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FOR JUSTICE

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Drafting Committee on a Uniform Act on the
Collateral Consequences of Conviction,
The National Conference on Commissioners
on Uniform State Laws

To the Committee:

We write to once again urge the Drafting Committee to include a policy recommendation limiting criminal disenfranchisement to the term of actual incarceration in its Uniform Collateral Sanctions and Disqualifications Act. It is our understanding that a decision was made at the November 2007 Committee meeting to remove from the Act the recommendation that had been in the Model Act since the July 2006 Annual Meeting Draft, recommending restoration of voting rights upon release from incarceration. We continue to believe, as we expressed to you in our letters of March, June, and October 2006, that failing to include such a policy recommendation in the new Uniform Act would represent a serious regression from previous NCCUSL policy and would be out of step with other recommendations from the American Bar Association and other national groups.

It is our understanding that the removal of what had been Section 11 of the Uniform Act was in response to disagreement over including an alternative provision that would have restored voting rights upon completion of full sentence, including probation and parole. The Brennan Center believes strongly that recommending restoration of voting rights upon release from prison should be a noncontroversial step for the Committee, given NCCUSL's long history of supporting voting rights.

This history began more than forty years ago with NCCUSL's 1964 Uniform Act on the Status of Convicted Persons. That Act explicitly allowed people on parole and probation to vote.¹ In 1978, NCCUSL's Model Sentencing and Corrections Act

¹ UNIFORM ACT ON STATUS OF CONVICTED PERSONS § 2(a) (1964) (stating that a "person sentenced for a felony, from the time of his sentence until his final discharge may not: (1) vote in an election, but if execution of sentence is suspended with or without the defendant being placed on probation or he is

recommended that people be allowed to vote even while incarcerated.² In addition to NCCUSL's previous recommendations, the Model Penal Code of 1962,³ the 1981 ABA Standards on the Legal Status of Prisoners,⁴ reaffirmed in the 2003 Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons,⁵ and the National Council on Crime and Delinquency's Criminal Justice Sentencing Policy Statement of 2005⁶ all favor restoration of voting rights upon release from incarceration, if not sooner.

In addition, the American Probation and Parole Association, a national organization of more than 2200 probation and parole professionals, issued a resolution in October 2007 calling for restoration of voting rights upon release from prison.⁷ We have been advised that the Association of Paroling Authorities International and the Association of State Correctional Administrators will soon issue similar resolutions.

Given the national consensus among these national organizations that voting rights ought to be restored upon release from actual incarceration, it would be a step backwards for the Committee to either fail to include a recommendation on criminal disenfranchisement or to sanction withholding the right to vote from people on probation and parole.

It is our understanding that the alternative language included in Section 11 of the November 2007 draft was motivated in part by concern regarding the necessity of constitutional changes to effect post-incarceration restoration in some states. However, only four states would require a constitutional amendment to permit statutory automatic restoration of the right to vote upon release from prison, yet would not require an amendment to restore the right to vote after completion of sentence.⁸ Surely those four states (Colorado,⁹ California, Georgia, and West

paroled after commitment to imprisonment, he may vote during the period of the suspension or parole").

² MODEL SENTENCING AND CORRECTIONS ACT § 4-1001(b)(2) (1978) (stating, "[e]xcept as provided by [the Constitution of this State or] this Act, a person convicted of an offense does not sustain loss of civil rights or forfeiture of estate or property by reason of a conviction or confinement; he retains all rights, political, personal, civil, and otherwise, including the right to...vote in elections").

³ MODEL PENAL CODE § 306.3 (1962).

⁴ ABA LEGAL STATUS OF PRISONERS STANDARDS: PART VIII. CIVIL DISABILITIES OF CONVICTED PERSONS, § 23-8.4 & cmt. (2d ed. 1983).

⁵ ABA STANDARDS FOR CRIMINAL JUSTICE: COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS § 19-2.6(a) & cmt. (3d ed. 2003).

⁶ National Council on Crime and Delinquency, CRIMINAL JUSTICE SENTENCING POLICY STATEMENT, Position 8 (November 2005).

⁷ American Probation & Parole Ass'n, *Resolution Supporting Restoration of Voting Rights* (Oct. 2007), available at http://www.appa-net.org/newsreleases/2007/APPA_Voting_Rights_Release.pdf.

⁸ Thirty-five states deny the right to vote to some individuals post-incarceration. See Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States*, available at http://www.brennancenter.org/page/-/d/download_file_48642.pdf (2007). Of those states, Kentucky, Virginia, Alabama, Delaware, Florida, Mississippi, Georgia, Iowa, West Virginia, California, and Colorado would each likely require a constitutional amendment to enable a statutory change to post-incarceration restoration. See Ala. Const. art. VIII, § 177; Cal. Const. art. II, § 4; Colo. Const. art. VII, § 10; Del. Const. art. V, § 2; Fla. Const. art. VI, § 4; Iowa Const. art. II, § 5; Ga. Const. art. II, § 1,

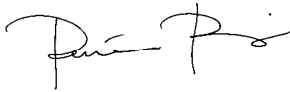
Virginia) could be protected by a saving clause, stating that the Act shall apply except as provided in the state constitution, without diluting the Committee's earlier strong message in favor of voting rights restoration.

The Brennan Center for Justice has recently published *Restoring the Right to Vote*,¹⁰ a comprehensive policy proposal for restoring the right to vote to people as soon as they are released from prison, a copy of which will be sent to you under separate cover. Among other things, the proposal shows that post-incarceration voting rights restoration is not only more protective of the fundamental right to vote, but is the most sensible policy from the point of view of election administration. A national uniform standard of post-incarceration restoration would end many of the administrative problems that the national patchwork of differing felony disenfranchisement rules has created. Given the mission of NCCUSL, it is particularly important that the Uniform Act on Collateral Sanctions contain a single, uniform standard on restoration of the right to vote.

We urge the Committee to continue NCCUSL's long history of recognizing the fundamental right to vote and recommend a sound democratic policy of restoring voting rights upon release from prison. We would be happy to discuss this matter with the Committee or any of its members, either in advance of the Committee's next meeting in February 2008 or at that meeting.

Thank you very much for your continued consideration of the Brennan Center's views on this matter.

Sincerely,



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para. III; Ky. Const. § 145; Miss. Const. art. 12, § 241; W. Va. Const. art. IV, § 1; Va. Const. art. II, § 1. (While the Alabama and Mississippi legislatures each have some ability to restore the right to vote on a select basis, either by individual legislative restoration (Mississippi) or by regulation of the Board of Pardons and Paroles (Alabama), in order to enact the sort of statute contemplated by prior versions of the Act, constitutional amendment would likely be necessary.) However, in Kentucky, Virginia, Alabama Delaware, Florida, Iowa, and Mississippi, a constitutional amendment would *also* be required to enable statutory change to automatic post-sentence restoration, making this criticism of previous versions of Section 11 equally applicable to the post-sentence alternative. (It is worth noting that both Florida and Iowa have recently changed their felony disenfranchisement rules through executive clemency, which is often possible even in those states where the exact terms of disenfranchisement are specified in the constitution.)

⁹ It would be possible in Colorado, however, to statutorily alter that state's system of parole to allow individuals released from prison to vote. See *generally Danielson v. Dennis*, 139 P.3d 688 (Colo. 2006).

¹⁰ Erika Wood, Brennan Center for Justice, *Restoring the Right to Vote* (2008).