Felon Voting Rights Restoration in Florida

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Disclaimers

▪ I am not an attorney

▪ Don’t shoot the messenger
Brief History of Felon Voting Rights

Constitutions of 1838, 1861 and 1865

- The General Assembly shall have power to exclude from every office of honor, trust or profit, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime.

Constitutions of 1868 and 1885

- No person under guardianship *noa compos mentis*, or insane, shall be qualified to vote at any election, nor shall any person convicted of felony be qualified to vote at any election unless restored to civil rights.

- The Legislature shall have power and shall enact the necessary laws to exclude from every office of honor, power, trust, or profit, civil or military, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, larceny, or of infamous crime, or who shall make or become, directly or indirectly, interested in any bet or wager, the result of which shall depend upon any election; or who shall hereafter fight a duel, or send or accept a challenge to fight, or who shall be a second to either party, or be the bearer of such challenge or acceptance; but the legal disability shall not accrue until after trial and conviction by due form of law.
Brief History of Felon Voting Rights

Constitution of 1968

- Disqualifications. 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.

- Clemency. (a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the secretary of state, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

1998 Amendment

- Clemency. (a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian secretary of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.
Voting Rights Restoration Via Clemency

- Board of Executive Clemency
  - Governor, Attorney General, Chief Financial Officer, Commissioner of Agriculture
  - Governor + 2 cabinet members required to restore rights
  - Only method for voting rights restoration until Amendment 4

- Rules of Executive Clemency
  - Change from Cabinet to Cabinet
  - Significant change from Bush to Crist to Scott
Clemency Rules 1991-2018

1991-1998 - Governor Chiles' Administration
• Under Governor Chiles' Administration, Rule revisions were made effective January 1, 1992.
• The Board expanded the Commission's duties to allow capital case inmates to receive interviews by panels of three commissioners and created a waiver procedure for female inmates to be evaluated by special panels if they met criteria to claim they were victims of the "battered woman syndrome." Requests for clemency increased due to more inmates being ineligible for any other form of early release consideration.

1999-2006 - Governor Bush's Administration
• Under Governor Bush's Administration, Rule revisions were made effective January 1, 2000.
• The Board amended the rule on the restoration of civil rights to add a list of disqualifying crimes and new language stating that restoration of civil rights does not relieve a person from the registration, notification requirements, or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

2007-2010 - Governor Crist's Administration
• Under Governor Crist's Administration, Rule revisions were made effective on April 5, 2007.
• For restoration of civil rights, the Board implemented Rules which designated three levels of eligibility based upon the severity of offense for exoffenders who had completed their sentences or supervision and paid all restitution.

2011-Present - Governor Scott's Administration
• Under Governor Scott's Administration, The Florida Board of Executive Clemency amended the Rules of Executive Clemency (Rules), which became effective on March 9, 2011.
• The Rule changes resulted in the redesign of the application, related instructional information, and website content.
• Felons seeking to have their rights restored must complete a five (5) or seven (7) year waiting period upon completion of the sentence to become eligible.

• More Info
## Restoration of Rights 2011-2017

Restoration of civil rights in Florida, applications and grants

The following table provides data on the number of applications for restoration of civil rights and the number of applications granted from 2011 through 2017.

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications</th>
<th>Grants</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>13,323</td>
<td>78</td>
<td>0.59%</td>
</tr>
<tr>
<td>2012</td>
<td>4,152</td>
<td>342</td>
<td>8.24%</td>
</tr>
<tr>
<td>2013</td>
<td>2,462</td>
<td>605</td>
<td>24.57%</td>
</tr>
<tr>
<td>2014</td>
<td>2,224</td>
<td>562</td>
<td>25.27%</td>
</tr>
<tr>
<td>2015</td>
<td>2,347</td>
<td>427</td>
<td>18.19%</td>
</tr>
<tr>
<td>2016</td>
<td>3,188</td>
<td>473</td>
<td>14.84%</td>
</tr>
<tr>
<td>2017</td>
<td>2,500</td>
<td>518</td>
<td>20.72%</td>
</tr>
<tr>
<td>Total</td>
<td>30,196</td>
<td>3,005</td>
<td>9.95%</td>
</tr>
</tbody>
</table>

Source: Florida Commission on Offender Review

[Image of table]
Felon Removal Process

1. New Application, Update or New Conviction
2. State Reviews for Possible Felony Conviction
3. If Determined Credible & Reliable, Sent to SOE for Review
4. SOE Begins Notice & Removal if Credible & Reliable
5. Voter Responds, Requests Hearing, or No Response
6. SOE Makes Final Determination and Notifies Voter
2018 Amendment to the Constitution of 1968
Article VI, Section 4. Disqualifications.—

▪ (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.

Passed by a margin of 65% to 35% in November 2018
So Now What?

- Implementation questions aplenty
- Self Executing vs. Implementing Legislation
- Effective Date January 8, 2019 – returning citizens began registering
- Division of Elections hit pause button on felon reviews
- Legislative Session March 5 to May 3
- Hearings, bills, press conferences, rallies, hate and discontent
- Result? SB 7066…and lawsuits
- Division of Elections restarted reviews
- Rulemaking will likely be required
SB 7066

▪ Amendment 4 implementation tacked on to omnibus election bill
▪ Defines “murder” and “felony sexual offense”
▪ Includes monetary requirements for completion of sentence
  ▪ Victim restitution, court-ordered fines/fees
  ▪ Provides other methods to complete (court terminates or converts to community service)
▪ Grants immunity to those who registered between Jan 8 and July 1
▪ Requires notification to felons of outstanding terms of sentence upon release
▪ Establishes Work Group (SOS, SOEs, FDLE, DOC, FCOR, COC)
  ▪ Review processes under Amendment 4, report by August 1, 2019
Florida Voter Registration Application

2  I affirm that I am not a convicted felon, or if I am, my right to vote has been restored.

2  □ I affirm I have never been convicted of a felony.
□ If I have been convicted of a felony, I affirm my voting rights have been restored by the Board of Executive Clemency.
□ If I have been convicted of a felony, I affirm my voting rights have been restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of my sentence, including parole or probation.
To the Courtroom We Go!

- Governor sued on clemency process prior to passage of Amendment 4
  - Governor lost at U.S. District Court
  - Stayed by U.S. Court of Appeals
- Multiple suits filed upon enactment of SB 7066
  - Secretary and multiple SOEs named in suit
  - Same judge who previously ruled against Governor
- Hope for resolution well in advance of March 2020 Presidential Primary
Questions?