



# Prison Education Guide

## BY CHRISTOPHER ZOUKIS

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# Lawsuit, Ballot Initiative Seek to Reform Felon Disenfranchisement in Florida

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by David M. Reutter

In 1868, in response to the abolition of slavery following the Civil War (except for prisoners), Florida enshrined in its constitution the permanent disenfranchisement of people convicted of a felony. The deprivation of felons' voting rights was combined with Black Codes that criminalized offenses state lawmakers believed were mostly committed by blacks, as a means of sending freed slaves to prison and ensuring they could not vote.

While the civil rights movement helped to change racial attitudes, Florida has held strong to its disenfranchisement policy. It is one of only four states, the others being Iowa, Kentucky and Virginia, to require executive clemency to restore voting rights.

“[Felon disenfranchisement] is understood as an issue of law and order, and in Florida that’s the end of the discussion,” said Scott Paine, a political analyst for the Florida League of Cities. “It is not seen in other terms, no matter the merits of other arguments. At the same time, this may be less about the state as a whole than about a particular administration’s perspective.”

Over a four-year period, former Florida Governor Charlie Crist, who earned the nickname “Chain Gang Charlie” as a state senator in the 1990s, granted about 154,000 clemencies. When he was elected in 2010, Governor Rick Scott instituted more onerous rules that included a five-year waiting period before former prisoners could apply to regain their voting rights. [See: PLN, Sept. 2011, p.28]. Scott’s office has granted only 3,000 clemencies in seven years; there is reportedly a backlog of 10,000 petitions, and applicants sometimes have to wait more than a decade before they receive a hearing.

In March 2018, a federal district court recognized problems inherent in the state’s disenfranchisement process, and held that Florida’s current executive clemency model of restoring voting rights is arbitrary and thus unconstitutional.

“This court is not blind to nationwide trends in which the spigot to access the United States’ most ‘precious’ and ‘fundamental’ right, the right to vote, depends on who controls the levers of power,” wrote U.S. District Court Judge Mark Walker. “That spigot is turned on or off depending on whether politicians perceive they will benefit from the expansion or contraction of the electorate.”

The court ordered state officials to create “specific standards and neutral criteria” for restoring the voting rights of ex-prisoners, concluding that “Florida’s vote-restoration scheme providing government officials with unfettered discretion and no meaningful time restraints on the exercise of that discretion violates the First and Fourteenth Amendments.” See: *Hand v. Scott*, 285 F.Supp.3d 1289 (N.D. Fla. 2018).

Critics of Florida’s disenfranchisement process contend the right to vote should not be dictated by political considerations.

“My position is it’s not a good way to make public policy based on how it might impact an election sometime down the road,” said Darryl Paulson, an emeritus professor of government at the University of South Florida. “Democrats clearly support the issue because they believe they will benefit and Republicans tend to oppose it because they believe they will be hurt.”

Nationwide, around six million people are disenfranchised. The ACLU believes some 1.4 million Floridians – about 10 percent of the state’s adult population – are unable to vote due to felony convictions.

“Everything in my life has been affected by my conviction – even after I paid my debt,” said Devon Coleman, 39, who was convicted of burglary at age 19. “This point, reclaiming my full citizenship, has become my life’s journey for redemption.”

Leon County Sheriff Walt McNeil, former secretary of the Florida Department of Corrections, cited studies that have found restoring the right to vote reduces recidivism. [See: PLN, Aug. 2012, p.30]. Another report, by The Washington Economics Group, released in May 2018, concluded that restoring voting rights to ex-prisoners would contribute an estimated \$365 million to Florida’s economy by making them more productive citizens.

Judge Walker’s ruling was stayed by the Eleventh Circuit on April 25, 2018, pending the resolution of the state’s appeal. The appellate court held the state was likely to succeed on the merits of the plaintiffs’ equal protection and First Amendment claims. Oral arguments were held in July 2018. See: *Hand v. Scott*, 888 F.3d 1206 (11th Cir. 2018).

Meanwhile, a Florida ballot initiative will allow voters to determine whether felons can obtain their voting rights upon the completion of their prison sentences or terms of probation or parole.

The initiative, known as Amendment 4, is being spearheaded by Floridians for a Fair Democracy, which collected over 800,000 petition signatures to put it on the ballot as a state constitutional amendment.

“The gravity of what has just been accomplished has not sunk in yet,” said Desmond Meade, the organization’s chairman. For Meade, it is personal. He is an ex-felon who earned a law degree, yet he is prohibited from voting.

Florida voters will decide in November 2018 whether to amend the state’s constitution to provide that “any disqualification from voting arising from a felony conviction shall terminate, and voting rights shall be restored upon completion of all terms or sentence including parole or probation.”

However, the initiative also includes language that states: “No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.” This means former prisoners convicted of murder or sexual crimes must petition to have their rights restored under the current lengthy, backlogged executive clemency process – the same one determined to be arbitrary by Judge Walker.

Around \$5.5 million was initially raised to get Amendment 4 on the ballot; the top contributor to the initiative, the ACLU, donated almost \$2 million. Most of the money was paid to a company that hired signature-gatherers for the ballot initiative.

If successful, the influx of new voters in Florida could have a major impact on national politics. Only 537 votes decided the hotly-contested presidential election in 2000 that put George W. Bush in the White House.

“This is an encouraging step in the right direction,” said Myrna Perez, deputy director of the Brennan Center for Justice Democracy Program. “This amendment is needed to move Florida more to the mainstream.”

Nationwide, polls show that 65 percent of voters favor re-enfranchisement for former offenders; that number increases when those convicted of murder and sex crimes are excluded. It will take 60 percent of the vote for Amendment 4 to pass – a hard sell in conservative Florida.

On August 10, 2018, the Florida Rights Restoration Coalition held a convening in Orlando to build support for the ballot initiative.

“With the support of people from all walks of life and backgrounds, we have become a shining example of what can happen when we come together along the lines of humanity,” said Desmond Meade. “We will continue to campaign across this state up to Election Day sharing the powerful stories of those affected by Amendment 4.”

The Lake Worth, Florida-based Human Rights Defense Center, PLN’s parent organization, does not support Amendment 4 because it excludes certain classes of former prisoners – those convicted of murder and sex offenses – and thus ensures some ex-felons can regain their right to vote while others cannot. While murderers and sex offenders statistically have the lowest recidivism rates, they are often excluded when criminal justice reform is discussed; they are thrown under the political bus.

Nor is it likely – or even possible – that there will be another Florida constitutional amendment sometime in the future to ensure that they, too, will have the same opportunity to regain their voting rights.

HRDC executive director Paul Wright, who was himself convicted of murder, noted that should Amendment 4 pass it would enshrine discrimination against certain former prisoners in the state constitution. He added that restoring civil rights for one marginalized population should not be accomplished at the expense of another marginalized population, and that the voting rights issue should be for “all of us or none.”

Sources: [www.nymag.com](http://www.nymag.com), [www.csmonitor.com](http://www.csmonitor.com), [www.sun-sentinel.com](http://www.sun-sentinel.com), [www.salon.com](http://www.salon.com), [www.cnn.com](http://www.cnn.com), [www.wfsu.org](http://www.wfsu.org), [www.ballotpedia.org](http://www.ballotpedia.org), [www.floridatoday.com](http://www.floridatoday.com), [www.orlandosentinel.com](http://www.orlandosentinel.com), [www.secondchancesfl.org](http://www.secondchancesfl.org), [www.tampabay.com](http://www.tampabay.com)

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### Hand v. Scott

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<b>Year</b>	2018
<b>Cite</b>	888 F.3d 1206 (11th Cir. 2018)
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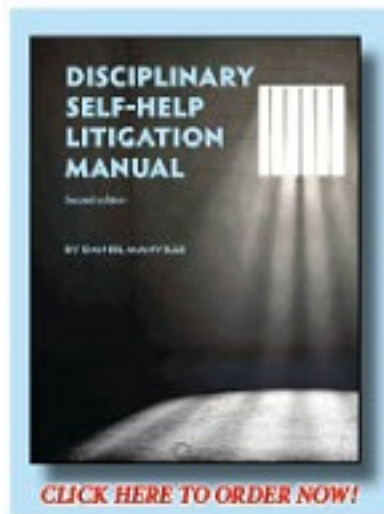
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