



April 13, 2010

Honorable Kenneth T. Cuccinelli, II  
Attorney General  
State of Virginia  
900 East Main Street  
Richmond, VA 23219

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*Re: Section 5 of the Voting Rights Act and Restoration of Rights*

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Dear Mr. Attorney General:

On behalf of the Lawyers' Committee for Civil Rights Under Law, we write concerning recent reports that the Commonwealth of Virginia intends to implement new requirements for individuals convicted of nonviolent felony offenses who seek restoration of their civil rights, including the right to vote. More specifically, it was reported in the Washington Post on April 11, 2010, that the Governor McDonnell plans to start requiring nonviolent offenders seeking restoration of rights to write letters explaining a number of factors, and that "[s]ome applicants already have been notified that letters will be required." Such requirements raise a number of potential legal issues. Our initial concern, however, is that although such new procedures require preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, before they lawfully can be implemented for voting purposes, it does not appear that the Commonwealth has yet obtained such preclearance.

Virginia, as a state covered by Section 5, may not implement any change in a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" unless and until preclearance is obtained from either the United States Attorney General or the United States District Court for the District of Columbia. 42 U.S.C. § 1973c(a). See *Virginia v Reno*, 117 F. Supp. 2d 46, 50 (D.D.C. 2000), *aff'd mem.* 531 U.S. 1062 (2001); see also 28 C.F.R. § 51.10; *Lopez v. Monterey County*, 519 U.S. 9 (1996). The new restoration requirements that we understand Virginia to be adopting will change the governing procedures and standards for re-establishing eligibility to vote and therefore fall squarely within the coverage of Section 5. 28 C.F.R. § 51.13(a) (changes covered by Section 5 include [a]ny change in qualifications or eligibility for voting"); *Allen v. State Board of Elections*, 393 U.S. 544, 566 (1969) (in Section 5, "Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way").



If it is the intention of the Commonwealth to proceed with implementation of the identified requirements without seeking Section 5 preclearance, we request that you inform us promptly of that decision. If, as we hope, the Commonwealth makes a Section 5 submission for these new requirements, we would appreciate you notifying us of that decision. In any event, the Commonwealth of Virginia must refrain from implementing the identified new restoration requirements unless and until Section 5 preclearance has been obtained.

Thank you in advance for your prompt response with respect to this matter.

Sincerely,



Robert A. Kengle



Marcia Johnson-Blanco

Acting Directors  
Voting Rights Project

cc: T. Christopher Herren  
Acting Chief, Voting Section  
Civil Rights Division  
U.S. Department of Justice