

April 4, 2019

DELIVERED VIA EMAIL

State Affairs Committee
Florida House of Representatives
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399

RE: Written Testimony in Opposition – HB 7089

Dear Chairman Ingoglia and members of the committee:

On behalf of more than 130,000 members and supporters state-wide, the American Civil Liberties Union (ACLU) of Florida provides this written testimony in opposition to HB 7089. We respectfully request that this guidance be included in the record of the meeting and made available to the public in the committee packet/record meeting notes.

Further, we respectfully request that you oppose this legislation for the reasons detailed below.

Background

On November 6, 2018, Florida voters approved Amendment 4, the Voting Restoration Amendment, with a vote of 64.55% in support. The Amendment's passage reflects the clear will of the people to grant a second chance to individuals with prior felony convictions who have paid their debt to society and recognizes the paramount importance of the right to vote to those who have made past mistakes and served their time.

We are deeply concerned that HB 7089 is overbroad, vague, violates the separation of powers, and extends far beyond what any reasonable person would conclude the voters intended when they passed Amendment 4; and therefore, is unconstitutional. It is well established that the State may only take action to implement Amendment 4 that supplements, protects, or furthers the availability of voting rights; and may not modify the right in such a fashion that it alters or frustrates the intent of Floridians.

This legislation clearly alters and frustrates the intent of Florida's voters by restricting the eligibility to vote for individuals Floridians clearly intended should have their voting rights back. The bill is deficient in numerous ways, including but not limited to the following:

- Includes too many offenses in the category of 'felony sexual offenses,' including offenses that are not 'sexual offenses' as contemplated by the Amendment;
- Makes a nonsensical distinction between "successful termination" of one's term of supervision and an "unsuccessful termination"—the latter of



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which the legislation defines as when a court, Department of Corrections (DOC), or Florida Commission on Offender Review (FCOR) waives any remaining terms of supervision;

- Conditions restoration of voting rights after completion of probation that includes waiver of any financial obligations (“unsuccessful termination”) on the approval of a third party, most likely a state agency or a victim’s family. This suggests that a state court cannot bestow and enforce its judgment to waive an individual’s financial obligations without the permission of the third party, which is extremely problematic from a separation-of-powers perspective;
- Addresses financial obligations “*arising from a felony conviction.*” (emphasis added), which is an overly broad term that could include anything related to the events surrounding a conviction. This could also lead a court to conclude that “*arising from a felony conviction*” includes financial obligations related to *any* felony conviction, not just the one for which a returning citizen lost their voting rights;
- States that financial obligations that have been converted into civil judgments or civil liens still constitute financial obligations that an individual must satisfy before restoration. This includes attenuated obligations such as the interest accrued on an unpaid amount of a restitution order, and costs and attorney’s fees incurred should a third party seek enforcement of the order. Once financial obligations are converted into civil judgments or liens, they are no longer a part of the terms of one’s sentence pursuant to Florida law;
- Places definitions and requirements in the improper statutory sections;
- Includes community service, residential treatment, work programs, education, batterer’s intervention programs, and any court-ordered special condition of probation in ‘terms of sentence’; none of which was contemplated in Amendment 4, and some of which are FDOC assessments that are “in addition to the cost of supervision directed by the sentencing court” and imposed “at [the department’s] discretion.”

The bill could effectively disenfranchise two categories of returning citizens for life: those with very small financial obligations that they will never be able to pay due to poverty (e.g. someone who owes \$200 but lives on a set income), and those with outstanding financial obligations for non-violent property crimes (e.g. someone who is dutifully paying monthly installments on a multi-million dollar restitution order). Consequently, this bill *maintains* lifetime disenfranchisement for non-violent relatively low-level offenses, and is, therefore, contrary to voters’ will expressed in Amendment 4.

Amendment 4 is Self-Executing

As we have previously stated, Amendment 4 is self-executing in that the mandatory provisions of the amendment are effective on the implementation date (Jan. 8, 2019). The Amendment altered Florida Constitution Article VI, Section 4, disqualifications, to state as follows:

- (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. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.
- (b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights. [...].



That language is specific and unambiguous. As the Florida Supreme Court stated in its unanimous opinion approving the Amendment for placement on the ballot, “Read together, the title and summary would reasonably lead voters to understand that the chief purpose of the amendment is to ***automatically restore voting rights to felony offenders***, except those convicted of murder or felony sexual offences, upon completion of all terms of their sentence.” *Advisory Opinion to the Attorney General Re: Voting Restoration Amendment*, 215 So. 3d 1202, 1208 (Fla. 2017) (emphasis added).

Since these mandatory provisions are in the Florida Constitution, the Legislature does not need to pass implementing legislation for the Amendment’s terms to be in effect. That said, the Legislature should exercise its normal and proper oversight function of relevant state agencies to ensure that they implement the Amendment in accordance with the will of Florida’s voters and without delay.

Florida law makes clear that the burden is on the state, not the individual, to establish if a voter is ineligible by using current administrative practices, databases and resources as defined in Chapter 98 and other relevant provisions of the Florida Statutes. The existing provisions of Chapters 97 and 98 of the Florida Statutes provide the Department of State, Division of Elections (the “Department”) with sufficient authority to coordinate across state and local agency databases to identify impacted individuals, to promptly and efficiently register to vote those individuals who wish to do so, and to confirm their eligibility in the same way the Department confirms the eligibility of all other Florida residents when they complete a voter registration application. The Secretary of State’s office is required by Chapter 98 of the Florida Statutes to provide guidance to relevant state and local agencies on the proper administration of voter registration for this newly enfranchised population of Florida’s citizens.

For this reason, as a key stakeholder in the passage of Amendment 4, we have requested that the Secretary take immediate administrative action to coordinate

with relevant state and local agencies on the following urgent topics: Amendment 4 is self-executing and needs no further implementing legislation; legal financial obligations owed by impoverished people should not be a barrier to the right to vote; and the narrowly defined categories of murder and felony sexual offenses as contemplated by the electorate are the only categories of offenses that should be excluded from rights restoration.

Conclusion

In closing, we appreciate your stated desire to ensure that the will of the people is implemented as smoothly as possible. Florida's citizens spoke clearly on election day – 1.4 million disenfranchised individuals deserve a second chance. This home-grown citizen's initiative will only be thwarted by this legislation and we urge the committee to oppose it.



Thank you for your consideration of the above and please do not hesitate to contact me at kbailey@aclufl.org (786) 363-2713, or Kara Gross, ACLU of Florida Legislative Director (kgross@aclufl.org), if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Kirk Bailey". The signature is written in a cursive, flowing style.

Kirk Bailey
Political Director