

October 6, 2026

RE: Updated Guidance on Felony Convictions and Voter Eligibility

Dear Virginia Registrars,

As this year's elections and voter registration deadlines rapidly approach, the American Civil Liberties Union of Virginia (ACLU) sends this letter to direct your attention to the Virginia Department of Elections' (ELECT) recently updated guidance around voter registration for individuals with felony convictions. Knowledge of recent court decisions and ELECT's updated guidance on this issue will help election officials ensure that every eligible voter can cast a ballot in this election and avoid any potential legal complications.



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King v. O'Bannon

Prior to 2026, individuals with a felony conviction were automatically and permanently disenfranchised, unless they had their rights restored by the governor. In January 2026, the federal district court in *King v. O'Bannon*¹ found this practice unlawful and ordered that Virginia may no longer deny any person attempting to register to vote unless the person has been convicted of certain, limited "common law felonies."

As a result of this decision, thousands of individuals who were previously convicted of felonies may now be eligible to register to vote without petitioning for their rights to be restored. To comply with the court's order, registrars must approve registration applications for individuals who do not have disqualifying felony convictions, and these individuals **do not** need to apply for restoration of rights by the governor prior to registering to vote.

ELECT's Guidance

Following the court's original ruling and subsequent clarification in *King*, ELECT issued updated guidance and disseminated an official advisory on September 14, 2026, explaining what Virginia statutory offenses qualify as "common law felonies." While the court in *King* recognized 11 common law felonies,² when mapping the elements of common law felonies onto Virginia's statutory offenses, the Commonwealth identified only three modern-day statutory offenses that disqualify individuals from registering to vote. Those statutory offenses are: (1) § 18.1-32 (murder); (2) § 18.2-35 (voluntary manslaughter); and (3) § 18.2-36 (involuntary manslaughter). This means that currently, only individuals convicted of murder, voluntary manslaughter, or involuntary manslaughter may be barred from registering to vote. Virginians who do not have one of these disqualifying felony convictions do not need to apply for their rights to be restored prior to

¹ *King v. O'Bannon*, 817 F. Supp. 3d 354 (E.D. Va. 2026).

² The 11 felony offenses that existed at common law are: (1) arson; (2) burglary; (3) escape and rescue from a prison or jail; (4) larceny; (5) manslaughter; (6) mayhem; (7) murder; (8) rape; (9) robbery; (10) sodomy; and (11) suicide.

registering or voting. As ELECT’s advisory succinctly explains, “*Felony convictions under any other statute no longer disqualify an individual from registering to vote or voting in Virginia.*”

Despite this change, the voter registration still prompts voters to declare whether: (1) they have been convicted of a felony; and (2) if they have had their rights restored. Virginians who have a non-disqualifying prior felony conviction should truthfully answer “yes,” and “no,” to those two questions, and then their voter registration application should be accepted. Their conviction will be cross-checked against the Department of Corrections records consistent with ELECT guidelines, and their registration should be approved once it is confirmed that they are eligible.

Same Day Voter Registration

If a newly eligible individual does not register to vote prior to the October 23, 2026, deadline, these individuals may still use the same day voter registration process available to all other qualified voters in the Commonwealth. These voters should be provided with a provisional ballot that the local electoral board checks against the prohibited list in the normal course of eligibility checks for all provisional ballots.

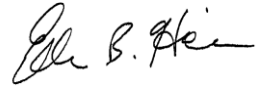
Jail Voting Guidelines

The ruling in *King v. O’Bannon* has not changed or disrupted the right of individuals to cast an absentee ballot if they are incarcerated pre-trial or on a misdemeanor. Under Va. Code §24.2-700.1, eligible voters being held in jail before trial who do not have a previous disqualifying felony conviction (murder, voluntary manslaughter, or involuntary manslaughter) can vote via absentee ballot. The jail has an obligation to provide the voter with the means and opportunity to apply for and cast an absentee ballot and these voters who send in a registration application should continue to be duly registered.

We ask that ELECT’s recent guidance be shared with all relevant staff in your office that handle or process voter registration applications or interact with the public. We also ask that you update any public facing materials with this updated information regarding voting and felony convictions as the court in *King* has noted specific examples of registrars sharing outdated public facing materials. You may refer the public directly to ELECT’s webpage “Felony Convictions and Voter Eligibility.”

We hope this letter will give you and your precinct a firm understanding of the rights of voters with prior felony convictions and suggestions for ways to ensure these rights are protected. Please do not hesitate to contact the ACLU if you have any questions about these issues or if we can be of any assistance to you on any of these matters. We can be reached at (804) 644-8022 or cheilman@acluva.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Eden B. Heilman". The signature is fluid and cursive, with the first name "Eden" being more prominent.

Eden B. Heilman
Legal Director