

**AMERICAN CIVIL LIBERTIES UNION
BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
THE SENTENCING PROJECT**

April 20, 2010

The Honorable Robert F. McDonnell
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Dear Governor McDonnell:

We write to express our serious concerns about your recent actions related to the restoration of voting rights to people with criminal convictions in Virginia, and to recommend changes to the current restoration process that will streamline the application and assure that more Virginians are permitted to exercise their fundamental right to vote.

As a group of civil rights and criminal justice organizations, we believe that the right to vote is not only fundamental to the modern ideal of an inclusive democracy, but is also a critical component of successful reentry back into the community. We understand from recent media coverage and from your statements while campaigning for governor that you would like to expedite and streamline the current restoration process. We commend your intentions, and we write to suggest four simple changes that would help your administration reach your goal: 1) abandon the written statement requirement; 2) eliminate the waiting period; 3) remove wealth as a voting qualification; and 4) process all applications within 90 days.

Virginia is one of only two states left in the country (Kentucky is the other) that denies the right to vote to everyone with a felony conviction for life. Ten years ago, seven other states also had lifetime disenfranchisement laws, but today only two remain. In the last decade, 21 states have either restored voting rights or eased the restoration process. These changes have occurred under both Republican and Democratic governors. There has been a national recognition that harsh criminal disenfranchisement laws are a relic of a discriminatory past, are antithetical to the fundamental principles of our democracy, and do nothing to protect public safety or promote successful reentry. In fact, the American Correctional Association, the American Probation and Parole Association, the Association of Paroling Authorities International and the National Black Police Association all support voting rights restoration.

Virginia's law is firmly planted in the Commonwealth's Jim Crow past,¹ and it continues to have racially discriminatory effects today. More than 300,000 people are permanently disenfranchised in

¹ During the Virginia Constitutional Convention of 1901-02, delegate Carter Glass (later a prominent U.S. Senator) described the proposal which included felony disenfranchisement as a plan that would "eliminate the darkey as a political factor in this State in less than 5 years, so that in no single county . . . will there be the

the state, despite having rejoined society and completed all terms of their criminal sentences. An estimated one in five African Americans in Virginia is permanently disenfranchised under this law. African Americans make up one-fifth of Virginia's population, but over half of those disenfranchised in the state.²

Under your leadership, Virginia can take action to help people rejoin their communities. To achieve this goal, we recommend four changes to the Commonwealth's felony disenfranchisement policy:

First, abandon the written statement. Requiring people to prepare a written statement as part of their application imposes an unnecessary barrier and harkens back to a time when such tactics were used to intentionally keep poor and minority voters from the polls. 12% of Virginia's population lacks basic literacy skills. Rates of illiteracy are substantially higher among poor and minority communities, groups disproportionately represented in the criminal justice system. Nationally, 24% of blacks and 44% of Hispanics lack basic literacy skills, compared to 7% of whites.³ People with low literacy skills will undoubtedly view the written requirement as a significant obstacle, and many will likely be discouraged from applying as a result. The written statement will also make the application review process lengthier, placing additional burdens on your staff and increasing the cost of administration.

The written requirement would represent an enormous step backward when the rest of the country is moving forward, and we ask that you abandon this policy change. To lessen confusion, we also ask that you process all of the applicants to whom your administration mistakenly sent letters requiring the written statement, and inform those applicants that the statement is not required.

Second, eliminate the waiting period. Virginia has every interest in making sure that people coming off probation and parole become connected with the community. The first six months of the reentry process are critical. Allowing individuals to apply for rights restoration immediately upon completing their sentences will allow them to feel this connection and become stakeholders in the community. Voting is not just a right, it is a responsibility. People who have completed their sentences and rejoined the community should know that they now have the rights *and* responsibilities that come with being members of society.

Third, do not make wealth a voting qualification. Currently your administration requires that applicants for rights restoration have satisfied all outstanding fees, fines and restitution. These financial obligations should be addressed in the province of the criminal justice system, but the right to vote should never hinge on one's ability to pay, and our democracy should never create a double standard for the wealthy and the poor. We urge you to eliminate this modern-day poll tax.

Fourth, process all applications within 90 days. In the past, applications have languished for months and sometimes years. Elections come and go and people remain disenfranchised, even

least concern felt for the complete supremacy of the white race in the affairs of government.” Report of the Proceedings and Debates of the Constitutional Convention, State of Virginia, 3076 (1906).

² Jeff Manza & Christopher Uggen, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* (2006) Tbl. A3.4.

³ National Center for Education Statistics, Education Indicators for the Whitehouse Social Statistics Briefing Room: Adult Literacy by Race/Ethnicity, <http://nces.ed.gov/ssbr/pages/adultliteracy.asp?IndID=32>.

though their applications are complete and they are eligible for restoration. You made a promise during your campaign to process all applications within 90 day and we strongly urge you to keep this promise. Bureaucratic red tape should not infringe upon the right to vote.

We hope you will use this opportunity to take swift and meaningful action, and look forward to working with your office to implement these changes.

Sincerely,

Erika L. Wood
Deputy Director, Democracy Program
Brennan Center for Justice at NYU School of Law
erika.wood@nyu.edu • (212) 992-8638

Marc Mauer
Executive Director
The Sentencing Project
mauer@sentencingproject.org • (202) 628-0871

Dennis D. Parker
Director, Racial Justice Program
American Civil Liberties Union

Cc: Janet Polarek, Secretary of the Commonwealth