

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

KELVIN LEON JONES, et al.,

Plaintiffs,

v.

RON DESANTIS, in his official
capacity as Governor of Florida, et al.,

Defendants.

Consolidated Case
No. 4:19-cv-300-RH-MJF

**BRIEF OF FLORIDA RIGHTS RESTORATION COALITION AS *AMICUS
CURIAE* IN SUPPORT OF NEITHER PARTY WITH RESPECT TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

**DISCLOSURE STATEMENT OF *AMICUS CURIAE*
FLORIDA RIGHTS RESTORATION COALITION**

Amicus Curiae Florida Rights Restoration Coalition is a non-profit organization that is a project of Tides Advocacy, a 501(c)(4) social welfare organization. Florida Rights Restoration Coalition 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 of its stock. Amicus 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.

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.

/s/ Chiraag Bains
Counsel for Amicus

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INTEREST OF AMICUS CURIAE

Amicus curiae Florida Rights Restoration Coalition (“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 provisions that ameliorate obstacles to rights restoration under Senate Bill 7066 (“SB 7066”). FRRC, therefore, has a strong interest in this Court’s consideration of Plaintiffs’ motion for a preliminary injunction regarding SB 7066 and any related consideration of the constitutionality of Amendment 4 itself, on which this Court has ordered briefing.

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 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. In no small part due to these efforts, Amendment 4 passed with the support of over 5.1 million Floridians—64.55% of the vote.

In 2019, the Florida legislature passed SB 7066, which requires certain legal financial obligations (“LFOs”) be paid by returning citizens before their right to vote is restored. FRRC engaged with Florida legislators, provided technical assistance, and testified to shape SB 7066 in specific ways favorable to returning citizens and their right to vote. FRRC helped secure within SB 7066 a sentence modification provision, allowing judges to terminate LFOs, convert them to community service, or remove them from the sentencing document such that the obligations still exist but no longer pose a barrier to re-enfranchisement. *See* Fla. Stat. § 98.0751(2)(a)(5)(e) (hereinafter “modification provision”). This modification provision has the potential to mitigate SB 7066’s LFO payment requirement and, if the LFO requirement is ultimately upheld, increase the number of persons able to have their rights restored under Amendment 4.

FRRC also advocated for language clarifying that re-enfranchisement is conditioned on completion of only those terms “contained in the four corners of the sentencing document,” *id.* § 98.0751(2)(a) (hereinafter “four-corners provision”).

This provision means that returning citizens need not pay LFOs imposed outside the sentencing document to regain their vote. FRRC has been working to help Floridians use the modification and the four-corners provisions to restore their voting rights.

FRRC submits this brief to explain why any order from this Court should not enjoin these provisions of SB 7066 and why no scenario calls for Amendment 4 itself to be invalidated.

BACKGROUND

At the heart of this case lies Florida Statute Section 98.0751, which was codified into law by SB 7066. *See* 2019 Fla. Laws 27-29, ch. 2019-162 § 25. That law provides that a person disqualified from voting on the basis of a felony conviction shall have “voting rights restored . . . upon the completion of all terms . . . of sentence, including parole or probation,” Fla. Stat. § 98.0751(1), and defines “all terms of sentence” to include full payment of restitution, fines, and fees imposed “as part of the sentence,” *id.* §§ 98.0751(2)(a), (2)(a)(5)(a)-(c).

SB 7066 limits the impact of this LFO requirement with its four-corners provision, which mandates that “completion of all terms of sentence” requires completing only those terms “contained in the four corners of the sentencing document.” *Id.* § 98.0751(2)(a). This four-corners provision means that payment of

any LFO imposed for a conviction but not listed in the sentencing document is not a condition for a person to regain the right to vote.

SB 7066 also establishes a sentence modification provision that allows individuals to alleviate or remove their LFOs through one of three mechanisms or “any combination thereof.” *Id.* § 98.0751(2)(a)(5)(e). First, a court may order the “termination . . . of any financial obligation to a payee” “upon the payee’s approval.” *Id.* § 98.0751(2)(a)(5)(e)(II). Second, a court may “convert[] the financial obligation to community service.” *Id.* § 98.0751(2)(a)(5)(e)(III). Third, a court may “modif[y] the original sentencing order to no longer require completion of such a term” and move an individual’s LFOs off their sentencing order. *See id.* § 98.0751(2)(a)(5)(e). When this occurs, LFOs are no longer considered part of the “four corners of the sentencing document,” and thus do not serve as a barrier to re-enfranchisement. *See id.* § 98.0751(2)(a). This third option allows a court to restore a person’s right to vote before they have paid their LFOs, without relieving them of the duty to pay.¹

The modification and four-corners provisions represent a crucial victory won through months of intense legislative advocacy. FRRC worked closely with

¹ This reading of the four-corners provision is supported by Florida Statute Section 98.0751(4), which states: “For the purpose of determining a voter registrant’s eligibility, the provisions of this section shall be strictly construed. If a provision is susceptible to differing interpretations, it shall be construed in favor of the registrant.”

legislators in the State House and Senate to secure the inclusion of these provisions in SB 7066. The organization's legislative campaign began with an "Advocacy Day" on March 12, 2019 during which over 500 members conducted 127 meetings with state legislators. FRRC's "Lobby Corps" of returning citizens met with legislators every week of the session. Those members attended every relevant committee and subcommittee hearing until the bill passed in May.

The enactment of these two provisions fulfilled a central goal of FRRC's. The modification provision, by allowing a court to alter financial obligations, provides avenues to re-enfranchisement for returning citizens who have outstanding LFOs. The four-corners provision ensures that Floridians with LFOs outside their sentencing documents will not be perpetually disenfranchised. If the LFO payment requirement is ultimately upheld, FRRC expects these provisions will significantly increase the number of returning citizens enfranchised by Amendment 4 in time to vote in November 2019 and any other interim elections. As long as LFOs remain a potential requirement for the re-enfranchisement of any Floridian, these two provisions will play a key role in making the promise of Amendment 4 a reality.

SUMMARY OF ARGUMENT

Amicus curiae FRRC submits this brief to make two key points. First, the modification and four-corners provisions of SB 7066 are critical mechanisms for enfranchising returning citizens and should not be enjoined as part of any preliminary relief this Court may grant to the Plaintiffs. Plaintiffs' claims and arguments do not require such relief. Moreover, enjoining the modification provision as part of an injunction against the LFO requirement would inflict great and irreparable harm on returning citizens' voting rights if that injunction is overturned on appeal. This outcome would take away months of precious time available to returning citizens to seek and attain sentence modifications in time to vote in the November 2019 election. Indeed, FRRC, public defenders, government entities, and Floridians have already begun to use these provisions to secure re-enfranchisement. Enjoining the modification and four-corners provisions will harm the public interest and may unnecessarily prevent returning citizens from voting.

Second, in response to this Court's inquiry about the implications of Plaintiffs' claims for Amendment 4 itself, FRRC submits that Amendment 4 must stand. No party argues that Amendment 4 is unconstitutional, and Plaintiffs seek no relief with regard to Amendment 4. Even if Amendment 4 were found to include an unconstitutional LFO requirement, a reviewing court can fashion alternative relief, such as an as-applied remedy, that would not require invalidating

Amendment 4. There is no basis to return Florida to the permanent felony disenfranchisement regime that predated the 2018 passage of Amendment 4 by a supermajority of the state's voters.

ARGUMENT

I. Any preliminary injunction to address constitutional infirmities in the LFO requirement of SB 7066 should not disturb its beneficial provisions.

A. **Plaintiffs do not seek, and their claims do not require, an order enjoining the sentence modification or four-corners provisions.**

In their respective complaints, certain Plaintiffs broadly ask this Court to enjoin Fla. Stat. §§ 98.0751(1)–(2)(a), which encompasses the modification and four-corners provisions. *See* Gruver Compl. at 69; McCoy Compl. at 27. However, Plaintiffs' preliminary injunction motion makes clear they are asking this Court to “enjoin[] Defendants from enforcing the provisions of Fla. Stat. §§ 98.0751(1) - (2)(a) that *require payment* of any financial obligations before automatic restoration of the right to vote.” Pls.' Mot. for Prelim. Inj., ECF 108, at 2 (emphasis added). Neither the modification provision nor the four-corners provision requires a returning citizen to pay any financial obligations in order to have their rights restored. The modification provision allows returning citizens to have financial obligations *excused* for purposes of voting rights restoration. *See* Fla. Stat. § 98.0751(2)(a)(5)(e). And, the four-corners provision *limits* the burden of financial obligations. *See id.* § 98.0751(2)(a). As such, any relief this Court

orders in the present case should enjoin neither Section 98.0751(2)(a)(5)(e) nor Section 98.0751(2)(a)'s language limiting terms of a sentence to those "contained in the four corners of the sentencing document."

Moreover, none of the harms Plaintiffs allege stem from these provisions. Plaintiffs argue that SB 7066 inflicts a range of constitutional injuries by requiring those with felony convictions to pay off all outstanding LFOs before their right to vote is restored. These injuries include punishment on the basis of wealth, unconstitutional vagueness, a violation of the Twenty-Fourth Amendment, an undue burden on the right to vote, and equal protection and due process violations. *See, e.g.*, Pls.' Mem. of Law in Support of Mot. for Prelim. Inj., ECF 98-1, at 46-73. Nowhere in their preliminary injunction briefing or their complaints do Plaintiffs argue the modification or four-corners provisions cause any of these constitutional injuries. *See, e.g., id.*; First Amended Compl., ECF 84, at 34-46; Gruver Compl. at 53-69. Indeed, Plaintiffs discuss the modification provision only to argue that it is inadequate to prevent the constitutional injuries inflicted by SB 7066's other provisions. *See* Pls.' Mem. of Law in Support of Mot. for Prelim. Inj., ECF 98-1, at 51-52, 60.

Because the modification and four-corners provisions implicate none of Plaintiffs' alleged injuries, this Court need not disturb those provisions should it grant relief.

B. Enjoining the modification and four-corners provisions would harm FRRC and prevent many returning citizens from voting.

Enjoining the modification and four-corners provisions would upend months of work to help impacted individuals, prevent otherwise eligible voters from participating in upcoming elections, create new legal uncertainty for individuals using the provisions, and thwart the will of Floridians in adopting Amendment 4.

First, enjoining these provisions will derail current efforts to help impacted individuals. Since SB 7066's passage, FRRC has worked closely with officials in a number of counties to establish efficient processes for rights restoration through the statute's provisions. In Miami-Dade County, for example, the state attorney has proposed a comprehensive plan to use the SB 7066's mechanisms in collaboration with FRRC, the county court system, and others. *See* Miami-Dade County State Attorney, *The Restoration of Voting Rights for Returning Citizens*, at 2-6 (<http://www.miamisao.com/wp-content/uploads/2019/08/A4-Statutory-Analysis-Plan-and-Procedures.pdf>); David Smiley & Charles Rabin, *Felons unable to pay fines, fees can vote in Miami under this first-of-its-kind plan*, *Miami Herald* (July 30, 2019) (<https://www.miamiherald.com/news/politics-government/state-politics/naked-politics/article233254066.html>) (noting an "estimated 150,000" returning citizens could use Miami-Dade's "rocket docket").

Some individuals with LFOs are unsure whether those LFOs constitute a term of sentence. FRRC intends to help these individuals file motions seeking a

court order deeming their sentence complete for the exclusive purpose of restoring voting rights. FRRC has processed numerous applications for people who would benefit from such a court order and is collaborating with government officials to identify additional candidates. In Miami-Dade County, FRRC and the public defender have already drafted motions for forty-one returning citizens. FRRC is working with these individuals to ensure that they are able to sign and submit the motions.

Other counties are establishing similar procedures. For instance, the Hillsborough County State Attorney is pursuing a “rocket docket” to process modification applications. *See, e.g., Mitch Perry, Three Florida state attorneys trying to help felons vote, despite new FL law, Florida Phoenix (July 30, 2019) (<https://www.floridaphoenix.com/blog/three-florida-state-attorneys-trying-to-help-felons-vote-despite-new-fl-law/>)*. And the Chief Judge of Broward County has already issued an order allowing returning citizens to file a written motion to modify their sentences and requiring a hearing to be held on the motion within 45 days of filing. *See Chief Judge Jack Tuter, Administrative Order 2019-59-Crim, Pertaining to Motions Filed Pursuant to Section 98.0751 (Aug. 23, 2019) (<http://www.17th.flcourts.org/wp-content/uploads/2019/08/2019-59-Crim.pdf>)*.

The impact will be substantial. FRRC has identified over 100,000 people eligible to use the modification and/or four-corners provisions to restore their voting rights in Miami-Dade County alone, and has been processing applications from candidates who could benefit from similar processes in Broward and Palm Beach Counties. FRRC has conferred with a total of ten counties to date about using the modification and four-corners provisions, and conducted calls with myriad judges, state attorneys, public defenders, clerks of court, and other stakeholders about using these provisions.

FRRC has also conducted widespread public outreach to help impacted individuals use the modification and four-corners provisions. The organization has held chapter meetings and community events across the state, sent canvassers to register voters and provide information on modification options, and placed over \$5,000 dollars in Facebook ads to make eligible individuals aware of the rights-restoration process. FRRC and its partners have invested countless hours in this work. They hope to begin securing relief for individuals within months.

Enjoining the modification and four-corners provisions would cripple these efforts. Indeed, some local officials recently communicated to FRRC that they will not work on a modification process until this Court rules on SB 7066 because they worry this Court may render their investments irrelevant.

Second, enjoining the provisions risks preventing otherwise eligible voters from participating in upcoming elections. Notwithstanding the term “rocket docket,” FRRC’s experience has shown that, at a minimum, it will take months for eligible individuals to learn about these provisions, apply, have their applications processed, and successfully obtain court orders. Any interruption of ongoing efforts to implement these processes would substantially reduce the available time and likely prevent many returning citizens from being able to complete the process in time for the November 2019 election and future elections. This denial of the right to vote constitutes grievous harm to those aspiring voters.

If this Court were to preliminarily enjoin the LFO payment requirement, that ruling no doubt would be appealed and final resolution of such appeal would take weeks or even months. If such an injunction were eventually overturned, the LFO requirement would be reinstated and returning citizens would be required to have completed their LFOs to vote. Such an appellate decision likely would leave little time before the registration deadline for the upcoming election. Allowing returning citizens to modify their sentences now—or receive court orders deeming their sentences complete—will ensure they can vote if an LFO payment requirement is later upheld.

Third, enjoining these provisions will thrust people who have already received relief on them into profound legal uncertainty. FRRC has helped

members and other formerly convicted persons prepare for the modification process to transform unduly burdensome, disproportionate debts into more manageable community service obligations. Moreover, returning citizens have structured their lives around these anticipated modifications; their financial plans and their civic participation depend on their modified sentences. In Broward County, over 100 people are being processed for modifications and many LFOs are being converted to community service. Others will be relying on court orders based on the four-corners provision to register to vote. If this Court enjoins either provision, these citizens will be forced to seek state-court clarification on whether their modified sentences and eligibility to register remain valid.

Enjoining the modification and four-corners provisions also threatens to chill individuals who have already used them, leading such individuals to refrain from voting out of fear that they may be accused of a crime. *See Fla. Stat. § 104.011* (false swearing in connection with voter registration or voting is a third-degree felony); *id.* § 104.041 (fraud in connection with voting is a third-degree felony).

Fourth, enjoining the modification and four-corners provisions would stymie Floridians' core intent in passing Amendment 4. The Florida Supreme Court concluded, "[T]he chief purpose of the amendment is 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. to*

the Att’y Gen. Re: Voting Restoration Amendment, 215 So.3d 1202, 1208 (Fla. 2017). Before Amendment 4, Florida permanently disenfranchised individuals convicted of a felony. *See, e.g.*, Br. for The Sentencing Project as Amicus Curiae, *Hand v. Scott*, No. 18-11388, 2018 WL 3328534, at *5 (11th Cir. June 28, 2018). Given this context, Floridians’ decision to automatically restore voting rights constitutes a vote to *end* permanent disenfranchisement. *See* Fla. Const., art. VI, § 4 (1968), *amended by* Fla. Const., art. VI, § 4 (2018).

If the LFO payment requirement is ultimately upheld, the modification and four-corners provisions will play a key role in preventing restitution, fines, and fees from serving as an absolute barrier to the right to vote for Florida’s returning citizens. The modification provision provides an avenue for some returning citizens with outstanding LFOs to become eligible to vote. Without the ability to modify their LFOs, many returning citizens will remain permanently disenfranchised. Similarly, the four-corners provision has the potential to blunt the impact of SB 7066’s LFO requirement, limiting what financial obligations may act as a barrier to rights restoration.

If these provisions are enjoined but an LFO payment requirement is ultimately upheld, the lost time to use these beneficial provisions will mean that many returning citizens will not have been able to complete all terms of their sentences and will remain disenfranchised in the upcoming election cycle. It is

critical for Florida's retuning citizens, as well as the state of Florida's democracy, that these provisions remain intact.

II. Nothing in Plaintiffs' claims or arguments suggests Amendment 4 itself should be struck down.

Amendment 4 added language to the Florida Constitution to establish that, except for persons convicted of murder or a felony sexual offense, "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 probation or parole." Fla. Const., art. VI, § 4(a). This Court recently asked the parties to brief what follows if Amendment 4 itself conditions voting rights restoration on the payment of LFOs, including whether "Amendment 4 is unconstitutional, and we're back where we were before it was passed?" Tr. of Scheduling Conf., Aug. 15, 2019, ECF 110, at 11:21-22. FRRC respectfully submits that the constitutionality of Amendment 4 is not squarely and properly before this Court. Furthermore, even if it were, and even if the Florida Constitution suffered from some constitutional infirmity, under no circumstances would the proper remedy be to invalidate Amendment 4 and restore the regime that predated its approval by a supermajority of Florida voters.

Neither Plaintiffs nor Defendants have argued that Amendment 4 is unconstitutional. *See, e.g.*, Pls.' Mem. in Opp. to Defs.' Mot. to Dismiss, ECF 121, at 15-26 (arguing Amendment 4 contains no LFO requirement and, if it did, the

requirement would be unconstitutional but severable); Governor and Secretary's Resp. in Opp. to Mot. for Prelim. Inj., ECF 132, at 17 (asserting that Amendment 4 contains an inseverable but constitutional LFO requirement). Nor has any party asked this Court to take any action with regard to Amendment 4.

If this Court nonetheless interprets Amendment 4 and locates therein an unconstitutional LFO requirement, the proper remedy would not be to strike down Amendment 4. For one thing, any such LFO requirement may be severable. *See* Pls.' Mem. in Opp. to Defs.' Mot. to Dismiss, ECF 121, at 15-31. Alternatively, insofar as this Court (or any court) finds the Amendment impermissibly punishes or discriminates against people for their inability to pay outstanding LFOs, or violates due process for those unable to determine what LFOs they owe, this Court may be able to fashion an as-applied remedy that adequately relieves the constitutional injury.

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. v. S.L.J.*, 519 U.S. 102, 128 (1996) (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 v. Georgia*, 461 U.S. 660, 666-68 (1983)

(prohibiting revocation of probation due to nonpayment of LFOs where individual is unable to pay); *Williams v. Illinois*, 399 U.S. 235, 242 (1970) (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”). Here, this Court could order that individuals who cannot afford to pay their LFOs not be required to do so in order to be re-enfranchised under Amendment 4. This Court could provide a similar as-applied remedy for individuals for whom records do not clearly indicate whether they have outstanding LFOs that constitute a “term of sentence” within the meaning of Amendment 4.

By contrast, invalidating Amendment 4 would be a drastic and pyrrhic remedy. It would inflict extraordinary harm on FRRC, its members, and other returning citizens who stand to regain their voting rights. FRRC and its partners spent the better part of the decade fighting for a constitutional amendment to end Florida’s deeply punitive permanent disenfranchisement scheme. They spent millions of dollars and countless hours convincing five million fellow citizens that all Floridians should have a voice in their democracy. Their success gave over 1.4 million Floridians the opportunity to be full citizens and participate in the most fundamental democratic act: voting. Invalidating Amendment 4 would reject the

will of Florida’s voters and impose a draconian punishment on the returning citizens those voters intended to help.

For these reasons, under no circumstances should Amendment 4 be invalidated and the law returned to its pre-November 2018 regime.

CONCLUSION

This Court should refrain from enjoining the modification and four-corners provisions, and Amendment 4 should not be invalidated.

Dated: September 27, 2019

Respectfully submitted,

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STATEMENT OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 3,801 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.

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CERTIFICATE OF SERVICE

The foregoing was filed this 27th day of September, 2019, through this Court's Electronic Filing System. Parties will be served and may obtain copies electronically, through the operation of the Electronic Filing System.

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