



MEMORANDUM

From: Florida Rights Restoration Coalition

To: Florida Advisory Committee to U.S. Commission on Civil Rights

Re: Florida Clemency Reforms

Date: September 21, 2007

Introduction

The Florida Rights Restoration Coalition (FRRC) is a coalition of over 40 local, state and national organizations dedicated to eradicating Florida's antiquated and discriminatory civil rights ban.¹ Florida's lifetime disfranchisement policy is enshrined in its Constitution and affects not only voting rights, but also bans people with convictions from serving on juries and holding public office. Additionally, individuals must have their civil rights restored before applying for many state-issued occupational licenses, including licenses for some key, common trades.

Notwithstanding the lifetime civil rights ban contained in the Constitution, civil rights may be restored in Florida as an act of clemency by the Board of Executive Clemency (composed of the governor and the three Cabinet members). Recognizing that constitutional change may take years to accomplish, the FRRC advocates for comprehensive reform of the clemency process. Virtually automatic civil rights restoration can be achieved under Florida's current disfranchisement scheme, by an executive order signed by the Governor and two Cabinet members. This was accomplished in 1975, when the clemency rules were revised such that restoration of civil rights was automatic upon an individual's completion of sentence and supervision, and without any further action by the ex-offender or any government agency.

The clemency rules adopted by the Florida Board of Executive Clemency on April 5, 2007, fall far short of automatic civil rights restoration. This analysis is designed to provide more detailed information this new policy.

Executive Summary

The proposed rules represent incremental progress, but they still fall far short of a truly fair and effective plan to restore the right to vote. The effective re-integration of ex-offenders, as well as basic principles of democratic fairness, dictate that Florida should adopt a truly

¹ A full list of the FRRC members is set forth at the end of this memorandum.

automatic, paperwork-free, rights restoration process for all Floridians who have completed their sentences, with any restitution owed to be paid, but not as a precondition to rights restoration.

Overview of New Rules

Although Governor Crist had repeatedly declared his commitment to significant reform of Florida's system of felon disenfranchisement, the new clemency rules fall short of this goal. Revisions to the clemency rules require the approval of the governor and at least two of the three Cabinet members. Opposition from two cabinet members contributed to the adoption of a compromise proposal that establishes a set of unnecessarily complex and burdensome procedures. Months after their adoption, there is widespread confusion among the public, including impacted ex-offenders, about how the new rules work.

The only group that is really treated any better than under past practice are those deemed to have committed a less severe or nonviolent ("Level 1") offense. These offenders (defined as those that haven't committed one of a long list of crimes, and do not qualify as habitual violent offenders, violent career criminals or sexual predators), if they have completed all terms of their sentences and supervision, if they have paid any restitution they may have owed, and if they have no currently pending charges against them, are to await notice that their civil rights have been restored (usually by receipt of a certificate of restoration from the Board of Executive Clemency). They may then re-register and vote. Level 2 and 3 offenders, and those subject to a 15-year crime and arrest-free rule, must submit to what are essentially similar procedures to those in the old rules. One improvement is that fewer of their cases must be heard by the Clemency Board.

By the state's own assessment, made at the time the new rules were announced, a maximum of 38,000 Floridians would benefit from these changes in the clemency rules. As explained below, the state has revised this figure downward since that time.

Problems with the New Policy

1. Burden on Ex-Offenders who have been Released and Completed Supervision

Most importantly, the revised clemency rules continue to place a significant burden on Florida's nearly 1 million² currently disenfranchised ex-felons who account for close to 20% of the nation's approximately 5.3 million disenfranchised ex-offenders. The governor's office stated that the State Department of Corrections (DOC) will "try to be proactive" in assisting these individuals by transmitting their records to the Florida Parole Commission for processing. But, there continues to be no guarantee that the DOC will be able to assist a significant number of these individuals. Problems, such as locating these individuals, some many years off-paper, and the cost of truly effective state outreach to locate them, may make this task effectively impossible. In fact, the governor's office has also stated that these individuals will get their

² Jeff Manza and Christopher Uggen, Locked Out: Felon Disenfranchisement and American Democracy (Oxford University Press 2006).

rights restored faster if they do not rely on the DOC, but contact the Office of Executive Clemency directly themselves.

Therefore, the new policy may not significantly improve the situation of the huge number of disfranchised Floridians who have been living, working and paying taxes in their communities - many of them long after completing their sentences. These citizens may never become aware of the rule changes and thus are unlikely to be able to benefit. And even if they do learn of the changes, they still will be required to overcome the bureaucratic obstacles necessary to confirm that their rights have been restored (usually by waiting to receive a certificate of restoration).

2. Full Payment of Restitution is Precondition for All Offenders with Restitution Obligations

Additionally, while the FRRRC believes that court-imposed restitution should be paid by ex-offenders who owe it, we argue that this should not be a precondition to rights restoration. Unfortunately, the new rules still impose what amounts to a poll tax on the right to vote. Civil rights need to be restored and barriers to employment removed *first*, so that applicants are able to get jobs and pay court-ordered restitution according to a repayment plan.

In April, proponents of the new rules estimated that a relatively small number of people would be ineligible for restoration of civil rights due to unpaid restitution obligations. In the past few months, it has become clear that a large number of people are ineligible for civil rights restoration due to unpaid restitution obligations. During DOC Secretary McDonough's July presentation to the FRRRC, he disclosed that 41% of all cases reviewed by the DOC since April were for people found to be ineligible for civil rights restoration due, at least in part, to outstanding restitution obligations. Secretary McDonough expects that this 41% is representative of the entire population of ex-offenders.

3. New Rules are Needlessly Complex and Unclear

The new Florida clemency rules are needlessly complex and unclear. The rules restore rights based on no fewer than four different categories: three are based on the nature of the specific offense, and one is based on the number of years since an individual has completed his or her sentence. All applicants must pay restitution before rights may be restored (if their sentence includes court-imposed restitution), have completed their sentence and probation or supervision; and have no pending charges on the state or federal level. Further, in most cases, individuals will not know that their rights have been restored until they receive paperwork from the Office of Executive Clemency. The review process is multi-level and cumbersome: the DOC conducts an initial review and makes an initial determination of eligibility, the Parole Commission then conducts a further review and makes a final determination of which restoration level process is required.

Once an ex-offender's level – 1, 2 or 3 or subject to the 15-year rule- has been determined, the Office of Executive Clemency initiates the process. Those convicted of certain “nonviolent” felonies should be notified that their rights have been restored. Those ex-offenders convicted of “violent” offenses, except murder and sex offenses, will be notified whether their

rights have been restored or whether they have been found ineligible, in which case their cases are scheduled for a hearing by the Board of Executive Clemency. For murder, sex offenses, and unapproved severe offenses, ex-offenders need to undergo the same hearing. The Board of Executive Clemency continues to conduct its in-person hearings in Tallahassee only quarterly; the ex-offender's presence is recommended, but not required. The rules also require an individual whose rights have been restored to wait at least 10 years to re-apply for rights restoration after a subsequent felony conviction, and the individual must remain crime and arrest free during this 10-year period. This is a further setback.

By confusing officials and applicants, these rules will fail to serve their intended purpose of rights restoration. And requiring Floridians who have completed sentences for non-violent offenses to wait for confirmation that their rights have been restored, usually in the form of an official "certificate of rights restoration," is not only unnecessary, but excessively burdensome to the individual (not to mention a cost to the state), and therefore serves as a significant impediment to voting. At the current rate of processing, thousands of the "Level 1" ex-offenders who eligible for "automatic approval" of civil rights restoration will not have their rights restored in time to register to vote in the upcoming presidential election. In short, the rules continue to perpetuate a problematic and costly process that will require the review of hundreds of thousands of applications, as well as a hearing process for many.

4. Complex and Confusing Rules will Contribute to Poor Administration of Voting Rolls

Because the list of crimes that bar a person from receiving the automatic approval of the Clemency Board is needlessly long, the process will only confuse corrections and elections officials as well as applicants, and result in continued poor administration of the voting rolls and the exclusion of eligible voters from the polls. This has been a major and well-documented problem in past Florida elections and the new rules do little to change that.

The FRRC has already received a report from an individual whose rights were restored, yet his local supervisor of elections office initially refused to allow him to register to vote. He was allowed to register only after receiving assistance from voter registration advocates. There is no reason to believe that the impediment this individual faced in registering to vote is isolated. Indeed, it is illustrative of the confusion that the new rules create. The confusion is not surprising. Leon County Supervisor of Elections Ion Sancho reported at the FRRC's July meeting that county supervisors of elections had received virtually no guidance about how the rules will be administered and how they may impact voter registration. He further stated that the Secretary of State/Division of Elections office had no communication with the supervisors of elections, although that office receives regular, bi-weekly, reports of RCR grants.

5. Fewer People than Originally Anticipated are Eligible for More Streamlined Restoration of Civil Rights in the "Level 1" Category

At the April press conference announcing the new rules, Governor Crist and DOC Secretary James McDonough estimated that close to 80% of ex-offenders in Florida would qualify for rights restoration in the "Level 1" category. Less than four months later, and after

processing approximately 80,000 cases, Secretary James McDonough acknowledged that initial estimates overstated the number of individuals who would qualify for “Level 1” processing and revised that estimate of Level 1 ex-offenders as closer to 70%. Whether that percentage will continue to decrease is still being determined.

6. The Bureaucratic Process Results in Delays in Processing Cases, even for Individuals in the More Streamlined “Level 1” Category

Not surprisingly, a procedure that relies on the processing of tremendous amounts of data, and the transfer of this data from one state agency (the DOC) to another (the Parole Commission) is prone to mistake and delays. This has already been the case. At the July FRRRC meeting, Secretary McDonough acknowledged that human error, difficulties transmitting data from the DOC to the Parole Commission, and other inter-agency glitches have caused delays in processing historic “Level 1” cases (i.e., the “Level 1” cases of individuals who are no longer under the DOC’s supervision).

Conclusion

At the time the rules were adopted, Chief Financial Officer Alex Sink said the rules changes were intended “to stop denying voting rights and occupational licenses to tens of thousands of Floridians each year who deserve a second chance” and to “provide Floridians with incentives, instead of roadblocks, to be responsible and to make the right decisions.” The new rules, while a step in this direction, do not seem to serve these ends, and may in fact continue to disfranchise eligible voters and confound elections administration.

The effective re-integration and rehabilitation of ex-offenders, as well as basic principles of democratic fairness, dictate that Florida should adopt a truly automatic, paperwork-free, rights restoration process for all Floridians who have completed their sentences, with restitution to be paid but not as a precondition to rights restoration.

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Members of the Florida Rights Restoration Coalition

Organizations

A. Philip Randolph Institute, Miami-Dade Chapter
ACLU (American Civil Liberties Union)
ACLU of Florida
Advancement Project
Advocacy Center for Persons with Disabilities
Better Way of Miami, Inc.
The Brennan Center for Justice
Brothers of the Same Mind
Concerned United People (CUP)
Congregations United for Community Action (CUCA)
Demos
Determination, Education, Justice, Acceptance (DEJA)
Eleventh Episcopal District Lay Organization of the African Methodist Episcopal Church
F. Malcolm Cunningham, Sr. Bar Association
Florida ACORN
Florida AFL-CIO
Florida Association of Criminal Defense Lawyers
Florida Cannabis Action Network
Florida Coalition on Black Civic Participation
Florida Congress on Racial Equality
Florida Conference of NAACP Branches
Florida Council of Churches
Florida Institutional Legal Services
Florida Justice Institute
Florida Voters League
Gray Panthers of South Florida
Homeless/Formerly Homeless Forum
Human Services Coalition
Inner City Grassroots Civic Coalition
International People's Democratic Uhuru Movement
Justice Fellowship
Labor Line, Inc.
Latino Council for Latin American Advancement (LCLAA) Central FL Chapter
Latino Leadership
Law Offices of Public Defender Bennett H. Brummer - Miami-Dade County
League of Women Voters of Florida
Mexican American Legal Defense and Educational Fund
Miami-Dade Election Reform Coalition
Movement for Change
National Lawyers Guild Gainesville
Office of Public Defender Carey Haughwout - Palm Beach County
Palm Beach County Urban League & Young Professionals Group
Peace and Justice Subcommittee of the Presbytery of Tampa Bay
People for the American Way Foundation

Project Civil Rights Restoration
Rainbow/PUSH Coalition
The Sentencing Project
Southwest Voter Registration and Education Project (SVREP)
The March for Justice
Voice of Freedom
Wilkie D. Ferguson, Jr. Bar Association
YWCA of Greater Miami

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