



May 23, 2019

Governor Steve Sisolak
State Capitol Building
101 N. Carson Street
Carson City, NV 89701

Dear Governor Sisolak,

We strongly encourage you to sign AB 431, milestone legislation that would restore the right to vote to more than 77,000 Nevadans.¹ We look forward to congratulating Nevada for leaving behind the embarrassing distinction of having one of the most complicated, draconian felony disenfranchisement laws in the country, and becoming among the most democratic and inclusive states for formerly incarcerated people. AB 431 will not only re-enfranchise tens of thousands of individuals, it will remove barriers to voting that have long blocked Nevadans with convictions from the ballot box. By limiting and simplifying your law, Nevada will also avoid potential conflicts with federal law that exist under the current disenfranchisement scheme. We are thrilled that the Nevada legislature has voted to end this dark chapter in Nevada's democracy and we urge you to sign this bill into law as soon as possible.

Campaign Legal Center is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis and public education. Our Restore Your Vote Campaign helps restore voting rights to people with past convictions by providing direct rights restoration services, empowering community leaders to understand rights restoration laws, and breaking down the false notion that a felony conviction always means you cannot vote. In Nevada, we have personally assisted nearly 875 people in the voting rights restoration process.

From that experience, we believe that under current law tens of thousands of Nevadans who are legally able to vote wrongly believe they cannot simply because of how confusing the current law is.

In Nevada, the law regarding which people with past criminal convictions can and cannot vote is inscrutable. Whether a person can vote depends on how many felony convictions they have, the category of the conviction(s), in what year they completed their sentence, and whether their convictions were in Nevada state court, federal court, or another state. For some, their voting rights will be restored once they complete their sentence, but most people who fall into that category likely do not know that they can vote again. Nev. Rev. Stat. §§ 213.155, 213.157. In our experience, of the people we spoke with who had past convictions and believed that they could not vote, roughly half actually could simply register to vote under law. No state officials had

¹ The Sentencing Project, *Six Million Lost Voters* (2016) <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>.

informed them of their rights and the persistent assumption is that a felony conviction means you can never vote again.

Moreover, we discovered through our work that even when those who have been automatically restored register to vote, county registrars and state laws construct additional unnecessary barriers, potentially in violation of federal law. The Secretary of State has promulgated a rule that directs the registrars to reject voter registration applications from people with past convictions if they do not receive “proof” of rights restoration within 15 days of registration. Nev. Admin. Code 293.414 (4), (6). The Secretary of State’s office suggested that this requirement only applied in practice to those re-registering to vote that had been previously purged on the basis of a conviction. However, on the Clark County website, the Elections Department instructs all persons with felony convictions that they must “provide additional documentation” with their voter registration application.² We were able to confirm with that Clark County that their policy was to require documentation from people registering with felony convictions. We also noted similar requests of individuals we were assisting from registrars in Washoe and Lyon Counties. This requirement is inconsistent with state law, creates a nearly insurmountable and unnecessary burden on the right to vote, and violates federal law.

The Help America Vote Act prohibits removal from the rolls or denial of a voter registration because of a felony conviction unless that person is actually disenfranchised under state law. To facilitate that process with respect to felony convictions, the State is required to “coordinate the computerized list with State agency records on felony status.” 52 USC 21083(a)(2)(A)(ii)(I). Yet Nevada officials confirmed that this coordination has not occurred and there is no system to provide election officials with sufficient information to ensure that only those who are not eligible to vote are removed from the registration rolls or have their registration denied.

This system of requiring additional documentation plainly violates the National Voter Registration Act. The NVRA provides that a voter registration form “may not include any requirement for notarization or other formal authentication,” but rather shall only include “an attestation that the applicant meets each [eligibility] requirement.” 52 U.S.C. § 20508(b)(2)(B) & (3). In *Arizona v. Inter Tribal Council of Arizona*, the Supreme Court directly addressed the question of whether the NVRA allows a state to add documentation requirements (in that case, proof of citizenship) that are not included on the Federal Form. It held that it does not. The Court rejected Arizona’s contention that the NVRA “requires merely that a State receive the Federal Form willingly and use that form as one element in its (perhaps lengthy) transaction with a prospective voter.” 570 U.S. at 9. Instead, the Court held that the mandate to “accept and use” the Federal Form means it must be accepted as sufficient to register a potential voter. *Id.* at 10.

Moreover, the NVRA specifically prohibits Clark County’s practice of requiring voters who lack access to proof of restoration to sign a notarized affidavit. See 52 U.S.C. § 20508(b)(3). Therefore, the NVRA’s mandate that a state ensure that “any eligible applicant is registered to vote in an election . . . if the valid voter registration form of the applicant is postmarked” before the registration deadline also bars this additional documentation step as a necessary condition for successful registration using the state form. 52 USC § 20507.

Attaching a person’s ability to register, and therefore their right to vote, on their ability to maintain possession of a piece of paper creates an undue

² See <http://www.clarkcountynv.gov/election/Pages/Felons.aspx>.

burden on that right. Our organizers spoke with many people across the state who were eligible to and prepared to register to vote where our organizers met them but who did not believe they still possessed their discharge paperwork and did not have the time or means to take extra steps. They declined to register as a result. These tended to be low-income individuals. AB 431 would eliminate the statutory paperwork requirement and the registrars' need to verify the details of a person's conviction. The new law will be simple: if you are in prison for a felony you cannot vote; if you are not, you can vote.

Under current law, others who are eligible to get their right to vote back after a conviction are required to petition the court to restore their rights – a process that many do not know about. As a result, many Nevadans with past convictions who are eligible to vote simply do not know that they can participate. There are nearly 90,000 people in Nevada who have lost their voting rights because of a conviction but over two-thirds of them are post-sentence, meaning they can apply to restore their voting rights. Yet, only 281 people used the court petition process to restore their rights from 1990-2011 – an average of only 13 per year. In fact, after speaking with clerks at the Las Vegas Justice Court and advocates across the state, it became clear that this process is so infrequently used, that no one even knows what one of these petitions should look like.

Furthermore, differences in how the state treats Nevada versus out of state convictions creates absurd results. On the one hand, a Nevada resident with a single conviction from a state with permanent disenfranchisement, (Kentucky, for example) would never be able to restore their right to vote absent a long-shot pardon from the governor of a state where they no longer reside. On the other hand, a person with both a Kentucky conviction and a Nevada conviction could petition a Nevada state court to restore their right to vote. If criminal activity were motivated by the right to vote (it is not), the incentive would be to commit a crime in Nevada. The law's differing treatment of pre-2003 convictions and post-2003 convictions also produces absurd results. A person with a single conviction from 2002 and a single conviction from 2004 would have to petition the state to get their voting rights back, but a person with ten convictions from 2002 could vote.

In short, Nevada's current felony disenfranchisement law is a mess and likely in violation of federal law. But more importantly, it is wrong. Studies show broad public support for second chances³ and the restoring the right to vote reduces recidivism.⁴ The Nevada legislature has shown it believes that people who make mistakes are still members of our society and still deserving of a voice. Right now, states across the country are passing laws that suppress and shrink the right to vote. Nevada now has the opportunity to push back against that trend and reaffirm the right to vote as the cornerstone of American democracy.

Sincerely,

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Campaign Legal Center

Blair Bowie, Skadden Fellow, Campaign Legal Center

³ See, e.g., Kristen Bialik, "How Americans view some of the voting policies approved at the ballot box" (Nov. 15, 2018) <https://www.pewresearch.org/fact-tank/2018/11/15/how-americans-view-some-of-the-voting-policies-approved-at-the-ballot-box/>.

⁴ See, e.g., Victoria Shineman, "Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government" (Oct. 25, 2018) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3272694.