



RON DeSANTIS
GOVERNOR

August 9, 2019

Honorable Charles T. Canady
Chief Justice and
the Justices of the Supreme Court of Florida
Tallahassee, Florida

Dear Chief Justice Canady and Justices of the Supreme Court of Florida:

Pursuant to Article IV, section 1(c) of the Florida Constitution, I hereby request your opinion on a question involving the interpretation of a portion of the Constitution affecting my executive powers and duties. The question pertains to the meaning of Article VI, section 4 of the Florida Constitution as it affects my constitutional power as the supreme executive to take care that the laws be faithfully executed and to transact all necessary business with the officers of the government under Article IV, section 1(a) of the Florida Constitution. This question also affects my direct administration and supervision of the Department of State under Article IV, section 6 of the Florida Constitution to ensure the proper administration of voter registration and disqualification.

On November 6, 2018, Florida voters approved a constitutional amendment, known as Amendment 4, to automatically restore voting rights for some convicted felons—namely, felons who have been convicted of offenses other than murder or a “felony sexual offense” upon “completion of all terms of sentence including parole or probation.” *See* Art. VI, § 4, Fla. Const. (2018). I request your interpretation of whether “completion of all terms of sentence” encompasses financial obligations, such as fines, fees and restitution (“legal financial obligations” or “LFOs”) imposed by the court in the sentencing order.

Prior to Amendment 4’s placement on the ballot, this Court was asked to determine whether the amendment met the legal requirements under Florida’s Constitution. On March 6, 2017, during a colloquy between the justices and Amendment 4’s sponsor, Floridians for a Fair Democracy (“Sponsor”), this Court was assured the Amendment presented a “fair question” and “clear explanation” to voters. Transcript of Oral Argument at 2, *Advisory Op. to the Attorney General Re: Voting Restoration Amend.*, 215 So. 3d 1202 (Fla. 2017) (Nos. SC16-1785 and

SC16-1981).¹ Addressing a question posed by Justice Polston as to whether “completion of [all] terms” included “full payment of any fines,” the Sponsor responded, “Yes, sir . . . All terms means all terms within the four corners.” *Id.* at 4. Justice Lawson similarly asked, “You said that terms of sentence includes fines and costs . . . that’s the way it’s generally pronounced in criminal court, would it also include restitution when it was ordered to the victim as part of the sentence?” *Id.* at 10. The Sponsor answered, “Yes.” *Id.* Justice Pariente posited the inclusion of fees, fines, and restitution as part of the completion of sentence “would actually help the state because if fines, costs and restitution are a requirement . . . for those that want to vote, there’s a big motivation to pay unpaid costs, fines and restitution.” *Id.* at 11. Ultimately, the Court found Amendment 4 clearly and unambiguously informed voters the chief purpose of the proposed amendment was 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 Op.*, 215 So. 3d at 1208 (emphasis added).

In alignment with the colloquy with the Florida Supreme Court, after Amendment 4 was approved by voters, the ACLU of Florida, League of Women Voters of Florida, LatinoJustice, and the Florida Rights Restoration Coalition delivered a letter to former Secretary of State Ken Detzner regarding implementation of Amendment 4. Exhibit 1, December 13, 2018 Letter. In part, the letter explained,

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. *The 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 eligibility of individuals registered to vote as outlined in Chapter 98, Florida Statutes.

Ex. 1, p. 3 (emphasis added).

During the 2019 Legislative Session, legislators in both chambers debated legislative implementation of Amendment 4. Ultimately, both chambers passed CS/SB 7066 and, on June 28, 2019, I signed it into law. *See* Ch. 2019-162, Laws of Fla. In relevant part, chapter 2019-162, section 25, Laws of Florida, creating section 98.0751, Florida Statutes, provided guidance on restoration of voting rights and determination of ineligibility pursuant to the amendment of Article VI, section 4 of the Florida Constitution. Section 98.0751, Florida Statutes, defines

¹ The transcript of oral argument is available here: https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf. A video of the oral argument is available here: <https://wfsu.org/gavel2gavel/viewcase.php?eid=2421&jwsourc=cl>.

“[c]ompletion of all terms of sentence” as “any portion of a sentence that is contained in the four corners of the sentencing document.” § 98.0751(2)(a), Fla. Stat. (2019). The Legislature provided five categories of terms included in the sentencing document: (1) release from any term of imprisonment; (2) termination of any term of probation or community control; (3) fulfillment of any term ordered by the court as part of the sentence; (4) termination from any term of supervision monitored by the Florida Commission on Offender Review; and (5) full payment of LFOs ordered by the court as part of the sentence. *See* § 98.0751(2)(a)1.-5., Fla. Stat. (2019).

On June 15, 2019, Luis Mendez filed a complaint in the Northern District of Florida seeking injunctive and declaratory relief and mandamus challenging chapter 2019-162, Laws of Florida. In part, Mendez alleges chapter 2019-162, Laws of Florida, violates Article VI, section 4 of the Florida Constitution because it adds requirements for the restoration of voting rights above what was prescribed in the Florida Constitution. Additional complaints were filed by numerous plaintiffs, including organizations referenced above, alleging provisions of chapter 2019-162, Laws of Florida violate the First, Eighth, Fourteenth and Twenty-Fourth Amendments of the United States Constitution. These challenges are only directed at chapter 2019-162, Laws of Florida, and do not question the constitutionality of Article VI, section 4 of the Florida Constitution.

Article IV, section 1(a) of the Florida Constitution prescribes the supreme executive power shall be vested in the Governor, that he “shall take care that the laws be faithfully executed” and “transact all necessary business with the officers of government.” Article IV, section 6 of the Florida Constitution places direct administration and supervision of all functions of the executive branch, including the Department of State, under the constitutional authority of the Governor. *See also* § 20.02(3), Fla. Stat. (the administration of any executive branch entity shall at all times be under the constitutional executive authority of the Governor”); § 20.10, Fla. Stat. (creating the Department of State, headed by the Secretary of State who is appointed by the Governor). Furthermore, the Secretary of State is the chief elections officer with the responsibility to maintain uniformity in the interpretation and implementation of voter registration and election laws. *See* § 97.012, Fla. Stat.

The Executive Branch is entrusted with implementing voter registration. *See* Part II of chapter 97 and chapter 98, Fla. Stat. Specifically, section 98.075(5), Florida Statutes, directs the Department of State to identify registered voters for eligibility under Article VI, section 4 of the Florida Constitution and section 98.0751, Florida Statutes. It is ultimately my responsibility, through the Department of State, to “protect the integrity of the electoral process” by maintaining accurate and current voter registration records, including ensuring only eligible voters remain on the statewide voter registration system. *See also* §§ 98.075(1), 98.035, Fla. Stat. Essential to my duty is a proper interpretation of Article VI, section 4 of the Florida Constitution.

I, as Governor of Florida, have the constitutional responsibility and duty to take care that the Constitution and laws of Florida are faithfully executed. I, as Governor of Florida, have the constitutional duty to transact business with officers of government, including, but not limited to, local supervisors of elections, local clerks of court, the Florida Department of Corrections, the

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Florida Department of Law Enforcement, the Florida Commission on Offender Review and the Florida Department of State regarding the collection of information related to the eligibility of voters under Article VI, section 4 of the Florida Constitution. We share the task of protecting the integrity of elections throughout Florida. I, as Governor of Florida, want to ensure the proper implementation of Article VI, section 4 of the Florida Constitution and, if applicable, chapter 2019-162, Laws of Florida. This includes the ability to direct the Department of State to fully implement Article VI, section 4 of the Florida Constitution by determining whether a convicted felon has completed *all* terms of their sentence, including the satisfaction of LFOs. I will not infringe on the proper restoration of an individual's right to vote under the Florida Constitution.

Understanding there is ongoing litigation in federal court challenging chapter 2019-162, Laws of Florida under the First, Eighth, Fourteenth and Twenty-Fourth Amendments of the United States Constitution, I do not ask this Court to address any issues regarding chapter 2019-162, Laws of Florida or the United States Constitution.

Therefore, I respectfully request an opinion of the Justices of the Supreme Court of Florida as to the question of whether "completion of all terms of sentence" under Article VI, section 4 of the Florida Constitution includes the satisfaction of all legal financial obligations—namely fees, fines and restitution ordered by the court as part of a felony sentence that would otherwise render a convicted felon ineligible to vote.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron DeSantis", with a stylized, cursive script.

Ron DeSantis



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 Bringham,
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