



March 22, 2019

Secretary of the Senate
Suite 405, The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Via email and U.S. mail

Members of the Florida Senate:

Campaign Legal Center (“CLC”) writes to urge the Florida Legislature to reject Senate Bill 7086 (2019) (“SB 7086”) 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 SB 7086 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 Senate to reconsider the provisions of SB 7086 pertaining to (1) repayment of fines, fees, and other financial obligations associated with felony sentences; (2) the definition of “completion” of sentence; (3) the definition of “murder”; (4) data sharing between the Departments of State and Corrections; and (5) 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 Senate to consider the following recommendations to SB 7086.

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. To the extent that such financial obligations persist past the point at which parole and probation are complete, they should not impede the rights restoration process. Pursuant to the plain language of Article VI, Section 4, an eligible individual's voting rights should be automatically restored upon the conclusion of their probation or parole, and this legislation should clearly identify that as the time at which a person's voting rights are restored.

SB 7086's treatment of legal financial obligations sweeps too broadly with respect to its treatment of financial obligations. The bill 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.

In the aggregate, 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. 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 SB 7086. The bill includes “[f]ulfillment of *any* term ordered by the court as a condition of the sentence” (emphasis added) within its definition of “completion of all terms of sentence.” This definition is both vague and overbroad in that it may include requirements that are administered by non-governmental third parties. 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. § 1983.¹

IV. Murder

CLC is similarly concerned about SB 7086’s overbroad definition of “murder.” As detailed below, SB 7086’s definition of “murder” for purposes of rights restoration includes several additional offenses that were clearly not contemplated by the voters who approved the Rights Restoration Amendment in November 2018. Just as with completion of sentence, the Legislature cannot now seek to expand through legislation the definition of “murder” for purposes of the Rights Restoration Amendment, which

¹ 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).

is now part of the Florida Constitution. The definition of “murder” in the Amendment must be construed in light of the definition available when it was passed. Doing so would thwart the will of Florida voters.

Article VI, Section 4 of the Florida Constitution states that “no person convicted of murder . . . shall be qualified to vote until restoration of civil rights.” The “Homicide” chapter of the Florida criminal statutes includes a wide variety of criminal offenses, but specifically defines “murder” in Section 782.04. SB 7086 purports to exclude from eligibility for rights restoration not only those individuals convicted of the statutory offense of “murder” as defined in Section 782.04, but also those who were convicted of the distinct crimes of “manslaughter” (Section 782.07), “Killing of unborn child by injury to mother” (Section 782.09), and “unnecessary killing to prevent unlawful act” (Section 782.11). These additional crimes are legally distinct from “murder” and, as such, cannot be considered disqualifying for purposes of rights restoration.

SB 7086 also purports to include “an attempt to kill” in the definition of “murder” for purposes of rights restoration. This is plainly outside the scope of the murder exception to automatic rights restoration. Florida law clearly defines “murder” and “criminal attempt” as wholly distinct crimes. Criminal attempt is defined as a separate criminal offense by Fla. Stat. § 777.04, and is therefore legally distinct from the disqualifying offense of “murder” specified in Article VI, Section 4 of the Florida Constitution. Moreover, for purposes of sentencing, the offense of criminal attempt merits a one-level reduction below the applicable ranking under the Criminal Punishment Code offense severity ranking chart for the offense attempted. *See* Fla. Stat. §§ 777.04(4)(a); 921.0022.

Floridians made their intent clear when they voted to exclude individuals convicted of “murder or a felony sexual offense” from the automatic rights restoration process in November 2018. The Legislature cannot now add to that list by expanding the list of disqualifying offenses to include additional crimes, such as manslaughter and criminal attempt. Doing so would clearly run contrary to the will of Florida’s voters and the Florida Constitution.

V. Data Sharing

With respect to the central verification system contemplated by the proposed changes to Fla. Stat. § 98.075, 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 Amendment 4 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.

The Senate 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.

VI. Voter Registration Form

CLC supports the proposed changes to the voter registration form in the proposed bill. However, we would encourage the Florida Senate 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.

VII. 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 SB 7086 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

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