

LWVVA Begins Process of Clarifying Issue of Restoration of Voting Rights For Felons

By Lois Page, Program Committee Co-chair

STATE AND LOCAL COMMITTEES BEGIN TWO-YEAR STUDY

At the 2007 League of Women Voters of Virginia Biennial Convention, a two year study titled "Study of the Restoration of Civil Rights of Felons in Virginia" was approved. An active committee, under the leadership of Molly McClenon, has been at work preparing background information and gathering local input.

The materials reproduced in this *Fairfax Voter* were largely those given to participants in the State Program Workshop last fall. They will inform you of the LWVUS position on the topic, what constitutes a felon, the history of felon voting and disenfranchisement in the United States, and other material of interest. In Virginia's Constitution, only the governor is empowered to restore civil rights to a felon. This study will be important in helping Virginia League members determine how to address this restriction without proposing a constitutional amendment. Or we may, as a League, decide we wish to support the lengthy process of amending the Virginia Constitution.

A small LWVFA committee has been interviewing local officials with the goal of combining their findings and formulating consensus questions. A summary of their interview findings and additional material will appear in the *Voter* next fall in preparation for our consensus meetings, but we wanted to provide a head-start on the background of this issue.

LWVUS POSITION URGES PARTICIPATION IN THE POLITICAL PROCESS

The League of Women Voters of the United States believes that voting is a fundamental citizen right that must be guaranteed.

The League's History on Voting Rights

The right of every citizen to vote has been a basic League principle since its origin. Early on, many state Leagues adopted positions on election laws. But at the national level, despite a long history of protecting voting rights, the League found itself in the midst of the civil rights struggle of the 1960s without authority to take national legislative action on behalf of the Voting Rights Act of 1965,

Stung by the League's powerlessness to take action on such a significant issue, the 1970 convention adopted a bylaws amendment enabling the League to act "to protect the right to vote of every citizen" without the formality of adopting voting rights in the national program. This unusual decision reflected member conviction that protecting the right to vote is indivisibly part of the League's basic purpose. When the 1974 convention amended the bylaws to provide that all League principles could serve as authority for action, the separate amendment on voting rights was no longer needed.

The 1976 Convention's adoption of Voting Rights as an integral part of the national program and the 1978 confirmation of that decision underlined the already easing authority under the Principles for the League to act on this basic right. In May 1982, the LWVUS board made explicit the League's position on Voting rights, and the 1982 Convention added Voting rights to the national program. The 1986 convention affirmed that a key element of protecting the right to vote is encouraging participation in the political process. The 1990 convention affirmed that the LWVUS should continue emphasis on protecting the right to vote by working to increase voter participation...¹ [See table below for historical information.]

VIRGINIA VOTING RIGHTS: A GIVE AND TAKE SITUATION

The Virginia Constitution regarding this issue reads as follows: Article II Section 1. Qualifications of voters. *In elections by the people, the qualifications of voters shall be as follows: Each voter shall be a citizen of the United States, shall be 18 years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this article. 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.*

Over 400 years in Virginia, voting rights have been gradually extended to, and sometimes taken from, various groups of citizens by both state laws and amendments to the U.S. Constitution. Originally granted to all freemen in Virginia, the franchise became limited to property owners, then was

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U.S. HISTORY OF FELON VOTING / DISENFRANCHISEMENT²

Date	Event
Ancient and Medieval History	<p>“In Greek city-states, the status of atimia [loss of civil rights] was imposed upon criminal offenders. This status carried the loss of many citizenship rights, including the rights to participate in the polis (polity). ... only elites had those rights to begin with, so disenfranchisement was a penalty imposed on deviant elites.</p> <p>“In ancient Rome, the related punishment of infamia could be imposed on criminal offenders. In this case, the principle penalties were loss of suffrage and the right to serve in the Roman legions (a desired opportunity). [...]</p> <p>“In medieval Europe, the legal doctrines of ‘civil death’ and ‘outlawry’ carried forward similar notions. As with atimia, those punished with civil death generally suffered a complete loss of citizenship rights (in some early Germanic texts, outlaw status meant a ‘loss of peace’ that was comparable to becoming a wolf, since the outlaw had to ‘live in the forest’). In extreme cases, civil death could be injurious or fatal, since outlaws could be killed by anyone with impunity, or have their property seized. In most medieval contexts, political rights held little substantive meaning. But the civil death model carried over into parts of modern criminal law.”³</p>
pre-1776	<p>“Criminal disenfranchisement has its roots in the punishment of ‘civil death,’ imposed for criminal offences under Greek, Roman, Germanic and later Anglo-Saxon law. English law developed the related punishment of attainder ...loss of all civil rights. These principles were transplanted to the British colonies which later became Canada and the United States.”⁴</p>
pre-1776	<p>“[A]side from property qualifications, there were no firm principles governing colonial voting rights, and suffrage laws accordingly were quite varied.... In practice, moreover, the enforcement of application of suffrage laws was uneven and dependent on local circumstances. [...]</p> <p>[T]he revolutionary period [...] witnessed heated public exchanges and sharp political conflict over the [voting] franchise. [...] Implicit in these arguments was the claim that voting was not a right but a privilege, one that the state could legitimately grant or curtail in its own interest. [...]</p> <p>Yet there was a problem with this vision of suffrage as a right [...] there was no way to argue that voting was a right or a natural right without opening a Pandora’s box. If voting was a natural right, then everyone should possess it. [...]</p> <p>[S]everal important legal and jurisdictional issues also were shaped, or structured, during the revolutionary period. The first was that suffrage was defined as a constitutional issue [...] Implicit in this treatment was the notion that suffrage requirements ought to be durable and difficult to change.”⁵</p>
1830	<p>Virginia’s state constitution is ratified. It specifically bars from voting those “convicted of an infamous crime.”⁶</p>
1870	<p>The U.S. Constitution’s Amendment XV is ratified by the states. It stipulates: “Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.</p> <p>Section 2. The Congress shall have the power to enforce this article by appropriate legislation.”⁷</p>
1957	<p>The Civil Rights Act of 1957 is passed. “The bill created a national Civil Rights Commission, elevated the Civil Rights section into a full-fledged division of the Justice Department, and authorized the attorney general to seek injunctions and file civil suits in voting rights cases [...]”⁸</p>
1965 Aug. 6	<p>“President Johnson signed the [Voting Rights Act] into law on August 6, 1965. Section 2 of the Act, which closely followed the language of the 15th amendment, applied a nationwide prohibition against the denial or abridgment of the right to vote on the literacy tests on a nationwide basis.⁹</p> <p>[Editor’s Note: The Voting Rights Act was renewed in 1970 for five years, 1975 for seven years, 1982 for 25 years, and in 2006 for an additional 25 years.]</p>

<p>1972</p>	<p>The Ninth Circuit Court of Appeals ruled in <i>Dillenburg v. Kramer</i> that “courts have been hard pressed to define state interest served by laws disenfranchising persons convicted of crimes.... Search for modern reasons to sustain the old governmental disenfranchisement prerogative has usually ended with a general pronouncement that a state has an interest in preventing persons who have been convicted of serious crimes from participation in the electoral process or a quasi-metaphysical invocation that the interest is preservation of the ‘purity of the ballot box.’... Earlier in our constitutional history, laws disenfranchising persons convicted of crime may have been immune from attack. But the constitutional concepts of equal protection are not immutably frozen like insects trapped in Devonian amber.”¹⁰</p>
<p>1972-1985</p>	<p>A 1974 Supreme Court case, <i>Richardson v. Ramirez</i>, 418 U.S. 24 (1974), held that California’s felon disenfranchisement clause was constitutional. In the Supreme Court case of <i>Hunter v. Underwood</i>, 471 U.S. 222 (1985), the provision in the Alabama constitution that mandated voting disenfranchisement for people who committed “crimes of moral turpitude” was struck down, because it was found that that provision was passed with a racially biased intent; whether a law was passed with a racially biased intent became the litmus test for whether a disenfranchisement law is constitutional.¹¹</p>

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restricted to persons holding certain amounts of property and wealth. Next, negroes were barred from voting simply because of their race. Immediately after the Civil War, black citizens were very active in Virginia political life. But their participation was soon impeded by poll taxes and literacy tests, and remained disproportionate to their numbers until after the national reforms of the 1960s civil rights movement.

In Virginia, as well as in most other states, convicted felons also lost their voting rights in the post-Civil War period. The franchise was greatly expanded by the addition of women less than 100 years ago and most recently, in 1971, 18 year olds were given the right to vote.

The greatest remaining voting rights issue in Virginia is the disenfranchisement of ex-felons. Their loss of voting rights is not related in any way to punishment imposed by the criminal justice system, but is a by-product of their felony conviction. Nationwide, a patchwork of different state rules and laws prevents an estimated 5 million citizens from voting. There is increased momentum to reform state felony disenfranchisement laws: 16 states have enacted reforms in the past decade.

- Virginia and Kentucky are the only states that bar people with felony convictions from voting for life.
- A nationwide survey in 2002 shows very high levels of public support for restoring voting rights to most categories of ex-felons: 80% of respondents to the survey stated that all ex-felons who have served their entire sentence and are now living in their communities should have the right to vote.¹² Public

policy has not caught up with public opinion on this issue. And while recent Virginia governors have restored voting rights to an increased number of ex-felons who filed the necessary paperwork, Virginia has not yet reformed its constitution and laws.

- In 2000, legislation required the Virginia Department of Corrections to inform inmates about their loss of voting rights and the process of restoration. In 2002, Governor Mark Warner streamlined the paperwork required for ex-offenders to regain their voting rights and reduced the waiting period for non-violent offenders to begin that process. During his four-year term, he restored voting rights to 3,414 Virginians, exceeding the combined total for all governors in the previous 20 years.
- In Virginia, only the Governor can restore voting rights. Former felons may begin the paperwork required 3 or 5 years after completing their sentence, parole and/or payment of fines. A one-page application to the Governor after 3 years begins the process for a non-violent felony while a 6-page form after 5 years, including three letters of reference, is required for someone convicted of a violent felony.
- An estimated 240,000-300,000 Virginia citizens are unable to vote because they are ex-felons: this represents 4-5% of Virginia citizens who are age 18 or older. About half of these citizens are African-American.
- A constitutional amendment would be required to allow a different method of restoring voting rights in

Virginia. Legislation authorizing a change must be passed by two sessions of the General Assembly before a constitutional amendment is placed on the ballot. Although legislation to begin this process has been introduced in the Senate for many years, and did pass again in 2007, it was blocked in the House of Delegates. The amendment which passed the Senate 29-10 in 2007 (SJR 307) would add this sentence to the text of the Constitution quoted above: *In addition, the General Assembly may provide by general law for the restoration of civil rights to persons who have been convicted of nonviolent felonies and who have completed service of their sentence including any period or condition of probation, parole, or suspension of sentence.*¹³

- For the 2008 session Senator Yvonne B. Miller introduced *SJ 7 Constitutional amendment; restoration of civil rights for certain felons*. The full text is as follows:
- *Constitutional amendment (first resolution); restoration of civil rights. Authorizes the General Assembly to provide by general law for the restoration of civil rights for persons convicted of nonviolent felonies who have completed service of their sentence including any period or condition of probation, parole, or suspension of sentence. The present Constitution provides for restoration of rights by the Governor. The amendment retains the right of the Governor to restore civil rights and adds the alternative for restoration of rights pursuant to general law.*
- *12/05/07 Senate: Referred to Committee on Privileges and Elections*
- *01/15/08 Senate: Continued to 2009 in Privileges and Elections (15-Y 0-N)*¹⁴

Thus the amendment proposal ended up the way it has for many years.

STATE WEB SITES PROVIDES INFORMATION ABOUT RESTORATION

The following material on a state-sponsored website is entitled “The Restoration of Civil Rights in Virginia.” We reproduce it here to illustrate what information is available to a felon seeking restoration of rights:

Clemency

Solely the Governor has the authority to grant clemency and he may do so at his discretion. This discretionary power allows each governor to establish his own guidelines and policies regarding the eligibility of those seeking clemency.

There are two types of clemency: Restoration of Civil Rights and Pardons.

A restoration of rights restores the rights which are lost upon a felony conviction. These include the rights to vote, to run for and hold public office, to serve on juries and to serve as a Notary Public. It does not include the right to possess or transport any firearm or to carry a concealed weapon. [If the Governor restores your rights, you may petition the circuit court of the jurisdiction in which you reside for a permit to possess or carry a firearm. The court may, in its discretion and for good cause shown, grant such a petition and issue a permit.]

There are three types of pardons: simple, conditional, and absolute. All three types require the petitioner to write a letter to the governor stating why the pardon should be granted. If you have been convicted of a felony you must have your rights restored before the Governor will consider a petition for a pardon.

Under Article V, Section 12, of the Virginia Constitution and Section **53.1-229** through **53.1-231** of the Code of Virginia, all clemency authority is vested solely in the Governor. Clemency is not guaranteed and if a petition is denied, the petitioner has no right of appeal.

Petitions for the restoration of rights and pardons are processed by the Secretary of the Commonwealth. Files are reviewed according to the order in which a completed application is received. The petitioner is notified by mail as to whether his or her petition has been granted or denied by the Governor.¹⁵

A second section of the website provides information of “Restoration of Rights “ as follows:

General Information

A **restoration of rights** restores the rights which are lost in Virginia upon getting a felony conviction. These include the rights to vote, to run for and hold public office, to serve on juries and to serve as a Notary Public. It does not include the right to possess or transport any firearm or to carry a concealed weapon.

There are two different applications/petition processes to follow for restoration of rights, depending on the nature of the felony convictions. **Non-violent felony offenders** may use the short form to apply for restoration. **Violent or drug-distribution felony offenders** must use the longer application form.

General Requirements

Certain requirements must be met in order to be eligible for the restoration of your rights, regardless of felony type:

- You must be a resident of Virginia **OR** have

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FELONY ACTS AS DESCRIBED IN THE VIRGINIA CODE**§18.2-8. Felonies, misdemeanors and traffic infractions defined.**

“Offenses are either felonies or misdemeanors. Such offenses as are punishable with death or confinement in a state corrections facility are felonies; all other offenses are misdemeanors. Traffic infractions are violations of public order as defined in & 46.2-100 and not deemed to be criminal in nature.”

[Editor’s Note: The real world is not so neat. Some felons end up in non-state facilities and some non-felons end up in state facilities. Misdemeanors range from Class 1 to 4 and felonies from Class 1 to 6 with 1 being the most serious.]

Examples:

§ 18.2-90. *Enter dwelling...*

“If any person in the nighttime enters without breaking or in the daytime breaks and enters or enters and conceals himself... which offense shall be a Class 3 felony. However, if such person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.”

§ 18.2-92. *Entering dwelling with intent to commit other misdemeanor.*

“... he shall be guilty of a Class 2 felony.”

§ 18.2-181.1 *Issuance of bad checks.*

“It shall be a Class 6 felony for any person, within a period of ninety days, to issue two or more checks ... aggregate value of \$200 or more and which (i) are drawn upon the same account... and (ii) are made payable to the same person, firm or corporation.”

§ 18.2-96 *Petit larceny defined.*

“Any person who: 1. Commits larceny from the person of another of money or other thing of value of less than \$5, or 2. Commits simple larceny not from the person of another of goods and chattels of the value of less than \$200...Class I misdemeanor.”

§ 18.2-104. *Punishment for conviction of misdemeanor larceny.*

“...and for a third, or any subsequent offense, he shall be guilty of a Class 6 felony.”

§ 18.2-94. *Possession of burglarious tools, etc.*

“If any person have in his possession any tools, implements or outfit, with intent to commit burglary, robbery, or larceny upon conviction thereof he shall be guilty of a Class 5 felony.”

§ 18.2-51.3. *Prohibition against reckless endangerment of others by throwing objects from places higher than one story.*

“...with intent to cause injury...any object capable of causing any such injury. A violation of this section shall be punishable as a Class 6 felony.

§ 18.2-175. *Unlawful wearing of officer’s uniform or insignia; unlawful use of vehicle with word “police” shown thereon.*

“...Any violation of this section shall be a Class 1 misdemeanor.

§ 18.2-57.2. *Assault and battery against a family or household member.*

“A. Any person who commits an assault and battery against a family or household member shall be guilty of a Class 1 misdemeanor. B. On a third or subsequent conviction... be guilty of a Class 6 felony. C. ...shall issue an emergency protective order...”¹⁶

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been convicted of a felony in a Virginia court, a court in any other state (including the District of Columbia), a U.S. District Court, a military court, or any court of an associated Commonwealth, territory, or possession of the United States.

- You must have been released from **supervised** probation for a minimum of three (3) years for a non-violent offense or five (5) years for a violent, drug distribution, or drug manufacturing offense and have no other convictions (felonies or misdemeanors) during that time.
- You must have paid all costs, fines, and/or restitution or any obligations to any other court, including traffic courts.
- You cannot have a conviction for DWI (Driving While Intoxicated) within the past five (5) years immediately preceding your application.

The Secretary of the Commonwealth will conduct a criminal history check on all applicants. This restoration process **takes at least six months** from the time an application is considered complete. Petitions are reviewed in the order in which they are received AND complete; therefore it is in your best interest to make sure that all required documents are included with your petition from the start.

Again, granting a restoration of rights is solely at the discretion of the Governor; it is not guaranteed. **If your petition for restoration of rights is denied, you have no right of appeal – but you may reapply after a two-year period.**

Non-violent / Non-drug Felonies

If your felony convictions did not involve charges for violence or for drug manufacturing or distribution, you may fill out the short application for the restoration of your rights. Drug possession offenders are eligible for this form as long as there were no attendant convictions for distribution, sale, manufacturing or accommodation.

Violent / Drug Distribution Felonies

If you have been convicted of a violent offense, a drug manufacturing or distribution offense, or an election law offense (voter fraud), you must use the longer form below to apply for restoration of rights.¹⁷

RECENT GOVERNORS HAVE INCREASED RATE OF RESTORATION

In 2003, Governor Warner implemented an expedited application process for non-violent offenders seeking the right to vote. For non-violent offenses, a simple one-page application was required to be filed with the Secretary of the Commonwealth, who did a records check. The longer 13-page application form was still necessary for persons convicted of violent offenses.

Between January 2002 and January 2006, Governor Mark Warner restored civil rights to 3,414 people. During the same period 195 applications were rejected, generally based on seriousness of offense or overall criminal record. His predecessor Governor Gilmore restored rights to 238 people. Governor George Allen restored rights to 480. Governor Robb restored rights to 1180 people between 1982 and 1986.)¹⁸

In January 2006 incoming governor Timothy Kaine promised to continue the expedited policy established by his predecessor; he continues to fund the agency designed to handle applications. As of the end of 2007, Kaine had granted one absolute pardon; two conditional pardons; one commutation of sentence; 14 simple pardons; and 1,144 restorations of rights. Restoration of rights restores a felon's rights, such as the right to vote, but not the right to possess a firearm.¹⁹

SOURCES

¹ From *Impact on Issues*, League of Women Voters of the United States

² Felon Voting ProCon .org

³ 2006 Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy*

⁴ Fall 2003 Debra Parkes "Ballot Boxes Behind Bars: Toward the Repeal of Prisoner Disenfranchisement Laws," Temple Political and Civil Rights Law Review

⁵ 2000 Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*

⁶ 1830 Virginia State Constitution

⁷ 1870 U.S. Constitution

⁸ 2000 Alexander Keyssar *The Right to Vote: The Contested History of Democracy in the United States*

⁹ 1965 U.S. Department of Justice

¹⁰ 1972 *Dillenburg v. Kramer*

¹¹ <http://www.felonvotingprocon.org/legalcases.htm>,

¹² Manza, J. Brooks, C., and Uggen, C., *Public Attitudes Towards Felon Disenfranchisement in the United States*

¹³ Written by Pat Bower for the exhibit, "History of

Voting Rights” prepared by The League of Women Voters of Lynchburg, The Martin Luther King, Jr. Center for Human Rights and the Lynchburg Public Library. August 2007

¹⁴ Jean Auldridge of Virginia C.U.R.E./ email to Judy Leader of LWVFA, 2.28.08.

¹⁵ <http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/clemency.cfm>

¹⁶ Compiled from West’s Annotated Code of Virginia, Book 14 and 15; 2001 with 2007 Cumulative Annual Pocket by Molly McClenon

¹⁷ <http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/restoration.cfm>

¹⁸ Relief from the Collateral Consequences of a Criminal Conviction: A State-By-State Resource Guide February 1, 2006 <http://www.sentencingproject.org/tmp/File/Collateral%20Consequences/Virginia.pdf>

¹⁹ Frank Green, “Kaine Grants Woman Pardon in three-Time loser’ Case,” Time Dispatch (fgreen@timesdispatch.com.)

LWV-VA Council Meeting, May 3

The 2008 League Of Women Voters of Virginia [LWV VA] Council Meeting is **Saturday May 3, 2008, 9:00 a.m. to 5:00 p.m.** at the Doubletree Hotel in Charlottesville, 990 Hilton Heights Road, Charlottesville, Virginia, 22901;Tel: 1-434-973-2121 Fax: 1-434-978-7735; www.charlottesville.doubletree.com

League of Women Voters of the National Capital Area Annual Convention

Saturday, May 17, 2008
9:30 a.m. – 1:00 p.m.

Jurys Hotel, Westbury Ballroom
1500 New Hampshire Avenue, NW
Washington, DC 20036

Agenda: Registration is at 9:30;. Seated Breakfast , served at 9:45. We will have an outstanding Guest Speaker (TBA),Q&A and our Annual Business Meeting. Adjournment will be approximately 1:00 p.m.

Cost: \$35.

Transportation: Hotel is located on DuPont Circle. If taking Metro, get off at Red Line’s DuPont Metro Stop and take North Exit. Walk to the right about 30 steps to traffic light on Connecticut Avenue. Cross avenue and walk right one block to DuPont Circle. Jurys Hotel is next left on circle. If driving, carpools are suggested. Street parking in area is available on Saturday morning. Good valet parking costing \$16.60 (\$15. + tax) is available from Jurys Hotel.

RSVP to andreagruhl@aol.com signifying intent to attend. Make check payable to LWWNCA. Mail check with completed registration form (below) **by May 10** to: **Andrea Gruhl**. Questions? 301-596-5460.

~~~~~ (Cut & mail) ~~~~~

### Registration for LWWNCA Convention, Sat., May 17, 2008

Name: \_\_\_\_\_ League: \_\_\_\_\_  
Street, City/State & Zip \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_ Delegate? Circle “Yes” or “No.”

Make check for **\$35** payable to LWWNCA. **Mail form and check by May 10** to:  
Andrea Gruhl, 5990 Jacob’s Ladder, Columbia, MD 21045-3817