No. 19A-_____

IN THE

Supreme Court of the United States

BONNIE RAYSOR, *ET AL.*, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Applicants,

v.

RON DESANTIS, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF FLORIDA, *ET AL.*,

Respondents.

APPLICATION TO VACATE THE ELEVENTH CIRCUIT'S STAY OF THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

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PARTIES TO THE PROCEEDING

The applicants in this Court are Bonnie Raysor, Diane Sherrill, and Lee Hoffman, individually and on behalf of all others similarly situated ("Raysor Plaintiffs"); Jeff Gruver, Emory Marquis Mitchell, Betty Riddle, Karen Leicht, Keith Ivey, Kristopher Wrench, Raquel L. Wright, Steven Phalen, Jermaine Miller, Clifford Tyson, Latoya A. Moreland, Curtis D. Bryant, League of Women Voters of Florida, Florida State Conference of the NAACP, and Orange County Branch of the NAACP ("Gruver Plaintiffs"); Rosemary McCoy and Sheila Singleton ("McCoy Plaintiffs").

The respondents in this Court are Ron DeSantis, in his official capacity as Governor of Florida, and Laurel Lee, in her official capacity as Secretary of State of Florida.

Kelvin Leon Jones and Luis Mendez were plaintiffs in the district court, but are not parties to the proceedings in the court of appeals and are not parties in this Court, but are members of the certified plaintiff class.

Mike Hogan, in his official capacity as Supervisor of Elections of Duval County was a defendant in the district court, and is an appellee in the court of appeals. Kim A. Barton, in her official capacity as Supervisor of Elections of Alachua County, Peter Antonacci, in his official capacity as Supervisor of Elections of Broward County, Craig Latimer, in his official capacity as Supervisor of Elections of Hillsborough County, Leslie Rossway Swan, in her official capacity as Supervisor of Elections of Indian River County, Mark Early, in his official capacity as Supervisor of Elections of Leon County, Michael Bennett, in his official capacity as Supervisor of Elections of

Manatee County, Christina White, in her official capacity as Supervisor of Elections of Miami-Dade County, Bill Cowles, in his official capacity as Supervisor of Elections of Orange County, and Ron Turner in his official capacity as Supervisor of Elections of Sarasota County, were defendants in the district court, but are not parties to the proceedings in the court of appeals and are not parties in this Court.

RULE 29.6 STATEMENT

Applicants League of Women Voters of Florida, Florida State Conference of the NAACP, and Orange County Branch of the NAACP do not have parent corporations, and no publicly held corporation holds ten percent or more of their stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

APPLICATION TO VACATE THE ELEVENTH CIRCUIT'S STAY OF THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

TO: The Honorable Clarence Thomas, Circuit Justice for the Eleventh Circuit:

Pursuant to Rules 22 and 23 of the Rules of this Court, applicants respectfully apply for an order vacating the order issued on July 1, 2020, by the Eleventh Circuit, a copy of which is appended to this application (App. A). The Eleventh Circuit's order stayed a permanent injunction issued on May 24, 2020, by the United States District Court for the Northern District of Florida, *Jones v. DeSantis*, No. 4:19-cv-300-RH/MJF, 2020 WL 2618062 (N.D. Fla. May 24, 2020) (appended as App. B).[1]

INTRODUCTION AND PROCEEDINGS BELOW

This application concerns Florida's requirement that three-quarters of a million of its citizens—persons with prior felony convictions who have completed all carceral and supervisory terms of their sentences—pay money in order to vote. For most, the amount owed to vote consists only of charges Florida imposes to fund government operations; in other words, taxes. Most cannot afford to pay what they owe. Worse, "the State has shown a staggering inability to administer the system," *Jones*, 2020 WL 2618062, at *14, and "is on pace to complete its initial screening of [currently registered] citizens by 2026, or perhaps later, and only then will it have an initial opinion about which [currently registered] citizens must pay, and how much they must pay, to be allowed to vote," *id.* at *1. The State has attempted—but so far failed—to determine how much the 17 individual plaintiffs must pay to vote, and has

[1] Applicants opposed the State's motion for a stay in the Eleventh Circuit. That brief is attached as Appendix D.

identified but not begun a review of the at least 85,000 registered voters who may or may not be ineligible under this pay-to-vote scheme. The State is unprepared to conduct such a review of the affected citizens—likely thousands or tens of thousands—who registered to vote in reliance on the district court's order and prior to the stay. It certainly is unprepared to provide answers for the three-quarters of a million others whose registration eligibility hinges on those determinations. Meanwhile, the State requires citizens to affirm under threat of prosecution that they are eligible to register to vote and makes voting while ineligible a crime. The State disclaims any responsibility for the untenable situation in which it has placed hundreds of thousands of Floridians: its position is that "the State can rationally demand that all felons . . . must satisfy all financial aspects of their sentences . . . [but] need not show the precise amount owed." State's Brief at 45, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 19, 2020). At the same time, the Director of the Division of Elections has testified that those uncertain—even if actually eligible—should not register and, even if already registered, should not vote. Trial Tr. at 1381. Floridians must register to vote by July 20, 2020 in order to vote in the August primary.

The district court's permanent injunction—accompanied by a 125-page opinion of factual findings and legal analysis—remedied the State's chaotic, unconstitutional pay-to-vote system, relying upon systems and procedures the State already employs. But in a one-sentence order with no explanation, and on the eve of the July 20 registration deadline, the *en banc* Eleventh Circuit has stayed the district court's injunction wholesale. Not only has this thrown the election rules into chaos (with

nearly one hundred thousand *registered* voters and three-quarters of a million citizens now uncertain of their eligibility to vote), it has revived the risk—and attendant chill—of prosecution for citizens who worry they will guess wrong about how much (if anything) they must pay to vote. Inexplicably, the *en banc* court has done this despite declining—just *four months ago*—to rehear *en banc* a panel decision affirming the district court's preliminary injunction in this very case and announcing a legal standard that would ensure that the vast majority of affected citizens in Florida would be eligible to vote. And remarkably, with no analysis, the *en banc* court stayed aspects of the district court's injunction—its remedies for the procedural due process, vagueness, and National Voter Registration Act ("NVRA") violations—that the State did not even challenge in its stay motion (either to the district court or the court of appeals), and the latter of which the State has abandoned on appeal.

Consider the plight now thrust upon three-quarters of a million would-be voters. In addition to having to guess (under threat of criminal prosecution) how much (if anything) they must pay to vote, now they must venture a second guess: which Eleventh Circuit decision tells them whether Florida may constitutionally require them to pay money they cannot afford in order to vote? The panel decision—left undisturbed by the *en banc* court then and now—that describes their constitutional rights in detail? Or the one-sentence order staying the district court's subsequent injunction that offers no explanation of their constitutional rights?

This is not tenable. Argument is set to be heard the same day as the August primary, a month after registration closes for that election on July 20. Tens of

thousands of people who were already registered, or who registered between the time of the district court's May 24 injunction and the Eleventh Circuit's July 1 stay, undoubtedly already submitted vote-by-mail requests, which under Florida law are valid for all elections this calendar year. *See* Fla. Stat. § 101.62. Ballots for overseas voters affected by the district court's injunction were required by state law to be mailed by July 2 (but could be mailed earlier). *Id.* Some overseas voters have already returned their completed ballots.[2] Supervisors of Elections have no way to determine which among the millions of vote-by-mail applications should not be fulfilled pursuant to the Eleventh Circuit's stay order, because the State has not yet determined for even a single voter whether they must pay to vote, and if so, how much. So they will mail the ballots to those who requested them, including those requested prior to the July 1 stay.[3] Nor can the affected voters know whether they are eligible to complete and return the ballot they received. Those aware of the stay, but who are actually eligible under the State's ever-shifting interpretation of its pay-to-vote law, will be discouraged from voting, because of the threat of prosecution emphasized on the State's registration materials. The district court remedied the chaos inherent in the pay-to-vote system. The Eleventh Circuit resurrected that chaos, and then multiplied it.

[2] *See, e.g.*, Mark Harper, *Did you order a ballot for Aug. 18 primary election? Expect them in the mail soon*, Daytona Beach News Journal, https://www.news-journalonline.com/news/20200707/did-you-order-ballot-for-aug-18-primary-election-expect-them-in-mail-soon (last visited July 7, 2020).

[3] *See, e.g.*, Anthony Man, *535,000 ballots about to hit south Florida voters' mailboxes as voting begins for August election*, South Florida Sun Sentinel, https://www.sun-sentinel.com/news/politics/fl-ne-mail-ballots-august-2020-florida-primary-20200707-p3ripew375czljst7s52bcymnq-story.html (last visited July 7, 2020).

This Court's *Purcell* decision compels vacatur of the stay.

1. Florida voters ended the State's permanent disenfranchisement for those with prior felony convictions by adopting Amendment 4 in November 2018, which automatically reenfranchised persons "upon completion of all terms of sentence including parole or probation." Fla. Const. art. VI, § 4. In June 2019, the legislature enacted SB 7066, which defined that phrase to include payment of all financial obligations ordered within the four corners of the sentencing document—including fines, restitution, costs, and fees—regardless of whether those financial obligations were converted by the sentencing judge to civil liens. Fla. Stat. § 98.0751(5).

2. Applicants filed suit in cases consolidated before Northern District of Florida Judge Robert L. Hinkle in July 2019, alleging, *inter alia*, that Florida's pay-to-vote system imposed wealth discrimination in violation of the Fourteenth Amendment for those unable to afford their legal financial obligations ("LFOs"), was a "poll tax or other tax" in violation of the Twenty-Fourth Amendment, and—given the State's unnavigable system for determining the amount of money owed in order to vote—violated applicants' procedural due process rights and was void for vagueness. The district court granted a preliminary injunction with respect to applicants' wealth discrimination claim on October 18, 2019. *Jones v. DeSantis*, 410 F. Supp. 3d 1284 (N.D. Fla. 2019). The Governor immediately issued a press statement expressing his agreement with the preliminary injunction and support for the ruling that those genuinely unable to pay should still have an avenue for rights

restoration, a position his counsel affirmed on the record, *see* Order Denying Stay at 5, ECF No. 244, but then reversed course and appealed.[4]

3. A panel of the Eleventh Circuit unanimously affirmed the district court's preliminary injunction on February 19, 2020. *Jones v. DeSantis*, 950 F.3d 795 (11th Cir. 2020) (*per curiam*). The panel explained that "the Supreme Court has told us that wealth classifications require more searching review in at least two discrete areas: the administration of criminal justice and access to the franchise." *Id.* at 817 (citing *M.L.B. v. S.L.J.*, 519 U.S. 102, 123 (1996)). Florida's pay-to-vote system, the panel reasoned, "implicates wealth discrimination [in] both" contexts. *Id.*

The panel explained that "disenfranchisement is a *continuing* form of punishment." *Id.* at 819 (emphasis in original). Indeed, the panel noted that "the Readmission Act of Florida authorized felon disenfranchisement *only* as punishment." *Id.* (citing Act of June 25, 1868, ch. 70, 15 Stat. 73, 73) (emphasis in original). Under Florida's system, the panel explained, "[f]elons who are unable to pay (and who have no reasoned prospect of being able to pay) will remain barred from voting, repeatedly and indefinitely, while for those who can pay, the punishment will immediately come to an end." *Id.* at 820. For over 60 years, the panel explained, this Court has held that "the state may not treat criminal defendants more harshly on account of their poverty." *Id.* at 818; *see Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (holding that although a state is not required to establish appellate courts, once it

[4] Respondents Governor DeSantis and Secretary of State Lee both appealed. Applicants refer to them collectively as "the State" for ease of reference.

does, it may not grant appellate review "in a way that discriminates against some convicted defendants on account of their poverty"); *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983) (holding that a state may not revoke probation—thereby extending a prison term—based on a defendant's inability to pay a fine); *Tate v. Short*, 401 U.S. 395, 399 (1971) (holding that a state cannot imprison an indigent defendant based solely on inability pay a fine); *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970) (holding that a period of imprisonment cannot be extended on the basis that an indigent person cannot pay a fine). The panel concluded:

> [The] *Griffin-Bearden* principle straightforwardly applies here . . . . Just like in *Bearden* and in *Griffin*, the fact that the State originally was entitled to withhold access to the franchise from felons is immaterial; rather, heightened scrutiny is triggered when the State alleviates punishment for some, but mandates that it continue for others, based solely on account of wealth.

Jones, 950 F.3d at 819.

Moreover, the panel likewise held that heightened scrutiny applied because here "the punishment itself takes the form of denying access to the franchise—the second arena where *Griffin*'s equality principle applies." *Id.* at 820. The panel noted that this Court has held, citing to *Griffin*, that "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." *Id.* at 821 (quoting *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966)). The panel reasoned that *Harper* applies even though the State could constitutionally disenfranchise felons in the first place because "the abridgement of a felon's right to vote is still subject to constitutional limitations." *Id.* at 822 (citing *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974)

(remanding challenge to California's disenfranchisement law for consideration of equal protection arguments)); *Hunter v. Underwood*, 471 U.S. 222, 233 (1985) (concluding that Alabama's "moral turpitude" standard for disenfranchisement was intentional racial discrimination). As the panel explained, "the *Griffin-Bearden* line of cases *all* illustrate this point" because in each the plaintiffs' rights were lawfully abridged, yet wealth could not be the basis for whether their rights were restored. *Id.* (emphasis in original). "The long and short of it is that once a state provides an avenue to ending the punishment of disenfranchisement . . . it may not erect a wealth barrier absent a justification sufficient to overcome heightened scrutiny." *Id.* at 823. The panel found no such justification. *Id.* at 825-28.[5]

The State filed a petition for rehearing *en banc* on February 26, 2020, which was denied on March 31, 2020 because "no judge in regular active service on the Court . . . requested that the Court be polled on rehearing en banc." Order, *Jones v. DeSantis*, No. 19-14551 (11th Cir. Mar. 31, 2020). The State did not petition for a writ of certiorari from this Court.

4. The district court granted the *Raysor* Plaintiffs' motion for class certification as to their wealth discrimination and poll tax claims on April 7, 2020, and held an eight-day bench trial (by videoconference in light of the coronavirus pandemic) from April 27 through May 6, 2020, where the court heard testimony from

[5] Moreover, the panel explained that even if heightened scrutiny did not apply, it had "reservations about whether the wealth-based disparities created by the LFO requirement would pass even rational basis scrutiny." *Id.* at 809. The panel noted that further factual development at trial would inform that analysis. *Id.* at 814 ("[I]f the LFO requirement is irrational as applied to those felons genuinely unable to pay, and those felons are in fact the *mine-run* of felons affected by this legislation, then the requirements may be irrational as applied to the class as a whole.").

plaintiffs, county supervisors of elections, county clerk of courts employees, public defenders, the Director of the Secretary of State's Division of Elections, her assistant director, and six expert witnesses; and reviewed over 10,000 pages of record evidence. The court issued its decision on May 24, 2020.

Following the Eleventh Circuit's panel decision, the court concluded that the pay-to-vote system failed heightened scrutiny by creating a wealth barrier to rights restoration without sufficient justification. *Jones*, 2020 WL 2618062, at *14. But the court also concluded that the system failed rational basis review whether viewed from the perspective of those unable to pay, or from the system as a whole. *Id.* at *15-16. Specifically, the court stated that "I find as a fact that the overwhelming majority of felons who have not paid their LFOs in full, but who are otherwise eligible to vote, are genuinely unable to pay the required amount," *id.* at *16, and thus "the system does not pass rational-basis scrutiny," *id.* at *14, because it withholds the franchise based upon debts that cannot be paid.

The court concluded that Florida's implementation of the pay-to-vote system is plagued by intractable administrative problems, which demonstrate its irrationality but also underscore its separate procedural due process and vagueness infirmities.

First, the court found that "many felons do not know, and some have *no way* to find out, the amount of LFOs included in a judgment." *Id.* (emphasis added). The court credited the expert testimony of a "professor specializing in this field with a team of doctoral candidates from a major research university" who "made diligent efforts over a long period to obtain information on 153 randomly selected felons," who

"found that information was often unavailable over the internet or by telephone and that, remarkably, there were inconsistencies in the available information for all but 3 of the 153 individuals." *Id.* at *17. The court found that "a copy of the judgment may not be available at all, or may be available only from barely legible microfilm or microfiche or from barely accessible archives, and only after substantial delay." *Id.* Even if obtainable and legible, the judgment may not provide an answer because "[j]udgments often cover multiple offenses, with sentences imposed simultaneously, often without matching financial obligations to specific offenses." *Id.* The court cited the example of one plaintiff whose judgment imposed a $1,000 fine but did not indicate whether it was associated with his disqualifying felony or his nondisqualifying misdemeanor conviction. *Id.* Shown the judgment at trial, the Director of the Division of Elections could not determine whether the plaintiff must pay the $1,000 in order to vote. *Id.* "In sum, 18 months after adopting the pay-to-vote system, the State still does not know which obligations it applies to. And if the State does not know, a voter does not know." *Id.* at *18.

Second, the court found that "[i]t is often impossible" to determine the amount that has been paid because of the State's "incomplete and inconsistent" records. *Id.* at *18-19. Staff with over 100 years of combined experience in the Hillsborough County Clerk of Court's office spent "12 to 15 hours" attempting to determine the amount one plaintiff had paid, but were "unable to explain discrepancies in the records." *Id.* at *20. Except in few cases, "[t]he State has no record of restitution payments at all." *Id.* And if people were required to pay off the actual balances of

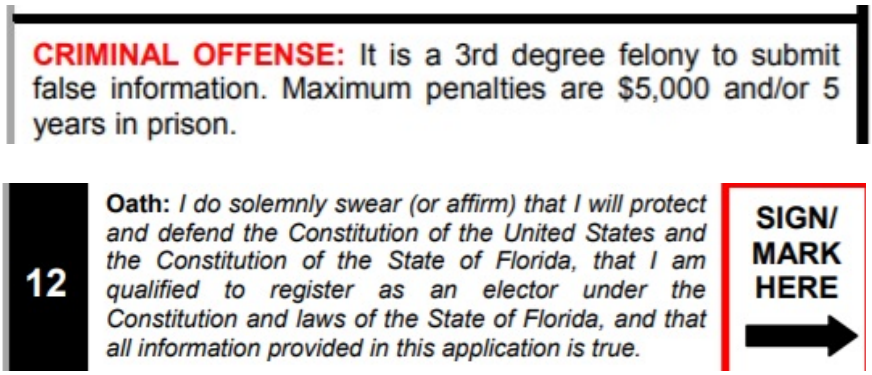
their LFOs in order to vote, they might first be forced to pay 40% collection agency fees or other surcharges associated with making payments, some not tracked by the State. *Id.* at *18.

Faced with these problems, "less than two months before trial . . . . [t]he State decided, entirely as a litigating strategy . . . to retroactively reallocate payments, now applying every payment to the obligations in the original sentence, regardless of the actual purpose for which the payment was made or how it was actually applied." *Id.* at *21. But the district court concluded that this approach "makes the pay-to-vote system's constitutional deficiencies worse, not better." *Id.* at *22. That is so because the State's "principal justification for the pay-to-vote system is that a felon should be required to . . . pay the felon's entire debt to society" before voting. *Id.* But the State's new approach "gravely undermines this debt-to-society rationale" because "most felons are no longer required to satisfy the criminal sentence." *Id.* Among other examples, the court highlighted one example of a person who owed $513 in unpaid fees assessed at judgment but whose relative paid $1,554.65 towards the cost of preparing the record for her unsuccessful appeal. Under the State's new approach, she can vote, but a person with the same conviction and fee who did not appeal could not. "This result is bizarre, not rational." *Id.* at *23. "The every-dollar approach is contrary to the State's original understanding, was conceived only in an effort to shore up the State's flagging position in this litigation, and renders the pay-to-vote system more irrational, not less." *Id.*

Third, the district court found that based on the State's own estimates, it will take six years or more for the State to determine how much (if anything) the *currently registered* voters that may be affected must pay to vote. "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. . . . [and] has not even begun screening for unpaid LFOs, with this exception: the Division's caseworkers have preliminarily screened the 17 named plaintiffs for unpaid LFOs, and the Division Director has reviewed the work on some but not all of the 17. None of the 17 is ready to go out." *Id.* at *24. And "[w]ith a flood of additional registrations expected in this presidential election year, the anticipated completion date might well be pushed into the 2030s." *Id.* In the time between the trial court's ruling and the Eleventh Circuit's stay five-and-a-half weeks later, no doubt many thousands more affected individuals have been added to the rolls.

All of this, the court found, creates a deterrent effect on registration because the state's voter registration form warns a false affirmation of eligibility is a felony, with no mention of willfulness. "[A]n individual attempting to register is told, in effect, that the individual will have committed a felony if it turns out that the individual is not eligible, regardless of willfulness." *Id.* at *25. Indeed, the threat of prosecution is one of the few things called out in red font on an otherwise cluttered form of small, black text:[6]

[6] Fla. Sec'y of State, Voter Registration Form, https://dos.myflorida.com/media/703131/dsde39-english-pre-7066-052120.pdf (last visited July 8, 2020).



And although a voter is afforded a hearing to contest their removal from the registration rolls, "this process is available only to a person who is able to register in the first place. A person cannot invoke this process at all if the person is unable or unwilling to register because the person is uncertain of eligibility and unwilling to risk prosecution." *Id.* at *36.

Finally, applying this Court's precedent adopting a "functional approach" for identifying taxes, *see Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 564-66 (2012), the district court concluded that the fees and costs assessed by Florida in criminal cases (but not fines and restitution) were "other taxes" that could not be imposed as a condition of voting under the Twenty-Fourth Amendment. *Id.* at *29. "[T]he fees are assessed regardless of whether a defendant is adjudged guilty, bear no relation to culpability, and are assessed for the sole or at least primary purpose of raising revenue to pay for government operations . . . . [a] tax by any other name." *Id.*

The district court employed the State's own processes to remedy these violations. It ordered a rebuttable presumption of inability to pay if such determination had already been made by the State through the appointment of

counsel in the person's criminal proceedings or upon conversion of LFOs to civil liens.[7] *Id.* at *45. At the State's suggestion, the court employed the Secretary of State's advisory opinion process to permit voters to seek a determination of the amount owed or of their inability to pay, and ordered that a person could register and vote with a safe harbor from referral for prosecution if no advisory opinion was provided within 21 days. *Id.* at 44-46.

Thousands of voters have likely registered on the basis of the district court's permanent injunction, which the Eleventh Circuit has now stayed without explanation on the eve of the August primary and with the November general election fast approaching.

STANDARD OF REVIEW

"A Circuit Justice has jurisdiction to vacate a stay where it appears that the rights of the parties to a case pending in the court of appeals, which case could and very likely would be reviewed here upon final disposition in the court of appeals, may be seriously and irreparably injured by the stay, and the Circuit Justice is of the opinion that the court of appeals is demonstrably wrong in its application of accepted standards in deciding to issue the stay." *W. Airlines, Inc. v. Int'l Bhd. of Teamsters*, 480 U.S. 1301, 1305 (O'Connor, J., in chambers) (quoting *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers)); *see also Hollingsworth v. Perry*, 558 U.S. 183, 189 (2010).

[7] The district court found that Florida courts generally convert LFOs to civil liens upon a determination of inability to pay. *Id.* at *4.

ARGUMENT

The Eleventh Circuit's stay should be vacated. First, the Eleventh Circuit's stay creates chaos and confusion about who can and cannot vote, where a wrong guess creates the risk of criminal prosecution. This Court's decision in *Purcell* compels the vacatur of the stay. Second, this is a case that would very likely be reviewed here upon final disposition in the Eleventh Circuit if the district court is reversed. Third, the Eleventh Circuit is demonstrably wrong in issuing the stay. Although it is impossible know the court of appeals' basis for doing so because it offered no explanation, the district court's factual findings are amply supported by the record and are not clearly erroneous, and the court's legal conclusions (and those of the Eleventh Circuit panel) directly flow from this Court's precedent. Fourth, the rights of applicants will be seriously and irreparably injured by the stay.

I. *Purcell* Concerns Require the Stay To Be Vacated.

The Eleventh Circuit's stay should be vacated because the chaos and disruption it has sowed is magnitudes beyond what concerned this Court in *Purcell*. The district court heard eight days of testimony and argument, considered over 10,000 pages of evidence, made legal conclusions based upon this Court's jurisprudence and Circuit precedent in *this* case, and "factual findings to which the Court of Appeals owed deference." *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006) (citing Fed. R. Civ. P. 52(a)). The Eleventh Circuit's "bare order" staying the district court's decision "fail[s] to provide any factual findings or indeed any reasoning of its own" and "[t]here has been no explanation given by the Court of Appeals showing the ruling

and findings of the District Court to be incorrect." *Id.* The Eleventh Circuit was required to "give deference to the discretion of the District Court," but there is "no indication that it did so." *Id.*

Moreover, the Eleventh Circuit has created *triple* the "confusion and consequent incentive to remain away from the polls" as this Court found in *Purcell*. *Id.* Not only has the court created "conflicting orders" with the district court, but it has created "conflicting orders" with *itself*, while simultaneously suspending the court order that actually resolved the "confusion and consequent incentive to remain away from the polls" attendant to Florida's incompetently administered pay-to-vote system. *Id.* It did all of this "[a]s an election draws closer," *id.*, just three weeks before the registration deadline for the August primary, with oral argument set to occur the same day as that election. Worse, the stay order came after vote-by-mail applications were already received and just as ballots were mailed to overseas voters. Local officials and voters have no way to know who is affected by the stay or how, as the State's own trial testimony readily illustrated. The same process begins soon for the November election.

This is untenable for the nearly one hundred thousand affected Floridians already registered, for the thousands or tens of thousands more who have undoubtedly registered following the district court's permanent injunction, for the three-quarters of a million who are entitled to register pursuant to the constitutional reasoning of the Eleventh Circuit panel's decision that remains in effect, and for the

tens of thousands who have already received (and possibly returned) their absentee ballots or who will next week.

The stay should be vacated and the district court's permanent injunction reinstated so that the August and November elections are not undermined by chaos and disenfranchisement. *See Frank v. Walker*, 574 U.S. 929 (2014) (Mem.) (vacating stay of district court's injunction related to approaching election where absentee ballots had been sent out); *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016), *stay denied*, 137 S. Ct. 27 (2016); *Ne. Coal. for the Homeless v. Husted*, 467 F.3d 999, 1012 (6th Cir. 2006) ("[T]here is a strong public interest in smooth and effective administration of voting laws that militates against changing the rules in the middle of submission of absentee ballots.").

II. The Court is Likely to Grant Review of this Case.

This case could, and in all likelihood will, be reviewed by this Court if the Eleventh Circuit reverses the district court because the district court's decision (and the Eleventh Circuit's panel decision) follows binding precedent from this Court. A reversal of the district court would create a conflict with this Court's precedent on an important question of federal law affecting hundreds of thousands of Floridians. *See* S. Ct. Rule 10(c). This case likewise involves a constitutional provision—the Twenty-Fourth Amendment—on which this Court has had little opportunity to provide guidance, and the State's procedural due process and vagueness infirmities jeopardize and chill the voting rights of three-quarters of a million citizens in the third-largest state in the Union.

A. The Court Is Likely To Review Applicants' Wealth Discrimination Claim if the Eleventh Circuit Reverses the District Court.

The Court is likely to review applicants' wealth discrimination claim if the Eleventh Circuit reverses the district court to ensure this Court's wealth discrimination precedent is properly applied, as the district court did, on this important issue of constitutional law. In *Bynum v. Connecticut Commission on Forfeited Rights*, the Second Circuit considered a law that required a person with a prior felony conviction to pay $5.00 to petition for restoration of his voting rights. 410 F.2d 173, 175 (2d Cir. 1969). The district court dismissed the plaintiff's complaint, declining to convene a three-judge court, reasoning that the plaintiff had forfeited his right to vote and Connecticut's restoration law could be analogized to pardon, probation, and parole—"act[s] of grace." *Bynum v. Connecticut Comm'n on Forfeited Rights*, 296 F. Supp. 495, 499 (D. Conn. 1968). The district court thus rejected plaintiff's reliance on *Harper*, stating that "plaintiff did not have the right to vote. He is seeking to obtain that right." *Id.*

The Second Circuit reversed, concluding that plaintiff's claim was "substantial," and explained this was so because this Court held in *Harper* that "wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process." *Bynum*, 410 F.2d at 176 (quoting *Harper*, 383 U.S. at 668); *id.* at 176-77 ("To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. . . . Wealth or fee paying has, in our view no relation to voting qualifications; the right to vote is too

precious, too fundamental to be so burdened or conditioned." (quoting *Harper*, 383 U.S. at 668, 670)). The Second Circuit credited plaintiff's argument that "it does not matter whether granting him permission to file his petition [for rights restoration] is denominated a 'right' or a 'privilege.' In either case the right or privilege is claimed to be fundamental, and not to be interfered with except for the most pressing reasons." *Id.* at 177. Likewise, the Second Circuit credited plaintiff's argument that the Equal Protection Clause's prohibition on wealth discrimination extends beyond criminal proceedings, particularly because "the issue raised here is so closely intertwined with the exercise of the political franchise." *Id.*[8] The Second Circuit thus rejected the essential arguments advanced by the State here—arguments the Eleventh Circuit panel has likewise rejected.[9]

The Second Circuit properly understood this Court's precedent, but the Sixth Circuit subsequently misapplied this Court's precedent. In *Johnson v. Bredesen*, a divided panel of the Sixth Circuit rejected a challenge to Tennessee's requirement that victim restitution and child support be paid by those unable to afford their obligations in order to regain the right to vote. 624 F.3d 742, 746 (6th Cir. 2010). The

[8] It is immaterial that the Second Circuit was reviewing the failure to convene a three-judge district court. Although the court noted it was not deciding the merits of the claim (which it could not do at that stage), the court explained that "there are certain factual issues, such as the exact degree of Bynum's poverty, which will have to be resolved by [the three-judge] court." *Id.* Those issues would not arise if the district court were free to conclude on remand that plaintiff stated no legal claim.

[9] Sitting by designation on the Ninth Circuit, Justice O'Connor likewise opined that people unable to afford their LFOs could challenge, under the Equal Protection Clause, a law conditioning rights restoration on payment. *See Harvey v. Brewer*, 605 F.3d 1067, 1080 (9th Cir. 2010) ("Perhaps withholding voting rights from those who are truly unable to pay their criminal fines due to indigency would not pass this rational basis test, but we do not address this possibility because no plaintiff in this case has alleged that he is indigent.").

Bredesen majority reasoned that plaintiffs had lawfully been stripped of their right to vote, and thus had no fundamental right to assert. *Id.* The majority concluded that Tennessee had a rational interest in encouraging people, by withholding the franchise, to pay obligations notwithstanding their indigency. *Id.* The court distinguished the *Griffin-Bearden* line of cases as involving "physical liberty" and "the importance of the right of access to the courts." *Id.* at 748. Reasoning that reenfranchisement was a "statutory benefit," the majority opined that "[w]hile the dissent would prefer that the state not discriminate on the basis of wealth when providing statutory benefits, this is an argument that must be resolved by the legislature, not this Court." *Id.* The *Bredesen* majority did not grapple with the fact that probation and criminal appeals—the benefits in *Bearden* and *Griffin*, respectively—are also mere statutory benefits not guaranteed by the U.S. Constitution.

Judge Moore dissented. She explained that this Court has rejected the "collection device rationale" for withholding individual rights from those unable to pay. *Id.* at 756 (Moore, J., dissenting) (citing *Zablocki v. Redhail*, 434 U.S. 374, 389 (1978); *Bearden*, 461 U.S. at 662). "The attempt to incentivize payments that an individual is simply incapable of making by linking those payments to the right to vote, particularly when there are other collection methods available, advances no purpose and embodies nothing more than an attempt to exercise unbridled power over a clearly powerless group, which is not a legitimate state interest." *Id.* at 757-58. Judge Moore likewise rejected the state's proffered interest in protecting the

ballot box from those who had not paid restitution and child support, concluding that this "amounts to nothing 'more than a naked assertion that [a felon's] poverty by itself' is a sufficient reason to disqualify the felon from regaining the right to participate in the exercise of democracy." *Id.* at 758 (quoting *Bearden*, 461 U.S. at 671). Analyzing this Court's long line of wealth discrimination cases, including *Harper*, *Bearden*, *Griffin*, *Williams*, and *James v. Strange*, 407 U.S. 128 (1972), Judge Moore concluded Tennessee's law violated equal protection.[10] The Eleventh Circuit panel in this case likewise "disagree[d]" with the *Bredesen* majority, *Jones*, 950 F.3d at 809, as contrary to settled Supreme Court precedent.

B. The Court Is Likely To Review Applicants' Twenty-Fourth Amendment Claim if the Eleventh Circuit Reverses the District Court.

This Court is also likely to grant review of the Twenty-Fourth Amendment claim if the Eleventh Circuit reverses the district court in order to ensure the Amendment's plain text is properly applied. That Amendment provides that "[t]he right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." U.S. Const. amend. XXIV. This Court has only once construed the Twenty-Fourth Amendment. In

[10] The Washington Supreme Court adopted a similar position to the Sixth Circuit in *Madison v. State*, 163 P.3d 757 (Wash. 2007), over the dissent of three justices who concluded that this Court's decision in *Harper* and its *Griffin-Bearden* line of cases meant that once the state created a reenfranchisement scheme, it could not dole out the right to vote on the basis of wealth. *See id.* at 779-81 (Alexander, C.J., dissenting).

Harman v. Forssenius, the Court invalidated a Virginia law that required people wishing to vote in federal elections to either pay a poll tax or file a certificate of residency. 380 U.S. 528, 544 (1965). The Court explained that the Amendment "does not merely insure that the franchise shall not be 'denied' by reason of failure to pay the poll tax; it expressly guarantees that the right to vote shall not be 'denied or abridged' for that reason." *Id.* at 540. Thus, this Court explained, the Twenty-Fourth Amendment "nullifies sophisticated as well as simple-minded modes of impairing the right guaranteed. It hits onerous procedural requirements which effectively handicap exercise of the franchise by those claiming the constitutional immunity." *Id.* at 540-41 (internal quotation marks and citation omitted). By requiring the payment of a poll tax or certificate of residency, the Virginia law "constitute[d] an abridgement of [plaintiff's] right to vote by reason of failure to pay the poll tax." *Id.* at 542.

But the Twenty-Fourth Amendment's broad scope is not limited to its inclusion of the word "abridge"; the Amendment prohibits both a "poll tax" *and* any "other tax." U.S. Const. amend. XXIV. This Court has never construed the phrase "other tax" in the Amendment.

C. The Court Is Likely To Review Applicants' Procedural Due Process and Vagueness Claims if the Eleventh Circuit Reverses the District Court.

Finally, this Court is likely to review the procedural due process and vagueness claims if the Eleventh Circuit reverses the district court because of the breathtaking flaws in Florida's pay-to-vote system. The only means of obtaining a hearing on one's eligibility to vote is to first affirm under threat of prosecution that one is eligible to

vote. But as the district court found based upon an extensive evidentiary record, and as the State's Director of the Division of Elections expressly testified, the State itself *cannot* determine who must pay money to vote or how much must be paid, and indeed has not done so for a single voter since the pay-to-vote system went into effect over a year ago. This Court is likely to review this issue to affirm that a citizen need not risk prosecution in order to obtain a determination of their eligibility to vote. This Court is all the more likely to do so because this issue affects three-quarters of a million citizens in the third largest state in the Union. It is a matter of extraordinary—and urgent—importance.

III. This Court's Precedent Requires Vacatur of the Stay.

This Court's precedent requires vacatur of the stay. To begin, the Eleventh Circuit was "demonstrably wrong in its application of accepted standards in deciding to issue the stay," *Western Airlines*, 480 U.S. at 1305 (O'Connor, J., in chambers), because there is no evidence of what, if any, standards the court employed in issuing its one-sentence stay order. In contrast to other cases where this Court has declined to vacate a stay, citing the court of appeals' consideration "at length" of the relevant standards, *see, e.g.*, *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 571 U.S. 1061 (2013) (Scalia, J., joined by Thomas, J., and Alito, J., concurring in denial of application to vacate stay), the Eleventh Circuit here has offered *no explanation whatsoever*. The absence of any reasoning is particularly confounding because the *en banc* court declined to rehear the February 2020 panel decision affirming the district court's preliminary injunction, and its stay order does not

disturb that decision, leaving the state of the law for three-quarters of a million voters in disarray.[11] Worse yet, the Eleventh Circuit stayed the district court's permanent injunction in full, even though the State did not even address the district court's procedural due process/vagueness and National Voter Registration Act ("NVRA") claims, which necessitated distinct remedies, in its stay application.[12] *See* State's Mot. for Stay, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 26, 2020). The State has now instructed election officials to reinstate a voter registration form it no longer defends on appeal and rescind the prescribed form for voters to seek advisory opinions from the Department on their eligibility to vote. And the State's instructions in light of the stay order do not provide election officials with a wit more clarity on how to implement its pay-to-vote system. *See* App. C (Email from Director of Division of Elections).

But even assuming the Eleventh Circuit considered the accepted standards, *see Nken v. Holder*, 556 U.S. 418, 434 (2009), its issuance of a stay was demonstrably wrong, most importantly because the State did not make a strong showing that it is likely to succeed on the merits.

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[11] The vast majority of Plaintiffs and plaintiff class members are entitled to relief under the standard for wealth discrimination announced by the panel in February. *See Jones*, 2020 WL 2618062, at *16 (finding the vast majority of affected citizens unable to pay). Thus, the *en banc* court's decision to decline rehearing of the panel's wealth discrimination ruling in March—when there was still breathing room before the August primary and November election to clarify affected individuals' legal rights—yet to accept initial hearing *en banc* and stay the district court's order now, three weeks before a registration deadline, is curious. Notably, as members of the panel, Senior Circuit Judges Anderson and Marcus would have been entitled to participate had the *en banc* court granted rehearing of the panel decision. 28 U.S.C. § 46(c); 11th Cir. Local Rule 35-9.

[12] Although the *en banc* Court stayed the district court's *permanent* injunction, it ignored entirely the preliminary injunction entered in this case and previously affirmed by the panel. Adding to the confusion, therefore, is the question of whether the preliminary injunction still controls, at least for the individual Plaintiffs.

A. Florida's Pay-to-Vote System Discriminates on the Basis of Wealth in Violation of the Equal Protection Clause.

The district court (and the Eleventh Circuit panel) correctly concluded that the Equal Protection Clause precludes the State from erecting a wealth barrier to sort who can and cannot have their voting rights restored. This Court has held that wealth classifications require searching review when they implicate access to the franchise or the administration of criminal justice. *M.L.B.*, 519 U.S. at 124 (explaining that Supreme Court precedent "solidly establish[es]" searching review for wealth classifications in the context of "[t]he basic right to participate in political processes as voters" and "access to judicial processes" in criminal or quasi-criminal matters). This case implicates both, and flows directly from an unbroken line of this Court's precedent. In *Griffin*, this Court held that although a criminal defendant has no federal constitutional right to an appeal, once the state creates an appellate court, it cannot create a wealth barrier to access it. 351 U.S. at 16. In the 60 years since it was announced, "*Griffin*'s principle of 'equal justice' . . . has been applied in numerous other contexts." *Bearden*, 461 U.S. at 664; *see, e.g.*, *Douglas v. California*, 372 U.S. 353 (1963) (indigent defendants entitled to counsel for first direct appeal); *Roberts v. LaVallee*, 389 U.S. 40 (1967) (indigent defendants entitled to free transcript of preliminary hearing); *Mayer v. Chicago*, 404 U.S. 189 (1971) (indigent cannot be denied adequate record to appeal fine-only statute).

In *Bearden*, this Court held that a state may not extend punishment—by revoking probation and remanding a person to prison—based upon failure to pay a fine the person is unable to pay. 461 U.S. at 672-73. Nor can the inability to pay a

fine be a basis to imprison a person, *see Tate*, 401 U.S. at 399, or to extend imprisonment beyond the statutory maximum, *Williams*, 399 U.S. at 240-41. Because disenfranchisement is a continuing form of punishment, *see Jones*, 950 F.3d at 819—indeed punishment is the *only* basis upon which Congress authorized Florida to impose disenfranchisement, *see* Act of June 25, 1868, ch. 70, 15 Stat. 73, 73—Florida's pay-to-vote system for reenfranchisement must satisfy the "equal justice" principle this Court has "solidly establish[ed]," *M.L.B.*, 519 U.S. at 124, in its *Griffin-Bearden* line of cases. As the district court and the Eleventh Circuit panel demonstrated, it does not.

Likewise, the district court and the Eleventh Circuit panel correctly concluded that this Court's precedent compels heightened scrutiny because here "the punishment itself takes the form of denying access to the franchise." *Jones*, 950 F.3d at 820. This Court has explained that *Griffin*'s equality principle is not limited to criminal justice processes. *See M.L.B.*, 519 U.S. at 111 ("*Griffin*'s principle has not been confined to cases in which imprisonment is at stake."); *Cruz v. Hauck*, 404 U.S. 59, 63-64 (1971) (stating that *Griffin*'s "equal protection concept is not limited to criminal prosecutions" (citations omitted)). This Court has applied *Griffin* in many contexts. *See, e.g.*, *Zablocki*, 434 U.S. at 389 (invalidating statute conditioning marriage eligibility on payment of child support); *Lubin v. Panish*, 415 U.S. 709, 719-21 (1974) (Douglas, J., concurring) (citing *Griffin* to invalidate filing fee requirement for access to state ballot); *Bullock v. Carter*, 405 U.S. 134, 149 (1972); *Boddie v.*

Connecticut, 401 U.S. 371, 382-84 (1971) (invoking *Griffin* to invalidate procedures imposing filing fees on indigent couple seeking a divorce).

If *Griffin* means that marriage, divorce, and candidate filing fees may not be conditioned upon wealth, then it certainly means that the franchise—that which is "preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)—likewise may not be. This Court has said as much; citing *Griffin*, this Court held in *Harper* that "a State violates the Equal Protection Clause . . . whenever it makes affluence of the voter or payment of any fee an electoral standard." 383 U.S. at 666.

The district court and the Eleventh Circuit panel thus followed this Court's precedent in applying heightened scrutiny. And they likewise properly determined that the State's pay-to-vote system could not withstand scrutiny, given the importance of the interest in voting, the lack of any meaningful alternative to gain the franchise, the futility of the State's purported collection rationale—"the State cannot draw blood from a stone," *Jones*, 950 F.3d at 827—and the State's approach of exacting punishment not "in proportion to [peoples'] culpability but [rather] to their wealth," *id.* As the Cato and R Street Institutes observed as *amici* in support of applicants below, Florida's pay-to-vote system, "insofar as it excludes people who cannot afford to pay criminal court debt from participating in the democratic process, perhaps permanently, violates the bedrock guarantee of equal rights that every citizen enjoys." Brief of Cato and R Street Institutes at 2, No. 19-14551 (11th Cir. Jan. 17, 2020).

The *en banc* court's single-line stay order does not provide any insight to its views, but to the extent it was persuaded by the arguments advanced by the State in its stay motion below, the court was demonstrably wrong in its view of the law.

First, the State contends that the district court erred by not requiring applicants to prove that the State purposefully discriminated on the basis of wealth. This is demonstrably wrong; this Court has expressly held that discriminatory intent is not an element of wealth discrimination claims. *See M.L.B.*, 519 U.S. at 126-27. In *M.L.B.*, this Court rejected the invocation of the purposeful discrimination rule from *Washington v. Davis*, 426 U.S. 229 (1976), because laws erecting wealth barriers are not neutral in application and "not merely *disproportionate* in impact . . . . they apply to all indigents and do not reach anyone outside that class." *M.L.B.*, 519 U.S. at 127 (emphasis in original); *id.* (grafting a purposeful discrimination requirement onto wealth discrimination claims would mean "our overruling of the *Griffin* line of cases would be two decades overdue"). If the *en banc* court's stay order is premised upon the State's purposeful discrimination argument, it is demonstrably wrong. The Eleventh Circuit cannot overrule this Court's precedent.[13]

[13] The State contends *M.L.B.*'s holding in this regard is limited to access to judicial proceedings. But *M.L.B.* expressly invoked "[t]he basic right to participate in political processes as voters" as something that cannot be conditioned upon wealth. 519 U.S. at 124. Nor is there anything about its rationale in rejecting a purposeful discrimination requirement—that laws creating wealth barrier affect only those who lack wealth—that would only reach judicial proceedings.

In any event, the district court—the factfinder—has expressly found as a fact that purposeful wealth discrimination occurred here. Stay Order at 8, ECF No. 431; *see also Jones*, 2020 WL 2618062, at *34 (finding that the legislature's treatment of civil liens constituted "discrimination against those unable to pay").

Second, the State contends that a person with a prior felony conviction "stands in the same shoes as a child or a foreign national: he has no right to vote—period." Mot. to Stay at 10, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 17, 2020). The State thus contends that because no fundamental right is at stake but rather a "statutory benefit" or "act of grace," *id.* (quotation marks omitted), this Court's *Harper* and *Griffin-Bearden* line of cases are inapposite. Not so. *Bearden* illustrates why. In that case, this Court held that where payment of fines and restitution are conditions of probation, courts may not "deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine." 461 U.S. at 672-73. But a person convicted of a crime has forfeited his constitutional right to physical liberty. There is no constitutional right to have one's physical liberty restored through probation; that is a statutory benefit extended as an act of grace.

Yet *Bearden* holds that the state may not prefer wealthy people when distributing its grace. The State's argument here runs headlong into *Bearden*. Physical liberty does not transcend voting in our constitutional structure; indeed, voting is "preservative of" physical liberty. *Yick Wo*, 118 U.S. at 370. Both are too important to be distributed based upon wealth, regardless of whether access to either is obtained by grace or right. *Cf. United States v. Haymond*, 139 S. Ct. 2369, 2375 (2019) (Gorsuch, J., plurality) ("Together with the right to vote, those who wrote our Constitution considered the right to trial by jury 'the heart and lungs, the mainspring and the center wheel' of our liberties, without which 'the body must die, the watch must run down; the government must become arbitrary.' Just as the right to vote

sought to preserve the people's authority over their government's executive and legislative functions, the right to a jury trial sought to preserve the people's authority over its judicial functions." (quoting Letter from Clarendon to W. Pyn (Jan. 27, 2755), in 1 Papers of John Adams 169 (R. Taylor ed. 1977)).

Moreover, *Harper* itself rejects the State's interpretation. This Court did not, as the State seems to contend, first determine that the plaintiffs in *Harper* had a fundamental right to vote in state elections and only then apply heightened scrutiny. To the contrary, this Court explained that "[w]hile the right to vote in federal elections is conferred by . . . the Constitution, the right to vote in state elections is nowhere expressly mentioned." 383 U.S. at 665 (internal citations omitted). This Court found it unnecessary to determine whether such a right was implicit in the First Amendment, "[f]or it is enough to say that once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Id.* This is so, therefore, even if one conceives of the ability to participate in state elections as a "statutory benefit" and not a right guaranteed by the federal constitution.[14]

This Court in *Harper* left no space for the wealth discrimination the State asks be sanctioned here. "We conclude that a State violates the Equal Protection Clause

[14] This rationale is not unique to voting. This Court has regularly held that even though a person has no constitutional right to a government-created benefit, that benefit may not be distributed based upon impermissible or irrelevant considerations. *See, e.g.*, *Espinoza v. Mont. Dep't of Revenue*, __ U.S. __, 2020 WL 3518364, at *11 (June 30, 2020) ("A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious."); *Shapiro v. Thompson*, 394 U.S. 618, 627 & n.16 (1969) (holding that state could not withhold welfare benefits from new residents to discourage migration of indigent persons, even though "public assistance benefits are a 'privilege' and not a 'right'"), *overruled in part on other grounds*, *Edelman v. Jordan*, 415 U.S. 651 (1974).

of the Fourteenth Amendment *whenever* it makes the affluence of the voter or payment of any fee an electoral standard." *Id.* at 666 (emphasis added). Wealth is not a permissible electoral standard—period.[15]

Harper thus compelled the Eleventh Circuit panel's rejection of the State's argument in this case: "*Harper*'s application of heightened scrutiny to wealth discrimination in the context of access to the franchise was based on the importance of the right in general, rather than the possession of the right by particular individuals." *Jones*, 950 F.3d at 822. Likewise, it was based upon the particular odiousness of wealth as a dividing line. "[T]his Court has made clear that even though a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely." *Perry v. Sinderman*, 408 U.S. 593, 597 (1972). Wealth may not determine whether a person may vote, because "[t]o introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor." *Harper*, 383 U.S. at 668. Applicants are no exception to the principles of *Harper* or the *Griffin-Bearden* line of cases.[16]

[15] The State says that applicants "stand[ ] in the same shoes as a child" because neither may assert a fundamental right to vote. Mot. to Stay at 10, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 17, 2020). Eleven states and the District of Columbia extend to 17-year olds the ability to vote in primary elections if they will be 18 by the general election. *See Voter Registration Age Requirements by State*, https://www.usa.gov/voter-registration-age-requirements (last visited July 6, 2020). Municipalities like Takoma Park and Hyattsville, Maryland, have extended to 16-year olds the ability to vote in local elections. Under the State's view of equal protection, these States and municipalities could exclude from the "statutory benefit" those minors who cannot afford to pay their school lunch account balance, and justify that exclusion as a way to incentivize payment. Would anyone think that constitutional?

[16] In *Hunter*, Alabama asked this Court to subject its "moral turpitude" standard to rational basis review, contending that "the State has a legitimate interest in denying the franchise to those convicted of crimes involving moral turpitude." 471 U.S. at 222-23. This Court declined, and expressly held that even though a state could withhold the franchise entirely from those with prior convictions, it could

Third, even if rational basis review applied (it does not), the district court—based upon extensive factual findings—correctly concluded the State's pay-to-vote system fails. As the district court and Eleventh Circuit panel concluded, the system is irrational as applied to applicants (and the class they represent) because the State advances no legitimate interest by withholding the franchise because a person has not paid money they cannot afford to pay. *Jones*, 950 F.3d at 810; *Jones*, 2020 WL 2618062, at *15. It does not further the collection of unpaid debt because, applied to those with no money to pay, it "erects a barrier 'without delivering any money at all.'" *Jones*, 950 F.3d at 811 (quoting *Zablocki*, 434 U.S. at 389)). It does not further its punishment interest because it divorces the punishment from culpability. "[T]he wealthy identical felon, *with identical culpability*, has his punishment cease. . . . Whatever interest the State may have in punishment, this interest is surely limited to a punishment that is applied in proportion to culpability." *Id.* at 812. Nor is there any legitimate interest in protecting the ballot box from those who are poor. *See Harper*, 383 U.S. at 666.

The State objects that an as-applied rational basis challenge is improper. Stay Mot. at 14, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 17, 2020). That is demonstrably wrong. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (applying rational basis review and concluding that a zoning ordinance was "irrational . . . as applied"). But the State's argument need not be addressed because

not choose to bestow the franchise among those persons in a way that offended the Equal Protection Clause. *See also Richardson*, 418 U.S. at 56 (remanding for consideration of equal protection arguments).

the district court also properly concluded that the pay-to-vote system was irrational overall because it found "as a fact that the overwhelming majority of felons who have not paid their LFOs in full, but who are otherwise eligible to vote, are genuinely unable to pay the required amount." *Jones*, 2020 WL 2618062, at *16. Because the system is irrational as to "the *mine-run* of felons affected by this legislation," it is "irrational as applied to the class as a whole." *Jones*, 950 F.3d at 814; *see also Harvey*, 605 F.3d at 1080 (O'Connor, J., sitting by designation) (noting that LFO requirement for those unable to pay may be irrational); *cf. Califano v. Jobst*, 434 U.S. 47, 55 (1977) (explaining that rationality of "legislative classification must be judged by reference to characteristics typical of the affected classes rather than by focusing on selected, atypical examples").

The State offer only semantics in response.[17] It contends that "a felon loses his right to vote as punishment for committing a felony, not for being unable to satisfy the financial terms imposed as part of that sentence. . . . And it is entirely rational . . . to insist that felons repay their debt to society *in full* before they can rejoin the electorate . . . even if the majority of felons are unable to pay." Stay Mot. at 15, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 17, 2020) (emphasis in original). But this merely relabels things. A person automatically regains her right to vote "for being *[]able* to satisfy the financial terms imposed as part of that sentence," and does not if

[17] The State previously conceded the pay-to-vote system would fail rational basis review if the mine-run of affected persons were unable to pay. *See Jones*, 950 F.3d at 814 (noting that State "appears to almost concede this point, arguing in its brief that '[a]bsent any evidence that felons unable to pay their outstanding legal financial obligations vastly outnumber those able to pay,' we cannot conclude that the requirement is irrational").

she is "*unable* to satisfy the financial terms imposed as part of that sentence." *Id.* (emphasis added). The State's "relabeling" of its wealth classification is "a sure sign that its . . . distinction is made-to-order." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 399 (2010).

That is not all. Even if the State's "repay the debt to society *in full*" rationale were not mere tautology for wealth discrimination, the district court concluded, in extensive fact-finding, that the State abandoned that rationale by adopting the "every-dollar method" of counting LFO payments. *Jones*, 2020 WL 2618062, at *21. "[L]ess than two months before the trial, the State abruptly changed course" and "decided, entirely as a litigating strategy, that instead of having to pay the outstanding balance of a specific obligation, an individual would be required only to make total payments on any related obligation, whether or not included in the sentence itself, that added up in the aggregate to the amount of the obligations included in the sentence." *Id.* But as the district court concluded, "the every-dollar method makes the pay-to-vote system's constitutional deficiencies worse, not better." *Id.* at *22. This is so because it "gravely undermines the debt-to-society rationale. Under the every-dollar approach, most felons are no longer required to satisfy the criminal sentence." *Id.* The district court offered four specific examples, *see id.* at *22-23, which illustrate the problem. One startling example: three individuals all are convicted of the same crime, and each is imposed the same fee. The first person has money, pays the fee, and can vote. The second person has no money but a relative pays for her appellate-related fees (three times the cost of the fee imposed upon

conviction). She loses the appeal, but her appellate-related payment exceeds the unpaid fee she was assessed, so she can vote. The third person also has no money, takes no appeal, and like the second, still owes her fee. She cannot vote. As the district court concluded, "[t]his result is bizarre, not rational." *Id.* at *23.

Examples abound. Most Florida counties contract with private collection agencies to collect these debts, and most take a 40% collection fee from each payment as profit. *Id.* at *18. At trial, the Director of the Division of Elections testified that, under the every-dollar method, someone might pay their entire dollar amount of restitution in collection agency fees, pay $0 of the restitution owed to the victim, and thereby get to vote.[18] Even if the debt-to-society interest proffered by the State were legitimate, the pay-to-vote system does not advance that interest, and thus "lacks a rational relationship" to it. *Romer v. Evans*, 517 U.S. 620, 632 (1996). Like the law invalidated as irrational in *Romer*, Florida's pay-to-vote system "is at once too narrow and too broad." *Id.* at 633. It is too narrow because it permits people to vote without actually "repay[ing] their debt to society *in full*." Stay Mot. at 15, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 17, 2020) (emphasis in original). It is too broad because, given the manner and sequence in which the State assesses surcharges and contracts

[18] *See* Trial Tr. at 1290-91. The Director of the Division of Elections testified that even though the State does not track payments made to collections agencies, and that such agencies maintain exclusive records of these fee payments, the State will not actually seek to obtain those records in order to include those payments in its "every-dollar" calculation. Trial Tr. at 1205; *Jones*, 2020 WL 2618062 at *51-52 (finding that with respect to collection fees, "[i]f one's goal is to determine total payments, rather than the outstanding balance, there is no way to do it" from state records). Instead, even though the State is aware it is possible a person may have paid enough money to private entities to be eligible to vote, the State will nonetheless flag a voter as ineligible because it does not have the information it did not seek. *See, e.g.*, Trial Tr. at 1333-32; ECF No. 389-11 at 12 (PX918). The voter is left with the burden to obtain the collections agencies records and prove her payments.

for private collection of non-restitution debts, people are required to pay for things—like private collection agency fees—that have nothing to do with their "debt to society." "The search for the link between the classification and objective [in rational basis review] gives substance to the Equal Protection Clause." *Romer*, 517 U.S. at 632. There is no such link here, and the district court thus correctly observed that "[t]he State's actions now call into question whether the pay-to-vote system is rational even as applied to those who are *able* to pay." *Jones*, 2020 WL 2618062, at *14 (emphasis added).

The State responds that it does not matter that people can vote despite retaining "a financial debt to the State or a victim," because under its system the person pays "the *monetary amounts* set forth in their sentencing documents," which the State says *is* the "financial debt to society." Stay Mot. at 16-17, *Jones v. DeSantis*, No. 20-12003 (June 17, 2020) (emphasis in original). So in the State's view, someone has paid his "debt to society in full" if the crime victim receives $0 of $100 owed in restitution and instead a private debt collection firm retains $100 in profit for collecting payment of surcharges (which may have accrued after sentencing). Startling as that proposition is on its own terms, it creates a new problem for the State: this conception of paying one's debt to "society" cannot conceivably be a legitimate interest upon which to dole out the right to vote. Gone is the punitive or compensatory purpose of repaying the debt, and in its place is a naked requirement to divest oneself of a set sum of money in order to vote, no matter to whom or for what

purpose the money is paid. That is an illegitimate government purpose, and an impermissible basis upon which to qualify the franchise.

There is "no indication" that the *en banc* court considered these "factual findings to which the Court of Appeals owed deference." *Purcell*, 549 U.S. at 5. Nor has the State even suggested they are clearly erroneous. *See* Fed. R. Civ. P. 52(a)(6). The Eleventh Circuit's stay should be vacated both because it did not follow the accepted standards in considering a stay, and because—assuming from its silence that it credited the arguments of the State—it was demonstrably wrong on the law and facts with respect to applicants' wealth discrimination claim.

B. The Twenty-Fourth Amendment Prohibits Florida from Conditioning Voting on the Payment of Costs and Fees.

The Twenty-Fourth Amendment prohibits Florida from conditioning voting on the payment of costs and fees. The Twenty-Fourth Amendment provides that the right to vote "shall not be denied or abridged . . . by reason of failure to pay any poll tax or other tax." U.S. Const. amend. XXIV. The district court correctly concluded that the phrase "other tax" must be accorded meaning beyond an explicit poll tax. *Jones*, 2020 WL 2618062, at *27. That meaning, the district court reasoned, could not be limited to taxes imposed at the time of voting.

> "Any other tax" means "any other tax." A law prohibiting citizens from voting while in arrears on their federal income taxes or state property taxes would plainly violate the Twenty-Fourth Amendment. A state could not require a voter to affirm, on the voter-registration form or when casting a ballot, that the voter was current on all the voter's taxes. The very idea is repugnant." *Id.*

Id.

Following this Court's precedent, the district court concluded that an LFO would constitute an "other tax" prohibited by the Twenty-Fourth Amendment if it had the "'essential feature of any tax' . . . that '[i]t produces at least some revenue for the Government.'" *Id.* (quoting *Nat. Fed'n*, 567 U.S. at 564). Using this functional approach, the district court concluded that restitution was not an "other tax" because it was compensatory to the victim and that fines were a "closer" issue but were not an "other tax" because of their primary punitive purpose. *Id.* at *28. But the costs and fees Florida imposes—often by a set statutory amount—are taxes. "Florida has chosen to pay for its criminal-justice system in significant measure through such fees." *Id.* The district court explained that "[m]ost fees and costs are assessed without regard to culpability," and "are ordinarily collected not through the criminal justice system but in the same way as civil debts or other taxes owed to the government, including by reference to a collection agency." *Id.* at *29. The district court correctly concluded that Florida's costs and fees "raise money for the government" and are "other taxes" the payment of which cannot be a condition for voting.

The State contends the "felons do *not* have a Twenty-Fourth Amendment claim because felons—again, like children and aliens—simply do not have a right to vote, and reenfrachisement statutes only *restore* voting rights." Stay Mot. at 17, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 17, 2020) (emphasis in original). The district court correctly dismissed this argument as "mak[ing] no sense. A law allowing felons

to vote in federal elections but only upon payment of a $10 poll tax would obviously violate the Twenty-Fourth Amendment." *Jones*, 2020 WL 2618062, at *27.[19]

The State derives its argument from *Richardson*'s conclusion that "s. 1 [of the Fourteenth Amendment], in dealing with voting rights as it does, could not have been meant to bar outright a form of disenfranchisement which was expressly exempted from the less drastic sanction of reduced representation which s. 2 imposed for other forms of disenfranchisement." 418 U.S. at 55. From this, the State concludes that it may fashion a voting rights restoration system however it chooses without violating *any* of the Constitution's voting rights provisions.

Consider the options open to the State under its view of the law. The Fifteenth Amendment provides that "[t]he right of citizens . . . to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude." U.S. Const. amend. XV. The Nineteenth Amendment provides that "[t]he right of citizens . . . to vote shall not be denied or abridged . . . on account of sex." U.S. Const. amend. XIX. The Twenty-Sixth Amendment provides that "[t]he right of citizens . . . who are eighteen years of age or older, to vote shall not be denied or abridged . . . on account of age." U.S. Const. amend. XXVI. Under the State's conception, the Fifteenth Amendment simply would not apply to a law restoring voting rights to white people but not Black people, the Nineteenth Amendment would simply not apply to a law restoring voting rights to men but not women, and the Twenty-Sixth Amendment

[19] Likewise, take the 17-year olds permitted by a number of States and the District of Columbia to vote in primaries for federal elections. *See supra* note 15. Under the State's view, the Twenty-Fourth Amendment would not apply if those States conditioned their ability to vote in those primaries upon payment of a $10 poll tax. That is nonsense.

would simply not apply to a law restoring voting rights only to people over the age of 65.

This, the State says, all must be so because § 2 of the Fourteenth Amendment protects states from reduced congressional representation if they abridge the right to vote of those guilty of "participation in rebellion, or other crime." U.S. Const. amend. XIV, § 2; *Richardson*, 418 U.S. at 42. Chief Justice Rehnquist, who wrote *Richardson*, would be surprised to learn that his opinion renders the Fifteenth Amendment inapplicable to a law that says: "Only former felons who are white may have their voting rights restored; those who are black may not." We know this because Chief Justice Rehnquist later wrote that "§ 2 was not designed to permit the purposeful discrimination . . . which otherwise violates § 1 of the Fourteenth Amendment." *Hunter*, 471 U.S. at 233. If that is so, nor can § 2 permit what *different* constitutional amendments prohibit. This is especially so because, just as "the Tenth Amendment cannot save legislation prohibited by the subsequently enacted Fourteenth Amendment," *id.*, nor can § 2 of the Fourteenth Amendment save legislation prohibited by the subsequently enacted Twenty-Fourth Amendment. States do not have the power to impose burdens on the right to vote, where such burdens are prohibited in other constitutional provisions. *Williams v. Rhodes*, 393 U.S. 23, 29 (1968).

Moreover, the Twenty-Fourth Amendment employs a "sweeping standard," *Bostock v. Clayton County*, __ S. Ct. __, 2020 WL 3146686, at *5 (June 15, 2020), because it prohibits the right to vote from being denied or abridged "by reason of" a

tax. U.S. Const. amend. XXIV. It thus "incorporates the 'simple' and 'traditional' standard of but-for causation. . . . [A] but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause." *Bostock*, 2020 WL 3146686, at *4. Here, the test is easy. First, change the fact of conviction, and the person has the right to vote—we have found a but-for cause. Second, change the fact of unpaid costs and fees, and the person has the right to vote—we have found a but-for cause. The State's invitation for the Court to focus on the former and disregard the latter is foreclosed by the "words on the page" of the Twenty-Fourth Amendment "adopted by Congress and [ratified by the states]." *Id.*

The State is also wrong to contend that a financial obligation imposed at sentencing cannot be a tax prohibited by the Twenty-Fourth Amendment. This Court has expressly rejected this focus on labels, and instead emphasized the function of exactions. *See Nat'l Fed'n*, 567 U.S. at 564-65. Just as "'[m]agic words or labels' should not 'disable an otherwise constitutional levy,'" *id.* (quoting *Quill Corp. v. North Dakota*, 504 U.S. 298, 310 (1992), neither should magic words or labels *enable* an otherwise *un*constitutional levy. Florida has chosen to run a tax system that applies exclusively to criminal defendants in order to fund its criminal justice system. Payment of those taxes cannot be a condition of voting rights restoration.[20]

[20] The State's reliance on *Harvey*, *Bredesen*, and *Howard v. Gilmore*, No. 99-2285, 2000 WL 203984 (4th Cir. Feb. 23, 2000) is misplaced; none of those cases involved a determination regarding costs and fees.

C. Florida's Dysfunctional Pay-to-Vote System Violates Procedural Due Process and Is Vague.

Florida's dysfunctional pay-to-vote system violates procedural due process and is void for vagueness. The district court demonstrated as much in extensive fact-finding, showing that citizens often have no way to determine if they must pay money to vote, and if so, how much they must pay to vote. And the only way to obtain a hearing is to affirm, under penalty of prosecution, their eligibility to vote—the very thing the State does not know, and so the voter does not know. *See Jones*, 2020 WL 2618062, at *16-26, *36-37; *id.* at *44 ("The requirement to pay, as a condition of voting, amounts that are unknown and cannot be determined with diligence is unconstitutional."). To remedy these violations, the district court ordered the State to make available to citizens an advisory opinion request form from the Division of Elections—a process suggested by the State itself—informing them of "the amount of any fine or restitution that must be paid to make the requesting person eligible to vote . . . together with an explanation of how the amount was calculated." *Id.* at *45. If an advisory opinion is not provided within 21 days, then the State may not prevent the person from registering or voting until such time as they provide an advisory opinion to the person. *Id.* The court likewise enjoined defendants from taking any steps "to cause or assist a prosecution" of the requestor except on grounds unrelated to financial obligations. *Id.* The court's factual determinations were not clearly erroneous, and it applied basic due process and vagueness principles in its analysis and remedy.

Up to this point, in the absence of any analysis on the merits from the Eleventh Circuit's stay order, we have responded to the arguments advanced by the State in its stay motion below. But here we reach a wall. The State did not challenge the district court's procedural due process or vagueness determinations in its stay motion, or make any merits argument whatsoever on these claims. Nor did it seek a stay on this basis from the district court. *See* Order Denying Stay at 5, ECF No. 431 ("The motion to stay wholly ignores the second [constitutional violation], the State's staggering inability to administer its system; [the court's] remedy uses a structure suggested by the State itself."); *id.* at 9 ("The motion to stay does not even mention these issues. The State is unlikely to prevail on any assertion that the . . . findings of fact are clearly erroneous or on any assertion that its inability to administer its system is constitutionally acceptable."); *id.* at 11 (noting that advisory opinion process for determining amount due "was the State's own suggestion, put forward in response to the plaintiffs' argument that the inability to determine the amount owed was a due-process problem.").[21]

All one must do is *read* the district court's opinion to determine that it was correct to remedy the remarkable due process and vagueness infirmities here. The Eleventh Circuit, with no analysis, stayed aspects of the district court's injunction

[21] The State did challenge the remedy imposed, but only insofar as the district court also imposed that remedy to support its wealth discrimination ruling. *See* Stay Mot. at 13-14, *Jones v. DeSantis*, No. 20-12003 (11th Cir. June 17, 2020). The State's only argument is that the due process remedy "is parasitic on the district court's erroneous wealth discrimination analysis." *Id.* at 13. But where two legal claims necessitate a remedy, the State cannot free itself from the remedy by arguing just one of the legal theories was wrongly decided. The Due Process Clause is not a "parasite[e]." It is a standalone legal obligation.

stemming from legal claims *the State did not even contend should be stayed*. If one were looking for an exemplar of a court of appeals being "demonstrably wrong in its application of accepted standards in deciding to issue the stay," *W. Airlines*, 480 U.S. at 1305 (O'Connor, J., in chambers), this would be it. It did not even follow its own standards. *See Ruiz v. Estelle*, 650 F.2d 555, 567 (5th Cir. Unit A June 1981)[22] ("Under our construction of Rule 8(a), we believe the district court should have the opportunity to rule on the *reasons* and evidence presented in support of a stay . . . .") (emphasis added).[23] The Eleventh Circuit's error is especially egregious because the court will not even hear argument until the day of the August primary—a month after the deadline to register to vote in that primary.

At the very least, this Court should vacate the stay of the district court's injunction as to the claims that the State did not even seek to have stayed. *See Jones*, 2020 WL 2618062, at *44-46 (paragraphs 2(b), 6, 8, 17, and 20 of injunction).

IV. Applicants' Rights Will Be Seriously and Irreparably Harmed if the Eleventh Circuit's Stay Is Not Vacated.

Irreparable harm occurs where it "would be difficult—if not impossible—to reverse the harm," *Hollingsworth v. Perry*, 558 U.S. 183, 195 (2010), or where an applicant cannot "be afforded effective relief" even if she eventually prevails on the merits, *Nken v. Holder*, 556 U.S. 418, 435 (2009). Where a stay wrongfully denies the

[22] Decisions of the former Fifth Circuit are binding precedent in the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (*en banc*).

[23] It is not just the due process and vagueness claims. The district court also ruled that the State's voter registration form violated the NVRA—something the State all but admitted at trial and has not even raised as an issue in its brief on appeal. *See* State's Brief, *See Jones v. DeSantis*, No. 20-12003 (11th Cir. June 19, 2020). The Eleventh Circuit was demonstrably wrong to stay injunctive relief that the State did not seek to have stayed and is not even appealing.

right to vote, it causes irreparable harm because of the "strong interest" in the right to vote. *Purcell*, 549 U.S. at 4. This is especially so "[b]ecause there can be no 'do-over' or redress of a denial of the right to vote after an election." *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016); *see also Jones*, 950 F.3d at 828 (holding, in this case, that "[t]he denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—even once—is an irreparable harm"); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("[O]nce the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin this law."); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("A restriction on the fundamental right to vote . . . constitutes irreparable injury.").

This case involves three-quarters of a million people who are otherwise eligible to vote but for the State's system of wealth discrimination, imposition of an unconstitutional poll tax, and the incapable administration of a system that deprives people of notice of their eligibility, forces them to risk prosecution if they hazard the wrong guess—a guess not even the State is equipped to correctly make—and deters eligible citizens from voting. The thoroughness and seriousness of the district court's 125-page decision—compelled by decades of this Court's precedent—is matched in scope only by the flippant character of the Eleventh Circuit's one-sentence stay

order—an order that conflicts, with no explanation, with binding precedent in this case left undisturbed by the court.

Three-quarters of a million Floridians deserve better than this. They are entitled to vote, and they are entitled to do so in the August primary and to register in time for the November general election. Applicants (and the class they represent) will be seriously and irreparably harmed if the stay remains in place. It is not hyperbole to say the court of appeals has risked chaos, confusion, disenfranchisement in upcoming elections. Tens of thousands have undoubtedly already registered to vote. Indeed, the State admits that as of trial there were already 85,000 registrations that needed to be screened based on prior felony convictions, including for eligibility with respect to LFOs. *See Jones*, 2020 WL 2618062 at *64-65. These individuals, and those who registered in reliance on the permanent injunction, will remain on the rolls notwithstanding the Eleventh Circuit's stay, *see id.* (finding that it would take the state at least six years to review these records). Indeed, vote-by-mail is already underway. Yet because of the stay they will have no notice of their potential ineligibility, and no way to determine their eligibility. Now they face conflicting appellate court decisions about their rights with a cloud of the State's criminal power hanging over their head—a threat those who have served time and come straight with the law wish deeply to avoid.

As the district court observed, "[t]his is a particularly inauspicious time for the State of Florida to cling to an outdated system that was overwhelmingly rejected by the State's electorate." Stay Order at 19, ECF No. 431. It is far too late in the day for

this Court to permit hundreds of thousands of eligible voters to be denied the franchise merely to avoid treading upon the opaque internal workings of the court of appeals.

CONCLUSION

For the foregoing reasons, applicants respectfully request that the Court vacate the Eleventh Circuit's July 1, 2020 stay in full, or at the very least as to the claims upon which the State did not even request a stay.

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