

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA IN AND FOR THE COUNTY OF MIAMI-DADE**


**INTERIM REPORT
OF THE
MIAMI-DADE COUNTY GRAND JURY**

FALL TERM A.D. 2017

**State Attorney
KATHERINE FERNANDEZ RUNDLE**

**Chief Assistant State Attorney
DON L. HORN**

**Assistant State Attorney
HOWARD ROSEN**



**JOAQUIN NETO
VICE FOREPERSON**



**MELISSA BERTHIER
CLERK**

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AMENDMENT 4: VOTE “YES” FOR A SAFER AND FAIRER FLORIDA

“We’re No. 1!” “We’re No. 1!” This phrase is a very familiar chant, usually shouted with exuberance and pride by the groups and persons uttering these words. As residents of the State of Florida, we too can shout the phrase. However, on the topic of this Grand Jury Report, we do not shout with exuberance or with pride. You see, the State of Florida is No. 1 in the nation for the number of convicted felons who have paid their debt to society but who cannot vote. How can that be?

Nationwide, there are more than six million felons whose civil rights have been stripped away. Approximately one fourth of them live in Florida.¹ Based on a 2016 report, it was estimated that Florida’s disenfranchised population² was 1,680,318, more than ten percent (10%) of Florida’s total voting age population.

In November 2018, Florida voters will have the opportunity to partially change Florida’s onerous felon voting ban. Because of a Citizen’s Ballot Initiative, voters will find on the November 6, 2018 ballot a proposed constitutional amendment which, if passed by 60% of voters, will automatically restore voting rights to Florida’s felons who were convicted of most felonies.³ If passed, Article VI, Section 4 of the Florida Constitution will be amended to read as follows:

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.

(the underlined text represents the new language that will be added)

¹<http://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>

² Disenfranchised population refers to those persons who are forbidden to vote because of “felony disenfranchisement,” or laws restricting voting rights for those convicted of felony-level crimes.

³ Restoration of Civil Rights will not be automatic for persons convicted of murder for felony sexual offenses.

A “yes” vote for Amendment 4 supports the automatic restoration of voting rights for people with prior felony convictions, upon completion of their sentences, including prison, parole and probation. The automatic restoration does not apply to those convicted of murder or a felony sexual offense. For the reasons stated below, the Miami-Dade County Grand Jury strongly recommends that all Floridians vote “yes” for Florida’s Amendment 4, Voting Rights Restoration for Felons Initiative (2018).

Disenfranchisement In Florida

As it is in most states, persons convicted of a felony in Florida lose their right to vote. However, Florida is rather unique in that it is one of only four states where convicted felons do not regain the right to vote, until and unless a state officer or board restores that individual’s right to vote. Another distinction for our State is that Florida’s disenfranchisement provision is set forth in our state constitution. Florida’s present constitutional provision reads as follows:

“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.”⁴

In Florida, when a person is convicted of a felony, they lose the right to vote, serve on a jury, hold public office, and possess a firearm. Administered by the Commission, the clemency process provides the only means through which felons may have some or all of their rights restored.⁵ Accordingly, Florida’s disenfranchisement provision serves as a permanent voting bar against all people in Florida with felony convictions. Even people who have fully served their sentences and paid their debt to society (literally and figuratively), are barred from going to the polls to cast a ballot in any election. The passage of time since the conviction does not matter, nor does the insignificance of the crime. Today, absent the restoration of civil rights, someone who made an error in judgment, had a bad day or committed a minor felony fifty (50) years ago still cannot vote in the State of Florida.

Restoring Civil Rights Reduces Recidivism

During our investigation, we discovered what we believe is the number one reason why every state should move toward the automatic restoration of civil rights for its convicted felons:

⁴Article VI, Section 4; Fla. Stat. § 97.041(2)(b)

⁵ Florida Commission on Offender Review, 2016 Annual Report, p. 5.

doing so reduces the chances that the felon will commit another crime. Not only is there nationwide data to support this finding, Florida conducted its own study and reported similar findings and conclusions to Florida's Clemency Board, which is comprised of the Governor, Attorney General, Chief Financial Officer and the Commissioner of Agriculture.

Specifically, the Chair of the Florida Parole Commission submitted to the Florida Board of Executive Clemency a report to compare recidivism rates for convicted felons who had their civil rights restored versus those who did not.⁶ The study looked at a total of 30,672 Florida felons⁷ who were granted their civil rights by the Board of Executive Clemency for calendar years 2009 and 2010. The findings were as follows:

The overall three-year recidivism rate based on all released [Florida prison] inmates [whose rights were not restored] from 2001-2008 was 33.1%.

Inmates released in 2003 → 33.9% recidivism rate

Inmates released in 2004 → 33.4% recidivism rate

Inmates released in 2005 → 32.7% recidivism rate⁸

Of the 30,672 felons who were granted their civil rights in CYs 2009 and 2010, the recidivism rate was only 11.1%.⁹

This low recidivism rate for felons whose rights were restored stands in stark contrast with the 33.15 recidivism rate for all Florida state prisoners released during the reflected time periods. Based on the study, one-third of Florida's state prisoners reoffended within three years. For this Grand Jury, looking at these numbers makes the issue a no-brainer. From our perspective, taking a course of action that can reduce the recidivism rate of state prisoners from 33% to 11% seems to be a stellar accomplishment and a laudable future goal. Florida's recidivism data for felons whose rights have been restored screams out for a policy change. Making such a change will contribute to Florida becoming a safer place for all our citizens and visitors by reducing crime and improving the quality of life for everyone. Not doing so will guarantee that many folks who are marginalized

⁶ Florida Parole Commission, Status Update: Restoration Of Civil Rights' (RCR) Cases Granted 2009 and 2010, available at <https://www.fcor.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf>.

⁷ The total numbers of felons were 24,954 for Calendar Year (CY) 2009 and 5,718 for CY 2010.

⁸ 2009 Florida Prison Recidivism Study, Florida Department of Corrections, Bureau of Research and Data Analysis, May 2010, pg. 4 of 18, available at <http://www.dc.state.fl.us/secretary/press/2010/RecidivismStudy.pdf>

⁹ Florida Parole Commission, Status Update: Restoration Of Civil Rights' (RCR) Cases Granted 2009 and 2010, available at <https://www.fcor.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf>.

and not allowed full opportunities to become contributing members of society will likely commit more crimes.

Reducing Recidivism Will Save Tax Dollars

It goes without saying that reducing the number of felons being sent to prison will save taxpayer dollars as it will reduce the amount of money the Department of Corrections will need to supervise and house these prisoners. In the Florida Department of Corrections 2009 Florida Prison Recidivism Study, (see footnote 8 above), after citing the 33% recidivism rate the author made the following observation:

Note that a one percentage point drop in the recidivism rate results in approximately 400 fewer inmates being admitted over a three-year period at a cost of \$20,000 per year per inmate or a cost avoidance of approximately \$8,000,000.¹⁰

Based on information from the Florida Department of Correction's website, it cost **\$55.80** a day or **\$20,367** per year to house an inmate in a Florida prison during FY 2016-17.¹¹ Using the Florida recidivism data from above, if 11% of the 30,672 felons who received their civil rights committed a new felony (3,406) and were returned to prison for just one year, the State of Florida would spend \$69,370,002 to house them. If 33% of the 30,672 felons whose rights were restored were returned to prison for just one year, the cost to house those 10,152 felons would amount to an astounding \$206,765,784. Using this simple study and with the State's own data, the lowered recidivism rate achieved through restoring civil rights to these 30,672 felons in calendar years 2009 and 2010 saved the state \$137,395,782. A May 21, 2018 Miami Herald news article reported on the results of a study conducted by The Washington Economics Group which gave estimates of the economic impact of automatically restoring rights to Florida's convicted felons. The Group estimated that Florida would expend \$223 million dollars **less** in annual prison and court costs.¹² Based on the cost savings that will ensue from lower recidivism rates we encourage all Florida voters to vote **for** Amendment 4.

¹⁰ 2009 Florida Prison Recidivism Study, Florida Department of Corrections, Bureau of Research and Data Analysis, May 2010, pg. 4 of 18, *available at* <http://www.dc.state.fl.us/secretary/press/2010/RecidivismStudy.pdf>

¹¹ <http://www.dc.state.fl.us/oth/Quickfacts.html>

¹² <http://www.miamiherald.com/news/politics-government/election/article211408754.html>

Instituting Automatic Restoration of Civil Rights Will Save Even More Tax Dollars

In addition to the tax dollars saved with the reduced recidivism rates, more tax dollars will be saved if civil rights are restored automatically. To support this conclusion, we looked at the Florida Commission of Offender Review's (FCOR) 2016 Annual Report. The Report reflects that FCOR's operating budget for FY 2016-17 is \$9,889,679. The agency's base budget includes funding for 132 full-time employees (pg.13 of FCOR Report). The Commissions' responsibilities and oversight include Clemency Services, Offender Revocations, Parole, Conditional Medical Release, Victims' Services, Conditional Release and Addiction Recovery Release. For budget purposes, the Commission tracks the number of workload hours that are invested for each of these functions. The data reflects that 56% of the total activity and workload hours of the Commission for FY 2015-16 were spent on clemency services. Automatic restoration would significantly reduce the need for resources and costs presently being incurred by the commission.

Creating a system for the automatic restoration of civil rights upon release from prison or the completion of supervision is not a new idea in Florida. In 2006 the Legislature directed Florida's Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the Florida Parole Commission's major functions. OPPAGA also evaluated options for reducing the backlog in processing executive clemency applications. That **2006** OPPAGA Report¹³ noted that "a large increase in applications without a corresponding increase in personnel has led to a backlog of cases and lengthy application processing times." The committee further noted that the backlog and average length of time required to process a case have increased significantly. At the time of OPPAGA's 2001 Justification Review, restoration of civil rights cases without a hearing took an average of 6.1 months, and full investigations took an average of 16 months.

In Fiscal Year 2005-06, the Legislature appropriated \$9.34 million in general revenue and authorized 148 full-time equivalent (FTE)¹⁴ positions to the commission. In 1983, sentencing guidelines were enacted, thereby effectively abolishing parole for those offenders who were sentenced for crimes committed on or after October 1, 1983. Accordingly, parole now occupies an increasingly minor part of the staff's time, while clemency investigations and offender

¹³ <http://www.oppaga.state.fl.us/reports/pdf/0615rpt.pdf> OPPAGA Report No. 06-15, February 2006.

¹⁴ Full Time Equivalent (FTE) refers to the number of full time positions given by the legislature to each agency.

revocations dominate staff time. For Fiscal Year 2006-07, the Parole Commission requested an additional 20 full-time staff and 20 part-time OPS (Other Personnel Services)¹⁵ staff, at a cost of \$1.45 million, to eliminate the clemency backlog. Based on these findings, the OPPAGA staff made two major recommendations to Florida's Clemency Board:

The Clemency Board could adopt a policy to automatically approve all applications for restoration of ex-felons' civil rights upon release from prison. This would free up clemency resources to perform other clemency activities and reduce the backlog. In Fiscal Year 2004-05, the commission had 51 [full time positions] dedicated to clemency activities. If the Clemency Board permitted ex-felons to automatically receive their civil rights back upon completion of sentence, the restoration of civil rights workload would be eliminated, allowing the state to save approximately 24 [full time positions] and \$1.08 million. Such a policy change would not be inconsistent with national trends – in most states, ex-felons automatically receive their voting rights back upon completion of their prison or supervision sentences.¹⁶

Based on 2006 budget numbers, establishing an automatic process for restoring civil rights in Florida would reduce the backlog and save the Parole Commission more than 10% of its annual budget appropriation. Accordingly, restoring civil rights to more felons is shown to reduce recidivism thereby saving the cost of housing prisoners. Making the process automatic will save even more taxpayer dollars by doing away with the significant use of manpower and dollars in conducting investigations.

The Draconian Impact of Florida's Disenfranchisement

We understand that criminal laws are in place to help maintain an orderly society. However, we also recognize that people make mistakes and some crimes, even felonies, are less severe than others. For instance, in 1974, under Florida's former larceny statute, one could commit the 3rd degree felony of Grand Larceny by shoplifting property that had a value of \$100 or more.¹⁷

¹⁵ Other Personal Services (OPS) employment is a temporary employer/employee relationship used solely for accomplishing short term or intermittent tasks. OPS employees do not fill established positions and may not be assigned the duties of any vacant authorized position. OPS positions usually do not include benefits and are not eligible to receive paid vacation, sick, or administrative leave, or paid holidays.

¹⁶ Id. Pg. 10

¹⁷ Florida Statute §812.021 (2)(a) (1974)

Similarly, decades ago, one could be found guilty of the felony crime of knowingly making or issuing a worthless check if they wrote a bad check in the amount of \$50!¹⁸

Each of these three (3) statutes was in place after the 1968 voting ban was placed in Florida's Constitution. If our hypothetical defendants were convicted of those crimes, and if they were not successful in getting their civil rights restored, they still would not be able to vote, even if the thief paid the victim ten times more than what he stole, and the bad check writer gave the business owner \$500 more than the amount of the worthless check. Both the theft statute and the worthless checks statutes have subsequently been modified, so that now a \$100 theft or a \$50 worthless check are misdemeanors; so someone who was convicted under the old laws still would lose their right to vote, yet if someone were convicted of a \$100 theft or of knowingly writing a \$50 worthless check today, they would not be barred from voting. Under the law as it exists today in the State of Florida, someone who was convicted of being in possession of 20 grams of marijuana would lose their right to vote, whereas someone who was convicted of being in possession of 19.9 grams of marijuana would not. We find these results to be very onerous and not reflective of a civilized society where we believe in giving people second chances and where we are taught to forgive one another. As part of our review, the Grand Jury decided we would take a look to see how other states deal with their convicted felons.

Disenfranchisement Across the Nation

Our research revealed that Florida has one of the most restrictive felon disenfranchisement laws in the country. We found that Florida is an outlier in this regard. The only other states with such a strict voter disqualification provision are Iowa and Kentucky.¹⁹ All three states permanently bar felons from voting.

Although it is common practice in the United States to make felons ineligible to vote, over the last few decades, the general trend of several states has been toward reinstating the right to vote at some point or making the process easier to have their civil rights restored.²⁰ We found that the overwhelming majority of states to be way more forgiving to its felons than Florida, especially

¹⁸ Florida Statute §832.05 (2)(b) (1974)

¹⁹ Iowa Constitution Article 2, §5 Disqualified persons. SEC. 5. A person adjudged mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled to the privilege of an elector.

²⁰ "Felon Voting Rights", NCSL, National Conference of State Legislatures, <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>

to first-time offenders and those who commit non-violent felonies. Our state-by-state review demonstrated numerous options that are available (and viable) for restoring voting rights to persons with felony convictions. We highlight some of our findings below, beginning the list with states who have the most lenient policies:

- In Maine and Vermont, felons never lose their right to vote, even while they are incarcerated.²¹
- In 14 states and the District of Columbia, felons lose their voting rights only while incarcerated, and receive automatic restoration upon release.²²
- In 22 states, felons lose their voting rights during incarceration, and for a period of time after their release, typically while on parole and/or probation. Voting rights are automatically restored after the period of supervision is over. Some states may require former felons to pay outstanding fines, fees or restitution before their rights are restored as well.²³
- In Arizona and Nevada, first-time offenders have their civil rights restored upon completion of probation and payment of any fine or restitution.²⁴
- In Arizona and Nevada, a person who has been convicted of two or more felonies may have his civil rights restored by the judge who discharges him at the end of the term of probation or by applying to the court for restoration of rights.²⁵

The nationwide trend appears to reflect a softening of the collateral consequences from states' felon disenfranchisement provisions. Over recent years, many state legislatures have enacted bills that give back the priceless right to vote to many of its felons. For instance, the State of California in a bold statement about the importance of voting passed a law in 2016 that allowed inmates in county jail to vote while they were incarcerated.²⁶ The following year, the California

²¹ ME.Rev.Stat. Tit. 21-A, § 112-14 (2009) and VT.Stat.Ann. Tit. 17 § 2121 (West 2011)

²² Those states include Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island and Utah.

²³ Those states include Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Kansas, Louisiana, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia and Wisconsin.

²⁴ A.R.S. §13-912; NV Rev Stat § 213.157 (1)(a)(1)(2017)

²⁵ A.R.S. §13-905; NV Rev Stat § 213.157 (2) (2017)

²⁶ California Elections Code, Chapter 2 Article 1 (2016)

2101. (a) A person entitled to register to vote shall be a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.

(b) A person entitled to preregister to vote in an election shall be a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 16 years of age.

(c) For purposes of this section, the following definitions apply:

(1) "Imprisoned" means currently serving a state or federal prison sentence.

Legislature passed another law requiring that information about voting rights restoration be provided on the internet and “in person” to felons being released from prison.²⁷

Similarly, the legislature for the State of Wyoming, in 2015, enacted a bill that requires the Department of Corrections to issue a certification of restoration of voting rights to certain non-violent felons upon completion of their sentence.²⁸ Other states have also demonstrated a willingness to be more forgiving when the crimes committed by the felons were non-violent. For example, in 2017, Wyoming passed a law that *automatically* restored the rights of its non-violent felons.²⁹ The State of Delaware eliminated its state’s policy that imposed on felons a five-year waiting period before their rights were restored.³⁰ The legislature in Maryland overrode a governor’s veto in 2016 and passed a law that now provides for the *automatic* restoration of voting rights upon completion of the term of incarceration.³¹

Our review of what other states are doing about restoring the right to vote to convicted felons in their state has led us to the conclusion that, whether disenfranchised citizens receive such a benefit is dependent on the party, person or personality of the person in power. A brief review of what happened in Kentucky proves the point. Iowa, Florida and Kentucky are three states that permanently bar all citizens with felony convictions from voting. In 2015, outgoing Kentucky

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2466

²⁷ California Elections Code, Chapter 2 Article 1 (2017)

2105.5. (a) The Department of Corrections and Rehabilitation shall do both of the following:

(1) Establish and maintain on the department’s Internet Web site a hyperlink to the Internet Web site at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found.

2105.6. (a) The Department of Corrections and Rehabilitation shall provide each parolee under the jurisdiction of the department upon the completion of his or her parole, upon the parolee’s request, information provided by the Secretary of State regarding voting rights for persons with a criminal history.

http://leginfo.legislature.ca.gov/faces/codes_display1ext.xhtml?lawCode=ELEC&division=2.&title=&part=&chapter=2.&article=1

²⁸ WY Statute §7-13-105(2015)

²⁹ WY Statute §7-13-105(2017)

³⁰ Article V, Section 2 of The Constitution Of The State Of Delaware Any person who is disqualified as a voter because of a conviction of a crime deemed by law a felony shall have such disqualification removed upon being pardoned, or after the expiration of the sentence, whichever may first occur.

<http://www.delcode.delaware.gov/constitution/constitution-06.shtml#TopOfPage>

... Any person who is disqualified as a voter because of a conviction of a crime deemed by law a felony shall have such disqualification removed upon being pardoned, or after the expiration of the sentence, whichever may first occur. The term "sentence" as used in this Section shall include all periods of modification of a sentence, such as, but not limited to, probation, parole and suspension. The provision of this paragraph shall not apply to (1) those persons who were convicted of any felony of murder or manslaughter, (except vehicular homicide); or (2) those persons who were convicted of any felony constituting an offense against public administration involving bribery or improper influence or abuse of office, or any like offense under the laws of any state or local jurisdiction, or of the United States, or of the District of Columbia; or (3) those persons who were convicted of any felony constituting a sexual offense, or any like offense under the laws of any state or local jurisdiction or of the United States or of the District of Columbia.

³¹ <http://www.baltimoresun.com/news/maryland/politics/bs-md-felons-voting-20160209-story.html>

Governor Steve Beshear signed an executive order to automatically restore the right to vote to felony offenders who had committed certain crimes, excluding violent crimes, sex crimes, bribery or treason.³² Matt Bevin, the next Kentucky governor, issued his own executive order³³ reversing the executive order issued by his predecessor. As previously stated, the Maryland Legislature enacted a House Bill and Senate Bill that would change its policy such that voting rights would be automatically restored after completion of the term of incarceration. Maryland's governor vetoed the bill. The Maryland Legislature, as representatives of the citizens of the State of Maryland, demonstrated their concern and commitment to this critical issue by overriding the governor's veto.³⁴ The five-year waiting period that previously existed in Maryland is now gone.

Unfortunately, Florida's history on the issue of restoring voting rights to its citizens who are convicted felons has been fraught with similar rule changes, policy changes and procedural changes. Some of the changes expedited the process, other changes added years to the eligibility criteria for applying. Whether those changes simplified the process and made it easier, or created more obstacles and made the process more difficult appeared to be dependent on either the party, person or personality of the person in power. The proof is in the pudding, or in the numbers, as it were.

In Florida, the rights restoration process is determined by the State of Florida's Rules of Executive Clemency, which are set by the governor and the Florida Clemency Board (comprised of the governor and his three cabinet members). Similar to what happened in Kentucky, Florida's policy and rules have changed over the years. The nature of the change depended on which governor was in office.

The clear language from the Rules of Executive Clemency underscores why the office of the governor is the most critical component in what happens within the entire state on the issue of restoration of civil rights.

The Governor has the **unfettered discretion to deny clemency at any time, for any reason.** The Governor, with the approval of at least two members of the Clemency

³² Executive Order from Kentucky Gov. Beshear, <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2015-MISC-2015-0871-242277.pdf>

³³ Executive Order from Kentucky Gov. Bevin, <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2016-MISC-2015-0052-243103.pdf>

³⁴ <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-maryland>

Board, has the **unfettered discretion to grant, at any time, for any reason**, the following forms of clemency: . . .³⁵

This language has been in the State of Florida's Rules of Executive Clemency for decades. Without any changes to that language the process for restoration of voter's right has changed dramatically dependent on the whims of the specific governor in office. To prove the point, we reviewed what happened in Florida over the past twenty years.

From 1999 to 2018, Florida has had three Republican governors in succession. Based on reports and other information we reviewed in connection with this report, we estimate that during the eight years Governor Jeb Bush was in office (1999 to 2007), voting rights were restored to approximately 52,000 convicted felons.³⁶ On April 5, 2007, his successor, Governor Charlie Crist and the Board of Executive Clemency revised the rights restoration process by changing the rules of eligibility.³⁷ The new rules made 80% of ex-felons eligible for **automatic restoration (Level 1), providing no** restitution is owed and there are no pending charges. That rule change allowed many offenders to get their rights restored without a formal clemency board hearing. Further, those who were convicted of a nonviolent felony became eligible for "automatic" rights restoration, similar to what other states have enacted in recent years. The impact of changing the rules of eligibility is readily apparent in the numbers. Data reveals that during the four years Governor Charlie Crist was in office, voting rights were restored to more than 154,000 convicted felons.³⁸

Similar to what happened in Kentucky, Florida's next governor, Rick Scott, with his Board of Executive Clemency, repealed the 2007 rule change and effectively took the state back to the more restrictive rules that were in place. On March 9, 2011, the Florida Board of Executive

³⁵State of Florida Rules of Executive Clemency 2007

³⁶ Nearly 200,000 persons in the State of Florida lost their right to vote between 1995 and 2005 because of the state's Constitutional ban. Over the same period of time, only about 6,500 ex-felons each year on average had their civil rights restored by the Clemency Board. *A Report of the Florida Advisory Committee to the U.S. Commission on Civil Rights, June 2014* p. 5

³⁷ State of Florida Rules of Executive Clemency 2007

³⁸ See <https://www.scribd.com/document/370550182/James-Michael-Hand-v-Gov-Rick-Scott-State-of-Florida>, Order Granting the Plaintiff's Motion for Summary Judgment, available at <https://cases.justia.com/federal/district-courts/florida/flndce/4:2017cv00128/91055/144/0.pdf?ts=1517563508> During our term as members of this Grand Jury we became aware of a lawsuit that was filed challenging the constitutionality of Florida's re-enfranchisement process. We note the existence of the lawsuit only to point out that court rulings from that litigation will not have any effect on the Amendment 4 Citizen's Initiative, nor will those ruling have any impact on the recommendations in this Grand Jury Report.

Clemency (the Board) voted to change the 2007 rules and imposed waiting periods of five to seven years before felons would even be eligible to **apply** to have their voting rights restored. Felons who were convicted of non-violent felonies and were eligible for “automatic” restoration of rights under the 2007 rule change were now required to get in line to wait and start, what has been described as, “an excessively burdensome process”.

Florida’s current clemency rules, which were issued by the Board in 2011, are now among the most restrictive in the nation and the most restrictive of the three most recent administrations. The impact of this change in 2011 to the 2007 Rules of Executive Clemency is also readily apparent in the numbers. “In Florida, more than 154,000 citizens had their voting rights restored during the last gubernatorial administration’s four years. Since 2011, a period of seven years, that figure has plummeted – less than 3,000 people have received restoration.”³⁹ As of October 1, 2017, there were 22,424 pending clemency applications.⁴⁰ The next governor may decide to enact a more onerous process or lengthen the time felons must wait before they can apply for restoration of their right to vote. This underscores our strong recommendation that “the people” take the process out of the hands of the politicians and allow for automatic restoration of voting rights to Florida’s felons.

Amendment 4 Represents The Will of the People

Again, our review of Florida’s history has confirmed what we discovered in our analysis of other state legislatures and governors. Namely, whether a convicted felon’s rights are restored and the difficulty involved in that process may solely be dependent upon the party, person or personality of the person (s) in power. This Grand Jury believes that restoration of one’s right to vote, which we see as one of the fundamental bedrock principles of our democracy, should not be subject to the vagaries of those in political power. “No right is more precious in a free country than that of having a voice in the election of those who make the laws.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

³⁹ *Ibid.*

⁴⁰ Testimony of OEC Coordinator Julia McCall, Constitution Revision Commission Ethics and Elections Committee Hearing (Nov. 1, 2017) (video at 2:22:56-2:24:04) available at <https://thefloridachannel.org/videos/11117-constitution-revisioncommission-ethics-elections-committee/>

The preamble to our United States Constitution begins with the words, “We the people...” It is that phrase and that principle that forms the basis for our strong recommendation that Florida voters vote in favor of the constitutional amendment that will be on the 2018 ballot. The proposed constitutional amendment represents the will of the people of the State of Florida. That assertion is supported by the fact that the group Floridians For a Fair Democracy surpassed the requisite 766,200 signature threshold to get this amendment on the ballot.⁴¹ The total number of signatures obtained were in excess of 1.3 million.⁴² The language of this Citizen’s ballot initiative has already been approved by the Florida Supreme Court. As the mechanism for losing one’s right is set forth in a constitutional provision, we strongly believe that the mechanism for restoring such a precious right should also be included in our state’s constitution.

We are most comfortable (and confident) in making the statement that Amendment 4 represents the “will of the people.” The members of the Grand Jury make this assertion based on the demographic we reviewed of the signatures obtained during the citizen’s initiative to get this proposed amendment on the ballot. Based on the legal requirements – the persons, groups and the entities involved in this initiative had a limited (and set) amount of time to gather a minimum threshold number of signatures from voters in sixty-seven (67) counties all over the state. The deadline for collecting the signatures was February 1, 2018. The signature threshold number was 766,200. The people involved in this campaign gathered more than 1,300,000 signatures of registered Florida voters. In other words, more than 1.3 million Florida residents who **can** vote want to help more than 1.5 million Florida residents who **can’t** vote.

An analysis of a sampling (more than 500,000) of the registered voters who signed the petition for the Citizen’s Ballot Initiative supporting Amendment 4 revealed the following:

As to the Age of the signers:
18 to 24: 78K (15%)
25 to 34: 93K (17%)
35 to 49: 121K (22%)
50 to 64: 139K (26%)
65+: 108K (20%)

⁴¹ In order to get a proposed amendment by initiative on the 2018 General Election ballot, a petition must be signed by 766,200 voters and the signatures must come from at least 14 of Florida’s 27 congressional districts.

⁴² The Secretary of State determines whether the constitutionally required number of signatures and distribution of signatures by congressional districts has been obtained by February 1 of the year of the general election.

As to the Race or Ethnicity of the signers:

White 315K (59%)
Black: 159K (30%)
Hispanic: 48K (9%)
Unknown: 8K (1%)
Native American 2K (<1%)
Asian: 5K (1%)

As to Party Affiliation:

Democrat: 296K (55%)
Republican: 112K (21%)
Unaffiliated: 127K (24%)
Libertarian: 2K (<1%)
Green: 750 (<1%)
Other: 1K (<1%)

This snapshot reveals a rainbow coalition of Florida voters who believe we ought to be in the business of offering people second chances. In baseball, the rule is 3 strikes and you are out. In the State of Florida, the rule for convicted felons is 1 strike and you are out – permanently. It is clear Florida voters want to change that.

Amendment 4's sole aim is to place in Florida's Constitution automatic restoration of the precious right to vote to felons who were convicted of non-violent crimes. We encourage all Florida voters to cast their ballot in favor of adding this provision to our Constitution. It is good for our citizens and it is good for our state.