



Still Voteless and Voiceless in Florida

Florida's Continuing Disfranchisement Crisis



“A Voteless Citizen is a Voiceless Citizen.”

- slogan for Harry T. Moore's 1945 voter registration drive



[“Justice cr[ie]s out for us to do what’s right.”]

“Dignity, justice, honor; at what point do[] the punished have the right to a simple chance to come back to society (?)....Those whose lives we discuss today have served a sentence, as they should have; but what right have we here to add to that sentence (?)”

- Excerpts from Governor Charlie Crist's Clemency Board Notes
on the Restoration of Civil Rights, 2007

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ABOUT THE ACLU OF FLORIDA:

The American Civil Liberties Union (ACLU) is the nation’s premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by the Constitution and laws of the United States.

Since our founding in 1920, the nonprofit, nonpartisan ACLU has grown from a roomful of civil liberties activists to an organization of over 500,000 members and supporters, with offices in almost every state.

The ACLU of Florida, with headquarters in Miami, is the local affiliate of the national organization. Chartered in 1965, the ACLU of Florida operates with the help of 36 staff members, 18 volunteer-run chapters and 30,000 members across the state.

The ACLU’s voting rights work focuses on ensuring that the political process is open and accessible to all, by implementing at every level of the political process the equal voting rights guarantees of the Fourteenth and Fifteenth Amendments and acts of Congress designed to ensure equality in voting.



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Forward

Ending Florida's system of lifetime felon disfranchisement is the unfinished business of the civil rights movement.

This shameful system of lifetime disfranchisement puts the Sunshine State out of step with the majority of states in the U.S – and the world's democracies. Although we pride ourselves on holding free and fair elections, in reality America's disfranchisement policies shut out more citizens from the democratic process than any other nation in the world. Disfranchisement policies bar over 5 million U.S. citizens from the polls - many of whom have fully served their sentences. Almost 20% of these citizens reside in Florida.

U. S. disfranchisement policies also disproportionately affect African Americans and other minorities. Although these policies have been in effect for many years, they were significantly expanded and flourished during Reconstruction and the Jim Crow era. Their purpose has been to deny the franchise to as many of the freed slaves as possible. (One might argue that the disfranchisement policies worked precisely as intended.)

Now in the 21st Century they affect a growing segment of the population, as the United States' criminal justice system convicts and imprisons more people than ever before, and now has the world's highest rate of incarceration.

This report describes alarming problems, including how widespread

confusion among Florida election officials about the restoration of civil rights process contributes to disfranchisement. This report also identifies a new problem -- the perception that, in April 2007, Florida Governor Charlie Crist resolved Florida's mass disfranchisement crisis by engineering reforms in the Florida Rules of Executive Clemency through the Board of Executive Clemency – composed of the Governor and Florida's Cabinet officers. That inaccurate and unfortunate perception has become a barrier to effectively eradicating our state's shameful Civil War era legacy.

Thanks for this important report go to Muslima Lewis, Senior Attorney and Director of the Racial Justice and Voting Rights Project of the American Civil Liberties Union of Florida, Project staff members, volunteers and interns, and our partners in Florida and elsewhere, who are all dedicated to ending barriers to the exercise of the most precious right in a democracy – the right to vote.

Documenting the gap between the oft-repeated misimpression of policies that were adopted in April 2007 and the actual limited effect of those changes should spur the State's chief officers, sitting as the Board of Executive Clemency, to remove impediments to the full integration of former offenders into civil society.

The Florida clemency process can, and should, be reformed to make the restoration of civil and voting rights virtually automatic.

What is truly required for Florida to re-join the majority of other states, and the world's democracies, is the removal of the provisions that mandate lifetime disfranchisement from our State's Constitution.

HOWARD SIMON
Executive Director
American Civil Liberties Union of Florida

Executive Summary

Florida's democracy has had a checkered past. Florida's highly problematic administration of elections has frequently brought our state to the forefront of American politics.

Central to this democratic crisis has been the administration of Florida's draconian ban on voting for hundreds of thousands of Florida citizens with past felony convictions. Florida's felony disfranchisement policy is one of the most restrictive and confusing in the country. Over one million Floridians are barred from voting due to past felony convictions.¹ Approximately 950,000 of them have completed all terms of their incarceration and/or supervision.²

The restoration of civil rights (RCR) process in Florida is failing. The current RCR process is impossible to administer fairly and wasteful of taxpayers' dollars. As a result, hundreds of thousands of Floridians, including perhaps tens of thousands of citizens with nonviolent offenses who are eligible for civil rights restoration under the most expedited procedures under the Rules of Executive Clemency, remain disfranchised. Further, public safety concerns can more effectively and efficiently be addressed through licensing regulations outside the clemency process.

On April 5, 2007, the Board of Executive Clemency adopted a revised set of rules governing the restoration of voting and other civil

rights for people with past felony convictions. During the almost two years since their adoption, it has become clear that the new rules fall woefully short of the promised "automatic RCR approval" for people with non-violent felony offenses. These new rules have streamlined the RCR process for many people convicted of non-violent offenses, and resulted in the enfranchisement of thousands of Floridians. However, hundreds of thousands more are still barred from voting. Many Floridians are still ineligible for civil rights restoration consideration because of RCR pre-conditions contained in the 2007 rules. Hundreds of thousands more are eligible for RCR consideration but still have not had their civil rights restored. Further, many citizens have had their civil rights restored but are not notified of that fact and/or face impediments when registering to vote.

At every step of the RCR process, there are impediments and failures that result in disfranchisement:

- People who would otherwise qualify for civil rights restoration are ineligible because they do not have the financial means to pay court-ordered restitution.
- Because the Executive Clemency Rules are difficult to understand, too many Floridians are unaware that they are eligible for restoration of their voting rights.
- The Florida RCR process requires a case-by-case review, resulting in administrative delays in the processing of civil rights restoration cases.
- Among elections officials who are responsible for registering voters with newly restored civil rights, there is widespread confusion and misunderstanding of the RCR process, which creates additional barriers to individuals being returned to the voter rolls.

To determine whether the public is receiving accurate information about voter eligibility under the 2007 Rules of Executive Clemency, the American Civil Liberties Union (ACLU) of Florida surveyed all 67 Florida county election offices to see what information elections officials give to the public about the RCR process and voting with a criminal record. For many potential voters, county election boards are a significant source of information about voter eligibility. Unfortunately, the survey results demonstrate widespread confusion among elections officials about the eligibility of voters with criminal convictions and about virtually every aspect of the RCR process. Key findings of the survey show that:

- Nearly one third of all officials surveyed could not answer basic questions regarding the application process for restoration of civil rights.

- More than half of all elections officials surveyed did not know that individuals on felony parole or probation are barred from voting in Florida.
- Forty percent of elections officials surveyed incorrectly said that individuals with past felony convictions must produce their certificates of civil rights restoration with their voter registration applications; no such documentation is required to register to vote in Florida.
- Half of the elections officials surveyed did not know that payment of all outstanding restitution is a pre-condition for rights restoration.
- Fewer than half of those surveyed knew whether a Florida resident with a conviction in another state can register to vote in Florida. Not a single election official correctly stated that individuals with out-of-state convictions can apply for rights restoration in Florida if they reside in Florida and have not had their rights restored in their state of conviction.
- One-third of elections officials were unaware of the proper process for purging a voter with a felony conviction from the rolls.

Given the complexity of the 2007 clemency rules and the fact that county election supervisors received virtually no meaningful training on these new rules, it is no surprise that elections staff dispense incorrect information to potential voters. This phenomenon creates a critical problem for Florida's democracy and has the potential to disfranchise countless eligible voters. It also demonstrates that the 2007 Rules fail to address the larger problem of mass disfranchisement in Florida.

By lifting its voting rights ban, Florida can finally put an end to a shameful legacy of felon disfranchisement that became firmly entrenched during the Reconstruction Era as a means of disfranchising newly freed slaves. It is time for Florida to join the majority of states in the U.S. and several other democracies around the world³ by automatically restoring voting rights to all Floridians who have completed their terms of incarceration and supervision. A simplified RCR process would be easier for elections officials to administer and strengthen our state's democracy.

I. Felony Disfranchisement in Florida

Nationally, an estimated 5.3 million Americans have lost their right to vote due to a felony offense.⁴ Over 20% of the nation's disfranchised citizens live in Florida, more than in any other state. Close to 950,000 people in Florida have completed all terms of incarceration and supervision, but are still denied the right to vote due to past felony convictions.⁵

Florida's voting ban remains one of the most draconian in the country. In addition to losing their voting rights, people with felony convictions in Florida also lose the right to sit on a jury and hold public office. Further, in Florida, people whose rights have not been restored are disqualified from holding dozens of state-issued licenses for occupations such as automobile dealer, physical therapist, and electrical contractor.

Nationwide and in Florida, felony disfranchisement disproportionately affects African-Americans and Latinos. This is not surprising given the cumulative impact of racial disparities at each point in the criminal justice system.⁶ In Florida, 18.82% of the African American voting age population is disfranchised.⁷ Given the current rates of incarceration for Black men nationwide, it is estimated that 3 in 10 Black men will be disfranchised at some time in their lives.⁸

In Florida, restoration of civil

rights is wholly discretionary. Civil rights are restored only through the executive clemency process.⁹ The Board of Executive Clemency (composed of the Governor and the three Cabinet members) establishes the rules by which civil rights may be restored. An individual's voting and other civil rights may be restored only with the approval of the governor and two other members of the Board of Executive Clemency.

The Rules of Executive Clemency reflect the political inclinations of the current administration, so they can change significantly over time. For example, under the leadership of Governor Ruben Askew in 1975, the rules were revised to provide that civil rights restoration

would be virtually automatic for all Florida citizens upon completion of supervision.¹⁰ Over the following years, Florida's clemency rules have become progressively more restrictive and have disfranchised a growing number of Floridians.¹¹

This restrictive trend changed in 2007, when Governor Charlie Crist, with the support of two other members of the Board of Executive Clemency, implemented reforms with the goal of easing the civil rights restoration process for certain individuals with past felony convictions. The 2007 Rules are an improvement over the rules adopted under recent administrations. Between April 5, 2007, and January 28, 2009, close to 135,000 people had their civil rights restored, com-

T.D.

In 1998, at the age of 16, T.D. was convicted for the delivery of cocaine, a felony under Florida law. This was his first and only conviction of any kind – felony or misdemeanor. T.D. was sentenced to 30 days credit for time served and was released from custody. Under Florida's draconian disfranchisement system, T.D. lost his right to vote even before he could have first exercised this right at the age of 18. Upon his release, T.D. continued his education and, in October 2007, successfully completed the state examination for a Life and Annuities License. Those exam results remained valid for only one year; if T.D. did not apply for his license within that year, he would have been required to sit for the exam again. But, because restoration of civil rights is a prerequisite for the license T.D. was seeking, he had to have his civil rights restored before applying for the license.

His desire to gain his right to vote and to obtain the state occupational license prompted T.D. to submit an application for restoration of civil rights in mid-2007 – even though he understood that an application should have been unnecessary under the new rules: because he had a non-violent “Level 1” offense, he was eligible for “automatic approval” without an application. Nonetheless, T.D. waited over one year after submitting his application to get his civil rights restored. In fact, his rights were restored only after repeated inquiries to the Office of Executive Clemency and ultimately only after a Clemency Board member's aide intervened on his behalf. T.D.'s civil rights were restored just days before his license examination scores became void -- but a few days too late for him to register to vote in the November 2008 election.

pared to an average annual rate of just over 5,000 restorations per year prior to 2007.¹²

Nonetheless, the April 2007 Rules still erect significant barriers to the franchise for far too many Floridians. Many Floridians, perhaps hundreds of thousands, still have not had their civil rights restored under the more streamlined RCR process available to people with nonviolent felony convictions. Many of these people were locked out of the historic November 2008 election despite the assurances of Governor Crist and state elections officials that the 2007 Clemency Rules would result in “automatic approval” of cases involving past convictions for nonviolent felonies. Many other Florida citizens are not notified when their civil rights have been restored, so they mistakenly believe they are ineligible to vote. Still more Floridians are de facto disfranchised because they receive inaccurate information about their voting rights from elections officials, as described in detail below. The result is the disfranchisement of a significant portion of Florida’s voting-age population.

II. The ACLU Survey

For many potential voters, the county elections office is the first stop for information about voter eligibility and civil rights restoration. Therefore, in 2008, the ACLU of Florida conducted a telephone survey of employees in all of Florida’s

67 county supervisors of elections offices. The survey was conducted to determine the extent to which state employees know, understand and accurately communicate information concerning the loss and restoration of civil rights following a felony conviction.

The survey reveals that many of Florida’s county elections employees are generally confused about how a felony conviction affects voter eligibility. While most county elections officials in Florida are aware that a felony conviction leads to disfranchisement, many officials either provided inaccurate information about the restoration of civil rights process or could not answer basic questions about the process. These employees also provided inconsistent information concerning voter registration practices for people with past felony convictions. Since most county elections officials are quick to refer the caller to the Florida Board of Executive Clemency for most questions concerning voter eligibility, it appears that individuals seeking assistance will frequently get the bureaucratic run around when attempting to obtain basic information about Florida’s RCR process.

The ACLU of Florida’s survey results mirror national findings, which show that elections officials across the country have difficulty understanding and accurately communicating their states’ felony disfranchisement policies.¹³ In Florida, as around the country, complex

felony disfranchisement policies have resulted in the mass dissemination of inaccurate and misleading information about voting with a criminal record. This has, in turn, led to the de facto disfranchisement of untold numbers of otherwise-eligible voters throughout the state who do not vote because they receive inaccurate information about their eligibility.

Election employees’ confusion about restoration of civil rights extended to all aspects of the restoration of civil rights process: from what types of convictions lead to disfranchisement, to RCR eligibility requirements, to the process for restoration of civil rights, and a misunderstanding of the procedure for removing people with felony convictions from the voter rolls.

Confusion and misunderstanding about the RCR process within the county supervisors of elections’ offices is not surprising. Florida’s disfranchisement laws and policies are complicated, and the 2007 rule changes resulted in significant changes in the RCR process. Yet, virtually no meaningful and consistent training has been provided by the state to county supervisors of elections or their staff.

RESULTS:

A. County Elections Employees are Uncertain about Disfranchising Offenses and Eligibility Requirements for Restoration of Civil Rights

Elections officials were generally confused about how a felony conviction affects voter registration.

Felonies/Misdemeanors

When asked if a person with a felony conviction could vote, most officials knew that a felony conviction leads to disfranchisement. However, many officials were not sufficiently knowledgeable about the rights restoration process to inform the caller that a person who loses his or her right to vote due to a past felony conviction regains that right after his or her civil rights have been restored. Failure to provide crucial information about the ability to restore one's civil rights has the potential to disfranchise people who will never know that they may apply to have their civil rights restored.

Alarming, employees in six elections offices incorrectly stated that individuals with misdemeanor convictions are ineligible to vote, and employees in four additional elections offices did not know whether a misdemeanor conviction results in loss of the right to vote.

Probation/Parole

More than half of the elections officials surveyed did not know that individuals on parole or probation

for a felony conviction can not vote in Florida. Those who responded incorrectly stated either that the ability to vote while on probation or parole depends on the nature of the crime or that a person on parole or probation can vote as long as his or her rights have been restored. These responses show a fundamental misunderstanding of the most basic eligibility requirements in Florida

P.G.

In 1986, at the age of 22, P.G. was arrested while transporting drugs for a friend. That arrest resulted in a drug trafficking conviction. As a result of her good conduct, P.G. was released early from incarceration and was granted early termination of probation in 1991. This was P.G.'s first and only conviction. P.G. works hard to support her three teenage children. Prior to her conviction, P.G. worked as a bookkeeper and file clerk in an insurance firm. Yet, since her 1991 release, P.G. has only been able to secure odd jobs. She has been unable to secure meaningful employment that uses the skills she acquired as a bookkeeper and file clerk before her incarceration. Because of her one prior conviction, employers repeatedly refuse to hire P.G. for jobs for which she is qualified.

Since her release from incarceration, P.G. has desired to be a full member of society and to exercise the right to vote. However, because she was misinformed that the RCR process would cost her thousands of dollars, she delayed applying for the restoration of her voting rights. After finally receiving accurate information about the RCR process in November 2008, P.G. immediately applied for restoration of civil rights. P.G.'s rights have not been restored – even though she meets the clemency process criterion that allows for civil rights restoration without a hearing if a person has been crime- and arrest-free for 15 years.

for civil rights restoration. Worse, if individuals who are on supervision rely on this misinformation from elections employees, they may register to vote when they are ineligible, which is a separate felony offense.

Out-of-State Convictions

In Florida, a person whose voting rights have been restored in another state may register to vote in Florida. Further, if a person has a felony conviction in another state, but his or her rights have not been restored, he or she can apply for civil rights restoration in Florida.

Fewer than half of the surveyed elections employees knew that a Floridian with a past felony conviction from another state can register to vote in Florida if his/her voting rights were restored in the other state. Almost one-third answered that they did not know if a person could register to vote in Florida notwithstanding a felony conviction in another state, or deferred to the Office of Executive Clemency. Not a single elections official stated that persons with out-of-state convictions could apply for civil rights restoration in Florida if their rights were not restored in another state.

Voting in Pre-trial Detention

Although nearly all of the elections officials knew that pretrial detainees may register to vote, some actually discouraged voting by people awaiting trial. In one instance, the election official said he recommends that someone should not register to vote while await-

ing trial; another election official said that a pretrial detainee can not register “because their rights are going to be taken away anyway.” Elections officials are charged with encouraging and facilitating voting by eligible citizens; these responses show that these elections employees are inclined to do just the opposite.

B. Elections Employees Are Imposing Unnecessary Documentation Requirements for Voter Registration

When an individual’s civil rights are restored in Florida, he or she is issued a Certificate of Civil Rights Restoration signed by the Governor. It is not necessary to present this certificate upon registering to vote. In order to register, an individual need only check the appropriate box on the voter registration appli-

cation indicating that he or she has a felony conviction but his or her civil rights have been restored.

Over 40% of elections officials erroneously stated that an individual must present documentary evidence of civil rights restoration in order to register to vote.

C. County Elections Employees Are Unclear about the Civil Rights Restoration Process

Although most county elections employees did not provide incorrect information about the process for restoring civil rights, they clearly were not sufficiently knowledgeable about the civil rights restoration process to give any meaningful guidance to the caller.

More than half of the elections

officials questioned were familiar with some aspects of the civil rights restoration process. Those familiar with the process correctly stated that the person seeking to have his or her rights restored must file an application with the Board of Executive Clemency. However, nearly one-third answered that they did not know the rights restoration process and that the question should be posed to the Office of Executive Clemency.

Waiting Period

Under Florida’s clemency rules, a person is eligible for consideration for civil rights restoration if he or she has completed his or her sentence and supervision and does not owe court-ordered restitution and if there are no pending charges or detainers against the individual. The rules do not impose a waiting period after completion of sentence and supervision. Only one-third of the elections employees knew that there is no waiting period; over half of election officials questioned could not correctly respond to this question about whether there is a waiting period.

Restitution Pre-condition

As noted above, an individual is ineligible for civil rights restoration if he or she owes court-ordered victim restitution. Half of the election officials did not know this, and many deferred to another agency.

D. Voter Purging

No single event in history brought more attention to the issue

D.P.

In 1999, D.P. was convicted of drug trafficking. She served just over one year of house arrest, during which she was permitted to leave her home only for medical treatments. Aside from D.P.’s 1999 conviction, she has an unblemished record, free of any other arrests or convictions. At the time of her sentencing, D.P. was not notified that she would lose her voting and other civil rights. Immediately upon satisfactorily completing supervision, D.P. applied for civil rights restoration in 2007. To this day, D.P. is awaiting the restoration of her civil rights.

The loss of her voting and other civil rights and the delay in regaining those rights has had a profound impact on D.P.’s health and life. Although D.P. has a bachelor’s degree in criminal justice, she has been denied employment for several positions for which she is qualified. She is ineligible for food stamps and public assistance, while bearing the burden of costly medical bills. D.P. voted regularly before her 1999 conviction. From an early age, her parents instilled in her the importance of civic participation - when she was only three years old, she accompanied her parents to the polls. D.P. and her parents went to the polls together when she cast her first vote at age 18. D.P. suffers from a debilitating and chronic disease. She asserts, “I am very ill, I probably won’t be alive to see my rights restored.”

of felony disfranchisement than Florida's flawed attempt to purge people with felony convictions from the voter rolls before the 2000 Presidential election. The election was decided by a mere 537-vote margin in Florida. During the aftermath of the election, it was revealed that Florida's aggressive use of a flawed felon purge list resulted in hundreds and perhaps thousands of eligible citizens being stricken from the voting rolls for that election. The State's plans to use another flawed purge list in 2004 were thwarted after litigation forced the State to release the list, which was then revealed to over-include Black voters, and under-include voters with Hispanic surnames.

Despite this abysmal history, this survey shows that county elections employees still are not fully aware of the process for removing voters with felony convictions from the voting rolls.

In 2005, a procedure was enacted that prohibits the use of purge lists, and establishes steps that must be taken at the state and county levels before removing an individual with a felony conviction from the voting rolls.¹⁴ The process is still prone to error, since a person can be removed from the statewide voter registration database if he or she does not receive the statutorily prescribed notice of potential ineligibility to vote.

Half of the election officials surveyed knew that there is a statewide system in place that notifies county

supervisors of elections that someone on the statewide voter registration database may be ineligible to vote due to a felony conviction. However, nearly half of the elections officials were unaware that the Department of State provides a file on each person who may be ineligible to vote containing information gathered from several sources and that the county supervisor of elections must follow up to ensure that individuals are not erroneously removed from the rolls. Alarmingly, they were unaware that the ultimate responsibility for removing someone's name from the voter rolls rests with the county supervisors of elections.

One-third of county elections employees surveyed were unaware of the process that the supervisor of elections must follow after receiving the file from the Secretary of State and before removing a person from the voting roll. The most common incorrect response from the county elections officials was that a person is automatically removed from the voter registration rolls if his or her name is on a list received by the supervisor of elections office. This response suggests that many elections employees believe that a felon purge list is still used in Florida. They had no knowledge of the notice requirements elections officials must follow or of the procedures that individuals can follow to contest removal. In one instance, an election employee stated that if the person is known to be a felon, he or she will be taken off the voter rolls "automatically."

A.S.

In 1993, A.S. was arrested for the offense of leaving the scene of an accident with serious injury or death. A.S. was convicted and, in 1995, sentenced to one year of incarceration and two years of probation. A.S. completed supervision in 1998. A.S. has remained arrest- and crime-free since his 1993 arrest. In 2003, he applied for the restoration of his civil rights. Two years after applying, he received a letter from the Office Executive Clemency informing him that he was ineligible for civil rights restoration due to unpaid restitution, although he had fully satisfied this restitution obligation years earlier. After repeated attempts to rectify this recordkeeping error, A.S. was finally advised by the Parole Commission that they had confirmed what A.S. had been telling them all along: he had, in fact, paid all outstanding restitution. A.S.'s 2003 application for civil rights restoration is still pending. In the meantime, A.S. is denied the right to vote in Florida, and due to his past felony conviction he has been turned down for many jobs for which he is qualified.

RECOMMENDATIONS

Mass disfranchisement in Florida occurs through operation of Florida law and Rules of Executive Clemency. In addition, de facto disfranchisement occurs when the rules and procedures are not followed due to misinformation and poor administration.

Ultimately, Florida's constitution should be amended to remove this voting ban, which undermines our democracy and does nothing to improve public safety. However, until then, Florida's civil rights crisis can be remedied immediately by taking the following steps:

1. The Governor and Cabinet sitting as the Board of Executive Clemency should take immediate action to reform Florida's felony disfranchisement policy.

The Florida Board of Executive Clemency should adopt changes to the Rules of Executive Clemency to create a streamlined, automatic and paperwork-free civil rights restoration process to ensure that every individual's civil rights are restored immediately upon completion of incarceration (if applicable) and any supervision. This can be accomplished immediately by a vote of the Governor and two additional Clemency Board members. Upon completion of incarceration and supervision, an individual should be able to register to vote by indicating on the voter registration application that his or her rights have been restored.

Significant increases in funding

for restoration of civil rights processing and public education and outreach would be necessary for the Office of Executive Clemency and Parole Commission to process RCR cases under the current Rules of Executive Clemency in a timely manner and to provide meaningful RCR information to the public and people directly impacted by Florida's civil rights restoration rules. In the current budget crisis, it is certain that this funding will not be forthcoming. To the contrary, it is likely that the Parole Commission will suffer additional budget cuts for the 2009/10 budget year, as the agency still struggles to operate under its 2008/09 fiscal year cuts.

A process that is straightforward, simple, and paperwork-free will ensure that the civil rights restoration process is fair and evenly administered. It will also eliminate the inefficient and costly investigations and other administrative procedures performed by the underfunded Parole Commission, which could instead devote its full attention to its core priorities: post-release supervision, re-entry assistance and victim services.

2. Eliminate Restitution as a Pre-Condition for Voting Rights Restoration.

Approximately 30-40% of individuals with non-violent offenses found ineligible for restoration of civil rights since April 2007 were ineligible, at least in part, because of unpaid restitution obligations.¹⁵ The Board of Executive Clemency should immediately

revise the Rules of Executive Clemency to remove restitution as a pre-condition for eligibility for restoration of civil rights. While payment of restitution should not be waived, it also should not be tied to voting rights.

This change will actually benefit, not harm, victims who are entitled to restitution. Because RCR is now tied to employment licensing in Florida, removal of this pre-condition will put many individuals who owe restitution in a better financial position to fulfill their obligations. To ensure compensation to victims, we need more effective and targeted payment and enforcement mechanisms, not a restriction that impedes restoration of voting rights and bears no relationship to ensuring victim compensation.

This change will also eliminate what amounts to a poll tax – tying the right to vote to the ability to pay.

3. Provide Accurate Voting Rights Restoration Information and Training to Elections Officials.

State and county elections officials should receive meaningful annual training about the restoration of civil rights process, the process for restoring people with past felony convictions who become re-eligible to the voting rolls, and the procedures for purging individuals from the voter rolls. This training is particularly important after civil rights restoration rules changes are implemented.

4. Provide Notice and Accurate Information about Voter Eligibility to All Individuals with Criminal Records.

Individuals with felony convictions should be provided accurate information about the restoration of their voting rights at all stages: at the time of sentencing, during incarceration, and upon completion of supervision. This should include a requirement that the standard plea colloquy inform the defendant that he or she loses voting and other civil rights as a consequence of pleading guilty to a felony offense. Further, people convicted of misdemeanors and people in pre-trial detention should be made aware of their right to vote.

5. De-Couple Civil Rights Restoration and Eligibility for State-Issued Occupational Licenses and Other Jobs that Require State Certification. An individual's right to participate in democracy and regain his or her civil rights has nothing to do with his or her eligibility for an occupational license. Qualified persons should not be blocked from employment just because their civil rights have not been restored.

Regulatory agencies and licensing boards will be more likely to establish criteria relevant to their specific trades that effectively satisfy public safety concerns when civil rights restoration is not tied to employment eligibility. Further, increased employment opportunities for people with past felony convictions should reduce recidivism (and enhance public safety); this could reduce the direct costs of crime as

well as costs of re-incarceration. In fact, the November 2006 Final Report of the Governor's Ex-Offender Task Force commissioned by Governor Jeb Bush¹⁶ and the Florida Senate's December 2007 Interim Report¹⁷ both recommended the repeal of laws that condition licensing solely on restoration of civil rights.

As the economy constricts, unemployment rises and jobs become harder to find, it is critical the state take action to eliminate unnecessary employment barriers that do nothing to enhance public safety but have the effect of making it more difficult for qualified people to obtain employment.

6. Governor Crist should issue an Executive Order to Bring Transparency to the Civil Rights Restoration Process. Governor Crist has committed to bringing integrity and transparency to all executive agencies, and to making the state government open and transparent "like never before."¹⁸ Governor Crist should bring transparency to the RCR process by immediately issuing an executive order requiring the Parole Commission and other executive agencies to release records relating to the RCR process in accordance with the same standards of transparency and timeliness that govern release of non-clemency records.

Secrecy still shrouds the civil rights restoration process. Recent changes authorized by Governor Crist that made the process more transparent for applicants are important, but do not go far enough. The Parole Commission fails or

refuses to provide certain information relating to the RCR process in response to requests for records, even when disclosure would not compromise the confidentiality of people seeking RCR, judges, victims or other individuals who provide information during an RCR investigation. Further, even when the Parole Commission releases limited RCR information it is slow in doing so, and underfunding is the stated reason for the delays.

These delays and failures are not surprising because, by law, records relating to the civil rights restoration process are exempt from Florida's Sunshine Law and can be released *only with the governor's approval*.¹⁹

As a result, it is nearly impossible for the public to assess how efficiently tax dollars are used to implement the RCR process. Just as an agency cannot use underfunding as an excuse for not providing full and timely responses to public records requests under the Sunshine Law, underfunding should not be an excuse for the public's inability to get timely information about the RCR process.

Release of records that do not disclose individuals' identities will provide much needed transparency to the RCR process. Such an action will give true meaning to Governor Crist's stated commitment to reform the RCR process and increase transparency in government.

Notes:

¹ Jeff Manza and Christopher Uggen, Locked Out: Felony Disenfranchisement and American Democracy, (Oxford University Press) (2006) at 248. These estimates of Florida's disfranchised population are based on Manza and Uggen's analysis of statistics dated as of December 1, 2004.

² *Id.*

³ See Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and Other Democracies, Laleh Ispahani, American Civil Liberties Union (May 2006).

⁴ Manza and Uggen, *supra* note 1, at 76.

⁵ Manza and Uggen, *supra* note 1, at 248.

⁶ See Reducing Racial Disparity in the Criminal Justice System, A Manual for Practitioners and Policymakers, The Sentencing Project (Second Ed. 2008)

⁷ Manza and Uggen, *supra* note 1, at 251.

⁸ Felony Disenfranchisement Laws in the United States, The Sentencing Project (2008).

⁹ See Appendix A for the state constitutional and statutory provisions relating to felony disenfranchisement.

¹⁰ Rules of Executive Clemency, 9A, adopted September 10, 1975, effective November 1, 1975.

¹¹ Before 2007, some rule changes were designed to remove some restrictions on restoration of civil rights eligibility. However, these changes did little to increase the number of civil rights restoration grants. For example, in 2004, the rules were changed to allow civil rights restored without a hearing for people convicted of less serious offenses who remained arrest-free for five years and for all otherwise eligible persons who remained arrest-free for fifteen years. See Rules of Executive Clemency, revised December 9, 2004, effective December 9, 2004.

¹² Information about recent RCR grants and the average number of RCR grants annually prior to 2007 was provided by the Parole Commission.

¹³ De Facto Disenfranchisement, Erika Wood and Rachel Bloom, American Civil Liberties Union and Brennan Center for Justice at New York University School of Law. (2008)

¹⁴ Fla. Stat. Section 98.075 (5) and (7) (2005)

¹⁵ Estimates of people ineligible for RCR due to unpaid restitution obligations were provided in 2007 by then Department of Corrections Secretary James McDonough.

¹⁶ Final Report of the Governor's Ex-Offender Task Force, at 27 (2006).

¹⁷ Rules for Restoration of Civil Rights for Felons and Impacts on Obtaining Occupational Licenses and Other Opportunities, S. 2008-114, at 8 (2007).

¹⁸ See Governor Charlie Crist's 2007 inaugural address at <http://www.flgov.com/speech2007inaugural>.

¹⁹ Fla. Stat. Section 14.28 (2008)

APPENDIX A
FLORIDA'S SYSTEM OF DISFRANCHISEMENT
Key Constitutional and Statutory Provisions

FLORIDA CONSTITUTION

ARTICLE IV
EXECUTIVE POWERS
Section 8. Clemency.

(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 two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

ARTICLE VI
SUFFERAGE AND ELECTIONS
Section 4. Disqualifications.

(a) 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 or removal of disability.

FLORIDA STATUTES

Voting Rights Ban and RCR Processing:

14.28 Executive clemency.--All records developed or received by any state entity pursuant to a Board of Executive Clemency investigation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such records may be released upon the approval of the Governor.

940.05 Restoration of civil rights.--Any person who has been convicted of a felony may be entitled to the restoration of all the rights of citizenship enjoyed by him or her prior to conviction if the person has:

- (1) Received a full pardon from the Board of Executive Clemency;
- (2) Served the maximum term of the sentence imposed upon him or her; or
- (3) Been granted his or her final release by the Parole Commission.

940.01 Clemency; suspension or remission of fines and forfeitures, reprieves, pardons, restoration of civil rights, and commutations.--

(1) Except in cases of treason and in cases when impeachment results in conviction, the Governor may, by executive order filed with the Secretary of State, suspend collection of fines and forfeitures, grant reprieves not exceeding 60 days, and, with the approval of two members of the Cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

(2) In cases of treason, the Governor may grant reprieves until adjournment of the regular session of the Legislature convening next after the conviction, at which session the Legislature may grant a pardon or further reprieve; otherwise the sentence shall be executed.

940.03 Application for executive clemency.--When any person intends to apply for remission of any fine or forfeiture or the commutation of any punishment, or for pardon or restoration of civil rights, he or she shall request an application form from the Parole Commission in compliance with such rules regarding application for executive clemency as are adopted by the Governor with the approval of two members of the Cabinet. Such application may require the submission of a certified copy of the applicant's indictment or information, the judgment adjudicating the applicant to be guilty, and the sentence, if sentence has been imposed, and may also require the applicant to send a copy of the application to the judge and prosecuting attorney of the court in which the applicant was convicted, notifying them of the applicant's intent to apply for executive clemency. An application for executive clemency for a person who is sentenced to death must be filed within 1 year after the date the Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later.

940.061 Informing persons about executive clemency and restoration of civil rights.--The Department of Corrections shall inform and educate inmates and offenders on community supervision about the restoration of civil rights and assist eligible inmates and offenders on community supervision with the completion of the application for the restoration of civil rights.

944.292 Suspension of civil rights.--

(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.

(2) This section shall not be construed to deny a convicted felon access to the courts, as guaranteed by s. 21, Art. I of the State Constitution, until restoration of her or his civil rights.

944.293 Initiation of restoration of civil rights.-- With respect to those persons convicted of a felony, the following procedure shall apply: Prior to the time an offender is discharged from supervision, an authorized agent of the department shall obtain from the Governor the necessary application and other forms required for the restoration of civil rights. The authorized agent shall assist the offender in completing these forms and shall ensure that the application and all necessary material are forwarded to the Governor before the offender is discharged from supervision.

951.29 Procedure for requesting restoration of civil rights of county prisoners convicted of felonies.--

(1) With respect to a person who has been convicted of a felony and is serving a sentence in a county detention facility, the administrator of the county detention facility shall provide to the prisoner, at least 2 weeks before discharge, if possible, an application form obtained from the Parole Commission which the prisoner must complete in order to begin the process of having his or her civil rights restored.

(2) This section shall not apply to prisoners who are discharged from a county detention facility to the custody or control of the Department of Corrections.

Removal from Voter Rolls:

98.075 Registration records maintenance activities; ineligibility determinations.--

.....

(5) **FELONY CONVICTION.--**The department shall identify those registered voters who have been convicted of a felony and whose rights have not been restored by comparing information received from, but not limited to, a clerk of the circuit court, the Board of Executive Clemency, the Department of Corrections, the Department of Law Enforcement, or a United States Attorney's Office, as provided in s. 98.093. The department shall review such information and make an initial determination as to whether the information is credible and reliable. If the department determines that the information is credible and reliable, the department shall notify the supervi-

sor and provide a copy of the supporting documentation indicating the potential ineligibility of the voter to be registered. Upon receipt of the notice that the department has made a determination of initial credibility and reliability, the supervisor shall adhere to the procedures set forth in subsection (7) prior to the removal of a registered voter's name from the statewide voter registration system.

(7) PROCEDURES FOR REMOVAL.--

(a) If the supervisor receives notice or information pursuant to subsections (4)-(6), the supervisor of the county in which the voter is registered shall:

1. Notify the registered voter of his or her potential ineligibility by mail within 7 days after receipt of notice or information. The notice shall include:

a. A statement of the basis for the registered voter's potential ineligibility and a copy of any documentation upon which the potential ineligibility is based.

b. A statement that failure to respond within 30 days after receipt of the notice may result in a determination of ineligibility and in removal of the registered voter's name from the statewide voter registration system.

c. A return form that requires the registered voter to admit or deny the accuracy of the information underlying the potential ineligibility for purposes of a final determination by the supervisor.

d. A statement that, if the voter is denying the accuracy of the information underlying the potential ineligibility, the voter has a right to request a hearing for the purpose of determining eligibility.

e. An instruction to the voter that, if further assistance is needed, the voter should contact the supervisor of elections of the county in which the voter is registered.

3. If a registered voter fails to respond to a notice pursuant to subparagraph 1. or subparagraph 2., the supervisor shall make a final determination of the voter's eligibility. If the supervisor determines that the voter is ineligible, the supervisor shall remove the name of the registered voter from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

4. If a registered voter responds to the notice pursuant to subparagraph 1. or subparagraph 2. and admits the accuracy of the information underlying the potential ineligibility, the supervisor shall make a final determination of ineligibility and shall remove the voter's name from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

5. If a registered voter responds to the notice issued pursuant to subparagraph 1. or subparagraph 2. and denies the accuracy of the information underlying the potential ineligibility but does not request a hearing, the supervisor shall review the evidence and make a final determination of eligibility. If such registered voter requests a hearing, the supervisor shall send notice to the registered voter to attend a hearing at a time and place specified in the notice. Upon hearing all evidence presented at the hearing, the supervisor shall make a determination of eligibility. If the supervisor determines that the registered voter is ineligible, the supervisor shall remove the voter's name from the statewide voter registration system and notify the registered voter of the supervisor's determination and action.

(b) The following shall apply to this subsection:

1. All determinations of eligibility shall be based on a preponderance of the evidence.
2. All proceedings are exempt from the provisions of chapter 120.
3. Any notice shall be sent to the registered voter by certified mail, return receipt requested, or other means that provides a verification of receipt or shall be published in a newspaper of general circulation where the voter was last registered, whichever is applicable.
4. The supervisor shall remove the name of any registered voter from the statewide voter registration system only after the supervisor makes a final determination that the voter is ineligible to vote.
5. Any voter whose name has been removed from the statewide voter registration system pursuant to a determination of ineligibility may appeal that determination under the provisions of s. 98.0755.
6. Any voter whose name was removed from the statewide voter registration system on the basis of a determination of ineligibility who subsequently becomes eligible to vote must reregister in order to have his or her name restored to the statewide voter registration system.

Employment:

112.011 Felons; removal of disqualifications for employment, exceptions.--

(1)(a) Except as provided in s. 775.16, a person shall not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person may be denied employment by the state, any of its agencies or political subdivisions, or any municipality by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought.

(b) Except as provided in s. 775.16, a person whose civil rights have been restored shall not be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a license, permit, or certificate is required to be issued by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person whose civil rights have been restored may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

(2)(a) This section shall not be applicable to any law enforcement or correctional agency.

(b) This section shall not be applicable to the employment practices of any fire department relating to the hiring of firefighters. An applicant for employment with any fire department with a prior felony conviction shall be excluded from employment for a period of 4 years after expiration of sentence or final release by the Parole Commission unless the applicant, prior to the expiration of the 4-year period, has received a full pardon or has had his or her civil rights restored.

(c) This section shall not be applicable to the employment practices of any county or municipality relating to the hiring of personnel for positions deemed to be critical to security or public safety pursuant to ss. 125.5801 and 166.0442.

(3) Any complaint concerning the violation of this section shall be adjudicated in accordance with the procedures set forth in chapter 120 for administrative and judicial review.

APPENDIX B

SUMMARY OF 2007 CHANGES TO FLORIDA RULES OF EXECUTIVE CLEMENCY

The revised Rules of Executive Clemency adopted by the Board of Executive Clemency on April 5, 2007, created three primary levels of approval for restoration of civil rights, depending on the nature of the felony conviction.²⁰ For all three levels, to be eligible for civil rights restoration, individuals must first complete all terms of their sentences and supervision, pay court-ordered restitution (if any), and have no pending charges against them.

Under Level 1, civil rights are restored without a hearing for those individuals with past felony convictions that are considered “non-violent.” Although under the Clemency Rules, individuals need not submit RCR paperwork if their offenses fall in the Level 1 category and approval of Level 1 cases has been characterized “automatic,” state officials acknowledge that state records and systems are incomplete and imperfect, and some individuals in the

Level 1 category will get their civil rights restored only if they affirmatively initiate contact with the Office of Executive Clemency.²¹

Individuals convicted of more severe crimes, except murder and sex offenses, fall into the Level 2 RCR processing category. Those individuals convicted of murder or sex offenses, sexual predators and those not approved in Level 1 or 2, are eligible for RCR consideration under the Level 3 category. These individuals must undergo a full investigation and their case must be heard at a Clemency Board hearing. The Clemency Board meets only four times each year, and only in Tallahassee.

The complete Florida Rules of Executive Clemency can be found at <https://fpc.state.fl.us/Policies/ExecClemency/ROEC04052007.pdf>.

²⁰ In addition to the three levels of RCR approval that are based on the severity of the felony offense, individuals who remain crime and arrest free for 15 years after completion of sentence and supervision may have their civil rights restored without a hearing. Rule 10.B.

²¹ In the months after the adoption of the April 2007 Clemency Rule changes, clemency aides and Florida Department of Corrections officials readily acknowledged that the Corrections Department records that are transmitted to the Parole Commission for Level 1 processing are incomplete and, not surprisingly, the records are especially incomplete for older convictions.



The ACLU of Florida is a member of the Florida Rights Restoration Coalition.

