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OPINION

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Legislative Update

Voters will decide on constitutional amendment

From Amy Neighbors
State Representative

When Kentucky voters cast their ballots in this year's General Election, they will have the opportunity to decide on a proposed constitutional amendment concerning the governor's authority to issue pardons and commute sentences.

The current Kentucky Constitution is our state's fourth and 135-years old. It is far more detailed than those of other states, with over 260 sections and detailed provisions that other states address through legislation. The document is significant not only for how old and long it is, but also for the way it reflects the social and political priorities and culture of the late 19th century. For example, the original version limited voting rights to white males age 21 and over. And, while it has been amended more than 40 times since 1891, much of its language is still outdated. Voters have considered amendments 12 times (16 proposed amendments) over the past 30 years.

If approved by voters, the proposed amendment on this year's ballot would prohibit any Kentucky governor from granting a pardon or commuting a sentence during the 60 days immediately preceding a general election and during the transition period between an election and the beginning of the next administration. The proposal would not eliminate the governor's existing constitutional authority to grant pardons or reduce sentences outside

of that restricted period.

The exact language of the amendment reads as follows:

Are you in favor of limiting a Governor's ability to grant pardons or commute sentences by prohibiting him or her from granting pardons or commuting sentences during the time period beginning 60 days prior to the general election at which the Governor is elected, and ending when the Governor is sworn in for that term by amending the Constitution of Kentucky as stated below?

It is proposed that Section 77 of the Constitution of Kentucky be amended to read as follows:

(1) The Governor shall have power to:

(a) Remit fines and forfeitures; and

(b) Commute sentences and grant reprieves and pardons, except:

1. In case of impeachment; or

2. For the period beginning sixty days prior to the date of the gubernatorial election and ending the fifth Tuesday succeeding the election.

(2) The Governor shall file with each application therefor a statement of the reasons for his or her decision thereon, which application and statement shall always be open to public inspection.

(3) In cases of treason, the Governor shall have power to grant reprieves until the end of the next session of the General

Assembly, in which the power of pardoning shall be vested; but he or she shall have no power to remit the fees of the Clerk, Sheriff or Commonwealth's Attorney in penal or criminal cases.

Under Kentucky's Constitution, the governor has broad clemency powers. A pardon can forgive the legal consequences of a conviction, while a commutation can reduce a person's sentence. These powers are separate from the judicial process and can affect decisions made by law enforcement, prosecutors, juries and judges.

The proposed amendment is intended to establish a constitutional restriction on when those powers may be exercised. It would apply to every governor going forward. The proposed amendment does not eliminate the governor's authority to grant pardons or commute sentences. Instead, it places limits on when that authority may be exercised, raising a practical question about timing.

The issue has received increased attention because of the use of executive clemency near the end of gubernatorial administrations. In December 2019, then-Governor Matt Bevin issued more than 600 pardons and commutations shortly before leaving office. Several of those decisions – as well as the decision-making process itself – generated significant public controversy and scrutiny. In the final days of his administration in December 2015, Governor Steve Beshear issued 197 pardons and

commuted six sentences, far more than he had issued earlier in his administration. And, in December 2007, Governor Ernie Fletcher issued 101 pardons and commutations as he was leaving office.

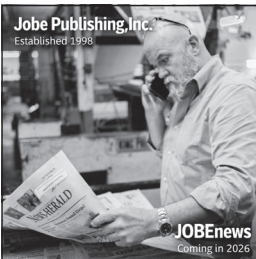
Interesting enough, when Governor Paul Patton was leaving office in 2003, he and his staff reportedly determined that almost 200 pardon applications were justified. However, he told a reporter with the Louisville Courier Journal that he chose not to grant them out of caution that it might appear like political favoritism if any were campaign donors.

The proposal has also been considered over multiple legislative sessions. The sponsor of the legislation that placed it on the ballot has pursued changes for several years. The amendment ultimately received bipartisan support in the General Assembly before being placed before voters.

As with any constitutional amendment, the decision ultimately rests with Kentucky voters. The question on the ballot gives voters the opportunity to determine whether these additional constitutional restrictions should become part of the governor's clemency authority.

As always, I can be reached anytime through the toll-free message line in Frankfort at 1-800-372-7181. You can also contact me via email at Amy.Neighbors@kylegislature.gov and keep track through the Kentucky legislature's website at legislature.ky.gov.

Kentucky should put reasonable limits on last-minute pardons



By Jeff Jobe
Community Publisher

The power to forgive a criminal conviction or reduce a prison sentence is an extraordinary responsibility. Kentucky's governors should retain that authority, but voters have good reason to place reasonable limits on when it can be exercised.

I support the proposed constitutional amendment on this year's ballot and encourage Kentuckians to vote yes.

State Sen. Chris McDaniel, a Republican from Ryland Heights in Kenton County, introduced Senate Bill 10, the legislation that placed this proposal before voters. The measure received bipartisan support in the General Assembly.

The proposal would prohibit governors from granting pardons or commuting sentences during the period beginning 60 days before a gubernatorial election and ending the fifth Tuesday after that election. The restriction concerns elections for governor, rather than every general election. Outside that period, the governor would retain those powers.

That is a reasonable safeguard for an authority that can profoundly affect victims, families and public confidence in our justice system.

There is a legitimate place for mercy. Courts can make mistakes. Sentences can be excessive. People can demonstrate rehabilitation that deserves consideration. A fair justice system must have room to recognize those circumstances.

But decisions carrying that much weight deserve careful review, clear explanations and accountability. They should never leave the public wondering whether political

connections mattered more than the merits of a case.

The standard we establish should apply equally to both parties. My support for this amendment would be the same regardless of who occupies the governor's office.

When an outgoing governor makes consequential decisions in the final days of an administration, the public has limited opportunity to demand answers before that governor leaves. The decisions remain, while responsibility for explaining and dealing with their consequences often falls to others.

For victims and their families, a pardon or reduced sentence can reopen painful wounds. For investigators, prosecutors and jurors, it can raise questions about years of work and difficult decisions. Those concerns do not mean clemency is always wrong. They mean it should be exercised with the seriousness it deserves.

There is a fair concern on the other side: a fixed restriction could delay relief for someone with a deserving case. Voters should acknowledge that tradeoff. I believe the limited pause is justified by the need to discourage last-minute decisions during an election and transfer of power.

This amendment will not guarantee that every future pardon is wise. It will not resolve every concern about political influence. It would, however, establish a clear boundary that every governor must follow.

Public trust depends on our willingness to place reasonable checks on powerful offices, including when the person holding that office belongs to our own political party.

Kentucky can preserve mercy while demanding greater accountability. This amendment offers a practical step toward that balance.

I encourage a yes vote.