April 22, 2019

DELIVERED VIA EMAIL

Senate Rules Committee
Florida Senate
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399

RE: Written Testimony – SB 7086

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Kirk Bailey
Political Director

Dear Chair Benacquisto 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 regarding key provisions of SB 7086. We respectfully request that this testimony be included in the record of the meeting and made available to the public in the committee packet/record meeting notes.

Further, while we recognize the thoughtful approach of the Senate and the significant progress made on this legislation to make it consistent with the terms of Amendment 4, we respectfully request that you oppose this legislation as written or amend it consistent with the concerns expressed 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 SB 7086 is overbroad and extends far beyond the plain language of Amendment 4 or 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 an initiative approved by voters that supplements, protects, or furthers the purposes of that initiative, in this case the availability of voting rights; and may not modify the right in such a fashion that it alters or frustrates the intent of Floridians.

Analysis of SB 7086

Key provisions of this legislation alter and frustrate 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 as follows:

Definition of Offenses – Murder

The bill's definition of "murder**"** (lines 294-302, Brandes Amendment) adopts the legal definition of "murder" in F.S. 782.04 (1) and (2) and comports with common parlance and lay persons' understanding of the term. In our view, this is consistent with the language of Amendment 4. That said, some of the offenses in this section include crimes that are outside of the statutory provisions defining "murder" and lack a necessary element of the crime of murder — either a killing or the requisite finding of intent, as follows:

- **Killing of unborn child by injury to mother** (F.S. 782.09) (Line 299 Brandes Amendment): This crime involves injuring a pregnant woman, resulting in her loss of pregnancy. There is no killing required for this crime, so this provision is inconsistent with the plain language of Amendment 4 and should be removed.

- **Providing Material Support for Terrorism or Terrorist Organizations** (F.S. 775.33(4) (at line 297 Brandes Amendment): This offense involves providing material support or resources for terrorism or to terrorist organizations that results in death or serious bodily injury. While illegal and unconscionable, providing material support to a terrorist organization that results in serious bodily injury is not murder. To the extent providing such assistance to a terrorist organization results in a death, presumably the perpetrator(s) could be charged with murder, and their voting rights would not be restored upon completion of sentence. As written, however, this provision is inconsistent with the plain language of Amendment 4 and should be removed.

Completion of Sentence

We remain concerned that the bill's definition of "completion of sentence" (lines 258 – 285, Brandes Amendment) is overly broad and includes obligations not contemplated in the text of Amendment 4. It also raises constitutional concerns.

- The bill includes payment of all restitution, even if it has been converted to a **civil lien**. (Lines 271-273 Brandes Amendment) ("regardless of whether such restitution is converted into a civil lien"). Once restitution is converted into a *civil* lien, it is no longer part of a *criminal* penalty or enforceable through a criminal court.

Moreover, conditioning restoration on an indigent person's ability to pay financial obligations extends disenfranchisement based solely on poverty and may violate the 14th or 24th Amendments. More broadly, SB 7086 will result in *lifetime* disenfranchisement for two large categories of returning citizens—1) indigent

individuals without the means to pay their financial obligations immediately, even if they are adhering to a payment plan, and 2) offenders who have committed property crimes and who are facing massive, sometimes multi-million dollar restitution obligations. SB 7086, then, would create two classes of returning citizens: a group wealthy enough to get their voting rights back and another group too poor to get their voting rights back. These results of the legislation would be a grave injustice and unconstitutional.

Other Provisions

Incorporating Amendment 4 language (at line 250 Brandes Amendment**):** In this section, which apparently mirrors the language of Amendment 4, there should not be a comma after "sentence" and before "including parole or probation." The line should read "or her sentence including parole or probation."

Supervisor of Elections verifies completion of sentence (Lines 303-308 Brandes Amendment): the placement of responsibility on Supervisors of Election to verify an individual's completion of sentence will likely cause massive confusion, lead to due process concerns as implemented, and will surely hinder registrations. Further, the language assigning responsibility is very vague and likely conflicts with current statutes regarding registration office, officers and procedures found at Florida Statutes Chapter 98. We encourage you to remove this provision.

Voting Rights Work Group (lines 426 – 487 Brandes Amendment): while we agree with the notion of a Work Group, we are concerned that the members of the group do not include any formerly incarcerated individuals with direct experience with the criminal justice system or the challenges of reentry after their incarceration, including the restoration of civil rights such as voting. We encourage the committee to amend the bill to include two formerly incarcerated individuals as members of the Work Group.

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.

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 as written or amend it consistent with this testimony.

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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