



COMMONWEALTH of VIRGINIA

Office of the Governor

Terence R. McAuliffe
Governor

SUMMARY OF THE GOVERNOR'S RESTORATION OF RIGHTS ORDER DATED APRIL 22, 2016

History of Felon Disenfranchisement in Virginia:

The Constitution of Virginia has prohibited felons from voting since the Civil War. Across the South and in Virginia, felon disenfranchisement laws, together with poll taxes and literacy tests, have had a disproportionately negative impact on African American voters, and have at times been used intentionally to consolidate and preserve white control over the political process. The political leaders championing these provisions were quite explicit in their aims, stating the purpose of imposing these hurdles was to “eliminate the darkey as a political factor in this State in less than five years, so that in no single county of the Commonwealth will there be the least concern felt for the complete supremacy of the white race in the affairs of government.”¹

Poll taxes and literacy tests have been banned for decades in the United States; however, Virginia has maintained felon disenfranchisement in its Constitution. Today, only four states maintain so stringent a felon disenfranchisement law as Virginia, and it continues to ensnare as many as 206,000 Virginians who have served their time and yet are unable to vote. It is estimated that 1 in 5 of the African American voting-age population is disenfranchised in Virginia because of this provision. Thus, despite the progress Virginia has made erasing the vestiges of slavery and segregation on so many fronts, this law continues to disenfranchise racial minorities and other citizens who have paid their debt to society and are otherwise qualified to vote.

¹ Statement of Carter Glass, Report of the Proceedings and Debate of the Constitutional Convention, State of Virginia, 3076 (1906). Glass went on to explain, in the debate about the 1902 suffrage amendments, that the entire purpose of the constitutional revision was “to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate.” *Id.* at 3076–77.

The Governor's Action:

Under the Constitution of Virginia, the Governor has the authority to “remove political disabilities consequent upon conviction” for felonies. Article V, Section 12. Using this authority, the Governor has issued an Order restoring civil rights to a large number of Virginians currently disenfranchised for a felony conviction.

To qualify, a person must have, as of April 22, 2016, (1) completed any term of incarceration and (2) completed any period of supervised release (probation or parole) for any and all felony convictions. In short, those who have served their time as of April 22, 2016, will have their right to vote restored. By this action, as many as 206,000 individuals will be qualified to vote in Virginia.

Going forward, the Governor will issue periodic orders restoring rights to persons who have completed the terms of their incarceration and any periods of supervised release since April 22, 2016.

The Governor's Authority to Restore Rights:

Article V, Section 12 grants the power to the Governor to grant various forms of Executive Clemency, including the power to (1) remit fines and penalties; (2) grant reprieves and pardons; (3) remove political disabilities from convictions; (4) commute capital punishment.

The text of the provision contains only three limitations on these powers. First, remittances of fines and penalties are subject to rules and regulations the General Assembly can pass. Second, reprieves and pardons are allowed only *after* conviction. And third, the Governor cannot pardon a conviction of impeachment. By the plain text of the provision, the Governor has absolute discretion to grant his clemency powers to any person or group of people for whatever reason the Governor sees fit.

While no Virginia Governor has exercised the clemency power on a categorical basis, history is replete with examples of this authority, from Presidents and other states' Governors, confirming the broad power granted under the Constitution of Virginia.² Any claim that the Governor does

² George Washington granted pardons to all those involved in the Whiskey Rebellion—one of the first grants of clemency in the United States. President Lincoln and Johnson offered general pardons to former Confederates; President Truman pardoned all armed service officials from convictions during their service in WWII; President Carter pardoned draft-dodgers from Vietnam. In Kentucky, the Governor has issued general pardons and restored voting rights on a general basis. Governors in Illinois and Florida have also issued general pardons/clemency.

not have this authority is far-outside the weight of constitutional authority across the nation and would read into the text of the Virginia Constitution words that simply are not there.

Previous Governors, starting with Governor Warner (2002-2006), have made considerable progress towards liberalizing the policy of restoration of rights for persons convicted of felonies. Governor Warner simplified the application process considerably. Governor Kaine shortened the waiting period for those released from prison before applying for a restoration of rights. Governor McDonnell started a process of restoring rights without any application. Governor McAuliffe's action is simply the culmination of that progress and a reflection of the moral and civic imperative to fully welcome individuals who have served their time back into society. This action is right on the law and the right thing to do to move past this troubling chapter in Virginia's history and write a new one of justice and equality for all Virginians.