

BRENNAN CENTER FOR JUSTICE

RESTORING THE RIGHT TO VOTE IN VIRGINIA

The Problem: Virginia is one of only two states (Kentucky is the other) that permanently disenfranchises all people with felony convictions, unless they receive individual, discretionary, executive clemency. Over 370,000 citizens of the Commonwealth of Virginia—almost 7% of the voting-age population—are disenfranchised because of a felony conviction.¹ Only Alabama, Delaware, and Mississippi disenfranchise at a higher rate.

Virginia’s felony disenfranchisement law was originally intended to keep African Americans from voting. During the Virginia Constitutional Convention of 1901-02, delegate Carter Glass (later a prominent U.S. Senator) stated:

This plan [which included felony disenfranchisement] will 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 least concern felt for the complete supremacy of the white race in the affairs of government.²

The constitutional provision designed for this odious purpose remains in place and continues to have its intended effect: One in five African Americans in Virginia, and one in four African-American men, is permanently disenfranchised under this law.³ African Americans make up only one fifth of Virginia’s population, but over half of those disenfranchised are African-American.

The Solution: The Virginia Constitution gives the Governor the power to “remove political disabilities consequent upon conviction.”⁴ This power is unqualified, giving Governor Kaine plenary authority to re-enfranchise anyone convicted of any crime at any time in the Commonwealth. The Governor need not even report to the Legislature his exercise of the power to restore voting rights; that constitutional obligation extends only to the exercise of other clemency powers.⁵ (The Governor “shall communicate to the General Assembly, at each regular session, particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same.”) Thus, the Virginia Supreme Court has emphasized that “the power to remove the felon’s political disabilities remains vested solely in the Governor, who may grant or deny any request without explanation.”⁶

¹ Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 250, Table A3.3 (2006). This data was gathered in 2004.

² Report of the Proceedings and Debates of the Constitutional Convention, State of Virginia, 3076 (1906).

³ Manza & Uggen, *supra* note 1, at 250.

⁴ Va. Const. Art. V, § 12.

⁵ *Id.*

⁶ *In re Phillips*, 574 S.E.2d 270, 273 (2003).

Both former Governor Tom Vilsack of Iowa and Governor Charlie Crist of Florida have exercised similar powers of executive clemency granted by the constitutions of each of those states. In 2005, then-Governor Vilsack issued an order automatically restoring voting rights to all persons who have completed their criminal sentences. A legal challenge to Governor Vilsack's power to issue the order was dismissed by a state court. In 2006, Governor Crist approved new rules of executive clemency that streamline the restoration process for some individuals who have completed their sentence. Virginia's constitution provides more power to the Governor to grant clemency than that of either Iowa or Florida.

Governor Tim Kaine can bring Virginia into the mainstream and join the vast majority of states restoring voting rights to people who are living and working in their communities. He can show the Commonwealth how to welcome people back into the community once they have served their time, and treat them as full citizens again, with the right and responsibility to participate in the democratic process.

As Governor Crist stated when he changed Florida's voting ban:

If we believe people have paid their debt to society, then that debt should be considered paid in full, and their civil rights should in fact be restored. By granting ex-offenders the opportunity to participate in the democratic process, we restore their ability to be gainfully employed, as well as their dignity.