



June 16, 2021

Monty Wilkinson, Executive Director
Executive Office of United States Attorneys
United States Department of Justice
950 Pennsylvania Avenue, NW, Room 2242
Washington, DC 20530-0001

Dear Director Wilkinson:

On March 7, 2021, President Biden issued an Executive Order on promoting access to the right to vote, directing federal agencies, by September 23, 2021, to assist in expanding citizens' opportunities to register to vote and to obtain information about, and participate in, the electoral process. Exec. Order No.14019, 86 Fed. Reg. 13623 (Mar. 7, 2021).¹ As we reach the halfway point toward that deadline, the Campaign Legal Center (CLC) writes to offer suggestions and expertise on how to fulfill the order's mandate.

Specifically, we encourage you to consider a uniform policy across the U.S. Attorneys' offices of ensuring that individuals who are prosecuted under federal law receive at the time of plea negotiation both written and oral explanations of the impact of any such pleas on their right to vote. This explanation could include not just a specific instruction on whether their guilty plea will cause the loss of the right to vote under their state's laws, but also clarification of how and when they will be able to regain

¹ Exec. Order No. 14019, 86 C.F.R. 13623, 13624 (May 7, 2021) ("Sec. 3. Expanding Access to Voter Registration and Election Information. Agencies shall consider ways to expand citizens' opportunities to register to vote and to obtain information about, and participate in, the electoral process. (a) The head of each agency shall evaluate ways in which the agency can, as appropriate and consistent with applicable law, promote voter registration and voter participation. This effort shall include consideration of: (i) ways to provide relevant information in the course of activities or services that directly engage with the public — including through agency materials, websites, online forms, social media platforms, and other points of public access — about how to register to vote, how to request a vote-by-mail ballot, and how to cast a ballot in upcoming elections;... (b) Within 200 days of the date of this order, the head of each agency shall submit to the Assistant to the President for Domestic Policy a strategic plan outlining the ways identified under this review that the agency can promote voter registration and voter participation.")

that right. Additionally, each U.S. Attorney’s office could designate a contact to assist individuals who received convictions after prosecutions by their office who are attempting to understand how they can regain their voting rights. We recognize that this suggestion departs from the traditional role of U.S. Attorneys in the adversarial process and goes beyond their constitutional obligations. But these two policies would go a long way to combatting the widespread and almost always erroneous belief that a felony conviction means a person can never vote again.

CLC 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. Since 2017, more than 230,000 people have used our online rights restoration webtools at RestoreYourVote.org and RecupereSuVoto.org. We have directly provided voting rights restoration information to over 12,000 people one-on-one. Through this work, we have gained expertise in the use of technology to promote civic engagement.

Likely more than 24 million Americans have been convicted of felonies,² resulting in almost every state in at least the temporary suspension of voting rights.³ Across the country, the disproportionate impact of these felony disenfranchisement laws on Black people, Indigenous people, and, indeed, all People of Color is overwhelming.⁴ But the vast majority of those individuals have already met their state’s requirements for restoration of voting rights and could be voting if they were aware of the rules. In fact, only around five million of those more than twenty-four million are actually disenfranchised under law.⁵ Confusion around voting rights after a felony conviction is rampant, compounded by the patchwork of varying laws across the states, misinformation, and lack of access to authoritative legal information and services. As a result, especially in states with complex disenfranchisement and re-enfranchisement laws, many people with past convictions wrongly believe they cannot vote even when they are eligible. Stories of rare instances where people have been prosecuted for unknowingly voting while ineligible exacerbate this misconception and intimidate eligible voters. This is *de facto* disenfranchisement, and it suppresses the votes of millions of Americans. It is feasible to break this cycle and significantly increase participation in elections.

² Nicholas Eberstadt, “America’s Invisible Felon Population: A Blind Spot in US National Statistics,” American Enterprise Institute at 4 (May 22, 2019) available at <https://www.jec.senate.gov/public/cache/files/b23fea23-8e98-4bcd-aeed-edcc061a4bc0/testimony-eberstadt-final.pdf>

³ Only Maine, Vermont, the District of Columbia, and Puerto Rico do not at least temporarily suspend voting rights when a person is convicted of a felony and sentenced to incarceration. However, Federal convictions *never* result in a suspension of voting rights in Mississippi.

⁴ Chris Uggen, et al., “Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction,” The Sentencing Project at 11 (Oct. 30, 2020) available at <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>

⁵ *Id.* at 16.

Executive Order 14019 directs all agencies to consider how to facilitate and increase voter participation. The Executive Office of United States Attorneys is in a unique position to do so. In many states, Federal convictions have a different impact on the right to vote than state court convictions. For example, in Mississippi, Federal felony convictions never result in a loss of the right to vote, whereas certain state-level convictions do. See Miss. Const. Art, 12, § 241; WL 2517257 Op. MS Att'y Gen. (2009). But many Mississippians with federal felony convictions sit out elections nonetheless because they wrongly believe they are ineligible. In Alabama, federal convictions only strip a person of the right to vote if the federal crime is the categorical equivalent of one of the “felonies of moral turpitude.” Ala. Code §17-3-30.1(c)(47). The people who are convicted of those felonies, however, are generally not equipped to make that legal determination about whether their conviction is or is not disqualifying; U.S. Attorneys are.

Furthermore, even in states where both federal and in-state convictions result in at least a temporary suspension of the right to vote, the process to regain that right may vary. In Tennessee, a person who has lost the right to vote for a federal felony may regain that right after completing certain terms of his or her sentence, but not unless that individual is able to secure a “Certificate of Restoration” completed by a federal authority. Tenn. Code Ann. § 40-29-203. U.S. Attorneys or their designees may be able to complete those Certificates for individuals with federal convictions, or at least assess their records for eligibility and direct them to an official who can complete the certificate. *Id.* Even in states where the rights restoration process for federal convictions mirrors the process for in-state convictions, relevant state-level officials do not always have access to the records that would allow a person to verify whether they can register to vote or not. For example, in Arkansas, a person who has completed all terms of his or her sentence, including payment of legal financial obligations, is eligible to register to vote but in order to do so must present documentary proof of the completion of those terms. Ark. Const. Amend. LI, § 11 (d)(2)(A). The Arkansas Department of Corrections and county clerks are required under Arkansas law to provide such proof; federal authorities are not. *Id.* at (d)(2)(B)-(C). The U.S. Attorney’s office could provide these documents or at least direct individuals convicted of federal felonies to the offices that can provide them.

If they were voluntarily to assume these duties, the U.S. Attorneys could play a significant role in the effort to combat low turnout rates of individuals with federal felony convictions. The U.S. Attorneys could as a policy provide both written and oral explanations of how plea agreement impacts the loss and restoration of voting rights, with specificity to the convictions and sentences on the table. Additionally, the U.S. Attorney’s offices could designate and publicize a contact to provide individualized assistance to people who are seeking to regain their voting rights after a federal conviction. We hope that you will consider this innovative approach.

CLC has gained valuable insight on how each state’s laws treat federal convictions and how individual assistance is necessary to combat de facto disenfranchisement. We would be very glad for the opportunity to provide input as you develop policies and to assist with the creation of reference guides for the impact of federal convictions on the right to vote under each state’s laws.

Please contact Blair Bowie if we can provide any assistance in this important endeavor by email at bbowie@campaignlegal.org or by phone at 202-736-2201.

Sincerely,

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Cc: Kristen Clarke
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