No. 19-14551

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Kelvin Leon Jones, *et al.*,

Plaintiffs-Appellees,

v.

Ron DeSantis, in his official capacity
as Governor of the State of Florida, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court for the
Northern District of Florida, Case No. 4:19-cv-300-RH/MJF

BRIEF OF APPELLEES MCCOY AND SINGLETON

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CERTIFICATE OF INTERESTED

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/s/ *Nancy G. Abudu*
Counsel for McCoy *Appellees*

STATEMENT REGARDING ORAL ARGUMENT

This Court already has scheduled oral argument to take place on January 28, 2020. The *McCoy* Appellees agree that oral argument would assist the Court in deciding the questions Defendants-Appellants raise on appeal.

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STATEMENT REGARDING ADOPTION OF BRIEFS OF OTHER PARTIES

Pursuant to Fed. R. App.

these indicators implicate human rights, civil rights, or fundamental rights, there is no question they help determine whether a person can form the foundation for a stable, successful life. That is really what Appellees Rosemary McCoy and Sheila Singleton are asking for in this lawsuit—the protection of the right to vote and a real opportunity through the political process to improve their own life condition.

Contrary to the assertions of Defendant-Appellant Governor DeSantis and Defendant-Appellant Secretary of State Lee (collectively, "Defendants-Appellants"), SB 7066 is not a bill of interpretation, clarification, or adherence to the will of the people. It is one in a long string of examples of Florida's outright hostility towards voting rights, especially when it comes to people with felony convictions. Defendants-Appellants contend the Plaintiffs have no fundamental righ004 Tw Le t8.3(e.004 Tc b ()3.7(c)3.5.165 Twuso poe.1(")12.1 n i(th)8.2(e)8.2(da)3e22a]TJ

SUMMARY OF THE ARGUMENT

The *McCoy* Appellees adopt and incorporate by reference the legal arguments in the opposition briefs filed by the *Gruver* and *Raysor* Appellees. However, the *McCoy* Appellees submit this separate brief to expand upon the consequences of reversing the district court's decision and the public policy reasons for upholding it.

The Supreme Court has struck down laws because of evolving societal values, the magnified negative impact of certain state action, and for reasons of equity and fairness. Defendants-Appellants are asking this Court to convert the fundamental right to vote into a watered-down privilege that's value changes based on the person who seeks access to the ballot. Their notion that the right to vote, in and of itself, is malleable to the point of being virtually inaccessible to huge swaths of our society is, quite frankly, repugnant and an anathema to our county's deep commitment to democracy and representational government. In instances where the Supreme Court has confronted laws similar to SB 7066 in the way it further stratifies people based on discriminatory factors or their unpopularity in society, it has upheld the constitutional right to equal protection. Unfortunately, the state of Florida, led by the Defendants-Appellants in this case, is trying to take us all back to the era when only wealthy people could vote in this country.

Moreover, SB 7066 negatively impacts low-income women of color—particularly Black women—who suffer from the weighty intersection of race-, class-

, and gender-based discrimination. Statistically, women of color continue to make less money than men, have increased financial obligations as heads of households, and are entering the criminal justice system in increased numbers at alarming rates. A significant number of women of color who are under criminal supervision are below, at, or just barely above the poverty line. Upon reentering society, they face more hardships obtaining employment, let alone a livable wage, than their White male, Black male, and White female counterparts. Consequently, women of color are entering and exiting the criminal justice system at a severe economic disadvantage and the *McCoy* Appellees are just two real-life examples of that. If SB 7066's LFO requirement is enforced against them, they most likely will never be able to vote again.

ARGUMENT

The district court correctly ruled that the Plaintiffs are likely to succeed on the merits of their Equal Protection claim pertaining to people unable to pay off their LFOs. As the *Gruver* and *Raysor* Appellees argue, the Supreme Court's decision in *Bearden v. Georgia*, 461 U.S. 660 (1983), clearly establishes that, at a bare minimum, a state must determine one's ability to pay a fee associated with their criminal sentence before depriving them of a substantial or important individual interest. This Court's ruling in *Johnson v. Governor of Florida*, recognizing that

resources," is further support for

Roe v. Wade, 410 U.S. 113 (1973), involved the constitutionality of a state law that criminalized abortion unless it was necessary to save the life of the mother. Looking first to the history of abortion in the United States and how laws and attitudes toward abortion have changed over time, the Court determined that the fundamental right to privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Id.* at 153, 165 ("This holding, we feel, is consistent with the relative weights of the respective interests involved, with the lessons and examples of medical and legal history, with the lenity of the common law, and with the demands of the profound problems of the present day.").

In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court overruled its prior decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986), and declared unconstitutional a Texas law that criminalized sexual activity between members of the same sex. The Court held that the law violated a person's right to engage in private, consensual sexual activity. *Id.* at 578. The Court looked to laws and traditions in the preceding fifty years and found "an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex." *Id.* at 571-72. The Court also considered the stigma caused by Texas's law and the harm caused by the Court's prior decision in *Bowers*, noting that "times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution

endures, persons in every generation can invoke its principles in their own search for greater freedom." *Id.* at 579.

In *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)

Floridians who are unable to pay off LFOs must include an examination of the

In *Richardson v. Ramirez*, the plaintiffs were people with felony convictions who had completed their terms in prison and on parole but who, under California law, were still denied the right to vote. The U.S. Supreme Court rejected plaintiffs' claim that this, without more, violated the Equal Protection Clause. *Id.* at 55-56. However, as the district court correctly noted:

> [T]he [*Richardson*] Court did *not* say that because a state could choose to deny all felons the right to vote and to restore none of them, the state's decision to restore the vote to some felons but not others was beyond the reach of the Constitution. Quite the contrary. The Court remanded the case to the California Supreme Court to address the plaintiffs' separate contention that California had not treated all people with felony convictions uniformly and that the disparate treatment violated the Equal Protection Clause. The remand was appropriate because when a state allows some people with felony convictions to vote but not others, the disparate treatment must survive review under the Equal Protection Clause. The same is true here.

App. 502 (Doc. No. 207 at 25) (emphasis in original) (internal citations omitted).

The *McCoy* Appellees have expressed their deep desire to vote and put in the record before the district court their genuine inability to satisfy their LFOs (amounting to over $7,500 for Plaintiff McCoy and almost $15,000 for Plaintiff Singleton). *See* McCoy Decl., ¶¶ 8-11, Doc. No. 98-14; Singleton Decl., ¶¶ 6-11, Doc. No. 98-15. But for their economic status, their ability to vote would be unencumbered and they could use their vote to institute real changes in state and federal laws and policies that harm poor people in the first place. Other than Defendants-Appellants' warped belief that poor people should never be forgiven for

- Women represent one of the fastest growing prison populations.[8] "Nationwide, women's state prison populations grew 834% over nearly 40 years—more than double the pace of the growth among men."[9]

- Efforts to reduce state prison populations have worked for men, but not women. From 2009-2015, the "number of men incarcerated in state prisons fell more than 5% between 2009 and 2015, while the number of women in state prisons fell only a fraction of a percent (0.29%)."[10]

- Economically, formerly incarcerated women face particularly daunting obstacles when they return home.[11] "Even before they are incarcerated, women in prison earn less than men in prison, and earn less than non-incarcerated women of the same age and race."[12]

- "Women's prisons do not meet the need or demand for vocational and educational program opportunities, and once released, the collateral consequences of incarceration make finding work, housing, and financial support even more difficult."[13]

  The extreme challenge people with criminal convictions

many families, the law perpetuates the cycle of poverty from which many can barely escape. The imposition of a law that extends the denial of voting rights based solely on one's financial status also means that low-income Floridians with a felony conviction will almost never be able to politically influence the very policies that

the *McCoy* Appellees join the *Gruver* and *Raysor* Appellees in respectfully asking this Court to uphold the district court's preliminary injunction.

Dated: January 10, 2020

Respectfully submitted,

/s/ *Nancy G. Abudu*

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 3,810 words as counted by the word-processing system used to prepare it.

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/s/ *Nancy G. Abudu*
Counsel for McCoy *Appellees*

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2020, I served a true and correct copy of the foregoing document via electronic notice by the CM/ECF system on all counsel or parties of record.

/s/ *Nancy G. Abudu*
Counsel for McCoy *Plaintiffs*