



March 21, 2019

Florida House of Representatives
513 The Capitol
402 South Monroe Street
Tallahassee, FL 32399

Via email and U.S. mail

Members of the Florida House of Representatives:

Campaign Legal Center (“CLC”) writes to urge the Florida Legislature to reject House Bill 7089 (2019) (“HB 7089”) regarding voting rights restoration as drafted. While Article VI, Section 4 of the Florida Constitution is self-executing, some legislation aimed at improving its administration could be helpful. This bill is not that helpful legislation. CLC has extensive experience in the field of rights restoration, including litigation, community education, direct services, and policy advising. Based on our experience, the current bill contains several provisions that will create additional confusion among voters and complicate the administration of rights restoration for eligible voters and election officials. In addition, the bill as drafted will frustrate the will of Florida’s voters by preventing the restoration of voting rights for many individuals eligible to vote pursuant to the newly amended Florida Constitution. Indeed, the bill will impose permanent disenfranchisement on otherwise eligible individuals who face insurmountable debt because of their convictions.

We urge you to consider the following changes to HB 7089 to avoid the pitfalls that we have identified through our work in other states and streamline the process of rights restoration for eligible Floridians. Specifically, we urge the Florida House of Representatives to reconsider the provisions of HB 7089 pertaining to (1) repayment of fines, fees, and other financial obligations associated with felony sentences; (2) the definition of “completion” of sentence; (3) data sharing between the Departments of State and Corrections; and (4) the content of the voter registration form.

I. CLC and Rights Restoration

CLC is a nonpartisan, nonprofit legal organization based in Washington, D.C., that works to strengthen American democracy at all levels of government. Among other activities, CLC engages in local, state, and federal actions to ensure the political

process is accessible to all eligible citizens, resulting in a representative, responsive, and accountable government. In furtherance of that mission, CLC conducts research, publishes reports and articles, provides expert analysis to the media, and engages in litigation throughout the country regarding voting rights, campaign finance, redistricting, and electoral ethics.

With respect to felony disenfranchisement and rights restoration specifically, CLC conducts litigation to expand access to the right to vote, administrative advocacy to correct and clarify official information, and public education and outreach to affected communities regarding rights restoration opportunities. Over the past year, CLC has engaged in policy advocacy and public outreach related to rights restoration in Alabama, Arizona, and Nevada, among other states. CLC is litigating a felony disenfranchisement case in federal court in Alabama, *Thompson v. Merrill* (M.D. Ala., No. 2:16-cv-00783). CLC has also developed a web tool at RestoreYourVote.org to provide residents of all fifty states and the District of Columbia with accurate, up-to-date information on the eligibility requirements and processes for rights restoration in their state.

Based on our extensive experience with felony disenfranchisement and rights restoration issues, in addition to our experience working on voting rights issues more broadly, we urge the Florida House to consider the following recommendations to HB 7089.

II. Financial Obligations

Requiring the payment of financial obligations as a condition of voting rights restoration is an unlawful wealth restriction on the right to vote. *See Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966). Such requirements differentiate between voters and non-voters not based on their criminal conviction but instead on their ability to pay fines and fees. *See Thompson v. Alabama*, 293 F.Supp.3d 1313, 1332 (M.D. Ala. 2017) (denying motion to dismiss claim challenging legal financial obligations requirement). Thus, to ensure equal access to the right to vote regardless of wealth, the Legislature should comply with Article VI, Section 4 of the Florida Constitution by requiring completion of any term of incarceration, parole, and/or probation, but not payment of fines and fees. This is consistent with the Constitution's plain language because the end of supervision—*e.g.* parole or probation—signals the criminal justice system's determination that the sentence has been completed. Moreover, probation typically includes conditions requiring individuals to pay the financial obligations like restitution that are part of their criminal sentence, at least in so far as they are able. Thus, the end of probation or supervision is an appropriate marker of the end of a sentence.

HB 7089's language sweeps beyond a credible interpretation of Article VI, Section 4 of the Florida Constitution, which requires individuals to "complete all terms of their sentence including parole or probation." Floridians did not intend "sentence" to extend to financial obligations that have never before been part of Florida's definition of a criminal sentence. Indeed, under current Florida law, the term "sentence" *only* includes terms included in "the pronouncement by the court of the penalty imposed on a defendant for the offense of which the defendant has been

adjudged guilty.” Fla. R. Crim. P. 3.700; *see also* Fla. Stat. § 960.291 (“Sentence’ means the court-imposed sentence of a convicted offender.”); 16 Fla. Prac. Sentencing § 1:27 (2018-2019 ed.) (“Every sentence or other final disposition of the case must be pronounced in open court, including, if available at the time of sentencing, the amount of jail time credit the defendant is to receive.”). Thus, completion of “sentence” is not an amorphous concept that can be redefined by the Legislature to suit its purposes. The only financial obligations that can be required for voting rights restoration are those imposed by the court as a penalty at the time of sentencing.

Yet, HB 7089’s language goes much further, purporting to include all legal financial obligations that “aris[e] from a felony sentence.”¹ HB 7089, § 98.075(5)(a)(3)(c). This language would encompass many administrative and civil fines, fees, and penalties that are not part of the criminal punishment for the offense and are not ordered by the sentencing court. Indeed, the proposed bill contemplates the inclusion of fines and fees imposed by “a court, the department [of corrections], or the Florida Commission on Offender Review.” HB 7089, § 98.075(5)(a)(3)(b). Financial obligations that “arise from” a felony sentence but are not ordered by the court at sentencing are not included in the “terms of [a] sentence.” *See Forbes v. Singletary*, 684 So. 2d 173, 174 (Fla. 1996) (“Sentencing is the obligation of the court rather than DOC.”).

The Florida Code includes numerous financial obligations that arise after a sentence has been imposed by a court. For example, a late fee of up to 40% can be levied on any court-related financial obligations that remain unpaid for 90 days or more when the debt is turned over to a private collector. Fla. Stat. § 938.35. Additionally, a person who owes a criminal debt is required to pay the administrative costs of enforcing that judgment, including but not limited to “postage, copying, docketing fees, service fees, court reporter’s fees, and reimbursements for the costs of processing bench warrants and pickup orders,” as well as “reasonable attorneys fees . . . assessed at the court’s discretion.” Fla. Stat. § 938.30(10). Civil liens may also be imposed that attach against the real or personal property owned by an individual who owes debt as a result of a criminal conviction; such liens continue for 20 years after the date of entry and carry interest determined by the Chief Financial Officer of Florida—imposing an additional administrative cost that is not part of the criminal punishment for the offense. Fla. Stat. §§ 938.30(6), 960.291–295. These costs are distinct from financial penalties ordered by the court at the time of sentencing, and therefore cannot be considered part of an individual’s sentence.

HB 7089’s treatment of legal financial obligations sweeps too broadly in another manner as well. It purports to include in “completion of all terms of [a] sentence,” financial obligations that have been reduced to *civil* judgments pursuant to Fla. Stat. § 775.089(5)(a)(3)(c). On its face, this definition is not plausible. When a financial obligation is converted to a civil judgment, it is no longer part of the criminal sentence.

¹ As a clerical matter, CLC notes that HB 7089 contains a mistaken reference to the section of the Florida Code that defines restitution. HB 7089 refers to Section 779.089; the correct reference should be to Section 775.089.

In the aggregate, these financial obligations can form an insurmountable barrier for otherwise eligible citizens with felony convictions seeking to restore their voting rights, as the Florida Constitution now promises them, while providing wealthy individuals with felony convictions a fast lane to have their rights restored simply because they possess the means to quickly satisfy their financial obligations before administrative fees and interest can accrue. The Legislature cannot attempt to retroactively broaden the definition of a “sentence” within Article VI, Section 4 of the Florida Constitution for purposes of creating additional barriers to the right to vote. It cannot define “sentence” for purposes of rights restoration in a manner that does not comport with the statutory definition of “sentence” when the Rights Restoration Amendment was passed. Doing so would thwart the will of the 65 percent of Floridians who voted for the Amendment.

III. Conditions of Sentence

CLC also has serious concerns about the scope of what constitutes “completion” of a felony sentence as defined in HB 7089. Specifically, defining completion of sentence to include completion of community service verified by a non-profit organization as described in Section 948.031 or completion of an educational requirement under Section 948.037 effectively outsources the determination of whether an individual has regained their right to vote to a non-governmental entity. Making the right to vote contingent on decisions made by non-governmental entities denies Floridians due process and could make such entities liable for actions under 42 U.S.C. § 1983.²

IV. Data Sharing

With respect to the central verification system contemplated by the proposed changes to Fla. Stat. § 98.045(4)-(7), the Secretary of State should maintain an accurate and up-to-date database of *only* those individuals whose felony convictions still pose a barrier to their voting rights after Amendment 4 (*i.e.* those individuals with incomplete sentences or with ineligible convictions who have not had their voting rights restored). This database should be updated with information that the Secretary of State collects from the Department of Corrections and Clerks of Court of all counties. The database should be available to county Election Supervisors, who in turn should be required to access the database upon request by any individual who wants to verify their eligibility status prior to registration.

² See *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937 (1982) (holding that the deprivation of a federal right may be attributed to the state if it results from a state-created rule and the party charged with the deprivation can be characterized as a state actor); *West v. Atkins*, 487 U.S. 42 (1988) (finding that a private entity was a state actor when the state delegated its authority to the private entity); *N. Ga. Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975) (finding state action where the state creates the legal framework governing conduct by a private entity).

The House should also include protections to ensure that stale data from other agencies is not relied upon by election administrators to remove eligible voters from the rolls. As we have seen previously in Florida, *United States v. Florida*, 870 F. Supp. 2d 1346, 1347-48 (N.D. Fla. 2012), and more recently in Texas, *Texas League of United Latin American Citizens v. Whitley* (S.D. Tex., No. 5:19-cv-00074), the use of stale data from other agencies for the purpose of purging voters from the rolls is fraught with risk of constitutional and statutory violations.

V. Voter Registration Form

CLC supports the proposed changes to the voter registration form in the proposed bill. However, we would encourage the House to also require that the Secretary of State and Elections Division include language on the voter registration form (as well as on the online voter registration portal) that plainly states the criteria for when a person's voting rights have been restored.

VI. Conclusion

CLC recommends that, for purposes of voting rights restoration, completion of sentence only include the completion of any term of incarceration, parole, and/or probation. This definition will provide equitable access to the right to vote for Floridians reentering their communities. It will provide the second chance that Floridians voted for in November. And it will do so in a constitutional manner that does not hinge the right to vote on wealth or the determinations of non-governmental agencies.

To the extent that this definition provides *more* access to the right to vote than Article VI, Section 4 of the Constitution—although we believe it does not—the Legislature certainly has the separate authority to restore voting rights to people with convictions beyond the dictates of the Florida Constitution. What this Legislature cannot do—but HB 7089 seeks to do—is to deny voting rights restoration to those to whom the Constitution plainly applies. Article VI, Section 4 is a floor not a ceiling.

Based on our experience working on felony disenfranchisement and rights restoration, we believe that implementing these recommendations will not only create a more equitable system but also minimize confusion among voters and facilitate the administration of the rights restoration process for election officials. We would be happy to discuss any of these issues further in order to ensure that the Rights Restoration Amendment is effectively implemented. Please feel free to contact Danielle Lang at the phone number or email address listed below.

Respectfully submitted,

/s/Danielle Lang

Danielle Lang
Co-Director, Voting Rights and Redistricting

Tel: 202-856-7911
Email: dlang@campaignlegal.org
Jonathan Diaz
Legal Counsel, Voting Rights
Email: jdiaz@campaignlegal.org
Blair Bowie
Skadden Foundation Fellow/Law Clerk
Email: bbowie@campaignlegal.org
Campaign Legal Center
1101 14th St. N.W., Suite 400
Washington, D.C. 20005