



September 26, 2013

Mr. Terry McAuliffe
Candidate for Governor
1601 N. Kent St., Suite 900
Arlington, VA 22209

Dear Mr. McAuliffe:

In the past four years, Governor McDonnell restored the rights of more citizens than any previous governor and his Administration implemented a less burdensome process for certain non-violent felons to regain their rights. Nonetheless, a tremendous amount of work remains if we are to have a Commonwealth in which all persons of voting age have the right to vote.

Recently, we were encouraged to read that you are committed to building on Governor McDonnell's positive record. As representatives of organizations working to protect and advance voting rights for all Virginians, we are writing to ask you to express your commitment in three ways: 1) by actively proposing and supporting an amendment to the Virginia constitution that would repeal the current lifetime ban on voting for all felons; 2) by agreeing that you will sign an executive order immediately upon taking office that restores the right to vote; and 3) by improving the restoration of rights process currently used by Governor McDonnell.

The right to vote is fundamental to full participation in a democracy. Voting allows citizens to elect public officials and determines the majority's will on constitutional issues. Given the significance of the right to vote, it is disappointing that Virginia continues to disenfranchise permanently its citizens upon felony conviction and impose discretionary and arbitrary hurdles to the restoration of their civil rights. Accordingly, we ask that you commit if elected as Governor to take the actions detailed below that we believe will move us closer to ensuring that every citizen of voting age has the right to vote and put an end felon disenfranchisement in Virginia.

The Process for Restoration of Voting Rights in Virginia

Virginia is one of only four states that continue to disenfranchise their citizens permanently. The rate of re-enfranchisement in Virginia remains abysmal despite the recent improvements, and more than 300,000 Virginians continue to be denied the right to vote. As you know, the entire restoration of rights process is at the sole discretion of the Governor. In the past few decades, the Governors of Virginia have instituted different policies and procedures for exercising their discretion. As a result, the process is confusing and arbitrary. More importantly, it has failed to restore the civil rights of a significant number of disenfranchised individuals.

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Currently, individuals convicted of what the current Governor defines as non-violent felonies for purposes of rights restoration no longer need to apply to have their rights restored, but still must complete all the conditions of their sentences, including probation and payment of all fines, fees, and restitution before the Governor will consider restoring their civil rights. Once those conditions are satisfied and the Governor's office is aware of the individual, he or she must wait for a letter from the Governor restoring his or her right to vote. There are limited resources and staffing available in the Secretary of the Commonwealth's office to efficiently process every eligible non-violent felon. As a result, many thousands of eligible non-violent felons will likely continue to wait for the restoration of this basic right even though the newly reformed process is "automatic" for these particular people.

For an individual who the Governor has chosen to define as a violent felon, he or she must complete all conditions of the sentence including probation and payment of all fines, fees and restitution---and then wait another five years before he or she is eligible to apply for restoration of civil rights. After waiting five years, this person must fill out a lengthy application that requires notarization, attachment of certified court documentation, and letters of recommendation. The numerous requirements discourage many individuals from even applying for the restoration of their civil rights. Individuals who choose to apply are often intimidated by the process and do not know how to gather or have the funds to obtain the necessary documentation.

Racial Disparity in Virginia's Felon Disenfranchisement Rate

Virginia's felon disenfranchisement law was a creature of the Jim Crow era, and it continues to cause greater harm in the African-American community today because of significant racial disparities in our criminal justice system. When national disenfranchisement data is broken down by race, it is clear that disparities in the criminal justice system are connected to disparities in political participation.¹ In Virginia, the disparity is even larger. More than twenty percent of Virginia's African-American voting age population is disenfranchised---representing one of every five African-Americans.² In contrast, the national disenfranchisement rate is one of every thirteen African-Americans of voting age, which is still four times greater than the rate for non-African Americans.

A recent report released by the ACLU in June 2013, illustrates the disproportionality that permeates our criminal justice system. The ACLU found that African Americans are 2.8 times more likely than whites to be arrested for marijuana possession in Virginia.³ The disparity is not limited to marijuana possession. The racial disparities are staggering for all drug offenses: despite the fact that whites use drugs at a rate roughly equal to African-Americans, African-Americans are incarcerated on

¹ Christopher Uggen, Sarah Shannon, and Jeff Manza. *State-Level Estimates of Felon Disenfranchisement in the United States*, 2010. The Sentencing Project (July 2012).

² *Id.*

³ *The War on Marijuana in Black & White: Billions of Dollars Wasted on Racially Biased Arrests*. American Civil Liberties Union (June 2013). Available at: <http://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel3.pdf>

drug charges at a rate that is ten times greater than that of whites.⁴ Virginians convicted of drug offenses other than simple possession are not currently able to regain their civil rights under the non-violent criteria. The prejudicial overrepresentation of African Americans in Virginia's criminal justice system, and as a result, a disproportionate percentage of the disenfranchised population, is unacceptable and must be remedied.

Necessary Reforms in Virginia

All public officials in Virginia, including the General Assembly, the Governor, Lieutenant Governor, and Attorney General need to work together to repeal the provision of the Virginia Constitution that removes an individual's civil rights upon felony conviction. As long as the power to restore civil rights remains within one person's sole discretion, there can be arbitrary hurdles to the exercise of this fundamental right. **We ask you to commit formally to propose and advocate actively for such a constitutional amendment if you are elected.**

The effort to amend the constitution will take a minimum of two years. During that time, immediate improvements to the restoration of rights process can be made that will allow thousands of Virginians to get their voting rights back without further delay. **We ask you to commit to issue immediately upon election an executive order automatically restoring the rights of all persons convicted of felonies once they have been released from probation or parole and without being conditioned on payment of fines, fees, and restitution.** The issuance of an executive order would allow the maximum number of disenfranchised individuals to regain their voting rights without further delay. A broad executive order can eliminate the need to determine whether a crime was non-violent or violent and would discard the subjective criteria that have plagued the process.

Finally, **we ask that you commit, at a minimum, to improve on the reforms implemented by Governor McDonnell in the individual restoration of rights process in three ways:** 1) revise the current policy to treat drug crimes the same as other non-violent offenses; 2) remove the arbitrary five-year waiting period for other felons; and 3) remove the requirement of payment of fines and restitution. All drug crimes listed as violent for purposes of restoration of rights should be reclassified as non-violent crimes. With few exceptions, most drug related felonies are treated as non-violent for criminal sentencing purposes in the Code of Virginia and should be treated in the same manner for restoration of rights.

The five-year waiting period for violent felons to apply for restoration of rights is simply without reason and has no substantive justification. Finally, the requirement of payment of fines, fees, and restitution is a modern day poll tax and should be removed. This financial burden eliminates a significant number of citizens from casting a ballot because of the insurmountable amount of money owed. It is important to recognize that the individual's obligation to pay the court or the

⁴ Feller, Jaime. *Race, Drugs, and Law Enforcement in the United States*. Stanford Law and Policy Review (June 2009).

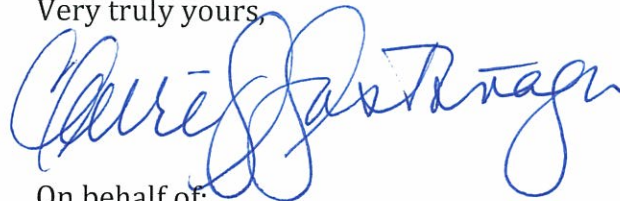
victims does not disappear; however, it should not serve as a barrier to the right to vote.

Governor McDonnell achieved notable progress in restoring the voting rights of Virginians over the last four years, and, as advocates, we hope to see significantly more advancement in the next four years. We ask that you confirm in writing your support for the reforms outlined above and that you provide the public with a detailed plan on how you plan to advance this issue and implement the necessary reforms to end disenfranchisement in Virginia. We look forward to working with you to achieve real substantive change and to put an end to Jim Crow once and for all.

Thank you for your time and consideration.

AMERICAN CIVIL
LIBERTIES UNION OF
VIRGINIA

Very truly yours,

A handwritten signature in blue ink, appearing to read "Chris Gastinger", written over a faint circular stamp.

On behalf of:

The ACLU of Virginia
Richmond NAACP
Virginia Organizing
STEP-UP, Incorporated
Alliance for Progressive Values
Fair Elections Legal Network
Hollaback and Restore Project (H.A.R.P.)
Bridging The Gap In Virginia
Opn-Door Communications, LLC
The Virginia Interfaith Center for Public Policy
League of Women Voters of Virginia
The Virginia Hispanic Chamber of Commerce
Northern Virginia (NOVA) Coalition