

SEP 18 2019

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1341

ADVISORY OPINION TO THE GOVERNOR  
RE: IMPLEMENTATION OF AMENDMENT 4,  
THE VOTING RESTORATION AMENDMENT

BRIEF OF MARK R. SCHLAKMAN, A FLORIDA LAWYER AS AN INTERESTED FLORIDA  
RESIDENT, JOINED BY THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE  
LAWYERS (FACDL), FOR PURPOSES OF RAISING A SIGNIFICANT AND OTHERWISE  
POTENTIALLY ELUSIVE ISSUE FOR THE COURT'S CONSIDERATION WITHIN THE  
CONTEXT OF THESE MATTERS

Mark R. Schlakman  
Florida Bar No. 0843067  
[mschlakman@fsu.edu](mailto:mschlakman@fsu.edu)  
The Florida State University  
Center for the Advancement of Human  
Rights (FSU/CAHR)  
426 W. Jefferson St.  
Tallahassee, FL 32301-1602  
tel.# (850) 644-4614/direct

TABLE OF CONTENTS

INTEREST OF AMICUS.....3

I. OBSERVATION: Legislative drafting in both chambers departed from the express language of the citizens' initiative Florida voters approved which upon certification became known as Amendment 4 in at least one instance. This departure resulted when a comma was inserted at a critical point in the legislation that was enacted which arguably changes the meaning and scope of "completion of all terms of sentence" as applied. While the Court's emphasis for these purposes is upon interpretation of the relevant provision of the State Constitution not the legislation per se the implications of this departure offer useful perspective...4

CONCLUSION.....6

CERTIFICATE OF SERVICE .....7

## **INTEREST OF AMICUS**

Amicus, a lawyer eligible to practice law in Florida who among other things serves as senior program director at The Florida State University Center for the Advancement of Human Rights, files this brief in his capacity as a private citizen and is joined by the Florida Association of Criminal Defense Lawyers (FACDL) for purposes of raising a significant and otherwise elusive issue for the Court's consideration within the context of these matters.

Amicus's background includes previous service as assistant general counsel and clemency aide to Governor Lawton Chiles, and subsequently serving as a principal investigator for a bifurcated and phased Florida Bar Foundation Administration of Justice (AOJ) grant-funded project entitled, Rethinking Civil Rights Restoration in Florida.

More recently, in consultation with the then-general counsel of The Florida Bar, amicus was afforded opportunity by the chair of The Florida Bar's Public Interest Law Section (PILS) in cooperation with the chair of The Florida Bar's Criminal Law Section (CLS) to develop informal comparative analysis of the three felony disenfranchisement- related proposals that would be considered by the Florida Constitution Revision Commission (CRC), which ultimately was published as a co-authored piece (with former Leon County Supervisor of Elections Ion Sancho and Leon County Sheriff Walt McNeil) by the Orlando Sentinel, and then posted on-line as a supplemental resource for Florida voters by the League of Women Voters of Florida in anticipation of the general election in November 2018.

Moreover, District Judge Mark Walker signed an order granting amicus leave to file an Amicus Curiae Brief in JAMES MICHAEL HAND, et al., v. RICK SCOTT, in his official capacity as Governor of Florida and member of the State of Florida's Executive Clemency Board, et al., nearly three weeks after the federal judge ruled Florida's civil rights restoration process for former offenders specifically as it relates to restoration of voting eligibility was violative of the First and Fourteenth Amendments of the U.S. Constitution, which is post-oral arguments pending a decision by the Eleventh Circuit Court of Appeals on the state's appeal thereof. That brief was framed for purposes of assisting the Court by providing

additional background and context relating to Florida's highly confidential clemency process as the Court deliberated over an appropriate remedy, rather than in support of or opposition to any particular party.

Finally, amicus participated informally during periodic United Nations Human Rights Committee proceedings in Geneva in March 2014 involving the United States, which sent an official delegation to appear before the Committee to address a range of issues and concerns involving adherence to issues addressed by the International Covenant on Civil and Political Rights (ICCPR), a treaty based upon principles articulated within the Universal Declaration of Human Rights. The United States and the vast majority of nations recognized by the United Nations ratified or acceded to, noting also the UN Human Rights Committee urged the United States government to engage with state governments to the greatest extent federalism would allow specifically to ensure no less than prompt restoration of voting eligibility upon completion of sentence. Toward these ends, the Committee underscored that the provisions of the ICCPR are not merely international norms, rather were incorporated into U.S. law under the Supremacy Clause of the U.S. Constitution upon ratification subject to reservations, understandings and declarations and are thereby broadly applicable to state and local governments in addition to the federal government.

---

**OBSERVATION:** Legislative drafting in both chambers departed from the express language of the citizens' initiative Florida voters approved which upon certification became known as Amendment 4 in at least one instance. This departure resulted when a comma was inserted at a critical point in the legislation that was enacted which arguably changes the meaning and scope of "completion of all terms of sentence." While the Court's emphasis for these purposes is upon interpretation of the relevant provision of the State Constitution rather than the legislation per se the implications of this departure offer useful perspective toward that end.

May it please the Court. This brief is submitted for the sole purpose of drawing an otherwise elusive issue to the Court's attention regarding which the significance of could conceivably prove to belie what

various legislators and legislative staff members characterized as an obscure and inconsequential matter.

Whether inadvertently or otherwise, legislative drafting in both chambers departed from the express language of the citizens' initiative that Florida voters approved which upon certification became known as Amendment 4 in at least one instance. This departure resulted when a comma was inserted at a critical point in the legislation that was enacted which arguably changes the meaning and scope of "completion of all terms of sentence" as applied.

Acknowledging and then moving beyond what was conveyed to the Court by at least one proponent of the ballot initiative during preliminary proceedings, as well as what was indicated by certain grassroots organizations at various points, focusing exclusively upon the plain language of the initiative Amendment 4 expressly states "Except as provided in subsection (b) of this section, any disqualification from voting arising out of a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation." (Note: Subsection (b) which addresses exclusions for convictions involving murder or felony sexual offenses is not impacted by the errant punctuation.)

The final version of CS for SB 7066, the legislation ultimately enacted, expressly states under 98.0751 Restoration of voting rights; termination of ineligibility subsequent to a felony conviction.- at line 1320 "(1) A person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification terminated and his or her voting rights restored pursuant to s.4, Art. VI of the State Constitution upon completion of all terms of sentence, including parole or probation..." inserting a comma after completion of all terms of sentence.

The legislation then defines "Completion of all terms of sentence."

Resources from the Modern Language Association, a widely accepted reference, clarifies that a "short modifying phrase or clause that is essential to the meaning of the sentence should not be set off from the rest of the sentence by commas..."

In this instance what arguably appears to be an essential modifier was reduced to a subordinate clause. Said another way, the weight of the language arguably limiting completion of all terms of sentence apart from incarceration to parole and probation like many other states for such purposes was diminished. In practical terms, by inserting a comma at that point, rather than arguably including exclusively parole or probation apart from incarceration it can be read instead as including but not limited to...

A proper fix would have required more than a technical amendment to delete the comma. The Legislature had cause to revisit whether requiring ex-felons to meet all financial obligations before restoration of voting eligibility was consistent with the plain language of the amendment irrespective of the colloquy before the Court that ensued during preliminary proceedings.

The potential significance of either inserting or deleting a comma that results in a departure from approved language is well-established in many jurisdictions, including Florida (See e.g. *Thorp v. State*, 555 So. 2d 362 (1990)).

### **CONCLUSION**

In anticipation of the Court responding to the Governor's request for an Advisory Opinion, it would be disingenuous for anyone to suggest that they know what 5.1 million Florida voters understood or intended when they voted to approve Amendment 4 last November. However, it would not be unreasonable to conclude they didn't cast their votes in favor of Amendment 4 to make it more difficult for former offenders to regain voting eligibility. Given that Governor Rick Scott and the Cabinet did not require payment of fines, fees or costs for purposes of civil rights restoration including voting eligibility that would be the effect in at least certain key respects if the significance of the limiting language that arguably was undermined by errant punctuation is not considered.

Respectfully submitted in cooperation with FACDL,

---

Mark R. Schlakman  
Florida Bar No. 0843067  
senior program director  
The Florida State University  
Center for the Advancement of Human Rights (FSU/CAHR)

426 W. Jefferson St.  
Tallahassee, FL 32301-1602  
Email: [mschlakman@fsu.edu](mailto:mschlakman@fsu.edu)  
tel.# (850) 644-4614/direct

**CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2019, a true and correct copy of the foregoing document will be furnished to counsel referenced on the Court's most recent Order via email.

\_\_\_\_\_  
Mark R. Schlakman  
Fla. Bar No. 0843067