

**IN THE
SUPREME COURT OF VIRGINIA**

Record No. 160784

WILLIAM J. HOWELL, et al.,

Petitioners,

v.

**TERENCE R. MCAULIFFE, in his official capacity
as Governor of Virginia, et al.,**

Respondents.

**BRIEF ON BEHALF OF ACLU AND ACLU OF VIRGINIA AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*

The **American Civil Liberties Union** (“ACLU”) is a nationwide, nonpartisan organization of nearly 500,000 members, dedicated to protecting the fundamental liberties and basic civil rights guaranteed by the U.S. Constitution and our nation’s civil rights laws.

Since 1966, the Voting Rights Project of the ACLU has sought to advance the rights of elective franchise for minority communities and has advocated on behalf of individuals with felony convictions who seek the right to vote. The ACLU and its affiliates have litigated numerous cases, as a party’s counsel or as an *amicus*, on behalf of individuals with felony convictions challenging the denial of their voting rights, including: *Hunter v. Underwood*, 471 U.S. 222 (1985) (as plaintiffs’ counsel successfully challenging Alabama’s felon disenfranchisement law under the Fourteenth Amendment); *Johnson v. Bredesen*, 624 F.3d 742 (6th Cir. 2010) (challenging plaintiffs’ ineligibility for rights restoration in Tennessee due to their inability to pay fines, fees, and restitution, due to indigence); *Farrakhan v. Gregoire*,

623 F.3d 990 (9th Cir. 2010) (as *amicus* in support of plaintiffs arguing that Washington’s scheme of automatic felon disenfranchisement violates Section 2 of the Voting Rights Act); *Griffin v. Pate*, No. 15-1661 (Iowa Sup. Ct. appeal filed Sept. 29, 2015) (challenging Iowa’s automatic lifetime disenfranchisement on behalf of a plaintiff convicted of a non-violent drug offense who had discharged her sentence of probation).

The **American Civil Liberties Union of Virginia** (“ACLU of VA”) is a state affiliate of the national ACLU, with approximately 7,000 members across the Commonwealth. The ACLU of Virginia has appeared before this Court in several significant cases protecting the fundamental rights of Virginians, including: *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, --- F.3d ----, No. 15-2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016); *Luttrell v. Cucco*, 291 Va. 308 (2016); *Martin v. Zihlerl*, 269 Va. 35 (2005); *Wilkins v. West*, 264 Va. 447 (2002). The ACLU and the ACLU of VA (“*Amici*”) have a significant interest in the outcome of this case and in other cases across the country concerning the

restoration and protection of fundamental rights for those with a prior felony conviction.

No party's counsel authored this brief in whole or in part, and no party, party's counsel, or person other than *amici*, their members, or their counsel, contributed money intended to fund the brief's preparation or submission. Pursuant to Virginia Supreme Court Rule 5:30(b)(2), *amici* received written consent of all counsel to file this brief.

AFFIANTS TO *AMICI CURIAE*'S BRIEF

Affiants Jeffrey Gunn, Anthony Parker, and DeShon Langston are African-American United States citizens and Virginia residents whose voting rights were restored by the April 22, 2016 Executive Order at issue in this case. Each had been stripped of his or her right to vote consequent to a felony conviction. Each affiant has completed a sentenced period of incarceration and supervised probation or parole for that conviction. Pursuant to Article V, Section 12 of the Virginia Constitution, however, each affiant received restoration of his or her right to vote on April 22, 2016 by Executive Order of the Virginia Governor, and is now

qualified to register to vote. Each affiant has registered, has had their name added to the voter rolls, and intends to exercise their fundamental right to vote in the November 2016 general election.

Jeffrey Gunn is a 55-year-old African-American Richmond resident. Mr. Gunn lost his fundamental right to vote when he was convicted of possession of a firearm, his first and only felony conviction, in 1999 at the age of 38. He completed a 17-month prison sentence, returned to Richmond in 2001, and was released from supervised probation in 2004. After Mr. Gunn's release, the Offender Aid and Restoration organization of Richmond helped him rejoin the workforce and once again become a productive member of society. He committed himself to living a good honest life without falling back into crime, remained focused on reestablishing his life, and has had no subsequent felony convictions. Mr. Gunn was prohibited from exercising his fundamental right to vote from the time of his conviction in 1999 until the Governor restored Mr. Gunn's voting rights in April 2016. Mr. Gunn registered to vote in June 2016 and has since become more engaged in his community. He intends to vote in the

upcoming Presidential election is glad to have a voice again as a full citizen. *See generally* Gunn Aff.

Anthony Parker, is a 43-year-old African-American resident of Charlottesville, where he lives with his girlfriend and his 8-year-old daughter. He has never voted. In 1991, at the age of 18, he was convicted of three counts of possession of cocaine with intent to distribute within a seven-month period. Mr. Parker completed his term of incarceration and supervision in 2001. In the 15 years since Mr. Parker discharged his sentence, he has not committed a felony offense. Because Mr. Parker was convicted right after his 18th birthday, he has never had the opportunity to vote. Prior to the Governor's April 22 Order, Mr. Parker was unaware of the existence of a process for voting rights restoration in Virginia. Mr. Parker had his rights restored as a result of the Governor's April 22 Order. Upon hearing that his rights had been restored, Mr. Parker immediately filled out a registration form, and on May 6, 2016, was proud to receive his voter registration card in the mail. He intends to vote in the

upcoming general election and bring his daughter with him to the polls to serve as a role model for her. *See generally* Parker Aff.

DeShon Langston is a 41-year-old African-American man and is an active resident of the Charlottesville community, where he lives with his wife and their two sons. He also has two daughters from a previous relationship. He volunteers at “Believers and Achievers,” an organization that helps people prepare to re-enter society after incarceration. He is passionate about helping others and lifting up members of his community. Mr. Langston was convicted in 1999 of three felonies involving distribution of a controlled substance and illegal possession of a firearm. He received and served an 87-month prison sentence. In prison, he took every step possible to prepare himself to succeed at re-assimilating upon release, including earning a general education diploma, supervisory management certificate, and a paralegal certificate through a correspondence course. Mr. Langston also took college courses and parenting classes, completed a nine-month drug rehabilitation program, and

attended religious services while incarcerated. It was during this time that Mr. Langston realized the importance of voting.

After his release in 2005, he moved to Michigan, where he could legally vote in the 2008 Presidential election. His experience in 2008 inculcated in him a belief that his vote matters. In 2012, he moved back to Virginia to be with his son. For Mr. Langston, being disenfranchised again felt like a major setback. Two years ago, when Mr. Langston learned that the Governor had reformed the restoration process by shortening the application and by allowing online submissions, he looked into applying to have his voting rights restored, but struggled to complete the bureaucratic application requirements. After he submitted his restoration application, the Secretary of the Commonwealth's office asked him for more information, but Mr. Langston became discouraged and confused by the process because he could not easily provide the information sought. On April 22, 2016, his rights were restored by Order of the Governor. Mr. Langston has registered to vote and received his voter

registration card, and he intends to vote in upcoming Presidential election. *See generally* Langston Aff.

STATEMENT OF THE CASE

On April 22, 2016 Governor McAuliffe issued an Executive Order (the “Order” or “April 22 Order”) restoring the civil rights of all individuals with a prior felony who had completed their term of incarceration and any term of supervised probation or parole.¹ The Order applies to approximately 206,000 citizens – including affiants Mr. Gunn, Mr. Parker, and Mr. Langston – who have completed their sentence and live, work, pay taxes, and raise their families in their home communities. As of June 22, 2016, approximately 7,620 of those 206,000 citizens have registered to vote. Email from Kelly Thomasson, Sec’y of the Commonwealth, to Hope Amezquita, Staff Att’y. (June 22, 2016, 4:45pm EST) (on file with author).

On May 23, 2016, Petitioners filed a petition for writs of mandamus and prohibition (“Petition”) challenging the Governor’s

¹ The April 22 Order can be found at http://commonwealth.virginia.gov/media/5848/order_restoring_rights_4-22-16.pdf.

authority to issue a single restoration Order that applies to a category of individuals. The Petition does not challenge the Governor's plenary authority to restore the civil rights of those 206,000 citizens affected by the Order. See Pet. at 6. Petitioners argue that *the manner* in which the Governor restored those citizens' rights – through a categorical order of restoration instead of the issuance of 206,000 individual grants of restoration – violates the Commonwealth Constitution. Petitioners seek to cancel the voter registrations of all registrants who had their rights restored by the April 22 Order and registered to vote; to prohibit the Board of Elections from causing local elections officials to register any voters who had their rights restored by the Order; and to prohibit the Governor from issuing similar orders restoring voting rights to more than one citizen at a time. Pet. at 2-5.

SUMMARY OF ARGUMENT

The right to vote is a fundamental right afforded to all citizens. *Harper v. Va. Bd. Of Elections*, 383 U.S. 663, 667 (1966); *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964). "The

right to vote . . . is the essence of a democratic society,” *Reynolds*, 377 U.S. at 555, and exercise of that right is “preservative of other basic civil and political rights,” *id.* at 562. To be excluded from voting is to lose a voice in representative democracy, and with it, a role in the election of those who make the laws that govern our daily lives.

Criminal disenfranchisement laws and policies affect upwards of 5.85 million Americans nationwide, and hundreds of thousands of citizens in Virginia. Sentencing Project, “State-by-State Data” (comparing U.S. Total to Virginia), <http://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.%20Total&state2Option=Virginia>. Until the April 22 Order, Virginia was an outlier among states in the breadth of its disenfranchisement. In 38 states and the District of Columbia, most citizens with a felony conviction automatically regain their right to vote upon their release from incarceration or the completion of their sentence after any term of probation or parole. National Conference of State Legislatures, “Felon Voting Rights” (Apr. 25, 2016),

<http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>. Out of the remaining 12 states, Virginia was among the harshest in terms of its disenfranchisement policies: prior to the April 22 Order, Virginia was one of only four states that permanently disenfranchise all citizens convicted of a single felony, absent restoration by the Governor (the other three states are Florida, Kentucky, and Iowa). The Sentencing Project, “Felony Disenfranchisement Laws in the United States” (Apr. 28, 2014), <http://www.sentencingproject.org/publications/felony-disenfranchisement-laws-in-the-united-states>.

There are staggering racial disparities in how felon disenfranchisement affects the Virginia electorate. Nationwide, 7.7% of the Black voting-age population is disenfranchised, compared to 1.8% of the non-Black voting-age population. *Id.* The racial disparities in Virginia are considerably worse: Prior to the Order, in Virginia, more than one in five African-American adults (over 20%) were disenfranchised – nearly three times the overall disenfranchisement rate of voting-age Virginians, and eleven times the overall national disenfranchisement rate.

Sentencing Project, "State-by-State Data" (Virginia),
<http://www.sentencingproject.org/the-facts/#detail?state1Option=Virginia&state2Option=0>.

Nothing in the Virginia Constitution prohibits the Governor from addressing this situation. Rather, the Commonwealth Constitution contemplates the rehabilitation of felony offenders and their reintegration into civic society: Article V, Section 12 grants the Governor unqualified authority "to remove political disabilities consequent upon conviction" and places no limitations on the manner in which the Governor may go about doing so. As the experiences of the three individuals described in this brief illustrate, the April 22 Order serves the dual goals of:

(1) rehabilitating individuals who have completed their sentence, and (2) creating safer, more inclusive communities. Each of these individuals has completed their sentence for a felony offense and has not committed a felony since that time. Indeed, all of them – like a substantial proportion of those disenfranchised in Virginia – completed their felony sentences years ago, and in some instances, over a decade ago. They exemplify the

rehabilitative goals that properly underlie an effective criminal justice system.

They now seek nothing more than formal recognition of what they themselves have already accomplished, so that they may participate as full citizens in the communities where they live, work, and raise families. The prior system of voting rights restoration – a cumbersome, bureaucratic process that was poorly understood and infrequently used – proved inadequate to the tasks of recognizing the rehabilitation of these and the more than 200,000 other Virginians who have completed their sentences, and of facilitating their reintegration into civic society. The April 22 Order was an appropriate response to the staggering number of disenfranchised Virginians, and was perfectly within the Governor’s Constitutional authority.

ARGUMENT

I. The Virginia Constitution Contemplates Rehabilitation and Reintegration of Former Felony Offenders, and Places No Limitations on the Authority of the Governor to Effectuate Those Goals.

a. The Virginia Constitution gives the Governor unqualified power to restore the right to vote to anyone convicted of a crime.

While the Virginia Constitution permits felon disenfranchisement, it also provides the Governor with broad authority to remove political disabilities. The Virginia Constitution disqualifies an individual from voting upon conviction of a felony, while simultaneously vesting in the Governor the explicit power to re-admit those who have committed a felony back into the democratic process by restoring their right to vote. It does not envision a citizen's unequivocal permanent "civil death" for the commission of a felony. Rather, it contemplates *both* disenfranchisement *and* the possibility of restoration.

Consistent with the principle that citizens may be integrated back into the democratic process after they have completed their sentence, this Court has recognized that the Governor wields broad executive clemency authority under the Virginia

Constitution. Article II, Section 1 of the Virginia Constitution provides, “[n]o person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.” Article V, Section 12 vests in the Governor the sole and exclusive power “to remove political disabilities consequent upon conviction,” including the authority to restore citizens’ eligibility to exercise the fundamental right to vote, the right to serve on a jury, and the right to run for elected office. It provides:

The Governor shall have power to remit fines and penalties under such rules and regulations as may be prescribed by law; to grant reprieves and pardons after conviction except when the prosecution has been carried on by the House of Delegates; to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this Constitution; and to commute capital punishment.

He shall communicate to the General Assembly, at each regular session, particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same.

Critically, although Article V, Section 12 places express limitations on various powers of the Governor, it places no such constraints on the Governor’s authority to remove political

disabilities. That is, where the Framers sought to limit executive power in Article V, Section 12, they did so explicitly. For instance, Section 12 provides that the Governor's authority "to remit fines and penalties," may be qualified by "such rules and regulations as may be prescribed by law," and thus, empowers the Legislature to set rules governing remission of fines and penalties. See *Wilkerson v. Allan*, 64 Va. 10 (1873) (determining that the Governor only had authority to remit fines as prescribed by the General Assembly, and his full pardon therefore did not include remission of a fine outside of the General Assembly's grant); see also 2012 Va. Op. Atty. Gen. No. 12-095 at 2, http://ag.virginia.gov/files/Opinions/2012/12-095_Kennedy.pdf ("Moreover, while the governor is also authorized 'to remit fines and penalties under such rules and regulations as may be prescribed by law,' his power to remove political disabilities is not subject to limitation by law." (footnote omitted)). Similarly, Section 12 mandates that the Governor "communicate to the General Assembly . . . [the] particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of

punishment commuted, with his reasons,” and thus places obligations on the Governor to engage with the General Assembly specifically with regard to pardon grants. But Section 12 does not extend the same reporting requirement to – or place any other limitations or checks by another branch of government on – the Governor’s power to remove political disabilities. The power to restore voting rights “is reserved exclusively to the Governor.” *Constitution of Virginia: Franchise and Officers (Qualifications of Voters) – Executive*, 1999 Va. Op. Atty. Gen. No. 99-098 at 2, <http://ag.virginia.gov/files/Opinions/1999/nov994.pdf> (“The restoration of a felon’s voting rights within this Commonwealth is reserved exclusively to the Governor.”).

The Governor’s broad power to restore voting rights is an explicit part of, and consistent with, the scheme of removal of voting rights and reintegration set forth in the Commonwealth Constitution. Exercise of that power in the manner the Governor sees fit does not, as Petitioners claim, “unlawfully take [] up lawmaking power,” Pet. at 25-26, or otherwise implicate the separation of powers. This Court has long held that the

Governor's discretion in granting rights restoration is not subject to review by, or appeal to, other branches of government. *See In re Phillips*, 265 Va. 81, 87-88 (2003) ("[T]he power to remove the felon's political disabilities remains vested solely in the Governor, who may grant or deny any request without explanation, and there is no right of appeal from the Governor's decision."). In fact, this Court recently distinguishing the Governor's exclusive "power to . . . remove political disabilities" from the shared processes to "restore all rights lost as a result of a felony conviction," specifically firearm rights. *See Gallagher v. Virginia*, 284 Va. 444, 452 (2012) ("[T]he Governor is empowered to remove political disabilities, but not to restore all rights lost as a result of a felony conviction. The jurisdiction to restore firearm rights lost in those circumstances is vested solely in the circuit courts.").² The Governor alone may determine when to remove political disabilities.

² The April 22 Order does not, because the Governor cannot, restore citizens' firearm rights. The Order explicitly excludes the restoration of firearm rights. Order at 2 ("Nothing in this Order restores the right to ship, transport, possess, or receive firearms."). It is clear that the Governor did not include the right

b. The Virginia Constitution does not prevent the categorical restoration of voting rights to a group of citizens.

Petitioners do not dispute the Governor's plenary power to restore voting rights, merely the *manner* in which the Governor has exercised that power. See Pet. at 6. But the Governor's exclusive authority to restore voting rights to persons convicted of a felony includes broad discretion to determine the way in which those rights are restored. See *Phillips*, 265 Va. at 87-88. Exercise of that recognized executive authority does not suddenly morph into "suspending laws," as the Petition claims, Pet. at 23-24, merely because it is exercised through an Order affecting a specified category of individuals, instead of individual grants of restoration.³

to ship, transport, possess, or receive firearms among the rights restored. See, e.g., *Chisholm v. Virginia*, No. CL-2009-11705, 2009 WL 4704504 (Va. Cir. Ct. Oct. 20, 2009) ("The restoration in the case at hand contains an *express* prohibition of the right to possess firearms; it is difficult to imagine that the Governor would intend to restore the right to possess and transport firearms when he states exactly the opposite in his restoration order.").

³ Petitioners claim that the need to assess a person's mental competency on an individual basis to restore voting rights, somehow indicates that the Governor must also restore voting

Indeed, implicit in this Court's holding that Article V, Section 12 grants the Governor exclusive authority to restore political disabilities is that there are no restrictions on the manner in which the Governor may exercise that authority. *See Phillips*, 265 Va. at 85 (“[T]he decision whether to remove a petitioner’s political disabilities still rests solely in the Governor, who may grant or deny any request without explanation.”). The Court has often deferred to the Governor to determine the appropriate

rights for persons convicted of a felony on an individual basis. *See Pet.* at 17-18. There is no commonality between the two provisions of Article II, Section 1, and as a practical matter, the determinations are not analogous. Article II, Section 1 provides:

No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority. As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished.

Establishing competency in a process “[a]s prescribed by law” allows for the legislature to prescribe a particular procedure for restoring voting rights to citizens adjudicated mentally incompetent. There is no such legislative role in the process for restoring rights lost consequent to a felony conviction. The case cited by Plaintiffs is inapposite to their argument that the common use of “person” means the processes for restoration should be the same. *Pine v. Commonwealth*, 121 Va. 812 (1917), determined that the phrase “the General Assembly shall have power” had distinct and different functions among the four times it was used in the constitution.

manner of exercising Section 12 authority. *See also Blair v. Commonwealth*, 66 Va. 850 (1874) (upholding Governor’s grant of clemency after a conviction was entered, but before sentencing); *Lee v. Murphy*, 63 Va. 789, 797 (1872) (“The power of granting conditional pardons must reside somewhere; and by common consent of all the States it is vested in the executive department.”); *Wilborn v. Saunders*, 170 Va. 153 (1938) (recognizing the unbound authority of the Governor to place conditions on grants of clemency). Categorical restoration is consistent with the Governor’s authority within the rehabilitative scheme recognized in Section 12.⁴

⁴ Even assuming, *arguendo*, that Section 12 required the Governor to justify his removal of citizens’ political disabilities, which it does not, the Governor included in the Order the reasons for restoring voting rights to this defined category of ex-offenders. The April 22 Order provides:

WHEREAS, such disenfranchisement disproportionately affects racial minorities and economically disadvantaged Virginians; and

WHEREAS, Virginians have increasingly advanced the ideals of equality of all races and peoples, while rejecting the indefinite and unforgiving stigmatization of persons who have committed past criminal acts; and . . .

WHEREAS, all individuals who have served the terms of their incarceration and any periods of supervised release deserve

II. The Governor’s Executive Order is Consistent with Principles of Rehabilitation and Reintegration Recognized in Article V, Section 12.

a. The Governor’s Executive Order properly recognizes the rehabilitation of individuals who have completed their sentences.

The Governor issued the April 22 Order based, in part, on his determination that “the restoration of civil rights has been noted to achieve substantial benefits for those individuals who have felt long-exiled from mainstream life,” and on “rejecting the indefinite and unforgiving stigmatization of persons who have committed past criminal acts.” Order at 1. He recognized that individuals with a prior felony conviction who have served their incarcerative sentence and any supervised release “deserve to re-enter society on fair and just terms, including to participate in the political and economic advancement of Virginia.” *Id.*

to re-enter society on fair and just terms, including to participate in the political and economic advancement of Virginia; and

WHEREAS, the restoration of civil rights has been noted to achieve substantial benefits for those individuals who have felt long-exiled from mainstream life; and

WHEREAS, democracy is strengthened by having more citizens involved in the political process

The affiants described in this brief committed offenses ranging from non-violent narcotics offenses to illegal possession of a firearm. They all completed their sentences for these offenses, some over a decade ago. Since that time, they have devoted themselves to putting the past behind them and reintegrating themselves into their communities to become productive, contributing members of society. They exemplify the more than 200,000 Virginians who have similarly completed a sentence for a prior felony conviction and who are now living, working, paying taxes, and raising their families in their communities. The majority of those re-enfranchised were non-violent offenders who had succeeded at rebuilding their lives, and moved on, without recidivism. Indeed, nearly half of the voters re-enfranchised by the April 22 Order completed their sentences more than a decade ago; and 79.3% of those re-enfranchised had lost their voting rights for a non-violent offense. Office of the Governor, "Analysis: Virginians Whose Voting Rights Have Been Restored Overwhelmingly Nonviolent, Completed Sentences More Than A Decade Ago" (May 11, 2016), <http://1.usa.gov/27e3iSS>

(46.2% of the voters analyzed completed their sentence 10 or more years ago, 70.2% completed their sentence 5 or more years ago.). These individuals should be fully reintegrated into civic life, not treated as second-class citizens.

Permanent exclusion from the democratic process, however, perpetuates the stigma of a conviction long after an individual has returned to his or her community, and undermines the process of reintegration by treating these individuals as second-class citizens. Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 414 (2012). Denial of the right to vote is a tangible and symbolic reminder that a person with a past conviction is prohibited from obtaining the full benefits and protections of the law, or of shaping the law. See Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* 25, 201-210 (2006); see also *McLaughlin v. City of Canton*, 947 F. Supp. 954, 971 (S.D. Miss. 1995) ("Disenfranchisement is the harshest civil sanction imposed by a democratic society. When

brought beneath its axe, the disenfranchised is severed from the body politic and condemned to the lowest form of citizenship, where voiceless at the ballot box the disenfranchised, the disinherited must sit idly by while others elect his civic leaders and while others choose the fiscal and governmental policies which will govern him and his family.”). It undercuts the self-esteem of released individuals by telling them that they are unfit to cast a ballot. It also isolates them from society, dividing them from friends and neighbors who may play an active role in the democratic process.

These are not abstract concepts – they have real consequences for disenfranchised citizens that last long beyond the completion of their sentences. For example, **Mr. Gunn** completed his sentence for an illegal firearms possession conviction more than a decade ago, in 2004. But he lost interest in the political system because he was permanently disenfranchised due to his conviction. Although he had already paid his debt to society, he felt for years that no one cared what he had to say. During that period, he avoided community

activities and political conversations because he knew he was not a “full citizen.” Gunn Aff. at ¶¶ 9-10, 13-14. For more than half of his life, **Mr. Parker** believed that society would never be able to see beyond the person he was when he was convicted for narcotics possession in 1991 at the age of 18 – a person he barely recognizes today at the age of 43. He was discouraged for years because he believed he would never hold the rights of full citizenship again, and because he was too young to vote before his conviction, he did not think he would ever have the opportunity to cast a ballot. Parker Aff. at ¶¶ 12-13, 17.

The April 22 Order washes away the stain of a prior conviction. It properly recognizes the rehabilitation of the affiants and other Virginians who have completed their sentences. The April 22 Order restored **Mr. Gunn’s** dignity and self-worth, allowing him to have a voice again and be a part of political change. Since his rights were restored in April 2016, he no longer feels like he a pariah in his community, but instead an equal citizen whose voice is valued. Gunn Aff. at ¶¶ 14-16. **Mr. Parker** explained that, when he received his voter

registration card in May, he felt that things were improving for him because he could fully contribute to his community. Parker Aff. at ¶ 17. He intends to bring his daughter with him to the polls when he goes to vote in November. *Id.* at ¶ 19. Similarly, **Mr. Langston** now feels that he has a voice in his community again and that he can now express himself with his vote like everyone else. Langston Aff. at ¶ 20. For each of these individuals, the restoration of their voting rights was an appropriate recognition of the space that they had already carved out for themselves as contributing members of their communities.

States across the country have increasingly recognized that harsh criminal disenfranchisement laws are a relic of a discriminatory past, are antithetical to the fundamental principles of our democracy, and fail to promote successful re-entry or protect public safety. In part because restoration of voting rights promotes democratic values, states have increasingly shifted toward expanding protection for voting rights, including the early restoration of voting rights upon release from incarceration. See

National Conference of State Legislatures, "Felon Voting Rights" (Apr. 25, 2016), <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>. At the time *Richardson v. Ramirez* was decided in 1974, more than half of the states inflicted lifetime disenfranchisement. Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement*, 56 *Stan. L. Rev.* 1147, 1168 (2004); see *Richardson*, 418 U.S. 24 (1974). By 2016, the number of states that impose lifetime disenfranchisement for a single felony had shrunk to four, including Virginia. The Sentencing Project, "Felony Disenfranchisement Laws in the United States" (Apr. 28, 2014). Virginia's continuing practice of wide-scale permanent disenfranchisement marked it as an extreme outlier as compared to other states. The Governor's Executive Order promotes the reintegration of former felony offenders into civic society, and realigns Virginia with contemporary norms for restoration.

b. The Governor's Executive Order properly reintegrates individuals with a prior felony conviction back into the broader civic community.

Restoration and political inclusion contribute to a healthy democracy. The Governor issued the April 22 Order based, in part, on his determination that "democracy is strengthened by having more citizens involved in the political process." Order at 1. Permanent disenfranchisement and the other collateral consequences of a conviction are destructive not only to the disenfranchised individuals themselves, but to entire communities. The April 22 Order allows particular individuals to vote, but the benefits of the groups' restoration flow to the community more broadly.

First, permanent disenfranchisement harms the law enforcement goals of minimizing recidivism and reducing crime. For ex-offenders, the early stages of the re-entry process are crucial to minimizing recidivism. Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 423-28 (2012). The Governor's order substantially promotes

reintegration into civic life and promotes healthy communities. Social science research has confirmed that there is a positive correlation between voting and lower rates of arrest, incarceration, and self-reported criminal activity. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence From a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 213 (2004). Persons released in states that permanently disenfranchise at least some individuals with a felony conviction are “roughly ten percent more likely to reoffend than those released in states that restore the franchise post-release.” Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 427 (2012). Indeed, law enforcement efforts as a whole suffer from wide-scale disenfranchisement. Hubert Williams, former Executive Director of the Police Foundation, explained: “[e]ffective policing relies on collaborative partnerships with people that live in the community. But when an entire group of people are effectively excluded from the community – creating a pariah class, if you will – you can’t

have meaningful partnerships, and the police's ability to prevent and deter crime suffers as a result." Hubert Williams, Executive Director, Police Foundation, Remarks at *Voting Rights and Reintegration: A Role for Law Enforcement* Convening, New York University School of Law (June 8, 2007), <http://www.brennancenter.org/sites/default/files/legacy/Democracy/Restoring%20the%20Right%20to%20Vote.pdf>. The Governor's categorical restoration serves the broader goals of public safety.

Second, wide-scale permanent disenfranchisement distorts democracy by depriving entire communities – particularly communities of color – of political influence commensurate with the size of their population. In issuing the April 22 Order, the Governor correctly recognized that “disenfranchisement disproportionately affects racial minorities and economically disadvantaged Virginians.” Prior to the Governor's April 22 Order, 451,471 Virginians, or 7.3% of the adult population, were not eligible to vote. Sentencing Project, “State-by-State Data” (Virginia), <http://www.sentencingproject.org/the->

facts/#detail?state1Option=Virginia&state2Option=0. But that wide-scale disenfranchisement – unacceptable on its own terms – was not spread evenly among Virginia communities. African Americans accounted for an incredible 53.8% of that disenfranchised population, or 242,958 African-American Virginians, despite comprising only 19.4% of Virginia’s adult population. *Id.*; U.S. Census Bureau, 2010 Decennial Census Data, QuickFacts: Virginia, <https://www.census.gov/quickfacts/table/PST045215/51#headnote-js-a>. To put that into perspective, the average Assembly district in Virginia includes about 80,000 residents, and the average Senate district includes about 200,000 residents. Ballotpedia, “Virginia General Assembly” (June 2016), https://ballotpedia.org/Virginia_General_Assembly. The number of disenfranchised African Americans alone is enough to fill an entire Senate District, and more than three Assembly Districts.

When disproportionate numbers of citizens in a particular community are denied the right to vote, the political power of that entire community – which includes many individuals who

themselves have had no direct involvement in the criminal justice system – is weakened. Virginia’s wide-scale permanent disenfranchisement, and its attendant racially disparate effects, distorted the democratic process by diluting the representation of African American communities. The April 22 Order is an appropriate response to ameliorate that distortion.

c. The Governor’s Order advances racial equality because Virginia’s felony disenfranchisement was imposed within the context of Virginia’s long history of racial discrimination in voting.

It is no accident that, for decades, Virginia’s harsh practice of permanent disenfranchisement diluted the political strength of African-American communities. The racial disparities witnessed today were the direct result of deliberate choices at various points in Virginia’s history. *See generally* NAACP Amicus Brief. In arguing that the practice of permanent felon disenfranchisement has race-neutral origins, the Petitioners severely oversimplify the historical context. The Petitioners assert that felon disenfranchisement could not have been adopted for the discriminatory purpose of denying African-Americans the right to vote in Virginia because it was first added to the Virginia

Constitution in 1830, when Virginia prohibited all African Americans from voting and still maintained and legally protected the institution of slavery. Pet. at 35-36.

Amici do not claim that, in theory, felon disenfranchisement laws can never be enacted without a racially discriminatory purpose. But Virginia's addition of felon disenfranchisement to its Constitution during the period in which it universally denied all Black peoples' voting rights does not absolve the provision of its racially discriminatory taint. Regardless of the specific intent of the framers in 1830, the fact remains that the *current* iteration of Virginia's practice of permanent felon disenfranchisement took root and flourished within Virginia's history of racial discrimination, most notably expressed during the Commonwealth's 1901 constitutional convention. *See generally* NAACP Amicus Brief. And, as explained, *supra*, permanent disenfranchisement in Virginia perpetuates racial discrimination in its effects. The Governor's decision to alleviate the discriminatory consequences of felon disenfranchisement through categorical restoration appropriately turns the page on a shameful chapter of

the Commonwealth's history, and advances the goal of ensuring equal opportunity to participate in the democratic process.

III. The Previous System for Restoration of Voting Rights Was Ineffective and Did Not Further the Constitutional Goals of Rehabilitation and Reintegration.

a. The previous system for restoration was ineffective due to an absence of public information about the process.

Virginia's previous process for voting rights restoration offered only a false promise to the vast majority of the returning citizens who sought to have their rights restored. The system was fraught with practical barriers that made restoration unnecessarily burdensome and all but impossible for many. Before 2013, individuals convicted of a non-serious offense seeking restoration had to complete their sentence, including payment of any fines, fees, and restitution, and then enter the bureaucratic funhouse of the application process.⁵ From 2010 to

⁵ Applicants had to obtain and submit: the restoration application, completely filled out, signed and notarized; certified copies of all felony sentencing orders; certified proof of payment for any fines, restitution and/or court costs; a letter of petition, signed and dated; three letters of reference, completed, signed, and dated by three citizens; a current letter from the applicant's most recent probation or parole officer addressed to the Governor,

2013, the application also required preparing a written statement, explaining the nature of the applicant's crime, and a description of what they had done following release from prison.⁶ Anita

outlining their period of supervision; a letter to the Governor describing the circumstances of the applicant's offense, community or comparable service, and any additional information they may want the Governor to know when reviewing their petition; if the applicant lived outside the Commonwealth of Virginia, certified copies of their driving record and criminal record from the state in which they resided; a certified copy of the felony sentencing order for each felony conviction; and, if applicable, a pre-sentence report. "Restoration of Civil Rights: Five Year Application Instructions" (Violent Offense) (rev. July 20, 2010), <http://felonvoting.procon.org/sourcefiles/Virginia-5-Year-Application.pdf>; "Restoration of Civil Rights: Non-violent Offenders Application" (2010), <http://felonvoting.procon.org/sourcefiles/Virginia-2-Year-Application.pdf>.

⁶ The written statement requirement imposed an unnecessary barrier, particularly to citizens with lower literacy levels, who are disproportionately poor and members of racial minorities. 12% of Virginia's population lacks basic literacy skills. See National Center for Education Statistics, "State & County estimates of Low Literacy," <https://nces.ed.gov/naal/estimates/StateEstimates.aspx>. Rates of illiteracy are substantially higher among poor and minority communities, groups disproportionately represented in the criminal justice system. See National Center for Education Statistics, *Adult Literacy in America*, (1993), <http://nces.ed.gov/pubs93/93275.pdf> (reporting a substantially lower literacy rate among the prison population). Illiteracy rates are also substantially higher among prisoners than the general population. See National Center for Education Statistics,

Kumar, *McDonnell in Hot Water Over Nonviolent Felons' Rights*, Wash. Post (Apr. 11, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/10/AR2010041001268.html>. Until 2014, citizens convicted of a more serious crime, which included some drug-related offenses, were required to wait for five years before they were eligible to apply for restoration. In April 2014, the waiting period was reduced from five years to three years. "Restoration of Rights: Application for More Serious Offenses" (rev. Dec. 15, 2014), <https://commonwealth.virginia.gov/media/3530/revised-more-serious-application-12-15-14.pdf>.⁷ Once an applicant gathered

"Literacy Behind Prison Walls" (1994), <http://nces.ed.gov/pubs94/94102.pdf>.

⁷ The waiting period alone disserves the goals of rehabilitation, by preventing returning citizens from reintegrating in their communities during the crucial early period of re-entry. See e.g. *Mixon v. Pennsylvania*, 759 A.2d 442, 451 (Pa. Commw. Ct. 2000) (striking a prohibition on registration for five years after release from confinement and restoring the right to vote in Pennsylvania automatically upon completion of the term of imprisonment, noting that, "implicit in a presumption that an unregistered individual who commits a crime, and is punished therefor, remains civilly corrupt for five years following release, is

and submitted their application materials, they had to wait for the rights restoration office to individually verify their application, which could take 60 days, and sometimes as long as 6 months, while elections came and went without their participation. *Id.* Inaccurate information could delay the process or disqualify an applicant from applying for another year. *Id.*

Before the April 22 Order, people often left incarceration without understanding the then-existing process for rights restoration, and, consequently, frequently failed even to apply.⁸

Mr. Parker, convicted of drug offenses at the age of 18, does not recall ever being told that there was an avenue for him to seek restoration. Parker Aff. at ¶¶ 12-13. He felt that the mistakes he made as an 18-year-old would follow him forever. *Id.* **Mr. Gunn** knew that he had lost the right to vote when he was convicted of

the unwarranted assumption that there was no possibility of rehabilitation during that period of incarceration and for five years thereafter.”), *aff’d per curiam*, 783 A.2d 763 (Pa. 2001) (mem.).

⁸ Va. Code § 53.1-231.1 requires the Director of the Department of Corrections to provide that any person convicted of a felony is notified of the loss of civil and voting rights and the processes to apply for the restoration of those rights. It is unclear whether re-entrants receive this information and, if so, in what format.

a firearm offense, but never tried to initiate the restoration process because he assumed that he could not satisfy all of the application requirements. Gunn Aff. at ¶¶ 11-12. Other ex-offenders did not have assistance in navigating the process, and simply gave up in frustration. The process required not only filling out, signing and having notarized an application, but collecting certified documents from court, obtaining documents from a probation or parole officer that an applicant may not have had contact with for years, gathering three letters of reference from non-family members, and writing a letter to the Governor. For applicants with limited literacy to navigate the process, or with limited access to the transportation, childcare, and time off of work needed to collect these documents, restoration was all but impossible. **Mr. Langston**, for example, tried to have his voting rights restored two years ago, but he was unable to navigate the process and eventually gave up. Langston Aff. at ¶ 14.

Over the past several years, the Governor's office began to chip away at the hurdles that unnecessarily complicated the

restoration process. Beginning in 2013, Governor McDonnell, by executive order, made restoration automatic for some individuals convicted of non-serious offenses after they completed their sentences (including payment of any fines, fees, and restitution). See Brennan Center, "Voting Rights Restoration in Virginia" (May 31, 2016), <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-virginia>. Governor McAuliffe has since expanded the category of offenses classified as non-violent, shortened the waiting period to apply for restoration after a serious offense, and removed the requirement that citizens fully repay court costs and fees in order to have their voting rights restored. *See id.*

It is laudable that Governors McDonnell and McAuliffe took these steps to streamline the restoration requirements, but they were insufficient. The gap in the information accessible to those affected was compounded by the frequent changes to the eligibility and application process. As **Mr. Parker's** experience demonstrates, people had little to no guidance on how to restore their rights or what requirements they must meet in order to do

so. Even among those Virginians who were eligible to seek restoration, many people like Mr. Parker had the mistaken belief that they did not meet all of the requirements. And many who tried, like **Mr. Langston**, eventually gave up because they found the process too confusing. As a result, countless eligible voters were prevented from obtaining restoration of their voting rights.

The April 22 Order eliminates the confusion, and replaces the bureaucracy of the prior application process with one easy-to-follow rule. By removing the application requirement from citizens with a prior conviction who have completed their sentence, the Order alleviates the burdens associated with restoration. Citizens with a prior felony conviction are no longer deprived of their voting rights and left out of the political process simply because they are unaware of the often-changing application requirements or are unable to navigate the process. Individual grants of restoration simply could not achieve the same result.

b. The previous system imposed significant practical and financial barriers, rendering it ineffective for poorer Virginians.

The previous individualized restoration system also often failed to provide a meaningful opportunity for restoration to economically disadvantaged Virginians in particular. Allyson Fredericksen & Linnea Lassiter, Alliance for a Just Society, *Disenfranchised by Debt: Millions Impoverished By Prison, Blocked From Voting*, at 17 (Mar. 2016), <http://allianceforajustsociety.org/wp-content/uploads/2016/03/Disenfranchised-by-Debt-FINAL-3.8.pdf>. For an indigent applicant, the possibility of restoration of voting rights was not a reality. Up until 2015, restoration applicants had to pay off all fines and fees related to their conviction, including any interest accrued on those costs, before their rights could be restored. Brennan Center, "Voting Rights Restoration Efforts in Virginia" (May 31, 2016), <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-virginia>. Beginning in 2015, outstanding court fines and fees no longer prohibited an individual from having his

or her rights restored; however, there were still costs associated with obtaining the documents required for the application, and the expense of, for example, securing the transportation, childcare, or time off of work, needed to gather them.

In light of the rehabilitative value of restoration, and the significance of the right to vote, indigence should never be the lone barrier to the exercise of that fundamental right. *Cf. Harper v. Va. Bd. of Elections*, 383 U.S. 663, 666 (1966) (invalidating a Virginia statute that assessed a poll tax in Commonwealth elections on the grounds “that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.”).⁹ Yet Virginians with a prior felony, who

⁹ The Supreme Court has recognized in related contexts that it is unconstitutional to deny an indigent individual their fundamental right to vote because of their inability to pay fines and fees. *Harman v. Forssenius*, 380 U.S. 528, 543-44 (1965). The Supreme Court has also recognized that an incarcerated individual who has completed his sentence except for the payment of financial obligations cannot continue to be deprived of his freedom for his failure to pay those financial obligations. *Williams v. Illinois*, 399 U.S. 235, 242 (1970) (inability to pay a fine due to indigence could not result in imprisonment beyond the statutory maximum); *Griffin v. Illinois*, 351 U.S. 12, 18 (1956)

already faced unique difficulties maintaining steady employment, remained ineligible for restoration while struggling to pay off their restitution, fines, and fees.

The difficulties that people face finding employment after release from prison, due to the stigma of their conviction, only exacerbated the financial barrier imposed by the previous requirement that they pay all fines, fees, and restitution, and submit an application before restoration. Cherish M. Keller, Note: *Re-Enfranchisement Laws Provide Unequal Treatment: Ex-Felon Re-Enfranchisement and the Fourteenth Amendment*, 81 Chi.-Kent L. Rev. 199, 212-13 & n.6 (2006); see also *Utah v. Strieff*, --- S. Ct. ----, No. 14-1373, 2016 WL 3369419, at *15 (U.S. June 20, 2016) (Sotomayor, J., dissenting) (recognizing that the “civil death” of an arrest subjects citizens to “discrimination by employers, landlords, and whoever else conducts a background check” (citing Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. Pa. L. Rev.

(explaining that a state cannot exercise its discretion “in a way that discriminates against some convicted defendants on account of their poverty”).

1789, 1805 (2012); James B. Jacobs, *The Eternal Criminal Record* 33-51 (2015); Kathryne M. Young & Joan Petersilia, *Keeping Track: Surveillance, Control, and the Expansion of the Carceral State*, 129 Harv. L. Rev. 1318, 1341-57 (2016))).

Each of the affiants had to fight to find steady employment following their conviction. **Mr. Parker** wanted to rebuild his life once he completed his prison sentence twenty years ago, but he was rejected from numerous employment opportunities, and was in many instances hired but then immediately fired when his employer discovered his prior felony conviction. Parker Aff. at ¶ 10. **Mr. Gunn** struggled to find stable employment because of his 1999 firearm conviction; most of the work he has been able to find has been temporary employment. Gunn Aff. at ¶ 10. They have been unwavering in their determination to support themselves financially and to contribute to their communities. The challenges they have faced in doing so should not stand in the way of their full civic participation. As a result of the April 22 Order, neither indigence nor a lack of access to accurate, current

information about the restoration requirements are a barrier to otherwise eligible citizens' participation in the democratic process.

CONCLUSION

Jeffrey Gunn, Anthony Parker, and DeShon Langston – like more than 200,000 other Virginians – made mistakes. But they have served their sentences. They now simply seek nothing more than to be treated as equal members of their civic communities. Nothing in Virginia Constitution prohibits the Governor from recognizing their dignity by restoring their voting rights, and the voting of other Virginians who have completed their sentences.

Respectfully submitted this 27th
day of June, 2016.

/s/ Julie A. Ebenstein

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CERTIFICATE OF SERVICE

I certify under Rule 5:26 that on June 27, 2016, this document was filed electronically with the Court via VACES, in Portable Document Format, and ten printed copies were hand-delivered to the Clerk's Office. A copy was electronically mailed to all counsel of record:

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IN THE SUPREME COURT OF VIRGINIA

WILLIAM J. HOWELL, et al.,

Petitioners

v.

TERENCE R. MCAULIFFE, in his official
capacity as Governor of Virginia, et al.,

Respondents

CASE NO. 160784

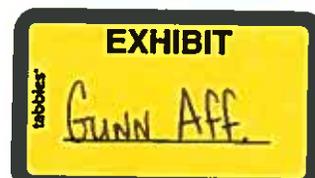
AFFIDAVIT OF JEFFERY GUNN

COMES NOW Jeffery Gunn, being first duly sworn, under oath, and states as follows:

1. My name is Jeffery Gunn. I was born on August 11, 1961. I currently work as a dishwasher and prep cook in Richmond, Virginia, and I have resided at 11 W. Grace St. Richmond, VA 23220 since April of 2016.
2. In 1999 I was convicted of unlawful possession of a firearm in Richmond, Virginia. I served 17 months at Federal Correctional Institution ("FCI"), Petersburg, Virginia. On or about June of 2004 I completed my period of supervised probation.
3. As a convicted felon, I have not been permitted to vote since the above date of my conviction.
4. On April 22, 2016, the Governor of the Commonwealth of Virginia, Terence R. McAuliffe, signed an executive order ("Order") removing the political disabilities of all individuals, previously convicted of felonies, who had, as of that date, "(1) completed their sentences of incarceration for any and all felony convictions; and (2) completed their sentences of supervised release, including probation and parole, for any and all felony convictions." Order, ¶10. Among the civil rights that Order restored was the right to vote. *Id.*
5. Because I have completed my sentence of incarceration for my felony conviction and I have completed my period of supervised probation, and because I have not been convicted of a felony during the period time of time since the issuance of the Order, I am eligible to register to vote pursuant to the Order.
6. On May 23, 2016, Petitioners filed a petition for writs of mandamus and prohibition with this Court, wherein they asked this Court to nullify the Order. I am therefore directly affected by the outcome of this case.

FURTHER, Affiant states that:

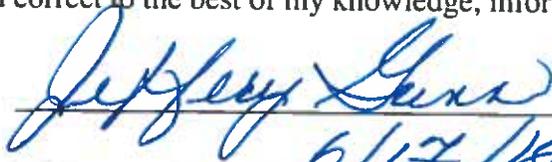
7. I am a fifty-five year-old African-American man, and I have lived in Richmond, Virginia for the vast majority of my life. I have a son, Deon, who is thirty-seven years old.



8. Prior to my felony conviction in 2000, I had been convicted of misdemeanor petty larceny. After I served my sentence at FCI Petersburg, I was again convicted of three or four misdemeanor larceny charges.
9. After that, I committed myself to living a good, honest life without falling back into crime. I connected with Offender Aid and Restoration ("OAR") and Workforce Innovations of Richmond, Virginia in 2001 to help get me back on my feet. OAR and Workforce innovations helped me to rejoin the workforce and be a productive member of society without having to resort to crime.
10. I have struggled to find stable employment because of my criminal record; most of the work I've been able to find has been temporary work. Despite this, I have kept the promise I made to myself, and I have not been convicted of any felonies in the last sixteen years, and I have not had a criminal conviction of any kind in the last decade.
11. I was registered and had voted before my felony conviction. I knew that I had lost the right to vote when I was convicted, but I did not know that I had lost it for the rest of my life. It was my belief that if I paid all of my fines and court fees and waited a certain period of time, my rights would be restored. I now know that this was not the case, but I was not aware of what the process actually was to have my rights restored.
12. I never tried to have my rights restored. It all seemed very confusing and frustrating, and I had no confidence that even if I tried to have my rights restored that it would actually work.
13. Being unable to vote made me feel like a marginal person. Because I couldn't participate in the political system, I lost interest. When you don't have a say anymore it's hard to maintain interest. That's how I felt for years – like no one cared what I had to say.
14. Being able to vote again has restored my dignity and self-worth, and I am glad that I can have a voice again and be a part of a change. Before my rights were restored, I would keep to myself and not go out much, partially because I felt different than everyone else, like I wasn't a full citizen. It was hard to get involved in my community or have normal social relationships.
15. I have applied to register to vote in the City of Richmond, and I fully intend to vote in the upcoming election. I am excited to be a part of the process again.
16. I've felt so much better since my rights were restored. I'm getting out more and being more active now that I no longer feel like a pariah. I have long since paid my debt to society, and now I feel like I've been made whole.

I swear (or affirm) that the above is true and correct to the best of my knowledge, information and belief.

Signature:



Date:

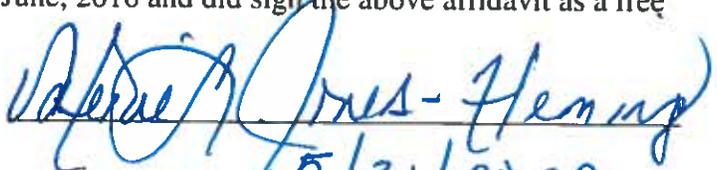


COMMONWEALTH OF VIRGINIA

City of Richmond

I, the undersigned Notary Public, do hereby affirm that the affiant, Jeffery Gunn, did personally appear before me on the seventeenth day of June, 2016 and did sign the above affidavit as a free and voluntary act.

Signature:



My commission expires:

5/31/2020

Valerie L. Jones-Fleming
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7193761
My Commission Expires 5/31/2020

IN THE SUPREME COURT OF VIRGINIA

WILLIAM J. HOWELL, et al.,

Petitioners

v.

TERENCE R. MCAULIFFE, in his official
capacity as Governor of Virginia, et al.,

Respondents

CASE NO. 160784

AFFIDAVIT OF DESHON LANGSTON

COMES NOW DeShon Langston, being first duly sworn, under oath, and states as follows:

1. My name is DeShon Langston. I was born on May 22, 1975 and I currently work as a roofer in Charlottesville, Virginia and I have resided at 906A Paoli St., Charlottesville Virginia 22901 since August of 2015.
2. In 1999, I was convicted of distribution of a controlled substance and two felonies related to the possession of a firearm in Albemarle County, Virginia. I served eighty-seven months at the Federal Correctional Institution, Cumberland, Maryland and Federal Correctional Institution, Beckley, West Virginia. During the summer of 2009 I completed my period of supervised release. I have also been convicted of the following misdemeanors: carrying of a concealed weapon (1993); public intoxication (1994); alluding police (1997), domestic violence (1997 or 1998 – I cannot recall); and domestic violence (2011). Dates are names of charges are to the best of recollection.
3. As a convicted felon, I have not been permitted to vote since the above date of my conviction.
4. On April 22, 2016, the Governor of the Commonwealth of Virginia, Terence R. McAuliffe, signed an executive order (“Order”) removing the political disabilities of all individuals, previously convicted of felonies, who had, as of that date, “(1) completed their sentences of incarceration for any and all felony convictions; and (2) completed their sentences of supervised release, including probation and parole, for any and all felony convictions.” Order, ¶10. Among the civil rights that Order restored was the right to vote. *Id.*
5. Because I have completed my sentence of incarceration for my felony convictions and I have completed my period of supervised release, and because I have not been convicted of a felony during the period time of time since the issuance of the Order, I am eligible to register to vote pursuant to the Order.

EXHIBIT

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Langston Aff.

6. On May 23, 2016, Petitioners filed a petition for writs of mandamus and prohibition with this Court, wherein they asked this Court to nullify the Order. I am therefore directly affected by the outcome of this case.

FURTHER, Affiant states that:

7. I am a forty-one-year-old African-American man. I was born in Detroit, Michigan, but I moved to Charlottesville, Virginia at the age of eight have spent most of my life here. I have been married to my wife Christina since October of 2012. My wife and I have two sons, ages eight and five. I also have two daughters from a previous relationship, ages eighteen and seventeen.
8. I was twenty-three when I was convicted of felony distribution of a controlled substance and two felony convictions related to the possession of a firearm.
9. I decided while I was in prison that this would be the first and last time that I would ever be incarcerated. I tried to do every positive thing that I could possibly do while I was serving my time; I wanted to better myself in every way available so that I would be prepared to fully re-enter society when I got out. I earned my GED while in prison. I also took college classes, earning my supervisory management certificate. I earned my paralegal certificate through a correspondence class as well. I took parenting classes, as well as any classes that were available that appealed to me. I attended religious services regularly, and took a nine-month long drug rehabilitation program.
10. When I was released in 2005, I moved back to Detroit, where I stayed for the next six years. I was involved heavily in my community in Detroit, and I worked with an organization that helped to clean up blighted neighborhoods in the inner city.
11. The law is different in Michigan, so I voted while I was living there.
12. My son was born in 2010 in Charlottesville, Virginia. I moved back to Charlottesville, Virginia in February of 2012, and I was married in October of the same year.
13. When I moved back to Charlottesville I began volunteering with the Believers and Achievers, an organization that helps ex-offenders reintegrate into society. We give care packages to soon-to-be-released inmates that are full of necessities they'll need once they're out. We also hold weekly support groups, visit soon-to-be-released inmates, and work with allied organizations to help people re-enter society. I still volunteer with Believers and Achievers to this day. I'm proud of the work I've done with Believers and Achievers, and I want to continue to do work that serves my community and helps the poor and the marginalized.
14. I applied to have my rights restored about two years ago. A community activist informed me that the restoration of rights application had been shortened from twelve pages to a single page, and that the process was much easier. The Secretary of the Commonwealth's Office contacted me asking for more information, but I became discouraged by the process. It wasn't nearly as easy I had anticipated. I filled out everything online, only to be told that more information was needed that I couldn't easily provide. It was all very confusing, and I wasn't sure what I needed to do.

15. Growing up, I felt like I was stigmatized by society – like there was something wrong with me and that I didn't matter. This gave me a negative mindset, and made me a person who didn't strive to succeed. It also led me to make poor choices that I regret.
16. Being unable to vote, I felt disconnected from the rest of society – like my thoughts and feelings didn't count. I had to work, I had to pay taxes, but I couldn't be a full member of my community with an equal voice to everyone else.
17. When I lost the right to vote I truthfully didn't care at the time. During that part of my life, I didn't think that voting mattered at all.
18. When I got out prison, my mind changed about voting. When I moved back to Detroit, Michigan I learned the value of voting. I voted in the 2008 election, and the candidate I voted for was elected. This showed that a vote can actually matter.
19. Moving from Michigan (where I could vote), to Virginia (where I couldn't), felt like a major setback.
20. Having my rights restored made me feel like I had a voice in my community again. If I like a candidate, I can vote for them. If I don't like something happening in my community, I can vote against it. I can speak out and fully express myself with my vote like everyone else.
21. I am very enthusiastic to vote in the upcoming election.

I swear (or affirm) that the above is true and correct to the best of my knowledge, information and belief.

Signature: 
 Date: 6-21-16

COMMONWEALTH OF VIRGINIA

City of Charlottesville

I, the undersigned Notary Public, do hereby affirm that the above-named affiant, DeShon Langston, did personally appear before me on the twenty-first day of June, 2016, and did sign the above affidavit as a free and voluntary act.



Lybia D Fulcher
 NOTARY PUBLIC
 Commonwealth of Virginia
 Reg. #7631277
 My Commission Expires November 30, 2019

Signature: 
 My commission expires: 11/30/2019

IN THE SUPREME COURT OF VIRGINIA

WILLIAM J. HOWELL, et al.,

Petitioners

v.

TERENCE R. MCAULIFFE, in his official
capacity as Governor of Virginia, et al.,

Respondents

CASE NO. 160784

AFFIDAVIT OF ANTHONY PARKER

COMES NOW Anthony Parker, being first duly sworn, under oath, and states as follows:

1. My name is Anthony Parker. I was born on September 10, 1972. I currently work as a floor technician in Charlottesville, Virginia. I have resided at 755 Orangedale Ave., Charlottesville, Virginia 22903 since March of 2015.
2. In 1991, I was convicted of three counts of possession of cocaine with the intent to distribute in the City of Charlottesville, Virginia. I was convicted of both State and Federal charges. I served nearly four years of my State sentence (October 3, 1991 to March 30, 1994) at Southampton Correctional Institute and Staunton Correctional Facility before I was paroled directly into Federal prison. I then served about just under two years at Federal Correctional Institute ("FCI") Morgantown and Federal Correctional Institute, Petersburg before I was paroled on January 6, 1996. I violated the terms of my Federal supervised release in 1998 and was sentenced to fifteen months in Federal prison at FCI Petersburg. On February 9, 1999, I was released from FCI Petersburg without supervision from the Federal system. On or about February of 2001, I completed my period of supervised release from the State system.
3. As a convicted felon, I have not been permitted to vote since the above date of my conviction.
4. On April 22, 2016, the Governor of the Commonwealth of Virginia, Terence R. McAuliffe, signed an executive order ("Order") removing the political disabilities of all individuals, previously convicted of felonies, who had, as of that date, "(1) completed their sentences of incarceration for any and all felony convictions; and (2) completed their sentences of supervised release, including probation and parole, for any and all felony convictions." Order, ¶10. Among the civil rights that Order restored was the right to vote. *Id.*
5. Because I have completed my sentence of incarceration for all my felony convictions and I have completed my period of supervised probation, and because I have not been

EXHIBIT

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Parker Aff.

convicted of a felony during the period time of time since the issuance of the Order, I am eligible to register to vote pursuant to the Order.

6. On May 23, 2016, Petitioners filed a petition for writs of mandamus and prohibition with this Court, wherein they asked this Court to nullify the Order. I am therefore directly affected by the outcome of this case.

FURTHER, Affiant states that:

7. I am a 43-year-old African-American man. I have lived in Charlottesville, Virginia for most of my life. I have a girlfriend, Kisha Brooks, who I have been with for six years. I have an eight-year-old daughter from a previous marriage.
8. My three felony convictions from 1991 are the only felony convictions I've ever had, and all of the charges came within the space of seven months. I was charged with one count of possession of cocaine with intent to distribute, but released on bond. I was then arrested and charged with another identical offense while on bond for the first offense. The same thing happened again for the third charge.
9. I was convicted when I was eighteen years old. The early nineties were a time when a lot of boys like myself were getting involved in the "crack game" out of pure peer-pressure and the temptation of easy money, myself included. I went into prison a child, but I came out a young man.
10. When I got out of prison in 1996, I wanted to be a full and productive member of society, but my status as a felon made it extremely difficult, especially when it came to finding work. I can recall three or four jobs that hired me, only to fire me a few weeks in when they discovered I was a felon. I can also recall several job interviews that were going very well, but were abruptly ended when the subject of my criminal history came up. On one occasion, I was rejected from a job before I finished the application. Because of the difficulty I've faced in securing employment, I've mostly had to take odd-jobs and temporary work.
11. I currently work for a subcontractor that does flooring work for the University of Virginia. I want to work for the University itself, but I don't think they'd hire a felon.
12. I didn't know that I lost the right to vote when I first convicted. I didn't find that out until another man told me while I was in prison. That was when I knew that my conviction really would follow me forever.
13. I never looked into having my rights restored because I didn't know it could be done. I thought I had lost my rights for life, with no chance of restoration.
14. When a friend of mine told me about the Governor's executive order, I immediately went to register to vote. I got my voter registration card in the mail on May 6, 2016. I am registered in Charlottesville City.
15. I was very excited that I was registered to vote. I was convicted just after my eighteenth birthday before I'd had the chance to register, so this would be the first time that I've been able to vote in my life.
16. I now understand the importance of voting, and I was proud to be able to tell my daughter that her father can vote and engage in the political conversation. It was very empowering to me to be able to vote, and I can't wait to cast my first ever ballot.

17. The first couple weeks after I got my voter ID card were incredible for me. I had been discouraged for years that I would be never be allowed to be a full citizen again, that society would never be able to see past the person I was when I was eighteen – a child I don't recognize anymore. I felt voiceless, like I was not a real member of society. But for a few weeks I felt better, like I was equal to everyone else again. I felt like things were finally changing.
18. I found out about this lawsuit a couple weeks after I got my voter registration card, now I feel discouraged again. I made poor decisions when I was young, and I regret them. But I have had to pay for those mistakes over and over again, both in my private and public life. I would like the chance to be a normal citizen just like everyone else.
19. I intend to vote in the next election, and I hope to bring my daughter with me to the polls to serve as a role model of an upstanding citizen.

I swear (or affirm) that the above is true and correct to the best of my knowledge, information and belief.

Signature: *Anthony Parker*
 Date: 6.24.16

COMMONWEALTH OF VIRGINIA

City of Charlottesville

I, the undersigned Notary Public, do hereby affirm that the above-named affiant, Anthony Parker, did personally appear before me on the twenty-first day of June, 2016, and did sign the above affidavit as a free and voluntary act.



Lybia D Fulcher
 NOTARY PUBLIC
 Commonwealth of Virginia
 Reg. #7631277
 My Commission Expires
 November 30, 2019

Signature: *Lybia D Fulcher*
 My Commission Expires: 11/30/2019