



COMMONWEALTH of VIRGINIA

Office of the Governor

Mark E. Rubin
Counselor to the Governor

January 15, 2010

Mr. Kent Willis
American Civil Liberties Union of Virginia
530 East Main Street
Suite 310
Richmond, Virginia 23219

Dear Kent:

This letter is in response to your letter of December 9th requesting that Governor Kaine use his executive power to grant a blanket restoration of voting rights to Virginians who have lost voting rights due to a felony conviction.

Governor Kaine supports the restoration of voting rights and has long supported efforts to change Virginia law so that a felony conviction is not a permanent disenfranchisement of those rights. Since his first days as Governor, he has worked to make the application process for restoration of voting rights simpler and has made the timely handling of these requests a high priority. As a result, Governor Kaine has restored voting rights to over 4,400 individuals since January 2006. This represents the greatest use of the restoration power by far of any Virginia Governor.

The question raised by your letter goes a step further – should the Governor use executive power in his last days in office to restore voting rights to an unknown number of unnamed individuals who have not applied to have their voting rights restored?

This specific question was raised less than two months before the Governor's term expires. It is a complex question to resolve within this short time period because it involves significant policy, legal and practical concerns. The question has more consequences than simply restoring voting rights because a restoration of rights also affects the ability of felons to serve on juries and to obtain concealed weapons permits. Nevertheless, the Governor has undertaken a very careful review of your proposal.

We conclude that a blanket restoration of rights within the context of current Virginia law would not be proper for two reasons. First, while the wording of the constitutional provision granting the powers of clemency and restoration of rights might be read to support the blanket use of these powers to benefit unnamed individuals, we think the better argument is that these

Mr. Kent Willis
January 15, 2010
Page 2

powers are meant to apply in particular cases to named individuals for whom a specific grant of executive clemency is sought. A blanket order restoring the voting rights of everyone would be a rewrite of the law rather than a contemplated use of the executive clemency powers. And, the notion that the Constitution of the Commonwealth could be rewritten via executive order is troubling.

To be sure, the Governor disagrees with the current policy embodied in the Virginia Constitution that a felony conviction automatically leads to permanent disenfranchisement. But, he did pledge to uphold the Constitution when he took his oath of office in January 2006. His and others' efforts to persuade the General Assembly to change the current law and policy have been unsuccessful. To attempt to change the Constitution by executive order on the way out the door could set a dangerous precedent that would have negative consequences if applied under different circumstances by future Governors.

Second, the practical aspects of implementing a blanket restoration raise significant problems. Neither the information about voting registration nor the information concerning whether a felon has completed his sentence are completely available in centralized state records as they are in other states you cited as models. For example, information about whether a felon has complied with court orders including the payment of restitution to the crime victim or whether the individual has successfully met the terms of probation or parole supervision is only available in local court records. Without having this information available in centralized data bases, a blanket restoration of rights for those who have completed their sentences would place an unprecedented burden on local registrars to determine whether a felon is actually qualified to register. It could also lead to significant confusion in the election process with disputes about an individual's actual voting status. The risk of undermining the integrity of the election process is not one the Governor is willing to take as he leaves office.

While we will not issue a blanket restoration of rights to unnamed individuals, we do encourage you and others to take important steps to facilitate the important goal of restoration of felon's voting rights. First, encourage all who have lost their rights to apply for a restoration. Governor Kaine has publicly encouraged such applications in many public settings since 2006. In a state and nation where the majority of registered voters often choose not to vote, the desire of citizens who have paid their debt to society to rejoin civic life by participating in elections is laudable. Second, do all you can do to support a change in Virginia law so that lifelong voting disenfranchisement is not an automatic consequence of a felony conviction. Virginia is one of only two states that mandate such an extreme penalty. The Governor will be glad to continue to work with you to ultimately persuade the General Assembly that this distinction is one to erase.

Sincerely,



Mark E. Rubin