2019-162, Laws of Florida. In part, Mendez alleges chapter 2019-162, Laws of Florida, violates Article VI, section 4 of the Florida Constitution because it adds requirements for the restoration of voting rights above what was prescribed in the Florida Constitution. Additional complaints were filed by numerous plaintiffs, including organizations referenced above, alleging provisions of chapter 2019-162, Laws of Florida violate the First, Eighth, Fourteenth and Twenty-Fourth Amendments of the United States Constitution. These challenges are only directed at chapter 2019-162, Laws of Florida, and do not question the constitutionality of Article VI, section 4 of the Florida Constitution.

Article IV, section 1(a) of the Florida Constitution prescribes the supreme executive power shall be vested in the Governor, that he “shall take care that the laws be faithfully executed” and “transact all necessary business with the officers of government.” Article IV, section 6 of the Florida Constitution places direct administration and supervision of all functions of the executive branch, including the Department of State, under the constitutional authority of the Governor. *See also* § 20.02(3), Fla. Stat. (the administration of any executive branch entity shall at all times be under the constitutional executive authority of the Governor”); § 20.10, Fla. Stat. (creating the Department of State, headed by the Secretary of State who is appointed by the Governor). Furthermore, the Secretary of State is the chief elections officer with the responsibility to maintain uniformity in the interpretation and implementation of voter registration and election laws. *See* § 97.012, Fla. Stat.

The Executive Branch is entrusted with implementing voter registration. *See* Part II of chapter 97 and chapter 98, Fla. Stat. Specifically, section 98.075(5), Florida Statutes, directs the Department of State to identify registered voters for eligibility under Article VI, section 4 of the Florida Constitution and section 98.0751, Florida Statutes. It is ultimately my responsibility, through the Department of State, to “protect the integrity of the electoral process” by maintaining accurate and current voter registration records, including ensuring only eligible voters remain on the statewide voter registration system. *See also* §§ 98.075(1), 98.035, Fla. Stat. Essential to my duty is a proper interpretation of Article VI, section 4 of the Florida Constitution.

I, as Governor of Florida, have the constitutional responsibility and duty to take care that the Constitution and laws of Florida are faithfully executed. I, as Governor of Florida, have the constitutional duty to transact business with officers of government, including, but not limited to, local supervisors of elections, local clerks of court, the Florida Department of Corrections, the

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Florida Department of Law Enforcement, the Florida Commission on Offender Review and the Florida Department of State regarding the collection of information related to the eligibility of voters under Article VI, section 4 of the Florida Constitution. We share the task of protecting the integrity of elections throughout Florida. I, as Governor of Florida, want to ensure the proper implementation of Article VI, section 4 of the Florida Constitution and, if applicable, chapter 2019-162, Laws of Florida. This includes the ability to direct the Department of State to fully implement Article VI, section 4 of the Florida Constitution by determining whether a convicted felon has completed *all* terms of their sentence, including the satisfaction of LFOs. I will not infringe on the proper restoration of an individual's right to vote under the Florida Constitution.

Understanding there is ongoing litigation in federal court challenging chapter 2019-162, Laws of Florida under the First, Eighth, Fourteenth and Twenty-Fourth Amendments of the United States Constitution, I do not ask this Court to address any issues regarding chapter 2019-162, Laws of Florida or the United States Constitution.

Therefore, I respectfully request an opinion of the Justices of the Supreme Court of Florida as to the question of whether "completion of all terms of sentence" under Article VI, section 4 of the Florida Constitution includes the satisfaction of all legal financial obligations—namely fees, fines and restitution ordered by the court as part of a felony sentence that would otherwise render a convicted felon ineligible to vote.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron DeSantis", with a stylized flourish extending from the end.

Ron DeSantis

Exhibit 1



December 13, 2018

The Honorable Ken Detzner
Secretary of State
State of Florida
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

Re: Implementation of Amendment 4, the Voting Restoration Amendment

Dear Secretary Detzner:

On November 6, 2018, Florida voters approved Amendment 4, the Voting Restoration Amendment with a vote of 64.55 % in support, reflecting the clear will of the people of Florida that those individuals with felony convictions who have paid their debt to society have their eligibility to vote restored to them. We write to request that you take immediate administrative action to coordinate with relevant state and local agencies as required by Chapter 98 Florida Statutes and to provide guidance to relevant state and local agencies on the proper administration of voting registration for this newly enfranchised population of Florida's citizens as soon as possible. To that end, we would like to take this opportunity to share our analysis and views on various provisions of the Amendment and corresponding issues.

Amendment 4 is Self-Executing

Amendment 4 is self-executing in that the mandatory provisions of the amendment are effective on the implementation date (Jan. 8, 2019). This is the very position that the State of Florida has acknowledged in its own legal filings in the *Hand v. Scott* case. The Amendment alters Florida Constitution Article VI, Section 4. Disqualifications, to state as follows:

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.

(b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights. [...].

That language is specific and unambiguous. As the Florida Supreme Court stated in its unanimous opinion approving the amendment for placement on the ballot, “Read together, the title and summary would reasonably lead voters to understand that the chief purpose of the amendment is to *automatically restore voting rights to felony offenders*, except those convicted of murder or felony sexual offences, upon completion of all terms of their sentence. (emphasis added.) *Advisory Opinion to the Attorney General Re: Voting Restoration Amendment*, 215 So. 2d 1202, 1208 (Fla. 2017).

Since these mandatory provisions will now be in the Florida constitution, the Legislature does not need to pass implementing legislation in order for the amendment to go into effect. That said, the Legislature should exercise its normal and proper oversight function of relevant state agencies to ensure that they implement the amendment in accordance with the will of Florida’s voters and without delay.

The burden is on the state, not the individual, to establish whether a voter is ineligible utilizing current administrative practices, databases and resources as defined in Chapter 98 and other relevant provisions of the Florida Statutes.

The plain language of the Amendment makes clear that it restores the voting rights of Floridians with felony convictions after they complete “all terms of their sentence including parole or probation.” The Amendment does not apply to those who have completed a sentence for murder or a felony sex offense. Individuals in those categories can only have their right to vote restored by the Governor and the Board of Executive Clemency.

Pursuant to Article XI, Section 5 (3), the Amendment goes into effect on January 8, 2019. Thus, starting January 8th, any individual with a felony conviction who has completed all the terms of their sentence should register to vote by completing a voter registration form.

Completion of all terms of Sentence

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 the eligibility of individuals registered to vote as outlined in Chapter 98, Florida Statutes.

Existing Voter Registration Forms are Sufficient

We assert that the uniform stateside voter registration application is sufficient to immediately register individuals impacted by the Amendment’s provisions. Question #2 of that form asks individuals to “*affirm that I am not a convicted felon, or if I am, my right to vote has been restored.*” The responsibility of the citizen is to honestly affirm that, by completing the terms of their sentence, their voting rights have been restored. Individuals may also register via the Florida Online Voter Registration System at <https://registertovoteflorida.gov/>.

Process to Confirm Eligibility is Already in Place

The existing provisions of Chapter 98 of the Florida Statutes provide the Department with sufficient authority to coordinate across state and local agency databases to identify impacted individuals, to promptly and efficiently register to vote those individuals who wish to do so, and to confirm their eligibility in the same way the Department confirms the eligibility of all other Florida residents when they complete a voter registration application.

We understand that the current registration process includes the following steps:

- An individual returns a completed voter registration form to the Supervisor of Elections;
- The Supervisor transmits an electronic copy of the application to the Department of State Division of Elections;
- The individual who completed the form is at that time considered registered and will receive a voter ID card in the mail;
- The Department of State then has the duty to review the voter’s registration to determine if there is credible information that the voter is ineligible;

This is the very same process that should be used to register those impacted by Amendment 4.

In closing, we appreciate the difficult task you face in administering elections in Florida. We hope that the discussion above will help you ensure that Amendment 4 is implemented in a timely and smooth fashion, without delay or undue burden on individual eligible voters. Florida's citizens spoke clearly on election day and we look forward to working with you to ensure their will is carried out.

Thank you for your attention to this important matter.

Sincerely,

Desmond Meade,
Executive Director, Florida Rights
Restoration Coalition

Melba Pearson,
Interim Executive Director
ACLU of Florida

Patricia Brigham,
President
League of Women Voters of Florida

Kira Romero-Craft,
Managing Attorney
LatinoJustice PRLDEF

cc: Maria Matthews, Director, Division of Elections
Florida State Association of Supervisor of Elections

Supreme Court of Florida

THURSDAY, AUGUST 29, 2019

CASE NO.: SC19-1341

ADVISORY OPINION TO THE
GOVERNOR

RE: IMPLEMENTATION OF
AMENDMENT 4, THE VOTING
RESTORATION AMENDMENT

Pursuant to article IV, section 1(c), Florida Constitution, on August 9, 2019, the Governor of Florida requested this Court's opinion on a question of constitutional interpretation affecting his executive powers and duties.

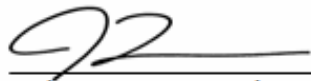
The Court has determined that the request is within the purview of the above-noted constitutional provision and the Court will exercise its discretion to provide an opinion in response to the Governor's request.

Interested parties shall file their initial briefs on or before Wednesday, September 18, 2019, and serve a copy on the Governor. Initial briefs are not to exceed 50 pages in length. The interested parties may file reply briefs by Thursday, October 3, 2019. Reply briefs are not to exceed 20 pages in length.

Oral argument is scheduled for 9:00 a.m., Wednesday, November 6, 2019. A maximum of twenty minutes to the side is allowed for the argument. Parties who have filed a brief and have asked to be heard may, in the Court's discretion, be permitted to participate in oral argument.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, LAGOA, LUCK, and MUÑIZ, JJ., concur.

A True Copy
Test:



John A. Tomasino
Clerk, Supreme Court



db
Served:

MELBA V. PEARSON
DESMOND MEADE
HON. RON DESANTIS, GOVERNOR

HON. JOSE R. OLIVA
LAURA M. LEE