



BACKGROUND MEMORANDUM

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To: Felon Enfranchisement, Racial Justice and Voting Rights Advocates

Re: Florida Clemency Board Decision

Date: April 6, 2007

Yesterday, Florida Governor Charlie Crist and the state clemency board (composed of the governor and his three cabinet members) adopted a new policy aimed at reforming Florida's antiquated and discriminatory felon disenfranchisement procedures. A press release from the ACLU of Florida commenting on these developments can be found [here](#). This memo is designed to provide more detailed information and analysis of this new policy.

Executive Summary

The proposed rules may represent some 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 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.

Overview of New Rules

Under these rules, the rights being restored are not only voting rights, but the right to serve on a jury, the right to apply for occupational licenses, and the right to hold public office.

Although Governor Crist has repeatedly declared his commitment to significant reform of Florida's system of felon disenfranchisement, these rules fall short of this goal. Staunch opposition from cabinet member State Attorney General Bill McCollum, and more moderate opposition from cabinet member Commissioner of Agriculture and Consumer Services Charles Bronson, contributed to the adoption of a compromise proposal which establishes a set of unnecessarily complex and burdensome procedures. Even experts and attorneys are not yet sure how these rules will work.

Prior to the adoption of this new policy, Governor Crist had declared that he intended to adopt a more uniform approach but these new rules do not embrace that position.

The only group that is really treated any better than under past practice are those deemed to have committed a less severe or nonviolent offense. These offenders (defined as those that haven't committed one of a long list of crimes, and do not qualify as a habitual violent offender, violent career criminal or sexual predator) who have completed all terms of their sentences and supervision, paid restitution (if any), and have no pending charges against them, would receive a certificate of restoration from the clemency board. They would likely constitute about half of future applicants, though that figure is still being determined.

Problems with the New Policy

1. Burden on ex-offenders who have been released and completed supervision

Most importantly, the revised clemency rules fail to explicitly address how to treat Florida's nearly 1 million currently disfranchised ex-felons who account for nearly 20% of the nation's approximately 5.3 million disfranchised ex-offenders. The governor's office has stated that the State Department of Corrections will "try to be proactive" in assist these individuals by transmitting their records to the Florida Parole Commission for processing. But, there is no guarantee that the DOC will be able to assist these individuals. In fact, the governor's office has also stated that these individuals will get their rights restored faster if they do not rely on the DOC, but *apply* for civil rights restoration themselves.

Therefore, the new policy may not 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 obtain a certificate of restoration in order to get their civil rights restored.

Frankly, the only sensible, fair and efficient way to deal with these nearly 1 million citizens is to apply the current rules retroactively, in much the same way that former Iowa Gov. Thomas Vilsack enfranchised some 80,000 Iowans with the stroke of a pen when he enacted a special executive order back in July 2005.

2. Restitution Requirement

Additionally, while the ACLU believes that court-imposed restitution should be paid by ex-offenders, we argue that this should not be a precondition to rights restoration. Unfortunately, these 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. The ACLU has taken initial steps to begin a legal action challenging this restitution precondition, and has identified a potential plaintiff harmed by this requirement.

3. New Rules are Needlessly Complex and Unclear

To make matters worse, the proposed Florida rules are needlessly complex and unclear. The rules appear to 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; have no pending cases on the state or federal level; and await paperwork from the clemency board before rights are restored. Once initial eligibility is verified, the Parole Commission will determine which restoration level process is required.

Once an ex-offender's level has been determined, the Office of Executive Clemency initiates the process. Those convicted of a "nonviolent" felony should be notified that their rights have been restored. For those convicted of "violent" offenses, except murder and sex offenses, ex-offenders will be notified if their rights have been restored or if they have been found ineligible. For murder, sex offenses, and unapproved severe offenses, ex-offenders need to request an in-person hearing before the Governor and his clemency board through the Office of the Executive Clemency. An amendment was added at the Board of Executive Clemency meeting to require that, once rights are restored, if an individual is convicted of a violent offense, s/he may not reapply for no less than 10 years. 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 bureaucratic paperwork in the form of an official "certificate of rights restoration" is not only unnecessary, but excessively burdensome to the individual, and therefore serves as a significant impediment to voting. As a result, 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

Also, because the list of crimes which 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 the past in Florida elections and the new rules do little to change that.

CONCLUSION

Commissioner 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 proposed rules, while a step in this direction, may not 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.

END MEMO