



To: Members of House and Senate Committees on Privileges and Elections

Date: January 20, 2015

RE: 2015 Voting Rights Legislation

The ACLU of Virginia is a private, non-profit organization that promotes civil liberties and civil rights for everyone in the Commonwealth through public education, litigation and advocacy with the goal of securing freedom and equality for all. While this memorandum is not exhaustive, it outlines our position on several issues affecting voting rights that will be presented before the House and Senate Committees on Privileges and Elections during the 2015 General Assembly session. No right is more fundamental and enshrined by law than the right to vote. We urge you to support all legislation that promotes access to the polls and strengthens our democracy. We ask you to oppose all bills that erode voting rights by placing unnecessary requirements and obstacles on voters' access to the polls.

Restoration of Rights

The ACLU of Virginia strongly supports the passage of legislation that would begin the process of restoring the civil rights of the estimated 450,000, nearly 7.3 percent, of Virginians who have permanently lost their right to vote and fully reenter society. We ask the committees to actively support and pass proposals to amend the Virginia Constitution to repeal the Commonwealth's felon disenfranchisement provision.

The ACLU of Virginia strongly favors a policy of restoring automatically the rights of all persons convicted of felonies without being conditioned on payment of fines, fees, and restitution. Supporting automatic restoration without financial conditions does not absolve individuals convicted of felonies from their duties to pay the court or victims. The vast majority of disenfranchised Virginia citizens are not incarcerated and are tax-paying citizens with jobs and families who are involved in their communities. Financial obligations should not prohibit citizens from exercising their basic constitutional right to vote. To the extent they do, they are a modern day poll tax.

Absentee Voting

All absentee voters should be permitted to vote absentee for any reason by either mail or by in-person. Limiting no-excuse absentee voting to in-person voters may have an adverse affect on certain classes of voters. In addition, if categories of "excuses" remain in our statute for any absentee voters, the requirement to provide personal details to qualify for any "excuse" threatens voters' privacy and due process rights.

If Virginia limits no-excuse absentee voting to in-person only, qualified voters may be excluded from participating based upon a lack of readily accessible transportation, geography, and income status. In addition, this may disproportionately impact minority communities. There are localities in Virginia where voters do not have ready access to transportation that permits them to travel to designated locations to vote by absentee ballot in-person. In rural jurisdictions, some voters are not able to access the registrar's office, which may be miles away on the opposite side of the county. Other voters have work schedules that simply do not permit them to access the registrar's office during the limited office hours. In urban locations, voters without vehicles may not have ready access to public transportation to travel to a distant absentee voting site.

The “excuse-based” absentee voting law also presents a current and continuing threat to the privacy of voters. The law now requires voters to disclose private and sensitive information in order to vote by absentee ballot. And, there is no assurance that the required information will be held confidential and secure. Finally, if a voter’s “excuse” is challenged as fraudulent, there is no guarantee that the information provided by the voter will be available to defend against allegations of absentee ballot fraud, which is a class 4 felony for which there is no statute of limitations.

The only effective solution to the likely disparity associated with limited access to in-person voting and to the privacy concerns attendant on any “excuse-based” law is to amend Virginia law to permit no-excuse absentee voting in-person or by mail. No-excuse absentee voting allows all qualified voters to exercise their right to vote regardless of location or status and eliminates the need for voters to share personal and private information with general registrars or for the registrars to develop secure records management procedures. If the law remains “excuse-based,” we ask that you consider amending the law to provide adequate privacy protections and mandate the secure handling and maintenance of voters’ confidential, personal information.

Voter ID

The ACLU of Virginia strongly opposes the voter ID law because it imposes an unnecessary and costly burden on voters to exercise their constitutional right to vote. We ask the committees to repeal the law. If this does not occur, then at a minimum, the committees should support legislation that eases the burdens imposed on the voters by the ID requirement. Specifically, we urge the committees to support legislation that expands the list of the types of photo IDs acceptable for voting purposes. Any photo ID that displays a photograph of an otherwise qualified voter should be acceptable at the polls to identify the voter whether it is expired or not. We urge the committees to support bills that make clear that expiration dates on otherwise acceptable photo IDs should not limit the right to vote. According to its proponents, the purpose of the law is to prevent voter fraud and the prohibition of expired photo IDs does not serve this objective. Voters with otherwise acceptable photo IDs that reasonably resemble their expired ID should be able to use it for voting purposes.

Interstate Cross-Check

The ACLU of Virginia supports legislation that protects voters from being unfairly and illegally purged from the voter registration rolls. However, The National Voter Registration Act of 1993 strictly prohibits states from purging voters’ names without notice and a two-election-cycle waiting period, and also prohibits such purges within 90 days of any federal election, including primaries.¹

Virginia law allows voters a 30 day window to reply to a registrar after receiving a notice of cancelation. Accordingly, in order to comply with federal law, any proposed legislation needs to ensure that a cross-check is completed at least 90 days before an election---not simply that no voter will be canceled within that time period. In practical terms, any cross-check legislation should ensure that general registrars complete the processing at least 120 days before an election to allow voters sufficient time to reply to their general registrar and to remain registered to vote.

Proof of Citizenship

The ACLU of Virginia opposes legislation seeking to mandate proof of citizenship for voting. Such a requirement can impose potentially insurmountable burdens on qualified voters and is unnecessary. There is no evidence demonstrating that non-citizens have committed voter fraud in Virginia. Investigations have not uncovered non-citizens intentionally registering or voting while aware that they were not eligible to do so.² The end result: proof of citizenship laws will more likely stop qualified Virginia voters from accessing the polls resulting in a violation of constitutional

¹ 42 U.S.C. s 1973gg-6(c) (2) ;(d).

² Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification*, note 10, at 18, (Nov. 2006), available at http://www.brennancenter.org/page/-/d/download_file_39242.pdf [hereinafter *Without Proof*].

rights. We ask the committees to oppose legislation imposing this unnecessary, burdensome requirement.

There is a sizeable portion of the electorate for whom obtaining proof of citizenship may be impossible. People with low-income, the elderly, women, and people of color living in rural Virginia are the least likely to have proof of citizenship. Nationally, 7 percent of U.S. citizens do not have ready access to proof of citizenship---more than 13 million Americans.³ Additionally, 32 million women of voting-age do not have ready access to a citizenship document with their current legal name.⁴ Naturalized citizens who have lost their proof of citizenship must apply to United States Citizenship and Immigration Services (USCIS) for documentation---a process that takes several months, may require in-person interviews, costs \$345, and possibly their constitutional right to vote.⁵

Third Party Access

The ACLU of Virginia supports legislation that expands opportunities for individuals to participate effectively in our democracy. We ask the committees to support legislation that gives third party candidates effective access to the political process by lowering the threshold percentages and number of signatures required to appear on the ballot during an election.

Redistricting

The ACLU of Virginia requests the committees to ensure that any redistricting legislation considered during the session adheres to fair and equal representation for all, upholding the Fourteenth Amendment's guarantee of equality, "one-person, one vote," and traditional redistricting principles. Additionally, redistricting legislation must comply with the Constitution's and Voting Rights Act's prohibition on the use of plans that result in diluting minority voting strength. Communities of color, in particular, have faced numerous obstacles to meaningful participation in the political process, including the redistricting process. Legislators should ensure these communities' effective involvement and equal opportunity in the political process and the ability to elect candidates of choice.

Every voter has a vital stake in the outcome of their community's redistricting. We ask the committees to ensure that any redistricting legislation upholds the following principles: 1) Voters must feel welcome to participate meaningfully in the process; 2) Communities must engage in a collaborative process with lawmakers, redistricting experts, and various groups and organizations to draw and analyze plans and promote transparency in the redistricting process; 3) Redistricting legislation should also specify that plans should keep communities as intact as reasonably possible, thereby protecting constituencies with shared interests.

³ *Without Proof.*

⁴ *Id.*, *supra* note 7.

⁵ Fatma Marouf, *The Hunt for Noncitizen Voters*, 65 STAN. L. REV. ONLINE 66 (October 31, 2012). Available at: <http://www.stanfordlawreview.org/online/hunt-noncitizen-voters>