UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

KELVIN LEON JONES et al.,

Plaintiffs,

CONSOLIDATED
CASE NO. 4:19cv00300-RH/MJF

v.

RON DESANTIS et al.,

Defendants.
_____/

GOVERNOR AND SECRETARY'S RESPONSE IN OPPOSITION TO *RAYSOR* PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Defendants, Governor Ron DeSantis and Secretary of State Laurel M. Lee ("State Defendants"), oppose *Raysor* Plaintiffs' (hereafter "Plaintiffs") Motion for Class Certification, ECF No. 172,[1] Memorandum in Support of Motion for Class Certification, ECF No. 172-1, and Supplemental Memorandum in Support of Motion for Class Certification, ECF No. 209 (collectively, the "Motion").

I. Introduction

A. Plaintiffs have moved this Court to certify one class and one proposed subclass. Both face significant defects that doom certification.

[1] All ECF Nos. refer to filings in Case No. 4:19-cv-300, unless otherwise explicitly stated.

The first class falls under Count 2 of the *Raysor* Second Amended Complaint, ECF No. 11-2 (Case No. 4:19-cv-301), which alleges that SB 7066 facially violates the Twenty-Fourth Amendment of the U.S. Constitution. The initial Memorandum defined the proposed class as: "All persons otherwise eligible to register to vote in Florida who are denied the right to vote pursuant to SB 7066 because they have outstanding LFOs." ECF No. 172-1 at 3.

Certification of this class should be denied because it is unnecessary. That is, Plaintiffs unnecessarily seek to certify a class containing every former felon in Florida with outstanding restitution, fines, fees, and costs for the purpose of litigating the facial constitutionality of SB 7066. Although Plaintiffs make a necessity argument in their Supplemental Memorandum with regard to their proposed subclass, they fail to argue that class certification is necessary with regard to the alleged violation of the Twenty-Fourth Amendment. And with good reason—Plaintiffs do not need class certification to obtain the broad ruling they seek on a facial challenge this claim.

In addition, this Court did not rule in Plaintiffs' favor on their allegation that SB 7066 was a poll tax in violation of the Twenty-Fourth Amendment in the preliminary injunction order. *See* ECF No. 207 at 40–43. Thus, even if this Court were to grant class certification on this claim, any extension of the preliminary injunction's existing terms to the proposed class would not provide a single former

felon with relief prior to a final trial on the merits. Class certification at this stage of the proceedings, if ever, is unnecessary. Moreover, given that this Court explicitly ruled that restitution and fines are not taxes, Plaintiffs' proposed class is also overbroad.

B. The second class is a subclass that falls under Count 1 of the *Raysor* Second Amended Complaint, ECF No. 11-2 (Case No. 4:19-cv-301) which alleges that SB 7066 violates the Fourteenth Amendment of the U.S. Constitution due to wealth-based discrimination. The initial Memorandum defined Plaintiffs' proposed subclass as: "All 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 LFOs due to their socioeconomic status." ECF No. 172-1 at 3–4.

The initial Memorandum concedes that to determine whether a former felon fits within the subclass, this Court or the State would need to examine not only "whether a class member has outstanding LFOs" but also "the subclass member's existing financial resources." *Id.* at 4. Thus, Plaintiffs seek to certify a subclass that will require individual determinations as to each former felon's personal financial situation, which they admit could involve an examination of at least 430,000 former felons. *Id.* at 6.

Moreover, nowhere in the Motion do Plaintiffs define what it means for a former felon to be "unable to pay off their outstanding LFOs due to their

socioeconomic status." Though it is not defined and ambiguous, Plaintiffs' proposed subclass does not appear limited to only those individuals who are indigent. Plaintiffs have proposed no test for determining whether a former felon is "unable to pay" their financial obligations, such as whether inclusion in the subclass is based on income, the size of the outstanding financial obligation, the amount of other debts the former felon owes, or some combination of these items.

Plaintiffs also have not defined who would properly make these determinations, or what evidence would be required. And even though Plaintiffs allege that this subclass definition "rel[ies] upon objective criteria," *id.* at 4, without some mathematical formula or other objective standard, Plaintiffs in reality are asking this Court or the State to make individual, subjective decisions about the "socioeconomic status" of hundreds of thousands of individuals.

C. Both this Court and the State Defendants noted problems with the proposed subclass during the preliminary injunction hearing. This Court stated:

> To the extent that the claim is that it's an as-applied challenge for people unable to pay, I do think there is a significant problem with having to make a million or 500,000, some number of decisions individually on ability to pay. That's hard to deal with in a class action.

(Tr. of Preliminary Injunction Hearing 294:5–10).

In addition, the Secretary noted that the proposed subclass definition was unclear as to what Plaintiffs actually meant by the phrases "unable to pay" and "socioeconomic status." (Tr. of Preliminary Injunction Hearing 297:8–298:2). This

Court directed Plaintiffs to submit a supplemental memorandum that would address the class definition and provide more clarity. (Tr. of Preliminary Injunction Hearing 298:13–16; 299:11–14).

D. Plaintiffs filed their Supplemental Memorandum on October 25, 2019. ECF No. 209. The definition for the proposed class based on Count 2 (Twenty-Fourth Amendment) did not change. *See id.* at 2. Plaintiffs amended their definition for the proposed subclass based on Count 1 (wealth discrimination): "All persons otherwise eligible to vote in Florida who are denied the right to vote solely because they are genuinely unable to pay their outstanding LFOs." *Id.*

The amended subclass definition does not cure the earlier defects cited by this Court at the preliminary injunction hearing. Whether a former felon is "genuinely unable to pay their outstanding LFOs" is just as ambiguous and subjective as whether former felons are "unable to pay off their outstanding LFOs due to their socioeconomic status."

Indeed, the proposed subclass still requires individualized determinations of each former felon's financial situation. Plaintiffs have not defined the class using any objective measure, such as whether a former felon would qualify for legal assistance in a criminal case. And, subjective and potentially contradictory determinations will inevitably be made if the State were to rely upon the 67 Supervisors of Elections to determine at a hearing whether a former felon falls

within the proposed subclass because he or she is "genuinely unable to pay" outstanding financial obligations—a process this Court concluded would be constitutional in the preliminary injunction order. *See* ECF 207 at 37–38. Plaintiffs' amended subclass still fails to provide a sufficient definition or standards that would allow for objective determination as to ascertainability of the subclass members either within the terms of the injunction or as a part of the relief ordered.

Plaintiffs' Motion should be denied because the proposed Twenty-Fourth Amendment class is not necessary and is overbroad, and Plaintiffs have not met their burden to define the proposed wealth-based discrimination subclass in a manner consistent with Rule 23.

II. Memorandum of Law

A. Standard for Class Certification

Any order certifying a class must define the class. ECF No. 172-1 at 3. But the burden to define the class according to objective measures falls on Plaintiffs, not State Defendants, and not this Court. *See, e.g.*, *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1238 (9th Cir. 2001) ("The district court is not 'to bear the burden of constructing subclasses' or otherwise correcting Rule 23(a) problems; rather, the burden is on Plaintiffs to submit proposals to the court." (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 408 (1980))); *see also Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1187 (11th Cir. 2003) ("The burden of proof

to establish the proprietary of class certification rests with the advocate of the class.").

The burdens of proof in class action proceedings is particularly important because they are the "exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (internal quotation marks and citation omitted). "And the entire point of a burden of proof is that, if doubts remain about whether the standard is satisfied, the party with the burden of proof loses." *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1233 (11th Cir. 2016) (internal quotation marks and citation omitted); *see also* Fed. R. Civ. P. 23 advisory committee's note to 2003 amendment ("A court that is not satisfied that the requirements of Rule 23 have been met should refuse certification until they have been met.").

Plaintiffs must "affirmatively demonstrate" their compliance with Federal Rule of Civil Procedure 23. *See Comcast*, 569 U.S. at 33 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)); *see also Wal-Mart*, 564 U.S. at 350 (holding that Rule 23 "does not set forth a mere pleading standard"); *Randolph v. J.M. Smucker Co.*, 303 F.R.D. 679, 684 (S.D. Fla. 2014) ("[C]onclusory statements are insufficient to meet the burden of proof on a motion for class certification." (citation omitted)). In other words, Plaintiffs must "be prepared to prove" that they meet the requirements of Rule 23. *Wal-Mart*, 564 U.S. at 350.

B. Twenty-Fourth Amendment Class

With regard to the proposed class on the Twenty-Fourth Amendment claim, Plaintiffs have failed to meet their burden under Rule 23 because class certification is unnecessary to obtain the facial relief Plaintiffs seek. The proposed class is also overbroad.

Numerous courts have held that class certification in Rule 23(b)(2) cases is properly denied where certification is unnecessary to obtain the requested relief. *See, e.g.*, *United Farmworkers of Fla. Housing Project, Inc. v. City of Delray Beach, Fla.*, 493 F.2d 799, 812 (5th Cir. 1974) (holding that the district court did not abuse its discretion to deny class certification in a Rule 23(b)(2) case because, "whether or not appellants are entitled to class action treatment," the resulting injunctive relief would benefit all persons who were subject to the challenged practice); *Madera v. Lee*, No. 1:18-cv-152-MW/GRJ, 2019 WL 1054671, at *1 (N.D. Fla. Mar. 5, 2019) (denying class certification because it was unnecessary, would "duplicate relief," and "[a]ny remedy benefitting the individual and organizational Plaintiffs would include any benefits for potential plaintiff class members"); *M.R. v. Bd. of Sch. Comm'rs of Mobile Cty.*, 286 F.R.D. 510, 517–21 (S.D. Ala. 2012) (concluding that plaintiffs had failed to meet their burden to show the necessity of the class action where the injunctive relief sought "would be identical in scope, breadth and effect to an individual injunction awarded in favor of the individual plaintiffs alone" and

plaintiffs had failed to "identif[y] other reasons that support the need for class relief"); *Ruiz v. Robinson*, No. 1:11-cv-23776, 2012 WL 3278644, at *2–3 (S.D. Fla. Aug. 9, 2012) (concluding that necessity "should be analyzed because Plaintiffs are seeking injunctive and declaratory relief against State officials, which if granted, would equally benefit all members of the putative class"); *Access Now Inc. v. Walt Disney World Co.*, 211 F.R.D. 452, 455 (M.D. Fla. 2001) (denying class certification as unnecessary because the injunctive relief granted "would necessarily benefit all other potential class members" and "the Plaintiffs may achieve by injunction all relief which would inure to similarly situated persons without the necessity of class certification").

Indeed, "considerable authority demonstrates that, whether it is deemed a formal 'requirement' or not, the necessity of the class mechanism to afford complete relief is a proper consideration in the Rule 23(b)(2) analysis." *M.R.*, 286 F.R.D. at 518 (noting that "the vast majority of courts" evaluating class certification under Rule 23(b)(2) "consider the necessity for class relief"); *see also id.* at 519 ("[B]inding precedent [in the Eleventh Circuit] lends strong support to the notion that it is appropriate for district courts to consider the benefits and burdens in making a Rule 23(b)(2) certification decision, and to deny class certification where those benefits are insubstantial."); 2 Newberg on Class Actions § 4.35 (5th ed.) (collecting cases showing that the majority of circuits consider necessity with regard to Rule

23(b)(2) classes); 7AA Wright & Miller, Fed. Prac. & Proc. Civ. § 1785.2 (3d ed.) (noting that "the vast majority of courts" have adopted necessity as "well-accepted" and "an appropriate consideration when certifying a Rule 23(b)(2) action").

There is simply no need to certify Plaintiffs' proposed class on the Twenty-Fourth Amendment claim. Plaintiffs seek a declaration that SB 7066 is facially unconstitutional because it operates as a poll tax against individuals who owe outstanding financial obligations. Thus, they seek an "all-for-one, one-for-all" declaration of unconstitutionality and injunctive relief that would apply to all former felons in Florida who have not paid their restitution, fines, fees, or costs—without the need for class certification. *Cf. M.R.*, 286 F.R.D. at 520.

Importantly, class certification will not provide a single former felon with relief prior to trial. This Court's preliminary injunction on Plaintiff's Twenty-Fourth Amendment claim grants no relief to felons who owe restitution or fines, and the order did not rule with regard to fines and fees. *See* ECF No. 207. Despite arguing the necessity of their proposed subclass, *see* ECF No. 209 at 7–9, Plaintiffs failed to offer any arguments on the necessity of the Twenty-Fourth Amendment class. *Cf. Madera*, 2019 WL 1054671, at *1 (noting that the issue was not briefed and plaintiffs could move again for class certification if they could prove necessity). Class certification should be denied.

Second, Plaintiff's Motion should fail because the proposed class definition lacks commonality and is overbroad. Rule 23(a)'s requirement that all class members have suffered the same injury "does not mean merely that they have all suffered a violation of the same provision of law." *Wal-Mart*, 564 U.S. at 349–50 (noting that Title VII "can be violated in many ways—by intentional discrimination, or by hiring and promotion criteria that result in disparate impact, and by the use of these practices on the part of many different superiors in a single company"). Plaintiffs may obtain relief only for the alleged violations they have experienced. *See Access Now*, 211 F.R.D. at 455 (denying class certification alleging ADA violations including blindness and hearing impairment, in part, because plaintiffs' ADA violations involved only mobility issues); *cf. Hines v. Widnall*, 334 F.3d 1253, 1257 (11th Cir. 2003) (finding typicality issues with an overbroad class); *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1275–77 (11th Cir. 2009) (same).

Plaintiffs' proposed class should also be denied because it is overbroad and lacks cohesiveness. To begin, the proposed class would include all former felons who owe restitution, fines, fees, or costs. None of the named Plaintiffs, however, have alleged—or proven—that they owe restitution. *See* ECF No. 11-2 at 7 (¶ 21), 34 (¶ 34), and 13–14 (¶¶ 44–45) (Case No. 4:19-cv-301). A judge imposes restitution for different reasons than fines, fees, or costs. Similarly, the State and voters have different reasons for requiring payment of restitution prior to rights

restoration than fines, fees, or costs—one of which involves a constitutional provision recently adopted by the voters guaranteeing "[t]he right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct." Fla. Const. art. I, § 16(b)(6)c. Thus, SB 7066 impacts Plaintiffs differently and causes a different alleged injury than at least some of the potential class members.

Moreover, Plaintiffs are seeking injunctive relief that this Court has already determined is not appropriate for much of the proposed class. ECF No. 209 at 2 (proposing to include all financial obligations). This Court previously stated in its preliminary injunction order that "[t]he only real issue" in the poll tax analysis "is whether the financial obligations now at issue are taxes" and that "[s]ome of the financial obligations at issue," such as restitution, "plainly are not taxes." ECF No. 207 at 41–42. Because "[r]estitution payable to a victim is not a tax," *id.* at 42, it cannot violate the Twenty-Fourth Amendment. This Court determined the same was true for fines. *See id.*

Though this Court did not decide the Twenty-Fourth Amendment claim with regard to fees and costs, Plaintiffs seek to certify a class that plainly would not entitle many of its members to relief. To satisfy a Rule 23(b)(2) class, Plaintiffs must demonstrate "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding

declaratory relief is appropriate respecting the class as a whole . . . ." Fed. R. Civ. P. 23(b)(2); *see also Wal-Mart*, 564 U.S. at 360 (holding that Rule 23(b)(2) requires "conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them").

Here this Court has already determined that two types of financial obligations (restitution and fines) do not violate the Twenty-Fourth Amendment and that, at best, Plaintiffs may obtain relief only on an as-applied basis with regard to former felons who owe fees and costs. Although State Defendants oppose any conclusion that fees or costs would constitute a tax in violation of the Twenty-Fourth Amendment, Plaintiffs have failed to meet their burden and are proposing a class where injunctive relief could be provided to only some of its members, which would create the need for similar individualized determinations that condemn Plaintiffs' subclass.

C. Equal Protection Subclass

As this Court noted at the preliminary injunction hearing, Plaintiffs' proposed subclass based on wealth is problematic, ill defined, and requires hundreds of thousands (up to as many as one million) of determinations regarding which former felons are "genuinely unable to pay" their outstanding financial obligations. *See* Tr. of Preliminary Injunction Hearing 294:5–10.

Plaintiffs attempt shore up their argument by arguing that ascertainability is unnecessary in Rule 23(b)(2) classes. *See* ECF Nos. 172-1 at 4–5 n.1; 209 at 2–7. They contend that ascertainability is not required in Rule 23(b)(2) classes in the Eleventh Circuit, because class members can be ascertained through a remedial scheme that addresses the violation. *See* ECF No. 209 at 3. Plaintiffs are wrong for two reasons.

First, ascertainability is required in the Eleventh Circuit. In a case involving a Rule 23(b)(2) class, the former Fifth Circuit has held: "It is elementary that in order to maintain a class action, the class sought to be represented must be adequately defined and clearly ascertainable." *DeBremaecker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970). The *DeBremaecker* Court affirmed the district court's denial of class certification because the proposed class was not an "adequately defined or clearly ascertainable class contemplated by Rule 23." *Id.*

Thus, even if "the same level of precision is not required when a party seeks to certify a class under 23(b)(2)," *ascertainability is still required in the Eleventh Circuit*, and the district court may properly deny class certification for lack of ascertainability where the class is "too amorphous," "too broad in scope," or "lacks objective criteria defining the class." *A.R. v. Dudek*, No. 12-60460-CIV-ZLOCH/HUNT, 2015 WL 11143082, at *5–6 (S.D. Fla. Aug. 7, 2015), *adopted in part by* 2016 WL 3766139 (S.D. Fla. Feb. 29, 2016); *see also id.*, 2016 WL 3766139,

at *1 ("[T]he proposed class definition is not sufficiently ascertainable as required by the Eleventh Circuit."); *see also Walewski v. Zenimax Media, Inc.*, 502 F. App'x 857, 861 (11th Cir. 2012) (affirming the district court's denial of class certification under Rule 23(b)(2) and (3) because "the class was not adequately defined or clearly ascertainable").

Plaintiffs' citation to *Carpenter v. Davis*, 424 F.2d 257 (5th Cir. 1970), is misplaced, as the proposed class in that case consisted of individuals who wished to sell newspapers that the City of Jackson had deemed obscene. The *Carpenter* Court's statement was simply that the trial court need not "so clearly indentif[y]" at the moment of class certification all individuals to whom any declaratory or injunctive relief might apply, should additional individuals wish to sell the newspaper in the future. 424 F.2d at 260. This isolated statement does not mean that Plaintiffs are absolved of any obligation to have an ascertainable class that is adequately defined using objective standards.

Moreover, *Braggs v. Dunn*, 317 F.R.D. 634 (M.D. Ala. 2016), does not advance the cause. The *Braggs* Court was apparently unaware of the existence of the *DeBremaecker, Walewski* , and *A.R.* cases and thus should not be regarded as having any persuasive authority in this Circuit. *See* 317 F.R.D. at 671 ("Defendants have not cited, and the court is not aware, of any cases within this circuit applying the ascertainability requirement to a Rule 23(b)(2) class, much less any binding

precedent doing so."). *Braggs* also did not cite *Carpenter* as binding or even relevant authority.

The other cases cited by Plaintiffs do not apply to this case, where Plaintiffs are not proposing a class but rather a *subclass of individuals based upon unique factual circumstances* that would prohibit ascertainability based on objective criteria at any point in time. Indeed, the reason why some courts eschew the ascertainability requirement for Rule 23(b)(2) actions is because "the enforcement of the remedy *usually* does not require individual identification of class members in (b)(2) actions." *Shelton v. Bledsoe*, 775 F.3d 554, 561 (3d Cir. 2015) (emphasis added). Here, where Plaintiffs have proposed a *subclass* using the amorphous criterion of "genuinely unable to pay," there is simply no way to afford relief to the class members without identifying who they are on an individual basis. That is, at some point individual identification will be required to distinguish members of the subclass from the public at large. Accordingly, this case is one of those *unusual* Rule 23(b)(2) actions in which the ascertainability requirement should apply.

District courts have denied class certification based on ascertainability where proposed subclasses were not adequately defined using objective criteria. *See, e.g.*, *Brown v. Madison Cty.*, No. 3:17-cv-347-WHB-LRA, 2019 WL 112783, at *5 (S.D. Miss. Jan 4, 2019) (holding that the subclass definitions of "majority-Black area" and "majority-Black neighborhood" were not sufficiently ascertainable in a Rule

23(b)(2) class); *AW v. Magill*, No. 2:17-1346-RMG, 2018 WL 6680939, at *3 (D.S.C. Sept. 7, 2018) ("Plaintiffs fail to recognize that their ascertainability hurdle is a lack of required objective reference because the class description is predicated on measuring individuals in constant health flux . . . against speculative criteria."); *cf also* Access *Now*, 211 F.R.D. at 454 (denying class certification, in part, because plaintiffs did not adequately define what they meant by the term "disabled," which was defined differently by multiple government agencies).

Here, this Court should deny Plaintiffs' proposed subclass because Plaintiffs have provided no definition or objective criteria by which this Court or State Defendants could determine whether former felons are "genuinely unable to pay" and thus, members of the subclass.

As Plaintiffs concede, either this Court or the State would have to examine not just "whether a class member has outstanding LFOs" but also "the subclass member's existing financial resources." ECF No. 172-1 at 4. Furthermore, there is no indication whether the proposed subclass would be dependent on a time-certain requirement on "genuinely unable to pay," or if it would be a historical analysis that continues into the future. Regardless, the analysis is necessarily a fact-specific and an individualized one. If left to the 67 Supervisors of Elections, it also could result in subjective and potentially conflicting determinations because Plaintiffs have failed to provide any objective criteria against which such a determination must be

made. District court cases cited by Plaintiffs are inapposite because they are controlled by different precedent and involved different factual circumstances. *See, e.g.*, *Dixon v. City of St. Louis*, No. 4:19-cv-0112-AGF, 2019 WL 2437026, at *6 (E.D. Mo. June 11, 2019), *pending appeal* No. 19-2254 (8th Cir.) (noting that the plaintiffs sought an injunction to require "prompt and proper hearing[s]," not that plaintiffs were seeking case-by-case determinations as to whether an individual was part of the class); *O'Donnell v. Harris Cty.*, H-16-1414, 2017 WL 1542457, at*4 (S.D. Tex. Apr. 28, 2017) (noting the plaintiffs invited the Court to limit their previously broad definition of being "unable to pay money bail" to a test based on "indigence"). Plaintiffs have not proposed limiting their subclass to only those who are indigent, and there is no way to determine class membership except on a case-by-case basis as to an individual's unique financial circumstances.

Thus, even if this Court were to conclude that ascertainability does not apply in Rule 23(b)(2) classes—which it should not, given *DeBremaecker* and *Walewski*—a lightened ascertainability standard does not alleviate Plaintiffs' burden to define the proposed class according to objective standards. *See, e.g.*, *AW*, 2018 WL 6680939, at *3; *Skeete v. Republic Schs. Nashville*, No. 3-16-cv-0043, 2017 WL 2989189, at * (M.D. Tenn. Mar. 21, 2017) (declining to certify a subclass that was not sufficiently definite because it would require individualized judgments); *In re Yahoo Mail Litig.*, 308 F.R.D. 577, 597–598 (N.D. Cal. 2015) (holding that

though the ascertainability requirement did not apply in that circuit, "[t]his does not obviate the basic requirement that Plaintiffs provide a clear class definition under Rule 23(c)(1)(B)"); *DL v. District of Columbia*, 302 F.R.D. 1 (D.D.C. 2013) (examining the term "timely" in a proposed class, even though that circuit did not require ascertainability in a Rule 23(b)(2) class, and concluding that plaintiffs provided an objective definition because the term was defined by statute).

IV. Request for a Hearing

If this Court grants Plaintiffs' Motion, State Defendants respectfully request a hearing prior to any amendment or modification of the preliminary injunction. District courts should provide the parties with "notice and an opportunity to be heard . . . before the modification [to a preliminary injunction] is made." *Riccard v. Prudential Ins. Co. of Am.*, 307 F.3d 1277, 1298 (11th Cir. 2002) (citing *Rufo v. Inmates of the Suffolk Cty. Jail*, 502 U.S. 367, 380 (1992)); *see also Doe v. Bush*, 261 F.3d 1037, 1064 (11th Cir. 2001) ("Notice must be given, along with an opportunity to be heard, and, if aggrieved, either party may appeal."). Such hearing could also be combined with any hearing on Plaintiffs' Motion, should this Court elect to schedule one.

V. Conclusion

For the above reasons, the State Defendants respectfully request that this Court deny Plaintiffs' Motion.

Respectfully submitted this 15th day of November, 2019.

/s/ Nicholas A. Primrose
JOSEPH W. JACQUOT (FBN 189715)
General Counsel
joe.jacquot@eog.myflorida.com
NICHOLAS A. PRIMROSE (FBN 104804)
Deputy General Counsel
nicholas.primrose@eog.myflorida.com
COLLEN M. ERNST (FBN 112903)
Deputy General Counsel
colleen.ernst@eog.myflorida.com
JOSHUA E. PRATT (FBN 119347)
Assistant General Counsel
joshua.pratt@eog.myflorida.com
EXECUTIVE OFFICE OF THE GOVERNOR
400 S. Monroe St., PL-5
Tallahassee, Florida 32399
Phone: (850)717-9310
Fax: (850) 488-9810
Counsel for Governor Ron DeSantis

/s/ Tara R. Price
BRADLEY R. MCVAY (FBN 79034)
General Counsel
brad.mcvay@dos.myflorida.com
ASHLEY E. DAVIS (FBN 48032)
Deputy General Counsel
ashley.davis@dos.myflorida.com
Florida Department Of State
R.A. Gray Building Suite, 100
500 South Bronough Street
Tallahassee, Florida 32399-0250
Phone: (850) 245-6536
Fax: (850) 245-6127

MOHAMMAD O. JAZIL (FBN 72556)
mjazil@hgslaw.com
GARY V. PERKO (FBN 855898)
gperko@hgslaw.com
Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
Phone: (850) 222-7500
Fax: (850) 224-8551

GEORGE N. MEROS, JR. (FBN 263321)
george.meros@hklaw.com
TARA R. PRICE (FBN 98073)
tara.price@hklaw.com
Holland & Knight LLP
315 South Calhoun Street, Suite 600
Tallahassee, Florida 32301
Telephone: (850) 224-7000
Facsimile: (850) 224-8832

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

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); this motion and memorandum of law contains 4413 words, excluding the case style, signature block, and certificates.

/s/ Tara R. Price
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 15th day of November, 2019.

/s/ Tara R. Price
Attorney