



December 22, 2005

Governor Mark Warner
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Re: Restoration of voting rights to people with felony convictions

Dear Governor Warner:

On behalf of the Brennan Center for Justice at NYU School of Law, we write to urge you to restore voting rights to the 243,000 Virginia citizens still barred from the polls although they have completed their sentences on past felony convictions. The Brennan Center for Justice is a nonprofit, nonpartisan organization that unites thinkers and advocates in pursuit of a vision of inclusive and effective democracy. As part of our work to promote full participation and fair representation in government, we support voting rights for people with felony convictions.

As you know, the Virginia Constitution gives you the power to “remove political disabilities consequent upon conviction.” Vir. Const. art. V, § 12. You have been generous in exercising this power to restore the franchise to more than 3,000 people, a number greater than were restored by your four predecessors combined. Still, nearly a quarter of a million Virginians who are living, working, raising families, and paying taxes in their communities are without a political voice. We urge you to right this wrong before you leave office by issuing an executive order restoring their right to vote.

Virginia law empowers you to grant clemency in this manner. Your constitution gives you plenary authority to re-enfranchise anyone convicted of any crime at any time in the Commonwealth. Although your power to “remit fines and penalties” is qualified by “such rules and regulations as may be prescribed by law,” your power to “remove political disabilities” is unqualified and subject to your discretion alone. *Id.* You need not even report to the Legislature your exercise of the power to restore voting rights; that constitutional obligation extends only to your exercise of other clemency powers. *Id.* (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." *In re Phillips*, 574 S.E.2d 270, 273 (2003).

Unrestricted executive power to restore voting rights in Virginia, as elsewhere, reflects the absence of risk associated with this form of clemency. When a governor grants "reprieves or pardons" or "remit[s] fines and penalties," a person convicted of a crime may be released from prison before having served his sentence. This may pose dangers to the community. In contrast, when a governor restores the franchise, no danger arises. In fact, a recent study shows that re-enfranchisement advances public safety. Among people who have been arrested, those who vote are less than half as likely to be re-arrested as those who do not vote. It seems that voting is an indication of the kinds of community ties that act as a barrier to recidivism.

Restoration of voting rights also strengthens democracy. Nearly 6% of voting-age Virginia citizens have lost the right to vote because of a felony conviction. Democracy is diminished when so many are excluded.

Among African Americans, the numbers are even more alarming. African Americans make up 20% of Virginia's population, but approximately 52% of those disenfranchised. Sixteen percent of all adult African Americans in the Commonwealth (including 25% of black men) cannot vote because of a felony conviction. Suppression of the black vote seems to have been one of the original purposes of felony disenfranchisement in Virginia. During the Virginia Constitutional Convention of 1901-02, delegate Carter Glass stated for the record: "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." The constitutional provision designed for this odious purpose continues to have the anticipated effect, denying African Americans their fair share of political power and yielding governments less responsive to their concerns. It is well past time to ensure the full and fair representation of African Americans in the Commonwealth.

Virginia is one of only three states (with Florida and Kentucky) that permanently disenfranchise all people with felony convictions unless they receive clemency, one applicant at a time. On Independence Day this year, Iowa's Governor Vilsack issued an executive order restoring the franchise to people who have served their sentences of incarceration and/or community supervision. Just months earlier, Nebraska repealed permanent disenfranchisement in favor of a law that restores the franchise two years after the completion of sentence. These most recent victories for voting rights are part of a national trend: since 1997, ten additional states have expanded the franchise or eased the restoration process for people with criminal convictions.

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We urge you to bring Virginia into the mainstream. If Iowans regained the vote to celebrate freedom on Independence Day, then Virginians should regain it to celebrate a new beginning in the New Year. Please show the Commonwealth how to welcome people back into the community once they have served their time. Please show that you are ready to treat them as citizens again, with the right and responsibility to participate in the democratic process. As we did in Iowa, the Brennan Center stands ready to help in any way as you consider an executive order to restore the vote.

Thank you and Happy New Year,

Catherine Weiss
Associate Counsel
Democracy Program