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Keywords

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PERSONAL ESSAY: MY ORDEAL OF REGAINING VOTING RIGHTS IN VIRGINIA

By: Frank Anderson ¹

I was convicted of burglary in 1998, and I served two years and two months in jail and prison. Several years after serving my time, I got interested in politics and learned of a process where I could restore my voting rights. Although the struggle of incarceration was long over, I didn't know that I was about to begin another struggle to become a full citizen again.

In the Commonwealth of Virginia an ex-offender can get a job, get married, get a driver's license, even raise children; but he or she cannot vote unless restored by the Governor.

I applied in 2008 to have my rights restored, but a few months later I was denied. No reason was given. There is no appeals process, and there was a two-year waiting period to reapply. I thought I had done everything right. I met all the requirements specified on the application: I was off parole for over three years, paid all my fines, and had not been convicted of a misdemeanor since 1998.

Working with some voting rights groups, activists, and local elected officials, we tried to get Governor Tim Kaine to reconsider his decision in my case. But beyond that, we wanted him to take action to restore the rights of the 300,000 Virginians who were disenfranchised like myself. The Virginia State Constitution gives the Governor the power to restore rights in any way he sees fit, and the type of action we were asking for was not without precedent. Other governors had issued Executive Orders to automatically restore rights, such as Governor Vilsak of Iowa and Governor Crist of Florida. Even Texas, under then-governor George W. Bush, moved to a system of automatic restoration.

But time was running out. Governor Tim Kaine's term was set to expire in January, 2010. It was exactly one month before that, December 2009, that I received an email from the Virginia Secretary of the Commonwealth's Office:

It is the policy of the Office of the Governor *not to provide specific reasons* why the Governor exercises his discretion not to grant requests for restoration of rights. . . . However, one requirement is that applicants have no convictions for violations of the law . . . prior to applying for restoration of rights. *This includes moving violations, such as speeding.*

I had two reactions. First, I thought, "moving violations? What kind of policy denies basic rights based

on speeding tickets?" My second thought was can you really call it a policy when, until that point, it had been a complete secret, and probably was never written down that moving violations could affect restoration applications. (Not to mention the fact that they broke their other supposed policy of not giving specific reasons why the Governor exercised his discretion to deny my application). I'm not a lawyer, but it was clear to me—it was not a policy, it was an arbitrary and capricious decision of the Governor's Office.

It was December 2009, and a coalition of groups that I joined called Virginia Restore Our Vote (which included the Virginia ACLU, NAACP, Poverty Law Center, League of Women Voters, Progressive Democrats of America, interfaith and many others) had recently formed to address the felony disenfranchisement issue on several fronts. Many of the coalition groups had been trying for quite some time, even for years, to convince the Governor to take action to restore rights before he left office. We

tried conventional methods; we tried working behind-the-scenes. But Governor Kaine was unwilling to do the right thing. We also knew that in less than a month, Kaine was going to be succeeded by a Republican Governor who may not be as willing to make any progress on the issue. That's when I decided to go public with this new information that they were denying restorations because of traffic tickets.

We hoped that putting some public pressure on the Governor would convince him to act. We held two demonstrations, had frequent media coverage, and made numerous public calls for Kaine. Legal teams had gone into great detail to show exactly how, and why, he had the authority to issue a blanket restoration if he chose to do so. Even the *Washington Post*

agreed with our position that Governor Kaine should issue a blanket restoration and create an automatic restoration system.

Unfortunately he lacked the courage, and in January Tim Kaine went on to devote himself full-time to his position as Chairman of the Democratic National Committee as Governor Bob McDonnell was sworn into office.

In the beginning of 2010, Governor Bob McDonnell declared April to be Confederate History Month. It was at this time his office announced that they would be requiring rights restoration applicants to submit a letter explaining why they think their rights should be restored. Officials also stated that this letter should include any community service, including church activities. This "essay requirement," as people were calling it, seemed



Above: Frank Anderson;
Credit: Kenton Ngo

legally wrong on so many levels, posing potential First and Fifteenth Amendment problems. It was hard to believe that this development could be ignored by the public.

It turned out that the essay requirement was a public relations nightmare for the McDonnell Administration, just on the heels of the flap over Confederate History Month. So once again, advocacy groups met with the Governor and a few weeks later, they announced a new “policy” for nonviolent offenders applying for restoration of rights. There would be no essay requirement. Applications were to be processed in 60 days or less. The waiting period to apply was shortened, and the period to re-apply was also shortened.

Moreover, I learned through unofficial channels that the Governor would no longer be using traffic tickets as a sole reason to deny applicants. I immediately drove to Richmond to hand-deliver my application. About one month later, I received a certificate from the Governor. The big golden seal both formalized my regained rights and at long last, my full citizenship. The very next day, I went to the Board of Elections to register to vote. A few days after later, I received my voter card in the mail.

I thank Governor McDonnell for making the restoration process even easier than it was under his predecessors. I encourage him to do even more to expand voting rights for every ex-offender in Virginia who has completed his or her sentence. But the problem remains that as long as Virginia’s Constitution puts the power of restoration solely in the hands of the Governor, thousands of Virginians can and will be disenfranchised. The fact that Governor McDonnell was able to change the “policy” so significantly from that of his predecessor *proves* that the process is truly arbitrary.

During this process, I was surprised at how many people, even some supposed progressives, actually believed that I shouldn’t be allowed to vote. I was being held to a higher standard than people who run for office, just to get my right to vote restored. I ask them: what are the requirements of citizenship? Didn’t I meet the requirements when I was released from prison and I was able to work and pay taxes? Those who say that I shouldn’t be allowed to vote are in essence saying that my sentence was too light and that my punishment should continue. Although I’m out here, they insist that my civil rights remain incarcerated. This is the moral hypocrisy that Virginians need to confront.

The Commonwealth of Virginia’s political hypocrisy is that forty-eight other states have better restoration laws. Why don’t people from the other states complain about the fact that ex-offenders have their rights restored automatically? Because it’s normal. Virginia is abnormal.

This is why we need Congress to act. Legislators are currently considering the Democracy Restoration Act, which will grant automatic restoration for all people convicted of felonies (who are no longer incarcerated) to vote in federal elections. People like me shouldn’t have to go through years of uncertainty about whether they would be able to vote again. They shouldn’t have to re-live the entire conviction and incarceration process as they pore through archived records to find the right information to send to the Secretary of the Commonwealth, in the hopes that the Governor would be nice enough to grant them a right that should never have been taken away.

I urge you to remember my story, and push Congress to act now. Free people should not be relegated to second-class citizenship after they have paid their debt to society.

Endnotes

¹ Frank Anderson is an advocate against felon disenfranchisement who recently re-gained his own right-to-vote in Virginia where he is currently is a resident. This essay is based on remarks that he made at the University of the District of Columbia Law School in October 2010.

For more commentary on rights restoration for people convicted of felonies, see Modern America: Law & Politics Blog posts, “Modern Day Poll Tax,” by Richael Faithful.
