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

KELVIN LEON JONES, *et al.,*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Consolidated Case No.:
	)	4:19-cv-300-RH-MJF
RON DESANTIS, *et al.*,	)	
	)	
Defendants.	)	
_____	)	

DEFENDANTS' MOTION FOR STAY PENDING APPEAL AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Federal Rule of Appellate Procedure 8(a)(1) and Local Rule 7.1, Defendants Governor Ron DeSantis and Secretary of State Laurel M. Lee respectfully move for this Court to stay pending appeal its preliminary injunction, ordered on October 18, 2019. *See* Order Den. the Mot. to Dismiss or Abstain and Granting A Prelim. Inj., Doc. 207 (Oct. 18, 2019) ("Doc. 207"). In support of this request, Defendants state as follows.

BACKGROUND

I. Factual Background

When Florida was admitted to the Union in 1845 it disenfranchised convicted felons. *See* Fla. Const. art. VI, § 4 (1838); 1845 Fla. Laws Ch. 38, art. 2, § 3. That general policy persisted for nearly 200 years. *See* Fla. Const. art. VI, § 4 (2017).

In November 2018, the voters of Florida decided to change course. Exercising their right to amend the State's constitution, *see* Fla. Const. art. XI, § 5(e), voters adopted the ballot amendment known as Amendment 4. This amendment, which became effective on January 8, 2019, changed Article VI of the Florida Constitution as follows (with new sections underlined):

> (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.

Fla. Const. art. VI, § 4 (2019).

Amendment 4 therefore re-enfranchises convicted felons (not including those convicted of murder or a felony sexual offense) "upon completion of all terms of sentence including parole or probation." Following the adoption of Amendment 4, the Florida Legislature enacted SB7066. *See* 2019-162 Fla. Laws 1. SB7066 interprets "completion of all terms of sentence" in Amendment 4 to mean "any portion of a sentence that is contained in the four corners of the sentencing document, including, but not limited to" "[f]ull payment of restitution ordered to a victim by the court as a part of the sentence" and "[f]ull payment of fines or fees ordered by the court as a part of the sentence or that are ordered by the court as a condition of

any form of supervision, including, but not limited to, probation, community control, or parole." *Id.* at 28 (codified at Fla. Stat. § 98.0751(2)(a) (2019)).

SB7066 also provides that the financial obligations enumerated above "are considered completed" in one of three manners: (1) "[a]ctual payment of the obligation in full"; (2) "the termination by the court of any financial obligation to a payee," upon the payee's approval; or (3) completion of community service hours "if the court . . . converts the financial obligation to community service." *Id*. at 29 (codified at Fla. Stat. § 98.0751(2)(a) (2019)).

II. Prior Proceedings

Plaintiffs, seventeen individuals and three organizations, sued Defendants in their official capacities for declaratory and injunctive relief, alleging that conditioning re-enfranchisement on the payment of financial obligations violated the United States Constitution, both generally and whenever the felon is unable to pay. Plaintiffs invoked several constitutional provisions, including the First Amendment, the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and the Twenty-Fourth Amendment. They also moved for a preliminary injunction to enjoin enforcement of the provisions of SB7066 that require the payment of financial obligations for restoration of the right to vote pending resolution of their claims on the merits. Defendants, meanwhile, moved to dismiss Plaintiffs' suit for lack of Article III standing or to abstain.

On October 18, 2019, this Court denied Defendants' motion to dismiss or abstain and granted Plaintiffs' motion for a preliminary injunction in part. The Court rejected Plaintiffs' procedural due process and unconstitutional vagueness arguments and withheld ruling on the Plaintiffs' Twenty-Fourth Amendment arguments. However, the Court held, based on footnote 1 of the court of appeals' en banc decision in *Johnson v. Governor of Florida*, 405 F.3d 1214, 1216-17 n.1 (11th Cir. 2005), that the restoration of a felon's right to vote could not constitutionally be made to depend on ability to pay financial obligations that were part of the felon's sentence. Concluding that Plaintiffs were likely to succeed on the merits of their claim under *Johnson*, the Court preliminarily enjoined Defendants "from interfering with an appropriate procedure through which the plaintiffs can attempt to establish genuine inability to pay." Doc. 207 at 50.

Before this Court issued its preliminary injunction, Bonnie Raysor, Diane Sherrill, and Lee Hoffman (the "Raysor Plaintiffs") moved for the Court to certify the case as a class action under Federal Rule of Civil Procedure 23(a) and (b)(2). *See* Mot. for Class Certification, Doc. 172 (Sept. 26, 2019). Specifically, the Raysor Plaintiffs sought to represent a class for Count 2 of their amended complaint, which alleged that the challenged provisions of SB7066 violated the Twenty-Fourth Amendment. That proposed class would encompass all persons otherwise eligible to register to vote in Florida but for outstanding financial obligations that they had to

pay under SB7066. They also sought to represent a subclass under Count 1 of their complaint, which raised a wealth-discrimination claim under the Equal Protection Clause. That subclass would be defined as all persons otherwise eligible to register to vote in Florida but for their inability to pay their outstanding financial obligations under SB7066.

Defendants opposed the motion for class certification, arguing that the Raysor Plaintiffs' class under Count 2 was unnecessary because the Court did not rule in favor of the Plaintiffs' Twenty-Fourth Amendment claim in its preliminary injunction order. *See* Governor and Secretary's Resp. in Opp'n to *Raysor* Plaintiffs' Mot. for Class Certification, Doc. 220 (Nov. 15, 2019). The State Defendants also argued that the subclass falling under the Raysor Plaintiffs' wealth-discrimination claim would require individualized determinations of at least 430,000 former felons' personal financial situations and that such determinations of the class members' "inability to pay" would not be guided by sufficiently objective criteria.

On November 15, 2019, the State Defendants filed their notice of appeal. *See* Doc. 219.

On November 22, 2019, this Court set a hearing for December 3, 2019 on all pending motions and further noted that "the parties should be prepared to address alternative class or subclass definitions, whether the preliminary injunction should be extended to others (including class members, if a class is certified), the issues the

Governor and Secretary of State intend to raise on appeal, whether they intend to seek a stay of the preliminary injunction pending appeal, and the status of efforts to devise or put in place a process for determining whether a felon is genuinely unable to pay an otherwise-disqualifying financial obligation." Order Setting a Hr'g, Doc. 228 at 2 (Nov. 22, 2019).

ARGUMENT

To secure a stay pending appeal, this Court must consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hand v. Scott*, 888 F.3d 1206, 1207 (11th Cir. 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)). Of these four factors, the first two are the "most critical." *Id.* (quoting *Nken*, 556 U.S. at 434).

Each of the four stay factors favors Defendants. As explained below, Defendants respectfully submit that they have a strong likelihood of success on the merits of their appeal. *Nken*, 556 U.S. at 434. Additionally, Defendants will suffer irreparable harm absent the stay; the stay will not substantially harm the Plaintiffs; and it would be in the public interest.

I. Defendants Are Likely To Succeed On the Merits of Their Appeal.

A. Defendants Are Likely to Show That Felon Re-Enfranchisement Under Amendment 4 and SB7066 Is Rationally Related to a Legitimate Government Interest.

It is well settled that "[a] state's decision to permanently disenfranchise convicted felons does not, in itself, constitute an Equal Protection violation." *Johnson*, 405 F.3d at 1217 (citing *Richardson v. Ramirez*, 418 U.S. 24, 53-55 (1974)). And as this Court recognized in its preliminary injunction order, it is equally "clear that a state can deny restoration of a felon's right to vote based on failure to pay financial obligations included in a sentence." Doc. 207 at 27.[1]

The only remaining dispute is whether a state that conditions a restoration of suffrage on the completion of a felon's sentence, including any financial obligations, can constitutionally apply that condition on those who are unable to pay the obligations. This Court, in its preliminary injunction order, maintained that the court of appeals' en banc decision in *Johnson* was dispositive. Defendants respectfully

[1] This is not true of a genuine poll tax, like that in *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966): a poll tax necessarily violates the Fourteenth Amendment because a State simply may not make payment of such a tax "a condition to the exercise of the franchise," *regardless of whether the voter has the means to pay*. *Harper*, 383 U.S. at 669. That is why the poll tax in *Harper* was facially unconstitutional. The very fact that Amendment 4 and SB7066 have many constitutional applications to felons with the ability to pay their fines and restitution shows that *Harper* cannot support the preliminary injunction ordered here.

disagree. The footnote of *Johnson* on which this Court hinged its order reads, in relevant part:

> The plaintiffs also allege that Florida's voting rights restoration scheme violates constitutional and statutory prohibitions against poll taxes. Access to the franchise cannot be made to depend on an individual's financial resources. *See Harper v. Va. State Bd. of Elections,* 383 U.S. 663, 668, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). Under Florida's Rules of Executive Clemency, however, the right to vote can still be granted to felons who cannot afford to pay restitution. The requirement of a hearing is insufficient to support the plaintiffs' claim. Because Florida does not deny access to the restoration of the franchise based on ability to pay, we affirm the district court's grant of summary judgment in favor of the defendants on these claims. In doing so, we say nothing about whether conditioning an application for clemency on paying restitution would be an invalid poll tax.

Johnson, 405 F.3d at 1216-17 n.1.

This Court interpreted *Johnson*'s first footnote to stand for the proposition that a state "cannot deny restoration of a felon's right to vote solely because the felon does not have the financial resources necessary to pay restitution." Doc. 207 at 30. But this Court never acknowledged, cited, or quoted the final sentence of the *Johnson* footnote: "In [affirming the district court], we say *nothing* about whether conditioning an application for clemency on paying restitution would be an invalid poll tax." *Johnson*, 405 F.3d at 1216-17 n.1 (emphasis added). By expressly declining to say anything on that issue, the *Johnson* court left open the question presented in this case.

That said, even freed from what this Court perceived to be the dispositive nature of the *Johnson* footnote, the Court maintained that its interpretation of the

footnote was "consistent with a series of Supreme Court decisions." Doc. 207 at 32. With respect, Defendants again disagree.

The Court apparently rejected the principle that the restoration of felons' voting rights is subject only to rational-basis review based on its reading of the Supreme Court's decision in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). *See id.* There, the Supreme Court reaffirmed that fee requirements are ordinarily reviewed only for rationality because "States are not forced by the Constitution to adjust all tolls to account for 'disparity in material circumstances.'" *M.L.B.* 519 U.S. at 123-24 (quoting *Griffin v. Illinois*, 351 U.S. 12, 23 (1956) (Frankfurter, J., concurring in judgment)). But the Court also noted that its cases "solidly establish two exceptions to that general rule." *Id.* at 124. One exception is that "[t]he basic right to participate in political processes as voters and candidates cannot be limited to those who can pay for a license." *Id.*

But that exception does not apply to this case. That is because although the "basic right to participate in the political process" may generally be a fundamental right under the Equal Protection Clause, *see Packingham v. North Carolina*, 137 S. Ct. 1730, 1738 (2017), it is not a fundamental right to those convicted of a felony. *See Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010) (O'Connor, J.).

This Court also invoked a second exception to the traditional application of rational-basis review to wealth discrimination claims: the exception for "claims

related to criminal or quasi-criminal processes." Doc. 207 at 32.[2] This Court cited *Bearden v. Georgia*, 461 U.S. 660 (1983), in support of its invocation of this second exception to rational-basis review. *See id*. But *Bearden* is inapposite. There, the Supreme Court considered whether a sentencing court could "revoke a defendant's probation for failure to pay the imposed fine and restitution, absent evidence and findings that the defendant was somehow responsible for the failure or that alternative forms of punishment were inadequate." *Bearden,* 461 U.S. at 665. Interpreting a long line of relevant cases, the Court distilled a basic principle: "[I]f the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter *imprison* a person solely because he lacked the resources to pay it." *Id.* at 667-68 (emphasis added). As the court of appeals has recently explained, *Bearden* only held that "it violates equal protection principles to *incarcerate* a person 'solely because he lacked the resources to pay' a fine or restitution." *United States v. Plate*, 839 F.3d 950, 956 (11th Cir. 2016) (emphasis added) (quoting *Bearden*, 461 U.S. at 668). That holding is inapplicable here.

[2] Defendants do not concede that the Court need even get to rational-basis review under the Equal Protection Clause. Amendment 4 and SB7066 on their face do not discriminate on the basis of wealth, and there is no basis for concluding that they were enacted "'because of,' not merely 'in spite of,'" any purported "adverse effects" upon felons unable to complete the financial aspects of their sentences. *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Plaintiffs' equal-protection claim therefore fails at the outset.

For these reasons, neither of the two asserted exceptions to rational-basis review for wealth-discrimination claims applies.

As this Court recognized in its order, "it is clear that a state can deny restoration of a felon's right to vote based on failure to pay financial obligations included in a sentence." Doc. 207 at 27; *see also Harvey*, 605 F.3d at 1079. The only remaining question is whether there exists a rational basis for withholding voting rights from felons who are genuinely unable to pay their criminal fines and restitution due to indigency. Defendants respectfully submit that such a basis clearly exists.

Where rational-basis review applies, a State "does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Dandridge v. Williams*, 397 U.S. 471, 485 (1970). Rather, laws challenged under this deferential standard "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). In other words, Amendment 4 and SB7066 must survive "unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that the legislature's actions were irrational." *Vance v. Bradley*, 440 U.S. 93, 97 (1979). And the "burden is on the one attacking the legislative arrangement to negative every conceivable basis

which might support it." *Armour v. City of Indianapolis*, 566 U.S. 673, 685 (2012) (quoting *Madden v. Kentucky*, 309 U.S. 83, 88 (1940)).

To assess the rationality of Amendment 4 and SB7066, it is important to remember that they are not "aimed at encouraging the collection of payments from *indigent* felons, but from *all* felons." *Johnson v. Bredesen*, 624 F.3d 742, 748 (6th Cir. 2010). Therefore, the People of Florida and the Legislature "may have been concerned, for instance, that a specific exemption for indigent felons would provide an incentive to conceal assets and would result in the state being unable to compel payments from some non-indigent felons." *Id.* Moreover, it is the Florida Legislature's "prerogative to legislate for the generality of cases," *Astrue v. Capato ex rel. B.N.C.*, 566 U.S. 541, 556 (2012), rather than providing for case-by-case exceptions to a general rule. *See Califano v. Jobst*, 434 U.S. 47, 52 (1977) (upholding a statutory scheme under rational-basis review in which Congress "elected to use simple criteria" "[i]nstead of requiring individualized proof on a case-by-case basis"); *Burton v. Tampa Hous. Auth.*, 271 F.3d 1274, 1284-85 (11th Cir. 2001) (describing *Jobst*).

Additionally, rational-basis review takes cognizance of administrative concerns, including the reduction of administrative costs. *See Armour*, 566 U.S. at 682-85; *Weinberger v. Salfi*, 422 U.S. 749, 784 (1975). The State possesses a finite amount of resources that it must allocate among its citizens and programs and it

therefore has a legitimate interest in putting those resources to their highest use. A vast bureaucratic system designed to provide individualized determinations as to whether up to 430,000 felons can or cannot afford to pay their fines and restitution would entail a significant cost that the State rationally can choose not to incur. *See Califano v. Boles*, 443 U.S. 282, 284-85 (1979); *Lyng v. Castillo*, 477 U.S. 635, 640-41 (1986).

Finally, although this discussion of the rational-basis standard has assumed that the State provides felons unable to pay with no avenue to restore their right to vote, the State *does* provide for two such opportunities. As to the first avenue, *Johnson* itself recognized that "[u]nder Florida's Rules of Executive Clemency . . . the right to vote can still be granted to felons who cannot afford to pay" and the State therefore "does not deny access to the restoration of the franchise based on ability to pay." 405 F.3d at 1216-17 n.1. Indeed, this Court recognized the avenue for restoration that runs through the Executive Clemency Board. *See* Doc. 207 at 36. Therefore, even if the *Johnson* footnote did govern this exact dispute, it provides precisely the reason why Amendment 4 and SB7066 *do not* "deny access to the restoration of the franchise based on ability to pay" fines and other financial obligations. 405 F.3d at 1216-17 n.1. Although SB7066's implementation of Amendment 4 would, Defendants submit, be constitutional even in the absence of application to the Executive Clemency Board, that procedure identified as sufficient in *Johnson* is

sufficient here with respect to various financial obligations. As to the second avenue, SB7066's provision allowing a court to modify outstanding financial obligations—including fines and restitution—by either waiving them entirely or converting them to community service hours. *See* 2019-162 Fla. Laws 29 (codified at Fla. Stat. § 98.0751(2(a) (2019)), provides an additional measure of flexibility and further shows that the existing regulatory regime provides sufficient opportunity for felons lacking the financial resources to discharge their financial obligations to restore their right to vote.

Defendants are therefore likely to show that Amendment 4 and SB7066 are constitutional.

B. Defendants Are Likely To Show that the Preliminary Injunction Should Not Have Issued Even If the Court's Merits Analysis Was Correct.

Even if the Court was correct that Amendment 4 and SB7066 violate the Equal Protection Clause as applied to felons unable to complete the financial components of their sentence, the Court's entry of a preliminary injunction would still be in error. If Plaintiffs and the Court are correct, that SB 7066 violates the Equal Protection Clause, then a determination of severability must eventually be made in Florida state court. Severability of State legislative provisions is "a matter of state law." *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996).

The Florida test for the severability of legislative enactments is as follows:

> When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Smith v. Dep't of Ins., 507 So. 2d 1080, 1089 (Fla. 1987). This same test applies to constitutional amendments adopted by Florida voters. *See Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999).

To be clear, the Governor and the Secretary do not believe that Amendment 4 or SB7066 violate the Equal Protection Clause in any respect whatsoever. However, because this Court reached a contrary conclusion, it should have also found Amendment 4 to be unconstitutional and deferred the question of severability to the Florida Supreme Court. *See Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) ("The highest court of each State, of course, remains 'the final arbiter of what is state law.' " (citation omitted)). The Florida Supreme Court is the appropriate venue to address whether "the good and the [allegedly] bad features" of the Amendment are "inseparable in substance" such that it cannot be said that the People of Florida "would have passed the one without the other." *Smith*, 507 So. 2d at 1089*; see also Mississippi Valley Title Ins. Co. v. Thompson*, 745 F.3d 1330, 1334 (11th Cir. 2014)

("Only a state supreme court can provide 'correct' answers to state law questions, because a state's highest court is the one true and final arbiter of state law." (citation omitted)). In light of Florida's nearly 200-year history of disenfranchising convicted felons, and Amendment 4's express requirement that felons' voting rights not be restored until completion of all terms of sentence, it is unlikely that Florida voters would have permitted felons to recapture their voting rights without fully repaying their debt to society. Indeed, this Court recognized in its order that this was the probable mindset of Florida voters. *See* Doc. 207 at 16 ("The theory of most voters might well have been that felons should be allowed to vote only when their punishment was complete – when they 'paid their debt to society.'").

Partially enjoining the requirement that felons complete the terms of their sentences would broaden Amendment 4 to provide automatic restoration of voting rights to a larger segment of the felon population than the People of Florida intended to benefit. Because the preliminary injunction does not, and cannot, adequately address the State's severability principles, Defendants are likely to prevail on appeal. They therefore satisfy the first factor for a stay.

II. Defendants Will Suffer Irreparable Injury Absent a Stay.

In addition to demonstrating that the State has a substantial likelihood of success on the merits, the remaining factors also favor granting a stay pending appeal. First, the State undoubtedly prevails on demonstrating injury. "[A]ny time a

State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers); *accord, e.g., Maryland v. King*, 567 U.S. 1301, 1301 (2012) (Roberts, C.J., in chambers); *Hand*, 888 F.3d at 1241. The voters of Florida passed Amendment 4, and the State seeks to implement the constitutionally expressed will of the People through SB7066. The preliminary injunction thwarts the State's efforts and defies the People's wishes, as it allows individuals to register and vote who are not eligible under Amendment 4.

The State also has "a substantial interest in avoiding chaos and uncertainty in its election procedures." *Hand*, 888 F.3d at 1214. It should not be rushed into creating procedures to comply with the Court's order, including creating a method for determining whether someone is "genuinely unable to pay" outstanding financial obligations. *See id.* The Court's order does not provide a standard for evaluating a convicted felon's ability to pay, nor does it give the State any guidelines for creating one consistent with its opinion.

The State's burden would not end with finding a manageable standard for evaluating ability to pay. Implementing new procedures for this determination would also create a significant hardship for the State, especially if the Court extends the preliminary injunction to the subclass if it is certified. Plaintiffs' proposed subclass

includes "[a]ll persons otherwise eligible to register to vote in Florida who are denied the right to vote pursuant to SB 7066 because they are unable to pay off their outstanding [legal financial obligations] due to their socioeconomic status." Raysor Pl.'s Mem. in Supp. of Mot. For Class Certification, Doc. No. 172-1 at 3-4 (Sept. 26, 2019). Plaintiffs admit that over 430,000 former felons have outstanding financial obligations. *Id.* at 6. If the preliminary injunction is extended to include the subclass, the State would expend substantial resources making individual determinations about the socioeconomic status of hundreds of thousands of individuals. The State's timeline for complying would also likely be truncated given the fast-approaching March 2020 presidential primary election. What is more, if the district court's order is overturned, the newly adopted procedures would need to be changed yet again, "potentially re-disenfranchising those who have been reenfranchised pursuant to the district court's injunction." *Hand*, 888 F.3d at 1214.

III. A Stay Will Not Substantially Injure Plaintiffs.

Conversely, a stay will not substantially injure Plaintiffs. The Constitution allows the disenfranchisement of convicted felons, and it does not mandate that states create a system for restoring their right to vote. *See Richardson v. Ramirez*, 418 U.S. 24, 53-56 (1974); *see also Johnson*, 405 F.3d at 1217. It is true that Plaintiffs have "an interest in regaining their voting rights sooner rather than later." *Hand*, 888 F.3d at 1215. But a stay would not significantly delay re-enfranchisement

were it in order, as the State also has an interest in timely resolution before the upcoming elections and plans to ask the court of appeals to expedite the appeal. *See id.* (explaining that plaintiff-appellees had not "shown that denying a stay would necessarily increase the speed with which their voting rights may be restored," considering the expedited briefing and oral argument schedule). A stay might also benefit Plaintiffs by stabilizing the process, as re-enfranchisement could be short-lived if the Eleventh Circuit modifies or overturns the Court's preliminary injunction. *See Hand*, 888 F.3d at 1214.

Simply put, the State's burden in complying with the Court's order is significant, whereas a stay would not substantially thwart Plaintiffs' rights. Under these circumstances, "there is wisdom in preserving the status quo ante" until the court of appeals has had the opportunity on full briefing to consider the constitutional issues raised by Plaintiffs. *See id.*

IV. The Public Interest Favors a Stay.

Finally, a stay of the Court's order would serve several compelling public interests. As noted above, the People of Florida have a substantial interest in the enforcement of valid laws. *See King*, 567 U.S. at 1301. It is also in the public interest to "ensur[e] proper consultation and careful deliberation before overhauling [the State's] voter-eligibility requirements," as the Court's order would force the State to devise and execute a plan for evaluating Plaintiffs' economic status based on the

Court's unclear standard of "genuinely unable to pay." *See Hand*, 888 F.3d at 1215. And if the injunction is extended to the subclass, it would require the State to do so for hundreds of thousands of convicted felons. Finally, a stay of injunctive relief is also warranted because implementation of the Court's order could confuse the public about the state of Amendment 4. As demonstrated above, the State is substantially likely to prevail on appeal. This reversal could lead to misapprehension of voting requirements, which undermines public confidence in the rules governing elections. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls.").

Overall, the public interest favors a stay of the district court's preliminary injunction, especially because the State is likely to prevail on the merits and has demonstrated it will suffer irreparable injury by not being able to enforce its own laws. *See Nken*, 556 U.S. at 434-35 (2009) (explaining that the "first two factors of the traditional standard are the most critical").

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant a stay pending appeal.

Dated: November 27, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIACE WITH LOCAL RULE 7.1(B)

Pursuant to Local Rule 7.1(B), the undersigned has conferred with counsel for Plaintiffs regarding the relief requested in this motion. The Gruver, Jones, McCoy and Raysor Plaintiffs, through their counsel, indicated that they oppose this motion. The Supervisors of Elections for Indian River and Alachua Counties have no objection. All remaining parties have expressed no position on the motion.

*/s/ Nicholas A. Primrose*_____
Nicholas A. Primrose

CERTIFICATE OF COMPLIACE WITH LOCAL RULE 7.1(F)

Pursuant to Local Rule 7.1(F), I certify that the foregoing memorandum of law contains 4,848 words.

*/s/ Nicholas A. Primrose*_____
Nicholas A. Primrose

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 27th day of November, 2019, which will generate an automated email notice and service copy to all counsel of record.

*/s/ Nicholas A. Primrose*_____
Nicholas A. Primrose