April 22, 2019 DELIVERED VIA EMAIL

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

RE: Written Testimony in Opposition – HB 7089

Dear Representative:

On behalf of more than 130,000 members and supporters statewide, 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.

ACLU Florida

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Kirk Bailey
Political Director

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;

- 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;

- 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;

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- Language at line 129-130 apparently meant to mirror Amendment 4 misstates the language of Amendment 4. The comma after 'sentence' should be removed and the provision should read "Art. VI of the State Constitution upon completion of all terms of sentence including probation or parole."

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).

If a constitutional amendment is self-executing, that does not merely mean that the constitutional provision is effective on its own. The word "self-executing" is a legal term that *constrains the legislature*; namely by restricting its ability to pass legislation that "modif[ies]" the right conferred by the constitutional provision in any way that "alters or frustrate[s] the intent of the framers and the people." *Browning v. Fla. Hometown Democracy, Inc.*, 29 So. 3d 1053, 1064 (Fla. 2010). The Florida Supreme Court has stated that constraining the legislature's authority in this way is "critical to prevent the Legislature from nullifying the will of the people as expressed in the Constitution," *id.*, which is "the most sacrosanct of all expressions of the people," *Fla. Hosp. Waterman, Inc. v. Buster,* 984 So. 2d 478, 485-86 (Fla. 2008). In other words, if the legislature diminishes or reduces the scope of the rights guaranteed by Amendment 4 in any way, it is acting unlawfully pursuant to rules outlined by the Florida Supreme Court. The legislature agrees that Amendment 4 is self-executing, which means that—in addition to ensuring that returning citizens can register with their respective Supervisors of Elections—the legislature also cannot pass any legislation that would reduce A) the rights guaranteed under Amendment 4, or B) the number of people to whom they are guaranteed.

Both the courts and the Legislature are bound by the plain language of Amendment 4. See *State v. Ruiz*, 863 So. 2d 1205, 1209 (Fla. 2003) ("Even when the court is convinced the Legislature really meant and intended something not expressed" in the statute, the court "will not deem itself authorized to depart from the plain meaning of the [statutory] language which is free from ambiguity."). A court will not look at evidence of intent unless the constitutional language is ambiguous. See *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400 (Fla. 1992) ("[T]he law is settled that when constitutional language is precise, its exact letter must be enforced and extrinsic guides to construction are not allowed to defeat the plain language."); *see also State ex rel. West v. Gray,* 74 So. 2d 114 (Fla. 1954); *City of Jacksonville v. Continental Can Co.*, 113 Fla. 168, 151 So. 488 (1933). Ambiguity is an absolute prerequisite to judicial construction, *Smith*, 607 So. 2d. The plain meaning of the text controls here because there is no ambiguity; neither the sponsors' testimony before the Supreme Court on a separate matter, nor comments on websites or other media related to Amendment 4 during the 2018 election cycle, are dispositive on the question of the effect of the new constitutional language. For that, the courts will look to the plain language of the Amendment 4, and so must the Legislature.

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 Florida House of Representatives to oppose it.

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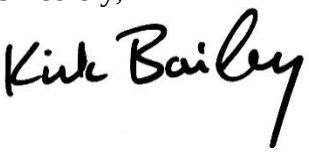
Thank you for your consideration of the above and please do not hesitate to contact me at kbailey@aclufl.org (786) 363-2713, or Kara Gross, ACLU of Florida Legislative Director (kgross@aclufl.org), if you have any questions or would like any additional information.

Sincerely,



Kirk Bailey
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