



PROTECTING THE VOTE FOR ALL AMERICANS

Testimony Regarding HJ 555

Virginia House Committee on Privileges and Elections

February 3, 2021

Fair Elections Center submits this testimony in support of HJ 555 because, as amended by the subcommittee, it will allow Virginia to join the many states that currently end disenfranchisement when persons with felony convictions are no longer incarcerated; it is consistent with a national trend enfranchising more Americans with felony convictions; and it will reduce public confusion surrounding voter eligibility requirements.

Fair Elections Center is a national, nonpartisan voting rights and election reform organization that works to remove barriers to registration and voting for traditionally underrepresented constituencies. Formed in 2017 to continue the work of the Fair Elections Legal Network, the Center works to improve election administration through legislative, legal and administrative reform, to protect access to the ballot through litigation, and to provide election law expertise, voter information and technical assistance to voter mobilization organizations. In 2018 the Center obtained a first-of-its-kind ruling in federal court holding Florida's former felon disenfranchisement scheme was unconstitutional. The Center engages in legislation and litigation seeking to reform state felony disenfranchisement laws across the country.

Fair Elections Center urges you to move this resolution forward for the following reasons:

Join Many States with This Approach. Virginia is among only a handful of states whose constitution leaves all persons with felony convictions disenfranchised subject to the discretion of a government official, here the governor. By contrast, at least eighteen states and DC currently restore voting rights to persons with felony convictions upon their release from prison. These states include Nevada, Pennsylvania, and Indiana, among many others. Currently, the Sentencing Project estimates that well over sixty thousand Virginians on felony probation are disenfranchised, along with over three hundred sixty thousand individuals post-sentence.¹

People who have studied the issue have found promising evidence that restoration of the right to vote is positively correlated with a reduction in recidivism. Controlling for other factors, the study found that those with a previous arrest who subsequently voted were considerably less likely to be rearrested than those who did not.² This makes sense: if we want people to rejoin

¹ The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* 16 (Oct. 30, 2020), available at <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

² Christopher Uggen & Jeff Manza, Voting and Subsequent Crime and Arrest: Evidence from a Community Sample, 36 Colum. Hum. Rts. L. Rev. 193, 213 (2004); see also Guy Padraic Hamilton-Smith & Matt Vogel, The Violence

society and live productive, law-abiding lives, then we should reintegrate them into society. As that study's authors write, "[v]oting appears to be part of a package of prosocial behavior that is linked to desistance from crime."³ These returning citizens work, pay taxes, raise families, go to church, coach sports, and yet cannot participate in our civic life.

Nationwide Trend. This resolution is also consistent with the overwhelming nationwide trend. In 2016, Maryland changed its laws to effect restoration of the right to vote following release from incarceration.⁴ In 2019, Colorado enacted HB 1266 and Nevada passed AB 431, amending the states' reenfranchisement laws to restore the right to vote to individuals on parole and probation.⁵

In 2018, Florida voters amended the state's Constitution by restoring the right to vote to persons with felony convictions who have completed all terms of their sentences, excluding those convicted of murder and sex offenses. In a year of closely divided U.S. Senate and gubernatorial elections that were decided by less than 1 percent of the vote, this amendment passed with 64.5 percent of the vote, showing the broad bipartisan support for restoration.⁶ Furthermore, since 2018, New York and Louisiana have moved up the point of restoration for many returning citizens; Texas and Delaware have eliminated their waiting periods for restoration.⁷ The trend is towards easing returning citizens' path back into civic life.

Eliminating Confusion. Passing this amendment would eliminate the administrative burdens of rights restoration in Virginia, eliminate confusion of potential voters due to the process, and remove the risk of leaving restoration solely in the hands of the Governor. Many otherwise-eligible returning citizens may not realize that their rights have been individually restored or are not familiar with the option to apply for restoration, and may avoid voter registration for fear of criminal repercussions. Establishing a clear rule that persons with felony convictions are restored to their voting rights upon release from incarceration is far more administrable as well as less confusing for voters.

Fair Elections Center urges you to move this resolution forward. If you have any questions or need further information, please contact Michelle Kanter Cohen, Senior Counsel, Fair Elections Center, (202) 331-0114, mkantercohen@fairelectionscenter.org.

of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism, 22 Berkeley La Raza L.J. 407, 427 (2012).

³ Uggen & Manza, Voting and Subsequent Crime and Arrest, at 195.

⁴ MD. CODE ANN. ELEC. LAW § 3-102(b)(1).

⁵ https://leg.colorado.gov/sites/default/files/2019a_1266_signed.pdf;
https://www.leg.state.nv.us/Session/80th2019/Bills/AB/AB431_EN.pdf.

⁶ See Fla. Dept. of State, Voting Restoration Amendment, 14-01,

<https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1> (last visited Feb. 2, 2021), full text of Amendment 4 available at <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/64388-1.pdf>

⁷ Disenfranchisement News: Louisiana Expands Voting Rights to People on Probation and Parole, The Sentencing Project (May 24, 2018), <https://www.sentencingproject.org/news/6243/>;
https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_181.pdf;

<https://legiscan.com/DE/bill/HB10/2013>; Jean Chung, Felony Disenfranchisement: A Primer, The Sentencing Project (June 27, 2019) (Table 2),

<https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>