

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. \_\_\_\_\_ – Civ. – Judge \_\_\_\_\_

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THOMAS JOHNSON; DERRICK ANDRE THOMAS;  
ERIC ROBINSON; OMALI YESHITELA; ADAM  
HERNANDEZ; KATHRYN WILLIAMS-CARPENTER;  
JAU'DOHN HICKS; and JOHN HANES in their own  
right and as representatives of all ex-felon citizens of  
Florida,

**COMPLAINT - CLASS ACTION**

Plaintiffs,

v.

JEB BUSH, Governor of Florida; KATHERINE  
HARRIS, Secretary of State of Florida; ROBERT  
BUTTERWORTH, ROBERT MILLIGAN, WILLIAM  
NELSON, ROBERT CRAWFORD, and THOMAS  
GALLAGHER in their roles as members of the Clemency  
Board of Florida; BEVERLY HILL, Alachua County  
Election Supervisor, JANE CARROLL, Broward County  
Election Supervisor, PAM IORIO, Hillsborough County  
Election Supervisor, DAVID C. LEAHY, Miami-Dade  
County Election Supervisor, WILLIAM COWLES,  
Orange County Election Supervisor, and DEBORAH  
CLARK, Pinellas County Election Supervisor, in their  
official capacities and as representatives of all county  
supervisors of election in Florida,

Defendants.

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**PRELIMINARY STATEMENT**

1. This action is brought by Plaintiffs on behalf of all Florida citizens who  
have been convicted of felonies and fully completed the periods of incarceration and/or

supervision to which they were sentenced (“ex-felons”), but nonetheless remain ineligible to register or vote because a felony conviction results in permanent disenfranchisement under Florida’s Constitution and statutes. The permanent disenfranchisement of felons in Florida was initially adopted to discriminate against African-American voters and continues to have a significant discriminatory impact. In 1998, ex-felons disenfranchised under these provisions represented approximately 15% of the African-American male voting age population in Florida. Moreover, although convicted felons can apply to Florida’s Clemency Board for restoration of the right to vote, many ex-felons are denied restoration or are not eligible for restoration because they owe monetary penalties. Plaintiffs contend that Florida’s disenfranchisement and clemency provisions violate the First, Fourteenth, Fifteenth and Twenty-Fourth Amendments of the United States Constitution, Sections 2 and 10 of the Voting Rights Act of 1965, codified at 42 U.S.C. § 1973 *et seq.*, and 42 U.S.C. § 1983.

### **JURISDICTION**

2. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343; 42 U.S.C. §§ 1973h and 1983; and the First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution.

3. Plaintiffs’ action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202; and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

### **VENUE**

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Defendants CARROLL and LEAHY reside in this district and the state Defendants may be found in this district.

## **PARTIES**

### **The Plaintiffs**

5. Plaintiff THOMAS JOHNSON is a 51 year old African-American male who lives in Gainesville in Alachua County, Florida. He is married and the father of five children. Since 1996, JOHNSON has been the executive director of a non-profit Christian organization that runs a residential program for recently released offenders. The program assists recently released offenders in reintegrating into society by providing a place they can live as they transition out of prison, helping them get jobs, and linking them with mentors and role models. Each year the program works with between 20 to 25 former offenders. Prior to 1996, JOHNSON lived in New York City, where he worked for a homeless mission and New York City transit agency. JOHNSON also studied at Long Island University for two and a half years. In 1992, JOHNSON was convicted of a felony in New York, and served eight months in prison. He was released in November 1992 without any period of supervision. As he has a felony conviction and has not had his rights restored, JOHNSON is ineligible to register and vote under Florida law. Prior to his conviction, JOHNSON was registered and regularly voted in New York. JOHNSON is eager to gain the right to vote because his work is significantly effected by political developments and the willingness of local and state government to support his organization's efforts.

6. Plaintiff DERRICK ANDRE THOMAS is a 34 year old African-American male who lives in Miami in Miami-Dade County, Florida. Over the last ten years, THOMAS worked in human resources and for several life and health insurance companies, and is currently employed as an implementation manager with responsibility for large health insurance policies.

A high school graduate, THOMAS attended college for three years prior to his employment in insurance. In 1990, THOMAS was convicted of two felonies, one under federal law and one under state law. He was sentenced to probation on the federal convictions and ten months imprisonment on his Florida state conviction. In 1999, THOMAS applied for restoration of his civil rights. The Florida Office of Executive Clemency returned his application because \$225 in penalties remain outstanding. As a convicted felon who has not had his rights restored, THOMAS is ineligible to register and vote under Florida law. THOMAS is eager to gain his right to vote so that he can become an active citizen in society.

7. Plaintiff ERIC ROBINSON is a 30 year old African-American male who lives in Miramar in Broward County, Florida. A high school graduate, ROBINSON has worked as a truck driver since 1996, when he attended a training program and obtained his commercial driver's license. Previously, he worked in maintenance for six years. ROBINSON is an active member of the 93rd Community Church in Miami and the father of three children. In 1989, he was convicted of a felony in Florida and sentenced to four years' probation. In 1997, he was convicted of two felonies and served six months' work release, which he completed on June 25, 1998. ROBINSON has not had his rights restored and therefore is ineligible to register and vote under Florida law. ROBINSON applied for restoration of his civil rights in September 1999. In October 1999, he was informed that he had \$623 outstanding in pecuniary penalties, which made him ineligible for clemency. As a result, his application for restoration of rights was returned. ROBINSON is eager to be able to vote and participate in the political life of his community.

8. Plaintiff OMALI YESHITALA (born as Joseph Waller, Jr.) is a 48 year old African-American male who lives in St. Petersburg in Pinellas County, Florida.

YESHITELA lives with his wife and two sons. Since 1972, YESHITELA has been chairman of the National African Peoples Socialist Party, known in Florida as the Uhura Movement.

YESHITELA's felony conviction dates back nearly thirty-five years and arose out of an act of political protest in 1966 in which he removed a canvas mural caricaturing African-Americans from the St. Petersburg City Hall. YESHITELA was convicted of a felony and served 30 months in prison. As a convicted felon who has not had his rights restored, YESHITELA is ineligible to register and vote under Florida law. In December 1998, YESHITELA applied for a pardon for his convictions, and, in 2000, he filed a separate application for restoration of his civil rights. Both applications are pending and no hearings have been held. YESHITELA is eager to be able to vote as an additional avenue through which to push for political reform.

9. Plaintiff ADAM HERNANDEZ is a 50 year old Latino male who lives in Opa Locka in Miami-Dade County, Florida. HERNANDEZ became a naturalized United States citizen in 1971, at which time he enlisted in the United States Army. Until 1991, when he suffered a work-related incident, HERNANDEZ worked as an electrician and a jewelry salesman. He has been disabled and unable to work since that time. In 1985, HERNANDEZ was convicted of two felonies in federal court in Missouri and served four years in prison. He successfully completed probation in 1996. As a convicted felon who has not had his rights restored, HERNANDEZ is ineligible to register and vote under Florida law. HERNANDEZ is eager to be able to vote so that he can have a say in his local government.

10. Plaintiff KATHRYN WILLIAMS-CARPENTER is a 44 year old African-American female who lives in Miami in Miami-Dade County, Florida. From 1978 to 1994, WILLIAMS-CARPENTER worked in Miami, including as a cashier, telemarketer, and factory

worker. Since 1994, she has been on disability due to blindness from diabetes and hepatitis. She is married and has two children and eight grandchildren. WILLIAMS-CARPENTER's felony conviction occurred over twenty-five years ago. In 1971, she was convicted of a felony under Florida law, for which she served six months in county jail. Because WILLIAMS-CARPENTER was unaware that her felony conviction made her ineligible to vote under Florida law unless her rights were restored, she registered to vote in 1973. She voted regularly for over twenty-five years until the beginning of 2000, when she was informed that she was being removed from the rolls of registered voters because she was a convicted felon and had not had her rights restored. In May 2000, WILLIAMS-CARPENTER applied to have her civil rights restored, and the application is still pending. WILLIAMS-CARPENTER is eager to be able to regain her right to vote and to exercise her political rights as a citizen.

11. Plaintiff JAU'DOHN HICKS is a 31 year old African-American male who lives in Orlando in Orange County, Florida. A high school graduate, over the past four years HICKS has also successfully completed training as an emergency medical first responder and as a firefighter, been certified as an emergency medical technician, and completed a course in pediatric advanced life support, advanced life support, and paramedic skills. He is currently enrolled in classes to learn computer engineering. From 1998 to 2000, HICKS worked as an emergency medical technician and, as of January 2000, he has worked as a paramedic for the same medical company. In 1986, HICKS served three months in prison for a felony conviction. HICKS also served nineteen months in prison from 1989 to 1991 on a second conviction. In October 1999, HICKS applied for restoration of his civil rights. His application was returned to him because of money still owed on a \$3,500 public defender lien against him. As a convicted

felon who has not had his rights restored, HICKS is ineligible to register and vote under Florida law. HICKS desires to vote so that he can take part in the political process.

12. Plaintiff JOHN HANES is a 48 year old white male who lives in Tampa in Hillsborough County, Florida. Since 1996, HANES has worked as a sentencing guidelines consultant, investigating factual issues and guidelines questions for criminal defense lawyers. From 1979 to 1989, HANES worked as a sales representative for four companies in several states, eventually owning and operating a travel agency in Tampa from 1985 to 1989. HANES was convicted on two connected felonies under federal law, one in 1989 and the other in 1990, and served seven years in prison. He was released in May 1996 and successfully satisfied his term of supervised release in January 1997. HANES lives with and takes care of his mother, who is a diabetic. He is an active member of the Tampa chapter of a national organization, Families Against Mandatory Minimums (FAMM), which lobbies politically on criminal sentencing issues. HANES has not had his rights restored and therefore is ineligible to register and vote under Florida law. He applied for restoration of his civil rights in the spring of 1999, and was informed in July 1999 that the Clemency Board objected to his being granted restoration of his civil rights without a hearing, as authorized under Fla. R. Exec. Clemency 9(A). Prior to his conviction, HANES was a registered voter and voted regularly. HANES is eager to be able to vote and participate in the political process again.

### **The Defendants**

#### ***The State Defendants***

13. Defendant JEB BUSH is Governor of the State of Florida. He is sued in his official capacity in connection with actions taken under color of state law. As Governor,

Defendant BUSH has the duty to support the Constitution and laws of the State of Florida, including those provisions disenfranchising felons, and to take care that these laws are faithfully executed. *See* Fla. Const. art. IV, § 1. In addition, Florida's Constitution places the clemency power in the control of the Governor, and Defendant BUSH's approval is required in order for a convicted felon to have his or her civil rights restored or for the Clemency Board to adopt or alter rules governing clemency. *See id.* art. IV, § 8; Fla. Stat. Ann. § 940.01(1) (1999); Fla. R. Exec. Clemency 1-2 (Fla. Clemency Bd., eff. 1/1/2000).

14. Defendant KATHERINE HARRIS is the Secretary of State of Florida. She is sued in her official capacity in connection with actions taken under color of state law. As Secretary of State, Defendant HARRIS is the chief election officer of the State of Florida and has responsibility for general supervision and administration of the election laws, including those provisions disenfranchising felons. *See* Fla. Stat. Ann. §§ 15.13, 97.012. In addition, as Secretary of State she is in charge of the Division of Elections of Florida's Department of State, which is responsible for notifying each county supervisor of elections of any convicted felon who has not had his or her civil rights restored and who is a registered voter in the supervisor's county. *See id.* § 98.0975. Defendant HARRIS is also a member of the Florida Cabinet, *see* Fla. Const. art. IV, § 4, and therefore a member of the Clemency Board of Florida. As a member of the Clemency Board, Defendant HARRIS has the power to restore civil rights and to adopt or alter the rules governing clemency, with the approval of the Governor. *See* Fla. Const. art. IV, § 8; Fla. Stat. Ann. § 940.01(1) (1999); Fla. R. Exec. Clemency 1-2.

15. Defendants ROBERT BUTTERWORTH, ROBERT MILLIGAN, WILLIAM NELSON, ROBERT CRAWFORD, and THOMAS GALLAGHER are members of

the Florida Cabinet, *see* Fla. Const. art. IV, § 4, and thus members of Florida's Clemency Board. Defendant BUTTERWORTH is Attorney General of the State of Florida, Defendant MILLIGAN is Comptroller of the State of Florida, Defendant NELSON is Treasurer of the State of Florida, Defendant CRAWFORD is Commissioner of Agriculture of the State of Florida and Defendant GALLAGHER is Commissioner of Education of the State of Florida. They are sued in their official capacities in connection with actions taken under color of state law. As members of the Clemency Board, these Defendants have the power to restore civil rights and to adopt or alter the rules governing clemency, with the approval of the Governor. *See* Fla. Const. art. IV, § 8; Fla. Stat. Ann. § 940.01(1) (1999); Fla. R. Exec. Clemency 1-2.

#### *The County Defendants*

16. Defendants BEVERLY HILL, JANE CARROLL, PAM IORIO, DAVID C. LEAHY, WILLIAM COWLES and DEBORAH CLARK are the county supervisors of elections for Alachua, Broward, Hillsborough, Miami-Dade, Orange and Pinellas counties, respectively. They are sued in their official capacities in connection with actions taken under color of state law and as representatives of the class of all county supervisors of elections for all counties in the State of Florida. The county supervisors of elections are the official custodians of the registration books in Florida and have exclusive control of matters pertaining to registration of electors. *See* Fla. Stat. Ann. § 98.015. Under Florida statutes, the county supervisors of elections are responsible for removing from the registration books the names of registered voters who have been convicted of a felony and not had their right to vote restored. *See id.* § 98.093.

#### **CLASS ACTION ALLEGATIONS**

17. The named Plaintiffs bring this action on their own behalf and on behalf of

all others similarly situated against the state Defendants and against the county Defendants individually and as representatives of their class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

18. The Plaintiff class includes all ex-felons in Florida, with ex-felons being persons who have completed the periods of incarceration and/or supervision to which they were sentenced, but have not had their rights restored and thus remain ineligible to register or vote under Florida's Constitution and statutes. The Plaintiff class includes approximately 525,000 members.

19. The county Defendant class includes all county election supervisors in the State of Florida. There is one county election supervisor for each of the 67 counties in Florida. Given the vast number of disenfranchised ex-felons in Florida, members of the Plaintiff class reside in every Florida county and thus every election supervisor exercises control over the ability of some members of the Plaintiff class to register and vote.

20. The prerequisites of subsections (a) and (b)(2) of Rule 23 are satisfied in regard to these classes. The members of the Plaintiff and Defendant classes are so numerous as to make it impracticable to bring them all before this Court. The named Plaintiffs are ex-felons who reside in Florida who have completed the periods of incarceration or supervision to which they were sentenced but have not had their rights restored and therefore are not able to register or vote. In addition, there are common questions of law and fact regarding the rights of citizens to register and to vote and Plaintiffs are not seeking monetary relief that would require consideration of individual circumstances. Because the claims of the named Plaintiffs rely on questions of law and fact common to the Plaintiff class and the relief sought will accrue to the

benefit of all Plaintiff class members, they can adequately and fairly represent the interests of the Plaintiff class. Finally, the defenses of the named Defendants are typical of the defenses of the classes as a whole and the Defendants have refused to allow the named Plaintiffs to register or vote on grounds generally applicable to the class, namely the Plaintiffs' felony convictions and the prohibition in Florida's laws on voting by convicted felons who have not had their civil rights restored. As a result, Defendants can adequately and fairly represent the interests of the Defendant class, and declaratory and injunctive relief with respect to the Plaintiff and Defendant class as a whole is appropriate.

**THE CHALLENGED CONSTITUTIONAL, STATUTORY  
AND REGULATORY PROVISIONS**

21. Section 4(a) of Article VI of the Florida Constitution provides: "No person convicted of a felony . . . shall be qualified to vote or hold office until restoration of civil rights or removal of disability." According to section 10 of Article X of the Florida Constitution, "[t]he term 'felony' as used herein and in the laws of this state shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary."

22. The disqualification of convicted felons from voting is repeated in § 944.292 of Florida Statutes, which provides: "(1) Upon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution."

23. Other statutes provide that convicted felons are not eligible to register to

vote and require that every county supervisor of elections be notified of persons convicted of felonies. Section 97.041(2) of Florida Statutes states: “The following persons, who might be otherwise qualified, are not entitled to register or vote: . . . (b) A person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law.” Section 104.15 of Florida Statutes makes it a third degree felony for a convicted felon to vote if aware that he or she is not qualified to vote.

24. Meanwhile, under § 98.093(2) “[e]ach clerk of the circuit court shall, at least once each month, deliver to each supervisor of elections a list . . . [identifying] each person convicted of a felony during the preceding calendar month who was a resident of that supervisor’s county.” In addition, state officials are required to forward information on persons convicted in federal court to county supervisors of elections. *See* § 98.093(3). “Upon receipt of any such list, the supervisor shall remove from the registration books the name of any person listed who is . . . convicted of a felony. . . . A person . . . who has had his or her right to vote restored after conviction of a felony shall be required to reregister.” *Id.* § 98.093(4). Finally, under § 98.0975 of Florida Statutes, the state Division of Elections is required to provide each county supervisor of elections a list identifying every person included in the state’s central voter file as a registered voter in the supervisor’s county who “has been convicted of a felony and has not had his or her civil rights restored.”

25. Restoration of civil rights, which includes restoration of the right to vote, is treated under Florida law as part of the clemency power. Clemency is addressed by section 8 of Article IV of the Florida Constitution, which provides:

(a) Except in cases of treason and in cases where impeachment

results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

This language is repeated nearly verbatim at § 940.01(1) of Florida Statutes.

26. The Governor and the members of the Cabinet collectively constitute the Clemency Board, which has issued Rules of Executive Clemency. *See Fla. R. Exec. Clemency 1-2.* Under the Rules of Executive Clemency, “[a] person may not apply for the restoration of his or her civil rights unless he or she has completed all sentences imposed and all conditions of supervision have expired or been completed.” Fla. R. Exec. Clemency 5(I)(E).

27. The Rules of Executive Clemency further provide that to be eligible for clemency, “[a]n applicant may not have any outstanding detainers, or any pecuniary penalties or liabilities, which total more than \$1,000 and result from any criminal conviction or traffic infraction.” Fla. R. Exec. Clemency 5(II). This rule allowing individuals to apply for clemency if they owe monetary penalties under \$1,000 was adopted on January 1, 2000; previously, an applicant was not eligible for clemency if he or she owed over \$275 in monetary penalties.

28. Applicants for restoration of civil rights may seek a waiver of these eligibility requirements. Such a waiver can only be granted by the Governor with approval of two members of the Cabinet. *See Fla. R. Exec. Clemency 8.*

29. The Rules of Executive Clemency authorize a procedure whereby applicants can have their rights to vote restored without a hearing, provided three members of the Clemency Board do not object. However, applicants can use this procedure only if, among other

requirements: (1) they have no amounts outstanding in victim restitution and no more than \$1,000 outstanding in other pecuniary penalties or liabilities, including traffic fines; (2) they have had no previous Clemency Board action; (3) they have no more than two felony convictions of record; (4) they have no conviction for a capital or life felony or for a number of specified felonies; and (5) they have no outstanding detainers or criminal charges. *See Fla. R. Exec. Clemency 9(A).*

## FACTS

### **History of Florida’s Use of Felon Disenfranchisement to Limit the Ability of African-Americans to Vote**

30. Although Florida disenfranchised individuals convicted of a few specific crimes from its inception as a Territory in 1838, the scope of such disenfranchisement was significantly expanded in 1868, after the Civil War. Section 2 of Article XIV of the 1868 Constitution added mandatory disenfranchisement of all convicted felons, stating that “[n]o person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of felony be qualified to vote at any election unless restored to civil rights.” In addition, section 4 of the same article added larceny to the list of specific disenfranchising crimes contained in earlier Constitutions, which previously had only included bribery, perjury and other infamous crime. Section 4 provided:

The Legislature shall have power to and shall enact the necessary laws to exclude . . . from the right of suffrage, all persons convicted of bribery, perjury, larceny, or of infamous crime, or who shall make or become, directly or indirectly interested in any bet or wager, the result of which shall depend upon any election; or who shall hereafter fight a duel, or send or accept a challenge to fight, or who shall be a second to either party, or be the bearer of such challenge or acceptance.

Fla. 1868 Const., art. XIV, § 4.

31. The broad disenfranchisement of every convicted felon in Florida's 1868 Constitution and the addition of larceny as a disenfranchising crime were enacted with the intention of restricting the voting rights of Florida's newly freed black population. White Floridians were strongly opposed to black suffrage after the Civil War. Blacks were finally given the right to vote in the 1868 Constitution so that Florida could gain readmission to the Union. However, the 1868 Constitution contained several measures in addition to the felon and specific crime disenfranchisement provisions that were adopted to limit the power of black votes. Further measures to restrict black suffrage were adopted as part of the 1885 Constitution. The discriminatory intent behind the disenfranchisement provisions is demonstrated by the history of the 1865, 1868, and 1885 Constitutions as well as Florida's use of criminal laws to control former slaves and create a low-wage labor force to replace that lost by the abolishment of slavery.

### ***The 1865 Constitution and the Black Codes***

32. The 1865 Constitution ended slavery but, like those before it, only granted the suffrage to white men. The provisional governor of Florida, William Marvin, argued at the 1865 convention that while slavery was abolished and blacks were now free, that freedom did not need to include the right to vote: "The governing power is in the hands of the white race, but the colored race is to be free and the government is to be administered in such a manner as not to infringe on that freedom." Journal of the Constitutional Convention of 1865 at 9. The 1865 Constitution used the antebellum three-fifths formula for counting blacks for apportionment, provided that blacks could testify only in cases involving blacks, and authorized the arrest of

vagrants who could be fined up to \$500 or sold for labor for up to a year. *See* Fla. 1865 Const., Ord. 4; Fla. 1865 Const., Res. 4.

33. The 1865 constitutional convention also created a committee to propose amendments to Florida's laws to ensure these laws conformed to the new Constitution, in particular "the altered condition of the colored race." 1865 Fla. House J. 58. In order to deal with "the great increase of minor offences, which may be reasonably anticipated from the emancipation of the former slaves," the committee recommended creation of a more local criminal court, *id.* at 39, and the legislature responded by creating county criminal courts with jurisdiction over a variety of crimes, including larceny, malicious mischief, vagrancy, and "all offences against Religion, Chastity, Morality, and Decency." 1865 Fla. Laws ch. 1,465. The committee also proposed the following measures: creation of a new kind of larceny to include theft of agricultural products, which had previously been a civil matter and handled by slave masters; punishment of vagrancy; and adoption of corporal punishment as an alternative for fine and imprisonment, in the belief that "[t]o fine and imprison a colored man in his present pecuniary condition, is to punish the State instead of the individual." 1865 Fla. House J. 62-63. The legislature similarly followed these recommendations. It added corporal punishment as an alternative for a list of crimes, provided that "severance from the freehold of any agricultural production or fixture, or any part thereof, and the felonious taking and carrying away of the same, shall be deemed and held to be larceny," and authorized the arrest of able-bodied persons with no visible means of support who could be sentenced to a year of labor or imprisonment. 1865 Fla. Laws ch. 1,466. These and other discriminatory measures intended to regulate the newly freed blacks came to be known as the Black Codes.

34. Florida's opposition to black suffrage continued after 1865. David Walker, elected Governor in 1865, indicated his opposition to granting the right to vote to black men at his opening address to the 1865 legislature: "Of course we could never accede to the demand for negro suffrage, should it be made. . . . [W]e could not give either an honest or a conscientious assent to negro suffrage." 1865 Fla. House J. 39-41. In 1866, the Florida Legislature rejected the Fourteenth Amendment. A legislative committee established to review the Amendment condemned the provision that congressional representation would be reduced in proportion to the number of adult men denied the right to vote, stating: "We must be shorn of our representation or give the inferior and unintelligent race the supremacy in the State government." 1866 Fla. House J. 77.

***The 1868 Constitutional Convention and the Adoption  
of the Felon Disenfranchisement Provision***

35. In the aftermath of the Civil War, divisions arose between President Johnson and moderate Republicans who sought to impose few conditions on former confederate states as a prerequisite for readmittance to the Union, and radical Republicans who sought to obtain greater concessions. The ascendancy of radical Republicans in Congress in 1867 led to enactment of legislation putting Florida and other former confederate states under military control and making extension of the suffrage to all adult men as well as ratification of the Fourteenth Amendment prerequisites for readmittance to the Union. The Republican Party in Florida was similarly divided between more moderate Republicans, led by businessmen, and a more radical group which was supported by a large majority of the black population, newly enfranchised under military rule.

36. In Florida, military authorities oversaw registration of voters, including black men, to vote on whether to hold a new constitutional convention. Most former supporters of the Confederacy, now calling themselves Conservatives, boycotted the election. As a result, the vote in November 1867 was overwhelmingly in favor of holding a new constitutional convention.

37. The convention met in Tallahassee from the end of January 1868 through the middle of February 1868. Initially, only 41 of the 46 elected delegates attended. Conflicts over black voting rights and political power led to a split in the convention, with 19 moderate Republican delegates leaving the convention and proceeding to meet separately in a nearby town where they conferred with Conservative leaders. The remaining group of 22 delegates, which included 15 of the 18 black delegates, supported the radical Republican leaders. After the moderate Republican delegates left the convention, the remaining delegates voted that they constituted a quorum of those elected delegates who had attended the convention and drafted a constitution to submit to Congress. This draft constitution contained no provision for felon disenfranchisement, and instead granted the right to vote to all males except those who had held either federal or state office and then participated in the Confederacy. It also provided for equal legislative apportionment based on population, and made state and county offices elective. *See* H.R. Misc. Doc. 40-109, at 25-44 (1868). Shortly thereafter the moderate Republican delegates, who had been joined by three additional delegates (two Conservatives, and one moderate Republican), returned. They took control of the convention, removed four radical Republican delegates and replaced them with moderate Republicans, and oversaw adoption of an alternative version of the constitution.

38. This alternative constitution, which became the 1868 Constitution, similarly provided for grant of suffrage men over the age of 21 without regard to race, as was required for readmittance. But it also contained several provisions intended to restrict the power of black voters. Anyone convicted of a felony was permanently disenfranchised, and larceny was added to the list of disenfranchising crimes. On the other hand, individuals who had participated in the Confederacy were not disqualified from voting, and the legislature was authorized to impose educational qualifications for voting that would go into effect in 1880, with anyone who had voted before that point being exempted. In addition, measures were adopted to ensure that blacks were not able to take political control of the state legislature or in the more populous northern Florida counties where they were often a majority. Specifically, limits were placed on popular representation, with each county getting at least one and no more than four representatives regardless of population, and local officials were appointed by the Governor. *See* 1868 Const. art. I, § 15; *id.* art. VI, § 19; *id.* art. XIV. A majority of delegates signed this version of the Constitution, and it was the version ultimately accepted by Congress. Radical Republicans opposed the Constitution, which was ratified by the voters by a vote of 14,520 in favor to 9,491 against in May, 1868.

39. The drafting of the suffrage article of the 1868 Constitution, Article XIV, was particularly controversial. Towards the end of the convention a version of this article was proposed by Radical Republican and Moderate Republican delegates which provided that the list of registered voters prepared by military authorities for the vote on whether to call a constitutional convention would be used for one year after ratification. As a result, the numerous white men who had not registered to vote in 1867 would be prevented from voting in the initial

elections. It further provided that “[n]o idiot or insane person, or person convicted of infamous crime, shall be entitled to the privileges of an elector, except when such convicted person shall be pardoned.” *Journal of the Proceedings of the Constitutional Convention of the State of Florida 89-90* (Tallahassee, Edward M. Cheney 1868) (“1868 Constitutional Convention”). Four days later, just before the convention adjourned, what became the final version of the suffrage article was offered as a substitute. This version provided that every male above 21 was entitled to vote, disqualified anyone convicted of a felony, and also disqualified all those convicted of bribery, perjury, larceny, or infamous crime. It was adopted by a 26 to 15 vote, with moderate Republicans and Conservative delegates voting in favor and radical Republicans voting against.

***The Impact of the Felon Disenfranchisement Provision  
on African-Americans in the Period After Its Adoption***

40. In 1868, the legislature adopted legislation defining what crimes would be felonies and misdemeanors. Larceny involving more than \$20 was a felony, as was a second conviction for larceny regardless of amount. *See* 1868 Fla. Laws ch. 1,367. Conviction for misdemeanor larceny still led to disenfranchisement because the 1868 Constitution added larceny as a disenfranchising crime. In addition, vagrancy was included as a crime against chastity, morality and decency, *see id.* ch.13.

41. In the period after the Civil War, Florida used its criminal laws as a means of controlling its former slaves. One example of this is the enactment or expansion of certain criminal offenses, such as vagrancy and larceny, in order to target Florida’s black population. Similarly, the unfair treatment of blacks in the county criminal courts created in 1865 led to reimposition of martial law in several north Florida counties in 1866. This discriminatory

treatment continued over the ensuing years. Although black convicts represented a small percentage of Florida's prison population before the Civil War, this situation was reversed in the post-war period. For example, in 1869 and the period 1872 to 1888, black men represented between 77% and 88% of those added to or in the state prison inmate population every year, and black convicts comprised the vast majority of criminals sent to work under Florida's convict leasing program. Between 51% to 60% of individuals incarcerated in the state prisons during the period 1872 to 1878 were convicted of larceny or felony theft.

42. There were also massive disqualifications of voters based on the criminal disenfranchisement provisions. Many of these disqualifications were on the grounds of petty larceny, and Republicans claimed that Democrats were using the criminal disenfranchisement provisions of the 1868 Constitution to reduce the number of black and thus Republican voters. This use of the criminal disenfranchisement provisions, combined with other types of voter fraud, refusal by commissioners to register black voters, violence against prominent black citizens and Republicans, and voter intimidation, dramatically increased the power of white Conservatives, who became the Democratic Party. By 1872, their representation in Florida's legislature was equal to that of the Republicans and by 1875 they claimed a majority. In 1876 the Democrats gained the governorship and ended Reconstruction in Florida.

### ***Subsequent Constitutional Amendments***

43. In 1885, Florida voters approved a new constitution. In response to pressure from white majority counties, the 1885 Constitution made almost all local officials elective. However, in order to preserve limits on black political power it retained appointment of county commissioners and reduced the maximum legislative representation for each county from

four representatives to three. More importantly, the 1885 Constitution authorized the Legislature to impose a poll tax. The criminal disenfranchisement provisions of the 1868 Constitution were retained essentially verbatim, the only change being the addition of the requirement that the felony conviction leading to disenfranchisement be “by a court of record.” This addition apparently resulted from the creation of a new County Criminal Court of Record which was authorized to try felony cases. In 1887, the Legislature enacted an act requiring voter registration for the first time, 1887 Fla. Laws ch. 3,704, and in the act provided for disenfranchisement of persons “convicted of felony by any court of record” as well as persons “convicted of bribery, perjury, or of larceny or of infamous crime.” *Id.* ch. 3,705.

44. In 1968, the list of disqualifying offenses originally enacted in Article XIV, § 4 of the 1868 Constitution, and continued in the 1885 Constitution, was removed. However, the broad disenfranchisement of all convicted felons contained in section 2 of that article was retained. The language of the felon disenfranchisement provision contained in Article VI, § 4 of the 1968 Revision is nearly identical to the language in Article XIV, § 2 of the 1868 Constitution, and provides: “No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights.”

**The Disproportionate Impact of Felon Disenfranchisement  
on African-Americans in Florida Today**

45. The disenfranchisement of convicted felons contained in Article VI, § 4(a) of Florida’s Constitution and repeated in statutory provisions has resulted in the disenfranchisement of a substantial number of Florida citizens. As of 1998, there were

approximately 525,000 former felons in Florida who have completed their sentences and periods of supervision yet remained disenfranchised. This represents a little over 4.6% of Florida's 1998 estimated voting age population of 11,383,000.

46. The impact that Florida's felon disenfranchisement laws have on African-Americans, and in particular African-American men, is especially severe. According to the same data, in 1998 there were approximately 139,000 black ex-felons in Florida, of which approximately 107,000 were black men. These figures mean that 9% of Florida's voting-age African-American population and 15% of Florida's voting-age African-American male population are disenfranchised as a result of a felony conviction.

47. In addition, there are approximately 63,000 African-American male felons currently in prison or under supervision. When the total black male felon population is considered, approximately 170,000 male African-American Florida citizens or 24% of Florida's voting-age African-American male population is disenfranchised as a result of a felony conviction.

48. Similarly, African-Americans represent a disproportionate number of the ex-felons who are disenfranchised by Florida's permanent disenfranchisement laws. The 139,000 black ex-felons disenfranchised under these laws represent approximately 20% of Florida's disenfranchised ex-felon population of 525,000. When current felons are included, the disproportionate impact on African-Americans increases still further. Of the approximately 710,000 Florida citizens disenfranchised by Florida's disenfranchisement laws (including ex-felons and current felons), nearly 30% or 211,000 are African-American. Florida's population is approximately 15% African-American.

49. The number of ex-felons disenfranchised by Florida's disenfranchisement laws has dramatically increased over the last 25 years. In 1976, approximately 61,000 ex-felons were disenfranchised. By 1984, this number had increased to 91,000, by 1992 it was approximately 406,000, and by 1998 nearly 525,000 were disenfranchised. Where in 1976 disenfranchised ex-felons represented 1% of Florida's voting age population, by 1998 they represented approximately 4.6%.

50. The percentage of African-American ex-felons who are disenfranchised as a result of the provision also has increased significantly. In 1976, approximately 13,000 black ex-felons were disenfranchised as a result of the provisions. In 1984 this figure was approximately 18,000; in 1992 it was 109,000; and in 1998 it was 139,000.

51. Criminal convictions in Florida display racial amplification, in that African-Americans are convicted at a substantially greater rate than their proportion in the population and than whites arrested for similar crimes. In addition, arrest data overstate the involvement of African-Americans in crime relative to whites. Moreover, African-Americans continue to be disproportionately affected by limited education and employment opportunities, poverty, and residency in depressed areas, all of which are positively correlated with arrest and incarceration.

52. Very few former felons successfully regain the right to vote through the clemency process. According to data from the Office of Executive Clemency, Florida granted restoration of rights to only 1,400 people in 1997, and has granted restoration to fewer than 2,500 ex-felons a year over the last decade.

53. The requirement in the Rules of Executive Clemency that convicted felons

must not have more than \$1,000 outstanding in fines or other monetary penalties in order to have their right to vote restored constitutes a significant obstacle for many convicted felons.

According to data from Florida's Department of Education, on average less than a third of prisoners released from June 1995 to June 1998, or 31.7%, found jobs and are working. Only 15.5% of released prisoners are working full-time, while 7.3% of prisoners released during 1995-1998 are currently receiving public assistance. *See Fla. Educ. & Training Placement Info. Prog. (FETPIP), Annual Outcomes Report: Fall 1998 Data 192-194.* In addition, most former prisoners lack job skills. According to Florida Department of Corrections data, 65% of current inmates have only basic literacy skills and are at an eighth grade or below education level. Nearly 50% of black inmates are only at a sixth grade or below education level. *See Fla. Dep't Corrections, 1997-98 Annual Report 97 (1998).* Data compiled by the federal government in 1991 indicates that the average annual income prior to arrest for state prison inmates in the southern part of the United States was less than \$16,000 (in constant 1991 dollars). Over 60% of these inmates are parents, many with small children. *See Bureau of Justice Statistics, Survey of State Prison Inmates (1991).*

54. Although the Rules of Executive Clemency provide that the requirement that monetary penalties be paid can be waived, in practice the Clemency Board has granted very few waivers of this requirement.

55. Florida does not maintain separate voter registration rolls for state and federal elections. As a result, the disenfranchisement of convicted felons contained in Florida's Constitutions and statutes serves to prevent convicted felons from voting in federal as well as state and local elections.

56. Florida's constitutional and statutory provisions disenfranchise all convicted felons, regardless of the nature of their specific offenses, when they committed the offense, or the length and severity of their sentence. These provisions also apply to felons convicted in federal court and in the courts of other states.

### **Racial Polarization in Florida**

57. Elections within Florida are characterized by patterns of racial bloc voting. African-American voters in Florida are politically cohesive. African-American candidates for public office generally receive substantial support from black voters, but such candidates often are not successful in obtaining election because of a lack of support from other voters.

58. Historically, African-Americans have been the victims of official discrimination perpetrated by the State of Florida and local governments in Florida. Such discrimination has included discrimination touching on the right of black citizens to register, vote, and participate in the political process.

59. Socio-economic statistics demonstrate that African-Americans in Florida continue to bear the effects of discrimination in such areas as education, employment, income and housing. The depressed socioeconomic status of blacks has a disparate and injurious effect on the ability of African-American citizens to participate equally in the political process.

60. For these and other reasons, the political processes in Florida are not equally open to participation by African-American citizens and African-Americans have less opportunity than others of the electorate to participate in the process and elect representatives of their choice.

**Impact on Rights Protected by 42 U.S.C. § 1983**

61. By reason of the foregoing, Defendants, acting under color of state law, have deprived Plaintiffs of the rights, privileges, and immunities secured to them under the First, Fourteenth, Fifteenth and Twenty-Fourth Amendments to the United States Constitution and section 1983 of Title 42 of the United States Code to participate in the democratic process free from unreasonable impediments.

62. Plaintiffs have no adequate remedy at law for such deprivation of their rights, privileges and immunities.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

63. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 62 above.

64. The permanent disenfranchisement of all convicted felons in Florida contained in section 4(a) of Article VI of the Florida Constitution was specifically adopted out of an intent to disenfranchise African-Americans.

65. Article VI, section 4(a) of the Florida Constitution, along with the statutory provisions that disenfranchise convicted felons, Fla. Stat. Ann. §§ 97.041(2), 98.093, 98.0975 and 944.292, currently have a significantly disproportionate impact on African-Americans, particularly black men.

66. The disenfranchising provisions contained in Article VI, section 4(a) of the Florida Constitution and Fla. Stat. Ann. §§ 97.041(2), 98.093, 98.0975 and 944.292, represent intentional racial discrimination in violation of the Fourteenth and Fifteenth Amendments to the

United States Constitution.

### **SECOND CLAIM FOR RELIEF**

67. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 62 above.

68. The permanent disenfranchisement of convicted felons contained in Florida's Constitution and statutes is not only intentionally discriminatory, but also has a significant disproportionate impact on African-Americans, particularly black men.

69. The discriminatory impact of Florida's felon disenfranchisement laws, combined with the racial polarization in Florida, means that African-Americans have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

70. As a result, the permanent disenfranchisement of convicted felons, contained in Article VI, section 4(a) of the Florida Constitution and Fla. Stat. Ann. §§ 97.041(2), 98.093, 98.0975 and 944.292, serves to deny Plaintiffs the right to vote on account of race, in violation of section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

### **THIRD CLAIM FOR RELIEF**

71. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 62 above.

72. The permanent disenfranchisement of convicted felons in Florida serves no legitimate governmental purpose as applied to the Plaintiff class of ex-felons. As ex-felons, Plaintiffs have fully completed any periods of imprisonment and/or supervision to which they were sentenced. Florida therefore no longer has any legitimate interest in punishing those

members of the Plaintiff class who were convicted of felonies under Florida law. Moreover, Florida permanently disenfranchises all felons, without regard to facts of their offense, when it was committed, or the sentence they received.

73. Some members of the Plaintiff class, such as named Plaintiffs Thomas JOHNSON, Adam HERNANDEZ, and Jack HANES, were convicted under the law of other states or under federal law. Florida never has had any legitimate interest in punishing these convicted felons as they did not violate Florida law.

74. Florida does not limit its disenfranchisement of ex-felons to individuals convicted of election-related crimes, such as election fraud, or crimes that strike at the heart of government, such as treason or bribery of election officials. Florida's permanent disenfranchisement of ex-felons thus does not serve any state interest in protecting the integrity of its electoral processes.

75. Ex-felons have reintegrated into society and are indistinguishable from other members of their communities – they work, support their families and are involved in churches and community groups. Florida has no legitimate interest in denying ex-felons basic political rights when it otherwise treats them as ordinary citizens.

76. As applied to ex-felons, Florida's felon disenfranchisement laws are status-based enactments that serve no purpose other than to burden and disadvantage ex-felons because they are unpopular.

77. As a result, the permanent disenfranchisement of convicted felons contained in Article VI, section 4(a) of the Florida Constitution and Fla. Stat. Ann. §§ 97.041(2), 98.093, 98.0975 and 944.292, is arbitrary and irrational and violates the Equal Protection and

Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

**FOURTH CLAIM FOR RELIEF**

78. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 62 above.

79. Through its felon disenfranchisement laws, Florida singles out a group of its citizens and permanently denies them the fundamental political right to vote, even after they have completed any period of imprisonment and/or supervision to which they were sentenced.

80. The percentage of Florida's voting-age population prohibited from voting by Florida's felon disenfranchisement laws has grown substantially over the last quarter-century, notwithstanding the substantial increase in Florida's population over this period. Ex-felons who have fully served any periods of imprisonment and/or supervision to which they were sentenced but are still prohibited from voting currently represent approximately 4.6% of Florida's voting-age population.

81. The denial of the right to vote and the resultant disenfranchisement of a substantial portion of Florida's electorate caused by Article VI, section 4(a) of the Florida Constitution and Fla. Stat. Ann. §§ 97.041(2), 98.093, 98.0975 and 944.292, violate the protections of the right to vote contained in the First and Fourteenth Amendments to the United States Constitution.

**FIFTH CLAIM FOR RELIEF**

82. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 62 above.

83. Under the Rules of Executive Clemency, convicted felons must not have

outstanding monetary penalties above \$1,000 in order to be eligible for restoration of civil rights or processing of their applications for restoration without a hearing. However, several ex-felons, including named Plaintiffs THOMAS and ROBINSON have been told that they are ineligible for restoration when they have less than \$1,000 outstanding. In practice, therefore, ex-felons with monetary penalties outstanding are unable to obtain restoration of their civil rights.

84. These requirements impose financial conditions on regaining the right to vote that are the practical equivalent of a poll tax and mean that ex-felons' ability to regain the right to vote depends on their financial resources.

85. As a result, these requirements, contained in Fla. R. Exec. Clemency 5(I)(E), 5(II), 9(A)(2) and 9(A)(3), violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the Twenty-Fourth Amendment to the United States Constitution.

#### **SIXTH CLAIM FOR RELIEF**

86. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 62, 83 and 84 above.

87. As a result, these requirements, contained in Fla. R. Exec. Clemency 5(I)(E), 5(II), 9(A)(2) and 9(A)(3), violate section 10 of the Voting Rights Act, 42 U.S.C. § 1973h.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully ask this Court:

(1) To certify the Plaintiff class of all Florida citizens who have been convicted of felonies and fully completed any periods of incarceration and/or supervision to

which they were sentenced, but nonetheless remain ineligible to register or vote;

(2) To certify the Defendant class of county election supervisors;

(3) To enter a judgment declaring and determining that Article VI, § 4(a) of the Florida Constitution, Fla. Stat. Ann. §§ 97.041(2), 98.093, 98.0975, and 944.292, and Fla. R. Exec. Clemency 5(I)(E), 5(II), 9(A)(2) and 9(A)(3), are in violation of the United States Constitution, both facially and as applied to Plaintiffs and the Plaintiff class, insofar as they deny ex-felons the right to register and vote,

(4) To grant injunctive relief enjoining Defendants from implementing and enforcing Article VI, § 4(a) of the Florida Constitution, Fla. Stat. Ann. §§ 97.041(2)(b), 98.093, 98.0975 and 944.292, and Fla. R. Exec. Clemency 5(I)(E), 5(II), 9(A)(2) and 9(A)(3), against Plaintiffs and the Plaintiff class, insofar as they deny ex-felons the right to register and vote,

(5) To award Plaintiffs their costs and disbursements associated with the filing and maintenance of this action, including an award of reasonable attorneys' fees pursuant to 42 U.S.C. §§ 19731 and 1988; and

(6) To award such other equitable and further relief as the Court deems just and proper.

DATE:

RESPECTFULLY SUBMITTED,

By: \_\_\_\_\_

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