



April 22, 2019

By Email & Certified Mail

Rules Committee
Florida Senate
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Opposition to Senate Bill 7086 – Voting Rights Restoration

Dear Members of the Rules 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 Senate Bill (“SB”) 7086.¹ As we conveyed to the Senate Judiciary Committee on April 8, 2019, we are deeply concerned that the enactment of SB 7086 contravenes the self-executing language of Amendment 4 and likely violates federal and other laws.²

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 more than 1.4 million returning citizens’ voting rights strengthens public safety, reduces recidivism, and builds a healthier democracy for us all.³ It is therefore unsurprising why this democracy-enhancing

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

² Letter from Leah C. Aden, John S. Cusick, et al., NAACP Legal Defense & Educational Fund, Inc., to Members of the Senate Judiciary Committee (Apr. 8, 2019), available at https://www.naacpldf.org/wp-content/uploads/2019-04-07_NAACP-LDF-and-FL-NAACP-Opposition-Letter-to-SB-7086_Final.pdf.

³ There is a 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.



measure generated overwhelming bipartisan support. Indeed, on November 6, 2018, 64.55 percent of Florida voters (*i.e.*, 5.1 million voters) voted to approve Amendment 4, which resulted in the largest expansion of the electorate in decades.

Yet SB 7086 has the potential to significantly undermine and alter the impact of this historic mandate to expand voting rights in Florida. The Criminal Justice Committee voted SB 7086 out of committee, with amendments to its original language. That Committee also referred SB 7086 to the Judiciary and Rules Committees for review.⁴ The Judiciary Committee voted SB 7086 out of committee on April 8, with one additional amendment to its original language.

Although we have serious concerns about several provisions within the current iteration of the bill, we focus your attention on SB 7086’s definitions relating to “completion of all terms of sentence.” These definitions are broader and more expansive than what Amendment 4 requires. And as explained below, if implemented, SB 7086 would be inconsistent with Amendment 4’s text and purpose. It would also reproduce a two-tiered level of citizenship, one that, based on existing data and other evidence, will disproportionately impact low-income and racial minority returning citizens. **We therefore urge you to decline to pass SB 7086 through the Committee and hold no further hearings.**

First, we continue to assert that 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, § 4.⁵

This language is unambiguous and specific and thus allowed voters to understand Amendment 4’s purpose and the scope of “completion of all terms of sentence.” Indeed, the Florida Supreme Court unanimously agreed: “the ballot title and summary clearly

⁴ For ease of reference, we reviewed the original filed version entitled SJ281, along with approved, unapproved, and withdrawn amendments to its original text. The documents can be accessed at the Florida Senate’s weblink about SB 7086 at <https://www.flsenate.gov/Session/Bill/2019/7086?Tab=BillHistory>.

⁵ Amendment 4 also includes two additional provisions, which address exemptions to (a) and term limitations. *Id.* (b)-(c).

and unambiguously inform the voters of the chief purpose of the proposed amendment.”⁶ “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.”⁷ Amendment 4’s self-executing plain language therefore directly negates the Florida legislature’s purported need to pass any legislation following Amendment 4’s passage.

Because Amendment 4 is self-executing, the Secretary of State need only provide guidance about voter registration administration. In this role, the Secretary of State must provide 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.⁸ This obligation means that the Secretary of State must take administrative action to coordinate with state and local agencies, including providing guidance that Amendment 4 is self-executing and does not require legislative action to make it effective. Such 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 SB 7086 remains under consideration because it creates unnecessary confusion and uncertainty about returning citizens’ ability to register to vote and vote. Moreover, an administrative order, unlike legislation, would provide more time for necessary public comment and expert testimony about the far-reaching human and administrative impact of SB 7086. For these reasons, we join the Florida Rights Restoration Coalition and other legal non-profits’ recommendations for immediate administrative action, which were submitted to the Secretary of State on March 11, 2019.⁹

Second, SB 7086, as proposed, threatens to resurrect the very same forms of lifetime disenfranchisement that motivated voters’ passage of Amendment 4. SB 7086’s definition of “completion of all terms of sentence” is inconsistent with Article IV’s plain language.¹⁰ Under Article IV, “voting rights shall be restored upon completion of all terms

⁶ *Advisory Opinion to the Attorney General Re: Voting Restoration Amendment*, 215 So. 1202, 1208 (Fla. 2017) (citations omitted).

⁷ *Id.*

⁸ Fla. Stat. Ann. § 98.

⁹ 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 that 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.

¹⁰ *See also* Letter from Danielle Lang, et al., Co-Director of Voting Rights and Redistricting, Campaign Legal Center, to the Florida Senate (Mar. 22, 2019),

of sentence including parole or probation.”¹¹ That 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. This understanding, which is critical to Amendment 4’s effectiveness, 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.*”¹² 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 contrast, SB 7086 seeks to expand the meaning of “completion of all terms of sentence” to require that a returning citizen pay fines and fees beyond those ordered by a court. Under the proposed definition, a returning citizen must pay *all* fines and fees associated with a condition of probation, community control, or parole that have not been converted to a civil lien to complete all the terms of his or her sentence under the provisions of Amendment 4. This definition would thus encompass monetary costs that were never part of a returning citizen’s original court-ordered sentence. Neither these enumerated terms, nor the legislature’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.¹³ 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 can 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. And under Florida law, debt collections agencies may assess up to an additional forty percent surcharge fee in addition to the initial debt someone owed to the courts.¹⁴

<https://campaignlegal.org/sites/default/files/201903/CLC%20Letter%20to%20FL%20Senate%20re%20OSB%207086.pdf>.

¹¹ FLA. CONST. art. IV, § 4.

¹² 3.700 (emphasis added).

¹³ 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>.

¹⁴ Fla. Stat. Ann. § 34.045(1)(b).

These examples of fines and fees begin to explain why Florida issued more than one billion in felony fines, while only nineteen percent of that money has been paid back per year.¹⁵ In Miami-Dade County, for example, there are more than \$278 million dollars in outstanding court fines from felony convictions.¹⁶ 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.¹⁷ These fees commonly serve as barriers to civic participation for many returning citizens. And these obstacles continue to be enacted even though more than eighty-three 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.¹⁸

To further compound these problems, returning citizens, a significant population of whom are people of color, endure a series of collateral consequences that serve as barriers to basic necessities, including employment and housing.¹⁹ For example, a returning citizen with a felony conviction may be ineligible for federally subsidized housing.²⁰ 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.²¹ Failure to pay the above-mentioned fines and fees could result in a returning citizen’s driver’s license being suspended.²² Whether individually or collectively, these myriad collateral consequences, combined with many others, reveal the unique challenges returning citizens, including many people of color, face during the reentry process.

Based on the cited outstanding fees, fines, and other court- and supervision-related fees, a majority of the 1.4 million returning citizens who are eligible to have their voting rights automatically restored, many of whom are people of color, would be blocked under SB 7086.²³ Despite this asserted impact, the Senate has failed to analyze and

¹⁵ 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>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. REV. L. & SOC. CHANGE 586 (2005-06); *State-by-State Data, Florida*, The Sentencing Project (2019), <https://www.sentencingproject.org/the-facts/#map>.

²⁰ *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>.

²¹ *Id.* at 31-34.

²² *Id.* at 21.

²³ Diller, *supra* n. 13 at 10; Rivero, *supra* n. 15; *see also* Jay Michaelson, *What Referendum? Florida GOP Set to Exclude Up to 80% of Felons from Voting*, DAILY BEAST (Mar. 13, 2019),

publicly identify the negative impact that SB 7086 will impose on returning citizens' lives. To be clear, the Florida legislature is proposing to pass legislation without assessing its impact or grappling with the asserted impact as illuminated by LDF, the FL NAACP, those testifying in committee, and public reports.

In addition to the human impact, the proposed restrictive bill would create significant administrative costs to carry it out. As one example, the Florida Legislature would likely need to create statewide systems for tracking victim restitution and costs associated with probation, community supervision, and parole for both in state and out of state convictions. Such a unified, statewide system does not appear to be in place.²⁴

Any bill, particularly one as here, with such far reaching implications for people's fundamental right to vote, cannot be properly assessed and evaluated without understanding its full impact. Accordingly, before any additional hearing or Committee vote, the Florida Senate must study, analyze, and publicly identify the negative human and fiscal impact of SB 7086, especially because low-income and racial minority returning citizens are likely to bear the brunt of the bill's impact.²⁵ These barriers and the potential impacts are therefore antithetical to Amendment 4's purpose. 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.²⁶

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.²⁷ The Due Process Clause of the Fourteenth Amendment also requires due process of law, including notice and an

<https://www.thedailybeast.com/what-referendum-florida-gop-set-to-exclude-up-to-80-of-felons-from-voting>.

²⁴ See Lawrence Mower, *Amendment 4 Will Likely Cost 'Millions' to Carry Out. Here's Why*, TAMPA BAY TIMES (Apr. 4, 2019), <https://www.tampabay.com/florida-politics/2019/04/04/amendment-4-will-likely-cost-millions-to-carry-out-heres-why/>.

²⁵ See Brian Highsmith, *Commercialized (In)Justice: Consumer Abuses in the Bail and Corrections Industry*, NATIONAL CONSUMER LAW CENTER (2019), <https://www.nclc.org/images/pdf/criminal-justice/report-commercialized-injustice-dec2018.pdf>; Nick Petersen, Marisa Omori, et. al, *Unequal Treatment: Racial and Ethnic Disparities in Miami-Dade Criminal Justice*, ACLU OF FLORIDA – GREATER MIAMI CHAPTER (July 2018), https://www.aclufl.org/sites/default/files/aclufl_unequaltreatmentreport2018.pdf; *Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications*, U.S. COMMISSION ON CIVIL RIGHTS (2017), https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2017.pdf.

²⁶ Kathy Fernandez Rundle, Andrew Warren, and Miriam Aroni Krinsky *If Lawmakers Don't Give Former Inmates a Second Chance, They Will be Defying the Will of Floridians*, MIAMI HERALD (Apr. 19, 2019), <https://www.miamiherald.com/opinion/op-ed/article229483999.html>.

²⁷ *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666, 668 (1966).

opportunity to be heard, before depriving an individual of life, liberty, or property. Of course, at the time of their sentencing, returning citizens have not been put on notice and had an opportunity to challenge a requirement under this bill that non-court ordered fines and fees be paid fully *before* they can exercise their fundamental right to vote. Yet, under this proposed legislation, these non-court ordered fines and fees may be used as a basis for disenfranchisement. 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.²⁸

Despite these constitutional prohibitions and protections, SB 7086 seeks to recreate a two-tiered system of citizenship by determining who can participate in the most fundamental of American rights—the right to vote—based, in part, on wealth. To potentially avoid costly and time-consuming legal exposure, at a minimum, you should decline to pass SB 7086 through the Committee.

Finally, the legislative environment in which SB 7086 has been offered is not open and transparent and, thus, calls for rejection of this bill. Indeed, the Senate Judiciary Committee restricted public testimony during its hearing. That Committee only allowed for *one* person to provide testimony during the public testimony portion of the hearing. This Committee, however, must not make the same mistake. Instead, it is imperative that you hear from and listen to *all* community members who want to provide public testimony during your Committee hearing.

In conclusion, the guiding principles motivating the historic passage of Amendment 4 provide the best lens for how to interpret its text and purpose. Those principles are counter to the effective lifetime disenfranchisement scheme that existed prior to Amendment 4’s passage and would be resurrected by SB 7086. 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.

Almost two-thirds of Florida voters corrected that defect by voting on November 6 to pass Amendment 4 to enfranchise 1.4 returning citizens. 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 provides 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—the felony disenfranchisement regime. The path forward must harness, rather than restrict, this popular mandate to build a stronger and more inclusive democracy. That goal can only be accomplished by voting no and withdrawing SB 7086.

²⁸ 380 U.S. 528, 534 (1965).



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
Pamela Burch Fort
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*.²⁹ 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.³⁰ 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.³¹ 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.³² More recently, in 2018, LDF, along with other civil rights

²⁹ *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/>.

³⁰ *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.

³¹ *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/>.

³² *Florida v. United States*, 885 F.Supp.2d 299 (D.D.C 2012).



organizations, urged Florida counties to establish early voting, particular on historically Black colleges and university campuses.³³

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 2011 to severely limit early voting opportunities in the state and the ability of third-party organizations to register voters. Consistent with its mission, Florida NAACP enthusiastically supported Amendment 4 and has worked to ensure its fair and non-discriminatory implementation.

³³ *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/>.