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Kaine Should Restore Felons' Voting Rights

Michael Paul Williams Column, December 12, 2009

As the weeks wind down in his term, Gov. Tim Kaine has unfinished business on behalf of more than 300,000 residents.

Kaine should issue an executive order restoring the right to vote to felons who have completed their sentences.

Virginia and Kentucky are the only states in the nation that require people who have lost their rights through felony convictions to apply for reinstatement.

Even with much-needed streamlining, Virginia's voter-restoration process produces a relative trickle of new voters.

Pamela Nicholas of Petersburg hasn't been one of them.

Nicholas, convicted on shoplifting charges dating to 1990, said her restoration application was denied without explanation this summer.

"I'm just trying to give something back to the community and be the best person I can be," she said.

The Kaine administration has argued that the Virginia Constitution is ambiguous on the issue of executive clemency and has expressed concern that a sweeping rights-restoration policy would be challenged in the courts.

But Howard L. Highland, a faculty member at Washington and Lee University School of Law, has been studying the issue and says Kaine has the power.

"Nothing in the Virginia Constitution stands in the way of a blanket order to restore voting rights to former felons," said Highland, an Oliver Hill Fellow at W&L's Community Law Center in Roanoke.

"Although the governor must report to the General Assembly the name and particulars of each and every person whom he pardons or whose death sentence is commuted, the Virginia Constitution does not obligate the governor to report to the General Assembly when he restores anyone's voting rights," Highland said.

When it comes to executive clemency in Virginia, he said, there's a huge difference between restoring the right to vote and granting a pardon.

"Whereas no convict has a right to a pardon, our fundamental right to vote has been guaranteed by the Virginia Declaration of Rights" since 1776.

Kaine could tailor his order to restore voting rights but not gun rights. If someone wants to challenge the order, so be it.

"It's really just the right thing to do," said Janice "Jay" Johnson, board chairwoman of the Virginia Organizing Project. "People who pay their debt to society should be able to become citizens again."

Kaine has done some good work on voter restoration, Johnson said. But "it's very important not to assume the next administration will be generous in the way they handle this work."

Indeed, Kaine should be feeling a sense of urgency.

Leaving Virginia among the two least-progressive states on this issue is not a desirable legacy for a former civil-rights lawyer who happens to lead the Democratic National Committee.

Kaine can do nothing and perpetuate the status quo, or worse. Or he can do the right thing.