

May 6, 2019

Chair Williamson, Vice-Chairs Gorsek and Sprenger, Members—thank you for the opportunity to be here this afternoon to testify in support of SB 388:

My name is Aliza Kaplan and I'm a Professor and the Director of the Criminal Justice Reform Clinic at Lewis & Clark Law School. Part of our work through the Clinic is representing individuals seeking clemency in the form of pardons and commutations. Through this work, I have had the pleasure and honor of meeting and getting to know Dondrae "Choo" Fair.

In the summer of 2017, we began our work on Choo's clemency petition asking Governor Brown to pardon his 1992 conviction for Robbery in the First Degree. Although ORS 137.225 provides a mechanism for individuals to seal the records of their criminal convictions, this was not an option for Choo because his conviction was a Class A Felony, and therefore not eligible for expungement under this statute. Thus, a pardon was his only option for post-conviction relief.

In all of our clemency petitions to the Governor, we seek to explain the individual's life circumstances that led to them committing the crime in question, and how they transformed their lives in the aftermath. In pardon cases in particular, the primary reason for seeking the pardon is because it is preventing the person from moving forward with their lives—particularly in regards to employment and housing.

Specific to Choo, he was a former gang member who had transformed his circumstances and found employment at Volunteers of America, where he was counseling young, mostly African-American men away from a life of gang activity. He had a particularized skill set and credibility given his past life, and he excelled at this job. However, his position, and thus employment, became at risk because the federal grant that funded him became contingent on a clean background check, which he couldn't pass due to this 1992 felony conviction. What makes Choo's case especially heartbreaking is the idea that without the pardon, he was at risk of losing a position that he was perfectly suited for based on his background, which include this felony conviction.

However, Choo is one of the lucky ones. Governor Brown granted his pardon on February 12, 2018 due to becoming a (quote) "valuable member of his community" and his (quote) "demonstrated extraordinary commitment to betterment of the community by mentoring youth and working to reduce gang violence." On the day he was pardoned, he received a pardon "certificate," was able to meet the Governor, and he and his family and close friends could celebrate this new important step forward in his life.

After the celebration was over, the most important next step was to seal the records of the 1992 conviction so Choo could stay at his job. It was at this point we realized there is no legal

mechanism to seal a pardoned conviction under Oregon law. And to be quite honest, I was dumbfounded. I called the circuit court, the Governor's Office, my contact at the Multnomah County District Attorney's office—no one knew the answer. And that's when I realized that there was no answer because our current pardon statute doesn't allow a legal mechanism to seal a pardoned conviction from someone's criminal record.

I've researched clemency extensively both nationally and in Oregon. Just as a power to pardon was assigned to the president in Article II of the U.S. Constitution, Oregon's Constitution provides for an executive pardoning power under Article V, section 14. Pardon is the ultimate expression of forgiveness and reconciliation from the sovereign that secured the conviction. And the purpose of a pardon is to absolve a person of guilt for a crime or other legal offense, as if the act never occurred.

One of the most important and difficult challenges of the modern criminal justice system has been finding ways to avoid or mitigate the disabling effects of a criminal record, to enable affected individuals to reintegrate fully into their communities. This is not a new problem, but its human scale today is daunting. As you are all aware, it is close to impossible to rent or buy an apartment or home or secure employment with a felony conviction on one's record.

It is my belief that the digital age makes it necessary to have a pardoned conviction sealed from one's record. Previously, it was one's hope that you would have some of your rights restored to you. But today, having a conviction pop up on a background check can be life altering. For Choo, this was certainly the case.

After many months, we ultimately had a hearing that resulted in Choo's record being sealed. However, what we learned from the process was that we have a serious problem in that there is no procedure to seal the record of a pardoned conviction.

A Governor's pardon is one of her broadest intrinsic powers. However, without the ability to seal the record of the pardoned conviction, the purpose of the pardon is *nominal*. SB 388 would ensure that people like Choo can seal their record after they are granted a pardon.

Therefore, I urge you to support SB 388.

Chair Williamson, Vice-Chairs Gorsek and Sprenger, Members—thank you for the opportunity to testify.