

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1341

ADVISORY OPINION TO THE GOVERNOR

RE: IMPLEMENTATION OF AMENDMENT 4, THE VOTING
RESTORATION AMENDMENT

APPENDIX TO THE INITIAL BRIEF OF GOVERNOR RON DESANTIS

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Governor Ron DeSantis respectfully submits the appendix to his initial brief pursuant to Florida Rule of Appellate Procedure 9.220.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of September 2019, a copy of this appendix was served by electronic service through the Florida Court’s E-Filing Portal, which will send a copy of this filing to all counsel of record.

/s/ Joshua E. Pratt

JOSHUA E. PRATT
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this appendix is typed in Times New Roman 14-point font and complies with Florida Rule of Appellate Procedure 9.210(a).

/s/ Joshua E. Pratt

JOSHUA E. PRATT
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December 13, 2018

The Honorable Ken Detzner
Secretary of State
State of Florida
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

Re: Implementation of Amendment 4, the Voting Restoration Amendment

Dear Secretary Detzner:

On November 6, 2018, Florida voters approved Amendment 4, the Voting Restoration Amendment with a vote of 64.55 % in support, reflecting the clear will of the people of Florida that those individuals with felony convictions who have paid their debt to society have their eligibility to vote restored to them. We write to request that you take immediate administrative action to coordinate with relevant state and local agencies as required by Chapter 98 Florida Statutes and to provide guidance to relevant state and local agencies on the proper administration of voting registration for this newly enfranchised population of Florida's citizens as soon as possible. To that end, we would like to take this opportunity to share our analysis and views on various provisions of the Amendment and corresponding issues.

Amendment 4 is Self-Executing

Amendment 4 is self-executing in that the mandatory provisions of the amendment are effective on the implementation date (Jan. 8, 2019). This is the very position that the State of Florida has

acknowledged in its own legal filings in the *Hand v. Scott* case. The Amendment alters 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 offenses, upon completion of all terms of their sentence. (emphasis added.) *Advisory Opinion to the Attorney General Re: Voting Restoration Amendment*, 215 So. 2d 1202,1208 (Fla. 2017).

Since these mandatory provisions will now be in the Florida constitution, the Legislature does not need to pass implementing legislation in order for the amendment to go into effect. That said, the Legislature should exercise its normal and proper oversight function of relevant state agencies to ensure that they implement the amendment in accordance with the will of Florida’s voters and without delay.

The burden is on the state, not the individual, to establish whether a voter is ineligible utilizing current administrative practices, databases and resources as defined in Chapter 98 and other relevant provisions of the Florida Statutes.

The plain language of the Amendment makes clear that it restores the voting rights of Floridians with felony convictions after they complete “all terms of their sentence including parole or probation.” The Amendment does not apply to those who have completed a sentence for murder or a felony sex offense. Individuals in those categories can only have their right to vote restored by the Governor and the Board of Executive Clemency.

Pursuant to Article XI, Section 5 (3), the Amendment goes into effect on January 8, 2019. Thus, starting January 8th, any individual with a felony conviction who has completed all the terms of

their sentence should register to vote by completing a voter registration form.

Completion of all terms of Sentence

The phrase “completion of all terms of sentence” includes any period of incarceration, probation, parole and financial obligations imposed as part of an individual’s sentence. These financial obligations may include restitution and fines, imposed as part of a sentence or a condition of probation under existing Florida statute. Fees not specifically identified as part of a sentence or a condition of probation are therefore not necessary for ‘completion of sentence’ and thus, do not need to be paid before an individual may register. We urge the Department to take this view in reviewing the eligibility of individuals registered to vote as outlined in Chapter 98, Florida Statutes.

Existing Voter Registration Forms are Sufficient

We assert that the uniform stateside voter registration application is sufficient to immediately register individuals impacted by the Amendment’s provisions. Question #2 of that form asks individuals to “*affirm that I am not a convicted felon, or if I am, my right to vote has been restored.*” The responsibility of the citizen is to honestly affirm that, by completing the terms of their sentence, their voting rights have been restored. Individuals may also register via the Florida Online Voter Registration System at <https://registertovoteflorida.gov/>.

Process to Confirm Eligibility is Already in Place

The existing provisions of Chapter 98 of the Florida Statutes provide the Department with sufficient authority to coordinate across state and local agency databases to identify impacted individuals, to promptly and efficiently register to vote those individuals who wish to do so, and to confirm their eligibility in the same way the Department confirms the eligibility of all other Florida residents when they complete a voter registration application.

We understand that the current registration process includes the following steps:

- An individual returns a completed voter registration form to the Supervisor of Elections;
- The Supervisor transmits an electronic copy of the application to the Department of State Division of Elections;
- The individual who completed the form is at that time considered registered and will receive a voter ID card in the mail;
- The Department of State then has the duty to review the voter’s registration to determine if there is credible information that the voter is ineligible;

This is the very same process that should be used to register those impacted by Amendment 4.

In closing, we appreciate the difficult task you face in administering elections in Florida. We hope that the discussion above will help you ensure that Amendment 4 is implemented in a timely and smooth fashion, without delay or undue burden on individual eligible voters. Florida's citizens spoke clearly on election day and we look forward to working with you to ensure their will is carried out.

Thank you for your attention to this important matter.

Sincerely,

Desmond Meade,
Executive Director, Florida Rights
Restoration Coalition

Melba Pearson,
Interim Executive Director
ACLU of Florida

Patricia Brigham,
President
League of Women Voters of Florida

Kira Romero-Craft,
Managing Attorney
LatinoJustice PRLDEF

cc: Maria Matthews, Director, Division of Elections
Florida State Association of Supervisor of Elections

March 11, 2019

The Honorable Laurel Lee
Secretary of State
State of Florida
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

Re: Implementation of Amendment 4, the Voting Restoration Amendment

Dear Secretary Lee:

We, the undersigned, reflect the broad coalition of organizations that led the effort to pass Amendment 4, the Voting Restoration Amendment, in 2018. Foremost, we are led by the Florida Rights Restoration Coalition that represents returning citizens in Florida. We also include a collection of legal non-profits who are experts in voting rights, criminal law and the intersection of the two, with many decades of experience in these areas of the law.

On November 6, 2018, Florida voters approved Amendment 4 with a vote of 64.55 % in support, reflecting the clear will of the people of Florida that those individuals with felony convictions who have completed their sentence have their eligibility to vote restored to them. Since that time, extensive public discussion has ensued regarding the implementation of Amendment 4 and the scope of its terms.

As you know, your office is required by Chapter 98 of the Florida Statutes to provide guidance to relevant state and local agencies on the proper administration of voter registration for this newly enfranchised population of Florida's citizens as soon as possible. As key stakeholders in the passage of Amendment 4, we write to request that you take immediate administrative action to coordinate with relevant state and local agencies on the following urgent topics: Amendment 4 is self-executing and needs no further implementing legislation; legal financial obligations owed by impoverished people should not be a barrier to the right to vote; and murder and felony sexual offenses as defined below are the only offenses that Amendment 4 does not cover. To that end, we have researched the above-mentioned issues and would like to take this opportunity to share our views on various provisions of the Amendment and corresponding issues.

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 offenses, 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) (emphasis added).

Since these mandatory provisions are in the Florida Constitution, the Legislature does not need to pass implementing legislation for the Amendment’s terms to be in effect. That said, the Legislature should exercise its normal and proper oversight function of relevant state agencies to ensure that they implement the Amendment in accordance with the will of Florida’s voters and without delay.

Florida law makes clear that the burden is on the state, not the individual, to establish if a voter is ineligible by using current administrative practices, databases and resources as defined in Chapter 98 and other relevant provisions of the Florida Statutes.

The plain language of Amendment 4 restores the voting rights of Floridians with felony convictions after they complete “all terms of their sentence including parole or probation.” The Amendment does not apply to those who have completed a sentence for murder or a felony sexual offense. Individuals in those categories can only have their right to vote restored by the Board of Executive Clemency.

Offenses Within the Scope of Amendment 4

Murder

Article VI, Section 4 now states that “no person convicted of murder [...] shall be qualified to vote until restoration of civil rights. [...]” We urge you to specify that only the following offenses fall under this constitutional provision: Fla. Stat. Ann. § 782.04(1)(a), (2), (3), and (4).

Felony Sexual Offense

The Florida Constitution states that “no person convicted of [...] a felony sexual offense shall be qualified to vote until restoration of civil rights. [...]. We urge you to specify that only following offenses fall under this constitutional provision:

- Sexual battery (Fla. Stat. Ann. § 794.011, *excluding* subsection 10).
- Unlawful sexual activity with certain minors (Fla. Stat. Ann. § 794.05).
- Lewd/lascivious offense committed upon or in the presence of persons less than 16 years of age (Fla. Stat. Ann. § 800.04).
- Sexual performance by a child (Fla. Stat. Ann. § 827.071).
- Selling or buying of minors (for portrayal in a visual depiction engaging in sexually explicit conduct) (Fla. Stat. Ann. § 847.0145).

Terms of Sentence

Article VI, Section 4 states “voting rights shall be restored upon completion of all terms of sentence including parole or probation.” We urge you to specify that individuals will have their voting rights restored automatically upon completion of any term of imprisonment and terms of parole or probation.

We understand a sentence may include monetary obligations such as restitution, fines, and fees imposed as part of a sentence under existing Florida statute. Monetary obligations not specifically identified as part of a sentence need not be discharged before “completion of sentence.”

Generally, monetary obligations are considered conditions of probation under Florida statutes and therefore monetary obligations generally have been fulfilled when probation ends. There are also situations where a person is discharged from probation and parole without having fully paid all monetary obligations. Logically, election officials should be able to rely on the judgment of the criminal justice system when defining completion of sentence. Consequently, a sentence is complete when a person is discharged from supervision (incarceration and parole or probation)—as is consistent with rules in the vast majority of U.S. states and the Florida Constitution. This approach is the most reasonable option, because it offers clarity to both prospective voters and elections officials.

Finally, disenfranchisement on the basis of poverty is anathema to American jurisprudence and violates the fundamental principles on which this country was founded. When anyone completes all terms of their criminal sentence and parole or probation, even if they have a civil financial obligation (which is not part of a criminal sentence), their right to vote should be automatically

restored under Amendment 4. Implementation of Amendment 4 should stand for the principle that financial inability to pay is not an insurmountable barrier to the right to vote.

Process to Confirm Eligibility is Already in Place

We renew our assertion that the uniform statewide voter registration application is sufficient to immediately register individuals impacted by the Amendments' provisions. Question #2 of that form asks individuals to "*affirm that I am not a convicted felon, or if I am, my right to vote has been restored.*" The responsibility of the citizen is to affirm that, to the best of their knowledge, they have completed the terms of their sentence and their voting rights have been restored.

Individuals may also register via the Florida Online Voter Registration System at <https://registertovoteflorida.gov/>.

The existing provisions of Chapters 97 and 98 of the Florida Statutes provide the Department of State, Division of Elections (the "Department") with sufficient authority to coordinate across state and local agency databases to identify impacted individuals, to promptly and efficiently register to vote those individuals who wish to do so, and to confirm their eligibility in the same way the Department confirms the eligibility of all other Florida residents when they complete a voter registration application.

We understand that the current registration process includes the following steps:

- An individual returns a completed voter registration form to the Supervisor of Elections (the "Supervisor");
- The Supervisor transmits an electronic copy of the application to the Department;
- The individual who completed the form is at that time considered registered and will receive a voter ID card in the mail;
- The Department then has the duty to review the voter's registration to determine if there is credible information that the voter is ineligible; and
- The Supervisor cannot delay the processing of a voter registration application and must notify an applicant of the disposition of the applicant's voter registration application within 5 business days after the registration information is entered into the statewide voter registration system.

This is the very same process that should be used to register those impacted by Amendment 4.

We also understand that once an applicant is deemed eligible to vote, that individual cannot be removed from the rolls unless: he or she requests in writing to be removed; a Supervisor receives notice from another state's election official that the voter has registered out-of-state; the voter fails to respond to an address confirmation final notice, thereby becoming an inactive voter, and does not vote or engage in voter registration record activity for two subsequent general election

cycles; or the voter is convicted of a felony after registration. These protections from improper voter purges extend to those impacted by Amendment 4.

We appreciate the difficult task you face in administering elections in Florida. We hope that the discussion above will help you ensure that Amendment 4 is implemented in a timely and smooth fashion, without delay or undue burden on individual eligible voters. Florida's citizens spoke clearly on Election Day and we look forward to working with you to ensure their will is carried out.

We would be happy to meet with you at any time to discuss these issues and lend our expertise to your efforts. Thank you for your attention to this important matter.

Sincerely,

*Florida Rights Restoration Coalition
ACLU of Florida
Advancement Project - National Office
Brennan Center for Justice
Dēmos*

*LatinoJustice PRLDEF
League of Women Voters of Florida
New Florida Majority
SPLC Action Fund*

cc:

Sen. Bill Galvano
Sen. Keith Perry
Sen. Dennis Baxley

Representative Jose Oliva
Representative Paul Renner
Representative James Grant

