



To: Members of the House of Delegates and Senate

Date: January 11, 2017

From: Hope Amezquita, Staff Attorney and Legislative Counsel

RE: Restoration of Rights Legislation

It is past time for Virginia to amend our constitution to protect the right to vote for all Virginians. We must move beyond conversations about restoring the “right” to vote to persons who have been affirmatively disenfranchised for discriminatory reasons, and become advocates for the inclusion of an affirmative right to vote for all citizens residing in Virginia. Therefore, although the ACLU of Virginia¹ continues to believe that we must ask voters to amend our constitution to remove the vestige of Jim Crow Virginia represented by the felony disenfranchisement provision in Article II, Section 1, we also believe that the right way to do this is to ask voters to affirm the right to vote for all Virginians without restriction. We have attached to this memo recommended language for amendments to the Virginia Constitution that would achieve this objective, and we hope that patrons of resolutions calling for a change in our Constitution to restore the right to vote of persons convicted of a felony will agree that it’s time to guarantee the right to vote for all.

Despite the reforms of the past three Governors, Virginia is still out of step with the nation with one of the highest disenfranchisement rates, especially in the African-American voting age population at 20 percent. Several bills have been introduced seeking to amend the state constitution to provide for restoration of civil rights in various forms and processes². Some bills propose to remove the authority from the Governor, while others seek to create a two-tier system of violent versus non-violent felonies, with different criteria for restoration of rights. One proposal even seeks to forever disenfranchise individuals convicted of a violent felony as defined by the legislature.

While we commend those legislators who are attempting to reform the process of restoration of rights in positive ways, the right solution is for the General Assembly to resolve to ask the voters to confirm the fundamental right of all persons living in Virginia who are citizens and of voting age. While ACLUVA supports repeal of the felon disenfranchisement provision in its entirety and automatic restoration the rights of persons convicted of a felony without conditions or another burdensome bureaucratic

¹ The ACLU of Virginia is a private, non-profit organization that protects and defends civil liberties and civil rights for everyone in the Commonwealth through advocacy, public education, and litigation with the goal of securing freedom and equality for all. This letter outlines our position on restoration of rights legislation for the 2017 General Assembly session.

² HJ 540 (Simon, Babgy, Bell, John, Hope, Kory, Levine, Plum, Price, Rasoul, Sickles; Senators Favola, Howell Locke, Surovell); SJ 253 (Dance); SJ 542 (Habeeb, Farrell, O’Bannon, Austin, Bell, Richard, Jones, Leftwich, Marshall D.W., Massie, Ware, Webert); SJ 223 (Norment); SJ 243 (Edwards)

process to navigate, we believe that this is not the preferred course of action at this time. The preferred course is to pass an amendment to the Virginia Constitution that affirms the existence of a fundamental and affirmative right to vote for all Virginians that cannot be abridged by law.

People convicted of felonies deserve the opportunity to participate in the process. These individuals work, raise families, and pay taxes in our communities. Any proposal to continue a two tiered system of rights restoration that differentiates between people formerly convicted of violent and non-violent crimes, creates cumbersome application processes, establishes wait times to even apply, or requires people to pay a modern day poll tax consisting of court fees, fines, and restitution as a condition to restoration of rights will result in arbitrary decisions and insurmountable barriers for many people. Although the obligation to pay court fees, fines, and restitution never extinguishes until it is paid, it should not be a hindrance to the fundamental right to vote.

While of all the legislative proposals introduced to date, HJ 540 comes closest to language ACLUVA could support, the simple deletion of the felony disenfranchisement language, without more, may leave open an argument that the General Assembly has unfettered discretion to define in law additional qualifications for voting. That would leave open the possibility that people who were convicted of felonies could be disenfranchised permanently by statute.

Voting is a cornerstone of our democracy. No person should be denied the fundamental right to vote. Please vote to put before Virginia voters a proposed amendment to Article II, Section 1 of the Virginia Constitution that would permanently remove the felony disenfranchisement provision and replace it with an affirmative right to vote for all Virginians who are citizens of voting age.

Article II. Franchise and Officers

Section 1. Qualifications of voters

In elections by the people, the *sole* qualifications of voters shall be as follows: Each voter shall be a citizen of the United States, shall be eighteen years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this article. *Every person who meets these qualifications shall have the fundamental right to vote in the Commonwealth which right shall not be abridged by law.* ~~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.~~

The residence requirements shall be that each voter shall be a resident of the Commonwealth and of the precinct where he votes. Residence, for all purposes of qualification to vote, requires both domicile and a place of abode. The General Assembly may provide for persons who are employed overseas, and their spouses and dependents residing with them, and who are qualified to vote except for relinquishing their place of abode in the Commonwealth while overseas, to vote in the Commonwealth subject to conditions and time limits defined by law. The General Assembly may provide for persons who are qualified to vote except for having moved their residence from one precinct to another within the Commonwealth to continue to vote in a former precinct subject to conditions and time limits defined by law. The General Assembly may also provide, in elections for President and Vice-President of the United States, alternatives to registration for new residents of the Commonwealth.

Any person who will be qualified with respect to age to vote at the next general election shall be permitted to register in advance and also to vote in any intervening primary or special election.