

January 13, 2021

The Honorable Ralph Northam
Governor of Virginia
P.O. Box 1475
Richmond, VA 23218

Via email to: ralph.northam@governor.virginia.gov
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Re: SJR272 (Locke)

Dear Governor Northam:

We are writing today on behalf of the more than 200,000 members and supporters of the ACLU of Virginia, the League of Women Voters of Virginia, the Williamsburg League of Women Voters, NoLeftturns, Bridging the Gap Virginia, Neighborhood Law Center, Inc, and the Institute of Forgiveness to ask you to support SJR 272 introduced by Senator Mamie Locke that would amend the Virginia constitution to guarantee a right to vote to all citizens 18 and over who are residents of the Commonwealth – effectively repealing felony disenfranchisement and finally ridding our constitution of this racist practice.

We are challenging felony disenfranchisement and seeking to guarantee a right to vote for all because doing so is essential to assuring racial justice at the ballot box. Our voting rights work is not about giving people convicted of felonies a “second chance.” It is about finally righting the wrong done by politicians in post-Reconstruction Virginia who enshrined felony disenfranchisement in our constitution precisely and solely to keep Black Virginians from being able to participate in our political system or exercise their rights as citizens to engage as active partners in our democratic republic.

The fact is that, as governor, you have been implementing a policy of “automatic restoration” of rights, as your predecessor did, and there are still hundreds of thousands of people who remain disenfranchised, a majority of whom are Black. This is a direct a result of our racialized criminal legal system in which Black people are arrested, charged, convicted and sentenced disproportionately. Through your work and the work of your predecessor, the number of Black people disenfranchised has fallen from one in five to one in seven, but the reality is that about 12,000 people are felonized each year in a racially unjust system and the backlog of disenfranchised people remains.

“Automatic restoration” of rights is not racial justice. Restoration does not repeal the language or address the racist intent of the felony disenfranchisement provision currently enshrined in our Virginia Constitution. Taking away a person’s right to vote who has been convicted of a felony has never been about punishing people who committed a crime. It was and remains an overt and intended effort to block Black people from voting. If that is in doubt, just read the debates at the 1902 Constitutional Convention. The delegates’ avowed goal was to “purify” the ballot and felony disenfranchisement has proven to be their most impactful method.

When felony disenfranchisement was incorporated in the post-Reconstruction 1902 Constitution alongside poll taxes, literacy tests and grandfather clauses, it was just one tool designed to stop as many Black people from voting as possible. Black codes ensured that a disproportionate number of Black people would be criminalized and felonized. It is beyond dispute that felony disenfranchisement was and is as Jim Crow as poll taxes. Automatic restoration does not fix this.

Virginia was forced by the federal constitution and Voting Rights Acts to repeal our poll taxes and literacy tests – but we kept felony disenfranchisement, and we have convinced ourselves that this is normal and somehow not racially defined. We are wrong on both counts.

The question we should be asking ourselves is: Why are we talking about giving something back that should have never been taken away in the first place? The right to vote is the essential currency of democracy. Withholding it from hundreds of thousands of Black Virginians, whether they are still incarcerated or not, makes a mockery of any pretense that we are a Commonwealth seeking to right past wrongs and make reparation for past injustices.

Moreover, restoration doesn't work for hundreds of thousands of the people who are currently disenfranchised, a majority of whom are Black.

- Our current restoration process relies on incomplete data from the Virginia Department of Corrections which does not (and should not) track people once their period of incarceration and supervision ends.

- Since 2016, Virginia has restored rights to more people than any other state. Nonetheless, over 350,000 people – a majority of whom are Black – remain disenfranchised. The data Governor McAuliffe published in May 2016 about the 200,000 people whose rights he sought to restore by Executive Order show that the majority of people who would benefit were white, despite the fact that a majority of people disenfranchised then and now are Black. <https://www.governor.virginia.gov/newsroom/all-releases/2017/mcauliffe-administration/headline-826616-en.html>

- Automatic restoration will not fix this. Currently, we are barely re-enfranchising at the rate at which we are felonizing and the racial disparities in length of sentence mean that any automatic provision that is triggered by end of

active supervision will continue to exacerbate the racial disparities among those awaiting restoration.

- The current restoration amendments that have been proposed this session will still leave out the nearly 70,000 Virginians who have completed their sentence and are on probation – a condition which can be applied indefinitely in Virginia. Combine that with the 30,000 people who are actively serving a prison sentence and at best you are still leaving behind 100,000 people, a majority of whom are Black, from this “solution.”

This is not the time to constitutionalize the status quo. Restoration is the status quo in Virginia – changing the constitution is a long and challenging process not meant for codifying a symbolic gesture that is already common practice. The only step forward is a commitment to universal suffrage and the repeal of Jim Crow from our constitution. If you are truly committed to bringing racial justice to the ballot box in Virginia, guaranteed universal suffrage is the only way to achieve that goal and leave no one behind. **We must repeal felony disenfranchisement, wholly and without limitation, and prevent this racist practice from impacting another single vote in this Commonwealth.**

If you join us in supporting universal suffrage, you will not be alone. There is strong support among Virginians for a guaranteed right to vote. In addition to the many advocates that have signed onto this letter, we have polled Virginians twice on the issue of their support for universal suffrage, and both times, the results show that a majority of Virginia voters support the right to vote for all – not just people who have “done their time.” In a December 2020 statewide poll by Mason-Dixon Polling and Strategy, 55% of Virginia voters (73% of Democratic voters and 75% of Black voters) said that government should not be able to permanently take away the right to vote from people who’ve been convicted of a felony. In a December 2019 statewide poll conducted by Beacon Research, 66% of Virginia voters (85% of Democratic voters and 83% of Black voters) said they support a constitutionally guaranteed right to vote.

We must be unrelenting in our commitment to be the change we want to see in the world, to fight back darkness and bring light everywhere we can, and to stand with and behind the Black people in our Commonwealth and our country who have too long been denied their rightful place, position and power. You have said that “[a]cknowledging and addressing the systemic, institutional racism that is deeply-rooted in this country and this Commonwealth” is “a top priority” for your administration. Choosing to support the right to vote would be consistent with this commitment, while leaving felony disenfranchisement in place in our constitution and embracing “restoration” would not be.

For all these reasons, we ask you to reject automatic restoration as a policy objective and join us in actively supporting SJR 272 – the guaranteed right to vote for all.

Very truly yours,

ACLU of Virginia, the League of Women Voters of Virginia, the Williamsburg League of Women Voters, NoLeftturns, Bridging the Gap Virginia, Neighborhood Law Center, Inc, and the Institute of Forgiveness

P.S. If you have questions about this letter or our policy positions, Jenny Glass, Director of Advocacy at the ACLU of Virginia, jglass@acluva.org, 757-969-3248, can be of assistance.

CC: The Honorable Mamie Locke, Senator of Virginia
The Honorable Jay Jones, House of Delegates
The Honorable Kelly Thomasson, Secretary of the Commonwealth