

The Case Against Virginia's 2026 Voting Rights Constitutional Amendment

Purpose: A structured presentation of the principal constitutional and public-policy arguments an opponent of the proposed amendment could make. This document is intended to analyze the amendment's text and policy choices, not to substitute slogans for the legal questions presented.

The Question Before Virginia Voters

Virginia voters will be asked whether the Constitution of Virginia should be amended: (1) to establish an explicit **fundamental right to vote** in the Commonwealth; (2) to automatically restore political rights to a person convicted of a felony **upon release from incarceration**, without further action by that person; and (3) to replace the existing voting disqualification for persons adjudicated mentally incompetent with a narrower standard applying to persons judicially determined to **lack the capacity to understand the act of voting**.

A reasonable argument against the amendment does not require believing that a felony conviction should result in permanent loss of voting rights. The more significant questions are **when restoration should occur, whether restoration should be automatic in every case, and whether these policy choices should be permanently embedded in Virginia's Constitution**.

1. Release From Prison Is Not the Same as Completion of a Criminal Sentence

The amendment provides that a person convicted of a felony may not vote during incarceration but, upon release from incarceration for that felony conviction and without further action, is invested with political rights, including the right to vote.

A criminal sentence can include more than incarceration. Depending upon the case, an offender may be released from prison while remaining subject to probation, parole, a suspended sentence, or other court-imposed requirements. Under the amendment, the constitutional trigger is release from incarceration rather than completion of the entire sentence.

A reasonable alternative position is that political rights should be restored after a person has completed the entire criminal sentence - not merely the incarceration portion.

2. The Amendment Makes No Distinction Based Upon the Seriousness of the Crime

Once an offender is released from incarceration, restoration is automatic. There is no waiting period, application, individualized review of rehabilitation, or distinction based upon the nature of the felony.

The policy question is therefore more precise than whether people convicted of felonies should ever vote again. It is whether the Virginia Constitution should require automatic restoration immediately upon release for every person covered by the provision, regardless of the seriousness of the offense and regardless of whether the entire sentence has been completed.

3. Virginia Has Alternatives to Permanent Disenfranchisement

Virginia's existing constitutional framework recognizes restoration of civil rights. The disagreement is therefore not necessarily between permanent disenfranchisement and restoration; it is over **how and when restoration should occur**.

Intermediate approaches are possible, including automatic restoration after completion of the full sentence, objective eligibility standards, waiting periods, or differentiated treatment for particular categories of offenses. The existence of alternatives is important because the amendment constitutionalizes one particular restoration point: release from incarceration.

4. The Amendment Removes Individualized Consideration

The proposed language expressly eliminates the need for further action by the individual. There is no constitutional requirement to demonstrate rehabilitation, complete probation or parole, remain conviction-free for a period after release, or distinguish violent, nonviolent, public-corruption, or election-related offenses.

An opponent can argue that restoration of political rights should reflect both completion of punishment and successful reentry into civil society rather than merely the administrative event of release from incarceration.

5. Election Crimes Present a Particularly Difficult Question

Felony offenses involving election fraud or corruption raise a special philosophical concern. If a felony directly attacks the integrity of the electoral process, should political rights automatically return immediately upon release, without any additional period demonstrating respect for that same electoral system?

A voter can support eventual restoration while still believing that offenses directly involving elections deserve additional consideration.

6. This Is Not Merely a 'Felon Voting Rights' Amendment

The amendment also adds an explicit declaration that qualified persons have a **fundamental right to vote** and that the right shall not be abridged by law, subject to the constitutional qualifications and exceptions.

That language deserves independent consideration because its future significance is not limited to felony restoration. Constitutional language is ultimately interpreted by courts, and a new express fundamental-right provision could become relevant in future litigation over election laws.

7. What Will 'Fundamental Right' Mean in Future Litigation?

Calling a right fundamental can affect constitutional analysis. That does **not** mean ordinary election regulations would automatically become unconstitutional. It does mean voters should consider how the provision could be invoked in future disputes involving registration requirements, voter identification, absentee and early-voting rules, deadlines, voter-roll maintenance, eligibility challenges, or other election-administration requirements.

The concern is not a prediction that courts will invalidate any particular law. The concern is that the ultimate scope of newly added constitutional language will be developed through future judicial interpretation.

8. Constitutionalizing the Exact Restoration Point Removes Future Legislative Flexibility

The amendment places a specific policy choice directly into the Constitution: **release from incarceration equals automatic restoration of political rights**.

If experience later led Virginians to prefer restoration after probation, after completion of the entire sentence, after a waiting period, or under different rules for certain serious offenses, the General Assembly could not simply enact a conflicting statute. Virginia would need to amend its Constitution again.

Even voters who favor broader restoration can therefore reasonably ask whether the precise timing and mechanics of restoration belong in the Constitution rather than ordinary law.

9. The Amendment Packages Three Separate Constitutional Questions Together

A voter might support modernizing the mental-capacity provision, favor a path to automatic restoration, but believe restoration should occur only after completion of the entire sentence. Another voter might support restoration but be uncertain about adding the new fundamental-right language.

The ballot provides no way to make those distinctions. The voter must approve or reject the package as a whole. An opponent can therefore argue that significant and conceptually separate constitutional changes should be considered separately.

10. The Mental-Capacity Provision Changes More Than Terminology

The existing constitutional language concerning persons adjudicated mentally incompetent would be replaced with a more specific standard focused on whether a court has found that a person lacks the capacity to understand the act of voting.

Modernizing outdated terminology and protecting capable voters with disabilities are legitimate objectives. But the proposed language establishes a particular **constitutional test of voting capacity**, raising questions about what constitutes understanding the act of voting, how capacity will be evaluated, what evidence will be required, and how the standard will be applied in practice.

11. Restoration of Political Rights Is Broader Than Merely Casting a Ballot

The proposed language speaks in terms of restoration of **all political rights, including the right to vote**, rather than only voter registration. That makes the policy question broader than the shorthand description of 'voting after prison.'

Voters should therefore examine exactly which political rights are affected and whether all rights covered by the provision should automatically return at the same constitutional trigger point.

12. Accountability and Restoration Are Not Mutually Exclusive

A restoration system could recognize eventual reintegration without permanent disenfranchisement while still tying restoration to completion of the judicial sentence.

For example: **conviction -> incarceration -> supervised release/probation -> completion of sentence -> automatic restoration**. Such a system could eliminate lifetime disenfranchisement and dependence on gubernatorial discretion while preserving a meaningful connection between completion of legal obligations and restoration of political rights.

13. A Constitutional Amendment Should Be Judged by Its Text

Supporters may describe the proposal in terms of voting rights, second chances, rehabilitation, and democracy. Opponents may describe it in terms of crime, punishment, and election integrity. Neither set of slogans should substitute for examining the legal text.

The central questions are: What exactly does the amendment require? What discretion does it eliminate? What new constitutional language does it create? What future laws might be affected? How will courts interpret its provisions? And, if unintended consequences arise, how difficult will the policy be to change?

Strongest Supporter Arguments - and the Counterarguments

“Once someone has served his time, he should regain his right to vote.”

Counterargument: The disagreement is partly over what it means to have served the sentence. Release from incarceration does not necessarily mean completion of probation, parole, or other court-ordered supervision. A restoration rule tied to completion of the entire sentence can recognize rehabilitation without treating release from prison as completion of every criminal obligation.

“Voting is a fundamental right, not a privilege government should selectively restore.”

Counterargument: Voting is central to representative government, but states also establish constitutional qualifications for voting. The question is whether this particular new constitutional language is necessary and how the phrase ‘shall not be abridged by law’ may be interpreted in future litigation.

“The Governor's restoration system is arbitrary and depends on who occupies the Governor's Mansion.”

Counterargument: That is a legitimate criticism of a discretionary system, but immediate restoration upon release is not the only alternative. Virginia could establish a neutral, automatic standard tied to objective criteria such as completion of the entire sentence.

“People who return to society pay taxes and should have representation.”

Counterargument: People on probation or parole may be living in the community while still serving a criminal sentence. The policy question is whether restoration should occur at the beginning of supervised reentry or after successful completion of the sentence.

“Automatic restoration helps former offenders reintegrate into society.”

Counterargument: Civic participation may promote reintegration, but that does not establish that restoration must occur immediately upon release. Guaranteed automatic restoration upon completion of the sentence could provide certainty while retaining a connection between fulfilled legal obligations and restored rights.

“The current mental-incompetency language discriminates against people with disabilities.”

Counterargument: Modernizing terminology and protecting competent voters with disabilities are legitimate goals. The separate question is whether the proposed replacement test is the best constitutional formulation and whether it should be bundled with felony restoration and the new fundamental-right clause.

Conclusion

A principled case against this amendment does not require supporting permanent disenfranchisement. Virginia can recognize second chances and eventual restoration while still rejecting the particular constitutional mechanism proposed here.

The principal objections are that release from incarceration is not necessarily completion of sentence; the amendment makes no distinction based on the seriousness or character of the felony; it eliminates individualized consideration; it uses broader ‘political rights’ language; it creates a new fundamental-right clause whose future judicial interpretation may extend beyond felony restoration; it establishes a new constitutional mental-capacity standard; it bundles distinct constitutional questions together; and it places detailed restoration policy into the Constitution, making future adjustment more difficult.

The ultimate question is therefore broader than whether former offenders deserve a second chance. It is whether **this particular combination of policies, using this particular constitutional language, should become part of Virginia's Constitution.**

Note: This document presents an opposition analysis of the proposed amendment. Before public distribution, readers should consult the official Virginia ballot materials and final constitutional text for the controlling language.