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-CAS

PLAINTIFFS' RESPONSE IN OPPOSITION TO STATE DEFENDANTS' MOTION FOR STAY PENDING APPEAL[1]

INTRODUCTION

On May 24, 2020, after an eight-day trial, this Court entered an Order (the "Order") enjoining enforcement of certain provisions of Senate Bill 7066 ("SB7066") and providing clarity to returning citizens[2] regarding their eligibility to register and vote. ECF 420. Defendants Governor Ron DeSantis and Secretary of State Laurel M. Lee (collectively, "State Defendants") now seek a stay of the Court's

[1] Plaintiffs refer to the *Gruver*, *McCoy*, and *Raysor* plaintiff groups. The *Raysor* plaintiffs are the named representatives for the Twenty-Fourth Amendment class and the 14th Amendment subclass.

[2] This brief refers to persons with felony convictions as "returning citizens."

Order pending appeal. ECF 423. State Defendants do not meet *any* of the applicable standards for a stay. The motion should be denied.

First, State Defendants are not likely to succeed on the merits. With respect to Plaintiffs' wealth discrimination claims, the Eleventh Circuit already rejected the arguments State Defendants advance on appeal, holding that denying the franchise to those who cannot pay their legal financial obligations ("LFOs") does not withstand heightened scrutiny and thus violates the Fourteenth Amendment. *Jones* v. *Governor of Fla.*, 950 F.3d 795, 817 (11th Cir. 2020). The Court of Appeals already declined to rehear *en banc* State Defendants' appeal from this Court's preliminary injunction. *Id.*, *reh'g* en banc *denied*, Order, No. 19-14551 (11th Cir. Mar. 31, 2020). The panel decision is therefore the law of the case, and binding in the Eleventh Circuit. *Alphamed, Inc.* v. *B. Braun Medical, Inc.*, 367 F.3d 1280, 1285-86 (11th Cir. 2004) ("[u]nder the law of the case doctrine, both district courts and appellate courts are generally bound by a prior appellate decision in the same case."). Rather than offer new arguments, State Defendants merely recycle their previously rejected arguments. Further, with respect to Plaintiffs' Twenty-Fourth Amendment claims, State Defendants are unlikely to prove that the Twenty-Fourth Amendment's blanket prohibition on the payment of a poll tax or other tax contains a carve out for returning citizens, nor that the factual findings regarding the role of fees and costs in the Florida judicial system that provided the basis of this Court's

decision were clearly in error.

Second, State Defendants fail to demonstrate they will suffer irreparable harm absent a stay. While this litigation was ongoing, and indeed since Amendment 4 went into effect, the Florida Department of State accepted and processed facially sufficient voter registration applications for returning citizens and did not seek to remove them from the voter rolls on account of unpaid LFOs.[3] In fact, the Department of State administered numerous local and federal elections across Florida over the past year *without* removing registered voters based on LFO obligations. The injunction does not prohibit the Secretary from maintaining that pre-existing policy for voter registration. Nor does the Order require the Secretary to significantly alter its removal practices. The only difference is that the Order creates a mechanism for returning citizens to obtain an eligibility determination from the Department of State, without forcing them to risk prosecution in order to exercise their right to vote, and establishes clear and uniform criteria for identifying potentially ineligible voters for the purpose of list maintenance. The State cannot

[3] During this same time period, however, the State Defendants failed to create, let alone implement, a process to make determinations regarding the eligibility of returning citizens with respect to LFOs. *See* Order at 65 ("In the 18 months since Amendment 4 was adopted, the Division has had some false starts but has completed its review of not a single registration.")

claim injury *now*, months later, from following a similar, less burdensome process during appeal that they observed throughout this litigation.

Third, State Defendants fail to show they would be irreparably harmed absent a stay. In fact, a stay of the Court's order would irreparably harm Plaintiffs and the plaintiff class by: (1) permitting State Defendants to remove eligible voters from the registration rolls; (2) preventing returning citizens from receiving assurance that their right to vote has been restored; and (3) requiring returning citizens to face potential prosecution for registering and exercising their right to vote in upcoming elections. State Defendants acknowledge these harms in their motion, but claim they would "be limited to the August 2020, non-presidential primary." This is both false and irrelevant. Returning citizens would also be precluded from the many local elections taking place in their communities in the upcoming weeks and months[4] and, regardless, the denial of the right to vote in any election is an irreparable injury. The organizational plaintiffs and unregistered class members also would be harmed by a stay because they would lose precious time for voter registration, both with regard to local elections and leading up to the November elections. *See* Smith Testimony, Trial Tr., ECF 388 at 104:16-18 ("In 2016 there were over a million people who registered to vote [in Florida] from January up until the registration cut-off day.").

[4] *See Dates for Local Elections*, Florida Department of State Division of Elections, (last visited June 8, 2020) https://dos.elections.myflorida.com/calendar/.

Finally, State Defendants fail to show that the public interest favors a stay. To the contrary, a stay would disserve the public interest, which favors permitting eligible voters to register and vote. *See Jones*, 950 F.3d at 830-31.

BACKGROUND AND PROCEDURAL HISTORY

Amendment 4 went into effect on January 8, 2019, automatically restoring voting rights to over a million returning citizens who "completed all terms of sentence including parole and probation." Fla. Const. Art. VI § 4(a) (2018). SB7066 went into effect on July 1, 2019 and defined "completion of all terms of sentence" to require full payment of certain disqualifying LFOs, including those converted to civil liens. Fla. Stat. § 98.0751(2)(a)(5).

Plaintiffs filed suit on June 28 and July 1, 2019, Complaint, *Raysor* v. *Lee*, No. 4:19-cv-00301-RH-MJF, ECF 1 (N.D. Fla. June 28, 2019); Complaint, *Gruver* v. *Barton*, No. 4:19-cv-00302-RH-MJF, ECF 1 (N.D. Fla. June 28, 2019); Complaint, *McCoy* v. *DeSantis*, No. 4:19-cv-00304-RH-MJF, ECF 1 (N.D. Fla. July 1, 2019),[5] and moved for preliminary injunctive relief on August 2, 2019. ECF 98-1. On October 18, 2019, this Court granted Plaintiffs' motion for preliminary relief in part. ECF 207. The Court found Plaintiffs were substantially likely to succeed

[5] These cases were consolidated under the case name *Jones* v. *DeSantis*, No. 4:19-cv-00300-RH-MJF. The *Jones* complaint has been dismissed without prejudice. Order, ECF 420, No. 4:19-cv-00300 (N.D. Fla. May 24, 2020).

on the merits of their claim that the LFO requirement, as applied to those who showed genuine inability to pay, constituted wealth discrimination in violation of the Fourteenth Amendment. ECF 207.

State Defendants appealed, and on February 19, 2020, the Eleventh Circuit upheld the preliminary injunction. Applying heightened scrutiny, the Eleventh Circuit held that states cannot deny rights restoration on the basis of outstanding LFOs that a person is genuinely unable to pay. *Jones*, 950 F.3d 795. State Defendants' petition for rehearing *en banc* was denied on March 31, 2020 with no judge requesting a vote to rehear the case. Order, *Jones* v. *Governor of Fla.*, No. 19-14551 (11th Cir. Mar. 31, 2020).

On May 24, 2020, after an eight-day trial, this Court ruled that Florida's "pay-to-vote" system is unconstitutional in part and violates the National Voter Registration Act ("NVRA"). ECF 420 at 118-25. The Order provided declaratory and injunctive relief in favor of Plaintiffs and the plaintiff class, prohibiting Defendants from taking any unconstitutional action to enforce the LFO requirement as a condition of rights restoration; requiring the Division of Elections to provide a functional process by which returning citizens unsure of their eligibility to vote could request an advisory opinion from the State verifying the amount of LFO payments required; and allowing citizens with outstanding LFOs to register to vote upon affirming their inability to pay. *Id.*

State Defendants filed their Notice of Appeal and a motion to stay the Order on May 29, 2020. ECF 422. In the interim, Defendants have implemented the Order by (1) removing the 2019 voter registration form from circulation; (2) posting the advisory opinion request form; and (3) issuing guidance to Supervisors of Elections regarding the remedy. In addition, all Defendant supervisors have reported that they have already complied or plan to comply with the Court's Order, and many non-Defendant supervisors have also already posted some of the forms required by the Court's Order online on their respective websites.

ARGUMENT

State Defendants fail to prove *any* of the four factors required to warrant a stay. Those factors are (1) whether State Defendants have made a strong showing they are likely to succeed on appeal, (2) whether State Defendants will be irreparably injured absent a stay, (3) whether issuance of the stay will substantially injure Plaintiffs, and (4) where the public interest lies. *Democratic Exec. Comm. of Fla.* v. *Lee*, 915 F.3d 1312, 1317 (11th Cir. 2019). Importantly, a "stay pending appeal is an extraordinary remedy for which the moving party bears a heavy burden." *Matter of O'Keeffe*, No. 15-mc-80651, 2016 WL 5795121, at *1 (S.D. Fla. June 7, 2016). State Defendants fail to meet this burden.

I. State Defendants Are Unlikely to Succeed on the Merits.

State Defendants have not made a "strong showing" they are likely to succeed on the merits. *Nken* v. *Holder*, 556 U.S. 418, 434 (2009) (citation omitted). This Court's decision followed binding precedent from the Supreme Court and the Eleventh Circuit.

A. This Court Correctly Followed Binding Eleventh Circuit Precedent that the Right to Vote Cannot Depend on an Individual's Financial Resources.

The Eleventh Circuit already held in this case that withholding voting rights due to inability to pay LFOs violates the Fourteenth Amendment. *Jones*, 950 F.3d 795. That decision is the law of the case, binding in the Eleventh Circuit, and in this Court. *See, e.g.*, *Alphamed*, 367 F.3d at 1285-86.

State Defendants have not identified any instance where a district court ignored binding Eleventh Circuit precedent *in the same case* in order to issue a stay, and Plaintiffs are aware of no such case. Defendants cannot make the requisite showing by reiterating arguments the Eleventh Circuit already rejected. Contrary to State Defendants' argument, and as the Eleventh Circuit already explained, *Hand* v. *Scott*, 888 F.3d 1206, 1207 (11th Cir. 2018) does not require intentional discrimination as a necessary predicate in a *wealth discrimination* case. *Jones*, 950 F.3d at 828. Nor did the Eleventh Circuit's ruling in *Jones* "rewrite" *Hand*; instead, the Eleventh Circuit faithfully applied Supreme Court precedent prohibiting wealth

discrimination in voting and as a punishment for inability to pay. *Id*. (citing *M.L.B.* v. *S.L.J.*, 519 U.S. 102, 126-27 (1996)).

State Defendants' contention that rational basis review is required for Plaintiffs' wealth-discrimination claim is meritless and already has been rejected by the Eleventh Circuit. Mot. at 4-6. As the Eleventh Circuit concluded, heightened scrutiny is appropriate where, as here, "access to [the franchise] is made to depend on wealth." *Jones*, 950 F.3d at 823. This conclusion does not conflict with *Shepherd* v. *Trevino*, 575 F.2d 1110 (5th Cir. 1978), which State Defendants acknowledge did not implicate wealth.[6]

Regardless, State Defendants fail to show a likelihood of success even under rational basis review. The Eleventh Circuit held that the LFO requirement would fail under rational basis review if "the mine-run felon who has otherwise completed the terms of his sentence" is unable to pay off their outstanding LFOs. *Jones*, 950 F.3d at 814. And where the *Jones* panel reserved its determination on this issue due to the "limited record," (*id.* at 816), the record before this Court was fully developed at trial. Indeed, this Court held that the "record now shows that the mine-run of felons affected by the pay-to-vote requirement are genuinely unable to pay" and

[6] Defendants also cite to out of circuit precedent (Mot. at 6 n. 2), which is particularly irrelevant here where there is binding Supreme Court and Eleventh Circuit precedent on this very issue.

"will be barred from voting solely because they lack sufficient funds." Order at 42-43. Defendants cannot establish that this factual finding was clearly erroneous, and thus the LFO requirement also fails rational basis review.

Further, even if the State were able to assert a legitimate interest in enforcing the LFO requirement, any such interest would be undermined by its "staggering inability to administer the pay-to-vote system," which forced it to "abandon[] the only legitimate rationale for the pay-to-vote system's existence," as laid out in extensive detail in the record at trial. Order at 44. The LFO requirement is not rationally related to Defendants' purported justification of ensuring collection of payment of LFOs included in a judgment from individuals convicted of felonies.[7] Instead, as the Court concluded, "many felons do not know, and some have no way to find out, the amount of LFOs included in a judgement" or how much of an LFO has already been paid. *Id*. at 45-47. And under the State's "Every-Dollar Method," a returning citizen would be allowed to vote by paying non-disqualifying fees and surcharges, while leaving victim restitution and other disqualifying LFOs unpaid. This turns on its head any potential argument that the purpose of the LFO

[7] As the Eleventh Circuit held, "[t]he problem with the incentive-collections theory is that it relies on the notion that the destitute would only, with the prospect of being able to vote, begin to scratch and claw for every penny, ignoring the far more powerful incentives that already exist for them—like putting food on the table, a roof over their heads, and clothes on their backs." *Jones*, 950 F.3d at 811.

requirement is to incentivize payment of those LFOs ordered as part of a sentence.

B. This Court Correctly Held that Conditioning the Right to Vote on Costs and Fees Violates the Twenty-Fourth Amendment.

State Defendants are also unlikely to succeed on the merits with respect to Plaintiffs' Twenty-Fourth Amendment claim. The Twenty-Fourth Amendment prohibits conditioning access on the right to vote upon payment of "any poll tax or other tax." U.S. Const. amend. XXIV, § 1. State Defendants claim that the Twenty-Fourth Amendment is not applicable to Plaintiffs or the plaintiff class because of their past felony convictions (Mot. at 9), but this is simply untrue. As this Court recognized, it is obvious the State could not require that returning citizens pay an explicit poll tax solely on the basis of their status as returning citizens. Order at 72. The non-binding, out-of-circuit cases cited by Defendants do not require a different result. The three-sentence analysis on this claim in *Harvey* v. *Brewer* did not examine the Twenty-Fourth Amendment's text or cite any case law. *See* 605 F.3d 1067, 1080 (9th Cir. 2010). Likewise, the unpublished *Howard* v. *Gilmore* decision contained scant analysis on this issue. *See* No. 99-2285, 2000 WL 203984, at *2 (4th Cir. Feb. 23, 2000). And *Johnson* v. *Bredesen* relied on *Harvey* and *Howard* without conducting any of its own textual or historical analysis. *See* 624 F.3d 742, 750 (6th Cir. 2010); *cf. also id.* at 766-76 (Moore, J., dissenting) (conducting textual

and historical analysis of Twenty-Fourth Amendment).[8] Because the Twenty-Fourth Amendment would bar a state from requiring returning citizens to pay a poll tax before they are eligible to vote, so too does it bar states from conditioning voting on the payment of "other tax[es]." U.S. Const. amend. XXIV, § 1.

State Defendants' argument that costs and fees should not be considered "other taxes" (Mot. at 9), under the Twenty-Fourth Amendment also fails. As the Supreme Court stated in *National Federation of Independent Business* v. *Sebelius*, the "essential feature of any tax" is that "[i]t produce[] at least some revenue for the Government." 567 U.S. 519, 564 (2012). Here, the facts found at trial demonstrates that the costs and fees at issue produce far more than "some revenue." In fact, "Florida has chosen to pay for its criminal justice system in significant measure through such fees." Order at 76. Further, these costs and fees are "assessed regardless of whether a defendant is adjudicated guilty [and] bear no relation to culpability." Order at 78. Thus, it is irrelevant whether court fees and costs are imposed at the time of sentence. Since the primary (if not sole) purpose of these costs and fees is to generate funds for Florida, this Court was correct in holding that they constitute "other taxes" under the Twenty-Fourth Amendment.

[8] The same abbreviated and flawed analysis was conducted in the two additional non-binding cases State Defendants cite for support. *See Coronado* v. *Napolitano*, No. 07-1089, 2008 WL 191987 (D. Ariz. Jan. 22, 2008); *Thompson* v. *Alabama*, 293 F. Supp. 3d 1313, 1332-33 (M.D. Ala. 2017).

C. Defendants Make No Showing of Likely Success on Plaintiffs' Remaining Claims.

Defendants do not address the Court's holdings on Plaintiffs' other claims, including that the LFO requirement is void for vagueness and that the State's implementation denies procedural due process, that it abrogates First Amendment rights, and that absent the Court's remedy, the State's implementation violates equal protection and the NVRA because of its disuniformity. The Court held that the remedy it prescribes will satisfy due process requirements and remedy the existing vagueness, *if implemented in a timely and proper manner*. Order at 98-99. State Defendants cannot obtain a stay pending appeal without demonstrating likelihood of success on the merits of these separate grounds supporting the Court's remedial injunction and Defendants have failed to make any such argument in their stay motion. Thus, the motion should be denied.

II. State Defendants Are Not Irreparably Harmed by this Court's Order.

State Defendants fail to demonstrate that this Court's injunction irreparably, or even significantly, harms them. This alone is sufficient grounds to deny a stay. *See Siegel* v. *Lepore*, 234 F.3d 1163, 1176 (11th Cir. 2000); *see also Democratic Exec. Comm. of Fla.*, 915 F.3d at 1317 ("[T]he party seeking the stay must show more than the mere possibility of . . . irreparable injury.").

First, Defendants make the false claim that "[d]uring the last several months, the State has worked feverously to learn how to implement a novel felon re-enfranchisement system." Mot. at 11. The evidence at trial demonstrated otherwise. *See* Order at 65 ("In the 18 months since Amendment 4 was adopted, the Division has had some false starts *but has completed its review of not a single registration*.") (emphasis added); *id.* at 66 ("The takeaway: 18 months after Amendment 4 was adopted, the Division is not reasonably administering the pay-to-vote system and has not been given the resources needed to do so."). Despite repeated opportunities to explain what it had done in 18 months to address the litany of problems associated with determining whether a returning citizen was eligible, the State's only response was that they were still working on getting "comfortable that [they] have a process" that they could use. *See* Trial Tr., ECF 408 at 1314:20-24. Furthermore, the State confirmed at trial that despite the months-old rulings by both the District Court and the Eleventh Circuit with respect to the wealth discrimination claim, they were still "just chatting" about a proposed procedure for implementing an inability-to-pay mechanism. *Id.* at 1397:23-1398:2. With regard to the advisory opinion process in particular, the Court merely took Defendants up on utilizing a process they claimed

was already in place.[9] *Id*. at 1389:8-20. The Court's Order does not change the advisory opinion process, it simply sets certain reasonable limits to protect returning citizens' reliance on that process.

Second, the Order does not require any change to the registration process: it simply maintains the status quo. Since the passage of Amendment 4 more than a year and a half ago, the Florida Department of State has accepted and processed facially sufficient voter registration applications for otherwise eligible Floridians with past felony convictions, and prior to the issuance of the Order, the Secretary had not undertaken any efforts to identify voters with outstanding LFOs to the Supervisors for removal. The State cannot demonstrate injury where the State was not even complying with its own enforcement responsibilities for the portion of the law it seeks to protect.

Third, the Order will not harm the "integrity of the election process." Mot. at 12. Quite the contrary, the Order finally provides clarity to voters regarding their eligibility and to the Department regarding the permissible conditions for removal, should they undertake list maintenance on account of unpaid LFOs. As discussed above, Florida has accepted and processed facially sufficient voter registration

[9] State Defendants have also failed to seek an alternative remedy, even though the Court stated at the end of trial that Defendants could seek to "alter or amend" the Court's remedy. *See* Trial Tr., ECF 408 at 1592:15-1594:22.

applications since Amendment 4 went into effect without assessing whether applicants had outstanding LFOs, and it continued to do so following the effective date of SB7066. *See* ECF 408 at 1180:25-1186:10. Indeed, returning citizens have remained on the registration rolls and participated in elections in the State since January 8, 2019. Trial Tr., ECF 396 at 473:8-474:1. State Defendants did not remove any returning citizens with unpaid LFOs from the rolls before administering dozens of local elections in November and December 2019, or the March 2020 presidential preference primary.[10] *See* ECF 98-1 at 27 n.1. It is not credible for State Defendants to claim *now* that they will be irreparably harmed by following largely the same election procedures that they have been following since the commencement of this litigation.[11] Thus, the State Defendants' suggestion that their harm is somehow amplified because they must adhere to the Court's Order for the August 2020 elections and other upcoming local elections rings hollow.

[10] Notably, Defendants have never suggested the elections conducted over the past year are tainted or illegitimate in any way.

[11] To the extent that State Defendants claim they are harmed due to the fact they need to review and determine the eligibility of thousands of returning citizens, that is a problem of their own making. For over 18 months, State Defendants failed to take any action to address or implement the LFO requirement. The Court's Order not only streamlines the process for determining voter eligibility, it *reduces* the burden on the state by substantially shrinking the pool of voters for whom an LFO determination is required. As the Court determined, under the State's proposed system, a manual review of each registration application for returning citizens would take the Secretary until approximately 2026 at the earliest. Order at 1.

Finally, contrary to State Defendants' argument, the Court has not enjoined State Defendants from effectuating Amendment 4 or SB7066. It merely enjoins the State from doing so in an unconstitutional manner. *See* Mot. at 13. The State remains free to require citizens who are genuinely able to pay their fines and restitution to do so as a condition of rights restoration pursuant to the terms of SB7066 so long as it is able to tell those citizens what amount they owe and what amount is disqualifying. What the State cannot do is deny its citizens the right to vote solely on the basis of wealth or unpaid taxes; or by requiring them to pay an unknown and indeterminate amount of money.[12] Indeed, as the Eleventh Circuit has already held in this case, the State's interest in effectuating its laws is at issue "any time a state's constitutionality is challenged," but, standing alone, that is not sufficient reason to prevent an injunction from going into effect. *Jones*, 950 F.3d at 829.

[12] The cases State Defendants rely on do not hold differently. Mot. at 13. In *New Motor Vehicle Board of California* v. *Orrin W. Fox Company*, the lower court had enjoined the implementation statute in full. 434 U.S. 1345 (1977) (Rehnquist, J., in chambers). Likewise, in *Maryland* v. *King*, the statute was enjoined in full. 567 U.S. 1301 (2012) (Roberts, C.J., in chambers). Finally, in *Hand* v. *Scott*, the Eleventh Circuit found the State Executive Clemency Board was irreparably harmed because the injunction in that case prohibited the Board from "apply[ing] its own laws." 888 F.3d 1206, 1214 (11th Cir. 2018). This is a far cry from the narrow Order in this case, which simply requires alteration to generally applicable laws to accommodate voters who would otherwise be unconstitutionally denied the right to vote.

III. Plaintiffs Will Be Irreparably Harmed by a Stay.

A stay would cause irreparable harm to Plaintiffs and members of the Plaintiff Class and Subclass. Without the Court's injunctive relief in place, eligible returning citizens will be deprived of their right to register and vote and will face the threat of prosecution when they apply for registration or cast their ballots. *See, e.g.*, Order at 25 ("It is likely that if the State's pay-to-vote system remains in place, some citizens who are eligible to vote, based on the Constitution or even the state's own view of the law, will choose not to risk prosecution and thus will not vote."). State Defendants' claim that the harm will be "limited" to the August 2020 primary is both false and irrelevant. A stay would preclude Plaintiffs, Organizational Plaintiffs' members, and the members of the Plaintiff Class and Subclass from casting a ballot in the many local elections taking place in their communities in the upcoming weeks and months,[13] and hinder Organizational Plaintiffs' ability to perform protected voter registration activities. Furthermore, the denial of the precious and fundamental right to vote in a single election is irreparable. *See Jones*, 950 F.3d at 828 ("The denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—

[13] For example, in just the months of July and August 2020—in addition to the August federal primary—there are four municipal elections, nine city general elections, twelve county and local primary elections, two city special elections, a special district election, one city referendum, and one city runoff election. *See Dates for Local Elections*, Florida Department of State Division of Elections, https://dos.elections.myflorida.com/calendar/ (last visited June 8, 2020).

even once—is an irreparable harm."). Plaintiffs' irreparable harm is sufficiently severe to warrant denial of a stay, notwithstanding the State's attempt to downplay the significance of these elections here. S*ee Florida Democratic Party* v. *Scott*, 215 F. Supp. 3d 1250, 1256 (N.D. Fla. 2016) ("The right to vote is a precious and fundamental right.") (internal quotation omitted).[14]

Finally, a stay risks creating significant confusion amongst already registered voters as to whether they are eligible to vote, and hampering voter registrations efforts during these elections. *See Purcell* v. *Gonzalez*, 549 U.S. 1, 5-6 (2006) (finding that "[c]ourt orders affecting elections, *especially conflicting orders*, can themselves result in voter confusion," and thus counselling against interference by appellate courts absent a compelling reason) (emphasis added). A stay would conflict with court orders in this case—some of which have been in place for over eight months—including a binding Eleventh Circuit decision, holding that voters who are unable to pay their LFOs cannot be denied the right to vote. Thus, a stay at

[14] The harm to Plaintiffs and the plaintiff class members if a stay is entered far outweighs any purported administrative burden State Defendants may face absent a stay, which "pales in comparison to [the hardship] imposed by unconstitutionally depriving [Plaintiffs] of their right to vote." *Fla. Democratic Party*, 2016 WL 6090943, at *8; *see also Fish* v. *Kobach*, 840 F.3d 710, 755 (10th Cir. 2016) ("There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by [the Secretary of State's] office and other state and local offices involved in elections.").

this late hour is certain to engender confusion among voters, elections officials, and the public about these voters' eligibility.

IV. A Stay Would Disserve the Public Interest.

The Eleventh Circuit already made clear that denial of the right to vote is not in the public interest. *Jones*, 950 F.3d at 830-31. Further, an "injunction's cautious protection of the Plaintiffs' franchise-related rights is without question in the public interest." *Charles H. Wesley Educ. Found., Inc.* v. *Cox*, 324 F. Supp. 2d 1358, 1355 (N.D. Ga. 2004) (holding that the loss of the opportunity to register and vote causes irreparable harm because "no monetary award can remedy" this loss), *aff'd*, 408 F.3d 1349 (11th Cir. 2005). Indeed, in light of the public's "strong interest" in permitting exercise of "the fundamental political right to vote," *Purcell*, 549 U.S. at 4, a stay would greatly *disserve* the public interest.

State Defendants suggest that the Court should permit it to disenfranchise voters until the appeal process is over to "preserve the autonomy of the States." Mot. at 14. But the State has no autonomy to infringe on the right to vote in violation of the United States Constitution. Furthermore, the District Court left to the State "substantial discretion in how to comply with the preliminary injunction," *Jones*, 950 F.3d at 830, and provided the State with numerous opportunities to explain how it intended to implement the LFO requirement in a constitutional manner. It was only after months of inaction by the State and a full trial on the merits, which proved

the State incapable of resolving the constitutional matters on its own, that this Court acted to impose a remedy, which itself incorporated precisely the procedures the State itself relied on.

It is well established that a stay pending appeal is an "extraordinary remedy" and State Defendants fail to meet the "heavy burden" required for a stay. *Matter of O'Keeffe*, 2016 WL 5795121, at *1. Despite State Defendants' assertion to the contrary, there are no "fundamental questions of federalism at stake."[15] The Court's Order is narrowly designed and does not prohibit the Secretary from maintaining its existing voter registration, removal, or advisory procedures. It simply provides uniform rules for implementing those procedures and allows returning citizens to obtain a determination of their eligibility to vote with respect to LFOs from the State without risking criminal prosecution.

For these reasons, State Defendants' Motion to Stay should be denied.

[15] This case bears no resemblance to *Jupiter Wreck, Inc*. v. *Unidentified, Wrecked and Abandoned Sailing Vessel*, which involved the "direct collision between federal admiralty jurisdiction and the immunity from suit afforded the State of Florida by the Eleventh Amendment, between federal salvage law and the State's police power, and finally between the power of federal courts and state courts." 691 F. Supp. 1377, 1380 (S.D. Fla. 1988).

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Respectfully submitted,

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NORTHERN DISTRICT OF FLORIDA LOCAL RULE 7.1 CERTIFICATION

Pursuant to N.D. Fla. L.R. 7.1(F), this motion contains fewer than 8,000 words. It contains 5,028 words.

Date: June 12, 2020