



Jena Griswold  
Secretary of State of Colorado  
1700 Broadway, Suite 200  
Denver, CO 80290

Dear Secretary Griswold,

We write to congratulate Colorado on expanding the franchise with HB19-1266. We believe that in order to achieve a truly inclusive and fair democracy, states must do away with outdated and discriminatory felony disenfranchisement laws. Passing this legislation was a critical first step for Colorado, but strong, thoughtful implementation is just as important, so we appreciate your call for public comments on this matter. Campaign Legal Center has worked extensively in other states that have recently updated their felony disenfranchisement laws. From that work, we have drawn lessons about best and worst practices in implementation and share some of those here.

Campaign Legal Center (CLC) is a non-partisan, non-profit organization based in Washington, DC. Through litigation, policy analysis and public education, CLC works as a nonpartisan, nonprofit organization to protect and strengthen the U.S. democratic process across all levels of government.

CLC's Restore Your Vote campaign focuses specifically on restoring voting rights to people with felony convictions. We utilize traditional organizing tactics to provide rights restoration assistance to thousands of people with convictions, train community leaders and activists on their state's disenfranchisement and restoration laws and practices, and employ traditional and new media tactics to educate the public about changing laws.

Through this on-the-ground work, we identify broader systemic barriers to the franchise and work to dismantle those hurdles through advocacy, legislation, and litigation. We have worked extensively in Alabama, Nevada, Arizona, and Tennessee and maintain a nationwide rights restoration tool and hotline at [www.restoreyourvote.org](http://www.restoreyourvote.org). We have helped thousands of

individuals navigate their state's felony disenfranchisement laws. This work has taught us several lessons that Colorado should take into consideration when implementing HB19-1266.

### **I. Individualized contact is crucial to informing people of their right to vote.**

The state must make every effort to individually contact people whose rights have been restored and inform others of their status as they become eligible. Individualized contact is crucial to ensuring that people with past convictions feel comfortable exercising their rights.

People with past convictions as a whole are a vulnerable population. As people who have been incarcerated, many will tend to be more cautious about interactions with the state. The last thing they will want to do is inadvertently make a mistake that could cause more punishment. Some states have capitalized on this abundance of caution as a voter suppression tool. For example, Texas and North Carolina have prosecuted people who have misunderstood the laws and cast ballots or registered when they were not eligible because of a past conviction. Those states have highly publicized those prosecutions in an effort to intimidate voters with past convictions.

Inaction from states can be just as efficient as voter suppression when there has been a change in eligibility requirements. After decades of vagueness, in 2017 Alabama updated its felony disenfranchisement law to clarify which convictions constitute "crimes of moral turpitude." This meant that tens of thousands, or more, people with past convictions suddenly became eligible to register and vote. Yet the Secretary of State actively and openly refused to spend any state resources on implementation and public education.<sup>1</sup> This has left tens of thousands of Alabamians wrongly believing that they cannot vote, because that was what the state last told them. A survey taken one year after the law passed found that 72% of unregistered voters had not heard that the law had changed, much less whether or not it restored their right to vote.<sup>2</sup> This is voter suppression by inaction.

We urge Colorado to do the opposite. Use every tool reasonably available to help newly eligible voters understand their rights and help them feel comfortable in exercising this crucial bastion of citizenship.

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<sup>1</sup> Pema Levy, "The Republican Overseeing the Alabama Election Doesn't Think Voting Should Be Easy," Mother Jones (Dec. 11, 2017) available at <https://www.motherjones.com/politics/2017/12/the-republican-overseeing-the-alabama-election-doesnt-think-voting-should-be-easy/>.

<sup>2</sup> "Under Pressure," Alabama Appleseed, et. al. (2017) available at <http://www.alabamaappleseed.org/underpressure/>.

This starts with individualized contact. Many Coloradans who are newly eligible will have been told by state and county officials that they cannot vote. The state must start by correcting that information. Boards of registrars will have records of everyone who has been purged from the voter rolls or had a registration denied because of felony conviction. Start by notifying everyone who has been previously denied of the law change and of their new eligibility. The state will also have a list of everyone currently serving parole. Contact everyone on that list to notify them of their new eligibility.

People who are still serving parole have frequent contact with their parole officers. Educate the parole officers about the change in the law and require them to offer parolees a voter registration form upon their next meeting.

Create signage to post in parole offices and day reporting centers. Also, place those signs in agencies that conduct voter registration pursuant to the National Voter Registration Act.

It is also important that the Secretary of State designate an individual or office to answer individualized inquiries about eligibility. Even in states where the law is relatively clear about who can and cannot vote after a conviction, people some will still be cautious and seek confirmation that they are eligible. Our Restore Your Vote assistance hotline regularly receives inquiries from people in states that have long allowed everyone not currently incarcerated to vote. Misinformation and confusion on this issue is persistent, even where laws may seem clear.

To that end, we also encourage the state to run a robust public education campaign to inform citizens of the change in the law.

## **II. It is the responsibility of the state to verify a voter's eligibility, not the responsibility of the voter to prove it.**

The burden of proving eligibility to vote must fall on the state, not individual voters. Requiring an individual with a past conviction to prove that they have completed their sentence for purposes of voter eligibility creates unnecessary burdens and violates federal law under the National Voter Registration Act and the Help America Vote Act. Under Colorado's new law, eligibility should be self-evident. If someone is not currently incarcerated, they are eligible to vote. If someone is currently incarcerated, the state should verify that they are serving time for a felony conviction or an election-related misdemeanor before denying the registration request. It is up to various state agencies – the department of corrections, the clerks of court, and the secretary of state's office – to create and manage a system for sharing the relevant information. Should the state instead place the burden of proving eligibility on the voter, it

would create an insurmountable barrier for many, particularly given that the relevant population (people incarcerated for misdemeanors or jailed pre-conviction) is currently incarcerated, likely without access to the pertinent documents. Additionally, many people who previously attempted to register to vote but were denied or removed from the rolls for a conviction will now be eligible to vote. When they register, it may raise flags with their local boards of registrars. Those registrars must have a way to verify eligibility without having to seek documentation from the would-be voter.

In fact, such a system is required under the Help America Vote Act and placing the burden of proof on the voter is prohibited under the National Voter Registration Act. 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). A 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.

In sum, federal law makes clear that the burden of any verification of a voter’s eligibility beyond voter affirmation on a registration form falls on the state, not the voter.

### **III. Officers of the state must be educated about the new law.**

Another problem we have encountered in states after the passage of new, less restrictive felony disenfranchisement laws is that state officials often do not know about the new eligibility requirements. To avoid this problem in Colorado, the state should implement a common training for relevant officials. This starts with the boards of registrars. It is particularly important that this training take place in smaller counties where the registrars may personally know people with convictions and be under the continued

impression that those people are ineligible if they are still serving time on parole.

Additionally, parole officers must be educated about the change so that they do not inadvertently misinform parolees of their status.

Finally, officials in offices that are designated voter registration sites under the National Voter Registration Act (“Motor Voter”) must be trained on the change in the law so that they can accurately answer questions about eligibility. 52 U.S.C. §§ 20504, 20506.

**IV. Update the state voter registration form, the Secretary of State’s website, and the instructions for the federal form.**

Of course, it is necessary to accurately update Colorado’s voter registration form, the Secretary of State’s website, and Colorado’s instructions on the federal form to reflect the change in the law. Too often we have seen states neglect this duty when their law changes. We remind Colorado that it is the duty of the state to report changes to the federal form’s instructions to the Election Assistance Commission.

The Colorado legislature has taken an important step forward in granting the legal right to vote back to citizens serving parole. The right to vote is only as good as the ability to use it and people who have been previously denied the franchise face many hidden barriers to exercising it. It is now up to the Secretary of State to fulfill the legislature’s vision for a more inclusive, reflective democracy by reaching out to re-enfranchised voters and helping them cross the finish line back into full citizenship.

Respectfully submitted,

A handwritten signature in cursive script that reads "Blair Bowie". The signature is written in black ink and is positioned above a horizontal line.

Blair Bowie, Skadden Fellow  
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