

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE
GOVERNOR,

Case No. SC19-1341

RE: IMPLEMENTATION OF
AMENDMENT 4, THE VOTING
RESTORATION AMENDMENT

**BRIEF OF INTERESTED PARTIES,
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STATEMENT OF THE CASE AND OF THE FACTS

Jennifer LaVia and Carla Laroche submit this Initial Brief as interested parties to the Governor’s request for an advisory opinion on the phrase “completion of all terms of sentence” under Article VI, section 4 of the Florida Constitution, pursuant to this Court’s Order dated August 29, 2019, and Article IV, section 1(c) of the Florida Constitution.

LaVia and Laroche are Clinical Professors in the Florida State University College of Law Public Interest Law Center. Since the Spring of 2017, LaVia and motivated law students she supervises have helped hundreds of veterans with their legal issues through the Veterans Legal Clinic, and in partnership with the Tallahassee Veterans Legal Collaborative. The clinic serves primarily low-income veterans, in family law, landlord/tenant, and other civil matters. A good number of cases involved veterans whose driver licenses have been suspended, some for child support arrearages and some because of money owed to courts for costs, fees, and fines. Students in the clinic acquire transferrable skills while providing life-changing legal services to veterans.

Since the Spring 2019, Laroche has overseen hardworking law students enrolled in the Gender and Family Justice Clinic as they help clients who are currently and formerly incarcerated on family law cases, including child custody and visitation, child support, divorce, and injunctions for protection, and as

students develop and conduct family law workshops to people incarcerated in local jail and prison facilities. The Gender and Family Justice Clinic addresses the intersection between mass incarceration and families. Students strengthen their lawyering skills in real-life settings, while supporting their clients as they attempt to address the collateral consequences of incarceration.

LaVia and Laroche founded the Driver License Project and the Collateral Consequences Project, respectively, to address additional barriers their clients with criminal records face as they attempt to reintegrate into society.

One of those barriers was their inability to regain the right to vote. On November 6, 2018, the Florida electorate passed Amendment 4, which modified Article VI, section 4 of the Florida Constitution. Amendment 4 went into effect on January 8, 2019, in accordance with Article XI, Section 5(e) of the Florida Constitution.

On August 9, 2019, Governor Ron DeSantis submitted a request for an Advisory Opinion from the Court on “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.” In re: Advisory Opinion to Governor, No. SC19-1341 (Fla. Aug. 9, 2019).

SUMMARY OF ARGUMENT

The Court should construe the term “sentence” in Article VI, section 4 of the Florida Constitution in a manner that does not restrict the ability of veterans and families to access the ballot box. Following the plain meaning of Amendment 4, the Court should rule that a sentence is completed after incarceration—and does not include fines, fees, and restitution. Doing so will enable more of Florida’s returning citizens to vote and would benefit Florida’s veteran population with felony records, Florida’s children, and Floridians, more generally.

ARGUMENT

By fulfilling Florida voters’ desires to allow returning citizens to vote once they have completed any term of incarceration, probation, and parole, the Court would be ensuring a brighter future for many Floridians. Just as society now looks back sordidly at the idea that African-Americans and women were once denied the opportunity to vote, there will soon come a time when others will look back abhorrently at Floridians upon realizing that we had not allowed people with felony convictions to take part in this fundamental American right.

The Court has an opportunity to follow the Florida electorate’s wishes and find that Amendment 4 allows returning citizens to register to vote upon completion of their term of incarceration, probation, and parole. Article VI, section 4 of the Florida Constitution now states, in pertinent part:

(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.

Art. VI, § 4, Fla. Const.

The amendment is an admirable step in the right direction for allowing returning citizens to reintegrate into society. But like the poll taxes of the last century, a misinterpretation of the amendment as requiring payment of all criminal debt will have a disproportionate effect on Black people because they are half as likely as Whites to have paid all of their criminal debts. Wayne Washington, Study: New Law Drastically Undercuts Felon Voting Rights Restoration, (Aug. 16, 2019), <https://www.palmbeachpost.com/news/20190816/study-new-law-drastically-undercuts-felon-voting-rights-restoration>. Disenfranchisement has the effect of creating a class of people who are not integrated into society, and who are less likely to trust government. Not surprisingly, those who are not permitted to vote tend to have less faith in the results of an election and are less likely to feel that they are part of society. This feeling of stigma and separation leads to more anti-social behavior and thus more recidivism. Restoring the right to vote, and thus

an important aspect of human dignity, can help returning citizens reintegrate more successfully into their communities, thus making them less likely to re-offend.

Victoria Shineman, Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government (Oct. 25, 2018), <https://ssrn.com/abstract=3272694>.

A person, whether a veteran or a parent, who has served a term in jail or prison and has completed probation or parole, faces countless barriers to reentry. The Court, however, should not extend the collateral consequences of incarceration by defining criminal “sentence” to include imposed fines, fees, costs, and restitution, and, thereby eliminating the voting rights of many Floridians. This brief outlines how an overly broad interpretation of “sentence” would affect veterans and children of returning citizens. In section I, the brief explains how those who served our country would be disenfranchised, leading to exclusion from the very right they sought to protect. In section II, the brief contends that disenfranchising returning citizens bars their children from the power of voting.

I. Veterans Served Their Country and Should Be Able to Vote

Veterans transitioning back to civilian life often face significant difficulties. Veterans often have unrealistic expectations about job placements, and nearly all veterans report a loss of sense of purpose upon separation from the military. Veterans have a lot to offer employers because of a “strong work ethic and

dedication to mission accomplishment,” yet some employers are still scared to hire veterans because of persistent stereotypes about anger management and PTSD.

Lisa Nagorny & Dan Pick, 5 Reasons Why Employers Are Not Hiring Vets, (2019)

<https://www.military.com/hiring-veterans/resources/5-reasons-why-employers-are-not-hiring-vets.html>. “Most veterans are strengthened by their military service, but the combat experience has unfortunately left a growing number of veterans with issue[s] such as PTSD and traumatic brain injury. . . . Left untreated, mental health disorders common among veterans can lead directly to involvement in the criminal justice system.” Veteran Treatment Courts (2019),

<https://www.military.com/benefits/military-legal-matters/veterans-treatment-courts.html>.

For many reasons, Veterans who are suffering from mental health issues are reluctant to seek help. And often, the first sign of serious trouble is when a Veteran breaks the law. Id.; see also Kelli Canada & David Albright, Veterans in the Criminal Justice System and the Role of Social Work, 4 J. Forensic Soc. Work 48-62 (Apr. 2014)(“Veterans, particularly those who were involved in combat, experience difficulty readjusting to civilian life after deployment.”).

Arrest and imprisonment can lead to a downward spiral as all the collateral consequences begin to pile up. Finding a job becomes even harder and many veterans find themselves unable to escape a life of poverty. Then, to compound the

problem, the veterans are unable to pay off debts owed to the court system, resulting in loss of their driver licenses. The Department of Highway Safety and Motor Vehicles is required to suspend a driver license upon receiving notice from a clerk of court that the license holder has “failed to pay financial obligations for any criminal offense.” § 322.245, Fla. Stat. (2019).

Currently, about 3,000 veterans are released from prison or complete their probation, and this number has been higher in the past. Mike Pheneger, Thousands of Military Veterans in Florida Barred from Voting, Sarasota Herald-Tribune (Jun. 12, 2018), <https://www.heraldtribune.com/opinion/20180612/pheneger-thousands-of-military-veterans-in-florida-barred-from-voting>. Because many of these veterans are likely to be poor, they will likely be disenfranchised if their ability to vote is predicated on their ability to pay criminal debt.

Conditioning the right to vote on payment of criminal debt may have a disproportionate impact on veterans of the state, who may be more likely than the general population to be convicted of felonies, as a result of PTSD and TBI resulting from their military service. What is Veterans Treatment Court? (2019), <https://justiceforvets.org/what-is-a-veterans-treatment-court>; see also Mike Richman, VA Research Communications, <https://www.research.va.gov/currents/0918-VA-researcher-examines-Vets-who-collide-with-criminal-justice-system.cfm>. These veterans are suffering from the

too-often invisible wounds of war; erecting unnecessary and unjust barriers to their right to vote pours salt in those wounds.

Florida's veterans have literally been on the front line of ensuring our freedom, one of the most treasured of which is the freedom to vote. Veterans, who know firsthand the cost of going to war, should not be disenfranchised from choosing the very leaders who will make decisions about future military engagements. They have no voice in the selection of the Commander-in-Chief, no voice in appointments of the Secretaries of Defense and Veterans Affairs, no voice in elections of Senators who can authorize a declaration of war.

The connection between the service of veterans and the right to vote has been recognized by Putnam and several other counties. Putnam County has a program that invites voters to "Vote in Honor of a Veteran." The purpose of the program is to encourage voter participation and teach young voters about "the sacrifices that our veterans have made." The program recognizes "the freedoms we often take for granted—freedoms that our veterans fought for":

The sacrifices our veterans have made . . . stand as examples that emphasize the need for us to take our responsibilities seriously, especially our right to vote. . . . By exercising our right to vote, we show veterans and service members the respect they deserve for protecting our democracy. Veterans have always served us honorably. Let's give them the recognition they have earned. The next time you vote, Vote in Honor of a Veteran.

Vote in Honor of a Veteran, <https://soe.putnam-fl.com/Vote-in-Honor-of-a-Veteran>.

These justice-involved Veterans have served their country. Their mistakes after separation do not negate the sacrifices that they and their families have made in the name of ensuring our freedoms. Surely the citizens of Florida, in voting for Amendment 4, did not mean to say to Florida's Veterans, "Thank you for your service, but you can't vote because you haven't paid your debt."

II. Requiring People Who Have Felony Convictions to Pay All Financial Debt Would Restrict Florida's Children

The sentences associated with felony convictions are multiplied by the fact that many returning citizens are parents. Disenfranchising returning citizens would also continue to disenfranchise the returning citizen's children. These children have done no wrong; they have committed no crime. They, however, are being punished for their parents' prior actions. Their sentences affect not only themselves, but also their children, their households, and their communities. See Terry-Ann Craigie, Eleanor Pratt, & Marie McDaniel, Urban Institute, [Father Reentry and Child Outcomes](https://www.urban.org/sites/default/files/publication/99370/father_reentry_and_children_outcomes_1.pdf) (Nov. 2018), https://www.urban.org/sites/default/files/publication/99370/father_reentry_and_children_outcomes_1.pdf (questioning whether "policies contributing to mass incarceration sufficiently consider the full costs and consequences, including disproportionate harm by race or ethnicity, on children, families, and society").

According to the Florida Department of Corrections latest Annual Report, Florida “incarcerates approximately 96,000 inmates in correctional facilities and supervises nearly 166,000 offenders as part of its community supervision programs incarcerates.” Florida Department of Corrections, 2017-18 Annual Report, http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf. An estimated 53,000 people are held in Florida’s county jails. Prison Policy Initiative, Florida Profile (2018), <https://www.prisonpolicy.org/profiles/FL.html>. These data points ignore the countless children and adults who are affected by a family member being incarcerated.

While the number of parents in Florida’s correctional system is unknown, approximately 80% of women held in jails and at least 60% of women held in state prisons across the nation are mothers. At least 60% of women held in state prisons are mothers. The Sentencing Project, Fact Sheet: Incarcerated Women and Girls, 1980-2016 (May 2018), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls>. Approximately 80% of women in jails have a child under the age of eighteen years old. Wendy Sawyer & Wanda Bertram, Prison Policy Initiative, Jail Will Separate 2.3 Million Mothers from Their Children This Year (May 2018), <https://www.prisonpolicy.org/blog/2018/05/13/mothers-day-2018>. Over 1.1 million fathers are behind bars. Craigie, supra. Nationally, there are over 5.1 million

children whose parents are or were incarcerated. Annie E. Casey Found., A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families, and Communities 1 (2016), <http://www.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf>. Researchers estimated “nearly 3.6 million parents are under some form of correctional supervision, including parole.” Ross D. Parke & K. Alison Clarke-Stewart, U.S. Dept. of Health and Human Servs., From Prison to Home: Effects of Parental Incarceration on Young Children 1 (2002), <https://aspe.hhs.gov/basic-report/effects-parental-incarceration-young-children#Parental> (citing Christopher J. Mumola, U.S. Dept. of Justice, Bureau of Justice Statistics Special Report: Incarcerated Parents and Their Children, NCJ 182335, 1 (2000), <https://www.bjs.gov/content/pub/pdf/iptc.pdf>). In addition, at least 312,000 children in Florida have had a parent incarcerated. Casey Found., supra. All of these children would be disenfranchised should the Court not use the plain meaning of “sentence” in Amendment 4.

Parents have direct knowledge of their children’s best interests and without the right to vote, these children have no say, no voice, and no power. Specifically, in relation to voting, the League of Women Voters states that expanding voter access promotes a better reflection of the needs of the population of the state. League of Women Voters, <https://www.lwv.org/voting-rights/expanding-voter-access> (last visited Sept. 12, 2019).

Because children do not have the right to vote, their interests are reflected in the votes of their parents. The more parents are barred from voting, the more the interests of countless children, families, and communities are not reflected in the voting outcomes for the state of Florida. Florida voters' decision to pass Amendment 4 sought to change this exclusion from decision-making.

a. Because of Florida's High Incarceration of Black People, Restricting Amendment 4 Would Disproportionately Disenfranchise Black Families

Although Amendment 4's language does not refer to race and ethnicity, a finding that individuals who completed their time in jail or prison, probation, and parole can vote would protect the rights of families of color across the State. America incarcerates a disproportionate amount of Black people. According to the National Association for the Advancement of Colored People, African Americans are incarcerated at more than five times the rate of whites. NAACP, Criminal Justice Fact Sheet (2019), <https://www.naacp.org/criminal-justice-fact-sheet>. The imprisonment rate for African American women is twice that of white women. Id. Though African Americans and Hispanics make up approximately 32% of the United States population, they comprised 56% of all incarcerated people in 2015. Id. Importantly, if African Americans and Hispanics were incarcerated at the same rates as whites, prison and jail populations would decline by almost 40%. Id. A review of the mass incarceration data by race confirms Florida's racial disparities.

Analysis of the 2010 Census indicates that Black people make up 16% of the Florida population, but 46% of the incarcerated population. Leah Sakala, Prison Policy Initiative, Overrepresentation of Blacks in Florida (May 2014), https://www.prisonpolicy.org/graphs/2010percent/FL_Blacks_2010.html.

This unequal treatment by race has led to a disproportionate effect on families of color as well. One study found that almost half of the estimated 3.6 million parents who are incarcerated were Black and 25% were white. Christopher J. Mumola, U.S. Dep't of Justice, Bureau of Justice Statistics Special Report: Incarcerated Parents and Their Children, NCJ 182335, 2 (Aug. 2000), <https://www.bjs.gov/content/pub/pdf/iptc.pdf>. Close to 500,000 Black fathers are incarcerated, reflecting approximately 40% of all incarcerated parents. Pew Charitable Trusts, Collateral Costs: Incarceration's Effect on Economic Mobility (2010), https://www.pewtrusts.org/~//media/legacy/uploadedfiles/pes_assets/2010/CollateralCosts1pdf.pdf. Over 1 in 9 Black children has a parent in prison or jail. Id. If the Court does not use the plain meaning of Amendment 4, but, instead, takes a broad view on the definition of "sentence," African American parents will continue to be silenced on issues that concern their homes, communities, health, finances, safety, and children.

Amendment 4 is not the first time society has had to address the disproportionate disenfranchisement of Black communities. The Voting Rights Act of 1965 was passed to ensure that voting procedure imposed by the states would not curtail the right of any United States citizen to vote on account of race or color. See 52 U.S.C. § 10101. In the Senate debate leading up to the passage of the Voting Rights Act, some Senators argued that the Voting Rights Act was not necessary because the Fifteenth Amendment had already declared that states may not deny the right to vote based on race. 111 Cong. Rec. 19,361 (1965). Despite the passage of the Fifteenth Amendment in 1869, nearly a century later in 1965, literacy tests were disproportionately restricting the people of color's right to vote. The Voting Rights Act was passed to enforce the Fifteenth Amendment to protect the minority vote and allow Black voters to voice their concerns. Current felony disenfranchisement practices, and an interpretation of Amendment 4 to include financial debts, will chip away at community members of color's right to vote.

Today, history is repeating itself through disenfranchisement due to felony convictions. While a review of Amendment 4 shows neither overt nor explicit impacts on Black people's right to vote, Amendment 4 redresses the significant stifling of returning citizens of color and their families. Following the plain meaning of Amendment 4 is necessary to protect families, especially families of color.

b. Amendment 4 Creates Opportunities for Second Chances and Allows Parents' Ability to Act According to Their Children's Best Interests That Would be Eliminated under an All Encompassing Reading of the Amendment.

Experiencing a parent's continuous failure to reintegrate back into society because of the collateral consequences they face after incarceration shapes the way children view power and justice. Ross D. Parke & K. Alison Clarke-Stewart, U.S. Dep't of Health & Human Servs., From Prison to Home: The Effect of Incarceration and Reentry On Children, Families, And Communities (Dec. 2001), <https://aspe.hhs.gov/basic-report/effects-parental-incarceration-young-children#Parental>. Children of formerly incarcerated people do not get to see the "rehabilitating" effect that they and their parents long suffered through while their parent was imprisoned. Instead, the children most vicariously experience further punishment from society through their parents. Lottie Joiner, How Families Pay the Never-Ending Price of a Criminal Record (Dec. 15, 2001), <https://www.theatlantic.com/politics/archive/2015/12/how-families-pay-the-never-ending-price-of-a-criminal-record/433641>. The children learn that once one has a conviction, one is stripped of the right to be considered a full "American" citizen. Kimberly R. Kras, Should Convicted Felons Lose the Right to Vote?, (Aug. 6, 2018), <https://psmag.com/social-justice/should-felons-lose-their-right-to-v>.

Society mutes their voice and withholds their power by controlling a person's ability to vote. Without this right, parents have virtually no hope of being

able to regain that voice and power and become a “full American” again.

Nonprofitvote.org, Benefits for Voters, (2014),

<https://www.nonprofitvote.org/documents/2014/07/benefits-voting-benefits-voters-factsheet-en.pdf>. If the continued loss of this right to vote is one of their

“punishments,” their children will suffer; they will never live in a society that

supports their parent getting back on their feet and they will never see their parent

regain this type of agency. Joseph Murray, The Cycle of Punishment: Social

Exclusion of Prisoners and Their Children, *Criminology & Criminal Justice*, 7(1),

59 (2007), <https://journals.sagepub.com/doi/abs/10.1177/1748895807072476>.

Further, children of returning citizens will likely never understand fully the immense power of the ballot and how that power shapes the opportunities and choices their parents make for both themselves and their children’s future. Perri Klass, M.d., What Really Makes Us Vote? It May Be Our Parents, *N.Y. Times*, Nov. 7, 2016, <https://www.nytimes.com/2016/11/07/well/family/what-really-makes-us-vote-it-may-be-our-parents.html>. In addition, children cannot engage in the political process with a parent if their parent has a felony conviction and, therefore, is barred from voting. The more returning citizens are disenfranchised, the more this disenfranchisement influences the future generations of voters, including their children, their households, and communities.

Kids Voting USA is a national non-partisan organization where local affiliates are present in thirty-four of Florida's sixty-seven counties. Kids Voting Florida, <https://kidsvotingusa.org/affiliates-near-you/14-florida/41-kids-voting-florida> (last visited Sept. 18, 2019). Kids Voting USA's actions stem from the idea that the value of lifelong voting must be conveyed to children. Id. Children must acquire the skills and confidence to address important social issues in their respective communities. Id. The founders of Kids Voting USA were inspired by the tradition of youth visiting the polls with their parents on Election Day in Costa Rica. Kids Voting USA, Making History: Catching the Big Fish- Kids Voting USA, <https://kidsvotingusa.org/index.php/kids-voting-usa-making-history> (last visited Sept. 18, 2019). This tradition of youth visiting the polls with their parents was credited with Costa Rica's high, eighty percent, voter turnout. Id. The founders of Kids Voting USA use their program to encourage parent-child interaction through discussion about voting experiences, curricula, mock elections, and interaction within the political process. Kids Voting Florida, <https://kidsvotingusa.org/affiliates-near-you/14-florida/41-kids-voting-florida> (last visited Sept. 18, 2019). Kids Voting USA's impact is not completely possible for a child whose parent has a felony conviction, as so many children do in Florida.

According to the American Psychological Association, voting is an expression of self-concept meaning an expression of who someone is. Christopher

Munsey, Why Do We Vote?, 39 Am. Psychol. Ass'n 60 (2008). Determination to vote is based on the self-concept, "If I am American, and Americans vote, then the act of voting is an expression of who I am." Id. However, the negative is also true, if I do not vote and voting is not who I am, then I am not American. When Florida bars returning citizens from voting, the State sends a message that they are not a part of the group, they are not American, so inherently, neither are their children. Advising the Governor that Amendment 4 automatically restores a person's right to vote upon release from a correctional facility and completion of any probation or parole would dispel this message.

CONCLUSION

Because veterans who served our country and children of parents with felon records would be negatively affected, LaVia and Laroche respectfully request that the Court advise the Governor that "completion of all terms of sentence" under Article VI, section 4 of the Florida Constitution does not include paying fees, fines and restitution imposed by the court. Returning citizens should be eligible to vote upon completing their term of incarceration and any parole, probation, or community supervision.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Honorable Ron DeSantis, Governor, THE CAPITOL, Tallahassee, FL 32399, by the Florida E-Filing Portal this 18th day of September, 2019.

/s/ Jennifer LaVia
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CERTIFICATE OF COMPLIANCE

I CERTIFY that the foregoing brief was prepared using Times New Roman 14-point font and complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

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