

Identifying Virginia's Racially Discriminatory Laws and Inequitable Economic Policies



REPORT *from*



The Commission to Examine Racial and Economic Inequity in Virginia Law

JANUARY 6, 2022

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Introduction

On June 4, 2019, Governor Ralph Northam signed Executive Order Number 32, establishing The Governor’s Commission to Examine Racial Inequity in Virginia Law¹. The Commission was directed to identify Virginia laws that “have the effect or could have the effect of enabling or promoting racial inequity or inequality,” so that the Commission’s findings and recommendations could be distributed to promote best practices in reducing racial inequity in the Commonwealth.²

The Commission began by reviewing the *Virginia Acts of Assembly* that, despite being either explicitly racist and discriminatory in their texts, or clearly intended to perpetuate segregation and discrimination, had never been repealed. The Commission issued a report in December of 2019 detailing the Acts it reviewed and recommending broad sections of these Acts be repealed.³ During the 2020 legislative session, the Governor worked with a number of legislators to create legislation to fulfill the Commission’s recommendations, and the General Assembly unanimously passed all of these bills.⁴

On June 11, 2020, Governor Northam amended Executive Order Number 32 to expand the mission of the Commission beyond identifying racially discriminatory language that should be removed from the Virginia Code and *Acts of Assembly*.⁵ The Governor charged the Commission with identifying current state laws and regulations that create or perpetuate inequities, proposing changes to increase protections for minority and marginalized Virginians, and providing policy recommendations for state agencies and institutions.

1 Executive Order Thirty-Two: Commission to Examine Racial Inequity in Virginia Law (June 4, 2019), <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-32-Establishment-of-the-Commission-to-Examine-Racial-Inequity-in-Virginia-Law.pdf>.

2 Governor Northam Announces Members of the Commission to Examine Racial Inequity in Virginia Law (Press Release Sep. 3, 2019) <https://www.governor.virginia.gov/newsroom/all-releases/2019/september/headline-846298-en.html>.

3 Virginia’s Commission to Examine Racial Inequity in Virginia Law, From Virginia’s Law Books (2019) <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/Interim-Report-From-the-Chb-ommission-to-Examine-Racial-Inequity-in-Virginia-Law.pdf>.

4 See, e.g., HB 857 / SB 874; HB 914 / SB 896; HB 973 / SB 600; HB 1325 / SB 636; HB 1521 / SB 850; HB 1638 / SB 722.

5 Office of the Governor, *Governor Northam Commits to Addressing Inequities in Virginia’s Laws and Regulations* (June 11, 2020) <https://www.governor.virginia.gov/newsroom/all-releases/2020/june/headline-857947-en.html>.

The Commission's second report, released in February 2021, reflected this expanded mandate, documenting racial disparities, and making concrete policy recommendations, in the areas of public safety, criminal justice, education, health, housing voting, environmental justice, and agricultural equity.⁶ Appendix I of this report identifies legislation and budget amendments that were introduced during the 2021 session that are responsive to the second report's recommendations.

Following the two-year legal sunset of the Governor's Commission to Examine Racial Inequity in Virginia Law, the Governor established the Commission to Examine Racial and Economic Inequality in Virginia Law.⁷ The new Commission – The Commission to Examine Racial and Economic Inequality in Virginia Law – established through Executive Order No. 80, continued the work of its predecessor through the summer of 2021. This report is the culmination of our work.⁸

For this new stage of work, we worked to further investigate laws and regulations that contribute directly to racial inequity in economic achievement and stability. The Commission considered, among other things, Virginia's statutory and regulatory policies on worker rights, consumer protection, debt collection, and other economic areas, seeking to make specific legislative and policy recommendations to address identified racial disparities. In response to feedback following the Commission's February 2021 report, we also sought to explore issues of racial equity in rural Virginia. Lastly, Virginia's former Secretary of Natural Resources, Secretary Matthew Strickler, brought issues of inequality in Virginia's land conservation policies to the Commission's attention. Our findings and recommendations in each of these domains are included here.

Much as with the reports from our predecessor Commission produced, our hope is that this report will offer tools and policy recommendations that are helpful in addressing longstanding and structural racial inequities in Virginia.

Unlike in the first Commission's two reports, in this report we capitalize the word "Black" in order to convey the shared sense of history and community among Black Americans. However, in keeping with editorial standards promulgated by the Associated Press and adopted by the Wall Street Journal, New York Times, and Washington Post, among others, we continue to keep the word "white" lowercase when using it as a racial identifier.⁹

At the time we completed our last report, we noted that it came on the heels of a racially polarized election, months of protests following the murder of George Floyd and other Black individuals at the hands of law enforcement, and in the midst of a pandemic. As a result, terms like "structural racism" and "systemic racism" entered the popular vernacular, and we introduced our report by discussing the definition of those terms and the way in which these principles informed our work.

6 Virginia's Commission to Examine Racial Inequity in Virginia Law, *Identifying and Addressing the Vestiges of Inequity and Inequality in Virginia's Laws* (2020) <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/2020-Commission-Report---Inequity-and-Inequality-in-Virginia-Law.pdf>.

7 Exec. Order No. 80, <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-80-Commission-to-Examine-Racial-and-Economic-Inequity-in-Virginia-Law.pdf>.

8 For the purposes of this report, we will refer to the Commission writ large, the members of the public who engaged with, directed, and provided feedback to the Commission, the work of the two groups is closely tied together.

9 *Explaining AP Style on Black and white*, July 20, 2020. <https://apnews.com/article/archive-race-and-ethnicity-9105661462>; Nancy Coleman, *Why We're Capitalizing Black*, July 5, 2020, <https://www.nytimes.com/2020/07/05/insider/capitalized-black.html>; Vol 33. Nos. 6-7: Race, <https://www.wsj.com/articles/vol-33-no-6-race-01595278956>; WashPost-PR, *The Washington Post announces writing style changes for racial and ethnic identifiers*, <https://www.washingtonpost.com/pr/2020/07/29/washington-post-announces-writing-style-changes-racial-ethnic-identifiers/>.

While some of the circumstances surrounding this publication have changed, discussions of race and racial equity remain a topic of national conversation. Thus, we feel that before discussing our specific policy recommendations, it is important to give a brief overview of how we arrived at the solutions we did.

The Bill of Rights of Virginia's Constitution begins by stating that "all men are by nature equally free and independent and have certain inherent rights... namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."¹⁰ As outlined in the reports produced by the first Commission, Virginia frequently failed to live up to these ideals. Indeed, for centuries the government intentionally and effectively restricted or removed the rights of Black Virginians.

While those laws have since lapsed or been repealed, we can still see their effects in the disparities between wealth, opportunity, and health for Black and white Virginians outlined in previous reports. As citizens of this state who believe in the ideals espoused in our Constitution, our hope is that this report, when taken together with the earlier Commission's reports, will provide an overview of some of the history and negative impacts of racial discrimination and segregation in Virginia. Our further hope is that this report and recommendations can be used as one tool, among many, by educators and policymakers to continue to undo that ongoing harm.

Moreover, the three reports, taken together, hopefully reinforce three important truths: (1) that Virginia's leaders engaged in centuries of strategic and wide-ranging racial discrimination and oppression; (2) that, as manifest in the extensive data on negative racial disparities across all areas of life in Virginia, these efforts at racial segregation and oppression were tragically successful; and (3) that Virginia's elected officials need to make dramatic policy changes to help undo this damage and ensure that every Virginian has a real opportunity to lead a successful and fulfilling life.

Equally important, we hope that the three reports inspire people of good will to work for change. We have the tools to address the legacy of discrimination and segregation. We know what we need to do. Now we must summon the will to act.

¹⁰ Constitution of Virginia, Art. I, Sec. I, <https://law.lis.virginia.gov/constitutionfull>.

MEMBERS OF THE COMMISSION

Chair Cynthia Hudson of Henrico

Counsel, Sands Anderson;
Former Chief Deputy Attorney General of Virginia

Vice-Chair Andrew Block of Charlottesville

Director of the State and Local Government Policy Clinic, University of Virginia School of Law;
Former Director, Virginia Department of Juvenile Justice

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Professor of Law, University of Richmond School of Law

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Jill Hanken of Richmond

Retired Health Attorney, Virginia Poverty Law Center

Carla Jackson of Chesterfield

Assistant Commissioner for Legal Affairs, the Virginia Department of Motor Vehicles

The Honorable Birdie Hairston Jamison of Richmond

Retired Judge of the General District Court, City of Richmond

The Honorable Jerrauld Jones of Norfolk

Chief Judge, Circuit Court, City of Norfolk

Ashley Kenneth of Richmond

President & CEO, The Commonwealth Institute for Fiscal Analysis

Leslie Chambers Mehta of Chesterfield

Chief of Staff and Counsel to the CEO, Richmond Metropolitan Transportation Authority

Executive Summary

This report addresses racial inequality in three areas: Economic Opportunity, Rural Issues, and Conservation Equity.

Each section begins with a brief history of the racial inequities in the Commonwealth in the particular subject area followed by an overview of the current data on the disparities, followed by topical subsections in which numbered recommendations are presented with supporting information. Data, reports, and sources relied on by the Commission have been included in footnotes with links for easy access. All images are either original, based on publicly available data, or have been reprinted with permission from their original creators.

The Commission's recommendations are as follows:

RACIAL DISPARITIES IN ECONOMIC OPPORTUNITY

Paid Family and Medical Leave

1. Endorse Paid Family & Medical Leave Program for Virginia (Previously SB 1330, HB 2016 (2021)).

Earned Income Tax Credit

1. Enact a Partially Refundable State Earned Income Tax Credit at 10% of the Federal Level That Phases Up to 20% Over Time.
2. Remove Restrictions That Disproportionately Disqualify Workers of Color, Including ITIN Restrictions and Age Restrictions.

Consumer Protection: Mitigating Foreclosure

1. Improve Access to Counsel for Homeowners Facing Foreclosure.
2. Implement a Foreclosure Diversion Program.
3. Adopt Judicial Foreclosure.

Consumer Protection: Debt Collection

1. Lower the Percentage of Wages That Debt Collectors Can Garnish.
2. Prohibit Debt Buyers from Bringing Debt Collection Lawsuits After the Statute of Limitations Has Expired.

Consumer Protection: Credit Reporting

1. Create More Loan Programs That Enable People Who Have Low Credit Scores to Buy Homes
2. Prohibit Insurance Companies from Charging Higher Automobile Insurance Premiums for People with Lower Credit Scores

Access to Capital: Home Ownership

1. Increase the Support Offered by the State Down Payment Assistance Program and First-Time Homebuyer Tax Credit, and Ensure That Potential Homebuyers Are Aware of the Assistance Available to Them.
2. Increase Funding for the Virginia Housing Trust Fund.
3. Use State Funds to Support Financial Literacy Training.
4. Direct the State Corporation Commission to Require the Use of Alternative Methods of Credit Scoring.

Access to Capital: Entrepreneurship

1. Continue to Support Virginia's New CDFI Fund.
2. Develop State Entrepreneurial Catalyst Grants.
3. Enact a Truth-in-Lending Law to Protect Small Businesses.

Real Property Tax Assessments

1. Codify a State-Wide Right to Notice of Right to Appeal Property Tax Assessment.
2. Propose Legislation Directing the Department of Taxation to Study and Develop a Proposal to Require that All Individuals who Conduct Local Property Tax Assessments Receive State Certification and Ongoing Recertification.

RACIAL DISPARITIES IN RURAL VIRGINIA

Infrastructure

1. Expand Broadband Infrastructure and Affordability in Rural Communities.
2. Develop a Rural Strategy and Budget to Address Food Insecurity and Food Deserts.
3. Restore Yearly Funds for School Construction and Maintenance.
4. Direct JLARC to Conduct a Study of State/Local Funding Approaches across all areas of Government to Determine Impact on Service Provision in Rural Communities.

Health

1. Support and Require Social Determinant and Health Outcome Report Cards and Plans.
2. VDH Should Issue Annual Reports on Local Health Department Staffing.
3. Employ an "At-Risk Add-On" Funding Model for Virginia Department of Health Districts.
4. Provide Health Districts with Policy Staff.
5. Fully Fund the Virginia Healthcare Workforce Development Authority and the Area Health Education Centers it Supports.
6. Provide Additional Financial Incentives for Health Providers to Work in Rural Communities.
7. Create State-Supported Pipelines for Medical Students, and Medical Residents to Work in.

Rural Areas

1. Fund and/or Incentivize the Opening of More Birthing Centers in Rural Hospitals.
2. Provide State Funding to Support Training and Licensing for Doulas in Rural Communities.

Criminal Justice

1. Expand Pretrial Services Offerings in Rural Areas.
2. Improve Access to Substance Abuse Counseling in Rural Areas.

Education

1. Create Tax Incentives for Teachers in Underserved Communities.
2. Dedicate State Funds to Bolster Rural School District Offerings to Students with Specialized Needs.

Commission Continuity

1. Codify a Racial Equity Commission.
2. Establish a Racial Equity Framework [i.e. Equity Impact Statement] for Review of Proposed Legislation.

CONSERVATION EQUITY

1. Add Tribal Governments to List of Public Bodies Eligible to Receive Virginia Land Conservation Fund Grants.
2. Prioritize the Preservation of Small, Minority-Owned Farms and Restoration of Tribal Lands by Modifying the Application Scoring Criteria for the Virginia Land Conservation Fund.
3. Increase Development of and Access to Urban Greenspace by Modifying the Application Scoring Criteria and Adding Categories of Eligible Funding for the Virginia Land Conservation Fund.
4. Increase Development of and Access to Urban Greenspace by Adding a New Funding Category to the Virginia Land Conservation Fund that Prioritizes Neighborhood Parks in Minority Communities.
5. Establish and fund a new grant fund for Minority Cultural Preservation by adding a new Historic Resource Fund.
6. Fund and Direct the Office of Farmland Preservation and Other Appropriate Agencies to Expand Outreach About Conservation Programs.
7. Increase Overall Funding Appropriated to Land Conservation in the Commonwealth.

Research Methodology and Process

Research Team's Methodology

The research team for the Commission collected data from published reports and policy and advocacy organizations, both nationally and within Virginia. In these reports, the team searched for evidence of racial disparities in the Commission's chosen policy areas in Virginia: economic opportunity, rural equity issues, and conservation equity. The policy proposals arising from the Commission's review and consideration of the collected build on recommendations of its predecessor Commission in the areas of housing, education, criminal justice, voting, health, environmental justice, and agricultural equity described in its second report issued in February 2021.

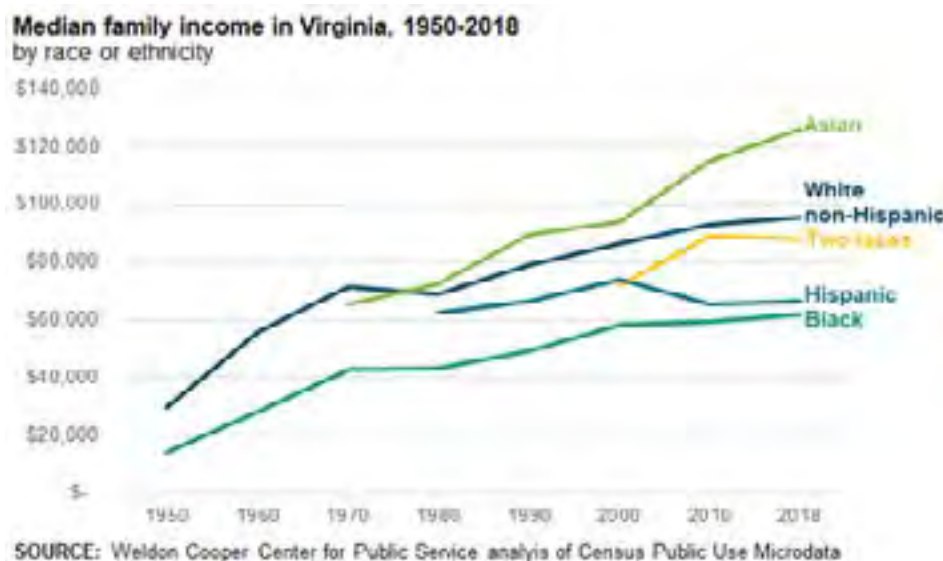
In some cases, it was clear that there was a racial disparity, but it wasn't clear why. In these areas, the research team identified data gaps that could be rectified by statutes or regulations. In other areas, the racial disparity at issue highlighted specific policy focus areas for making substantive policy recommendations based on empirical evidence of effectiveness. Considering these policy areas, the research team presented data and drafted a proposed policy recommendation to address a disparity. Some policy recommendations have a fiscal impact, and in some cases, the data suggest that it is a lack of investment that is driving the disparity. From there, the Commissioners discussed the proposal, taking into account the data and public comments. The Commission then voted to approve or deny recommendations, with amendments as needed.

Throughout its process, the Commission has received public comment and policy recommendations from private citizens and various organizations. These organizations include the Virginia Department of Health, Virginia Legislative Black Caucus, the Virginia Poverty Law Center, the Commonwealth Institute, the New Virginia Majority, ECHO Virginia, Virginia's United Land Trusts, the Virginia Outdoors Foundation, the Black Family Land Trust, as well as individuals during public comment. The final recommendations approved by the Commission include many of these suggestions.

Racial Disparities in Economic Opportunity: Background and Policy Recommendations

Black Virginians are more likely to be at the bottom rungs of the economic ladder, more likely to rely on public benefits, and less likely to own homes or have accumulated wealth than other racial or ethnic groups. Wealth can form an obvious safety net in our society, helping families avoid large amounts of debt when they encounter unexpected financial crisis,¹¹ and providing for intergenerational transfers of wealth which can fund critical ladders out of poverty such as higher education, a down payment for a home, or capital for a business.¹² Because people of color are less likely to receive money from family members to make these types of investments, the wealth gap has persisted from generation to generation.

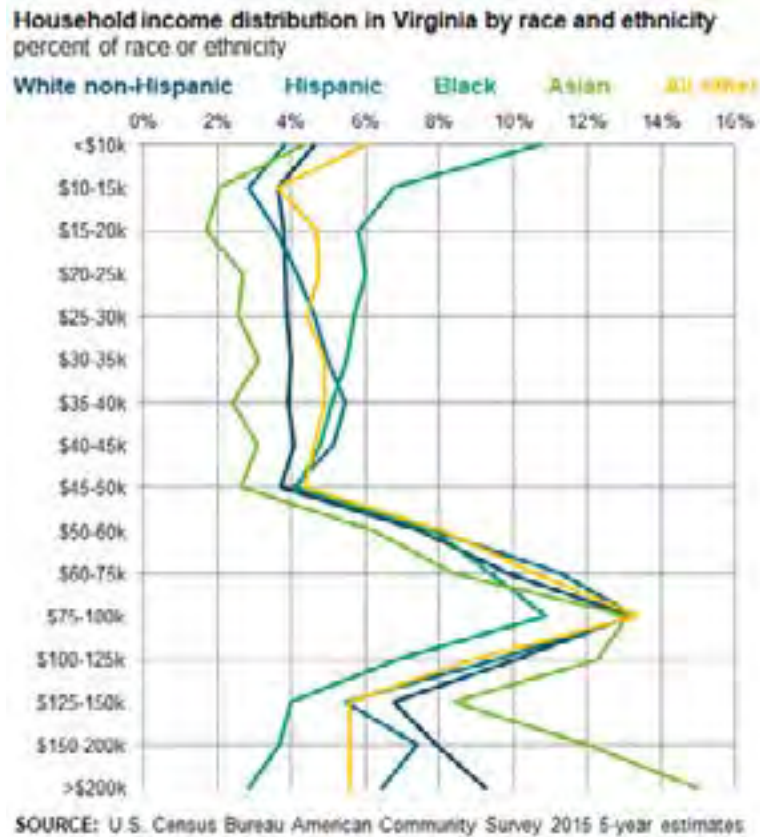
Wide racial disparities appear in everything from income and wages to unemployment and wealth. Historically, state-level policies intentionally created these disparities, and many current policies perpetuate the disparities. Recent legislative effort has focused on discrimination protections in the workplace, but work remains to be done. The following data provides an overview of some of the economic challenges that communities of color face in Virginia.



¹¹ Demos, *The Racial Wealth Gap: Why Policy Matters* (June 21, 2016) <https://www.demos.org/research/racial-wealth-gap-why-policy-matters>.

¹² *Id.*

Black Virginians and other communities of color, with the exception of Asian Virginians, are at the lowest end of the income spectrum in the state. Data from the U.S. Census Bureau estimate that the median household income in 2018 for Black Virginians was \$61,923, which is less than two-thirds of the median household income for white, non-Hispanic Virginians over the same time period.¹³



Income distributions vary by race in Virginia. Notice the disproportionate rate of extreme poverty faced by Black and Hispanic Virginians, as compared to other racial groups. More Black and Hispanic Virginians fall into the lower income ranges, and correspondingly fewer make \$50,000 per year or greater. This means that a livable minimum wage and strong unemployment and wage theft protections are particularly important to address racial disparities. The Commonwealth should work to both raise the ceiling of opportunity for Virginians of color, but also raise the floor, increasing the support available for those living in poverty.

Of 50 all states, Virginia has the largest gap between its minimum wage and the bare minimum needed to support a family of four.¹⁴ A minimum wage increase to \$15 in 2024 would benefit 1.2 million Virginians, including 39% of Black workers and 45% of Hispanic workers. Currently, minimum wage laws exclude farmworkers, landscaping workers, construction workers, and H-2B visa holders.

¹³ Hamilton Lombard, Weldon Cooper Center for Public Service, *Inside the Income Gap for some Black Virginians* (Jul. 30, 2020) <http://statchatva.org/2020/07/31/inside-the-income-gap-for-some-black-virginians/>.

¹⁴ Oxfam America, *Best and Worst States to Work in America 9* (2018) <https://www.oxfamamerica.org/explore/research-publications/best-and-worst-states-work-america/>.

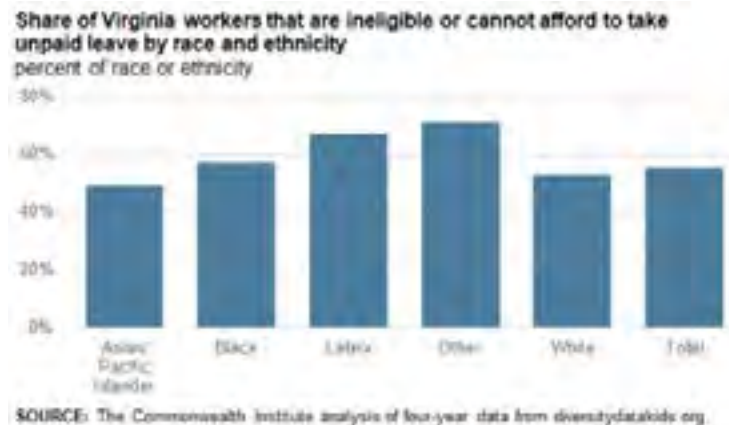


The current unemployment and nonworking rates for Virginians of color are nearly double those of white Virginians. The COVID-19 pandemic has highlighted many of the issues with Virginia’s unemployment system. At the start of the pandemic, Virginia’s unemployment insurance determinations took the longest of any in the country, as did the time it took to get an appeal hearing. Virginia also has one of the lowest caps on unemployment benefits in the nation, and only offers services in English and Spanish.

To address some of these challenges, and this painful and damaging legacy of centuries of targeted and specific racial discrimination and oppression, the economic opportunity section covers the Commission’s recommendations for paid family and medical leave, earned income tax credit modifications, consumer protection policies, increased access to capital for homeownership and entrepreneurship, and fairness in real property tax assessments. Many things can affect economic opportunity, and people living at lower income levels experience far more precarious financial situations in their day-to-day lives. The policy recommendations below are by no means exhaustive, but are meant to prompt dialogue and provide an initial direction for action.

PAID FAMILY AND MEDICAL LEAVE

Paid Family and Medical Leave (paid leave) provides wage-replacement payments to workers who need to take periods of time off longer than ordinary sick days would cover. For example, paid leave could act like maternity or paternity leave, providing paid time off for new parents. It can also act like short-term disability insurance, providing paid time off for a worker who suffered an injury or diagnosed medical condition. Paid leave can also provide paid time off for workers who are caring for a family member. Federally, the Family and Medical Leave Act (FMLA) allows employees to take up to twelve weeks of unpaid time off for these types of events without being at risk of losing their job.



Black and Latinx workers are both disproportionately excluded from paid leave policies compared to their white peers, and far more likely to be sole breadwinners for whom paid leave policies are crucial to survival and stability, according to research by The Commonwealth Institute. In Virginia, 67% and 57% of Latinx and Black workers, respectively, are either ineligible or cannot afford to take unpaid leave through the protections provided by the FMLA. Workers of color are also more likely to be sole breadwinners, meaning that they have greater needs for strong paid leave and childcare policies to protect the stability and wellbeing of their families.

A Virginia Paid Family and Medical Leave program would improve upon the federal FMLA protection in two ways. First, it would be available to more workers than FMLA, which does not apply to all types of businesses or employees and is inaccessible to 55% of Virginia workers.¹⁵ Second, because FMLA only provides for *unpaid* time off, a Virginia paid leave program would protect workers from having to make the hard choice between caring for a loved-one or themselves and earning an income. It is also worth noting that while employers can elect to provide paid leave, only 15% of U.S. workers in 2017 had access to employer-sponsored paid family leave.¹⁶

In addition, paid family leave would benefit and protect the most vulnerable members of our workforce, who disproportionately consist of people of color. For example, white workers are twice as likely to have access to paid parental leave as their Hispanic counterparts.¹⁷ Access to paid leave is also strongly correlated to income.¹⁸ Black and Latinx workers, who tend to experience higher rates of poverty and make lower than average wages, are less likely to have access to even unpaid leave under the current system.¹⁹

Even those workers who have access to unpaid leave might not be able to take it for financial reasons. Leave is often needed at times when expensive medical services are required, and many families cannot forego their income, especially during those times. In the context of childbirth, this presents a difficulty for any new mother. However, it is worse for mothers of color, as 74% of non-Hispanic Black mothers and 47% of Latinx mothers are the key or sole breadwinners for their families, compared to 45% of non-Hispanic white mothers nationally.²⁰ Compound that fact with the many facets of the racial wealth gap and it is easy to see why many mothers of color are not able to take advantage of the unpaid leave.

This lack of time off may have negative health and developmental effects. In Virginia, Black women are 1.9 times more likely to die during pregnancy or within one year of pregnancy than white women.²¹ The infant mortality rate of Black infants is more than double that of white infants

15 National Partnership for Women and Families, *Paid Leave Means a Stronger Virginia* (Jan. 2021) <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-means-a-stronger-virginia.pdf>.

16 Ann P. Bartel et al., *Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets*, Monthly Labor Review (Jan. 2019) <https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm>.

17 Sarah Jane Glynn, Center for American Progress, *Working Parents' Lack of Access to Paid Leave and Workplace Flexibility* (Nov. 20, 2012) <https://www.americanprogress.org/wp-content/uploads/2012/11/GlynnWorkingParents-1.pdf>.

18 *Id.*

19 The Commonwealth Institute, *Statewide PFML: A Critical Step Toward Racial, Economic, and Health Equity* (Aug. 2020) <https://thecommonwealthinstitute.org/statewide-pfml-a-critical-step-toward-racial-economic-and-health-equity/>.

20 *Id.*

21 *Id.*

nationally.²² Paid leave would allow new mothers more time to attend postpartum health visits and recover from childbirth. Leave would also give new mothers time to better meet their children's needs. A paid leave program could help reduce the disparities in maternal and infant mortality.²³

Nine states²⁴ and Washington, D.C. have adopted a paid leave program. All of these programs are funded through payroll deductions made by employees, employers, or both. In California, where such a program has been in place the longest, the average time taken off for maternity leave between Black and white mothers has equalized.²⁵ Before the state's program, Black women took an average of just one week of maternity leave and white women took four weeks. After implementation of the program, Black and white mothers both took an average of seven weeks of leave.²⁶ Understandably, existing paid leave programs have been shown to also improve infant health, with Black children showing the biggest improvements.²⁷

Two demographic shifts highlight the need for paid leave. The first of these is the aging population. The percentage of the state's population aged 65 and older will grow by nearly one-sixth in the next twenty years.²⁸ As the population ages, the average age of a Virginia worker goes up, and so do their average care needs. Further, the need to care for elder family members will likely increase. Black and Latino families will likely experience greater elder care demands as households of color are more likely to be multi-generational.²⁹ Second, children are increasingly growing up in households where all parents are working.³⁰ No parent in these households can serve as a physical presence to meet a child's care needs without taking time off work. Black and Latinx households, where mothers are more likely to be both the sole or key breadwinners and caregivers, experience this problem more acutely than white households.³¹ These two trends exacerbate the need for paid leave and demonstrate how the absence of paid leave harms families of color most.

The COVID-19 pandemic has also highlighted the importance of paid leave programs. One study found that states with paid leave programs already in place were able to provide help to workers more quickly and reduce the burden of the pandemic on employers.³²

22 Center for Disease Control, *Infant Mortality* (last reviewed Sep. 8, 2021) <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/infantmortality.htm>.

23 The Commonwealth Institute, *supra* note 19.

24 California, New Jersey, Rhode Island, New York, Washington, Massachusetts, Connecticut, Oregon, and Colorado.

25 National Partnership for Women and Families, *Paid Family and Medical Leave: A Racial Justice Issue – and Opportunity* (2018) <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-family-and-medical-leave-racial-justice-issue-and-opportunity.pdf>.

26 *Id.*

27 Ann P. Bartel et al., *supra* note 16; *see also* Jessica Pac et al., VoxEU & CEPR, *Paid family leave and breastfeeding: Evidence from California* (July 21, 2019) <https://voxeu.org/article/paid-family-leave-and-breastfeeding> (showing that California's paid family leave increases overall breastfeeding duration, which may lead to health improvements for mothers and children, particularly among disadvantaged families).

28 National Partnership for Women and Families, *supra* note 15.

29 National Partnership for Women and Families, *supra* note 25.

30 Juliana Menasce et al., The Pew Research Center, *Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies* (March 23, 2017) <https://www.pewresearch.org/social-trends/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>.

31 The Commonwealth Institute, *supra* note 19.

32 Chantel Boyens, Urban Institute, *State Paid Family and Medical Leave Programs Helped a Surge of Workers Affected by the COVID-19 Pandemic* (2020) https://www.urban.org/sites/default/files/publication/102325/state-paid-family-and-medical-leave-programs-helped-a-surge-of-workers-affected-by-the-covid-19-pandemic_0.pdf.

In short, a Virginia paid leave program would strengthen economic stability, family connections, and maternal and infant health for people of color in Virginia.

RECOMMENDATION 1: ENDORSE PAID FAMILY & MEDICAL LEAVE PROGRAM FOR VIRGINIA (PREVIOUSLY SB 1330, HB 2016 (2021)).

During the 2021 General Assembly Session, SB 1330 and HB 2016, would have created a new paid leave program based on successful models in other states. However, both bills unfortunately failed. The proposed program, which this Commission endorses, requires employers and employees to contribute to a common fund through a payroll tax. The fund would be administered by the Virginia Employment Commission and would serve as a social insurance program in which workers can make a claim to the Employment Commission if they need to stop working for up to 12 weeks.³³ Workers could make a claim to care for themselves or a family member and would receive 80% of their wages during leave.³⁴ Such a bill would extend the protection of paid leave to more Virginians who need it than would other options.³⁵ It would especially lift up workers and families of color, who have less access to paid and unpaid leave as of today.³⁶

EARNED INCOME TAX CREDIT

The federal Earned Income Tax Credit (EITC) was enacted in 1975 and was established, in part, to address rising costs of living.³⁷ The credit is available to working people, and the amount of the credit varies based on income, filing status (e.g., single, head of household, married joint), and number of children.³⁸ As of tax year 2018, about 600,000 families in Virginia received the federal EITC.³⁹ Most families who receive the EITC in Virginia have a federal adjusted gross income under \$25,000.⁴⁰ For tax year 2021, the American Rescue Plan Act (ARPA) temporarily increased and expanded the federal EITC for working people without qualifying dependents. An estimated 416,000 Virginians will benefit from those provisions.⁴¹

33 This is modelled after Washington's successful paid leave program which is administered through the Washington State Employment Security Department. See Washington State, Paid Family & Medical Leave <https://paidleave.wa.gov/>.

34 80% of the state average weekly wage is the maximum amount a worker can receive during leave under the 2021 proposals. See S.B. 1330 Paid family and medical leave program; Virginia Employment Commission to establish, 2021 Legislative Session (Va. 2021) <https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+SBI330>.

35 While alternative strategies to secure paid leave are available, these are generally insufficient in terms of the people covered or the extent of the benefit. Options include encouraging employers to create their own paid leave program using state or federal tax incentives. Many smaller employers would not be able to afford to create a comparable program of their own. Another option would allow employees to make contributions to a savings account through pre-tax payroll deductions, similar to a Health Savings Account, that they could pull from when needed. It would be difficult for lower wage earners to set enough aside to receive a comparable benefit. The cost spreading of a public insurance system like the one proposed would improve access for smaller employers and lower wage earners.

36 This program is endorsed by the Campaign for a Family Friendly Virginia and Main Street Alliance. See Campaign for a Family Friendly Virginia, <https://familyfriendlyeconomyva.org/>; and The Mainstreet Alliance <https://mainstreetalliance.org/>.

37 Congressional Research Service, *The Earned Income Tax Credit (EITC): How It Works and Who Receives It* (2021) <https://crsreports.congress.gov/product/pdf/R/R43805>

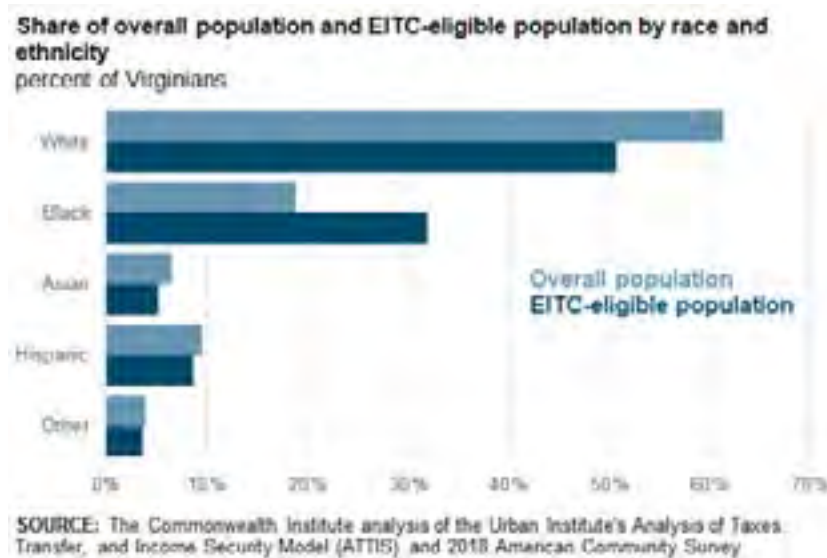
38 IRS, Earned Income and Earned Income Tax Credit (EITC) Tables (2021) <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-and-earned-income-tax-credit-eitc-tables>.

39 IRS, Statistics of Income Table based on Individual Master File System (2020).

40 *Id.*

41 Chuck Marr, Kris Cox, Stephanie Hingtgen and Katie Windham, *Congress Should Adopt American Families Plan's Permanent Expansions of Child Tax Credit and EITC, Make Additional Provisions Permanent, Center on Budget and Policy Priorities* (2021) <https://www.cbpp.org/research/federal-tax/congress-should-adopt-american-families-plans-permanent-expansions-of-child>.

Working people of color, especially Black workers, are more likely to be eligible for the EITC. Although Virginia's total population is about 61% non-Hispanic white,⁴² estimates of the EITC-eligible population indicate that about 51% of eligible families are white, 32% are Black, 9% are Hispanic, 5% are Asian, Native Hawaiian, or other Pacific Islander, and 4% are another race or ethnicity.⁴³



Virginia enacted a state-level EITC that became available in 2006 and matches up to 20% of a tax filer's federal EITC.⁴⁴ Though Virginia is one of 30 states, plus D.C. and Puerto Rico, with its own state EITC,⁴⁵ it is one of only five that is nonrefundable.⁴⁶ This means that if a family owes less in taxes than it has in tax credits, the family will not receive a payment from the government equal to the difference, which means many families do not receive the full amount of the credit. According to estimates, a previous proposal⁴⁷ to make Virginia's state EITC fully refundable would have helped about 385,000 tax filers in the state,⁴⁸ or nearly two in three EITC filers in Virginia.

42 U.S. Census Bureau, 2018 American Community Survey.

43 Urban Institute, Analysis of Transfers, Taxes, and Income Security Model (ATTIS), using data from the 2018 American Community Survey (ACS).

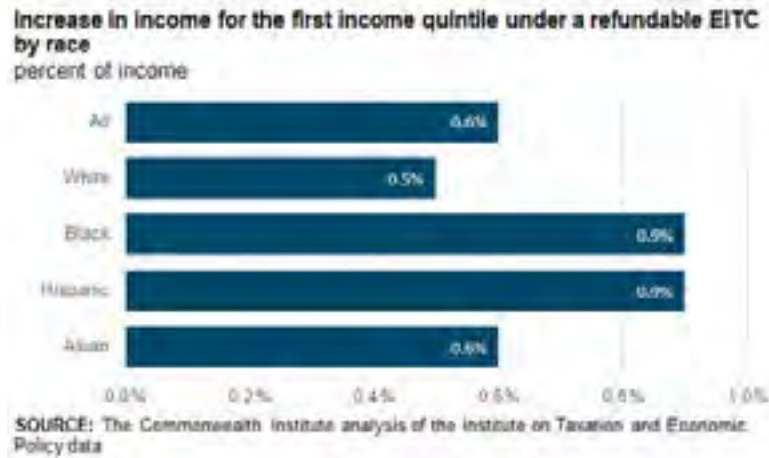
44 Ch. 3, 2004 Special Session I Acts of Assembly.

45 Samantha Waxman, *Record Number of States Create or Improve EITCs to Respond to COVID-19*, Center on Budget and Policy Priorities (2021) <https://www.cbpp.org/blog/record-number-of-states-create-or-improve-eitcs-to-respond-to-covid-19>.

46 *Id.*; see also Laws of Delaware, Vol. 83, Ch. 118, 151st General Assembly.

47 See SB 1297 (2019) <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+SB1297>; and HB 2160 (2019) <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB2160>.

48 Michael Martz, "Virginia legislators adopt tax package on fast route, after racial equity reshapes debate", Richmond Times Dispatch (2019) https://richmond.com/news/local/government-politics/virginia-legislators-adopt-tax-package-on-fast-route-after-racial-equity-reshapes-debate/article_f32b009c-320d-561d-9de7-40a0f766de0c.html.



A refundable state EITC would provide a comparatively larger percentage increase in income for families of color. Among tax units in the lowest 20% of the income distribution, the benefits of refundability would be largest for Black and Hispanic families.

RECOMMENDATION 1: ENACT A PARTIALLY REFUNDABLE STATE EITC AT 10% OF THE FEDERAL LEVEL THAT PHASES UP TO 20% OVER TIME.

Statutory language in Va. Code § 58.1-339.8(C) prohibits the amount of a tax filer’s state EITC that exceeds the filer’s state income tax liability from being issued as a refund.⁴⁹ Removing this restriction and making the credit fully refundable would help to increase incomes for working families in Virginia, particularly for Black and Latinx families who, and despite working, are more likely to be excluded from the current nonrefundable credit due to having low incomes.⁵⁰ A phased approach that starts at partial refundability will accommodate a restriction against large net tax reductions currently in effect under ARPA.⁵¹

RECOMMENDATION 2: REMOVE OTHER RESTRICTIONS THAT DISPROPORTIONATELY DISQUALIFY WORKERS OF COLOR, INCLUDING ITIN RESTRICTIONS AND AGE RESTRICTIONS.

Undocumented immigrants and other noncitizens who cannot receive a Social Security number generally file taxes using an Individual Taxpayer Identification Number (ITIN).⁵² ITIN filers are not eligible for the federal EITC, but they are eligible for state EITCs in seven states.⁵³ (The federal exclusion applies if one adult has an ITIN even if other people in the family have Social Security numbers).⁵⁴ The racial demographics of ITIN filers in Virginia are not readily available, but people of color likely make up the majority of ITIN filers in the state. An analysis that linked California

49 Current Va. Code § 58.1-339.8. Income tax credit for low-income taxpayers.

50 Chris Wodicka, The Commonwealth Institute, *Tax Policy in Virginia*, (2021) <https://thecommonwealthinstitute.org/research/tax-policy-in-virginia/>.

51 U.S. Dept. of the Treasury, 31 CFR Part 35, Coronavirus State and Local Fiscal Recovery Funds, Interim final rule. <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

52 Tax Policy Center, *Racial Disparities and the Income Tax System* (2020) <https://apps.urban.org/features/race-and-taxes/#taxpayer-identification>.

53 The seven states are California, Colorado, Maine, Maryland, New Mexico, Oregon, and Washington. Aidan Davis, Institute on Taxation and Economic Policy, *Boosting Incomes and Improving Tax Equity with State Earned Income Tax Credits in 2021* (2021) <https://itep.org/boosting-incomes-and-improving-tax-equity-with-state-earned-income-tax-credits-in-2021>.

54 IRS, *Who Qualifies for the Earned Income Tax Credit (EITC)* [https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/who-qualifies-for-the-earned-income-tax-credit-eitc#:~:text=To%20qualify%20for%20the%20EITC%2C%20everyone%20you%20claim%20on%20your,plan%20to%20claim%20\(including%20extensions\)](https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/who-qualifies-for-the-earned-income-tax-credit-eitc#:~:text=To%20qualify%20for%20the%20EITC%2C%20everyone%20you%20claim%20on%20your,plan%20to%20claim%20(including%20extensions)).

nutrition assistance program data with state tax records finds that 94% of CalFresh recipients with ITINs are Hispanic.⁵⁵ Relative to California, estimates indicate that Virginia's undocumented population includes a slightly larger share of immigrants from Asia and Africa.⁵⁶

In addition, ARPA temporarily suspends (for 2021) the age restrictions that prevented workers between ages 19-24 and age 65 and older from receiving the federal EITC.⁵⁷ At those ages, people of color in Virginia are much more likely to be working while also living in poverty.⁵⁸

Lifting both restrictions will help make the EITC available to more working people of color in the state.

CONSUMER PROTECTION

As discussed above, vast disparities in wealth exist between white households and their Black and Latino counterparts. According to data from the U.S. Census Bureau, in 2018, the median white household had over \$141,000 in wealth holdings, while the median Black household had less than \$13,000 and the median Latino household had \$20,000.⁵⁹ One of the main factors driving the racial wealth gap is the low rate of homeownership among Black and Latino people. In the United States in 2018, 72% of white households owned homes, while only 47% of Latino households and 41% of Black households did.⁶⁰ The home ownership statistics in Virginia are similar to the national statistics: according to U.S. Census Bureau data, in 2018, 73% of white families in Virginia owned homes, while only 48% of Black households did.⁶¹

While it is critical that the Commonwealth help all homeowners hold on to their homes, it is particularly important that it protects homeownership for people of color given historical barriers and disparities. Lack of financial security makes people of color vulnerable to a range of predatory and higher risk financial products and tactics, as well as less able to secure the financial gains that they have made. While Virginia has made some real policy progress in establishing protections against predatory lending, more work is needed to protect consumers in a range of different areas.

In this Consumer Protection section, we offer recommendations in three main issue areas that are currently impairing people of color's efforts to build wealth: foreclosure, debt collection, and credit reporting.

It is also worth pointing out that in an effort to protect consumers from predatory lending, the Virginia General Assembly passed the Virginia Fairness in Lending Act (Senate Bill 421), which took

55 John Iselin, Taylor Mackay, and Matthew Unrath, *Measuring Take-up of the California EITC with State Administrative Data, working paper* (2021) https://mattunrath.github.io/files/research/Iselin_etal_CalEITC.pdf.

56 Migration Policy Institute, *Profile of the Unauthorized Population: Virginia* and Migration Policy Institute, *Profile of the Unauthorized Population: California* based on analysis of U.S. Census Bureau data from the pooled 2014–18 American Community Survey (ACS) and the 2008 Survey of Income and Program Participation (SIPP), weighted to 2018 unauthorized immigrant population estimates provided by Jennifer Van Hook, Pennsylvania State University. <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/VA>. <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/CA>.

57 Congressional Research Service, *The “Childless” EITC: Temporary Expansion for 2021 Under the American Rescue Plan Act of 2021* (ARPA; P.L. 117-2) (2021) <https://crsreports.congress.gov/product/pdf/IN/IN11610>.

58 Analysis based on 2019 IPUMS USA, University of Minnesota, www.ipums.org.

59 Prosperity Now Scorecard, *Financial Assets & Income*, <https://scorecard.prosperitynow.org/data-by-issue#finance/outcome/net-worth>.

60 Prosperity Now Scorecard, *Homeownership & Housing*, <https://scorecard.prosperitynow.org/data-by-issue#housing/outcome/homeownership-rate>.

61 *Id.*

effect on January 1, 2021.⁶² This law closes loopholes that previously allowed lenders to charge excessive rates for payday and title loans.⁶³

IMPACT OF FORECLOSURE ON MINORITY HOME BUYERS

Across the country, the homeownership rates of Black and Hispanic people are lower than those of white people.⁶⁴ Black and Hispanic people are less likely to purchase a home and more likely to lose their homes to foreclosure.⁶⁵ This phenomenon contributes to the wealth gap between white people and people of color.⁶⁶

One of the main reasons for the lower rates of homeownership among Black and Hispanic people is that home loans are more expensive for these groups since lenders direct them to higher-risk products such as subprime loans.⁶⁷ A study by the National Bureau of Economic Research found that even accounting for differences in financial circumstances, Black Americans are 105% more likely than white Americans to be given a high-cost mortgage, while Hispanic Americans are 78% more likely.⁶⁸ These expensive loans make foreclosure more likely. Between 2007 and 2009, in the midst of the housing market collapse, nearly 8% of African Americans and nearly 8% of Latino Americans completed foreclosures, while only 4.5% of white Americans did.⁶⁹ As a result of this disparity, Black homeowners experienced a 45% decrease in their wealth following the housing market collapse, while white homeowners' wealth decreased by only 21%.⁷⁰

Virginia employs a non-judicial foreclosure process,⁷¹ which means that a court does not have to be involved in a foreclosure.⁷² As a result, individuals facing foreclosure have no right to counsel in the process⁷³ and, if they want to contest the foreclosure, must go to court on their own in order to assert a defense to the foreclosure.⁷⁴ Foreclosure can have far-reaching consequences for individuals and families. In Virginia, when a person's home is foreclosed upon, that person loses all of the equity he or she has accumulated in the home.⁷⁵ The investment in homeownership is thus erased, and the effect is compounded by the impact of foreclosure on future credit extension.

62 WHSV, *Va. Lawmakers Approve Amendment to Anti-Predatory Lending Law* (Apr. 22, 2020) <https://www.wHSV.com/content/news/Va-lawmakers-approve-amendment-to-anti-predatory-lending-law-569862671.html>.

63 *Id.*

64 Gillian B. White, *Why Blacks and Hispanics Have Such Expensive Mortgages* (Feb. 25, 2016) <https://www.theatlantic.com/business/archive/2016/02/blacks-hispanics-mortgages/471024/>.

65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.*

69 Center for Responsible Lending, *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*, <https://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-presentation.pdf>.

70 *Id.*

71 National Consumer Law Center, *Foreclosure Report: Survey of State Foreclosure Laws* 120 (2009) https://www.nclc.org/images/pdf/foreclosure_mortgage/state_laws/survey-foreclosure-card.pdf.

72 See Doug Rendelman, *Foreclosure of a Deed of Trust in Virginia*, 51 U. Rich. L. Rev. 147, 174 (2016); Va. Code Ann. §§ 55.1-320 to 55.1-345.

73 See Melanca Clark & Maggie Barron, Brennan Center for Justice, *Foreclosure: A Crisis in Legal Representation* 13 (2009) <https://www.brennancenter.org/sites/default/files/legacy/Justice/Foreclosure%20Report/ForeclosuresReport-ExecSum.pdf>.

74 See Doug Rendelman, *supra* note 72, at 174.

75 G. Thomas Kingsley et al., The Urban Institute, *The Impacts of Foreclosures on Families and Communities* 10 (2009) <https://www.urban.org/sites/default/files/publication/30426/411909-The-Impacts-of-Foreclosures-on-Families-and-Communities.PDF>.

Virginia has implemented some temporary protections against foreclosures in light of the COVID-19 pandemic. In 2020, HB340 gave homeowners who had experienced a loss of income due to the pandemic a right to obtain a thirty-day foreclosure stay.⁷⁶ The Virginia Rent and Mortgage Relief Program, announced on June 29, 2020, provided a one-time payment to assist with rent and mortgage payments that were past due from April 1, 2020 onward.⁷⁷ Some recipients were able to obtain renewal based on need, availability of funding, and continued eligibility.⁷⁸ These temporary protections, while important, are not sufficient to resolve racial disparities in foreclosure long-term.

RECOMMENDATION 1: IMPROVE ACCESS TO COUNSEL FOR HOMEOWNERS FACING FORECLOSURE.

One way to provide additional protection to consumers in foreclosure proceedings is to provide counsel in those proceedings. This is especially important in Virginia, where the homeowner has to initiate judicial proceedings in order to challenge a foreclosure.⁷⁹ Possible ways to ensure access to counsel include adopting an explicit right to counsel, improving access to and awareness of access to pro bono attorneys and legal clinics that represent homeowners facing foreclosure,⁸⁰ and including information about homeowners' options for avoiding foreclosure in notices of foreclosure.⁸¹

RECOMMENDATION 2: IMPLEMENT A FORECLOSURE DIVERSION PROGRAM.

The City of Richmond has implemented an Eviction Diversion Program, which creates a payment plan for overdue rent for tenants who have fallen behind on rent payments due to unforeseen circumstances.⁸² Virginia could help homeowners who are struggling to make payments by implementing a statewide program, based on this model, to limit foreclosures.

RECOMMENDATION 3: ADOPT JUDICIAL FORECLOSURE.

Virginia's current policy of nonjudicial foreclosure offers less protection to homeowners than the alternative of judicial foreclosure. However, 21 states plus the District of Columbia have adopted a right to some form of judicial foreclosure procedures.⁸³ Judicial foreclosure would give homeowners more time to prepare for an impending foreclosure and an opportunity to reclaim their property after a foreclosure sale.⁸⁴ Additionally, judicial foreclosure shifts the burden of suing from the borrower to the lender, which provides a greater chance of the borrower's defenses being heard.⁸⁵

76 Amy Loftsgordon, NOLO, *Virginia Passes New Law Allowing Homeowners to Delay Foreclosure During the Coronavirus Crisis* (2020) <https://www.nolo.com/legal-updates/virginia-passes-new-law-prohibiting-foreclosures-during-the-coronavirus-crisis.html> (last visited Oct. 28, 2020).

77 WTOP News, *Gov. Northam announces extension of Rent and Mortgage Relief Program* (Sept. 24, 2020), <https://wtop.com/virginia/2020/09/gov-northam-announces-extension-of-rent-and-mortgage-relief-program>.

78 *Id.*

79 Zoom Interview with Jessica Thompson, Senior Staff Attorney, Central Virginia Legal Aid by Taylor Beck and Olivia Seksinsky (Oct. 13, 2020); Knowledge@Wharton, *How States Can Help Police Mortgage-lending Practices* (June 27, 2019) <https://knowledge.wharton.upenn.edu/article/judicial-foreclosure-mortgage-lending/>.

80 *Id.* at 23.

81 *Id.*

82 Jeremy M. Lazarus, Richmond Free Press, *HOME to begin eviction diversion program* (Sept. 6, 2019) <http://richmondfree-press.com/news/2019/sep/06/home-begin-eviction-diversion-program>.

83 *Id.* at 28, Figure 1.

84 Amy Loftsgordon, Lawyers.com, *Virginia Foreclosure Process* (Aug. 11, 2020), <https://www.lawyers.com/legal-info/bankruptcy/foreclosures/virginia-foreclosure-process.html>.

85 Elizabeth Renuart, *Property Title Trouble in Non-Judicial Foreclosure States: The Ibanez Time Bomb?*, 4 Wm. & Mary Bus. L. Rev. 111, 141 (2013).

Furthermore, judicial foreclosure delays the finality of a foreclosure sale⁸⁶ and allows the buyer to remain in possession of their home for longer,⁸⁷ which is especially important in Virginia since the time between default and sale under the current law is only fourteen days.⁸⁸ A narrower alternative would be a policy similar to what is happening in Maryland, which employs a quasi-judicial foreclosure that allows for a court process or mediation.⁸⁹

DEBT COLLECTION

According to research done by ProPublica, debt collection suits are primarily concentrated in Black neighborhoods.⁹⁰ The disparity remains even after accounting for differences in income.⁹¹ Companies frequently use the courts to sue people over small consumer debts, which enables debt collectors to seize a portion of a debtor's wages.⁹²

Resolving racial disparities in debt collection is especially important in Virginia, which is ranked among the top ten states with the highest levels of credit card debt, mortgage debt, and student loan debt.⁹³ The portion of Virginians living in predominantly white areas who have any debt in collections is 25%, with 16% having medical debt in collections and 1% having student loan debt in collections.⁹⁴ However, in predominantly non-white areas in Virginia, 43% of people have debt in collections, with 24% having medical debt in collections and 3% having student loan debt in collections.⁹⁵ The median amounts of debt in collections for Virginians are \$1,399 for any type of debt, \$582 for medical debt, and \$9,342 for student loan debt.⁹⁶

RECOMMENDATION 1: PROHIBIT DEBT BUYERS FROM BRINGING DEBT COLLECTION LAWSUITS AFTER THE STATUTE OF LIMITATIONS HAS EXPIRED.

Virginia law requires defendants in civil lawsuits to affirmatively raise the statute of limitations defense.⁹⁷ This requirement is problematic in debt collection suits because the defendants often are not represented by counsel and therefore do not know that this defense exists.⁹⁸ Furthermore, according to the Federal Trade Commission, debt buyers often abuse the court system by suing beyond the statute of limitations.⁹⁹ This phenomenon is especially concerning given that debt

86 Zoom Interview with Kristi Kelly, Attorney, Kelly Guzzo, PLC, by Taylor Beck and Olivia Seksinsky (Oct. 19, 2020).

87 Patrick B. Bauer, *Judicial Foreclosure and Statutory Redemption: The Soundness of Iowa's Traditional Preference for Protection Over Credit*, 71 Iowa L. Rev. 1, 9 (1985).

88 Va. Code. § 55.1-321 (2020).

89 Md. Real Property Code § 7-105.1(e); Jeffrey Miller, Dependable Homebuyers, *The Maryland Foreclosure Process Explained*, (July 2, 2017) <https://www.dependablehomebuyers.com/blog/the-maryland-foreclosure-process-explained/>.

90 Paul Kiel and Annie Waldman, ProPublica, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods* (2015) <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>.

91 *Id.*

92 *Id.*

93 Debt.org, *Consumer Debt in Virginia* (2021) <https://www.debt.org/faqs/americans-in-debt/consumer-virginia/>.

94 National Consumer Law Center, *Virginia Debt Collection Fact Sheet* (2018) https://www.nclc.org/images/pdf/debt_collection/fact-sheets/Virginia.pdf.

95 *Id.*

96 *Id.*

97 Va. Code § 8.01-235.

98 Federal Trade Commission, *Repairing A Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (2010) <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission>

-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf.

99 *Id.*

buyers are increasingly relying on litigation to collect debts as opposed to other methods.¹⁰⁰ Two of the largest publicly traded debt buyers, Encore Capitol and Portfolio Recovery Associates, grew their legal collections 184% and 220%, respectively, from 2008 to 2018.¹⁰¹ This data indicates a need to implement specific rules governing debt buyers' conduct in order to protect minority consumers.

California has enacted a statute that provides a good example of restrictions on debt collection lawsuits that protect consumers. This statute prohibits debt buyers from bringing a debt collection lawsuit after the statute of limitations has expired.¹⁰² It also provides that if a debt buyer plaintiff seeks a default judgment and has not complied with the requirements of the statute, including ensuring that the action is brought within the statute of limitations, the court may not enter a default judgment for the plaintiff and may dismiss the action entirely.¹⁰³ Additionally, a debt buyer that violates any provision of the statute with respect to any person is liable to that person for both actual damages and statutory damages, unless the debt buyer demonstrates that the violation was unintentional.¹⁰⁴

CREDIT REPORTING

Several systemic factors result in Black and Hispanic people having lower credit scores than white people. As explained previously, these communities experience much higher rates of foreclosure, which greatly harms their credit scores.¹⁰⁵ These groups' credit histories are also affected by discriminatory practices with an economic impact, including racial profiling/law enforcement bias, employment discrimination, housing segregation, and the re-emergence of redlining.¹⁰⁶ Furthermore, Black and Hispanic individuals are disproportionately affected by municipalities discriminatorily imposing fees and fines in order to raise revenue.¹⁰⁷

Auto insurance is one of the specific areas in which lower credit scores harm minority communities. For example, auto insurance companies often charge people with lower credit scores higher premiums.¹⁰⁸ Auto insurance is required for driving in every state except New Hampshire.¹⁰⁹ The higher premiums can also result in reduced access to vehicles, which is a major barrier to employment opportunities.¹¹⁰

100 The Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts* (2020) <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>.

101 *Id.*

102 California Civil Code, title 1.6C.5 § 1788.56.

103 California Civil Code, title 1.6C.5 § 1788.60.

104 California Civil Code, title 1.6C.5 § 1788.62.

105 Racial Justice and Equal Economic Opportunity Project, *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination* (2016) https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

106 *Id.*

107 *Id.*

108 Consumer Federation of America, *Systemic Racism in Auto Insurance Exists and Must Be Addressed By Insurance Commissioners and Lawmakers* (2020) https://consumerfed.org/press_release/systemic-racism-in-auto-insurance-exists-and-must-be-addressed-by-insurance-commissioners-and-lawmakers/.

109 *Id.*

110 *Id.*

RECOMMENDATION 1: CREATE MORE LOAN PROGRAMS THAT ENABLE PEOPLE WHO HAVE LOW CREDIT SCORES TO BUY HOMES.

The Rural Housing program has been successful in helping people to obtain low-cost loans to buy homes.¹¹¹ This program helps low-income applicants obtain housing in rural areas by providing payment assistance to improve the applicants' repayment abilities.¹¹² However, it is infrequently used and limited to rural housing.¹¹³ Virginia could enable more Black and Hispanic people to own homes by creating a program that is not limited by geography or community type.

RECOMMENDATION 2: PROHIBIT INSURANCE COMPANIES FROM CHARGING HIGHER AUTOMOBILE INSURANCE PREMIUMS FOR PEOPLE WITH LOWER CREDIT SCORES.

Insurance companies claim that they are justified in charging higher premiums to people with lower credit scores because those people are likely to make more insurance claims.¹¹⁴ However, several studies have demonstrated that this is not the case.¹¹⁵ As a result, several states (including California, Hawaii, Maryland, Massachusetts, Michigan, Oregon, and Utah)¹¹⁶ have passed legislation to put a stop to such practices.¹¹⁷

ACCESS TO CAPITAL

Background

People of color often experience challenges when trying to invest in their future. Low net worth, poor credit, and apparent bias make it more difficult for minorities to access financing and capital to start or operate businesses, or to buy a home, than it is for white people. According to nationwide data from the U.S. Census Bureau, the median white household has a net worth (assets minus liabilities) over 11 times greater than the median Black household.¹¹⁸ In addition to having lower wealth than white families, families of color typically have lower incomes. In 2018, the median income for white families in Virginia was \$95,216, while the median income for Black families was \$61,923.¹¹⁹ Furthermore, on average, Black workers in Virginia earn 73 cents for every dollar white workers earn.¹²⁰ These factors result in young adults of color being both less likely to have access to financial

111 Rural Development, U.S. Department of Agriculture, *Single Family Housing Direct Home Loans in Virginia* <https://www.rd.usda.gov/programs-services/single-family-housing-direct-home-loans/va>.

112 *Id.*

113 *Id.*

114 National Consumer Law Center, *Credit Scoring and Insurance: Costing Consumers Billions and Perpetuating the Economic Racial Divide* (2007) <https://www.nclc.org/images/pdf/pr-reports/report-insurance-scoring-2007.pdf>.

115 *Id.*

116 Louis DeNicola, Experian, *Which States Restrict the Use of Credit Scores in Determining Insurance Rates?* (2020) <https://www.experian.com/blogs/ask-experian/which-states-prohibit-or-restrict-the-use-of-credit-based-insurance-scores/>.

117 *Id.*

118 Prosperity Now Scorecard, *Financial Assets & Income*, <https://scorecard.prosperitynow.org/data-by-issue#finance/outcome/net-worth>.

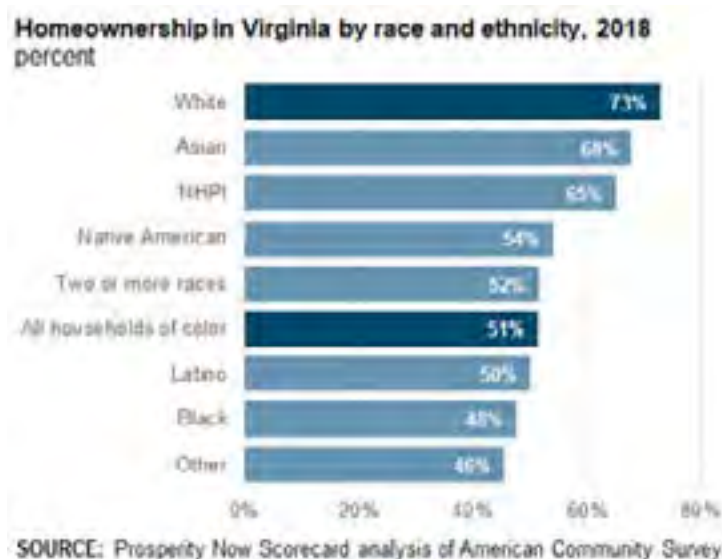
119 Katherine Hafner, The Virginia Pilot, *Virginia's Racial Income Gap Closed More Before the Civil Rights Era Than It Has Since* (Sep. 15, 2020) <https://www.pilotonline.com/news/vp-nw-racial-income-gap-virginia-20200915-b5t4cl7p6fa7hkdtufpwrn-j34e-story.html>.

120 The Commonwealth Institute, *Latest Data Shows Trend Toward Economic Recovery, but Black Workers and Businesses are Being Left Behind* (2020) <https://thehalfsheet.org/post/624820264899936256/latest-data-shows-trend-toward-economic-recovery>.

support from family members¹²¹ and less likely to receive loans.¹²² The minority-white wealth gap thus perpetuates itself as families of color struggle to access some of the most effective methods of increasing their wealth. Therefore, mitigating disparities in access to capital and enabling more minority families to invest in homes and businesses would go a long way towards equalizing economic opportunity for people of color.

HOMEOWNERSHIP

Homeownership requires capital that is not equally available to all. While nearly three-fourths of white families in Virginia own their own homes, barely half of households of color are homeowners. This significant difference in homeownership rates is likely because of historical lending and legal discrimination.



The homeownership gap between Black and white households in the U.S. has always been significant. The Great Recession only exacerbated the problem, widening the gap from 28.1% in 2010 to 30.2% in 2017.¹²³ During the same period, the Black homeownership rate dropped 4.8%, while the white homeownership rate dropped only 0.5%.¹²⁴ In Virginia in 2019, the Black-white homeownership gap was 26.3%, up from 22.9% in 2000.¹²⁵

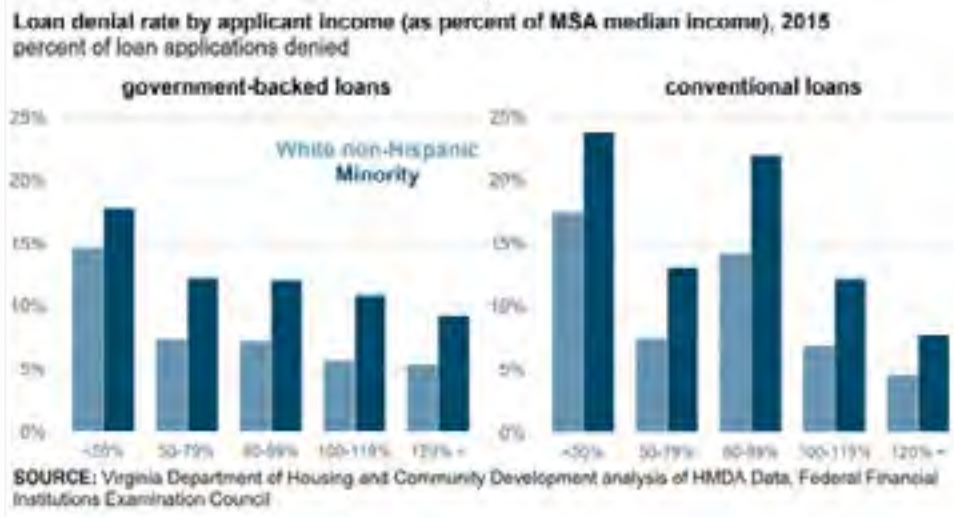
121 Choi et al., Urban Institute, *Explaining the Black-White Homeownership Gap* (2019) https://www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_2.pdf.

122 Start Us Up, *America's New Business Plan* (2021) <https://www.startusupnow.org/wp-content/uploads/sites/12/2021/03/AmericasNewBusinessPlan.pdf>.

123 Choi et al., *supra* note 121.

124 *Id.*

125 Lisa Sturtevant, Virginia Realtors, *Understanding African American Home Ownership in Virginia* (2021) <https://virginiarealtors.org/2021/02/01/understanding-african-american-homeownership-in-virginia/>.



In general, people of color are more likely than white people to lack access to financing for purchasing a home. Analysis from the Virginia Department of Housing and Community Development shows that even when their earnings far exceed the necessary income, families of color are much more likely to be denied a loan. When controlling for income, denial rates are higher for applicants of color compared to white non-Hispanic applicants for both conventional loans and government-backed loans. Bias in lending practices is likely driving these disparities. In 2019, more than 4% of Black mortgage loan applicants in Virginia were rejected because lenders thought that their debts would consume too much of their income, while only 1.4% of white applicants were rejected for this reason.¹²⁶ Additionally, 3.6% of Black borrowers were denied mortgage loans because of their credit history, compared to only 1% of white borrowers.¹²⁷

Bruce Whitehurst, the CEO of the Virginia Bankers Association, explained in an interview with Virginia Mercury that the lack of access to financing is a multifaceted problem—“What leads to a poor credit history, what leads to a high debt-to-income ratio, aren’t as simple as the applicant didn’t pay their bills on time or the applicant was trying to borrow more money than his or her income would support. It’s really a much more layered, complicated representation of the disadvantages Black Americans have faced for a very long time.”¹²⁸

Bruce McClary, a former credit counselor in the Richmond area, explained to the Virginia Mercury that even among African American clients who were good credit risks, “their first stop was a subprime lender.”¹²⁹ The decision to go to subprime lenders is rooted in the historical difficulties Black borrowers have faced in accessing credit—McClary said that clients told him they chose subprime lenders because they knew the lender and because their parents went to that lender.¹³⁰ As a result of taking out subprime loans, McClary explained, “[p]eople struggle to pay them back, and they get caught up in a cycle of debt.”¹³¹ In part due to people of color being more likely to take out subprime

126 Jeff South, Virginia Mercury, The Bedrock of Wealth Inequality: Data Shows Big Racial Disparities in Mortgage Loans and Homeownership (July 21, 2020) <https://www.virginiamercury.com/2020/07/21/the-bedrock-of-wealth-inequality-data-shows-big-racial-disparities-in-mortgage-loans-and-homeownership/>.

127 *Id.*

128 *Id.*

129 *Id.* A subprime lender offers loans at higher interest rates, often to individuals with lower credit scores who therefore do not qualify for loans at prime rates.

130 *Id.*

131 *Id.*

loans, the majority of white households in the U.S. have a FICO credit score above 700, while only 20.6% of Black households do.¹³² Furthermore, 33% of Black households with credit histories lack a credit score entirely, compared to 17.9% of white households.¹³³ Differences in family wealth levels also contribute to the disparities in access to financing between white families and families of color. Overall, differences in parental wealth and homeownership explain 12% to 13% of the Black-white homeownership gap in the U.S.¹³⁴

As a result of these issues, according to federal data, African Americans in Virginia were twice as likely as white people to be denied loans to buy homes in 2019.¹³⁵ In Virginia, 11.9% of the approximately 14,700 mortgage loan applications submitted by Black borrowers in 2019 were rejected, while only 5% of the approximately 70,400 applications from non-Hispanic white borrowers were rejected.¹³⁶ Even among applicants at the same income level, the denial rates for Black borrowers in Virginia in 2019 were higher than the denial rates for white borrowers.¹³⁷ For applicants making about \$115,000, the denial rates for Black and white Virginians, respectively, were 8.9% and 3.4%.¹³⁸ For applicants making about \$185,000, the gap was 7.4% versus 2.3%.¹³⁹



in the visual studies collection of the Library of Virginia.

132 Choi et al., *supra* note 121.

133 *Id.*

134 *Id.*

135 South, *supra* note 126.

136 *Id.*

137 *Id.*

138 *Id.*

139 *Id.*



Richmond Times Dispatch, November 26, 1989.
 From the State Government Records Collection of the Library of Virginia.

RECOMMENDATION 1: INCREASE THE SUPPORT OFFERED BY THE STATE DOWN PAYMENT ASSISTANCE PROGRAM AND FIRST-TIME HOMEBUYER TAX CREDIT, AND ENSURE THAT POTENTIAL HOMEBUYERS ARE AWARE OF THE ASSISTANCE AVAILABLE TO THEM.¹⁴⁰

Communities that do not have adequate access to financial services and banks struggle with a lack of fairly priced financial services.¹⁴¹ More than half of renters view a down payment as a major obstacle to buying a home, and many are not aware of low-down-payment options or payment assistance programs.¹⁴² These issues have impacted predominantly Black communities especially heavily.¹⁴³ Black Millennials are significantly less likely than white Millennials to buy a home, and the homeownership gap will widen in the future if this trend continues.¹⁴⁴

Improving opportunities for young Black adults to buy homes can help to increase homeownership among people of color in Virginia.¹⁴⁵ The Virginia Down Payment Assistance Program provides first-time homebuyers with an income at or below the program limit for their region and a Federal Housing Administration credit score of at least 620 with a grant of 2% to 2.5% of the purchase price of

140 Alanna McCargo et al., *Building Black Homeownership Bridges: A Five-Point Framework for Reducing the Racial Homeownership Gap* (2019) https://www.urban.org/sites/default/files/publication/100204/Building_black_ownership_bridges_1.pdf.

141 Choi et al., *supra* note 121.

142 McCargo et al., *supra* note 140.

143 *Id.*

144 *Id.*

145 *Id.*

the home.¹⁴⁶ Additionally, the Virginia Housing Development Authority provides first-time homebuyers with a Mortgage Credit Certificate, which is a dollar-for-dollar credit against the homebuyer's federal income tax liability equal to 20% of the homebuyer's annual mortgage interest. This credit continues for the life of the mortgage every year that the homebuyer continues to live in the home.¹⁴⁷ Virginia could improve its Down Payment Assistance Grant program by increasing the maximum grant and/or reducing the credit score required to receive the grant. It could also increase the amount of the first-time homebuyer tax credit offered. If funding for these increases is not available, simply making citizens aware of the current programs through education and outreach could improve homeownership rates among people of color and aid in closing the homeownership gap.¹⁴⁸

RECOMMENDATION 2: INCREASE FUNDING FOR THE VIRGINIA HOUSING TRUST FUND.

The Virginia Housing Trust Fund, part of the Virginia Department of Housing and Community Development, was established to create affordable housing and reduce homelessness in Virginia.¹⁴⁹ There is a requirement that at least 80% of the fund be used for the Competitive Loan Pool, which provides short-, medium-, and long-term loans for the production and preservation of affordable housing for both homebuyers and renters.¹⁵⁰ The loans are administered through the Affordable and Special Needs Housing (ASNH) Program and the Vibrant Community Initiative (VCI).¹⁵¹ The loans are awarded to developers producing affordable housing who meet goals aligned with gubernatorial initiatives or state housing policies.¹⁵² The loans are low-interest, and the loans' provisions encourage the recipients to use outside funding sources.¹⁵³ Some of the criteria the ASNH program and the VCI use to award funding include affordability, financial sustainability, feasibility, and the potential project's effects on state housing policy.¹⁵⁴ In 2019-20, \$4,460,000 was allocated for the Competitive Loan Pool, while \$1,000,000 was allocated for the Vibrant Community Initiative.¹⁵⁵ The Virginia Legislative Black Caucus has advocated for increased funding for the Trust Fund on several occasions as a means of improving access to affordable housing for people of color in the Commonwealth.¹⁵⁶

146 Virginia Housing, *Down Payment Assistance Grant* <https://www.vhda.com/Homebuyers/Pages/DownPayment.aspx>.

147 Robin Spensieri, Virginia Realtors, *A Federal Tax Credit to Help First-time Homebuyers* (2019) <https://virginiarealtors.org/2019/03/14/federal-tax-credit-help-first-time-homebuyers/>.

148 McCargo et al., *supra* note 140.

149 Virginia Department of Housing and Community Development, *Virginia Housing Trust Fund* <https://www.dhcd.virginia.gov/vhtf>.

150 *Id.*

151 *Id.*

152 *Id.*

153 *Id.*

154 *Id.*

155 *Id.*

156 Virginia Legislative Black Caucus, *The VBLC Announces its 2021 Legislative Agenda* (2021) <https://www.vablackcaucus.com/news/c/0/i/53030955/vlbc-announces-its-2021-legislative-agenda>; Virginia Legislative Black Caucus, *Virginia Legislative Black Caucus Announces its 2020 Legislative Agenda: A Restorative and Equitable Agenda* (2020) <https://www.vablackcaucus.com/news/c/0/i/41535961/virginia-legislative-black-caucus-announces-its-2020-legislative-agenda-restorative-and-equitable-agenda>; Virginia Legislative Black Caucus, *Virginia Legislative Black Caucus' Advocacy Results in Equity Initiatives and Investments in Governor Northam's Proposed Biennial Budget* (2019) <https://www.vablackcaucus.com/news/c/0/i/41520366/virginia-legislative-black-caucus-advocacy-results-equity-initiatives-and-investments-governor-northams-proposed-biennial-budget>.

RECOMMENDATION 3: USE STATE FUNDS TO SUPPORT FINANCIAL LITERACY TRAINING.

This proposal could expand on the efforts of organizations such as Virginia Housing, which provides free education courses, credit counseling, and down payment grants.¹⁵⁷ People of color are less likely than white people to have bank accounts because of a lack of knowledge or trust of financial institutions due to historical discrimination as well as physical barriers such as not having cars or consistent access to public transportation.¹⁵⁸

According to United Way of Greater Richmond and Petersburg, almost 30% of Black households in the Richmond region are underbanked, meaning that they have bank accounts but have used another financial resource, such as a payday loan, within the past year.¹⁵⁹ 14% of Black households in the region are unbanked, which means they do not have a bank account at all.¹⁶⁰ Geographic areas with inadequate access to banks are known as banking deserts, a phenomenon that often affects rural areas.¹⁶¹ The lack of access to banking among people of color is problematic because people who do not have bank accounts are likely to pay thousands of dollars through cash loan services and are also vulnerable to losing their savings to theft or natural disasters.¹⁶² Youngmi Kim, an associate professor at Virginia Commonwealth University's School of Social Work, has said that institutions can improve access to banking using education and outreach, but must also create more innovative approaches to making banking accessible so that people can both receive government benefits and participate in the mainstream financial system.¹⁶³

RECOMMENDATION 4: DIRECT THE STATE CORPORATION COMMISSION TO REQUIRE THE USE OF ALTERNATIVE METHODS OF CREDIT SCORING.

Families of color experience more difficulty than white families in obtaining mortgage credit because people of color are more likely to have low credit scores or thin or no credit files because of historical barriers to accessing banking and credit.¹⁶⁴ Although creditors today often use computer algorithms to make credit decisions, these systems tend to disadvantage Black households.¹⁶⁵ Rent, cell phone, and utility payments currently are not incorporated into the credit score models used for mortgage underwriting. If creditors included rental payment history in credit scoring models or the underwriting process, more households of color could access credit to buy homes without increasing the probability of default on the loans extended.¹⁶⁶ It is also important for credit scoring to address the racial biases within the existing system. For example, Black borrowers were more likely to be given high-cost mortgages during the housing boom, and both financial technology and traditional lenders charge higher interest rates for Black households with financial records similar to those of white households.¹⁶⁷

¹⁵⁷ South, *supra* note 126.

¹⁵⁸ *Id.*

¹⁵⁹ Colbi Edmonds, Richmond Times Dispatch, *Access to Banking Remains Issue For Communities of Color in the Richmond Region* (Jul. 30, 2021). https://richmond.com/news/local/access-to-banking-remains-issue-for-communities-of-color-in-the-richmond-region/article_87eb612b-4357-5ecd-8362-5c109840cf61.html.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ McCargo et al., *supra* note 140.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

Much like the challenges with securing financing for home purchases, people of color who are starting or running businesses also face challenges in accessing capital. The reasons appear to be varied.

Lower levels of wealth among people of color sometimes result in less access to start-up capital.¹⁶⁸ Notably, Black-owned businesses in the U.S. have lower levels of start-up capital across all major industries.¹⁶⁹ The lack of access to financial capital among people of color leads to difficulty maintaining businesses through economic downturns.¹⁷⁰ These businesses are also likely to have lower sales, profits, and employment than businesses that have higher levels of start-up capital.¹⁷¹

The lack of access to start-up capital among people of color may be partially attributable to lending discrimination.¹⁷² In the past five years, 46% of white-owned businesses in the U.S. with employees accessed credit from a bank, while only 23% of Black-owned businesses and 32% of Latinx-owned businesses did.¹⁷³ Another factor contributing to racial disparities in access to capital may be lower levels of personal and family wealth among people of color, which entrepreneurs can borrow against or use as equity financing.¹⁷⁴ Without wealth, potential entrepreneurs cannot invest directly in businesses or secure collateralized business loans.¹⁷⁵ Differences in home equity among white homeowners and homeowners of color may be especially instrumental in creating disparities in access to start-up capital—homes provide collateral, while home equity loans provide lower-cost financing.¹⁷⁶

Possibly due to lower levels of wealth, Black-owned businesses in the U.S. are seven times less likely than white-owned firms to obtain business loans in their first year.¹⁷⁷ When Black-owned businesses do receive loans, those loans are typically smaller than those white-owned businesses receive. The average Black-owned business receives \$35,205 in startup capital during its first year, while the average white-owned firm receives \$106,720.¹⁷⁸

Racial disparities in access to capital continue after the first year. According to the Federal Reserve, 80.2% of white business owners in the U.S. receive at least a percentage of the funding they request from a bank, compared to 66.4% of minority business owners.¹⁷⁹ Additionally, Black business owners are given loans with higher interest rates, and these disparities remain even when controlling for creditworthiness.¹⁸⁰

168 Alicia M. Robb and Robert W. Fairlie, *Access to Financial Capital among U.S. Businesses: The Case of African American Firms* (2007) <https://journals.sagepub.com/doi/abs/10.1177/0002716207303578?journalCode=anna>.

169 *Id.*

170 *Id.*

171 *Id.*

172 Connor Maxwell et al., Center for American Progress, *A Blueprint for Revamping the Minority Business Development Agency* (2020) <https://www.americanprogress.org/issues/race/reports/2020/07/31/488423/blueprint-revamping-minority-business-development-agency/>.

173 Start Us Up, *supra* note 122.

174 Robb & Fairlie, *supra* note 168.

175 Maxwell et al., *supra* note 172.

176 *Id.*

177 *Id.*

178 *Id.*

179 Eric Goldschein, Nerd Wallet, *Racial Funding Gap Shows Black Business Owners Are Shut Out From Accessing Capital* (2021) <https://www.fundera.com/blog/racial-funding-gap>.

180 *Id.*

In addition to the barriers explained above, Black loan applicants often receive differing treatment from potential lenders than white applicants. One audit found that minority applicants for bank loans were more often asked to show various documents and were also less likely to be offered assistance in filling out loan applications.¹⁸¹ Perhaps because of unequal treatment by banks, according to the Federal Reserve, 37.9% of Black business owners said that their main reason for not applying for a loan was that they believed they would be rejected.¹⁸²

These barriers conspire to keep Black businesses out of the marketplace—Black Americans own less than 2% of small businesses with employees, despite making up 13% of the U.S. population.¹⁸³ In contrast, white Americans own 82% of small businesses with employees despite making up 60% of the U.S. population.¹⁸⁴ This lack of access to capital hurts Black business owners in other ways as well. For example, Virginia localities where less than 20% of residents were Black received 23% more capital in Paycheck Protection Program loans than localities with higher percentages of Black residents.¹⁸⁵

Community Development Financial Institutions (CDFIs) are one way to combat discriminatory practices and make capital more accessible to minority entrepreneurs. CDFIs are specialized community-based financial institutions with a primary mission to promote economic development by providing financial products and services to people and communities underserved by traditional financial institutions, particularly in low-income communities. Virginia is working to make strides in this area: the 2021 Budget Bill provided \$10 million for the establishment of a CDFI fund to be administered by the Department of Housing and Community Development.

RECOMMENDATION 1: CONTINUE TO SUPPORT VIRGINIA'S NEW CDFI FUND.

Mission-driven small business funds aim to fill in gaps in access to capital by providing low-cost financing solutions and support for entrepreneurs.¹⁸⁶ CDFIs are specialized financial institutions that serve low-income communities and are, in many ways, designed to respond to some of the barriers that people of color face when trying to access capital.¹⁸⁷ With the potential for having multiple funding streams, and using some of these funds to mitigate risk, they typically have more flexible underwriting criteria than other financial institutions, such as more lenient collateral requirements and lower credit score thresholds.¹⁸⁸ They are also more likely than typical financial institutions to make small-dollar loans to small businesses; to provide outreach, coaching, and other kinds of support for potential borrowers; and to establish programs (usually with federal support) to target woman- and minority-owned businesses.¹⁸⁹ Grant subsidies and entrepreneur support programs mitigate the increased risks that these funds take by lending to people with lower levels of wealth and lower credit scores.¹⁹⁰

181 Goldschein, *supra* note 179.

182 *Id.*

183 Maxwell et al., *supra* note 172.

184 *Id.*

185 Connor Scribner, VPM, *Virginia Doubles-Down on PPP, Potentially Harming Black-Owned Businesses* (2021) <https://vpm.org/news/articles/20741/virginia-doubles-down-on-ppp-potentially-harming-Black-owned-businesses>.

186 Boston Indicators, *The Color of the Capital Gap* (2021) <https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/capitalgap052020211458.pdf?la=en>.

187 *Id.*

188 *Id.*

189 *Id.*

190 *Id.*

During the 2021 Virginia General Assembly Session, the legislature authorized \$10,000,000 in one-time funding to be managed by the Department of Housing and Community Development to support the work of CDFIs. While there may be further policy proposals in the future, for now the Commission endorses the continued support of this fund.

RECOMMENDATION 2: DEVELOP STATE ENTREPRENEURIAL CATALYST GRANTS.¹⁹¹

In addition to supporting the work of CDFIs, Virginia could develop funding streams to promote entrepreneurship and support new businesses. There are several models for funding streams that could benefit entrepreneurs of color in Virginia. “Evergreen community investment funds,” such as MassVentures in Massachusetts and JumpStart Evergreen Fund in Ohio, can support new businesses in their early stages of proof-of-concept and product development.¹⁹² Collaborative investment funds, such as Cintrifuse in Cincinnati and Renaissance Venture Capital in Michigan, can engage established businesses to work with new businesses for joint product development and supplier relationships.¹⁹³ Virginia could create a funding stream by establishing a quasi-public corporation and requesting a grant from the U.S. Department of Commerce to fund the corporation, as the Commonwealth of Massachusetts did when it established MassVentures.¹⁹⁴

While these funding strategies are somewhat similar to CDFIs the goals of “Evergreen community investment funds” and collaborative investment funds differ somewhat from those of CDFIs because these organizations aim to support new businesses rather than low-income communities specifically. Therefore, developing Entrepreneurial Catalyst Grants could supplement, but not replace, efforts to support the new CDFI fund in Virginia.

RECOMMENDATION 3: ENACT A TRUTH-IN-LENDING LAW TO PROTECT SMALL BUSINESSES.

The protections that the federal Truth-in-Lending Act provides generally do not apply to small business owners or entrepreneurs obtaining credit for commercial purposes.¹⁹⁵ Because entrepreneurs of color are less likely to receive funding from traditional capital markets, they are especially vulnerable to predatory lending.¹⁹⁶ Therefore, Virginia should apply consumer truth-in-lending rules to new and small business borrowers so that there is greater transparency in lending. One example that could aid Virginia in developing its own truth-in-lending law is California’s Truth in Lending Act for small businesses, enacted in 2018.¹⁹⁷ This act requires lenders to disclose the total amount of financing, total cost of financing, term length, frequency and amount of payments, prepayment policies, and annual interest rate at the time of financing.¹⁹⁸ The Responsible Business Lending Coalition estimated that this act would save California small businesses \$617 million to \$2.9 billion annually.¹⁹⁹ Another example is New York’s Small Business Truth in Lending Act, enacted in December 2020, which requires disclosure of annual percentage rate (APR) or estimated APR.²⁰⁰

191 Start Us Up, *supra* note 122.

192 Start Us Up, *supra* note 122.

193 *Id.*

194 MassVentures, *History of MassVentures*, <https://www.mass-ventures.com/history>; Start Us Up, *supra* note 122.

195 Start Us Up, *supra* note 122.

196 *Id.*

197 *Id.*

198 *Id.*

199 *Id.*

200 *Id.*

TAX ASSESSMENTS

Due to years of discrimination, redlining, unfair lending practices, and other overt and covert barriers, families of color are less likely to own homes than white families. As homeownership is a key strategy for building wealth in this country, this lack of homeownership perpetuates racial disparities when it comes to economic opportunity.

Recent scholarship and news reporting has also highlighted that even when Black families own homes the disparate treatment does not end. Specifically, this research and reporting argues that homeowners of color have higher assessment/sales ratios on their homes than white homeowners.²⁰¹ The higher assessment/sales ratio could be caused by over-valuing homes owned by people of color at the assessment stage or by under-valuing those homes at the sales stage. The result of this is that homeowners of color are paying a higher property tax burden in proportion to the value of their homes than white homeowners, further cutting into the wealth those families are trying to build.

The following recommendations suggest ways in which the Commonwealth could better ensure equitable assessments and opportunities for individuals to appeal their initial assessment.

NAME OF TENANT ASSESSED	LOCATION AND DESCRIPTION OF LAND	STATE TAXES, ETC.		COUNTY AND DISTRICT TAXES, DELINQUENT		REASON FOR IMPROPER ASSESSMENT
		Year	Amount	Year	Amount	
1. R. B. Williams	Springfield	1924	120	1924	100	Improperly assessed
2. J. B. Williams	Springfield	1924	100	1924	100	Improperly assessed
3. J. B. Williams	Springfield	1924	100	1924	100	Improperly assessed
4. J. B. Williams	Springfield	1924	100	1924	100	Improperly assessed
5. J. B. Williams	Springfield	1924	100	1924	100	Improperly assessed

*Improper Assessment of Lands, Dinwiddie County (White), 1924.
From the State Government Records Collection of the Library of Virginia.*

NAME OF TENANT ASSESSED	LOCATION AND DESCRIPTION OF LAND	NUMBER OF ACRES	STATE TAXES, ETC.		COUNTY AND DISTRICT TAXES, DELINQUENT		REASON FOR IMPROPER ASSESSMENT
			Year	Amount	Year	Amount	
1. J. B. Williams	Springfield	10	1924	100	1924	100	Improperly assessed
2. J. B. Williams	Springfield	10	1924	100	1924	100	Improperly assessed
3. J. B. Williams	Springfield	10	1924	100	1924	100	Improperly assessed
4. J. B. Williams	Springfield	10	1924	100	1924	100	Improperly assessed
5. J. B. Williams	Springfield	10	1924	100	1924	100	Improperly assessed

*Improper Assessment of Lands, Dinwiddie County (Colored), 1924.
From the State Government Records Collection of the Library of Virginia.*

²⁰¹ See, e.g. <https://www.washingtonpost.com/business/2020/07/02/black-property-tax/> discussing the scholarship of Professors Troup Howard and Carlos Avenancio-Leon, specifically their paper, *The Assessment Gap: Racial Inequalities in Property Taxation*.

RECOMMENDATION 1: CODIFY A STATEWIDE RIGHT TO NOTICE OF RIGHT TO APPEAL PROPERTY TAX ASSESSMENT.

Add language to either § 58.1-3379 or § 58.1-3382 of the *Code of Virginia* mandating that accompanying each property tax assessment local governments must provide taxpayers with notice of their right to appeal in writing. This notice should include a description of the standards used to determine the assessment, the local appeals process and, next steps the taxpayer needs to take to pursue an appeal.

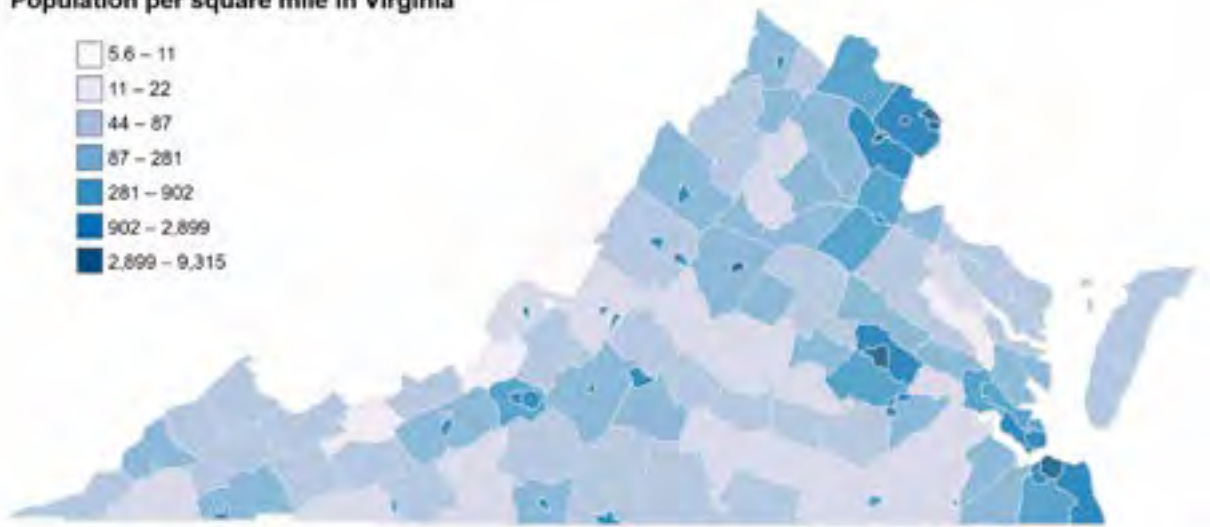
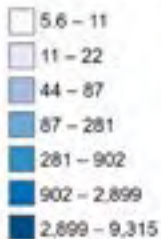
RECOMMENDATION 2: DIRECT THE DEPARTMENT OF TAXATION TO STUDY AND DEVELOP A PROPOSAL TO REQUIRE THAT ALL INDIVIDUALS WHO CONDUCT LOCAL PROPERTY TAX ASSESSMENTS RECEIVE STATE CERTIFICATION AND ONGOING RECERTIFICATION.

Virginia is one of only a few states that does not have statewide certification standards for local government property tax assessors. In order to ensure more effective, consistent, and equitable assessments across all jurisdictions, the Commonwealth, via the Department of Taxation, should create certification standards and training requirements. Legislation requiring the Department of Taxation to study this issue and develop such standards is a first step towards their eventual implementation and requirement.

Racial Disparities in Rural Communities

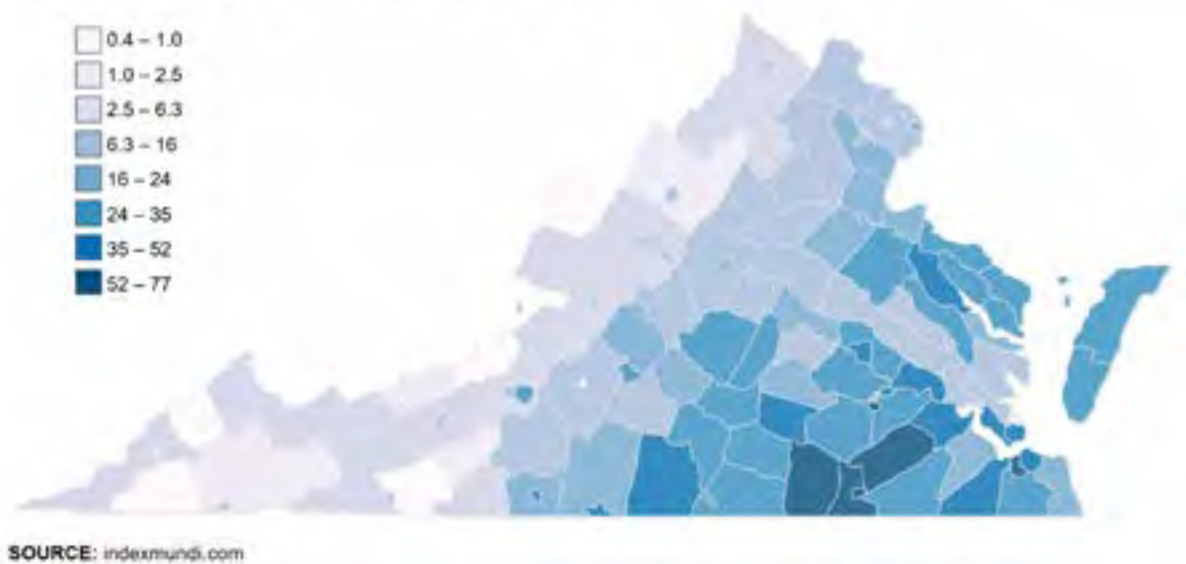
Reports of the Commission to Examine Racial Inequity in Virginia Law focused on people of color in Virginia generally, and did not consider how the challenges facing people of color in Virginia's rural communities might be different from those faced in urban communities. For that reason, this Commission decided to investigate the intersection of rural issues and race issues in the Commonwealth and propose solutions to disparities borne disproportionately by people of color in rural areas. The challenges discussed affect all rural residents, but disproportionately impact people of color in rural areas. Our hope is that these proposals will target the issues most affecting people of color, while also benefiting all rural Virginians.

Population per square mile in Virginia



SOURCE: indexmundi.com

Percentage of People of Color Per County in Virginia



To begin, it is worth pointing out that people experience higher rates of poverty in rural communities than urban communities, and nowhere is the poverty rate gap between rural and urban communities larger than in the South.²⁰² In Virginia, the non-rural poverty rate is 9.9% and the rural poverty rate is 15.4%.²⁰³ In rural communities, Virginians are 6% less likely to finish high school and 20% less likely to attain a bachelor's degree.²⁰⁴ Rural Virginia communities also have the oldest public school buildings and the schools most in need of repair.²⁰⁵ These rural populations are also more likely to not have health insurance.²⁰⁶

Further, Virginia is a national leader in the rural-urban mortality disparity, with rural mortality about 30% higher than urban mortality.²⁰⁷ Many areas in Virginia lack primary care doctors, let alone emergency and specialty services.²⁰⁸

In part due to lack of services, rural communities in Virginia are also more likely to detain arrestees pretrial than communities with more supports and alternatives to jail.²⁰⁹

202 USDA, *Rural Poverty and Wellbeing*, <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/>.

203 VDH, *Virginia Income and Poverty*, <https://www.vdh.virginia.gov/equity-at-a-glance/virginia/income-and-poverty/>.

204 Hereinafter, Commission Census Data. This is based on data from the 2015-2019 American Community Survey and the 2010 Census P2-Urban and Rural Table. Using the P2-Urban and Rural Table, I designated each census tract with more than 50% of its residents living in rural areas as rural, and all other census tracts as urban. We then gathered data on poverty, educational attainment, health insurance coverage, presence of a computer in the home, and unemployment from the American Community Survey for non-Hispanic white and Black Virginians by census tract. When referring to total or overall populations, the total is the combination of the white only and Black only data, it does not include all race groups.

205 Commission on School Construction and Engagement, *Needs and Conditions of Virginia School Buildings*, https://studies-virginiageneralassembly.s3.amazonaws.com/meeting_docs/documents/000/000/979/original/Needs_and_Conditions_of_Virginia_School_Buildings_6.3.21.pdf?1622733329.

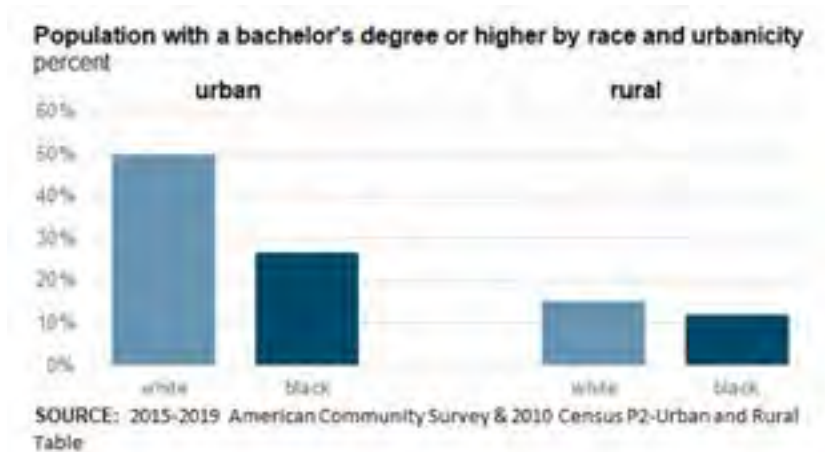
206 Commission Census Data. See also See Gordon Gong, et al, *Higher US Rural Mortality Rates Linked to Socioeconomic Status, Physician Shortages, and Lack of Health Insurance*, Health Affairs, December 2019 (discussing the factors contributing to the urban/rural mortality disparity including unequal health insurance coverage).

207 See Gordon Gong, et al, *Higher US Rural Mortality Rates Linked to Socioeconomic Status, Physician Shortages, and Lack of Health Insurance*, Health Affairs, December 2019.

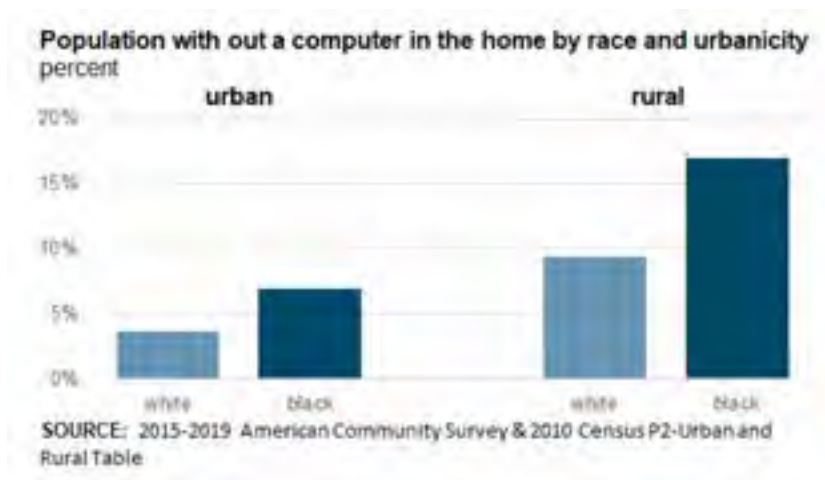
208 *Id.*

209 Vera, *Incarceration Trends in Virginia*, <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-virginia.pdf>.

The following data further illustrate the disparities between Black Virginians living in urban areas and Black Virginians living in rural areas.



Education: Both white and Black rural populations are less likely to finish high school than their urban counterparts, however there are worse outcomes in both regions for Black Virginians than for their white neighbors.



Infrastructure: As the COVID-19 pandemic illustrated, home internet access is more important than ever, yet many rural Virginians do not have access to a home computer, including nearly 1/5th of Black rural Virginians.²¹⁰

²¹⁰ Commission Census Data.

Figure 3: Maternity Care Deserts, By Virginia County, 2019



SOURCE: US HRSA, Area Health Resources Files, 2019 (<https://data.hrsa.gov/topics/health-workforce/ahrfl>).

Health: Many rural Virginians do not have access to healthcare providers. The image above illustrates one such gap. Many counties in Virginia either have “low access” to prenatal maternal care, or no access within the county.

All of these systemic factors intersect to make rural issues particularly complicated to address. Many of the issues are intertwined, reinforcing one another. For example, the lack of public transportation limits peoples’ mobility, but it also has profound effects on educational and employment opportunities, access to healthcare, and social cohesion. Similarly, the lack of access to quality broadband internet prevents people from applying to jobs, attending virtual learning, or receiving telehealth medicine. Solving these two issues would help in the short-term and over time, but they are altogether incomplete on their own.

Social Determinants of Health

While this section of the Report addresses various issues impacting Virginia’s rural communities with a particular focus on health, it is important to look at all the issues as having an interrelated impact on health outcomes, often described as social determinants of health. The Center for Disease Control and Prevention (CDC) has defined Social Determinants of Health as “conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes.”²¹¹ These include “economic stability, education access and quality, healthcare access and quality, neighborhood and built environment, and social and community context.”²¹²

Therefore, when we discuss education, transportation, food insecurity, poverty, access to the internet, and more below, it is helpful to think about the interdependent relationship and impact these areas of life have on health outcomes.

211 CDC, *About Social Determinants of Health*, <https://www.cdc.gov/socialdeterminants/about.html>

212 *Id.*



Left column, top to bottom: RAM Clinic, Wise Fairgrounds, Wise County, Va. July 25, 2008; RAM Clinic, Wise Fairgrounds, Wise County, Va. July 24, 2009; RAM Clinic, Wise Fairgrounds, Wise County, Va. July 24, 2009. Photographs courtesy of the State Government Records Collection of the Library of Virginia.

Right column, top to bottom: RAM Clinic, Wise Fairgrounds, Wise County, Va. July 25, 2008; RAM Clinic, Wise Fairgrounds, Wise County, Va. July 25, 2008. Photographs courtesy of the State Government Records Collection of the Library of Virginia.

Background

This Section addresses the disparate accessibility of basic commodities and services such as internet, electricity, food, and safe schools between rural and urban communities. In rural areas, delivery of basic utilities and commodities is more difficult due to the decentralized population. While the infrastructure disparity creates challenges for all rural populations, the problems are experienced most by people of color. The following recommendations would begin to uplift rural communities at large but would also help to close the gap between races in rural areas.

RECOMMENDATION 1: EXPAND BROADBAND INFRASTRUCTURE AND AFFORDABILITY IN RURAL COMMUNITIES.²¹³

Improving access to broadband internet is essential for reducing disparities between rural and urban populations. Rural communities have less internet yet, in some ways, need it more. For example, the drive to the doctor's office is much longer in rural areas than it is in urban centers, especially for specialized care. With better access to internet, people in rural communities could utilize telehealth to meet some of their care needs. High-speed internet is also required for distance learning. The need for high-speed internet is especially critical for children with special needs, who might not have the local offerings they need and can only access specialized services through distance learning. During a crisis like the current pandemic, the need for broadband is multiplied. In the state of Virginia, 83.9% of households have a broadband subscription at any speed.²¹⁴ But that number gets as low as 56.1% in Lunenburg County and 57.2% in Halifax County, and no Southside county gets above 75%.²¹⁵ Across the Commonwealth, Black households are 8% less likely to have access to internet than white households.²¹⁶ Still, Black households in rural areas are 10% more likely to not have a computer in the home than Black households in urban areas.²¹⁷ In addition to ensuring that broadband is available in rural areas, broadband must also be priced at an affordable point for rural citizens.

RECOMMENDATION 2: DEVELOP A RURAL STRATEGY AND BUDGET TO ADDRESS FOOD INSECURITY AND FOOD DESERTS.

The greatest food insecurity in Virginia is in the Southside and Southwest counties that are largely rural.²¹⁸ Food insecurity is associated with higher rates of obesity and diabetes as well as mood disorders and stress.²¹⁹ These problems can reinforce one another and lead to more serious health consequences.²²⁰ Problems related to access to nutritious food affect Virginians of color differently; the obesity rate for Black Virginians being 1.5 times higher than that for white Virginians.²²¹ The disparity in nutrition only exacerbates the differences in health, education, and economic outcomes between rural and urban communities.

²¹³ Although the Commonwealth is attempting to address this issue, see <https://www.governor.virginia.gov/newsroom/all-releases/2021/january/headline-891658-en.html>, we need to reach all rural communities as soon as possible.

²¹⁴ VDH, *Virginia Broadband Access*, <https://www.vdh.virginia.gov/equity-at-a-glance/virginia/virginia-broadband-access/>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Commission Census Data.

²¹⁸ Feeding America, *Food Insecurity in Virginia*, <https://map.feedingamerica.org/county/2018/overall/Virginia>.

²¹⁹ West Virginia Rural Health Research Center, *Patterns of Food Insecurity, Food Availability, and Health Outcomes among Rural and Urban Counties*, https://www.ruralhealthresearch.org/mirror/4/453/2010_halverson_final_report.pdf.

²²⁰ *Id.*

²²¹ Robert Wood Johnson Foundation, "Virginia State Obesity Data, Rates and Trends: The State of Obesity", <https://www.rwjf.org/en/library/articles-and-news/2010/06/new-report-adult-obesity-increases-in-28-states.html>

These problems are exacerbated by the decentralized population, lack of transportation, and overall poverty levels. And while there may be farms, getting food from those farms into the hands of people who need it is complicated for these reasons and others.

While Virginia has recently passed legislation to address food insecurity, a specific, and targeted strategy is required to address these problems in rural communities.²²²

RECOMMENDATION 3: RESTORE YEARLY FUNDS FOR SCHOOL CONSTRUCTION AND MAINTENANCE.

More than 50% of schools in the Commonwealth are more than 50 years old.²²³ The areas of the state with the oldest schools are also those with the highest poverty.²²⁴ Therefore, it is no surprise that Southside and Southwest counties, with their comparative lack of financial resources,²²⁵ have the oldest schools in the Commonwealth.²²⁶ Virginia made school construction grants until 2010, when the state eliminated them during the Great Recession budget cuts.²²⁷ Despite the economy's recovery, and despite ongoing attempts to reinstate the funding, these funds have remained unavailable. The Commonwealth must provide greater state support for local school construction, especially in districts with high rates of poverty.²²⁸

RECOMMENDATION 4: DIRECT JLARC TO CONDUCT A STUDY OF STATE/LOCAL FUNDING APPROACHES ACROSS ALL AREAS OF GOVERNMENT TO DETERMINE IMPACT ON SERVICE PROVISION IN RURAL COMMUNITIES.

From education to health to the Virginia Juvenile Community Crime Control Act to a range of other services, Virginia delivers a number of state services to local communities through a combination of state and local funding. Formulas for the ratio of state to local funding varies across service areas. Likewise, the delivery of such services and the ability to provide local funds, or to supplement these often baseline services, ranges greatly across communities. Given the many service gaps in rural Virginia, and the service disparities between rural communities and wealthier urban and suburban areas, the Governor and the General Assembly should direct the Joint Legislative Audit and Review Commission to conduct a wide-ranging study on the impact of these funding approaches to actual service delivery in rural communities and to make accompanying recommendations for necessary improvements.

222 Both Senate Bill 1188 (2021), allowing state reimbursement for farmers who donate produce to food banks, and Senate Bill 1073 (2020), addressing food deserts and expanding SNAP benefits, are helpful but are not targeted at the unique challenges of addressing these issues in rural communities.

223 Commission on School Construction and Modernization, *supra* note 205.

224 *Id.*

225 Commission on Local Government, *Fiscal Stress Report*, <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/fiscal-stress/fiscal-stress-report.pdf>.

226 *Id.*

227 Kate Masters, Virginia Mercury, *In the final days of session, funding school construction remains a budget debate* (2020), <https://www.virginiamercury.com/2020/03/06/in-the-final-days-of-session-funding-school-construction-is-still-a-budget-debate/>.

228 *Id.* See also <https://www.wdbj7.com/2020/12/29/fight-for-school-construction-funding-to-continue-in-general-assembly/>; <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+SBI109>.

Background

Disparities in poverty rates, as well as reduced access to medical services, including the lack of medical professionals, lead to a dramatic difference in health outcomes between urban and rural communities.²²⁹ Virginia, unfortunately, is a national leader in the rural-urban mortality disparity, with rural mortality about 30% higher than urban mortality.²³⁰ People in rural communities are less likely to have health insurance and access to medical services.²³¹

As discussed above, social determinants of health are factors like wealth, geography, and education that are correlated to health outcomes. To illustrate some of these social determinants, consider the following data about obesity. In Virginia, those without a high school diploma are 1.6 times more likely to be obese than those with a college degree.²³² Similarly, those who earn less than \$25,000 annually are more than 1.3 times more likely to be obese than those who earn more than \$75,000 annually.²³³ And, as noted above, Black Virginians are nearly 1.5 times more likely to be obese than white Virginians.²³⁴ To give another example, Black Virginians are more likely to be infected with COVID-19 and more likely to die from the disease than white Virginians.²³⁵ Therefore, any conversation about disparities between rural and urban populations in the Commonwealth should be viewed in the context of social determinants. Any conversation about health disparities is inevitably about race disparities as well.

RECOMMENDATION 1: SUPPORT AND REQUIRE SOCIAL DETERMINANT AND HEALTH OUTCOME REPORT CARDS AND PLANS.

Given the impact that social determinants can play in health outcomes in rural communities, it is important that each health district both report on these determinants and work with the communities they serve to develop comprehensive plans to address areas of need. It is important to note that VDH already maintains an interactive map that breaks down social determinants of health by locality. While this is a good start, the data is not presented in a centralized and connected way that shows the collective impact of the various determinants. The data is also not linked to plans to comprehensively address the areas of challenge. The state has recently allocated funds to hire local population health managers whose job it will be to conduct Community Health Assessments and begin addressing some of these areas, using the Virginia Plan for Well Being.

RECOMMENDATION 2: VDH SHOULD ISSUE ANNUAL REPORTS ON LOCAL HEALTH DEPARTMENT STAFFING.

During conversations with VDH district level staff, we heard concerns about staffing levels in local health department offices in rural communities. The Cooperative Health Department Program was established in 1954 to fund these positions using a combination of state and local funding based in

229 Gordon Gong, et al, *Higher US Rural Mortality Rates Linked to Socioeconomic Status, Physician Shortages, and Lack of Health Insurance*, Health Affairs, December 2019.

230 *Id.*

231 *Id.*

232 America's Health Rankings, *Annual Report*, <https://www.americashealthrankings.org/explore/annual/measure/Obesity/state/VA>.

233 *Id.*

234 *Id.*

235 VDH, *Covid-19 Data in Virginia*, <https://www.vdh.virginia.gov/coronavirus/covid-19-in-virginia-demographics/>.

part on local ability to pay. While funding formulas have changed over the years, including in 2021, they are still dependent on a local government’s ability and willingness to contribute the local match. Creating more transparency over local staffing levels will make it easier for local health departments and community members to identify their needs and state policy makers to understand the impact, and potential shortcomings, of the current funding approach.

RECOMMENDATION 3: EMPLOY AN “AT-RISK ADD-ON” FUNDING MODEL FOR VIRGINIA DEPARTMENT OF HEALTH DISTRICTS.

Virginia’s current Department of Education budget allows for the allocation of extra funds to “at-risk” schools with a higher population of low-income students. The state should consider adopting a similar program for health districts suffering from underfunding or understaffing. The state could designate an “at-risk” measure to identify those communities who might need additional state funds to recruit or retain staff, add staff due to the size and rural nature of the district, or address other critical health needs.

RECOMMENDATION 4: PROVIDE HEALTH DISTRICTS WITH POLICY STAFF.

Each health district in Virginia has distinct needs and varying local support. Providing regional health districts with an internal policy advocate could help to alleviate many problems. As part of their duties, such an analyst could also represent the health district’s needs to local officials. A dedicated policy analyst at either the district or regional level could generate recommendations for improving the delivery of health services to rural and underserved communities.

RECOMMENDATION 5: FULLY FUND THE VIRGINIA HEALTHCARE WORKFORCE DEVELOPMENT AUTHORITY AND THE AREA HEALTH EDUCATION CENTERS IT SUPPORTS.

The Virginia Health Workforce Development Authority (VHWDA) was established by the General Assembly to identify and address health workforce issues in the Commonwealth. Governed by a board that includes members of the legislative and executive branches, and other members of the Virginia citizenry as appointed by Governor, VHWDA’s mission “is to facilitate the development of a statewide health professions pipeline that identifies, educates, recruits, and retains a diverse, appropriately geographically distributed, and culturally competent quality workforce.”²³⁶

236 Va. Code § 32.1-122.7B. The full mission is as follows: “The mission of the Authority is accomplished by: (i) providing the state-wide infrastructure required for health workforce needs assessment and planning that maintains engagement by health professions training programs in decision making and program implementation; (ii) serving as the advisory board and setting priorities for the Virginia Area Health Education Centers Program; (iii) coordinating with and serving as a resource to relevant state, regional, and local entities, including the Department of Health Professions Workforce Data Center, the Joint Legislative Audit and Review Commission, the Joint Commission on Health Care, the Southwest Virginia Health Authority, or any similar regional health authority that may be developed; (iv) informing state and local policy development as it pertains to health care delivery, training, and education; (v) identifying and promoting evidence-based strategies for health workforce pipeline development and interdisciplinary health care service models, particularly those affecting rural and other underserved areas; (vi) supporting communities in their health workforce recruitment and retention efforts and developing partnerships and promoting models of participatory engagement with business and community-based and social organizations to foster integration of health care training and education; (vii) advocating for programs that will result in reducing the debt load of newly trained health professionals; (viii) identifying high priority target areas within each region of the Commonwealth and working toward health workforce development initiatives that improve health measurably in those areas; (ix) fostering or creating innovative health workforce development models that provide both health and economic benefits to the regions they serve; (x) developing strategies to increase diversity in the health workforce by examining demographic data on race and ethnicity in training programs and health professional licensure; (xi) identifying ways to leverage technology to increase access to health workforce training and health care delivery; and (xii) developing a centralized health care careers roadmap in partnership with the Department of Health Professions that includes information on both licensed and unlicensed professions and that is disseminated to the Commonwealth’s health care workforce stakeholders to raise awareness about available career pathways.

One of the core responsibilities of the VHWDA is to facilitate the development of successful Area Health Education Centers (AHEC's) which, among other focuses, are tasked with developing health workforce pipelines. Leaders from both the VHWDA and the Virginia Rural Health Association identified AHEC's as an important tool for "growing" a local healthcare workforce.

Other important potential functions of the VHWDA include data collection and analysis and the development of strategies to both diversify the healthcare workforce (an area of need that the Commission has previously identified) and provide trainings through the AHEC's on racial equity, diversity, and bias.

Despite these important functions, all of which are particularly critical when thinking about the challenges facing rural communities, the VHWDA has limited staffing and receives no state funding. Instead, it relies on federal and private grants to support its work, including the funding of the AHEC's. This is compared to North Carolina, for example, which provides an annual budget in excess of \$50,000,000 in state support for its AHECs, or South Carolina which, while funding at a lower level than North Carolina, provided more than \$11,000,000 for the state's AHEC program.²³⁷

Given the numerous reports and studies documenting Virginia's healthcare workforce challenges, and the particular difficulties of staffing healthcare positions in rural Virginia, funding the Authority in a way to allow it to fulfill its statutorily defined mission and priorities would both support the work of VDH, and make it more likely that rural communities can receive the medical services they so desperately require.

RECOMMENDATION 6: PROVIDE ADDITIONAL FINANCIAL INCENTIVES FOR HEALTH PROVIDERS TO WORK IN RURAL COMMUNITIES.

The shortage of physicians is growing in rural areas faster than urban areas.²³⁸ Many of Virginia's rural communities are federally designated Health Professional Shortage Areas.²³⁹ The shortage of doctors is not limited to primary care; rural communities often go without a local dentist or mental health provider as well. Indeed, there are many Virginia counties without a single OB/GYN.²⁴⁰ People in rural areas already must travel farther to get to a doctor with less access to public transportation, but fewer doctors means these trips get even longer, especially for specialty care. Doctor shortages may lead to avoidable emergency room visits.²⁴¹

In addition to the "Grow Your Own" efforts supported by the AHECs, it is recommended that Virginia do more to provide financial incentives for health care workers to live and work in rural communities. This could include loan repayment efforts, scholarships, or other strategies.

237 See Appendix 1, 2020 South Carolina AHEC Report.

238 *Id.*

239 HRSA, Health Professional Shortage Area Find Tool, <https://data.hrsa.gov/tools/shortage-area/hpsa-find>.

240 See HRSA, *Area Health Resources File*, <https://data.hrsa.gov/topics/health-workforce/ahrf> and filter the results by Virginia and Obstetrics and Gynecology.

241 See VHI, *Avoidable Emergency Department Visit*, <https://www.vhi.org/Hospitals/avoidable-ed-visits.asp> indicating higher levels of avoidable ER visits in Southern Virginia.

RECOMMENDATION 7: CREATE STATE SUPPORTED PIPELINES FOR MEDICAL STUDENTS, AND MEDICAL RESIDENTS TO WORK IN RURAL AREAS.

Another approach to direct medical practitioners to rural communities is to create residency opportunities in those communities. Students who come from underserved communities and students who work in those communities as part of their medical education are more likely to then practice in those communities.²⁴² Therefore, Virginia should do as much as it can to target students who are interested in practicing medicine in rural areas and create programs that give them hands-on experience serving those communities in medical school. University of California Davis has had such a program since 2007 and it allows the school to take an applicant's rural experience into consideration in the admissions process and put interested students into residencies in rural areas.²⁴³

Virginia funds very few rural medical residencies (one estimate was 8, while another stakeholder said the actual number was 16) and reportedly few, if any, of these are in Southside Virginia. In addition to programs like the one at UC Davis, South Carolina provides another model for Virginia to consider. Specifically, South Carolina uses state funding to support hundreds of medical residencies each year, including many in rural communities.

RECOMMENDATION 8: FUND AND/OR INCENTIVIZE THE OPENING OF MORE BIRTHING CENTERS IN RURAL HOSPITALS.

In Virginia, Black women are 300% more likely to die in childbirth than white women.²⁴⁴ These disparities in conjunction with other disparities and challenges facing women in rural communities conspire to put new mothers of color at risk when it comes to maternal health. According to input received from the Virginia Rural Health Association, the shortage of maternal health services, the distances that many women need to travel to receive them, and the lack of early and effective education for young women all contribute to health outcome disparities for rural women generally, and rural women of color, in particular.

According to some stakeholders, many hospitals serving rural areas in Virginia have cut their maternity and birthing programs, or closed altogether. The Commonwealth should work with these hospitals and other providers to establish or reestablish these programs.

RECOMMENDATION 9: PROVIDE STATE FUNDING TO SUPPORT TRAINING AND LICENSING FOR DOULAS IN RURAL COMMUNITIES.

Virginia recently authorized the state Medicaid program to cover Doula services.²⁴⁵ In Virginia, a doula is defined as “(a) trained, community-based nonmedical professional who provides continuous physical, emotional, and informational support to a pregnant person during the antepartum or

242 NCBI, *Predictors of Primary Care Physician Practice Location in Underserved Urban and Rural Areas in the United States: A Systematic Literature Review*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5007145/>.

243 UC Davis, *Medical school training program is transforming health care in California*, <https://health.ucdavis.edu/health-news/newsroom/medical-school-training-program-is-transforming-health-care-in-california/2019/11>. Many graduates of this program are practicing in underserved communities, but the program is small, and we were not able to find any data as to the effectiveness of the program in reducing Health Professional Shortage Areas in California.

244 See, e.g., *When Childbirth is Deadly*, Eastern Virginia Medical School's online magazine, (2018-2019), https://www.evms.edu/about_evms/administrative_offices/marketing_communications/publications/is_sue_11_2/feature_when_childbirth_is_deadly/.

245 See, for example, the proposed VDH regulations providing for the certification and licensure of Doulas, <http://register.dls.virginia.gov/details.aspx?id=9636>.

intrapartum period or during the period up to one year postpartum.”²⁴⁶ Research has shown that doula services can help produce better maternal and infant health outcomes, including among women of color.²⁴⁷

Unfortunately, such services are not widely available. In order to cultivate the necessary workforce in rural communities, Virginia should make state-funded grants available for community health organizations to provide scholarships and training for people to meet the necessary education and meet the newly established state licensure and certification requirements.

CRIMINAL JUSTICE

Background

The Commission has reported on the disproportionate impact the Virginia criminal justice system has on people of color and made numerous accompanying policy recommendations.²⁴⁸ However, there are ways in which rural communities of color are at even greater risk than Virginians of color at large. Since 2000, the pretrial incarceration rate has increased 99% in Virginia’s rural counties while the rate decreased by 40% in the state’s urban counties.²⁴⁹ The highest increase in pretrial incarceration was in Brunswick County, which is predominantly Black.²⁵⁰ According to the Vera Institute, Virginia ranks number one in the country for pretrial incarceration rate.²⁵¹ This is incarceration of people who have not been convicted of a crime and are awaiting trial. Various studies have shown that being detained prior to trial makes one more likely to plead guilty and more likely to be convicted.²⁵²

RECOMMENDATION 1: EXPAND AFFORDABLE PRETRIAL SERVICES OFFERINGS IN RURAL AREAS.

One way to reduce the pretrial incarceration rate is to expand pretrial services. Efforts have been made on this point.²⁵³ Still, there are some localities which do not have pretrial services.²⁵⁴ Urban areas have been able to lessen their pretrial populations because they have more funding.²⁵⁵ The Commonwealth should step in to provide these resources when localities are not able to. Accidents of geography should not be a determinant of trial outcomes. In addition to making sure every locality has pretrial services, workload assessments should be conducted to ensure that staffing needs are being met.²⁵⁶ Pretrial release is often granted under the condition that the released party will seek substance abuse treatment, and those services are also scarcer in rural areas.

246 Va. Code § 32.1-77.1.A

247 *Id.*

248 See The Commission to Examine Racial Inequity in Virginia Law, *2020 Commission Report*, <https://www.governor.virginia.gov/media/governorviriniagov/governor-of-virginia/pdf/2020-Commission-Report---Inequity-and-Inequality-in-Virginia-Law.pdf>.

249 Incarceration Trends in Virginia, *Vera*, <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-virginia.pdf>.

250 *Id.*

251 *Id.*

252 *Id.*

253 VDCJS, Governor Northam Announces More Than \$135 Million in Grants to State and Local Criminal Justice Programs, <https://www.dcjs.virginia.gov/news/governor-northam-announces-more-135-million-grants-state-and-local>.

254 VDCJS, *Report on Pretrial Services*, <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/report-pretrial-services-fy2020.pdf>.

255 VPR, *Urban-Rural Divide: Examining Incarceration Rates at Rural Jails Across Virginia*, <https://www.wvtf.org/post/urban-rural-divide-examining-incarceration-rates-rural-jails-across-virginia#stream/0>.

256 See JMI, *Getting to the Right Caseload in Pretrial and Probation*, <https://www.jmijustice.org/blog/caseload-pretrial-probation/>.

RECOMMENDATION 2: IMPROVE ACCESS TO AFFORDABLE SUBSTANCE ABUSE COUNSELING IN RURAL AREAS.

Rural substance abuse counselors face unique challenges because of their spread-out client base. These counselors cannot offer the level of specialized treatment that urban counselors can, such as tailored treatment for women, HIV-positive people, or people of color.²⁵⁷ In order for judges to defer offenders to treatment instead of incarceration, there needs to be local treatment options available. A successful intervention would help to grow resources and build trust in rural communities.

EDUCATION

Background

The achievement gap in education between race groups in Virginia is well documented in reports of the prior Commission.²⁵⁸ However, educational attainment is lower in rural areas than urban areas as well, with rural adults being less likely to have earned a high school diploma and a bachelor's degree.²⁵⁹ 12.7% of Black Virginians in rural communities have a Bachelor's degree compared to 26.8% of urban Black Virginians and 25.3% of rural white Virginians.²⁶⁰ 22.8% of rural Black Virginians have not attained a high school diploma compared to 12.2% of urban Black Virginians and 12.2% of rural white Virginians.²⁶¹ The following recommendations address some of the contributing factors to these disparities.

RECOMMENDATION 1: CREATE MORE FINANCIAL INCENTIVES FOR TEACHERS TO WORK IN RURAL COMMUNITIES.

Better qualified teachers could help to close the achievement gap in rural schools. Teachers are not incentivized to work in these schools, and the state could issue tax credits to qualifying teachers to make teaching in a rural community more attractive. This could come in the form of a refundable tax credit for teachers at schools with a certain poverty threshold. This might give a disproportional boost to rural schools because whatever the value of the tax credit, it likely goes farther in a rural area where cost of living is lower.²⁶² Georgia has implemented a tax credit targeting rural schools and low-performing schools.²⁶³ Studies have shown that small financial incentives can reduce teacher turnover.²⁶⁴

RECOMMENDATION 2: DEDICATE STATE FUNDS TO BOLSTER RURAL SCHOOL DISTRICT OFFERINGS FOR STUDENTS WITH SPECIALIZED NEEDS.

Schools in rural areas struggle to meet the specialized needs of some students. English Language Learners, students with disabilities, and students identified as gifted and talented are often not

257 NCBI, *Barriers to Substance Abuse Treatment in Rural and Urban Communities: A Counselor Perspective*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3995852/>.

258 See Virginia's Commission to Examine Racial Inequity in Virginia Law, *supra* note 3.

259 USDA, *Rural Education at a Glance*, <https://www.ers.usda.gov/webdocs/publications/83078/eib-171.pdf>.

260 See Virginia's Commission to Examine Racial Inequity in Virginia Law, *supra* note 3.

261 See *Id.*

262 Brookings Institute, *Tax credits can help high-poverty schools attract more teachers*, <https://www.brookings.edu/blog/brown-center-chalkboard/2018/07/30/tax-credits-can-help-high-poverty-schools-attract-more-teachers/>.

263 AP News, *Senate approves \$3,000-a-year credit for some teaching posts*, <https://apnews.com/article/georgia-legislation-education-bills-aa4e5228054d2e9631d9a0e7e4be66f7>.

264 See Brookings Institute, *supra* note 262.

adequately served because of challenges in recruiting and retaining staff in the face of limited resources.²⁶⁵ It is hard for rural school districts to attract qualified teachers, possibly because many prefer to live in metropolitan areas,²⁶⁶ and possibly because teachers want to work in school districts that have the resources to support them. On top of having fewer resources available for students with special needs, children in rural areas are diagnosed with developmental disabilities, like ADHD and autism, at higher rates than students in urban areas.²⁶⁷ Distance learning could be leveraged for individual students whose schools are unable to offer the programming they need.

265 Building State Capacity and Productivity Center, *How States Can Help Rural LEAs Meet the Needs of Special Populations*, <http://www.bscpcenter.org/resources/publications/HowStatesCanHelpRuralLEAsMeettheNeedsofSpecialPopulations.pdf>.

266 Masters in Special Education Program Guide, *How do Special Education Programs Differ in Rural and Urban Schools?*, <https://www.masters-in-special-education.com/faq/how-do-special-education-programs-differ-in-rural-and-urban-schools/>.

267 Us News, *Study: Rural Children Are More Likely to Have a Developmental Disability*, <https://www.usnews.com/news/healthiest-communities/articles/2020-02-19/rural-children-more-likely-to-have-developmental-disability> (citing a CDC study).

Conservation Equity

Currently, much of the state funding for land conservation flows to a relatively small share of mostly white Virginians. In order to make this funding more equitable, Virginia needs to provide additional resources for the conservation of lands that are of particular historical or cultural value to communities of color. Virginia uses a combination of grants and tax credits to provide financial incentives for land conservation. Conversely, tax credits allow landowners to receive a credit on their state taxes for land that they donate or that they continue to own but put under easement to prevent future development. Virginia's tax credit program, the Land Preservation Tax Credit, is vastly larger than the grant programs, which means that most land conservation incentives are being given to individuals and corporations for private land conservation. In order to increase equity in conservation funding, we make recommendations aimed at both increasing the number of minority landowners participating in the tax credit program and directing grant funding to projects that benefit communities of color.

The recommendations below address three of the main sources of funding for land conservation that currently exist in Virginia:

- The Land Preservation Tax Credit (LPTC) provides tax credits equal to a portion of the value of a donated property or easement. LPTC is the largest source of funds for land conservation, consuming 95% of the funding allocated to the four programs.
- Virginia Land Conservation Fund (VLCF) grants are established by statute and funded through annual appropriations. VLCF grants are divided evenly across funding categories: farmlands and forest preservation; historic area preservation; natural area protection; and open spaces and parks
- Virginia Outdoors Foundation Preservation Trust Fund (PTF) grants receive 25% of the VLCF appropriation each year. The fund is established by statute, but it does not have statutory restrictions on how the funds are spent.

In the course of our research, we consulted with a representative of several Virginia Tribes. Seven Virginia Indian Tribes have received federal recognition in the past five years, which affirms their Tribal sovereignty and requires re-tooling of their relationships with the Commonwealth. Some of our recommendations reflect the needs and priorities that were expressed to us.

Virginia's United Land Trusts (VaULT) and the Virginia Outdoors Foundation also circulated Policy Ideas for Improving Equity in Virginia's Conservation Programs to the Commission. We think that these proposals are consistent with the goals of increasing equity in conservation funding and deserve the Commission's support. The Commission voted to support these recommendations and they are attached as Appendix II of this report. We have attempted to call attention to where our enumerated recommendations below are substantially similar to the recommendations in the Appendix.

RECOMMENDATION 1: ADD TRIBAL GOVERNMENTS TO THE LIST OF PUBLIC BODIES ELIGIBLE TO RECEIVE VIRGINIA LAND CONSERVATION FUND GRANTS.

Tribal governments are only eligible recipients for one type of funding: the Preservation Trust Fund grants from the Virginia Outdoors Foundation. Restoring a tribal land base sufficient for cultural and economic sustainability is a priority among Virginia's Tribes, but Tribal governments are shut out from access to grants from the Virginia Land Conservation Fund (VLCF) because the language defining eligibility does not include tribal governments as eligible bodies to receive such grants. Specifically, the language in §10.1-1020 of the Code of Virginia currently reads: "Providing grants to state agencies, including the Virginia Outdoors Foundation, and matching grants to other public bodies and holders for acquiring fee simple title or other rights..." A "public body" eligible to receive funds includes certain state agencies; any county or municipality; any park, public recreational facilities, or community development authority; and any soil and water conservation district but does not include tribal governments. Similarly, "holder" is defined as a nonprofit charitable corporation, association, or trust, and thus excludes Tribal government easement holders.²⁶⁸

Given the history in Virginia of land dispossession and other violations of tribal sovereignty, amending relevant code provisions to make tribal governments eligible to receive VLCF grants for purposes of historic preservation and land acquisition would be a small, but important, step towards righting these historic wrongs and treating them like other public bodies when it comes to funding eligibility.

This recommendation is in line with the VaULT recommendation to create a Virginia Tribal Land Program. A new program may have further reach and be a valuable addition to this recommended recognition of tribal sovereignty.

RECOMMENDATION 2: PRIORITIZE THE PRESERVATION OF SMALL, MINORITY-OWNED FARMS AND RESTORATION OF TRIBAL LANDS BY MODIFYING THE APPLICATION SCORING CRITERIA FOR THE VIRGINIA LAND CONSERVATION FUND.

The LPTC has been successful in conserving farmland throughout the Commonwealth. However, families with limited resources have a lower tax burden, and may qualify for other substantial tax credits that already exceed the tax they owe.²⁶⁹ Therefore, these families receive comparatively little benefit from tax credits. Instead, compensation for the development rights surrendered by putting land under easement provides landowners with more immediate income and can be a stronger incentive for preservation. Grants can provide this compensation and can cover additional costs such as surveying the property, recording the easement, and legal costs to resolve heirs property issues. However, the way that the Board of the VLCF awards grants, specifically the grant scoring criteria, disadvantages families with fewer resources and smaller properties.

Discretion to set grant scoring criteria is given to the Board of the VLCF by statute.²⁷⁰ Their current criteria, however, prioritizes large parcels of land and parcels that are adjacent to other parcels already under conservation easement.²⁷¹ This approach often excludes Black and minority owned farms from consideration for grant funding. The average size of Black-owned farms in the United

268 Va. Code § 10.1-1009.

269 Urban-Brookings Tax Policy Center, *Briefing Book 276* (2020), <https://www.taxpolicycenter.org/briefing-book>.

270 Va. Code § 10.1-1020 (A)(2).

271 Virginia Land Conservation Foundation, *June 2021 Grant Manual 18*, <https://www.dcr.virginia.gov/virginia-land-conservation-foundation/document/VLCF-FY22-Grant-Manual.pdf>. [hereinafter Grant Manual].

States is 132 acres and 80% of Black-owned farms have less than 180 acres.²⁷² In minority communities where trust in government may often be low, there may not yet be any conserved land, perpetually denying these points to projects in the community. Furthermore, in the “additional scoring criteria” section, more points are awarded based upon how open the property is to the public.²⁷³ Open public access may be inappropriate for a working family farm.

Changes to grant scoring criteria also have the potential to aid Virginia’s Tribes in reacquiring ancestral lands and building a tribal land base. Because Tribes are starting with virtually no conserved lands, it disadvantages them to give more preference to areas where nearby easements are already in place. Furthermore, open access may not be appropriate for certain tribal lands with sacred associations or private uses.

Accordingly, we recommend that the Board modify the current scoring criteria to recognize the special nature of small, minority-owned farms and places significant to Tribes. This will allow applications for conservation of these lands to better compete for funding. These small parcels are disadvantaged in the current VLCF grant scoring criteria for farmland, which awards more points to larger parcels.

This recommendation is aimed at a similar goal as the VaULT recommendations to provide funding to agencies to work with owners of smaller tracts, to create an African American Land Retention Program, and to create a Virginia Tribal Land Program. The VaULT recommendation to explore making the LPTC refundable for certain taxpayers provides an alternative but complementary course of action.

RECOMMENDATION 3(A): INCREASE DEVELOPMENT OF AND ACCESS TO URBAN GREENSPACE BY MODIFYING THE APPLICATION SCORING CRITERIA AND ADDING CATEGORIES OF ELIGIBLE FUNDING FOR THE VIRGINIA LAND CONSERVATION FUND.

One of the legacies of structural racism in this country, and in Virginia, is the racially disparate access to greenspace. Nationwide, parks that are located in majority nonwhite neighborhoods are half the size of parks in majority white neighborhoods and are six times more crowded.²⁷⁴ Urban heat islands occur when natural land cover is replaced with impervious, heat-retaining materials like concrete and pavement. Research shows that extreme urban heat follows patterns of historic racism, with formerly redlined areas having surface temperatures as much as 7°C higher than nearby, non-redlined areas.²⁷⁵

Conversely, parks mitigate urban heat islands: areas within a 10-minute walk of a park can be up to 3°C cooler than areas further away, due to the cooling effects of shade and the evapotranspiration of the trees and grasses in the park.²⁷⁶ Park access can also reduce childhood obesity, improve mental wellbeing, and improve the lives of nearby residents.²⁷⁷

272 U.S. Dept. of Agriculture, *2017 Census of Agriculture: Black Producers*, https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Black_Producers.pdf.

273 Grant Manual, *supra* note 272, at 24.

274 The Trust For Public Land, *The Heat is On 3* (2020), <https://www.tpl.org/the-heat-is-on>.

275 Jeffery Hoffman et al., *The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas*, *Climate* (2020), <https://doi.org/10.3390/cli8010012>.

276 The Trust For Public Land, *supra* note 275, at 5-6.

277 Matt Eldridge et al., The Urban Institute, *Investing in Equitable Urban Park Systems: Emerging Funding Strategies and Tools 2* (2019), <https://www.urban.org/research/publication/investing-equitable-urban-park-systems>.

In Virginia, these problems are compounded, in part, by the lack of public funding available to develop or preserve urban greenspace. Virginia's four major land conservation funds largely focus on protecting large, open-space swaths of land. While the Preservation Trust Fund is the most available source of funds for urban greenspace projects,²⁷⁸ changes to the VLCF grant categories and criteria could make VLCF funds more available to such projects.

Projects that benefit underserved communities can be awarded up to ten points in the “additional scoring criteria” portion of VLCF grant applications.²⁷⁹ However, projects can earn a similar number of points for projects that address two or more ConserveVirginia categories, and by protecting fish and wildlife habitat—goals that a neighborhood park may be less likely to achieve. Projects are also awarded substantial points by being adjacent to other conserved land, further putting urban parks at a disadvantage in the scoring criteria.

Grant scoring criteria are established by the Board of the VLCF.²⁸⁰ Therefore, this is a change that can be made without the need for legislative action. The Board should modify the scoring criteria to recognize the unique benefits urban greenspace projects bring compared to more traditional land conservation. Changes could include increasing the number of points that are awarded to projects that benefit underserved communities and awarding points based on the number of Virginians expected to visit or benefit from the project each year.

Care should be taken when investing in green infrastructure to ensure that residents are not displaced by “green gentrification.”²⁸¹ Scoring criteria could further incentivize community participation in the project planning process to ensure that the needs of the surrounding neighborhood are met.

This recommendation is aimed at a similar goal as the VaULT recommendations to increase the share of funding in the Parks and Open Space funding category of the VLCF grants and to codify and fund the Get Outdoors Fund. This recommendation would be enhanced by VaULT's proposed expansion of the Urban and Community Forestry Program.

RECOMMENDATION 3(B): INCREASE DEVELOPMENT OF AND ACCESS TO URBAN GREENSPACE BY ADDING A NEW FUNDING CATEGORY TO THE VIRGINIA LAND CONSERVATION FUND THAT PRIORITIZES NEIGHBORHOOD PARKS IN MINORITY COMMUNITIES.

Alternatively, or additionally, instead of forcing these projects into a framework primarily designed to weigh the environmental benefits of conserving a property, the General Assembly could modify the Code to create an additional category of VLCF grants. Currently, there are four or five grant categories each year, depending upon the annual budget of the VLCF.²⁸² Adding a new category for urban greenspace projects would ensure a pool of funds available to neighborhood park projects and would allow for the development of evaluation criteria that take into account the unique benefits of neighborhood parks and emphasize the number of Virginians likely to be served by the project.

278 Virginia Department of Conservation and Recreation, *Four Virginia Land Conservation Programs: An Overview for the Secretary of Natural Resources* (July 2021).

279 Grant Manual, *supra* note 272, at 12.

280 Va. Code § 10.1-1020 (A)(2).

281 Eldridge et al., *supra* note 278, at 6.

282 Va. Code § 10.1-1020 (C)(2) and (D)(2).

The VLCF grant categories are specified in the Virginia Code²⁸³ and creating a new grant category would require legislative action. Once the category is established, the Board of the VLCF is empowered to determine the grant criteria as well as the required match from an applicant.²⁸⁴ Presently state agencies can receive 100% of project costs, while other entities must match 50% or more of project costs.²⁸⁵ Match requirements could be reduced for projects that benefit underserved communities.

This recommendation may be functionally equivalent to the VaULT recommendation to increase the share of funding in the Parks and Open Space funding category of the VLCF grants. Adjusting grant evaluation criteria is an important difference between the recommendations. This recommendation is also aimed at achieving a similar goal as the VaULT recommendation to codify and fund the Get Outdoors Fund. This recommendation would be enhanced by VaULT's proposed expansion of the Urban and Community Forestry Program.

RECOMMENDATION 4: ESTABLISH AND FUND A NEW GRANT FUND FOR MINORITY CULTURAL PRESERVATION BY ADDING A NEW HISTORIC RESOURCE FUND.

Currently, there are a handful of funds for historic preservation established through the Code of Virginia such as: the Virginia Battlefield Preservation Fund (VBPF), the Revolutionary War Cemeteries and Graves Fund (RWCGF), and Historical African American Cemeteries and Graves Fund, which are dedicated to the, acquisition and protection of battlefields, farmlands, parks, forests, natural areas, and historic points of interest.²⁸⁶ The state provides limited grants to fund BIPOC cultural and historical sites. This grant would create a special non-reverting fund for purchase, rehabilitation, stabilization, restoration, or data recovery of any cultural or historic property associated with Black, Indigenous, or people of color. Funding has to be sufficient to make this new grant fund meaningful, and projects that are led by BIPOC communities themselves should be prioritized.

This recommendation is similar to the VaULT recommendations to create a Virginia Tribal Land Program and an African American Land Retention Program, though we believe it would fund land retention and acquisition for a broader set of communities.

RECOMMENDATION 5: FUND AND DIRECT THE OFFICE OF FARMLAND PRESERVATION AND OTHER APPROPRIATE AGENCIES TO EXPAND OUTREACH ABOUT CONSERVATION PROGRAMS.

More outreach is needed to inform communities about conservation programs available to them. Some state agencies are natural homes for these outreach programs. For example, the Office of Farmland Preservation should conduct outreach to small farms and to gender- and ethnic-minority owned farms. Agriculture is the Commonwealth's largest industry.²⁸⁷ However, many small farmers and socio-economically disadvantaged farmers are unfamiliar with the use of preservation opportunities available to them, or with the changes made to estate ownership in the Uniform Partition of Heirs Property Act.²⁸⁸

²⁸³ *Id.*

²⁸⁴ Va. Code § 10.1-1020 (A)(2).

²⁸⁵ Grant Manual, *supra* note 272, at 1.

²⁸⁶ *See, e.g.*, Va. Code § 10.1-2202.4.

²⁸⁷ Virginia Department of Agriculture and Consumer Services, *Virginia Agriculture Facts and Figures*, <https://www.vdacs.virginia.gov/markets-and-finance-agriculture-facts-and-figures.shtml>.

²⁸⁸ Va. Code §§ 8.01-81 – 81.3.

Furthermore, community-based organizations should be funded to conduct this outreach on behalf of agencies, with the end goal of more equitable use of land conservation programs in Virginia. Nonprofits can be valuable intermediaries to build trust between minority communities and the government and to help increase participation in conservation programs.

This recommendation is similar to the VaULT recommendations to provide funding to resolve heirs' property title issues, create an African American Land Retention Program, and provide funding to agencies to work with owners of smaller tracts.

RECOMMENDATION 6: INCREASE OVERALL FUNDING APPROPRIATED TO LAND CONSERVATION IN THE COMMONWEALTH.

Virginia's land conservation funds and tax credits currently serve worthy goals. The recommendations above are aimed at increasing the types of projects and communities that can take advantage of state funding to preserve their land. To allow for this expansion of conservation priorities without compromising existing programs, the Commission recommends that appropriations for the Virginia Land Conservation Fund (which in turn transfers 25% of its appropriation to the Virginia Outdoors Foundation's Open-Space Lands Preservation Trust Fund) be increased.

This recommendation is substantially similar to the VaULT proposal to increase funding for existing grant programs, particularly the Virginia Land Conservation Foundation.

Continuing the Work

Over the past two years, both Commissions made, and received support for, numerous policy recommendations addressing a wide range of racial disparities in the Commonwealth. But the work of helping Virginia overcome centuries of intentional and pervasive discrimination is not over. The Commonwealth would benefit from a permanent body dedicated to continuing the work of the Commissions. This work involves identifying specific problems and solutions when it comes to advancing opportunity and equity for all Virginians.

In February 2021, the General Assembly passed a resolution recognizing racism as a public health crisis.²⁶⁸ Through the resolution, the Virginia legislature acknowledged that systemic racism has manifested as “a determinant to public health through persistent racial disparities in criminal justice, housing, education, healthcare, employment, worker protections, climate, outdoor access, food access, and technology.” The General Assembly further recognized steps that could be taken to address systemic racism and its impact on public health, including retaining a Commission of this nature as a permanent body.

RECOMMENDATION 1: CODIFY A RACIAL EQUITY COMMISSION.

The Governor should advance or support legislation that will codify a Racial Equity Commission to ensure that this work has an enduring place in Virginia government.

RECOMMENDATION 2: ESTABLISH A RACIAL EQUITY FRAMEWORK FOR REVIEW OF PROPOSED LEGISLATION.

It is recommended that, as a matter of law and procedure, significant pieces of relevant legislation be formally assessed for its “racial equity impact” as part of the legislative process, just as all legislation is currently assessed for fiscal impact.

²⁶⁸ House Joint Resolution No. 537 (2021), <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HJ537ER>.

Conclusion

This report is the third and final of a series that began with two reports of the Commission to Examine Racial Inequity in Virginia Law and concludes with this report of this Commission, all during Governor Northam's term. In total, these Commissions made numerous recommendations to the Governor aimed at rectifying historic racial inequity in our state. It is our sincere hope that the work has contributed to a foundation of knowledge about the Commonwealth's past and its present day impacts that will serve as a springboard to a fairer and more equitable Virginia.

As we said in the introduction, this report and those that preceded it demonstrate the benefits of continuing to examine the impact of Virginia's many centuries of racial oppression and segregation to better understand our present and to plan for the future.

While some have tired of, or even reacted against, the explicit talk about Virginia's discriminatory and segregationist history, we urge people to look beyond the labels and the finger pointing, to set politics aside, and focus instead on the history, the facts, the need, and the opportunity.

The history is undeniable. For centuries, public and private actors in Virginia intentionally, pervasively, and strategically worked to create a permanent and disempowered underclass of people of color in the Commonwealth. The facts show that these efforts were largely successful. Indeed, the data in this report, and the ones that preceded it, make for a painful read. Across any marker of health, well-being, wealth, or opportunity people of color in Virginia, and in particular Black Virginians, come out at the bottom. Failing to address our past will limit our ability to address our present and to right these wrongs.

We have an opportunity for Virginia to become all that it should, for it to be a place where everyone truly has an opportunity to flourish and pursue their dreams, to work, support a family, and contribute to their community. Our democratic system is stronger when everyone participates. Our economic system is stronger when everyone's talent and good ideas can grow and contribute. Addressing the legacy of our past in the ways that we have recommended here, and that others continue to recommend every day, will allow us all to move forward.

Those of us who have served on the Commission have been honored to do so. We are grateful for the chance we have had to do this work, to look at our history and its aftermath, and to intentionally and systematically identify policy ideas to help undo some of the lasting damage. We are heartened by the reception that our ideas have had from Governor Northam and from the General Assembly.

On a personal level we have learned from one another. We have provided support to one another as we revisited our painful past and also provided inspiration to one another as we dug into policy discussions and brought our experience and professional knowledge to bear on proposing meaningful and effective solutions to Governor Northam. Despite many of us having both professional and personal experience with some of the issues we have discussed, we have all learned a lot along the way, and it is fair to say that this has been some of the most rewarding work of our careers.

Reflections from the Commissioners

Many of the policy recommendations of the two Commissions – in concert with echoing recommendations of other stakeholder organizations – have been enacted as law over the past two years and speak for themselves in terms of their impact. That is the loudest “voice” on what the Commissions’ efforts have wrought. But in the comments below, we speak in our individual voices about what the work has meant to us as Commissioners:

The Commission’s work to advance racial equity has been some of the most rewarding and personally meaningful work I have ever had the privilege and honor to do. The painstaking process and groundwork underlying the Commission’s policy work product has made clear that equity, while in no way easy to achieve, is indeed achievable with commitment to do the work required. The Commission has struck a blow that has and can continue to “bend the arc.”

Cynthia Hudson, Chair

I am so grateful for the opportunity I have had to do the work for, and be of service to, this Commission. The chance to move the needle on issues of this magnitude, to try to understand the past in order to create a better future for all Virginians, and, most of all to, learn from and partner with fellow Commissioners, our law student team members, and Governor Northam and his staff, has been one of the honors of my life.

Andy Block, Vice-Chair

Serving on this Commission has been a privilege and a joy. From its early days of reviewing areas of Virginia law to identify specific laws and enactments that should be repealed to its more recent work recommending changes to Virginia law that would decrease racial inequity in Virginia, the Commission has examined Virginia’s complicated and troubled racial history while helping the Commonwealth chart a more equitable path forward. As its adopted recommendations and annual reports suggest, this commission has made a difference. However, much work remains to be done to eliminate racial inequity in Virginia. The desire for racial equity coupled with the hard work necessary to achieve the goal are crucial to continuing to propel Virginia forward. This commission’s work is a blueprint for that effort.

Henry L. Chambers

It has been an amazing honor to be a part of the Commission to Examine Racial and Economic Inequity in Virginia Law. Being surrounded with exceptional empathic leaders who are committed to change is truly inspiring. The work that we have done is greater than all of us. We have set a blueprint that our Commonwealth can build and expand upon. I pray that the work continues and change abounds.

Rev. Pierre L. Greene

It has been a true privilege and honor to serve on the Commission and work with very distinguished colleagues to recommend ways to address racial injustice in Virginia's laws and policies. It was humbling to be a part of the Commission's successful efforts to finally repeal outrageous remnants of overt racism in state laws on education, voting, transportation and other issues. Our recommendations to proactively change other laws are supported by detailed research and data which clearly demonstrate disparate impacts on people of color and the poor. The Commission's work and achievements should be broadly publicized to serve as a blueprint for additional corrective actions.

Jill Hanken

It was an honor to serve on the Commission. Not only did I work with brilliant leaders and students in our community, but I also had an opportunity to leave a lasting equitable impact.

Carla Jackson

I want to thank Governor Northam for his vision and commitment to creating a more equitable and inclusive state. I also would like to commend my fellow commissioners, our support staff and our student researchers for dedicating their time, talent and service to help identify and change the practices of racial and economic inequities in the law in Virginia. Working on this Commission has been one of the most rewarding experiences in my legal career.

Hon. Birdie H. Jamison

The call to public service must always be answered. Our esteemed Governor issued an urgent call and this diverse group of talented and committed citizens came together and devoted their time and talent in order to tackle some of Virginia's most difficult and challenging issues involving race and class. Their numerous recommendations have been widely hailed and embraced by the Legislature and the public. Indeed, I am honored to have been a contributing member of this important group. Its work must continue because the struggle for equity under law must continue.

Hon. Jerrauld C. Jones

In this report, the Commission continues to shine a light on what can be a new path for Virginia - a path where intentional policy decisions tear down the barriers that have shrunk opportunities for communities of color and where bold decision making can build new inclusive systems of justice and opportunity. I'm proud to have been a part of this process. It is vital that the work of the Commission continues and that the policy recommendations included in this report are considered and enacted by the General Assembly. We must center equity in policy making so that all people who call Virginia home have the opportunity to thrive, without exception.

Ashley Kenneth

I expected to be part of work that could impact the Commonwealth of Virginia - and I am happy to say that I still feel that way. However, I was pleasantly surprised to also work with such brilliant, inspiring, and passionate colleagues on the Commission. I am proud of the work and I hope that the work lives on beyond this term.

Leslie Chambers Mehta

Acknowledgements

The report of this Commission was made possible because of the input and efforts of many non-Commission members throughout the Commonwealth.

Throughout its process, the Commission has received public comment and policy recommendations from private citizen and various organizations. These organizations include the Virginia Department of Health, Virginia Legislative Black Caucus, the Virginia Poverty Law Center, the Commonwealth Institute, the New Virginia Majority, ECHO Virginia, Virginia's United Land Trusts, the Virginia Outdoors Foundation, the Black Family Land Trust, as well as individuals during public comment. The final recommendations approved by the Commission include many of these suggestions.

The Commission continued to benefit from the dedication and hard work of law students from the University of Virginia School of Law, including Scott Chamberlain, Julie Eger, and Joe Aldridge.

The Commission wants to thank Mr. Don Ferguson, Senior Assistant Attorney General and Ms. Heather Hays Lockerman, Section Chief and Senior Assistant Attorney General, both of the Virginia Attorney General's Office for providing legal support to the Commission.

Throughout the duration of the work for this Commission, and with the previous Commission, staff at the Library of Virginia, including Roger Christman, Ben Steck, and Dale Neighbors, worked diligently to identify some of the powerful historic images and background information found in the report. Their dedicated hard work has been in fulfillment of the Library's vision to inspire learning, ignite imagination, create possibilities, encourage understanding and engaging Virginia's past to empower its future.

A special thank you to our design and printing team, Aaron Puritz, Haley Harrington-Thomas, and Ruth Henderson-Pollard.

Finally, the Commission wants to thank the staff in Governor Northam's office, for their unwavering commit and support of the work. We thank Melissa Assalone, Nathan Dowdy, Grace Kelly, and Jessica Killeen.

Appendix I: 2021 Legislation That Reflects the Commission's Recommendations

AGRICULTURE & FORESTRY

Sufficiently fund Virginia Cooperative Extension services at Virginia State University.

- Budget Language: \$1.5 million for the cooperative extension at Virginia State University, as well as \$6.2 million for VSU's Virginia College Affordability Network, an expansion of an intrusive advising early warning.

Modify Code § 58.1-3965 to allow an extended redemption period for tax sales involving heirs' property.

- HB2165 (Del. Hope): Extends from 36 to 60 months the time period for which a local tax official may suspend an action for the sale of tax delinquent property.

OFFICE OF DIVERSITY, EQUITY, AND INCLUSION

Enact a process that would require examination of proposed legislation with an equity lens (similar to a fiscal impact statement)

- HB1990 (Del. Aird): Provides that the Chair of the House Committee for Courts of Justice or the Chair of the Senate Committee on the Judiciary may request that JLARC review and prepare a racial and ethnic impact statement for a proposed criminal justice bill to outline its potential impact on racial and ethnic disparities within the Commonwealth (no more than 3 bills).

EDUCATION

Advocate for high quality pre-kindergarten programs for all children

- HB2312 and SB1406 (Del. Herring/Sen. Ebbin): Dedicates 40% of future marijuana revenues to Pre-K for all at-risk three and four-year-olds.
- Budget Language: Restores over \$16 million for expanding and improving early childhood education system in FY2022.

Support the Governor's initiative to unify the Pre-K data system and create Pre-K student identifiers (data tracking).

- HB2105 (Del. Bulova): Makes a uniform quality rating and improvement system mandatory for all publicly funded early childhood classrooms by 2024.
- Budget Language: \$300,000 to expand the Virginia Kindergarten Readiness Program (VKRP) to all publicly funded Pre-K classrooms; and \$161,000 to create a Deputy Superintendent of Early Childhood at the Department of Education to oversee this newly unified system starting July 2021.

Invest in educational infrastructure.

- Budget Language: Restores over \$30 million in previously un-allotted investments in tuition assistance at Virginia's public institutions of higher education. The budget includes an additional \$8.4 million for investments at Norfolk State University and \$6.1 million at Virginia State University, as well as \$5 million for George Mason University and \$5 million for Old Dominion University. The Governor's budget invests \$34 million in capital funds for system upgrades, facility repairs, and safety projects at Virginia State University.

Increase support staff funding as an alternative to suspension.

- Budget Language: \$500 million to prevent reductions to school division funding due to COVID-19. The budget invests \$27 million in school counselors and includes \$80 million for a 2% bonus for teachers and support positions. The budget also restores over \$16 million to expand access to early childhood education.

HEALTH AND HUMAN RESOURCES

Increase mental health programming in schools.

- Budget Language: Invests \$27 million in school counselors and includes \$80 million for a 2% bonus for teachers and support positions

PUBLIC SAFETY

Abolish or limit felony disenfranchisement by amending or repealing Article II, Section I of the Virginia Constitution.

- HJ555 (Del. Herring): Provides that everyone is guaranteed the right to vote. After serving a sentence for a convicted crime the person shall be granted their right to vote back.

Require the collection of data on the results of pretrial hearings, bail decisions, and pretrial incarceration, including breakdowns by race.

- HB2110 and SB1391 (Del. Herring/Sen. Lucas): Requires the Virginia Criminal Sentencing Commission to collect and disseminate, on an annual basis, statewide and locality-level data related to adults charged with criminal offenses punishable by confinement in jail or a term of imprisonment. Statewide and locality-level data will be available on a website starting October 1st, 2021.

Propose legislation that addresses the impact that mandatory minimum sentencing laws have on racially disproportionate rates of incarceration

- HB2263 and SB1156 (Del. Mullin/Sen. Surovell): Abolition of the death penalty.

Propose legislation that fosters restorative practices like expungement, clemency, sentence reductions, and retroactive sentencing

- SB1406 and HB2312 (Sen. Ebbin/Del. Herring): Includes provisions for the expungement of marijuana related convictions.
- Budget Language: \$13.1 million from the General Fund (GF), second year, for the one-time and ongoing costs of implementing and operating an automatic expungement process for certain offenses outlined in SB1406 and HB2312.

OTHER BILLS

- HB1993 (Del. Askew): Requires state agencies to establish and maintain a comprehensive diversity, equity, and inclusion strategic plan in coordination with the Governor's Director of Diversity, Equity, and Inclusion.
- HJ537 (Del. Aird): Recognizes that racism is a public health crisis in Virginia.

Appendix II: Conservation Equity Recommendations from Virginia's United Land Trusts (VaULT) and the Virginia Outdoors Foundation

September 13, 2021

To: Commission to Examine Racial Inequity in Virginia Law

Dear Commissioners,

This letter is submitted on behalf of many of Virginia's land trusts and several outdoor recreation organizations. This is not an exhaustive list of recommendations and additional stakeholders should be part of this process, but we are writing to provide recommendations for your consideration that we believe could make a meaningful difference in addressing equity in Virginia land conservation.

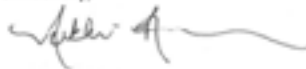
The Land Preservation Tax Credit (LPTC) program in Virginia has been an overwhelmingly successful tool in protecting over one million acres of farms, forests, historic and cultural resources, open space, and drinking water supplies and watersheds throughout the state. Virginia's LPTC program is known across the country as an innovative, bipartisan, and highly successful conservation tool. The tool has been used in more than 100 Virginia localities. Prior to the adoption of the LPTC in 1999, approximately 50% of all conservation easements in Virginia were on land located in the Northern Piedmont. There has been a dramatic increase in the distribution of land conservation across the Commonwealth as a result of the LPTC, and now only 30% of all easements are in the Northern Piedmont. This trend is very likely to continue as more landowners in more places learn about this tool.

The Land Preservation Tax Credit is, however, just one tool. We agree, as was suggested at the last Commission meeting, that Virginia's land conservation grant programs need funding. These programs have never been fully funded despite 20 years of annual advocacy by the conservation community.

Beyond the LPTC and the grant programs there are much broader needs. Attached, we offer a set of policy ideas for improving equity in Virginia's conservation programs. We hope the Commission will consider these ideas for inclusion in its recommendations.

A full suite of tools and funding are needed to meet the challenges of climate change, protect drinking water supplies, provide outdoor access to every community, conserve our working farms and forests, and address land retention and acquisition. We are happy to discuss these recommendations further with the Commission.

Sincerely,



Nikki Rovner
Board Member
Virginia's United Land Trusts



Ellen Shepard
Executive Director
Virginia's United Land Trusts

Policy Ideas for Improving Equity in Virginia's Conservation Programs

Make more land accessible to the public.

- Increase funding for existing grant programs, particularly the **Virginia Land Conservation Foundation (VLCF)**. Of Virginia's grant programs, this is the largest and the one that most emphasizes acquisition of public lands, particularly in the Parks and Open Space category. To improve equity in the VLCF program:
 - Revise the VLCF statutory formula to increase the percentage allocated to the **Parks and Open Space category**.
 - Increase BIPOC representation on the **VLCF board**.
- **Multi-use and Recreational Trail Program**: a connected trail system for urban, suburban, and rural residents to increase accessibility to parks, schools, and workplaces.
- Regularly issue **bonds** for state conservation agency land acquisition and public access infrastructure. With bonds, Virginia can provide more state parks, natural area preserves, state forests and wildlife management areas and ensure that these places have adequate infrastructure so people can use them.

Conserve and open more land in underserved areas.

- Expand the **Urban and Community Forests Program**. As the COVID pandemic has shown, people need equitable access to greenspace for mental and physical health. Trees scrub the air of harmful particulates, cool our streets, and reduce heat-related illnesses. Trees also improve water quality, cost-effectively reduce stormwater runoff, and sequester carbon. Despite these benefits, mature hardwoods are being lost to development, redevelopment, roads and disease.
- Codify and provide dedicated funding to supplement the Virginia Outdoors Foundation's **Get Outdoors Fund (GO)**. Underserved communities across Virginia have historically been unable to access available conservation resources, necessitating the need for this newly established program. The Get Outdoors Fund provides grants that increase equitable access to safe open space in Virginia's communities, including funding for a wide array of outdoor recreation, trails, pocket parks, and cultural site expansion, capacity building, outdoor education and development projects.

Provide funding and tools to historically disadvantaged groups to retain or acquire land.

- Create a **Virginia Tribal Land Program**. Virginia's state and federally recognized tribes have long been denied access to and ownership of their tribal lands.
- Create an **African American Land Retention Program**: In 1920, Black-owned farms accounted for 14% of total farms across the U.S. Today, they account for less than 2% of all farmers. Virginia must invest funding efforts to reverse this dramatic loss of land.
- Establish a program to provide financial assistance to landowners to resolve **heirs' property** title issues.
- Explore the possibility of offering a refundable tax credit for **Land Preservation Tax Credit** projects claiming below a certain amount of credits or refundable for low-income landowners.
- Provide funding to agencies to work with owners of smaller tracts. Currently, the **Virginia Outdoors Foundation** and other state agencies tend to focus on larger tracts of land to optimize the use of limited staff.

