

BRENNAN
CENTER
FOR JUSTICE

at New York University School of Law

April 8, 2019

Senator David Simmons
Chairman, Florida Senate Committee on Judiciary
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simmons,

The Brennan Center for Justice writes in opposition to Senate Bill 7086, which the Judiciary Committee is scheduled to hear on April 8, 2019. We urge you to remove the bill from the Committee agenda or to decline to pass the bill through the Committee.

The Brennan Center is a non-partisan law and policy institute that seeks to improve our systems of democracy and justice. Through legislative advocacy, policy research, and litigation, we work to advance reforms that will make our elections more free, fair, and accessible. The Brennan Center has a particularly long record of supporting efforts to reform criminal disenfranchisement laws at the state and federal levels. The Brennan Center has published a series of reports on voting rights restoration, and provided support to legislative reform efforts throughout the country.

As you know, in November 2018, Florida voters delivered a clear and unmistakable message by passing a constitutional amendment—Voting Restoration Amendment 4—to restore voting rights to citizens with prior felony convictions, except those convicted of murder or a felony sexual offense, “upon completion of all terms of sentence including parole or probation.” Senate Bill 7086 would undermine the will of Floridians, who decided that Americans who have served their sentences deserve a second chance.

We are encouraged by the recent amendments to Senate Bill 7086, which demonstrate that the Senate is willing to respond to the concerns of voters. In this regard, the Senate stands in sharp contrast to the House, which is advancing a bill that would do even more violence to the language of Amendment 4.

Still, even as amended, there are two principal problems with the language of Senate Bill 7086. First, the bill would expand the definition of “murder” beyond the definition of that term in Florida’s criminal code. Second, Senate Bill 7086 would redefine “term of sentence” to include restitution even after a court has determined that it is appropriate to convert restitution from a criminal penalty to a civil lien. In short, Florida’s laws already define both murder and the terms of sentence. Senate Bill 7086 ignores those definitions and would deprive individuals of the right to vote that Florida voters decided to re-enfranchise just months ago.

The problematic language advanced by Senate Bill 7086 is bad policy for three reasons.

1. The legislation would create confusing, administratively unworkable carve outs.

Senate Bill 7086 creates carve outs from Amendment 4 that would further limit the number of Floridians living in the community who cannot vote. These kinds of carve outs are confusing, difficult to administer, and will chill voter registration even among those who *are* eligible to vote, resulting in de facto disenfranchisement. Election officials are not trained to draw lines based on complex sentencing statuses.

For example, in New York—where, until recently, people on probation could vote, but those on parole could not—interviews with New York election officials revealed that more than a third (38%) of the local boards incorrectly stated that people on probation are ineligible to vote.¹ Florida has its own history of confusion and misinformation regarding voter eligibility. In 2009, after then-Governor Crist issued new clemency rules for individuals seeking voting rights restoration, a survey of all 67 county election officials revealed widespread misunderstanding and misinformation among those responsible for providing information to the public about voter eligibility and registration.²

Once a single local election official or poll worker misinforms a citizen that he is not eligible to vote, it is unlikely that the person will ever follow up or make a second inquiry.³ That same individual may pass along that inaccurate information to his family members, neighbors, and peers, creating a lasting ripple effect across the community. Florida should avoid introducing confusing carve outs that will inevitably result in mistakes by eligible voters, ineligible voters, and elections officials.

2. Voters of all political backgrounds supported Amendment 4 as written.

Senate Bill 7086 flouts the will of Florida voters, who passed Amendment 4 with nearly 65 percent of the vote. In the 2018 election, more than sixty percent of Florida voters were registered Republicans or lacked a party affiliation.⁴ Registered Democrats, by contrast, comprised just 38.5 percent of voters in the 2018 election. Republican candidates won the office of the Governor and the State Attorney General, a U.S. Senate seat, more than half of U.S. House races, more than 70 percent of State Senate races, and more than 60 percent of State House races. That means that Florida's voters of all political stripes voted in favor of Amendment 4. Indeed, the number of votes for Amendment 4 exceeded by more than a million the number of votes for any candidate for office in the State of Florida. Unsurprisingly, the constituency that supports access to the ballot is broad and deep. Florida's legislature should not ignore the democratic will of the people.

¹ See Erika Wood & Rachel Bloom, *De Facto Disenfranchisement* at 3, Brennan Center for Justice and American Civil Liberties Union (Oct. 1, 2008), <http://www.brennancenter.org/publication/de-facto-disenfranchisement>.

² Erika L. Wood, *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice at 16 (Dec. 16, 2016), https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf.

³ See Wood & Bloom, *supra* note 1, at 1.

⁴ Florida Department of State, Division of Elections, *Florida Voter Registration and Voting History Extract File (Statewide) 03/2019*, (Mar. 12, 2019).

3. The legislature may not and should not supersede constitutional amendments enacted by voter initiative.

In 1968, Florida revised its constitution to permit amendments to the state constitution by citizen initiative, and Floridians have been sponsoring constitutional amendments by initiative since 1978.⁵ In April 2017, the Florida Supreme Court approved the language of Amendment 4, pursuant to the constitutionally required judicial review of initiatives.⁶ The Court unanimously concluded that Amendment 4 “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.”⁷ Florida’s voters overwhelmingly agreed to do just that. Legislative action that contradicts the intent of voters—as understood by the Florida Supreme Court—would violate the separation of powers that Florida’s constitution expressly contemplates in setting forth the rules for citizen initiatives.

For these reasons, along with those advanced by partner organizations, the Brennan Center urges you to remove the Senate Bill 7086 from today’s Committee agenda or to decline to pass the bill through the Committee.

Respectfully,



Eliza Sweren-Becker
Counsel, Democracy Program
Brennan Center for Justice

Cc: Vice Chairman Jose Javier Rodriguez
Senator Dennis Baxley
Senator Audrey Gibson
Senator Travis Hutson
Senator Kelli Stargel

⁵ P.K. Jameson & Marsha Hoscak, *Citizen Initiatives in Florida: An Analysis of Florida’s Constitutional Initiative Process, Issues, and Alternatives*, 23 Fla. St. U. L. Rev. 417, 424 (1995); Florida Division of Elections, Initiatives / Amendments / Revisions Database, <https://dos.elections.myflorida.com/initiatives/>.

⁶ *Advisory Opinion to the Attorney Gen. Re: Voting Restoration Amendment*, 215 So.3d 1202 (Fla. Apr. 20, 2017).

⁷ *Id.* at 1208.