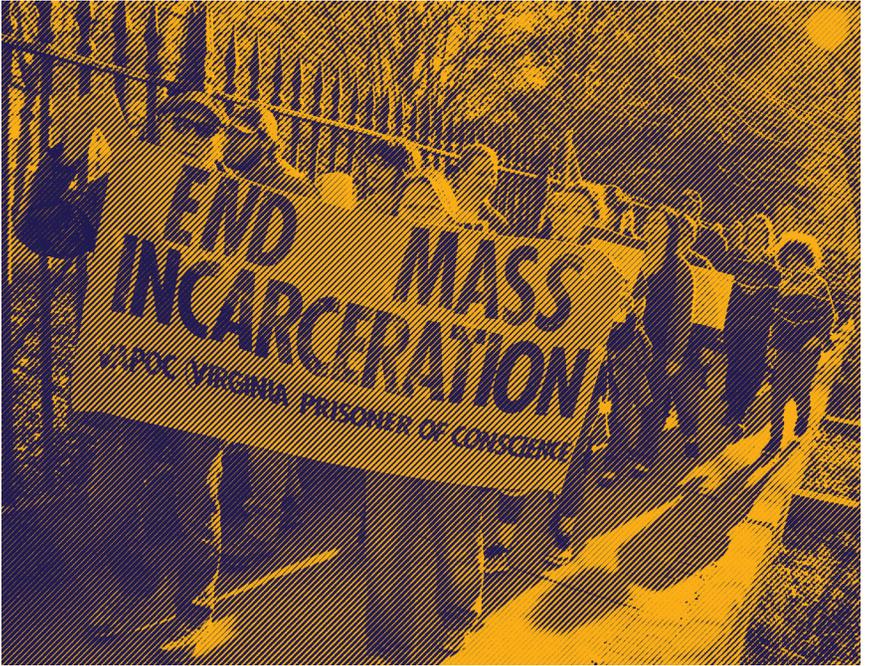


SPRING 2019

# RIGHTS FOR ALL OF US



The ACLU of Virginia demands racial justice. African Americans are over represented in our jails and prisons due to excessive and disproportionate enforcement of specific crimes. Then our state constitution permanently denies the right to vote to those convicted of felonies. It is a vicious cycle that must end. We cannot allow this system to continue. As such, the ACLU of Virginia is prioritizing racial equity and will be devoting the greatest share of its resources to addressing these barriers to liberty that the government placed in front of black Virginians.



**Virginia**  
**ACLU** 50 YEARS  
AMERICAN CIVIL LIBERTIES  
UNION OF VIRGINIA  
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**SAVE THE DATE!**

**ACLU of Virginia 50th Anniversary**

**Celebration**

Saturday, Sept. 7, 5-8 p.m.  
Richmond, Va.

Come celebrate our 50th anniversary with a program featuring Shaun King, an American writer, civil rights activist, and co-founder of Real Justice PAC and The North Star! We will share our top priorities for protecting and expanding civil liberties in Virginia for the coming years, and invite you to ask questions and tell us what is important to you in your own communities.

## ROOTING OUT JIM CROW IN VIRGINIA



Jim Crow laws, established in the late 19th and early 20th centuries to enforce segregation in the post-war South, are alive and well in Virginia.

From the laws our police and prosecutors selectively over-enforce against African Americans, to the punishments black people receive, to their permanent denial of the right to vote even after all sentences have been fulfilled and debts paid, Virginia continues to perpetuate an unequal, racist system.

Take, for example, the disproportionate enforcement of laws against simple marijuana possession. Statewide, African Americans are three times more likely to be charged and prosecuted for that offense, even though usage rates are about the same as for whites. And in some localities, the ratio is as high as eight to one.

Black people are greatly overrepresented in the incarcerated populations being held in state prisons and local and regional jails. There are more than five times the number of black people behind bars in Virginia than white people, according to the Prison Policy Initiative, and they're serving longer sentences.

Virginia is one of only three states that permanently bans those convicted of felony offenses from voting again, unless they meet certain requirements and have their rights restored by the governor. The majority of those who have lost their right to vote for this reason in the Commonwealth are African American, leaving one in five black Virginians without the right to help choose their elected representatives.

For these reasons, our top two policy goals for at least the next three years will be reducing mass incarceration with a focus on ending racial disparities in the criminal justice system, and amending the state constitution to guarantee the right to vote for every citizen and Virginia resident 18 or older – even those serving criminal sentences in jails and prisons. We hope you will continue to stand with us as we embark upon this ambitious reform agenda.

the likelihood of being arrested on new charges. Prosecutors can lead pre-trial reform to address the unfair and disproportionate impact of this system on women, racial minorities, and people who are unable to pay.

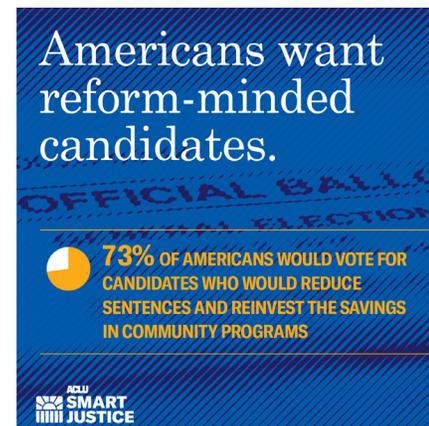
Long-term, adverse consequences impact even those who are never tried or convicted. In Arlington, individuals implicated in over 2,300 charges dropped by the prosecutor (*nolle prosequi*) must still go through an onerous expungement process to have their charge and proceedings cleared from the public record. Although the charges are dismissed, their impact remains.

### 3. Commonwealth's attorneys' decisions can magnify or reduce disparities in the criminal justice system, including racial inequalities.

Per 1,000 individuals in the population, the rate of marijuana prosecution in Arlington is more than eight times higher for black defendants than white defendants. The rate of enforcement for driving under the influence (DUI) for black defendants is 2.5 times higher than that for white defendants.

CAs can address these disparities through their stance on key civil rights issues within their prosecutorial discretion, such as bail reform, marijuana nonenforcement, police accountability, and much more.

*What actions is your CA taking to rectify disparities in our criminal justice system?*



Virginians have an opportunity to take action and address these disparities—by asking CAs more questions, demanding better policies, insisting on transparent data collection practices, and holding CAs accountable at the ballot box. In November's general election, there will be more than 40 CA races across the state. Voters in Arlington, Fairfax, and Prince William counties can cast a ballot in the primaries on June 11, if registered by May 20. For more voting information, visit the Virginia Department of Elections ([elections.virginia.gov](http://elections.virginia.gov)) and ACLU of Virginia ([www.acluva.org](http://www.acluva.org)).

The ACLU of Virginia is committed to increasing prosecutorial transparency and enabling every Virginian to exercise their rights as voters. You can act to ensure the Commonwealth's attorney in your community is seeking justice, not just convictions. Check out our advocacy toolkit at [acluva.org/SmartJusticeVA](http://acluva.org/SmartJusticeVA).

I've been empowered by using my personal story to effect change. In this position, I want to work in collaboration with other organizations already in the field to build a campaign centered around the experience and voices of those directly impacted by the criminal justice system at every level. And even though some of us formerly incarcerated people in the Commonwealth still can't vote, we still can influence laws and build restorative and transformational movements. These are the voices that have been missing in changing policy and transforming the electoral landscape that feeds and influences our current system of mass incarceration.

Ultimately, we the people will be the solution to the changes we wish to see.

## Data and Discretion: An Analysis of a Commonwealth's Attorney Prosecutorial Data

By Jennifer Safstrom  
Dunn Legal Fellow

Commonwealth's attorneys are the most powerful law enforcement officials in their jurisdiction's criminal justice system. These locally elected prosecutors can initiate investigations, decide what charges to bring, make immunity and plea bargain determinations, as well as making other critical choices that impact the criminal justice system, on both an individual and aggregate level.

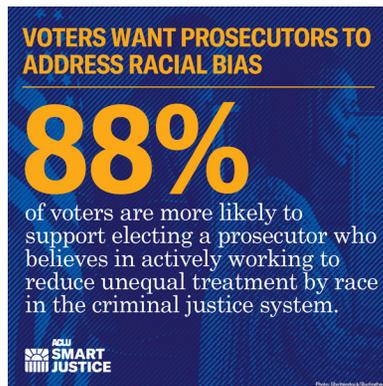
These decisions matter, and frequently have a disparate racial impact. Yet, there is often a lack of transparency about them. Consistent with national efforts to increase prosecutorial transparency, the ACLU of Virginia investigator recently sent several Virginia Freedom of Information Act (VFOIA) requests to CA offices to several localities to try to obtain data about what prosecutors are doing. Our analysis of data obtained from Arlington County highlights how prosecutors' decisions affect criminal justice outcomes.

### 1. Commonwealth's attorneys use their discretion to determine prosecutorial enforcement policies and priorities.

The number one charge last year in Arlington was for first-time marijuana possession. CAs could use their discretion to *not* prosecute marijuana possession offenses, as CAs in Norfolk and Portsmouth have opted to do, even if the judge may ultimately disagree in some cases. For drug offenses generally, prosecutors can use their discretion to divert individuals to rehabilitative services – an approach that addresses the underlying cause of criminal activity, recognizes that treatment is a more effective and cost-efficient solution to reduce incarceration and recidivism, and concentrates enforcement resources on crimes that truly threaten the public safety.

### 2. Commonwealth's attorneys make charge determinations that impact pre-trial detention and an individual's criminal history record.

While in jail, people risk losing their jobs, healthcare, housing, or custody of their children. One study has shown that just three days in jail can increase



## THE RIGHT TO VOTE BELONGS TO THE PEOPLE

By Claire Guthrie Gastañaga  
Executive Director

Florida voters made voting rights history on Election Day when they chose to repeal and replace the state's constitutional limit on voting rights of people who have committed felonies. Their decision restored the right to vote to 1.4 million people.

This is an amazing step forward. Florida's action leaves Kentucky, Iowa and Virginia as the only states that still impose on any person convicted of any felony a lifetime ban on voting. In Virginia, that ban can be lifted only by the governor acting alone using whatever rules the governor chooses to apply.

Recent Virginia governors have expanded the "rules" for restoration of voting rights; then-Gov. Terry McAuliffe (D) restored voting rights to more than 170,000 people. It remains true, however, that, under the state constitution, a Virginian who has been convicted of a felony may never get back the right to vote.

It is past time for Virginia to amend our constitution to remove this Jim Crow-era limit – a limit intended to block previously enslaved black people from voting. It is time to end government's control on our right to vote and to amend our constitution simply to say: Every person 18 or over, is a citizen, a Virginia resident and who registers shall have the fundamental right to vote in the commonwealth, and such right shall not be abridged by law.

Voting is a cornerstone of our democracy. So much so that the right to vote is mentioned more times than any other in the U.S. Constitution. Yet, there is no right-to-vote guarantee in it or in the Virginia Constitution. It is time we made clear that the vote is basic to citizenship, the main building block of civic life, and it belongs to the people – not the government they elect.

In Virginia, it should no longer be okay to allow a governor or the government to decide who gets to vote or to privilege some voters over others. Every



**REGISTER NOW!**

**2019 ACLU of Virginia Northern Virginia Chapter**

### **Crabfest & Annual Meeting**

Sunday, June 23, 1 p.m. – 4 p.m. (Rain or Shine)

**Fort Hunt National Park, Area A**

8999 Fort Hunt Road, Alexandria, Va. 22308

Register online by credit card before noon on **June 14** at [bit.ly/2019NoVaCrabfest](http://bit.ly/2019NoVaCrabfest) or by mail

person in Virginia – including those in jails or prisons, and their families – is governed by the same laws. It is only right that everyone who meets the qualifications of age, citizenship and residency has the same opportunity to choose who represents them in crafting those laws.

Rather than focus on the questions of whether and when someone deserves to get back the right to vote, as we have for decades, we need to oppose the very idea that government should be able to take away this fundamental right in the first place. We must resist any effort to tinker with the current lifetime ban on voting by amending it to separate people convicted of felonies into politically defined classes, or to amend the language to constitutionalize barriers to voting such as required repayment of court costs, fines and fees – essentially a modern-day poll tax. All citizens should be able to use their right to vote. Full citizenship means having a voice in government.

The only answer is to enact a concise constitutional amendment that repeals the current lifetime ban on voting for people convicted of felonies and inserts an affirmative right to vote in Virginia that cannot be abridged by law.

Amending the constitution is a difficult process in our state. A proposal first must pass both the House of Delegates and the Senate. Then, after an intervening election of the House, the identical wording of the proposed amendment must pass both chambers a second time. Then, Virginia voters must approve the amendment in a statewide referendum.

This is a long process, but it is one we can and must begin during next year’s legislative session. Doing so will ensure it could reach the ballot and Virginia voters by November 2020.

Voting is how we decide who governs us. Voting is not a disposable tool for elected officials to use to decide who gets to choose them.

The right to vote is fundamental to our democracy. It must be treated as irrevocable. Politicians should not be able to use the right to vote to reward or punish people. The right to vote should be treated in the same respect as other fundamental rights in our democracy, such as freedom of religion and speech.

It is time to act in Virginia to ensure that the right to vote is guaranteed for everyone. Check out our advocacy toolkit at [acluva.org/LetPeopleVoteVA](http://acluva.org/LetPeopleVoteVA).

*This essay originally appeared in The Washington Post on Dec. 7, 2018.*

### 2019 ACLU-VA CRABFEST REGISTRATION FORM

Enclosed is \$.....to reserve places for

..... Adults (at \$25/person)

..... Children, ages 6-12 (at \$5/person)

..... Children, under 6 (free)

Name(s):.....

.....

Phone:.....

Email:.....

Send this form with your check made payable to:

**ACLU of Virginia**  
701 E. Franklin St. Suite 1412  
Richmond, Va. 23219  
Memo: Crabfest

Checks must be received by **June 14**.

**No day-of registration allowed**

Questions?  
703.360.1096

[novachapter@acluva.org](mailto:novachapter@acluva.org)

## WE THE PEOPLE WILL BE THE SOLUTION TO THE CHANGES WE WISH TO SEE

*By Kemba Smith Pradia  
State Advocacy Campaigns Director*

In 2012, at 41 years old, I was granted full restoration of my voting rights and was able to vote for the first time in a presidential election.

At that moment it truly sank in that I was free to participate as a full citizen of this country in the political process. Even though I had been out of prison for 12 years and was working, paying taxes, married and raising my two children, obtained a bachelor’s degree in social work and bought a home, I still struggled with collateral consequences of past choices even though my life reflected a redemptive and resilient path from tragedy to triumph. After all, I went from being a 17-year-old college student, to dating a drug dealer, to surviving an abusive relationship, to being incarcerated and giving birth to my son while in custody. At 23, I was sentenced to 24.5 years as a first-time non-violent drug offender, even though the prosecutor stated that I never handled, used or sold the drugs that were involved with my case. I became a poster child for drug policy gone wrong.



My case was one of many in the 90s that sparked a movement before social media existed to create policy that would undo the harms from the federal War on Drugs, which was disproportionately impacting people of color, and in particular black women. After I exhausted every court remedy, in December 2000, with the help of my parents, national organizations, the media and ordinary people who wanted to act, I was granted executive clemency from President Bill Clinton after serving 6.5 years in federal prison.

Since my release more than 18 years ago, I’ve been blessed to be a spokesperson for so many causes around criminal justice reform, domestic violence, and empowering women, youth and formerly incarcerated communities around the nation and internationally. I have had the opportunity to collaborate with various organizations, such as the ACLU, on federal criminal justice issues revolved around drug policy and sentencing reform, women and incarceration, prosecutorial misconduct, felony disenfranchisement, domestic violence, and reentry. This has been my passion.

In this next phase of my life, I want to continue being a national spokesperson, but I want to be a change agent to build equity and fairness within the Commonwealth. In my position as state advocacy campaigns director, I would like to use the skills that I have obtained from working on federal legislation to build a multi-year Smart Justice campaign that would aim to reduce the use of incarceration and significantly reduce racial disparities in Virginia’s criminal justice system.