

April 3, 2019

By Email & Certified Mail

State Affairs Committee
Florida House of Representatives
209 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300

Re: Opposition to House Bill 7089 – Voting Rights Restoration

Dear Members of the Committee:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) and the Florida State Conference of the NAACP (“Florida NAACP”), write to express in the strongest possible terms our opposition to proposed House Bill (“HB”) 7089.¹ We are deeply concerned that the enactment of HB 7089 contravenes the self-executing language of Amendment 4 and likely violates federal and other laws.

As nonprofit, nonpartisan civil rights organizations, our aim is to ensure that all voters, particularly Black voters, have equal, meaningful, and non-burdensome access to the one fundamental right that is preservative of all other rights: the right of citizens to access the ballot box and elect candidates of their choice. In this way, the vote is both a tangible measure of what we are and aspire to be as a nation. For these reasons, we, along with other voting rights and pro-democracy groups, enthusiastically supported Amendment 4, the Voting Restoration Amendment ballot measure. The measure reflected the understanding that restoring returning citizens’ voting rights strengthens public safety, reduces recidivism, and builds a healthier democracy for us all.² It is therefore unsurprising why this democracy-enhancing measure generated overwhelming bipartisan support. Indeed, on November 6, 2018, 64.55% of Florida voters voted to approve Amendment 4, which resulted in the largest expansion of the electorate in decades.

Yet HB 7089 is written to significantly undermine and alter the impact of this historic mandate to expand voting rights in Florida. From our understanding, the Criminal Justice Subcommittee voted HB 7089 out of committee, with one amendment to its original language.

¹ An **appendix** to this letter includes a brief description of LDF and Florida NAACP.

² The tendency to define a person as a “felon.” This label, however, is stigmatizing because it reduces a person to a single act, thereby perpetuating negative stereotypes and societal prejudice against that person. *Collateral Damage: America’s Failure to Forgive or Forget in the War on Crime*, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS 1, 31 (May 2014), <https://www.nacdl.org/.restoration/>. To avoid reinforcing these harms, voters who are eligible to have their voting rights restored under Amendment 4 are referred to as returning citizens, which is consistent with Amendment 4’s intent and purpose.



This Subcommittee also referred HB 7089 to the Judiciary and State Affairs Committees for review.³

Although we have serious concerns about several provisions within the bill, we focus your attention on HB 7089’s definitions relating to “completion” of sentence and “terms of sentence” because it is broader and more expansive than what Amendment 4 requires. As explained below, if implemented, HB 7089 would be inconsistent with Amendment 4’s text and purpose and reproduce a two-tiered level of citizenship, disproportionately impacting low-income and communities of color. We therefore urge you to withdraw HB 7089, with no further committee hearings.

First, Amendment 4 is self-executing because its mandatory provisions went into effect on January 8, 2019, its implementation date. Under the amended Florida Constitution, a voting disqualification is stated 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. FLA. CONST. art. IV, § 4.⁴

This language is unambiguous and specific, which allowed voters to understand Amendment 4’s purpose and the scope of “completion” of sentence and “terms of sentence.” Indeed, the Florida Supreme Court unanimously agreed: “the ballot title and summary clearly and unambiguously inform the voters of the chief purpose of the proposed amendment.”⁵ “Read together,” the Court further concluded, “the title and summary would reasonably lead voters to understand the chief purpose of the amendment is to automatically restore voting rights to felony offenders, except those convicted of murder or felony sexual offense, upon completion of all terms of their sentence.”⁶ Amendment 4’s self-executing plain language therefore directly negates the Florida legislator’s purported need to pass implementing legislation.

Because Amendment 4 is self-executing, the Secretary of State is responsible for providing guidance to relevant state and local agencies about properly administering voter registration for newly enfranchised returning citizens who qualify to have their voting rights restored.⁷ To this end, the Secretary of State must take administrative action to coordinate

³ For ease of reference, we reviewed the original filed version entitled PCB CRJ 19-03, along with Representative James Grant’s approved Amendment to the bill entitled PCB CRJ 19-03 a1. Both documents can be accessed at the Florida House of Representative’s weblink about HB 7089 at <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=66272>.

⁴ Amendment 4 also includes two additional provisions, which address exemptions to (a) and term limitations. *Id.* (b)-(c).

⁵ *Advisory Opinion to the Attorney General Re: Voting Restoration Amendment*, 215 So. 1202, 1208 (Fla. 2017) (citations omitted).

⁶ *Id.*

⁷ Fla. Stat. Ann. § 98 (West).

with state and local agencies, including providing guidance that Amendment 4 is self-executing and does not require implementing legislation. This guidance would help ensure that returning citizens are afforded reasonable and unencumbered access to register to vote, which is central to Amendment 4's mandate. These objectives, however, are undermined each day that HB 7089 remains under consideration because it creates unnecessary confusion and uncertainty. For these reasons, we join the administration action recommendations that the Florida Rights Restoration Coalition and other legal non-profits submitted to the Secretary of State on March 11, 2019.⁸

Second, HB 7089 is drafted to resurrect the very same forms of lifetime disenfranchisement that motivated voters' passage of Amendment 4. HB 7089's definitions for "completion" of sentence and "terms of sentence" are inconsistent with Article IV's plain language.⁹ Under Article IV, "voting rights shall be restored upon completion of all terms of sentence including parole or probation."¹⁰ The language reflects the understanding that financial obligations that are not part of a court-ordered sentence do not need to be discharged before a returning citizen can qualify to register to vote. Civil liens stemming from accrued interest of an unpaid attorney's fee amount, for example, are thus not considered part of a returning citizen's sentence. This understanding, which is critical to Amendment 4, is also rooted in Florida law. Under Florida Rules for Criminal Procedure, the term sentence includes only terms by which "*the court of the penalty imposed* on a defendant for the offense of which the defendant has been adjudged guilty."¹¹ To be clear, non-court ordered penalties which can accrue as part of the collateral consequences of being a returning citizen must not be used to effectively keep disenfranchised the very people that voters sought to enfranchise by supporting Amendment 4.

In stark contrast, HB 7089 seeks to expand the meaning of "completion" of sentence to require the full payment of *all* financial obligations—beyond those ordered by a court. Under the proposed definition of financial obligation, it is defined as "a financial obligation arising from a felony conviction." Without any limiting language, the broad and vague language can be expanded to justify *any* monetary obligation resulting from a conviction, including non-court ordered administrative fines, fees, and penalties. Indeed, HB 7089's structure and other proposed provisions further illuminate its broad scope. The Department of Corrections and the Florida Commission on Offender Review, for example, may order

⁸ Letter from Florida Rights Restoration Coalition et. al, to Hon. Laurel Lee, Secretary of State, State of Florida (Mar. 11, 2019) (on file with undersigned). The letter requested the Secretary of State take immediate administrative action to coordinate with relevant state and local agencies on these three topics: (1) Amendment 4 is self-executing and needs no further implementing legislation; (2) legal financial obligations owed by impoverished people should not be a barrier to the right to vote; and (3) murder and felony sexual offenses as defined in the letter are the only offenses that Amendment 4 does not cover.

⁹ See also Letter from Danielle Lang et al., Co-Director of Voting Rights and Redistricting, Campaign Legal Center, to the Florida House of Representatives (Mar. 21, 2019), <https://campaignlegal.org/sites/default/files/201903/CLC%20Letter%20to%20FL%20House%20re%20HB%207089.pdf>.

¹⁰ FLA. CONST. art. IV, § 4.

¹¹ 3.700 (emphasis added).

financial obligations on returning citizens that are separate from their court-ordered sentence, including electronic monitoring supervision costs. Moreover, under Florida law, outstanding legal financial obligations that have been converted into civil judgments or civil liens are not considered part of a returning citizen’s court-ordered sentence. Yet HB 7089 requires returning citizens to fully pay *all* civil financial obligations as a condition to complete his or her sentence under the provisions of Amendment 4.

Equally troubling, CJR3’s term of sentence is defined to encompass monetary costs that were never part of a returning citizen’s original court-imposed sentence. Under the proposed bill’s enumerated terms, returning citizens could not qualify to vote until they paid costs associated with community service, residential treatment, work programs, and any cost of supervision or other monetary obligation under Fla. Stat. Ann. § 948.09. For example, under § 948.09, the Florida Department of Corrections, at its discretion, may require people under its supervision to submit to drug testing and then pay for the test’s costs as part of a rehabilitation program. Neither these enumerated terms, nor the legislator’s discretion to impose new financial obligations under term of sentence, are contemplated by Amendment 4.

Too often, any contact with the criminal justice system creates insurmountable debt for returning citizens. These harms are well-documented and disproportionately borne by low-income and racial minority returning citizens.¹² Indeed, the Florida court system relies on generating revenue from non-court imposed sentencing fees on returning citizens. These fees may subsidize other government functions. In addition to these “user-fees,” a felony conviction often requires the payment of criminal fines, which, standing alone, can be staggering. Returning citizens also bear costs associated with their supervision, including parole and probation. When someone is unable to pay an outstanding financial obligation—whether tied to his or her sentence—counties may pursue aggressive debt collection practices. If someone does not pay his or her fines for ninety days, for example, counties routinely enter into contracts with private debt collection agencies, which may assess up to an additional forty percent surcharge fee in addition to the initial debt someone owed to the courts.¹³

These examples of fines and fees begin to explain why Florida issued more than one billion in felony conviction fines, while only nineteen percent of that money has been paid back per year.¹⁴ In Miami-Dade County, for example, there are more than \$278 million dollars in outstanding court fines from felony convictions.¹⁵ Similarly, to date, there are more than \$195.8 million dollars, which includes interest, in outstanding court fines from felony convictions in Palm Beach County.¹⁶ These fees commonly serve as barriers to civic

¹² Rebekah Diller, *The Hidden Costs of Florida’s Criminal Justice Fees*, THE BRENNAN CENTER FOR JUSTICE (2010), <https://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF&F.pdf?nocdn=1>.

¹³ Fla. Stat. Ann. § 34.045(1)(b).

¹⁴ Daniel Rivero, *Felons Might Have to Pay Hundreds of Millions Before Being Able to Vote in Florida*, WLRN PUBLIC RADIO AND TELEVISION (Jan. 20, 2019), <https://www.wlrn.org/post/felons-might-have-pay-hundreds-millions-being-able-vote-florida>.

¹⁵ *Id.*

¹⁶ *Id.*

participation for many returning citizens. And these obstacles continue to be enacted despite that more than 83 percent of all court-related fines and fees are labeled as “minimal collections expectations.” This means the Clerk of the Courts association does not anticipate receiving a payment on the debt because of the person’s financial status.¹⁷

To further compound these problems, returning citizens endure a series of collateral consequences that serves as barriers to basic necessities, including employment and housing.¹⁸ For example, a returning citizen with a felony conviction may be ineligible for federally subsidized housing.¹⁹ A felony conviction could be used to justify not hiring a returning citizen for a job or denying him or her an apartment or home.²⁰ Failure to pay the above-mentioned fines and fees could result in a returning citizen’s driver’s license being suspended.²¹ Whether individually or collectively, these collateral consequences, combined with many others, reveal the unique challenges returning citizens face during the reentry process.

For these reasons, these barriers are antithetical to Amendment 4’s purpose. Based on the cited outstanding fees, fines, and other court- and supervision-related fees, a majority of returning citizens who are eligible to have their voting rights automatically restored would be blocked under HB 7089. Replacing lifetime disenfranchisement by criminal conviction with lifetime disenfranchisement by debt contravenes Amendment 4’s text and purpose. Equally important, it thwarts the will of Florida voters.

Third, conditioning returning citizens’ right to vote based on their ability to pay violates foundational principles enshrined in the U.S. Constitution. For example, the Equal Protection Clause of the Fourteenth Amendment prohibits restricting a person’s right to vote based on economic status or wealth.²² The Due Process Clause of the Fourteenth Amendment also requires due process of law, including notice and an opportunity to be heard, before depriving an individual of life, liberty, or property. Of course, returning citizens have not been put on notice and had an opportunity to challenge at the time of their sentencing non-court ordered fines and fees that may be a basis for disenfranchisement under the proposed bill. And the Twenty-Fourth Amendment prohibits a state from imposing “a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections” before paying a tax.²³

Despite these constitutional prohibitions, HB 7086 seeks to recreate a two-tiered system of citizens who are able to participate in the most fundamental of American rights—

¹⁷ *Id.*

¹⁸ *Michael Pinar & Anthony C. Thompson, Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. REV. L. & SOC. CHANGE 586 (2005-2006).

¹⁹ *What You Don’t Know Can Hurt You: The Collateral Consequences of a Conviction in Florida*, THE MIAMI-DADE PUBLIC DEFENDER’S OFFICE 1, 27-30 (Apr. 2019), <http://www.pdmiami.com/ConsequencesManual.pdf>.

²⁰ *Id.* at 31-34.

²¹ *Id.* at 21.

²² *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666, 668 (1966).

²³ 380 U.S. 528, 534 (1965).



the right to vote—based, in part, on wealth. To potentially avoid costly and time-consuming legal exposure, at a minimum, you should withdraw HB 7089 and hold no further committee hearings.

The guiding principles motivating the historic passage of Amendment 4 provide the best lens for how to interpret its text and purpose. The effective lifetime disenfranchisement scheme that existed prior to Amendment 4's passage would be resurrected by HB 7089. Under the previous scheme, Florida afforded too much discretion to state officials through the Office of Executive Clemency to determine whether to restore a returning citizens' right to vote. The lifetime ban isolated returning citizens' voices and inflicted harms flowing from an unnecessary punitive law. Plain and simple, it served as a defect in Florida's democracy.

But Florida voters corrected this defect by overwhelmingly voting to approve Amendment 4, removing barriers to political participation. The 1.4 million newly enfranchised returning citizens encompass people eager to foster public discourse, participate in collaborative dialogue, and strengthen our democracy. Amendment 4 provided an opportunity for families, friends, neighbors, and co-workers to publicly endorse second chances, redemption, and reconciliation, including the removal of a Jim Crow vestige. At its core, Amendment 4 serves as a collective call to recognize everyone's intrinsic value and remove impediments to human achievement. The path forward must harness, rather than restrict, this popular mandate to continue building a stronger and more inclusive democracy. That goal can only be accomplished by withdrawing HB 7089.

We ask that you consider this information and extend an invitation to discuss it further with you. We are eager to work with you to ensure that all newly enfranchised citizens have equal access to the fundamental right to vote.

Sincerely,

Leah C. Aden, Deputy Director of Litigation
Sam Spital, Director of Litigation
John S. Cusick, Equal Justice Works Fellow,
Sponsored by the Venture Justice Fund
NAACP LEGAL DEFENSE
& EDUCATIONAL FUND, INC.
40 RECTOR ST., 5TH FL.
NEW YORK, NY 10006
212.965.7715
laden@naacpldf.org



Monique Dixon, Director of State Advocacy &
Deputy Policy Director
NAACP LEGAL DEFENSE
& EDUCATIONAL FUND, INC
700 14th Street, NW, Suite 600
Washington, D.C. 20005
202.682.1300

David Honig, Special Counsel for Civil Rights
Florida State Conference, NAACP
5554 Highway A1A # 301
Vero Beach, FL 32963
202-669-4533
David@davidhonig.org



Appendix

Since its founding in 1940, **LDF** has been a pioneer in the struggle to secure and protect the voting rights of Black people. LDF has been involved in much of the precedent-setting litigation related to securing voting rights for people of color. *See, e.g., Shelby Cty., Ala. v. Holder*, 570 U.S. 529 (2013). LDF uses legal, legislative, public education, and advocacy strategies to promote the full, equal, and active participation of Black people in America's democracy. LDF has been a separate entity from the NAACP, and its state branches, since 1957.

Central to LDF's work has been spearheading litigation, legislation, and education to eradicate felony disenfranchisement laws. In 2010, LDF challenged Washington state's felony disenfranchisement law. *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010) (en banc). Similarly, in 2004, LDF challenged New York's felony disenfranchisement law. *Hayden v. Paterson*, 594 F.3d 150 (2d Cir. 2010). More recently, LDF has submitted amici briefs to support state-based challenges to felony disenfranchisement laws, including *Voice of the Ex-Offender v. State of Louisiana* and *Griffin vs. Pate*.²⁴ In 2016, LDF, along with the Sentencing Project, published *Free the Vote*, a public education guide about the history of felony disenfranchisement laws and their impact on individuals and communities across the United States.²⁵ Through its Prepared to Vote Initiative, LDF regularly provides non-partisan public education materials to assist returning citizens understand their voting rights, including in Alabama, South Carolina, and Texas.

In past years, LDF also has successfully advocated against proposals that restrict access to the ballot box for Florida's voters. In 2011, LDF, along with several other civil rights organizations, urged the Florida Board of Executive Clemency to not further restrict voting rights by requiring returning citizens to apply for the restoration of their civil rights after proposed waiting periods.²⁶ In that same year, LDF, along with other civil rights organizations, successfully challenged Florida's omnibus elections law bill, which severely restricted early voting opportunities in the state and penalized voter registration efforts.²⁷ More recently, in 2018, LDF, along with other civil rights organizations, urged Florida

²⁴ *Louisiana Felony Disenfranchisement Case*, NAACP LDF (Nov. 7, 2017), <https://www.naacpldf.org/press-release/civil-rights-criminal-justice-reform-organizations-file-amicus-brief-in-louisiana-felony-disenfranchisement-case/>; *Iowa Felon Disenfranchisement*, NAACP LDF (Dec. 8, 2015), <https://www.naacpldf.org/press-release/iowas-felon-disfranchisement-law-is-one-of-the-worst-in-nation-time-to-change-says-ldf-in-amicus-brief-to-state-supreme-court/>.

²⁵ *Free the Vote for People with Felony Convictions*, NAACP LDF and THE SENTENCING PROJECT (2016), https://www.naacpldf.org/wp-content/uploads/Free-the-Vote-2016_0.pdf.

²⁶ *Civil Rights Groups Urge Florida Board of Executive Clemency Not to Further Restrict Voting Rights Move Would Harm Voting Fairness in a State With History of Serious Election Problems*, NAACP LDF (Mar. 7, 2011), <https://www.naacpldf.org/press-release/civil-rights-groups-urge-florida-board-of-executive-clemency-not-to-further-restrict-voting-rights/>.

²⁷ *Florida v. United States*, 885 F.Supp.2d 299 (D.D.C 2012).



counties to establish early voting, particular on historically Black colleges and university campuses.²⁸

The **Florida State Conference of the NAACP (“Florida NAACP”)** is the oldest and one of the largest and most significant non-profit civil rights’ organizations in the State of Florida that promotes and protects the rights of Black Americans and other people of color. With adult branches across Florida it has thousands of members who reside in every region of the state. Since its inception, the organization has been involved in numerous voting rights cases and legislative efforts to ensure equal and unfettered access to the right to vote, including, as noted above, challenging discriminatory voting laws like Florida’s attempt in 2012 to severely limit early voting opportunities in the state and the ability of third-party organizations to register voters. Consistent with this mission, Florida NAACP enthusiastically supported Amendment 4 and has worked to ensure its fair and non-discriminatory implementation.

²⁸ *Voting Rights Groups Applaud Florida Election Officials for Providing Student-Accessible Voting, Urge Additional Early Voting Sites on Campuses*, LEAGUE OF WOMEN VOTERS OF FLORIDA (Aug. 30, 2018), <https://www.lwvfl.org/press-releases/voting-rights-groups-applauds-florida-election-officials-for-providing-student-accessible-voting-urge-additional-early-voting-sites-on-campuses/>.