

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

KELVIN LEON JONES et al.,

Plaintiffs,

v.

CONSOLIDATED
CASE NO. 4:19cv300-RH/MJF

RON DeSANTIS et al.,

Defendants.

_____ /

ORDER CERTIFYING A CLASS AND SUBCLASS

The Florida Legislature adopted a statute colloquially known as SB7066 that purports to implement Amendment 4. SB7066 explicitly provides that completion of all terms of sentence under Amendment 4 includes payment of all financial obligations imposed as part of the sentence that is, the four corners of the sentencing document 98.0751(2)(a). SB7066 also explicitly provides that this includes financial obligations that the sentencing court has converted to a civil lien. *Id.* SB7066 became effective on July 1, 2019.

On June 28, 2019, the Raysor plaintiffs filed a four-count complaint against the Florida Secretary of State asserting the financial-obligations requirement discriminates against those unable to pay in violation of the Fourteenth Amendment (count one); imposes a poll tax or other tax in violation of the Twenty-Fourth Amendment (count two); is void for vagueness (count three); and denies procedural due process (count four). The complaint was later amended to add a claim under the National Voter Registration Act (count five). The case has been consolidated with four others that also challenge the requirement to pay money as a condition of reenfranchisement.

After an evidentiary hearing, a preliminary injunction was entered on October 18, 2019 in favor of all the individual plaintiffs against the Florida

Id. at 3. She asstas

The party who moves to certify a class has the burden of establishing that the Rule 23 elements are met. *Vega*, 564 F.3d at 1265. The Rule 23(a) elements are *numerosity*, and adequacy of *representation*. *Babineau v. Fed. Express Corp.*, 576 F.3d 1183, 1190 (11th Cir. 2009) (*quoting Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1187-88 (11th Cir. 2003)).

A. Numerosity

The numerosity element requires the class to be

Fed. R. Civ. P. 23(a)(1).

-one is inadequate, more than forty

adequate, with numbers between varying according to other factors. *Cox v. Am.*

did not include the 9 counties for which Dr. Smith did not have data and did not include felons with only federal or out-of-state convictions. *Id.* at 7 n.3, 20.

The numerosity requirement is also met for the inability-to-pay subclass. For the fiscal year that runs from October 1, 2017 to September 30, 2018, the Florida Court Clerks & Comptrollers published an annual report on the payment of court-related fines, fees, and charges. *See Fla. Court Clerks & Comptrollers, 2018*

classwide proceeding to generate common *answers* apt to drive the resolution of *Dukes*, 564 U.S. at 350 (emphasis in original) (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)). In this case common answers to common questions will resolve the litigation. The commonality requirement is satisfied.

C. Typicality

he claims or defenses of the

Fed. R.

Civ. P. 23(a)(3). The plaintiffs must

injury as the *Dukes*, 564 U.S. at 348-49 (quoting *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)).

Here each named plaintiff has the same interest and suffered the same injury as each class and subclass member. Each would be eligible to vote but for a financial obligation imposed as part of a felony sentence an obligation the plaintiff asserts the plaintiff is genuinely unable to pay. Nothing more is required.

The Secretary asserts, though, that none of the named plaintiffs owe restitution. This would not preclude class certification even if true; the named plaintiffs owe financial obligations that are sufficiently typical even if not identical to all the financial obligations at issue. And in any event the record shows that Mr. Hoffman was ordered to pay restitution. *See, e.g.*, ECF No. 148-29 at 14, 27. If it

turns out that Mr. Hoffman does not in fact owe restitution and that the restitution issues are so different from those presented by other financial obligations that the typical a development unlikely for the Twenty-Fourth Amendment class and even more unlikely for the inability-to-pay subclass the class definitions can be amended to exclude restitution.

The typicality requirement is satisfied.

D. Adequacy of Representation

T

grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory

Fed. R. Civ. P. 23(b)(2).

This case presents the very paradigm of a proper (b)(2) class. The party opposing the class—the Secretary on behalf of the State of Florida—has refused to allow felons with unpaid financial obligations to vote, regardless of any inability to pay.

V. Ascertainability

The analysis to this point shows that the plaintiffs have met the requirements of Rule 23(a) and 23(b)(2). Rule 23 does not list ascertainability of class membership as an additional prerequisite to class certification. But the Secretary asserts ascertainability is required. And the Secretary asserts the plaintiffs have not met this requirement. The Secretary is wrong on both scores.

First, the law of the circuit is that ascertainability is not a requirement for certification of a (b)(2) class. The controlling case is *Carpenter v. Davis*, 424 F.2d

It is not

necessary that the members of the class be so clearly identified that any member can be presently a *Id.* at 260. The court said Rule 23(b)(2) commonly

-rights field where a party is charged with discriminating

unlawfully against a class ~~under the 51004~~-w

by any ruling is not enough.

After entry of a preliminary injunction in favor of the 17 individual plaintiffs, the Secretary advised Supervisors of Elections throughout the state that the ruling applied only to the 17 individuals. The March 2020 elections went forward on that basis without any statewide effort to conform to the United States Constitution as interpreted by both this court and the Eleventh Circuit. Class members can hardly be faulted for asserting that, if the ruling on the merits ultimately is that they have a constitutional right to vote, the right should be recognized in an enforceable decision.

VII. Conclusion

The plaintiffs -Fourth Amendment and inability-to-pay claims turn on issues

3. A subclass is certified -to-pay claim
count one of their amended complaint consisting of all persons who would be eligible to vote in Florida but for unpaid financial obligations that the person asserts the person is genuinely unable to pay.

4. The named plaintiffs Bonnie Raysor, Diane Sherrill, and Lee Hoffman are the class representatives.

5. Chad Dunn and Mark Gaber are class counsel.

6. Excluded from the class and subclass are the named plaintiffs in the other cases that have been consolidated with *Raysor* in this proceeding. The excluded individuals are Jeff Gruver, Emory Marquis Mitchell, Betty Riddle, Kristopher Wrench, Keith Ivey, Karen Leicht, Raquel Wright, Steven Phalen, Clifford Tyson, Jermaine Miller, Curtis D. Bryant, Latoya A. Moreland, Rosemary McCoy, Sheila Singleton, Kelvin Leon Jones, and Luis A. Mendez.